MINISTRY OF HOUSING AND URBAN DEVELOPMENT

Regulatory impact statement

Supporting complex urban development projects with dedicated legislation

New Zealand Government

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Housing and Urban Development. It provides an analysis of options to improve urban development outcomes in New Zealand and assesses the case for enacting legislation that provides a wide range of powers to support complex urban development projects.

Context

A discussion document, *Urban Development Authorities,* was released in February 2017. Following its release, consultation occurred with various stakeholders and government agencies. This discussion document sought feedback on the proposal to have multiple urban development authorities across New Zealand with access to a range of powers. Feedback from this discussion document is mentioned throughout this paper**.**

Parameters for development of options

The options have been considered from the perspective of enacting legislation that enables the Government to act directly to support specific urban development projects at the neighbourhood level with a range of development powers, including the capacity to aggregate urban land and rezone underutilised land for the purpose of supporting urban renewal.

The policy options analysed in this RIS do not apply to the urban development system as a whole. Instead, the scope of the options is restricted to a project-based development approach. Project-based solutions are planning and development approaches based on specific development projects, their physical locations and their geographical and spatial relation to other areas. These solutions recognise the unique characteristics of each project being considered.

Structure of this RIS

Given the size and scale of the problem and options, the RIS incorporates appendices that present greater detail on both the framework and the development powers. Feedback and proposals from the 2017 discussion document are discussed throughout the RIS.

Uncertainties and assumptions within the analysis

It is difficult to calculate the scale of the likely impact that more enabling powers for specific development projects could have. In response to the wide range of barriers identified, the menu of powers proposed within the discussion document is correspondingly broad. Most of the proposals are to provide an appropriate legislative framework for a range of powers and functions to be attributed to an urban development authority (UDA) according to project-specific needs. In light of this limitation, scenarios were developed for the discussion document and secondary research has been drawn upon.

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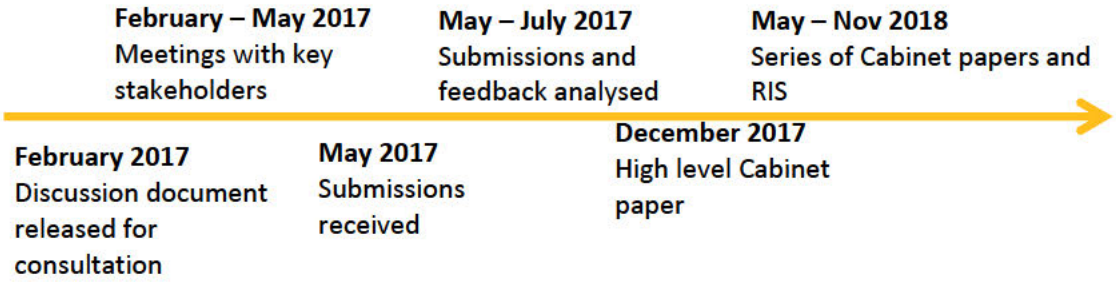
Timeline



Previous work on urban development legislation in New Zealand

- ***Catalysing Positive Urban Change in New Zealand*** **- report (June 2006):** Commissioned from SGS Economics and Planning and published by the Ministry for the Environment, the report proposed creating national and regional urban transformation corporations to undertake urban regeneration, and demonstrate commercially viable, sustainable developments[1].

- ***Urban Transformation Mechanisms*** **- Cabinet paper (July 2007):** The paper identified constraints limiting the success of nationally significant, large-scale urban development projects.

- ***Urban Development Authorities and a New Sustainable Urban Development Approach*** **- Cabinet paper (May 2008):** The paper covered both the barriers to urban development and overseas attempts to resolve similar challenges and then suggested pathways for change in New Zealand.

- ***Building Sustainable Urban Communities - discussion document*** **(September 2008):** A discussion document was produced by the Sustainable Urban Development Unit[2] that sought feedback on a development organisation to coordinate planning and investment, assemble land, and operate streamlined planning and consenting processes.

- ***Report and Recommendations from the Urban Taskforce – research report*** **(2009):** The Urban Taskforce, reporting to the Minister for Building and Construction, recommended creating "an Urban Development Agency model based on a set of clear partnering principles to deliver urban development projects" (p. 4).

- **Productivity Commission –** ***Affordable Housing*** **(2012),** ***Using Land for Housing*** **(2015),** ***Better Urban Planning*** **(2017):** The *Affordable Housing* report focused on New Zealand's experience with collaboration and the experiences of urban development authorities in Melbourne and Queensland[3]. The *Using Land for Housing* report concluded

[1] SGS Economics & Planning (2006). Catalysing positive urban change in New Zealand.
[2] An inter-agency unit with teams headed by Ministry for the Environment, Department of Prime Minister and Cabinet, and the Department of Internal Affairs.
[3] New Zealand Productivity Commission (2012). Affordable Housing. Available from http://www.productivity.govt.nz/inquiry-content/1509?stage=4

that urban development authorities can play an important role in de-risking development and bringing land to market[4]. This advice was carried through to the *Better Urban Planning* report[5].

[4] New Zealand Productivity Commission (2015). *Using land for housing*. Available from http://www.productivity.govt.nz/inquiry-content/2060?stage=4, R12.1

[5] New Zealand Productivity Commission (2017). *Better Urban Planning*. Available from http://www.productivity.govt.nz/inquiry-content/2682?stage=4 R12.2

Executive summary

1. This paper assesses the case for enacting legislation that enables complex urban development projects.

2. New Zealand faces a high need for the re-development of existing urban areas at a scale and pace that it has never had to support before.

3. Existing legislative frameworks have been adequate to deal with most land use and development scenarios in New Zealand. However, population growth and demographic changes are increasing the need to develop, redevelop and intensify land use in our cities.

4. Under the current statutory framework, large-scale urban development projects face a range of barriers including limited coordination, fragmented land ownership and the inability for central government to take action in particular development projects.

5. This RIS assesses the case for legislation that will allow central government to allocate more enabling development powers to identified complex urban development projects. The powers would be given to a UDA.

6. This RIS includes analysis on the most appropriate legislative vehicle and powers needed.

Conclusions

7. In light of the options analysis and consultation with stakeholders and government agencies, it is recommended that the Government enact a single statute of more enabling urban development legislation (UDL). This legislation should provide access to a wide range of powers to support complex urban development projects on a per project basis.

8. The powers that would potentially be available to urban development projects include:

    - planning and consenting
    - land assembly (compulsory acquisition)
    - land assembly (reserves)
    - infrastructure
    - funding and financing.

9. The recommended process involves two stages: the establishment stage, when potential projects are identified, and the development plan stage, when the UDA prepares a development plan that sets out how the powers would be used, for approval by the Minister responsible for the legislation.

10. None of the proposed powers would override Treaty of Waitangi settlements.

Benefits

11. The legislation will better coordinate the use of land, infrastructure and public assets to maximise public benefit from complex urban development.

12. Independent research examining overseas experience with UDAs[6] has concluded that when all benefits are taken into account UDAs create economic value. Benefit cost ratios of between 2:1 and 3:1 are not uncommon. For communities, wider benefits include improved amenity and services, and a range of social outcomes, including improved community health.

13. Other benefits can be expected to include:

    - faster economic transformation through more effective, large-scale urban development
    - better integration between land use and transport systems
    - more control over the location, timing and quality of urban development
    - increased planning certainty and incentive for developers to participate in large-scale urban development
    - increased access to private sector investment in urban development through joint ventures and partnership arrangements between the public and private sectors
    - better return on public sector infrastructure investment.

Costs

14. We are unable to make a reliable estimate of the impact that the proposals would have on enabling development projects generally. Because existing powers and processes can overcome some urban development problems, it is difficult to calculate the likely impact that more enabling powers could have on specific development projects.

15. We know that some large developments have been able to progress under the existing legislative scheme, albeit with some concern over the delays they have experienced (e.g. Fletcher Building's development of up to 1,500 new dwellings in a former quarry in Three Kings, Auckland, which has been the subject of a recent appeal).

16. In other cases, new legislation could be the difference between a development proceeding or not. There could also be developments that would have proceeded anyway, but where the proposed legislation will make a material difference to the dwelling yield or other public good outcomes.

17. Given the tool-kit nature of the legislation, we are also unable to know what development projects will receive what powers. This adds to the difficulty in predicting the outcomes and risks of this legislation.

[6] Ian Mitchell (2017). The case for urban development authorities in New Zealand

18. Nevertheless, we can assess certain impacts the proposed powers may have on stakeholders. For example, the legislation will enable more efficient use of urban land, which would benefit future residents but could adversely impact current residents and property owners. These groups are most likely to be adversely impacted by this legislation and the least likely to support the range of powers.

1 Status quo and problem definition

Why this policy reform is being considered

19. Historically, growth in New Zealand's urban areas has predominantly occurred by expansion of the urban footprint into the surrounding countryside. The existing development framework and rules have been designed for this.

20. However, like many developed countries, New Zealand is entering a new phase of city development involving substantial redevelopment of existing urban areas. As our cities grow, land values have risen in the suburbs closer to urban centres. Over time, historical land use configurations become sub-optimal as the needs and wider configurations of the city change (e.g. land use configurations that do not provide affordable housing, single dwellings on large sections, or poor transport links).

21. This is driving the need for the re-development of existing urban areas at a scale and pace that New Zealand has never had to support before.

22. Successful modern cities are becoming increasingly centred around nodes of mixed-use social and economic activity. Given that our cities were originally designed to distinguish between the places where people work and the places where people live, changing that paradigm requires a process of significant urban transformation, in particular by identifying and rectifying land-use patterns and infrastructure deficiencies that constrain urban performance.

23. Well-designed greenfield development is also needed at the fringes of urban areas to accommodate fast urban growth.

24. Existing legislative frameworks have been adequate to deal with most land use and development scenarios in New Zealand. However, population growth and demographic changes are increasing the need to develop, redevelop and intensify land use in our cities.

25. Cities with static or declining populations, such as Invercargill and Whanganui, face challenges that may require unforeseen urban development interventions to take opportunities to attract investment to revive their flagging economies.

26. This calls for large and significant development projects that integrate a wide range of public good objectives across economic development, local employment, affordable housing, public transport and infrastructure provision.

Status quo

Current urban development in New Zealand

27. While private greenfield development is occurring within existing urban limits and around the urban fringe of all New Zealand cities, most brownfield development is opportunistic and small-scale, centring on individual or small groups of properties. Most greenfield developments create new, low-density suburban areas that perpetuate the traditional paradigm of urban design.

28. The private sector seldom has the scale or power to manage the risks of more complex urban transformation projects to the point where development is commercially feasible.

29. Although the existing development system is capable of managing incremental urban developments, complex or strategically important urban development projects struggle to proceed at the scale and pace required.

30. This can be problematic when at least two cities the size of Tauranga, and perhaps as much as one the size of Christchurch, will need to be constructed within existing built-up areas of Auckland over the next 15 years (according to the future trajectory of Auckland's population growth).

Contributors to urban development in New Zealand

31. Many parties contribute to urban development in New Zealand:

- local government regulates and manages the pattern of urban development through the Local Government Act 2002 (LGA) and the Resource Management Act 1991 (RMA)
- central government owns land and develops it for public purposes (usually through individual departments and operating arms) and provides important community services in urban areas
- a range of funders and providers (private, central or local government) make decisions on major urban public infrastructure investments (e.g. transport, water, waste, telecommunications, energy, community facilities)
- private companies and individuals buy, sell and develop land to create residential, commercial and industrial buildings within urban areas.

Current entities leading complex urban development projects

32. New Zealand already has public entities that are leading complex urban development projects. In Auckland, Homes Land and Community (HLC) and Tāmaki Regeneration Company are government-owned entities responsible for developing their respective areas; while Panuku Development Auckland is a council controlled organisation (CCO) embarking on the transformation of Manukau and Onehunga. Wellington City Council has also announced plans to take a similar approach in the capital.

33. These entities are able to achieve large-scale development under the status quo, however, this predominantly occurs incrementally. For example Britomart, Viaduct Harbour and the Wellington waterfront development. Case study box 1 provides more information on the Tāmaki Regeneration Company and its experience under the status quo.

34. Apart from the new organisation that the Government has recently established in Canterbury (Regenerate Christchurch), none of these public entities have access to the same development powers or legislative support as most of their overseas counterparts. Instead, they must rely on controlling land and on their standard corporate powers in order to get things done, supported by their relationship with councils to reduce (but not eliminate) legislative hurdles and local regulation.

Existing legislation

35. The New Zealand urban planning system is underpinned by three main statutes – the RMA, the LGA, and the Land Transport Management Act (LTMA). The RMA is primarily a regulatory statute, while the LGA and LTMA govern budgeting, service and infrastructure provision and planning.

36. In certain areas the multitude of statuses becomes more complicated. For example, infrastructure planning, provision, funding and financing powers are currently spread across at least eight different statutes: RMA; Local Government Act 1974; LGA; Local Government (Rating) Act 2002; Local Government (Auckland Council) Act 2009; Government Roading Powers Act 1989; Public Works Act 1981 (PWA); and LTMA.

Current initiatives

37. A number of reform initiatives are already underway in New Zealand following previous reviews of urban development. These reviews identified barriers such as slow and prescriptive planning processes, and infrastructure provision which is unresponsive to growth demands. These include, but are not limited to, the Resource Legislation Amendment Act 2017 (RLAA), the National Policy Statement on Urban Development Capacity (NPS UDC), Government Policy Statement on Land Transport, the Urban Growth Agenda, Crown Infrastructure Partners the Three Waters Review and the Local Government Funding and Financing Inquiry.

38. The RLAA's changes in particular are likely to benefit government efforts to deal with urban development issues by clarifying and strengthening national direction, providing new alternatives for plan-making with improved process efficiency, and enabling further streamlining of consenting processes.

Problem definition

39. The current New Zealand urban development system provides for the general planning and urban development of New Zealand's cities however, it does not provide for exceptional needs.

40. The New Zealand urban development system does not have an appropriate suite of tools to draw on when the current approach by central government and local authorities is insufficient.[7]

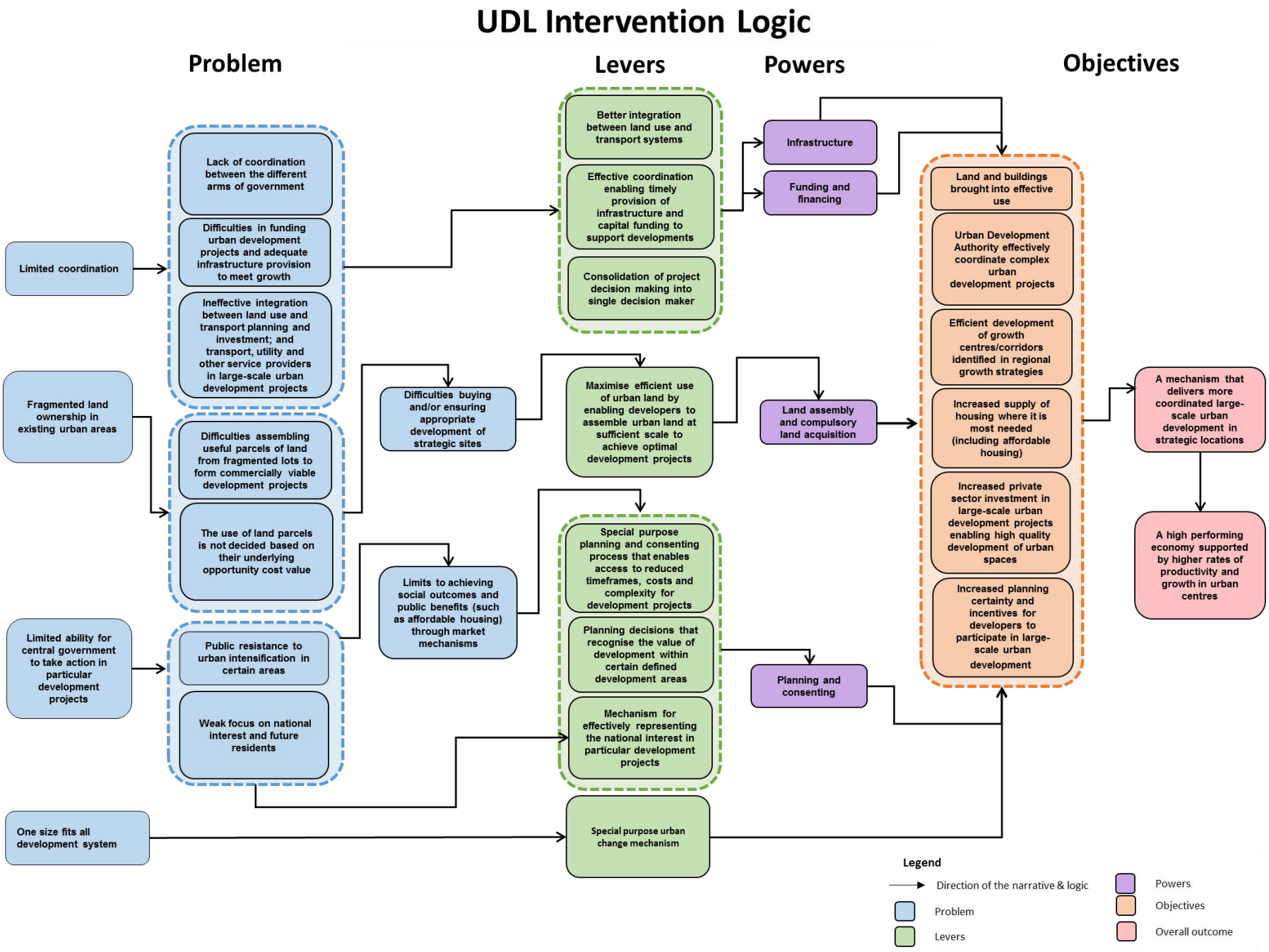
41. The existing system does not have the range of tools, powers and support required to facilitate comprehensive, large-scale, timely and transformational urban development projects. This is particularly evident with complex or strategically important projects.

42. Naturally, general problems with the wider urban development system also impact the ability to undertake more complex projects; arguably more so given the range of points at which any such project must engage with the planning system. Consequently, many of these issues also appear in the problems identified below. However, the overarching structural problem is that the general urban development system does not provide a more enabling means to realise particular projects that warrant greater support, particularly when those projects come up against the limits of what the general system is designed to do.

43. The problem definition and its relationship to the levers and objectives are captured in the intervention logic diagram on the following page.

[7] Catalysing positive urban change in New Zealand (2006). Ministry for the Environment and SGS Economics & Planning, chapter 5.

Figure 1: Intervention Logic



Case study: Tāmaki Redevelopment Company (TRC)

Tāmaki Redevelopment Company (TRC), a jointly-owned Crown/Council company, currently faces limitations to large-scale urban development under the status quo such as:

- an inability to achieve a complete spatial redesign of any of the sub-precincts within the Tāmaki area and limited flexibility with development patterns, potentially restricting dwelling yields through restrictions on density imposed by the Auckland Unitary Plan
- an inability to rearrange the spatial layout and use of public land (e.g. roading pattern and reserve land) to maximise dwelling yield and amenity values
- an inability to acquire private land needed to reconfigure development patterns for optimal development other than through willing buyer/willing seller transactions
- capture by the slow plan change and consenting process of the RMA that discourages innovative approaches to development
- the inability to alter or move existing infrastructure which it does not own, or which is connected to (or forms part of) a wider network
- the ability to only influence other government agencies, council activity and funding priorities for the area.

Limited coordination

44. A number of the constraints that currently restrict the success of complex large-scale urban development projects in New Zealand relate to limited coordination. Complex urban development projects need coordination across the national, regional and local planning systems, involving agencies including central government, local government and utility providers. Each of these agencies has different drivers for their individual planning and decision-making. It is important for complex urban development projects that their decisions and investments contribute to a shared (rather than competing) vision of the future.

Lack of alignment between the different arms of government

45. Large-scale urban development projects can only be achieved by many parties working together. However, central, regional and local government have different roles and each form of government operates at a different scale. This results in limited coordination of national, regional and local planning and implementation of large-scale urban development projects.

46. There is no integrated programme between central and local government to identify ways to utilise under-performing public assets in particular areas. Nor is there

integration to identify areas where urban development projects could achieve service delivery gains by reducing social deprivation or improving mobility.

47. Decision-making regarding public sector investment at local, regional and national levels is not well aligned to ensure that investment in particular development projects is suitably directed towards achieving effective urban transformation.

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

48. Mechanisms for the planning and delivery of infrastructure in New Zealand are complex. Different categories of infrastructure are planned and delivered by a spectrum of public, mixed and private sector bodies. The result is a system that struggles to ensure an integrated approach to making decisions on, and setting priorities for, complex urban development projects. Infrastructure supply is commonly unresponsive because land use rules and infrastructure planning are not well aligned for particular development projects.

49. There is misalignment of timing, scale and prioritisation of a range of infrastructure investment, land use and operational location decisions by service providers. Providers have their own priorities, asset management requirements, timing issues and investment decision points. All must be actively involved in planning and developing a particular urban area to ensure that:

- the right infrastructure and community facilities are put in the right place at the right time, and are of sufficient scale and standard to cope with the expected population or use
- residents and visitors can access the right services at the right time and at a reasonable price.

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

50. In its *Better Urban Planning* report[8], the Productivity Commission found that councils, particularly in high-growth areas, often invest too slowly or underinvest in infrastructure, even though the additional revenues from growth are likely to cover the costs over the lifetime[9] of the asset. Reasons include the front-loaded costs of infrastructure relative to growth revenue, debt limits, reluctance to fully use existing funding tools, and political pressures to keep rates low and avoid debt.

51. These issues with the general urban development system have particular relevance to complex projects insofar as the powers and abilities necessary to fund large-scale urban development are unevenly distributed. No one entity has all the powers required

[8] New Zealand Productivity Commission (2017). *Better Urban Planning*. Available from http://www.productivity.govt.nz/inquiry-content/2682?stage=4

[9] Although a report commissioned by MBIE in 2017 on whether growth pays for growth suggests that this is true in theory, there are a number of reasons that work against this in practice (such as imperfect information, and conservatism in costings to lessen the likelihood of legal challenge).

to undertake a complex urban development project and manage all foreseeable needs by itself.

Fragmented land ownership in existing urban areas

52. Unlike other countries, New Zealand has few large tracts of derelict land or contiguous Crown land within its urban borders that can be used for large-scale urban development. Therefore the problem in the New Zealand context is how to amalgamate small parcels of valuable urban land into larger blocks that permit meaningful development.[10]

53. Most existing urban areas consist of land parcels of differing sizes, ownership and uses. Currently, large-scale urban development projects experience difficulties assembling useful parcels of land from fragmented groups of properties to form commercially viable development projects in strategic sites.

54. Where significant urban transformation is desired, projects need enough land in common ownership to enable a developer (or a group of owners working together) to:

- make significant changes to urban form to create large-scale, purpose-designed, higher-density, mixed-use development. This includes new roading patterns, linkages to rail, public spaces and infrastructure
- realise economies of scale
- re-package and redevelop the land and assets to improve their utilisation or performance and increase their public/private value (this would apply particularly to public land and assets).

55. These projects are precluded by the difficulties of negotiating with multiple land-owners and the risk of owners either holding out for higher prices or frustrating a strategic vision by proceeding with smaller-scale development on their own property.

56. Under the current regime, the use of land parcels is not decided based on their underlying opportunity cost value (either in financial capital or natural capital). Instead, regulatory decisions about land use focus on limiting the effects of particular activities, land parcel by land parcel, rather than a broader consideration of where the most efficient location for land use activities might be.

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

57. Central government has few direct levers with which to act in respect of particular development projects. There is a lack of statutory authority for the Crown to participate directly in urban transformation activities at regional or local level.

58. This is generally desirable, insofar as democratically elected local government is best placed to manage local issues. However, there is a need for central government to play a role when local issues are having a national impact (e.g. Auckland housing or lack of

[10] Gray, R. N. (2006). Towards an urban transformation framework for New Zealand. Paper prepared for the Ministry for the Environment. Wellington: R Neil Gray Strategic Projects.

regional economic development), as local government is not incentivised to respond to national issues.

59. No single Crown agency has an active mandate to carry out urban development or to coordinate Crown inputs for urban development projects (despite significant investment in urban infrastructure) that represent the national interest. There is no coordinated process for Crown agencies to provide local authority owned land for a development of regional or national importance; nor is there a process to prioritise Crown land for different uses, including urban development. This leads to a lack of integration when making decisions on urban development projects of national importance, as well as strategic management of Crown land.

60. These deficiencies in the existing tool kit are particularly problematic with respect to complex or strategically important urban development projects.

Public resistance to intensification in particular areas

61. The Productivity Commission[11] found that most New Zealand cities tend to grow out at the fringes, rather than intensify within existing urban areas. In New Zealand there is a strong public preference for large, standalone houses.[12]

62. A gap seems to exist between council aspirations for compact cities as expressed in their plans and actual policy outcomes. Although many cities across New Zealand have chosen to pursue a compact urban form, local democratic processes are often dominated by interests that resist intensification as a means to accommodating growth.

63. Local government is subject to political pressures that limit their willingness to effectively support urban development projects that will restructure an existing urban area. The system of local government democracy is biased in favour of property-owners and is unable to equally represent the interests of people who require additional housing to be constructed. Consequently, local authorities have difficulty giving effect to this strategy through land-use rules.

64. There is public distrust that intensification efforts will be high-quality and fit in with the character of existing areas. Poor construction, designs and controversies, such as 'leaky buildings', have created negative associations with residential intensification projects. These outcomes have led to significant resistance and opposition to higher-density typologies, particularly in predominantly low-density neighbourhoods.

Limits to achieving social outcomes and public benefits through market mechanisms

65. The market has difficulty translating community aspirations into viable projects that are attractive for private sector investors. This prevents urban development projects from making headway.

[11] New Zealand Productivity Commission (2017). *Better Urban Planning*. Available from http://www.productivity.govt.nz/inquiry-content/2682?stage=4

[12] New Zealand Productivity Commission (2017). *Better Urban Planning*. Available from http://www.productivity.govt.nz/inquiry-content/2682?stage=4

66. There are existing suburbs that need housing renewal, either to provide additional housing to support nearby business development or because the existing stock needs to be replaced. However, where these suburbs have less desirable reputations, they have lower housing and land prices, which undermine the ability of private developers to identify projects that generate sufficient profit. This deters investment in further development that would otherwise provide both public and private benefits.

67. Furthermore, existing legislation aims to reduce risks of adverse development and to address subjective perceptions of impact, rather than enabling a balanced evaluation of social costs and benefits. Decisions tend to err on the side of caution, restricting development, rather than taking an objective evidence-based assessment of risk. This manifests as arbitrariness, unfairness and a long process that erodes the viability of proposed development projects, as delays are expensive and can provide an opportunity for opponents to re-litigate decisions.

One-size-fits-all development system

68. General legislation governing urban development must strike a balance between competing considerations, such as balancing environmental protection with economic growth, and the concerns of neighbouring land owners. The urban development system must strike this balance for the nation as a whole without overly favouring any one particular purpose.

69. While the balance in urban areas can be struck in favour of urban development to some extent, the scope and purpose of general legislation means that any settings designed to support urban development can only go so far.

70. The result is an urban development system that is not designed to cater for special circumstances. Strategically important urban development projects of national significance are governed by the same general settings as a backyard subdivision.

71. This means that, although in the majority of cases the various spheres of government already have a reasonable suite of tools available to realise desired urban change, in certain circumstances the same tools fall short, particularly with respect to projects of national significance.

72. The underlying issue is the tension between what is desirable for the general urban development system and what is needed in special cases. In particular, the general system is deliberately designed to limit central government's direct involvement in shaping the pattern of urban development. However, in certain cases there is an unmet need for mechanisms that can better overcome that deliberate design by enabling greater central government involvement (e.g. Tāmaki, where central government both owns half of the housing and there is a national interest in the regeneration of these suburbs).

73. Ultimately, the assumption underpinning New Zealand's planning and urban development is that one general system can appropriately cater for all circumstances. The limitation of that assumption is one of the key problems addressed by these proposals.

Consultation feedback: Status quo and problem definition

- Submitters overwhelmingly understood the obstacles that large-scale urban development projects currently face. Developers especially provided examples of where the current system has hindered their developments. Many mentioned the limitations of processes under the RMA for large-scale projects.
- Submitters, particularly developers, agreed that there are currently coordination failures occurring at the project level between the different arms of government. Developers noted that there is a strong need for coordination and agreement between the functional components and entities required to achieve successful area-based urban re-development. They particularly noted the struggle in aligning timeframes and intentions with other agencies.
- Developers and councils mentioned the obstacles faced when assembling large parcels of land that are appropriate for development. The need to amalgamate land to create more integrated urban development compared to existing fragmented land ownership was regularly noted.
- The need for a stronger relationship between central and local government was highlighted consistently by councils and some developers. Submitters illustrated the need for central government to have the ability to enable sufficient development capacity for residential and business land.
- Concerns were raised, predominantly by planning groups, as to how UDAs would sit within the current planning system and initiatives that are in place. The amendments to the RMA (RLAA) were mentioned consistently by submitters who questioned the need for UDAs after its enactment. However, while the RLAA will result in improvements to the general planning system, it will not address the need for a mechanism to support particular large-scale urban development projects, nor resolve issues around infrastructure provision and funding, land assembly or reserves management.

74. Table 1 on the next page demonstrates a range of current initiatives and what problems they are addressing. Particular problems highlighted in the table are discussed in the problem definition section.

Table 1: Current initiatives

Problems	Urban Development Legislation	National Policy Statement- Urban Development Capacity	Housing Infrastructure Fund and Crown Infrastructure Partners	Housing Accords	Crown Land Programme	Land for Housing Programme	Resource Legislation Amendment Act	Urban Growth Agenda
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	✓✓	✓	✓	—	—	—	—	✓✓
Difficulties assembling useful parcels of land from fragmented lots to form commercially viable options	✓✓	✓	—	—	✓✓	✓✓	—	—
The use of land parcels is not decided based on their underlying opportunity costs value	✓✓	✓	—	✓	✓✓	✓✓	✓	✓
Public resistance to urban intensification in certain areas	✓	✓	—	✓✓	✓	✓	✓	✓
Weaker focus on national interest and future residents	✓✓	✓✓	✓	✓	✓	✓	✓✓	✓
Capacity and capability issues in all levels of government and the development industry	✓	✓	—	✓	✓	✓	—	—
Length and nature of planning and development control processes	✓	✓	—	✓✓	✓	✓	✓✓	✓✓
Planning legislation lacks clarity and focus, and is prone to overreach	✓	✓	—	✓	—	—	✓✓	✓✓
Lack of commercial incentive to provide affordable homes/sufficient number	✓	—	✓	✓	✓✓	✓✓	✓	✓
Slow, prescriptive, risk averse planning process for urban environments	✓	✓✓	—	✓✓	—	—	✓	✓✓
One-size-fits-all development system	✓✓	—	—	✓✓	✓	✓	—	—

KEY	Likely to significantly contribute to meeting objective	✓✓	Likely to contr bute to meeting objective	✓	Does not contribute to the objective	—

2 Objectives

Relationship with KiwiBuild

75. KiwiBuild aims to facilitate the delivery of 100,000 affordable houses for first-home buyers over the next 10 years.

76. There are four methods for delivering KiwiBuild:

- identifying and leveraging opportunities to procure KiwiBuild homes
- purchasing (or underwriting) new homes off the plans, to de-risk suitable developments that the private sector and others are leading
- undertaking 12 to 15 major greenfield and urban regeneration projects
- investigating innovative approaches to addressing current constraints within the development sector.

77. The UDA would undertake all these functions once fully established. A part of these functions is undertaking 12 to 15 major greenfield and urban regeneration projects. This legislation will provide the UDA with the powers it needs to undertake some of these developments.

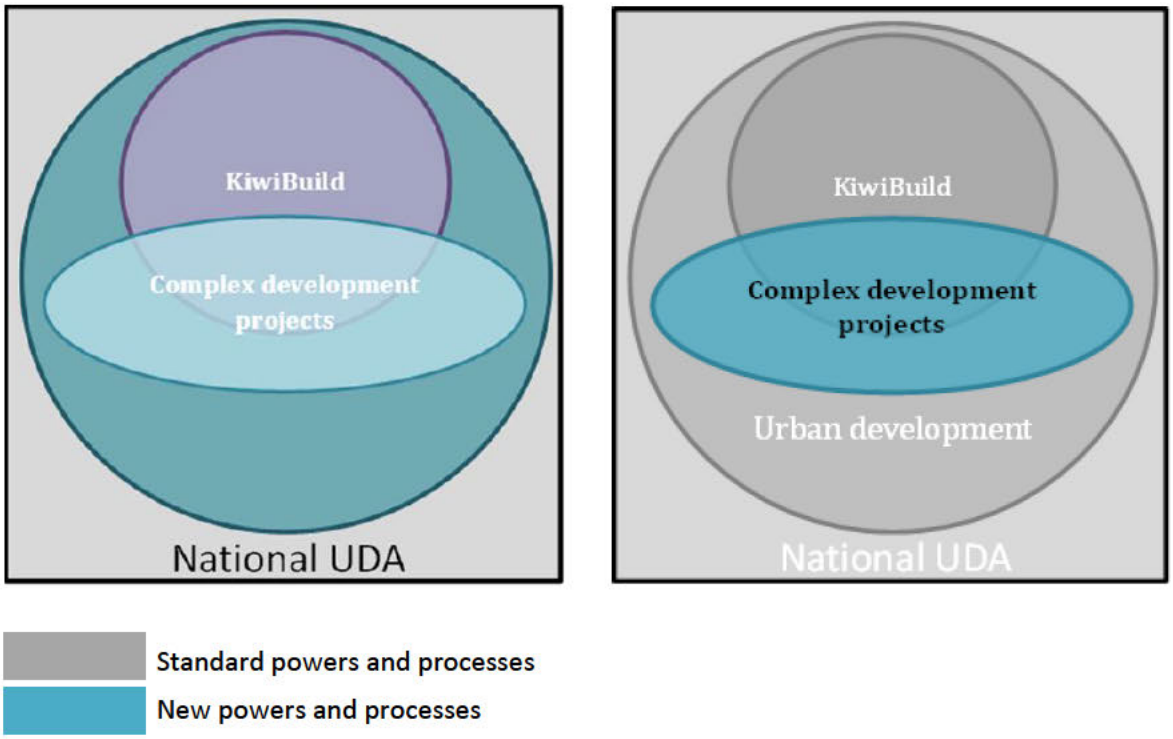
78. While complex development projects will deliver a large part of KiwiBuild, they will not be responsible for delivering all of KiwiBuild; nor will they exclusively deliver KiwiBuild outcomes and nothing else. In the interim, the KiwiBuild Unit will take on the functions not requiring the development powers.

79. Most projects will include urban development outcomes that go beyond KiwiBuild such as:

- commercial and industrial buildings
- other new homes (including public housing)
- transport solutions
- parks and amenities.

80. Figure 2 on the next page outlines the relationship between KiwiBuild and the UDA.

Figure 2: Relationship with KiwiBuild



81. It is also important to note that for many developments the national UDA will be able to use standard development and planning processes. Only for selected development projects will the UDA access the more enabling development powers and processes that Cabinet has previously agreed.

Objectives

82. Ultimately the objective of the urban development legislation is to better coordinate the use of land, infrastructure and public assets to maximise public benefit from complex urban development projects. This includes:

- bringing land and buildings into effective use, including through the subdivision and consolidation of land
- increasing planning certainty and incentives for developers to participate in large-scale urban development
- increasing private sector investment in urban development projects enabling high-quality development of urban spaces
- increasing supply of housing where it is most needed
- facilitating efficient development of growth centres/corridors
- effectively co-ordinating complex urban development projects.

83. More particularly, the objective is to ensure an appropriate urban change mechanism is available to support particular urban development projects when the settings of the

general urban development system mean that the opportunity or challenge cannot be satisfactorily resolved.

Levers

84. These objectives can be achieved through the following levers:

- better integration between land use and transport systems for particular projects
- effective coordination enabling timely provision of infrastructure and capital funding to support developments
- consolidation of project decision making into a single decision maker
- maximising efficient use of urban land by enabling developers to assemble urban land at sufficient scale to achieve optimal development projects
- special purpose planning and consenting processes that enable access to reduced timeframes, costs and complexity for particular urban development projects
- planning decisions that recognise the value of development within certain, defined development areas
- a mechanism for effectively representing the national interest in particular development projects
- a special purpose urban change mechanism.

85. The links between the objectives, levers and problem definition are demonstrated in the intervention logic diagram in section 1.

3 Options and impact analysis

86. The options analysis is presented in four parts:

- Do we need to legislate?
- What is the most appropriate form of legislation?
- What are the key features of an urban development authority?
  - Appendix 1 provides more analysis on the preferred framework
- What is the most appropriate legislative framework?
- Which development powers should be in the preferred form of legislation?
  - Appendices 2-6 provide more analysis on each of the powers.

