

Regulatory Impact Statement

Creating Special Housing Areas

Agency Disclosure Statement

- 1 This Regulatory Impact Statement has been prepared by the Ministry of Business, Innovation and Employment.
- 2 It provides an analysis of options to increase the supply of land for housing development and redevelopment over the short term (0 to 3 years) in order to reduce pressure on housing supply, in particular parts of New Zealand (such as Auckland) that are currently experiencing severe housing affordability problems.
- 3 Options have been assessed in terms of their expected impact on increasing the short term supply of land for residential development. The analysis is qualitative, but based on an empirically evidenced understanding of the interaction between land regulation and land supply. Key assumptions relevant to the conclusions are that:
 - a. land supply for residential development is artificially constrained by current regional and district plans;
 - b. constrained land supply is not sufficient to meet expected demand and is contributing to land scarcity and high land and housing costs in some parts of New Zealand; and
 - c. current initiatives to provide for a new Auckland Unitary Plan and to reform the resource management system will not free up sufficient land over the short term (next three years) to counter short term land shortages and upward land and house price pressures.
- 4 Four main options were identified and assessed to address this problem:
 - a. Rely solely on the Government's proposals to reform the resource management system; and
 - b. Allow Auckland's new Unitary Plan (in either part or whole) to take effect from its notification date (September 2013) rather than its intended finalisation date (September 2016); or
 - c. Establish, through specific legislation, an Urban Development Agency (UDA) to take a permissive approach to the issuing of resource consents and building consents for larger housing developments and redevelopments in areas suffering severe housing affordability problems and constrained land supply; or
 - d. Create special housing areas, through agreement with local councils, in which local councils would exercise more permissive resource consenting powers.

- 5 The analysis in this RIS is limited by:
- a. Insufficient information on land supply restrictions across local authorities to allow precise views to be formed on the urgency of the problem or the extent to which land supply is a problem outside of Auckland
 - b. Insufficient information on the specific detail and operation of each of the options to allow for a more precise analysis of how each option might impact on the behaviours and commercial decisions of land owners and property developers
 - c. Insufficient information on the existing provision of trunk infrastructure in order to allow for a more precise analysis of any limitations trunk infrastructure might have for the effectiveness of each of the options
 - d. The development of the option under budget secrecy rules, which has meant that options have not been consulted on with stakeholders and affected parties outside of government
- 6 The overall conclusion is that establishing special housing areas in which local councils, or MBIE would exercise more flexible resource consenting powers (in conjunction with the Government's proposed changes to the resource management system) will most likely increase land supply over the short term in ways consistent with a collaborative central / local government approach to addressing land supply and housing affordability issues. This option will result in more developments being consented than would otherwise under existing plans and consent processes, because councils in which special housing areas have been established will exercise additional powers that will enable them to take more permissive approaches to consenting in favour of residential developments. This together with the notification of a more permissive Auckland Unitary Plan and governments proposed changes to the resource management system will create commercial uncertainty for landowners (as to future capital gains from holding rather than selling land) and change the balance of commercial incentives in favour of more short term sale of land for development.

Jo Doyle
Director, Housing Affordability Programme
Ministry of Business, Innovation and Employment

15 / 4 / 2013

Status Quo and Problem Definition

Context

- 1 Housing affordability is a key concern for Government. Home ownership contributes to social and economic outcomes, and provides New Zealanders with a tangible stake in the communities in which they live. Unaffordable homes translate into pressures on families, on the social housing system and on government support. They also result in proportionately more household income savings going into housing, leaving less for investment in other areas of the economy. All of this contributes to New Zealand being less globally competitive than it otherwise would be.
- 2 Recent investigations into housing affordability in New Zealand conclude that, following the 'housing boom' of the 2000s, "national measures of house price-to-disposable income ratios remain elevated, and would require sharp falls in house prices to return to long-term averages"¹.

Evidence of pressures on housing costs

- 3 Data on house prices, household incomes and mortgage rates is used by the Demographia International Housing Affordability Survey and organisations such as Roost to calculate and report on housing affordability.
- 4 The Demographia 2013 International Housing Survey found housing in New Zealand to be severely unaffordable relative to other countries. It also reported that house prices in New Zealand are becoming less affordable. The study found that within New Zealand, house prices in Auckland are the least affordable followed by those in Christchurch, Tauranga-Western Bay of Plenty, and Wellington.
- 5 Roost's February 2013 report concluded that a single median income for a first-home buyer is not enough to buy a lower-quartile priced house, even with a deposit of around 10% of the house's value. Roost's analysis of regional data shows large variations in affordability across regions. While nationally it takes 45.6% of one median income of a person in the 25-29 age group to pay the mortgage on a lower-quartile priced house (in January 2013), in Auckland it takes up to 66.1% and up to 67% in Central Otago. By contrast as little as 20.6% is required in Southland and 26.7% in Manawatu. Table 1 below shows how housing affordability varies across regions:

¹ New Zealand Productivity Commission, *Housing Affordability Inquiry, Summary Version of Report*, p.7.

