

## **Auckland Council Draft Submission to the Urban Development Authorities Discussion Document February 2017**

### **Introduction**

1. Auckland Council 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 the Auckland Council Group (the council), which includes Auckland Council, Auckland Transport, Panuku Development Auckland (Panuku), and Watercare Services Limited (Watercare). The council has also worked with the Independent Māori Statutory Board in the preparation of this submission.
3. The council's submission consists of high level comments followed by comments on the issues and proposals it considers most substantive.

### **The council's high level comments**

4. The council supports, in principle, the establishment of urban development authorities as a means of effecting urban development at speed and scale in Auckland<sup>1</sup>. The council notes that, as local authorities, regional councils should be involved in the process of developing a UDA.
5. The council strongly supports territorial authority veto rights (proposal 50). In particular, the veto right is essential to ensure the strategic objectives of an UDA are appropriate and do not undermine the council's responsibilities under Part 2 of the Resource Management Act (RMA). Any legislation needs to be clear that if a territorial authority vetoes a UDA proposal, the process ends.
6. The council supports urban development that provides for local aspirations and aligns with current and future plans, and takes a collaborative approach to urban regeneration.
7. The council has significant concerns regarding aspects of the overall proposals in the discussion document, including the composition and powers of Urban Development Authorities (UDAs), the processes outlined for the development of UDA, and about the nature of new urban development that could arise if these are not sufficiently cognisant of, and responsive to, the legislative, planning, environmental and infrastructure context in which they would sit.
8. The problem which the discussion document seeks to solve is insufficiently defined. A more specific problem definition would be helpful in providing useful feedback and suggested improvements. In addition, the discussion document does not address the considerable resources that would be required to establish and operationalise a UDA.
9. The council does not believe that, as proposed, the tools, processes, and interventions in the discussion document will address the underlying constraints that presently hold urban development back. In addition, many of the suggested tools intended for UDAs' use are already available to local authorities.

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<sup>1</sup> See also Auckland Council's submission to the Productivity Commission's *Using land for housing* draft report, June 2015. <http://www.productivity.govt.nz/sites/default/files/sub-land-for-housing-135-auckland-council-6612Kb.pdf>

10. The council is unconvinced that, as stated in the diagram of proposed processes (page 15), the benefits of the proposals will lead to better integration between land use planning and transport systems, as well as increased planning certainty for developers. Collectively, the proposals are likely to reduce planning integration and will reduce certainty for local government and other actors such as key infrastructure providers.
11. The council supports the urban focus of UDAs (see also proposal 12), and recommends that urban development and regeneration should focus on the existing urban area, or at least in areas already identified for growth such as within the Rural Urban Boundary. Development or redevelopment in existing urban areas can be difficult and this proposal goes some way to overcoming some obstacles to development. The council considers that areas for which a UDA can be convened should be:
  - a. Areas of land zoned urban in an operative district plan/unitary plan; and
  - b. Areas of land identified or zoned as 'future urban' in an operative district plan/unitary plan and within any urban limit contained in the regional policy statement.
12. This definition will ensure the focus of an UDA development proposal is in an urban area, which the territorial local authority considers is feasible for some form of urban development and that is able to be serviced with trunk infrastructure. Importantly, it also means the public have already been consulted on whether it is appropriate for the area to be urbanised.
13. As set out, the proposals create greater potential for out of sequence/ad hoc greenfields proposals to be brought forward. This may conflict with and undermine long term planning for growth and infrastructure investment.
14. The council does not support proposals that would allow the strategic objectives of a UDA in a project area to override a territorial authority's strategic decision making at the city and regional level. For Auckland, this includes proposals that would conflict with the urban growth strategy contained in the Auckland Unitary Plan (AUP) and the Auckland Plan.
15. Proposals regarding trunk infrastructure are not clearly resolved. As proposed, it is unlikely to be cost-effective or efficient for the specific requirements for a UDA project area to be prioritised over the regional growth requirements of the infrastructure network. Trunk infrastructure provision requires a substantial body of long term planning and a prioritisation of resources by the council.
16. The council recommends that infrastructure providers must be included in the initiation stage, as well as throughout the establishment phase of a UDA's project development. Auckland Transport and Watercare, in particular, note the critical nature of their involvement in the process of identifying opportunities including the availability, or otherwise, of infrastructure.
17. The funding and financing proposals, e.g. development contributions levied by a UDA, do not properly address the shortfall of funding necessary for urban development and regeneration at the initial stages.
18. The council recommends that any powers over reserves must have set parameters to ensure that reserves are replaced with equal or better quality open space. Territorial authorities should not be required to invest in additional costs such as infrastructure, reserves, and amenities as a result of a UDA.
19. The council is concerned that the proposals are not integrated with the government's wider package of reforms, particularly those which place a greater emphasis on speedier

decision making. Changes through the Resource Legislation Amendment Act 2017, for example, will potentially make some of the proposals redundant.

