



**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
HIKINA WHAKATUTUKI

# Regulatory impact statement

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**Urban development authorities**

## Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Business, Innovation and Employment and explains the analysis supporting the proposals in the Discussion Document: *Urban development authorities*.

This RIS 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 nationally or locally significant urban development projects.

This is a draft 'consultation RIS', that will be attached to the discussion document. There will be a final RIS at final decision stage.

### *Parameters for development of options*

Although the Government is committed to enabling productive, well-performing urban areas through a comprehensive reform package currently underway, the options considered here are focused on a series of targeted interventions at the local level to support specific, nationally or locally significant urban development projects that are complex and/or strategically important.

The options have been considered from the perspective of enacting legislation that is capable of enabling 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 options analysed in this RIS are limited as alternative options for directly improving urban development outcomes have been previously considered and discarded following public consultation undertaken by government agencies in 2008 and 2010.

### *Structure of this RIS*

- The RIS reports a two-step analysis:
  - Function: The objectives for urban development, and gaps in the current regime, consideration of the means to plug those gaps – in particular the potential for the creation of new powers related to urban development (and alternatives considered) – together with the impacts across different stakeholders;
  - Form: Whether proposed changes require legislative change or a lighter touch regulatory instrument; and if legislative change is proposed, what form.

### *Limitations of consultation*

The discussion document will go out for public consultation within the next few months. Therefore, this RIS is a draft RIS (a 'consultation' RIS), written to explain to Cabinet how the proposals in the discussion document have been arrived at.

This RIS outlines preliminary conclusions based on previous consultation exercises:

- Public consultation undertaken by the Productivity Commission in 2015 as presented in its report entitled *Using Land for Housing*;
- Public consultation undertaken by DIA in 2008 via the release of the discussion document: *Building Sustainable Urban Communities*.

#### *Uncertainties and assumptions within the analysis*

Since existing powers and processes can overcome at least some of the issues faced by urban development, 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 ensure that an appropriate legislative framework is in place to allow for a range of powers and functions to be attributed to the appropriate development entities according to project specific needs.

While efforts have been made to supply cost benefit analysis where possible, due to the extensive range of the powers proposed, it is difficult to accurately quantify the financial impact of the options at this stage.

The consultation strategy is intended to test whether the proposals analysed in this RIS merit revision. If further policy decisions are required following the consultation programme, additional regulatory impact assessment will be undertaken.

#### *Further work*

Policy development work is ongoing. A final RIS, including feedback from the forthcoming consultation round, will be prepared and submitted to Cabinet alongside final policy recommendations.

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# 1 Status quo and problem definition

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## Context

*Why this policy reform is being considered*

1. New Zealand is a highly urbanised nation, with 86% of New Zealanders living in urban areas. Effectively managing urban form to support the delivery of economic, social and environmental outcomes has become critically important.
2. The design of our cities, the way they are developed, and the location and type of housing provided in those cities significantly influences the New Zealand economy and the sustainability of our urban communities.
3. There is a strong body of supporting evidence to show that cities play an important role in economic growth<sup>1</sup>. To achieve a high performing economy we need to increase labour productivity, and cities play a critical role in supporting this.
4. It follows that the performance of our larger urban areas, especially Auckland, has significant implications for the performance and success of New Zealand's economy as a whole.
5. There is also an economic cost to 'doing nothing'. The literature is clear that the external costs generated by the status quo, dispersed development, are significant<sup>2</sup>. That is why the New Zealand Energy Strategy, Energy Efficiency and Conservation Strategy, and the Government Policy Statement on Land Transport all acknowledge that managing patterns of urban development and growth is important for realising the outcomes they seek.
6. In 2012 the Productivity Commission identified a number of areas for change relevant to housing affordability, including a particular focus on urban planning, building costs, building regulations, and rental market outcomes.
7. The main focus of Government activity has been to increase and accelerate housing supply by making more land available for development and reducing regulatory costs and delays.

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<sup>1</sup> Lewis, G. & S. Stillman (2005) *Regional Economic Performance: How Does Auckland Compare?* New Zealand Treasury Working Paper 05/08.

<sup>2</sup> Ministry for the Environment (2005) *The Value of Urban Design*.

## Status quo and problem definition

8. The Productivity Commission's 2015 report, *Using land for housing*, aligns with a considerable body of research<sup>3</sup> in concluding that insufficient urban development is failing to deliver desirable outcomes for New Zealand for a number of reasons.
9. Good urban development can make our cities more sustainable, and can make housing more affordable. More intensive urban developments have proportionately lower land costs and lower costs for increasing infrastructure capacity.
10. Traditional urban development patterns in New Zealand are generally not efficient or effective and current attempts to develop or redevelop New Zealand urban areas in a sustainable manner are being frustrated by a number of barriers and implementation difficulties.

### *Urban development plays an important role in the economy*

11. While productivity in New Zealand has been rising, the gap between us and other OECD countries remains significant. A recent OECD study found that Auckland's labour productivity was around 20% below the OECD average, despite a higher labour force participation rate than other metro-regions in the OECD.
12. Not all of the challenges faced by our urban centres relate to growth. Some of our urban areas are in decline and may need to redevelop land in order to create opportunities for economic renewal. Enabling innovation and transformation in these areas can be difficult under the current legislative regime.

### *Urban development plays an important role in the provision of housing*

13. The Productivity Commission's 2015 report, *Using land for housing*, identified that 'constraints on the supply of land, and the slow pace at which land for housing is zoned and released with appropriate infrastructure in the face of rapid population growth, has contributed to escalating housing prices and declining affordability, in certain areas'.
14. Demand for housing is rising, prices are increasing, and the market is not responding by providing sufficient supply. Auckland needs more than 13,000 dwellings to be constructed per year to meet estimated demand, yet in the last 12 months only about 10,000 were consented.
15. As a result house prices in New Zealand are extremely high relative to income compared with other OECD countries. Demographia<sup>4</sup> considers Auckland the fourth least affordable city to live in after Hong Kong, Sydney and Vancouver. According to current data available from the IMF<sup>5</sup> the house price to income ratio in New Zealand has risen faster than all other OECD countries since 2010.
16. The market is not currently delivering development of the required density or quality in strategic locations, nor is it providing affordable housing in the required quantities and locations. Requirements to create a return on capital and to manage risk profiles focuses private developers on "quick win" or high profit projects, rather than creating sustainable communities or providing affordable housing.
17. New affordable housing is necessary to achieve positive social outcomes and public benefits in lower socio-economic areas. However, the reduced market appeal of these areas results in

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<sup>3</sup> *Building Sustainable Urban Communities: A discussion document exploring place-based approaches to sustainable urban development in New Zealand, 2008*, New Zealand Government. Productivity Commission (2016) *Draft Report on Better Urban Planning*

<sup>4</sup> <http://www.demographia.com/dhi.pdf>

<sup>5</sup> [http://www.imf.org/external/research/housing/images/pricetoincome\\_lq.jpg](http://www.imf.org/external/research/housing/images/pricetoincome_lq.jpg)

relatively low house and land prices and there is little scope for market players to profit from improvements and reinvest in further development.

18. When trying to fill the resulting gap in housing provision, capacity issues such as funding difficulties in initiating and implementing urban development projects prove a major barrier to the public provision of affordable housing. Funding the initial capital required to start purchasing and developing land is difficult at both the central and local government level.
19. Local government is also subject to political pressures that limit capacity to effectively support urban development projects that will restructure an existing urban area. Currently the system of local government democracy is biased in favour of the interests of parties owning property in an area and is unable to equally represent the interests of people who require new housing to be constructed in that area.