Table 1. Housing Affordability Compared Across New Zealand Regions

	<i>Percentage of take home pay required to service the mortgage on a first quartile priced house</i>	<i>Percentage of take home pay required to service the mortgage on a medium priced house</i>
<i>Northland</i>	34.0%	44.8%
<i>Auckland</i>	66.1%	69.9%
<i>Waikato</i>	43.8%	47.7%
<i>Hawke's Bay</i>	35.9%	43.7%
<i>Manawatu</i>	26.7%	33.7%
<i>Taranaki</i>	39.1%	47.6%
<i>Wellington</i>	46.6%	54.3%
<i>Nelson / Marlborough</i>	51.7%	53.4%
<i>Canterbury</i>	46.7%	49.1%
<i>Central Otago</i>	67.0%	67.1%
<i>Otago</i>	33.6%	37.0%
<i>Southland</i>	20.6%	27.7%
<i>New Zealand</i>	45.6%	53.4%

- 6 The IMF and RBNZ have recently indicated concern about house price inflation in Auckland, which risks becoming “expectations-driven” and taking on a “self-reinforcing character” that would accentuate broader risks to financial stability and inflation (RBNZ March 2013 Monetary Policy Statement, IMF 2013 Article IV Consultation Preliminary Concluding Statement).
- 7 The Government wishes to improve housing affordability so that: more New Zealanders can own their own homes, fewer New Zealanders depend on government support for housing, proportionately more of their savings are available for productive investment, and New Zealand’s global competitiveness improves.
- 8 In response to the recommendations of a Productivity Commission report on housing affordability, Cabinet noted the following four points as “key areas to address New Zealand’s significant housing affordability problem” [Cab Min (12) 35/4A refers]:
 - a. land supply restrictions;
 - b. paying for infrastructure development;
 - c. productivity in the construction sector; and

d. costs and delays in the regulatory process.

- 9 This RIS focuses on the relationship between land regulation, land supply and housing affordability, and proposals to improve the short term supply of land in parts of New Zealand with land supply shortages and unaffordable housing.

Status Quo

- 10 The supply and residential development of land are governed by the Resource Management Act 1991 (RMA).
- 11 Regional and district plans set rules for what land can be used for and how it can be used. Plans can place limits on the use of land and can exclude or constrain residential development (often for good reasons such as a planned approach to providing and funding infrastructure or to protect land for particular uses). Plans can also constrain how land can be used for residential purposes. Many plans, for instance, while providing for residential development also constrain the amount of land available for development, and place constraints on how that land can be developed by, for instance, specifying minimum and maximum lot sizes, minimum floor areas, maximum heights and densities.
- 12 Plans determine whether resource consent is required for an activity, and what degree of discretion the local authority has with respect to consent applications and the nature of information that applicants are required to provide. Decisions to approve or decline an application and the nature of any conditions placed on an applicant are generally made by the council and can be appealed to the Environment Court.
- 13 While housing developments inconsistent with permitted land uses in plans can proceed, they can do so only at the discretion of a council and are subject to public notification and potential legal appeals. This discretion takes time to exercise - a minimum of 70 days or longer if it leads to further consideration by the council and legal appeals can take years to conclude. The availability or cost of providing trunk infrastructure (sewers, storm water drains and roads) will be an important consideration for a council in exercising discretion, as will local community attitudes and values to land use.
- 14 Central government can guide local authorities in their planning on environmental issues that are of national significance through national policy statements and national environmental standards. Under the RMA's hierarchy, regional policy statements and plans need to give effect to national policy; district plans need to give effect to national policy and regional policy and must not be inconsistent with regional plans. All plan rules must comply with national standards. In practice, there has been little guidance to councils on the importance of ensuring adequate provision of land for housing and the importance of housing affordability.

Recent government decisions to change the resource management system

- 15 When the Government came into office in 2008, it began a programme of resource management reform. Major improvements to streamline and simplify the resource management system have commenced. These include: establishing the Environmental Protection Authority (EPA) and a national consenting regime; penalties for non-compliance and for delays in consent processing by councils; disincentives for anti-competitive behaviours; and a streamlined process for developing a new Auckland Unitary Plan that will be notified in September 2013 and become operational by the end of 2016.
- 16 The Minister for the Environment is currently consulting on further changes to the resource management system that would:
 - a. result in central government providing more direction to councils on matters of national importance (such as the effective functioning of the built environment including the availability of land for urban expansion, use and development);
 - b. introduce an obligation on councils to plan positively for future needs such as land supply;
 - c. clarify and extend central government powers to direct plan changes;
 - d. introduce a six month time limit for councils to process medium sized consents;
 - e. improve consenting processes including the ability to take some consent applications directly to the EPA.

Implications of plans and regulations for land supply and housing affordability

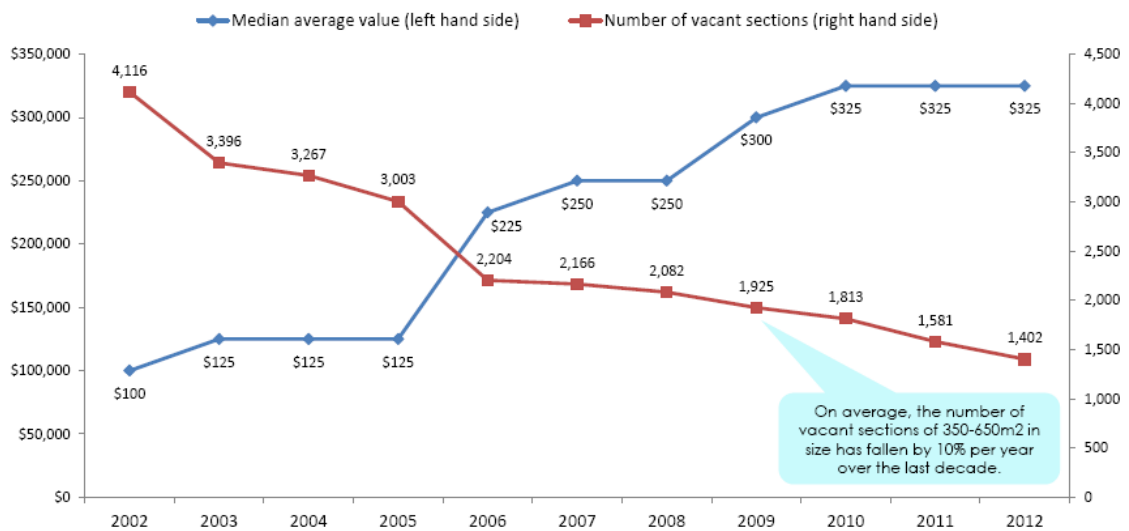
- 17 Housing affordability is driven by the interaction of demand and supply. In the short term, the supply of housing is relatively inelastic or unresponsive. Increases in demand tend to push up prices and shocks to demand or supply can have a large impact on prices. In the longer term, the supply of housing is more elastic as developers respond to new demand and rising prices. In general, the long term supply curve is less than fully elastic so that as housing demand rises, supply of new units will rise but so will prices. Figure 1 below illustrates this point for Auckland. It shows the relationship between land availability and land prices over the past ten years and how as availability has decreased, prices have increased.

