MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

BRIEFING

Establishing a national Urban Development Authority

Date:	6 September 2018	Priority:	High
Security classification:	In Confidence	Tracking number:	0544 18-19

Action sought		
	Action sought	**Deadline**
Hon Phil Twyford **Minister of Housing and Urban Development**	**Forward** this briefing to Ministers Hipkins, Parker, Mahuta, Jones and Sage **Discuss** these design decisions with Ministers Parker, Mahuta, Jones and Sage at your 13 September meeting **Forward** this briefing to Minister Robertson for his information	13 September 2018
Hon Jenny Salesa **Associate Minister of Housing and Urban Development**	For your information	13 September 2018

Contact for telephone discussion (if required)				
Name	**Position**	**Telephone**		**1st contact**
Di Anorpong	Manager, Urban Development Policy	04 901 8743	s 9(2)(a)	
David Hermans	Policy Director, Housing and Urban Branch	09 919 9323	s 9(2)(a)	✓

The following departments/agencies have been consulted
The Treasury, SSC, HNZ, HLC, MfE, MoT, NZTA, MSD, DIA, LINZ, MoJ, TPK are part of the interagency officials group. DPMC were also consulted.

Minister's office to complete:

- ☐ Approved
- ☐ Noted
- ☐ Seen
- ☐ See Minister's Notes
- ☐ Declined
- ☐ Needs change
- ☐ Overtaken by Events
- ☐ Withdrawn

Comments

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Purpose

This briefing provides information to support your meeting with Ministers Parker, Mahuta, Jones and Sage on Thursday 13 September to discuss the makeup and legal form of the national Urban Development Authority (UDA). Minister Hipkins will send an advisor on his behalf.

Executive summary

A national UDA is being established to lead large scale urban development projects and drive the delivery of the 100,000 affordable homes planned for KiwiBuild. It will be a single public entity with four core functions – delivering programmes, commissioning projects, exercising statutory powers, and delivering projects. Ministers need to make two key design decisions to ensure the UDA has the capability and flexibility it needs to do these functions effectively.

The first key design decision is where it draws existing central government development capability that delivers on the four core functions of the UDA. This briefing proposes two main options for doing this – forming the UDA on the basis of the KiwiBuild Unit and HLC, and forming the UDA on the basis of the KiwiBuild Unit, HLC and Housing New Zealand (HNZ).

Both options have advantages and disadvantages. A UDA formed around the KiwiBuild Unit and HLC would be solely focused on urban development, and have more straight-forward governance and accountability arrangements. On the other hand, a UDA formed around the KiwiBuild Unit, HLC and HNZ would better consolidate central government's urban development capability, but would need to carefully manage tensions between its public housing and urban development roles.

The second key design decision is the legal form of the UDA. There are two options for doing this – a Crown agent and a departmental agency. Each option provides a different level of Ministerial control. Based on the core functions, we recommend establishing the UDA as a Crown agent. This would enable more responsive, commercially-focused decision-making, while maintaining suitable accountability to the Minister.

Establishing the UDA as a Crown Agent under either option will require new legislation, consultation with iwi and other stakeholders, and careful transition management. This will mean it will take at least 12-18 months to fully establish. We have proposed some measures to ensure that the constituent parts of the UDA build processes and relationships, and work effectively together on current and future large-scale projects through the transition period.

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

a **Forward** this briefing to Ministers Parker, Mahuta, Jones and Sage for discussion at your 13 September meeting, and to Minister Hipkins who is unable to attend.

Agree / Disagree

b **Discuss** these issues with Ministers Parker, Mahuta, Jones and Sage at your 13 September meeting.

Agree / Disagree

Di Anorpong
Manager, Urban Development Policy
Housing and Urban Branch, MBIE
6 / 9 / 18

Hon Phil Twyford
Minister of Housing and Urban Development

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Background

1. Cabinet has committed to establishing a national Urban Development Authority (UDA) to lead large scale urban development projects and drive the delivery of the 100,000 affordable homes planned for KiwiBuild [CBC-17-MIN-0051]. To do this successfully, the UDA needs to be designed in such a way that it has the capability and flexibility to do four core functions:

   a. *Delivering programmes* – delivering affordable KiwiBuild homes through different methods (including through complex large-scale urban developments), and managing and implementing specific housing and urban-related government initiatives (such as home ownership support products).

   b. *Initiating/commissioning projects* – working alongside the Ministry of Housing and Urban Development (MHUD) and other agencies in regional spatial planning exercises, and in assessing and selecting large-scale development opportunities.

   c. *Exercising statutory powers* — exercising and administering the enabling urban development powers and tools available within designated large-scale project areas (e.g. consent processing, land assembly, setting of rates and development contributions, and acting as a road controlling authority).

   d. *Delivering development projects and being a developer* – coordinating, managing and delivering integrated, large-scale, mixed-use urban development projects; purchasing and assembling land; facilitating land readjustment through partnerships; and making its development expertise available to support other projects and initiatives across government.

2. Cabinet has agreed that the UDA will be a single public entity with access to a wide range of development powers, and a mandate to deliver large-scale integrated developments that help create thriving, sustainable urban communities. The UDA will be focused on supporting the Government's priorities through the delivery of outcomes focused on economic development, local employment, climate resilience, social wellbeing and, affordable housing, public transport (working with NZTA and councils), and infrastructure.

Key design decisions to be made

3. Ministers need to make two key design decisions to establish the UDA – where it draws existing capability and its legal form:

   a. The first key design decision is which of the existing centres of central government development capability should help comprise the UDA. This decision will inform the capabilities and assets the UDA will have from its outset, and the ones it will need to build.

   b. The second decision relates to the UDA's legal form. Based on its four core functions the UDA could be a Crown agent or a departmental agency, with each option offering a different level of Ministerial control.

