

In Confidence

Office of the Minister of Housing and Urban Development

Chair, Cabinet Business Committee

Establishing the Housing Commission and legislating to empower complex urban development projects

1. I propose that we agree:
 - 1.1 in principle to establish the Housing Commission as a national urban development authority; and
 - 1.2 develop new legislation that enables central government to empower complex or strategically important urban development projects to access more enabling development powers.
2. I will report back to Cabinet in the New Year with detailed policy proposals and to seek authority to issue drafting instructions for a new Bill.
3. This paper complements, and should be read alongside, a separate Cabinet paper I am presenting on *Commencing the Implementation of KiwiBuild*. Whereas that paper seeks authority to establish the interim measures required to commence KiwiBuild, this paper outlines the longer-term solutions that I anticipate will be needed and seeks Cabinet's support for the core elements involved.

Executive summary

4. New Zealand is facing critical levels of child poverty, homelessness and housing affordability. Around 86% of our population live in urban areas that are growing faster than often aging infrastructure and transport systems can keep up. The Government is committed to addressing these issues by taking a hands-on approach to ensure much-needed urban development, housing and infrastructure is delivered strategically and at pace, especially in areas that most experience these challenges.
5. The existing mechanisms and arrangements have not delivered the scale of development needed fast enough nor in an integrated way. New Zealand needs development powers and land use rules that better enable complex development projects in order to meet the unprecedented scale of urban development required in a short timeframe, especially in Auckland. 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.
6. Auckland in particular needs government to better enable critical major urban infrastructure, such as light rail, that informs spatial planning and is supportive of sustainable urban communities.
7. Government needs a means for coordinating its investment in urban development across a range of national policy objectives, including social and environmental outcomes, economic development, land management, housing and transport. No single Crown agency has a mandate to carry out integrated urban development at pace and scale.

8. There is no statutory authority for the Government to participate directly in urban transformation activities at regional or local level. Nor is there any statutory mechanism for coordinating and aligning the Government's contributions or requirements for urban development projects.
9. Accordingly, I propose that we quickly work towards establishing the Housing Commission as a national urban development authority and to enacting a comprehensive range of more enabling development powers capable of supporting a range of complex or strategically important urban development projects.
10. Under the new legislation, the Government would have the power to—
 - 10.1 identify suitable urban development projects; and
 - 10.2 set the objectives for each project.
11. The legislation would apply to any complex or strategically important urban development project that met eligibility criteria, anywhere in New Zealand, for the duration of the project, including for housing, commercial and infrastructure projects. The more enabling development powers would apply only to specific projects recognised under the legislation, so could not apply to an entire town or city.
12. For those projects that the Government chooses to support, I propose that the new legislation include at least the following range of powers:
 - 12.1 land assembly, including access to powers of compulsory acquisition;
 - 12.2 planning and consenting, including the power to override district plans in the project area;
 - 12.3 infrastructure provision, such as roads and water pipes; and
 - 12.4 funding, including powers:
 - i. to levy targeted rates to recover the costs of providing infrastructure and amenities; and
 - ii. to obtain part of the increase in land value that can be expected from each development project.
13. The new legislation would make no substantive change to the law as it applies to Māori rights and interests in land and would provide for the Crown to continue to be bound by all of the Crown's Treaty settlement obligations. However, careful design will be required to avoid the risk for certain development powers to undermine Māori rights and interests, while providing for Māori aspirations for urban development.

Introduction

14. Urban development is not currently occurring at sufficient pace and scale to keep up with growth in households and travel demand in rapidly growing urban areas. Our Government has committed to establishing the Housing Commission as a national urban development authority ("UDA"); and to working with the private sector, councils and iwi/ Māori to cut through red tape, undertake major development projects and ensure new affordable homes are built rapidly.
15. More particularly, through our KiwiBuild programme, our Government has pledged to build 100,000 high quality, affordable homes over the next 10 years, driven by the Housing Commission.

KiwiBuild

16. One method for delivering KiwiBuild will be to undertake 12-15 large-scale development projects in partnership with the private sector, local government or iwi/ Māori. These projects are likely to be large, complex developments seeking a range of social, environmental, commercial and urban development outcomes, including a mix of public, affordable and market housing. These projects can be examples of how to build strong communities through good urban design. They will need a strong Government role to manage the high risk, mixed objectives and large investment involved.
17. New legislation can better support these types of developments by providing the more enabling development powers to which our Government has committed.

Previous work

18. The previous Labour Government commenced working towards this type of legislation in 2006, which eventually culminated in the 2008 discussion document, *Building Sustainable Urban Communities*. This paper builds on the proposals in that work, a summary of which is attached in Appendix 1.
19. In its report on *Using Land for Housing*, the Productivity Commission identified the same issues. To better enable urban development, the Commission recommended that the Government enable particular development projects to operate with different powers and land use rules.
20. Responding to that report, in February 2017 the previous Government published a discussion document, *Urban Development Authorities*, which set out detailed proposals towards establishing and empowering such authorities in the context of particular development projects.

Supporting urban development projects

21. As a relatively young country with large land resources, the first generation of urban expansion in New Zealand has occurred in greenfield subdivisions, in the form of small developments, with growth occurring at the fringe of urban areas. But as our cities grow, land values have risen in the suburbs closer to urban centres where many people prefer to live and work. As the buildings on that land age, the use of land in these existing suburbs becomes increasingly inefficient. This is driving the need for the re-development of existing urban areas at a scale and pace that New Zealand has never had to support before, together with fit-for-purpose legislation to support this second generation of development.
22. Limits on housing land supply at the urban edge has further increased land prices and driven up costs throughout urban areas. Unlocking additional market ready housing land quickly has the potential to have a positive impact on house prices, lowering development costs and freeing resources for use in more productive parts of the economy.

