MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

BRIEFING

Housing Commission Legislation – Planning and Consenting Issues

Date:	19 January 2018	**Priority:**	High
Security classification:	In Confidence	**Tracking number:**	1307 17-18

Action sought		
	Action sought	**Deadline**
Hon Phil Twyford **Minister of Housing and Urban Development**	**Discuss** with MBIE officials **Indicate** the option you prefer for each issue **Forward** this briefing and **discuss** these issues with the Ministers for the Environment, Conservation, Infrastructure and Local Government and, if appropriate, their relevant Associate Ministers **Agree** that the proposal you adopt will be reflected in a detailed Cabinet paper **Note** that this briefing should be read following the Fundamental issues briefing paper	2 February 2018
Hon Jenny Salesa **Associate Minister of Housing and Urban Development**	For information	N/A

Contact for telephone discussion (if required)				
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The following departments/agencies have been consulted
MfE, DoC, DIA, Te Puni Kōkiri, MoJ, MCH, Heritage New Zealand, Treasury

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- ☐ Withdrawn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 our advice on the planning and consenting powers associated with resource management matters for the Housing Commission.

Recommended action

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

a **discuss** this briefing with MBIE officials

b **note** that this briefing should be read following the Fundamental issues briefing [MBIE 1262 17-18]

c **indicate** the option you prefer for each issue

d **forward** this briefing and **discuss** these issues with the Ministers for the Environment, Conservation, Infrastructure and Local Government and, if appropriate, with their relevant Associate Ministers

Agree / Disagree

e **agree** that, subject to discussions with your colleagues, the proposals you adopt will be reflected in one of the series of detailed Cabinet papers to be considered early this year

Agree / Disagree

Di Anorpong
Manager, Construction and Housing Policy,
Housing and Urban Branch, MBIE
19 / 1 / 18

Hon Phil Twyford
Minister of Housing and Urban Development
.... / ..... / .....

Context

1. On 20 December 2017, the Cabinet Business Committee agreed in principle to establish the Housing Commission as a national urban development authority with a process and development powers to:

   - support high quality urban development
   - provide greater coordination, certainty and speed, and
   - provide the capability to support a wide range of development projects.

2. The Cabinet Business Committee paper described the core elements proposed for the new legislation, and signalled that there are a number of critical policy issues that need to be resolved before detailed policy decisions can be made in early this year. These issues are discussed in the following series of briefings (the ones you have received to date are highlighted):

   1. Fundamental issues
   2. Decision-making: priorities and principles
   3. Organisational issues
   4. Approach to Māori interests
   5. Land assembly powers, especially compulsory acquisition
   6. Infrastructure and funding powers
   7. Planning and consenting issues
   8. Powers to change reserves.

3. This briefing contains our advice on a range of planning and consenting questions for the design of the Housing Commission legislation.

The Housing Commission will need planning and consenting powers to achieve its objectives

4. You have committed to establishing the Housing Commission that will have the powers of an urban development authority.

5. One of the key objectives of the urban development legislation is to provide the Housing Commission with planning and consenting powers that cut through red tape and provide for it to:

   - identify, delineate and plan large-scale, complex development projects in defined areas in an integrated way
   - make planning and consenting decisions within the development project area
   - undertake development in accordance with agreed plans and approved consents.

6. The powers will be used by the Housing Commission for the development project in the development project area only. The development project area will be the area covered by the development plan.

7. The powers do not include building consenting powers.

8. The processes above will need suitable checks and balances. This is to ensure that positive economic and social development outcomes can be realised while retaining robust environmental safeguards for the development area and wider catchments and air-sheds.

9. In designing the provisions that will deliver on these objectives a number of design choices need to be made. This briefing describes the proposed planning and consenting framework, outlines some of the issues that will need to be addressed and seeks your direction on the options presented.

Table 1: Outline of design choices

Section	Issues	Page number
1.	Access to existing planning processes	5
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2017 discussion document feedback

10. Throughout this briefing we reference stakeholders' feedback drawn from the response to the discussion document on *Urban Development Authorities* (February – May 2017).

1. Access to existing planning processes

11. Ministers have indicated that the Housing Commission may be tasked to undertake smaller "pepper-pot" developments[1]. There may also be times where the scale, complexity and nature of a proposed development do not require the full suite of development powers. In such circumstances it may be useful for the Housing Commission to have access to the existing powers in the RMA for land use regulation.

12. Existing processes that can be used by a natural person under the RMA include:

    - directing consent applications, plan changes or notices of requirement as 'nationally significant proposals' to decision by a board of inquiry or the Environment Court
    - using the designation powers in the RMA
    - requesting that the Minister direct plan changes and reviews
    - requesting direct referral to the Environment Court for notified resource consents and notices of requirement, rather than to the relevant council.

13. The most suitable RMA process would be based on the needs of the proposed project. This would mean that the Housing Commission would need the full and usual powers of a natural person under the RMA (eg the ability to lodge resource consents, request private plan changes, or request that an application be directly referred to the Environment Court).

Recommendation

1. Officials recommend that the urban development legislation empower the Housing Commission to have the full and usual powers of a natural person under the RMA.

Agree / Disagree

2. The role of regional councils and territorial authorities in environmental matters

14. As discussed in the fundamental issues paper [MBIE 1262 17-18] local councils play a critical role in the processes for establishing urban development projects. From an environmental management perspective, regional councils[2] can bring significant environmental knowledge to a development project. In addition, territorial authorities[3] need to be involved and committed to the development project as they are the local authorities that inherit the land-use activities within the urban development project area once the projects are completed.

Feedback noted the important role both regional and territorial authorities could play throughout the process

15. Feedback received on urban development authorities and the interface with local government noted the role of regional councils and the value they could provide throughout the process. Submitters also noted that regional councils had key responsibilities for water

[1] Small-scale developments of a particular nature or character dispersed into an area with different characteristics
[2] Including the regional council function of a unitary authority
[3] Territorial authorities are defined as City and District councils and unitary authorities have territorial authority functions

and air quality, flood protection and natural hazards. Many regional councils have a major regional planning role along with their territorial authority counterparts.

16. Submitters noted that regional councils also have an important role in public transport provision under the Land Transport Management Act 2003 and should:

    - have a greater involvement in UDA processes
    - be actively involved in the establishment and development plan processes to ensure projects that require changes to public transport systems and networks are planned and implemented in an integrated way.

17. It was noted that territorial authorities could bring local knowledge on land use, infrastructure (requirements, availability, capacity and constraints), contamination, natural hazards and ecological diversity to the development project.

Options to enhance local authority participation

18. There are four opportunities within the establishment and development plan processes where regional councils and territorial authorities can play an important role:

    - as part of the initial assessment of potential projects
    - during the preparation of the development plan
    - in reviewing the two assessments of environmental effects of the urban development project, as proposed for the urban development legislation (should you agree to recommendation 9 in section 4 on environmental assessments)
    - giving regional councils and territorial authorities the status of 'affected persons', allowing them to formally participate in the objection process for development plans.

