



Briefing

Plan-making and resource consenting powers			
Date:	29 March 2019	Security level:	In Confidence
Priority:	Medium	Report number:	BRF18/19020162

Action sought		
	Action sought	Deadline
Hon Phil Twyford Minister of Housing and Urban Development	<p>Note that this report identifies six options that may contribute to partially alleviating the constraints imposed on the development sector by the current planning system</p> <p>Note that we do not recommend progressing work to enable HUDA to be a resource consenter for small to medium sized developments because this would risk undermining the HUDA's ability to effectively perform its core roles and would likely delay the HUDL</p> <p>Direct officials to further assess empowering the HUDA to initiate a streamlined planning process (SPPs) for private developers (Option E), and clarifying what purposes requiring authorities can designate land for to enable Ministers and the HUDA to designate land to enable urban development (Option F)</p>	5 April 2019

Contact for discussion				
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Other agencies consulted
Ministry for Environment

Minister's office to complete

<div><input type="checkbox"/> Noted</div> <div><input type="checkbox"/> Seen</div> <div><input type="checkbox"/> Approved</div> <div><input type="checkbox"/> Needs change</div> <div><input type="checkbox"/> Not seen by Minister</div> <div><input type="checkbox"/> Overtaken by events</div> <div><input type="checkbox"/> Declined</div> <div><input type="checkbox"/> Referred to (specify)</div> <div><hr/></div>

<div>Comments</div>

Date returned to MHUD:

Briefing

Plan-making and resource consenting powers

For: Hon Phil Twyford, Minister of Housing and Urban Development

Date: 29 March 2019

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Purpose

1. This briefing advises on options for discussion with you to streamline plan-making and resource consenting for small to medium sized developments through the Housing and Urban Development Authority (HUDA) or otherwise.
2. We are seeking your direction on which options to investigate further to remove barriers for small to medium sized developments.

Executive summary

3. You asked for advice on the possibility of adding powers to the HUDA to streamline plan-making and resource consenting for small to medium sized developments. This followed Cabinet's decision not to extend the Housing Accords and Special Housing Act 2013 (HASHAA).
4. We have considered your request within the context of your overarching goal to remove barriers and impediments for all forms of housing development to deliver additional houses as rapidly as possible, including affordable houses at lower price points.
5. You have a number of policy initiatives underway which will improve housing supply, including affordable housing. These include: the establishment of the HUDA to progress large scale developments; a National Policy Statement for Urban Development (NPS-UD) and a National Environment Standard to support intensification; as well as the KiwiBuild Buying Off the Plans programme to incentivise developments with dwellings at lower price points.
6. Plan-making and consenting processes take time and create uncertainty for developers, which is created by:
 - a. difficulties making changes to district plans, including private plan changes
 - b. public notification of urban development projects (i.e. that there is public engagement on the projects)
 - c. the threat, and actual impact, of appeal processes on time frames and final outcomes of proposed plans, plan change requests and resource consent applications.
7. A responsive and more dynamic urban planning and development system would require a balancing of interests between both current and future residents, more responsive infrastructure investment, fewer upfront restrictions, incentives on institutions to respond to growth and regulatory measures that help internalise the costs of development. Ideally these could be enabled by reforming the underlying urban development system, instead of adding further short term solutions. These could be enabled through legislative reform under the Urban Growth Agenda.