20. The council recommends that robust, transparent, and early and meaningful engagement with Māori must be part of the overall process. The council supports utilising established frameworks and mechanisms for ongoing engagement with mana whenua and mataawaka Māori to ensure that Māori outcomes are identified.

### **Specific proposals**

The council provides further comments on some of the more specific aspects of the proposals in the key chapters of the discussion document.

### **Section 3: Framework and processes**

21. The following set of comments responds to proposals for the framework (proposals 1-21) and processes (proposals 22-55; processes diagram), and considers the questions posed in Section A: Criteria or thresholds for selecting urban development projects (page 100).

*Framework – Core components, Scope, Application (proposals 1-20)*

22. Proposals 1-20 set out the provision for significant enabling development powers that central government and territorial authorities will select together for each development project and areas. Given the significant powers proposed, the council recommends that these proposals require more rigour.
23. The council recommends that for the sake of clarity, that any legislation clearly states whether, and where, it applies to either a local authority, i.e. a regional council or territorial authority, or a territorial authority, i.e. city, district, or unitary authority, as per the Local Government Act 2002.
24. The council supports the intention of the proposed legislation for government to collaboratively support specific urban development projects at the neighbourhood level for locally significant projects that are complex or strategically important, and not stand-alone infrastructure projects (proposals 1-20).
25. The discussion document identifies the types of projects and features that warrant a development being considered for support under the proposed legislation. The set-up of a proposed UDA and subsequent projects need to reflect the outcomes it aims to achieve. For example, if a UDA aims through its projects to address housing issues, the strategic objectives of the UDA should include housing related outcomes including social and affordable housing.
26. An example is the importance of attractive urban environments for attracting people with highly valued skills (proposal 11(c)). Where relevant, the strategic objectives should identify that sustainable urban development and environmental outcomes are considered, rather than only in the development plan stage as per proposal 40 (e).
27. The council recommends that further work be undertaken on the criteria (Section 10: Other matters), particularly regarding scale. Scope and scale needs to be clearly defined for application of a UDA. While unlimited scope allows for flexibility, it may cause problems for implementation. A UDA that is too small or too large could have more dis-benefits than benefits. The provision of guidance notes and parameters would be useful to guide successful implementation.

28. The implications for Auckland's wider infrastructure network, and alignment with strategies such as the Future Urban Land Supply Strategy are significant. Within Auckland 60%-70% of development is intended to take place in urban areas, pursuant to the Auckland Plan and the AUP. The redevelopment of these brownfield areas will require the provision of new infrastructure to service the development. Care will need to be taken to ensure that the cost and timing of upgrading and replacing existing infrastructure in these areas is fully factored into any funding and financing of infrastructure serving the UDA area. Incentives may be required to encourage brownfield development (as opposed to greenfield development) in order to compensate for additional complications within brownfield areas (i.e. relocating existing infrastructure that services upstream or downstream properties).

*Framework - Benefits (proposal 21)*

29. The council recommends that proposal 21 be strengthened to make public good outcomes mandatory, and expanded to recognise and ensure that the profit from a development be required to be directed back into public good outcomes. If there is transparency of the strategic objectives sought and the opportunities to recycle profit from developments into further achievement of those objectives, this could provide support for use of greater powers to enable developments – such as reduced rights of appeal and ability to acquire land compulsorily. Additionally, the transfer and use of a local authority's land needs to result in a public benefit for the local community.

30. The council recommends that public good outcomes should be fundamental to the application of an urban development project and should be incorporated in the strategic objectives. This includes the quality of development, and should be focussed on communities, and the necessary infrastructure to support their community facilities, open space, and public transport.