First design decision: the UDA's makeup

Interagency officials group - work to date

4. Over the last two months, an interagency officials group, chaired by the Ministry of Business, Innovation and Employment (MBIE), has discussed different UDA permutations. We have also tested and refined these in meetings with you. We have focused on three core central

government entities with urban development functions – the KiwiBuild Unit, HLC, and Housing New Zealand (HNZ).

5. As a result of that work, and your direction, this briefing proposes two main options:

   a. KiwiBuild Unit and HLC in the UDA (with significant additional capability)

   b. KiwiBuild Unit, HLC and HNZ in the UDA (with significant additional capability)

6. Following a workshop with you on 3 July 2018, we have removed an initial option from consideration to expand and repurpose the New Zealand Transport Agency (NZTA) to become the UDA. This was due to the risks and implications for NZTA's significant work programme, and to the transport management and regulatory system.

7. Once the key decision is made, over time, it will be possible to assess whether other existing entities carrying out urban development functions (such as Tamaki Regeneration Company (TRC) and Otākaro) can be further consolidated within the UDA, or whether the UDA can support the urban development projects being led by other entities through project-level partnerships or shared governance arrangements.

8. For both the options below, KiwiBuild and HLC are included. In particular, HLC's delivery capability is essential for the UDA, as it has a clear track-record of building new urban communities: along with approximately 1,600 completed homes and 600 currently under construction, HLC have delivered infrastructure (roads, storm water, wastewater, land remediation etc) to the value of $85.9 million.

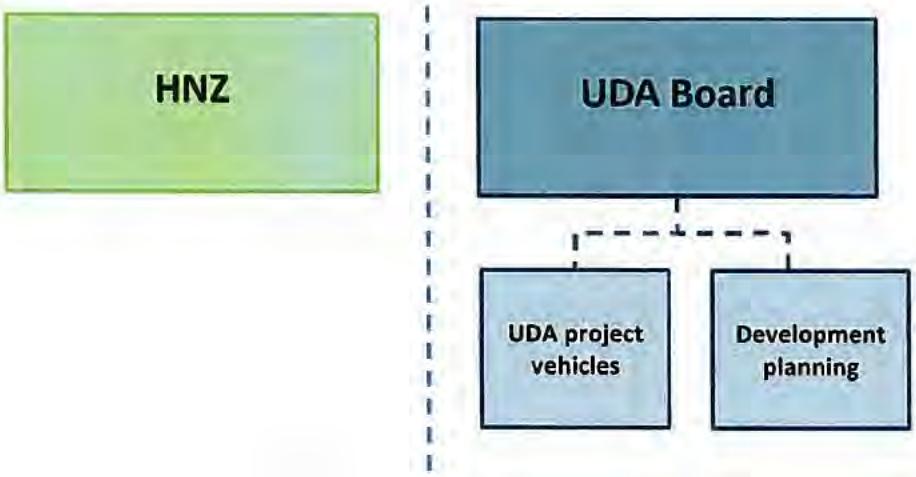
Option One – KiwiBuild Unit and HLC in the UDA

9. In this option, HLC would be removed from the ownership and control of HNZ, and the KiwiBuild Unit would be removed from MHUD. The two entities would then merge into a new entity that will form the initial basis of the UDA.

10. The UDA would likely be structured internally with an urban development function (e.g. master-planning and delivery), an enabling function (e.g. formal establishment of project areas and exercise of statutory functions), and locally-based, project-specific subsidiaries that may include local authority participation (see later section on territorial authority involvement).

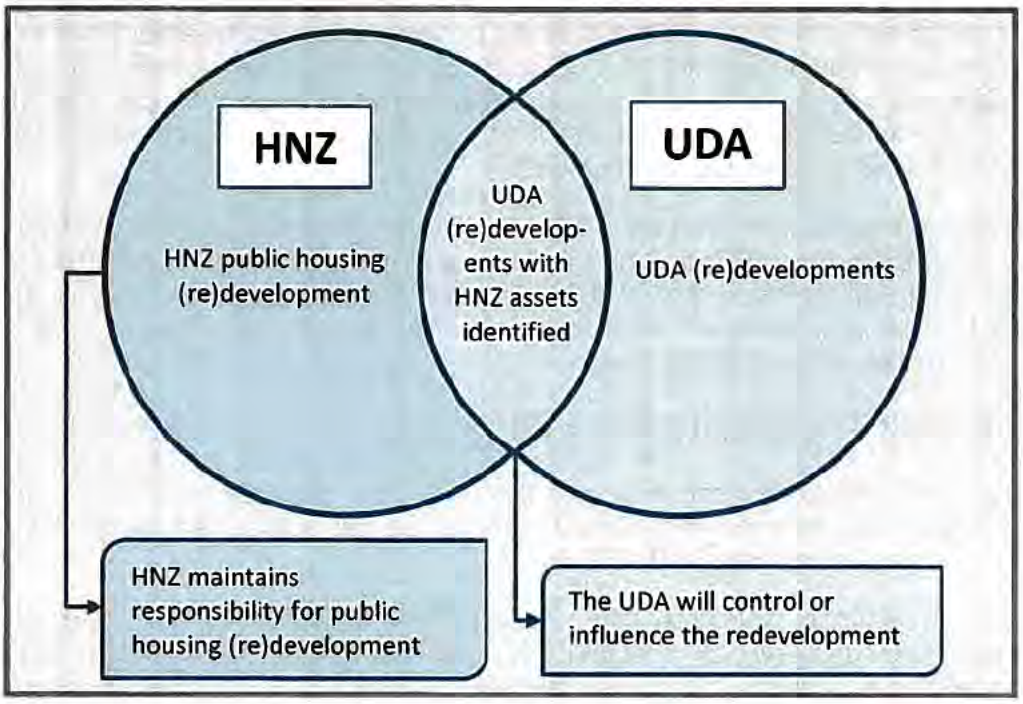
11. This option is stylised below:

Option One – KiwiBuild and HLC



12. This diagram is illustrative only, and other delivery functions (such as KiwiBuild's 'buying off the plans' initiative, administration of the KiwiBuild programme, and the management of Crown ownership products) would impact on organisational structure.

