Departmental Disclosure Statement

Urban Development Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Housing and Urban Development.

The Ministry of Housing and Urban Development certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

28 November 2019

Contents

Part One: General Policy Statement

What Bill seeks to achieve and why

This Bill is an omnibus Bill introduced under Standing Order 263(a) because the amendments deal with an inter-related topic that can be regarded as implementing a single broad policy. That policy is to provide for functions, powers, rights, and duties of the Crown entity Kāinga Ora–Homes and Communities (**Kāinga Ora**) to enable it to undertake its urban development functions.

Current legislative framework for urban development not meeting the needs of New Zealanders

New Zealand's urban areas are facing unprecedented pressure and are not delivering the improvements in living standards that New Zealanders expect. While our urban areas are growing, we are experiencing unaffordable housing (both rental and owner occupation), rising urban land prices, increasing homelessness, pressure on the public housing register, increasing greenhouse gas emissions, lack of transport choice, and flattening productivity.

We need to change the ways we develop our urban areas so that our cities can make room for growth and thrive. This must happen at a scale and pace so everyone in New Zealand can live in healthy and safe homes in sustainable communities and have opportunities to achieve success. This calls for transformational urban development projects that integrate a wide range of public good objectives across economic development, local employment, affordable and public housing, public transport and infrastructure provision.

The current New Zealand urban development system does not effectively facilitate and enable the delivery of complex or strategically important projects the market would not otherwise deliver, particularly those revitalising urban areas. Our system does not provide the tools, certainty, and coordination required to do comprehensive, large-scale, timely, and transformational urban development.

The objective of this bill is to better coordinate the use of land, infrastructure and public assets to maximise public benefit from complex urban development projects

This Bill tackles these long-term challenges by providing Kāinga Ora with a tool-kit of powers and a new, streamlined process that will enable complex, transformational development that will improve the social and economic performance of New Zealand's urban areas. It is not designed to address wider issues in the urban development and planning system.

By providing an upfront consultation and approval process—for funding, planning, infrastructure, and land assembly—this Bill will reduce the risks and costs associated with complex developments and provide more certainty for developers and investors.

The Bill will address a range of barriers to transformational development, including planning constraints, fragmented land parcels, limited funding, and poor infrastructure. This will reduce the risk of complex developments and create opportunities for the private market, councils, and Māori developers. It will ensure that there is aligned land use and transport planning, an increase in the supply of public and affordable housing where it is most needed, and the effective use of land and buildings, including through the consolidation and subdivision of land. The opportunity to undertake such projects will expand the possibilities for urban development and regeneration in New Zealand—

supporting central and local government, the private sector, and communities to find new ways to meet the aspirations of New Zealanders for their cities.

The Bill has a range of safeguards in place to ensure that the benefits of urban development are balanced by a range of other considerations, including environmental, cultural, and heritage values. Early engagement is required with Māori and key stakeholders, so their local needs and aspirations can be ascertained, and full public consultation is required on the development plan for the project.

The Bill recognises the aspirations that Māori have in housing and urban development, as potential development partners, as people significantly impacted by historic and current pressures in housing, and through their connections with the land and other natural resources. This Bill establishes protections for land in which Māori have interests and a strong expectation that Kāinga Ora will identify and support Māori aspirations for urban development in specified development project areas, including through the opportunity to participate in development.

The Bill recognises the essential role of territorial authorities in realising transformational urban development and provides for their partnership with Kāinga Ora.

Specific features of Bill

Establishing a Specified Development Project to bring together existing powers to provide certainty to developers and the wider community

This Bill establishes a Specified Development Project process (the **SDP process**), a streamlined process for complex urban development projects. These are the kind of projects that struggle in the current environment due to the need to coordinate the activities of multiple central and local government agencies and private sector participants, and work across the national, regional, and local planning systems.

The SDP process brings together multiple legislative processes and decision points that are currently disconnected to provide certainty, simplicity, and more effective and coordinated access to a tool-kit of development powers. Outlining and gaining the appropriate approvals for all the planning and consenting permissions, infrastructure, and funding for a project at the start of a project will allow more efficient delivery.

