



BRIEFING

Interim report back on UDA entity form: information for your discussion with Ministers Mahuta, Jones and Sage on 6 August

Date:	3 August 2018	Priority:	High
Security classification:	In Confidence	Tracking number:	18-19 0135

Action sought		
	Action sought	Deadline
Hon Phil Twyford Minister Housing and Urban Development	Forward this briefing and attached A3 to Ministers Sage, Mahuta, Jones, Parker and Hipkins Discuss these issues with Ministers Sage, Mahuta and Jones at your 6 August meeting	6 August 2018
Hon Jenny Salesa Associate Minister of Housing and Urban Development	For your information	N/A

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	Director, Housing and Urban Branch	09 919 9323	s 9(2)(a)	

The following departments/agencies have been consulted
TPK, HLC, MOJ, LINZ, DIA, SSC, MOT, MSD, MfE, HNZC, NZTA, The Treasury are all a part of the Inter-Agency working group

Minister's office to complete:

☐ Approved

☐ Declined

☐ Noted

☐ Needs change

☐ Seen

☐ Overtaken by Events

☐ See Minister's Notes

☐ Withdrawn

Comments



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Purpose

The Annex contains information to support your meeting with Ministers Sage, Mahuta and Jones on Monday 6 August from 6 - 7pm in Minister Twyford's office to discuss the entity form of the national Urban Development Authority (UDA).

Context

1. You asked an interagency officials group, chaired by the Ministry of Business, Innovation and Employment, to report back to you with an assessment of the options for the UDA's entity form and make-up [CAB-18-MIN-0241]. The options included expanding and repurposing of NZTA to become the UDA, or incubating the UDA within the Ministry of Housing and Urban Development.
2. Following a workshop with you on 3 July, the option of an NZTA-led UDA was removed from consideration. This was due to risks and implications for NZTA's significant work programme, and to the transport management and regulatory system.
3. Since then, the options have been refined. You have now asked for advice on entity form and options for structural changes to:
 - a. include the KiwiBuild Unit in the UDA
 - b. include the KiwiBuild Unit and HLC (moved out of HNZ) in the UDA
 - c. Include Kiwibuild Unit, HLC and HNZ in the new UDA entity

Interagency report back

4. The Annex is an interim report back from the interagency group summarising the pros and cons for the two entity form options – Department (or Departmental agency) or Crown agent. It also canvasses the issues arising for these three structural changes for discussion at your Ministerial meeting on 6 August.
5. The interagency officials group will provide a final report back containing our advice, recommended options and transition pathways at a later date, subject to the outcomes of your discussion.

Recommended action

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

- a **forward** this briefing to Ministers Sage, Mahuta and Jones for discussion at your 6 August meeting, and to Ministers Parker and Hipkins who are unable to attend.

Agree / Disagree

- b **discuss** these issues with Ministers Sage, Mahuta and Jones at your 6 August meeting. The Annex is provided to support this discussion.
- c **note** that the group of interagency officials, which the Ministry of Business, Innovation and Employment is chairing, will provide a final report back containing our advice, recommended options and transition pathways at a later date, subject to outcomes of your discussion.

Noted



Di Anorpong
Manager, Urban Development Policy
Housing and Urban Branch, MBIE

3, 8, 18
..... / /

Hon Phil Twyford
**Minister of Housing and Urban
Development**

..... / /

Annex

Annex 1: A3 summarising the range of issues that arise for the three entity form options you have now asked for advice on

Urban Development Authority

Interim report back on entity form: for discussion purposes at the Ministerial meeting on 6 August. Officials will provide a final report back containing our advice, recommended options and transition pathways at a later date, subject to outcomes of discussion.

1

What is the entity form of the UDA: Crown agent or Department ?

There is no off-the-shelf entity form that fulfils all the necessary functions of the UDA (see section 7). Whatever its form, it will require a bespoke solution. That bespoke solution will need to address the following major considerations for the entity form.