*Urban development plays an important role in supporting the delivery of Regional growth strategies*

20. The Western Bay of Plenty District Council captured an aspect of the issue in their submission to the 2015 Productivity Commission report. In 2002 the council zoned Omokoroa as an urban growth area; subsequently a lack of timely transport infrastructure provision has prevented the area from being developed for more than 13 years. The delay has caused unused capacity in utility network infrastructure and significant holding costs for the local authority as it is unable to realise a return on its initial investment in the development.
21. Co-ordination of urban development to support the delivery of regional growth targets is being partly addressed by regional development strategies, such as the Greater Christchurch Urban Development Strategy, Auckland Regional Growth Strategy and the Auckland Unitary Plan. However, a consistent and reliable approach to ensuring national planning and implementation aligns with regional and local processes has not yet been developed.

*Achieving necessary urban development requires effective institutional design*

22. A number of the constraints currently limiting the success of nationally significant large-scale urban development projects in New Zealand relate to institutional design. A significant body of research indicates that New Zealand requires significant reform of current institutional arrangements to enable public sector agencies to sustainably support urban transformation into the future.
23. 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. Designing and implementing these developments can be complicated and difficult because of:
  - difficulties assembling land where there is multiple fragmented ownership;
  - lack of certainty and return on capital for private developers, especially where wider public objectives are desired;
  - community resistance to higher densities; and
  - limited tools and powers to do large scale urban development.
24. No single Crown agency has an active mandate to carry out urban development or to coordinate Crown inputs to urban development projects (despite significant investment in urban infrastructure) in order to represent the national interest. This leads to:
  - the lack of an integrated approach to making decisions on urban development projects of national importance and the strategic management of Crown land; and
  - a lack of alignment regarding public sector investments at all levels to ensure that investment is directed towards achieving urban transformation, nationally significant and sustainable outcomes

25. Misalignment of timing, scale and prioritisation of a range of infrastructure investment, land use and operational location decisions by service providers can undermine local government plans for urban redevelopment.
26. Local government responsibilities for providing local level infrastructure and utility services overlap with central government responsibilities for the provision of national transport networks, and health and education services.
27. Meanwhile there is no integrated programme between central and local government to identify ways to better utilise under-performing public assets or to identify areas where urban development could achieve service delivery gains by reducing social deprivation or improving mobility.
28. Lack of statutory authority for the Crown to participate directly in urban transformation activities at regional or local level means that the existing tool kit for managing urban change in NZ is inadequate.
29. Existing mechanisms, including the opportunity to establish Council Controlled Organisations and Council Controlled Trading Organisations, will not always be effective because of gaps in compulsory purchase and land value capture powers, the constraints associated with standard RMA assessment and review processes.
30. These deficiencies in the existing tool kit are particularly problematic with respect to projects of national significance, for example, addressing urban efficiency in Auckland.

*Achieving necessary urban development requires effective regulation*

31. According to the Productivity Commission, regulatory overreach in urban areas is precluding development by imposing overly restrictive rules. The length and nature of planning and development control processes incurs costs due to planning uncertainties and process delays are a factor in the economics of development projects.
32. Legislation is currently aimed at reducing risks of adverse development and on subjective perceptions of impact, rather than enabling a balanced evaluation of social costs and benefits. Decisions tend to err on side of being precautionary, restricting development, rather than taking an objective evidenced-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.
33. Issues with capacity and capability in all levels of government make it difficult to interpret regulation usefully to support the delivery of strategic development that require focussed activity to implement. Attempting to do so stretches council and government resources in planning, consultation and related activities, such as land acquisition and infrastructure provision.
34. Ultimately the regulatory system currently lacks a method for balancing competing interests in a way that is transparent and perceived as legitimate

*Inefficient use of land is a barrier to accessing land for urban development*

35. 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). 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.
36. Development projects can experience difficulties assembling useful parcels of land from fragmented groups of properties. Large scale, high yield urban development projects are precluded by the difficulties of negotiating with multiple land-owners; the high cost of land purchase in a speculative market; and the risk of owners either holding out for higher prices or frustrating a strategic vision by proceeding with smaller scale development of their own property.



## 2 Objectives

37. Ultimately the objective of urban development reform is to better coordinate the use of land, infrastructure and public assets to maximise public benefit from our urban centres, by enabling government to take a project based approach to supporting the delivery of strategically important urban development projects, by, among other things:
- bringing land and buildings into effective use, including through the subdivision or consolidation of land;
  - encouraging the development of industry and commerce, whether new or existing;
  - creating attractive and sustainable urban environments;
  - ensuring that housing and social facilities are available to encourage people to live and work in the same area; and
  - providing sufficient utility infrastructure, roads and public transport to support optimal urban use.
38. Setting up urban development authorities enables the Government to establish a common vision or goal for a project that is accepted and well-understood by major stakeholders. While developing such a common vision and plan often takes a long time and involves conflict, ultimately this collaborative governance approach yields better results.
39. Any new measures supporting the delivery of urban development projects must be:
- Practicable - the measures must be capable of being implemented
  - Effective - the measures must contribute to the desired outcome
  - Efficient - costs/risks justified by potential benefits
40. The outcomes sought and the levers that influence these in relation to the problem definition are captured in the diagram below:

## Problems

Slow and prescriptive, risk adverse planning process for urban environments (unresponsive to household demand and price signals)

Regulatory overreach in urban areas

Difficulties assembling useful parcels of land from fragmented lots with properties held many different parties

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

Strong local government focus on local interests and existing homeowners and a weaker focus in the national interest, and future residents

Public resistance to urban intensification

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

Capacity and capability issues in all levels of government and the development industry

Limited coordination of national, regional and local planning and implementation for large-scale urban development

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

## Levers

Effective coordination enabling timely provision of infrastructure and capital funding to support developments

Better integration between land use and transport systems

Increased planning certainty and incentives for developers to participate in large-scale urban development

Maximise efficient use of urban land by enabling developers to assemble urban land at sufficient scale to achieve optimal development outcomes.

Resource management decision-making that recognises the value of development within certain defined development areas

Special purpose planning and consenting process that enables access to reduced timeframes, costs and complexity for development projects

Central government mechanism for effectively representing the national interest in urban centres

## Objectives

A high performing economy supported by higher rates of productivity and growth in urban centres

Increased supply of housing where it is most needed (including affordable housing)

Urban centres adapt to recognise changing needs of the population

Efficient development of growth centres/corridors identified in regional growth strategies

Urban Development Authorities effectively co-ordinate government investment in urban development

Increased private sector investment in urban development projects enabling high quality development of urban spaces

# 3 Options and impact analysis

## Options and impact analysis of the proposed high level options

- 41. This RIS examines options to support urban development projects at the neighbourhood level, to effectively coordinate the actions required, and to assemble urban land at sufficient scale to achieve optimal development outcomes.
- 42. There are other options for achieving better outcomes for urban development projects including market based interventions and a fundamental rethink of RMA planning principles and both MfE and the Treasury are considering options for pursuing better outcomes in these areas.
- 43. The options analysed in this RIS are limited as alternative options for several reasons. Firstly, to present more high level options would simply duplicate the public consultation that the Government previously undertook in 2008<sup>6</sup> and risk not generating the feedback we really need to test the proposals.
- 44. In addition, in September last year, following extensive public consultation the Productivity Commission delivered its report on Using Land for Housing.
- 45. To better enable urban development, the Commission recommended that the Government enable particular development projects to operate with different powers and land use rules to accelerate the development of significant projects in ways that could not be carried out by the private sector alone. The options considered in this RIS reflect those recommendations.
- 46. Finally, as this is only a consultation RIS, potential options will be re-analysed more fully following public input on the proposal and a revised RIS will be provided at a later stage once a draft Bill is lodged.
- 47. The options analysis has been presented in two parts. We assess the case for including a range of powers in the preferred legislative vehicle. As form should follow function, we then assess the options for the type of legislative vehicle most likely to ensure change.

## Assessing the case for including a range of powers in the preferred legislative vehicle

48. The table below compares a range of proposed development powers against the objectives of this policy intervention:

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

<sup>6</sup> DIA (2008) Discussion document: *Building Sustainable Urban Communities*.

