D. Stakeholder Guide: Territorial authorities

Why is the Government proposing new legislation?

As our population grows, the Government wants to accelerate the building of new communities and the revitalisation of urban areas to deliver vibrant places to live and work. Rejuvenating our cities requires flexibility to plan and develop new communities for current and future generations.

The Government is therefore proposing a tool-kit of enabling powers that could be used to streamline and speed up particular large scale projects, such as suburb-wide regeneration. This will accelerate urban development projects that offer benefits to communities, including increasing the amount of affordable housing and the provision of necessary infrastructure. The projects would be planned and facilitated by publicly-controlled urban development authorities, potentially in partnership with private companies and/or landowners.

Where will it happen?

Only land that is already within an urban area, or that is sufficiently close to an urban area to be able to service its growth in future (whether or not it connects with the existing built-up area), will potentially be affected by the proposed legislation. The intention is to support nationally or locally significant development projects that are complex or strategically important. A range of urban development projects will be eligible for consideration, including housing, commercial and associated infrastructure projects. Projects cannot cover an entire town or city, nor can they be standalone infrastructure projects.

Territorial authorities and the urban development legislation

To succeed, urban development projects need central and local government to work together. The Government therefore proposes that urban development projects will require the agreement of every territorial authority whose area falls within the proposed project boundaries. Effectively, territorial authorities will have a veto over the application of the proposed legislation to a particular development project.

Territorial authorities will also have a key role throughout the process, as outlined below:

Proposed process

Initiating development projects (Proposals 1 - 21)

Section 3 of the Discussion Document outlines the process for identifying an urban development project. The process starts with either central or local government (territorial authority) initiating a proposal. This could be the result of an approach to government from the private sector, including from iwi organisations and Māori land trusts and incorporations, to consider supporting significant developments that these groups wish to lead on land in which they have an interest. Alternatively, government may identify opportunities to develop publicly owned land.

The first step towards establishing a development project is an initial assessment of its potential. Officials would review the opportunity, identify all the land in the proposed project area and the challenges the project presents. To inform the assessment, government must engage with relevant iwi and hapū groups (regarding

Māori interests in land inside the proposed development project area), with public landholders and requiring authorities (regarding their interests) and with any existing entity that is proposed either to be the urban development authority or to lead the development.

Who would undertake the initial assessment of a potential development project has been left open at this stage. If the project is initiated by a territorial authority, either its officials or the officials of a council controlled organisation may manage this process. If central government initiates a project, an independent panel could be formed to undertake the assessments and make recommendations to the Government, or (once established) an urban development authority that is granted development powers may have the necessary expertise to take on this role. The Government welcomes views on this topic.

Pre-establishment consultation

If the initial assessment shows that the proposed development project has promise, the second step is to consult the public on the core elements of the proposal including:

- the strategic objectives of the project, including any public good outcomes the Government would require as a condition of development;
- the boundaries of the proposed project area;
- the development powers that government proposes to grant to achieve the strategic objectives;
- the urban development authority that will be granted those powers; and
- the entity that will be accountable for delivering the strategic objectives (which may or may not be the same entity as the urban development authority).

The Government (for projects it initiates) or the Mayor of the relevant territorial authority (for locally initiated projects) must seek the public's feedback on the proposal. Government must engage with relevant iwi and hapū groups and post-settlement governance entities that have an interest in land in the proposed project area; and the relevant regional council.

Establishing a development project (Proposals 22 - 33)

The third step is to formally establish the development project. One of the requirements of this step is to set the project's strategic objectives. These become the paramount consideration for decision-making and will take precedence over the purpose and principles of the Resource Management Act 1991 in decisions on the development plan and development consents.

If more particular protections are needed in any one case, the Government will also be empowered to stipulate binding conditions when it establishes the project.

The Government will be able to allocate development powers to either new or existing entities, provided they are publicly-controlled and willing to take on the role. Territorial authorities are one type of existing entity that would be eligible to become an urban development authority (proposal 60).

Subject to the outcome of the pre-establishment consultation, and securing the agreement of the relevant territorial authority(s), the Minister will make the final decision to recommend establishing the project to the Governor-General, who would give assent via an Order-in-Council.

No appeal would be available on the decision to formally establish a development project.