Figure 1

Land values are rising fast

As the number of vacant sections of the desirable size within 25km of Queen Street has fallen, their ratings value has more than tripled.

350–650 m² vacant sections suitable for a single dwelling, in existing urban areas
2002-2012



Source: QV

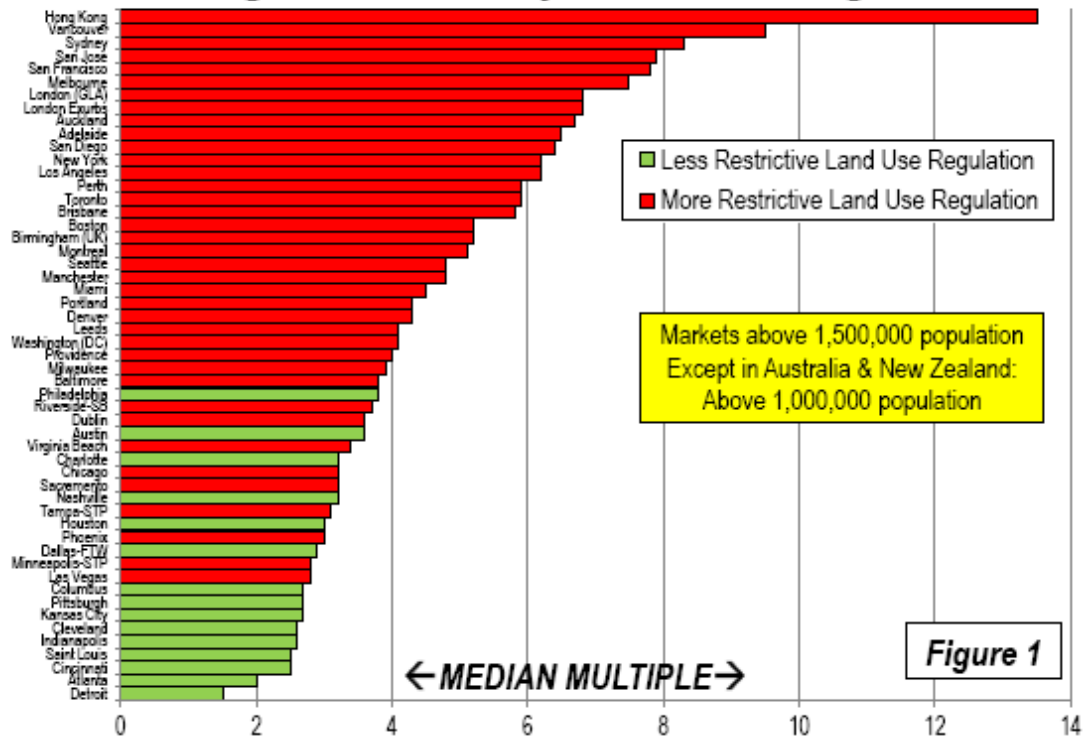
31

Ministry of Business, Innovation & Employment

- 18 Land for housing is a key consideration in the demand / supply equation. Housing supply tends to be slow in responding to changes in demand because it can take several years to transform bare land to a construction-ready state (including the supporting infrastructure). The typical process involved in taking bare land from initial sale through to the completion of a house for occupation involves a decision by the owner of bare land to sell it; the land being zoned residential by the council; the provision of bulk infrastructure (storm water, roads and sewage); planning and consenting of the land's subdivision; the construction of roads and the connection of residential lots to bulk utility services; and the design, consenting and construction of houses on residential lots and their sale.
- 19 Regulation, such as restrictive plan rules, lowers the elasticity of new housing supply by increasing lags in the process and adding to the cost of supplying new houses on the margin by, for instance, placing limits on the use of some land for residential purposes and by sequencing over time the volume of land able to be used for greenfield development. If for instance, the volume of land designated in plans for Greenfield development is too little, it will result in a shortage of land that will contribute to high land prices.

- 20 Commercial decisions to release land for housing (green or brownfields) are made within these regulatory and infrastructure constraints and the conditions of plans such as the Auckland Metropolitan Urban Limit (MUL). MBIE recently completed a study of land availability in Auckland's MUL and concluded that there is likely capacity of land in Auckland to provide for 14,500 dwellings, of which most (560 ha) is yet to be subdivided, and that of this land available for subdivision there are only 1,900 residential sections on which a dwelling can actually be built today (i.e. where the developer has subdivision consent and has provided services to each section). The study concluded this land is insufficient to meet future expected demand and is far less land than is required by the Auckland's own development strategy.
- 21 When land and housing demand grows faster than available land supply, regulatory constraints such as Auckland's MUL, together with infrastructure constraints create incentives for land owners to limit or control the release of their land in order to maximise future returns. This is because the costs of holding land over time will likely be less than the expected increase in land value over the medium to long term.
- 22 In some parts of New Zealand, such as Auckland, current plans have resulted in land supply constraints that are continuing to contribute to steep increases in land and house prices.
- 23 A 2009 study by MOTU found land just within Auckland's MUL is valued approximately ten times higher than land just outside the MUL. It concluded that Auckland house prices as a whole have risen substantially relative to other urban (Hamilton and Wellington) prices in the North Island and that this rise is likely to reflect, at least in part, the increasingly binding impact of the MUL over time.
- 24 The results of the 2013 Demographia International Housing Survey illustrates this same point, shown in the figure below, at an international level. They show a strong correlation between restrictive land supply regulation and housing affordability, with housing affordability being lowest in countries and regions characterised by restrictive regulation.