Assessment of proposed powers against objectives	Effective co-ordination of infrastructure investments and capital funding in urban centres	Better integration between land use and transport systems	Increased planning certainty and incentives for developers	Maximise efficient use of urban land	Effective resource management decision making that enables development	Reduced planning timeframes, costs and complexity for development projects	government is able to balance interests including consideration of the national interest
<p><b>1. Operational and administrative powers</b> - Include the power for government to:</p> <ul style="list-style-type: none"> <li>establish a development project;</li> <li>set its strategic objectives, including conditions for the delivery of public good outcomes (such as a certain proportion of social housing);</li> <li>select which of the development powers enacted in the legislation that project can access, including any conditions for their use; and</li> <li>determine who can exercise those powers and who will be accountable for delivering the project's strategic objectives;</li> <li>change the purpose for any publicly owned land within the development project area that was previously acquired for a public work but that is no longer needed for its existing uses</li> <li>vest all suitable Crown land within a development project area in the public entity responsible for leading the development (which may or may not be the relevant urban development authority)</li> </ul>	✓✓	N/A	✓	✓✓	✓	N/A	✓✓
<p><b>2. Planning and consenting powers</b> - Include powers enabling the urban development authority to take on planning and consenting responsibilities for the development area:</p> <ul style="list-style-type: none"> <li>enable the development plan to override one or more of the existing and proposed: district plan, regional plan and the applicable regional policy statement that would otherwise apply to the development project, at the Government's discretion;</li> <li>enable the Government to choose the extent to which one or more of the district plan, regional plan and regional policy statement can be overridden in each case;</li> <li>enable an urban development authority to be granted the planning and consenting powers of a regional council and territorial authority;</li> <li>enable the Government to impose conditions on the use of any planning powers that are granted (such as a condition to comply with a rule concerning discharges in a regional air plan, notwithstanding that the Government is granting a power to override regional plans more generally); and</li> <li>enable the urban development authority to take on the compliance and enforcement responsibilities and powers of a territorial authority and regional council, for breaches of the development plan and associated development consents (except where the authority is the developer and a development consent has been required, in which case compliance and enforcement will rest with the relevant local authority);</li> <li>enable the urban development authority to recommend the removal of a designation within its area as part of its recommended development plan</li> </ul>	N/A	✓x	✓✓	✓✓	✓✓	✓✓	✓
<p><b>3. Compulsory land acquisition power</b> - Include powers enabling the urban development authority to access powers of compulsory land acquisition for purposes that are no more and no less than the purposes for which both central and local government can currently exercise compulsory land acquisition</p>	✓✓	✓	✓	✓✓	N/A	✓✓	N/A
<p><b>4. Infrastructure powers</b> - Include powers enabling the urban development authority to take on infrastructure provision responsibilities for the development area:</p> <ul style="list-style-type: none"> <li>declare, stop, move, build and/or alter: local and private roads; connections to state highways; and any related ancillary or underlying infrastructure such as lighting, signage, cycle-ways, and footpaths;</li> <li>stop, move, build and/or alter: water supply, wastewater, storm water, fire hydrants, and land drainage infrastructure systems, including related trunk infrastructure and plant;</li> <li>stop, move, build, create, extend and/or alter: any land and/or public transport facilities and services, together with network infrastructure associated with transport, including services such as timetabled bus or rail routes and any ancillary infrastructure such as bus shelters, interchanges, park-and-ride facilities and railway stations;</li> <li>notify, contract with and/or require network utility operators to stop, build, move and/or alter electricity, gas, telecommunications or other privately owned utility services and to empower the urban development authority to undertake this work if the network utility operator refuses or fails to do the work in a reasonable time;</li> <li>carry out any preliminary earthworks, construction, demolition, removal, placement or alteration works to enable infrastructure systems and services to be stopped, moved, built, declared and/or altered;</li> <li>enter public and privately-owned land, subject to reasonable notice conditions, to undertake preliminary assessments of a development project area and to identify, define and protect infrastructure corridors and systems that will connect to a new development;</li> <li>require the local territorial authority to alter or upgrade any remote trunk infrastructure systems that are necessary to support the development project, if that work is not being undertaken by the urban development authority;</li> <li>require that local territorial authority long-term plans, regional land transport and public transport plans and other local government statutory planning documents must not be inconsistent with the strategic objectives of development projects within the areas covered by those plans;</li> <li>suspend part of, or recommend changes to, regional land transport or public transport plans, as they apply to a development project, where a project or service set out in the plan may compromise the proposed development or would no longer apply because of the development;</li> <li>suspend or require territorial authorities to temporarily or permanently cancel, create or amend local by-laws, for roads, reserves and other matters as they apply to the development project; and</li> <li>vest any new infrastructure for a development project in the host territorial authority or relevant public agency or network operator at no cost to the receiving organisation, with the timing of the transfer to be discretionary depending on which entity owns the infrastructure;</li> </ul>	✓✓	✓✓	✓	✓	N/A	✓	N/A
<p><b>5. Funding and financing powers</b> : include powers enabling the urban development authority to take on funding responsibilities for the development project including:</p> <ul style="list-style-type: none"> <li>buy, sell and lease land and buildings in the development project area and receive and issue grants from the Crown and others;</li> <li>borrow from private lenders or banks, issue bonds or shares, create joint venture or co-investment arrangements and enter into funding contracts;</li> <li>levy targeted infrastructure charges on property owners within the project area (only) that apply annually and are calculated to provide sufficient revenue to pay for infrastructure and amenities that are contained within the project area over the life of the assets;</li> <li>direct the income from any targeted infrastructure charge to a privately-owned vehicle that has the power to raise the necessary debt to finance and own the infrastructure over the lifetime of the asset, backed by the income stream from the infrastructure charge; and</li> <li>determine and levy project specific development contributions on developers building within the project area and collect those contributions for the development project;</li> </ul>	✓✓	N/A	✓✓	✓	N/A	✓	✓

## **Discussion of powers to include in the preferred legislative vehicle**

### **Power 1: Operational and administrative powers**

49. This section assesses the case for enabling the government to establish urban development projects and, where required, establish new UDAs to support those projects.
50. Under the proposal, permanent legislation would be enacted to meet the ongoing needs of urban growth throughout New Zealand. The legislation will include all the powers considered necessary to assist urban development projects to succeed in a wide variety of situations. As a result, a range of urban development projects will be potentially eligible for accessing the powers.

#### ***Pros***

51. The key benefits of establishing development projects in this way 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; and
  - better return on public sector infrastructure investment.
52. The range of potential development powers to be made available would be deliberately extensive. A reduced menu of powers would likely make the projects undertaken more focused on housing specifically, and thereby miss some of the greater benefits of coordinated urban development that ties in transport, business and employment and takes a holistic community approach to design.
53. Having sufficient powers to be able to support any type of development project enables the legislation to better support a range of outcomes that may be in the public interest. Many of these provisions would function to reduce development times by truncating existing processes.
54. It is likely that surrounding property owners will experience increased certainty regarding planned developments in their area as the planning consultation process proposed under the legislation will be clearer and more concise.

#### ***Cons***

55. A key concern with the proposals as drafted is that they are likely to be contentious and could potentially draw significant criticism. In addition, the broad range of development projects that could be undertaken and UDAs that could be established could create opportunities for the potential misuse of powers for private gain at the expense of public policy objectives. These two issues are inter-related. The broader the powers, the higher the concern is likely to be at the potential for their misuse.
56. As a result of the broad nature of this legislation and a lack of thresholds for projects to be considered eligible to access the powers enabled by it, there is a risk that the proposal potentially results in the Executive having unjustified control in relation to the establishment of development projects and the overriding of other legislative instruments. Furthermore, if the

separation of functions is not done effectively, there is a risk that decision making about the specific aspects of development projects becomes overly politicised.