13. This option would consolidate much of the Government's market-facing urban development capability, but leave HNZ with overall responsibility for public housing asset management and tenancy management. The assumption for this option is that the UDA would control or influence the redevelopment of HNZ assets within identified large-scale project areas established under the new urban development legislation, but that HNZ would maintain responsibility for public housing (re)development projects outside of the UDA's sphere of operation. This would mean HNZ needs to retain a development capability for undertaking smaller-scale projects (i.e. its current Asset Development Group).



14. As well as establishment legislation, progressing this option would require:

    a. Transferring KiwiBuild and HLC capability to the new UDA.

    b. Clarifying arrangements for managing HNZ assets within the context of large-scale projects, and/or for providing HNZ with ongoing access to the development services offered by HLC.

    c. Retaining HNZ and its legislative framework largely as is stands (with HNZ's social objectives embedded in legislation in line with existing Treasury-led work).

There is a variant of this option which involves merging HNZ's Asset Development Group as well

15. There is another option, proposed by Treasury, which extends the above. This option involves removing the Asset Development Group from HNZ, and merging it with the KiwiBuild Unit and HLC within the UDA.

16. The Asset Development Group is a division within HNZ that is focussed on maintaining, upgrading and constructing public housing. It leads the development of smaller sites of HNZ's Auckland Housing Programme and its regional housing programme.

17. This variation would further consolidate development capability into one entity, and would provide the UDA with additional scale. However, it would result in less capability within HNZ to redevelop public housing, particularly outside urban areas. Either the UDA would have to

undertake this function (potentially distracting it from its large-scale focus), or HNZ would have to re-build this capability, increasing the likelihood of duplicated functions across central government.

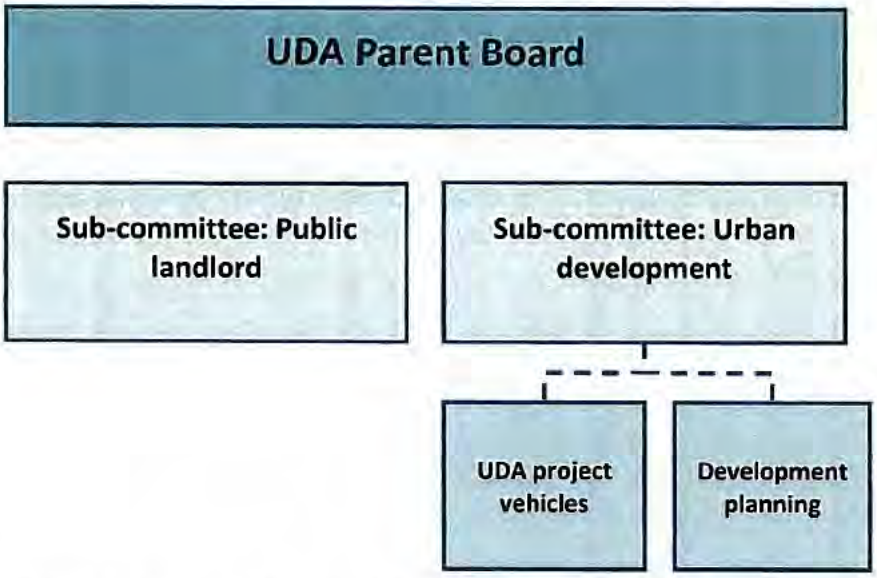
Option Two – KiwiBuild Unit, HLC and HNZ in the UDA

18. In this option, the UDA would be formed on the basis of the KiwiBuild Unit, HLC and HNZ. While HNZ would be the largest component, this option is less about restructuring HNZ, than forming a new entity. This would mean a single entity is responsible for the UDA's urban development function (and its related functions, like KiwiBuild and the enabling function), as well as managing public housing assets and tenants nation-wide.

19. While HNZ currently has legislation that is broadly enabling — and so it could begin structural changes quickly as part of a transition — we advise that this new entity would need its own bespoke legislation specifying the expanded purpose, and establishing arrangements for mitigating governance issues that might arise from the broad scope and span of control.

20. The SSC has developed this structural model, reflecting the mixed objectives of the new entity:

Option Two – KiwiBuild, HLC and



21. This structure provides a legislative requirement for an entity to have sub-committees, but it does not require the entity to delegate decision making to the sub-committees. Any delegations remain at the discretion of the Parent Board. The sub-committees do ensure the board has separate streams of advice that can be informed by different sets of expertise for its two major objectives.

22. The sub-committee model does not provide structural separation of functions or any independent tenancy entity. The separate entities in Option One is the way to provide structural separation in the decision making about public housing / UDA functions

23. As well as establishment legislation, progressing this option would require:

    a. Significant change to the existing governance of HNZ.

    b. UDA Parent Board to consider options for internal organisational structure and branded units.

c. Transferring the KiwiBuild Unit to the new UDA.

There is a variant of this option which involves establishing a separate organisation for tenancy management

24. There is another option which takes the structural separation one step further, by establishing the tenancy management function as a standalone entity. This option involves combining the Asset Development Group from HNZ with the KiwiBuild Unit and HLC within the UDA (as Treasury has proposed), along with Housing New Zealand Limited, which is the HNZ subsidiary that holds HNZ's land. Consequently, the UDA would combine land ownership, asset management and development functions. The remainder of HNZ would be a social housing landlord. A new organisation would be established to contain the newly combined functions; and HNZ's legislation would be amended to tighten its focus on social housing and tenant's needs.