Housing Affordability & Land Regulation



Evidence of constrained land supply

25 Information on the availability of land for residential development is not routinely collected, and is not available on a district by district basis for all areas of New Zealand. In 2013, the Ministry of Business, Innovation and Employment undertook a detailed study of residential land available in Auckland. The study (as already noted) found that Auckland land supply is short of targets and that unless something changes, there will not be sufficient land to provide for the additional 200,000 households estimated by Statistics New Zealand for Auckland by 2031. The Ministry study found that:

- a. in January, Auckland Council reported that greenfield land ready for subdivision has the capacity for 15,000 new dwellings, a reduction from a capacity for 18,500 dwellings that it reported in July 2012;
- b. there are greenfield planning areas containing land that are either ready for subdivision, or that have already been subdivided, sufficient for 14,500 dwellings, of which the majority (12,600) is represented by 560ha of land that is yet to be subdivided (meaning rural blocks that are yet to be broken up into smaller residential sections). The majority of this land is either owned by the Crown (e.g. Hobsonville) or contained in 27 other blocks of more than 5ha in size;

- c. in addition to the 560ha of land ready for subdivision, there are less than 1,900 vacant residential sections in these planning areas on which a residential dwelling can actually be built “today” – i.e. where the developer has subdivision consent, has provided utility services to each residential-sized section, and can sell the section with a new certificate of title that has been issued by the district land registrar;
- d. the greenfield planning areas that are ready for subdivision fall almost 2 years short (8,750 dwellings) of Auckland Council’s minimum target (one years supply of greenfield land needs the capacity to carry 4,650 dwellings);
- e. the greenfield land currently in the pipeline also falls short of the target that Council has set itself for future supply. Auckland’s development strategy calls for 20 years worth of land supply in the pipeline, whereas the capacity for 14,500 dwellings on land ready for subdivision, plus 40,000 dwelling capacity on other land in the pipeline, only adds up to about 10 years of required supply.

Objective

- 26 The objective of this proposal is to increase the volume of land released for housing development and redevelopment over the short term (next three years) so as to reduce pressure on housing supply in particular parts of New Zealand (such as Auckland). If achieved, it is expected this will decrease pressure on land prices, and by so doing contribute to improvements in housing affordability.
- 27 The focus of this proposal is short term because it is assumed other government initiatives and Auckland’s Unitary Plan will result in improvements to land supply and housing affordability over the medium to long term.
- 28 For the purpose of assessing options, consideration has also been given to the extent to which the option is consistent with government’s desire to collaborate with councils in addressing land supply and housing affordability issues.

Regulatory Impact Analysis

- 29 Four main options (and two variants of one option) were considered to achieve the objective.
- 30 Each option is predicated on the assumptions that: the proposed new Auckland Unitary Plan (which is expected to be finalised in three years) will provide a sufficient basis to address Auckland’s expected land demands and will reduce pressure on land supply and house prices in Auckland; and that other initiatives to reform the resource management system, to improve operation of the resource consent system, and better plan for and fund infrastructure will result in improvements for the rest of New Zealand over the medium to long term.

31 The options are:

Option 1: *Rely solely on the amendments to the Resource Management Act, as currently proposed by the Minister for the Environment, to provide for:*

- a. more direction to councils on matters of national importance (such as the effective functioning of the built environment, including the availability of land for urban expansion, use and development) that they must consider when creating plans. This will only impact on changes to current plans and the content of new plans over the medium to long term (next ten years). This is because only Auckland currently has a streamlined (3 year) process to make its new unitary plan. The planning process that other councils operate under take longer;
- b. an obligation on councils to plan positively for future needs such as land supply. However, this will only impact on the content of new plans over the medium to long term (Auckland after three years and other councils later);
- c. clarifying and extending central government powers to direct plan changes. However, these powers would likely be rarely used and the process proposed for their use would take time. As proposed, it requires the Minister to identify the issue or outcome they want addressed, to invite the relevant authority to set out how it has addressed the matter in its planning, the Minister to either direct a plan change, including the ability to specify the matters the authority must consider when developing the plan change and/or the outcomes to be achieved through the plan change, or for the Minister to directly amend an existing operative plan if the Minister considers the local authority has not adequately addressed the issue or outcome;
- d. the more timely processing of major consents. A six month time limit is proposed for councils to process medium-sized consents, but this will only benefit developments that are generally consistent with the provision of existing plans;
- e. improved consenting processes, including the ability to take some consent applications directly to the EPA.

Option 2.a: *In addition to the Minister for the Environment's proposed amendments to the Resource Management Act (as proposed under Option 1) also provide for the new Auckland Unitary Plan to come into force once notified around September 2013.*

The new Auckland Unitary Plan is being developed to relax some of the past constraints on land use, by making more land available for residential development and permitting more intensive development. It will not become effective for at least three years. Over this period, land supply will continue to tighten and the costs of gaining consents for developments, such as Tamaki, that are not permitted under current plan rules will be high. The Auckland Mayor has requested Government to provide for all new Unitary Plan provisions to take legal effect as soon as the plan is notified.

