



Urban Development Authorities Discussion Document: NZPI submission

Prepared by NZPI Senior Policy Adviser, 19 May 2017

Introduction

1. The New Zealand Planning Institute (NZPI) welcomes the opportunity to engage on the Ministry of Business, Innovation and Employment's (MBIE) Urban Development Authorities: Discussion Document February 2017.
2. This submission represents the views of NZPI's membership of 2,500 planners, planning policy analysts and their managers working in both the public and the private sector.
3. The submission contains high level comment relating to the overall purpose and design of the proposed Urban Development Authority legislative intervention, followed by detailed comments on specific issues and proposals.

NZPI's high level comment

4. NZPI welcomes in principle the NZ Government Urban Development Authority (UDA) initiative that is being developed with the Ministry of Business, Innovation and Employment (MBIE). 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...¹

5. The discussion document states that 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.²

¹ MBIE, Feb 2017. Pg 5, Urban Development Authorities, Discussion Document.

² MBIE, Feb 2017. Pg 19, Urban Development Authorities, Discussion Document.

6. While NZPI supports this intention, because it plugs a planning gap that NZPI has submitted needs to be fixed, NZPI is concerned at the limited process that has been followed to develop the proposals, that some of the proposed powers don't go far enough, and that some go too far – especially because they could undermine property and participation rights at the core of good planning. It is of particular concern that the reasoning given for UDAs is to streamline and accelerate development whereas our understanding of the UDA approach is to enable transformation over time. More generally NZPI considers that key issues with the proposals as drafted include the lack of transparent decision-making and meaningful engagement, and Ministers having overriding decision powers. In terms of good strategic planning, NZPI questions how an assessment of effects can be conducted for development plans that are not set within the local regional and city policy framework.

NZPI's high level comment: Lack of consistency with Productivity Commission advice

7. The Government proposes that the new legislation provide an enduring legislative tool-kit to meet the ongoing needs of urban development. NZPI notes that while Productivity Commission (PC) findings (dated 2015 and earlier) have provided a significant policy input to the design of the current proposals, this input does not include the Better Urban Planning findings and recommendations released earlier this year. These include recommendations in support of spatial planning; economic instruments including betterment or value uplift levies or taxes to fund infrastructure; and land value rating instead of capital value rating. These are major recommendations for planning legislation reform, and NZPI submits that further policy and legislative design work is needed on the UDA proposals to ensure relevant PC findings are properly incorporated.

NZPI's high level comment: Insufficient evidence and case study analysis

8. NZPI is concerned that the rationale offered for the UDA proposals does not include an examination of urban regeneration and redevelopment projects that have already occurred in New Zealand (especially in Auckland) under current legislative arrangements. Well documented examples include: Britomart, Wynyard Quarter, New Lynn, Hobsonville, Tamaki and Whenuapai – all of which have been planned and have been or are being implemented within the jurisdiction of the RMA and in accordance with relevant planning instruments and processes (such as district plan changes). These case studies provide opportunities for a fact based assessment of the strengths and weaknesses of New Zealand's current urban redevelopment framework, thus providing a policy basis which can be used to justify and support legislative change and intervention. As it stands the discussion document does not clearly define the problem, or provide sufficient evidence, to justify its proposals.

NZPI's high level comment: Proposals should prioritise urban redevelopment

9. While NZPI generally supports the urban focus of the proposals, it notes the scope of the proposals as drafted appear to encompass greenfield development proposals. These are currently provided for using structure plan methods. Providing for fast-tracking or out of sequence processing of greenfield developments could conflict with long term growth

planning and infrastructure investment. Urban development authority legislation needs to prioritise urban regeneration, brownfield sites or redevelopment.

