



New Zealand
Planning Institute[®]
Te Kokiringa Taumata

Submission

Urban Development Bill

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1. Executive Summary

This is the New Zealand Planning Institute's (NZPI) submission to The Urban Development Bill (the Bill). The Bill is the sequel to the Kāinga Ora – Homes and Communities Act 2019 which created New Zealand's first urban development authority last year.

NZPI generally supports the establishment of urban development agencies as planning implementation mechanisms. However NZPI has significant concerns with the Bill – both in terms of its overall conception, the assumptions it is based upon (as expressed in Cabinet papers), and its workability and likely (but unintended) consequences. In summary the Bill:

- risks being a heavy-handed and costly Central Government duplication of functions and roles that should be delivered by enabled and empowered Local Government agencies;
- is based on insufficient analysis of what can, and what already has, been achieved in urban regeneration in Auckland within existing legislation;
- fails to integrate with overlapping and parallel Central Government interventions including the National Policy Statement on Urban Development Capacity and the proposed NPS on Urban Development;
- builds on incomplete accounts of urban development agency tools and mechanisms in Australia (eg Western Australia);
- risks enabling privately owned and managed regeneration developments with minimal accountability to the relevant local authority or affected public;
- fails to provide appropriately for partnership and collaboration between Central and Local Government in urban regeneration;
- fails to provide for value uplift capture or betterment tax to contribute toward necessary supporting infrastructure development costs.

NZPI's submission is that the outcomes sought in the Bill are better achieved:

- Either by in the short term: modifying the National Policy Statement on Urban Development to provide for urban regeneration situations so that the activity is coordinated with existing NPS's and integrates with existing planning frameworks;
- Or by in the longer term: incorporating its provisions into the RM Reform process and providing appropriately for powers of land amalgamation, compulsory purchase and value uplift funding, and Government incentive funding;
- Or something in between but which in any case requires implementation to be carried out by Central and Local Government working collaboratively.

2. Introduction

This is the New Zealand Planning Institute's (NZPI) submission to The Urban Development Bill (the Bill). The Bill is the sequel to the Kāinga Ora – Homes and Communities Act 2019 which created New Zealand's first urban development authority earlier this year. Kāinga Ora is the amalgamation of Housing New Zealand, the Kiwibuild unit and the former Hobsonville Land Company. The aim of this Bill is to provide Kāinga Ora with broad development and planning powers to streamline and consolidate consenting and construction of Specified Development Projects (SDP).

Proposed development and planning powers include:

- The ability to override, amend or suspend provisions in district and regional plans or policy statements through an expedited planning process;
- Requiring authority status for roading and three waters infrastructure, along with power to construct infrastructure and vesting power to hand any such infrastructure back over to councils and utility companies once completed;
- Land acquisition powers through a modified public works process but also introducing significant safeguards for right of first refusal/customary rights holders. For some projects, Kāinga Ora will also be a significant land-owner in its own right;
- Rating and development contribution levying powers and the power to enter into, and bind councils to multi-year infrastructure funding mechanisms.

These powers are part of the tool-kit that Kāinga Ora and its partners can access for any particular project. The Bill also outlines the proposed process to establish an SDP. This includes:

- Identification of a geographic area, project objectives and a governance structure which are all approved by relevant Ministers. The relevant local authorities must be invited to be part of the project governance – which provides some local representation;
- Kāinga Ora preparing a draft development plan that outlines the development powers and funding arrangements for the project;
- The opportunity for people to make submissions on the draft development plan followed by a hearing by an independent hearing panel;
- Minister responsible for the project approves or declines the recommendations of the hearing panel on the draft plan.

Ministry officials have previously advised that there could be 10-15 SDPs throughout the country. For those unknown locations the proposals in the Bill represent a significant shift in the way development occurs. This is an opportunity for a new and better way of doing things, but also carries substantial risks for stakeholders, local authorities and residents of each area. NZPI agrees new powers and mechanisms are needed to implement urban regeneration projects in New Zealand cities in particular, but considers there are significant problems and risks with the Bill and its design, and submits there are less costly and risky mechanisms.