25. This option would consolidate development capability into one entity, and would provide the UDA with additional scale. It would consolidate all development of HNZ land into one entity and add long term asset management to the UDA's functions. Land with potential for urban development would be readily accessible for the UDA. However, land and homes that have no development potential, such as those in rural and regional areas, would also become the UDA's permanent responsibility, adding a potential distraction from the UDA's focus on large-scale development. The UDA would become a long-term asset owner as well as a developer.

26. This option would separate tenancy management from land ownership, which is a routine separation of specialities in the private sector, but comes with additional risks in the context of vulnerable tenants. Routine maintenance would be a responsibility of the tenancy manager (HNZ's current People and Property division), as it is in the private sector; but the separation of land from tenancy management would necessitate new arrangements to determine at what point the UDA becomes responsible for higher expenditure decisions. The delivery of the additional social housing that the Government wants would also become a critical deliverable for the UDA.

Option assessment

Options have been assessed against a set of key criteria

27. The primary objective of the UDA is to lead transformational, integrated urban development and drive the delivery of KiwiBuild. To ensure the UDA is able to meet this objective, we have assessed the options for structural change against the following criteria:

    Criteria one – Consolidating urban development capability

    Criteria two – Having a clear strategic purpose

    Criteria three – Having clear governance and accountability

    Criteria four – Having access to capital

    Criteria five – Ease of access to land

    Criteria six – Meeting the growth challenge

Criteria one – consolidating urban development capability

28. A key driver for establishing the UDA is the need to consolidate urban development capability across central government. Currently critical roles and functions are split or duplicated across multiple entities, and no single entity has the capabilities required to deliver the broad range of urban development outcomes. This results in limited coordination,

uncertainty and fragmented decision-making. Annex One details the current machinery of government.

29. While both options would consolidate central government's development capability, Option Two would do this to a greater degree as it would include HNZ's Asset Development Group and the set of sector relationships that it holds. Under Option One, HNZ would need to maintain this capability to undertake public housing developments outside of the UDA's large-scale project areas.

30. However, under both options, the new entity would still need to develop significant new capability to perform all of the UDA's core functions. It would also need to build new relationships with development partners, such as territorial authorities and iwi, to ensure the successful outcome of development projects.

Criteria two – having a clear strategic purpose

31. Another key driver for the UDA is the need for a single entity to have a clear strategic focus on the important task of integrated urban development. In this regard, a new entity created around the KiwiBuild Unit and HLC (Option One) would likely find it easier to establish and maintain the right brand, organisational culture, and sharpness of purpose as it grows.

32. The Government's commitment to focus HNZ more strongly on the wellbeing of its current and future tenants, and on being a world-class landlord, is partly driven by HNZ's past difficulties — albeit informed by previous owner expectations — in juggling and making the right trade-offs across its tenancy, asset management and development functions.

33. Option Two would increase the potential for future conflict between the urban development and public housing roles of the UDA. While this risk can be mitigated through careful organisational design, a significant organisational change process for HNZ would still be required. The HNZ Board is already managing this internally, as it balances the Auckland Housing Programme's development priorities with the needs of the tenants in those homes. However, the significantly wider scope of the UDA's operations could require more explicit and transparent risk-management measures. This will be particularly important as the UDA's focus increasingly shifts well beyond the current HNZ estate.

34. The bespoke governance arrangements proposed by SSC have been designed to ensure Option Two maintains an appropriate strategic focus on public housing with scope for a range of specialist expertise. This includes: two sub-committees to support the governance Board functions with the new entity; and using existing levers such as letters of expectation and policy direction over the Parent Board.

Criteria three – having clear governance and accountability

35. The more distance between the Minister and the project delivery function, the more complex the governance and accountability arrangements become for the UDA. This complexity increases the likelihood of fragmented decision-making, uncertainty, delays and misaligned priorities.

36. The governance and accountability arrangements for Option Two would be more complex than those for Option One. This is due to the scale and breadth of the new entity's operations, as well as the need to mitigate the governance and accountability issues that could arise from balancing its public housing and development roles.

37. The proposed governance and accountability arrangements for Option Two add complexity, but are designed so that a Parent Board would provide integrated governance and risk management for the entity, with sub-committees for the public landlord function and the UDA. However, the decision-making role of sub-committees would be at the discretion of the Parent Board.

38. A different set of capabilities would be required from the Parent Board compared to the current HNZ Board. This is because the Parent Board would need to have the specialist business skills necessary to provide appropriate governance given the diversity of issues and diversity of commercial risks across the entity, while also representing key stakeholders such as local government, public housing tenants and Māori.

39. Under both options, MHUD would be responsible for monitoring the UDA, and providing advice on its performance to Ministers.

Criteria four – having access to capital

40. The UDA under either option would have access to the balance of the $2.1 billion appropriated for KiwiBuild and for establishing the UDA. In the future, the UDA will need access to more capital to progress the large number of urban development projects envisaged. This is most likely to be provided through either direct capital injection (via core-Crown borrowing) or by the UDA borrowing in the market itself, at higher cost, as HNZ does now.

41. HNZ is currently borrowing against future revenues (its rental income, including Income Related Rent Subsidies) and selling surplus land released through redevelopment to fund its investment in re-fitting, renewing, realigning and expanding the public housing stock. This source of finance is critical to meeting the Government's target of 1,600 additional public homes per year, and ensuring that all state homes are warm, safe and dry.

42. There is limited scope for HNZ to borrow against current revenue sources more than is already planned, without needing a revenue stream sufficient to allow HNZ to service the debt. Adding a second function raises the question about the extent that HNZ's income should be redeployed to non-public housing uses. Any additional lending would likely increase the cost of HNZ's debt, and impact the integrity of the Government's fiscal strategy, because the HNZ debt may be treated as core Crown debt (affecting operating balance before gains and losses (OBEGAL)).