Crown agent	Department (or Departmental Agency) with separate project delivery entities
Ministerial direction <ul style="list-style-type: none"> More independence from Crown and Ministerial direction — channels of Ministerial direction or instruction more formalised, and primarily through the Board TA involvement <ul style="list-style-type: none"> Can establish subsidiaries with minority shareholding from other entities — i.e. enabling territorial authority partnership in specific projects Treaty Obligations <ul style="list-style-type: none"> Unlikely to be able to discharge the Crown's Treaty obligations Ability to borrow <ul style="list-style-type: none"> Can borrow to fund development (subject to suitable assets/security) Delivery-focus <ul style="list-style-type: none"> 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 	Ministerial direction <ul style="list-style-type: none"> More direct Ministerial direction No decision-making Board TA involvement <ul style="list-style-type: none"> 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 obligations <ul style="list-style-type: none"> Maintains existing processes and relationships for meeting Treaty obligations Ability to borrow <ul style="list-style-type: none"> Cannot borrow independently of the Crown (does not have own balance sheet) However, the Crown can access the cheapest borrowing through the New Zealand Debt Management Office Delivery-focus <ul style="list-style-type: none"> Could establish an advisory panel to provide external expertise similar to what a Board could provide Potential for greater responsiveness to government priorities and/or ability to make policy trade-offs

Officials will need to undertake further work to determine the optimal bespoke solution. It is possible for the UDA to be first constituted as a Department or Departmental Agency as a transitional measure, while this work is undertaken.

A Crown agent has the potential to fund its activities by borrowing in the market, independently of Crown. However, this is subject to it having suitable assets or revenue streams to support that borrowing. In reality, at least in the early years of its existence, the UDA is unlikely to have sufficient collateral to enable it to borrow in the market in a way that is not: significantly more expensive than core-Crown borrowing, reliant on an explicit government guarantee, and treated as core-Crown debt (impacting on the Government's fiscal position). Therefore, irrespective of whether it is a Crown agent or Department, the UDA will be reliant on capital directly funded (i.e. appropriated) through core-Crown debt.

The ability to borrow independently is therefore not a significant consideration for the initial establishment of the UDA.

2

What existing resource will the UDA be built on?

There are three options for the existing resources that the UDA could be built on: (further analysis is provided in section 7, against key criteria developed by the interagency officials group):

1. Include KiwiBuild Unit in the new UDA entity

This would require significant additional development capability to be built around the KiwiBuild Unit. It would mean that Government's capability in this area continues to be split across the UDA and HLC/HNZ for a time, as HNZ completes the redevelopment of its landholdings. In the longer term the UDA would likely assume prominence.

2. Include KiwiBuild Unit and HLC (moved out of HNZ) in the new UDA entity

This would require removing HLC from the control of HNZ, and merging it with the KiwiBuild Unit. This would consolidate the government's market facing development activity, but leave responsibility for public housing development projects with HNZ. If suitably beneficial arrangements are not established for the UDA's role in large-scale public housing developments, HNZ may seek to re-build the HLC capability that it lost.

3. Include KiwiBuild Unit, HLC and HNZ in the new UDA entity

This would require restructuring HNZ, likely into a development arm (UDA) and a public housing (tenancy and asset management) arm (HNZ). The parent organisation would, in essence, be a new entity. The KiwiBuild Unit would shift across to the development arm.

All options would require significant new capability to be developed to meet the Government's objectives for the UDA, and the HNZ's Crown Products Unit (which manages the HomeStart Grants and other initiatives for government) may also need to shift, but we consider this a second-order matter.

3

Territorial authority involvement

A key issue for the involvement of territorial authorities (TAs) is the extent to which they can participate in the exercise of the development powers and be accountable for them. Option 1 would only apply to a Crown agent model.