NZPI has made a number of submissions relating to urban development (in the past 12 months), to NZ's planning framework reform (last two weeks) and to proposed urban development authorities

(2017). This Bill is the latest in a proliferation of Central Government interventions and work arounds, from separate Ministries, each seeking particular and conflicting changes to NZ's urban planning and development system. NZPI submits it is essential that these interventions be coordinated so that conflicting, competing and duplicating provisions are removed or reconciled. NZPI submits that Central Government Ministries should collaborate to deliver workable and practical reforms.

3. Submissions

The Urban Development Bill is a complex piece of legislation which provides specific powers to enable Kāinga Ora - Homes and Communities (Kāinga Ora) to undertake urban development within specified development project areas (SDPA) as well as providing the ability to use powers of acquisition for all of Kāinga Ora's development activities. The Bill sets out the process for establishing an SDPA, the preparation of a respective development plan, notification of the plan, providing it and submissions to an Independent Hearings Panel (IHP), and the collection of rates and development contributions.

This Bill is the latest Central Government intervention on urban development and housing, and is in addition to: Resource Management Act reforms (stages 1 and 2); proposed National Policy Statements on Urban Development and Highly Productive Land (not forgetting Freshwater Management and Indigenous Biodiversity); the Infrastructure Funding and Financing Bill; and National Planning Standards.

In all of its recent submissions to these planning systems change proposals NZPI has called for coordination and integrated national direction as individual Government ministries (Ministry for the Environment; Ministry for Business, Innovation & Employment; Ministry for Primary Industries) propose conflicting and competing national planning system guidance. This Bill comes from the Ministry for Housing and Urban Development to empower its urban development agency and require government to produce a Government Policy Statement on Housing and Urban Development.

3.1 The Bill risks being a heavy-handed and costly Central Government duplication of functions and roles that should be delivered by enabled and empowered Local Government agencies

The Executive summary to the Cabinet paper (dated 23rd November 2018) which aimed at establishing a Housing Commission and legislating to empower complex urban projects is strongly critical of Auckland, arguing it: "needs government to better enable critical major urban infrastructure such as light rail", and that: "the current legislative scheme is too slow, uncertain or weighted against development to be able to achieve the desired outcomes in the necessary timeframe to meet the scale of the challenge, whether for Kiwibuild or for other large-scale, city-shaping projects". The responsible Minister's concern with local government and existing planning frameworks is exemplified in his Cabinet paper proposal that "to future proof the Authority" there should be a provision: "enabling the Minister to direct it to perform any additional function relating to housing and urban development".

This shapes the direction of the proposed reform and the functions of the proposed urban development authority. The Urban Development Bill gives Kāinga Ora access to a 'tool box' of development powers to be used within a specified development project area and some general powers that can be applied outside of these areas. Each of the powers has been designed to address a specific barrier to development. Not all powers will be needed by every project. Development powers are set out under the following categories:

- a) Infrastructure – scope potential works, three waters and drainage infrastructure, roading, parking, public transport, transfer of ownership, bylaw powers, ability to do works outside a specified development area;
- b) Planning and Consenting – amendments to district plan, regional plan or regional policy statement, issue consents, shortened consent process, requiring authority powers, veto or amend applications of resource consents or plan changes in the project area;
- c) Funding – Set and assess targeted rates, require development contributions, require betterment payments, require infrastructure and administrative charges;
- d) Land Acquisition and Transfer – exchange, revoke, reconfigure some reserves, create, classify and vest reserves, transfer and set apart Crown owned land, acquire private land, transfer of ownership, buy, sell and hold land in own name, transfer of former Māori land.