Do we need to legislate?

87. This section assesses two options:

- Non-legislative changes
- Legislation

Non-legislative changes

88. It is possible for complex urban development projects to progress under the status quo. With enough local political will and cooperation across agencies and functions, the challenges of coordination can be overcome and sufficient funding can be accessed to assemble commercially viable land parcels. With further cooperation, central and local government could pursue joint ventures that pool Crown land with council land. This approach would draw on existing organisational forms to involve central government in assisting its development.

89. Accordingly, the first option to achieve the objectives is to build on the status quo by:

- finding ways for the organisations that plan, fund and/or provide important infrastructure (such as public utility operators, developers, and local and central government) to work together more effectively
- building capacity and capability in urban development across both central and local government
- improving the way existing regulatory tools are used
- improving or adapting existing tools.

90. There is increasing recognition by agencies and organisations of the value of working closely together to better co-ordinate planning and integrate infrastructure provision. Thus, there may be scope to continue to improve communication and interaction between the key players.

91. Capacity and capability building could be undertaken across local and central government to ensure urban development needs are understood, to build the skill and expertise base, and to concentrate key players around particular projects. This could be helped by a range of options including:

- collecting, analysing and providing information on urban issues
- developing guidance notes, case studies, and good-practice examples, and creating forums for sharing experiences and expertise
- supporting recruitment and training initiatives to address skill gaps
- creating a shared services company or initiative for central and local government to pool and share expertise for use in projects
- using existing consultation and/or planning mechanisms more effectively.

92. Furthermore, CCOs are a readily available commercial vehicle through which local government can organise, manage and coordinate urban transformation in their communities. By establishing more of these organisations and investing further in their capacity and capability, it may be possible to address many of the coordination issues identified earlier, and even involve central government to some extent. Alternatively, central government can readily establish Crown entity companies to pursue development projects, and equally involve local government.

93. However, there are limits to what can be achieved without legislation. CCOs' balance sheets form part of the consolidated accounts of their parent council, so can come under the same debt-to-revenue and other financial constraints faced by councils. A council that already is close to its debt limits may not be in a position to set up a new CCO if it will increase overall debt.

94. Greater coordination also depends on cooperation. Without it, the multiple decision-makers involved are unlikely to coordinate and cannot be obliged to do so, given their various different statutory roles.

95. Secondly, while the ability to access powers of compulsory acquisition is nominally available to both central and local government to overcome land fragmentation (and could be extended to CCOs and Crown entity companies), in practice the PWA lacks clarity and consistent criteria generating legal risk that deters its use. In principle, powers exist for 'urban renewal' under the PWA and LGA, but because they are not well understood or tested, they are seldom used.

96. Thirdly, any central government involvement could only occur by invitation. There would not be a recognised role in complex urban development projects. Finally, there would be no change to the planning system. The challenges that generate uncertainty and greater costs for complex projects would continue to undermine their viability.

Legislation

97. This section assesses the pros and cons of legislating to enable urban development projects to be built.

98. It builds on the previous investigations and recommendations made in a 2006 Ministry for the Environment report[13] and subsequent 2008 discussion document[14]that proposed a project-based approach to urban development projects and invited public feedback on the concept.

Pros

99. Firstly, legislation can address the fact that the challenges and barriers to coordinating complex urban development projects are spread across various statutes. As outlined earlier, infrastructure planning, provision, funding and financing powers are currently spread across at least eight different statutes, with multiple decision-makers. The only sure way to better coordinate the exercise of these legislative functions is through legislation.

100. Secondly, because the powers of compulsory acquisition are also based in statute, only legislation can overcome the current uncertainties and inconsistencies in their application. Thus, a legislative approach would best address the challenge of land fragmentation and reduce the complexity and intersecting nature of current land assembly powers.

101. Thirdly, a legislative approach would empower central government to directly intervene in order to progress nationally-significant urban development projects, where there is likely to be significant public benefit in doing so. Without legislation, central government would not have the same mandate to become involved.

102. Finally, only legislation can change the nature of the planning system. Without legislative change, it would continue to treat all development projects as equal, without the potential to approach complex projects in a more enabling way.

Cons

103. New Zealand's planning system is already complex, with a multitude of interlinking statutes, including, but not limited to, the RMA, LGA, the LTMA, PWA and the Reserves Act 1977 (Reserves Act). Introducing another piece of legislation is likely to further complicate an already complex legal system.

Recommendation

104. While initiatives under the status quo may make a difference at the margin, they are unlikely to provide the speed of outcomes required, especially with respect to housing supply projects. Although the new legislation will add an unavoidable layer of

[13] SGS Economics & Planning (2006). Catalysing positive urban change in New Zealand. Report prepared for the Ministry for the Environment.

[14] Sustainable Urban Development Unit (2008). Building sustainable urban communities. Discussion document prepared by the Department of Internal Affairs.

complexity, it will provide an urban change vehicle by which government can act directly to secure nationally or locally significant outcomes through coordinated leadership and investment. Therefore, in light of the options analysis and consultation with stakeholders and government agencies, this RIS concludes that legislation is the most appropriate tool to address the challenges identified in section.

What is the most appropriate form of legislation?

105. This section discusses three alternative legislative options:

- Option 1: Reform of the planning system that does not provide more enabling powers for complex urban development projects.
- Option 2: Multiple bespoke statutes that each establish a separate development project.
- Option 3: A single enabling statute that can establish multiple urban development projects

Option 1: System level reform that does not provide more enabling powers for complex urban development projects

106. The Urban Growth Agenda (UGA) is designed to improve outcomes for New Zealanders by addressing the fundamentals of land supply, development capacity and infrastructure provision.

107. The UGA will provide options for legislative changes to the urban and infrastructure planning system to ensure it is responsive to growth and provides for thriving communities. It will provide options for how to move towards a planning system that is more aligned and integrated across its functions and decision making processes, and has institutional structures that are fit for purpose.

Pros

108. The UGA aims to tackle a range of system wide problems and would go further than legislative reform of the RMA. It is an opportunity to deliver medium to long-term changes needed to system settings to create the conditions for the market to respond to growth and bring down the high cost of urban land. It will improve housing affordability.

Cons

109. The UGA will inherently fail to address both the one-size-fits-all nature of the planning system and the limited ability for central government to take direct action in particular development projects.

110. While we can assume that a reformed system will be more enabling for urban development, it will have to strike a balance between development and other considerations at some point. The system changes will need to cater for all areas, in all

scenarios, and is therefore unlikely to be as enabling as it could be if the rules were being drawn up for a single project in a particular geographic area. The concerns that drive the need for system-wide protections when considering all areas and all scenarios are unlikely to all apply to one particular project.

111. Some complex development projects will need more enabling powers and provisions than even a reformed system will allow. They will need a specific urban change mechanism that is only available in special cases that a general planning system alone cannot address. As the Building Sustainable Urban Communities discussion document explained:

> 'Complex and/or strategically important projects may need a wider range of powers, tools and support, potentially of a directive or coercive nature…. These types of projects are likely to make up only a small (but important) proportion of all urban development.' (p. 35)

112. As this suggests, there will always be a tension between what is desirable for the general urban development system and what is needed in special cases. Hence the need for legislation dedicated to those special cases, which can operate in parallel with the general system.

113. Secondly, if responsibility for solving development problems stays at the local level and keeps central government at arm's length, this may not be ideal in particular cases. Although this will be the ideal when dealing with businesses-as-usual, what works in general does not cater for special cases.

114. One of the main benefits of an alternative urban change mechanism is that it enables proactive central government intervention in local urban development. This would provide a means for central government to be more closely involved in particular development projects where that involvement is warranted (the main examples being where the Crown owns significant amounts of land and where there is a national interest in particular projects).

115. Therefore, although the UGA will improve the system more generally, there will still be the need for an urban change mechanism that enables project-specific planning that is tailored to the complex, large-scale developments. Although any mechanism in the short/medium term may need amending in light of the UGA's outcome, there is still going to be a need for a dedicated project specific mechanism.

Option 2: Multiple bespoke statutes that each establish a separate development project

116. The second option is to enact individually tailored legislation for each development project, as with the enactment of the Riccarton Racecourse Act 2016 and the Point England Development Enabling Act 2017, which is part of the Tāmaki regeneration project.

Pros

117. There is a relative simplicity of a single statute dedicated to one development project.

118. Tailored legislation allows for appropriate powers to be provided in each case and thereby reduces the potential concerns and uncertainties created by a larger tool-kit of powers where it is not clear where they might be used.

Cons

119. This approach would be inefficient if applied to a large number of developments. It fails to provide certainty for the market and may prevent potentially viable development projects from being identified.

120. Private sector developers who come forward with development projects need more certainty than the mere potential for standalone legislation.

121. It is also not efficient to dedicate public sector resources to legislating for urban development projects on an ad hoc basis, meaning each project will need to find new resources.

122. In addition, tailored legislation must compete for Parliamentary time with the Government's other legislative priorities. A large or small project will still take a similar amount of time to navigate the Parliamentary process – between 10 and 24 months – and its timing cannot be reliably planned.

Option 3: Single enabling statute for urban development projects

123. Option 3 involves enacting a single enabling piece of legislation. A range of development projects could be eligible to access the new legislation, including housing, commercial and infrastructure projects, provided they meet specified criteria.

Pros

124. A single enabling statute for urban development projects is an efficient approach that can be applied to a large number of development projects. It can provide certainty for the market.

125. This option can reduce the significant resource costs and time penalties that come with tailored legislation for individual projects.

126. A single statute for urban development projects will also be more accessible for private sector developers (such as when they are participating as part of a joint venture).

127. A single enabling statute centralises the systems around a small set of authoritative actors and venues. Many of these provisions would function to reduce development times for large-scale development by shortening existing processes.

Cons

128. Although a standalone piece of legislation has the potential to reduce complexity surrounding the legislative powers and approval processes that support development, it will itself need to be fairly complex, as a single statute will need to cater for multiple

projects. This will likely need to be more complicated than a bespoke statute designed for a single project.

129. One single statute may raise concerns or uncertainties about the larger toolkit of powers where it is not clear where they might be used.

Recommendation

130. It is recommended that single enabling urban development legislation is enacted. This legislation would be able to efficiently apply to a large number of development projects. It would provide more certainty to the market, compared to multiple bespoke statutes.

131. A single enabling urban development legislation is more flexible and adaptable, as it is able to cater for particular projects in ways appropriate to each project.

132. Although, system reform will address many of the problems discussed in section 1, it will do so at a system wide level. Certain complex, large-scale developments are likely to need targeted, case-by-case intervention.

What are the key features of an urban development authority?

133. This section of the RIS assesses the best framework for a single enabling statute for urban development projects. It focuses on the key features of a UDA.

134. Appendix 1 discusses various aspects of the framework in more detail.

The need for development authorities

135. Previous work completed in New Zealand on urban development legislation recommended the establishment of some form of urban development entity which could address the problems discussed in section 1.

- The 2006 Ministry for the Environment report, *Catalysing Positive Urban Change n NZ*, recommended that a national urban transformation corporation should be established, supporting the delivery of projects of national significance and providing advice and support to regional and local urban transformation corporations. It contended that the existing tool-kit for managing urban change in New Zealand was insufficient, highlighting the need for supplementary mechanisms for urban change.

- In 2008, the *Building Sustainable Urban Communities* discussion document recommended the establishment of urban development organisations. It suggested a ‘place-based’ approach to urban development, whereby the focus would be on “existing tools and powers to create a new solution for our unique urban places rather than creating standard formula to apply to urban areas throughout the country” (p. 5), the mechanism for this being urban development organisations.

- The 2009 Urban Taskforce report also recommended the use of an urban development agency model as a "tried and tested way to bring together complex projects" (p. 15). It contended that "something systematic is needed. This has been found over time in many countries where an urban development agency approach has provided durable arrangements" (p. 15). The report noted the purpose-built development agencies are able to:
    - speed up the process of development
    - scale up of the process of development where that is necessary
    - introduce a wider range of partners into the process in a more direct and effective way
    - create efficiencies, particularly the sharing of costs and risks, to produce innovation in the sense of being free to do things a bit differently
    - deliver long-term value by creating a financial engine or pursuing development over the long term.
- Since then, a range of research has been conducted into urban development authorities.[15] The Productivity Commission in their *Using Land for Housing* report concluded that urban development authorities can play an important role in de-risking development and bringing land to market. New Zealand requires a focussed, determined and substantive response that moves beyond what has been done previously. This means a greater degree of publicly led development. The Commission contends that:

    > "A UDA would be a suitable vehicle for the use of compulsory acquisition to amalgamate parcels of land for development and redevelopment, and for capturing the uplift in value that comes from up-zoning, coordinating infrastructure provision, and catalysing development on a scale required" (p. 14).

    The Productivity Commission went on to recommend in their *Better Urban Planning* report that a future system should include legislation in which certain development authorities that are able to operate with different powers and land use rules (recommendation 12.2).

Options analysis on key features of urban development authorities

136. This section assesses the high level key features of the entity at the heart of these recommendations, referred to as a UDA.

137. Section 6, Implementation Plan, and appendix 1 describe and assess the framework and entity structure in more detail. These sections go on to discuss what forms UDA's could take.

[15] These papers include the Productivity Commission reports into Housing Affordability in 2012, *Using Land for Housing* in 2015 and *Better Urban Planning* in 2017 and the 2016 The Case for Urban Development Authorities in New Zealand by BRANZ

There are two high level options

Option 1

138. This is the approach taken in Australia, where UDAs are typically single, state-level entities that are responsible for multiple development projects in different locations with access to the full range of development powers provided in their enabling legislation. Examples include the Metropolitan Redevelopment Authority (Western Australia), Renewal SA (South Australia), Places Victoria (Victoria) and Urban Growth NSW (New South Wales). In New Zealand this model would mean either a regional or a New Zealand-wide UDA.

Option 2

139. This is the approach taken in Britain, where an UDA is established to manage a single project, but with the potential to manage more than one project in a city. The London Docklands Development Corporation established in 1981 is an example of a project-based UDA. The corporation's aim was the urban renewal of 2,400 hectares on the banks of the Thames River which had fallen into disuse and has now become the Canary Wharf commercial centre. In the New Zealand context, an example would be TRC gaining UDA status for the Tāmaki project.

140. These two options are presented in the table below.

Table 2: Framework

	Option 1	**Option 2**
Number of UDAs	One UDA	Multiple UDAs
Number of projects	Multiple projects per UDA	Single project per UDA
Access to development powers	Access to all the powers	Powers limited to selected group

Number of UDAs

141. Under option 1 there could be one UDA per region or for the whole country, compared to option 2 where there would be multiple UDAs across the regions.

142. Submitters on the discussion document noted the risks that come with multiple UDAs. They contended that multiple UDAs could result in overlapping boundaries and competition for resources. Many submitters felt that the sector does not have sufficient capacity to resource multiple UDAs beyond a certain point. Multiple UDAs may also have a negative impact on the ability of local authorities to govern and advance their other strategic objectives. There is the risk of duplicating functions in a single region and of missing out on scale efficiencies. Submission feedback also noted the cost and 'red tape' required to set up new entities. There is a significant cost for the establishment of multiple UDAs.

143. One UDA has its advantages. Its size and scale enables the entity to source private sector talent and build on expertise in undertaking large and complex projects and enables it to diversify its holdings and projects in order to manage risk. There is also a greater ability for a single UDA to recycle capital from one project for use in another (something that HLC is now doing).

144. However, option 1 has the potential to exclude current development entities (for example TRC, HLC and Panuku) from becoming urban development authorities if UDA status was only granted to one UDA. With multiple UDAs per region (option 2), current development entities would be able to gain UDA status. This is in line with the Productivity Commission's recommendation that "rather than establishing a parallel UDA, central government should seek to support the activity of locally established UDAs" (p. 304).

145. Nevertheless, having regional UDAs or a national UDA does not wholly exclude these development entities from accessing the benefits of this legislation (as project partners for example), only the UDA status.

Numbers of projects

146. With option 1, a UDA is able to take on a wide range of projects that vary in size and scale. Allowing a UDA to have responsibility for more than one development project would maximise the benefit delivered by the time and money invested in establishing a UDA while allowing development projects that meet differing needs to be established.

147. Option 1 would allow lessons learned to be more easily transferred between areas, costs to be spread across multiple development projects and more development projects to be established. It would also allow for smaller scale, but still complex, development projects to be established thereby enhancing the effectiveness of the legislation.

148. A potential drawback is if the governance of the UDA is accountable to Ministers for the successful delivery of multiple development projects. This has the potential to create conflicting priorities.

149. With option 2, UDAs are established for a particular project. Limiting UDAs to a single development project might suit particularly large-scale developments that need to be undertaken over a long period of time. The work being undertaken by the Tāmaki Regeneration Company is an example of such a project. The key advantage of this model is that it would allow for clear accountability to Ministers for the successful delivery of the strategic objectives[16] of the development project in question.

Access to powers

150. Under option 1, all of the development powers would be available to each development project, with the UDA selecting which powers are required to achieve the project's strategic objectives. This option provides clarity in terms of what powers can be used. It enables development projects to pick and choose from a tool-kit of powers to suit

[16] The role of strategic objectives will be to define the aims of each development project and guide planning and delivery.

specific circumstances, without the added layer of approval (and time penalty) that comes with option 2.

151. Option 1, however, does not provide for a more tailored approach for each development project. In order to minimise risk, the powers available in option 1 can potentially be less far-reaching than if they were approved on a case-by-case basis, like option 2. This approach also heightens the risks of misuse of powers. Under option 2, if a UDA was misusing a power, access to that power could be more readily removed.

152. Under option 2, central government would retain the ability to choose which development powers are made available for each development project. This approach enables a tailored approach to each development project. The development powers would be chosen when the project is established. This option enables the public, affected residents and relevant government agencies to have their say on the powers provided to each project.

153. One limitation of option 2 is that there may be difficulty in the ability to anticipate all the development powers that might be beneficial at the establishment phase and before a development plan has been completed. While it will be obvious that certain powers are required at this phase, it will not be obvious that other powers are needed until much later in the planning process.

154. This could also pose problems with public consultation. The public would need to be consulted on the development powers being approved for each UDA. However, this may discourage meaningful consultation as the public may not be able to weigh the benefits of the proposed powers when they are not provided in context. In the abstract, for example, a proposal to grant the power to swap reserves without specifying which reserve will be swapped is likely to attract opposition simply because the public will conclude that the power could be applied to all reserves in the development project area.

Recommendation

155. We consider option 1 to be the most appropriate model. A UDA should be established to take on a range of projects and have access to a fixed range of powers.

156. The UDA would be able to acquire the benefits of economies of scale and the ability to take on a wide range of development projects. This allows lessons learned to be transferred between areas and costs to be spread across multiple projects. This option fosters an entity that has expertise in large-scale, complex urban development.

157. Under option 1, the UDA could exclude current development entities (for example TRC, HLC and Panuku), from becoming urban development authorities. However, to address this it is recommended that these entities can be developers that can still access the benefits of the powers, which would be authorised through the regional UDA.

158. Given the limitations identified above we recommend that a UDA have access to all the powers in the legislation, with the ability to authorise particular development powers to particular UDA projects. This still enables a more tailored approach.

What is the most appropriate legislative framework?

159. An important issue for the design of a new piece of legislation is how best to enable significant and complex development projects to change multiple components of the urban development environment.

160. Public amenities, utilities, transport and social infrastructure are all necessary for successful urban development. Consequently, development projects under the proposed legislation may need to change or coordinate all of these components of the urban environment.

161. Currently, there is no statutory process that can change or coordinate all of these components through one mechanism. Instead, the regulation of urban development planning, provision, funding and financing is spread across numerous statutes. Urban development is governed by multiple statutory processes that each operate under a different statutory framework with a different decision-maker and decision-making criteria.

162. There are two main options:

Option 1: single process, using existing decision-making frameworks for one coordinated decision

Option 2: single new process with a bespoke, integrated decision-making framework

Option 1: single process using existing decision-making frameworks for one coordinated decision

163. This option provides for a single process, but each decision-making consideration would remain separate, using existing decision-making criteria/tests, amendments to documents, and any necessary approvals/consents, through each of the relevant statutes.

164. The purpose of the legislation and the strategic objectives would now be the paramount consideration for the ultimate development plan decision. Where one or more decisions may be inconsistent with each other across the different statues, the decision-maker would also have the ability to address those conflicts by referring back to the paramount purpose, principles and strategic objectives.

165. Under this option some jurisprudence is retained as existing statutory decision-making is used. It retains case law, knowledge and expertise in the existing system. Established decision-making processes under the RMA are retained, including Part 2 matters, except to meet the project's strategic objectives or to resolve the occasional conflict or inconsistency.

166. There is a less risk of public, local government and community discomfort for status quo tests. The development plan and project will also easily integrate back into the existing statutory environment when completed.

167. However, the use of existing decision-making criteria could overly constrain and complicate the UDA's decision making and would not send a clear signal to the community. Combined decision-making done for the whole proposal could require a significant decision-making resource. The process could also appear to be not as directive or transparent.

Option 2: Single process with single-tier decision-making framework

168. This option enacts a new single process and single decision-making framework. For example, this would enable decisions about light rail to be made as part of the same legal process as decisions about whether to permit higher density housing, with the decision being made under the same framework.

169. When the new legislation is drafted, the principles and values contained within existing frameworks can be incorporated in the new Act's principles.

170. A new, streamlined process that coordinates and replaces existing decision-making processes with one clear decision on all aspects. This enables the public to understand the reasons for bespoke process.

171. Under this approach a new statutory framework can have flexibility and scope to focus on good urban outcomes, with a single guiding purpose for urban development projects.

172. However, rewriting and merging of relevant purposes, principles and decision-making criteria into one Act creates legal uncertainty and risk of unintended consequences.

173. New (even if similar) legal tests and no existing jurisprudence means objectors with resources may be more likely to challenge and litigate, creating uncertainty and delaying project timeframes.

174. Furthermore, it would be an unfamiliar decision-making framework for participants, both technical and public.

Recommendation

175. We recommend option 2, a single process, as it is the only option that provides a single decision-making framework. Its main advantage is its ease of use and straightforward structure. For every decision they make, consideration would only need to be given to how best to realise the strategic objectives in light of a new statutory purpose.

Which development powers should be in the preferred form of legislation?

176. This section assesses a range of powers to be included in the preferred legislative vehicle at a high level.

177. Appendices 2-6 delve deeper into various aspects of the associated powers and the risks and implications of various options.

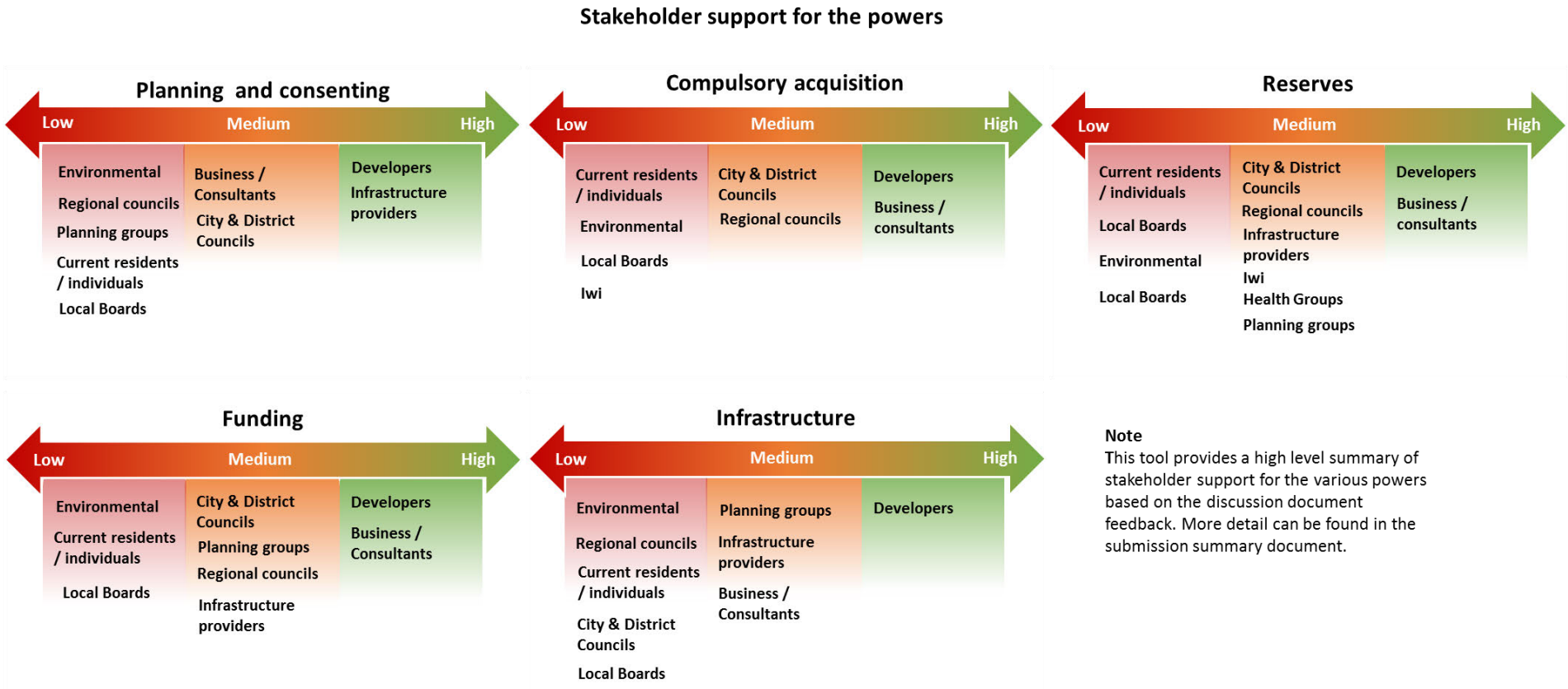
Background information

178. The powers potentially available for the UDA could relate to:

- planning and resource consenting – powers to override existing and proposed district plans and streamlined consenting processes
- building consenting – powers to undertake some of the regulatory roles and consenting functions defined in the Building Act 2004
- land assembly (compulsory acquisition) – powers to assemble parcels of land, including existing compulsory acquisition powers under the PWA
- land assembly (reserves) – powers to change some reserves in order to streamline and fast-track development and to increase flexibility in any given scenario
- infrastructure – powers to plan and build infrastructure such as roads and water pipes
- funding and financing – powers to buy, sell and lease land and buildings (including auctioning of development rights); powers to borrow to fund infrastructure; and powers to levy charges to cover infrastructure costs.

179. Figure 3 below demonstrates the high level stakeholder support for each development power that was consulted on in the 2017 discussion document.

Figure 3: Summary of stakeholder support for powers



180. Table 3 below compares the range of recommended development powers against the levers and objectives of this policy intervention.

Table 3: Analysis of powers to include in the preferred legislative vehicle

LEVERS	**Planning and consenting powers**	**Building consenting powers**	**Land assembly powers (including reserves)**	**Infrastructure powers**	**Funding and financing powers**
Better integration between land use and transport systems	✓×	✓×	✓	✓✓	✓
Effective coordination enabling timely provision of infrastructure and capital funding to support developments	N/A	N/A	✓✓	✓✓	✓✓
Consolidation of project decision making into single decision maker	✓✓	✓✓	N/A	✓	✓
Maximise efficient use of urban land by enabling developers to assemble urban land at efficient scale to achieve optimal development projects	✓✓	✓	✓✓	✓	✓
Special purpose planning and consenting process that enables access to reduced timeframes, costs and complexity for development projects	✓✓	✓✓	✓	N/A	N/A
Planning decisions that recognise the value of development within certain defined development areas	✓✓	N/A	✓✓	✓✓	✓
Mechanism for effectively representing the national interest in particular development projects	✓✓	N/A	✓✓	✓✓	✓
OBJECTIVES	**Planning and consenting powers**	**Building consenting powers**	**Land assembly powers (including reserves)**	**Infrastructure powers**	**Funding and financing powers**
Bringing land and buildings into effective use, including through the subdivision and consolidation of land	✓	N/A	✓✓	✓	✓
Increasing planning certainty and incentives for developers to deliver large-scale urban development projects	✓✓	✓	✓	✓	✓✓
Increasing private sector investment in large-scale urban development projects	✓	✓	✓	✓	✓✓
Increasing supply of housing where it is most needed	✓✓	✓✓	✓✓	✓✓	✓✓
Efficient development of growth centres/corridors	✓	✓	✓	✓✓	✓
Effectively coordinating complex urban development projects	✓	✓×	✓✓	✓✓	✓

KEY			
✓✓	Power is likely to significantly contribute to meeting objective	✓	Power is likely to contribute to meeting objective
✓×	Power is hard to assess and depending on the circumstances may either contribute or detract from efforts to achieve this objective	N/A	This lever is not relevant for this power

Power 1: Planning and consenting powers

181. This section assesses the case for a development focused planning, land-use and resource consenting[17] regime that would form part of the suite of powers to be provided to the UDA through urban development legislation.

182. Note that appendix 2 analyses the extent of the planning and consenting powers in more depth.

183. Under the legislation, the UDA could exercise territorial authority planning and consenting powers within an urban development project area (regional council functions will be excluded). This differs from the status quo where these powers rest with local government.

184. Primary responsibility under the planning and consenting regime would be for the UDA to develop for Cabinet approval, a development plan for the project development area. The development plan would be guided by the strategic objectives set for the development project when established by Cabinet.

185. Through the development plan, the UDA may override, add to, or suspend provisions in local planning documents (district plans, regional plans and regional policy statements).

186. Under the legislation, once approved, the development plan would guide subsequent decisions.

Pros

187. This approach supports New Zealand's planning system to adapt to support large-scale urban development in a less risk-averse manner.

188. The creation of the UDA that is also a planning and consenting authority would provide greater certainty and increase the likelihood of a practical resource management decision-making process.

189. Constraints can be put in place to reduce potential adverse impacts. These could potentially include a requirement for approval from local authorities prior to the approval of development areas, and the inclusion of a disputes resolution process and an independent development plan review panel.

190. A UDA with planning and consenting powers would be more capable of delivering proactive and positive urban development in the wider interests of the city and country, rather than being hindered by politically powerful neighbourhood interests.

Cons

191. There are risks associated with this approach. The UDA may not be able to provide the in-house expertise needed to assess consent applications (in comparison to the

[17] Resource consents are a formal approval for such things as the use or subdivision of land, the taking of water, the discharge of contaminants in water, soil or air, or the use or occupation of coastal space. Building consents on the other hand are a formal approval granted by your local council under the Building Act that allows a person to carry out building work. Building work includes work in connection with the construction, alteration, demolition or removal of a building. A council will issue a building consent only when it is satisfied the proposed building work will meet the requirements of the Building Code.

economies of scale that municipal territorial authorities have). They may therefore need to rely heavily on consultants, or risk poor quality decisions being made. This risk would be significantly mitigated if the UDA is a national entity with the ability to appropriately resource this function. This risk will also be minimised over time as the UDA gains in-house expertise.

192. From a resourcing perspective, it may be difficult for the UDA to acquire robust expertise to process highly technical consents and make appropriate planning decisions in areas like water and air quality. Again, this risk would be reduced if the UDA was a national entity. It is also reduced if regional environmental management and consenting stays with the regional council.

193. Reduced territorial authority control over a range of matters, including planning and consenting within a development area, as well as infrastructure network and asset quality management, may add complexity to local authority planning for future service provision. It may also reduce their capability to confidently engage in long-term planning.

194. There is a risk that the proposal is seen as being a de facto removal of the RMA or at least an undermining of the status of the RMA. In addition, the enabling nature of the legislation may put it at odds with existing local public policy objectives.

195. There is a further risk that integration issues could arise, given that the surrounding district-level policy environment may be significantly different to that of a development project (both spatially and temporally). The existence of this legislation could undermine regulatory coherence by providing an alternative pathway to the RMA, and may reduce support for further changes necessary to improve the resource management system.

196. Changes to the planning and consenting regime for potential urban development areas identified through this legislation may have an impact on the rights of some iwi. Through the treaty settlement process some iwi have negotiated special consultation rights in relation to planning and consenting matters with their local councils. In cases where the UDA takes over the planning and consenting role for a project area, any planning and consenting rights negotiated with council would need to be reassigned to the UDA.

Consultation feedback: Planning and consenting

- Local authorities demonstrated unease at UDAs having access to planning powers. Most of the concern focused on the potential for UDAs to override regional or district plans. Developers on the other hand were enthusiastic about planning powers being available to UDAs to streamline developments at scale.
- There was an overwhelming opposition to consenting powers being available to UDAs; this opposition particularly came from councils. Concerns were raised about a lack of transparency, issues with capacity and capability of UDAs to undertake consenting functions, and the duplication of roles. Again, in contrast, developers strongly supported the transfer of consenting powers away from local authorities.
- Moreover, submitters, including a range of councils and iwi, were concerned about the RMA (especially Part 2) being overridden.

Recommendation

197. It is recommended that planning and consenting powers be available to the UDA.

198. A UDA that is also a planning and consenting authority would provide greater certainty of a manageable process to support the approval of proposed development projects and an increased likelihood of a practical resource management decision-making process.

199. Although submitters expressed a range of concerns, particularly around consenting powers, we believe there is benefit in keeping them in the tool-kit for particular developments.

200. See appendix 2 for a more detailed analysis on planning and consenting powers.

Power 2: Building consenting powers

201. This section assesses the case for enabling the UDA to undertake some of the regulatory roles and consenting functions defined in the Building Act 2004.

202. As a building consenting authority (BCA), the UDA could operate alongside or instead of territorial authorities and BCAs to facilitate more approvals faster for specified urban developments.

Pros

203. The main benefit in accrediting and establishing the UDA as a BCA is that is provides the facility to tailor and focus consenting capacity, capability and processes on delivering specific, co-ordinated projects within in a specified location. This would provide some flexibility for the UDA regarding when and how it engages with the building control system and may remove some of the existing barriers. This may

increase the speed at which building projects can obtain consent approval for construction and final compliance certification upon completion.

204. The UDA operating as a BCA may introduce market competition for territorial authorities within their jurisdiction, as well as adopting different risk approaches to consenting, and adopting more innovative building solutions. This may prompt improvement in the overall responsiveness across the entire system.

Cons

205. The extent to which speed could increase over the status quo is unclear as the options to accelerate the process are the same as those noted above for territorial authorities and truncating the process carries additional risk for the entity.

206. Furthermore, costs of this power include:

- the liability and insurance implications of transferring powers to the UDA
- the upfront establishment costs of attaining and maintaining BCA accreditation as the associated management and operating systems
- the ongoing information reporting requirements back to territorial authority (as custodian of area building and land information)
- ensuring consistency with the existing territorial authority decision-making and that decisions made on innovative products or building practices are fed back into the mainstream consent system
- the risk that more BCAs could dilute building consenting capacity and capability, reducing effectiveness and efficiency of building consenting across the entire building control system.

207. There are existing legislative and non-legislative mechanisms available within the current building control system that could be used to address the constraints identified in the consenting process.

208. Mechanisms are already in place in current legislation (the Building Act 2004) that enable the consent process to be accelerated for large-scale developments. Multi-proof national consents, CodeMark product certification and territorial authority waivers/exemptions (if appropriate) are a number of measures that could be used.

Recommendation

209. It is recommended that the proposed legislation exclude special rules to consent building work in new urban developments or to empower to the UDA to undertake some of the territorial authority and BCA functions as an independent, accredited building consent authority or otherwise.

210. There are existing legislative and non-legislative mechanisms available within the current building control system that could be used to address the constraints identified in the consenting process.

Power 3: Land assembly powers (compulsory acquisition)

211. The key land assembly power being proposed is access to compulsory acquisition. This section assesses the case for enabling the UDA to ask the Crown to exercise powers of compulsory acquisition in accordance with the existing process and decision making criteria under the PWA (except if the land is owned by Crown agents as explained in Appendix 3).

212. Appendix 3 analyses the extent of land assembly powers (compulsory acquisition) in more depth.

213. The status quo enables land (including legal encumbrances and interests) to be acquired for a variety of purposes that would be necessary for urban development. For example, currently central or local government (or both) have the power to acquire land by compulsion for the purposes of:

- physical infrastructure (eg roads, rail, utilities)
- public services or amenities (eg parks, hospitals, schools)
- social, affordable, or market housing, including ancillary commercial buildings
- urban renewal.

Pros

214. Providing the UDA with access to compulsory acquisition will enable it to undertake projects that cannot be delivered by the private market (which does not have access to compulsory acquisition).

215. If the UDA does not have access to the powers and is left to rely on other entities to compulsorily acquire the land needed for projects, it is likely that multiple agencies will need to be involved. This is relatively inefficient when the land is being assembled for a unified project.

