Preliminary Analysis of NZ Government Urban Development Authorities Discussion Document

Prepared by NZPI Senior Policy Adviser, 9 March 2017

Introduction

The government is proposing new legislation allowing central government and local government to work together identifying urban development projects, and establishing new powers enabling Urban Development Authorities to plan, fund and implement urban redevelopment projects. This initiative sits alongside other major central government led interventions into New Zealand's system of urban planning which include the Resource legislation Amendment Bill, a National Policy Statement for Urban Development Capacity, and Productivity Commission's *Better Urban Planning* review.

The New Zealand Planning Institute is interested in all of these interventions because they have the potential to profoundly influence planning practice and planning outcomes throughout New Zealand, and because they affect the professional working lives of its members. This latest initiative is being led by the Minister for Building and Construction (Hon Nick Smith) supported by the Ministry of Business, Innovation and Employment.

This preliminary analysis of Urban Development Authority (UDA) proposals contains five sections:

1. **Background and Purpose of this Analysis.** NZPI generally supports the establishment of urban development agencies as planning implementation mechanisms. This section briefly outlines NZPI's views on UDAs, and provides the rationale for this preliminary document.
2. **Policies selected for the UDA Proposal Framework.** Since 2008 NZ government ministries have analysed and advised upon a range of policy options for UDAs. The section introduces and summarises that work and raises questions about the powers that have been adopted and that have been discarded from the present draft proposals.
3. **Summary Description of the UDA Proposal Framework.** This section briefly introduces and summarises the current UDA proposals**.**
4. **Specific Concerns with the UDA Proposal Framework.** This is the heart of this document. It critically examines proposals for compensation and compulsory acquisition; taking of public land; shifting planning outside existing district plans; and rejection of value uplift for funding**.**
5. **Your Feedback and Contributions.**

You can cut to the chase of our analysis by turning immediately to Sections 3 and 4. An appendix of relevant submissions to the Productivity Commission is included.

1. Background and Purpose of this Analysis

NZPI generally welcomes the NZ Government **Urban Development Authority** initiative that is being developed with the Ministry of Business, Innovation and Employment (MBIE). Last year, in submissions to the Productivity Commission's "Better Urban Planning" enquiry, the NZPI asserted:

> …Property rights matters are becoming more significant in the consideration of local development applications and at national level in considering how to provide for economic activity and growth in existing urban areas. However the planning system does not provide well for property rights either at individual or at community level (a road or a public space being a community owned property). When considering proposals to intensify an existing urban area, the receiving environment is no longer a natural environment, it is a built environment including a set of property rights owned by individuals, groups and public entities, which all need to be negotiated in terms of economic gains and losses - and other matters. Those processes need to be brought into the urban planning system ….[1]

The UDA discussion document, along with an associated Regulatory Impact Statement (RIS) outlines proposed legislative changes that:

> …will enable publicly-controlled urban development authorities to access powers to acquire parcels of land and then plan and oversee the necessary development. Developments could include housing, commercial premises, associated infrastructure, and amenities including parks, community spaces or shopping centres…[2]

NZPI will prepare a formal response to be submitted to MBIE by 19 May 2017. The RIS notes that:

> …the consultation strategy is intended to test whether the proposals analysed in this RIS merit revision…[3]

The purpose of this preliminary analysis is to:

a) share with NZPI members our preliminary findings and associated recommendations for discussion and consideration;
b) share our thinking with partner organisations including Local Govt NZ, Infrastructure New Zealand (previously NZ Council for Infrastructure Development), RM Law Association, Environmental Defence Society;
c) seek feedback on process, research and priorities over the coming 6 weeks.

[1] NZPI, 9 March 2016. Pg 9, Productivity Commission "Better Urban Planning" Issues Paper: NZPI submission.
[2] MBIE, Feb 2017. Pg 5, Urban Development Authorities, Discussion Document.
[3] MBIE, 1 December 2016. Pg 3, Urban Development Authorities, Regulatory Impact Assessment.

2. Policies selected for the UDA Proposal Framework

This section briefly explores the options selection and rejection process that has been undertaken by Central Government to arrive at proposals contained in the present discussion document. This is important because Central Government Ministries have been investigating UDA initiatives for the past decade. Considerable policy work has already been carried out. NZPI is concerned by evidence of a cherry-picking policy selection approach. Valuable policy approaches have been rejected. The MBIE agency disclosure statement in the RIS states:

> …The options considered here are **focused on a series of targeted interventions** at the local level to support specific, nationally or locally significant development projects…
>
> ….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…[4] (**Bold** added)

This raises questions as to the completeness, coherence and emphasis of the proposals now being considered which may limit or inhibit their combined effectiveness in delivering urban outcomes. For example the 2008 *Building Sustainable Urban Communities* consultation document contains this account of how its urban development authority proposals might have worked in combination:

> First, a **suitable location** for a sustainable urban development project needs to be identified. There may be a number of triggers for a particular location to be put forward for consideration — a **regional (or local) strategic planning** exercise with community consultation; central government **social housing redevelopment** priorities; or a combination of factors.
>
> Determining the suitability of a location for the special approach would involve a **detailed study outlining the development opportunities** and the likely or known barriers to development. This would also provide opportunities for potential project partners to participate (such as private sector developers, significant landowners, service and infrastructure providers, etc) along with the local community.
>
> The next important stage is developing a more **detailed project plan**. This would involve getting the agreement of all project participants — including those in central and local government — to funding, resource allocation, and the main decisions that will be required. It would outline the **broad vision for the area**, and it would involve preparing a **business case** demonstrating the viability of the project. The business case must show why special urban development powers and tools are needed to realise the vision.
>
> A Minister would consider the business case and, supported by appropriate advice, decide whether to **declare the location a sustainable urban development project**. This decision would outline the boundaries of the project area, the objectives of the project, the **powers and tools** available, and the nature of the **development organisation** that would undertake the project on behalf of the project partners.
>
> It is likely at this stage, and while the development organisation gets up and running, that interim planning controls would be placed on the area to prevent any development inconsistent with the overall vision. The development organisation would then:
>
> - prepare the detailed **master development plan** for consultation
> - determine the final **development and planning controls**
> - arrange formal **changes to the district plan**

[4] MBIE, 1 December 2016. Pg 2, Urban Development Authorities, Regulatory Impact Assessment.

- begin entering into **development agreements**, contracting work, buying, preparing, and selling land for development
- consider what **social and economic programmes** would be needed to support the existing and future communities.

> The project may take 15 to 20 years to complete. At the end of this, the area would be **returned to the normal jurisdiction of the local authority** during a transition period, and the development organisation would be disestablished (or move on to another approved project).[5] (**Bold** is original)

This account bears a strong resemblance to the scenario presented in Appendix 2 of the present consultation – though there are important differences – key among them in the 2008 consultation being the use of plan change processes to incorporate proposed development controls into the relevant District Plan, and uplift levies. Specific powers suggested in the 2008 consultation included:
:

- land assembly and compulsory land acquisition powers to be used within the area, including appropriate accountability mechanisms
- funding tools, including a framework for infrastructure and value-uplift levies within the area
- mechanisms and powers to streamline planning and development control processes, with appropriate levels of public consultation and appeal rights
- mechanisms to improve utility and service-provider integration at the planning and delivery stages of the development process.[6]

Many of these options for powers are included in the present proposals, though the funding option of value uplift levies is not, and district plan processes are over-ridden.

Two large scale urban redevelopments are referred to in the 2008 consultation as examples of projects that required partnerships between several parties – public and private. These are Auckland's Britomart Precinct and the New Lynn Town Centre renewal which included upzoning and intensification, trenching of the railway, and construction of a new passenger transport interchange, both of which were successfully completed without the additional legislation described in the current proposals, and both of which included plan change processes ensuring relevant district plan policies and rules were put in place in existing statutory planning documents.

[5] DIA, 2008. Pg 37, Building Sustainable Urban Communities.
[6] DIA, 2008. Pg 36, Building Sustainable Urban Communities

3. Summary Description of the UDA Proposal Framework

The framework for the proposed legislation is intended to:

> …enable local and central government:
> - To empower nationally or locally significant urban development projects to access more enabling development powers and land use rules; and
> - To establish new urban development authorities to support those projects where required.[7]

While NZPI generally supports this intention, because it plugs a planning gap that NZPI has submitted needs to be fixed (see more NZPI thinking on this at appendix 1), NZPI is concerned that some of the proposed powers don't go far enough, and some go too far – especially because they could undermine property and participation rights at the core of good planning.

The powers described in the current UDA Proposal Framework operate at two levels. The first level gives powers to Central Government. The second level gives development powers to a UDA.
Thus the proposed legislation gives Central Government the power to:

> (a) identify a development project;
> (b) set the strategic objectives for the project;
> (c) select which of the development powers that project can access;
> (d) determine who can exercise the development powers for that project; and
> (e) determine who is accountable for delivering that development project's strategic objectives.[8]

The proposed legislation contains a "toolkit" of powers from which Central Government may choose and provide access to by a particular UDA. These powers relate to:

1. Land assembly powers that cover both public and private land, including existing powers of compulsory acquisition, together with powers over reserves and lesser interests in land[9];
2. Planning, land-use and consenting powers that shift the balance of matters that must be considered in decision-making towards the strategic objectives of the development project[10];
3. Independent powers for providing infrastructure where the necessary infrastructure has not been included in local government plans or needs to be brought forward to accommodate urban growth[11];
4. Powers that enable an urban development authority to levy development contributions and a targeted infrastructure charge on properties within a development project area. (Any charges will be collected by the territorial authority, on behalf of the urban development authority or a private vehicle.)[12]

Regarding Maori and Treaty issues the discussion document states:

> The Government is not proposing to change the law as it applies to Māori interests in land; and the Crown will continue to be bound by all of its Treaty settlement obligations. Nevertheless, the proposed legislation still has significant implications for Māori interests.[13]

[7] MBIE, Feb 2017. Pg 19, Urban Development Authorities, Discussion Document.
[8] MBIE, Feb 2017. Pg 20, Urban Development Authorities, Discussion Document.
[9] MBIE, Feb 2017. Pg 44, Urban Development Authorities, Discussion Document.
[10] MBIE, Feb 2017. Pg 59, Urban Development Authorities, Discussion Document.
[11] MBIE, Feb 2017. Pg 72, Urban Development Authorities, Discussion Document.
[12] MBIE, Feb 2017. Pg 82, Urban Development Authorities, Discussion Document.
[13] MBIE, Feb 2017. Pg 88, Urban Development Authorities, Discussion Document.

4. Specific Concerns with the UDA Proposals

This section of this analysis outlines some concerns we have identified with aspects of the current proposals. While we support the principle of Urban Development Authority type institutional processes in New Zealand's planning system, we have major concerns with the proposals as drafted. NZPI's analysis is incomplete at this stage and will include wider consultation with NZPI members. This preliminary analysis is intended to stimulate and inform that member consultation.