*Processes – Establishment stage, Development plan stage, Contents of the development plan (proposals 22-40), and the diagram of proposed processes (pages 14-15)*

31. Given the significant powers in the proposed legislation, the council recommends that robust checks and balances underpin the process for identifying the establishment of an urban development project, and throughout each stage of the development plan. Use of public land can be controversial and can result in dis-benefits to some residents. It is appropriate that there are safeguards in place to protect the public interest.

32. The council, therefore, would not support a reduction in public participation, local decision making or accountability by publicly elected representatives, and recommends that it be explicit that territorial authorities means all of its councillors.

33. Agreement between central and local government will be of vital importance to UDAs. For the avoidance of doubt, the council considers that the establishment stage should require agreement between central and local government on the proposed UDA (proposal 24(c)) prior to public consultation, to avoid unnecessary commitment of resources for the community and other parties, including regional councils.

34. The initiation stage of the project establishment phase is fundamental, and requires relevant actors to be engaged in the process. The council believes that local authorities would be best placed to undertake the initial assessment as they have the local knowledge. Infrastructure providers must be included in the initiation stage due to the process of identifying opportunities including the availability, or otherwise, of infrastructure.

35. The council has concerns that the proposals do not take into account that in the Auckland context, Auckland Transport has the transport powers of the territorial authority, and that the territorial authority is not the road controlling authority. The council recommends that this legislative role is recognised in the UDA legislation. The Local Government (Auckland Council) Act establishes Auckland Transport with functions and powers of a local authority under a range of Acts. It is unclear whether “local authorities” in the document could include Auckland Transport.
36. Environmental impact should be considered at all stages of the proposal (including initial assessment and pre-establishment consultation), as both constraints/potential for adverse effects and opportunities for environmental enhancement to improve UDA outcomes (proposals 23, 32, 34). The council recommends a stronger recognition of mitigation, offsetting and enhancement through the development plan (and earlier). Consideration of environmental outcomes only explicitly at the development plan stage is too late (proposal 40(e)).
37. Mana whenua should be involved at each stage of the establishment process where the government is present (initiation, assessment, government agreement, public consultation and establishment stages). This is necessary to uphold co-governance requirements under the Treaty of Waitangi. The Building Sustainable Urban Communities discussion document used to inform the discussion document’s project based approach to urban development noted the increasing need for iwi capacity and capability to engage in urban development processes and to be in a position to invest in development<sup>2</sup>.

*Processes – Approval of the development plan, Dispute resolution (proposals 43-49)*

38. The proposal for the Minister resolving objections on the development plan after a review by independent commissioners should be expanded to enable the local authority to also be included within this decision-making process to address local issues (proposals 43, 47).
39. The document proposes that significant powers be given to independent commissioners to resolve disputes between the UDA and other parties. In addition to impacts on property rights, they would need to consider any practical implications. The council recommends that, if a project potentially takes a long time to implement, when the power to appoint, remove, replace commissioners would be needed. Should, for example conflicts of interest, commissioners become unavailable, further clarification is required regarding how the dispute resolution would apply if dispute resolution is between a private developer delivering the project, and others, but not the UDA (proposal 49).

*Processes - Role of territorial authorities and regional councils (proposals 50-55)*

40. Territorial authorities (whose agreement is already required prior to consultation occurring), should be the decision-maker on whether to proceed to public consultation on a development proposal (proposal 51).

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<sup>2</sup> Building Sustainable Urban Communities. Department of Internal Affairs. 2008.  
[https://www.dia.govt.nz/diawebsite.nsf/wpg\\_URL/Resource-material-Sustainable-Urban-Development-Index?OpenDocument](https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Resource-material-Sustainable-Urban-Development-Index?OpenDocument)