Preparation of a development plan (Proposals 34 - 40)

The next step is for the urban development authority to develop and publish a draft development plan, within a specified timeframe. In preparing this plan, the urban development authority would be required to consult with relevant territorial authorities and regional council on the content of the draft development plan, and central government agencies that provide public services. The authority will also be free to engage with the community as it sees fit.

During preparation of the development plan, the urban development authority must confirm which landowners have elected to include their land in the development project, what land subject to a right of first refusal is in the area, whether relevant landowners wish to develop their land as part of the project and how Māori cultural interests will be addressed in the development plan.

Consultation on the draft development plan

The fifth step is for the urban development authority to publish a draft development plan for public consultation. Any interested member of the public can make written submissions in response to the draft.

All affected persons will have the right to object to any aspect of the development plan that the urban development authority recommends. Those objections will be heard by independent commissioners, who can recommend that the responsible Minister change the development plan before it is approved.

In order to avoid duplicating consultation processes on the same issues, the Government proposes that the public consultation required under the proposed legislation is deemed to satisfy the territorial authority's consultation obligations under the Local Government Act 2002. However, the territorial authority will be free to engage in further consultation if it wishes.

Approval of the development plan (Proposals 43 - 54)

If there are no objections, the urban development authority recommends a final development plan to the Minister. If there are objections, the independent commissioners make their recommendations to the Minister. If a variation to the development plan is required, the same process for development and approval applies, including consultation.

Having considered the recommendations, (and any advice from the independent commissioners if objections were received), the Minister approves the plan, which is then published and the proposed changes come into effect. The Minister has to be satisfied that the plan fulfils the strategic objectives of the development project. If not satisfied, the Minister can reject the plan or ask for changes to be made.

The Minister's decision is final. The development plan that the Minister approves will not be subject to appeal on its merits to the Environment Court.

Proposed powers

Assembling land for an urban development project (Proposals 72 - 88)

Section 5 sets out the proposed powers enabling land to be assembled for an urban development project, which include acquiring Crown or council-owned land and purchasing land from private owners.

The existing powers of the Public Works Act 1981 would continue to apply. All land currently subject to those powers, including Māori freehold land, would continue to be subject to these existing powers, whether or not the land is included or excluded from a development project. Currently, central or local government already has the power to acquire land by compulsion for a range of public works, including for roading purposes and for urban renewal.

The urban development authority can ask the Minister for Land Information to compulsorily acquire any land that is included within a development project, for any one of the existing types of public works. It is important to note that final decision-making power would remain with the Minister for Land Information. Neither the range of public works for which land can be taken, nor the types of land that can be taken, will be extended.

Land that has been excluded from a development project could still be acquired by the Crown or by a territorial authority under their existing powers, including at the instigation of other public agencies that currently have the right to ask for compulsory acquisition. In contrast, subject to the exception noted below (in respect of requiring authority powers), the urban development authority's ability to ask for compulsory acquisition cannot apply to land outside the project area.

While enabling urban development authorities to ask for these powers to be exercised may increase the number of occasions it is used compared to the status quo, their use will still be subject to all of the existing statutory protections. As set out in section 5, it is expected that the Public Works Act 1981 would only be used as a last resort for urban development projects.

Reserves (Proposals 89 – 96)

Reserves can occupy a reasonable amount of land space, therefore 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, subject to appropriate constraints. Nature reserves, scientific reserves and Māori reserves will be exempt from the powers proposed in relation to reserves.

In the case of recreation and local purpose reserves, the powers can only be exercised after consultation with the bodies that administer, manage and own the reserve, especially with respect to the values and purpose for which the reserve is held. For scenic, historic and government purpose reserves, the prior agreement of the Minister of Conservation, which may include the Minister imposing certain conditions, **must** be obtained.

There is also a need to better integrate reserve management planning powers and reserve by-laws with other land use planning. The proposed legislation will include a power to adopt, amend or replace the reserve management plan in consultation with the territorial authority and the administering body.

It will also include a power to suspend by-laws relating to activities on reserves in the development project for the duration of the development, and to recommend and require the territorial authority to cancel, create or

amend by-laws as they apply to the area. The power to suspend by-laws will be limited to the extent necessary to meet the development project's objectives.