8. This paper identifies six options to streamline plan-making and resource consenting for small to medium sized developments, which would partially alleviate the constraints imposed on the development sector by the current planning system. More fundamental system reform will be required to fully enable the development system to meet demand.
9. We have considered some options that could enable small to medium sized developments by adding further powers to the HUDA, including empowering the HUDA to function as a national authority for resource consenting not limited to specified development project areas (SDPs) (Option C in this paper).
10. Our initial view is not to pursue the option where the HUDA functions as a resource consent authority (Option C) any further. This is because there are substantive policy implications for the wider system that need to be worked through, which would add further policy work to the Housing and Urban Development Legislation (HUDL) and likely delay the introduction of the second bill. There is also a risk that the HUDA's ability to effectively perform one of its core roles (i.e., delivering large scale projects) could be undermined, because additional roles and responsibilities could divert its focus and would require significant upscaling of capability in other areas. At the same time, the HUDA will already inherit pre-existing challenges at its inception (i.e., merging existing organisations and cultures into one organisation with a new and broader purpose).
11. s 9(2)(f)(iv)
12. Two options that could be further assessed hold more promise of being effective policy interventions while also being less likely to compromise the integrity of the HUDA or add significant policy work to the HUDL ahead of introducing the second bill. Both options focus on overriding council district plans and, possibly, giving Ministers more control. They are:
 - empower the HUDA to initiate a streamlined planning process (SPPs) for private developers (Option E)
 - clarify what purposes requiring authorities can designate land for (through an amendment to the Resource Management Act 1991 (RMA)) to include "specified work" (as listed in the HUDL) and thereby enable Ministers and the HUDA to designate land in ways to enable urban development (Option F).
13. Our initial assessment of Options E and F is that risks of either compromising the integrity of the HUDA or adding substantial policy work to the HUDL (with implications to timeframes) are lower than other options. Furthermore, these two options could enable medium sized developments with moderate to high complexity, where such are proposed by private developers and could otherwise not proceed.

Recommended actions

14. We recommended that you:
 1. **Note** that you have asked for advice on the possibility of adding powers to the HUDA to streamline plan-making and resource consenting for small to medium sized developments *Noted*
 2. **Note** that more system reform through the UGA would be required to fully enable the development system to flexibly respond to and meet demand *Noted*
 3. **Note** that this report identifies six options that may contribute to partially alleviating the constraints imposed on the development sector by the current planning system *Noted*

4. **Note** that we do not recommend progressing work to enable HUDA to be a resource consenter for small to medium sized developments because this would risk undermining the HUDA's ability to effectively perform its core roles and would likely delay the HUDL

Noted

5. **Note** two other options that could partially alleviate most of the barriers identified in the resource consenting and plan-making processes for small to medium sized developments. These two options would also be less likely to compromise the integrity of the HUDA, but would add policy work to the HUDL ahead of introducing the second bill:

- empower the HUDA to initiate a streamlined planning process (SPPs) for private developers (Option E)
- clarify what purposes requiring authorities can designate land for (through an amendment to the RMA) to include "specified works" (as defined in the HUDL) and thereby enable Ministers and the HUDA to designate land to enable urban development (Option F)

Noted

6.

s 9(2)(f)(iv)

Agree / Disagree



Caleb Johnstone
Policy Manager,
Urban Performance

29/3/19

Hon Phil Twyford
Minister of Housing and Urban
Development

..... / /

Background

15. You asked for advice on additional options to streamline plan-making and resource consenting for small to medium sized developments, including providing additional powers to the HUDA. This followed Cabinet's decision not to extend the HASHAA.
16. The proposed HASHAA extension would have provided small to medium sized developments with an alternative pathway to obtain resource consent and, where necessary, the option to concurrently make changes to council district plans within specified timeframes. The HASHAA process also provided additional certainty, because it reduced public notification and limited appeal rights.
17. You have a number of policy initiatives underway which will improve the housing supply, including affordable housing. These include:
 - the establishment of the HUDA with streamlined powers for specified development projects. s 9(2)(f)(iv)
 - a National Policy Statement for Urban Development (NPS-UDC) – which requires high growth councils to include enabling provisions in their plans to support the expected demand for development capacity, and encourage intensification in proximity of areas with high urban amenity, including around transport links and town centres
 - a National Environmental Standard (NES) – which intends to provide more certainty for intensive development. Further advice on the proposed NES will be provided mid-year
 - the KiwiBuild Buying Off the Plans initiative – which incentivises the private sector to undertake developments with affordable dwellings in exchange for the Government de-risking their developments through underwrites.