Option 1: The national board of the UDA exercises the powers	Option 2: The project board of each project exercises the powers (which includes TA representatives when partnering with the TA)
Does not provide automatic role for a TA's representative in exercising the development powers, reducing the incentive for TAs to partner	Provides automatic role for a TA's representatives in exercising the development powers, incentivising TAs to partner
National board is distant from local issues	Project boards operate at a local level, providing greater connection to the local community and development sector, thereby generating greater trust and buy-in
Concentrates control over the powers in the Crown	Shares the powers with development partners, including TAs and iwi
	'One stop shop' for both the commercial and statutory functions, creating a powerful delivery organisation

4

Crown-Māori relationship and Treaty of Waitangi obligations

The UDA will need to assist in the maintenance of the Crown-Māori relationship, and help ensure the Crown meets its various obligations. It will also have a number of specific obligations to Māori, and iwi will be key stakeholders in most projects and may also be development partners.

The form of the agency will impact on the core Crown's ability and manner in which it is able to maintain the Crown-Māori relationship and meet the Crown's Treaty and other legal obligations to Māori. **s 9(2)(f)(iv), s 9(2)(h)**

5

Core function of UDA?

Whether the UDA is a developer or services provider determines whether the UDA needs to own the land.

Option 1: a **development service provider** does not own land, invest its own capital, or accept development risk. It provides development services within parameters set by its owner. In the service provider model, delivery of the Government's objectives might be constrained by the willingness of the underlying landowners (including Ministers) to accept direct accountability for the level of risk that may be required to deliver ambitious urban development outcomes.

Option 2: a **lead developer** owns and controls land in its own right. In this model, the UDA would set its own development parameters (subject to Ministerial direction and approval), invest its own capital and choose its own level of risk.

If the UDA is a lead developer, it can perform the development service provider role for some projects. Deciding whether to separate the functions involves consideration of the trade-off between using different entities to increase focus and control risks, and the transaction and coordination costs.

HNZ finance

We consider that HNZ's potential as a finance source for UDA activities is, at best, a neutral factor in the consideration of entity options.

If the Government wants the UDA to be a lead developer, and to meet the aspirations for 10-15 large-scale projects, the UDA will need access to capital to purchase land, and finance infrastructure and development activity. Its initial capital allocation will need to sustain it over a lengthy period where there may be no revenue.

HNZ is currently borrowing against future revenues (its rental income, including IRRS) 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 houses per year and ensuring that all state houses are warm, safe and dry. 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. This additional lending would also 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.

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 an option equally available to other UDA entity forms.

HNZ land

HNZ's landholdings will be a key component of some of the large-scale urban development opportunities, particularly in Auckland, and particularly in the early stages of the UDA's existence. For example, a UDA project formed around the planned light rail corridor would incorporate and leverage the existing HNZ redevelopment activity in Mt Roskill and Mangere. **s 9(2)(f)(iv)**

To enable the UDA to deliver optimal development outcomes within a project area, there is some advantage to the UDA having the ability to control HNZ's relevant assets. Otherwise, the Crown would continue to have multiple urban development agents, diminishing the rationale for the UDA.

The following three broad options are therefore available for the UDA to access HNZ land:

- HNZ becomes the UDA** (which would require a significant restructure of HNZ, and have implications for HNZ's governance and focus on its tenancy role)
- HNZ land within a development project area is transferred to the UDA.** The UDA would be responsible for the delivery of new public housing in those areas. HNZ would continue to manage the tenancies and pre-development assets (which may reduce HNZ's ability to fund and finance its public housing programme, depending on arrangements for revenue streams). Likely to be difficult for HNZ to manage its assets without owning the land, although appropriate contractual arrangements between the UDA and HNZ may assist to ensure that the public housing outcomes and wellbeing of tenants continue to be prioritised.
- Relevant **land remains with HNZ** and the UDA works in partnership with HNZ to redevelop the land and deliver development outcomes (which may result in confused accountability, coordination problems and fragmented decision-making).