23. Successful modern cities are becoming increasingly centred around nodes of mixed-use social and economic activity. Our cities were originally designed to distinguish between the places where people work and the places where people live. Changing that paradigm requires a process of significant urban transformation, in particular by identifying and rectifying land-use patterns and infrastructure deficiencies that constrain social and economic performance. This calls for significant development projects that integrate a wide range of objectives across social outcomes, economic development, local employment, affordable housing, environmental improvements, public transport and infrastructure provision.
24. While private development is occurring within existing urban limits and around the urban fringe of all New Zealand cities, most brownfield development is opportunistic and small-scale, centring on individual or small groups of properties; and most greenfield developments create new, low-density suburban areas that perpetuate the traditional paradigm of urban design. The private sector seldom has the scale or power to manage the risks of more complex urban transformation projects to the point where development is commercially feasible.
25. If this transformation is to occur, government must play a role by using public powers to assist with managing the risks of development. Although the existing development system is capable of managing incremental urban developments, I share the Productivity Commission's concern that more needs to be done to enable complex or strategically important urban development projects to proceed at the scale and pace required. Depending on the future trajectory of Auckland's population growth, for example, at least two cities the size of Tauranga, and perhaps as much as one city the size of Christchurch, will need to be constructed within existing built-up areas of Auckland over the next 15 years.
26. While general planning legislation can balance competing interests to some extent, existing legislation is not sufficiently flexible to provide for complex urban development projects. New legislation can better coordinate planning and implementation of specific projects; and, by limiting when and where more enabling powers can be applied, be specifically designed to support urban development without having to cater for the general context. A balance must still be struck, but one that can support urban development to a greater degree, while simultaneously securing significant public benefits.

International experience

27. Legislation to support targeted urban development projects has a long history overseas, dating back to the reconstruction following World War II. Generally, such legislation focuses on supporting a new entity to facilitate development of a particular location, often referred to as an "urban development authority". Such authorities usually combine the powers of the public sector with the skills and finance of the private sector. When governed by a competency-based board of directors drawn largely from the private sector, who operate at arms' length from the Government, such entities are typically welcomed by private developers as the best means for unlocking urban development opportunities.

28. Cities such as Melbourne, Sydney, Adelaide and Perth are all using urban development authorities to drive urban transformation in particular areas; and similar approaches have been taken in the United Kingdom. Such agencies have demonstrated commercially viable and sustainable development, high quality design and urban regeneration. Some have also facilitated the provision of affordable housing, community facilities and services, and kick-started redevelopment in strategic areas where there was little market interest.

New Zealand experience

29. New Zealand already has certain types of public entities that are leading particular urban development projects. In Auckland, the former Hobsonville Land Company (now HLC) is an example of brownfield redevelopment of a redundant site comparable with most international examples of UDAs.
30. The Tāmaki Regeneration Company is a Crown-owned entity responsible for redeveloping within an established community. Panuku Development Auckland is a council controlled organisation that Auckland Council recently established, which is embarking on the transformation of Manukau and Onehunga.
31. Apart from the new organisation that the Government has recently established in Canterbury (Regenerate Christchurch), none of these public entities has access to the same development powers or legislative support as most of their overseas counterparts. Instead, they must rely on controlling land and on their standard corporate powers in order to get things done, supported by their relationship with councils to reduce (but not eliminate) legislative hurdles and local regulation.

Responding to three key problems

32. Without similar legislation to that used overseas, New Zealand faces three key problems:
33. **Governance:** The Productivity Commission found that local democratic processes are dominated by interests that are stacked against accommodating growth. National direction for local government on urban development planning and consenting is limited.¹ There is a lack of statutory authority for the Crown to participate directly in urban transformation activities at regional or local level. Consequently, the drivers for decision-making can fail to provide sufficient support when there is a public interest in complex or strategically important urban development. New legislation could empower central government to more directly enable and support significant urban development projects
34. **Coordination:** No single public entity is responsible for all aspects of urban development and there is limited coordination of national, regional and local planning and implementation for significant projects. New legislation could give a single public entity access to a potentially wide range of development powers and enable the Government to set a broad mandate that can include objectives such as social and environmental outcomes, economic development, local employment, affordable housing, public transport and infrastructure provision.

¹ Notable exceptions include the National Policy Statement for Urban Development Capacity and the National Land Transport Strategy.

35. *Land assembly*: Especially in existing urban areas, the private sector has difficulty assembling useful parcels of land from fragmented groups of properties to form a commercially viable development. New legislation could support the large-scale redevelopment of publicly owned land and provide land assembly powers that enable compulsory acquisition in the last resort.

Benefits

36. I am confident that adopting a similar approach to that taken overseas can be equally successful in New Zealand. Independent research examining overseas experience with urban development agencies² has concluded that when all benefits are taken into account these agencies create economic value. Benefit cost ratios of between 2:1 and 3:1 are not uncommon. These benefits include the uplift in property values in and around the regeneration area, reflecting improved public benefits, amenity and services; and a range of social outcomes, including improved community health.
37. Other anticipated benefits include —
- 37.1 faster economic transformation through more effective, large-scale urban development;
 - 37.2 better integration between spatial planning, land use and infrastructure, including transport systems;
 - 37.3 more control over the location, timing and quality of urban development;
 - 37.4 improved social, cultural and natural environmental outcomes within urban environments;
 - 37.5 increased resilience of communities and infrastructure to natural hazards;
 - 37.6 incorporation of Māori aspirations and priorities for urban development
 - 37.7 increased planning certainty and incentive for developers to participate in large-scale urban development;
 - 37.8 increased access to private sector investment in urban development through joint ventures and partnership arrangements between the public and private sectors, including iwi;
 - 37.9 better return on public sector infrastructure investment; and
 - 37.10 maintaining a construction pipeline to support industry capacity and capability.
38. Development projects led by the Housing Commission have the potential to take calculated risks, showcase good urban design and be innovative in achieving long-term social, economic, environmental and cultural benefits.

