MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

BRIEFING

Urban development authority legislation – Infrastructure and funding powers

Date:	5 December 2017	**Priority:**	High
Security classification:	In Confidence	**Tracking number:**	1234 17-18

Action sought		
	Action sought	**Deadline**
Hon Phil Twyford **Minister for Housing and Urban Development**	**Agree** to the recommendations **Forward** a copy of this briefing to the Ministers of Finance, Local Government and Infrastructure **Consult** those Ministers before making decisions	11 December 2017
Hon Jenny Salesa **Associate Minister for Housing and Urban Development**	For your information	

Contact for telephone discussion (if required)				
Name	**Position**	**Telephone**		**1st contact**
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The following departments/agencies have been consulted

Minister's office to complete:

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- ☐ Withdrawn

Comments

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

BRIEFING

Urban development authority legislation – Infrastructure and funding powers

Date:	4 December 2017	Priority:	High
Security classification:	In Confidence	Tracking number:	1234 17-18

Purpose

On 16 November 2017, you received a briefing that discussed new legislation:

- that may be required to establish a national urban development authority (UDA)
- that is required to provide more enabling development powers to support complex or strategically important development projects, such as those that form part of your strategy for delivering KiwiBuild.

That briefing described the core elements proposed for the new legislation, and signalled the following series of further briefings on critical issues, of which this is one (highlighted):

1. Fundamentals: legislative design, decision-making, role of local government.
2. Decision-making: priorities and principles.
3. Organisational functions and form of the national UDA.
4. Approach to Māori interests.
5. Land assembly powers, especially compulsory acquisition.
6. Infrastructure and funding powers.
7. Planning and consenting powers.
8. Powers to change reserves.

Recommended action

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

a. **indicate** your preference for each option in the body of this paper; and

b. **forward** this briefing and **discuss** these issues with the Ministers of Finance, Local Government and Infrastructure.

Agree / Disagree

Di Anorpong
Manager, Construction & Housing Policy
MBIE
6 / 12 / 17

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

Introduction

1. In our introductory briefing, we proposed that the new legislation include:

   a. powers to provide infrastructure and amenities, such as roads and water pipes; and

   b. funding powers to levy charges on developers and land owners to recover the costs of providing that infrastructure.

2. When we subsequently discussed that briefing, you also indicated your interest in including:

   a. a power to capture some of the increase in land value that results from a development project ("value capture"); and

   b. a tax or rate on land value that targets land bankers, to incentivise the development of land within a project area.

3. This briefing provides more detailed proposals for infrastructure and funding, and addresses the following critical issues:

   a. whether there should be a power to require territorial authorities ("TAs") to provide necessary infrastructure;

   b. what approach to take to different types of infrastructure;

   c. whether there should be a power to change public transport services; and

   d. Initial advice on value capture mechanisms.

4. Advice on targeting land bankers to follow in a later briefing.

Context

5. When considering the proposed infrastructure powers, the role played by TAs is particularly important.

Reliance on territorial authority infrastructure

6. All forms of urban development, whether in greenfield or brownfield areas, requires public infrastructure in the form of three-waters[1] and transport (generally roading, but which can include other forms of transport), and private utilities. However, private utilities such as energy and telecommunications are not covered in this briefing as they have not previously been a hindrance in the development process and it is expected that the UDA will work in a collaborative manner as and when required (similar to how other developers do now).

7. In almost every case, any infrastructure provided by the UDA *inside* the project area must either link with, or be reliant on, the TA's infrastructure *outside* of the project area (see Annex 1).[2] This will include:

   a. sourcing, treating and transporting freshwater (via treatment plants, pumping stations and water mains) to the project area;

   b. collecting, transporting, treating and disposing of wastewater from the project area;

[1] Drinking water, wastewater and stormwater

[2] Primarily, TAs are responsible for water and roading, and regional councils are responsible for public transport services and some land drainage and flood protection works.

c. ensuring public transport that will run within the project area will have regular connections to meaningful destinations outside that area for those living and working within it; and

d. ensuring traffic flows that connect with the wider network.

Relationship with territorial authorities

8. The development projects will be reliant on TA-provided (and funded) infrastructure *outside* the project area, and the accountability of TAs to their communities for the significant expenditure required to supply that infrastructure. This means the UDA will need to maintain a good working relationship with the relevant TAs.

9. TA-provided infrastructure will generally have been paid for by a combination of ratepayers and previous developers. Consequently, these groups will expect to hold the TA accountable if further expenditure is required to accommodate a development project.

Infrastructure powers

10. Infrastructure provision is a major barrier to urban development. Under current settings, no one entity has the full range of powers needed. In addition, the powers that do exist are slow and complex. Infrastructure planning, provision, funding and financing powers are currently spread across at least nine different statutes.[3] This complexity reduces the ability of developers to respond quickly to opportunities that impact on the viability and usefulness of a development project.