The specific problems identified are described below under the following headings:

- Compensation and Powers of compulsory acquisition
- Taking of public land for UDA purposes
- Shifting planning and land use outside existing district plans
- No use of value uplift or betterment levy systems

4.1 Compensation and Powers of Compulsory Acquisition

The present MBIE UDA discussion document *Proposal 82* states:

> In calculating compensation for land acquired or taken, no allowance is made for any increase or reduction in the value of the land as a result of a development project.[14]

The supporting text states: "…This is the same approach taken under the PWA (Public Works Act) and also in Australia."

A small amount of desk research indicates there is a major debate about this approach to compensation for land that is taken for the same purpose it is presently used for. The present UDA proposal essentially aims to take land that is used for residential purposes (compensating land owners at the pre-redevelopment price), and then redeveloping the land area so that the betterment profits accruing from a higher density residential development are only collected by the developer and the development authority.

The present proposal appears to be based on what has come to be known as the Pointe Gourde principle of compensation[15], a principle developed in the course of litigation relating to compensation for infrastructure project land, including a Privy Council decision which states:

> The Land is to be assessed at the value it would have had if the railway for which it is resumed had never been contemplated. Any and every other circumstance may be taken into consideration in estimating the worth of the land, except the effect upon it of the railway for which it is taken.

The present UDA proposals provide powers to take land that is currently used for residential development, and then make that land available for more intensive residential development. This is not the same as taking land for a railway or a motorway or some other piece of public infrastructure. The literature is replete with analysis of this different problem, and contains recommendations for more appropriate arrangements which incorporate the different issues that arise, and which aim to avoid takings that are deemed "unfair" being challenged in court. In short there appear to be other, "fairer", approaches to the issue of land acquisition and compensation than the approach designed into the present UDA proposals.

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[14] MBIE, Feb 2017. Pg 48, Urban Development Authorities, Discussion Document.

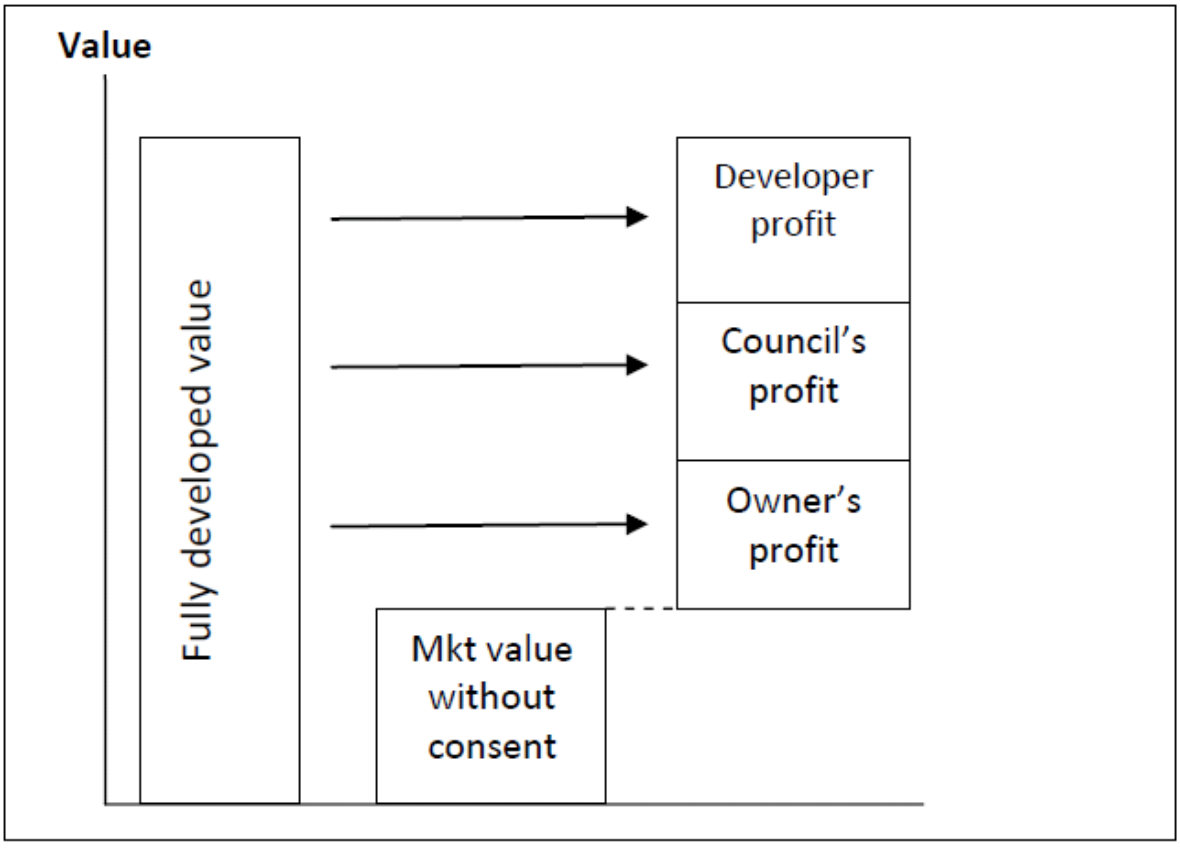
[15] Pointe Gourde account http://www.vgso.vic.gov.au/content/overview-pointe-gourde-san-sebastian-principle-december-2009