57. The powers proposed are potentially far reaching, with limited criteria to provide certainty about where the powers might be applied. The risk is that if the 'right' criteria are not set then the legislation could fail to achieve its aims (either by being used for projects which do not deliver benefits or by being overly politicised at the establishment phase).
58. Furthermore, while the proposals could help to address the shortcomings of the local democratic processes highlighted by the Productivity Commission, there is a risk that decision making is no less expedient as a result and timeframes for development projects remain relatively unaffected.

### ***Alternatives***

59. Expanding the provisions of the Housing Accord and Special Housing Areas Act (HASHA) that provides for specific areas that are designated by the Minister to be subject to streamlined consenting and plan change timeframes was considered and dismissed. While we see the extension of HASHA as a way of delivering better outcomes than the status quo, we do not see that it can be scaled up sufficiently to address all the issues described above.
60. Alternatively, new legislation could be introduced that allows access to a constrained menu of powers only. The constrained powers could focus more on housing development specifically rather than urban renewal more generally.
61. While this limited set of powers is likely to be better than the status quo, we believe that the likely outcomes of development will be limited in their ability to take account of the broader factors that are important to a well-functioning community.
62. Equally, constrained legislation would limit central government's ability to work with local authorities to take advantage of future opportunities that require unforeseen changes to the urban environment.

### **Power 2: Planning and consenting powers**

63. This section assesses the case for a development focused planning, land-use and consenting regime that would form part of the suite of powers to be provided to UDAs through the urban development legislation.
64. Under the legislation, a UDA could be able to exercise the planning and consenting powers within the urban development project area. This differs from the status quo whereby these powers rest with local government.
65. 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 set up by Cabinet.
66. Under the legislation, the weighting given to development and environmental matters would change.
67. Under the proposals, any decision-maker making decisions on the development plan or on a resource or development consent must have regard to the following matters, giving weight to them in the order listed:
  - the strategic objectives of the development project;
  - the matters in Part 2 of the Resource Management Act 1991 ("RMA");

- for decisions on the development plan, other relevant matters listed in sections 66 and 74 of the RMA;
- for decisions on resource or development consents, to other relevant matters in sections 104-107 of the RMA.

### ***Pros***

68. This approach supports New Zealand's planning system to adapt to support urban development in a less risk adverse manner, to deal with the change and unpredictability inherent in growing cities.
69. Creation of UDAs that are also planning and consenting authorities provides greater certainty of a manageable process supporting approval of proposed development projects and an increased likelihood of a practical resource management decision-making process.
70. Giving UDAs planning powers within the development area enables an approach to planning that precludes regulatory overreach in urban areas as new rules that support development can be created.
71. Constraints are proposed to reduce adverse impacts from this proposed change to the status quo. These 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 panel for reviewing development plans.
72. National and local political interference and local landowner concerns with intensification could be minimised through decisions being made by an arms-length entity. A UDA could be more capable of delivering pro-active and positive urban development in the wider interests of the city and country, rather than being hindered by politically powerful neighbourhood interests.

### ***Cons***

73. The legislation, as currently proposed, will enable UDAs to supersede the local planning regime in order to achieve development that would otherwise be more difficult to realise and problematic in outcome. As such, it contains broad powers to override regional policy statements, regional plans and district plans and enables urban development authorities to take on the planning and consenting functions of both district and regional councils within development areas. There are risks associated with this:
74. A UDA may not be able to provide the in-house expertise needed to assess consent applications (in comparison to the economies of scale that municipal territorial authorities have). They may therefore need to rely heavily on consultants, or risk poor quality decisions being made. The magnitude of this risk may be dependent on the financial resources available to the entity.
75. Regional councils already have the institutional knowledge, expertise, and processes for managing aspects of the environment within their functions, and it may be difficult for a development entity to source these independently. Regional councils are also better positioned to consider impacts on a wider catchment or air-shed than an entity focused on a particular geographic area within a city, and provide a check and balance on development.
76. From a resourcing perspective, it may be difficult for urban development authorities to acquire robust expertise to process highly technical consents and make appropriate planning decisions in areas like water and air quality.

77. 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.
78. There is a further risk that integration issues could arise, given that the surrounding district level policy environment may be significantly different to that for 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 the potential for any further lasting changes which are required to improve the RM system.
79. 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.
80. Some integration with relevant planning instruments is enabled by the inclusion of some of the public policy objectives of the RMA (albeit with altered weightings attached) and by the partnership between central and local government mandated by the legislation.

### ***Alternatives***

81. It would also be possible to deliver more effective planning and consenting to support urban development by instigating change to the whole resource management regime with respect to how it would apply to urban development projects. This could happen through the use of stronger national policy direction applying to urban environments with decision-making responsibility remaining primarily with local government.
82. The streamlined planning process in the Resource Legislation Amendment Bill, supported by the Bill's amendments to consenting processes, including around affected parties and notification is likely to assist with barriers to urban development too.
83. These were discarded as viable options as there is insufficient certainty that a whole of system change would be able to prioritise the development of the built environment while maintaining its capacity to effectively protect the natural environment. Also an opportunity may be missed to send a clear signal to both communities and developers that change is required.
84. This option is likely to be both slow and expensive as developing the NPS and NES that are central to this option takes time, and further time is required to establish effective implementation to have a meaningful impact at a local level.

### **Power 3: Land assembly powers**

85. This section assesses the case for enabling urban development authorities to ask the Crown to exercise existing powers of compulsory acquisition.
86. Making use of the development powers enabled by the legislation could have a significant impact on affected property owners within a development project particularly through the mechanism of compulsory acquisition.
87. 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.<sup>7</sup>
88. 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. However, under the status

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<sup>7</sup> LAC Guidelines: 2014 edition 'Basic constitutional principles and values of New Zealand law'



quo there are likely to be multiple agencies acquiring land in a development. This is relatively inefficient when the land is being assembled for a unified project.

89. A range of development powers are proposed for urban development authorities to enable land assembly. Current powers for land assembly are contained in a number of statutes that allow the Crown, local authorities, and some private entities to acquire private land for:
- public works (roads, schools, prisons, power lines, railway infrastructure, irrigation, drains and airports)
  - state housing purposes
  - commercial and light industrial purposes that are ancillary to housing
  - urban renewal purposes.

### ***Pros***

90. Current land assembly powers and their definitions are spread through a number of Acts which means when, and how, they can be used are currently unclear. Bringing them into the suite of powers enabled by urban development legislation improves certainty for developers.
91. The proposal is to maintain PWA principles and transparency criteria, which benefits landowners and maintains the certainty of private property rights, and meets the established legal tests for exercising use of compulsory acquisition powers.
92. Applying the following criteria and safeguards on the use of compulsory acquisition powers will balance the need for flexibility of the compulsory acquisition powers to meet urban development outcomes, and maintain certainty of property rights:
- requiring consultation with communities and affected landowners on development proposals before powers such as compulsory acquisition can be used
  - the Government approving the urban development plan and what powers will be available to that project
  - the Crown (Minister or Local Government) retaining oversight of use of the land assembly powers
  - applying a time limit for an urban development authority to undertake compulsory acquisition, and allowing landowners to activate acquisition negotiations following finalisation of an urban development plan.
93. The legislation enables parties directly affected by a development proposal to be provided with adequate information, and sufficient opportunity to engage on the proposals. The appeals and disputes resolution process should ensure rigour in the decision making process and provide adequate protection for private property rights.
94. An additional check against risks relating to compulsory acquisition is that the final decision will continue to be made by the Minister for Land Information, and continue to be subject to the principles of the Public Works Act 1981, which requires that the objectives for which the land needs to be taken must be clear, alternative sites or methods of achieving those objectives must be considered and that it must be fair, sound and reasonably necessary to invoke the powers in order to achieve those objectives.