216. Current land assembly powers and their definitions are spread through a number of Acts which means when, and how, they can be used is sometimes unclear. Bringing these powers into the suite of powers enabled by urban development legislation will improve certainty as to their application in urban development projects.

217. Giving the UDA the access to PWA acquisition powers will enable streamlined acquisition of land, both by agreement and compulsory acquisition to meet urban development objectives.

Cons

218. There is a risk that giving the UDA access to compulsory acquisition will increase the frequency with which these powers are used. This could potentially reduce public confidence in property rights.

219. Those concerns could be exacerbated by the fact that the partnership development model proposed enables private actors to make a financial gain from development projects supported by the legislation.

220. It is recognised that giving the UDA access to compulsory acquisition could have a detrimental impact on private property rights. Property rights are highly protected in New Zealand and any proposed legislation needs to ensure that the Government is not able to acquire people's property without good justification, and that land is acquired via a fair process that requires adequate compensation to be paid.

221. However, applying the following criteria and safeguards on the use of compulsory acquisition powers will strike an appropriate balance between the need to meet urban development outcomes and the need to maintain certainty of property rights:

- consultation with communities and affected landowners on development proposals before powers such as compulsory acquisition can be used
- Government approval of the urban development plan and what powers will be available to that project
- the Crown retaining decision making power, and applying the usual criteria (including needing to be satisfied that the compulsory acquisition is reasonably necessary and that alternative sites or methods for achieving the objectives of the work have been considered)
- the objection process for compulsory acquisition will apply (except for Crown agents) and should ensure rigour in the decision making process.

Consultation feedback: Land assembly powers (compulsory acquisition)

- Overall, there was a mixed response from submitters, with a generally even number supporting and opposing the proposals. The majority of support was from developers and some councils, whereas the opposition was largely from individual submitters and other councils.
- Supporters of the power, mainly developers and councils, noted the need to overcome the challenge of fragmented land. They also noted a need to provide clarity on the public works for which a UDA is authorised to pursue compulsory acquisition. There was a clear consensus from councils, developers, infrastructure providers and businesses that compulsory acquisition should be a used as a last resort.
- Concerns were noted by individual submitters that compulsory acquisition undermines citizen rights.
- Iwi were concerned that this power could affect their right of first refusal (RFR). However, the proposal is the Crown continues to be unable to sell land in a development project that is subject to a RFR under an existing Treaty settlement unless it has first offered that land for sale to the relevant post-settlement governance entity, with no development conditions attached. The UDA would be bound to fulfil the Crown's obligation with respect to any RFR land that is vested in the UDA.

Recommendation

222. It is recommended that land assembly powers (including compulsory acquisition) are made available to the UDA. Providing the UDA with access to compulsory acquisition will enable it to undertake projects that cannot be delivered by the private market (which does not have access to compulsory acquisition). In addition, it would enable the better coordination of works that would otherwise be undertaken on an ad hoc basis, by a range of different entities.

223. However, there is the risk that the UDA having access to compulsory acquisition will increase uptake, with the potential to reduce public confidence in property rights. Therefore, it is recommended that the legislation enable the UDA to access compulsory acquisition through the Minister for Land Information

224. See Appendix 3 for a more detailed analysis.

Power 4: Land assembly powers (reserves)

225. This section assesses the case for all, or part, of five classifications of reserves under the Reserves Act ('identified reserves') to be used within a project area for development. The proposed legislation should also include provisions to empower the Minister of Conservation to classify and vest land as reserve land in accordance with the development plan (for example once a reserve has finished being used for development purposes).

226. Note that Appendix 4 analyses the extent of the land assembly (reserves) in more depth.

227. Currently, areas are provided and managed as reserves under the Reserves Act to protect a range of special features or values. There are seven reserve classifications: scientific, government purpose, historic, scenic, nature, local purpose and recreation. Due to the special nature of scientific and nature reserves as important national assets, we do not propose including them in the legislation (see Appendix 4 for a more detailed discussion on the classifications).

228. Under the proposal, the Minister responsible for the UDA legislation will be able to approve the use of reserves by setting them apart using a new provision based on current provisions in the PWA.

229. These provisions for reserves would avoid duplication of public processes, enable the use of part or all of some reserves otherwise not available for development purpose, provide the desired flexibility in any given scenario, and streamline and consolidate decision-making, and development.

230. Using all, or part, of a reserve for development purposes could include temporarily using reserve land for storing construction materials or infrastructure, reconfiguring reserve shape or size to better fit with the proposed development, swapping one reserve for another, or building on part, or all, of a reserve.

Pros

231. Conservation and protection objectives of the Reserves Act do not include objectives for urban regeneration. By enabling the UDA to access the powers described above, the objective of urban regeneration is given a higher weighting, and in some cases enabled where it would not otherwise be possible.

232. Reserves occupy a reasonable amount of open space within urban areas. In some cases these reserves may not be optimally situated to enable urban development. To enable urban development and better reserve outcomes, the UDA may need to use all, or part, of existing reserves within a project area for development purposes, and do so through streamlined processes.

Cons

233. There is a risk that some underlying values of reserves, particularly regarding recreation or local purpose reserves, could be lost. Reserves are highly valued for a number of reasons and there is a risk of public opposition to making changes.

234. As this paper involves the setting apart of reserve land, care would also need to be taken to work through any Treaty of Waitangi issues, obligations and settlements.

Consultation feedback: Land assembly powers (reserves)

- Submitters, including public health groups, emphasised that reserves are important to people's mental and physical wellbeing, especially where developments create greater housing density.
- There was considerable opposition from local boards, who emphasised reserve protection. An emphasis was placed on the preservation of reserves at the local (neighbourhood/community) level with local/urban groups perceiving the potential for an imbalance in favour of national over local interests.

Recommendation

235. We recommend that the proposed legislation include provisions that would enable five classifications reserves (as set out in the Reserves Act) within a project area to be used for development purposes. This would be subject to certain checks and balances including the Minister of Conservation's approval for government purpose, scenic and historic reserves. This approval could be subject to certain conditions, reflected in the development plan.

236. Reserves can occupy a reasonable amount of land space within urban areas. Therefore, it may be desirable to use some existing reserves within a project area for development purposes and to do so through streamlined processes.

237. The legislation should also include provisions for setting apart of reserves from development purposes into reserve purposes. This would be done by the Minister of Conservation, in accordance with the development plan, once the redevelopment works are completed.

238. To ensure adequate reserve provision within urban development areas, it is recommended that the strategic objectives guide the relocation, formation and function of future (including existing and new) reserve land. This will ensure there is open space of sufficient quantity and quality for the projected population of a redevelopment area.

239. See Appendix 4 for a more detailed analysis, including a discussion of the necessary protections.

Power 5: Infrastructure powers

240. This section assesses the case for the UDA to benefit from access to a menu of powers to better integrate and co-ordinate infrastructure planning, works and/or construction activity inside an urban development project area.

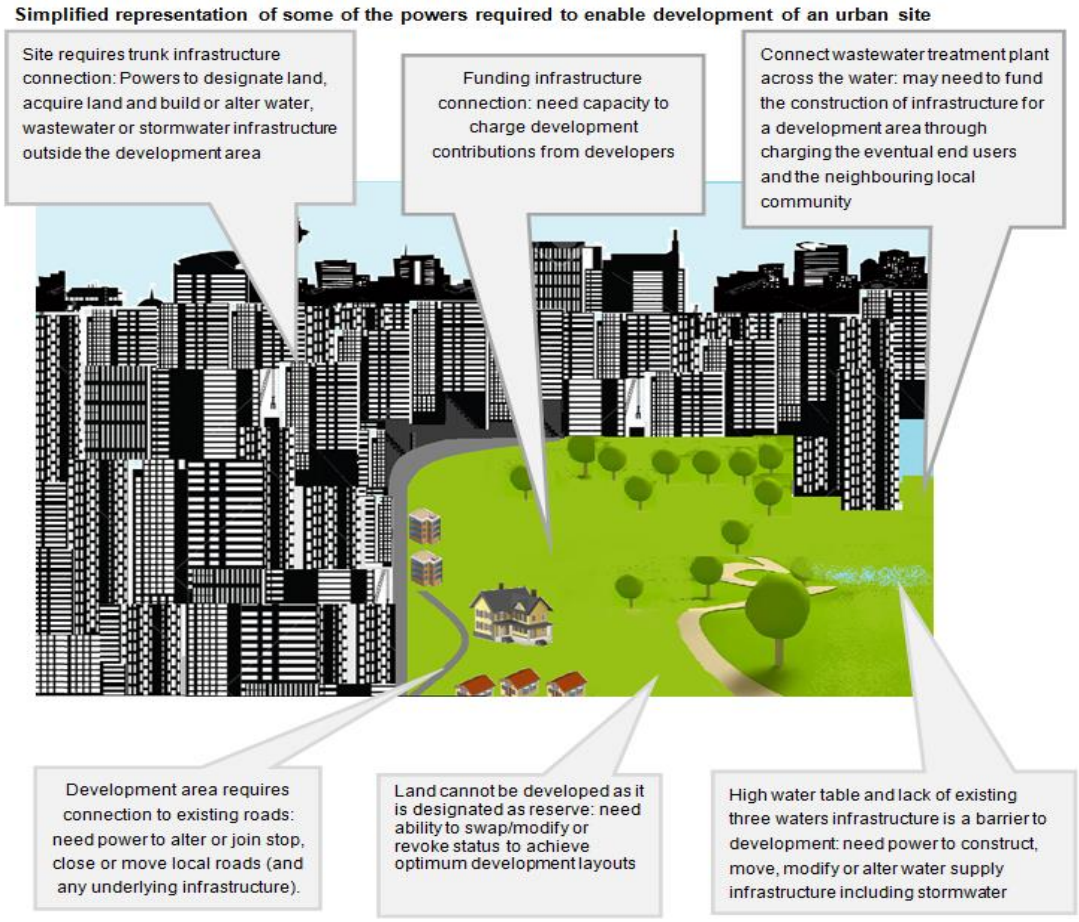
241. The UDA infrastructure would connect through services and systems that are outside the project area, and with the trunk and network systems that are upstream and downstream of the development that may be outside UDA control, but which the UDA may need to assist with.

242. Note that Appendix 5 analyses the extent of the infrastructure powers in more depth.

Pros

243. The UDA will need access to sufficient powers to provide it with the authorisation and ability to undertake tasks that include the planning, design, construction, management and handover of physical infrastructure (either directly or under contract with others). See the diagram below for a summary of the relevant powers.

244. **Figure 4: Infrastructure powers**



245. The key advantage for an urban development project is that the infrastructure-related powers, currently held by a mix of central government, local government and the private sector entities, will be available to a single entity (the UDA). The UDA would be empowered to undertake large-scale, comprehensive infrastructure development and manage all foreseeable needs independently, with a range of powers tailored to the specific urban development project.

246. The current complexity of the governance arrangements for infrastructure provision is illustrated in the following table:

Table 4: Governance arrangements for infrastructure

Power	Private developer	Local Government	Central Government	Restrictions on private developers
Constructing, altering or stopping national roads			✓	
Constructing, altering, or stopping local roads, cycleways foot paths and ancillary infrastructure	✓	✓		Subject to council approvals
Provision of potable water infrastructure	✓	✓		Subject to council approvals
Provision of wastewater infrastructure	✓	✓		Subject to council approvals
Provision and construction of stormwater systems	✓	✓		
Purchase, make, extend or repair land drainage works		✓		Subject to council approvals
Construction of land transport network facilities and provision of public transport services	*	✓	✓	Can be provided by private companies, but usually under contract with regional or city councils
Requiring authority powers (designation / acquisition)		✓	✓	
Requiring vesting of land in council / Government		✓	✓	
Infrastructure and public transport strategic planning, making of bylaws for reserve, roads and water		✓	*	
Construction and placement of fire hydrants	✓	✓		Subject to council approvals
Removal of structures and other infrastructure related works	✓	✓	✓	Subject to council / NZTA approvals
Entry onto land for inspection and survey purposes		✓	✓	
Provision of telecommunications infrastructure	✓	*		Subject to regulations and agreements with utility operators
Provision of energy infrastructure	✓	*		Subject to regulations and agreements with utility operators
Provision of schools	✓		✓	Subject to regulations and relevant consents
Establishment, provision and management of reserves	✓	✓	✓	Private reserves tend to vest in councils

247. If the UDA has access to a full menu of powers and abilities tailored to its proposed development, this would simplify the complex and time-consuming regulatory processes, and agreement-seeking arrangements for physical infrastructure. The powers would provide the UDA with options for providing infrastructure where the necessary infrastructure hasn't been included in local government plans or is needed sooner.

248. The new legislation would still require the UDA to consult and collaborate with, and in some cases seek the agreement of, the relevant territorial authority, government agencies (such as NZTA) or network utility operators before exercising any powers that could affect an existing service provider's infrastructure networks. Establishing these relationships early in the development project will be essential, especially as the UDA

will be required to vest ownership of any new infrastructure in the territorial authority and other parties when the project is complete.

249. More effective planning, funding and delivery of urban infrastructure would maximise the return from existing infrastructure investment, and may enable networks that have surplus capacity to be used to deliver additional commercial and residential development-ready land to the market. Additionally, including requirements to align development projects with local government's long term infrastructure planning should enable systems to have the future capacity and capability in place to accommodate urban growth.

250. Enabling the UDA to take full responsibility for infrastructure provision has the potential to encourage more innovative infrastructure solutions that, provided the regional and territorial authority performance requirements are met, could reduce overall infrastructure costs and construction timeframes for the project. These innovative solutions could be applied more widely, which in turn could result in overall efficiency and effectiveness improvements for the whole infrastructure system. This would be particularly likely if the innovations were built into multiple developments or became part of mainstream infrastructure development or upgrading programmes.

Cons

251. The key risks with this option is that the infrastructure provided by the UDA:

- does not meet the wider network asset quality, standards, and durability requirements set by the local territorial authority/infrastructure provider
- complying with high standards imposed by territorial authorities or other infrastructure providers undermines the financial viability of other aspects of the development project
- does not integrate properly with the existing networks when infrastructure ownership is eventually vested once the development is completed. This could be particularly problematic if the additional service requirements place too much pressure on the system's capacity causing additional wear and tear or failures.

252. This risk can be mitigated by requiring the UDA to meet agreed design and durability requirements (such as those defined in New Zealand Standards, regulations or statutory plans), and the objectives of the host territorial authority's infrastructure design codes of practice.

253. The UDA would also be required to engage with the local authority or infrastructure provider to develop the design parameters, quality standards and network connection requirements/interfaces necessary for a project to integrate with existing networks. This will also assist in ensuring that territorial authorities do not inherit over-specified infrastructure which, although of a high quality, imposes higher operating costs on them.

254. From a legislative perspective, giving the UDA access to infrastructure powers could potentially be more confusing for all parties because there would be a duplicate and separate process for infrastructure that applies to specific development projects only. However, this risk can be mitigated if, at the time of project establishment, the UDA and relevant parties come together to agree on the roles each party will play and, as a

result, which powers the UDA will need to employ to meet the development project's objectives.

Consultation feedback: Infrastructure

- Submitters, particularly developers and councils, noted that infrastructure and its funding are key impediments to progress on large-scale urban development projects. UDAs have the potential to stimulate infrastructure provision and allow flexibility in delivery. This can provide developers certainty that the development can be delivered to the market more quickly.
- UDA powers to undertake works could have significant implications for wider infrastructure networks; this was principally noted by utility providers. Any plan to relocate or stop infrastructure requires considerable planning. Furthermore, utility providers noted that infrastructure networks are complex. They raised concerns about UDAs undertaking works without the necessary knowledge as it could present risks to operators' efforts to make prudent and efficient investments, the health and safety of workers and security of supply to communities and businesses.
- Local government stated that public transport planning occurs at a regional level as an integrated network, through regional councils, and that UDA led change could affect services, long-term contracts with service providers and have cost implications if services become unprofitable. Concern was expressed about how the impacts on the existing public transport systems will be addressed by a UDA and its consideration of the wider networks and community's needs.
- Local government also expressed concern that the UDA may create, and vest in councils, high-specification infrastructure that could be expensive for a council to operate or maintain. The view was thus expressed that infrastructure should be built to 'agreed standards' rather than prescribed minimum standards.
-

Recommendation

255. It is recommended that the UDA have access to infrastructure powers.

256. This would empower the UDA (with a range of powers necessary for the specific circumstances of the project) to undertake large-scale, comprehensive infrastructure development and manage all foreseeable needs independently.

257. See Appendix 5 for a more detailed analysis on infrastructure powers.

Power 6: Funding and financing powers

258. This section assesses the case for enabling the UDA to access a wider range of financing and funding options, particularly for infrastructure that would suit all potential development opportunities.

259. Appendix 6 analyses the extent of the funding powers in more depth.

260. In its 2017 *Better Urban Planning* report the Productivity Commission recommended that:

> 'Growth should pay for itself. Councils' funding and financing tool kits should be expanded so councils can cover the costs of growth – infrastructure investment and securing land for future infrastructure corridors and public open spaces – adequately efficiently and fairly'. p.324

261. This could be done either through borrowing or on a "pay-as-you-go basis". Borrowing could include loans or the UDA issuing bonds or other securities. Depending on the structure of entities formed, the UDA may also be able to offer shares in a joint venture arrangement to facilitate the injection of private capital for given projects.

262. The pay-as-you-go approach uses funds from existing revenue tools (such as rates and other taxes, user charges, leasing land or buildings, and development contributions), capital grants from the Crown, sale of land or buildings, or savings. Where the land is Crown owned and the UDA has paved the way for greater development opportunities, auctioning off the rights to develop the land could also serve as a source of revenue.

263. The legislation can also empower the UDA to charge landowners within an urban development project area. The charge would pay for the actual cost of developing the new infrastructure systems that landowners within the development area would directly benefit from.

Value Capture Mechanisms

264. Value capture mechanisms, which capture the value uplift in land, such as betterment levies or land-value increase linked to taxes, rates or duties, have also been identified as potential supplementary options to fund infrastructure development and the upgrades for urban growth.[18]

265. Such mechanisms reserve, for the community, some of the uplift in land value that is created by public actions, such as the provision of new or improved infrastructure (e.g.

[18] New Zealand Productivity Commission (2015). Using land for housing. Available from http://www.productivity.govt.nz/inquiry-content/2060?stage=4, *and* New Zealand Productivity Commission (2016). *Better Urban Planning* Draft. Available from www.productivity.govt.nz/inquiry-content/urban-planning

extending roads or services to a new area) or re-zoning for higher value activities (e.g. for increased density, or from rural to urban).

266. There is a large body of international literature that examines the impact of public investment and land use management decisions on private property values. The literature shows access to new or superior transport facilities can create a significant uplift in land values (sometimes referred to as a transport premium)[19].

267. Similarly, there is evidence[20] that uplift in land value can result from the rezoning of land, in particular locations, from a lower intensity use to a higher intensity use. This is because, in light of a more permissive regulatory approach to density, there are greater development opportunities and potential yield (in terms of number of housing units for example) higher densities can provide relative to prior lower density zoning. A further contributor to value uplift can be that the new zoning can increase the desirability of an area by attracting (and making more viable) businesses such as bars, cafes and shops.

268. The value of the uplift is generally capitalised in the land price. A levy may be charged to property owners based on the increase in land value accrued by the properties that benefit from any zoning or infrastructure improvements. These tools have been used for funding specific, local projects internationally[21] but their effectiveness has been variable and dependent on individual project circumstances.

269. The principal, most effective and most commonly used value-capture approach is for the UDA to make improvements to land it owns (or has acquired) and sell that land for its improved value. In New Zealand this can be supplemented by a requirement for private beneficiaries to pay betterment where a road had been built or improved or other transport services provided. The legislation could empower the UDA to access both these existing forms of value-capture, with modifications made to the betterment levy to include cycleways, busways and light rail.

Pros

270. Providing the UDA with funding powers would enable it to obtain funding from multiple sources (central government, debt or taxation revenue) to pay for the up-front capital costs of constructing new infrastructure system upgrades and expansion to accommodate community growth. These costs can be substantial for large development projects, particularly where headworks and trunk infrastructure is required.

271. Any revenue sharing arrangement between the territorial authority and the UDA would need to ensure that whoever bears the costs of upgrading any trunk infrastructure (either inside or outside the development area) receives the funding that is collected for that purpose. Any revenue streams associated with an infrastructure asset (such as a targeted rate) would revert to the territorial authority (or organisation to which an asset is to be transferred e.g. territorial authorities for local roads) once the UDA project had been

[19] For example: see Smith and Gihring (2017) *Financing Transit Systems Through Value Capture,* Victoria Transport Policy Institute (USA) who summarised 112 studies that showed positive correlation between land value and proximity to new or improved public transport routes and superior transport access.

[20] For example: Transport for London (2017) *Land Value Capture: Final Report;* Kinnaird (2011) *Urbis Insights* found that rezoning of land from rural to residential in Melbourne resulted in significant value uplifts on a per hectare basis of up $400,000 depending on location.

[21] Rates or levies have been used in Australia, the United Kingdom and the United States, while stamp duties and betterment levies have been used more broadly (in Australia, South America, India, and the United States for example)

wound up and ownership of the new infrastructure assets is vested in the territorial authority or permanent custodian.

272. These powers would enable the UDA to have access to a broader range of funding options than would otherwise be possible under the status quo (which would otherwise have seen the UDA be reliant on selling land and on support from territorial authorities to provide infrastructure). This approach would take some of the immediate financial burden of providing trunk or major local infrastructure away from the territorial authority.

273. Planned infrastructure projects could potentially be constructed earlier than they would under a territorial authority. It could also potentially encourage innovative infrastructure funding solutions led by the UDA that, provided the regional and territorial authority performance requirements and standards are met, could reduce initial development and on-going maintenance costs.

274. Applying a local infrastructure charge would address wider concerns about the equity of levying a general rate on all ratepayers to fund the infrastructure for one development project, particularly in a large city like Auckland. Broadening the levy catchment to include those on the development area boundaries addresses potential equity issues where these properties would also benefit from the area's infrastructure improvements. This approach is not unusual in New Zealand, many territorial authorities charge targeted rates to homeowners and businesses to pay for specific services provided to their communities[22].

275. Requiring the payment of betterment helps ensure that those who benefit disproportionately from increases in land value arising out of roading or transport works of the UDA pay their fair share of their windfall gain. This would reduce the overall infrastructure costs to the UDA in some instances, and lessen the need to recoup those costs from others in and around the development area that benefit less.

Cons

276. The key risk for this proposal is ensuring that sound and prudent funding decisions are made so that territorial authorities do not inherit significant debt or legacy issues when infrastructure assets are vested in them. Large residual debts and re-payment commitments could place pressure on or constrain future infrastructure funding in other areas and affect the whole community.

277. Territorial authorities may still run up against debt limits, even where the UDA provides a territorial authority with an additional stream of revenue to repay the debt on an asset which has been vested in that authority. This is because of the lag between what normally occurs between expenditure being incurred and the point of time at which sufficient revenue has been received to pay off the debt. Therefore, good governance is necessary to ensure that the UDA acts prudently in sourcing its financing and securing funding.

278. There may also be a potential risk in securing and sustaining debt funding for development projects in greenfield or uninhabited brownfield areas, where there may be few or no existing ratepayers to charge for the development of new infrastructure. Funding for these areas would need to be secured independently by the developer or territorial authority, without existing rates revenue to help secure the finance or re-pay any loans.

[22] E.g. Wellington City Council - maintenance of a specified group of residential driveways in Tawa; Wa kato Council - Piako and Waihou. I can't comment on this because it's a footnote but I'm confused by this sentence, I don't think it adequately explains what the targeted rates are particularly for Waikato Council

This could delay the construction of the necessary infrastructure to support a development.

279. One territorial authority raised a concern over the potential use of targeted rates to fund infrastructure development. A developer can be the main beneficiary of a targeted rate, if the rate is applied to households and other users to fund infrastructure it offsets their development contributions. The territorial authority indicated that developers are unlikely to pass any cost savings on as they will seek to maximise selling prices regardless. For this reason, providing the UDA with the ability to both set a targeted rate and to seek development contributions enables it to determine the fairest and most effective way of funding major infrastructure.

280. Broadly applied, tax or levy-based value-capture mechanisms have proved difficult to implement overseas. It is difficult to precisely define the extent to which neighbouring properties (outside of the immediate defined development area) directly benefit from the improvements. This creates equity issues. Additionally, if these levies are applied over too short a timeframe, they can incentivise land banking (particularly of land that has the infrastructure services already installed) or opposition to re-zoning proposals. Property owners may hold and delay development of land in anticipation of capturing capital gains after the levy is lifted.

281. The need to apply a targeted rate to capture the value uplift created by infrastructure development is less likely if the UDA owns all the land to be developed or the UDA is not the provider of the infrastructure in question. An entity that owns the undeveloped land should capture some, or all, of the value created by investment in infrastructure prior to on-selling the land or houses to developers or homeowners.

282. Existing betterment provisions contained in the Local Government Act 1974 are limited in scope and are useful in a relatively narrow range of situations where the number of beneficiaries are few and the nature, cause and attribution of increases in land value arising from works is clear. For this reason, although providing the UDA with the ability to require betterment may be useful in some circumstances, the application of the power is likely to be infrequent.

Alternatives

283. Two additional options were considered for funding infrastructure for new urban development projects: tax increment funding (TIF) and municipal utility districts (MUDs). These were discounted. These options were also reviewed in the Productivity Commission's inquiry "*Using land for housing*"[23].

284. TIF would require a fundamental change in approach to how rates are set (from expenditure-based to revenue-based), particularly with regard to capturing the cost of infrastructure. If this occurred, significant changes would also be required to the way in which territorial authorities forecast and manage their revenue and expenditure.

285. Other considerations regarding the use of a TIF approach include:

[23] New Zealand Productivity Commission (2015). *Using land for housing*. Available from http://www.productivity.govt.nz/inquiry-content/2060?stage=4River catchment and flood protection schemes

- It is a financing approach rather than a funding approach – meaning it may still require a government or council to borrow money and therefore may not get around issues with debt limits.
- It can be difficult to forecast future tax revenue, that there is a risk of over or under-recovery of infrastructure costs. This risk becomes amplified over longer the time periods that generally apply to the service life of infrastructure assets.
- The TIF approach does not necessarily generate additional revenue. Rather, it hypothecates future revenue and reduces the flexibility to use that revenue for other purposes (which can create difficulties in times of emergency).

286. MUDs have the potential to increase competition in the infrastructure market. They construct infrastructure on their own and recover costs from those that benefit over the long term. Something similar to MUDs could be implemented now under current legislative settings, through a private developer providing all of the infrastructure for an area and then putting an encumbrance on property titles that obligates owners to repay the developer their share of the infrastructure costs over a period of time.

287. However, the Productivity Commission noted that there is not much interest from the development community in pursuing such an approach, as owning infrastructure in the long term was not their core business. Additionally, the Productivity Commission was not convinced that having a large number of resident-managed infrastructure districts would achieve efficiencies either in providing or running new infrastructure systems.

288. Other considerations regarding the MUD approach:

- Their usefulness and acceptability in brownfield situations (where there is existing development) is limited.
- They are better suited to greenfield developments.
- They can be expensive to administer relative to other forms of borrowing (MUDs rely on the issuing of bonds and repayment of bonds through a system of localised taxation).
- The MUD approach can be more expensive for property owners in the long run with lower house purchase prices (where passed on) more than matched by higher annual taxes[24].
- Issues of contiguity and loss of economies of scale (assuming MUDs are smaller than Territorial Authorities) may arise and can mean MUDs result in high levels of expenditure to carry out the same services that local authorities perform. Duplication of administration becomes more prevalent and with it, a loss of transaction efficiency.
- Overseas experience (such as in Texas) has shown a fragmentation of water management, including a lower ability to achieve good environmental outcomes associated with water allocation and quality (which require an integrated, regional, approach).

[24] Set at between one and three per cent of property value per year in many examples in the United States, which could equate to $10,000s per year in a New Zealand context, considerably more than current local government rates

- Adopting a United States approach to MUDs may entail a reliance on tax exempt status for bonds to incentivise investment and an associated reduction in central government revenue[25].
- MUDs are likely to require significant additional regulatory oversight to avoid some of the double-charging and inferior infrastructure standards and maintenance issues seen in some overseas examples.

Consultation feedback: Funding

- Submitters, particularly infrastructure providers, noted that moving the focus of decisions on how to fund the costs of growth and infrastructure from territorial authorities to a UDA does not resolve underlying problems of insufficient funding. It was mentioned that funding the costs of growth and infrastructure is a wider issue that goes beyond, and is unlikely to be resolved by, the proposed UDA legislation.
- There was general support for the inclusion of the funding powers. The majority of support was received from developers, councils, and infrastructure providers.
- Concerns were expressed about where the costs could lie and recommendations were made that project costs be met from a UDA's internally generated revenues.

Recommendation

289. It is recommended that the UDA have access to funding and financing powers, including the abilities to:
    - set a targeted rate on landowners in the development area
    - require payment of development contributions and/or betterment under the Local Government Act 1974 and LGA
    - buy and sell (or lease) land and buildings or auction development rights (this would allow the UDA to realise and use the uplift in land value to help fund the development project)
    - borrow, issue shares or equities in subsidiaries, issue bonds.
290. These powers would enable the UDA to have access to a broader range of funding options than would otherwise be possible under the status quo. This approach would take some of the immediate financial burden of providing trunk or major local infrastructure away from the territorial authority.
291. Consideration is also being given as to whether the UDA should have access to tax or levy-based land value capture mechanisms in addition to the buying and selling of land

[25] Tax exempt bond interest [coupon] rates appear to range from 3% to 7.5% according to a 2014 National Association of House Builders (United States).report *An Overview of Special Purpose Taxing Districts*

and betterment. Such approaches can include stamp duties, sales taxes, land-value-uplift based local taxes or rating approaches, and various forms of capital gains or land taxes.

292. Analysis of these forms of land value capture has not been completed, and needs to be aligned and consistent with the Treasury-led UGA Infrastructure Funding and Financing work, and take into account the work of the Taxation Working Group. Therefore, these options are not currently included in current UDA proposals or covered in-depth in this regulatory impact statement.

293. See Appendix 6 for a more detailed analysis on funding and financing powers.

High-level summary of stakeholder impacts

294. Table 5 below presents a high-level summary of the potential impacts on stakeholders in relation to the proposed powers discussed above.

Table 5: Summary of stakeholder impacts in relation to the proposed powers

Costs/benefits	Central government	Local government	Current residents	Future residents	Current property owners in the UDA	New entrants to the housing market	Developers
Appeal rights will be reduced for members of the public	✓	×✓	×	✓	×	✓	✓
Access to affordable housing may be positively influenced by easing restrictions on development (including density restrictions)	✓	✓	×	✓	×	✓	✓
Consumer surplus benefits from enabling more enhanced housing supply	✓	-	✓	✓	✓	✓	-
Land amalgamation will be more easily enabled to support the delivery of urban development projects	✓	✓	×✓	✓	××	✓✓	✓✓
Public land may be sold or repurposed to make urban development projects viable	-	-	×	✓✓	×	✓✓	✓✓
Urban development projects may increase the population density of an area significantly	-	×✓	××	✓✓	××	✓✓	-
Central government will have more leverage to enable significant development projects	✓✓	×✓	×	✓	×	✓✓	✓✓
Once consent is given for a UDA, district council planning and consenting rules may be superseded by the UDL provisions	✓✓	×	××	✓✓	××	✓✓	✓✓
Once a UDA is established, regional government planning and consenting rules may be superseded by the UDL provisions	×✓	×	×	-	×	×✓	✓
Private land may be compulsorily purchased within urban development areas	✓	✓	××	✓✓	××	✓✓	✓✓
Higher density development will be easier to undertake	✓	✓	××	✓✓	××	✓✓	✓✓
The balance of open space in the built environment may change in order to enable more efficient use of urban land	-	-	×✓	×✓	××	✓✓	-

Key	✓✓	Power is likely to significantly contribute to meeting objective	✓	Party is likely to be positively impacted	×✓	Power is hard to assess and depending on circumstances may contribute or detract to achieve objective	×	Party may be adversely impacted	××	Party is likely to be adversely impacted	-	This effect is not relevant for this party

Overall recommendations

295. It is recommended that the following powers be included in the tool-kit for the UDA:

- planning and consenting
- land assembly (compulsory acquisition)
- land assembly (reserves)
- infrastructure
- funding and financing.

296. It is not recommended the tool-kit include the ability to consent building work in new urban developments or to empower the UDA to undertake some of the territorial authority and building consent authority (BCA) functions as an independent, accredited building consent authority or otherwise.

297. Although granting consenting powers to the UDA was strongly opposed by territorial authorities in the discussion document feedback, we recommend keeping the tool available in order to retain flexibility.

4 Consultation

298. As the proposed development powers are far-reaching and can potentially be applied anywhere in New Zealand, this legislation has the potential to impact the lives of a large number of people.

Previous consultation

299. We note that previous consultation on the need for urban development legislation took place with the release of the 2008 discussion document, *Building Sustainable Urban Communities*. Based on the submissions received through that exercise, the 2017 consultation was more focused and incorporates the earlier feedback.

300. Almost all submitters on the earlier discussion document agreed that there were barriers and implementation difficulties in urban development. Some submitters said that they believed specific barriers or combinations of barriers were of particular importance.

301. Most submitters agreed that the discussion document provided a good description of the barriers currently being faced in large-scale urban development. A number of submitters indicated that these barriers and difficulties were more prevalent and difficult to deal with when developing and redeveloping existing urban areas (compared with greenfield development).

302. Regarding powers enabled by the proposed legislation, most submitters appeared to accept that any new agency or entity set up to focus on urban re/development would need to be appropriately empowered and funded to succeed in implementing an urban development vision.

Discussion document on Urban Development Authorities

303. MBIE developed a discussion document for public consultation, *Urban Development Authorities*, which covered 169 proposals.

304. The public consultation on the discussion document ran for three months, closing on 19 May 2017. This included an online survey and meetings with key stakeholders.

305. A total of 350 written submissions were received in response, from a range of individuals and organisations. See appendix 7 for a list of organisations that submitted.

306. MBIE officials held 45 consultation meetings with key stakeholders, held over 93 hours, attended by 242 people. See appendix 8 for the list of stakeholders that MBIE met with, including meetings with iwi.

High level feedback

307. Feedback from public consultation is mentioned throughout the document in consultation boxes. A full summary of public submissions has been made publically available.

308. Half of all submitters supported the overall proposal in principle. In addition, a fifth either did not state their overall view or were neutral, meaning that less than a third of submitters were opposed.

309. Among the 238 individuals who submitted, 44% supported the proposals overall (105), with 34% disagreeing (80) and the remainder neutral (53). Across the 112 organisations who submitted, most showed clear support for the proposals. Regional councils, environmental groups, rural representatives and Māori were balanced between neutral and overall support.

310. The only clear opposition to the overall proposal was voiced by the five residents' associations. Some of the associations' key concerns were:

- a perceived reduction in public input into the process
- the inability for communities to hold UDAs to account
- the removal of the right of appeal to the Environment Court
- the ability to override the district and regional plans within the development project area, which was seen as diminishing local democracy.

Additional consultation with councils and utility providers

311. Additional consultation was undertaken with a select group of high-growth territorial authorities and private utility providers in early 2018. The purpose of this exercise was to update these stakeholders on the progress and likely form of the UDA. It was also an opportunity to gauge their reactions to proposed powers, requirements and governance structures.

312. A number of key themes arose from this consultation:

- Some territorial authorities preferred that they held all the UDA powers themselves.
- UDA use of targeted rates was considered acceptable provided that territorial authorities had the ability to recover the administration, collection and enforce costs from the UDA and UDA imposed rates were kept separate from local authority rates.
- There was a concern that UDAs could create multiple "spot zonings" that were not consistent with the rest of a local authority's district plan zones, so complicating plan administration and public understanding of planning provisions.
- Utility providers were comfortable with proposed UDA powers provided that they were involved in UDA projects from the start of the process.

5 Conclusions and recommendations

Do we need to legislate?

313. In light of the options analysis and consultation with stakeholders and government agencies it is recommended that a legislative approach be taken. While initiatives under the status quo may make a difference at the margin, they are unlikely to provide the speed of outcomes required, especially with respect to housing supply projects.

314. Although the new legislation will add an unavoidable layer of complexity, it will provide an urban change vehicle by which government can act directly to secure nationally or locally significant outcomes through coordinated leadership and investment.

What is the most appropriate form of legislation?

315. In light of the options analysis and consultation with stakeholders and government agencies, it is recommended that single enabling urban development legislation is enacted.

316. This legislation would be able to efficiently apply to a large number of development projects. This approach would provide more certainty to the market, compared to multiple bespoke statutes.

317. Although a fundamental reform of the planning system will address many of the problems discussed in section 1, it will do so at a system-wide level. Certain complex, large-scale developments will always need targeted, case-by-case intervention.