NZPI's high level comment: Strategic objectives "to accelerate/streamline" inadequate

10. NZPI considers that policy interventions to address specific urban planning issues need to be comprehensively considered alongside other urban development objectives and strategies. We note "*the intention of these legislative changes is to **accelerate development through streamlined land acquisition, planning and approval processes...***" and that a development plan is required stipulating how a stated set of strategic objectives are to be delivered. NZPI generally supports spatial planning for the successful development of an urban environment and considers that proposed development plans should be in the form of spatial plans. NZPI cautions against planning, even spatial planning, that is limited to accelerating development. The planning for future housing or business development needs to be an integrated process which includes all elements that make a successful, livable city. These include locations for employment, social and public services and facilities, transport networks, and other infrastructure, parks, reserves and community amenities and facilities. The strategic objectives of a proposed development should provide for all of these outcomes, otherwise there is a risk that the resulting urban redevelopment project will deliver an unsuccessful and unlivable piece of city.

11. NZPI considers that the legislation should require strategic objectives for a project to include a set of measureable urban indicators specifying the delivery of minimum public good outcomes. These could be drawn from ISO 37120:2014 (Sustainable development of communities – Indicators for city services and quality of life) and include: square metres of public recreation space per capita; number of public transport trips per capita; green area per capita; jobs/housing ratio. Project specific indicators might also measure the proportion of affordable homes. The Planning Institute of Australia (PIA) Congress 2017 focussed on urban growth and included presentations emphasising the important role such indicators play in the success of urban regeneration projects in Sydney, Melbourne and Perth in particular. (NZPI can provide information about relevant case studies.)

NZPI's high level comment: Planning profession is collaborative, rather than coercive

12. NZPI's vision is that planning is a valued profession essential to achieving a better New Zealand. Its strategic objectives include championing the profession and supporting planners in their work and workplaces. To that end NZPI has generally encouraged and supported planning that provides for local aspirations and which takes a collaborative approach. Noting that its members will be instrumental in much of the implementation of urban development authority proposals and powers, NZPI is interested in ensuring that planners will be appropriately empowered by these provisions in the planning and facilitation of good urban redevelopment. While recognising the "stick and carrot" nature of some aspects of planning, NZPI is concerned at the weight given to coercive powers (such as compulsory purchase) and limitations on local participation, which could force planners into professional roles which ignore local aspirations and are not collaborative. NZPI considers there needs to be a greater

range of powers and tools available that enable, incentivise and encourage urban redevelopment so that coercive and compulsory powers are much more of a last resort.

NZPI's high level comment: Central government investment essential for redevelopment

13. NZPI submits that the scope for central government participation in urban redevelopment projects needs to be widened to provide for the opportunity of central government investing in urban redevelopment, and central government recouping that investment through development or other charges. An alternative to this, given the government revenues that arise from increased development activity, that government provides grant funding for associated network infrastructure expansion. While possible contribution of publicly owned reserve or other land can catalyse and enable redevelopment, overseas experience (Perth for example) suggests that the costs of establishment of a UDA and of proposal development are significant and are met there by a capital contribution from State Government.

Specific proposals

14. NZPI provides further comment and suggestions on specific aspects of the proposals contained in the discussion document. These submissions are organised by discussion document section headings.

Section 2: Why new legislation is needed to support urban development projects

15. This section briefly summarises the options selection and rejection process that has been undertaken by Central Government to arrive at proposals contained in the present discussion document. It is apparent considerable policy work had 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...³ (**Bold added**)

16. 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 an account of how its urban development authority proposals might have worked in combination which 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 the use of uplift levies. Specific powers suggested in the 2008 consultation included:

³ MBIE, 1 December 2016. Pg 2, Urban Development Authorities, Regulatory Impact Assessment.

- 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.⁴
17. Some of these options for powers are included in the present proposals, though the funding option of value uplift levies is not, district plan processes are over-riden, and no justification or rationale is given for those exclusions.
18. 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 projects were successfully completed without the additional legislation described in the current proposals, and both included plan change processes ensuring relevant policies and rules were put in place in existing statutory planning documents. While NZPI accepts the importance of resolving governance, coordination and land fragmentation issues when redeveloping urban land, these issues were resolved in the above renewal projects, and also in the case of Wynyard Quarter redevelopment – without the need for the legislative changes proposed in the discussion document.