Recommendations

Officials recommend that:

2. As part of the initial assessment of a proposed development project, officials must consult the relevant regional council and territorial authorities and have *particular regard* to their views

Agree / Disagree

3. When preparing the draft development plan, the Housing Commission must consult with the relevant regional council and territorial authorities and have *particular regard* to their views

Agree / Disagree

4. The definition of 'affected persons' be clarified to include regional councils and territorial authorities, enabling them to formally object to any element of the Housing Commission's recommended development plan

Agree / Disagree

5. If you agree to the recommendation on environmental assessments (recommendation 9), then the regional council's and the territorial authority's reviews of the assessment of environmental effects of the proposed project and the draft urban development plan can be submitted to the independent commissioners for their consideration as part of the development plan process.

Agree / Disagree

3. The Housing Commission may need powers to override regional and district planning documents

19. A cornerstone development power of the proposed legislation is the ability of the Housing Commission to override (including replacing, suspending or amending) resource management plans applicable to the development project area to the extent necessary (ie in-part) to achieve the development project's strategic objectives.

20. Resource management plans include district plans, regional policy statements and regional plans. This distinction is set out in Table 2.

Table 2: District plans, regional policy statements and regional plans

District plans	*Regional policy statements and regional plans*
District plans detail the land-use and subdivision provisions (density requirements, height restrictions, parking requirements, roading standards etc) applicable to an area. They also control development for the purpose of: • avoiding or mitigating natural hazards • preventing or mitigating any adverse effects of the development, subdivision, or use of contaminated land • maintaining biodiversity.	Regional policy statements contain objectives, policies and methods (excluding rules) to guide urban development and growth, and provide direction on the management of the regional environment, natural hazards and for the assessment of historic heritage. Regional plans provide rules and standards that articulate environmental bottom-lines, providing the local expression of national and regional policy statements.

There are a range of legislative design choices that need to be considered

21. Legislative design choices relevant to the plan override power are:

- which resource management plans may be overridden, or overridden in part, in respect to the powers application to the development area:
  - district plans
  - regional policy statements
  - regional plans
- whether all types of provisions in any plan or policy statement can be overridden or suspended (not apply for period of time), or only some specified types of provisions?

There are risks with the override power

22. Any override has potential implications for the management of environmental effects in (and potentially outside[4]) the development project area. It will be vital to ensure that environmental bottom-lines are set and maintained.

[4] For example waterborne or airborne contaminants or noise generated within the development site can move or affect persons and the environment beyond the development area

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

Feedback expressed the importance of regional plans and caution about the override ability

24. Stakeholders highlighted that regional plans represent the integrated management of whole catchments and air-sheds, which need to be treated holistically, in contrast to the development project area, which is geographically discrete.

25. Stakeholders also expressed concern about overriding regional policy statements, in particular where they included growth management strategies that provided certainty to infrastructure providers about where growth could be expected to occur.

26. Feedback also noted it was inconsistent to override regional policy statements but not regional plans, especially as regional plans are required to give effect to regional policy statements. Overriding district plans was seen as contrary to the community's expressed preferences for development as stated in the district plan.

Options for overriding planning documents

District plans

27. To ensure efficient development, the Housing Commission may need to change the land-use regulation (ie area zoning, height restrictions etc) in the development project area. This will require a district plan override or suspend power. We therefore recommend that the Housing Commission have the power to override or suspend the applicable district plan for the urban development project area.

Regional policy statements and regional plans

28. Table 3 outlines the options for overriding regional policy statements and regional plans.

Table 3: Options for overriding regional policy statements and regional plans

Options	Explanation	Analysis
Option 1: Status quo	The status quo option retains the status of regional plans and regional policy statements, so that the land use and subdivision provisions in development plans give effect to regional policy statements and are not inconsistent with regional plans.	If the environmental assessment option recommended at recommendation 9 is not adopted then we recommend this option, as it maintains the status quo, protecting existing environmental bottom-lines in the development project area. This option will require the Housing Commission to work more collegially with district and regional councils over growth management issues. The trade-off is that some development activity may be prevented or slowed if it fails to comply with regional rules around matters such earthworks, drainage of land, or diversion of waterways.

Option 2: Overriding land-use components of regional policy statements and regional plans.	Option 2 overrides land-use components only.	There can be circumstances where it is desirable to override the land-use components of regional instruments (such as earthwork or natural hazard controls). One approach to doing this is to not provide the power for a development plan to override a regional policy statement and regional plan, except to the extent that provisions are closely related to land use and the power is necessary to realise the strategic objectives of the project. Environmental bottom-lines would be retained in parts of the regional plans that are not overridden However, the problem with this approach will be the difficulty of defining land-use related provisions without affecting the provisions that set environmental bottom-lines. For example, earthworks are clearly related to land use, but they also have a significant impact on water quality. Regional plans that use an integrated planning approach may therefore have most provisions subject to override. Thus it may not always be clear-cut to determine whether these aspects of a regional plan should be protected or changed. There would also be the potential to undermine Treaty settlements as they are articulated through collaboration in the development of planning documents, especially with respect to environmental values. Given this difficulty (and that outlined above) it may be easier and preferable not to have the ability to override or suspend a regional plan. Potentially, this could frustrate timeliness of development.
Option 3: Override regional policy statements only as they affect growth management but not override environmental bottom lines **(recommended)**	Option 3 allows regional policy statements to be overridden with respect to growth management provisions (thus overcoming restrictions on growth and sequencing of growth) but does not allow them to be overridden in respect of environmental matters, or a regional plan to be overridden.	Under this option, the environmental bottom-lines, as set in the regional policy statement and regional plans, would remain in effect and be applicable to the development project area. However, there may be some difficulty if a growth management provision is the mechanism used to protect some environmental bottom-lines. We would suggest that a growth management provision that is in place to give effect to an environmental bottom-line or national direction may not be overridden. From a growth management perspective, this approach would mean that Housing Commission developments may be established out-of-sync with the growth and sequencing of growth agreed by regional and district councils and the regional community, including the methods that give effect to the National Policy Statement on Urban Development Capacity 2016 (NPS-UDC). On the other hand, urban development projects may provide an important mechanism for regions to use to achieve the development capacity required under the NPS-UDC, acting as a 'circuit breaker' to stymied development potential.

National level documents

29. In any of the above options, the development plan would be required to give effect to applicable national level documents and the environmental bottom-lines articulated or required by them. This matter is canvassed in more detail in the briefing you will receive on decision-making provisions for the Housing Commission [MBIE1363 17-18].

Recommendations

District plans:

6. Officials recommend that the Housing Commission have the power to override or suspend applicable parts of the district plan that apply to urban development project areas to the extent necessary to achieve the strategic objectives of the development

Agree / Disagree

Regional plans

7. EITHER

    a. That the Housing Commission have the power to override or suspend provisions of regional plans pertaining to restrictions on the development of land to the extent necessary to give effect to the strategic objectives of the urban development project area, except where environmental bottom-lines for air or water quality will be significantly adversely affected or the risk of natural hazards is not able to be managed

Agree / Disagree

OR

    b. There be no provision for the Housing Commission to override or suspend regional plans

Agree / Disagree

Regional policy statements

8. Officials recommend that regional policy statements (with respect to their urban growth management provisions) can be overridden, excluding provisions essential to environmental matters, including the management of air, water, coastal and soil resource bottom-lines and management of natural hazards.