Scope

11. Consequently, the UDA will need to be able to provide infrastructure independently where the necessary infrastructure has not been included in local government plans or is needed sooner. This includes developing supporting network infrastructure outside of the main project area either:

    a. by including the necessary infrastructure corridors that lead to the main development within the boundaries of the project area; or

    b. by excluding these infrastructure corridors from the project area making the UDA a requiring authority under the Resource Management Act 1991 (RMA), which would enable it to designate land outside of the project area for the purposes of providing essential infrastructure to support the proposed development.

12. Note that, although we have proposed that UDAs have access to the benefit of compulsory acquisition[4], those powers will only be available within the boundaries of a project area. Thus, unless those boundaries are drawn to include any required infrastructure corridors that lead to the main project area, the UDA will not be able to use those powers to provide infrastructure required outside the project area to support development inside the project area. In those circumstances, we propose that the UDA have access to the more limited rights to seek compulsory acquisition available to a requiring authority[5], which are linked to specific infrastructure requirements.

Agree / Disagree

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[3] Resource Management Act 1991; Local Government Act 1974; Local Government Act 2002; Local Government (Rating) Act 2002; Local Government (Auckland Council) Act 2009; Government Roading Powers Act 1989; Public Works Act 1981; Land Transport Management Act 2003; and Reserves Act 1977.

[4] Note that compulsory acquisition is generally used as a last resort by utility operators, with negotiation and voluntary sale and purchase generally preferred (as it entails less process risk and maintains relationships)

[5] Refer to Annex 2

Network infrastructure

13. Utility and infrastructure networks are complex and expensive. Undertaking planning, design or construction work independently on geographically discreet parts of an infrastructure network could potentially undermine network utility operators' efforts to make prudent and efficient investments on the network as a whole. Existing network utility operators also have statutory property and access rights to existing works and are regulated with statutory compliance requirements around services pricing, ensuring continuity of supply, and minimising service outages. Additionally, many infrastructure facilities and systems require specialist input into the design, installation and connection of new parts to their network, together with comprehensive quality integration and assurance testing at completion, all of which may be outside of a UDA's capability or capacity for some utilities.

14. For these reasons, we propose that network utility operators are enabled to provide input into the provision of infrastructure for a development project, particularly at the initial assessment of a development project. This involvement would continue through the project establishment, the development plan, as well as during the construction and commissioning phases. It may also involve oversight of UDA contractors if the UDA undertakes any works itself.

Agree / Disagree

By-laws

15. Powers are also required to enable the UDA to have local government by-laws suspended, amended or created to remove any specific restrictions or constraints to developing infrastructure. These powers would be limited to sites or activities that are related to specific project areas or their objectives and would include by-laws relating to road safety. This power would enable a UDA to undertake functions as the road controlling authority and road corridor manager for the roads within a project area.

Standards

16. Connecting into the existing city-wide circulation (road, rail, bus routes and land transport services) and reticulation (water, wastewater, stormwater and land drainage) networks and systems will be a key part of providing new physical infrastructure for development projects. These existing networks will border and service a project area and it is critical that any new infrastructure matches the existing systems in terms of its sizing, compatibility, durability, capacity, construction standards and levels of service.

17. The infrastructure for a development project will need to meet the system performance requirements and levels of service of the existing networks. The infrastructure construction and quality standards for a development project will be established at the development plan stage. At a minimum, these standards must meet the relevant New Zealand Standards, or the objectives of the host TA's infrastructure design codes of practice. Collaboration will be required with the TA and other network utility operators to ensure that the proposed infrastructure will meet these performance requirements and standards.

18. Except to the extent that the development plan for the UDA requires, the infrastructure powers of the UDA will not extend to overriding national policy statements or national environmental standards under the RMA. We will continue to work through detail of the relationship between the UDA development plan and national direction under the RMA with the Ministry for the Environment to resolve outstanding relationship issues around which takes precedence within the development area and to what extent.

Consultation and collaboration

19. To this end, we propose that the new legislation requires the UDA to consult and collaborate with, and in relevant cases seek the agreement of, the TA, government agencies (such as

NZTA) or network utility operators before exercising any powers that could affect an existing service provider's infrastructure networks, particularly for nationally significant infrastructure.

20. As noted previously, establishing these relationships early in the initial stages of the establishment process will be essential, especially as the UDA will need to be able to vest ownership of any new infrastructure in the TA and other agencies when the project is complete. We envisage this consultation and collaboration as being an ongoing engagement that would continue throughout a development project.