## Section 5: Land assembly, compulsory acquisition and reserves (Appendix 4 prompts) Proposals 72-96

41. The council supports proposals 72-73, whereby land assembly powers allow a UDA to purchase land by agreement with the landowner (proposal 72); and, at the landowner's discretion, a UDA can pay for all or part of the land in the form of an equity stake in the development projects (proposal 73). This will make it easier for an UDA to assemble fragmented sites and thereby make a development more likely to be economically feasible.
42. The council seeks clarification regarding proposal 74. As proposed, a UDA can dispose of its land, including by sale, lease, easement, or transferring the land to other government agencies. It is unclear whether the proposal to allow land disposal (of any kind) is limited to only other government agencies. It is unclear, for example, whether disposal land would then in turn form part of any existing or future *Right of First Refusal* (RFR) arrangements. RFR should follow the path of transfer of disposal lands from the UDA to other government agencies. The council considers that checks and balances are essential to protect the public's interest and note that, ordinarily, the sale of council owned land would be tightly controlled.
43. The council supports the compulsory acquisition proposals 75, 76, 77, 78, 79. UDAs should have access to the proposed powers, subject to the requirements in proposal 78, i.e. the Minister for Land Information must exercise the power in accordance with existing tests in the Act, including seeking approval from the Minister for Land Information.
44. The council in principle supports proposal 82 as it reflects existing practices provided to territorial authorities under the Public Works Act 1981. At present, entities within the council access these powers under delegation from the council. In practice, compulsory acquisition is usually a matter of "last resort" and additional compensation is sometimes paid to encourage or incentivise an earlier sale of land to the council. The council is of the view that the offer of an equity stake in part compensation for land as a means to share in the value created by the UDA might not get a strong response.
45. Proposals 83(a) and 83(c) use inconsistent language. The council recommends that consistent language be used to make it clear that local authorities are to be financially compensated for the transfer of their land to a UDA.
46. The council supports in principle proposals 89 and 90, for powers over some types of reserves, with the proviso that parameters must be set to ensure that reserves are replaced with equal or better quality open space. Good quality public open space increases in importance to communities and the public when there is potential for greater density of development. However, territorial authorities should not be required to invest in additional costs such as infrastructure, reserves, and amenities as a result of a UDA using an existing reserve for its development purposes.
47. The council supports the limitations set out in proposals 92 and 93, but considers there should also be consideration given to natural and historic values of regional significance, and that these limitations should apply to all reserve types, should they be present on the reserve. Auckland has several scenic reserves with significant indigenous biodiversity values which should be taken into consideration in relation to any acquisition proposal.
48. UDAs should have the powers to reclassify reserves only if the reserve functions poorly and the development plan demonstrates a better urban form can be achieved with a reserve in an alternative location. If a UDA reclassifies a reserve, a better functioning open space should be provided as part of the development. Good quality public open

space increases in importance when there is potential for greater density of development as private open space tends to be replaced with public amenity in parks, reserves and streetscape.

49. The council supports proposal 95, and recommends further that the replacement reserve must have at least the same utility as the original reserve. For example it must have the same level of improvement with replacement or equivalent facilities e.g. sports grounds, play equipment, etc., appropriate for its intended use, and positively contribute to an improved urban form.
50. The community has told us that they value existing reserves in urban environments. Enabling UDAs to remove such reserves will require excellent communication and consultation to achieve public buy in and avoid strong community opposition to future development proposals (particularly as these proposals are intended to primarily take place on public land).

### **Section 6: Planning, land use and consenting powers (proposals 97-111)**

51. The powers outlined in the discussion document propose substantial changes to existing resource management plan making and resource consenting processes. These powers give a UDA roles and functions normally undertaken by a territorial authority and appear to challenge a fundamental premise of local government as the representative of local communities. Councils are knowledgeable and should be empowered to make local decisions. In the case of the planning powers exercised by councils, these are a form of subordinate regulation (e.g. district plans) and involve quasi-judicial decision-making processes such as the grant or refusal of resource consents.
52. UDA development plans prioritise the strategic objectives of the development project first, then RMA principles. The council group recommends the requirements of Part 2 remain the over-riding consideration (proposal 97). In the event that development plans contain land use regulations they should be required to adopt the same requirements for all RMA section 6 matters as district plans.
53. Proposals 98, 101, and 102 provide for an alternative planning approach and assign activity classifications to elements of the development project. Introducing a dual system is both unnecessary and overly complex when the district plan should suffice. The council notes the recent Resource Legislation Amendment Act 2017 is intended to facilitate faster plan-making (including any plan changes required by a UDA).
54. While the council supports the UDA leading the master planning, the council would not support plan changes being undertaken by any authority other than the local authority.
55. An example of the resourcing requirements and complexity to undertake master planning and a plan change is the Whenuapai Structure Plan. Development of the Structure Plan required approximately 2000 staff hours from the council, Watercare and Auckland Transport. During this period, the council and Auckland Transport also engaged several consultants for technical advice totalling \$466,890.00. The Whenuapai Structure Plan identifies the future land use pattern for the area, and the appropriate form of development including the provision of the transport network, underground services and social infrastructure that will serve the future population. It identifies areas for residential development, the location of retail centres and business land, and the relationship between these areas and public open space, community facilities and the Upper Waitemata Harbour. The Structure Plan also identifies some constraints on urban development, in the form of the capacity of the transport network and other