The process is intended to reduce the risk of undertaking complex development projects, by bringing together multiple interdependent regulatory processes, without losing the important checks and balances when exercising these powers.

Establishing a Specified Development Project (an SDP)

The Bill sets out a comprehensive establishment process that SDPs must go through before they can access the development powers. The process is as follows:

- Kāinga Ora will carry out an initial assessment to evaluate feasibility and define the proposed project area and project objectives. The objectives will need to be project specific and identify what the project is expected to achieve. They can also identify any features or areas within a project area that must be protected or enhanced as part of the development. Engaging and working together with key partners including iwi, local Māori, and territorial authorities will be an important element of this step. The views of territorial authorities must be sought and provided in the assessment report.
- If Kāinga Ora recommends that the project be established as an SDP, it will seek endorsement from the joint Ministers (the Minister of Finance and the Minister responsible for the administration of the Act).

- If joint Ministers agree, an Order in Council will be sought to establish the SDP. The Order in Council will confirm and publicise the boundaries of the project area, the project objectives, and the name or type of project governance body. The objectives will then guide decision making within a project area. When establishing a project governance body, relevant territorial authorities who support the SDP will be invited to nominate a representative.
- Kāinga Ora will then prepare a draft development plan and supporting documents that outline the development powers and funding arrangements that will be used, as well as protections for Māori interests, the environment, and historic heritage sites. When preparing the draft development plan, Kāinga Ora will engage with Ministers who are responsible for particular interests in the project area.
- Kāinga Ora will publicly notify the draft development plan for consultation. The draft development plan will be widely consulted on, with submissions being heard and considered by an Independent Hearing Panel (an **IHP**).
- After the IHP has completed the hearing process, it will provide the Minister responsible for this legislation with a report on the draft development plan and the submissions it received, with recommendations (if any) for amendments to be made to the development plan.
- The Minister responsible for this legislation will approve or decline the development plan based on recommendations from the IHP. If the recommendations from the IHP are approved by the Minister, the development plan will be finalised and publicly notified by way of a Gazette notice.

Public's views will be heard before responsible Ministers make decisions on the draft development plan

The development plan is the core document that will provide an outline of how development will be undertaken within a project area. There will be public consultation on the contents of the draft development plan. The plan will include:

- detail of the development's design, including a structure plan; and
- any necessary changes to normal Resource Management Act 1991 (the **RMA**) planning instruments or process; and
- identification of any areas to be protected or excluded from development (if relevant); and
- high-level information on what development powers Kāinga Ora and its partners will have access to and how they will be exercised; and
- high level information and certain details on funding sources; and
- time-frames and phasing of development.

Providing access to a tool-kit of development powers

Where approved by the development plan, Kāinga Ora and its partners will have access to a toolkit of powers that currently exist through numerous separate pieces of legislation. Ordinarily these powers are spread across central and local government and must be accessed through separate approval processes. The SDP process will ensure these powers are used for a project in a co-ordinated way, in line with the project objectives, so that complex development can occur.

Each power is designed to address a specific barrier to development, such as planning constraints, old and aging infrastructure, and limited funding for development activities. Used together, they enable multiple aspects of the urban environment to be changed with greater certainty, integration and speed.

Powers include the ability to:

- override, add to, or suspend provisions in RMA plans or policy statements in the development plan that applies to the project area:
- act as a consent authority (city/district level) and requiring authority under the RMA:
- use funding tools for infrastructure and development activities:
- levy targeted rates and development contributions:
- build and change infrastructure:
- reconfigure reserves.

Kāinga Ora will also be able to veto or amend resource consent applications and exclude plan changes from applying in a project area before the development plan is operative, following the Order in Council.

Kāinga Ora will be able, with Ministerial approval, to delegate some of the development powers to its partners under the Crown Entities Act 2004. In these cases, the partners of Kāinga Ora will be able exercise the powers, but Kāinga Ora will remain accountable for their use. The powers to acquire land and to levy targeted rates are not able to be delegated outside Kāinga Ora, other than to a subsidiary.

Bill to ensure appropriate safeguards in place

The Bill has a range of safeguards in place to ensure key interests are adequately protected and managed through the SDP process and when using the development powers.