43. While HNZ could borrow (either through the Debt Management Office or privately) against the future revenue and profit streams arising from wider UDA-related development (e.g. targeted rates, infrastructure charges, rents and land sales), this is also available to the UDA under Option One.

44. There are also potential financial risks in relying on HNZ as a financial source:

    a. The potential for revenues (both IRRS and revenue from land sales) to be redirected from public housing to urban development activities.

    b. The potential for private sector development risks to be transferred onto HNZ's balance sheet (e.g. by HNZ or HLC being the party underwriting KiwiBuild developments).

    c. The risk of contagion from one function to another. Development is inherently risky, and a major financial failure could impact the public housing function.

45. These risks could be mitigated, but not eliminated, through a clear governance focus on risk management, and monitoring and oversight by Treasury and MHUD.

46. Given the above, we do not consider that HNZ's balance sheet is a material factor in making the decision between the two options.

Criteria five – ease of access to land

47. If the Government wants the UDA to be a lead developer, and to meet the aspirations for 10 to 15 large-scale projects, the UDA will need to own and/or control outcomes on land, and have access to capital to purchase land, and finance infrastructure and development activity.

The two options provide slightly different arrangements for access to land and capital, but overall the difference would not be significant.

48. A UDA formed around the KiwiBuild Unit and HLC (Option One) would have no land at the outset, but would have access to the balance of the $2.1 billion appropriated for KiwiBuild and for establishing the UDA. It would use this to purchase land.[1]

49. Even when the UDA purchases land, it is unlikely to generate income for some time, which will constrain its ability to borrow in the market. This means its initial capital allocation will need to sustain it over a period where there may be no revenue, or it will need to access capital via core-Crown debt.

50. While there would be a number of future large-scale development projects in Auckland that will not involve HNZ land (e.g. Unitec), any development centred on Manukau, Mangere, Otara, Onehunga, Mt Roskill or even Avondale will include some amount. In some areas HNZ land will be a key strategic asset, particularly when housing outcomes are the priority.

51. Option One will require specific arrangements for the UDA to influence or control the development outcomes on HNZ land in large-scale project areas, or to leverage it to fund redevelopment. This includes the HNZ land that HLC is currently developing for its parent.

52. There are options for doing this, ranging from negotiated joint ventures (where the UDA provides development services and influences the development outcomes, but HNZ continues to be the developer, taking the risk), to making all HNZ land within a project area automatically subject to a 'right to acquire' in favour of the UDA.[2] HNZ retaining its land does not preclude negotiated development models or the use of HNZ's balance sheet. Such arrangements will create complexity, but are nevertheless achievable (and already in existence – e.g. Hobsonville, Tāmaki).

53. Transferring HNZ land to the UDA under Option One has the potential to divide the public housing estate and weaken HNZ's financial position, as well as compromise asset stewardship. However, this effect may only be temporary, as the UDA would undertake development in project areas in a broadly similar fashion to what HNZ (with HLC) would have otherwise done with its land. That is, it would intensify the land, sell off a proportion in the market (including KiwiBuild affordable homes) to fund the development, and return new public housing assets to HNZ. The long-term net asset position for HNZ would be at worst neutral.

54. More importantly for HNZ however, Option One would require careful, potentially risky arrangements for ensuring the wellbeing of tenants is maintained adequately during the redevelopment period being controlled by the UDA.

55. Option Two would require simpler arrangements, given it provides the UDA with 'automatic' access to HNZ's land and balance sheet, subject to the internal resource allocation decisions of the Parent Board. It also allows the UDA to rely on the existing HNZ processes for managing tenant welfare during redevelopments.

56. There is also a concern arising from Option One about maintaining momentum in existing Auckland Housing Programme projects. The transition period would be critical for managing this, to ensure there is a seamless shift of responsibilities and relationships. By the time the UDA is formally established, the planning and development for many of the projects will be

[1] HLC is a service provider, owns no land, and has no capital to invest in development. In Hobsonville Point, the Crown owns all of the land, and set the investment and risk parameters for the development. HLC acts as the Crown's agent to manage the delivery of the development. All of the risk remains with the Crown, as do the profits. For more recent projects like Northcote, Mangere and Mt Roskill, HLC is performing this role for HNZ rather than the Crown without owning the land.

[2] We note that a specific 'right to acquire' by the UDA could allow subsequent repeal of the Housing Corporation Act Part 5A 'Transaction mandate'.

well-advanced, and the UDA would be unlikely to substantially adjust HLC's direction or approach.

57. Overall, we consider that either option provides the UDA with access to HNZ land, but Option One will require subsequent decisions to ensure a viable and effective working relationship between HNZ and the UDA in large-scale project areas. This would include specific legislative provisions (e.g. 'right to acquire'), subsequent ministerial direction to both entities, as well as suitable organisational and governance arrangements determined jointly by the two entities.

Criteria six – meeting the growth challenge

58. Both public and private sector entities find it challenging to govern and manage a growth business within a mature business. This is because the culture, scale and type of excellence needed to be successful in the two types of businesses are very different. This challenge tends to intensify as the growth business increases in scale and requires additional funding and resourcing.

59. So far HNZ has taken an orthodox approach to the growth challenge in establishing HLC as a subsidiary with a separate board and chief executive. Under either option, the entity could take a similar approach and establish multiple subsidiaries to manage a series of complex projects. This would change the role and capabilities of the UDA's Parent Board compared to the current HNZ Board.

60. Additionally, the commercial risks that will be taken on by the UDA are very different to the ones HNZ is currently exposed to in its core property and tenancy management business. Option Two would need HNZ to make changes to its capabilities and culture so it can manage these risks, while managing a large, vulnerable tenant base. This will be challenging.