### ***Cons***

95. There may be public concern and negative public perceptions if Crown land held for one purpose is to be on-sold and used for another purpose and a perceived reduction or erosion of property rights.
96. The new legislation will not create any new powers of compulsory land acquisition, nor does it reduce the requirement for adequate compensation to be paid. The proposal is to enable

UDAs to ask the Crown for existing powers. The risk is more that this increases the frequency with which these powers are used, with the potential to reduce public confidence in freehold title, thereby discouraging landowners from investing in the development of their land.

97. Ensuring that we do not undermine the integrity of landowners' private property rights has been carefully considered in relation to the proposed policy. This issue is particularly pertinent because the partnership development model proposed enables private actors to make a financial gain from development projects supported by the legislation.

**Alternatives**

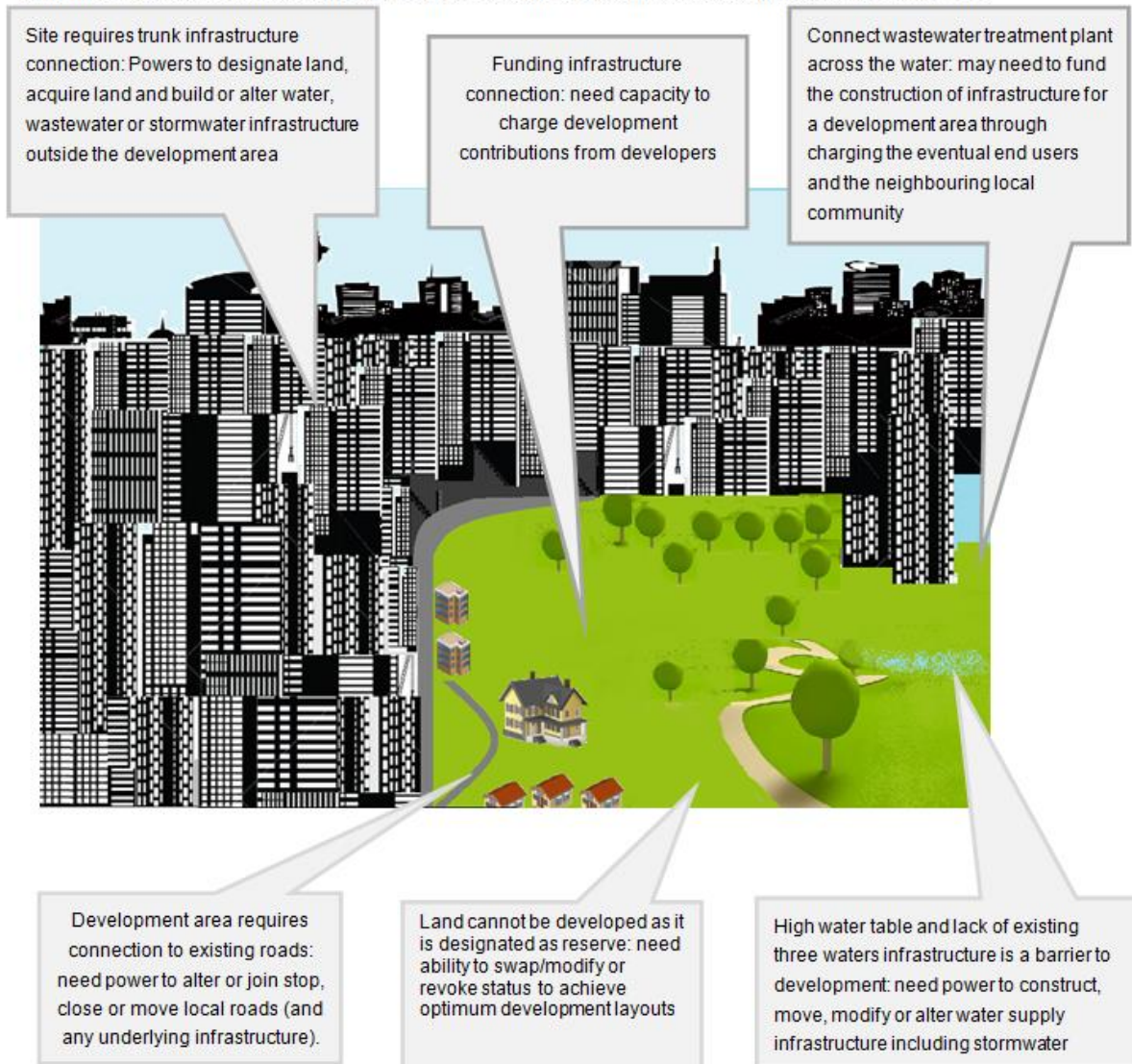
98. It would be possible to achieve land assembly for projects without extending compulsory acquisition powers to UDAs; however development projects in New Zealand have failed to utilise compulsory acquisition powers to date, partly because of the lack of clarity around when this power can be used.
99. Capacity and capability building that supports local authorities to use these powers with greater confidence may be a viable alternative to legislative reform.

**Power 4: Infrastructure powers**

100. This section assesses the case for urban development entities to benefit from access to a menu of powers to better integrate and co-ordinate infrastructure planning, works and/or construction activity inside a development project area, with services and systems that border the project area and with the trunk and network systems that are upstream and downstream of the development.

101. The key premise is that a development entity needs access to sufficient powers to provide it

**Simplified representation of some of the powers required to enable development of an urban site**



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.

### **Pros**

102. The key advantage of our recommended approach is that, for an urban development project, the infrastructure related powers currently held by central government, local government and the private sector are re-distributed to a single entity (a UDA). The UDA would therefore be empowered (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.
103. The complexity of layered governance arrangements for infrastructure provision is illustrated in the following table:

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

104. Facilitating the development of infrastructure for urban development areas by providing a menu of powers and abilities which can be tailored according to the circumstances of an urban development entity and its proposed development would override and potentially simplify the

existing complex and time consuming legislative processes involved with developing physical infrastructure. The powers would provide an urban development entity with options for providing infrastructure where the necessary infrastructure hasn't been included in local government plans or is needed sooner.

105. The new legislation requires the development entity 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 will be essential, especially as the development entity will be required to vest ownership of any new infrastructure in the territorial authority and other agencies when the project is complete.
106. More effective planning, funding and delivery of urban infrastructure, that would maximise the return from existing infrastructure investment, 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.
107. Enabling UDAs 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 could result in overall efficiency and effectiveness improvements for the infrastructure system as a whole, particularly if the innovations were built into multiple developments or became part of mainstream infrastructure development or upgrading programmes.

### ***Cons***

108. The key risk with this option is that the infrastructure provided by UDAs does not meet the wider network asset quality, standards, and durability requirements set by the local territorial authority/infrastructure provider or 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 due to stress.
109. This risk can be mitigated by requiring the UDA to meet minimum design and durability requirements defined in New Zealand Standards, other legislation and the objectives of the host territorial authority's infrastructure design codes of practice. 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 required for a project to integrate seamlessly with existing networks.
110. From a legislative perspective, giving UDAs access to infrastructure powers could potentially be more confusing to all parties as there would be a duplicate and separate process for infrastructure that applies to specific development projects only.

### ***Alternatives***

111. One alternative considered was to legislate to streamline the existing, separate development processes for each type of infrastructure (i.e. water, roads, utilities, local government, planning) necessary to enable large scale development projects to be undertaken more effectively and efficiently. This option would enable faster navigation of the regulatory system and address the potential issues around maintaining infrastructure system compatibility and standards.

112. However, this would not address the multiple co-ordination, approvals and consent processes required (across multiple statutes) to enable infrastructure to be built for a large scale development project. Uncertainty would remain for developers trying to navigate these separate processes.
113. The other alternative was to develop a separate piece of bespoke legislation that overrides existing planning and infrastructure requirements either in certain areas or for each, specific development project. While it addresses the co-ordination issues between different legislation, this approach was considered inefficient and time-consuming for both central and local government. It could also be potentially more legislatively complex than the preferred option.