What are the key features of an urban development authority?

318. It is recommended that a UDA should be established to take on a range of projects and have access to a fixed range of powers.

319. The UDAs would be able to acquire the benefits of economies of scale and the ability to take on a wide range of development projects. This allows lessons learned to be transferred between areas and, costs to be spread across multiple projects. This option fosters an entity that has expertise in large-scale, complex urban development.

What is the most appropriate legislative framework?

320. It is recommended that a single legislative process be used. This is the only option that provides an integrated decision-making framework. Its main advantage is its ease of use and straightforward structure. For every decision they make, consideration would only need to be given to how best to realise the strategic objectives in light of a new statutory purpose.

What powers should be in the preferred form of legislation?

321. This single urban development legislation should enable access to a full range of powers to support large-scale, complex urban development.

322. It is recommended that the following powers be included in the tool-kit:

- planning and consenting
- land assembly (compulsory acquisition)
- land assembly (reserves)
- infrastructure
- funding and financing.

323. It is recommended to not legislate for special rules to consent building work in new urban developments or to empower the UDA to undertake some of the territorial authority and building consent authority (BCA) functions as an independent, accredited building consent authority or otherwise.

Detailed conclusions and recommendations for framework and powers

324. These conclusions and recommendations are drawn from the appendices that follow. They provide a more detailed option analysis for each of the development powers and legislative framework discussed in section 3.

Framework and entity structure

325. It is recommended that a single enabling urban development legislation be enacted that enables access to a full range of powers to support urban development.

Eligibility criteria

326. Given the intention for the legislation to support only significant development projects that are complex or strategically important, the recommendation is to include principles-based

criteria that require a range of public benefits to be delivered and exclude business-as-usual developments.

327. The eligibility criteria in the legislation will be necessary but not sufficient to access the development powers under the legislation. For projects that meet the eligibility criteria, central government will retain discretion over whether a proposed project is established under the legislation.

The role of local government (territorial authorities)

328. Consultation on the discussion document showed that territorial authorities strongly support the requirement for central government to secure their agreement before a development project can be established. Their support for the legislation as a whole is contingent on it containing the veto.

329. We therefore recommend that the legislation include a requirement for central government to seek agreement from the relevant territorial authority before establishing a development project. However we also recommend that the legislation have a reserve power for central government to override.

330. The importance of infrastructure means that territorial authorities will have a large influence on whether a development occurs or not. There will likely be the need for additional capacity to support large-scale developments from the network infrastructure that territorial authority operates and funds. It is better to empower territorial authorities, than sideline them.

331. However, given that in some cases it may be possible to overcome any infrastructure funding constraints, we think it would be useful to provide central government with the means to proceed if necessary.

Legal form of the UDA

332. We recommend establishing the UDA as a Crown agent. This would enable more responsive, commercially-focused decision-making, while still maintaining suitable accountability to the Minister.

333. The advantages of establishing the UDA as a Crown Agent include the ability to:

- borrow to fund development (subject to suitable assets/security)
- create subsidiaries with minority shareholding from other entities – i.e. enabling territorial authority partnership in specific projects
- have specific expert capabilities on the Parent board that can support the UDA's functions and delivery
- have independence of finances and decisions, which can support speedier decision-making and investment.

Drawing existing capability

334. The UDA can draw capability from the KiwiBuild Unit, HNZ and HLC. If the UDA draws from HLC and KiwiBuild there would be less complex governance and accountability arrangements and the entity could focus solely on urban development. However, if the UDA drew capability from HNZ as well, it would gain access to HNZ land but need to manage tensions between public housing and urban development.

The role of a UDA

335. It is recommended that the UDA should have the ability to delegate functions and partner with others, while retaining accountability to Ministers for achievement of the project's strategic objectives to the UDA.

Planning and consenting powers

336. It is recommended that regional councils have a stronger voice in the establishment of the urban development project and in the development of the development plan, and their views accorded particular regard. Therefore additional weight is given to consultation with territorial authorities and Regional Councils, with the UDA to have *particular regard* to their views.

337. It is recommended that:

- territorial authority planning and consenting functions and powers be available to the UDA within the urban development project area, and the sustainable management focus of Part 2 of the RMA be integrated into the purpose and supporting principles
- territorial authority planning and consenting functions and powers be available to the UDA within the urban development project area, but not those of regional councils
- there is a power to override, add to or suspend provisions in district plans, regional plans and regional policy statements (any override of a regional coastal plan must be approved by the Minister for Conservation)
- for the development plan there are no merit appeals, only points on law to the Court of Appeal and Judicial review remains available
- for consents there are merit appeals available to the Environment Court, point of law appeals are available to the High Court only and judicial review remains available
- provisions around designations be modified to better protect continuity/delivery of services.

Land assembly powers (compulsory acquisition)

338. It is recommended the legislation enable the UDA to ask the Minister for Land Information to exercise existing powers of compulsory acquisition.

339. In addition, it is recommended the legislation maintain PWA principles and transparency criteria. This benefits landowners, maintains the certainty of private property rights, and meets the established legal tests for exercising the use of compulsory acquisition powers.

The range of works covered by the compulsory acquisition powers

340. It is recommended that the UDA have access to compulsory acquisition through the Minister for Land Information.

How should compensation be assessed?

341. It is recommended that the existing compensation regime be retained. The one difference from the status quo would be that compensation could be paid in money, land or by way of an equity share in the project. This would go some way towards enabling landowners to share in the proceeds of profitable works, and also incentivise landowners to sell by agreement.

How should offer back obligations apply?

342. It is recommended that PWA offer back obligations do not apply to certain types of land transfers to enable the delivery of specified public works. Offer back obligations would not apply to land transfers to private developers, to entities that operate public works (provided that they continue to use the land for that work), and to end-owners, for specified works that are intended to end up in private ownership. This will enable the UDA to work with private developers to deliver public works, and the sale of completed works to their final owners. These proposals would not apply to certain categories of former Māori land now held by the Crown.

Should the urban development authority be given new powers to assemble public land?

343. Land held by Crown agents can be compulsorily acquired under the PWA. It is recommended that the compulsory acquisition process be modified to remove the Crown agent's right to object to the Environment Court, for land within a UDA project area. In addition to the existing decision criteria, the Minister for Land Information must consult with

- the Minister responsible for the proposed legislation
- the Minister of Finance
- the Minister whose portfolio oversees or is responsible for the Crown agent whose land is being acquired,

344. Ministers must jointly consider whether it is in the public interest to take the land from the Crown agent.

Land assembly powers (reserves)

What reserves should be included in this legislation?

345. It is recommended that reserves of the following classifications be included in the proposed urban development legislation as "Identified Reserves" that can be set apart for development purposes in a project area:

- recreation
- local purpose
- government purpose
- historic
- scenic reserves

Minister of Conservation's consent

346. It is recommended that the Minister of Conservation's permission be needed only for scenic, historic and government purpose reserves in urban development areas.

347. However, in response to submitters' concerns, we recommend two additional checks on powers over recreational and local purpose reserves:

- require consultation with the Department of Conservation as part of the initial assessment and as part of the consultation on the draft development plan.
- require consultation with Heritage New Zealand Pouhere Taonga where any historical or cultural heritage issues have been identified in any type of identified Reserve at both the initial assessment stage and as part of the draft development plan.

Decision-making framework for making changes to reserves

348. To ensure sufficient consideration is given to the values in scenic, government purpose, and historic reserves when the Minister of Conservation is deciding whether or not to approve the setting apart of such reserves, we recommend that there should be criteria to guide the Minister of Conservation's decision.

Infrastructure

349. It is recommended that the UDA be the decision-maker for its activities within a project area but consults and collaborates with other infrastructure owners and operators. This will ensure that their network strategy's and the UDA's objectives integrate and combine to achieve the UDA's strategic objectives, and the operator's objectives both within the project area and more broadly across all infrastructure networks.

Agreements to upgrade infrastructure outside the UDA project area

350. It is recommended that the UDA can enter into binding agreements that require territorial authorities to alter or upgrade infrastructure outside the project area necessary to support development. Where a territorial authority is able to contribute to these costs, apportionment will be based on the distribution of benefits and the extent to which the UDA contributed to the need for new or upgraded infrastructure.

Territorial authority infrastructure performance requirements and standards

351. It is recommended that the UDA agree to the intent of a territorial authority's prescribed standards by meeting the performance and operational requirements but retain the flexibility to design or procure systems, fixtures and fittings that deliver without needing to rigidly comply with prescribed solutions.

Network utility infrastructure powers

352. It is recommended that network utility operators have early involvement and input into the provision of infrastructure for the UDA development project, particularly at the initial assessment phases of the UDA project that continues throughout the development. Any infrastructure provided by the UDA must meet standards agreed with the network utility provider.

Public transport powers

353. It is recommended that the UDA has powers to create or alter public transport facilities and ancillary infrastructure but that these can only be exercised in consultation and collaboration with the regional council and transport providers.

354. The UDA would not have any powers to stop, move, create, extend and/or alter any public transport services. However, to support the UDA's requirements, the legislation would require regional councils to collaborate with the UDA when developing the Regional Land Transport Plan, the regional public transport plan, 30-year infrastructure strategies and decisions arising from other projects. The UDA would have the power to recommend changes to land transport plans that the regional council must have regard to.

355. The UDA's development plan must be consistent with the existing Regional Land and Public Transport Plans and vice versa.

Alignment of local statutory strategic planning documents

356. It is recommended that long-term plans, regional land transport and public transport plans are consistent with the strategic objectives of a development project. It is proposed that as a condition of supporting the project, territorial authorities must agree to commit to amending their strategic planning documents to align with the strategic objectives of the development project.

Funding and financing

357. It is important to constrain and limit UDA financing powers. Consequently, it is recommended that the UDA will be required to develop the funding and financing policies that bind them to an operating framework with boundaries that are appropriate for the type of project that is being developed. This will provide predictability and certainty about the limits to which funding and financing mechanisms will be used for a development project.

358. It is recommended that the UDA must obtain the agreement of the responsible Minister on all funding and financing policies prior to adopting them and before final approval of the development plan.

Funding infrastructure outside the development area

359. For infrastructure outside the development project area it is recommended that the UDA have powers to enter into a binding agreement with the relevant territorial authority to prioritise the provision of infrastructure to support a particular development project.

360. It is essential that there is a mechanism to ensure that the wider infrastructure network has sufficient capacity to accommodate the service requirements of the UDA project, particularly where a territorial authority does not have the balance sheet capability to provide the additional infrastructure capacity required by the UDA's development area.

361. Thus it is recommended that the UDA, through the binding agreement, can require territorial authorities to alter or upgrade infrastructure outside the project area to support the development project. This requirement would only occur if the partnership agreement between the UDA and territorial authority has failed.

362. Where a territorial authority is able to contribute to infrastructure costs, then these will be apportioned based on a distribution of benefits or the extent to which UDA actions contributed to the need for this infrastructure. If the territorial authority is unable to meet these costs, the UDA can meet them fully if the benefits of doing so outweigh dis-benefits.

Targeted rates

363. It is recommended that the UDA legislation provides for a territorial authority to collect and enforce UDA set targeted rates under delegation from the UDA.

364. Given feedback from consultation, it is also recommended that the territorial authority can charge the UDA a fee to recover its full costs of administering, collecting, and enforcing targeted rates for which the UDA has been responsible for setting and applying.

Cross border funding arrangements

365. It is recommended that the UDA and developers within a project area contribute to amenities created outside a project area by a territorial authority that benefit properties within the development project and vice versa (where a territorial authority contributes to infrastructure that is developed by the UDA).

366. To do this, territorial authorities will still be able to apply rates, targeted rates and development contributions to land and developments within the UDA development areas,

provided that they are not applied to pay for the same infrastructure for which the UDA has already applied a rate or development contribution.

Value capture

367. We recommend that powers be included in the legislation that enable the UDA to apply a specifically targeted rate that enables the community to capture part of the value uplift created by planning changes or the development of infrastructure for the project area. However, further work must be done to address complex issues around timing, fairness and attribution of value uplift to a given infrastructure project or zoning before such a power is implemented.

Betterment

368. We consider that, on balance, it would beneficial for the UDA to have access to similar betterment powers a local authority has under the Local Government Act 1974 to assist in those circumstances where there are a small number of landowners that benefit from roading or other transport projects undertaken by the UDA, and where other value-capture mechanisms would be too blunt.

6 Implementation plan

369. This section outlines

- the legislative framework enabling policy change
- functions of the UDA
- an assessment of implementation risks

Legislative framework enabling policy change

Description of the legislative framework

370. The process envisaged for delivering projects through an urban development authority is staged as follows:

Stage 1: Establishment

Stage 2: Prepare Development Plan

Stage 3: Undertake development

Stage 1: Establishment

371. The first step in the process for establishing an urban development project is for the UDA to identify potential areas for development. A high level assessment will then need to be completed by the UDA which sets out the characteristics of the project. This assessment will need to be in sufficient detail to allow for public consultation and to inform Cabinet's decision-making on whether to allocate more enabling powers to the particular development project.

Stage 2: Prepare Development Plan

372. Stage two of the process requires the UDA to prepare a development plan that identifies how the UDA proposes to exercise each of the development powers (for example, the nature and location of new land use regulations, where reserves will be revoked or exchanged, where roads and other infrastructure will be created or re-aligned, and where any new schools or other social infrastructure will be located). If it's a particularly complex development, the UDA will have the option to complete a plan for the development project as a whole, then more-detailed plans for sub-projects.

373. The development plan will describe in detail:

- the specific developments that will be undertaken within the project area

- how and where the various development powers will be applied
- how the project will be delivered

374. The UDA will be required to publish the draft development plan for formal consultation. Any member of the public can make written submissions in response to the draft development plan. In doing so, the UDA must consult with the same groups that needed to be consulted as part of the initial assessment. In particular, to uphold the Crown's Treaty obligations, it will be important to undertake early engagement with post settlement governance entities, Māori land owners, mana whenua and iwi/Māori developers. In addition, the UDA will be expected to engage as it sees fit with the development project's community in the preparation of the draft development plan. The submissions will then be heard by an independent hearings panel (discussed in more detail in section 7).

375. Provided the Minister is satisfied that the development plan fulfils the strategic objectives set for the development project, the Minister can approve the development plan and arrange for a suitable notice to be published, whereupon it takes effect. Alternatively, the Minister can either decide to:

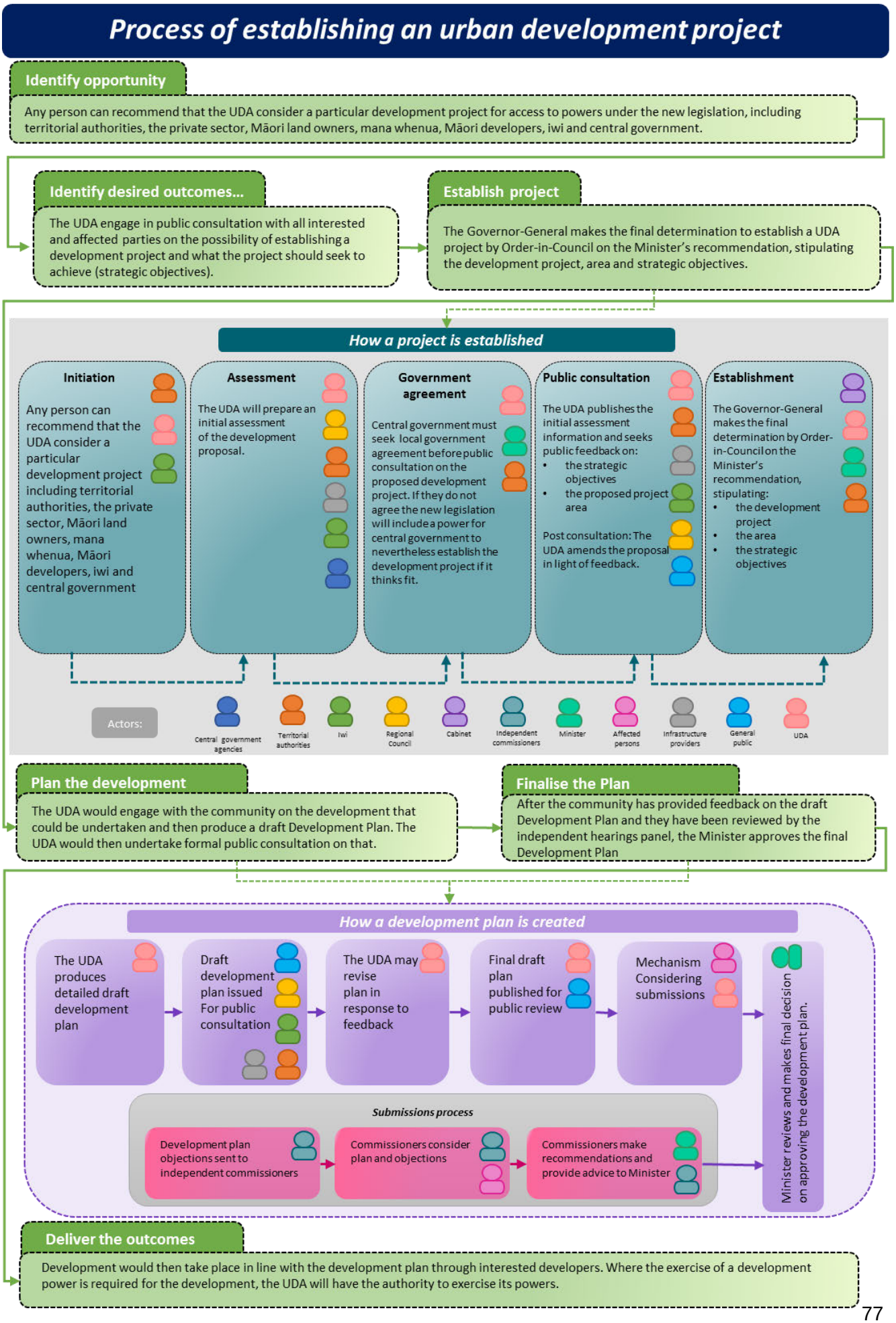
- reject the development plan entirely, in which case the UDA must start the process again (or the Minister can decide to dis-establish the development project altogether); or
- refer the development plan back to the independent hearings panel to examine any issues that the Minister reasonably believes should be considered (or considered again). In this case the panel must also consult the UDA on the same matters.

Stage 3: Development Stage

376. Development powers are automatically available to each development project that is established under the legislation. The draft development plan would describe which powers the UDA considers it needs to achieve the strategic objectives. The Minister's approval of the final development plan gives approval for the development powers to be used for the project.

377. Figure 5 outlines the three stage process.

Figure 5: Process of establishing an urban development project



Guidance material

378. We recommend that the legislative changes proposed by the preferred policy option be supported by guidance for affected parties. This includes material for parties that may wish to access the legislation to achieve urban development outcomes. This will help ensure the legislation achieves its objectives and reduce unnecessary costs and risks.

379. It is envisaged the preparation of any guidance material would be led by the Ministry of Housing and Urban Development (MHUD). The Ministry for the Environment, Land Information New Zealand, the Treasury, and the Department of Conservation. The Department of Internal Affairs and the New Zealand Transport Agency will be invited to be involved in the preparation of guidance.

380. In some respects, guidance could be used as a mitigation (prevention) resource to encourage constructive stakeholder engagement from the outset.

Functions of the urban development authority

The general functions

381. The UDA can undertake a range of functions to lead large-scale development projects. To do this successfully, the UDA needs to be designed in such a way that it has the capability and flexibility to do four core functions:

- Delivering programmes – delivering affordable KiwiBuild homes through different methods (including through complex large-scale urban developments), and managing and implementing specific housing and urban-related government initiatives (such as home ownership support products).
- Initiating/commissioning projects – working alongside the MHUD and other agencies in regional spatial planning exercises, and in assessing and selecting large-scale development opportunities.
- Exercising statutory powers — exercising and administering the enabling urban development powers and tools available within designated large-scale project areas (e.g. consent processing, land assembly, setting of rates and development contributions, and acting as a road controlling authority).
- Delivering development projects and being a developer – coordinating, managing and delivering integrated, large-scale, mixed-use urban development projects; purchasing and assembling land; facilitating land readjustment through partnerships; and making its development expertise available to support other projects and initiatives across government.

Project specific functions

382. The table below outlines the key project specific functions a UDA will need.

Table 6: Functions of the UDA

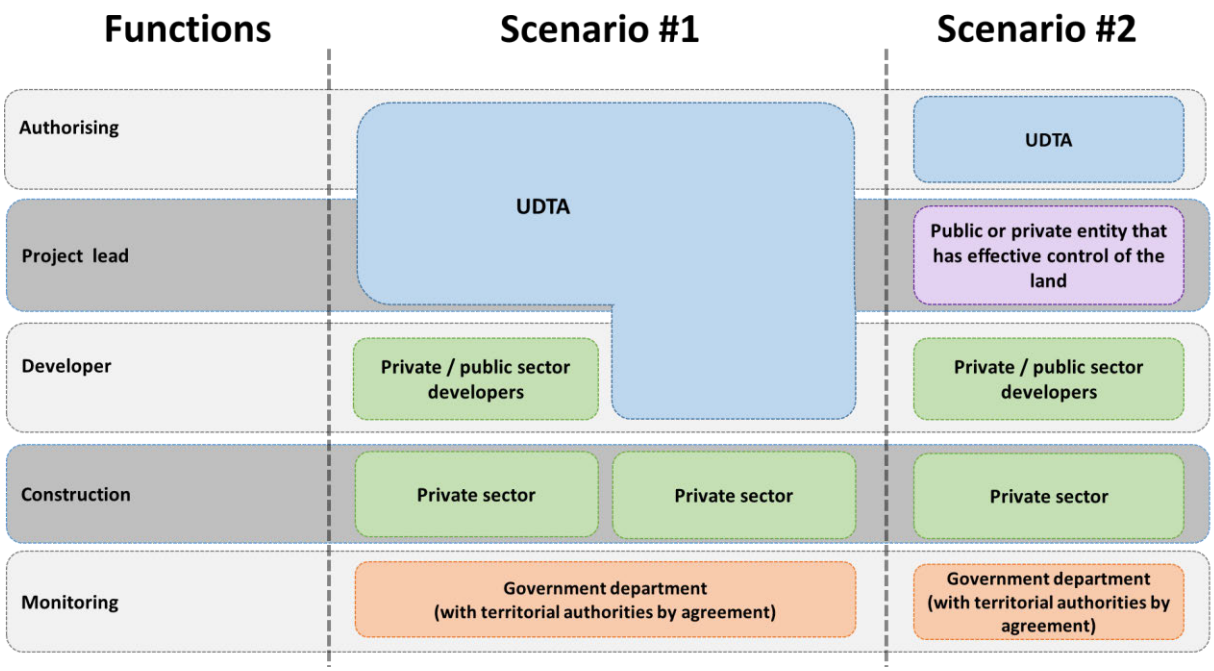
Function	Explanation
Authorising functions	These functions relate to the UDA's role in exercising the more enabling development powers and consequently, the need only arises in the context of the proposed legislation. The authorising functions are the governance and decision-making functions required to: • oversee the preparation of the development plan • recommend the final draft development plan to the Minister • exercise the development powers as and when needed to achieve the strategic objectives of the development project, provided the proposed use of the powers has been approved in the development plan. Ministers will have the power to approve which powers can be used and in what circumstances, via the content of the development plan. Any exercise of the selected development powers is also subject to the development plan. The Minister holding the decision-making power is the primary mechanism to ensure democratic accountability.
Project lead functions	These functions relate to the UDA's role in delivering each development project. These are the core functions needed to make things happen. Consequently, they include functions needed when government is leading any development project, but are tailored to the processes and requirements proposed for the new legislation (such as the need to deliver strategic objectives). The functions are the management and operational functions required to: • realise the strategic objectives of the development project in accordance with the approved development plan, including initiating and leading urban development of the project area • manage and spatially master plan the development project in accordance with the development plan (referring to the more detailed planning required) • collaborate with, and build support for the development project among, the development project's community • assemble public landholdings with private landholdings within the project area to undertake development on the required scale • coordinate and integrate the delivery of infrastructure identified in the development plan for the development project • partner with private sector developers (including iwi) to deliver the overall development project, and procure developers for particular sites within the project area • own, operate and/or maintain public assets in the project area, including infrastructure and public land

	▪ consult and collaborate with the stakeholders necessary to successfully realise the strategic objectives of the development project.
Developer functions	Developer functions include the design, financing, funding and marketing of particular developments within the overall project area. The developer functions will usually be undertaken by the private sector, who takes the risk on the development of a particular site in exchange for earning profits.
Construction functions	These will be undertaken by the sub-contractors that the lead developer engages to deliver physical outcomes.
Monitoring functions	Monitoring will sit with a central government agency.

383. Figure 6 below sets out all five main functions.

384. Conceptually, the UDA can undertake the first two functions and choose whether to exercise the risk-taking developer functions on a case-by-case basis (Scenario #1). Different entities could also undertake the first two functions, with the UDA exercising the authorising functions and another entity exercising the project lead functions (Scenario #2).

Figure 6: Functions of the UDA



Implementation risks

Understanding the impacts of this legislation

385. Because existing powers and processes can overcome some urban development problems, it is difficult to calculate the likely impact that more enabling powers could have

on specific development projects. This could create uncertainty regarding the implementation of this legislation.

386. We know that some large developments have been able to progress under the existing legislative scheme, albeit with some concern over the delays they have experienced (e.g. Fletcher Building's development of up to 1,500 new dwellings in its former quarry in Three Kings, Auckland, which has been the subject of a recent appeal).

387. In other cases, new legislation could be the difference between a development proceeding or not. In still other cases, there could be developments that would have proceeded anyway, but where the proposed legislation will make a material difference to the dwelling yield or other public good outcomes.

388. Given the tool-kit nature of the legislation, we are unable to know what projects will use what powers. This increases the difficulty in predicting the outcomes and risks of this legislation.

389. Consequently, because we cannot know in advance how many developments would fall in each of these categories or what powers different projects will have access to, we are unable to make a reliable estimate of the impact that the proposals would have on enabling development projects generally.

390. Nevertheless, we are able to draw inference from studies that have been completed about urban development authorities.

BRANZ report: The Case for Urban Development Authorities in New Zealand

391. A 2016 BRANZ report[26] assessed whether UDAs in New Zealand would add economic value, their financial sustainability and the wider benefits they can provide.

392. Key findings from international experience show that UDAs struggle to be profitable. However, published reports and articles suggest they do actually create economic value once the wider benefits produced are taken into account.

393. Although there was a range of outcomes, cost benefit ratios of between 2 and 3 were common. A snapshot from two British studies (1,2) and one Australian study (3) shows positive Cost Benefit Ratios:

    1. Department for Local Government and Communities (DLCG) (2010) found 'industrial and commercial' activities to have a Cost Benefit Ratio of 10.8 (central) – 5.8 (cautious). Similarly, 'new build housing' was found to have a ratio of 2.6 – 1.7, and 'acquisition, demolition and new build' to have a ratio of 5.5 – 3.7.
    2. Tyler et al. (2013) when looking at regeneration projects found 'new build housing' to have a ratio of 2.8 – 1.9, and 'acquisition, demolition and new build' to have a ratio of 5.7 – 3.9.
    3. Wood and Cigdem's (2012) analysis of urban renewal programmes identified a range of benefit to cost of -7.7 – 12.6, with an average of 2.2.

[26] Ian Mitchell (2017) The case for urban development authorities in New Zealand

394. The published evidence suggests that UDAs have been widely used as a policy tool to attempt to improve urban outcomes. However, financially, they are likely to struggle to be profitable without subsidies from local or central government. Subsidies typically include capital grants, tax credits, vested Crown or publicly owned land and patient capital.

395. When the wider benefits of this approach are considered the majority of cost benefit studies, examining costs and outcomes at a policy and UDA level, demonstrate the benefits exceed the costs. Wider benefits identified in the analysis include uplift in values in properties surrounding the regeneration area, reflecting improved amenity and services and a range of social outcomes including improved community health.

396. It is difficult to assess costs and benefits in Australasia due to a lack of assessments conducted. For example, detailed financial information has not been published about the Hobsonville Point development. Similarly, there is no publically available information about the economic and financial performance of developments undertaken by Places Victoria in Australia.

397. Generally, there is a lack of real evidence showing the costs/benefits of UDA type projects in New Zealand to date. This highlights the need for better monitoring in the future to allow for more informed decision making surrounding the effectiveness of UDAs in the New Zealand setting.

Mitigation

398. It is for this reason that the proposals require a sufficient assessment of each proposed development project prior to establishing it, including an appropriate business case. The proposals also set out a monitoring framework for the legislation, the entities and their projects (see section 7 for more information on the monitoring framework).

Funding and financing

399. Submitters on the discussion document noted that the costs of establishing and running the UDA from initial concept/pre-development through to implementation could be significant. There was uncertainty as to how the UDA would be capitalised, how funding arrangements would work, how infrastructure would be funded or how debt would be secured by a UDA without revenue.

400. Councils are largely constrained by revenue/debt ratios and the impact of these on council credit ratings. Barriers to councils making more use of debt can be an important reason for urban development failing to keep pace with demand. Even if investment to support growth provides a net financial gain to councils over reasonable payback periods, an inability or unwillingness to borrow to finance the investment may well stop it going ahead.

401. Although this legislation provides the UDA with a more enabling tool kit to address funding and financing constraints, it does not address the root cause of these problems, nor does it aim to.

Resourcing and capacity

402. Councils expressed concerns about resourcing and capacity in response to the 2017 discussion document. They presented unease as to the extra level of bureaucracy and cost that would come from these entities. Furthermore, there was concern around the necessary skills and experience to undertake particular functions. In particular, infrastructure providers were concerned that UDAs would be unable to pull together the necessary expertise and knowledge needed to make informed decisions about infrastructure. This risk is also discussed in section 3 under 'planning and consenting powers'.

403. Under a national UDA this risk is minimised by having one UDA. However this shortcoming could further exacerbate the already (perceived) shortage of expertise and capacity within territorial authorities.

Decision making power to Ministers

404. This piece of legislation provides central government and the Minister responsible with greater influence over large-scale urban developments. However, submitters were concerned that the Minister responsible for the legislation would be provided with too much discretion in the process.

405. One area where this is particularly relevant is with the approval of the development plan. As figure 5 demonstrates, the Minister is the final decision maker who approves the development plan (or the Minister can delegate the power if desired).

406. The Productivity Commission in its *Better Urban Planning* report recommended that independent hearing panels (IHP) be established to consider and review plans. The Commission recommended that an IHP have the final decision on the merits of plans with appeals only on points of law to the Environment Court.

407. The current proposal overlaps with those of the Productivity Commission insofar as the process for approving a development plan includes the plan being referred to an IHP. The proposal differs in that the IHP is not the final decision-maker, the Minister is.

408. Provided the Minister is satisfied that the development plan fulfils the strategic objectives set for the project, he or she approves the development plan and arranges for a suitable notice to be published, whereupon the development plan is enabled.

409. Nevertheless, this raises risks, as decision-making is not at arms' length from Ministers. The Minister has very broad and relatively unfettered discretion as to what should qualify as an urban development plan especially as there are no appeal rights in terms of the Minister's decisions.

410. If an IHP was the decision-maker then this would be with an expert body with the capability to make quality planning decisions. However there will be cases where government has significant capital invested in a development project. Therefore the increased risk and cost to government of pursuing a development project may suggest

that it is more appropriate for the final decision-maker to be the Minister, albeit with the benefit of the IHP's advice.

411. It is important to note that the overall discretionary power provided to the Minister under this legislation will always raise risks around the use of this legislation for different political pressures and ideological values.

Treaty of Waitangi

412. The proposed legislation would not override any Treaty settlement legislation (past or future). The Crown and the UDA would also remain bound by any relevant agreements between Crown agencies and iwi or hapū entities or the mandated representatives of claimant groups.

Treaty settlements

413. Certain Treaty settlements or associated agreements provide Māori with processes in which Māori views and interests must be sought and in some cases given effect. These provisions must continue to bind the Crown under the new legislation.

414. However, there is a risk that the different planning and consenting processes that are proposed in development project areas may be incompatible with obligations and co-governance arrangements established through these Treaty settlements or agreements, which are built around the existing planning framework. Several arrangements under Treaty settlements involve the establishment of joint committees or iwi representation on council committees. Some of these entities, such as the Hawkes Bay Regional Planning Committee, have a direct role in the preparation of regional policy statements and plans. The functions of others, such as the Waikato River Authority, include the preparation of documents which must be given specific legal weighting in the preparation of plans and policy statements.

415. Given that the proposals include the potential for regional policy statements to be partially overridden in project areas, if and when scenarios like these arise the new legislation needs a mechanism to protect the Treaty settlement arrangements within the new planning and consenting framework, as removing certain land from the scope of urban development projects will not address this risk.

Sensitive land

416. Some Māori land is particularly sensitive, because of the history of land loss and confiscation, Crown-Māori relations, and the statutory purpose of Te Ture Whenua Māori Act 1993, which is to promote the retention of land held under that Act in the hands of its current owners. Consequently, the proposed powers of compulsory acquisition are of particular concern with respect to this land. Māori are concerned with the proposal to enable the UDA to ask the Crown to exercise these powers, because it is likely to increase the frequency with which the powers are used.

417. When the Government previously consulted with Māori on the use of compulsory acquisition for urban development projects (in 2008), submitters were asked to discuss

how Māori interests in land could be protected. Hui attendees felt strongly that there should be no compulsory acquisition of Māori land. National, rather than local, control over compulsory acquisition powers was also urged, and the use of cultural assessment of land was suggested for inclusion in criteria for assessing whether acquisition is appropriate. Submitters noted that compulsory acquisition powers could mean that land returned under Treaty settlements is re-acquired by the Crown, and that this could compromise the integrity of those settlements. If these concerns had not been addressed, they would present a significant risk for the implementation of the legislation.

418. It is now recommended that the UDA not be able to compulsorily acquire sensitive Māori land. The UDA would still be able to acquire land by agreement, or to partner with Māori land owners to develop this land as part of a development project.

Land subject to a right of first refusal

419. Land that the UDA holds that is subject to a right of first refusal (RFR) cannot be sold with development conditions attached, unless this is specifically agreed. It must be offered free of conditions to the post-settlement governance entity to develop or not as they choose. Although any new land use regulations adopted under the development plan would apply to RFR land sold to iwi, that would not guarantee any particular development outcomes. Consequently, the more land that is subject to RFR, the greater the risk that the UDA will have insufficient control over the development outcomes to achieve its strategic objectives.

420. Currently, there is no effective means for the Crown to manage this risk on its own. However, iwi are concerned with how a UDA may use RFR land and that may provide the basis for the two Treaty partners to work together.

421. The discussion document proposed that UDAs be bound by the Crown's obligation under any RFR. Although Māori stakeholders welcomed that commitment, they noted the power for the UDA to re-purpose any public land it is given, develop that land itself and only then offer it for sale once there is no further development profit to be made. Although the land would remain subject to RFR in this scenario, it would eliminate the commercial opportunity and so undermine the commercial redress that the RFR is designed to support.

422. In general, the Crown is entitled to change the purpose for which it holds public land, provided it continues to be held for a public purpose. For example, the Crown could use land held for education purposes and instead develop it for housing without offering it to iwi first. But the potential to do so on a large-scale is likely to be a source of conflict between the Crown and iwi because it would be depriving iwi of the commercial opportunity they were promised in their Treaty settlement.

Mitigation

423. The UDA should work collaboratively with post settlement governance entities to achieve mutually beneficial outcomes for the use of RFR land. For example, the governance entity may wish to consider investing in the proposed development project using that RFR land.

424. One way to mitigate this risk is to ensure that where the UDA holds or controls RFR land, if and when the UDA wishes to develop that land as part of the development plan, the legislation requires the UDA in the first instance to give the relevant post-settlement governance entity the opportunity to be the developer of that land on any terms and conditions that the UDA wishes to set. Alternatively, the UDA could agree to some other alternative with the post-settlement governance entity that is sufficiently attractive for the post-settlement governance entity to waive its RFR.

425. The post-settlement governance entity could then choose whether or not to agree to purchase the RFR land subject to those development conditions. Where the post-settlement governance entity does not agree to purchase the land on those conditions, the UDA may wish to proceed with development of the land ahead of the RFR being offered and only offer it to iwi at the end, once the UDA is offering the completed homes (or other buildings) for sale.

426. The Crown and UDA remain bound by the right of first or second refusal and, where that right is triggered, must offer the same land to the post-settlement governance entity without any conditions attached. Avoiding that outcome is the incentive for the post-settlement governance entity to prefer to purchase the RFR land subject to development conditions.