Summary table

61. The table below summaries the options assessment:

	Criteria one	Criteria two	Criteria three	Criteria four	Criteria five	Criteria six
	Consolidating urban development capability	Having a clear strategic purpose	Having clear governance and accountability	Having access to capital	Ease of access to land	Meeting the growth challenge
Option One: KiwiBuild Unit and HLC in the UDA	✓	✓✓	✓✓	✓	✓	✓✓
	Would bring together the expertise held in KBU and HLC, but HNZ would still need to retain development capacity	Would be focused solely on urban development	Would have less complex governance and accountability arrangements	Would own no land at outset, and would only have access to the $2.1 billion appropriated for KiwiBuild	Would have no land at the outset, but would have access to the $2.1 billion appropriated	Would be a growth business
Option Two: KiwiBuild Unit, HLC and HNZ in the UDA	✓✓	✓	✓	✓	✓✓	✓
	Would bring together the three core central government entities directly involved in urban development	Would need to balance tensions between public housing and urban development functions	Would need more complex governance and accountability arrangements due the scale and breadth of its operations	Would be potential risks in relying on HNZ as financial source	Would have ease of access to HNZ land	Would need to manage the challenges associated with managing a high risk, growth business within a mature, low risk business

Second design decision: the UDA's legal form

Options

64. Flowing on from the decision about the UDA's makeup is the decision about the legal form of the new entity. There are two options – a Crown Agent or a Departmental Agency.

65. A Crown Agent is more arms-length from Ministers than a Departmental Agency. The channels for Ministerial direction are more formalised, and are primarily through the board and its chair. These channels include government policy statements, statements of intent, and letters of expectations.

66. The UDA model of Crown Agent would need to be closer to Ministers than the standard Crown Agent model. This is because Cabinet has agreed that the responsible Minister will make the final decision on the development plan for complex urban development projects. Other Ministers will also need to agree to specific aspects of the development plan, and the exercise of certain enabling development powers.

67. The powers of Ministerial control over Crown Agents are also less specific. For example, under the standard Crown Agent model, Ministers cannot direct Crown Agents with respect to specific assets or transactions. This means the UDA's board would be able to make key decisions on the KiwiBuild programme and flagship initiatives.

68. On the other hand, a Departmental Agency is an operationally autonomous agency within a host department, and is directly accountable to the Minister. This provides greater Ministerial control.

Options assessment

There are advantages and disadvantages to both options

69. The table below assesses various aspects of the Crown Agent and Departmental Agency options.

	Crown agent	Departmental agency
Ministerial direction	• More independence from Crown and Ministerial direction — channels of Ministerial direction or instruction are more formalised, and primarily through the Board. For example, direction through a Government Policy Statement can be specific if provided for	• More direct Ministerial direction • No decision-making Board however some statutory models still give decision making to outside boards
Territorial authority involvement	• Can establish subsidiaries with minority shareholding from other entities – i.e. enabling territorial authority partnership in specific projects	• Cannot establish subsidiaries, but the Crown can establish a series of separate project entities (e.g. like TRC) where the Minister is a shareholding Minister
Treaty of Waitangi obligations	• Existence of entity does not derogate from Crown's core Treaty obligations. They cannot be delegated to a Crown Agent.	• Maintains existing processes and relationships for meeting Treaty obligations
Ability to borrow	• Can borrow to fund development (subject to suitable assets/security) if given the power to borrow via legislation.	• Part of core Crown, so cannot borrow independently (does not have own balance sheet) • However, the Crown can access the cheapest borrowing through the New Zealand Debt Management Office

Delivery-focus	• The specific expert capabilities of a Board can support the UDA's functions and delivery • Independence of finances and decisions can support speedier decision-making and investment • Separates some decisions from political considerations	• Could establish an advisory panel to provide external expertise similar to what a Board could provide or could establish a separate statutory decision making board • Potential for greater responsiveness to government priorities and/or ability to make policy trade-offs

Treaty of Waitangi obligations are a key consideration

70. Whatever legal form it takes, the UDA will need to meet the Crown's Treaty of Waitangi and other legal obligations to Māori. A key part of doing this is being willing and able to engage with Māori. It is critical that the UDA operates in this way.

71. s 9(2)(f)(iv)

72. There is a specific issue relating to the Crown's obligations as part of the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Deed that will need to be addressed if the UDA is established as a Crown Agent. The Deed includes a protocol requiring iwi to be offered the first opportunity to be the developer of Right of First Refusal (RFR) land in Auckland before involving a Crown Agent or a private party.

Ensuring democratic representation when the UDA is exercising its taxation powers

73. The UDA will have a range of powers and mechanisms available to fund infrastructure, services and assets within a project area. This includes being able to charge targeted rates.

74. A general principle of law is that there should be no taxation without appropriate representation and accountability. Normally this is met through having elected representatives make decisions on taxation. However, the arms-length nature of the Crown Agent model makes it more challenging to meet this principle.

75. As such, further work will be needed to ensure decisions on taxation are made by elected representatives — for example, through Ministerial approval of projects.

There are options for ensuring territorial authority involvement in decision-making

76. You have previously agreed that when a territorial authority has agreed to support a development project, there should be a decision-making body for that project that is jointly appointed by and accountable to the Minister and that territorial authority. This will require territorial authorities to have more than an advisory role in the UDA's decision-making for projects in their district.

77. Territorial authority involvement in decision-making will not be possible if decisions for a development project are made at the national board level. This is because any local government representatives on a national board would need to represent the general interests of local government rather than the particular interests of a territorial authority involved in a development project.

78. Given the above, the UDA needs to be designed that decisions can be made at the project level. This will require the UDA to have a single set of management and staff that can

support multiple development projects, each with their own separate project board making project-related decisions.