Option 2 would effectively mean developers would be able to apply for resource consents and that the Auckland Council would process these under the rules of its new Unitary Plan from around September 2013, rather than from 2016. It is expected these rules will allow for increased densities and be more permissive of urban development within a new Rural Urban Boundary (RUB). The proposed RUB should allow for significantly more land to come into residential development than currently allowed under the MUL (enough to maintain sufficient capacity of unconstrained land within the RUB to accommodate an average of seven years of urban growth at any one time). The process for doing so, as proposed in Auckland Council's draft plan, would involve plan changes within areas generally identified in the Draft Auckland Unitary Plan after investigations have demonstrated the land is suitable for urban development.

The Auckland Council's request to allow the Plan to become operational from its date of notification has not been supported to date because:

- a. doing so would mean communities are subject to new rules and policies when they have not had the opportunity to submit on them through a formal RMA process. This would present significant natural justice issues and risks;
- b. doing so would result in considerable investor uncertainty with provisions which have carried full legal weight since notification, possibly changed at the end of the hearing as a result of new evidence being presented;
- c. significant unintended consequences might arise if new provisions are unclear or contain errors, resulting in additional restrictions being placed on development or inappropriate development occurring before evidence is able to be presented through the RMA hearing process;
- d. existing plans have been through the rigorous RMA processes and been developed after much consultation and public and legal scrutiny. We do not support the Auckland's proposed approach that would override these existing plans.

Options 2.b: *A variant of Option 2.a would be to allow just those parts of the new Unitary Plan relevant to residential development of come into force early*

An alternative to giving legal effect to the Auckland Unitary Plan on notification would be to give specific parts of the Plan legal effect i.e. those parts that will have the greatest effect on meeting housing objectives. These parts are likely to be:

- a. the new Rural Urban Boundary (RUB), which Auckland Council has proposed to replace the current Metropolitan Urban Limit (MUL);
- b. provisions of the new Plan that allow for increased residential densities; and
- c. provisions of the Plan that reduce requirements for car parking.

Both variants of Option 2 could be implemented via a Supplementary Order Paper attached to RMA Bill 1, or the Plan could be brought forward by using the Minister for the Environment's powers under section 25a of the RMA.

Option 2 would only be effective for Auckland.

Option 3 *In addition to Option 1, establish, through specific legislation, an Urban Development Agency within an existing government entity*

The UDA would be established as a national agency to take a permissive, fast and certain means to consenting residential developments and redevelopments in specified parts of New Zealand suffering from severe housing affordability problems and constrained land supply. These areas would include parts of Auckland but also potentially other parts of New Zealand.

The UDA would be:

- a. able to issue consents for large housing development and redevelopments (over 30 units) in areas of high housing need and restricted land supply across New Zealand;
- b. required to take a permissive approach to issuing consents;
- c. required to comply with Part 2 of the RMA;
- d. required to consider current plans, but able to grant consents for the residential developments on lands not currently zoned residential;
- e. required to work with the council, the developer and infrastructure providers to ensure that appropriate subdivision planning and infrastructure works are undertaken (by either the developer, the council or another infrastructure provider);
- f. able to review development fees set by councils;
- g. able to direct that the relevant local authority carry out required infrastructure work within a prescribed time period;
- h. empowered to issue consents;

- i. not required to notify consents that it issues;
- j. required to charge fees to consent applicants to cover its costs;
- k. able to delegate its functions and powers to councils; and
- l. subject to judicial review of its decisions (but not wider rights of review or appeal).

Implementation of this option would require legislation, regulations and establishment of an agency in an existing entity (the Ministry of Business, Innovation and Employment or the Environmental Protection Agency (EPA)). The cost of establishing the agency in the Ministry has been estimated at around \$4.2 million in its first year of operation and \$5 million in its second year. It would likely be established with a small core of employees and outsourcing arrangements with either specialist providers or delegating some or all of its functions to councils to perform. The UDA would seek to recover its costs from those that make consent applications to it.

Option 4: In addition to Option 1, provide through specific legislation for special housing areas (Ministers' preferred option).

Special housing areas will be able to be created where:

- 1. with the provision of appropriate infrastructure, the area could be used for qualifying developments
- 2. there is demand to create qualifying developments in the geographic area
- 3. there is demand for residential housing in the area.

Within special housing areas, the powers to issue resource consents will be made more permissive to recognise and provide for the need for increased housing supply in support of the government's housing affordability goals. These more permissive powers will be exercised by local councils that have reached an agreement with the Government or by MBIE where that agreement doesn't exist. The process for entering into a housing accord with Auckland Council has been initiated.

Councils with special housing areas that have reached an agreement will be able to take a permissive approach to issuing consents for large housing developments and redevelopments that might not otherwise proceed under the rules and conditions of existing plans. In doing so, councils will be required to:

- 1. ensure that sufficient and appropriate infrastructure is provided to support the development (this could be provided by the council, the developer or a third party provider); and
- 2. comply with Part 2 of the Resource Management Act 1993 (RMA); and
- 3. take into account the factors outlined in section 104 of the RMA; and
- 4. take into account the new Urban Design Protocol 2005 and subsequent amendments; and

Not required to:

5. notify consents.

Council decisions to issue consents will be subject to judicial review but will not be able to be appealed.