Types of development and associated barriers to progress

18. You have requested advice on the HUDA functioning as a resource consent authority as well as the possibility of the HUDA more flexibly drawing on its powers, because plan-making and consenting processes take time and create uncertainty for developers. This can be driven by:
 - a. difficulties making changes to district plans, including private plan changes
 - b. public notification of urban development projects (i.e. that there is public engagement on the projects)
 - c. the threat, and actual impact, of appeal processes on time frames and final outcomes of proposed plans, plan change requests and resource consent applications.
19. The resource consenting process can also produce a number of specific barriers to progress. Barriers manifest themselves differently for the different types of development outlined below, but tend to be additive – that is, as developments become more complex, they retain the difficulties of more simple developments but must address additional issues.
20. The more complex a development is, the more likely it will face barriers to progress in the resource consenting and plan-making process. The size and type of development determines what kind of barriers may stall or halt the process.
21. For the purposes of analysing barriers that may be alleviated through policy changes, we have grouped developments as follows:
 - a. Small sized developments of 1-5 units with low complexity that do not require rezoning, significant infrastructure upgrades or complex site master-planning, such as development-ready greenfield lots, and small infill developments.
 - b. Medium sized developments of 5-15 units with moderate complexity that marginally to significantly breach a few development rules.

- c. Medium sized developments of 15+ units with large complexity that marginally to significantly breach a few development rules and/or may require rezoning, significant infrastructure upgrades and/or complex site master-planning, such as sizable terraced housing or apartment blocks in brownfield areas.
22. Annex A outlines in broad strokes the continuum of size and complexity of developments as outlined above, with associated cumulative barriers to progress in the resource consenting and plan-making process. Focused policy interventions can be explored to address each type of barrier within current settings of the planning system (i.e., in or related to the existing RMA).

There are a range of options to streamline plan-making and resource consenting for small to medium sized developments

23. A responsive and more dynamic urban planning and development system would require a balancing of interests between both current and future residents, more responsive infrastructure investment, fewer upfront restrictions, incentives on institutions to respond to growth and regulatory measures that help internalise the costs of development. Ideally these could be enabled by reforming the underlying urban development system, instead of adding further short term solutions. These could be enabled through legislative reform under the Urban Growth Agenda.
24. Ahead of a more fundamental reform there are a range of options available. These include, but are not limited to, giving HUDA powers and functions to overcome various types of barriers that developments may encounter, depending on their size (number of units) and complexity (types of dwellings and extent to which rules are breached and plan changes are required).
25. We considered a range of possibilities. Six options that may be considered ahead of more fundamental reform of the planning system are:
- A. not repealing the regulation-making powers of the RMA in the Phase 1 review, and taking advantage of them to fast-track applications as well as preclude them from being notified
 - B. adding to National Planning Standards to preclude councils from notifying the public and affected parties of applications that breach certain planning rules
 - C. enabling the HUDA function as a resource consent authority outside the specified development project areas
 - D. inserting HAASHA like provisions into the HUDL
 - E. empowering the HUDA to initiate a streamlined planning process (SPPs) for private developers
 - F. clarify what purposes requiring authorities can designate land for (i.e., include "specified works") and thereby enable Ministers and the HUDA to designate land in ways that enable urban development.

For further analysis of the options please refer to Annex B.

26. We have discounted new options where the HUDA is the developer for small to medium sized developments because of a set of substantial risks. The first risk is that any option that further incentivises the HUDA to develop small to medium sized developments risks compromising one of the HUDA's roles, which is to deliver large scale developments. The second risk is that the HUDA already has resourcing constraints, so any addition of powers and objectives would likely lead to the HUDA prioritising activity in favour of small to medium sized development projects.