New legislation

39. For these reasons, I recommend that we develop new legislation to enable complex urban development projects to operate with more enabling development powers and land use rules.

² The Case for Urban Development Authorities in New Zealand, Livingston and Associates Ltd, 2016, a research report funded by BRANZ under the Building Research Levy.

Development opportunities

40. Publicly owned land is the principal foundation on which development projects are usually established (e.g. the redevelopment of the London and Melbourne docks). New Zealand differs somewhat in that there are fewer large blocks of contiguous brownfield land still held in public ownership.
41. However, the Housing New Zealand Corporation (“HNZC”) estate provides significant redevelopment opportunities, particularly in Auckland where its land falls alongside private housing that also has potential for more intensive re-development. The proposals in this paper would greatly assist the re-development of that land, with the potential to also catalyse the development of private land nearby.

National urban development agency

42. The scale and complexity of the proposed development projects and any access to more enabling development powers requires a strong Government role in each project and a vehicle through which the Government can play that role. In line with the approach used overseas, we have already publicly committed to establishing a national urban development authority to play this role, in the form of the Housing Commission.
43. I propose that new legislation provide a suite of more enabling development powers for use in any development project that is formally established under the Act. Further below, I outline the powers and processes that I recommend we include in the legislation.

Functions of the Housing Commission

44. The Housing Commission will be able to play the key strategic role identifying, prioritising and coordinating the various development projects required to deliver our Government’s commitment to KiwiBuild and to realise our other commitments, including to public transport and light rail. It will be able to do this both across the country as a whole and within particular regions, especially in Auckland, where multiple development projects will need to be established in both greenfield and brownfield locations.
45. Only some of these projects will need to access the more enabling development powers I propose below. Other projects will be able to progress well under the status quo. In these cases, I envisage that the Housing Commission will simply act as the lead development agency.
46. For example, I am seeking Cabinet’s authority to establish the KiwiBuild Wholesale Land Programme in a separate paper that accompanies this one. That programme will only include development projects that can be progressed under existing statutory processes, without any need to access more enabling development powers. Nevertheless, I envisage that governance and management of that programme will become one of the functions of the Housing Commission. In this way, the Commission can be responsible both for large-scale complex development projects that require support from more enabling development powers and for smaller neighbourhood developments, including social housing initiatives within existing suburbs.

47. Separately, the Labour Party manifesto also committed to putting all surplus Crown land in urban areas under the control of the Housing Commission. The ownership and management of Crown land was devolved to relevant Crown agencies 30 years ago, meaning there is no longer central management of these assets, to the point where central government no longer knows with any certainty what land it owns in urban areas. Consequently, there may be value in identifying all of the urban land that the Crown owns and transferring any surplus land in urban areas to the Housing Commission to manage. In that case, the Housing Commission would add an asset management function to the development functions that I've outlined above.
48. Officials have been working on ways to identify all Crown land and the issues with ensuring it is put to its best use. I have asked officials for advice on the merits of transferring Crown land to the Housing Commission and will report back to Cabinet with any policy recommendations following discussion with the Minister for Land Information.

Local government

49. The Housing Commission's other functions will depend on the scope we prefer for its role and, in particular, on how we would like to manage the relationship the Housing Commission will need to build with local government in each relevant area. How local government will participate and be impacted under the new legislation and the circumstances in which it may be desirable for development powers to override local government decisions are critical issues that I will discuss with relevant Ministers and return to when seeking more detailed decisions in the New Year.

Establishing the Housing Commission

50. Whether the new legislation will need to establish the Housing Commission depends on what legal form is preferred.
51. If a statutory Crown entity is preferred, then the new legislation would need to establish the Housing Commission. In contrast, if a limited liability company is preferred, the new legislation would not establish the Housing Commission, but would need a mechanism through which the company can be empowered under the legislation (and have its powers removed).
52. The two Crown agencies that already play a role in urban development are both limited liability companies, incorporated under the Companies Act 1993 and governed by the Public Finance Act 1989.³ In examining how to structure the Housing Commission, one issue will be what approach to take to these existing Crown companies, and to Housing New Zealand Corporation's development functions, especially if we also want the development of the Corporation's land to access the legislation's more enabling powers.

³ These include the Tamaki Redevelopment Company Limited, which operates in Auckland; and Otākaro Limited, which operates in Christchurch.

Local governance

53. How to manage the tension between the Housing Commission, whose board and executive is located in one part of the country and appointed through a national process, and a development project that is established and pursued at the other end of the country will also need to be considered.