Powers

21. Accordingly, we propose that the new legislation include comprehensive, streamlined powers to provide any necessary infrastructure that enables the development project to:

    a. stop, re-align or create (declare) roads or other land transport routes, including public transport facilities and services;

    Agree / Disagree

    b. stop, move, build and/or alter water supply, wastewater, storm water and land drainage systems;

    Agree / Disagree

    c. contract with network utility operators to stop, build, move and/or alter electricity, gas, telecommunications or other privately owned utility services;

    Agree / Disagree

    d. enter public and privately-owned land to enable the entity to undertake preliminary surveys, inspections and assessments of land and buildings;

    Agree / Disagree

    e. enable a UDA to vest new development infrastructure in the host TA or relevant government agency or network operator at no cost to the receiving organisation when the development project is complete unless there is debt attached to the asset;

    Agree / Disagree

    f. where debt is still attached to an infrastructure asset, enable the UDA to retain ownership of that asset until such time as the debt no longer exists or transfer powers that the UDA has for the funding of that infrastructure asset to the TA until such time as the debt has been paid off;

    Agree / Disagree

    g. require that regional and TA statutory planning instruments (e.g. Long Term Plans) must be consistent with the strategic objectives for the development project; and

    Agree / Disagree

    h. suspend, or require that TAs suspend, amend or create new, local by-laws to overcome any constraints as they relate to the project area.

    Agree / Disagree

Existing assets

22. These powers enable changes to existing infrastructure and the construction of new infrastructure. Meanwhile, if a development project is established in an existing urban area (such as Tāmaki), the network infrastructure that is not being changed will need to be maintained.

23. In these scenarios, we propose that the existing owner of the infrastructure continue to own, service and maintain its assets inside the project area, if necessary throughout the life of the project. Only if the development plan calls for particular infrastructure to be removed, relocated or upgraded would the existing assets cease to be the responsibility of their current owner, and only at the point in time when the actual work begins.

Agree / Disagree

Power to require the TA to provide infrastructure

24. Development projects will be dependent on the wider infrastructure network outside the project area. If those networks don't have the capacity to support the development project, then the project will be unable to realise its strategic objectives.

25. In particular, the development project will need to connect to bulk infrastructure such as roading, water, wastewater and stormwater outside the development area that is owned and operated by a TA. To undertake such works as efficiently as possible, the ideal approach is to obtain the TA's commitment to work in a constructive partnership with the UDA. Different issues apply depending on whether that commitment is forthcoming.

A willing territorial authority

26. The first scenario is where the TA supports the development project being established and is willing to commit to providing the infrastructure required. This collaboration would require both parties to agree on a project's infrastructure objectives, as well as specific details about who is responsible for planning, funding and constructing any new infrastructure required.

27. However, even if the TA agrees to support the development project when it is established, there is a risk that circumstances can change. Issues could arise during the course of the development project that mean the TA may want to significantly change or pull out of its infrastructure commitments. Because complex development projects will take many years to realise their strategic objectives, there is a particular risk that a change in council members following local body elections could lead to the council deciding to withdraw its support. That scenario would add significant costs and delays to the project. The risk of that occurring is also likely to undermine the confidence other parties have in the project, especially private investors.

28. To provide certainty and confidence to all parties involved in the development project we consider a mechanism is required that holds TAs to any commitment they make towards providing infrastructure. Where the TA is willing to do so, we propose that the TA enter into a binding commitment to fund and provide the required infrastructure needed to support a development project as part of an infrastructure and cost-sharing agreement with the UDA.

29. Any issues between the UDA and TA would be worked through during the initial assessment of a project. This would include preliminary work around infrastructure funding and provision requirements before the agreement is signed.

30. This option could add cost and time for the UDA, but is more likely to be acceptable to TAs and their communities, and would help to avoid stalling behaviour at a later stage. Given the UDA will need to work closely with TAs over a long period, we think collaboration and commitment is preferable to maintain a positive and constructive working relationship.

Recommendation

31. We recommend that, where a TA is willing to commit to supporting a proposed development project with the provision of infrastructure outside the project area that is necessary to support the development project (including cost-sharing arrangements), the new legislation

provides for a mechanism that can hold the TA to that commitment (e.g. through the TA voluntarily entering into a binding agreement with the UDA).

Agree / Disagree

An unwilling territorial authority

32. If a TA is opposed to a development project, or is simply unwilling to make any infrastructure commitments, the options are to:

    a. not establish the development project;

    b. reconfigure the development project to the point where the TA is willing to support its infrastructure needs (which may involve down-sizing the project);

    c. create a statutory power for the UDA to require the TA to provide the infrastructure; or

    d. empower the UDA to act outside of its boundaries for infrastructure purposes only and fund the cost of that infrastructure from the Crown.

33. Under a statutory power of requirement, the UDA would have the legal power to require TAs to provide and fund infrastructure required for the UDA development. While this gives the UDA (and other parties) certainty, it can impose significant costs on the local community without meaningful engagement. Consequently, the exercise of that power is likely to be contentious, be subject to legal challenges, or could result in behaviours that frustrate or stall the development project through other avenues. Accordingly, we do not recommend this approach.