In effect, a specified SDPA, while geographically located within a territorial authority jurisdiction, would come under the control of Kāinga Ora. It would stipulate the plan, issue consents, scope and carry out infrastructure works, set rates and development levies (which would be collected however by the territorial authority and transferred to Kāinga Ora), and acquire private land. All of these functions are presently carried out by a TLA, and would need to be duplicated within Kāinga Ora.

NZPI submissions below argue that while new powers may be necessary to enable and carry out urban regeneration development, it is risky and unnecessary to so completely remove existing territorial authorities from urban regeneration planning and development.

3.2 The Bill is based on insufficient analysis of what can, and what already has, been achieved in urban regeneration in Auckland within existing legislation

Cabinet papers refer briefly to Hobson Point, Britomart and to the Tamaki Redevelopment project, but don't explain the fundamental enablers of those developments. Cabinet papers are largely silent on other significant urban regeneration projects in Auckland including: New Lynn, the Viaduct, and Wynyard Quarter. It should be noted that with the exception of Tamaki Redevelopment, all of the above projects were planned and enabled prior to the creation (through amalgamation) of Auckland Council.

A fundamental enabler of all of the above projects (except New Lynn) was the availability of a significant amount of contiguous land in one title: Hobson Point was defence owned, the Britomart site was largely owned by Auckland City Council (ACC), Viaduct was ex Ports of Auckland and largely owned by Auckland City Council, Wynyard Quarter was ex Ports of Auckland and owned by Auckland Regional Council (ARC). The Tamaki Redevelopment project is on land owned by Housing New Zealand and was based on the idea of densification of existing state housing to free up land for private development. These kinds of development opportunities are harder to find now – though the Ngāti Whātua Ōrākei Trust is the owner of urban regeneration opportunities in Auckland's CBD (surplus railway sidings for example), and is presently intensively developing surplus defence lands at Devonport and Bayswater on the North Shore of Auckland.

The second fundamental enabler was the contribution of significant public money which has gone into infrastructure, public amenity and good urban design. Excluding central government cash for rail, Britomart received in excess of \$200 million from ACC which was used for heritage preservation and the construction of an extraordinary railway station. Hobson Point was the beneficiary of central government investment in two schools, and the construction of SH20. Viaduct Harbour regeneration

benefited from \$50 million public money from the Infrastructure Auckland entity. Wynyard Quarter regeneration was supported by \$200 million provided by ACC and ARC.

The New Lynn urban regeneration project was largely enabled and incentivised by central government funding upwards of \$100 million to underground the New Lynn railway station. This project was not on land under single ownership as New Lynn was a town centre. All stakeholders – including Waitakere City Council, the local Community Board, the Auckland Regional Transport Authority, private land owners – established a development committee to steer the project collaboratively. Individual stakeholders delivered necessary components including plan changes, road layout changes, an undergrounded railway and station, and bus interchange.

With the exception of Auckland’s waterfront regeneration projects, all of the above urban regeneration projects are characterised by a very high level of collaboration between central and local government.

NZPI notes that these projects – with the possible exception of the Tamaki Redevelopment – were led and planned by Local Government – sometimes through the creation of an appropriate development vehicle, and in most cases enabled and incentivised by Central Government infrastructure contributions.

3.3 The Bill fails to integrate with overlapping and parallel Central Government interventions including the National Policy Statement on Urban Development Capacity and the proposed NPS on Urban Development

There is clearly an overlap between the objective of the NPS on Urban Development Capacity (and its proposed replacement – the NPS on Urban Development), and the proposed objective of the Bill:

The Objective of the NPS-UD is to enable quality urban environments that make it possible for all people, whānau, communities and future generations to provide for their well-being, including by: a) offering people access to a choice of homes that meet their demands, jobs, opportunities for social interaction, high-quality diverse services and open space b) providing businesses with economies of scale, with access to many consumers, suppliers, skilled people and sources of innovation c) using land, energy and infrastructure efficiently d) responding to changing needs and conditions.