Development functions

54. The Housing Commission may or may not also be the entity responsible for managing the development project, including the master planning, procurement of developers and ownership or control of public land. The approach overseas is to combine both the authorising functions and the project management functions within a single entity. But it may be useful to enable these functions to be allocated to separate entities if desired.
55. This approach would help to support private development projects to access the benefits of the legislation, by enabling a private developer to be the project manager without having the direct ability to exercise the development powers, which would still rest with a publicly controlled UDA.
56. This approach could also usefully support the same division of functions across publicly owned entities. In Auckland, for example, the Housing Commission could exercise development powers for multiple development projects that are separately managed by Auckland's three existing public land developers.⁴

Project-based approach

57. I propose that we develop new legislation that provides a wide range of more enabling statutory powers intended to better support urban development ("development powers") for particular complex or strategically important urban development projects. An A3 summary of the proposals is attached to this paper.
58. The proposed legislation would be project-based, which means it would focus on a programme of urban development for a selected geographic area ("development project"). It would only apply to the discrete geographic area (or areas) in which a single development project is located (the "project area"), meaning the more enabling development powers could only apply in each project area.
59. Accordingly, the legislation would not provide a new planning framework for urban areas in general, and so would not apply to entire districts. Instead, that is the subject of work on the urban growth agenda that we are undertaking separately.
60. The proposed legislation would not establish or enable any particular development projects upon its enactment. Instead, the selection of each development project and project area, and its formal empowerment under the legislation, would be fundamental parts of the proposed legislative framework that would involve a considered series of processes.
61. The key objectives of a project-based approach are to:
 - 61.1 assemble public landholdings with private landholdings to allow development on the required scale;
 - 61.2 coordinate and integrate the delivery of infrastructure;
 - 61.3 spatially masterplan significant projects;

⁴ Panuku Development Auckland, Tāmaki Regeneration Company, and Housing NZ Corporation.

- 61.4 partner with private sector developers to deliver those projects;
- 61.5 provide for streamlined land use and subdivision planning and consenting processes; and
- 61.6 provide for reserves, amenity and community building.

Project objectives

- 62. To help define what each development project is, the planned objectives for urban development in the project area would need to be identified, to guide the planning and delivery of that development project (“strategic objectives”). Accordingly, I propose that the new legislation require the strategic objectives to be agreed when a development project is established.

Public benefits

- 63. Given the importance of working in partnership with local communities, I propose that we put public benefits at the heart of the new legislation by ensuring no development project can be established without demonstrating that it has the realistic potential to deliver tangible public benefits. These can be stipulated as part of the strategic objectives set for a development project when it is established.
- 64. Potential objectives could relate to: the volume of housing supply, social outcomes, the speed of delivery, better infrastructure, liveable urban environments, affordable and public housing, community services such as schools and public safety, and improvements to local amenities.

Scope

- 65. The legislation would be able to be applied anywhere that urban development takes place, but the development powers would only be available for the duration of the particular development project. Once the development is complete, access to the development powers would be removed and the project area would become subject to the general planning system once more. But the legislation would continue to be available for other development projects.
- 66. I propose that development projects can be of any type. There would be no requirement for them all to have a housing component. However, further decisions will need to be made on the eligibility criteria and thresholds that determine which development projects are eligible for consideration under the new legislation.

Processes

- 67. In any one case, the legislation would be triggered by central government deciding to formally establish a development project under the legislation, which would be the process through which the project gains access to the development powers. I propose that the process include the following two steps, both of which require public consultation:
 - 67.1 first, the assessment and establishment of the development project; and
 - 67.2 secondly, the preparation and approval of a detailed development plan.

Assessment and establishment

- 68. I propose that two key choices must be made before the legislation can apply to any one development project:

- 68.1 what the development project is, including the boundary of the project area; and
- 68.2 what the strategic objectives of the development project are.
69. To inform those choices, I propose that the first step is an initial assessment of the proposed development project that is sufficient to enable the Housing Commission to make an informed decision regarding whether to proceed to public consultation:



Development plan

70. The development plan is the planning document that would describe the programme of urban development for a particular development project and that would show how relevant development powers would be exercised in the project area (“development plan”). Where projects have already commenced (such as s 9(2)(f)(iv)) the process would be adapted to accommodate the stage that the project has already reached.
71. Following public consultation on a draft plan, I propose that the Housing Commission publish its recommended plan, followed by a suitable mechanism for considering any objections to that plan, on which I have asked for further advice. To ensure political accountability for the use of the development powers, I propose that the Minister responsible for the legislation approve the final plan.



Development powers

72. Subject to further decisions on the scope of each power, I propose that new legislation include the following range of development powers:
- 72.1 **land assembly powers**, including access to powers of compulsory land acquisition and the ability to exchange reserve land;
- 72.2 **planning and consenting powers**, including the power to override district plans in the project area;
- 72.3 powers to provide physical **infrastructure** and amenities, such as roads, water pipes and parks; and
- 72.4 **funding** powers to levy charges on developers and land owners to recover the costs of providing that infrastructure.

Land assembly

73. In the Productivity Commission's view, the delivery of housing needs to be supported by increased access to powers of compulsory land acquisition on the grounds that in this context the public interest will often outweigh the rights of landowners who are not prepared to sell their properties voluntarily. Accordingly, the Commission recommended that the Government legislate to grant compulsory acquisition powers to urban development authorities for housing developments in appropriate cases.
74. Given that fragmented ownership is a problem in all urban areas, compulsory acquisition is the most common development power granted to urban development authorities overseas. While it is not always used, the availability of the power is what makes the difference.
75. Compulsory acquisition powers are already available to central and local government for various types of works under a number of statutes based around the Public Works Act 1981. However, there is a degree of uncertainty about what is covered, especially in relation to works that have less clear and compelling public benefits.
76. Subject to further decisions on the scope of the powers, I propose that the new legislation include powers to:
 - 76.1 compulsorily acquire land in the development project area;
 - 76.2 amalgamate and re-shape land parcels; and
 - 76.3 remove legal encumbrances from the land (such as restrictive covenants).