Agree / Disagree

4. Who will review the environmental assessments?

30. During consultation, submitters and some agencies raised the need for environmental assessments at two points in the process for establishing an urban development project:

- an initial environmental assessment to assess the potential for any adverse environmental effects undertaken in the establishment phase (to ensure project feasibility)

- at the development plan stage, a full assessment of a development's effects on the environment, including cumulative effects.

31. The initial assessment would be high level with a focus on identifying the issues that will need to be dealt with in a more detailed assessment at the development plan stage.

32. Submitters and agencies were also concerned about who would do the assessments, whether they would be audited, and what weight these assessments would be given in decision-making.

Options for auditing the environmental assessments

33. Although the Housing Commission would do the environmental assessments, there are options for who would audit these assessments. These options are set out in the following table.

Table 4: Options for auditing the environmental assessments

Options	Explanation	Analysis
Option 1: Regional councils and territorial authorities would audit the assessments **(recommended)**	Option 1 would be for the relevant territorial authorities and regional council to review assessments of environmental effects and make recommendations to the Minister for the initial assessment and to the independent commissioners who review the recommended development plan (for the second).	The approach of local authorities making these recommendations to the decision-maker is consistent with other process options already contained within the RMA (eg Auckland Unitary Plan Independent Hearing Process, Board of Inquiry processes, streamlined planning process, and the standard planning and consenting tracks). The benefit of this option is that local authorities, which understand the local context, can help identify issues and options early. The local authorities can provide an integrated local and regional perspective on the development project. However a local authority may not have capacity to review the assessment of environmental effects in a short timeframe, so the ability to recover costs may be needed.
Option 2: Environmental Protection Authority (EPA) would audit the assessments	Option 2 would be to provide a statutory role for the EPA to review assessments. The EPA would have the power to make recommendations to the Minister for the initial assessment and to the independent commissioners who review the recommended development plan (for the second).	This option may slow down the development plan process. To date, the EPA has not undertaken this role with respect to Independent Hearing Panels as established for the Auckland Unitary Plan and the review of the Christchurch district plan.

34. In either case, the reviewing authority would be empowered to call on external expertise (Heritage New Zealand, for example, for historic or archaeological impacts or the Department

of Conservation for conservation and ecological values) as necessary to ensure robust review.

Recommendation

9. Officials recommend that:

   a. the two environmental assessments required by the proposed legislation must be provided to the relevant regional council and territorial authorities for review

   b. regional councils and territorial authorities have the power to recommend changes to the development plan to the independent commissioners in light of the second assessment.

Agree / Disagree

5. Consenting powers (including compliance, monitoring and enforcement of consents)

35. To streamline consenting processes and to cut through red tape, it is proposed that the Housing Commission be given the power to issue development (resource) consents for land-use activities, as territorial authorities do under the RMA.

36. Accompanying this power would be the power to monitor and ensure compliance with the provisions of the development plan and any consents issued under it. The thinking behind this is that the Housing Commission would be expert in its own development plans, eliminating interpretation issues that may occur with a third party undertaking consenting (eg the territorial authority). The Housing Commission could also use the streamlined processes in the proposed legislation to provide a one-stop shop for developers.

37. However, a distinction needs to be drawn between consents for development plan activities (land-use consents) and those required to meet the requirements for any coastal, water, or air-discharge consents that usually sit within the regional plan. These categories of consents require significant specialised expertise and would be best dealt with by the regional council.

Feedback raised concerns about the UDA having consenting powers

38. In feedback, opposition to an urban development authority having consenting and associated powers was predominantly based on concerns around its organisational capacity and capability to perform these functions. In subject areas such as water and air quality, consents can be highly technical, and all consent processes require expertise.

39. There was also concern that an urban development authority would have little incentive to consider the wider regional effects of its activities as it would be focused solely on the development project area.

40. Some submitters were concerned about the misuse of powers, if an urban development authority approved its own resource consents (the urban development authority being the applicant and consent authority).

41. Developers were generally in favour of an urban development authority having consenting powers, as they felt consenting would be faster and that there would be benefits in dealing directly with the body tasked with ensuring progress was made in development.

There are risks and benefits of the Housing Commission undertaking consenting

42. Having the Housing Commission as a single national urban development authority removes most of the capacity and capability issues raised in the consultation feedback. The Housing Commission will be large enough to attract suitably qualified staff and have sufficient through-put of consents to retain capability in consenting, compliance, monitoring and enforcement. Alternatively, as it will be working across numerous councils, the Housing Commission may find it useful to partner with local councils, and delegate or contract out consenting work to them.

43. A more relevant risk results from the Housing Commission's focus on particular development project areas. This may mean that the Housing Commission has limited incentives to consider the wider environmental impacts of activities with effects that extend beyond the boundaries of the project area, particularly the impact on water management catchments, air-sheds, natural hazards, traffic and other infrastructure networks.

44. Within the more enabling environment of the development plan, a majority of activities may be permitted activities and not require a consent. However, such activities will need to be monitored against the provisions of the development plan.

45. Councils may also be concerned that the Housing Commission will grant consents and associated conditions that are onerous to monitor and enforce during or after the development project. Further, the Housing Commission's procedures may not align with council procedures. Some of this risk could be mitigated by the Housing Commission entering into a contract with the relevant council and contributing to the actual and reasonable costs incurred by the council in monitoring and enforcing consent conditions for an agreed period. Alternatively, there would be little to prevent the Housing Commission contracting consent processing and monitoring work to consultants (as is the practice of some councils now).

46. While local authorities want to retain the consenting role in development project areas, some poorly-resourced local authorities may have difficulty processing consents for projects that may be large and complex in nature, and could benefit from the Housing Commission's capability and expertise. In these cases the council could transfer consenting to the Housing Commission under section 33 (Transfer of powers) of the RMA.

47. A caveat to the Housing Commission having consenting powers would be where the Commission itself was the applicant for consent. In such situations the local council could process the consent. This would ensure that the applicant was not also the decision-maker. It should be noted however, that when councils themselves are seeking consents, they avoid this problem by having independent commissioners as decision-makers or can directly refer applications to the Environment Court.