34. In contrast, granting a power to act outside the project boundaries is unlikely to be any more contentious than a power to act inside the project area. In fact, if the Crown is willing to pay for the infrastructure, it is much less likely that the TA will oppose the development. But this scenario would raise issues with recovering the Crown's costs. Given the infrastructure involved is likely to be a large component that services wide areas with multiple beneficiaries, it will be near impossible to identify a targeted group of landowners from whom the cost could be recovered.

35. If appropriate infrastructure funding solutions can be identified through the work that Treasury is leading, then empowering the UDA to act outside its boundaries when supported by that solution will become a viable option. Otherwise, there are limited choices if the TA is unwilling to support a development project that needs additional infrastructure provided by the TA.

Local government plans

36. A related issue is what approach to take to prevent local government infrastructure and transport plans from undermining the strategic objectives of any development projects within their area.

37. As for the funding commitments to infrastructure, if the TA agrees to support the development project, then we recommend that it also be required to amend its strategic planning documents so that they align with the strategic objectives of the project. This would also mitigate the risk that these plans compromise the proposed development or vice versa.

38. To support the commitment to provide infrastructure, we propose that a UDA has the power to require local authority strategic plans to be changed, if required, to bring forward the infrastructure construction outside of the project area that is needed to support the development. To mitigate any potential funding pressures this could create for the TA, a UDA would be required to fund its share of the additional or out-of-sequence infrastructure

development when exercising this power in consultation and collaboration with the relevant local authority.

Agree / Disagree

39. However, if the TA does not support the development project, being able to require the TA to change its planning documents would raise difficult issues, particularly given the funding implications involved. Hence, we do not recommend such a power in that context.

Approach to different types of infrastructure

40. Because providing a power to provide all types of infrastructure raises significant issues in particular cases, we propose the legislation provide for different approaches for certain types of infrastructure.

Nationally significant infrastructure

41. Feedback on the previous Government's discussion document highlighted that some infrastructure networks are of high national significance. These nationally significant networks include:

    a. the national grid electricity transmission network;

    b. major gas or oil pipeline services, such as the Refinery to Auckland Pipeline from Marsden Point to Wiri;

    c. state highways and government roads;

    d. New Zealand rail network, including suburban rail systems;

    e. primary airports;

    f. commercial ports; and

    g. any Defence Force land, buildings or interest in land and airspace.

42. In our view, any benefits derived from the UDA making changes to this infrastructure are outweighed by wider risks: to public supply, operator and public safety, as well as potentially high costs involved in the UDA undertaking works on these networks. Such costs could increase significantly if remedial actions are required because the UDA's works interfere with or undermine network operations or do not meet performance requirements or standards.

43. To manage this risk, we recommend that the new legislation provide greater protection for nationally significant infrastructure, including any associated designations. Any works by the UDA on this infrastructure would require operator input and approval as part of the initial assessment. There will also be an opportunity for operators to be consulted on, or collaborate (dependent on project circumstances), with the UDA, as part of the preparation of the UDA development plan.

44. As the effects of a development can have effects on nationally significant infrastructure both inside and outside the UDA development area itself (e.g. increased demand on roading and electricity networks, including the national grid), the UDA would need to consult with operators whether or not their infrastructure was in the UDA development area.

Recommendation

45. We recommend that the legislation require the UDA to apply the following hierarchy of decision-making to undertake works for each of the following class of assets:

a. for nationally significant infrastructure, the UDA must obtain the network utility operator's and/or the asset owner's agreement before any changes can be made to the infrastructure;

b. for all other infrastructure, the UDA may construct and alter any infrastructure, but must consult and collaborate with the existing network utility operator and/or the asset owner prior to undertaking such works.

Agree / Disagree

Power to change public transport services

46. A further issue is whether to include powers to stop, move, create, extend or alter public transport services (bus and rail).

47. The appeal of powers to change public transport is the ability to increase the services offered within the development project, thereby making it more attractive for buyers (and thus developers). For example, the Tāmaki Regeneration project includes the rail line to the Auckland CBD. The ability to construct a second railway station in the area and change the railway timetable to have trains stop at that station could significantly increase the development opportunities.

48. However, the risk of including this power is the wider impact on the public transport system. Changes to services within the development project area could affect long-term contracts with service providers and thus have significant cost implications. For example, extending the rail service in Tāmaki would have a cumulative effect across the network, requiring changes in routes and timing of other services that will connect with the new service or which will use the same stations or stops.

49. In a greenfield development, there is also a risk that the UDA would use the power to create a public transport service designed to attract home buyers to the area in advance of their actual arrival. The result could be underutilised services that are unable to pay for themselves, or the changes may not integrate well with the existing network. Consequently, it would be important that early planning takes place and consideration is given about how to best link potential new services to existing services.

50. For these reasons, the options are for the legislation to require the UDA to fund the full additional costs of any change to services it requires (which is likely to be very large) or to prevent the UDA from being able to make changes to services. On balance, we prefer the latter.