Implementation of this option will require legislation, regulations, the identification of special housing areas and the reaching of agreements with councils. The financial impact on MBIE is less certain than under option 3

Discussion

- 32 Of the four options considered, establishing special housing areas is the preferred option for achieving the policy objective.
- 33 This is because it, like the UDA option, provides for a fast and certain means of consenting new land for residential development and redevelopment over the next three years – including its ability to consent lands that might not otherwise be consented under existing planning rules and consent processes. This is because Councils with special housing areas will be legally empowered to take permissive approaches to consenting developments in special housing areas. It is also because consents for developments in special housing areas will carry less of review and appeal. From a developer's perspective this will mean:
 - a. more land being considered for development, limited only by the capability and practical abilities of private developers to take on developments and by council developers and 3rd parties to provide necessary infrastructure, than would be the case under existing plans and consenting processes;
 - b. less risk of developments being held up by the review or appeal of consents;
 - c. more options for providing infrastructure;
 - d. fewer legal and other risks and costs in gaining consents.
- 34 Option 4 is also more likely than option 3 to contribute to a collaborative approach between central and local government to addressing land supply and housing affordability issues.
- 35 This will add up to an increased likelihood that more land will be developed for housing over the next three years in specified areas of high need across New Zealand (such as in Auckland), than would otherwise be the case.
- 36 From a landowner's perspective, the establishment of special housing areas (combined with proposed changes to Auckland's planning rules and the resource management system) will mean less certainty that there will be capital gains from holding land and that any capital gains will exceed the costs of holding land rather than selling land for development. This uncertainty will change the balance of commercial incentives on land owners in favour of more short term sale of land and less long term holding of land. This will ease pressure on land supply over the short term that should slow the rate of land price appreciation and contribute to improved housing affordability.

- 37 By contrast, the mechanisms provided for in Option 1 are less tangible in terms of exactly what will change as a result of their application and medium to longer term in their likely impact. While Option 1 provides for increased direction to councils on matters they must consider in plans, this direction is yet to be developed. It will take time to develop and more time before it results in tangible changes to existing and new plans with no certainty of change. Similarly, the proposed extension to the Minister for the Environment's discretionary powers to direct plan changes is positive but will only have an effect (if exercised) over the medium to long term, as the proposal requires the Minister to follow a process including the identification of issues or outcomes to be addressed, inviting the relevant authority to set out how it has addressed the matter in its planning, and allowing the Minister to then either direct a plan change or directly amend the plan if the Minister considers the local authority has not adequately addressed the issue or outcome. Because the power is discretionary, there is no certainty that it will be used. Indeed, existing powers to direct local authorities have rarely been used.
- 38 While a decision to allow the Auckland Unitary Plan (in its entirety) to come into force once notified will allow for the earlier consenting of more residential developments, developers will face the risk of plan provisions that had carried full legal weight since notification changing at the end of the hearing process as a result of new evidence being presented. Land to be consented will also be constrained by the specific detail of the proposed plan, and will be more restrictive than what I propose for special housing areas.
- 39 Compared to option 3 (establishment of a UDA), option 4 has the advantage that special housing areas will in the most part be identified in collaboration with local councils and that the proposed powers will be exercised locally. This will result in a more collaborative approach between government and local councils to addressing land supply and housing affordability issues than would occur under option 3.
- 40 The table below summarises the likely short term impacts that option 2, 3 and 4 would have for the development of different types of land (infill, existing vacant sites, brownfield redevelopment and various types of greenfields in Auckland). It concludes that all options would be effective for large scale brownfield redevelopment (such as Tamaki) and greenfields with or close to infrastructure, where it may be practical to extend the reach of existing infrastructure for a relatively small additional cost that could be provided and funded by either the council, the developer, a 3rd party or some combination of the three.

	Infill	Existing vacant sites	Redevelopments	Greenfields², zoned with infrastructure	Greenfields, zoned with no infrastructure	Greenfields, not zoned, close to infrastructure	Greenfields, not zoned, no infrastructure
Residential capacity?	22,500 sites can accommodate an additional 47,500 dwellings ³ .	11,675 vacant residential sites ⁴ .	108,000 on business land. 104,000 on other land ⁵ .	Current capacity for 14,500 dwellings ⁶ with an additional 9,800 available in 2013 / 14.	Greenfield land for an additional 44,000 dwellings (including the aforementioned 9,800) is in process of zoning and infrastructure servicing through to 2020.	No estimate.	No estimate.
Potential constraints?	Consent processing and appeals. Owners unwilling to sell or redevelop. Finance.	Land fragmentation. Owners unwilling to sell. Consent processing and appeals. Finance.	Current Plan (for housing on business land). Consent processing and appeals. Land fragmentation. Owners unwilling to sell or redevelop. Finance.	Consent and structure planning processes. Owners unwilling to sell or redevelop (developer strategy). Finance.	Infrastructure.	Current plan. Zoning process. Land availability and suitability.	Infrastructure. Current Plan. Zoning process. Land availability and suitability.

² Including Stonefields.

³ Auckland Council modeling based on operative plans.

⁴ MBIE report, slide 23.

⁵ Ibid, slide 32 (NB: uses current plan rules rather than draft Auckland Unitary Plan rules).

⁶ MBIE report, slide 21.