79. However, doing this would be more complex if the UDA is a Crown Agent as there would be a need to manage the role of the national board when decision-making and accountability for a development project is at the project board level. While there are two ways of doing this, they both have trade-offs:

    a. The project board is the primary decision-maker: under this approach the project board is directly accountable to the Minister and the territorial authority for delivering the development project's strategic objectives. While this option would ensure territorial authority involvement in decision-making, the role of the national board would be reduced to providing the necessary staff for the development project. This could be done through a service agreement.

    b. The national board is the primary decision-maker: under this approach the national board is directly accountable to the Minister and the territorial authority for delivering the development project's strategic objectives. It would also be responsible for providing the necessary staff. The national board could delegate its decision-making authority (but not its accountability) to project boards at its own discretion, giving no guarantee of territorial authority involvement.

80. The new legislation would need to specifically establish the project boards to provide for territorial authority involvement in the Crown Agent model.

There are also implications for MHUD's ongoing role

81. There are functional and resourcing implications for MHUD if the UDA is established as a Crown entity. For example:

    a. MHUD would be the monitoring agency.

    b. MHUD would need to retain the capacity and capability to discharge the Crown's obligations under the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Deed in relation to Crown-owned RFR land, as these functions must be discharged prior to the Crown involving a Crown entity in any development of that land. This would include undertaking relevant due diligence, inviting development proposals from iwi and negotiating and (presumably) managing any resulting development and on-sale agreements. This task could be substantial in the case of major projects involving Crown-owned RFR land (e.g. Unitec).

We recommend that the UDA is a Crown agent

82. On balance, we recommend establishing the UDA as a Crown Agent. This would enable more responsive, commercially-focused decision-making, while still maintaining suitable accountability to the Minister.

Sequencing and timing

83. Either design option will require sequencing and transitional arrangements. Legislation would be required to establish the UDA as a Crown Agent. The most likely avenue to progress this legislation is through the planned legislation establishing the UDA's powers, tools and processes. This is planned for introduction in March/ April 2019, to be passed by the end of that year.

84. It is likely that the UDA cannot be formally constituted for 12 to 18 months under either option. However, we consider it will be useful to put in place clear transitional arrangements to make sure:

a. progress can continue to be made in the identification and coordinated delivery of large-scale urban development projects; and,

b. the affected agencies can start planning towards the new organisational arrangements, to ensure a smooth transition and the least disruption at the point of establishment.

85. Annex Two sets out an indicative process for establishing each option for the UDA.

86. Option Two (repurposing HNZ) is preferred by Ministers, HNZ has informed you that it can start doing some of the UDA role under its existing legislation and can begin making the appropriate organisational structural changes. Under this scenario, an early transfer of the Kiwibuild function into HNZ may be possible, but:

a. It is likely that HNZ can only go so far within current HNZ legislation.

b. There are risks to Crown-Māori relationship (not just Crown land issues, but special protections for Māori interests are proposed in the UDA legislation).

c. s 9(2)(f)(iv)

d. The governance-risk and strategic focus mitigation proposed through SSC's bespoke Crown Agent model will not be available.

87. The key mitigation for Crown-Māori interests is to retain KiwiBuild (and its Crown land development role) within MHUD (i.e. within the Crown and close to Ministers) until the UDA legislation is passed, enabling safe transfer to UDA. In addition, this would provide more time for the Government to undertake authentic engagement with its Treaty partners around establishing the UDA.

88. We recommend that under either option, existing arrangements remain in place until the legislation is passed (i.e. HLC remain with HNZ and KiwiBuild Unit remain with MHUD), but that Ministers agree to the following:

a. The creation of a special transition establishment team within MHUD that will draw on cross-agency and external expertise and tasked with establishing the UDA and supporting the working relationship between the UDA's constituent parts ahead of the establishment.

b. Clear Ministerial direction to the component urban development entities to accelerate and formalise the partnership and collaboration arrangements that are beginning to emerge in the context of existing scale development projects, including encouraging a move towards co-location (e.g. between HLC and the KBU staff in Auckland).

c. Joint work on identifying and planning for the first round of large-scale UDA projects, including the City Centre to Mangere light-rail corridor)

Housing New Zealand view

89. HNZ has requested that their specific views be identified in this paper. It wishes to note that it does not agree with aspects of the evaluation of the two main options presented in the paper, and that its analysis suggests Option Two (HNZ, HLC and KBU) is preferred. HNZ also considers that structural change does not need to wait until legislative change in order to progress Option Two, and that quick implementation allows it to maximise its procurement advantages.

90. We understand the Chairs of HNZ and HLC will provide separate advice to you on this, as they have done previously.

Next steps

91. Once Ministers have agreed in principle on the UDA's make up and legal form, we will prepare a Cabinet paper. To enable the new urban development legislation to be introduced in early 2019, we are planning for this Cabinet paper to be ready for lodging with the Cabinet Economic Development Committee (DEV) in early November 2018.