427. However, given the potential implications for Treaty settlement durability and for the Crown/Māori relationship, we propose that a decision to re-purpose or develop RFR land in these circumstances be required to be agreed by the Minister for Urban Development and the Minister for Crown/Māori Relation

Competing interests

428. This legislation is trying to achieve a balance between the interests of a range of people, including private property holders, whose rights and interests have to be balanced against the public interest in development. Currently the system of local government democracy represents the interests of parties owning property in an area and does not equally represent the interests of other relevant parties.

429. While tempting to view this through a property rights lens only, there are a number of additional factors which should be considered. At present, certain communities within New Zealand are already experiencing the opportunity cost associated with missed development opportunities. Urban development projects which could contribute to recovery of these areas are constrained by the complexity of the current regulatory settings.

430. The introduction of legislation that enables increased development in urban areas may be opposed by homeowners who perceive such development to be a risk to the amenity of their neighbourhood, makeup of their community and the value of their homes. It may also be opposed because change is itself often a cause for concern and pushback. Such opposition may be strong due to negative perceptions surrounding past intensification efforts.

431. The risk of not introducing this legislation is that people who want to live in areas experiencing housing shortages continue to bear the burden of high housing costs and poor access to housing.

432. However, there is also a risk associated with moving decision-making within urban development project areas away from local government and assigning it to the Minister responsible for the legislation. For example, decision-making by the Minister could be weighed too far in a particular direction, or subject to short-term political pressures.

Mitigation

433. To mitigate this risk, process requirements are set out in the proposed legislation requiring decision-makers to take account of community preferences within a democratic environment where affected parties are able to express their views.

434. When implemented, it will be essential to ensure:

- An appropriate balance is achieved between the flexibility of land assembly powers to meet development outcomes, while maintaining certainty of private property rights.
- There is a direct (not trickle down) public benefit that justifies the need for the UDA land assembly power. This gives confidence that the use of the power will contribute to accelerate housing supply and public works within a project area more quickly than what could be achieved under the status quo.
- UDA acquisitions and other land assembly effects on private property rights do not provide different outcomes for affected owners than the status quo (other PWA acquisitions). Compulsory acquisition is used as a last resort.
- A simple, affordable process is enabled to support affected parties who want to submit on concerning aspects of particular development projects.
- Developments on public land maximise the utility of any land which is not currently delivering adequate public benefit.

435. Section 7 describes the dispute resolution processes to be put in place.

7 Monitoring, evaluation and review

Purpose of monitoring and evaluation

436. This legislation provides a range of enabling development powers for large, complex development projects undertaken by the UDA. It is essential to monitor the performance of the UDA, and to consider whether development projects undertaken by the UDA are achieving expected milestones.

437. In time, it may also be useful to evaluate (i) whether development projects are achieving their intended outcomes, and (ii) certain aspects of the legislation and how these have been implemented, to understand their relevance, effectiveness, sustainability, impact and/or efficiency.

438. A full set of performance and success measures for the UDA, specific development projects, and aspects of the legislation, will be developed as part of detailed monitoring and evaluation design for each project. This work should happen in conjunction with detailed implementation design.

Monitoring urban development authority performance

439. MHUD will be tasked with the performance monitoring of the UDA. Performance monitoring of the UDA will be undertaken in accordance with the legislative requirements of the Crown Entities Act 2002 (CEA).

440. The Minister responsible for the legislation shall be required to table the UDA's annual report to in House of Representatives.

441. Monitoring information gathered could include

- number of projects, size, complexity, resourcing requirements
- success, speed, problems of projects
- powers used
- project progress.

442. A full set of performance and success measures for the UDA will be developed as part of detailed monitoring and evaluation design. This work will happen alongside detailed implementation design for the UDA.

Consultation feedback: Monitoring and evaluation

- Submitters, notably councils and some developers, noted the importance of including local government in the performance monitoring and evaluation of UDAs and the system as a whole. This could be through joint monitoring or central government providing local government with information on UDAs performance.
- It is recommended that local government should be consulted during detailed monitoring and evaluation design

Monitoring of the urban development authority projects

443. Bodies (e.g. subsidiaries) implementing UDA projects will be required to provide monitoring reports to the UDA on a regular basis, as agreed with the UDA.

444. Possible measures for each project could include:

- size, complexity, resourcing requirements
- success, speed, problems
- powers used
- achievement of milestones.

445. For each UDA project, a full set of performance and success measures, and a monitoring plan, should be developed as part of detailed monitoring and evaluation design. This should be completed alongside detailed implementation design.

446. The UDA will provide relevant guidance (eg results framework, guidance on indicators, useful templates) to support monitoring of UDA projects. This will enable the UDA to collect consistent information across UDA projects, to be used in monitoring and evaluation of the UDA. Project monitoring and indicators will depend on decisions made about the UDA's function and intended outcomes.

447. The UDA will be required to send the project monitoring data to the relevant local government agencies. This will help build the partnership with local government. Territorial authorities can, by agreement with the central government agency, be involved in the monitoring of development projects.

Evaluation of the urban development legislation

448. Over time it will be useful to evaluate aspects of the Urban Development Legislation and how these have been implemented, to understand their relevance, effectiveness, sustainability, impact and/or efficiency.

449. Potential evaluation questions include:

- How effective was the legislation (and/or the way it was implemented) in making it easier for complex or strategically important urban development projects to be planned, implemented and completed, and the reasons for this (i.e. are there any gaps/loopholes in the legislation that meant these projects were not enabled more easily?)
- How effectively were objectives of the legislation achieved across all types of urban development projects and, if not achieved equally, why not?
- How relevant are the powers within the new legislation – which were used most, which were used least/not at all, and reasons for this?
- What, if any, unintended outcomes did the legislation lead to?
- How relevant is the legislation overall – is it still the best option for enabling complex or strategically important urban development projects?

450. A detailed monitoring and evaluation design will be developed alongside the detailed implementation design for the UDL. The monitoring and evaluation design will clarify key evaluation questions and approach, taking into account stakeholders' information needs and the intended use of monitoring and evaluation information.

451. The evaluation design will include a framework for measuring the effectiveness of the UDL based on a programme logic which clarifies the relationship between activities (UDA projects), outputs and outcomes. This framework will provide the basis for monitoring progress over time. Monitoring data will be used to help answer key evaluation questions.

Dispute resolution

Public disputes to development plan

452. Although this legislation aims to reduce barriers for large-scale urban development projects, it is essential that members of the general public affected by a development are able to have their say.

453. Without a right to appeal to the courts against the content of the development plan, it is important that the new legislation provide the opportunity for any concerns to be considered a second time by an independent party in order to ensure due process.

454. Anyone can submit on the UDA's recommended development plan to an independent hearings panel.

455. The UDA must present its recommended plan and copies of all the second round of submissions for review by an independent hearings panel appointed by the Minister, together with the UDA's response to the submissions. The panel reviews the recommended plan and determines whether to endorse the plan as presented or recommend amendments.

456. The independent hearings panel must take into account the same decision-making framework as the UDA, with the same priority and weighting[27].

457. The independent hearings panel can finally recommend to the Minister that the development plan

- be approved as recommended by the UDA
- be referred back to the independent hearings panel to examine any issues that the Minister reasonably believes should be considered (or considered again)
- be rejected entirely.

Disputes with public entities

458. As development projects cannot exist in isolation, they need to connect and integrate with the area outside the project's borders and with various public entities responsible.

459. Consequently, the UDA will need to collaborate or seek agreement from a number of other public agencies and authorities on a range of significant issues that have the potential to result in challenges, whether at the establishment of a development project, during its life, or when it is being wound up.

460. For these reasons, there are a range of polices in place under the various powers to mitigate disputes.

461. For example, for disputes adjudication for across-boundary funding arrangements; the UDA, the territorial authority, or both may apply to an independent decision maker if agreement between the parties cannot be reached on

- the amount to be paid
- the timing of any amounts to be paid; or
- the infrastructure to be provided by each party, including when it is to be provided; or
- any other matter related to cost-sharing arrangements.

[27] Once a development project is established, all decision-makers must recognise and provide for the purpose of the new legislation and the strategic objectives as their first priority in all decision-making related to the development project, over and above the matters considered in Part 2 of the RMA. In order of priority, decision-makers must recognise and provide for sustainable management of natural and physical resources, then the national level RMA instruments (such as national environmental standards) and various other environmental considerations currently found in section 6 of the RMA. Decision-makers must then have particular regard to certain matters found in section 7 of the RMA; and finally have regard to a few related matters, including the environmental assessment required to be included as part of the development plan.

462. Similarly, where there is a dispute between the UDA and a requiring authority over the lodgement of a notice of requirement, the matter be determined by an independent decision maker.

463. Further policy work is also being done in this area and will be reflected in later Cabinet advice.

Appendix 1 - Framework and entity structure

464. This appendix builds on the segment ‘what are the key features of an urban development authority?’ in section 3 and section 6 (implementation).

465. It assesses various aspects of the legislative framework and entity structure; including.

- eligibility criteria
- the role of local government
- legal form of the UDA
- existing capability
- the role of a UDA and delegations

Eligibility criteria

466. Having clear eligibility criteria to guide which development projects should be able to access more enabling development powers could be an important tool for providing transparency for potentially affected stakeholders.

467. Depending on the specificity of the criteria, they would also provide a level of objectivity to the decision-making process. Eligibility criteria would provide a useful signal to developers about the type of project that might be appropriate for consideration under the legislation.

468. On the other hand, not having eligibility criteria would allow for maximum flexibility regarding the type of development projects that could be considered under the legislation. This would ensure the legislation could be responsive as the urban environment continues to change, and may encourage innovation.

469. Not having eligibility criteria would result in considerable uncertainty for stakeholders. It also may result in proposed projects being put forward that are not appropriate for consideration under the legislation.

470. The table below assesses three possible methods for setting eligibility criteria.

Table 7: Criteria

	Pros	Cons	Risks
Prescribed criteria, for example a minimum number of houses or project cost	▪ would provide a level of objectivity to the assessment process.	▪ difficult to establish criteria that would be appropriate in every situation ▪ may require ongoing amendment	▪ may be seen as too restrictive by developers and discourage participation
Principles-based criteria, for example requiring a range of public benefits to be delivered	▪ would clearly link individual development projects to the purpose of the legislation while allowing some flexibility for different types of project ▪ appropriate for legislation with a broad set of objectives	▪ potential for 'gaming' of the process in order to meet the criteria ▪ more difficult to assess whether a development project has met the criteria	▪ difficulty in assessing the extent to which the project has met the criteria
No pre-defined criteria	▪ would allow maximum flexibility to consider innovative projects	▪ too subjective development projects could be allocated special development powers on the basis of a vague rationale	▪ lack of transparency and rigour could result in criticism of the government ▪ may be perceived as unconstrained use of executive power

Recommendation

471. Given the intention that the legislation support only significant development projects that are complex or strategically important, we recommend including principles-based criteria that requires a range of public benefits to be delivered and exclude business-as-usual developments.

The role of local government

472. Urban development projects will require the UDA and local government (especially territorial authorities) to work together collaboratively if New Zealand is to deliver the volume of urban development the country will need over the coming decades. There will also likely be the need for additional capacity to support large-scale developments from the network infrastructure that territorial authorities operate and fund. That being said, it is important to ensure the legislation addresses coordination and governance failures currently preventing positive urban development outcomes.

473. This section assesses the option of providing local government (territorial authorities) with a 'veto' power over a development project.

Option 1: Local government has a veto right

474. Under this option, the UDA would need to obtain the agreement of the relevant territorial authorities before establishing a development project. This conversation would take place at the establishment stage of the process.

Pros

475. Providing territorial authorities with this power would ensure the development project is well integrated into the existing system and becomes part of the territorial authority's plans and strategic vision for the region. It supports local democracy and respects local community views.

476. This option would encourage a collaborative relationship between the territorial authority and the UDA from the outset.

Cons

477. Local government is subject to political pressures that may limit their willingness to support urban development projects. The system of local government democracy is biased in favour of property-owners and is unable to equally represent the interests of people who require additional housing to be constructed.

478. It is likely that residents will strongly oppose development projects that seek to provide for higher density housing in existing neighbourhoods, as opposition to the Auckland Unitary Plan illustrated. If councils chose to exercise their veto power for similar reasons, this would effectively prevent central government from using the legislation for projects of national interest.

479. Having to gain territorial authority agreement could delay (if not stop) development projects.

Option 2: Local government does not have a veto right

480. This option would require central government to consult with the relevant territorial authority with the aim of obtaining support for a development project. If support cannot be obtained, the high-level assessment at the establishment stage may recommend that the project proceed anyway, because a case can be made that is in the national interest. If Cabinet approves the proposal on that basis, the relevant territorial authority would be required to have an ongoing role in the process.

481. It is anticipated that it would be very rare for development projects to proceed without territorial authority support given that early (and ongoing) conversations on potential areas of development will take place with relevant local authorities,

Pros

482. This option would provide a direct lever for central government to act in respect of a particular development project, allowing projects deemed as nationally important to be established even if they do not align with local government's priorities. It responds to the current lack of statutory authority for the Grown to participate directly in urban transformation activities at regional or local levels.

Cons

483. The development project may not align with the territorial authority's plans.

484. This option has the potential to damage the relationship between local and central government and local government's willingness to participate in the process. Submissions from local government on the 2017 discussion document noted that their support of the proposals was reliant on having a veto power.

Recommendation

485. Consultation on the discussion document showed that territorial authorities strongly support the requirement for central government to secure their agreement before a development project can be established. However, the veto power may restrict the number of development projects that can be established, which would consequently restrict the ability of the legislation to achieve its purpose.

486. We therefore recommend that the territorial authorities have a veto power, with a reserve power to override. The importance of infrastructure means that territorial authorities will have an effective veto, irrespective of whether the legislation gives them one. It is better to empower territorial authorities, than sideline them. However, given that in some cases it may be possible to overcome any infrastructure funding constraints, we think it would be useful to provide central government with the means to proceed if necessary.

Legal form of the UDA

487. There are two main options for the legal form of a UDA – a Crown Agent or a Departmental Agency.

488. A Crown Agent is more arms-length from Ministers than a Departmental Agency. The channels for Ministerial direction are more formalised, and are primarily through the board and its chair. These channels include government policy statements, statements of intent, and letters of expectations.

489. The UDA model of Crown Agent would need to be closer to Ministers than the standard Crown Agent model. This is because the responsible Minister will make the final decision on the development plan for complex urban development projects. Other Ministers will also need to agree to specific aspects of the development plan, and the exercise of certain enabling development powers.

490. The powers of Ministerial control over Crown Agents are also less specific than they are for Departmental Agencies. For example, under the standard Crown Agent model, Ministers cannot direct Crown Agents with respect to specific assets or transactions. This means the UDA's board would be able to make key decisions on the KiwiBuild programme and flagship initiatives.

491. On the other hand, a Departmental Agency is an operationally autonomous agency within a host department, and is directly accountable to the Minister. This provides greater Ministerial control.

492. There are advantages and disadvantages to both options. The table below assesses various aspects of the Crown Agent and Departmental Agency options.

Table 8: legal form options

	Crown agent	Departmental agency
Ministerial direction	• More independence from Crown and Ministerial direction — channels of Ministerial direction or instruction are more formalised, and primarily through the board. For example, direction through a Government Policy Statement can be specific if provided for	• More direct Ministerial direction • No decision-making Board however some statutory models still give decision-making to outside boards
Territorial authority involvement	• Can establish subsidiaries with minority shareholding from other entities – i.e. enabling territorial authority partnership in specific projects	• Cannot establish subsidiaries, but the Crown can establish a series of separate project entities (e.g. like TRC) where the Minister is a shareholding Minister

Treaty of Waitangi obligations	▪ Existence of entity does not derogate from Crown's core Treaty obligations. They cannot be delegated to a Crown Agent.	▪ Maintains existing processes and relationships for meeting Treaty obligations
Ability to borrow	▪ Can borrow to fund development (subject to suitable assets/security) if given the power to borrow via legislation.	▪ Part of core Crown, so cannot borrow independently (does not have own balance sheet) ▪ However, the Crown can access the cheapest borrowing through the New Zealand Debt Management Office
Delivery-focus	▪ The specific expert capabilities of a board can support the UDA's functions and delivery ▪ Independent of finances and decisions can support speedier decision-making and investment ▪ Separates some decisions from political considerations	▪ Could establish an advisory panel to provide external expertise similar to what a board could provide or could establish a separate statutory decision-making board ▪ Potential for greater responsiveness to government priorities and/or ability to make policy trade-offs

Recommendation

493. We recommend establishing the UDA as a Crown Agent. This would enable more responsive, commercially-focused decision-making, while still maintaining suitable accountability to the Minister.

Drawing existing capability

494. There is a question as to which of the existing centres of central government development capability should help comprise the UDA. This decision will inform the capabilities and assets the UDA will have from its outset, and the ones it will need to build.

495. This section outlines two main options for where the UDA can draw its existing capability from.

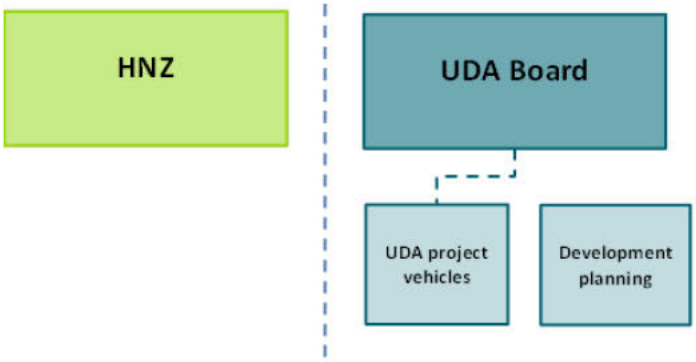
- Option 1: KiwiBuild Unit and HLC in the UDA
- Option 2: KiwiBuild Unit, HLC and Housing New Zealand (HNZ) in the UDA

496. Under option 1 HLC would be removed from the ownership and control of HNZ, and the KiwiBuild Unit would be removed from MHUD. The two entities would then merge into a new entity that would form the initial basis of the UDA.

497. The UDA would likely be structured internally with an urban development function (e.g. master-planning and delivery), an enabling function (e.g. formal establishment of

project areas and exercise of statutory functions), and locally-based, project-specific subsidiaries that may include local authority participation.

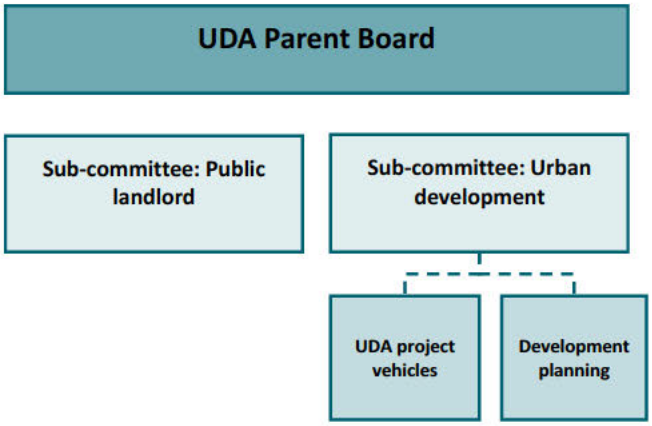
498. This option is stylised below:



499. Under option 2 the UDA would be formed on the basis of the KiwiBuild Unit, HLC and HNZ. While HNZ would be the largest component, this option is less about restructuring HNZ, than forming a new entity. This would mean a single entity is responsible for the UDA's urban development function (and its related functions, like KiwiBuild and the enabling function), as well as managing public housing assets and tenants nation-wide.

500. While HNZ currently has legislation that is broadly enabling — and so it could begin structural changes quickly as part of a transition — this new entity would need its own bespoke legislation specifying the expanded purpose, and establishing arrangements for mitigating governance issues that might arise from the broad scope and span of control.

501. This option is stylised below:



502. Both options are assessed in the table below:

Table 9: Existing capability

	Criteria one	Criteria two	Criteria three	Criteria four	Criteria five	Criteria six
	Consolidating urban development capability	Having a clear strategic purpose	Having clear governance and accountability	Having access to capital	Ease of access to land	Meeting the growth challenge
Option One: KiwiBuild Unit and HLC in the UDA	✓	✓✓	✓✓	✓	✓	✓✓
	Would bring together the expertise held in KBU and HLC, but HNZ would still need to retain development capacity	Would be focused solely on urban development	Would have less complex governance and accountability arrangements	Would own no land at outset, and would only have access to the $2.1 billion appropriated for KiwiBuild	Would have no land at the outset, but would have access to the $2.1 billion appropriated	Would be a growth business
Option Two: KiwiBuild Unit, HLC and HNZ in the UDA	✓✓	✓	✓	✓	✓✓	✓
	Would bring together the three core central government entities directly involved in urban development	Would need to balance tensions between public housing and urban development functions	Would need more complex governance and accountability arrangements due the scale and breadth of its operations	Would be potential risks in relying on HNZ as financial source	Would have ease of access to HNZ land	Would need to manage the challenges associated with managing a high risk, growth business within a mature, low risk business

The role of an urban development authority

503. Section 6 describes the roles and functions of the UDA. It explains that the UDA will be an 'authorising entity. However it can take on the role of a 'project manager' or delegate that role to another entity.

504. Submitters on the *Urban Development Authorities* discussion document were divided on the role a UDA should play. Those against were concerned that UDAs should not act as developers; that instead, a UDA should only have the function of exercising the more enabling development powers and should delegate development functions.

505. Reasons for opposition included the challenge of non-expert UDAs being developers, the risk of the misuse of power without proper regulatory oversight, crowding out of the private sector and the loss of control and accountability of the UDA. If the UDA considers it does not have sufficient development capacity, then this option provides the ability to delegate the project lead functions to another body where appropriate.

506. This option was argued to provide flexibility in the makeup of a UDA to take full advantage of existing entities and urban development projects already underway, empowering them to increase their effectiveness and capability as project managers.

507. However, it was seen that if a UDA takes on both roles then it keeps accountability for the exercise of the development powers and the achievement of the strategic objectives with the publicly-controlled entity.

508. Nevertheless, with a single, national UDA, these risks are minimised. Furthermore, any risks can be mitigated by keeping Ministers accountable for the achievement of the project's strategic objectives with the UDA. The UDA would maintain oversight of the project as it has control of the exercise of the development powers according to how the project manager performs. This would be written into the development agreement with the project manager. This promotes clearer accountability and also keep political involvement in operational decisions removed from project managers.

Recommendation

509. It is recommended that the UDA have the ability to delegate functions, while retaining accountability to Ministers for achievement of the project's strategic objectives.

Appendix 2 - Planning and consenting powers

510. This appendix builds on the planning and consenting section in part 3.

Status quo and problem definition

511. Since its commencement, the RMA has been subject to a series of reforms aimed at overcoming ongoing concerns with the Act's processes and implementation.

512. Most recently, the RLAA further amended the RMA and a number of other statutes that impact on resource management. RLAA's changes that are particularly pertinent to urban development issues include:

- clarification and strengthening of national direction
- new functions for local government to ensure sufficient development capacity
- new alternatives for plan-making with improvements to efficiency of processes
- further streamlining of consenting processes.

513. Due to some unintended consequences arising from these changes, it is likely that further amendments to the Act will be undertaken.

514. The issues for urban development under current planning, land-use and consenting regulatory settings resolve into essentially three problems:

> **Problem 1:** National and regional interests, to ensure housing supply and development, compete with local interest in retaining the status quo – an issue of purpose and weight accorded to different matters in decision-making leading to uncertain outcomes.
>
> **Problem 2:** Processes for changing planning provisions can be cumbersome and fail to deliver timely urban outcomes – an issue of process and cost.
>
> **Problem 3:** Prescriptive regulation is often coupled with highly discretionary decision criteria – an issue of regulatory uncertainty for users, and risk aversion, stifling innovation.

Options analysis

515. This section considers four broad options that could be used to effect change in the planning, land-use and consenting components for urban development projects:

- **Option 1**: Enhanced status quo
- **Option 2:** Targeted change
- **Option 3:** Radical change
- **Option 4**: Mixed model (Targeted and Radical change)

516. Each option is comprised of four key features, which are the broad areas of the resource management and planning system that may require change. There are costs and benefits associated with each feature, which when combined, these describe the overall costs and benefits of each option

- **Feature One:** Purpose and Principles – What is the purpose and principles for resource management in urban development project areas and what should be retained from the status quo?
- **Feature Two:** Functions and powers – What functions and powers under the existing system need to be changed or retained?
- **Feature Three**: Decision-maker – Who should make planning and consenting decisions?
- **Feature Four:** Planning process – What is the process for planning in an urban development project?

Option 1: Enhanced status quo

517. Option 1 involves minor change to the resource management regime with respect to how it would apply to urban development projects. The option proposes to retain the purpose of the RMA, and to support development through the use of stronger national policy direction applied to specified areas.

518. The focus of change would be the land use and subdivision provisions of the RMA. The option proposes that decision-making responsibility would remain with territorial authorities and regional councils.

519. The planning process is envisaged to be the streamlined planning process in the RLAA, supported by the Act's amendments to consenting processes, including around affected parties, notification and appeals. Only existing district level rules and standards could be overridden; regional policy and rules, NPS, National Planning Standards and NES would remain in force.

Pros

520. One of the main benefits of this approach is that the purpose of the RMA is well understood, with a large body of case law developed around it. The option uses processes that are well understood by users, helps retain the coherency and integrity of existing RMA processes, and reduces the costs of implementing and educating the end-

user about new processes in comparison to the other options. This approach provides high community accountability.

521. Option 1 provides a coherent purpose for the management of all natural and physical resources in New Zealand, including urban planning. Disruption to the current system is minimised by using existing tools, especially in light of other potential changes occurring to the planning system, such as LGA reform, the Housing Accords and Special Housing Areas Act, special economic zones, NPS-UDC, and the RLAA.

522. It will allow for the recent changes made through RLAA, such as streamlined planning processes; the consultative planning process, including a new function for local government to ensure sufficient feasible housing and business development capacity; and the policies of the NPS-UDC; to have their intended effects, and enable more development in urban areas.

523. This approach enables district rules to be changed, recognising that these are at the core of restrictions on urban development.

524. The option retains existing bio-physical bottom lines and protective policy weightings on matters other than land use and subdivision (such as water, air and soil quality).

Cons

525. The option retains existing bio-physical bottom lines and protective policy weightings on matters other than land use and subdivision (such as water, air and soil quality). To date, the urban outcomes that are driving the need for development projects have not been achieved consistently under the RMA in practice.

526. It is unclear whether the Act's purpose is capable of achieving good urban outcomes without amendment, potentially because of its focus on "enabling" rather than "driving" change for social, economic and cultural well-being. Arguably it also led to a bias toward the bio-physical, prioritising the protection of the natural environment over the development of the built environment with a focus on effects-based localism.

527. Part 2 of the RMA may continue to be seen as a barrier to effective urban development and associated objectives, and an opportunity may be missed to send a clear signal to both communities and developers that change is required.

528. NPS and NES, which are central to this option take time to develop, and NPS take time to have a meaningful impact at a local level. NPS and NES (additional to the NPS-UDC) also involve considerable cost to develop.

529. National level direction would need to be highly directive, or the option would not provide a significant incentive for local government to recognise national level interests in its vision/strategic planning and policy documents.

530. The option may continue the 'democratic deficit' problem, making it difficult to change other kinds of rules (relating to earthworks, hazards etc) in existing plans. If neighbourhood interests cannot resist land use and subdivision rules, their attention and energy may turn to opposing developments on other grounds.

Option 2: Targeted change

531. Option 2 involves targeted changes to the resource management regime in terms of how it would apply to urban development projects. The option proposes to incorporate Part 2 of the RMA (the purpose of the RMA in section 5 and the decision-making considerations in sections 6, 7 and 8) but to make it clear that these are altered to give greater weighting to concerns of urban development, which would be achieved through giving precedence to the purpose of the new legislation and the project's strategic objectives.

532. Option 2 encompasses the ability to alter aspects of the RMA that are closely connected to the development of land, and proposes that the UDA, which would remain a public body, is charged with making substantive planning and consenting decisions on such matters.

533. The planning process would be streamlined and existing planning instruments (RPS, regional plans and district plans) may be overridden to the extent they are connected closely to (and are required to achieve) the land development objectives of the area.

Pros

534. This option sends a clear signal that urban development is the most prominent concern for development projects, and ensures that pro-active and positive urban development is at the heart of planning a development project. It continues to engage with the purpose of the RMA, make clear the ways in which they interfaces and recognises matters of national importance by giving weight to Part 2 of the RMA, including section 6. There is precedent in using a similar hierarchical model in the HASHAA.

535. Overriding a district plan would not unduly undermine territorial authority interests, given that territorial authority agreement must be obtained for the establishment and strategic objectives of the project area.

536. It safeguards matters of environmental health (such as water, soil and air quality) and recognises that rules and policies in regional plans provide important checks and balances on development activity at that level.

537. This approach also anticipates that significant institutional knowledge and expertise reside in regional councils, and it may be difficult for the UDA to obtain comparable expertise.

538. It provides a degree of accountability to a national (and local, depending on specific governance structure) constituency, although any political interference and NIMBY concerns would be minimised through decisions being made by an arms-length entity.

539. It could rebalance the delivery of pro-active and positive urban development in the wider interests of the city and country, rather than being weighted towards the interests of existing homeowners.

540. The RMA already envisages that prescriptive national level direction can be provided concerning land-use. Therefore active Crown involvement in planning at the local level where there is a national community of interest is not in principle a radical change.

541. An expedited planning process would allow the benefits of development to be realised in a more timely way.

542. It recognises that projects will occur over a number of years, sometimes on a staged basis and variations may be required to a development plan.

543. The development plan would enable an expedited consenting process as it would allow the bulk of consultation to occur at the development planning stage, and not again at the consenting stage. It would guard against the same points being litigated twice.

544. Removing the rights of existing requiring authorities to roll-over and establish new designations would recognise the benefits of a single development entity having overall control of spatial planning in a project area.

Cons

545. This option assumes that the balance of matters in Part 2 of the RMA, amendments to sections 30 and 31 of the RMA, and the NPS-UDC, currently do not emphasise the benefits of urban development to the degree needed to achieve good urban outcomes.

546. Important environmental and cultural safeguards in Part 2 of the RMA may be diluted, for example the principles of the Treaty of Waitangi, natural hazards management, and the life supporting capacity of water (which is arguably more important in an urban environment in the sense of sufficient supply and potability).

547. Risks may arise in relation to environmental quality particularly if a completely different balance of considerations relate to regional council functions.

548. There is a risk of undermining the coherence of the overall planning regime by “tinkering” with overarching purpose and principles in only specific areas and/or contexts.

549. A degree of uncertainty could result from prioritising a project’s strategic objectives, as these can vary on a case by case basis and there may be substantial discretion to set those objectives when an area is established.

550. It may not overcome any barriers posed to development by regional rules and policies. The risk could be amended by a requirement that regional councils, when deciding on consents triggered by regional rules, must be guided by an altered hierarchy of decision-making considerations described above in feature 1.

551. There is also a risk that provisions in regional plans requiring the public notification of resource consent applications may slow down the process of development.

552. The exclusion of powers to change regional plans would mean that there is no ‘one-stop-shop’ in a development project area. There would be different instruments regulating different domains, and may be a missed opportunity to integrate regional and district level plans and produce a more coherent spatial plan for a project area.

553. Splitting decision-making functions between a development entity and a regional council may not produce timely urban outcomes if they do not have incentives to work together.

554. It involves less community accountability and could be vulnerable to decision-making bias.

555. It highlights the importance of requiring a demonstrable national, regional or city-wide interest to be shown at the establishment stage, to justify the removal of decision-making power from locally elected persons.

556. Unless the entity is a national UDA, it may not have the in-house expertise needed to assess consent applications (in comparison to the economies of scale that territorial authorities have).

557. There would be a reduction in opportunities for engagement by communities.

558. Removal of appeal rights would emphasise the importance of providing adequate resourcing and expertise for the decision-making entity.

559. There are risks of non-notification or limited notification in the planning and consenting context where aspects of development may have more than minor effects on the environment, especially if the process applied to matters of environmental health like water and air quality. The views and knowledge of the wider public can add substantial value to the process, and may be lost.

560. There are substantial risks associated with removing decision-making rights from existing requiring authorities, including network utility operators.

Option 3: Radical change

561. Option 3 involves radical change. It replaces the purpose of the RMA – 'sustainable management' – with a more strongly development focused purpose – 'sustainable development'.

562. The scope of change would be across all territorial and regional council functions under the RMA. The option proposes that decision-making responsibility would shift to a kind of entity that would involve, at least to some extent, the private sector.

563. The planning process is envisaged to be a new and highly streamlined process, with the potential for all existing planning instruments, except national direction, to be overridden (although there would be scope to replicate them as appropriate for an area).

Pros

564. This option would send a clear signal to decision-makers to ensure the planning environment facilitates development and associated urban outcomes for which the project has been established. It provides a focus on pro-active development, rather than the enabling focus of the RMA.

565. Including all territorial authority and regional council functions within the scope of change provides for holistic decisions to be made in the development and planning process.

566. It creates opportunity to develop integrated "win-win" and innovative solutions to urban environmental challenges.

567. A streamlined process could produce urban outcomes for development projects that are realised in a timely, efficient, and low-cost way. A streamlined consenting process would allow consultation to occur once at the planning stage, and not again at the consenting stage. It would prevent the same issues being litigated twice.

Cons

568. This option requires the creation of an entirely new legal term, 'sustainable development', which may generate substantial uncertainty and litigation. Terms such as this would have to be carefully defined to avoid assumptions that come with using it (for example, under the LGA 2002 or under international legal instruments like Agenda 21).

569. It would have to carefully rebalance all relevant considerations of development and environmental protection, rather than using the RMA's well known purpose as a base to shift an existing balance towards development.

570. It assumes that there is something inherently anti-development in sustainable management, rather than seeing the problem as one of implementing sustainable management at the regulatory (district plan) level.

571. It would present serious risks of undermining environmental bottom lines if an altered purpose were to be applied to functions relating to environmental quality (such as control of discharges).

572. It could be argued that regional rules and policies relating to the natural environment are not significant barriers that need to be overcome in order to deliver better urban outcomes.

573. Removing the detailed planning and consenting decisions from the role of local government and giving them to an unelected and largely private entity would be a radical step.

574. An elected and accountable regional council can provide valuable checks and balances on the decisions of those tasked with development.

575. Regional councils (as expressed through regional plans) consider a wide range of impacts beyond a project area, including on a catchment basis.

576. Lack of implementation of a national direction to the extent that controls around water and air quality, flooding, and hazards management in intensifying urban areas may be lost.

577. If an urban development decision-maker were a private entity, there may be no accountability to the community for matters of environmental health.

578. The process would lack community input, especially on matters that could have wide adverse effects and would ordinarily warrant public notification, submission and appeal rights. In particular, safeguards around consultation with iwi are extremely important, because regional council functions involve natural resources (such as water and air quality) which are matters of importance to mana whenua. The public can also provide valuable input into questions of good urban design and outcomes

Option 4: Mixed Model (Targeted and Radical Change)

579. Option 4 involves an amalgam of the targeted change envisaged in option 2, and the radical change envisaged in option 3. This is the option that featured in the Urban Development Authorities Discussion Document taken out for consultation in February 2017.

580. The mixed model proposes that decision-making be subject to a hierarchy of considerations, as in option 2, in which the purpose and principles of the new Act are pre-eminent and integrate Part 2 of the RMA. Development specific strategic objectives are an expression of the purpose and principles of the UDA legislation as they apply to the project area, both taking into account the existing environment and providing significant direction on what the project needs to achieve.

581. As in option 2, the scope of change would be across all territorial and some regional functions under the RMA. Existing territorial authority planning instruments would be overridden along with some aspects of regional planning documents. National direction would remain in force.

582. Option 4 proposes that the UDA is charged with making substantive planning and consenting decisions (is the consent authority) for territorial authority level consents, but that regional consents would still be processed by the regional council. A planning document, the development plan, would be developed for the urban development project area by the UDA using a bespoke process and would give effect to the strategic objectives for the development project.

Pros

583. This option sends a clear signal that urban development is the most prominent concern for development projects, and ensures that pro-active and positive urban development is at the heart of planning a development project.

584. It continues to engage with the purpose of the RMA, and its sustainable management focus, and make clear the ways in which they interface.

585. There is precedent in using a similar hierarchical model in the HASHAA.

586. It continues to recognise matters of national importance by giving weight to Part 2 of the RMA, including section 6, and to national planning documents.

587. Including all territorial authority within the scope of change provides for a streamlined consenting process for planning consents while leaving consents on environmental matters with the regional council which can apply a regional perspective to potential cross-boundary matters.

588. It provides a degree of accountability to a national (and local, depending on specific governance structure) constituency, although any level of political interference and NIMBY concerns would be minimised through decisions being made by an arms-length entity.

589. It could rebalance to delivery of pro-active and positive urban development in the wider interests of the city and country, rather than being weighted towards the interests of existing homeowners.