Bill to ensure Kāinga Ora will protect Māori interests and actively support advancement of Māori aspirations

The Kāinga Ora–Homes and Communities Act 2019 provides a broad framework for how Kāinga Ora must consider Māori interests. This includes an expectation that Kāinga Ora will engage early and meaningfully with Māori when undertaking urban development. The Bill complements this by setting out in more detail the agency's obligations to Māori in urban development.

As part of the SDP process, Kāinga Ora will engage with Māori entities (including post-settlement governance entities, iwi and hapū authorities, and urban Māori authorities) and the former owners of, and the hapū associated with, any former Māori land[1] within a proposed project area when assessing a proposal to establish an SDP. This includes seeking expressions of interest from Māori entities to develop, as part of the project, any land within the project area in which they have an interest. It also provides an opportunity for Māori to shape the project area and project objectives sought from the SDP.

No powers in the Bill can be used in respect of Māori customary land, Māori reserves and reservations and any parts of the common marine and coastal area in which customary marine title or protected customary rights have been recognised. Other categories of land are protected from compulsory acquisition but may be developed using powers under the Bill if the owners of the land provide their prior consent. This includes Māori freehold land, certain types of general land held by Māori, land held by a post settlement governance entity, and land held by or on behalf of an iwi or hapū if the land was transferred with the intention of returning the land to the holders of mana whenua.

[1] "Former Māori land" is land that was taken for a public work by the Crown (or a specified work by Kāinga Ora), and was, immediately before it was taken, Māori land, or Māori land that became general land under the Māori Affairs Amendment Act 1967.

The Bill must be read subject to anything in a Treaty settlement Act or deed, Te Ture Whenua Maori Act 1993 and the Marine and Coastal Area (Takutai Moana) Act 2011. It ensures that the Crown is still able to meet its obligations under the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014.

Environmental and heritage protections

This Bill recognises the importance of protecting the environment and ensuring good access to open spaces. It provides for the protection of significant environmental interests and environmental bottom lines as well as protecting heritage sites and values.

There are multiple points at which environmental concerns can be raised and protected during an SDP:

- Project objectives and the setting of the project area can identify and seek to protect specific areas or features so that they are excluded from the development. The project area does not need to be one contiguous piece of land, to enable land to be excluded from development.
- Project objectives are required to be consistent with the national policy statements, national environmental standards and other national directions under the RMA.
- The development plan can apply any existing RMA protections or include new provisions to protect specific areas or features.
- The Minister of Conservation must be engaged during the initial assessment of an SDP if reserve land, land subject to a conservation interest, or any part of the coastal marine area is within or adjacent to the proposed project area. Approval from the Minister of Conservation will be required to use any of this land as part of the development project.
- If a development plan includes changes to any existing reserves, approval from the Minister of Conservation must be obtained before an SDP can be progressed.
- The evaluation report for a draft development plan must set out how environmental constraints and opportunities associated with an SDP will be managed, together with a broad assessment of the likely effects on the environment.

There is a safeguard for the protection of historic heritage values. Kāinga Ora is required to seek recommendations from Heritage New Zealand Pouhere Taonga on the protection of heritage values for a proposed project area. The development plan cannot override planning rules and other provisions protecting historic heritage in a way that would make them more permissive to development.

There are specific protections for infrastructure. Nationally significant infrastructure providers must be engaged during the initial assessment stage of the SDP process. This is done to ensure that the operation of the infrastructure can continue during construction and upon completion of the proposed development. The protections for nationally significant infrastructure are also extended to a Defence Area and the Chief of the Defence Force must be engaged with if a proposed project area is in or adjacent to a Defence Area.

Kāinga Ora will have land acquisition and transfer powers when undertaking any urban development

The Bill also provides Kāinga Ora with a set of powers to acquire (either through agreement or compulsory acquisition) and transfer land when it initiates, facilitates or undertakes any work for the purpose of urban development. This will enable Kāinga Ora to use these powers when undertaking both SDPs and other urban development

projects. This power can be used for the purpose of acquiring land in future development areas prior to any uplift in land values following an urban development project's announcement. The Bill has safeguards in place to ensure that the use of land acquisition powers strike an appropriate balance between the need to meet urban development outcomes and the need to maintain certainty of property rights. These safeguards are broadly the same as those currently in the Public Works Act 1981. However, Kāinga Ora may dispose of land without being required to offer it back to the former owner if certain housing or urban renewal works have been completed on the land.