Mangioni is an Australian academic and acknowledged expert on these matters. He has delivered papers on the topic at various New Zealand based conferences and forums. He writes:

> Government cannot on one hand act as a business partner with one party to the process and then act as government authority towards the other party using the courts as a blunt instrument to assert its authority. The proposition that government is the gate keeper of land uses, provider of development consent and enforcer of utilitarianism does not auger well with dispossessed parties internationally and has raised concern among dispossessed parties as highlighted in the cases critiqued in this paper. The potential benefits for government to resolve this situation through a well defined policy of an 'offer to treat and negotiate' with developers and existing property owners is needed to bring itself into a role of facilitating change with parties to the process.[16]

Mangioni's research also suggests that "the dispossessed party is a stakeholder in the economic development of land", that there are ways and means of building into the redevelopment process the active, positive and willing engagement of existing landowners, and that profit sharing from the redevelopment needs to be more equally shared and be part of the process of motivating stakeholder participation. As shown in Mangioni's figure 6 (below):

Figure: 6 - Voluntary framework with owner, developer council profit



[16] Mangioni, 2010, http://www.prres.net/papers/Mangioni_Urban_cleansing_renewal_compulsory_acquisition.pdf

4.2 Taking of Public Land for UDA Purpose

Many of the case studies and urban regeneration projects cited in the present discussion document and in the 2008 proposals were reliant upon the existence of public land that had been used for infrastructure or a public work that had become obsolete or redundant. For example three commonly cited Perth examples (Subiaco, East Perth, West Midlands) took place on land that had been used for railway sidings and a gas works, while Britomart relied upon a redundant public transport bus terminus and New Lynn upon road corridors and a railway.

For example, in Auckland, reserve land is being looked to as the next best opportunity to lead intensive redevelopment projects including parts of Point England Reserve being taken for incorporation into the Tamaki redevelopment project; and Queen Elizabeth Square as part of the intensive redevelopment of Auckland's CBD.

The discussion document states:

> …because reserves can occupy a reasonable amount of land space, it may be desirable to re-configure or revoke reserve status of existing reserves within a development project area and to do so through streamlined processes.[17]

In the event that a reserve exchange is envisaged (ie where reserve land within a Development Area is taken for redevelopment, in exchange for another piece created elsewhere), the proposal requires:

> For Identified Reserves that are exchanged, the new reserve must provide at a minimum for the same purpose and values as the original reserve and, if at all practicable, be located in close proximity to the community that the original reserve served. [18]

The caveat "if at all practicable" will provide little comfort to existing stakeholders. There is clear case law that would likely apply relating to the word "practicable".

The provision of public open space is a matter of considerable importance in urban planning. Liveability measures such as square metres of public open space/resident; square metres of public open space/hectare of urban form; maximum walking distance to a public open space are all typical policies put in place to ensure minimum adequate reserve/public open space provision.

There appear to be few reserve/public open space protections in discussion document proposals. The requirement to produce a Master Plan (as envisaged in the 2008 proposals) whose contents are well specified and agreed with local stakeholders would go some way to ameliorating this issue.

4.3 Shifting Planning and Land Use Controls outside District Plans

The RIS provides this short summary of the powers proposed for Urban Development Authorities in relation to planning and consenting powers:

> 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**.

[17] MBIE, Feb 2017. Pg 52, Urban Development Authorities, Discussion Document.
[18] MBIE, Feb 2017. Pg 55, Urban Development Authorities, Discussion Document.

> 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");** etc[19] (**Bold** added)

The RIS provides a reasonable assessment of the "pros and cons" of these proposals, noting, for example, that UDAs "may not be able to provide the in-house expertise needed to assess consent applications" in comparison to municipal territorial authorities, and that "it may be difficult for UDAs to acquire robust technical expertise….to make appropriate planning decisions in areas like water and air quality."

Cutting to the heart of this matter, the Development Plan for an area that has been prepared by the UDA in accordance with this power, must (summarising proposal 102):

- Show how planning powers will be used to deliver Government set strategic objectives;
- Identify the provisions in existing regional or/and district plans that will continue to apply;
- Describe the development rules to apply within the development area;
- Provide for various classes of activities

Thus, under the proposals described in the UDA Discussion Document the Development Plan can override one or more of the existing district plan, regional plan, and applicable regional policy statement, that would otherwise apply to the project land.

The RIS does recognise some of the issues that might arise with this set of proposals. For example:

> 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.[20] (**Bold** added)

NZPI is concerned that not only will these proposals effectively remove UDA projects from RMA jurisdiction, they will create yet another fast track or streamline pathway with its own administration and rules (and need for appropriately trained and directed planning staff), and further fragment what is already at risk of becoming an extremely fractured and inefficient planning system. This fragmentation may lead to poor social outcomes as the compartmentalised approach of the proposed UDA planning system could impact the cohesion needed for effective transport, education and other social infrastructure planning.

There is a parallel risk of a fragmentation of the adjudication system of planning checks and balances that are currently contained in the Environment Court and relate to compliance with a single district

[19] MBIE, 1 December 2016. Pg 14, Urban Development Authorities, Regulatory Impact Assessment.
[20] MBIE, 1 December 2016. Pg 16, Urban Development Authorities, Regulatory Impact Assessment.

plan. The idea of one-stop-shop access to environmental justice is not just about efficiency it is also about the integration of planning appeals, decisions and litigation. Rather than fragment planning frameworks a case can be made in support of a single planning framework for an area (with appropriate plan changes for new urban development precincts) and an added dimension to the Environment Court's jurisdiction of adjudication over compensation and value uplift matters.