590. A streamlined process could produce urban outcomes for development projects that are realised in a timely, efficient, and low-cost way. A streamlined consenting process would allow consultation to occur once at the planning stage, and not again at the consenting stage. It would prevent the same issues being litigated twice.

Cons

591. It assumes that the balance of matters in Part 2 of the RMA, amendments to sections 30 and 31 of the RMA, and the NPS-UDC currently do not emphasise the benefits of urban development to the degree needed to achieve good urban outcomes.

592. Important environmental and cultural safeguards in Part 2 of the RMA may be diluted. Examples may include the principles of the Treaty of Waitangi, natural hazards management, and the life supporting capacity of water (which is arguably more important in an urban environment in the sense of sufficient supply and potability).

593. Risks may arise in relation to environmental quality particularly if a completely different balance of considerations relate to regional council functions.

594. There is a risk of undermining the coherence of the overall planning regime by "tinkering" with overarching purpose and principles in specific areas and/or contexts.

595. A degree of uncertainty could result from prioritising a project's strategic objectives, as these can vary on a case by case basis and there may be substantial discretion to set those objectives when an area is established.

596. An elected and accountable regional council can provide valuable checks and balances on the decisions of those tasked with development.

597. Regional councils (as expressed through regional plans) consider a wide range of impacts outside a project area, including on a catchment basis.

598. It involves less community accountability and could be vulnerable to decision-making bias.

599. It highlights the importance of requiring a demonstrable national, regional or city-wide interest to be shown at the establishment stage, to justify the removal of decision-making power from locally elected persons.

600. Consenting processes could lack community input, especially on matters that could have wide adverse effects and would ordinarily warrant public notification, submission and appeal rights.

Submissions

601. Submissions received on the *Urban Development Authorities Discussion Document* raised the following matters with respect to the four main features of the options.

Purpose and principles

602. Submitters raised significant concerns over the relegating of Part 2 of the RMA to a secondary position in a decision-making hierarchy after the strategic objectives of a project. It was felt that this 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.

Functions and powers

603. There was general unease with the UDA having planning and consenting powers, and particularly strong concern over the ability to override regional and district plans. Concern was especially focused on regional plans which often represent the local expression of national direction and as such are seen as representing environmental bottom lines that have been agreed by the community. An associated issue was the practical difficulty envisaged in overriding regional plans but not national policy statements and the policy tension this would create.

604. Infrastructure providers were concerned about the uncertainty that overriding existing plans would cause for their long-term planning. They also raised issues around certainty and continuity of service should the UDA be able to lift designations.

605. More generally, there was concern about threats to local democracy in that plans developed with significant community involvement and investment could be put aside.

606. With respect to the transfer of regional council and territorial authority functions to UDAs, submitters voiced concern over a lack of transparency if UDAs, as developers, had consenting powers.

Decision-makers

607. Local authorities were unanimous in opposing any power to transfer their consenting function to UDAs. They raised issues of capacity and capability in UDAs to undertake such specialist functions and also questioned the waste in setting up a parallel system for what could be quite small areas (although this is mitigated if a national UDA is put in place).

608. In contrast, developers submitting on the document strongly supported the transfer of consenting powers away from local authorities.

Planning processes

609. There were also concerns raised more generally about UDAs having planning powers to undertake the development plan planning in the first place. Many local authorities believed this should stay with them and be done under normal RMA processes.

610. With respect to planning processes the loss of appeal rights both, with respect to the development plan and with consenting, was almost unanimously opposed, with only a couple of developers supporting the removal of appeal rights. The move was generally characterised as undemocratic and an attack on natural justice. The loss of an independent decision-maker (the Environment Court) on issues of contention was seen as particularly worrying. It was seen as a strengthening of the UDA's monopoly power over decision-making.

Recommendations

611. The options sit along a continuum of change from minor change with option 1, using currently available tools and processes under the RMA, RLAA and the NPS UDC, through to radical change in option 3 that posits an entirely new code for development based on a new purpose of sustainable development. Options 2 and 4 lie equidistant between promoting a considered approach that looks to draw on the benefits of the existing system, while using changes in the weighting of matters to be considered in decision-making to better drive urban development.

612. The option taken out for engagement was essentially option 4, although some of the features of option 3, particularly around the role of regional councils and the overriding of regional and district RMA documents, were emphasised in the consultation option.

613. Given the concerns raised by submitters over the proposed decision-making hierarchy and the sub-ordinate weight given to RMA Part 2 matters and the significant concern expressed on the perceived dilution of protection to environmental bottom-lines, some mediation of the option as consulted on would seem appropriate.

614. The essential difference between options 2 and 3 lies in the inclusion or exclusion of regional council functions within the powers to be provided to the development entity. The inclusion or otherwise of these functions plays to the weighting given to environmental bottom-lines in the consideration of urban development projects. Our preference would be option 2, for the stronger assurance it places on environmental health, while still providing an overall weighting of consideration in favour of development.

615. However, it is also considered that with careful design, option 4 (Mixed Model), could deliver the desired balance of outcomes. This could be achieved by ensuring that regional councils have a stronger voice in the establishment of the urban development project and in the development of the development plan, and their views accorded particular regard. Therefore additional weight is given to consultation with territorial authorities and regional councils, with the UDA to have particular regard to their views.

616. With respect to option 4 (Mixed Model), it is recommended that:

- the decision-making hierarchy be weighted to give primacy to the new legislation's purpose and the strategic objectives of the urban development project, and the sustainable management focus of Part 2 of the RMA be integrated into the purpose and supporting principles
- territorial authority planning and consenting functions and powers be available to the UDA within the urban development project area, but not those of regional councils
- there is the power to override, add to or suspend provisions in district plans, regional plans and regional policy statements (any override of a regional coastal plan must be approved by the Minister for Conservation)
- for the development plan there are no merit appeals , only points on law to the Court of Appeal and Judicial review remains available

- for consents there are merit appeals available to the Environment Court, point of law appeals are available to the High Court only and judicial review remains available and
- that provisions around designations be modified to better protect continuity/delivery of service (Part 8 of the RMA is to continue to apply to nationally significant infrastructure. Where a designation that supports network infrastructure is altered, removed, amended or replaced, the UDA must provide an amended or replacement designation that serves the same function (unless the requiring authority agrees otherwise))

Appendix 3 - Land Assembly powers (compulsory acquisition)

617. This appendix builds on the land assembly powers (compulsory acquisition) section in part 3.

Status quo and problem definition

618. This part of the RIS focusses mainly on compulsory acquisition, because that is the most consequential land assembly power that has been proposed for the UDA.

International context

619. There are a number of overseas jurisdictions (including Australia and the United Kingdom) that provide access to compulsory acquisition powers, in some form, to UDAs.

620. Internationally, UDAs are usually government entities. As a result, the compulsory acquisition powers are still overseen by government, and subject to suitable checks and balances.

621. New Zealand is unique in that it has two land systems (general free hold title and Māori freehold land), as well as Treaty settlement obligations that need to be considered by the government when acquiring land. As such, international approaches have informed the options in this paper, but may not always be appropriate for New Zealand.

New Zealand context

622. The key powers to compulsorily acquire land are set out in the PWA 1981 (PWA). The fundamental principles of the legislation reflect international practice and include:

- clearly defining the decision-making criteria and responsible parties
- giving land owners the right to be compensated so that they are left in no better or worse situation than before the public work
- giving land owners the right to object to compulsory acquisition, and to choose to have their compensation determined independently.

623. The process must begin with an attempt to negotiate with the landowner (using ‘willing buyer, willing seller’ or market negotiations). If an agreement cannot be reached, or the

landowner cannot be located or is deceased, then the land may be taken without consent ('compulsory acquisition').

624. Compulsory acquisition is rarely used. Around 85 to 90 per cent of Crown acquisitions are achieved through 'willing buyer, willing seller' negotiations. In the year ending 30 June 2017 there were only 40 compulsory acquisitions, and 59 in the previous financial year.

Canterbury Legislation

625. Straightforward compulsory acquisitions by the Crown typically take around 6 to 12 months if there is no objection, and considerably longer otherwise.

626. The Canterbury Earthquake Recovery Act 2011 and the Greater Christchurch Regeneration Act 2016 removed landowners' rights to object to the acquisition of land to help speed up the process.

627. This legislation was enacted to enable recovery from a natural disaster. Further, it was anticipated that compulsory acquisition would be rare, given that the land involved was often damaged, so that most owners would want to move on.

628. To date, compulsory acquisition has only been used for certain properties in the Christchurch central business district, to support the redevelopment of the city centre and the key anchor projects. It has not been used for properties in residential red zone areas.

629. With the exception of Crown agents, we do not recommend removing owners' objection rights for the UDA, as explained below.

Overview of problem

630. Unlike other countries, New Zealand has few large tracts of derelict land or contiguous Crown land within its urban borders that can be used for large-scale urban development. Therefore, the main problem for New Zealand is amalgamating small parcels of valuable urban land into larger blocks that permit meaningful development[28].

631. Most urban areas consist of land parcels of differing sizes, ownership and uses. Currently, private developers can experience difficulties assembling large enough areas of contiguous land to undertake commercially viable development projects.

632. Where significant urban transformation is desired, projects need enough land in common ownership to enable a developer (or a group of owners working together) to:

- make significant changes to urban form, including to create large-scale, purpose-designed, higher-density mixed-use development (this type of development may require new roading patterns, linkages to rail, public spaces and infrastructure)
- realise economies of scale
- re-package and redevelop the land and assets to improve their utilisation or performance and increase their public/private value.

[28] Gray, R. N. (2006). Towards an urban transformation framework for New Zealand. Paper prepared for the Ministry for the Environment. Wellington: R Neil Gray Strategic Projects.

633. These projects can be precluded by the difficulties of negotiating with multiple land-owners and the risk of owners either holding out for higher prices or frustrating a strategic vision by proceeding with smaller-scale development on their own properties.

Options analysis

634. The key questions to consider in relation to giving the UDA access to compulsory acquisition are:

- What types of works should be covered by the compulsory acquisition powers?
- How should compensation be assessed?
- How should offer back obligations apply?
- Should the UDA be given new powers to assemble public land?

635. Each of these questions is discussed below.

The range of works covered by the compulsory acquisition powers

636. The Discussion Document proposed that UDAs should only be given access to compulsory acquisition for the same types of works as the Crown and local authorities. In other words, no new types of works would be covered.

637. Stakeholders supported this approach in principle but had concerns that it is unclear what types of works the Crown and local authorities can compulsorily acquire land for. In their view, unless the uncertainty is addressed, a UDA could be discouraged from using compulsory acquisition due to legal risk.

638. Powers to compulsorily acquire land are set out in a range of legislation, including the PWA, the Housing Act 1955 and the Greater Christchurch Regeneration Act 2016. Some of the legislation identifies the works that land can be compulsorily acquired for by name[29]. However, most works are covered by more generic provisions set out in the PWA, which are focussed on whether the entity involved can show control and a public purpose (for the Crown), or control and financial responsibility (for local authorities). This provides flexibility but does so at the cost of certainty.

639. Removing those requirements for the UDA would improve certainty but could create a risk that the expected public benefits from the land acquisition would not actually be delivered, especially in cases where the UDA sells land to private developers before works are

[29] Between 1981 and 1987, the Public Works Act included a definitive list of public works for which compulsory acquisition was available ("essential works"). However, this list was removed in 1987 because it was not flexible enough to provide for all works that the Crown or local government might wish to undertake.

completed (since private developers might be able to generate more profits from putting the land to a different use).

640. One way of addressing this risk would be to give the Crown a 'right of resumption', enabling it to take land back if it is not used for the intended works. This would be similar to the right of resumption provided for in the State Owned Enterprises Act 1986, which applies where the Waitangi Tribunal has recommended that land be returned to Māori ownership.

641. In summary, the recommended option is designed to improve certainty, while also preserving the flexibility of the existing PWA provisions, and the assurance they provide that the intended public benefits will actually be delivered.

642. Table 10 details the key options considered, and the benefits and risks of each option.

Table 10: Works covered by the powers

Option	Benefits	Costs and risks
Option 1: Provide that the UDA can access compulsory acquisition for the same types of works that the Crown can already compulsorily acquire land for (without clarifying what those works are).	• avoids any expansion of the range of works land can be compulsorily acquired for	• may lead to the underutilisation of the powers due to perceived legal risk
Option 2: Name the types of works that the UDA can compulsorily acquire land for, without requiring it to demonstrate control, financial responsibility or a public purpose on a case by case basis. The list would be limited to types of works that will always meet those requirements.	• minimises the underutilisation of the powers due to perceived legal risk	• will create inconsistencies in terms of the circumstances when the UDA can compulsorily acquire land (for some named works, the Crown and local authorities would need to demonstrate control, financial responsibility or a public purpose but the UDA would not). • the inconsistencies could create incentives for the UDA to become involved in delivering works that should be delivered by another

		entity ▪ reduces flexibility - will not cover any unforeseen works ▪ less control over outcomes ▪ does not cater for types of works that sometimes, but not always, have a public purpose
Option 3: Name the types of works that the UDA can compulsorily acquire land for, without requiring it to demonstrate control, financial responsibility or a public purpose. Also include a 'catch all' provision to deal with anything that may not always have a public purpose or is unforeseen. This catch all provision would provide for works that are covered by the current provisions of the PWA.	▪ minimises the underutilisation of the powers due to perceived legal risk ▪ retains the flexibility of the existing PWA provisions	▪ will create inconsistencies in terms of the circumstances when the UDA and other types of entity can compulsorily acquire land (for some named works, the Crown and local authorities would need to demonstrate control, financial responsibility or a public purpose but the UDA would not) ▪ the inconsistencies could create incentives for the UDA to become involved in delivering works that should be delivered by another entity ▪ less control over outcomes
Option 4: Name the types of works that the UDA can	▪ minimises the underutilisation of the	▪ will create inconsistencies in

compulsorily acquire land for, without requiring it to demonstrate control, financial responsibility or a public purpose. Also include a 'catch all' provision to deal with anything that may not always have a public purpose or is unforeseen. This catch all provision would include, but not be limited to, works that are covered by the current provisions of the PWA. Also including a right of reversion to help ensure that the intended works are delivered **(Recommended option)**	powers due to perceived legal risk ▪ retains the flexibility of the existing PWA provisions ▪ helps preserve control over outcomes	terms of the circumstances when the UDA and other types of entity can compulsorily acquire land (for some named works, the Crown and local authorities would need to demonstrate control, financial responsibility or a public purpose but the UDA would not) ▪ the inconsistencies could create incentives for the UDA to become involved in delivering works that should be delivered by another entity

643. As noted earlier, it is recommended that the above options do not apply to sensitive Māori land.

How should compensation be assessed?

644. It is expected that the UDA will often rely on private developers to deliver works. In that scenario, the private developers will often make a profit from the resale of land that was compulsorily acquired from other people. Arguably, the PWA compensation regime, which quantifies compensation based largely on the market value of land at the time it is acquired, is not fair and appropriate in that scenario (although it should noted that this scenario is not unique to the UDA). The same issue can arise for other entities, especially where the works involved are able to be sold after completion – e.g. housing).

645. Stakeholders highlighted that the current compensation regime does not adequately incentivise landowners to agree to acquisitions quickly.

646. One option considered was to give the UDA powers to pay landowners more compensation, including incentive payments for early agreement.

647. MHUD does not recommend this option because it could contravene the PWA principle that landowners should be left no better or worse off as the result of the works their land is being acquired for. Further, allowing the UDA to pay more for land could result in pressure

for it to take the lead in acquiring land in circumstances where it would be more appropriate for another entity to do so.

648. Also, the problem has already been addressed to some extent by recent amendments to the PWA that go some way towards incentivising early agreement. A further $10,000 of compensation must be paid to the owners of land who execute an agreement for the sale and purchase of land within 6 months after the negotiation start date.

649. For those reasons, the recommended option is that the value of compensation should be assessed under the existing PWA provisions.

650. However, we do recommend allowing the UDA to pay some or all of the compensation by way of an equity stake in the project. This would give landowners a share of any profits made, going some way towards sharing the profits from development.

651. The recommended option ensures that owners of land acquired by the UDA receive the same amount of compensation as owners of land acquired by other entities, but enables them to share in any profits made by the project if they are willing to also take on risk.

652. We do not anticipate that this option will be taken up in most cases, as most landowners whose land is being acquired are likely to need to use the compensation payment to purchase a new property. However, for some landowners who are able to defer receiving compensation in order receive a share in any profits, this will be a beneficial alternative to the status quo process.

Table 11: How should compensation be assessed?

Option	Benefits	Costs and risks
Option 1: The UDA is enabled to pay extra compensation to encourage early agreement.	• could speed up the process	• not consistent with the principle that landowners should be left no better or worse off as the result of the works their land is being acquired for • creates a point of difference between works undertaken by the UDA and by other entities which cannot be justified • could create pressure for the UDA to undertake works that are more appropriately undertaken by another

		entity
Option 2: The UDA is enabled to pay extra compensation to reflect the expected profits from the works.	▪ avoids perceived unfairness in circumstances where private profits are being made from the works	▪ not consistent with the principle that landowners should be left no better or worse off as the result of the works their land is being acquired for ▪ creates a point of difference between works undertaken by the UDA and by other entities which cannot be justified ▪ could create pressure for the UDA to undertake works that are more appropriately undertaken by another entity
Option 3: The quantum of compensation is based largely on the market value of land at the time it is acquired, as opposed to the expected profits from the development. Compensation is paid in money or land. **(Status quo)**	▪ consistent with the principle that landowners should be left no better or worse off as the result of the works their land is being acquired for	▪ could create perceived unfairness in circumstances where private profits are being made from the works
Option 4: The quantum of compensation is based largely on the market value of land at the time it is acquired, as opposed to the expected profits from the development. Compensation could be paid in money or land or by way of an equity share in the project (or a combination of any or all of these options).	▪ consistent with the principle that landowners should be left no better or worse off as the result of the works their land is being acquired for (since the quantum still reflects the value of land at the time it is acquired)	▪ could create perceived unfairness in circumstances where private profits are being made from the works (although this concern would be partially mitigated)

(Recommended option)	▪ helps avoids perceived unfairness in circumstances where private profits are being made from the works (if the equity share is used) ▪ could speed up the acquisition process	

How should offer back obligations apply?

653. The PWA requires that land held for a public work must be offered back to the former owners (or the owners' successors) if it is no longer needed for the 'original' work or any other public work, before it can be sold to anybody else.

654. Section 40 of the PWA sets out the disposal process for land held under the PWA or any other Act for a public work. The first stage requires the entity holding the land to declare it surplus to requirements. If the land is not required for another public work or for exchange under section 105 then it must be offered for sale to the former owner from whom it was acquired, or to their successors (subject to certain statutory exceptions, eg if there has been a significant change in the character of the land).

655. Stakeholders told us that there is confusion about when the offer back obligations are triggered when private developers are involved in the delivery of public works. This confusion means that the UDA cannot be certain in what circumstances it can transfer land to a developer without first having to offer the land back to former owners. This could impact the UDA's ability to work with private developers to undertake development projects.

656. This uncertainty could be addressed by limiting the offer back obligations. One option could be to stipulate that no obligation would apply unless and until the land that was transferred is used for something other than the intended work. This would enable land to be used for a wide range of activities without having to continue to show that they were 'public works' (which, as explained above, is sometimes unclear).

657. However, we recommend providing that offer back obligations do not apply when land is transferred to private developers to deliver public works. This would enable the development model of the UDA by removing the uncertainty about when offer backs are triggered.

658. To address the risk that the developer might not use the land for the intended public work, we recommend that this provision apply only when the transfer is conducted with a mechanism which enables the UDA to resume (take back) the land if the developer does not deliver the work on the agreed terms. These terms would be outlined in a development agreement, and could include detailed requirements about the works to be

delivered and the timing of delivery. This mechanism would be enabled by a memorial on the title of the transferred land.

659. There is a good case for treating former Māori land differently to other classes of land held by the Crown. For this reason, we recommend that offer backs continue to apply for former Māori land.

Table 12: How should offer back obligations apply?

Option	Benefits	Costs and risks
Option 1: No change to existing PWA offer back obligations. **(Status quo and discussion document proposal)**	• consistency	• perpetuates the existing uncertainty • may lead to the underutilisation of the powers due to perceived legal risk
Option 2: Limit offer back obligations e.g. so that they do not apply unless, and until, the transferred land is used for something other than the intended work.	• minimises the underutilisation of the powers due to uncertainty and perceived legal risk	• creates a point of difference between land held by the UDA and by other entities • could create pressure for the UDA to undertake works that are more appropriately undertaken by another entity
Option 3: Offer back obligations do not apply when land is transferred to a private developer to deliver a public work.	• minimises the underutilisation of the powers due to uncertainty and perceived legal risk	• creates a point of difference between land held by the UDA and by other entities • could create pressure for the UDA to undertake works that are more appropriately undertaken by another entity • the UDA would not be able to ensure that the developer will deliver the public work for which the land is

		transferred
Option 4: Offer back obligations do not apply when land is transferred to a private developer to deliver a public work. Introduce a mechanism that enables the UDA to resume land if the developer does not deliver the public work on agreed terms. **(Recommended option)**	• minimises the underutilisation of the powers due to uncertainty and perceived legal risk • enables the UDA to ensure that the public work will be delivered on the agreed terms	• creates a point of difference between land held by the UDA and by other entities • could create pressure for the UDA to undertake works that are more appropriately undertaken by another entity

660. The other point in the development process when offer back obligations may apply is when completed works are transferred to their end owner – for example when completed homes are sold to people who will live in them. If offer back obligations applied at this point, it would not be possible for the UDA to ensure that the works will go to the intended recipient, as they could instead be purchased by the former owner (or their successors).

661. The Housing Act 1955 provides that offer back obligations do not apply to the disposal of State housing land. This includes land with dwellings and ancillary commercial buildings, and supporting infrastructure such as roads and water works.

662. The UDA would be able to rely on the Housing Act to transfer land with these works, without triggering offer back obligations. However, the Housing Act does not cover some other works that may be undertaken in UDA project areas, such as urban renewal, or commercial buildings that are not ancillary to housing. In addition, this section of the Housing Act will be repealed in 2026, meaning that the UDA would not be able to transfer such works after this date.

663. To address this, we recommend that the UDA legislation provide for the sale of completed works to the end-owner without triggering offer back obligations. This would apply to works that are intended to end up in private ownership – such as houses, commercial or industrial buildings, commercial community facilities, urban renewal, and the reinstatement of works located elsewhere.

Table 13: How should offer back obligations apply to completed works?

Option	Benefits	Costs and risks
Option 1: No change to existing PWA offer back	• consistency with how offer back obligations	• would mean that the UDA could not ensure

obligations (Housing Act 1955 applies until 2026). **(Status quo)**	apply to other parts of the Crown	completed works can be transferred the intended recipients
Option 2: Offer back obligations do not apply for works covered by the Housing Act 1955 (the urban development legislation replicates the works covered by the Housing Act)	▪ consistency with how offer back obligations apply to other parts of the Crown (until 2026) ▪ certainty for the UDA for works covered by the Housing Act	▪ after 2026 would mean that the UDA could not ensure completed works can be transferred the intended recipients ▪ would limit the types of works that the UDA is able to transfer
Option 3: Offer back obligations do not apply for specified works that are intended to end up in private ownership **(Recommended option)**	▪ covers the types of works that are most likely to be transferred to private ownership ▪ would enable the development model of the UDA.	▪ creates a point of difference between land held by the UDA and by other entities.

Should the urban development authority be given new powers to assemble public land?

664. The Discussion Document proposed that the Governor-General, on the recommendation of the Minister responsible for the proposed legislation, the Minister of Finance, and the Minister for Land Information, should be able to require local authorities, CCO's and the Crown to transfer land that they own within a development project area for use by the UDA.

665. We do not recommend this approach. Land bought with ratepayer money and other local government assets is different to Crown land, which is resourced by taxpayers, and should not be taken by the Crown without a fair and rigorous decision-making process. Accordingly, we consider that the UDA should only be able to acquire local authority land where it would be willing to sell it by agreement, or using the standard compulsory acquisition powers under the PWA.

666. We also consider that there is no need to create a new process for compulsorily acquiring land from Crown agents. The existing PWA process is largely appropriate, except that the right to take an objection to the Environment Court (under section 23 of the PWA) could cause delays which could impact the viability of a project. The objection process also enables the Environment Court to make decisions on public assets based on criteria that are designed to protect private property rights, rather than ensuring that land is used in a way which best serves the public interest.

667. However, it will be important to ensure that decisions on the acquisition of Crown agent land for the UDA are fully informed, and that Crown agents have adequate opportunities to explain the benefits of their own projects. On that basis, it is recommended that the Minister for Land Information must consult the Minister responsible for the relevant Crown agent, the Minister of Finance and the Minister responsible for the urban development legislation, who must jointly consider whether the compulsory acquisition is in the public interest.

668. The proposal to remove the right to challenge acquisitions in the Environment Court would only apply to Crown agents, as the form of Crown entity which is closest to government. The other types of Crown entities are public bodies discharging independent functions outside the service of the Crown. For this reason, we propose to retain these entities' right of objection.

669. The recommended option is designed to minimise complexity and ensure that decisions on land owned by Crown agents are made in the public interest.

Table 14: Should the UDA be given new powers to assemble public land?

Option	Benefits	Costs and risks
Option 1: No change to the existing PWA provisions. **(Status quo)**	• consistency	• potential delays due to objection rights • decisions will not be directed towards achieving the public interest
Option 2: Create a new process for taking land from local authorities and Crown entities.	• allows decisions to be made based on what use of land best achieves the public interest, instead of based on decision making criteria designed to protect private owners' property rights • avoids any delays due to objections	• adds complexity by creating a new process
Option 3: No change to the existing PWA provisions for local authorities. PWA process applies to	• allows decisions to be made by Ministers, and based on what use of land best achieves the public interest, instead	

Crown agents, except that: ▪ Crown agents will no longer have a right of objection to the Environment Court to challenge the taking. ▪ Before issuing a notice of intention to take land, the Minister for Land Information must consult the Ministers responsible for the Crown agent, the Minister of Finance and the Minster responsible for the urban development legislation. Ministers must consider whether it is in the public interest to take the land. **(Recommended option)**	of decision-making criteria designed to protect private owners' property rights ▪ avoids any delays due to objections	

Appendix 4 - Land assembly powers (reserves)

670. This appendix builds on the land assembly powers (reserves) section in part 3.

Status quo and problem definition

Status quo

671. Currently, areas are provided and managed as reserves under the Reserves Act to protect a range of special features or values, for the benefit and enjoyment of the public. There are seven reserve classifications as follows: scientific, government purpose, historic, scenic, nature, local purpose and recreation.

672. Reserves may be owned and managed by the Crown or by administering bodies. Where reserves are provided by the Crown, local authorities or other bodies may have been appointed to control and manage them by the Crown. Councils and a few trusts may have a vesting of a reserve from the Crown which is similar to "ownership", although the Crown retains the underlying ownership, sometimes referred to as a reversionary interest or a Crown derived reserve.

673. The Minister of Conservation's consent is required to set apart five classifications of Reserves Act reserves: scenic, historic, government purpose, recreation, and local purpose, under section 52 of the PWA.

Decisions to revoke, exchange, classify or change classification of reserves

674. Certain actions under the Reserves Act, such as the revocation of reserve status, exchange, classification, change of classification of reserve land, require the consent of the Minister of Conservation. Such actions require public processes set out in the Reserves Act. Even where these actions are undertaken under delegation (usually by the Department of Conservation, sometimes by a local authority), the delegates still have to follow the statutory processes laid down in the legislation, including necessary public consultation.

Appeals

675. Aside from requesting a judicial review of the Minister of Conservation's or a local authority's decision regarding a reserve, no appeal by an objector is permitted under the Reserves Act.

Problem definition

676. Reserves are important assets to New Zealanders, especially to communities, as they provide open spaces and places for recreation and socialising. They can also have cultural, historical and natural significance.

677. However, it may be desirable to re-configure them within a development project area, either because they occupy land space required by the UDA for urban development, or because reserves established in the past no longer retain their original function or value, and are not well located to provide a community resource.

678. The Reserves Act places constraints on exchanges of reserve land and the revoking of reserve status. For example, the revoking of the reserve status, or reclassifying a reserve to a lower status, may not be possible if the values that led to the classification still exist. In the context of urban redevelopment, it may be desirable to change, temporarily suspend, or permanently remove the classification of a reserve, while still ensuring the ongoing protection of reserve values or features where that is appropriate or necessary.

679. While RLAA has gone someway to integrating RMA provisions for land use and reserves planning, integrating reserves planning, with other land use planning in development areas, and the reserve classification change of classification, revocation and exchange processes could be further streamlined and consolidated by urban development authorities in order to increase flexibility in any given scenario.

680. It is essential that the integration and streamlining processes are balanced, however, with the fact that reserves are public assets that local communities often have strong connections to, and any urban development powers over reserves should not be unfettered. Limitations on them should vary depending on the classification of the reserve.

Options analysis

What reserves should be included in this legislation?

681. As noted above there are seven classifications of reserves under the Reserves Act. This section assesses the inclusion of each reserve type in the legislation.

Recreation and Local Purpose Reserves

682. Local authorities manage more than 7,000 reserves around New Zealand with the majority of these reserves being recreation and local purpose reserves. These types of reserves are likely to be the most common reserves within urban areas suitable for housing and redevelopment (e.g. sports fields or playgrounds).

683. There are benefits in these types of reserves being able to be set apart for use in urban development project areas. Even where such a reserve is proposed to have its current classification returned in the long term, the power to set apart reserves would be useful to allow temporary use while wider redevelopment work is undertaken. Therefore we recommend that the power to set apart these classifications reserves be included in the legislation.

684. The power to set apart recreation and local purpose reserves should only be exercised after consultation with the Department of Conservation, Heritage New Zealand Pouhere Taonga, the bodies that administer, manage and own the reserve, any lease, licence, other permit or concession holders and the Ministers who have jurisdiction over the reserve, especially with respect to the values and purpose for which the reserve is held.

685. Where an esplanade reserve or esplanade strip (a sub-category of a local purpose reserve) is set apart by the UDA Minister, the purposes set out in section 229 of the RMA (e.g. maintaining water quality, mitigating natural hazards, enabling public access) would need to be provided for through means other than as an esplanade reserve or strip.

Government Purpose, Historic and Scenic Reserves

686. Scenic, historic or government purpose reserves are found reasonably frequently in areas where urban development is likely desired. If not covered by the legislation, it may not otherwise be possible to change or revoke the reserves status in some situations. Therefore we consider that they should be included in the proposed legislation.

687. These reserves are likely to contain values that contribute to New Zealand's heritage (e.g. particular flora and fauna or historic features) on a regional, national, and in some cases, international basis, particularly with some of our historic reserves.

688. Therefore we consider that an additional safeguard should be that the agreement of the Minister of Conservation is required to set apart one of these types of reserves for development purposes.

689. The Minister of Conservation's approval for the setting a part of a reserve for the UDA development area may be subject to certain conditions, and the UDA could also be required to consult with the Heritage New Zealand Pouhere Taonga, bodies that administer, manage and own the reserve, as well as with any lease, licence, other permit or concession holders, and any Ministers who have jurisdiction over the reserve, especially with respect to the values and purpose for which the reserve is held.

690. In deciding whether to set apart all or part of a scenic, historic or government purpose reserve, the Minister of Conservation shall:

- have regard to the classification of the reserve and the purpose of that classification under the relevant sections of the Reserves Act
- have regard to the values and issues of local significance including as expressed in the reserves management plan (or relevant conservation management strategy) if one is available, and as identified by the UDA in public consultation, including with the bodies that administer, manage and own the reserve, and any lease-, licence-, permit- or concession-holders, and
- be satisfied that the reserve does not contain values of regional, national or international significance that should be retained in the public interest (unless these values would have no lesser protection under a new classification or reconfiguration).

691. For Identified Reserves where the Minister of Conservation is required to give approval for the setting apart for development purposes, we recommend that:

- approval in principle be given, and draft conditions specified, prior to the draft development plan being released for public consultation; and
- final approval be given, and final conditions specified, after the independent hearings panel have made their recommendations to the UDA Minister and before the UDA Minister has approved the development plan.

Nature and Scientific Reserves

692. We recommend that nature and scientific reserves should not be included in the proposed urban development legislation. This is to reflect the very special nature of those reserves as important national assets and the existing safeguard in section 24(9) of the Reserves Act that also requires the Governor-General's approval. These reserves are administered by the Department of Conservation and are largely confined to isolated places around New Zealand that are not suitable for urban development (e.g. the Hen & Chicken Islands Nature Reserve).

693. A similar approach was taken in section 45 of Victoria's urban development legislation, the Urban Renewal Authority Victoria Act 2003, which permits reserves to be revoked, except for certain classes of reserves in the Crown Land (Reserves) Act 1978. These classes of reserve have underlying special values specific to that particular area, for example mineral springs, areas of ecological significance, areas of natural interest or beauty or of scientific, historical or archaeological interest.

694. In contrast, reserves such as show-grounds and racecourses, public buildings, research farms and tourist facilities can be revoked and developed under Australian legislation, which is similar to our proposed approach for recreation and local purpose reserves.

Other Excluded Reserves

695. MHUD also recommends that the following types of reserve land not be used for development purposes under the proposed legislation (but may still be included inside a project area while retaining their existing status):

- Māori reserves under the Māori Reserved Land Act 1955
- Māori reservations under Te Ture Whenua Māori Act 1993
- land administered under the National Parks Act 1980
- esplanade reserves and esplanade strips (as defined in the RMA), unless the UDA determines that the area is essential to the development and the administering body agrees that the matters under section 229 of the RMA will be provided for in the same location through means other than an esplanade reserve or strip (for example where the nature of the environment is such that an alternative approach could provide the same function and values as the esplanade reserve it is replacing)
- land administered under the Conservation Act 1987
- land administered under the Wildlife Act 1953
- land administered under the Te Urewera Act 2014

Open spaces

696. At least thirty submitters on the 2017 Discussion Document, including councils and local boards, mentioned how important reserves are to people's mental and physical wellbeing, especially where developments have greater housing density.

697. It is recommended that the UDA's strategic objectives will guide the relocation, formation and function of reserve land to ensure there is open space of sufficient quantity and quality for the projected population of a redevelopment area.

698. Specifically, the legislation should state that, in preparing the draft development plan, the UDA should have regard to the provision of open spaces in and around the development area for future residents and users of a project area on an ongoing basis.

Minister of Conservation's consent

699. It is recommended that there are five reserve classifications of identified reserves that may be set apart as a part of a development project area: government purpose, historic, scenic, local purpose and recreation.

700. This section assess two main options

> **Option 1:** The Minister of Conservation's consent is needed only to set apart scenic, historic and government purpose reserves
>
> **Option 2:** The Minister of Conservations' consent is needed to set apart all five classifications of reserve: scenic, historic, government purpose, recreation and local purpose reserves.

701. Option 1 requires the Minister of Conservation to be satisfied that the scenic, historic or government purpose reserve does not contain natural or historic values of regional, national or international significance which should be retained in the public interest. This test focuses on protecting values of national and international significance, in terms of whether the reserves can form part of an urban development project. It does not require consent for local purpose and recreation reserves.

702. Option 2 is the status quo under the PWA and does not provide any decision-making criteria for the Minister's decision.

703. Giving the decision making over these two reserves to the Minister of Conservation consolidates decision making for these two commonly-found classes of reserves in order to streamline decision-making, fast-track development and to increase flexibility in any given scenario. The UDA Minister will also have political accountability to Parliament for any changes (s)he makes to reserves.

704. As part of the initial assessment, the Department of Conservation is also consulted and may make recommendations to the UDA on any proposed changes to those reserves.

705. Additionally, any proposed changes to recreation and local purpose reserves will require prior consultation with the bodies that administer, manage and own the reserve, as well as with any lease-, licence-, other permit- or concession-holders and Heritage New Zealand Pouhere Taonga especially with respect to the values and purpose for which the land is held.

706. A handful of submitters wanted not only the national and international values of reserves to be taken into account but also the local values of reserves because many reserves are of great value and important to their local communities.

707. Submitters noted that recreation and local purpose reserves can also have special significance, taonga and values attached to them, so they should have the same protection of requiring the Minister of Conservation's permission as scenic, historic and government purpose reserves.

708. Including all reserves will provide an opportunity to weigh these values, while still recognising the differences in their relative importance, particularly when set against the benefits of an urban development project.

Recommendation

709. We recommend that the Minister of Conservation's permission is only needed for scenic, historic and government purpose reserves.

710. However, in response to submitters' concerns, we recommend two additional checks on powers over recreational and local purpose reserves. The first recommendation is to require consultation with the Department of Conservation, as part of the initial assessment and as part of the consultation on the draft development plan.