Options for which organisation undertakes consenting

48. Table 5 below outlines three options for the organisation that will undertake consenting in the development area.

Table 5: Options for which organisation undertakes consenting

Options	Explanation	Analysis
Option 1: Territorial authority consenting (subdivision and land use) functions undertaken by Housing Commission and regional function consents undertaken by regional councils **(Recommended)**	Under option 1 the Housing Commission could undertake consenting for subdivision for land-use consents usually issued by territorial authorities, however regional function consents would be undertaken by regional councils. Monitoring and enforcement functions would remain with relevant regional and territorial authorities.	The Housing Commission takes over land-use and subdivision consenting from the territorial authority for the development area. We think the status quo is the better choice with respect to regional consenting given the preference for holistic environmental management. This is due to the likely technical content of regional consent applications and their pan-regional implications. The status quo for regional consenting would ensure that robust technical and other expertise are utilised with respect to catchment and air-shed based issues, safeguarding important aspects of environmental well-being in the regional consenting context.
Option 2: Housing Commission has consenting powers for both regional and territorial authority consents.	Option 2 is to empower the Housing Commission to have all consenting, compliance, monitoring and enforcement functions (including the ability to transfer these functions). The application of these powers would be set out in development plans, and would be time-limited to the period of the development, and then transferred back to the applicable local government entity.	The size of the Housing Commission means that it would have enough staff with the right expertise to effectively carry out consenting compliance, monitoring and enforcement functions. However, resource consents can be long-lived (up to 35 years for some regional council consents or longer for some land-use consents) meaning that the Housing Commission should also have the power to transfer functions in cases where it has completed its other responsibilities and functions in respect to a development area.

Option 3: Consenting remains with councils (status quo)	Option 3 places the decisions on consenting, compliance, monitoring and enforcement in the hands of councils. If councils see efficiency or extra resources available from the Housing Commission, they can transfer these activities using an amendment to RMA Section 33 (Transfer of powers).	We consider the Housing Commission model can work equally well with resource consenting, compliance, monitoring and enforcement functions remaining with local government *providing* that councils are required to prioritise the strategic objectives in decision-making. A risk with leaving consenting with councils is that councils may struggle with volumes and slow the process down.

Recommendations

10. Officials recommend that:

EITHER

a. The Housing Commission have the resource consenting functions of a territorial authority, but not those of a regional authority; and

   i. Where the Housing Commission is itself the applicant, it must delegate consent decision-making powers to the relevant territorial authority or an independent panel, or refer the application directly to the Environment Court; and

   ii. Responsibility for monitoring and enforcing consents remains with the relevant territorial authority or regional council

Agree / Disagree

OR

b. The Housing Commission have resource consenting powers for both territorial and regional functions, except where it is itself the application; and

   i. Where the Housing Commission is the applicant, it must delegate consent decision-making powers to the relevant territorial authority, regional council or an independent panel, or refer the application directly to the Environment Court; and

   ii. Responsibility for monitoring and enforcing resource consents rests with the Housing Commission for the duration of the development project, which it is transferred back to the applicable local government entity

Agree / Disagree

6. The consenting framework and the status of activities

49. The proposed consenting framework has four categories for activities *included in* the development plan that the Housing Commission has drafted for the project area.

50. These consent categories will follow the naming protocols and draw on the definitions already established in the RMA for activity categories. This avoids confusion for users, maintains the expertise developed in the present system and avoids having to replicate the system. The removal of the discretionary activity status will require the development plans to be more definitive in applying an status to an activity.

51. Activities in the development plan may be:

- a **permitted activity** – an activity able to occur without any need for a development (resource) consent (the equivalent of a permitted activity under the RMA)
- a **controlled activity** – an activity able to occur only with a development consent, but that consent must be granted, albeit with discretion to impose a range of conditions (the equivalent of a controlled activity under the RMA)
- a **restricted discretionary activity** – able to occur only with a development consent, with discretion to approve or decline the application, but the exercise of that discretion is restricted to defined matters (the equivalent of a restricted discretionary consent under the RMA)
- a **prohibited activity** – not permitted in any circumstances (the equivalent of a prohibited activity under the RMA).

52. Any activity not included in the development plan, or one that does not meet the requirements set out in the development plan, is a **non-complying activity** that can be considered by the Housing Commission, through an extensive notified application process that provides for affected party submissions and subject to appeals as outlined in section 7.

53. Unlike with the RMA, we do not propose to include a discretionary activity category This is because we consider that such a category would allow for too much uncertainty and the overriding purpose of the development plan is to provide as much certainty as possible to developers and the community.

Feedback highlighted concern that new categories of consent could be confusing and complicated

54. Stakeholders expressed concern that the proposal introduces new categories of consent activities to those prescribed in the RMA, and that this would be confusing and lead to unnecessary complexity.

Alternative option for consent framework and activity status

55. An alternative option to that proposed is to retain the full range of activity categories that are in the RMA, thereby re-introducing the discretionary status. While this would make the proposal more consistent with the RMA, it would introduce uncertainty, making the development plan less definitive and consents open to appeal.

Recommendation

11. Officials recommend that:

    a. there be four activity status categories for activities *included* in a development plan that are (mirroring the categories in the RMA):

- a **permitted activity** – able to occur without a resource consent (the equivalent of a permitted activity under the RMA); or
- a **controlled activity** – able to occur only with a development consent, but where that consent must be granted, albeit with a discretion to impose a range of conditions in restricted circumstances (the equivalent of a controlled activity under the RMA); or
- a **restricted discretionary activity** – able to occur only with a development consent, where there is discretion to approve or decline the application, but where the exercise of that discretion is restricted to defined matters (the equivalent of a restricted discretionary consent under the RMA); or
- a **prohibited activity** – not permitted in any circumstances (the equivalent of a prohibited activity under the RMA)

  and
- any activity *not* included in the development plan, or one that does not meet the requirements set out in the development plan, is a **non-complying activity** that may be considered by the Housing Commission, but through an extensive notified application process that provides for affected party submissions

Agree / Disagree

OR

b. retain the full range of activity status categories including discretionary activities, as defined by the RMA

Agree / Disagree

7. Appeal rights for consents

56. This section discussed appeal rights for consents. A design choice for the legislation is whether we provide for appeal rights on the merits of consents, or remove or restrict them.

57. Appeal rights on the development plan are discussed in the briefing on fundamental issues [MBIE 1262 17-18]. That discussion deals with appeals of policy decision-making.

58. As discussed in that briefing, where a public body makes a decision that affects a person's rights or interests, the principles of natural justice require that person to be given the opportunity to have the decision reviewed in some way. This is equally important in regulatory decision-making, to the applicant for consent or to those affected by the activity subject to consent.

59. The discussion document proposed to remove merit appeal rights on consents. The proposal was justified on the basis that the appeal process needed to be timely, and thus restrictions on the traditional appeal rights available to RMA processes were proposed to ensure the projects would not be subject to time delays. Given the rigorous development plan policy-setting process, an opportunity to re-litigate at consent stage would not be necessary.

Feedback identified the risks of removing appeals

60. Feedback received on the proposal to remove appeal rights for consents identified the risk that removal undermines due process and generates the potential for unfair outcomes. Consent outcomes become binding on stakeholders, who have no means of challenging

them except by judicial review, which does not go to the substance of the decision in question. Most stakeholders opposed the proposal.

61. In response to feedback and concerns raised by the Legislative Design Advisory Committee the proposal has been modified and brought into alignment with the existing provisions on appeals in the RMA.

62. New Zealand is unusual in allowing appeals on consent-level approvals. Overseas jurisdictions generally restrict appeals to decisions on policy documents (eg the equivalent of the development plan).