Section 3: Framework and processes

19. The following submissions respond to proposals 1-55 set out in the discussion document for the framework and processes.
20. NZPI generally agrees with the intention of the proposed legislation for central government and local government to work collaboratively and support specific urban development projects at the neighbourhood level which are complex or strategically important (Proposals 1-20).
21. NZPI supports territorial authority veto rights set out in proposal 50.
22. We consider that this veto right will have its greatest influence when a TLA considers the strategic objectives for an urban development project which are set by Government (proposal 6b), and which currently, according to proposal 21 “can include conditions for the delivery of public good outcomes”. We submit there is a need for minimum requirements in the legislation for what should be included in the strategic objectives.
23. We consider that strategic objectives must identify and include the range of sustainable urban development and environmental outcomes that existing territorial plans require.

⁴ DIA, 2008. Pg 36, Building Sustainable Urban Communities

These should not be capable of limitation – for example – to numbers of houses. We submit that the wording of the proposals providing for “strategic objectives” should ensure that the strategic objectives prepared by Government for a potential development project are as integrated and comprehensive as those listed in the example presented in the discussion document at Pg 110.

24. We note further, in support of the need for more definition in the “strategic objectives” that are set by Central Government during the establishment stage, that proposals as drafted only require an assessment of effects on the environment of the development at the development plan stage (Proposal 40e) – which is after the establishment stage. We submit that to ensure a collaborative relationship between Central and Local Government that some sort of EIA (Environment Impact Assessment) should form part of the strategic objective setting process. That preliminary EIA could also be supported at establishment stage by a simplified s32 type analysis of the benefits and costs of the potential urban development project. This would ensure a more rigorous assessment of potential project options by Central Government, and some measure of start-up funding required, before projects are passed to Local Government for the next stage of implementation.
25. The definition of urban development project scope is very wide and includes greenfield areas (Proposal 12). Nothing has been advanced in the analysis accompanying the discussion document that suggests there is an issue or problem that needs to be addressed with processes already in place providing for urban development on greenfield land. We submit the UDA proposals should focus on urban regeneration, renewal or redevelopment projects - not greenfield development. Present RMA structure plan arrangements provide for such development. While the proposed legislation “will not be available to developers that own small sites”, there is nothing in the actual proposals that restricts the legislation’s application to small projects (eg a just a few houses), or to very large projects (which would merit more comprehensive assessment).
26. There is a lack of clarity in establishment and pre-establishment proposals relating to the “initial assessment”, consultation and preparation of strategic objectives. The flow diagram at page 14 suggests that officials engage with all interested and affected parties, prior to deciding on strategic objectives, and then subsequently an assessment is prepared. However the proposals 22 – 24 suggest that an initial assessment comes first “that addresses issues that are appropriate for the scale and type of development”. This appears to relate to public land and public land owner issues only. It also appears that this is the only assessment done before preparation of the strategic objectives that are then made available for public consultation (including with private land owners). This confusion needs to be addressed. We submit that an assessment of the form suggested in para 24 (above) is the minimum required to inform the development of an appropriate set of strategic objectives which can then be consulted with, and justified to, the public.
27. The development plan should include a spatial plan so that the public can understand what is proposed. The present proposals (34 – 40) do not provide for a spatial plan. NZPI’s advice is that if the intent is to inform and involve the public in plans and land use decisions, then

plans should relate to neighbourhood sized land areas and include drawings and diagrams that clearly convey to lay people what is intended. Such information would form part of a spatial plan. A number of presenters to the PIA Congress 2017 described the importance of actual drawings and visuals as part of spatial planning and public engagement in the early stages of urban regeneration projects in Australian cities.

28. NZPI is concerned by the proposals 54 – 55 which appear to remove regional councils from urban development project decision-making. This is inconsistent with recommendations of the Productivity Commission (PC) which emphasises the significance and need for regional spatial planning. NZPI submits that these UDA proposals need further development to clarify the respective roles of regional councils and territorial authorities.