The exception is where the land is former Māori land that may pass out of public ownership through development, There Kāinga Ora must engage with the land's former owners and the relevant hapū associated with the land before undertaking development on the land. The engagement is to understand their aspirations for the land and how these aspirations may be taken into account in the way the land is developed. Furthermore, Kāinga Ora must offer the land back under the PWA before it can proceed with development.

Rights of First Refusal

The Bill sets out a new approach to Rights of First Refusal (RFR), designed to support Māori aspirations in urban development and enable them to participate in development opportunities. Where Kāinga Ora wishes to initiate, facilitate, or undertake an urban development project on RFR land it holds or controls, it must engage with the RFR holder and offer it the opportunity to undertake the development on specified terms. The development may not proceed unless the RFR holder agrees to participate in the development on those or other terms or to the development going ahead without its involvement. In such case the RFR will continue to apply, meaning the RFR holder will (subject to any offer back requirements) be offered the first opportunity to purchase the land and improvements if they are sold.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	**YES**
The proposal to establish a new entity to drive transformational urban development is informed by a series of Productivity Commission reports, beginning with the *Housing Affordability Inquiry (2012), Using Land for Housing (2015), and Better Urban Planning* (2017). *The Housing Affordability Inquiry* focused on New Zealand's experience with collaboration and the experiences of urban development authorities in Melbourne and Queenstown.[2] The *Using Land for Housing* concluded that urban development authorities can play an important role in de-risking development and bringing land to market.[3] This advice was carried through to the *Better Urban Planning report.*[4] The proposal was also informed by a 2017 discussion document issued by the government, the *Urban Development Authorities discussion document*.[5] Other previous reports include *The Case for Urban Development Authorities in New Zealand (2017)6, Catalysing Positive Urban Change in New Zealand (2006)7, and Building Sustainable Urban Communities – discussion document (2008)8.*	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	**NO**

[2] New Zealand Productivity Commission (2012). *Affordable Housing Inquiry*. Available from http://www.productivity.govt.nz/inquiry-content/1509?stage=4
[3] New Zealand Productivity Commission (2015). *Using land for housing*. Available from http://www.productivity.govt.nz/inquiry-content/2060?stage=4, R12.1
[4] New Zealand Productivity Commission (2017). *Better Urban Planning*. Available from http://www.productivity.govt.nz/inquiry-content/2682?stage=4, R12.2.
[5] Ministry of Business, Innovation and Employment (2017). *Urban Development Authorities discussion document*. Available from https://www.mbie.govt.nz/dmsdocument/4598-urban-development-authorities-discussion-document
[6] Ian Mitchell (2017). *The case for urban development authorities in New Zealand*
[7] SGS Economics & Planning (2006). *Catalysing positive urban change in New Zealand.*
[8] Inter-agency unit with teams headed by Ministry for the Environment, Department of Prime Minister and Cabinet, and the Department of Internal Affairs (2008). *Building Sustainable Urban Communities – discussion document*

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	**YES**

"Supporting Complex Urban Development Projects with Dedicated Legislation", Ministry of Housing and Urban Development, 30 November 2018. This is accessible at https://treasury.govt.nz/publications/risa/regulatory-impact-assessment-supporting-complex-urban-development-projects-dedicated-legislation

The preferred policy option presented in this Regulatory Impact Statement 2019 is being given effect through two pieces of legislation.

The Kāinga Ora – Homes and Communities Act 2019 established Kāinga Ora and its purpose. This Urban Development Bill will support Kāinga Ora to undertake and facilitate transformational, complex urban development that contributes to sustainable, inclusive, and thriving communities. This is through providing the tools, certainty and coordination required to do comprehensive, large-scale, timely and transformational urban development.

The analysis in this Regulatory Impact Statement regarding what development powers are needed and how they are used is unaffected by the decision to progress this policy through two pieces of legislation.