Appeal rights for non-complying activities

63. We now propose to divide consents into two types, those for controlled or restricted discretionary activities and those for non-complying activities. Decisions in the latter case would remain subject to the same full appeal rights as currently under the RMA.

Options for appeal rights on consents

64. Table 6 below outlines three options for appeal rights on consents.

Table 6: Options for appeal rights on consents

Option 1: Status quo appeal rights for resource consents	With respect to consents other than for non-complying activities, option 1 is to follow the recent changes to the consenting provisions enacted by the Resource Legislation Amendment Act (RLAA), which came into force on 18 October 2017, and which has already limited the right of appeal on consents for controlled or restricted discretionary activities. Under RLAA, the applicant or any person who made a submission on an application (but only on matters raised in the submission) may appeal a consent decision on its merits to the Environment Court. However, there are no appeal rights against the whole or part of a decision to the extent that it relates to one or more of the following: • a boundary activity • a subdivision • a residential activity (as defined by section 95A(6) of the RMA[5]). Because a consent is not required for permitted activities or deemed permitted activities, appeal rights are not applicable to such activities. A consent must be granted for controlled activities, and the applicant or a submitter has the right to appeal against the conditions associated with the consent, provided it is not a consent for one of the excluded activities listed above. For restricted discretionary activities, where the decision-maker does have discretion to decline the resource consent, appeal rights are available to applicants and submitters on the merits of the decision, providing the activity is not one of the excluded activities listed above.

[5] A **residential activity** means an activity that requires resource consent under a regional or district plan and that is associated with the construction, alteration or use of one or more dwelling houses on land that, under a district plan, is intended to be used solely or principally for residential purposes.

Option 2: No appeal rights for any land-use restricted discretionary activities	Option 2 further fast-tracks the resource consenting process by removing appeal rights for all land-use restricted discretionary activities, subdivision or residential activities (eg building houses or apartments). This would go one step further than RLAA and would potentially speed up a wider range of consent applications.
Option 3: Appeal rights removed for non-complying activities	Option 3 would include non-complying activities, and could see appeal rights completely removed on all consent types. However, as non-complying activities are not contemplated by the development plan, they step outside the policy certainty the development plan is designed to provide. For this reason, as a matter of transparency and natural justice, this option is not recommended.

65. Judicial review remains available for all options, meaning there is the means to challenge unreasonable or wrongly informed decision-making.

Questions

12. Are you comfortable with the limitation of appeal rights as outlined in option 1: status quo appeal rights for resource consents for controlled and restrictive discretionary activities?

Yes / No

OR

13. Would you like to extend the removal of appeal rights to apply to all restricted discretionary land-use activities listed in the development plan?

Yes / No

8. Ensuring heritage protection

66. Feedback from councils and some government agencies raised concerns about the protection of heritage and archaeological sites in urban development areas. The concern was twofold:

- Existing protections would be lost in any development plan override of existing plans
- Development plans would not make sufficient provision for any historical or archaeological values of sites of significance to mana whenua that were discovered during the environmental assessments (as described above in section 4).

67. In response, the following provisions are recommended:

- When the Housing Commission establishes rules for historic heritage and sites of significance for mana whenua, that at a minimum the same level of protection is afforded to these sites relative to the existing district plan provisions,
- Processes under the Heritage New Zealand Pouhere Taonga Act 2014 continue to apply to a project area, including the archaeological provisions and heritage covenants,
- Land of special significance to Māori for cultural or historic reasons (eg wahi tapu land) will be protected through specific rules to avoid inappropriate development,

- Heritage New Zealand will be considered an 'affected party' when the Housing Commission is consulting on a development plan. This means Heritage New Zealand may formally object to any element of the Housing Commission's recommended development plan.
- Initial assessments of potential development projects include a conservation assessment which takes heritage and archaeolical issues into account.
- Public benefits for a specific development project can include investment, restoration and adaptive re-use of a local heritage building.

Recommendation

14. Officials recommend that the provisions outlined above in paragraph 67 be included in any urban development legislation to ensure the ongoing protection of heritage and archaeological sites, and sites of significance to mana whenua.

Agree / Disagree

9. The role of requiring authorities and designations in the development plan

68. Designations for public works or public goods are managed by requiring authorities, which include Ministers of the Crown, local authorities and network utility operators. For the Crown, designations include public works, such as schools, defence matters, prisons, courts etc. For local authorities, such works cover infrastructure projects including roads, three waters, land drainage and flood protection.

69. Designations have a number of advantages, including providing for activities that might otherwise be difficult to comprehensively provide for in a district plan. These designations are identified in district plans and are used to protect existing and future uses of infrastructure and public assets and services within the designated area.

70. Currently, when a district plan is reviewed, a requiring authority is provided the opportunity to say whether its designation should be rolled over or lifted. It also has the power to establish a new designation.

71. The Housing Commission will need to have full control of land use within the development project area. It may need to alter, remove or add designations for public works or goods to ensure the developments are integrated with core public infrastructure such as wastewater networks, roads, train stations or schools.

72. We therefore propose that the requiring authority must obtain the approval of the Housing Commission to establish or roll over a designation. If the Housing Commission and requiring authority cannot agree, then the final decision rests with the Minister. This is a change of final decision-maker from the requiring authority to the Minister.

Feedback highlighted that a loss of control over designations could have a critical impact on infrastructure providers' operations

73. Infrastructure companies and local authorities had concerns with the proposed urban development authority powers over designations. They commented that major infrastructure assets, associated designations and easements that are nationally or regionally significant

should be excluded from an urban development authority's power. They considered designations to be fundamentally important to the operations of infrastructure providers, and that a loss of control would have a critical impact on their operations and undermine long-term and cross-boundary planning.

74. The risk is that an urban development authority would not be aware of the long-term plans and technical requirements of infrastructure providers, which could undermine the providers' ability to support additional growth. The proposal, discussed above, attempts to manage this risk by having the Minister as the final decision-maker for all designation issues, rather than the Housing Commission.

75. Even so, there are particular concerns with designations that support nationally significant infrastructure providers, such as Transpower's national grid and KiwiRail's network of railway tracks.

76. Submitters were also concerned that any proposed changes to designations that support network infrastructure need to consider the designation's function in the context of that wider network. When a network continues outside a development project area, any changes within the area must not threaten the network's connectivity from one side of the project area to the other. In short, it is one thing to move the path of a water pipe, but it is another thing not to provide for any pipe at all. Additionally, many designations have locational needs for their functions. For example, fire stations are located based on response times around a city, so moving one can have serious consequences and can affect a number of different sites.

Options for approving designations within the development project area

77. Table 7 outlines options for approving designations within the development project area.

Table 7: Options for approving designations within the development project area

Option 1: the legislation provides for the Housing Commission to have power over designation with certain restrictions **(recommended)**	Option 1 is for the legislation to: • retain the status quo for designations that support nationally significant infrastructure (eg the national grid, KiwiRail tracks, international airports, inter-provincial oil and gas pipelines and state highways) • support designations for network infrastructure by requiring development plans to provide for a replacement designation that serves the same function unless the requiring authority agrees otherwise • require the Housing Commission to consider the locational needs for the designations' functions • give requiring authorities a more defined role in the development plan process, such as a specific requirement to consult with them.
Option 2: Status quo as set out in the RMA applies	Option 2 maintains the status quo as set out in the RMA in the urban development project area, with requiring authorities having the power to establish designations as they see fit. This approach could compromise the development plan for the area and could seriously reduce the Housing Commission's control over the area.