Rather than throw the baby out with the bathwater, NZPI considers that the recent experience of urban brownfield regeneration and intensification projects in and around Auckland (including Britomart, New Lynn, Wynyard Quarter, and Hobsonville – all generally regarded as successful), all of which involved extensive public and stakeholder participation and partnership, and all of which included as part of the planning process plan changes to the relevant district plans – suggests there is not a justification for by-passing or replacing existing RMA processes.

4.4 Value Uplift or Betterment fee/levy system

The current development levy system has been useful in paying for a proportion of the cost of infrastructure needed to support development. However it is generally accepted in New Zealand that existing ratepayers continue to subsidise some of the infrastructure costs for newly developing areas of their town or city – despite the fact they have done nothing to incur those costs. (At a recent MBIE/MfE run Urban Development Capacity NPS symposium, the Mayor of Tauranga stated that despite that Council's rigorous implementation of Development Levies, an audit revealed that existing ratepayers had contributed $30,000,000 toward the capital cost of growth related infrastructure.)

The RIS, in its account of alternatives to the current funding proposals, notes:

> 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. 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.[21]

It goes on to outline arguments against their use here, but these are not convincing. For example New Zealand has used them extensively in the past in the development planning of Wellington – taking 50% of the uplift to fund social infrastructure such as social housing and public transport. Further the rationale for limiting the UDA funding proposals does not engage with the function of value uplift potential revenues in buying the agreement and participation of stakeholders in the kind of land acquisition processes that are outlined in 4.1 above.

[21] MBIE, 1 December 2016. Pg 23, Urban Development Authorities, Regulatory Impact Assessment.

5. Your Feedback and Contributions

While this preliminary report identifies proposals that are generally supported (based on previous NZPI submissions and policies) and addresses contentious aspects, more analytical work is being carried out on all of the proposals and their implications.

NZPI is intent on providing thought leadership over the proposals contained in what is a very challenging set of proposals, and in reflecting the views of our membership. With that in mind we will be sharing our thinking with our broader membership and with partner organisations including: Local Government New Zealand; New Zealand Council for Infrastructure Development; Resource Management Act Law Association; Environmental Defence Society. The latter engagement would be based on the hope that there may be the opportunity for mutual support of various aspects of our respective submissions.

Your Feedback:

NZPI would appreciate feedback, by 30th March 2017, on the following matters:

1) Do you generally support the preliminary analysis outlined in this report?
2) Do you have strong views that support/conflict with anything in this report?
3) If you have prepared specific submission material or other commentary that you would like to share with NZPI for our consideration, we would request that you please send it to NZPI's Senior Policy Adviser: joel.cayford@planning.org.nz

We plan to incorporate your feedback and consolidate the policy basis of our submission work. Next stages include drafting submission text and identifying specific submission points which we will seek qualitative membership feedback on, before proceeding with a full membership quantitative survey. Information collected from members will shape and inform NZPI's final submissions, which will be provided to the Board for sign-off prior to being submitted to MBIE by 19 May 2017 .

Ends

Appendix 1 - Previous NZPI Submissions on Urban Development Authorities

This section contains extracts from NZPI's submission made to the Productivity Commission's research informing its Better Urban Planning review. That submission was in response to specific questions posed by the Commission.

Commission Questions	NZPI Response/submission
Thinking beyond the current urban planning system, how could a new model best deal with the complex and dynamic nature of urban environments?	Most definitions of urban planning talk about the need to balance environmental, social and economic outcomes. **In the absence of national guidelines that expand the current role of urban planning from one which focusses on the avoidance of adverse environmental effects, it will not be able to deal with the complexity and dynamic social and economic forces that are a feature of urban neighbourhoods.** However, should that planning model be enhanced by being required to engage with social and economic effects – through some sort of national planning direction and associated tools, then it would be more able to deal with complexity and change. This would require a planning system that treated existing urban form as the receiving environment for development (ie a receiving environment that was populated with people, communities and their built assets and property), rather than being seen only as an area of soil, clay, water, ecosystems and air.
Thinking beyond the existing planning system, how should diverse perspectives on the value of land be taken into account?	A lot of thinking about this has occurred around the world in relation to land taxes or rates that may be charged by local government on a property in order to generate revenues to cover the cost of such public goods as roads, pipe networks, libraries or other community infrastructure**. In New Zealand, the 1926 Town Planning Act, provided (s.30) for a 50% betterment charge to be payable to the relevant local authority on increase in value of a property attributable to the approval of a town or regional planning scheme, or the carrying out of any work authorised by the scheme**[22]. The "five most important conclusions" in the standard text: Land Prices and Governmental Policy include: a local city planner who tries to maximise the land value surplus will realise the most socially desirable package of public facilities; fixed costs of public facilities must be funded from land value….; best way to finance a municipality is through land value surplus…[23]. The definition in this text of land value surplus, is that increase that is attributable to a calculation of agglomeration benefits.
Thinking beyond the existing planning system, how should the property rights of landowners and other public interests in the use of land be balanced?	Answers to this question are at the core of this enquiry. At a time when the market is generally relied upon to allocate and efficiently use natural resources like land, there are major questions about how public interests (in shared infrastructures and shared community amenities) are to be addressed, and how public goods (assets and land) are to be funded and managed. While this examination can be applied when rural land is urbanised (a type of intensification), and when urban land is developed (consistent with a planning scheme of some kind where adjacent land uses are in accordance with the