The objective of Kāinga Ora–Homes and Communities is to contribute to sustainable, inclusive, and thriving communities that (a) provide people with good quality, affordable housing choices that meet diverse needs; and (b) support good access to jobs, amenities, and services; and (c) otherwise sustain or enhance the overall economic, social, environmental, and cultural well-being of current and future generations.

NZPI submits this Bill risks duplication, when what is needed is integrated and consistent national direction, and interventions which build implementation partnerships and collaboration. NZPI notes with concern that the Kāinga Ora–Homes and Communities Act (2019) requires the preparation of a Government Policy Statement which must “state the Government’s overall direction and priorities for housing and urban development”. It is unclear how these very similar but different policy statements are to be weighed and given effect on the ground.

NZPI suggests that conflict and confusion would reduce if Kāinga Ora–Homes and Communities focused on social housing for example, but if that is not the intention, NZPI submits this whole Bill and its

relationship with the NPS-UD and options for some of its objectives to be included within the more substantive NZ planning system review – need further analysis so that the Bill is fit for a clear purpose.

3.4 The Bill builds on incomplete accounts of the role of urban development agency tools and mechanisms in Australia (eg Western Australia)

NZPI is concerned by the over-simplified accounts provided in Cabinet papers of the role and function of urban regeneration mechanisms in Australia. It should be noted that prior to embarking on the collaborative project to regenerate New Lynn in West Auckland (described above), representatives and senior officials from Auckland regional and local government, and from transport agencies, jointly attended a week long study trip to Perth (in 2005) to attend presentations and site visits relating to three urban regeneration projects there (East Perth, Subiaco and West Midlands). Presentations were received from developers, state government officials, local government, transport (especially rail) and UDA officials. These assisted the study group to obtain a good understanding of the planning, funding and coordinated implementation of those projects – two of which were underway at the time.

Each of those projects had its own tailor-made Urban Development Entity established and funded by State Government. State Government capital contributions were to be repaid through development levies raised as each development proceeded. Later, the State of Australia established a state-wide urban development authority – the Metropolitan Redevelopment Authority. This single state-wide entity has enabled several more urban redevelopment projects of scale (some in Perth, some green field) by a mechanism of Land Redevelopment Committees which are delegated special development powers and funding – one being established for each project area. The makeup of those committees ensures collaboration, accountability and involvement of relevant territorial local authorities, significant land owners and infrastructure providers.

NZPI notes that West Australia's experience with UDA type mechanisms has gone through various changes as experience has been gained across the State and locally with different approaches. It started with Government establishing single purpose UDAs for each project. Their first projects were on single title land areas: gas works, railway sidings. There were few such opportunities. Greater complexity in land ownership required a different, but much more local approach – hence the use of empowered Land Redevelopment Committees which enable (rather than lead) redevelopment, and which build partnerships and collaboration.

The learnings gained from this study trip formed the basis of the highly collaborative institutional design adopted in Waitakere and which delivered the New Lynn regeneration project.

3.5 The Bill risks enabling privately owned and managed regeneration developments with minimal accountability to the relevant local authority or affected public

This Bill appears to take the previous Special Housing Areas (SHA) intervention approach and enable Kāinga Ora to build whatever infrastructure might be needed to support a private housing development (for example), and then require the relevant territorial authority to levy requisite rates and development levies to pay for that infrastructure. NZPI is primarily concerned by the extent to which Kainga Ora – with any chosen developer – will be able to ignore local planning frameworks and locally adopted strategic plans in pursuit of specific development objectives. The process will establish separately governed urban communities within a city - which will depend on the city for funding mechanisms and for certain infrastructure, but which can avoid rules and regulations that apply to the rest of the city's

inhabitants. Final decisions on the establishment of any Special Development Project Area will be in the hands of two Ministers who can't be relied upon to have good knowledge of the area and don't seem to be required to consider relevant information in coming to a decision. NZPI submits that New Zealand Local Government is not averse to urban regeneration – it has led it across Auckland already. However NZPI submits Central Government can enable, legitimise and incentivise local government to lead more urban regeneration projects.