Recommendation

51. We recommend that the legislation:

a. does <u>not</u> include a power to change public transport <u>services</u>;

Agree / Disagree

b. includes a power to create or alter public transport <u>facilities</u> and ancillary infrastructure (e.g. bus shelters), but that it can only be exercised by the UDA in consultation and collaboration with the regional council and transport providers;

Agree / Disagree

c. require regional councils to collaborate with the UDA when developing the regional land transport plan, the regional public transport plan, 30-year infrastructure strategies and decisions arising from the Auckland transport alignment project; and

Agree / Disagree

d. the legislation grant the UDA with the power to recommend changes to land transport plans that the regional council must have regard to.

Agree / Disagree

Funding powers

52. It is appropriate that the local residents or businesses that would use and/or directly benefit from upgraded or new infrastructure should bear the costs of constructing the associated works. The Productivity Commission expressed similar views.[6]

53. Providing the UDA with access to targeted rates and development contribution revenue streams for specific new infrastructure would improve the efficiency and viability of development projects and have the potential to deliver improved community outcomes, such as new parks and reserves. Accordingly, we propose that the entity undertaking this work should receive the funding.

54. We propose that the new legislation provides that the UDA may:

    a. set targeted infrastructure rates only on properties within the project area, that apply annually to fund the actual costs of the infrastructure over the asset's whole life;

    b. direct the income from any targeted infrastructure rate to a privately-owned vehicle that has the power to raise the necessary debt to finance and own the infrastructure over its whole life, backed by the income stream from the infrastructure rate; and

    c. determine and levy project specific development contributions on developers operating within that project area that are paid to the UDA, rather than the TA.

Targeted rates

55. Applying a targeted rate to properties within a project area would address wider concerns about the equity of alternative options, such as levying a general rate on all ratepayers in a district to fund the infrastructure constructed for one development project. This is particularly applicable for larger urban areas where many ratepayers would be remote from, and not interact with, a development project.

56. Consequently, the UDA's power to set targeted infrastructure rates would not extend to setting a general rate across an entire TA area to fund infrastructure in the development project area. We propose that the legislation restrict the use of a UDA targeted rate to the use of land and facilities that are contained within the project area. This approach is not unusual with many TAs in New Zealand charging targeted rates to homeowners and businesses to pay for specific services provided to their communities.

Agree / Disagree

57. While a UDA would have powers to set a targeted infrastructure rate, it would not operate as a collection agent nor have any powers to enforce payment. We propose that any rates are collected by the TA, on behalf of the development project, with the TA being able to recover the actual and reasonable costs of its administration of the targeted infrastructure rate from the UDA. The funds would be forwarded to either the UDA (if it is servicing the debt) or to a privately owned vehicle established to raise the finance needed to develop infrastructure and social amenities within the project area. This approach is proposed for the following reasons:

[6] New Zealand Productivity Commission: (2017) Better Urban Planning Final Report, Chapter 11, page 307.

a. TAs already have the necessary accountability, monitoring and enforcement structures in place for obtaining and using public money, as well as the collection systems, mechanisms and authorisations that enable them to do so; and

b. The option to direct the income stream to a privately owned infrastructure vehicle enables both central government and the TA to avoid carrying the debt on their balance sheets. Backed by a sufficient number of residents, investors are likely to be attracted to a reliable income stream such as this. However, given that the investment vehicle would own the infrastructure until the debt is fully repaid; careful provision would need to be made with the TA (or other service provider) for the maintenance of the assets. A certain percentage of the income stream would need to be set aside for this purpose each year, along with allowances for depreciation and other costs, with the security being that the TA is the entity collecting that rate.

58. Any infrastructure rate would be additional to the general rates for a property and apply to those properties for the life of the asset (which could be up to 40-50 years for some infrastructure).

59. Given the potential impact of an infrastructure rate on households, the new legislation will require public consultation with the affected property owners, whose properties would fall within a new project area. This consultation would seek submissions on the rationale for the rate, its coverage, the likely amount, its long-term implications and any potential exemptions. This level of consultation would occur when the development plan is being prepared. Prior to that, as part of the initial assessment, the public will be consulted on the proposal to grant the UDA the power to levy such a rate in the first place. However, there wouldn't be sufficient information at that point to inform the more detailed consultation required.

60. Additionally, the UDA's use of these powers cannot be unrestrained or their use could negatively affect the value of the development as a whole (because people will not buy into developments with high recurring services charges or rates). They must be limited to the extent that is required for recovering the actual costs of the infrastructure development which include capital, maintenance and renewals (depreciation) over the productive lifetime of the asset, especially for infrastructure that is to be vested in local authorities or network utility operators. Targeted rates and development contributions will need to be set to recover the costs for the useable or productive life of the asset, as opposed to its actual lifetime, which may be longer. This is consistent with a TA's approach to its infrastructure strategy and management under the Local Government Act 2002.