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	**YES**

The RIA was provided alongside the 2018 November Cabinet paper *Establishing the national urban development authority* [CAB-18-SUB-0265]. Treasury's Regulatory Quality Team (RQT) advised that:

> The RIA is largely the same as the one considered by Cabinet in May 2018 [CAB-18-SUB-0243]. The main areas of change concern:
>
> - inclusion of options for the legal form of the Urban Development Authority (UDA);
> - clarification on the development plan process and disputes resolution;
> - clarification on the Treaty of Waitangi and implementation, including the exemption of sensitive Māori land for compulsory acquisition;
> - clarification of offer back obligations.
>
> RQT re-confirms its earlier assessment that the information and analysis summarised in the Regulatory Impact Assessment meets the quality assurance criteria.
>
> The RIA has a clear structure and exhibits clear thinking on the nature of the problem and the available options for each issue. The analysis also identifies that there are adverse potential impacts for current residents and property owners.

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	**NO**

There has been no substantial change to policy intent or material difference to the preferred option outlined in the Regulatory Impact Statement. This preferred option will be given effect through two pieces of legislation: The Kāinga Ora – Home and Communities Act 2019 and the Urban Development Bill.

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	**NO**

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	**YES**
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	**YES**
"Supporting Complex Urban Development Projects with Dedicated Legislation", Ministry of Housing and Urban Development, 30 November 2018. This is accessible at https://treasury.govt.nz/publications/risa/regulatory-impact-assessment-supporting-complex-urban-development-projects-dedicated-legislation	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	**NO**
(b) the nature and level of regulator effort put into encouraging or securing compliance?	**NO**
The Bill does not establish Kāinga Ora as a regulator with substantial compliance responsibilities. There will be some circumstances in which Kāinga Ora will act as a regulator. In particular, as part of an SDP (where approved by the development plan) it will have the power to issue and ensure compliance with resource consents within a project area. In these circumstances it will act as if it were the territorial authority.	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
Internal review has occurred and determined that there are no relevant international obligations.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?
The policy of this Bill is largely formed through the proposals in the 2017 discussion document and consultation. This consultation included iwi, post-settlement government entities, Māori representative bodies including independent Māori statutory board (ISMB), Te Puni Kōkiri and Te Arawhiti. This consultation identified that there were concerns around honouring Treaty obligations and that Māori had a keen interest to lead and participate in urban development. Officials have worked closely with Te Puni Kōkiri and Te Arawhiti to ensure adequate safeguards are in place so that Kāinga Ora is a good partner and that Māori interests and aspirations are actively identified and advanced. These safeguards include protections for land in which Māori have interests. Certain categories of land are protected from compulsory acquisition but may be developed using powers under the Bill if the owners of the land provide their prior consent. This includes Māori freehold land, certain types of general land held by Māori, land held by a post settlement governance entity, and land held by or on behalf of an iwi or hapū if the land was transferred with the intention of returning the land to the holders of mana whenua.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
Advice provided to the Attorney-General by the Ministry of Justice is generally expected to be available on the Ministry of Justice's website at introduction of a Bill, and can be accessed at https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/	

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	**YES**
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	**YES**

This Bill creates an offence to intentionally obstruct authorised entry to a property. Authorised entry includes for the purposes of assessment of a specified development project SDP), for the preparation, change or review of a development plan, for the exercise of specific development powers, and for the assessment of land for acquisition.

When Kāinga Ora accesses a development power it is intended that the existing appeals processes (for example, appeal to the Environment Court for decisions made under the Resource Management Act 1991) will continue. However, to enable a concurrent and integrated approach to development, shortened appeal rights will exist within an SDP once it is approved. SDPs go through a rigorous approval process which includes public and ministerial consultation.

Unless explicitly stated in the Bill, existing provisions from other legislation, for example the Resource Management Act 1991, will continue to apply in an SDP. Please see appendix one to see what new jurisdictions will be created and what appeal rights will be shortened.

Judicial Review will not be limited in this Bill except certain avenues of statutory appeal rights must be exhausted before judicial review is available (adopting the approach taken in section 296 of the Resource Management Act 1991).