711. The second recommendation is to require consultation with Heritage New Zealand Pouhere Taonga where any historical or cultural heritage issues have been identified in any type of identified Reserve at both the initial assessment stage and as part of the draft development plan.

712. We recommend that marginal strips should not be included in the proposed legislation, and esplanade strips and reserves should only be included if the territorial authority agrees that their purposes as set out in section 229 of the RMA will be provided for through other means, and the UDA determines that the area is essential to the development. This is because esplanade strips and reserves contain values and provide important access ways for the public to waterways.

Decision-making framework for making changes to reserves

713. Other than a decision-making framework for the Minister of Conservation to use in making decisions on historic, scenic and government purpose reserves, the discussion document did not specify any additional criteria. Some submitters asked that there should be a decision-making framework, like in the Reserves Act, for making decisions on changes to reserves, for example, a reserve exchange should be given priority over a reserve revocation.

714. Being silent on the decision-making framework would create flexibility for the decision-maker to decide what the best use for reserves is in the development plan.

715. However, being silent may result in more reserves being revoked, if there is no process to first determine whether other options are possible than revocation.

Recommendation

716. We recommend that the above decision-making criteria be used by the Minister of Conservation for making decisions on identified reserves.

717. Administration of all Identified Reserves in the Development Plan should only transfer to the UDA after the development plan has been approved and when the reserve is actually needed for development. The UDA shall give effect to the UDA Minister's decision to set apart a reserve by notice in the Gazette. This will allow a reserve to continue to be used by the public, and managed by its existing administering body, until such time as the reserve land is needed for the development. The UDA should therefore have the ability to defer the request for transfer of the land to the UDA (and thereby remove the reserve status) of any Identified Reserve in the Development Plan to the time it is needed.

718. The Minister for the UDA should also have the ability to create or re-create the reserve status of land in accordance with the development plan, when land in an urban development area is ready to be used as reserve (eg on completion of part or all of a development project). The UDA Minister should then be able to request the Minister of Conservation to give effect to the development plan by undertaking the process of final reserve classification and vesting, as per the development plan.

719. Once development work is complete for an area of UDA-administered Crown land, if the development plan requires that the land become reserve (to either create or reinstate reserve status), we recommend that the new legislation include a power similar to section 52 of the PWA for the Minister of Conservation to give effect to the development plan when appropriate for the development timetable, by:

    - setting apart the Crown land, changing it from development purposes to reserve purposes, by notice in the Gazette
    - classifying the reserve by notice in the Gazette in accordance with the development plan, and
    - vesting the reserve through a notice in the Gazette in accordance with the development plan.

Comment

720. MHUD's intention is that when the UDA administers land that was formerly reserve, values on the land could become protected by rules set out in the approved development plan. Where former reserve land needs to be temporarily (or permanently) used by the UDA for development purposes, the UDA would be free to do so without the constraints previously imposed by the Reserves Act.

721. Where it is desired that UDA-administered land be used for recreational and other public purposes during the period that development is carried out (but it is not feasible for the land to keep its existing reserve status while development is carried out), the UDA, as the landowner, would be free to authorise public use of the land as it sees fit and subject to any conditions it sees fit. As the administrator of the land (in the same way that DOC administers national parks, for example), the UDA would also be free to contract a local

council or other contractor to undertake tasks such as maintaining park areas, cleaning toilets, and emptying rubbish bins.

722. These “powers” of the UDA are automatic under these proposals given that the UDA is the administrator of the land (to all intents the landowner). No special additional legislative provisions are required.

Appendix 5 - Infrastructure powers

723. This appendix builds on the infrastructure powers section in part 3. It describes the problem definition relating to infrastructure and presents option analysis on:

- general construction powers
- asset ownership during construction for a UDA project
- infrastructure outside the UDA project area
- infrastructure performance requirements and standards
- network utility infrastructure powers
- public transport powers
- alignment of local statutory strategic planning documents.

Problem definition

724. There are three key issues relating to providing infrastructure in the current urban development system.

Fragmented distribution of powers

725. The market lacks an entity that has all the powers required to undertake a large comprehensive development and manage all foreseeable needs by itself.

726. The current distribution of powers is fragmented and may not enable an urban development authority to have all the powers it may require to complete a development. The powers and abilities necessary for large-scale development are unevenly distributed between central government, local government and the private sector.

727. Local government has most (but not all) of the powers required, while central government retains control of a select number associated with infrastructure assets. For example the New Zealand Transport Agency controls state highways but has limited or no powers over three-waters or local roading infrastructure.

728. Private developers do not require specific legislative powers for many of their functions, but are constrained in how they operate within the regulatory environment by regulations, bylaws or consent requirements set by central and local government.

729. Private developers do not have access to the same range of powers and tools as central or local government. Consequently, developments that may require the exchange, revocation and realignment of reserves or the realignment of local roads can be subject to long delays.

Complexity in infrastructure planning decision-making

730. Urban development requires multiple processes under different Acts, each with different timeframes and objectives. Infrastructure planning decision-making is complex and there are multiple approval processes that can be slow and iterative, which can increase costs and create uncertainty for developers.

731. Compliance with overlapping legislative powers and timeframes creates complexity that can make it difficult for private developers, local government or central government to respond quickly to rapidly moving issues and opportunities that impact on the viability and usefulness of a development project.

732. In many cases, current legislation can be sufficient to deliver desired urban development outcomes, but not with the degree of efficiency and expediency required to provide certainty for developers of complex, large-scale projects.

733. For some developers, particular process steps (consultation, objections and appeals) may limit their ability to take advantage of, or respond to, rapidly moving issues or opportunities. Over this time, market conditions may change, or the opportunity to purchase and develop land efficiently and effectively may be lost. Additionally, the collective purchasing power and influence of local and central government is not being utilised to better coordinate investment in and development of new infrastructure to support urban development.

Misaligned incentives

734. Incentives for current market participants to fund and develop infrastructure can be misaligned, creating delays and increasing costs.

735. Sometimes the strategic priorities of (and even within) central and local government agencies are not aligned or possibly conflict. This contributes to slowing the supply and development of land and housing.

736. When providing infrastructure, councils and their council-controlled organisations have incentives to take a long term view towards infrastructure provision and can set higher construction standards (with high upfront costs) that can extend a property's life and reduce maintenance that means lower ongoing operational costs. This can make the cost of delivering infrastructure higher than is anticipated by developers, potentially affecting the viability of some developments.

737. Councils also tend to be concerned about debt levels and the risk of stranded (under-utilised) assets if development does not proceed as expected. In some instances it can mean that they do not have the money in the short-to-medium term to provide infrastructure, or it can result in them taking a "just-in-time" approach to providing infrastructure, which reduces their willingness and ability to provide infrastructure in places and within timeframes that developers may require.

738. Developers are mainly concerned with reducing construction costs (to maximise their returns) and ensuring that the land sections are as attractive to prospective buyers as possible (for fast turnover).

739. Overall, there are few incentives for developers to invest in infrastructure, particularly large network systems, beyond the initial sales period, or to consider providing more than the minimum required quality or durability. This creates a tension that can see development costs increase and time delays occur as each party seeks to ensure that their individual requirements are being met.

Options analysis

General infrastructure construction powers

740. There are three main options for how the UDA could exercise its powers to undertake or commission infrastructure-related construction activities in a development area:

Option 1: The UDA acts as the sole decision-maker for its activities within a project area with legislative provisions that require other infrastructure owners and operators to adapt and align their network strategies and asset delivery programmes towards achieving the UDA's objectives.

Option 2: The UDA is the decision-maker for its activities within a project area but consults and collaborates with other infrastructure owners and operators so that their network strategies and the UDA's objectives integrate and combine to achieve both the UDA's strategic objectives and the operator's outcomes and objectives within the project area and more broadly across all infrastructure network.

Option 3: The UDA is required to align its infrastructure decision-making and planning with the strategies of other infrastructure owners and operators so that the objectives and asset management plans of the wider networks drive the design, performance, construction standards and delivery of the UDA project's infrastructure.

741. It is critical to the success of UDA projects that its development plan is informed by and considers the potential effect that the UDA exercising its general powers to plan and construct roads and other transport infrastructure, three-waters infrastructure or network utilities[30] could have on the multiple, wider infrastructure networks that the project will be part of and connect to. This includes any associated costs, limitations and delivery options that are involved initially and throughout the life of the asset created.

742. A particular risk is that the focus on discrete geographic areas will fail to adequately consider the needs of the wider infrastructure network, beyond the boundaries of the project area. An example of this risk is if the UDA, acting autonomously, develops project-specific infrastructure to address a development area's needs that operates independently of the wider network. This could create a proliferation of small-scale sub-network infrastructure systems that are likely to be more costly and less effective from a wider infrastructure perspective, creating a more complex operating environment once the UDA project is complete.

743. Another potential risk is disruption to existing network services operated by the existing owners while the UDA undertakes its work. The legislation needs to ensure that if there

[30] Network utilities include electricity, gas and telecommunications networks which are currently privately owned.

are changes in infrastructure provision or systems, existing service levels are maintained during and after works, and interruption management strategies are put in place.

744. For these reasons, the UDA cannot operate in isolation from other infrastructure providers and should have some constraints and limitations placed on its level of autonomy when exercising powers.

745. Consultation feedback identified that early communication and engagement with infrastructure providers and network utility operators is necessary at the early stages of project initiation, assessment and development plan preparation. This would ensure that the technical and operational constraints of utility construction and relocation are captured and the actual and real costs of undertaking infrastructure works are understood by the UDA.

746. Some submitters suggested that engagement goes beyond consultation and provides a platform requiring two-way communication and collaboration, thus enabling the UDA to understand network requirements, potential effects of UDA proposals, costs and limitations associated with infrastructure provision.

747. However, having existing infrastructure providers drive the design, standards and delivery requirements for infrastructure within the UDA's project area potentially limits the scope for out-of-sequence delivery of infrastructure. It also could limit the UDA's ability to introduce alternative options or innovative solutions.

748. UDA projects could be constrained by the strategies and plans that have priorities focussed elsewhere. Furthermore, supporting infrastructure may either not be complete in time for a development to be inhabited, or delivered properties may experience reduced levels of service or performance until the infrastructure is put in place.

749. Any plan to relocate or stop such infrastructure requires considerable planning, coordination and engagement with existing network providers, stakeholders and communities.

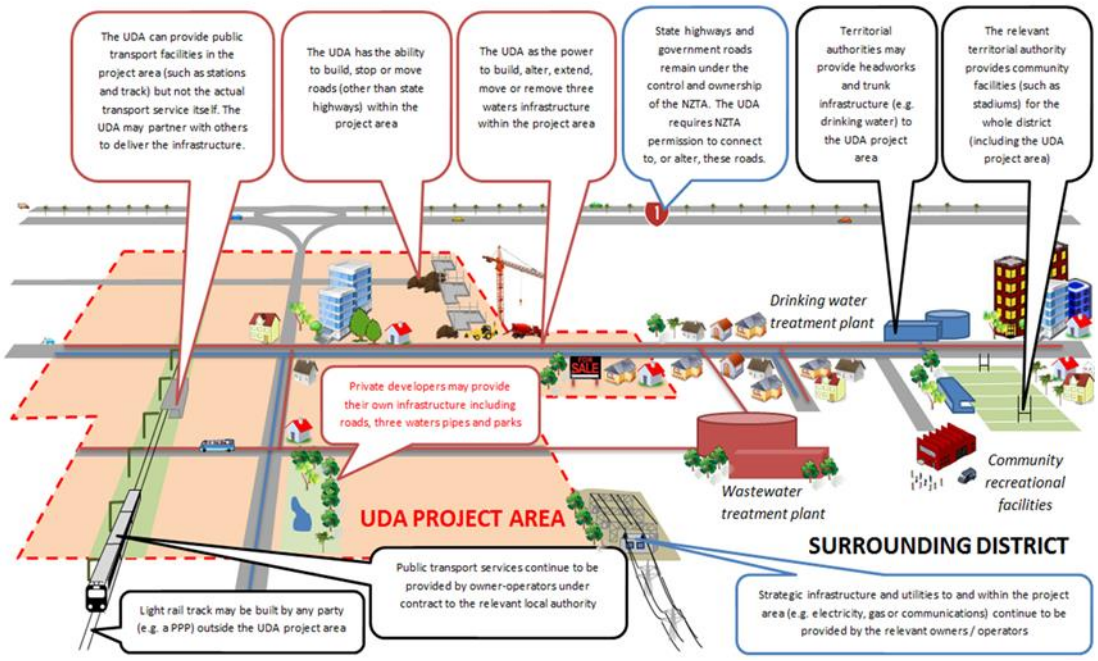
Recommendation

750. It is therefore recommend that the UDA be the decision-maker for its activities within a project area but consults and collaborates with other infrastructure owners and operators. This would mean integration between the UDA's objectives and the objectives of the network strategy. This would help achieve the UDA's strategic objectives and the operator's outcomes and objectives within both the project area and more broadly across all infrastructure networks.

Suggested infrastructure arrangements for UDA projects

751. The figure below outlines how infrastructure works for UDA projects could be undertaken.

Figure 7: Infrastructure works



Asset ownership during construction for an urban development authority project

752. Another key consideration is whether the UDA would require ownership of some or all of the infrastructure assets or groups of assets for which it is responsible within a project area. Asset ownership could be for the entire project during the build-out timeframe, which could be 10 to 20 years for some large developments, or only part of the time[31].

Ownership

753. The benefit of ownership is that it provides the UDA with the option to exercises its powers relating to asset planning, development and construction at any time it choose (so conferring the highest potential for control and coordination of infrastructure assets). This would not require the permission of the existing asset owner to make alterations or additions, apart from statutory resource and building consents.

754. The main issue with ownership is that the UDA would be responsible for land and asset management, maintenance and upgrades and, potentially, operations during the period of ownership[32]. These activities would draw funding and other resources away from the UDA's primary focus on land development. The UDA may also not have the capability or expertise to undertake these activities, as some infrastructure is very complex and specialist in nature.

[31] The time it takes to complete and sell/transfer all the sections, dwellings or other units of development associated with the project.
[32] This could be contracted out to the council within whose jurisdiction the development area falls, as councils are the owner of the wider network to which the development area connects.

Control over assets without UDA ownership

755. An alternative option is that the UDA is granted control of the powers and duties over the infrastructure assets within a development project area that are necessary to enable it to gain access and make decisions on the layout re-configurations, re-alignment and/or new construction.

756. Other powers and duties, such as those of a road-controlling authority that relate to road use and safety, land and asset management, and other activities such as controlling vehicle size and revenue collection, are not considered necessary for the UDA to have responsibility for, if it is set up for urban development purposes only.

757. Such powers would not be granted to the UDA (if acting in a stand-alone capacity) but would continue to be exercised by the local territorial authority or infrastructure provider within the project area.

758. However, when the UDA is ready to undertake any infrastructure modifications or other construction-related activities, the ownership of the asset, along with the other responsibilities for maintenance and operations may (depending on arrangements with other infrastructure providers and partners) transfer to the UDA while activities related to delivering the development plan are undertaken. Ownership would vest back to the permanent custodian once the works are complete and the parties have agreed that the asset(s) can be transferred.

Infrastructure outside the urban development authority project area

759. It is intended that the UDA, acting in its capacity as a UDA (as opposed to any other capacity it may have if it was an already existing entity), would not have any powers to undertake construction activities outside the defined development project area. As is current development practice, the territorial authority (or other relevant infrastructure provider) would develop any remote infrastructure outside of the development project area that is required to support the development project.

760. It is important that this infrastructure is put in place in time so that new properties are serviced when they go on the market. If not, a UDA development project could be left stranded and the sale of section or houses would be almost impossible.

761. Ideally, consultation and collaboration between the UDA and the territorial authority, and other relevant infrastructure providers, is the preferred approach to enable this. During the establishment phase of a project, a condition of supporting the project could be included in any negotiations that place obligations on territorial authorities to commit to providing the necessary infrastructure capacity to support the project.

762. The risk remains that infrastructure may not be ready if agreement cannot be reached initially, if the territorial authority changes strategic or political priorities during the project's lifetime, or it cannot afford to develop the infrastructure when it is required. Given the likely duration of a UDA project, it is possible that this risk could manifest after the UDA project establishment, potentially some years later, where any initial agreements may not be considered relevant to a later council's priorities.

763. There needs to be some mechanism to ensure that development projects are serviced with adequate infrastructure capacity from the wider network as and when it is needed, especially after the project is established and is underway.

764. The discussion document proposed that the UDA would have powers to require the relevant territorial authority to alter or upgrade any infrastructure outside of the development project area that is needed to support the development project. This would also ensure that new properties are serviced when they go on the market. This would be done through a binding agreement or contract made between the UDA and the relevant territorial authority at the commencement of the development plan process or development.

765. Consultation feedback identified that a territorial authority would need to prioritise the funding and provision of infrastructure for a particular development project, especially if it is out-of-sequence from current plans, over other agreed projects. This could undermine long-term district plans and asset management strategies in ways that introduce inefficiencies and additional costs into the network. It is therefore proposed that territorial authorities have a duty under the legislation to ensure their plans are not inconsistent (i.e. do not present a barrier to) with the project objectives and development plan of the UDA.

766. The territorial authority may also need to borrow funds earlier than anticipated to deliver the infrastructure. This could have a major impact on their fiscal strategy, debt levels, and, potentially, credit rating and interest costs if the council is near to or in breach of its debt limits. .

767. Where a territorial authority is unable to fund the infrastructure capacity required to serve the UDA development area, the UDA may meet the infrastructure costs, or put in place appropriate and acceptable financing arrangements (for example partnering with Crown Infrastructure Partners to provide the infrastructure).

Recommendation

768. It is recommended that the UDA fund any additional remote infrastructure development or upgrades it agrees to, or require (via a contractual or binding agreement) the territorial authority to construct necessary infrastructure to support a project.

769. The UDA would seek to agree fair and reasonable costs with a territorial authority. These costs would include the time value of money to acknowledge the greater benefits to the UDA of funding the works earlier than would otherwise have been planned, as well as the benefits that may accrue elsewhere in the district resulting from this infrastructure. If agreement cannot be reached on the costs and their allocation between parties, the matter would be referred to an independent commissioner to resolve any differences.

Territorial authority infrastructure performance standards

770. Regardless of how, and by whom, an area is planned and developed from a customer's perspective, there should not be any noticeable difference between the experience of using the roads, water or other infrastructure systems within a UDA development project area and those of the surrounding local and network infrastructure provided by the territorial authority or NZTA.

771. Developing compatible infrastructure and connecting into the existing city-wide circulation (road, rail, bus routes and land transport services) and local reticulation (water, waste, storm water, and land drainage), network utilities will be a key part of the UDA's activities. It is anticipated the UDA project area will sit within or connect to existing urban infrastructure networks so it is critical that any new infrastructure is compatible with the existing systems in terms of sizing, durability, construction standards, performance and levels of service.

772. The main options to ensure that the quality and performance standards of UDA-developed infrastructure meet the requirements of the existing networks are as follows.

Option 1: Require the UDA to comply and conform to existing performance standards

773. This option requires the UDA to comply and conform to existing quality and performance standards prescribed by regional councils or territorial authorities.

774. The benefit of this approach is that any new infrastructure will be compatible with the existing system and it is likely to be accepted by the receiving organisation once the UDA's role in delivering it is complete, with little or no cost to integrate the UDA infrastructure into the existing network.

775. The main risk is that some of the requirements may be highly prescriptive, leaving limited options for the UDA to propose alternative or more innovative solutions to introduce new technologies or materials that could potentially reduce construction time and costs or increase performance or durability.

776. Existing infrastructure providers also have incentives to take a long-term view and can set higher construction quality standards, with correspondingly higher upfront costs. This could extend an asset's lifespan and reduce maintenance requirements, lowering ongoing operational costs. However, this could result in the cost of delivering infrastructure being higher than is necessary, which could potentially affect the viability of some developments or impact the final price of properties for consumers.

777. Having said this, some consultation submissions identified that this is not always the case as infrastructure that is higher quality, unusual or over-specified can also be more costly to service and maintain, so the incentive to "gold-plate" assets is potentially lessened.

Option 2: Require the UDA's new infrastructure to conform to the minimum industry-accepted standards or approaches

778. This option would require the UDA's new infrastructure to conform with the minimum industry-accepted standards or approaches while meeting all required statutory compliance requirements.

779. This option provides the UDA with the scope and flexibility to utilise materials, techniques and infrastructure or construction systems that are considered best suited to the infrastructure project. Provided these materials and techniques comply with minimum statutory requirements, the UDA could consider new solutions and that have the potential to reduce construction time and costs more than would be case for Option 1, where

meeting the standards prescribed by existing infrastructure providers or network utility operators may not yield the best outcome for the UDA.

780. The key risk is that developers are mainly concerned with reducing upfront construction costs (to maximise their returns) and ensuring that properties are as attractive to prospective buyers as possible (for fast turnover). Subsequently, there are few incentives for developers to consider infrastructure quality or durability beyond the initial sales period. This means there is the potential for any compliance to be at the most basic or the minimum level required.

781. Such minimum standards or requirements (where they exist and are widely accepted in the New Zealand context) may not be the most appropriate for the system and could increase the frequency and costs involved with maintaining, operating, upgrading or replacing infrastructure earlier than is ideal from an asset management perspective. These costs are likely to be borne by the eventual owners, most likely after the UDA is dis-established.

782. This creates inefficiencies and a tension that could see development costs increase and time delays as each party seeks to ensure that their individual requirements are being met. Protracted negotiations with a territorial authority may also occur to confirm whether the standards adopted comply with their requirements, potentially delaying consent approvals and handover.

783. There is also the risk that the UDA-developed assets may not be accepted by the receiving organisations once the UDA has completed its work on the asset. Additionally, the UDA could potentially overlook or override district plans, by-laws or industry-regulated standards (for network utility operators) that could have service goals or outcomes that go beyond quality e.g. community resilience, water quality.

Option 3: Agree to the intent of a territorial authority's prescribed standards

784. Under this option, the UDA would agree to the intent of a territorial authority's prescribed standards by meeting the performance and operational requirements, while still retaining the flexibility to design or procure systems, fixtures and fittings that deliver without needing to rigidly comply with prescribed solutions or products.

785. This option proposes that the UDA would consult and collaborate with territorial authorities and network utility operators to confirm quality and durability levels before exercising any powers that could affect an existing service provider's infrastructure networks.

786. Collaboration means that the UDA would work alongside an operator/territorial authority to develop the design parameters, quality standards and network connection requirements/interfaces for a project. This reduces the risk that completed infrastructure would not be accepted by the receiving organisation, provided that it has been built to the acceptable standards.

787. This option acknowledges and accepts that the new infrastructure will need to integrate into the existing network systems, and would eventually be vested in the agency to operate it once the UDA has completed the work.

788. However, our intention is that the UDA would not be required to strictly adhere to existing standards of territorial authorities or infrastructure provider's performance requirement and levels of service, allowing it some scope to introduce innovative solutions to designing and constructing new infrastructure.

789. In principle, it is desirable for the UDA that new infrastructure assets, particularly roads, vest into the ownership of the territorial authority (or other permanent owner-operator) as soon as practicable after completion. This is so the territorial authority (owner-operator) can assume ownership responsibilities for maintenance and upkeep, and begin making provisions for eventual replacement (through depreciation). The UDA should be focussed on delivering the new development rather than expending resources on maintaining built roads or other completed infrastructure while the UDA or developers are building on their super lots.

790. This "completion" point may vary depending on how the UDA is structured and what access subsequent developers may require for other sub-areas within the UDA area (so multiple subdivision consents). It is recommended that any transfer of assets is negotiated between the UDA and the receiving territorial authority or owner-operator. This includes any terms such as residual debt, if any, and any revenue streams that are associated with the asset.

791. There are many factors to consider when assets are completed and vested to the eventual owners. Concern was expressed during the public consultation process about vesting assets to receiving organisations at "no cost", as infrastructure costs include initial outlay, operational costs, maintenance and renewal. It was noted that depreciation is a significant cost to ratepayers that makes up a majority of targeted infrastructure rates. These costs may be unbudgeted for. Two main sets of views were provided from submitters:

- If assets have any debt or financial liabilities, they can only be transferred to a receiving organisation with that organisation's prior agreement. Provision should be made for territorial authorities to make decisions on whether they want assets or not.
- No assets should be transferred or vested in local authorities until all debt is paid down fully, whereby vesting can only occur by agreement with the receiving organisation.

792. Complexities may arise when a territorial authority may be required to take on an asset debt for the UDA that is not straightforward. Legislative options around vesting of UDA assets to receiving organisations should be made flexible with the decision and terms on when and how vesting should occur to be negotiated and made jointly by the UDA and the receiving organisation.

Network utility infrastructure powers

793. In the original UDA proposals that went out for public consultation, the initial assessment of a proposed development project included the need for consultation with requiring authorities, but it did not specifically extend that requirement to all public and private infrastructure providers with networks in the area. Nor did the proposals for the

preparation of the development plan specifically include network utility providers, especially private providers of water, electricity, gas and telecommunications networks.

794. This option was proposed to provide the UDA with more autonomy and flexibility to make decisions and consider innovative solutions to infrastructure problems and issues without being as constrained by current practices and requirements as existing network utility operators and infrastructure providers.

795. Consultation feedback noted that the UDA powers to undertake planning, design and/or construction work independently on geographically-discrete parts of an infrastructure network could undermine operator efforts to make prudent and efficient investments on the network as a whole.

796. Utility and infrastructure networks are complex and many specialist facilities and services require operator input into the design, installation and connection of new parts to their network, together with comprehensive quality assurance testing upon completion. Some operators noted that work undertaken on utility networks must comply with prescribed design and construction standards or must be undertaken by an approved contractor, otherwise assets would not be accepted when proposed for vesting to the ultimate owner.

797. Others identified that the consulted proposals could result in existing utility operators losing statutory property and access rights to existing works and assets that they own. The UDA's decisions need to consider the network as a complete system both from both integration and a whole-of-life asset management perspective.

798. Proposals for the UDA to re-design, relocate or stop this infrastructure would require considerable planning (including identification and acquisition of suitable alternative sites where networks are altered), while ensuring the networks continue to provide safe, appropriate and sufficient services to residents and businesses.

799. There is also a large amount of legislation governing the safe construction, installation and use of gas, electricity and telecommunications networks. The UDA or third parties undertaking works without the necessary knowledge, capability or approvals carries risks to both health and safety and continuity of supply. For utilities regulated by the Commerce Commission, specific interruption management systems and processes are necessary to ensure compliance with statutory requirements to maintain continuity of supply and minimise service outages that can have a substantial operational and financial impact on customers.

800. For these reasons, it is appropriate for network utility operators to have greater involvement and input into the provision of infrastructure for the UDA development project, particularly at the initial assessment phase. This involvement would to continue through the establishment and development plan phases, as well as during construction and commissioning stages. This may also involve oversight of UDA contractors if the UDA does undertake any work itself.

801. Submissions also highlighted that the importance of certain nationally significant infrastructure networks is such that the benefits of a UDA being able to independently make any changes to them is outweighed by wider risks. These are risks to public supply, operator and public safety and the potential scale of the costs involved in a UDA

undertaking works on these networks, especially if remedial activities are required because a UDA's works interfere with or undermine network operations or do not meet performance requirements or standards.

802. As such, we recommend greater protection for the following nationally significant infrastructure be afforded by not providing for the UDA to alter, move, build or remove it without the agreement of the network operator and the network operator either carrying out the work themselves or having input into and supervising works (where the UDA has permission to carry out works). The infrastructure that is nationally significant is:

- National Grid electricity transmission networks
- Refinery Auckland Pipeline
- gas pipeline services as identified in the Commerce Act 1986, section 55A
- state highways and government roads as defined in LTMA 2003, section 5
- New Zealand rail network, including suburban rail systems
- primary airports as identified in Civil Defence Emergency Management Act 2002, Schedule 1, Part A, sections 2 – 5
- commercial ports as identified in Civil Defence Emergency Management Act 2002, Schedule 1, Part A, section 6.

803. While a similar argument could be made for the construction of locally significant network infrastructure, we consider that there are benefits in the UDA being able to undertake this work more independently from the network owner, subject to agreed standards and processes.

804. The key benefit of this option is the ability of the UDA to bring forward the delivery of this infrastructure, out of sequence from what is planned, and to support a specific development's needs where the existing plan's scheduling would affect the UDA achieving its objectives.

805. However, due to this type of infrastructure's significance to a district and the potential risks to the entire system if the works affect the network's integrity or performance standards, the UDA's powers would need to be constrained.

806. Similarly, it would be important to integrate this infrastructure into the wider network to help mitigate the risk of orphan or isolated infrastructure that creates inefficiencies such as a stand-alone or duplicate plant that results in higher operating and maintenance costs.

Recommendation

807. It is proposed that the UDA can be granted powers to construct and alter any locally significant infrastructure, but the UDA must consult and collaborate with the existing network provider on wider network performance requirements and implications, prior to undertaking any works. Locally significant network infrastructure includes:

- treatment plants, water pump stations, water reservoirs, storm water ponds, interceptors and main pipelines, outfalls and discharges for water supply and waste water services
- road-based public transport facilities and services and urban cycleways as identified in the Government's Urban Cycleways Programme.

Public transport powers

808. Under the LTMA 2003, it is the responsibility of regional councils to coordinate land transport strategic planning at a regional level to provide an integrated network that covers:
    - road (passenger and freight)
    - public transportation (road and rail)
    - cycle routes and walkways
    - road safety and traffic demand management
    - other services such as ferries.

809. Regional councils also contract the delivery of public transport services from private providers sourced through competitive procurement processes under the Public Transport Operating Model (PTOM) implemented under the LTMA 2013.

810. Under the PTOM model, contracts run for either six or nine years depending on whether units are negotiated or tendered. Strategic plans for future public transport services and network alterations are identified in regional land transport plans that are publicly consulted legislative instruments.

811. To meet the transport needs of property owners and residents in a UDA development project, it is important that the UDA has the ability to enable existing transport networks and public transport services/facilities to be modified, extended and/or constructed if necessary. UDA project areas could then be connected to the wider city, aiding the mobility of residents and providing access to travel and transport options. Additionally, in a greenfield development, the UDA may use this power to create a public transport service that is designed to attract home buyers to the area.

812. The main options to integrate a UDA project into regional transport planning and service delivery processes are as follows.

Option 1: The UDA can independently create or alter public transport facilities and ancillary infrastructure

813. Under this option the UDA has powers to independently create or alter public transport facilities and ancillary infrastructure, plus stop, move, create, extend and/or alter public transport services as necessary to suit the development plan.

814. The relevant regional council would be required to incorporate these changes into its existing operations and service delivery, as well as amend the regional land transport and

public transport plans to reflect and support the UDA's amendments to the system and services.

815. The key benefit of this option is that the UDA has the autonomy and flexibility to design and develop transport facilities and services that are specifically tailored to the development. The regional council and service providers would then need to accommodate the UDA's requirements.

816. The UDA could circumvent existing discussions and regulatory processes associated with developing the regional plans. This could save time but is also likely to be met with resistance from regional councils, public transport operators and, possibly, residents and businesses.

817. There is considerable risk associated with any changes that do not integrate well into, or could have a cumulative effect on, the overall network's service timetables and reliability; potentially alter long-term contracts with service providers; and have cost implications for both regional councils and providers.

818. The implications of this could be significant, particularly if new buses or rolling stock are required to meet demand, and/or services are underutilised and cannot recover costs, which could affect the economic viability of the service provider.

819. The UDA's required changes to the Regional Land Transport Plan could also trigger the requirement for a formal review of the entire plan and, potentially, a re-allocation of public transport funding across the region.

Option 2: The UDA can require the relevant regional council to amend its regional land transport strategies

820. Under this option the UDA has powers to require the relevant regional council to amend its regional land transport strategies, procurement plans and associated provider contracts to deliver public transport facilities and service requirements that support the UDA's development plan.

821. Having the UDA direct regional councils, transport agencies and operators to provide additional network infrastructure services could have significant cost implications and affect Long Term Plan and Regional Land Transport Plan funding and programmes.

822. As noted above, direction from the UDA 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.

823. Even if the legislation required the UDA to fund the full additional costs of any change to facilities or services, the risks of significant wider network effects and costs remain, particularly if the UDA only considers its own needs and is not required to consider the broader effects of its decisions.

Option 3: With consultation and collaboration with regional councils and transport providers, the UDA has powers to create or alter public transport facilities and ancillary infrastructure

824. Under this option the UDA has powers to create or alter public transport facilities (stations, stops or light-rail track for example) and ancillary infrastructure. However, these can only be exercised in consultation and collaboration with the regional council and transport providers. The UDA would not have any powers to stop, move, create, extend and/or alter any public transport services. The UDA's development plan would need to be consistent with the existing Regional Land and Public Transport Plans and vice versa.

825. To support the UDA's requirements, the legislation would require regional councils to collaborate with the UDA when developing a regional land transport plan, the regional public transport plan, 30-year infrastructure strategies and decisions arising from other projects, such as the Auckland transport alignment project. The UDA would be granted the power to recommend changes to land transport plans that the regional council must have regard to.

826. This option recognises the critical role and responsibility that regional councils have for public transport provision and acknowledges that they should be involved in UDA development processes and the establishment and development plan processes. The key benefit is that UDA projects that require changes to public transport systems and networks are planned and implemented in an integrated way, thus reducing the risk of unanticipated or unplanned service disruptions and/or costs or effects on providers.

827. The main risk is that regional transport planning either does not include sufficient facilities or services to adequately support a project area's inhabitants, or it imposes requirements that limit the UDA's design options or add costs. It is anticipated that, for the scale of UDA projects where changes to the land transport networks may be required, there would be some economic incentives for planners and service providers to adapt their strategies to include a project area.

828. This option is a more collaborative approach, where UDA development plans would be required to align with a region's strategic planning for land and public transport. For the UDA to commit to regionally-agreed priorities, and if there is deviation from these priorities, the UDA needs to demonstrate the benefits of change and mitigate problems that may include funding and network ripple effects. It must also address concerns expressed through public consultation about how the impacts on the existing public transport system will be addressed by the UDA, as well as its consideration of the wider network and community's needs.

829. The legislation will not provide the UDA with powers to require metro rail network infrastructure or services to be modified and/or extended to support specific urban developments, as rail networks are already identified as nationally significant infrastructure. The UDA would not be able to undertake this work independently of the rail network owner (KiwiRail) but may be allowed to do so by agreement with the owner if both parties decide it is appropriate for the network to be extended or modified to deliver a project's objectives. Network or trunk infrastructure in this context would include railway tracks, crossings, signals and/or power systems.

Alignment of local statutory strategic planning documents

830. To provide greater certainty for developers and potential property owners and greater consistency between urban development projects and other developments, mechanisms are required to ensure that local government infrastructure and transport plans support, and do not undermine, the strategic objectives of development projects and vice versa.

831. The discussion document proposed that the legislation include a power for the UDA to require that territorial authority long-term plans and regional land transport and public transport plans "must not be inconsistent" with the strategic objectives of development projects.

832. Submitters expressed concern that the UDA could require territorial authorities to change their plans, with the implication that territorial authorities could be forced to re-allocate or re-prioritise their budgeted spending towards supporting a UDA project area at the direction of a third party and potentially without public consultation. Requiring out-of-sequence expenditure could also have considerable cost and unanticipated impacts on a local authority's debt and re-payment plans.

833. An alternative to the approach above would be to impose a statutory duty on territorial authorities to ensure that their plans are "not inconsistent" with the strategic objectives and provisions of the UDA development project and development plan.

834. Such an approach would mean that local authorities could not frustrate the development project. At the same time, the UDA development's strategic objectives and plan would not automatically override local authority long-term and annual plans in such a way that undermines public participation in the preparation of those plans. This approach would allow local authorities to consider how best to adjust their resourcing and financial requirements to accommodate the UDA development in the context of wider priorities and adjust their plans accordingly.

835. Such an approach was used, with some success, in the Canterbury Earthquake Recovery Act 2011 to provide for local authority plans to be aligned and coordinated with the Recovery Strategy. Although not an emergency situation of the same nature, the proposed approach has considerable merit in terms of coordinating multiple plans to deliver large-scale urban development (or redevelopments) quickly. It is therefore beneficial in meeting the purpose and objectives for UDA developments.

Recommendation

836. As with infrastructure capacity, we consider that there is a need for long-term plans and regional land transport and public transport plans to be consistent with the strategic objectives of a development project.

837. It is proposed that as a condition of supporting the project, territorial authorities must commit to amending their strategic planning documents to be, at least, not-inconsistent with the strategic objectives of the development project. To support this, the consultation required in the establishment and development plan stages of the process could also fulfil the LGA 2002 consultation requirements for amendments to strategic planning documents.