Reserves

77. In certain cases, it may be desirable to re-configure or revoke reserve status on existing reserves within a development project and to do so through more streamlined processes. Accordingly, I propose that the new legislation include powers to reconfigure reserves.
78. As there are a number of different types of reserves with different values that need to be protected, these powers will need to have checks and balances tailored to each different type.

Planning and consenting powers

79. The delays, uncertainties and costs of the plan change and resource consent processes – including appeal processes – can reduce the number of developments that are commercially feasible. This is particularly true for large or complex developments in existing urban areas where local opposition and associated Resource Management Act processes can cause a private plan change process to extend over several years.
80. Recent amendments to the Resource Management Act 1991 will assist in making development easier in urban areas. However, to achieve the scale and pace necessary, I propose further powers be available for selected development projects under the new legislation, including the power to streamline planning and consenting processes.

81. In particular, I propose that the new legislation include a power for development plan provisions to override the district plan in the project area, to the extent necessary to facilitate the development project, which would enable the Housing Commission to apply specific, tailored provisions to each project area. Given the broad powers proposed, some check on proposed plan changes and planning consents is likely to be required. I will be working with the Minister for the Environment to consider which body or process should fulfil that role.

Infrastructure

82. Utilities, transport networks, three waters, public amenities and central government services are all necessary for successful urban development. Although private developers usually provide and fund the local infrastructure needed in their developments, it is likely that a complex or strategically important development project will require additional trunk infrastructure that would normally be provided by local government.
83. A private developer has no power by themselves to stop or re-align roads, nor to designate or acquire the land corridors required and only very limited ability to instigate the construction of large scale trunk infrastructure. While a territorial authority has most (though not all) of the existing powers to construct the bulk infrastructure necessary for urban development, the exercise of these powers is through lengthy and time consuming processes with multiple appeal rights.
84. Under current settings, therefore, no one entity has the full range of powers needed and the powers that do exist are slow and complex. Infrastructure planning, provision, funding and financing powers are currently spread across at least nine different statutes. The inherent complexity reduces the ability to respond quickly to opportunities that impact on the viability and usefulness of a development project.
85. Consequently, I propose that the new legislation include an independent method for providing infrastructure where the necessary infrastructure hasn't been included in local government plans or is needed sooner. This would include powers to construct or change roads, water supply and wastewater networks, stormwater and drainage systems, public transport facilities, and network utilities. There would also need to be associated powers to carry out any preliminary works, enter onto private land to undertake preliminary assessments and to create or amend relevant local by-laws.
86. Having created the ability for the Housing Commission to build and own new infrastructure, there would also be the need at the end of a development project for powers to vest that infrastructure in the host territorial authority or other relevant receiving organisation.

Funding

87. To enable a development project to fund any new or upgraded infrastructure it requires, I propose that the new legislation include a range of funding powers, including a power:
 - 87.1 to levy a targeted rate on property owners within the project area;
 - 87.2 to levy development contributions on developers building within the project area;

- 87.3 to capture some of the increase in land value that results from a development project; and
 - 87.4 to charge a levy on undeveloped land as an incentive to promote its development.
88. To help avoid the cost of infrastructure falling on public balance sheets, I also propose that private investors can fund the construction of infrastructure in the project area, supported by a power for the Housing Commission to direct the income from any targeted rate to a privately-owned vehicle.

Cross-border funding issues

89. Where new or upgraded infrastructure *outside* the project area has a benefit for land owners *inside* the area (and vice versa), I propose that the new legislation include a mechanism that ensures the development project and the territorial authority meet the appropriate share of the costs being incurred in the other party's area of responsibility.

Building Act 2004

90. Finally, I do not propose to change or override the Building Act 2004 or the New Zealand Building Code.

Māori interests

91. The proposed legislation has implications for Māori rights and interests. There is an opportunity to take advantage of the legislation to support iwi/hapū led development projects and incorporate Māori aspirations and priorities for urban development. But there is also the potential for certain development powers to undermine Māori interests if they are inappropriately used.
92. In particular, the ability to access powers of compulsory land acquisition is inappropriate for land that has been returned under a Treaty settlement, or that must be retained in Māori ownership under Te Ture Whenua Māori Act 1993. I am seeking further advice on these issues and will report back to Cabinet with proposed solutions in the New Year.
93. More generally, I propose that the new legislation make no substantive change to the law as it applies to Māori interests in land and would provide for the Crown to continue to be bound by all of the Crown's Treaty settlement obligations and Te Ture Whenua Māori Act 1993. However, careful design would be required to manage the potential for certain development powers to undermine Māori interests.
94. The legislation will need to be aligned to Treaty settlement instruments and legislation and other signed agreements between the iwi and the Crown that confer rights in land, as well as Māori land tenure legislation (principally Te Ture Whenua Māori Act). Te Puni Kōkiri, the Office of Treaty Settlements and the Post Settlement Commitments Unit will work with MBIE and the Parliamentary Counsel Office to ensure that the legislative amendments appropriately follow the intent of the decisions made in this paper.

Financial implications

95. There are no immediate financial implications from developing or enacting the proposed legislation. The financial implications of establishing the Housing Commission and capitalising KiwiBuild are addressed in my other paper.

Consultation

96. The Treasury, Ministry for the Environment, Ministry of Transport, Housing New Zealand Corporation, Land Information New Zealand, Department of Internal Affairs, Ministry of Justice, Te Puni Kokiri, Ministry for Culture and Heritage, Fire and Emergency NZ, Department of Conservation and Ministry of Education were consulted on these proposals. The Department of Prime Minister and Cabinet was informed.
97. Some of the policies that are proposed are based on the Productivity Commission's recommendations in both their 2017 report, *Better Urban Planning*, and their 2015 report, *Using Land for Housing*, which were informed by a process of open public consultation. Other proposals have been informed by the Government's 2008 discussion document, *Building Sustainable Urban Communities*, and by the 2017 discussion document, *Urban Development Authorities*.