<p>Will options 2, 3 or 4 help in the short term</p>	<p>Option 2 will Options 3 and 4 are unlikely to because of the proposed 30 dwelling threshold.</p>	<p>Option 2 will. Options 3 and 4 may but their effectiveness will be limited by the proposed 30 dwelling threshold. All options, and particularly options 3 and 4 will result in increased certainty for developers and lower legal costs / risks because they do not require notification and appeal rights are limited</p>	<p>Yes, all options will help. Option 2 allows consenting under the rules of the new unitary plan. Options 3 and 4 are more permissive than option 2 and allow consenting in areas of need outside of plan restrictions (including for housing on business and commercial zoned land). All options, and particularly options 3 and 4 will result in increased certainty for developers and lower legal costs / risks because they do not require notification and appeal rights are limited</p>	<p>Yes, all options will help. All options, and particularly options 3 and 4 will result in increased certainty for developers and lower legal costs / risks because they do not require notification and appeal rights are limited</p>	<p>Maybe. Option 2 allows consenting under the rules of the new unitary plan. Options 3 and 4 are more permissive than option 2 and allow consenting in areas of need outside of plan restrictions (including for housing on business and commercial zoned land) Provision of infrastructure may be a constraint. Under all options there is the potential for alternative approaches (including council reprioritisation, developer provision, or 3rd party provision) to both providing and funding</p>	<p>Yes. Option 2 allows consenting under the rules of the new unitary plan. Options 3 and 4 are more permissive than option 2 and allow consenting in areas of need outside of plan restrictions (including for housing on business and commercial zoned land). Under all options there is the potential for alternative approaches (including council reprioritisation, developer provision, or 3rd party provision) to both providing and funding All options, and particularly</p>	<p>Maybe. Provision and cost of providing infrastructure maybe an absolute constraint over the short term.</p>
---	---	--	---	---	--	---	--

					<p>infrastructure.</p> <p>Option 3 allows for the reasonableness of council infrastructure charges to be reviewed, but option 4 may result in a more collaborative approach to infrastructure provision.</p> <p>All options, and particularly options 3 and 4 will result in increased certainty for developers and lower legal costs / risks because they do not require notification and appeal rights are limited</p>	<p>options 3 and 4 will result in increased certainty for developers and lower legal costs / risks because they do not require notification and appeal rights are limited</p>	
--	--	--	--	--	--	---	--

- 41 The table illustrates that the UDA and the special housing areas options have advantages over option 2 in that they provide for more permissive and more certain approaches to consenting.
- 42 The removal of appeal rights and having a non-notified process for UDA and special housing areas consent decisions will result in a time and cost saving for those consents that otherwise would have been appealed or notified. In 2010/11 in Auckland, there were 10 notified and 11 limited notified subdivision consents out of a total of 1,487 subdivision consents. In the 2010/11 survey of local authorities, 1% of resource consents were appealed.
- 43 For the purpose of this analysis it has been assumed that any differences in administrative costs between council and UDA consent processes would be inconsequential compared to the time and cost advantages of consents not being notified and rights appeal limited.
- 44 The existence of infrastructure, and the costs of providing new infrastructure will be a constraint to the volume of new green fields land that can be consented under any of the options. Where options 2, 3 and 4 will be most effective will be in their ability to consent lands close to existing infrastructure or where the marginal costs of extending existing infrastructure can be met directly by the developer (such as the marginal costs of upgrading an existing road or incrementally extending the reach of an existing sewer line or storm water drain.
- 45 In brownfield areas, the UDA and special housing areas options could result in land being consented beyond the constraints of current plans to consent developments at a higher density than currently envisaged. However, much brownfield development occurs within or close to the definition of “permitted activity” of a plan (i.e. low density, single unit dwellings) and does not need a consent. Unless the plan changes, this type of development is unlikely to change. Further, the threshold of 30 dwellings will limit scope to larger brownfields developments which are relatively rare.
- 46 Indirect costs and externalities arising from UDA decisions could be higher than those associated with the other three options. This is because UDA consent decisions could result in additional or earlier than planned infrastructure costs for councils. A decision, for instance, to bring forward the development of greenfields land to the south of Auckland on the outer edge of the proposed Rural Urban Boundary faster than envisioned in the proposed Unitary Plan would incur these costs. It might also have irreversible knock on effects for the sequencing of infrastructure provision and further development of land in this area to the detriment of other areas proposed for development. UDA decisions may also override values important to local communities, with limited opportunities for those communities to voice or have their concerns considered.
- 47 The table below summarises the relative benefits, costs and risks of the three options, in terms of their ability to make a difference over the short to medium term to the supply of land in areas experiencing severe housing affordability in the short to medium term (over the next three years); In doing so, it also compares the options in terms of:
 - a. the certainty they will provide for commercial decision makers and developers;

- b. the expected costs of consenting land under each option to developers;
- c. any unintended costs or externalities; and
- d. fostering collaboration between government and councils in addressing land supply and housing affordability issues.

	<i>Option 1: Rely solely on the amendments to the Resource Management Act, as currently proposed by the Minister for the Environment</i>	<i>Option 2a or 2b - allow the proposed Auckland Unitary Plan to become operational (either in its entirety or in part) from the date of its notification</i>	<i>Option 3 – establish a UDA</i>	<i>Option 4 – provide for special housing areas</i>
<i>Effectiveness in increasing land supply for residential development and redevelopment over the short term?</i>	<p>No. The option will primarily impact on the amendment and development of new plans, so has a medium to long term outlook.</p> <p>The proposed ability for the Minister to direct changes to existing or new plans involves a process that must be worked through (over time) before a plan change can be effected.</p>	<p>Yes, but consents will need to be notified. This means the consenting process will take longer than that associated with Option 3. There will also be the risk of appeal, which will result in more risk and uncertainty to developers and potentially greater legal and time costs.</p> <p>Infrastructure may be a constraint, unless the Minister has a power similar to that proposed for the UDA to direct a council to provide infrastructure.</p>	<p>Yes. The option is designed to provide a mechanism for bringing lands to development which would not otherwise be able to be brought to development without plan changes.</p> <p>By increasing the likelihood that consents will be granted with less risk of review or appeal, developments will be more likely to proceed. The balance of incentives on land owners will shift in favour of short term land sale because future capital gains from land holding will be less certain.</p>	As per option 3
<i>Certainty for commercial land development</i>	Yes. While better than Option 2, the plan will not	No. The consent will still need to be notified and might be	Yes. This option will result in the most certainty for land developers,	As per option 3