3.4.1. Was the Ministry of Justice consulted about these provisions?	**YES**

Ministry of Justice was consulted during the general agency consultation on relevant cabinet papers. These papers included the recommendation of there being no general appeal rights on the establishment of an SDP, and that appeal rights on the development plan should be restricted to Points of Law. CAB – 18 – MIN - 0243

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	**NO**

Kāinga Ora, when carrying out its functions established in this Bill, will collect information on private property. This information is already publicly available, and Kāinga Ora will follow existing practice. Kāinga Ora will not collect information on private citizens under this Bill.

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES

The establishment of an urban development authority was consulted on as part of the following Productivity Commission reports: *Housing Affordability Inquiry (2012),9 Using Land for Housing (2015),10 and Better Urban Planning* (2017).[11]

The 2017 Urban Development Authority discussion document issued by the then Government sought feedback on enacting new legislation including specifics on establishing an urban development authority. The majority of submitters supported the concept of a UDA in principle. A full summary of submissions can be found here: https://www.hud.govt.nz/assets/Urban-Development/Urban-Development-Authority-Legislation/Summary-of-submissions-UDA.pdf

In early 2018, additional consultation on the powers and processes of an urban development authority was undertaken with a select group of high-growth territorial authorities and private network utility providers. A summary of this consultation can be found here: https://www.hud.govt.nz/assets/Urban-Development/Housing-and-Urban-Development-Authority/Briefing/84aeac7e02/UDTA-Infrastructure-and-Funding-Consultation-Report-Back.pdf

In preparation for the introduction of the Bill, officials met with key stakeholders to test critical elements of the draft and to inform them about the intent and content of the Bill. This occurred during October and November 2019.

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES

[9] New Zealand Productivity Commission (2012). Affordable Housing Inquiry. Available from http://www.productivity.govt.nz/inquiry-content/1509?stage=4

[10] New Zealand Productivity Commission (2015). Using land for housing. Available from http://www.productivity.govt.nz/inquiry-content/2060?stage=4, R12.1.

[11] New Zealand Productivity Commission (2017). Better Urban Planning. Available from http://www.productivity.govt.nz/inquiry-content/2682?stage=4, R12.2.

In early 2018, additional consultation on the powers and processes of an urban development authority was undertaken with a select group of high-growth territorial authorities and private network utility providers. This was on particular provisions in the Bill including the council's role, the usability of targeted rates, and the settings for nationally significant infrastructure. A summary of this consultation can be found here: https://www.hud.govt.nz/assets/Urban-Development/Housing-and-Urban-Development-Authoerity/Briefing/84aeac7e02/UDTA-Infrastructure-and-Funding-Consultation-Report-Back.pdf

Early in 2019 officials worked with the Kāinga Ora establishment team, Housing New Zealand, and some industry actors to review policy from an operational lens. This engagement lead to the ongoing advancement of the policy thinking that underpins this Bill including the streamlined SDP process.

Engagement on the SDP process in mid-2019 with agencies and industry experts identified the need for simplification. This improved and streamlined process was then reviewed by a specialist resource management firm. Subsequent changes, as well as implementation challenges identified by Housing New Zealand during consultation, have been addressed in the drafting of this Bill.

Officials have met with Te Arawhiti, the Department of Conservation, Land Information New Zealand, Department of Internal Affairs, New Zealand Transport Agency and Ministry for the Environment on multiple occasions. The Bill draws on multiple pieces of legislation administered by these agencies. The Ministry of Housing and Urban Development has worked with these partner agencies to make sure that the bill has appropriate protections in the SDP process when these powers are accessed including Ministerial involvement.

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	YES

This Bill enables Kāinga Ora to acquire land when it initiates, facilitates or undertakes any work for the purpose of urban development, whether the work is for a SDP or other type of urban development project. The Bill includes a definition of "specified work" which sets out the type of urban development works that are applicable in respect of the acquisition powers. These powers are equivalent to existing acquisition powers in the Public Works Act 1981 (PWA) for a "public work". They enable Kāinga Ora to compulsorily acquire land for a specified work in a similar fashion to the process provided for in the PWA.