Constitutional and NZ Bill of Rights implications

98. I will report back on any implications once I have developed more detailed policy proposals. In general, however, it is worth noting that access to powers of compulsory land acquisition has implications for property rights.

Legislative implications

99. This paper commences the process towards new legislation. Subject to agreeing the Government's legislative agenda for 2018, and to securing Cabinet's approval to issue drafting instructions in the New Year, I propose that we prioritise this legislation for both introduction and enactment by the end of 2018.
100. Consultation will be needed with the Government caucus and the Government's support parties.

Regulatory impact analysis

101. A regulatory impact assessment will accompany the detailed policy decisions I will seek in the New Year.

Publicity

102. In consultation with the Prime Minister's office, the office of the Minister of Housing and Urban Development will manage the publicity resulting from any decisions recommended in this paper.
103. Note that I will release this Cabinet paper to the public at an appropriate time.

Recommendations

I recommend that the Cabinet Business Committee:

- 1 **note:**
 - 1.1 in its 2015 report, *Using Land for Housing*, the Productivity Commission recommended that the Government enable particular development projects to operate with different powers and land use rules;
 - 1.2 the previous Labour Government commenced working towards that type of legislation in 2006, culminating in a 2008 discussion document, *Building Sustainable Urban Communities*;
 - 1.3 the previous National Government published a discussion document in February 2017, *Urban Development Authorities*, which set out detailed proposals towards establishing and empowering such authorities in the context of particular development projects;
 - 1.4 the key aims of a project-based approach to urban development are to:
 - 1.4.1 assemble public and private landholdings to allow development on the required scale;
 - 1.4.2 coordinate and integrate the delivery of infrastructure;
 - 1.4.3 spatially masterplan development projects;
 - 1.4.4 partner with public sector organisations, private sector developers and iwi authorities to deliver those projects; and
 - 1.4.5 operate under streamlined planning and consenting processes;
 - 1.5 urban development authorities and more enabling development powers for significant projects are a common method used overseas to deliver the aims described above;
 - 1.6 the benefits of new legislation can be expected to be:
 - 1.6.1 faster economic transformation through more effective, large-scale urban development;
 - 1.6.2 better integration between land use and transport systems;
 - 1.6.3 more control over the location, timing and quality of urban development;
 - 1.6.4 improved social, cultural and natural environment outcomes within urban environments;
 - 1.6.5 increased resilience of communities and infrastructure to natural hazards;
 - 1.6.6 incorporation of Māori aspirations and priorities for urban development;
 - 1.6.7 increased planning certainty and incentives for developers to participate in large-scale urban development;

- 1.6.8 increased access to private sector investment in urban development through joint ventures and partnership arrangements between the public and private sectors, including iwi authorities;
- 1.6.9 better return on public sector infrastructure investment; and
- 1.6.10 maintaining a construction pipeline to support industry capacity and capability;
- 1.7 that the Government's priorities in its first 100 days in office include commencing work to establish the Housing Commission, an urban development authority with cut through planning powers, which will be responsible for driving the delivery of the KiwiBuild Programme and undertaking major greenfield and brownfield regeneration projects in partnership with Councils, private developers and iwi/Māori;

2 agree:

- 2.1 to develop legislation that enables selected urban development projects to operate with more enabling development powers and land use rules;
- 2.2 in principle, to establish the Housing Commission as a national urban development authority that has responsibility for exercising the development powers in the new legislation (among other potential functions);
- 2.3 the new legislation enact a framework, process and development powers that:
 - 2.3.1 support high quality urban development;
 - 2.3.2 provide greater coordination, certainty and speed; and
 - 2.3.3 are capable of supporting a wide range of development projects;
- 2.4 as eligible development projects arise, the new legislation give the Government the power to:
 - 2.4.1 identify the development project;
 - 2.4.2 set objectives specific to the development project; and
 - 2.4.3 approve the scope and application of more enabling development powers to the development project;
- 2.5 that the new legislation:
 - 2.5.1 restrict the exercise of any development powers to selected development projects that are formally established under the legislation, including the infrastructure required to support them;
 - 2.5.2 prevent the legislation from applying to a whole city or town, or a small residential land parcel;
 - 2.5.3 only apply to the discrete geographic area(s) in which a single development project is located;

- 2.5.4 be an enduring legislative tool-kit that enables the Government to support development projects anywhere in New Zealand, subject to those projects meeting any thresholds or criteria included in the legislation;
 - 2.5.5 provide for access to the development powers to expire when the development project has achieved its objectives;
 - 2.5.6 provide that development powers are available to development projects in any urban area, including greenfield areas adjacent to an urban area;
 - 2.5.7 provide that private sector developers can access the benefit of development powers (though not the power to exercise them) in the context of their own development projects, where appropriate and subject to suitable protections; and
 - 2.5.8 enables development powers to be available to support any type of urban development project, whether or not it includes a housing component, subject to those projects meeting any thresholds or criteria included in the legislation;
- 3 **agree** in principle to include the following development powers in the new legislation, subject to further policy decisions on the detailed scope and application of these powers:
- 3.1 changing land and resource use regulations;
 - 3.2 overriding development controls;
 - 3.3 streamlining the resource consent process;
 - 3.4 compulsory land acquisition;
 - 3.5 amalgamating and re-shaping land parcels;
 - 3.6 removing legal encumbrances from the land;
 - 3.7 exchanging or revoking suitable types of reserve land;
 - 3.8 stopping, re-aligning, designating and creating roads and other transport routes;
 - 3.9 re-aligning and acquiring access-ways for network infrastructure;
 - 3.10 designating, providing and constructing infrastructure;
 - 3.11 vesting infrastructure in local councils or other appropriate receiving organisations at the completion of development projects; and
 - 3.12 independently funding and incentivising the development by levying contributions from land owners or capturing a share of the uplift in land value, through mechanisms such as a targeted rate and development contributions;
- 4 **agree** in principle that the new legislation:
- 4.1 require a development project's objectives to be identified and agreed when the project is formally established;
 - 4.2 provide that no development project can be established without demonstrating that it has the realistic potential to deliver tangible public benefits;