Appendix 6 – Funding and financing powers

838. This appendix builds on the funding powers discussion in part 3. It describes the status quo and problem definition and presents an options analysis on

- constraining and limiting UDA financing powers
- infrastructure outside the development project area
- targeted rates
- across boundary funding arrangements
- alternative funding options.

Status quo and problem definition

Status quo

839. The powers and abilities necessary to fund large-scale land development are unevenly distributed. No one entity has all the powers required to undertake a large comprehensive development and manage all foreseeable needs by itself.

840. Territorial authorities have most, if not all, of the existing powers available to fund and finance infrastructure development, including the power to tax property owners through rates and targeted rates. However, there isn't any certainty that a local territorial authority would be able or willing to support a development project with additional funding.

841. The ability of territorial authorities to take on debt to fund additional or out of sequence infrastructure development is limited and dependent on their current debts levels and capacity to access finance on favourable terms from lenders. The local community can also place pressure on the territorial authority to limit the amount of debt it can take on to develop new infrastructure, especially if the infrastructure is not considered a high priority relative to other territorial projects and services.

842. Central government agencies have powers to fund and finance infrastructure for urban development that is provided to them by statute or regulation i.e. to obtain and spend Crown funding or develop assets for a specific purpose. At present, these powers primarily relate to the development of roads, land transport, schools, prisons, hospitals, housing and reserves and thus can be limited in their scope.

843. Depending on the individual departments or entities that may be involved in developments, they will have limited powers to tax land, require contributions or levies, or

to purchase, sell or lease land or buildings (unless the agency is a Crown entity or agent) to generate funding through other means.

844. Private developers primarily fund and finance infrastructure and building a development area through borrowing, issuing shares and bonds, sales and leasing of land and buildings. Developers can place an encumbrance on a title, lease or rent infrastructure, or be a mortgagee, but they have no powers in respect to tax or rating land. They also cannot require parties outside of a development area to contribute to the cost of the infrastructure they build (except by mutually agreed contract).

845. The current distribution of funding powers is shown in table 14 below:

Table 14 Existing Funding Powers

Power	Private developer	Local Government	Central Government	Restrictions on private developers
Requiring contributions to costs of roads, railways etc.		✓	✓	Only possible by way of contract
Borrow money within New Zealand	✓	✓	*	
Borrow money from off-shore	✓	**	*	
Issue bonds or share securities	✓	✓	*	
Lease or sell land and buildings	✓	✓	*	Only possible by way of contract
Set fees and charges	✓	✓	*	Only possible by way of contract
Set and charge rates and targeted rates		✓		
Require development contributions		✓		
Enter into Local Government Act 2002 development agreements	✓	✓		
Mortgages, encumbrances and charges on titles	✓	✓	*	
Betterment levy under the Local Government Act 1974 (sections 326, 447 and Schedule 12)		✓		

Notes

* indicates that powers may be available if specifically enabled for a given entity.

** indicates that only the Local Government Funding Agency and Auckland Council, under statute, may borrow from outside of New Zealand

Problem definition

846. In addition to the overall issues associated with the need for a UDA, the following issues are specific to infrastructure, funding and financing.

847. The key issue is that the current range of funding and financing powers and abilities are fragmented between developers, local and central governments. The extent of these powers, when available, may be insufficient for a single entity to fund and/or finance large-scale development. The powers may also need to be broader to pay for the infrastructure needed to develop a large urban area or to support growth.

848. Infrastructure provision for future growth is expensive and can be a major barrier to large-scale development. Under existing arrangements, servicing a development can be heavily dependent on local government assistance to succeed. However, even if a territorial authority is interested, there is no guarantee that it would be in a position to use some or all of its powers to commit funding to support new development.

849. Providing infrastructure for new urban development ahead of housing provision may result in territorial authorities facing high borrowing and depreciation costs, and some risk if growth occurs at a slower rate than anticipated.

850. Territorial authorities that are close to debt limits may be unable to borrow more without affecting their individual credit ratings and interest costs. Depending on the size of the territorial authority, exceeding debt limits could potentially affect the credit ratings of the LGFA and wider local government sector as a whole.

851. This fuels a lack of appetite for risk in some territorial authorities. In turn, this aversion to risk reduces the extent and pace to which infrastructure is developed in time to accommodate future growth.

852. While infrastructure investment may maximise the potential for complementary investments in urban development, this places significant pressure on public spending for local authorities, especially when considered against alternative or competing priorities for communities. Ultimately the costs of these projects will be borne by local communities who will want some say in the levels of service they are prepared to pay for. These decisions need to consider affordability, the community's ability to pay and an equitable allocation of costs to those who benefit.

853. Currently, the collective bargaining power and influence of the public sector is not being utilised to best co-ordinate investment in new infrastructure to support urban development. The way that central government operates at the regional level can significantly affect the cost and efficiency of public services and infrastructure, as well as the attractiveness and viability of urban development projects[33].

854. The current distribution of powers creates incentives for territorial authorities and CCOs to try to pass all the costs of infrastructure provision for specific projects on to developers. Territorial authorities can require land developments to have a level of infrastructure installed to meet wider council requirements rather than requirements that pertain

[33] Department of Internal Affairs (2008) Building Sustainable Urban Communities – A discussion document

specifically to the development. This approach reduces the capital input required from a territorial authority to provide new services to new suburbs by transferring costs to developers and, ultimately, property owners.

855. However, the fact remains that most territorial authority funding tools are of a cost recovery nature, whereas capital expenditure is "lumpy" (large-scale but occurring over a short duration). Thus there is a lag (measured in many years) between significant capital expenditure being incurred and revenue being received to repay the investment. Territorial authorities cover this lag period by borrowing and taking on debt.

Options analysis

856. Legislatively, the option with the broadest reach is to enable the UDA to do anything that a natural person of full age and capacity may do, similar to provisions in the CEA (s17) and the Companies Act 1993 (s16). Once the powers are allocated, the UDA's board would determine and apply the most appropriate funding, financing and operational models and mechanisms necessary to deliver a project's strategic objectives.

857. Overseas experience suggests that having a wide range of funding and financing powers will allow the UDA the flexibility to access and attract the type of investment required to undertake its functions and deliver large-scale development. These functions include purchasing, managing and selling of land and buildings; the development of land and buildings; and the construction, operation and maintenance of local and network infrastructure to support the development as well as, potentially, providing infrastructure services while it owns or is in control of any such assets. With some modifications or clarifications, these functions could also be used to auction development rights to land or buildings.

858. The discussion document proposed that a UDA has access to powers that to enable it to generate funds for capital, operating and maintenance expenditure internally, through its own net operating cash flows, accumulated savings or reserves, and trade in land and buildings, or externally through:

- *funds gifted or granted* from external sources such as the Crown or the private sector
- *debt or equity* capital markets (e.g. shares and bonds)
- *the banking system* (particularly for short- and medium-term borrowing)
- *powers to tax or charge* property owners, businesses and others through targeted rates, development contributions and value capture mechanism such as duties or betterment levies.

859. The key benefit of this approach is that, apart from powers to tax or charge property owners, most of the other powers already available, individually, to central government, to local government and the private sector would be available to the UDA. This offers the UDA more options to source funding and financing without some of the legislative constraints that currently inhibit existing development entities, such as the CEA (restrictions on borrowing) and the LGA (restrictions on foreign currency borrowing). It

also provides it with sufficient autonomy to make the necessary decisions to facilitate and obtain project funding and financing arrangements.

Constraining and limiting urban development authority financing powers

860. Consultation feedback noted that an unfettered ability for the UDA to take on debt carries significant risks regarding borrowing security, maintaining operational liquidity, servicing loans and determining what are appropriate prudential limits and liquidity ratios. UDA debt could also have longer term implications for the debt levels of the local territorial authority or other receiving organisations that may have assets vested in them once a UDA project is wound up.

861. Because of these risks and their potential to impact on territorial authority debt, it is appropriate to have clear visibility of, and potentially place some constraints and limitations on, the UDA's ability to source financing. The main options for how constraints and limitations could be placed on the UDA are discussed below.

Option 1: Legislation or associated regulations specify prudential and operating parameters for funding and financing.

862. This approach would provide some clarity and surety on its likely limits and approach but it offers less flexibility. Having pre-set financial operating parameters may mean that the UDA may not be able to access some funding or financing options or arrangements. This could mean that innovative solutions that may offer better value may not be available.

863. Another key issue is that legislatively fixed parameters or limits are likely to require periodical amendments as the value of money or projects changes over time, which could be time consuming and costly.

864. Set operating parameters may also not be appropriate for all types of entity type or projects. Furthermore, they may not be able to accommodate all the different funding approaches that may be proposed

Option 2: Specification of financial outcomes

865. This option sees shareholders (Ministers, but may include other parties if a joint venture) specify detailed financial outcomes in the strategic objectives or issue instructions/directions to the UDA board at the establishment or development plan stages regarding operating parameters, constraints or limitations that would apply to individual projects.

866. While this can still be done on a case-by-case basis, we consider that shareholders are unlikely to be in a position to identify what the right prudential operating levels and parameters are, particularly early on in a project.

867. This "top-down" approach also does not incentivise the UDA to consider and manage its levels of debt appropriately or with the long term effects on other stakeholders in mind. There is also a risk of inconsistencies in approach and application project to project.

Option 3: UDA board determines funding and financing limits

868. Once established, the UDA's board could determine what its approach to sourcing funding and financing will be as well as its limits, which would include consideration of the longer term effects on successor organisations. They would articulate this through polices that form part of its operating parameters and accountability requirements.

869. Risks with this approach are that the UDA board does not have the skills or capability to make these decisions and that the UDA decides to set borrowing or investment limits, rates and charges that are higher than is needed or engage in rent seeking behaviour, operating as a coercive monopoly.

870. Shareholders' agreement would be required for board appointments and approval of these policies. These would be a binding legislative requirement that would then govern how the UDA sources funding and financing, including any prudential limits.

Recommendation

871. It is proposed that, to provide predictability and certainty about the limits to which funding and financing mechanisms will be used for a development project, the UDA will be required to develop funding and financing policies that bind them to an operating framework with boundaries that are appropriate for the type of project that is being developed. These policies would cover:

- revenue and financing policy - that sets out its approach to meeting its funding requirements, sources, financing mechanisms
- liability management policy - that sets out its approach to debt and equity financing and management, provision of security for financing, borrowing and liquidity limits, prudential limits, interest rate and credit exposure risk, management and mitigations
- investment policy – that sets out its approach to managing its financial investments, investment securities, asset classes and diversity, determining and defining risk and performance limits and benchmarks
- rating policy - that sets out its approach to determining and applying development contributions and targeted rates and, for development contributions, meets the requirements of the LGA as if the UDA was a territorial authority.
- development contributions policy – that sets out why and when development contributions will be required, the assets for which they are be used, and how they will calculated.
- distribution policy – that sets out why and when surplus funding would be distributed to shareholders

872. It is recommended that the UDA must obtain the agreement of the responsible Minister on all funding and financing policies prior to adopting them and before final approval of the development plan.

Infrastructure outside the development project area

873. There is a need for a mechanism that ensures the wider infrastructure network to which the UDA project will connect has sufficient capacity to accommodate the services requirements of the UDA development project. Otherwise, there is the potential for development projects to be left without adequate service.

874. The main options for how the UDA could enable the development of supporting network infrastructure outside a project area are discussed below.

Option 1: UDA has powers to require territorial authorities to prioritise the provision of infrastructure

875. Under this option the UDA has powers to require a territorial authority to prioritise the provision of infrastructure to support a particular development project. The key benefit is that the UDA has legislative levers to enable the supporting network infrastructure to be in place when it is needed and can place some obligation on the territorial authority to deliver it.

876. The major risk with this option is that there is the potential to undermine a region's strategic long-term plans and broader network requirements. This could require the territorial authority to develop ad hoc infrastructure that is out of sequence with the territorial authority planning. This may have significant cost implications, particularly if borrowing is required to fund it.

877. This approach could introduce unnecessary inefficiencies into delivering city wide systems, which could potentially increases the overall costs of the future network development.

Option 2: A requirement for territorial authorities to commit funding

878. Under this option there would be a requirement for territorial authorities to commit funding to provide network infrastructure to support UDA developments. This could be a significant issue especially if the expenditure is out of sequence or if a territorial authority was close to its debt limit and unable to borrow more.

879. Additionally, it may be difficult to source unanticipated debt which could affect a territorial authority's credit ratings, and its future ability to source and service financing for other projects. Depending on the size of the debt, this may have wider effects for the LGFA and local government as a whole.

880. Ultimately, the costs of these decisions would be borne by the community who, if the UDA had complete autonomy, would have little say in the appropriate level of service they are prepared to fund and with no requirement for the UDA to consider affordability or the community's ability to pay.

881. To mitigate this risk, it is proposed that the UDA must publicly consult the intention to levy targeted rates or development contributions, as well as their likely extent during both the establishment and development plan stages of a project.

Option 3: The provision of network infrastructure by binding agreement between the UDA and territorial authorities

882. Under this option the provision of network infrastructure to support a UDA development could be by agreement between the UDA and territorial authority. This would occur during the initial assessment and establishment of a project and in collaboration with the local territorial authority.

883. As a condition of supporting the project, territorial authorities would need to commit to providing the necessary infrastructure capacity to support the project, and if necessary with agreement on how that additional capacity will be funded. The territorial authority would then amend its strategic plans accordingly to support the UDA, which is proposed in this legislation.

884. Some consultation submitters noted that a UDA's investment decisions on funding network infrastructure that would service the wider community need to reflect the strategic goals and priorities of territorial authorities and their communities.

885. Under the proposed agreement, amendments to a territorial authority's strategic plans would be consulted with the wider community as part of UDA consultations. This would be deemed to comply with the LGA requirements for community involvement.

886. The main risk with this option is that a territorial authority may still not be willing or able to develop the network infrastructure to support a development which could be problematic, especially after the UDA has been established and development is underway, and may force the UDA to provide the infrastructure in place of the territorial authority.

887. For example, a new council could be elected that is less supportive of the UDA concept or a specific project than a previous council that agreed to its establishment, and decides to re-focus its long term plan away from supporting the UDA project or to not develop a key piece of infrastructure. This could affect the long term delivery of a project's objectives.

888. To avoid this situation, the territorial authority commitment will need to be secured by way of a binding agreement or contract, potentially including penalty clauses to deter withdrawal from commitments at a later stage.

Recommendation

889. The recommended option is option 3, that the UDA should have the ability to secure territorial authority commitments to provide network infrastructure by way of a binding agreement or contract.

How the recommendation could be implemented

890. While the costs of bringing infrastructure forward could be borne by either the UDA or the territorial authority, it is appropriate that the UDA, as the initiator, bears the fair and reasonable costs of developing the infrastructure, regardless of who undertakes the works. For both of these options, these costs would be negotiated and agreed with the territorial authority either at the establishment phase or during the project when the infrastructure is required.

891. This negotiation could either occur up front at the UDA project establishment, providing clarity over planning and costs, or on a case by case basis over time as the development

proceeds. This would provide some flexibility for both the UDA and the territorial authority to allocate resources.

892. If there are any differences in views that cannot be resolved or if an agreement cannot be reached, these issues are referred to an independent commissioner to determine the allocation of costs. Some consultation submissions supported this approach.

893. Submitters suggested that the design of UDA funding and financing proposals and powers for each project should be based on the premise that development project revenues will pay for development project costs, and that all costs will be internalised so that economic externalities are minimised.

894. This would explicitly allow for agreed initial public subsidies, start-up funding and investment financing which would be recouped through development levies, targeted rates or other value uplift or betterment mechanisms.

895. There was also support for the idea that UDA surpluses resulting from land and/or property sales being re-invested into funding infrastructure or community assets, particularly within the UDA project area. These suggestions have been included in the proposals and principles by which the legislation is applied.

Targeted rates

896. The Productivity Commission noted:

> To achieve socially efficient provision of infrastructure, government suppliers need to (i) set prices that encourage the efficient use of existing infrastructure, (ii) make timely and wise investments in additional infrastructure capacity, and (iii) generate funds efficiently and fairly to cover their costs." where "A future planning system should allow councils to recover the full cost of infrastructure fairly and efficiently. It is fair that, in most circumstances, funding should come from users. [34]

897. It is appropriate that the local residents or businesses, who will directly benefit from upgraded or new infrastructure, should bear the costs of constructing the works. The entity undertaking this work, either the UDA or the local territorial authority, should receive the funding either directly or via transfer from the entity collecting it.

898. Providing the UDA with access to targeted rating and development contributions revenue streams (which territorial authorities already use) for specific new infrastructure would improve the efficiency and viability of UDA development projects. It will also assist in facilitating the delivery of improved community outcomes, such as quality recreational opportunities that are important to the health of residents via the provision of new parks and reserves.

899. Applying a targeted rate within a development area would address wider concerns about the equity of alternative options. This is because levying a general rate would otherwise entail creating imposition on all ratepayers in a district to fund the infrastructure that benefits only one development project area. This is particularly applicable for larger urban

[34] New Zealand Productivity Commission. (2017). *Better Urban Planning*. Chapter 11, pages 307. Available from www.productivity.govt.nz/inquiry-content/urban-planning

areas where many ratepayers would be remote from, and not interact with, the UDA development project or an even wider central government tax levying all taxpayers across the country to address specific urban infrastructure costs within one city.

900. The UDA's use of targeted rate or development contribution powers cannot be unrestrained or their use could negatively affect the value of the development as a whole, (i.e. people will not buy into developments with high recurring services charges or rates). They must be limited to the extent that is required for recovering the actual costs of the infrastructure development which include capital, maintenance and renewals (depreciation) over the productive lifetime of the asset, especially for UDA developed infrastructure that is to be vested in local authorities or network utility operators.

901. Targeted rates and development contributions will need to be set to cover these costs for the useable or productive life of the asset, as opposed to its actual lifetime, which may be longer. This is consistent with a territorial authority's approach to its infrastructure strategy and management under the LGA.

902. For transparency and accountability reasons, the UDA would need to consider whole of life implications in the principles by which decisions regarding infrastructure and funding are made and the legislation is to include the methodology required to determine what targeted rates and development contributions can be charged for and what processes and controls exist.

903. Consultation feedback suggested that enabling a UDA to access powers to set targeted rates at all was contrary to democratic principles which align taxation with representation. Concern was also expressed that targeted rates collected would be used fairly and that these mechanisms may deliver poor outcomes for individuals or others who may not be able to afford such penalties.

904. These concerns can be mitigated if the UDA is a statutory entity with accountability to publically elected Ministers and/or council representatives and both the establishment of a UDA, its strategic objectives, possible taxation powers and the development plan are to be publicly consulted prior to final approval providing the community, with input on these powers and their use.

Charging targeted rates to beneficiaries or those creating the need for an activity beyond a UDA project boundary

905. While levying a targeted rate on beneficiaries within a development area is considered appropriate, there are properties bordering the UDA development area that will also benefit from, or load on, infrastructure services and systems that are built for a project area.

906. As noted above, the option of levying a more general rate across a district to fund infrastructure development for the UDA has been discounted as it would be inequitable to residents who live some distance from a UDA area and would either never use the systems or services or do not indirectly create the need for the infrastructure to be developed, i.e. land run-off into stormwater systems.

907. However, it may appropriate to extend the UDA's taxation powers more broadly so it could apply targeted rates to property owners either just beyond the project area boundary or within a defined area surrounding the UDA project where benefit can be identified and attributed.

908. Broadening the taxation catchment to include those properties addresses the potential equity issues at the boundaries of the development area where properties just outside would also benefit from the area's infrastructure improvements.

909. Extending the UDA's powers to this extent would mean that the boundary between the UDA and local territorial authority's responsibilities and authority would become less clear. Ratepayers would have less certainty about their obligations and there are risks that the decision-making process would be less transparent, disciplined and robust. It is therefore inappropriate for the UDA to have a power to set targeted rates outside a project area.

910. Therefore, for these properties, it is recommended that the territorial authority could levy a targeted rate to fund the related infrastructure with cost sharing arrangements to be put in place between the territorial authority and UDA to ensure that the funds go to the party that undertakes the development works.

Collection and enforcement of targeted rates

Option 1: Territorial authority to collect and enforce UDA set targeted rates

911. One option is that the UDA legislation provides for a territorial authority to collect and enforce UDA set targeted rates under delegation from the UDA. By agreement all collection and recovery costs incurred by the territorial authority would be compensated by the UDA. The legislation is to make clear that this action would not remove the UDA's responsibilities or costs for levying the rate.

912. The key benefit of a territorial authority undertaking the collection of targeted rates is that this is an activity that they already do and so have the systems and processes already established to undertake the required tasks. The territorial authority is also responsible for and owns the Rating Information Database[35] that provides information on each property used to assess rates liability and could be referenced to levy UDA set targeted rates.

913. While responsibility for this section would remain with the UDA, it could delegate it to a territorial authority. To reduce complexity and potential confusion for territorial authorities and ratepayers, it is proposed that the processes for setting and applying rates are similar to those outlined in the Local Government (Rating) Act 2002. Any additional costs incurred by a territorial authority can be agreed with and paid for by the UDA by negotiation.

914. Consultation with a sample of territorial authorities in January and February 2018 uncovered no significant objection to the use of targeted rates by a UDA if:

- the UDA is accountability to publicly elected Ministers and/or council representatives
- targeted rates are only applied within the development project area

[35] As defined in the Local Government (Rating) Act 2002, Part 2

- the reasonable costs incurred by the territorial authority administering targeted rates on behalf of the UDA are met by the UDA, and the rates attributable to the UDA clearly identified on invoices.

Option 2: Empower UDA to establish a rates collection and enforcement function

915. The main alternative of empowering the UDA to establish a rates collection and enforcement function is less efficient, potentially fraught with complexity and would be more costly. There is also a potential conflict with ownership and responsibility for the Rating Information Database for a district and the potential for inconsistencies, errors or omissions if the UDA is operating a duplicate process and recording system.

916. Concern was expressed in the consultation about the potential burden that the proposed collection and enforcement of targeted rates could have on territorial authorities. A number of submitters stated that rates collection must not be at any additional cost to ratepayers and territorial authorities should be fully compensated for their costs in undertaking these functions.

917. It was identified that this would be less of an issue if the UDA was a territorial authority subsidiary, however if the UDA is independent, territorial authorities may be required to prioritise UDA revenue expectations ahead of their own.

918. Territorial authorities will also experience the negative consequences of associated levies and rate increases as the public are unlikely to understand the difference between levying parties. It is proposed that a territorial authority can charge the UDA a fee to recover the full costs of administering the collection of targeted rates which would remain responsible for setting and applying any targeted rate.

Across-boundary funding arrangements

919. There is a broad body of international literature that supports the concept of a benefiter-pays approach to funding of infrastructure. In that context, it is appropriate that the UDA and developers within a development project area contribute to amenities created outside a project area by a territorial authority that benefit properties within the development project. Similarly is it appropriate that where a community benefits from infrastructure provided by the UDA, the territorial authority on behalf of the community contributes to the cost of infrastructure that is developed by the UDA.

920. While concerns were expressed in the consultation about complications, the UDA and territorial authority working collaboratively to apportion costs was considered to be the most appropriate option as opposed to having either the UDA or the territorial authority independently front the full costs of infrastructure development or for each entity type to have powers to require cost re-imbursement from the other party. Both these alternative options would be inefficient and time consuming with one party needing to apply to the other to recover any costs associated with individual expenditures.

921. The importance of having statutory tools to facilitate agreements to share funding and break any deadlocks to advance projects was also recognised by submitters. As previously noted, where there is a dispute, this would be resolved by an independent commissioner who would consider the strategic objectives associated with the

development as the leading criteria. Some submitters thought that in this process the priorities of a local council may be seen as secondary to those of the UDA which was considered unfair to local residents, particularly those surrounding a development.

Betterment

922. Betterment is the windfall or excess increase in value of a person's property that arises from works that mean the value of the property (less any adverse impact on value from those works) is greater than before those works commenced. In this manner, it functions as a limited form of value capture.

923. Local Government currently has access to limited betterment powers under section 326 the Local Government Act 1974 to require landowners to pay for betterment in cases where a new road is created or is widened, or where a council has covered in a watercourse.

Option 1: No power to charge betterment

924. The concept of betterment can be hard to implement because of the subjective nature of some of the factors that contribute to establishing the value of a property. There can also be complications that arise in attributing increase in value in land to a particular work when multiple works, developments or general market conditions may have also contributed to increased value. Given this, the administrative ease and efficiency of betterment decreases as the number of owners evaluated as potentially benefitting increases.

925. Despite the aforementioned difficulties, having no ability to require payment of betterment at all would mean the full-costs of UDA works that may disproportionately benefit a few (though higher property value increases, for example) are borne by the wider community through higher rates or other charges.

Option 2: Limited betterment requirement provisions

926. While not widely used, there are examples of territorial authorities using betterment requirement powers to offset all or some of their expenditure on land acquisition and works from those benefitting from the works. The use of the powers seems to work best where there are comparatively few land owners (such as in a greenfield development prior to subdivided sections being sold).

927. Payment of betterment is unlikely to be useful where the UDA itself is the landowner and can therefore realise a capital gain through the sale or lease of its land. However, in some instances the UDA will not own all the land within the development area, but the number of other landowners in the development area may be too small to make a targeted rate worthwhile. In these cases betterment could be a useful lever in ensuring those other land owners who stand to benefit from UDA works, to a degree greater than the general population, pay a fair share of the costs of those works.

928. However, the existing provisions of the Local Government Act 1974 were last updated in 1985 and currently rule out the possibility of being applied to transport projects other than road widening. In keeping with more contemporary practice, the UDA may also be

involved in providing transportation infrastructure outside of existing roading corridors (such as light rail, busways or cycleways).

929. Overseas experience suggests that there can be an uplift in land value (and thereby a windfall benefit to landowners) arising out of projects such as light rail that is greater for those adjoining or close to the infrastructure. It would therefore be logical to extend the same betterment provisions that currently apply to road widening works to a wider range of transport infrastructure that may not necessarily be using an existing road corridor.

Recommendation

930. We consider that, on balance, it would beneficial for the UDA to have access to the same betterment powers a local authority has under the Local Government Act 1974 to assist in those circumstances where there are a small number of landowners that benefit from roading or other transport works undertaken by the UDA and other value-capture mechanisms would be too blunt.

931. To take into account the proposed wider transport infrastructure delivery functions of the UDA, it is recommended that the LGA 1974 betterment provisions also be extended to cover light rail, busways and cycle ways, particularly where these are not using an existing roading corridor.

Taxation or levy-based value capture approaches

932. A number of submissions to the discussion document identified additional options for funding infrastructure development or upgrades in the form of value capture or a wider suite of betterment levies and recommended they be added as a further funding tool. Submitters considered that the community should benefit from a share of the potentially significant uplift in property values that could be generated by the establishment of a development project and its subsequent development plan.

933. Under the current proposals, any beneficial uplift in land value resulting from the development project, such as land re-zoning for higher value activities (eg increasing density, making rural land urban) or the provision of new or improved infrastructure (extending roads, railways or services to a new area) would accrue directly to existing landowners.

934. In contrast, value capture, betterment levies of broad scope and value uplift mechanisms would reserve for the community some of the increase in land value that is created by public actions.

935. The Productivity Commission noted that, with amendments to legislation, targeted rates could be used by councils to pay for infrastructure by capturing value uplift based on changes in property land values.[36] It also noted that value capture through direct purchase and ownership is simpler than a structured intervention. Consultation submissions suggested that these mechanisms require further exploration as does using a broader

[36] New Zealand Productivity Commission (2015). *Using land for housing*, Chapter 9, p228. Available from http://www.productivity.govt.nz/inquiry-content/2060?stage=4, R12.1 and New Zealand Productivity Commission (2017), *Better urban planning*, Chapter 11, p334. Available from http://www.productivity.govt.nz/inquiry-content/2682?stage=4

taxation basket e.g. capital gains tax, and levy higher rates on unoccupied/ undeveloped land.

936. Broadly applied taxation-based value capture mechanisms have proved difficult to implement overseas as there are equity issues around precisely defining the extent to which neighbouring properties (outside of the immediate defined development area) directly benefit.

937. As with current Local Government Act 1974, requirements for betterment can be problematic in determining how much of any value increase can be attributed to the development of infrastructure in the project area and what is the result of other market or local conditions (e.g. a change in purchaser preferences). There is also an argument that once the cost of providing the services or systems is recovered by the project through a targeted rate, it could be considered unfair to also charge all homeowners again for the increase in property value that could be attributed to this new infrastructure.

938. Additionally, if these levies are applied over too short a timeframe, they can incentivise land banking (particularly of land that has the infrastructure services already installed) or opposition to re-zoning proposals where property owners hold or do not develop land in the anticipation of capturing capital gains once any applied levy is lifted.

939. Lastly, the principle of value capture is heavily tied to the assumption that property values will increase over the period that the infrastructure is being built. So, when these mechanisms are being used (particularly those that involve borrowing funding in anticipation of increased revenue from value uplift) any impacts of a recessionary property market would also need to be considered where the UDA may be required to compensate a property owner for value loss if a development negatively affects their land or capital value.

Recommendation

940. In the short-term a degree of value uplift can be captured through the UDA developing and selling land for its improved price (the simplest form of value capture). This should be supplemented by a modest extension to the betterment provisions of the Local Government Act 1974. It is also recognised that the use of a targeted rate will have some degree of value-capture associated with it (as the share of rates a ratepayer is levied is based on the value of their property, and this should increase over the course of a UDA development as more services become available).

941. We recommend other forms of value-capture should only be incorporated into UDA after further work is completed that demonstrates they are justifiable, workable and appropriate in terms of effect.

942. Insufficient analysis and consideration of consequences, practicality and implications has been carried out to reach a definitive position on where a tax, levy or rate based value-capture approach should be employed at this time. For consistency consideration of such approaches should ideally to be set within the context of wider government work around:

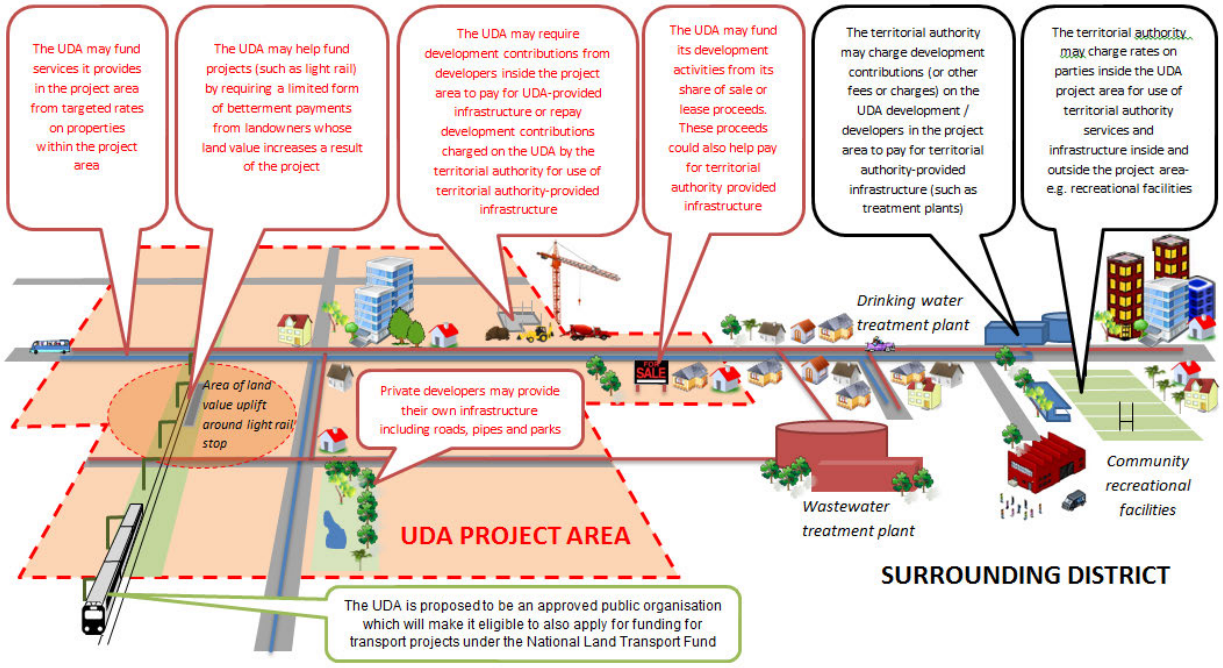
- Urban Growth Agenda Infrastructure Funding and Financing workstream

- Tax Working Group findings (as a taxation or levy approach could have similar features to a capital gains tax)
- The wider review of local government funding tools.

Suggested funding arrangements for the UDA projects

943. The figure below outlines how funding for UDA projects could be undertaken.

Figure 8: Funding for the UDA



Appendix 7 - List of organisations that submitted

ADLS Environment & Resource Management Law Committee

Albert-Eden Local Board

Anderson Creagh Lai Limited

Auckland Council

Auckland Regional Public Health Service

Auckland Transport

Augusta Capital Limited

Aurora Energy Limited

Bay of Plenty Regional Council

Business Central

BusinessNZ

Canterbury District Health Board

Canterbury Regional Council (Environment Canterbury)

Christchurch City Council

Community Housing Aotearoa

Deloitte

Development Christchurch Limited

Devonport-Takapuna Local Board

Employers and Manufacturers Association

Environment and Conservation Organisations of NZ

Far North District Council

Federated Farmers of New Zealand

Federation of Māori Authorities

First Gas

Fletcher Building Limited

Foodstuffs

Franklin Local Board

Friends of Regional Parks (Auckland) Inc

Future Proof Implementation Committee

Glenside Progressive Association

Goodman

Greater Christchurch Urban Development Strategy Partnership

Greater Wellington Regional Council

Hamilton City Council

Hawke's Bay District Health Board

Heritage Estates Limited

Hibiscus and Bays Local Board

Horticulture New Zealand

Housing New Zealand

Howick Local Board

Hutt City Council

Infrastructure New Zealand

Kapiti Coast District Council

Kapiti Housing Task Force

KiwiRail Holdings Limited

Local Government New Zealand

Long Bay Okura Great Park Society

Ma Development Enterprises (MADE Group)

Māngere-Ōtāhuhu Local Board

Masterton District Council

Maungakiekie-Tāmaki Local Board

McGuinness Institute

Motu Design

Mt Victoria Residents' Association Inc

New Zealand Fire Service Commission

New Zealand Institute of Surveyors

New Zealand Planning Institute

New Zealand Port Company CEO Group

New Zealand Telecommunications Forum

New Zealand Walking Access Commission

Newtown Residents Association

Oji Fibre Solutions

Okura Residents and Ratepayers Association

OPC

Ōrākei Local Board

Otago Regional Council

Panmure Community Action Group

Papakura Local Board

Park Legal Limited

Porirua City Council

Powerco

Property Council

Property Institute of New Zealand

Puketāpapa Local Board

Queenstown Lakes District Council

Rangitikei District Council

Refining NZ

Regenerate Christchurch

Retirement Villages Association of New Zealand

Royal Forest and Bird Protection Society of New Zealand Inc and the Environmental Defence Society

SmartGrowth Leadership Group

Society of Local Government Managers

Tāmaki Regeneration Company

Taranaki Whanui

Taupo District Council

Tauranga City Council

Te Runanga o Ngai Tahu

Te Runanga o Toa Rangatira Inc

The Board of Airline Representatives of New Zealand Inc

The Electricity Networks Association

The Neil Group Limited

The New Zealand Airports Association

The New Zealand Institute of Architects Incorporated

The Public Health Association of New Zealand

The Registered Master Builders Association

The Resource Management Law Association

The Salvation Army

The Urban Advisory

Transpower

Turnstone Capital

Upper Hutt City Council

Vector

Waikato Regional Council

Waikato-Tainui

Waipa District Council

Waitematā Local Board

Watercare

Wellington City Council

Wellington Water

Whangarei District Council

Whetu Consultancy Group

Willis Bond & Co

Appendix 8 – Consultation meetings

Officials met with representatives from:

- local authorities in larger urban areas, both territorial authorities and regional councils;
- Local Government New Zealand;
- Panuku Development Auckland;
- Tāmaki Regeneration Company;
- Housing NZ Corporation and its development subsidiary, HLC;
- Property Council;
- NZ Planning Institute;
- Infrastructure NZ;
- Resource Management Law Association; and
- a range of both public and private infrastructure providers (eg Auckland Transport, Watercare, Vector, Counties Power, Chorus).

Officials also met with representatives from the following groups:

- Ngā Mana Whenua o Tāmaki Makarau (Auckland);
- Iwi representatives from Ngāti Ranginui, Ngāti Pūkenga and Ngāi Te Rangi (Tauranga);
- Waikato-Tainui (Hamilton);
- Te Rūnanga o Ngāi Tahu (and Ngāi Tahu Property) (Christchurch);
- Wellington Tenths Trust;
- Te Matapihi (national Māorihousing trust); and
- Federation of Māori Authorities.