The Bill also allows Kāinga Ora to transfer land acquired for a specified work to a developer in order to deliver the specified work without triggering the "offer back" requirements provided for in the PWA. This type of transfer may be necessary when a developer needs to own the land in order to access development finance.

The compulsory acquisition of land is needed so that Kāinga Ora and its partners can bring together parcels of land for urban development purposes that the private market would otherwise find difficult to assemble. These hurdles disincentivise private developers from carrying out complex and transformative urban development.

This Bill has safeguards in place to ensure that the use of land acquisition powers strike an appropriate balance between the need to meet urban development outcomes and the need to maintain certainty of property rights. These safeguards are broadly the same as those currently in the Public Works Act 1981. The Bill protects certain types of land from being compulsory acquired for a specified work, including certain types of reserves and national parks, Māori customary land and Māori reserves and common marine and coastal areas where rights have been recognised.

To ensure any land transferred to a developer is used to deliver the intended specified work, the Bill includes a mechanism to allow the Crown to take the land back if deemed necessary. The Bill actively protects Māori interests when land is disposed of, either because a specified work is completed or because land is no longer needed. Former Māori land cannot be on sold unless it has first been offered to its former owners in accordance with the PWA and transfer of the land outside public ownership is subject to any rights of first refusal under settlement legislation.

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	YES

Once a development plan has been approved, Kāinga Ora will be able to set any development contributions, targeted rates, and infrastructure and administrative charges that may be permitted in an operative development plan. These are not new powers and are available through the Local Government Act 2002 and the Local Government (Rating) Act 2002. The Territorial Authority and Kāinga Ora will not both be able to impose a source of funding for the same purpose at the same time.

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	**NO**
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	**NO**

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	**NO**

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	**NO**
This Bill centralises decision making and provides efficient use of existing development powers. Kāinga Ora will have access to a suite of development powers that may involve concurrent and/or streamlined processes but will not fundamentally change or add any powers that don't already exist. Although in some cases decision making is being moved from local government to Ministers or Kāinga Ora.	

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	**NO**

4.8. Does this Bill create or amend any other powers to make delegated legislation?	**YES**
The Bill creates the following powers to make delegated legislation: • The Bill provides for the creation of Orders in Council to establish an SDP, authorise the collection of targeted rates, and disestablish a SDP. • Once a targeted rates order has been made, Kāinga Ora can issue a rates resolution that will set out the terms of the targeted rate. A rates resolution is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	**YES**
Clauses 171 to 183 provide for Kāinga Ora to propose bylaw changes relating to the infrastructure within, or that will connect into, a project area. These provisions set out the process Kāinga Ora must complete, which includes public notification of what is proposed, and hearing the views of persons on the proposal. Although these provisions do not give Kāinga Ora any power to make infrastructure-related bylaws, in certain circumstances Kāinga Ora may require bylaw changes to be made by the relevant bylaw-making authority, once Kāinga Ora has been through the required process. Bylaw changes can also be proposed and approved through the development planning process. This includes bylaws that prescribe infrastructure and service charges (see clause 239).	

Appendix One: Further Information Relating to Part Three

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove?

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

Shortened appeals include:

- **Appeals on resource consents (Clause 135)**
  Currently, resource consents can be appealed to the High Court on points of merit and are not limited to points of law. The Bill provides that appeals on resource consents within the SDP area will be limited to points of merit in the Environment Court, and points of law in the High Court. The High Court is the final court of appeal on such matters. This provides efficiency with other checks and balances being provided in the SDP approval process.
- **Direction on reasonable use of land (Clause 136)**
  The Environment Court may issue directions on the reasonable use of land that is subject to controls under s 85 of the Resource Management Act 1991. Appeals against this may only be on points of law to the High Court.
- **Rights of Appeal to Territorial Authority (Clauses 134)**
  Within a project area, rights of appeal to the territorial authority (on matters which Kāinga Ora is acting as a territorial authority) are instead appeals to a hearings commissioner appointed by Kāinga Ora.

There are new jurisdictions and/or appeal rights:

- **Development Plan (Clause 88) – New**
  The development plan can be appealed to the High Court on questions of law by a person who made a written submission. An appeal against a decision of the High Court may be made to the Court of Appeal, but that is the final appeal.