The HUDA as resource consent authority

27. Enabling the HUDA to operate as a national consenter (Option C) would involve setting up an entirely separate system for resource consenting in parallel to the existing one, but grounded

in the HUDA as a national body. The HUDA would have local offices throughout the country but would be integrated as a central body. This option would grant developers an alternative to applying for resource consent and introduce competition, but at the cost of substantial increase in administrative complexity. A variant of this option would be to ground the separate system in the Environment Protection Authority (EPA) instead of the HUDA.

28. Option D would see a lift and shift of HAASHA powers into the Housing and Urban Development Legislation, but with relevant changes to overcome shortcomings identified in the original legislation (for example, observed land banking behaviour). As with HAAHSA, this would enable the HUDA to establish development areas and initiate concurrent plan change and resource consent applications within specified timeframes.
29. Our initial view ahead of more fundamental reform of the planning system is not to pursue Options C and D. There are substantive policy implications for the wider system that need to be worked through, including to what extent the complexity and cost, such as introducing additional capacity challenges in an already under-resourced system, are outweighed by any benefits. Working through these issues would add further policy work to the HUDL and likely delay the introduction of the second bill.
30. Options C and D also risk undermining the HUDA's ability to effectively perform one of its core roles (i.e. delivering large scale projects) because additional roles and responsibilities could divert its focus, lead to dual decision-making arrangements at times at odds with each other (i.e. consenting versus urban delivery) and would require significant upscaling of capability in other areas. At the same time, the HUDA will already inherit pre-existing challenges at its inception (i.e. merging existing organisations and cultures into one organisation with a new and broader purpose).

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

Some options merit further investigation

32. Two other options could be assessed that hold more promise of being effective policy interventions while also being less likely to compromise the integrity of the HUDA. However, these options would add policy work to the HUDL ahead of introducing the second bill, with potential implications on timeframes. Both options focus on overriding council district plans.
33. Option E would enable the HUDA to receive and prepare plan change proposals from private developers and then forward these to joint Ministers (Minister for Housing and Urban Development and Minister for Environment) for agreement to proceed. This could be done through an amendment to the RMA or a minor addition to the HUDL. You and the Minister for Environment may then agree to the proposal entering into a streamlined planning process that cannot be appealed. Practically, this would entail:
 - the HUDA prioritising projects submitted by private developers on the basis of a set of criteria, including affordability considerations
 - developers and the HUDA engaging more fully in detailed planning work and public engagement in advance of finalising project proposals
 - Joint Ministers providing a letter of expectation to guide the outcomes to be achieved in development projects, if alterations to objectives are deemed necessary.
34. There are two variants to this option. The first would enable joint Ministers to approve plan changes in agreement with local authorities. The second would be a firmer approach that would enable joint Ministers to approve plan changes even when local authorities disagree (see Annex B for more detailed discussion of these alternatives).
35. To enable Option E, you would need to seek agreement from the Minister for Environment upon which further work could ensue, including consultation with the Ministry for Environment

and the Department of Conservation, assessing the degree to which the HUDA would need to be further resourced and undertaking policy work to consider required additions to the HUDL.

36. Another option that could be assessed further is Option F, which would expand on work already underway on the HUDL that empowers the HUDA to designate land for “public work” and acquire land for a list of activities identified as “specified work”. This approach would extend Ministers’ and the HUDA’s ability to designate land in such ways to enable urban developments beyond the limits of “specified development project” areas (SDPs).
37. The power to designate would enable you and the HUDA to override council district plans by applying designations to areas for the purpose of progressing urban developments. The designation would specify its own set of rules (for example, development standards) that would enable a given development project. This approach would still have to go through a standard process associated with the designation of land, which includes public consultation. In practice this would entail:
 - directing officials (for example, the HUDA) to prepare proposals to designate land
 - proposals being forwarded to local authorities for consideration, who may notify the public and/or recommend changes
 - you, or another Minister, approving proposals taking into account council recommendations (these decisions could be appealed, though this right could be removed as part of this option).
38. To enable Option F, you would need to seek agreement from your colleagues and then direct officials to do further analysis, which could be significant, and consult with a wider group of agencies, to clarify how:
 - designations link to council district plans when private land owners and developers are involved
 - private developments progressed on designated land areas can be reintegrated in council district plans once the projects are completed
 - existing use rights (granted by developments completed in designated areas) may lead to appropriate future use rights.
39. Both Options E and F need further analysis but our initial judgment is that the risk of either compromising the integrity of the HUDA or adding substantial policy work to the HUDL is lower than other options. Furthermore, these two options could enable medium sized developments with moderate to high complexity, where such are proposed by private developers and could otherwise not proceed.