3.6 The Bill fails to provide appropriately for partnership and collaboration between Central and Local Government in urban regeneration

The Bill makes the presumption that Kāinga Ora can lead urban regeneration (presumably by actually doing it) – rather than enabling urban regeneration (which is the practice in Western Australia for example). A key problem with this approach is that Kāinga Ora – being a Government entity focused on housing – will inevitably prioritise Ministry objectives. This problem is well understood in Australia, where State and Commonwealth governments are made up of highly efficient silos – one for transport, one for education, one for health, and another for housing – for example. Difficulty arises when there is a need to combine the outcomes of silos into the planning for the development of a town or an urban community. That is what local government is for at its best. Local government's role is the building and managing of communities – whether in rural or urban environments.

Auckland is not alone in New Zealand as a city with parts that are rundown and neglected and in need of urban renewal, or which present development opportunities. Auckland – along with most NZ cities - has spatial and visionary plans for how those pieces of city can be redeveloped. What it lacks is the tools to do the job (land amalgamation, value uplift taxes/rates, kick start capital funding).

Central Government has the power to deliver the tools and the funding, local government has the additional knowledge needed to get the job done and meet a broad range of outcomes – not just the building of more houses. That is why the Bill needs to provide for collaboration and partnership between central government and local government in its design, and in the implementation of the urban renewal projects it enables. NZPI submits that Central Government should be steering not rowing.

3.7 The Bill fails to provide adequately for value uplift capture or betterment tax to contribute toward necessary supporting infrastructure development costs

There is considerable commentary in Australia in support of value uplift capture as a consistent, substantial, predictable and transparent source of base load funds, as distinct from its sporadic and opportunistic use in part funding individual infrastructure projects. New Zealand needs a value uplift capture regime urgently, so that regeneration development projects pay their way and can comprehensively develop as pieces of city with all of the associated amenity – not just pipes and asphalt. A modern urban regeneration Bill needs to provide for value uplift capture, thus enabling projects to build the complete urban environments called for in the objectives of Bills like this one.

4. Conclusion

There are a number of alternatives to the Bill to address the risks it entails, and to address the main issues it appears aimed at.

NZPI is concerned that this Bill is a strengthened Special Housing Areas (SHA) work around. We are concerned because the SHA approach to increasing housing supply was problematic and arguably caused more problems than it solved. We are particularly concerned at the minimal regard given in the Bill to the work and role of Local Government in the regeneration planning and building of pieces of city. We strongly advocate for any urban development mechanism to require that central and local government strengths and powers are brought together in constructive partnerships, and that collaboration is the norm.

NZPI understands that both the Auckland and Christchurch Plans have been reviewed and enable greater infill opportunities both through zoning and as overlays for existing state housing areas, which appear to be being actively taken up by Kainga Ora on a site by site basis. This would suggest that more enabling provisions could be put in place in other parts of New Zealand through plan reviews or specific directions in the Urban Development NPS. This is an alternative and less complex solution to some of the problems summarised in the Cabinet papers.

NZPI considers there are three ways forward. None of which supports the Bill in its present form.

- The first is to put the Bill on ice and review the effectiveness of the new plans in Christchurch and Auckland, sharpen national guidance in the Urban Development NPS and add new powers, and concentrate on developing Local Government Act infrastructure funding frameworks.
- The second option is for the Bill to be advanced as a short-term workaround, which NZPI would cautiously support as an interim solution for infrastructure provision and funding provided it came with better safeguards re representation/ local govt involvement for planning.
- The third option is that while NZPI recognise challenges with the current RMA/ LGA frameworks, on balance it's better to wait for the wider reform package to provide the full solution and acknowledge that this may mean limited progress on the 15 or so targeted areas.

Ends