## **Power 5 – Funding and financing powers**

114. This section assesses the case for enabling urban development authorities to access a wider range of financing and funding options, particularly for infrastructure, that would suit all potential development opportunities.
115. Providing a UDA with funding powers would enable it to obtain funding from multiple sources (appropriated, 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, trunk infrastructure. This could be done either through borrowing or on a “pay-as-you-go basis”, which uses funds from current government revenue (such as rates and other taxes, user charges, leasing land or buildings, and development contributions), capital grants from the Crown, asset sales or savings.
116. The legislation would also empower a development entity to charge landowners within a development project area an annual local infrastructure development charge (or targeted rate). The charge would pay for the actual cost of developing the new infrastructure systems that landowners within the development area would directly benefit from. For some developments, it may be appropriate to levy the annual infrastructure charge on those neighbouring properties outside the project area that are directly benefiting from the infrastructure improvements or public amenities that the project is providing (e.g. new access roads or parks). However, in these situations, only the territorial authority, rather than the urban development authority, would have the power to levy the infrastructure charge (or some portion of it) on residents who live outside the project area.
117. In both situations, a revenue sharing arrangement between the territorial authority and development entity is proposed 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 would revert to the territorial authority (or organisation to which an asset is to be transferred e.g. NZTA for roads) once a development entity had been wound up and ownership of the new infrastructure assets is vested in the territorial authority or permanent custodian.

### ***Pros***

118. These powers would enable a development entity 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. Potentially planned infrastructure projects could then be constructed earlier than planned. It could also potentially encourage innovative infrastructure funding solutions led by the development entity that, provided the regional and territorial authority performance requirements and standards are met, could reduce initial development and on-going maintenance costs.

119. Applying a localised infrastructure charge would address wider concerns about the equity of levying a general rate on all ratepayers to fund the infrastructure developed for one development project, particularly in a large city like Auckland. Broadening the levy catchment to include those outside of the development area boundaries addresses the potential equity issues at the boundaries of the development area where properties just outside would benefit from the area's infrastructure improvements. This approach is not unusual in New Zealand, many territorial authorities in New Zealand charge targeted rates to homeowners and businesses to pay for specific services provided to their communities<sup>8</sup>.

### **Cons**

120. The key risk for this model is ensuring that sound and prudent funding decisions are made so that local 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. Putting good governance in place would ensure that the development entity acts prudently in sourcing its financing and securing funding.
121. 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. This could delay the construction of the necessary infrastructure to support a development.
122. Feedback from one territorial authority raised a concern over the potential use of targeted rates to fund infrastructure development. The developer is the main beneficiary of a targeted rate because, if the rate is applied to households and other users to fund infrastructure, in lieu of development contributions (which are paid by the developer) the net effect is a reduction in costs for the developer. The territorial authority indicated that developers are unlikely to pass any cost savings on as they will always seek to maximise selling prices regardless of any changes in cost. For this reason, providing a UDA with the ability to impose both the target infrastructure charge and/or seek development contributions enables it to determine the fairest and most effective way of funding major infrastructure construction.

### **Alternatives**

123. Two additional options were considered for funding infrastructure for new development projects, tax increment funding and Municipal Utility Districts, but these were discounted. These options were also reviewed in the Productivity Commission's inquiry "Using land for housing"<sup>9</sup>.
124. Tax increment funding would require a fundamental change in approach to how rates are set (from expenditure-based to revenue-based), particularly with regards 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.
125. Municipal Utility Districts have the potential to increase competition into the infrastructure market and construct infrastructure on their own and recover costs from those that benefit over the long term. These districts could be implemented now under current legislative settings, but the Productivity Commission noted that there is not much interest from the development community in pursuing these as owning infrastructure in the long term was not

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<sup>8</sup> E.g. Wellington City Council - maintenance of a specified group of residential driveways in Tawa; Waikato Council - Piako and Waihou.

<sup>9</sup> New Zealand Productivity Commission. (2015) Using land for housing, <http://www.productivity.govt.nz/inquiry-content/2060?stage=4>River catchment and flood protection schemes

their core business. Additionally, the 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.

126. Value capture mechanisms, such as value uplift and betterment levies, have also been identified as potential alternative options to fund infrastructure development and upgrades resulting from urban growth.<sup>10</sup> Value capture mechanisms reserve, for the community, some of the uplift in land value that is created by public actions, such as land re-zoning for higher value activities (e.g. increasing density, making rural land urban) or the provision of new or improved infrastructure (extending roads or services to a new area). The value of the uplift is generally capitalised in the land price. A levy is charged to property owners based on the increase in land value accrued by the properties that benefit from any zoning or infrastructure improvements. Overseas, these tools have proved effective for specific, local projects that can be completed in the short term.
127. However, broadly applied value capture mechanisms have proved difficult to implement overseas as there are some equity issues around how to attribute the level of improvement (vs. local market conditions) and precisely defining the extent to which neighbouring properties (outside of the immediate defined development area) directly benefit. 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.
128. Lastly, the need to apply a targeted rate to capture the value uplift created by infrastructure development is less likely to be required if the UDA owns all the land to be developed. An entity that owns the undeveloped land should be able to capture some or all of the value uplift that results from any investment in infrastructure prior to on selling the land or houses to developers or homeowners.

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<sup>10</sup> New Zealand Productivity Commission. (2015) Using land for housing, <http://www.productivity.govt.nz/inquiry-content/2060?stage=4>, and (2016) Better Urban Planning Draft Report [www.productivity.govt.nz/inquiry-content/urban-planning](http://www.productivity.govt.nz/inquiry-content/urban-planning)

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

Key	✓	Party is likely to be positively impacted	x	Party may be adversely impacted	-	This effect is not relevant for this party
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## Options analysis assessing the form of legislative vehicle most likely to ensure change

129. We assess three options for change and two possible alternative approaches in this section:

- Option 1: Permanent legislation for enabling urban development projects
- Option 2: Bespoke legislation to support each development project
- Option 3: Legislative reform to other instruments e.g. RMA reform

130. Alternatives include not introducing legislation, and instead pursuing alternative strategies.

### ***Option 1: Permanent legislation for enabling urban development projects***

131. Option 1 involves enacting a comprehensive range of permanent development powers capable of supporting a range of urban development projects.

132. A range of development projects could be eligible for access to the new legislation, including housing, commercial and infrastructure projects.

133. The new legislation would usefully include a comprehensive range of powers to be available to support projects approved by Government and territorial authorities. These powers could support a number of functions relating to:

- land assembly
- planning and consenting
- infrastructure provision
- funding and financing
- managing reserves

134. Under the proposed legislation, the Government will be able to allocate powers to an existing public entity or establish a new statutory entity to lead particular development projects.

135. In effect, the legislation intends to enable urban development entities to access all of the functions necessary for the effective delivery of an urban development project in two ways, by:

- allowing for the creation of fit-for-purpose urban development entities that are able to access some or all of the powers listed above; and
- enabling existing development entities to access some or all of the powers available under the legislation.

136. The menu of powers would be deliberately extensive, as all the powers proposed are likely to be essential for overcoming barriers to development identified earlier.

137. The Government and territorial authority will be able to choose the particular development projects in which more enabling development powers apply. These powers will only be available within the boundaries of the development project and will not be able to apply to an entire town or city.

### *Pros*

138. Having sufficient powers to be able to support any type of development project enables the legislation to better support a range of outcomes that may be in the public interest. Many of these provisions would function to reduce development times by truncating existing processes.

139. The legislation could enable development projects to benefit from a coordinated approach to urban development that draws together transport, business and employment considerations and takes a holistic community approach to design of urban spaces.