infrastructure, and environmental matters such as the management of storm water. The next stage is to prepare a plan change to embed the master plan into the AUP.

56. The council recommends that where a plan has not been reviewed for more than 5 years a territorial authority would be required to accept a plan change for notification. A UDA should bear the cost of any such plan change.
57. The council strongly opposes a UDA to have consenting powers. In addition, the discussion document does not address the significant resourcing required to set this up, or how these costs would be borne, e.g. by the rate payer, through the council or the beneficiaries of development through UDA charging.
58. The council strongly opposes the proposal for a UDA having the ability to veto resource consents or impose consent conditions that a relevant territorial authority or regional council is considering in respect of the development project area. This would create further uncertainty (and natural justice issues) for private interests (proposal 100). However, it would be appropriate for a UDA to be notified as an affected party if a resource consent was for a non-complying activity or required public notification.
59. Notwithstanding the council's position on consenting powers, clarification is required in relation to outline plans where the UDA is the consenting authority. Under section 172 of the RMA, the requiring authority determines whether to accept or reject a recommendation of the territorial authority, which can be appealed to the Environment Court. This process needs to be clarified within the legislation.
60. The content list for a Development Plan in Proposals 102, 103 and 104 appears comprehensive. The council seeks to ensure RMA Part 2 matters are recognised under Proposal 102 (b), including heritage and areas of significance.
61. The council supports the concept of using independent commissioners determining a UDA's resource consent applications (proposals 105 and 106). We consider the council should assess and provide the evaluation report to the independent planning commissioner, and that there needs to be the ability for council to recover those costs.
62. The council has concerns that a requiring authority's designations are not automatically included in UDA development plans and can be removed (proposal 110).

### **Section 7: Infrastructure (Proposals 112-131)**

63. Key benefits of the UDA proposal are the ability for a UDA to master plan an area and then develop both the public and private realm within. For example, Wynyard Quarter is a successful example of the council delegating a range of functions (i.e. design, planning and construction of parks and open space, buildings) which are normally undertaken across the group to a single council entity. The local infrastructure in Wynyard Quarter has been able to be designed and located in such way that it complements the development occurring on adjacent sites.
64. At the higher level this ensures the key benefit of a UDA can be achieved – that is as a catalyst for urban regeneration of an area, with public realm works being established ahead of the development of private sites. This is a critical factor in development areas which are presently not seen as being market-attractive and provide investment confidence to the private sector.