Option 3: Housing Commission approval required to roll over or establish a designation in the development area	Option 3 is for the approval of the Housing Commission to be required for the roll over or establishment of any designation in the development project area, with any disagreement between the Housing Commission and the requiring authority settled by decision of the Minister.

78. Given the significance of designations, which have a role in providing for wider public benefit, further consideration needs to be given on matters such as the role of outline plans, transfer of designations and how existing designations are provided for in the development plan. There is also an opportunity for partnerships between requiring authorities and the Housing Commission.

Recommendation

15. Officials recommend option 1 as outlined above.

Agree / Disagree

The Housing Commission is a requiring authority under the RMA

78. There may be times when the Housing Commission wishes to build infrastructure outside the urban development project area. Because it is outside the project area. the provisions of the urban development authority legislation would not apply. Having the power of a requiring authority under the RMA would allow the Housing Commission to establish designations to undertake this work. It is therefore recommended that the Housing Commission be recognised as a requiring authority under section 166 of the RMA.

79. RMA processes to establish a designation provide sufficient public input and assessment for Housing Commission designations outside the project area. Notices of requirement that propose a designation are publicly or limited notified by a council for written submissions and a hearing. The council recommends to the requiring authority whether it thinks the designation should be confirmed in the district plan (with or without conditions and modification) or withdrawn. Notices of requirement may also be part of a nationally significant proposal and so are heard by a board of inquiry or the Environment Court.

Recommendation

16. Officials recommend that the Housing Commission be deemed a requiring authority under section 166 of the RMA.

Agree / Disagree

10. Private changes to the development plan

80. A change to the development plan is an amendment to the provisions of a development plan after the plan has been approved by the Minister.

Housing Commission led plan changes

81. A change may arise through the Housing Commission needing to respond to:

- changing market conditions
- new information on the physical environment of the development
- the need for more detailed planning and land-use provisions arising from the staging of the development.

82. These development plan changes would be led by the Housing Commission, which would be required to go through the same process as required to establish the development plan in the first place (as outlined in the "fundamental issues" briefing [MBIE 1262 17-18 refers].

Private plan changes

83. It is conceivable that third parties may wish to vary the approved development plan to a greater extent than can be accommodated by the development (resource) consent, designation parameters or other approvals. Such requests may arise from a developer wanting flexibility in delivering on the strategic objectives for the development area as it responds to market forces or unforeseen site difficulties. Any proposed change must not be inconsistent with the strategic objectives of the development project and the development plan more generally.

Current provisions under the RMA

84. The RMA system provides for third parties to request a change to a district or regional plan. This is governed by clause 21 of Schedule 1, which provides for anyone to request a change to a plan provided the request is not made earlier than two years from the date that the relevant plan became operative (or three years in the case of RMA plan provisions made operative through the collaborative planning process). There are also other grounds for a local authority to reject a private plan change request under clause 25(4) of Schedule 1.

Feedback raised concerns about certainty of development outcomes

85. This issue was not canvassed in the discussion document and we received no feedback on it directly. However, submitters did raise concerns about the level of certainty in development plan outcomes and some developer submitters remarked on the need for flexibility to support innovation.

Options for private changes to the development plan

86. Table 8 sets out options for private changes to the development plan.

Table 8: Options for private changes to the development plan

Options	Explanation	Analysis
Option 1: Managed provision of private changes to the development plan **(recommended)**	Option 1 allows for private plan changes to the development plan, but only: • after three years since the development plan was approved, and • if the Housing Commission is not anticipating a change to the plan for the area due to staging, and • if the change is for a discrete part of the development area covered by the development plan and not for the whole area or for the whole plan.	Under this option there would be limited access to private changes to the development plan. A degree of certainty would be provided by not allowing a change to be requested within a certain time period from the approval of the development plan (consistent with current RMA provisions). We recommend that the moratorium against application be for a period of three years. The moratorium could be set for each development as part of the development plan in order to reflect underlying development and market conditions. Private plan change requests would not be accepted where the Housing Commission is preparing a public amendment to the development plan for the same area due to project staging. The private plan change request could only be for a discrete area that must be owned by, or under the control of, the applicant. Providing for private plan changes under these conditions enables flexibility but also ensures a high degree of overall certainty. The Housing Commission should also have discretion to reject requests for private plan changes on the same grounds that councils have under clause 25(4) of Schedule 1 of the RMA.
Option 2: No provision for private plan changes to the development plan	Option 2 does not allow for private changes to development plans after final approval.	Under this option there would be no provision for private requests for a change to the development plan. This option would provide the greatest certainty that the development plan will be progressed unaltered. However, this certainty removes any flexibility to alter the way the strategic objectives may be delivered in response to changes in the market over time, new information on site conditions or infrastructure capacity, or emergent innovative design responses to the strategic objectives. It would require the initial development plan to be very detailed and supported by in-depth information on the conditions of the site. It would also mean that any change to the development plan could only be undertaken by the Housing Commission itself. The developer could request the Housing Commission to do this. Not providing for private plan changes could lead to developers using non-complying consents or other ad hoc processes that may lack transparency, and which could cause development to be inconsistent with other parts of the development plan.

Option 3: Full provision for private plan changes to the development plan	Option 3 allows for private plan changes to the development plan at any time after final approval, for any reason, and for any part of the development area other than the whole area or for the whole plan.	Under this option a private plan change request could be made at any time; there would be no moratorium either after a development plan has been approved or leading up to a public plan change. A request could be made to change the development plan for any part of the development area (ownership or controlling interest would not be required), but the request could not apply to the whole development area or the whole development plan. This option would provide the greatest flexibility to developers, but certainty to the public and other parties interested in the development would be low.

87. Any option that provides for private plan changes would be implemented through a specified process outlined in the proposed legislation. It would be a variation on the process for preparing a development plan and would include opportunities for public engagement and formal submission, with objection rights and approvals as required for the development plan itself. The Housing Commission would be able to set administrative charges to cover the cost of processing the private plan change.

Variations to the proposed development plan

88. Although the RMA provides for variations to the proposed development plan, we consider that this is not necessary as it is envisaged that the timeframe for producing a development plan will be relatively short (12 to 18 months).

Recommendations

17. Officials recommend option 1 that private plan change requests (changes by third parties) be allowed, provided that:

    a. three years has elapsed since the development plan was approved; and

    b. the Housing Commission was not anticipating making a plan change in relation to the same area; and

    c. the plan change must only apply to part of the development plan or development area and not the entire development area or development plan

Agree / Disagree

18. Officials recommend that no provisions be made for variations to proposed development plans (changes to plans that are still being prepared by the Housing Commission).