61. We propose that the new legislation provide the UDA may:

a. require a TA to collect targeted infrastructure rates on its behalf, and that the TA may recover its actual and reasonable costs of administration of the targeted rate from the TA;

Agree / Disagree

b. recover a targeted infrastructure rate on top of existing rates charged by the TA, but that the targeted rate be spread over the lifetime (service life) of the asset to lessen its impact on those affected by it.

Agree / Disagree

Cross border funding issues

62. There is a need for funding to flow into the development project from residents outside the project area, for any benefits they receive from the development project. There is also a need

for funding to flow out to the TA from residents inside the project area, for benefits they receive from the wider infrastructure system.

Recovering costs from households outside the project area

63. In appropriate situations, there may be a case for setting a targeted rate on properties outside the project area that are directly benefiting from the infrastructure improvements or public amenities that the project is providing (e.g. new access roads or parks). However, to keep the areas of responsibility strictly separate, we propose that only the TA, rather than the UDA, has the power to collect revenue for this purpose from residents who live outside the project area.

64. Some statutory mechanism enabling the development project to access appropriate income from outside residents is therefore required. The TA could simply agree and generate the necessary revenue from among its existing funding powers (whether from general rates or a targeted rate). Alternatively, if no agreement is possible, we propose that the matter can be referred to an independent decision-maker who is empowered to resolve the issue.

Recovering costs from households inside the project area

65. In most situations, there will also be a case for levying at least part of the TA's standard development contribution on developers operating inside the project area, to help pay for infrastructure, services and amenities that property owners will receive from outside the project area, such as improvements to headworks (e.g. an upgrade to the local waste water treatment plant). For network infrastructure, development contributions may also need to be shared between the TA and the development project depending on the extent to which each is funding the new infrastructure and where the benefits accrue. However, in this scenario we propose that only the UDA, rather than the TA, has the power to levy development contributions within the project area.

66. A statutory mechanism enabling the TA to receive an appropriate share of development contributions is therefore required. Again, the UDA could simply agree and charge a development contribution that is calculated to cover both its costs and an appropriate share for the TA. Alternatively, if no agreement is possible, we propose that the matter can be referred to the same independent decision-maker envisaged above.

Incentives

67. In situations where there are reciprocal funding flows, there will be an incentive for the two authorities to come to some agreement between themselves. But we do not propose that the legislation require the two matters to be tied together. We think the independent decision-maker should be free to treat each matter separately on its merits, with the fundamental goal being a fair allocation of costs based on where the benefits accrue.

68. The starting assumption can be that the UDA is liable to pay the equivalent development contribution that would otherwise have applied to land within the project area. That can then be adjusted to the extent that the UDA has delivered infrastructure that would otherwise have been provided by the TA.

69. We propose that the new legislation provides the UDA be able to that:

    a. charge and collect development contributions within the development project area to help pay for TA infrastructure outside the development area which benefits those inside the development project area; or

Agree / Disagree

    b. authorise a TA to charge development contributions on those within the development area of the UDA proportionate to their share of the infrastructure expenditure the TA

has incurred for infrastructure outside the development area (but which benefits those inside it).

Agree / Disagree

Inclusion of value capture mechanisms

70. You have previously expressed your interest in the use of value-capture mechanisms to fund infrastructure. There are five broad categories of value capture mechanisms for funding infrastructure used overseas (such as the UK, Australia and USA):

    a. leveraging land the UDA purchases prior to development and selling it for its improved value to make a gain;

    b. charging development contributions (which ties the costs of infrastructure provided by the UDA or a TA to those who benefit from it);

    c. targeted rates;

    d. betterment levies; and

    e. taxes on property transactions (stamp duties, sales taxes or capital gains taxes).

Approaches already detailed in current UDA proposals

71. In our introductory briefing, we proposed to use two of the broad approaches above, as these can easily be adapted from existing legislative powers:

    a. selling or leasing land the UDA owns at its improved value after the infrastructure work associated with a development project is completed; and

    b. the ability to charge development contributions.

72. Although we also proposed the ability for the UDA to apply a targeted rate, we propose that the targeted rate be consistent with current practice under the Local Government (Rating) Act 2002 (LGRA), rather than be a value-capture mechanism.

73. Current LGRA rating practice is to use targeted rates to recover expenditure on infrastructure (or other services) from those who directly benefit from it, rather than collect it on the basis that land value has increased. Land or property value simply determines the share of the overall rates that an individual ratepayer is required to pay relative to other ratepayers.

Additional approaches that could be considered

74. There are three other approaches that could also be used:

    a. a new form of targeted rate (a localised tax on the increase in the value of land which has resulted from the development project);

    b. a betterment levy, which would take the form of a one-off tax on the uplift in land or property value associated with the infrastructure provided as part of the development project; and

    c. taxes on property transactions (effectively a form of stamp duty or capital gains tax), possibly set as a percentage of the sale price of sections or completed units within the UDA development area.