65. The comments above support the UDA document's approach to local infrastructure, however the proposition regarding trunk infrastructure is not as clearly resolved. In a city of Auckland's scale, with acknowledged shortfalls in existing trunk infrastructure (e.g. roads, rail) it is unlikely to be cost-effective or efficient for the specific requirements for a UDA project area to be prioritised over the regional growth requirements of the infrastructure network. Trunk infrastructure provision requires a substantial body of long term planning and a prioritisation of resources by the council.
66. An example of the need to integrate infrastructure for water and transport is that of Watercare. Watercare supplies a total of 390 million litres of drinking water to Auckland, and 395 million litres of wastewater is treated, servicing 1.4 million people. Under its current operating model, Watercare can meet the demands of growth by working with the council and development community to align infrastructure delivery and timing to when and where growth is occurring, without compromising on its mission to deliver reliable, safe, low-cost and efficient water and wastewater services.
67. Watercare's major strategic projects are planned and staged to ensure water and wastewater networks continue to have sufficient capacity to meet demand as Auckland's population increases. Watercare prepares an Asset Management Plan ("AMP") on a three yearly cycle to inform the council's preparation of its Long Term Plan (LTP). Major new assets planned include the Hunua 4 Watermain to Khyber Reservoirs, expansion of the Waikato Water Treatment Plant, replacement of the Huia Water Treatment Plan and construction of the North Harbour 2 Watermain. If there is significant growth in some non-metropolitan areas (for example Helensville), then a large investment in securing additional water sources would be required.
68. A planned progression of expansion is needed that builds incrementally, to include urban brownfields and intensification areas with existing infrastructure capacity as well as greenfields areas where new provision is necessary. This applies equally across transport and water infrastructure.
69. Providing infrastructure or picking up operational costs for ad hoc and unsequenced new development impacts on other projects and spreads funding resources thinly across the region.
70. In addition, the current transport funding process requires long term planning by Auckland Transport; preparation of the Regional Land Transport Plan (RLTP) has a lead time of about 18 months from initiation through consultation to adoption. The RLTP is then in effect for three years. The council LTP also has a long lead-in time and is also in force for three years and has a 10-year planning horizon. It is difficult for transport funding to respond to the demands of accelerated development, for example, SHAs, that may not have been anticipated during plan preparation.
71. It will therefore be important that the UDA is able to work closely with infrastructure providers. Particular care needs to be made to avoid a situation of "orphan" infrastructure. That is, at the expiry of a UDA, the infrastructure should be transferred across to the appropriate Utility Provider with the appropriate funding. All new infrastructure also needs to be designed and constructed to the local authorities' engineering standards. If not, there is a risk that infrastructure operators or local authorities will not want that asset or additional costs are required to bring the infrastructure up to standard.
72. The council has particular concerns regarding how the public transport system as a network will be addressed by a UDA in its wider consideration of a local community's

needs. As proposed, a UDA is not required to consider the impact on the community outside the UDA and connection to the wider network (proposal 114).

73. Contrary to what is proposed in the discussion document, the council considers a UDA should align to the relevant territorial authority's long-term plans, regional land transport and public transport plans and other local government statutory planning.
74. The scale of Auckland's growth makes it important that the council takes a strategic approach in ensuring that the right residential, business and commercial land is released in the right places at the right times. Land release for development must align with the provision of appropriate infrastructure and amenities that is able to meet current and future needs.
75. The council has a number of initiatives underway that will enable Auckland to respond to growth pressures. These include, amongst others, implementing the AUP and the National Policy Statement on Urban Development Capacity, undertaking its own urban development activities through Panuku, updating its Future Urban Land Supply Strategy, and refreshing the Auckland Plan. There are also ongoing discussions with central government through the Auckland Transport Alignment Project to address broader transport issues and to begin implementing project recommendations.
76. There needs to be a commitment to adhere to regionally agreed priorities where known, if there is deviation from these, e.g. bringing a project forward, then the UDA needs to demonstrate the benefit and mitigate problems. These may include changes to funding, changes to benefits from projects, ripple effects on network planning. The prioritisation of funding for UDAs may be at expense of higher priority projects.
77. The council does not support truncating processes to simplify and shorten them without addressing the greater risk that individual concerns could be marginalised or overlooked. Any revision to the planning system, even within the context of an urban redevelopment agency, needs to keep in mind the lack of equality between participants representing different interests. In addition, the cost implications of a revision could be significant, and require accessing funds in the LTP and potentially redirecting funding programmes (proposal 119).
78. If a UDA were to become a requiring authority, then the council supports that they have the ability to access the government's National Transport fund (proposal 121).
79. The council agrees that no assets should transfer or be vested in the relevant local authority until all debt is paid down. All infrastructure should be local authority standard compliant and vested in the local authority once debt is paid off. This ensures equitable access to infrastructure by all residents with appropriate long term asset planning maintenance and renewal.
80. The council does not agree with Scenario 3 (Appendix 5, page 126), that a developer may vest infrastructure in entities other than the relevant local authority.
81. The document indicates that proposals would require agreement in relation to state highways and railway but not major arterials. At a minimum Auckland Transport recommends that there is early agreement on changes to the arterial network and public transport because of significant network impact (proposal 125).