<p><i>decision makers in favour of development activity over the short term?</i></p>	<p>give as much certainty as Option 3. This is because the process for Ministerial direction involves a greater level of discretion and judgment than the process for gaining consent under Option 3.</p>	<p>appealed. There is also the risk that the notified plan may change.</p>	<p>because consents will not generally be notified and because there will be no rights of appeal (though there will be rights of judicial review which could create uncertainty). The risks of judicial review will be mitigated through the approach taken to the drafting of enabling legislation.</p>	
<p><i>Expected costs of the option – to government, local government and developers?</i></p>	<p>Implementation and process costs to government in providing guidance to council's and exercising Ministerial powers.</p> <p>Developers wanting to bring land into development that is not permitted under current rules will face high legal, holding and other costs in seeking consents and or convincing the Minister to exercise her discretion to direct plan changes to enable development.</p>	<p>Low in terms of implementation costs to the council.</p> <p>No costs to government.</p> <p>Medium in terms of costs to the developer. Requirements to notify consents, rights of appeal and the risk the final plan may change, all result in uncertainty and time lags that will flow into associated legal and financing costs that will be greater than under Option 3.</p>	<p>Costs to developers of this option are lowest, while the costs to government are highest.</p> <p>They will pay (on a cost recovery basis) the costs of the UDA processing their consent application. It is expected the UDA's fixed costs will be relatively small, employing a small core team of staff. Most of the UDA's cost will be variable as it will most likely outsource most of the work involved in assessing and granting consent applications to a panel of providers.</p> <p>Costs to the government of this option include the costs of implementing Option 1 and are greater than the</p>	<p>This option results in lower costs for all parties.</p> <p>Developer costs will be similar to option 3.</p> <p>Council costs will be similar to option 2.</p> <p>Government costs will be those associated with developing legislation and regulations to provide councils with additional powers for special housing areas, reaching agreements with councils, and execution of resource consenting functions by MBIE in areas where there is no housing agreement with the local council.</p>

			<p>costs that would be associated with Option 2. MBIE has estimated that the costs to government of establishing the UDA in MBIE would be around \$4.2 million in year one and \$5 million in year two. Initial indications are that the costs of establishing the UDA in the Environment Protection Agency would be slightly lower.</p> <p>The legal, holding and other costs faced by developers will be lower than they would be under Options 1 or 2, because consents will generally not be notified and rights to review and appeal consent decisions will be limited to judicial review.</p>	
<p><i>Will the option result in unintended consequences and knock on costs for communities and councils?</i></p>	<p>Possibly, because of the Minister's power to direct changes to plan that may have not been anticipated or intended by the council and local communities</p>	<p>Possibly. Because the option will allow developments to be consented under the notified plan, whose conditions may vary from the final plan, it is possible that consented developments may have community or infrastructure costs and implications that would not</p>	<p>Unintended consequences are more likely under option 3.</p> <p>Because the UDA will not be required to notify consents and because rights of review and appeal will be limited to judicial review, values important to local communities may not receive the same level of consideration by the UDA as they</p>	<p>Similar to option 2.</p>

		otherwise occur	might otherwise. Because the UDA is giving particular consideration to housing affordability objectives, the balances of its judgment may be to the cost of councils in bringing forward infrastructure or other costs that would otherwise not occur so early.	
<i>Will the option contribute to a more collaborative approach between government and councils in addressing land supply and housing affordability issues over the short term?</i>	No, because the option has a medium / long term focus	Yes, but only with Auckland	No	Yes

Consultation

- 48 The UDA and special housing areas proposals have been developed within the constraints of the Budget process and with very limited consultation. Stakeholders outside of government have and are being consulted on options for resource management reform, including a competition consenting agency, but have not specifically been consulted on the proposed UDA. The detail of the special housing areas option has been discussed with Auckland Council, who have indicated support for it, but not with other councils.
- 49 The information on land supply, and issues associated with planning constraints were widely discussed and consulted as part of the work of the Productivity Commission. Further analysis of land supply was conducted by officials as part of the housing affordability programme and was discussed in detail with Auckland Council prior to its finalisation.

Conclusions and Recommendations

- 50 The overall conclusion is that the special housing areas option (Option 4) best meets the policy objective, and of the four options assessed is the option most likely to result in an increase in land supply in areas characterised by severe land supply and housing stress, and a more collaborative approach between government and councils to addressing land supply and housing affordability issues over the short term .

Implementation

- 51 The special housing areas option (Option 4) requires the passing of enabling legislation and regulations to enable the establishment of special housing areas and to provide councils with powers to take a permissive approach to consenting development in special housing areas. Implementation of the option will also require negotiation between government and councils to identify special housing areas and reach agreements as a basis for government delegation special consenting powers to councils. MBIE will require funding to carry out these functions and the exercise of resource consenting powers.

Monitoring, Evaluation and Review

- 52 The proposal is to provide for special housing areas is short term, and would continue in force until the identified housing supply and affordability issues have been adequately addressed or other mechanisms are in place to address them. In the case of Auckland, this may be until the Auckland Unitary Plan becomes operational.
- 53 It is proposed that the implementation of special housing areas be evaluated and reviewed within three years of their provision. The review would consider whether the option had been successful in increasing land supply in areas of severe housing affordability and constrained land supply. The evaluation would also consider what affect other mechanisms such as the Auckland Unitary Plan has had on land supply plus any changes made nationally to the Resource Management system and how infrastructure is provided and funded.