140. Giving urban development authorities access to PWA acquisition powers clarifies and confirms the full purpose effect of the PWA and State Housing legislation. This will enable streamlined acquisition by agreement and compulsory acquisition to meet urban development objectives.
141. This option reduces complexity regarding legislative powers and approval processes available to support development and centralizes the systems around a small set of authoritative actors and venues.
142. Enabling UDAs to access all the legislative powers they need from one statute reduces the multiple, potentially conflicting compliance processes for different statutes making achieving regulatory compliance less complex and time consuming.
143. This enables development projects to benefit from a coordinated approach to urban development that ties in transport, business and employment and takes a holistic community approach to design.
144. In developing the development plan and taking any decision under it, the UDA would follow a set of decision-making criteria based on the sustainable management purpose of the RMA, but with priority weighting being given to the strategic objectives of the area. This would help address the biophysical and local effects based bias in decision-making that has developed through Court precedent and council implementation since the Resource Management Act 1991's inception.
145. The altered balance of decision-making considerations for planning and consenting decisions made within development areas has a number of advantages, benefits and opportunities. Most importantly, it 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.

#### *Cons*

146. There may be a risk that this legislation increases the frequency with which PWA powers are used, with the potential to reduce public confidence in the protection of private property rights.
147. Reduced territorial authority control over a range of matters including planning and consenting within the development area and infrastructure network and asset quality management may add complexity to local authority planning for future service provision and reduce their capability to confidently engage in long term planning.
148. This option would enable urban development authorities to override regional policy statements and regional plans and take on the planning and consenting functions of regional councils within development areas. There are some risks with this as regional councils provide an important check on proposed developments to provide positive environmental outcomes.
149. Changes to the planning and consenting regime for areas identified as urban development areas 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 a UDA takes over the planning and consenting role for an urban development area, any planning and consenting rights negotiated with council will cease to be relevant within the boundaries of the area.

#### *Alternatives*

150. An alternative option is to create permanent new legislation but restrict access to a constrained list of powers focusing on housing development rather than urban renewal. This could include compulsory acquisition powers while retaining status quo provisions relating to offer back obligations and land encumbrances.
151. On balance, enabling access to a shorter list of powers is better than the status quo, but development is likely to be slower than with a more fulsome range, and the likely outcomes of

development will be limited in their ability to take account of the broader factors that are important to a well-functioning community.

152. By reducing the focus to housing purposes, the legislation would be constrained in its ability to enable central government to work with local authorities to take advantage of a range of future opportunities that require unforeseen changes to the urban environment. The potential to renew urban areas to support economic growth by creating mixed use urban forms or industrial/business related facilities would be constrained.

### ***Option 2: Bespoke legislation to support each development project***

153. This option assesses the potential for developing individually tailored legislation for each development project, as with the recent enactment of the Riccarton Racecourse Act and the proposal for Point England reserve within the Tāmaki regeneration project.

#### *Pros*

154. Tailored legislation allows for the appropriate powers to be provided in each case and thereby reduce potential concerns with a larger toolbox of wider powers where it isn't clear where they might be used.

155. *Cons*

156. Creating tailored legislation has a significant resource cost across the public sector; and a large elapsed time to be able to effect development (up to two years from when the development is identified), while the relevant powers are identified and consulted on, Cabinet decisions reached, legislation drafted and navigated through Select Committee etc.

157. This approach would be extremely 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. The process of enacting legislation in this way is also not really visible or accessible for private sector developers who may wish to come forward with development projects but who are not able to pursue the opportunity afforded by the mere potential for such legislation.

### ***Option 3: Legislative reform to other instruments e.g. RMA reform***

158. A number of reform initiatives are already underway in New Zealand following previous reviews of urban development that identified<sup>11</sup> barriers such as slow and prescriptive planning processes and infrastructure provision that is unresponsive to growth demands.

159. There is scope to rely on currently or soon to be available tools and processes of the RMA, Resource Legislation Amendment Bill 2015 (RLAB) and the NPS on Urban development Capacity to deliver positive urban change.

160. There are also a range of powers within existing Acts that are seldom used due to local government capability and capacity issues that, if utilised more effectively, could aid urban development. These include:

- Land assembly under the Public Works Act for housing purposes;
- Infrastructure funding by local government using existing powers, such as targeted rates, road tolls, etc.; and
- Existing transport funding and planning processes that can be used to create and re-align roads.

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<sup>11</sup> New Zealand Productivity Commission (2015) *Using land for housing*

161. To address this gap, further work could also be done to increase resources within the existing planning and consenting departments of high growth Councils to aid faster planning and consenting processes, with nationally or locally significant development projects assigned a key account manager to aid their dealings with council.

*Pros*

162. RLAB'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 improvements to efficiency of processes, and enabling further streamlining of consenting processes.
163. Having fewer legislative pathways for achieving development may provide more certainty for the development community.
164. New Zealand's planning processes have been designed to enable communities to develop their own unique local place-based, community-focused solutions via the development of district plans. This option respects the integrity of that system and the input invested into the development of local level planning documents by local government, stakeholders and the community.

*Cons*

165. While these initiatives would all make a difference at the margin, they are unlikely to provide the speed of outcomes desired, especially with respect to housing supply projects.
166. It is difficult to predict with certainty that any of them will deliver focused improvements to urban development outcomes. Integration and co-ordination issues remain an issue post these reforms and they are one of the most significant levers for change to the urban development situation.
167. While decision making processes may benefit from a clearer recognition of the value of urban environments none of these reforms provide a mechanism for co-ordinating the urban related investments of the various agents to improve the viability of large scale urban development projects.

### **Alternatives to options 1-3**

#### **Reform of existing statutes (e.g. combine RMA and Reserves Act 1977)**

168. The Resource Legislation Amendment Bill (RLAB) that is currently before Select Committee would potentially save time by enabling joint notifications and joint hearings for exchanges of recreation reserves that are vested in a local authority, with publicly notified resource consents and/or plan changes that relate to the same development or activity.
169. As part of the RLAB consultation process, discussions with councils suggest that Auckland is the region most affected by these processes for exchanges of recreation reserves. According to the Auckland Council, recreation reserve exchanges can take three to six months, depending on the scale of the project. Auckland Council believes if the RMA consenting and the Reserves Act 1977 processes were combined, it could cut processing times down by half.

#### ***Do not introduce legislation, instead pursue alternative strategies such as CLM***

170. This option assess the potential to either do nothing or adopting non legislative approaches such as Competitive Land Markets strategy recently proposed by Treasury.
171. This strategy seeks to enable discontinuous urban expansion by encouraging councils to allow 'out of sequence' development (such as localised wastewater treatment facilities subject to the management of neighbouring effects and the protection of public open spaces, network utility corridors, and sensitive natural environments).

172. A competitive urban land market is one where price equals its marginal opportunity cost<sup>12</sup>, barriers to developing land are minimal (subject to the management of neighbouring effects and the protection of public open spaces, network utility corridors, and sensitive natural environments), and urban planning does not promote excessive heterogeneity in land markets.
173. The proposal is to achieve more competitive land markets by giving the market new standardised tools to manage their own affairs autonomously, including:
- integrated governance and management of infrastructure and community facilities (e.g. wastewater treatment and discharge, roads, parks, and ensure those networks are compatible in future with the 'host' city's networks)finance (e.g. infrastructure bonds secured against the new homes)
  - planning (e.g. covenants rather than zoning, and avoid the need for council resource consents as per network utility requiring authorities after designations are awarded).

#### *Pros*

174. Holding back from introducing new legislation saves significant process related costs both at the policy development and implementation stages.
175. A number of barriers to green field development exist, including funding constraints inhibiting the provision of sufficient infrastructure to support development. It is possible that greenfield developments in particular could be better supported via mechanisms like this.
176. If the strategy proved effective then urban land prices may reduce, and the supply of housing increase, making housing more affordable.