- 4.3 support complex or strategically important development projects that deliver a range of development outcomes, subject to further decisions on appropriate eligibility criteria and thresholds for determining which development projects can be established under the legislation;
- 4.4 require a two-step process for each development project, both of which require public consultation:
 - 4.4.1 first, the assessment and establishment of the development project; and
 - 4.4.2 secondly, the preparation and approval of a detailed development plan that identifies how the development powers will be used to realise the project's objectives;
- 4.5 provide that the Minister responsible for the new legislation approves the development plan;
- 5 **note** the proposed powers have implications for the Crown's relationship with Māori, with respect to Treaty settlements, rights of first refusal and Te Ture Whenua Māori Act;
- 6 **agree** the new legislation:
 - 6.1 ensure Māori interests are identified and protected;
 - 6.2 recognise and provide for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga;
 - 6.3 provide for both the Treaty of Waitangi and Te Ture Whenua Māori Act 1993 to be upheld; and
 - 6.4 ensure Treaty settlements are honoured in each urban development project, including where relevant by the Housing Commission;
- 7 **note**:
 - 7.1 there are a number of critical policy issues that need to be resolved before detailed policy decisions can be made and drafting instructions can be authorised, including in respect of Māori interests; and
 - 7.2 the Minister of Housing and Urban Development will ask Cabinet to prioritise the new legislation for enactment by the end of 2018;
- 8 **invite** the Minister for Housing and Urban Development and the Minister for Māori Development to agree to scope a range of options to advance Māori housing aspirations in urban centres;
- 9 **note** that:
 - 9.1 the Labour Party manifesto committed to putting all surplus Crown land in urban areas under the control of the Housing Commission;
 - 9.2 there may be value in identifying all of the surplus urban land that the Crown owns and consolidating its management under the Housing Commission; and

- 9.3 the Minister of Housing and Urban Development has asked officials for advice on the merits of this proposal and will report back to Cabinet with any policy recommendations following discussion with the Minister for Land Information;
- 10 **invite** the Minister of Housing and Urban Development (who is also the Minister of Transport) to consult with the Ministers of Finance, State Services, Treaty of Waitangi Negotiations, Crown-Māori Relations, Environment, Local Government, Māori Development, Infrastructure, Land Information, Conservation and Arts, Culture and Heritage on relevant components of the policy proposals and report back to Cabinet with policy decisions capable of supporting drafting instructions by February 2018, including in particular:
- 10.1 the nature, functions and structure of the Housing Commission, including its corporate powers;
 - 10.2 the appropriate thresholds and criteria for determining when a development project should be eligible under the new legislation and the extent to which these criteria should be set out in legislation;
 - 10.3 how monitoring of the Housing Commission's objectives, powers and outcomes will be undertaken;
 - 10.4 the process for identifying and empowering development projects;
 - 10.5 the appropriate safeguards and accountability mechanisms when granting development powers;
 - 10.6 how to set development objectives and the most appropriate public good outcomes;
 - 10.7 how the proposed legislation should address the Crown's obligations to Māori, particularly with respect to Treaty settlements and rights of first refusal;
 - 10.8 how iwi/Māori would like to be engaged in respect of any particular development proposals, and what role iwi organisations may wish to play;
 - 10.9 how local government will participate and be impacted under the new legislation; and
 - 10.10 the circumstances in which it would be desirable for development powers to override local government decisions.

Authorised for lodgement

Hon Phil Twyford

Minister of Housing and Urban Development

Appendix 1: Summary of the previous Labour Government's work on urban development authorities

Background

1. In 2006 the Minister of Housing proposed that the government find better ways to support the delivery of development projects for urban transformation as a part of supply-side interventions to meet the Government's housing objectives. Cabinet requested that agencies determine the powers, funding and mechanisms required to facilitate large-scale urban development projects of national and regional importance [POL Min (06) 26/7].
2. Following this direction, from 2006-08 the New Zealand government undertook a programme of work assessing a range of options for delivering improvements in the quality, scale and integration of urban development in New Zealand.
3. The research was led by inter-agency teams headed by the Ministry for the Environment, the Department of the Prime Minister and Cabinet and the Department of Internal Affairs. This paper summarises the recommendations and findings in the following key documents:
 - *Research report* Catalysing Positive Urban Change in New Zealand, SGS/MfE, June 2006
 - *Cabinet paper* Urban Transformation Mechanisms, POL (07) 235, July 2007
 - *Cabinet paper* Urban Development Authorities and a New Sustainable Urban Development Approach, POL (08) 120, May 2008
 - *Discussion document* Building Sustainable Urban Communities - A discussion document exploring place-based approaches to sustainable urban development, DIA, September 2008