[22] See s.30 1926 Town Planning Act at: http://www.nzlii.org/nz/legis/hist_act/ta192617gv1926n52240/

[23] See pg 95, Cities and the Urban Land Premium, By Henri L.F. de Groot, Gerard Marlet, Coen Teulings, Wouter Vermeulen

	planning scheme), **cases where urban land developed at low intensity (suburban 800 square metre lots for example) is to be redeveloped more intensively (medium to high density for example) are most pertinent to the present discussion**. Other countries are facing these pressures, and have embarked on similar productivity commission type reviews. See for example the UK's "Land Use Futures UK Report". It concerns itself with balancing private and public interests at a town scale, and contains many ideas: " Making development land prices more reflective of the value in alternative uses and the cost imposed by development would reduce the intense and unsustainable upward pressure on land and property prices, leading to a situation more like that in Germany, where house prices have been flat in real terms. This would lower the cost of employment, increase worker and social mobility, and make housing much more affordable for a wider range of people. Government could consider a range of mechanisms, including, for example, replacing S106 agreements by a fully assessed Community Infrastructure Levy (CIL) that attempts to measure the costs of any development imposed on a town, including the value of any loss of amenity. At present the CIL is to be set according to simple formulae, but these are unlikely to include the full range of costs incurred, and the overlap with S106 appears an unsatisfactory way of making charges site-specific. While it may be difficult to make accurate valuation assessments, such changes are likely to represent an improvement on the current system. They would need to be accompanied by the creation of an independent regulatory authority that would provide methods and data for such assessments, and would adjudicate on their reasonableness. Measures such as restoring the Business Rate to local control, reforming local taxation so that towns and cities benefit rather than being disadvantaged by the influx of new residents, and facilitating green swaps to enhance access to green space as land is released for building would encourage development where needed..."[24]
How does the allocation of responsibilities to local government influence land use regulation and urban planning?	This is an interesting question which raises a number of fundamental planning issues. For example, as is partly revealed in the Productivity Commission issues document, the national approach to the planning of residential development in countries like Japan and Germany is oriented to the provision of housing (like clothing, to meet a social need, a means) rather than being an economic growth priority or end in itself (as is increasingly the case in New Zealand). **Thus in countries like Germany and Japan local government's job is to implement government policy objectives to house the population appropriately and affordably as a means to other economic goals, rather than requiring local government to enable urban development and activity as an economic end in itself**. Just as form follows function, the two forms of local government are entirely different. Thus dealing with the question requires the Productivity Commission to ask another question: what is the national economic strategy or development plan for land use – especially urban land use? Once that

[24] See Land Use Futures UK 2010 at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/288843/10-631-land-use-futures.pdf

	question is answered, then it is reasonable to ask questions of the responsibilities and functions of local government in order to implement the national plan locally, and to deliver the outcomes. However the question is tackled it is evident that some sort of national direction or development planning is required, which will then suggest the type of local government roles and responsibilities required. We suggest that twenty-five years of experience of entrusting urban development outcomes to the market alone provides enough evidence that such an approach cannot be trusted to deliver the kinds of outcomes that are now being sought. It is also insufficient to presume that free local markets will somehow produce the knowledge that is needed to inform coordinated and efficient development across the country**. Some sort of national development plan is needed, along with sufficient national guidance and direction enabling and empowering the local government bodies to regulate and influence local land development.**
How can an urban planning system better integrate land use regulation and infrastructure planning?	Useful answers to questions like this require detailed examination of how urban planning systems have performed, how decisions were taken, what influences were exerted, in representative case studies. We recommend that the Productivity Commission undertake a number of case study examinations in order for it to gain the level of practical wisdom essential to a good enough understanding of NZ's planning system for it to be the basis and rationale for changes in that system. We would suggest, in terms of Auckland, that one of these case studies could be the planning process undertaken at Huapai/Kumeu which changed the zoning of rural land to a variety of urban zonings, and which included the planning for necessary roading and utility infrastructure. Processes included RMA structure plans, public consultations, stakeholder and landowner engagement, and the involvement of network infrastructure providers. Gaps in this urban planning process primarily related to the provision of nationally provided infrastructure such as schooling. This case study contrasts interestingly with Hobsonville, where central government involvement ensured coordinated provision of new schooling. Both case studies highlight difficulties encountered in the coordinated and timely development of employment opportunities for new residents. This issue is of much greater significance in the longer term than the provision of infrastructure – which is passably well managed by the current planning system. These are greenfield case studies. A second set of case studies are required in order for the Productivity Commission to gain a sufficient understanding of how urban planning can better coordinate provision of infrastructure in brownfield situations. These are the situations now being confronted by the Proposed Auckland Unitary Plan writers, officers and politicians. **A useful case study that is an exemplar of what is possible in the present planning system is the New Lynn Auckland town centre planning and redevelopment project.** This involved the upzoning of large tranches of urban Auckland, re-arrangement of roading networks, undergrounding of a section of urban rail, establishment of new community infrastructure including rail and bus stations and