#### *Cons*

177. The strategy may not prove successful at reducing land prices due to a number of complex factors such as geographic constraints that may prevent sufficient volume of highly substitutable land to supply all of the demand that might exist for it at a price equal to marginal opportunity costs.
178. A range of factors such as agglomeration forces may preclude the market from engaging in the behaviours anticipated by this strategy. People have many reasons to want to locate in the city centre as the global phenomenon of rapidly increasing urbanisation attests. Discontinuous greenfield developments may only be of interest to a limited proportion of the market.
179. Another key challenge to this strategy is acceptance by local government as it fundamentally shifts the role of councils and enables greater market freedom and reduced planning responsibilities for council.

## 4 Consultation

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#### *Introduction*

180. As the proposed development powers are comprehensive and can potentially be applied to any urban area in New Zealand, this legislation may impact the lives of a large number of our people.

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<sup>12</sup>

Land markets can never be perfectly competitive, because land is to some degree heterogeneous. However, by minimising the degree of needless heterogeneity caused by urban planning, and by removing excessive capacity constraints, such markets can be workably competitive in that price-cost mark-ups are minimal and housing affordability achieved.

The proposal is therefore likely to attract a high degree of public interest and merits in-depth consultation.

181. A public consultation process is therefore scheduled to run for a period of three months. This should be sufficient to enable affected parties (including councils, iwi, other stakeholders and the general public) time to investigate the proposals and make considered submissions.
182. This engagement will give officials the opportunity to address or mitigate any concerns Māori may have to the proposed legislation and how it is intended to be implemented, reducing the risk that a Treaty or court claim will be lodged against the Crown regarding the consultation process.
183. Māori interests and the Crown's Treaty obligations are discussed in more detail from paragraph 84 in the Cabinet paper.

#### *Previous consultation*

184. 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, this round of consultation is more focused and incorporates the earlier feedback. Also, while the proposal is presented in a fairly completed form, there is scope to adapt the proposed legislation to reflect input from the submissions.
185. 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.
186. 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).
187. Regarding powers enabled by the 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.

## 5 Conclusions and recommendations

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188. Agencies contributing to this work programme consider that enabling access to a full range of powers to support urban development best fulfils the objectives described above.
189. This option is best enabled by implementing option 1: enacting new legislation that enables access to a wide range of development powers to support nationally or locally significant development projects.
190. It is too early in the policy development process to put forward a detailed set of recommendations about which powers should be included in the legislation.
191. Post consultation, further analysis will be done to assess this and also to recommend constraints to appropriately manage the impacts of the use of any powers enabled under the legislation (if enacted).

# 6 Implementation plan

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192. Implementation options are under consideration by officials and will be refined prior to final policy recommendations.
193. Implementation is being considered in two parts:
- i. the legislative framework enabling policy change
  - ii. the design of urban development entity structures and delivery models.

## Legislative framework enabling policy change

194. The aim is to identify the most appropriate legislative framework to achieve the purpose of the legislation in a New Zealand context.
195. As outlined in other sections of this RIS, the powers will include:
- plan making powers – powers to change land use regulations and development controls using streamlined processes
  - regulatory process – accelerating consenting powers and the ability for an urban development authority (UDA) to be the resource consent authority
  - land assembly – powers for a UDA to assemble land in development areas, including the ability to compulsorily acquire land
  - infrastructure – comprehensive streamlined powers for providing any necessary infrastructure, including via infrastructure corridors outside the designated area.
196. The process envisaged for delivering urban development legislation is staged:
- Stage 1: Establishment
  - Stage 2: Prepare Development Plan
  - Stage 3: Undertake development
197. The diagram attached to the Cabinet paper as Appendix 2 illustrates this staged approach.

### Guidance material

198. We propose that the legislative changes proposed by the preferred policy option will be supported by guidance for affected parties including those 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.
199. It is envisaged the preparation of any guidance material would be led by the Ministry of Business, Innovation and Employment. The Ministry for the Environment, Land Information New Zealand, the Department of Conservation and the New Zealand Transport Agency will be invited to be involved in the preparation of guidance.

# The design of urban development entity structures and delivery models

200. The effectiveness of the legislation depends to a large extent on the existence of entities which can give effect to the envisaged urban development system. This will require that all of the necessary functions are able to be undertaken by appropriate entities.

## Status quo and opportunity for change

201. At the current time, several entities exist in New Zealand that are tasked with urban development of some form. The most pertinent examples include:
- Panuku Development Auckland (Panuku): A Council Controlled Organisation (CCO) tasked with the design, planning and procurement associated with brownfield locations identified in the Auckland Plan and where there is a level of 'community need'.
  - Hobsonville Land Company (HLC): A wholly-owned subsidiary of the Housing New Zealand Corporation with full corporate powers. HLC's primary purpose was to develop the land of the former Hobsonville airbase into an integrated community development.
  - Tamaki Regeneration Company (TRC): TRC, a 4th Schedule Company under the Public Finance Act, is jointly owned by the Government and Auckland Council and has full corporate powers. TRC is tasked with the design, planning and procurement for the regeneration of the Tamaki area.
202. However, the current regulatory settings do not provide for a coordinated approach to an entity holding or managing all of the functions necessary for the effective delivery of an urban development system<sup>13</sup>.
203. The creation of an authorising environment for urban development through the UDL is an opportunity to align these functions through consistent decision-making and establishment processes.
204. Therefore, in order to enable the successful delivery of greater urban development at a faster rate, the UDL should allow for the establishment of fit-for-purpose urban development entities.
205. While the status quo is not a viable option in and of itself, the legislation could include the flexibility to allow for the 'retro-fitting' of one or more of these existing entities with some or all of the powers available under the legislation as appropriate.

## Recommended approach

206. The proposal is that the following elements should be allowed for in the UDL:
- the establishment of one or more UDAs
  - that a UDA can be either a new entity established under this legislation or an existing entity which is publicly owned
  - that a UDA can oversee one or more Development Projects
  - that any public entity can play the role of UDA (if Ministers are satisfied that the entity is subject to sufficiently rigorous and appropriate governance structures).

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<sup>13</sup> By 'urban development system' we mean all aspects of the planning, delivery and oversight of multiple urban development projects.



# 7 Monitoring, evaluation and review

- 207. Conducting a full impact evaluation of the operation of the UDL after four years is planned. This will assess the outcomes of development projects managed under the new powers.
- 208. To allow effective evaluation at this stage, a comprehensive output monitoring framework will be established for each project undertaken by an Authority, with collection of information about the effects of these outputs on the defined objectives of the project. To ensure consistency, MBIE will provide guidance on design of these monitoring programmes, review results and be responsible for the subsequent overall impact evaluation.

## Monitoring and evaluation and review for land assembly

- 209. Information from the Crown Property Centre of Expertise business group at LINZ will be reviewed as part of any wider review and evaluation of the urban development legislation.

## Monitoring, evaluation and review for physical infrastructure, funding and financing, reserves and associated powers

- 210. The impact of the preferred option is proposed to be monitored and evaluated by affected agencies including NZTA and local government agencies.
- 211. The table below sets out the areas that are proposed to be monitored, the indicators that are proposed to be used, and the intended source of data.

**Table 1: Proposed monitoring and evaluation of changes to development contributions**

Proposed Monitoring and Evaluation Approach		
Aspect being monitored	Proposed indicator(s)	Proposed source of data
Are the powers included in the legislation sufficiently broad	Number of UDA projects abandoned or delayed by processes, requirements or proceedings which are not covered by their powers.	Periodic surveys of UDAs as part of overall monitoring of performance.  Number of projects proposed v number of projects completed within expected timeframes.
How often are the powers being utilised	Number of occasions UDA request access to powers.  Number of times powers used	Papers to Ministers requesting use of powers.  Periodic surveys of UDAs as part of overall monitoring of performance.

- 212. Following analysis of the evaluation material described above, infrastructure powers authorised by the urban development legislation may be reviewed and revised.