## Section 8: Funding and financing - Proposals 132 - 145

### *Financing*

82. Accordingly, the council, in principle, supports the need for financing and funding mechanisms for UDAs on the proviso that the fundamental issues discussed above are resolved. Committing funding to new projects to support new development is a significant issue for the council. Whilst the council has a range of financing sources and the ability to borrow directly or indirectly and “in substance”, it is operating close to its debt limits. Therefore it cannot borrow much more without potentially impacting its external credit rating. The implications of a credit rating downgrade would be to increase borrowing costs, reduce access to international debt markets and, through the Local Government Funding Agency, impact the credit ratings for New Zealand local government sector as a whole.
83. UDA arrangements for the provision of infrastructure (including elements related to asset ownership, operational contracting and financing) need to be able to be accommodated within the council’s debt to revenue limit (as assessed by the Standard and Poor’s credit rating agency). The council has concerns UDA debt may be considered on the council’s balance sheet if the council will eventually be the owner or operator of any of the UDA assets. This would risk a credit rating downgrade for the council. This is a fundamental issue that must be addressed in any legislation. The status quo finance proposals will not work into the future.

### *Funding*

84. The funding mechanisms proposed, targeted rates and development contributions are the same as those presently available to the council and we consider their proposed use appropriate. The council recommends that MBIE considers what processes and controls will apply to a UDA where it seeks to apply targeted rates to properties that it does not own that will benefit from infrastructure investments. The application of targeted rates in these circumstances may offer important incentive and revenue security benefits to the UDA but involve an element of compulsion. Councils are required to consult extensively before applying rates and must do so within the scope of the matters they are required to consider under s101(3) of the Local Government Act 2002. It is not clear how the UDA’s power to rate land owners will be tempered.
85. The council considers that any legislation to introduce UDAs should provide for some amendments to rating legislation for the application of rates by UDAs and the council when they are being applied to growth infrastructure. The proposed amendments are:
- providing for infrastructure targeted rates to be set at any time rather than solely as part of an annual or long-term plan. This would recognise that the contracting and negotiation process with the private sector need not follow a set annual time frame
  - providing for infrastructure targeted rates to be set for a period greater than a single year (but still allowing for adjustment to reflect changes in underlying costs e.g. capital cost overruns)
  - allowing valuation in best potential use rather than current possible use to be the basis for land valuation for the application of infrastructure targeted rates – land value captures more of the differences between properties than land area. The council has to use land area at present because valuation rules/legislation requires valuation of land on the basis of what it can be used for now i.e. before infrastructure investment
  - allowing the use of value change as a basis for setting infrastructure targeted rates.

## **Section 9: Māori interests in urban development and land use (proposals 146-169)**

86. The council supports the proposal that a UDA is bound to uphold any co-governance arrangements established through Treaty settlements, even where those arrangements refer to planning and consenting frameworks that have been replaced under the proposed legislation (proposal 150). This should also include any co-governance/co-management arrangements that have arisen outside of Treaty settlements. Further clarification is sought regarding how future co-governance/co-management agreements would be dealt with.
87. There are potential issues for mataawaka Māori regarding the location of urban marae as they may not be associated with Māori land or Treaty settlement land. They are often on a public open space reserve, and could be affected by the proposals around reserves.
88. The council supports proposal 151 in principle that there will be no change in the processes required under Te Ture Whenua Māori Act 1993 (or its successor). The council notes, however, that this may need to be reviewed in light of amendments to the Te Ture Whenua Bill currently underway.
89. The council has well established frameworks and mechanisms to engage with Māori, as set out in CCOs' respective Statements of Intent. The council supports maintaining these relationships and ensuring that Māori outcomes are identified through ongoing engagement with mana whenua and mataawaka Māori.

## **Section 10: Other matters**

### *C. Transitional matters: establishing and disestablishing an urban development project*

90. The council supports proposals requiring that assets cannot be vested if debt remains unless by agreement of the receiving authority. It is important to protect the territorial authorities/Council-controlled organisations from inheriting bad debt.
91. There is, however, a significant risk (particularly over a long time period) that if a UDA fails, the only agency able to take over is a public entity such as the territorial authority. Although the government can assign a new UDA or entity it may be difficult to find one that wants to pick up bad debt.
92. The council seeks clarification regarding whether the contractual liabilities and warranties post project closure are adequately understood.

### *D. Market provision of infrastructure*

93. The council recognises the potential value that the role of UDAs to support urban development projects that offer benefits to communities, including increasing the amount of affordable housing and the provision of necessary infrastructure.
94. The council supports new tools for paying for infrastructure, including annual charges that can be given to a private entity to raise debt.