

## E. Stakeholder Guide: Developers

### 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.

Both private developers and publicly owned urban development authorities (or a combination) could access development powers for their development projects. However, in the case of private developers, even once the project has been established, the Government proposes that they must apply to a publicly controlled urban development authority, who would decide whether to exercise the powers. Urban development authorities could delegate some or all of the development entity functions to another entity, but a private developer cannot be delegated the power to independently exercise any of the development powers.

### 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.

### Proposed process

#### Initiating development projects (Proposals 1 - 21)

Section 3 outlines the process for identifying an urban development project, which starts with either central or local government initiating a proposal. Territorial authorities can recommend that the Government consider a particular development project for access to powers under the new legislation, or the Government itself can initiate the process. 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.

### 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, in particular from: relevant iwi and hapū groups; existing private and public property owners; requiring authorities; and where they already exist, with the entities that are proposed to lead a development and be the urban development authority, such as the Tāmaki Regeneration Company. At this point, a private developer would not be able to provide input or feedback on the establishment of a development project unless the developer already owned property in the proposed area, or was an initiation partner of the local territorial authority or Government agency.

### Establishing a development project (Proposals 22 - 33)

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

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.

Urban development authorities must remain in public control and have a governance board that is accountable to Ministers and/or local government. 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 33 - 41)

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 free to engage with the community as it considers appropriate.

During preparation of the development plan, the urban development authority must confirm which landowners have elected to include their land in a 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, including developers who may be interested in working with an urban development authority on a specific project.

Only developers that are considered affected persons, as defined by the legislation, would 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.

### Approval of the development plan (Proposals 43 - 46)

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 on potential changes. If a variation to the development plan is required, the same process for development and approval applies, which includes another round of public consultation on the proposal.

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 housing purposes and for urban renewal.

However, other than the urban development authority itself, no public agency will be able to exercise powers of compulsory acquisition over land included within a development project (including Māori freehold land) without the prior approval of the Minister responsible for the new legislation.

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 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, with the exception of requiring authority powers noted later in this guide, 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 request that these powers 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 noted in section 5, it is expected that the Public Works Act 1981 would only be used as a last resort for urban development projects.

### **Planning and resource consenting** (Proposals 97 - 111)

The delays, uncertainties and costs of current plan change and resource consent processes (including appeal processes) reduce the number and size of projects that are commercially feasible. These issues are particularly challenging for large or complex developments in existing urban areas.

To achieve the scale and pace of development 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.

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. This would not happen automatically, but only in circumstances where the Government believes that the public benefit of the project is sufficiently high to justify it. This would streamline the planning and consent processes required for approving the construction of new buildings, services and infrastructure within a development project area.

### **How this legislation could affect developers**

Currently, powers relating to building and infrastructure planning, provision, funding and financing are spread across at least eight different statutes. Individually, private developers, local territorial authorities and central government do not have access to the full range of powers to provide the additional infrastructure required to support new large and complex urban developments, and the powers that do exist are slow and complex.

### **Infrastructure powers** (Proposals 112 – 118)

Section 7 (and its associated summary table) identifies proposed powers that an urban development authority could be granted 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 development project areas that would service individual areas or households as well as new trunk or network systems or plant, outside of a development area, that may be required to support the increased number of households and 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; and

- 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 would 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 a 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)

Urban 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, public transport, 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,<sup>1</sup> 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.<sup>2</sup> The latter 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.

### **Alignment with 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 consistent 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 enable an urban development authority to have local government by-laws suspended, amended or created to remove any specific restrictions or constraints to developing infrastructure for a project. These powers 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.

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<sup>1</sup> See section 166-168, Resource Management Act 1991.

<sup>2</sup> See section 186, Resource Management Act 1991.

Until the development plan is approved and notified, the current rules in the relevant regional and district plans continue to apply. If the urban development authority is granted planning and consenting powers, then in the period before the development plan takes effect, it can veto or require conditions to be attached to any resource consent or plan change that the relevant territorial authority or regional council is considering in respect of the development project area, provided it is necessary to realise the development project's strategic objectives.

### **Performance requirements and standards (Proposals 125 – 126)**

Connecting seamlessly 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 are to 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. It is proposed that private network utility operators will continue to have responsibility for developing their infrastructure networks to accommodate the requirements of new development projects. Where this does not occur and the urban development authority extends these networks, the performance requirements and standards of the existing systems are to be maintained.

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 new legislation proposes that urban development authorities are 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, government agencies or private providers. 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 potential 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, but it would not be able to lend to a developer. 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.

Where the development project results in costs to upgrade or extend local infrastructure outside of the development project, these costs can be passed on to the eventual purchasers of the individual properties either in the sale price or through a separate, targeted property-based infrastructure charge. Any charges will be collected by the territorial authority on behalf of the urban development authority or a private investment vehicle.

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.

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.

Private provision of trunk infrastructure for development projects would have the potential to reduce the costs to territorial authorities and council-controlled organisations, as well as reducing the burden on existing ratepayers to contribute to paying for services for new residents. This may also encourage the competing provision of serviced land, increasing diversity of choices in the land market, which would ultimately improve its competitiveness, thereby helping to contain price inflation. Private infrastructure provision is already possible under existing land use and planning rules. However, it is uncommon, occurring only at a localised scale in discrete developments.

### **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.