Agree / Disagree

11. Mana Whakahono a Rohe and facilitating Māori interests

89. The RLAA introduced changes to Māori participation in resource management and planning processes. Previously, engagement between councils and Māori in RMA planning and consenting was inconsistent across the country, and the effectiveness of existing relationships between iwi and councils was varied.

90. One of the new provisions is the introduction of mana whakahono a rohe. The purpose of a mana whakahono a rohe is to provide a mechanism for councils and iwi to come to

agreement on ways tangata whenua may participate in RMA decision-making and to assist councils with their statutory obligations to tangata whenua under the RMA. The principles of the arrangements include establishing a relationship based on good faith and cooperation, sharing expertise and effectively and efficiently meeting statutory obligations.

Feedback emphasised the importance of strong relationships between a UDA and iwi

91. Although feedback did not directly envisage mana whakahono a rohe, it emphasised the importance of strong relationships and interaction between a urban development authority and iwi.

Mana whakahono a rohe presents opportunities to strengthen relationships

92. Mana whakahono a rohe was created to form relationships between iwi and councils in an RMA-specific context. However, it is also a potential tool to strengthen the relationship between the Housing Commission and iwi and to ensure consistency of interaction across the country. Māori may also expect that, for resource management issues, they will have the same opportunities for interaction with the Housing Commission as they currently have with councils.

93. However, as a central government entity, the Housing Commission may have to attend to other commitments such as Treaty accords, relationship agreements and protocols on specific policy areas that intersect with urban development.

Options for the Housing Commission to facilitate Māori participation

94. Table 9 below outlines options for the Housing Commission to facilitate Māori participation.

Table 9: Options for the Housing Commission to facilitate Māori participation

Option 1: Mana whakahono a rohe negotiated between iwi and Housing Commission	Option 1 provides for an iwi authority to invite the Housing Commission to form a mana whakahono a rohe-type arrangement (or the Housing Commission invites the iwi). The purpose of this arrangement would be to assist the Housing Commission with any statutory obligations to tangata whenua under the proposed legislation. This arrangement would set out how the Housing Commission must involve iwi in any resource management and planning functions that it holds in a project area. The precise nature of the arrangement would be specific to each development project. Negotiating a mana whakahono a rohe-type arrangement for a Housing Commission development project would be resource intensive for an iwi authority, especially if it has already been through this process with a local authority.
Option 2: Local authority roles and responsibilities, so far as they pertain to the development area are transferred to Housing Commission **(Recommended)**	This is the status quo. s 9(2)(h) If local authority roles or responsibilities are transferred to the Housing Commission for a project area, the Housing Commission must abide by any provisions in a mana whakahono a rohe agreement that relate to the role of the Housing Commission in the development project. This is a simpler approach that protects existing relationships. Roles and interests negotiated between iwi/hapū and the council do not require a separate negotiation to take place. The negative aspect to this approach is that it could tie the Housing Commission to arrangements that were suitable for the local authority but which are less suitable for it. There would need to be an options for renegotiation between iwi and the Housing Commission.

Option 3: Proposed legislation specifically overrides existing mana whakahono a rohe	Under option 3 the proposed legislation could specifically override the automatic transfer of mana whakahono a rohe responsibilities and provide for the Housing Commission and iwi to enter whatever voluntary relationships they wish. However, this option does not necessarily allow for the specified interests in any mana whakahono a rohe to be captured along with any other interests and obligations a government body has with respect to iwi and their land in the development project area. This approach could potentially be contrary to the Crown's Treaty obligations and would need to be supported by further advice on a relationship that best fits central government and iwi and the wide functional range of their relationship.

Questions

19. Do you want the Housing Commission to be bound by existing mana whakahono a rohe responsibilities and obligations in place with existing local authorities in the development area?

Yes / No

20. Do you want the Housing Commission to be able to negotiate new mana whakahono a rohe agreements with iwi?

Yes / No

Next steps

95. Meet with Ministers Parker, Sage and other colleagues to discuss this briefing.

96. We are preparing a series of Cabinet papers seeking agreement to the detailed policy for the Housing Commission.

Annexes

Annex 1: Existing statutory resource management operating environment

Annex 2: Recent changes to the Resource Management operating environment

Annex 1: Existing statutory resource management operating environment

97. The Resource Management Act 1991 (RMA) is New Zealand's primary piece of legislation that sets out how we should manage our environment. It is based on the principle of sustainable management which involves considering the effects our activities have on the environment now and in the future when making resource management decisions.

98. As well as managing air, soil, fresh water and coastal marine areas, the RMA provides the framework for regulating land use including the provision of infrastructure. The RMA planning and consenting framework, including notices of requirement for designating public works, are the principal mechanisms for the implementation of urban development projects.

99. Within the RMA framework, regional councils must develop regional policy statements and regional plans, and district councils must develop district plans. Regulations made under the RMA provide specific direction to councils about what sustainable management means in particular contexts. The RMA also includes a resource consenting framework. Activities can be permitted, restricted or prohibited – meaning that councils retain a lesser or greater degree of influence over how the activities, and the effects of those activities, are specifically managed.

100. The system, including regional and district planning and consenting, and national level regulation, sit alongside the RMA itself to operate as an integrated environmental management system. Each document operates within a hierarchy, with the RMA at the top, national direction and regulation, regional regulation then district regulation.

101. Since it was originally enacted in 1991, many amendments have been made to the RMA as knowledge about the environment has increased, the public has become more engaged in environmental matters, the role of the Environment Court was introduced and expanded, and where political focus has determined that new systems and processes should be introduced into the Act. The most recent changes, made in 2017, are outlined in Annex 2. These changes focused particularly on speed and flexibility in planning and consenting pathways (predominantly to support housing and urban development), enabling more targeted national direction, and improving Māori participation.

102. Other tools under the RMA that could deliver the Government's objectives for the Housing Commission include:

- directing consent applications, plan changes or notices of requirement as 'nationally significant proposals' for decision by a board of inquiry or the Environment Court
- utilising the designation powers in the RMA, Ministers of the Crown and local authorities are automatically requiring authorities under section 166 of the RMA. A requiring authority can:
    - i. apply to the local authority to designate land. (A designation is a provision in a district plan that gives notice to the community that a requiring authority intends to use land in the future for a particular work or project)
    - ii. undertake works in an emergency and get resource consents after the work has been done
    - iii. apply to the Minister for Land Information to use the compulsory acquisition powers in the Public Works Act 1981
    - iv. enter private land (after giving notice) to undertake investigations under the Public Works Act 1981

- making decisions on council applications for streamlined planning processes in response to emerging issues or to implement national direction (eg housing)
- directing plan changes and reviews
- directing referral to the Environment Court for notified resource consents and notices of requirement, rather than the relevant council.

103. These tools may have a role in the delivery of the wider objectives for the Housing Commission.

National direction

104. Successive governments have chosen to direct local decision-making using various tools under the RMA. The Government has the ability to issue National Environmental Standards, regulations and National Policy Statements (NPS) and National Planning Standards. National direction provides councils with greater direction on what the purpose and the operating scheme of the RMA mean in specific contexts.