	interchanges, public open spaces, and library and suchlike. **Central to the successful planning and implementation of this project – which took 5 to 10 years – was the formation of a development agency with representation from local and regional government, land owners, and infrastructure providers**. The local community board was an important and influential part of the local government component. A lot of what was achieved was by means of agreements and cooperation, rather than through statutory direction and despite the absence of national guidance. We suggest it is important to this review that the Productivity Commission develops an in depth understanding of how NZ's planning system actually functions, gained by means of case study investigations conducted according to an acceptable research standard, before coming to conclusions about how it might need to be changed.
Are complicated rules needed to control complex social systems? What are the alternative approaches for dealing with complexity?	This is another question which suggests a need for understanding of what planners actually do. In New Zealand, quite apart from being involved in the avoidance, mitigation, and remediation of adverse effects on the natural environment, urban planners are required to manage the protection of existing land and property investments from the effects of other developments, and to regulate new development. **This is an intensely economic and social system which has evolved over time, and which reflects the desire and need of individuals to exert control over and to protect what they have and what they regard as their property.** In an urban setting, perhaps 90% of the consideration that is applied in the assessment of an application to develop land, relates to the property and to economic investments on neighbouring land. The biggest part of the work of urban planners, and the main role of urban planning systems, is to protect existing property investments. Planners and planning systems also function to enable new development and new investment, but it is critical to an understanding of what urban planning is and does, to recognise its role and responsibility in the protection of existing built environments. While the media and popular commentary rail against planners and planning, citing particular cases where a developer might have had an application declined for what might be mocked as a stupid reason, those same voices are silent in describing what "The Unsung Profession" are primarily responsible for – and that is protecting private property investments. Planners may have "control over" certain matters – such as height to boundary, set-backs, building height and suchlike. But these would not be described as complex social systems or complexity – though urban environments are very complex. It is when an urban environment is subject to pressure or change – such as the construction of a new road, railway, cycleway, or the need to intensify, or to make way for a new school – that planners become involved. But this is not to control what happens, it is usually to manage what happens. Control might be what planners can do in China. But not in New Zealand – despite central government direction**. The question then becomes not one of whether "complicated rules" are required, but what tools might be available to planners or be within the planning system to facilitate mutual gain, to incentivise behaviour change, and to encourage buy-in.**

What principles around consultation and public participation should the Commission consider in the design of a new urban planning system?	For the past 25 years New Zealand's planning system has generally regarded the "receiving environment" for development as being the natural environmental mix of air, water, soil, ecosystems, vegetation, outstanding landscapes and suchlike. The RMA has enabled consultation and public participation accordingly. There are many accounts of how, in the absence of national guidance and direction, local authorities have had to develop their own systems, and have opened up, or closed down opportunities for consultation and participation. Many submitters to the Resource Legislation Amendment Bill 2015 have responded critically to proposals that further restrict consultation and participation in plan making and resource consent processing. Proposals regarding the latter increasingly favour the property rights of developers over the property rights of those owning existing developments. Property right matters are becoming more and more important in the consideration of development applications and at national level in considering how to provide for economic activity and growth in existing urban areas. **However the planning system at present does not provide well for property rights either at individual or at community level (a road or a public space being a community owned property). When considering proposals to upzone or to provide for intensification of an existing urban area, the receiving environment is no longer a natural environment, it is a built environment including a set of property rights owned by individuals, groups and public entities, which all need to be negotiated in terms of economic gains and losses - and other matters. Those processes need to be brought into the urban planning system and will require additional participation and consultation processes.**
Thinking beyond the existing planning system, what should be the appropriate level of consultation in making land use rules or taking planning decisions?	This is a very broad question. Answers to it vary considerably depending upon the type of land use planning that is the subject. **For example, establishing land use rules when shifting land from rural to urban (such as in the case of Huapai mentioned above) usually requires something akin to structure planning processes where land owners and other stakeholders participate in the decisions (more than consultation), and in some cases need to agree them.** At the other end of the spectrum, where planning decisions are taken on any application for an activity that is entirely permitted by a relevant planning scheme, there is no need for any sort of consultation or participation. **Decisions about planning rules or decisions that affect the value or values of existing properties or property rights would require active participation of the owners of those properties – not just consultation.** They would typically need to agree those decisions or rule changes**. In Australia, planning decisions and rule changes relating to urban regeneration projects, are typically represented in some sort of a masterplan and are the result of master planning process where stakeholders (property owners for example) consider assessments of economic gains and losses, and negotiate compensations or betterment tax arrangements or levy payments, as part of reaching agreement on the masterplan. That is the kind of approach that will be appropriate and needed in New Zealand to**