Next Steps

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

Consultation

41. The options presented were discussed with officials at the Ministry for Environment and an early version of this briefing was consulted with the Ministry for Environment. HNZ was notified but did not have adequate time to comment.

Annexes

42. Annex A: Types of development, associated barriers and intervention focus
43. Annex B: Overview of options

Annex A: Types of development, associated barriers and intervention focus

Development	Features/Conditions	Barriers to Progress	Intervention Focus
Small size with low complexity	<p><u>Features</u></p> <ul style="list-style-type: none"> 1-5 units with low complexity Does not require: rezoning; significant infrastructure upgrades; or complex site master-planning <p><u>Conditions</u></p> <ul style="list-style-type: none"> Planning rules are enabling Development controls are permissive Not commercially feasible to go higher/bigger 	<ul style="list-style-type: none"> Meeting urban design panel requirements Uncertainty of timeframes and outcomes under existing resource consenting process Lack of clarity on requirements for applications Difficult to access binding guidance in the pre-application stage Difficult for applicants to negotiate with different arms of council, and between and across other stakeholders 	<p>(1) Reduce transaction costs pre-application</p> <p>Provide access to good, timely and consistent planning assistance and advice pre-application, and so speed up the post-application process of resource consents, and provide more certainty</p>
Medium size with moderate complexity	<p><u>Features</u></p> <ul style="list-style-type: none"> 5-15 units with medium complexity (e.g., the built form of a terraced house) Does not require: rezoning; significant infrastructure upgrades; or complex site master-planning <p><u>Conditions</u></p> <ul style="list-style-type: none"> Marginally breaches a rule, or significantly breaches a rule Development standards prevent density and height Commercially feasible to go higher/bigger 	<ul style="list-style-type: none"> Meeting urban design panel requirements Uncertainty of timeframes and outcomes under existing resource consenting process Difficulty overcoming status quo bias when the council deems breaches to rules and development standards significant enough to notify (publicly or affected parties) 	<p>(2) Overcome resistance to change (status quo bias)</p> <p>Fast-track applications in areas with certain "activity status"¹, and preclude them from being notified</p> <p>(3) Reduce restrictive development standards</p> <p>Enable developments that breach specified development standards in district plans to proceed by precluding the applications from being notified</p>
Medium size with high complexity	<p><u>Features</u></p> <ul style="list-style-type: none"> 15+ units and/or high complexity May require: rezoning; significant infrastructure upgrades; and/or complex site master-planning May require: changes to district plan 	<ul style="list-style-type: none"> Meeting urban design panel requirements Additional plan change requirements further extend timeframes and creates uncertainty Also difficult to overcome status quo bias once the council deems requested plan changes significant enough to notify (publicly and/or affected parties) 	<p>(4) Speed up plan changes</p> <p>Empower developers to use the new RLAA 2017 streamlined process to change council plans</p> <p>(5) Override council district plans</p> <p>Enable the HUDA to initiate a streamlined planning process and/or empower Ministers/the HUDA to designate land for "urban purposes" with a public process</p>

¹ District and regional plans assign a different status to various kinds of activities (e.g., a type of house with certain specifications, including height and plane recession, etc.). The degree to which a given activity might impact on its surroundings is on a continuum (permitted, controlled, restricted discretionary, discretionary, non-complying, or prohibited) and each "activity status" on this continuum describes how the council will "treat" the activity in question when assessing a resource consent application, and it will also influence whether or not the council decides to notify the consent, or not.