Section 4: Urban development authorities

29. As presently drafted the UDA organisational form proposals (56 – 71) cover – very superficially – a huge variety of UDA organisational types (from earthquake regeneration to greenfield to limited urban redevelopment), with many different – but unspecified - possible lines of accountability and control, and with unclear responsibilities. The proposals may be seen as all things to all people. However NZPI is concerned at the risks and unintended consequences of broad brush legislation that lacks precision, particularly where private property rights may be affected or altered. Organisational form should follow function. NZPI considers that fit for purpose urban development authority vehicles are needed but these need to be designed to address well understood problems, achieve coherent and comprehensive strategic objectives, deliver high quality pieces of city, and include clear provisions relating to accountability, control and responsibility.

Section 5: Land assembly and compulsory acquisition

30. NZPI notes that urban regeneration projects that have already occurred in Auckland have involved land assembly, acquisition and the use of public land. The “willing seller, willing buyer” principle has generally applied when private property issues have arisen – except where private land has been required for a public work such as a roadway when PWA methods have applied.
31. 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.⁵ 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 proposals allow a UDA to take land that is used for residential purposes (compensating land owners at the pre-redevelopment price), and then redevelop the land area so that the betterment profits accruing from a higher density residential development are available for the developer and the development authority.

⁵ MBIE, Feb 2017. Pg 48, Urban Development Authorities, Discussion Document.

NZPI considers that the option of allowing ordinary landowners to take an equity stake in the overall development as a means of earning some of the uplift gains would only be taken up by few home owners – most of whom would be focussed on replacing their lost home.

32. NZPI has noted above its support for collaborative planning approaches. The literature contains recommendations for arrangements 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. We support the thinking of Mangioni who writes: 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.⁶
33. NZPI considers there are ways and means of building into the redevelopment the active, positive and willing engagement of existing landowners, and that profit or value uplift needs to be more equally shared and be part of the process of motivating stakeholder participation in redevelopment planning.

Section 5: Land assembly and Reserves

34. Case studies and urban regeneration projects cited in the discussion document and in the 2008 proposals relied upon public land that had been used for a public work that had become 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, Britomart relied upon a redundant public transport bus terminus, and New Lynn upon road corridors and a railway. Deemed surplus reserve land is leading intensive redevelopment projects in Auckland. For example parts of Point England Reserve are being taken for incorporation into the Tamaki redevelopment project; and Queen Elizabeth Square is part of the intensive redevelopment of Auckland’s CBD.
35. There is a presumption in the discussion document that reserve land is readily available for redevelopment. NZPI’s view is that communities highly value reserves in existing urban environments. Any proposal to take public land for development will need clear communication and compensation to achieve public support and buy in. In the event that a reserve exchange is envisaged (where reserve land within a Development Area is taken for redevelopment, in exchange for another piece elsewhere), proposal 95 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.⁷ 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”.

⁶ Mangioni, 2010, http://www.prrs.net/papers/Mangioni_Urban_cleansing_renewal_compulsory_acquisition.pdf

⁷ MBIE, Feb 2017. Pg 55, Urban Development Authorities, Discussion Document.

36. 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. These matters assume greater importance and significance with more intensive development – where apartments have no “backyard”. NZPI submits that appropriate public open space and reserve provision needs to be part of the strategic objectives of a development proposal and be included in development plan processes (spatial plans).

Section 6: Planning, land use and consenting powers

37. Powers that are outlined in the discussion document (proposals 97-111) would substantially change existing resource management plan making and consenting processes, would give UDA functions currently the responsibility of territorial authorities, and challenge local government in its role as the representative of local communities. Proposals 98 and 101-102 would provide an alternative planning approach, assign new activity classifications within the development project, and effectively create a separate parallel planning system. NZPI considers that until evidence is provided that current planning processes are/have failed there is no justification for adding complexity. If the objective is simply acceleration and stream-lining, NZPI notes that changes in that regard have been enacted in the recent Resource Legislation Amendment Act 2017.