For 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. If reserve land is sold, the proceeds will be treated in the same way as they are now.

Planning and resource consenting (Proposals 97 - 111)

The delays, uncertainties and costs of plan change and resource consent processes (including appeal processes) reduces the number and size of projects that are commercially feasible. These issues are particularly challenging for large or complex developments in existing urban areas. However, to achieve the scale and pace necessary, further powers need to be available for significant urban development projects, including accelerated planning and consenting powers and the ability for an urban development authority to be the resource consenting authority.

An urban development authority can be granted the planning and consenting powers of a regional council and territorial authority. Where such powers are not granted to an urban development authority, regional councils and territorial authorities continue to undertake this function.

Regardless of whether it is the urban development authority, the territorial authority or a regional council that is the decision-maker, when making decisions on planning and land use regulation that apply to any part of a development project area, decision-makers must have regard to the strategic objectives as their first priority and must give them the most weight.

The urban development authority can take on the compliance and enforcement responsibilities and powers of a territorial authority and regional council, for breaches of the development plan and associated development consents (except where the authority is the developer and a development consent has been required, in which case compliance and enforcement will rest with the relevant local authority).

In Section 6, the Government proposes that, in appropriate cases, the development plan can override existing and proposed district or regional plans, or parts of them. The summary table at the end of Section 6 provides a summary of the proposed changes.

Infrastructure powers (Proposals 112 – 118)

Section 7 (and its associated summary table) identifies proposed powers that an urban development authority could be granted powers to contract or carry out the planning and construction work to develop the infrastructure required for a project. This includes providing new local infrastructure systems within the development project areas that would service individual areas or households as well as new trunk or network systems or plants, outside of the development area, that may be required to support the increased number of households or businesses. These powers would enable an urban development authority to create, stop, move, build and/or alter:

- local roads, connections to state highways and any road-related infrastructure such as street lights, signage, footpaths and cycle-ways;
- water supply, wastewater, storm water and land drainage infrastructure systems, including related trunk infrastructure and plant;

- public transport facilities and services, together with network infrastructure associated with transport, including services such as timetabled bus or rail routes and any ancillary infrastructure such as bus shelters, interchanges, park-and-ride facilities and railway stations.

An urban development authority could also be empowered to contract with or require that network utility operators stop, build, move and/or alter electricity, gas, telecommunications or other privately owned utility services as required for the development area.

In certain circumstances, it may be necessary for the urban development authority to undertake this work itself if the network utility operator refuses or fails to do the work within a reasonable time. This power would only be exercised in exceptional circumstances and in consultation with the relevant provider to ensure that network integrity, performance, durability and quality standards are maintained.

Independent method for providing infrastructure (Proposals 119 – 122)

Development projects may need an independent method for providing infrastructure where the necessary infrastructure has not been included in local government plans, is needed sooner, or is out of sequence with existing infrastructure plans. This may also include facilitating the development of supporting trunk infrastructure outside of the main project area, including roads, electricity transmission lines, telecommunications, gas and water services.

The Government proposes that urban development authorities can be given the status of a 'requiring authority' under the Resource Management Act 1991,[1] which would enable it to designate land for specific infrastructure requirements and to ask the Crown to exercise powers of compulsory acquisition over that land for those purposes if necessary.[2] The compulsory acquisition power would not extend to wider public works, such as housing or urban renewal, and the decision-maker in these circumstances would be the Minister for Land Information.

To support the construction of major local roads or connections to state highways within its project area, the Government also proposes to enable urban development authorities to become approved public organisations under the Land Transport Management Act 2003. This would enable them to access the Government's National Land Transport Fund and associated co-investment funding programme.

Links to local government planning (Proposals 123 – 124)

The Government proposes to enable an urban development authority to require that local government infrastructure and transport plans are not inconsistent with the strategic objectives of any development projects within their area. This would provide greater certainty and consistency for both developers and territorial authorities over the strategic direction for the identified urban areas and also mitigate the potential risk that these plans compromise the proposed development or vice versa.