Annexes

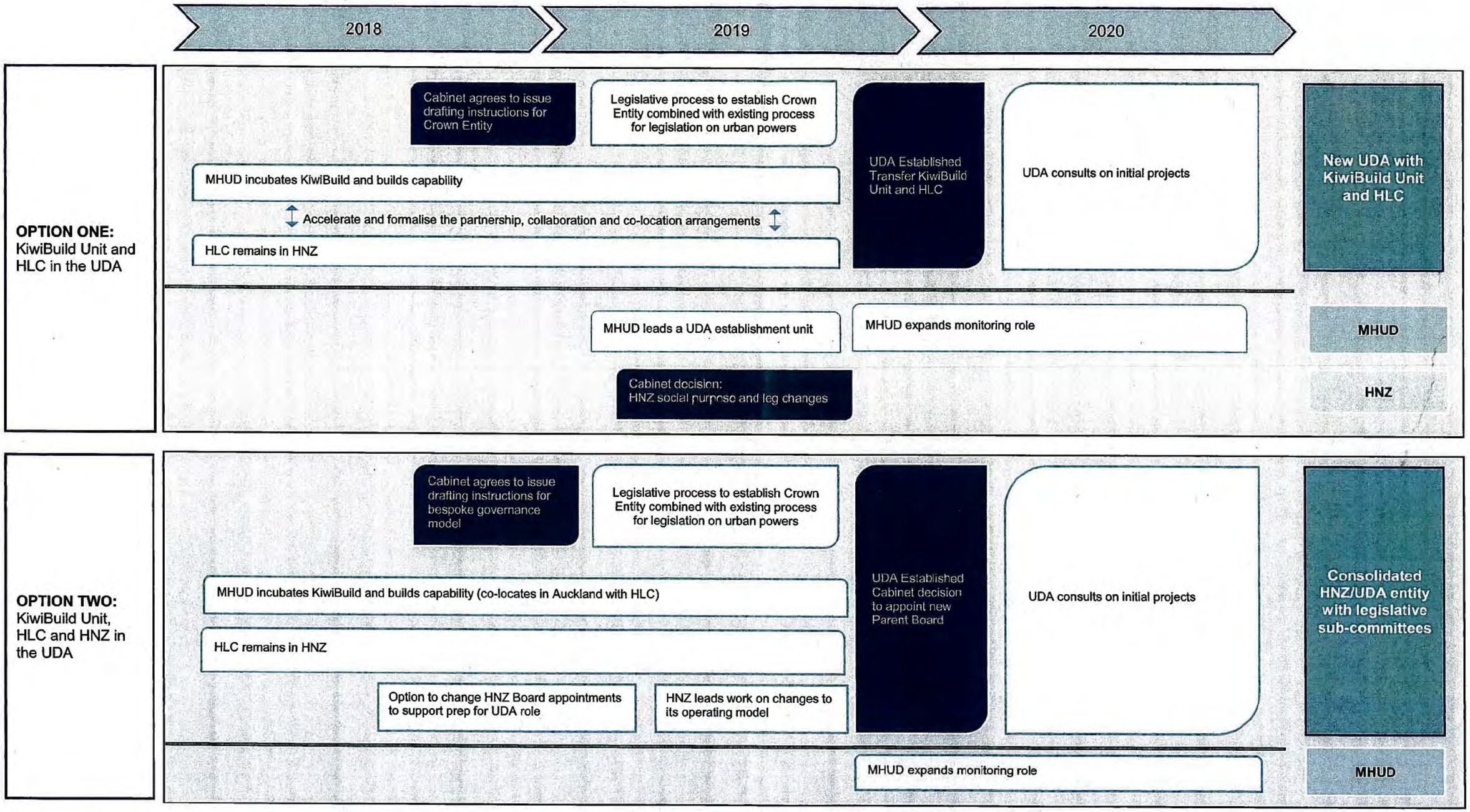
Annex One: Current machinery of government

Annex Two: Indicative process for establishing each option for the UDA

Annex One: Current machinery of government

There are nine public agencies or branches directly involved in urban development:

	Description	Place making & urban design	Housing	Commercial	Parks & reserves	3 waters	Local roads	Busways & light rail	Local bridges & tunnels
KiwiBuild Unit	• Brand new, with facilitator role to date • No local infrastructure capabilities yet • $2b capital • Unitec and Manukau Super Clinic sites are only significant land holdings		✓						
HLC	• Subsidiary of HNZC, 18 months in current form • Service provider (no capital or land) • Focus on land development • Project management capabilities, including local infrastructure • Leads Hobsonville Point development, as well as projects on HNZC land and larger sites of Auckland Housing Programme • Now manages Tamaki regeneration	✓	✓	✓	✓				
HNZ's Asset Development Group	• Division within HNZ with well-established development capability • Focus on maintaining, upgrading and constructing public housing • Leads development of smaller sites of Auckland Housing Programme, and the regional housing programme		✓						
HNZ's asset management function	• Owns $26b of residential land for public housing • Replacing, retrofitting or redeveloping around 55,000 homes over next 30 years (86% of its portfolio) • Annual income of >$1b is all committed to maintaining and growing the public housing portfolio • Will spend $350m p.a. on housing maintenance and $50-100m p.a. on capital upgrades over next 10 years • Plans to borrow up to $12b over next 30 years to finance its long term investment plan • Uses part-sale of redeveloped land for market housing to help finance public housing delivery		✓						

	Description	Place making & urban design	Housing	Commercial	Parks & reserves	3 waters	Local roads	Busways & light rail	Local bridges & tunnels
NZTA	• The NZTA is a land transport system solution provider, including in urban areas. • Land transport investment decisions made by the NZTA and Councils through the NLTP can have profound placing shaping effects • NZTA statutory functions include co-investing with councils in public transport, walking and cycling infrastructure • The NZTA delivers light rail, including the project in Auckland (delivered on the same basis as State highways) which has a key focus on enabling land use uplift and placing making.						✓	✓	✓
Regenerate Christchurch	• Leads Regeneration in Christchurch consistent with the purpose, objectives, and functions set out in s122 of the Greater Christchurch Regeneration Act 2016 • Current priorities are the Ōtākaro/Avon River Corridor Regeneration Plan and the Regeneration Strategy for Southshore and South New Brighton • No land or capital	✓							
Otākaro	• Leads development of Crown anchor projects in CBD • Owns Crown land in Christchurch CBD • Will divest Crown land holdings in central Christchurch	✓	✓	✓	✓		✓	✓	
Tamaki Regeneration Company (TRC)	• Owns $1.6b of public housing land in Tamaki • Manager of around 2,800 public housing tenancies	✓	✓	✓	✓				

Annex Two: Indicative process for establishing each option for the UDA