75. The table below sets out some the principal reasons for and against each of these mechanisms:

Mechanism	For	Against

Mechanism	For	Against
New type of targeted rate	• Captures 'unearned' gains obtained by land or property owners that arise out of the UDA development project • Helps pay for the UDA development project • Imposed over time (less severe initial impact on land or property with little in the way of liquid assets) • Could be further modified to act as an anti-land-banking measure (higher rates being charged regardless of whether land has been developed or not, or possibly even higher for undeveloped land)	• Not consistent with the general purpose and approach of the LGRA which ties rates to expenditure on projects or services rather than increased land value • Reliant on the accuracy of land valuations which can be affected by factors beyond the influence of the UDA • Could create a negative impact on buyers concerned about ongoing costs outside of purchase costs • Revenue recovery is spread over a number of years, so limiting the ability to recycle it quickly into other projects or further expansion
Betterment levy	• Captures "unearned" gains obtained by land or property owners that arise out of the UDA development project • Helps pay for the UDA development project • Revenue able to be collected faster than in a targeted rate approach if applied as a one-off lump sum.	• Typically imposed as a one-off tax which, as a lump sum, can be onerous for those with little in the way of liquid assets • Reliant on the accuracy of land valuations which can be affected by factors beyond the influence of the UDA • Gives rise to questions or expectations as to whether those who are negatively affected by the infrastructure should be compensated
Tax on property transactions in the project area	• Relatively straight forward as a concept • Helps pay for the UDA project • Capable of raising significant revenue – depending on development scale and the level of the tax rate • Amount paid automatically varies with changes in land / property price (as it is based on a percentage of the sale price) • May have a minor effect on	• Penalises those who add value to their house or section through their own efforts • If imposed as a stamp duty (i.e. on buyers) then it directly impacts on the upfront costs they pay for a house or section • If imposed as a capital gains tax (on the seller) then it may reduce willingness to sell and thereby reduces property turnover, workforce mobility, and revenue

Mechanism	For	Against
	reducing speculative behaviours (though there is not much evidence of this having occurred in Australia where stamp duties and capital gains taxes have been used for decades) • Paid when people are cashed up from the sale	• Revenue streams can be unpredictable as they are dependent on sales activity

76. All of the three options listed above would require substantial further work to progress as part of the legislation. They represent approaches not currently used in New Zealand and which have proved complex to implement in overseas settings.

77. We also note that the options above could intersect with some of the work to be carried out by the Tax Working Party[7], and wider work on infrastructure funding and financing that you commissioned with the Ministers of Finance and Local Government on 29 November 2017. However, if this approach is taken, the timeframes to include these options in UDA legislation might be difficult to achieve.

78. If the value-capture approaches are pursued more quickly, they could be inconsistent with the outcomes of the other broader infrastructure or tax work programmes. This may be mitigated by the fact that the powers available to the UDA are intended to be exceptional and not "business as usual". However, there would remain the chance of some duplication of effort as well as an additional draw on resources.

Question and recommendation

79. Please indicate below which of the following is your preferred option for progressing work on value-capture mechanisms:

    a) For us to provide you with further advice on the available value-capture mechanisms ahead of the work of the Tax Working Party and the wider infrastructure funding and finance work you have commissioned?

    Yes / No

    b) For work on value capture mechanisms for development projects to progress as either part of, or parallel to, wider government work on infrastructure funding and financing approaches, and tax settings, to ensure alignment and consistency with them?