	enable the implementation of intensification zones and similar provisions in existing urban settings.
Thinking beyond the current urban planning system, how should a new model be designed so as to avoid unnecessary administrative, economic and compliance costs?	A key attraction of investment in urban development in New Zealand's economy is the opportunity for windfall gains and profits – eg when land is upzoned and when rural land is zoned urban. Because that attraction is so strong and so real, and there is considerable investment competition chasing the most lucrative urban development sectors in New Zealand (Auckland especially), a sort of gold-rush is happening where urban planners and urban planning system "red tape" are perceived as the principle obstacles standing in the way, responsible for costs associated with administration and compliance of planning systems, and imposing economic costs including infrastructure development levies. **Clearly, a new model ensuring that the lion's share of windfall gains (betterment) from development were levied, in addition to infrastructure levies, would take some of the glitter away from this gold-rush, and perhaps encourage investment in other sectors of the productive economy.** Investment focussed on housing rather than speculation would lead to applications for complying projects and a smaller proportion of administrative and other related transaction costs.
Thinking beyond the current planning system, how should national interests in planning outcomes be recognised and taken into account? What are the national interests that should be recognised?	NZPI has submitted that a national development plan or equivalent be developed by central government to guide and direct the local planning activities needed to deliver local outcomes sought and which would contribute to the aggregate national outcomes. Any such national plan would require a rationale for the plan (which would include an account of the relevant national interests), objectives, and other stages typical of a well constructed plan and policy framework. In a well functioning western democracy it would be reasonable to expect that a national development plan – particularly its expectations of local areas and territorial authorities – would be the subject of consultation, negotiation and coordination activities to ensure smooth and efficient implementation of the plan (which would occur at local level). National interests might include a population growth plan; an urban GDP economic growth plan; a national GDP/capita growth plan; a declining housing affordability metric; a declining income inequality measure.
Does a goal of limiting the scope of land use regulation to managing effects, based around nationally-established environmental bottom lines, remain a valid objective?	The key word in this question is "limiting". We accept that where the receiving environment for a development project is an existing urban environment, then the most significant effects that need to be managed are economic effects and relate to private and public property rights. These are quite apart from environmental bottom lines. So the answer to this question has to be "no", **land use regulation needs to include consideration of economic effects and property rights.**
Which aspects of the existing planning system would be worth keeping in a new system?	**NZPI submits that the existing framework is worth keeping. However implementation has been problematic. For example the lack of capability at local level and the need for national guidance on matters such as infrastructure planning, urban design, urban development need to be addressed through a set of national policy statements. As importantly, NZPI considers that property rights and methods for addressing economic effects and implications of**

	activities, and tools for providing economic incentives and disincentives including funding streams, need to be incorporated – probably by means of national policy statements and improved s.32 processes.
Would there be benefits in a future planning system making more provision for private lawsuits and bargaining to resolve disputes over land use? In what circumstances would lawsuits and bargaining be beneficial?	**NZPI understands that forms of bargaining and negotiation are part of area masterplanning processes where land uses are changed and intensified. Considerations of who loses and who gains in a redevelopment proposal or land use plan form the basis of master planning processes aimed at achieving consensus and buy-in. NZPI requests that further research is required in respect of dispute resolution. Compensation for land taken is one thing, but resorting quickly to lawsuits and formalised bargaining by wealthy investors aiming to drive individual homeowners to settlement for fear of process costs might not be a positive step.**
Are there opportunities to make greater use of economic tools such as prices, fines and user charges in a future planning system? Where do these opportunities lie? What changes would be required to facilitate their use?	Developer levies under the Local Government Act and Financial contributions under the Resource Management Act are an accepted set of economic tools in New Zealand. However their implementation is subject to political influence and is increasingly contested by the development community as adding cost to new development, and making houses less affordable. Prior to the implementation of development levies (generally prior to 2002), existing ratepayers subsidised the infrastructure costs incurred for new subdivisions. In Auckland, regional infrastructure (such as new passenger transport corridors and trunk sewer infrastructure) could not be funded from development levies until local government amalgamation in 2010. The true costs of urbanising greenfield land around Auckland are only recently being disclosed. And they risk becoming a political football between central government, local government and ratepayers. Internationally the additional tool of betterment charges appears to be accepted practice. **Should NZ's planning system seek to include tools which allow economic weighing of losses and gains to property rights and values when assessing development proposals, then those tools should be complemented with tools which allow charges and levies ensuring equity and incentivising market behaviours consistent with desired urban planning outcomes.**
What international approaches to planning and environmental protection should the Commission consider?	**An area where NZ's planning systems are most deficient include systems that engage with property rights and values when urban land is upzoned or redeveloped.** Perth is widely regarded as a success story for urban renewal planning. It was used as the exemplar for the Auckland New Lynn regeneration project (referred to above). The combination of financial incentives, regulations (ensuring a proportion of mixed tenure affordable homes for example), retention of heritage, intensification, state contribution recouped through development levies, and masterplan participation and adoption by all stakeholders all combined to deliver local outcomes envisioned by state level development plan.
How could a future planning system be designed to reflect the differing circumstances and needs of New	Cities don't have needs. People living in them have needs. People have different needs and different wants. The question is better posed what sort of planning system is best for meeting the different needs of people in an urban setting. This is about being responsive by design and being responsive to changing demand. One single planning

Zealand cities? Are new or different planning and funding tools needed?	institution servicing an urban area is much less structurally responsive than several smaller planning offices (they are usually nearer, more approachable, and provide for the immediate geographic area). Localism (UK term) tends to encourage and promote local identity different from adjacent areas – providing for choice and diversity, rather than uniformity and same zones. There can be a few common zones, but local character can be protected and delivered through an area based overlay. Where urban renewal or redevelopment is envisaged (such as through upzoning in the Auckland PAUP), then very local forms of urban planning will be required to manage the negotiations and obtain the community buy-in that will be required. This local urban planning function will need to be housed and function locally for several years if Perth examples and Auckland's New Lynn are anything to go by.
Is there a need for greater vertical or horizontal coordination in New Zealand's planning system? In which areas? How could such coordination be supported?	NZPI believes that the Productivity Commission needs to carefully examine the consistency between planning goals of responsiveness and efficiency, and the amalgamation of urban planning functions. **NZPI has already noted that our experience is that people do not engage with large area maps and plans, but they do and can engage with local plans. The implementation of urban renewal projects including upzoning and intensification will require very localised masterplanning mechanisms and methods which will need some sort of institutional home. This suggests that de-centralisation of planning delivery (horizontal) may be the most efficient and responsive approach at local level, coupled with vertical integration with national development plans.**

Ends