105. National Environmental Standards operate like rules, and can be technical standards, or operate to enable, restrict, or prohibit activities depending on the nature of the activities and the environmental effects being managed. Many of the national direction instruments, such as the National Environmental Standard for Telecommunication Facilities, are broadly enabling, and operate to provide nationally consistent rules for installation of certain infrastructure. The RMA also enables other types of regulations to be made for a variety of purposes.

106. NPSs provide a range of direction to councils through objectives and policies (but not rules). NPSs can require councils to apply methods, undertake monitoring and include content in their plans. The National Policy Statement on Urban Development Capacity (NPS-UDC) is particularly relevant to the Housing Commission as it sets objectives and policies requiring councils (both regional and territorial) to provide for sufficient feasible residential and business development capacity to meet growth.

107. The NPS on Freshwater Management 2014 is also relevant as it was recently amended to include additional responsibilities on councils to improve water quality for swimming. We are still considering the appropriate role for these national direction instruments within the Housing Commission proposal.

108. The Resource Legislation Amendment Act 2017 (RLAA) introduced a new type of national direction, called National Planning Standards. The first set of National Planning Standards must be gazetted by April 2019, and must set at a minimum:

    - a structure and form for plans and policy statements, including references to relevant NPS, National Environmental Standards, and regulations made under the RMA
    - definitions
    - requirements for the electronic functionality and accessibility of plans and policy statements.

Regional and district level documents

109. At the regional level, Regional Policy Statements (RPSs) are designed to achieve the purpose of the RMA by providing an overview of the resource management issues of the area and policies and methods to achieve integrated management of the natural and physical resources of the whole region. Regional councils must prepare and change their RPS in accordance with any NPS and the New Zealand Coastal Policy Statement.

110. RPSs are supported by Regional Plans that set relevant standards and environmental bottom-lines (eg in relation to discharges to air and water). The RMA sets specific requirements for Regional Plan contents and the plans must be developed in accordance with a set of criteria in the RMA, which includes giving effect to NPSs.

111. The objectives and policies of district plans must give effect to these regional documents.

Māori participation

112. At the regional and district level, a number of Treaty settlements now provide for iwi input into the development of resource management plans, including in some cases, formal decision-making rights. Most recently, legislative changes to the RMA have introduced mana whakahono a rohe arrangements, which provide a mechanism for councils and iwi to come to agreement on ways tangata whenua may participate in RMA decision-making, and assist councils with their statutory obligations to tangata whenua under the RMA.

Land use and development

113. The RMA contains a permissive presumption in relation to land use. Historically this has not applied to subdivision. However, as part of the 2017 amendments, this same presumption was applied to subdivision. This means every person may use their land how they wish, including subdividing it, unless that use contravenes a rule in an National Environmental Standard, a regional plan or a district plan.

114. Where an activity contravenes a rule, it may still be undertaken if a resource consent is obtained. In some cases, through national regulation or regional or district plans, certain land uses with adverse environmental effects are permitted subject to certain conditions. Consents, and conditions on activities, can enable activities while still being consistent with the sustainable management purpose of the RMA.

Plan making

115. Plan-making (for RPSs, regional plans and district plans) is regulated by Schedule 1 of the RMA. The general process for plan production has the council develop a proposed plan or plan change, or a private individual submit a private plan change. The RLAA introduced two new planning tracks:

- the Streamlined Planning Process, which intends to provide flexibility in planning process and timeframes, and
- the Collaborative Planning Process, which emphasises early and robust community engagement in the planning process.

116. The RMA contains extensive 'instructions' to councils on what to consider when making plans, and what general content to include in them. The processes for making plans, including notification and consultation requirements, are set out in Schedule 1 of the RMA.

117. Following changes to the RMA in 2017, two new planning tracks were introduced to offer more flexibility for the process to be less or more extensive depending on the nature of the planning issues being progressed and whether the community developed the change through a collaborative process.

118. In summary, the key elements of all the Schedule 1 processes are:

- development and preliminary consultation phase – where a council works with iwi, key stakeholders and groups with special interests to prepare a draft plan or plan change

- assessment of the costs and benefits of the proposal
- notification – where the general public are alerted to the proposal
- submissions and hearings – where the public have a chance to have their say
- final decisions and recommendations.

Consenting

119. There are a number of types of resource consent called land-use and subdivision consents and coastal, water, and discharge permits.

120. Consents may or may not be required depending on how the local planning framework manages particular activities. Multi-phase multi-use projects, such as those envisaged by the Housing Commission proposal, would be likely to involve each type of activity regulated under the RMA, but may not require consents for all of those under the current planning framework.

Principles, participation and decision-making

121. The RMA framework delegates specific decision-making to councils. The processes required to develop plans enable councils to manage resources, and involve and meet the needs of their communities. This enables the purpose of the RMA, which recognises the importance of social, cultural and economic wellbeing as part of sustainable management, to be reflected in planning. Part 2 of the RMA also provides national-level guidance to councils by setting out certain matters that the councils must provide for, have regard to, or take into account as part of their decision-making (sections 6, 7 and 8 of the RMA).

Annex 2: Recent changes to the Resource Management operating environment

Table 10: Recent changes to the RMA operating environment

Planning Tools	
Local authority provision of sufficient development capacity	The National Policy Statement on Urban Development Capacity 2016 (NPS-UDC) requires councils, particularly medium- and high-growth councils, to ensure sufficient urban development capacity, Under the NPS-UDC local authorities must complete a housing and business land development capacity assessment, detailing: • the demand for housing and business land • the supply of development capacity to meet that demand • the most significant causes of any shortfall in capacity. The first assessments were due by the end of 2017.
Streamlined planning process	The streamlined planning process (SPP) in the RMA allows councils and private plan changes to create or amend RMA planning documents to respond faster and in a more tailored way to urban changes. The SPP is optional. A council must apply to the Environment Minister to undertake the process. The SPP allows for restrictions on further submissions, hearings and appeal rights. This increases speed, reduces costs and avoids the potential for legal challenges to plan changes.
Limited notification of small, discrete plan changes	RMA planning document changes can be limited notified when all affected parties can be identified. This reduces time and resources needed to engage with submitters and resulting appeals.
Reduction in resource consent 'red tape'	The Resource Legislation Amendment Act 2017 introduced a number of RMA changes to reduce resource consent requirement, including: • a resource consent exemption for boundary activities • deemed permitted activities for marginal or temporary rule breaches • fast-track processes for straightforward resource consent applications • reducing the ability to publicly notify some resource consent applications for subdivision and residential activities • removing appeal processes for subdivisions, boundary activities and residential activities (except non-complying activities).

Housing Accords and Special Housing Areas	The Housing Accords and Special Housing Areas Act 2013 (HASHAA) is a 'plug-in' to the RMA that: • focuses on housing and land-supply • cuts resource consent processing times • reduces notification requirements and appeal rights • emphasises urban design • allows a proposed plan to be implemented and varied before submissions have been heard and decided. Special housing areas can be established in districts listed in Schedule 1 of the RMA. They must be agreed between the district council and the Government. The HASHAA expires in September 2021.