Powers are also proposed to suspend part of, or recommend changes to, regional land transport or public transport plans, as they apply to a development project, where a project or service set out in the plan may compromise the proposed development or would no longer apply because of the development. These powers

[1] See section 166-168, Resource Management Act 1991.
[2] See section 186, Resource Management Act 1991.

would be limited to sites or activities that are related to specific development project areas and would not include any by-laws relating to road safety.

Performance requirements and standards (Proposals 125 – 126)

Connecting into the existing city-wide circulation (road, rail, bus routes and land transport services) and reticulation (water, wastewater, storm water, land drainage, gas, telecommunications and power) networks and systems will be an important part of providing new physical infrastructure for development projects.

The infrastructure for a development project will need to meet the system performance requirements and levels of service of the existing or planned networks. The infrastructure construction and quality standards for a development project will be established at the development plan stage. At a minimum, these standards must meet the relevant New Zealand Standards, such as NZS 4404:2010 (Land development and subdivision infrastructure), or the objectives of the relevant territorial authority's or network utility provider's infrastructure design codes of practice.

Collaboration will be required with the relevant territorial authority and other providers to ensure that the proposed infrastructure will meet these performance requirements and standards. In addition, the infrastructure will need to be operated and maintained in a manner which ensures these standards will continue to be met over time and the costs are borne by the users or beneficiaries of that infrastructure.

The proposed legislation would require urban development authorities to consult and collaborate with, and in some cases seek the agreement of, the relevant territorial authority, government agencies (such as the New Zealand Transport Agency) or network utility operators before exercising any powers that could affect an existing service provider's infrastructure networks.

Dealing with infrastructure when winding-up a development project (Proposals 127 – 130)

In advance of disestablishment, decisions will need to be made regarding any assets, liabilities, rights, designations or revenue streams that need to be distributed to appropriate receiving organisations. These organisations may include the relevant territorial authority, regional council and government agencies. They would become the long-term owners of relevant land, infrastructure systems and services, and would be responsible for the ongoing operations, maintenance, revenue streams and debt re-payments, together with the re-integration of the land use regulations into the wider district and regional plans.

New local infrastructure (of the sort usually provided in a new subdivision) would automatically vest in the relevant territorial authority through the existing processes for approval of sub-division consents under the RMA. For other infrastructure, the proposals cover a range of circumstances, depending on whether the infrastructure is publicly or privately owned, and whether it still has associated debt.

A table summarising the proposed responsibility for new and existing infrastructure in three scenarios under the proposals is contained in Appendix 5 of the discussion document.

Infrastructure funding (Proposals 131 – 144)

An urban development authority will require access to a broad range of powers to encourage investment in, and independently fund, new infrastructure. Section 8 proposes powers that would enable urban development authorities to buy, sell and lease buildings as well as access Crown funding and debt and equity financing. The proposed legislation would also enable an urban development authority to determine and levy

a targeted infrastructure charge on properties, as well as charge project specific development contributions on developers building within a development project area. Any charges will be collected by the territorial authority on behalf of the urban development authority or a private investment vehicle.

In appropriate situations, there may be a case for levying part of the annual infrastructure charge on properties outside the development project area that are directly benefiting from the infrastructure improvements or public amenities that the project is providing (e.g. new access roads or parks). However, the Government proposes that only the territorial authority, rather than the urban development authority, has the power to collect revenue for this purpose from residents who live outside the project area.

The local territorial authority would have no power to levy development contributions on developers within the development project area, but will be able to seek to recover a share of the costs for providing head works, trunk infrastructure and wider services and amenities that benefit land owners within the project area. Similarly, an urban development authority can seek to recover from the relevant territorial authority an appropriate share of the costs of providing facilities and amenities that benefit landowners outside the development project area.

To resolve any disputes regarding the relative share of the costs incurred for developing new infrastructure, the new legislation will include a mechanism through which either the local territorial authority or the urban development authority can apply to an independent decision-maker who has the power to determine to what extent each will be subject to the costs of infrastructure and amenities within the project area.

In addition to developers providing local infrastructure, the proposals have been designed to allow for the private provision of trunk infrastructure, removing the need for public entities to provide this infrastructure. In particular, the proposals enable private sector entities to access an annual infrastructure charge against which the private sector can borrow to construct the trunk infrastructure required.

How can I have my say on the proposed legislation?

More information, including the full version of the discussion document, is available here on MBIE's website.