    Yes / No

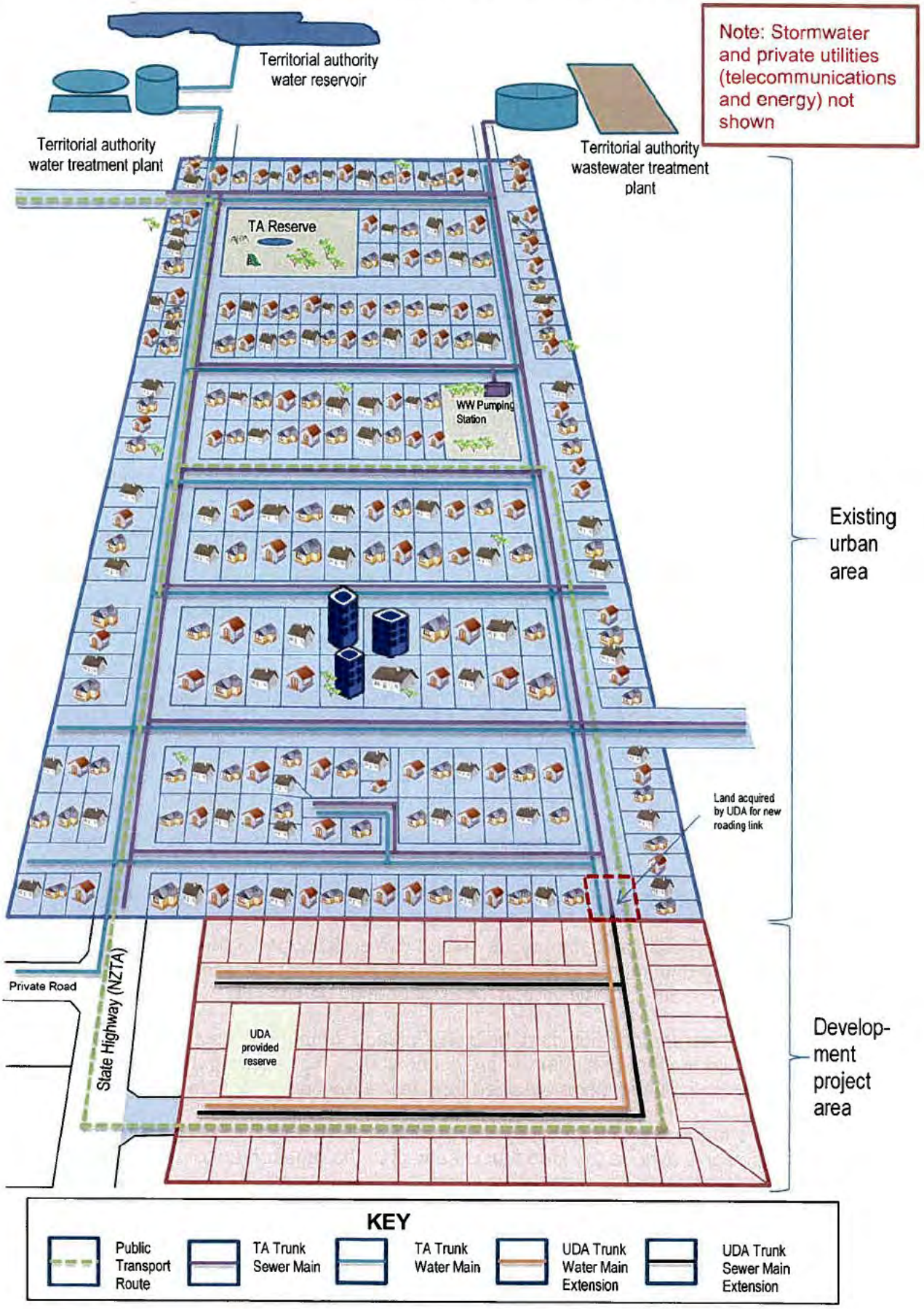
Consultation

80. This briefing draws on work previously undertaken on the development of policy proposals for a UDA, including a public discussion document issued in February 2017.

81. The Treasury, Ministry for the Environment, Department Internal Affairs and Ministry of Transport were provided with copies of this briefing, but time was insufficient for them to be consulted or for them to provide detailed feedback.

[7] Their Terms of Reference include investigating whether a capital gains tax or land tax (not applying to the family home or land under it), or other housing tax measures, would improve the tax system.

Annex 1: How a development project area connects with existing urban areas



Annex 2: Requiring authorities

Definition of a requiring authority

Requiring authorities are parties defined by, and authorised, under sections 166-187 of the Resource Management Act 1991 (RMA) to exercise the power to issue notices of requirement and put designations over land. Requiring authorities and the use of designations is a means for infrastructure providers to easily build and operate their network infrastructure.

A requiring authority is normally a Minister of the Crown, a council, or network utility operator (an owner or operator of rail, roading, electricity, water, sewerage, drainage or gas networks, the operator of an airport, or the operator of a radio or telecommunications facility). To avoid the need for the UDA to go through the process of applying for requiring authority status, the definition of a requiring authority under the RMA will need to be amended to include the UDA.

The powers of a requiring authority

Requirements and designations

A requiring authority has the ability to issue a notice of requirement to impose a designation over land, whether it owns that land or not.

A notice of requirement is a notice lodged with the relevant local territorial authority by the requiring authority stating that the requiring authority wishes to put a designation over an area of land. Once lodged, the notice of requirement then goes through a process of public notification (and hearings, if required), after which, if confirmed, it is called a designation. Decisions on notices of requirement can be appealed to the Environment Court.

A notice of requirement has an interim effect similar to a confirmed designation in so far that it stops land being put to a use that would frustrate the requiring authority's development.

The effect of a designation

The effect of a designation is to:

a. Bypass the need for certain types of land use consent under the RMA- provided the work being undertaken is consistent with the purpose of the designation and the outline plan and conditions to which the designation may be subject;

b. Prevent any person, including the owner of land, from doing anything about the land that would prevent or hinder the project or work of the requiring authority unless permission has first been obtained from the requiring authority; and

c. Enable to the requiring authority to access the powers in the Public Works Act 1981 to compulsorily acquire the land that is subject to the requirement or designation.