Annex B: Analysis of options

Option	Description	Advantages	Disadvantages
Option A Could be assessed	Fast-track process for resource consents without notification	<ul style="list-style-type: none"> Provides more certainty to developers in the resource consenting process Overcomes resistance to change from status quo bias Enables projects to proceed that would otherwise be undercut by notification of the public and affected stakeholders 	<ul style="list-style-type: none"> Natural justice: no level of appeal Conflicts with government principles favouring communal decisions Requires a late change to RMA Phase 1 review Hard test: Minister must be satisfied that the scale and complexity will not warrant notification and can be processed in shorter timeframes
Option B Could be assessed	Preclude certain types of activity from being publicly notified	<ul style="list-style-type: none"> Provides more certainty to developers in the resource consenting process Overcomes resistance to change from status quo bias Enables developments that breach certain development standards in district plans (height, height to boundary, floor area ratio, etc.) to proceed 	<ul style="list-style-type: none"> Natural justice: no level of appeal Conflicts with government principles favouring communal decisions Unintended results: speed could lead to aberrant outcomes Difficult to determine: Minister must be satisfied that nature of project and likely effects will not warrant notification
Option C Do not recommend	Enable the HUDA to function as a national resource consent authority beyond specified development project areas	<ul style="list-style-type: none"> Provides developers with an alternate path to resource consenting and thus more options Introduces competition into the resource consenting process 	<ul style="list-style-type: none"> Capacity & purpose: Could undermine the HUDA's performance of its core function to deliver large scale projects Complexity: would require another entirely separate system Limited resources of relevant skills/expertise Effectiveness: may or may not reduce timeframes, but would likely not impact notification or final decision under current RMA Transaction costs: more costly processes due to information asymmetry
Option D Do not recommend	Inserting HAASHA like provisions into the Housing and Urban Development Legislation (HUDL)	<ul style="list-style-type: none"> The HUDA could override council district plans May overcome the land banking behaviour observed with original HAASHA provision Provides certainty for parallel (resource & plan change) applications within set timeframes Overcomes resistance to change from status quo bias 	<ul style="list-style-type: none"> Capacity & purpose: Could undermine the HUDA's performance of its core function to deliver large scale projects HUDA: Inconsistent with current government direction that favours collaborative and participatory decision-making processes Administration costs imposed on central government Natural Justice: no level of appeal
Option E Recommend further assessment	Empowering the HUDA to initiate a streamlined planning process (SPPs) for private developers	<ul style="list-style-type: none"> Speed up making changes to district plans The HUDA/Ministers could override council district plans Prioritises projects that include affordability considerations Incentivises developers to include housing types with lower price points 	<ul style="list-style-type: none"> Delay: would increase the scope of RMA Phase 1 work Effectiveness: we do not yet know how effective the new SPP process is Administrative burden: could impose high administrative burden on the Minister, the Ministry of Housing and Urban Development & the HUDA
Option F Recommend further assessment	Clarify what requiring authorities can designate land for (include "specified works")	<ul style="list-style-type: none"> Ministers could designate land for urban development purposes and so override council district plans Enables developments that would otherwise breach certain development standards in district plans to proceed May provide a credible signal to the market that government is committed to urban expansion 	<ul style="list-style-type: none"> Financial accountability: Minister would have to take financial responsibility for developments Controversial: may create noise and put HUDA reputation at risk Potential tension in Māori/Crown relations over treatment of land Still requires a designation process, which requires evidence and a full public consultation process Designating and/or acquiring land can be costly and take substantive periods of time (up to 2 years)