June 2006 Research report: Catalysing Positive Urban Change in New Zealand

4. The *Catalysing Positive Urban Change in New Zealand* report was commissioned from SGS Economics and Planning (an Australian-based consultancy firm) and published by the Ministry for the Environment ("SGS report").
5. The SGS report concluded that sufficient urban development was unlikely to occur in New Zealand if urban change is left to market forces. The research team provided a comparison with overseas examples of urban development authorities and identified a range of features that contribute to good urban governance and that enable positive urban change.
6. The SGS report found that the existing tool-kit for managing urban change in New Zealand was inadequate, particularly for supporting projects of national significance. Problems identified included:
 - the rate of population growth and subsequent pressure on some region's resources for housing and supporting infrastructure;

- a slower than anticipated rate of intensification in areas earmarked for growth e.g. around town centres and along transport corridors;
 - the poor quality of some of the intensification in Auckland's CBD and the lack of intensification in suburban areas;
 - the level of incremental infill development occurring, which delays the point at which substantial redevelopment and intensification will occur;
 - a development sector that is generally innovation-averse and inclined to build to established patterns and standards to maximise profitability;
 - a development sector that has traditionally provided homogeneous development and lacks incentive to provide development patterns that are desirable in an intensifying city, e.g. mixed-use;
 - the range of ad-hoc development which is not well integrated or connected with the existing built form; and
 - a lack of affordable housing supply.
7. The SGS report recommended that legislation be introduced to directly support urban regeneration, by enabling access to powers such as value capture and compulsory land acquisition for urban reform purposes. This would provide central government with a mechanism to directly intervene in urban development issues when national issues are at stake.
8. The proposed legislation would introduce new tools to overcome barriers to development in relation to the following issues:
- land assembly to support efficient development;
 - infrastructure provision and financing;
 - capitalisation and development finance, including capturing value uplift in order to fund development;
 - strategic planning and consenting designed for the consideration of matters relevant to the urban environment; and
 - commissioning projects of national significance.
9. In addition, the SGS report recommended that a national urban transformation corporation should be established, supporting the delivery of projects of national significance and providing advice and support to regional and local urban transformation corporations.

July 2007 Cabinet paper: Urban Transformation Mechanisms [POL (07) 235]

10. Following consideration of the SGS report, in 2007 the Ministers for the Environment, Local Government, Housing and Building and Construction recommended to Cabinet that central government take a more active role in the delivery of large-scale urban development projects.

11. The paper identified the following constraints limiting the success of nationally significant, large-scale urban development projects:
 - The lack of a focused Crown agency to support urban development and co-ordinate investment in urban centres.
 - The lack of an integrated approach to making decisions on urban development projects of national importance and the strategic management of Crown land.
 - The lack of alignment for public sector investments at all levels to ensure that investment is directed towards achieving urban transformation and nationally significant and sustainable outcomes.
 - The lack of statutory authority for the Crown to participate directly in urban transformation activities at regional or local level.
12. The paper identified a number of both greenfield and brownfield sites with potential for urban development, including sites of regional or national importance, such as the Auckland waterfront, areas along new or revitalised transport corridors, and growth areas identified in regional growth strategies.
13. Cabinet agreed that central and local government should play a more active role in large-scale development, particularly when projects would support the delivery of government objectives such as economic development, affordable housing and infrastructure provision.
14. Cabinet agreed that further work should be done to identify reform opportunities, to clarify the urban development problem definition, and to better understand the funding opportunities for urban development projects.

May 2008 Cabinet paper: Urban Development Authorities and a New Sustainable Urban Development Approach [POL (08) 120]

15. In response, an inter-agency Urban Development Team was set up and run by the Department of the Prime Minister and Cabinet [refer CBC Min (08) 3/17 and CBC Min (08) 4/2]. The team's mandate was to:
 - explore the desirability of Urban Development Agencies and the powers, funding and mechanisms required to establish and operate them; and
 - identify potential brownfield and greenfield redevelopment projects that would provide for sustainable communities (including the supply of additional affordable housing and giving consideration to social, economic, cultural and environmental objectives).
16. After reviewing advice from this team, Cabinet agreed that there was scope to change our approach to urban development, to introduce a range of measures to operate in tandem with legislation, and to support sustainable urban development projects across New Zealand [CAB Min (08) 4/2 (14)].
17. Cabinet concluded that the prevailing system of market-led development was not delivering the range of tools, powers and support that would be required to achieve necessary urban change. It was also failing to provide adequate levers to enhance the provision of affordable housing and the achievement of other public benefit objectives.

18. Cabinet decided to investigate options for taking a place-based approach to the introduction of targeted legislative tools, in order to strengthen the ability of existing organisations to achieve urban development outcomes. Then a case would be made for approving a range of new powers and tools for use by approved organisations in those declared locations, on an “as needed” basis.

September 2008 discussion document: Building Sustainable Urban Communities

19. Cabinet agreed to publish a discussion document to test the policy options with the public [refer POL (08) 210].
20. The document sought submissions on a number of issues relevant for urban development, including options for changing the role of government, introducing powers such as compulsory land acquisition and rates and levies for funding urban development, and for streamlining planning and development control processes.
21. The submission period ran from Monday 1 September until Friday 28 November 2008 and 103 submissions were received. Hui were held to gain a specific Māori/iwi perspective.

Summary of submissions

22. Most submitters agreed that the discussion document provided a good description of the barriers currently being faced in large scale urban development. A number of submitters indicated that these barriers and difficulties were more prevalent and difficult to deal with when redeveloping existing urban areas (compared with greenfield development).
23. Regarding powers to be enabled by the legislation, most submitters appeared to accept that any new agency or entity set up to focus on urban re/development would need to be appropriately empowered and funded to succeed.