38. NZPI is concerned that not only will these proposals effectively remove UDA projects from RMA jurisdiction, they will require separate administration and appropriately trained and directed planning staff, and further fragment what is already at risk of becoming an extremely fractured and inefficient planning system and are arguably undemocratic. 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.

39. 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 plan. The idea of one-stop-shop access to 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.

40. 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 no justification for by-passing or replacing existing RMA processes.

Section 7: Infrastructure

41. NZPI notes that an important aspect of the UDA approach is the ability to integrate infrastructure planning and development with land use planning and development. Significantly though, the provision of public good infrastructure – such as open space and parks and community assets – is an important attractor for the private investment needed to make brownfield regeneration successful. Auckland’s Wynyard Quarter is an excellent example of this. More than \$100 million was committed to that development (for North Wharf repair and refurbish and construction of other aspects of the public realm – quite apart from network infrastructure) before new private investment was committed – in that case the ASB Headquarter building investment.
42. The planning for network significant infrastructure – such as arterial roading projects and stormwater, water and wastewater trunk infrastructure – needs to be managed at regional level, rather than at UDA level. This reality does not appear to be recognised in the UDA proposals, which are not consistent with PC recommendations that regional spatial planning largely drives or comes before local district planning and development. Further work is needed in the proposals to distinguish between UDA projects that can be accommodated by existing or planned trunk infrastructure systems, and those which might require additional infrastructure capacity which is out of sequence of what is provided for in regional planning instruments.
43. This planning reality needs to be made explicit in the UDA legislation. It is inappropriate for an urban development project to be identified and for its UDA to be granted powers that would conflict with or take priority over the staged funding and development of trunk network infrastructure. NZPI is concerned, for example, by the conflict that appears to exist within proposal 123(a) which requires regional land transport plans to not be inconsistent with the strategic objectives of development projects in areas covered by those plans. This proposal would appear to require relevant territorial authorities to make changes to regional planning instruments (transport plans and spatial plans) to provide for central government determined strategic objectives. The implication of this proposal appears to be that UDAs could take funding from agreed annual planning budgets to support UDA projects which is also arguably undemocratic.

Section 8: Funding and financing

44. There is a lack of comprehensiveness in the proposals about the funding and financing of an urban development project. The proposals appear to have been designed to address the need for network infrastructure. However the costs of an urban development project include public goods such as heritage structures (eg North Wharf at Wynyard Quarter and the heritage Post Office building at Britomart), the construction of local amenities such as a library and playground equipment on a local reserve, and the establishment cost of the

associated UDA itself. These costs are additional to the provision of any public land or reserve land that might be incorporated into the development. Typically these costs – taking Wynyard Quarter and Britomart as examples – are about the same as those projects’ associated network infrastructure costs, and need also to be funded.

45. NZPI strongly advises that the design of UDA funding and financing proposals and powers should be based on the premise that development project revenues will pay for development project costs, and that all costs will be internalised so that economic externalities are minimised. This would explicitly allow for agreed initial public subsidy, start-up funding and investment financing which would be recouped through development levies, value uplift or betterment charges, or targeted rates mechanisms. These mechanisms can also be designed to encourage and incentivise the stakeholder buy-in that will be necessary to achieve land amalgamation, and to minimise the costly litigation that is associated with “hold-out” behaviours of land-owners seeking a fairer price.
46. NZPI notes with concern that with the exception of roading infrastructure and social infrastructure (additional education facilities), and despite increased government revenues that flow from redevelopment projects, the proposals do not explicitly provide for central government to become a financial partner in urban development projects it intends to partner with territorial authorities to deliver. NZPI notes that Australian State Government consistently provides startup capital for urban development agencies there, while federal Government explicitly invests in the public passenger transport trunk infrastructure needed to attract private sector investment into new and brownfield development areas.

Section 10: Other matters

47. NZPI welcomes the ability to establish UDAs that would enable comprehensive and integrated (re) development. Well designed legislation could achieve that outcome, but it would need to provide for consultation, assessment and agreement. The outlined proposals appear centralised, lacking in meaningful process, and risk duplication of bureaucracy.

Ends