HNZ's focus on public housing

The Government wants to focus HNZ on the wellbeing of its current and future tenants and on its role as a world-class landlord. The functions that need protecting include: day-to-day tenancy management, increasing public housing supply, and improving the quality of existing public housing stock. It is currently managing the tension between its development and public housing roles internally. HNZ becoming the UDA would require a significant organisational review to ensure that its new wider development functions are appropriately structured in relation to its public housing function – i.e. that UDA focus does not undermine the public landlord focus. This will also have implications for how governance is structured across the two functions – eg. separate Board sub-committees or subsidiaries to reflect the different objectives and skill sets required. There are also potential financial risks in relying on HNZ as a financial source:

- The potential for revenues (both IRRS and revenue from land sales) to be redirected from Social Housing to urban development activities
- The potential for private sector development risks to be transferred onto HNZ's balance sheet (e.g. by HNZ or HLC being the party providing an underwrite on KiwiBuild developments)

The UDA will have three core sets of functions:

- programme delivery:** responsible for delivering (or coordinating the delivery of) 100,000 affordable **KiwiBuild** homes over 10 years through different methods (including through complex large-scale urban developments), and responsible for the management and implementation of specific housing and urban-related government initiatives (such as home ownership support products).
- project initiation/commissioning:** working alongside the new Ministry and other agencies in regional spatial planning exercises and in the assessment and selection of large-scale development opportunities.
- project delivery/developer:** coordinating, managing and delivering integrated (large-scale, mixed-use) urban development projects, exercising the special regulatory development powers provided through the proposed Urban Development Legislation, proactively purchasing and assembling land assets and/or facilitating land readjustment through partnerships, and making its development expertise available to support other projects and initiatives across government.

The government's capabilities and responsibilities for these core functions is currently either split across multiple entities, including the KiwiBuild Unit and the new Ministry, or does not exist. Based on these core sets of functions and the government's objectives for the UDA, the interagency officials group has agreed a set of criteria and undertook an initial assessment of the three options for the composition of the UDA, as set out in the table below.

	New entity (with KiwiBuild Unit)	New entity (with HLC and KiwiBuild Unit)	New entity (with HNZ, HLC and KiwiBuild Unit)
Prioritises urban development	Focus on urban development.	Focus on urban development.	HNZ has a wider focus than urban development – could dilute its strong focus on public housing priorities (can be mitigated through organisational design).
Access to and control of HNZ land for development	There are likely options for gaining control of HNZ land, but not without trade-offs.	There are likely options for gaining control of HNZ land, but not without trade-offs.	HNZ would retain access to and control of its land for development.
Avoids duplication of functions between agencies	Would result in multiple government urban development agents. Could look like the UDA was re-inventing HLC.	HNZ would retain its small-scale development function on its properties outside a UDA project area. HNZ may seek to rebuild some of the lost HLC capacity. UDA could coordinate or control HNZ development on large-scale sites (but not without trade-offs). UDA could provide development services to HNZ.	Would remove most duplication of functions between government development agencies, and provide a single point of accountability for development of HNZ land within project areas.
Does not require agency functions to be set up from scratch	Small initial capacity, but scaling up.	Moderate initial capacity, but scaling up. May be some disruption to current projects from an HLC move, although HLC is already operating separately from HNZ.	Moderate initial capacity, but would require a significant organisational change process for HNZ.
Becoming UDA has minimal impact on existing agencies' work programmes, including stakeholder relations	Would have minimal impact.	Would require the new entity to pick up HLC's role and work effectively with HNZ in existing development areas to ensure minimal disruption to work programmes.	With the proportion of development capacity that is in HLC, HNZ's strong development sector relationships can be leveraged. Would require significant organisational change for HNZ, and could impact on its public housing programme (can be mitigated through organisational design).
Existing urban presence and programmes	KBU is (will be) operating in main centres.	KBU is (will be) operating in main centres, with HLC operating in Auckland.	HNZ has an existing urban presence across New Zealand, but also works outside of those areas. Most of HNZ's land outside Auckland unlikely to be a focus for UDA.