

[HOUSING AND] URBAN DEVELOPMENT AUTHORITIES: UDA – HUDA – MHUD – DUD? Monsters, robots, friends, or foe?

A discussion document and issues paper, May 2019

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Introduction:

In 2017 the National-led coalition consulted on Urban Development Authority (UDA) options and legislation, a process covered in the following paper from Jade Kake.

The change of government later that year may have suggested a new approach to UDAs could be on the cards, as both major parties promised to use a UDA framework to deliver big-scale state-led housing development during the election campaign. It appears the current government have relied in a democratic and procedural sense on the earlier consultation and whether a UDA would look and operate differently under different governments may be the wrong question.

Urban Development Authorities are after all essentially a practical move to remove some major barriers to scaled-up development and generate development momentum. They rely on re-organising and bringing together a specific set of public sector powers (like consenting and acquisition), but for the most part avoid the creation of new powers: on the face of it efficient and not too controversial.

So the UDA is kind of like re-organising deck-chairs, and maybe the right question is whether they're on the Titanic, or maybe on a similarly state-of-the-art and ambitious-for-its-time waka, but one which targets its destination in a more prudent fashion, even if accused of taking too long to get there.

We need a solution to our housing outcomes. The UDA is the key move and we need to monitor how it will address the heart of our housing crisis, whether it will reflect a post-settlement maturity in iwi/Crown relationships, and how it will deliver outcomes for Māori whānau that are desperately needed.

This paper surveys much of what we know right now about the government approach to Urban Development Authority legislation. We know the NZ Inc. version will align with the new 'Housing and Urban Development' Ministry – a *Housing and Urban Development Authority*. This paper identifies some of the [H]UDA's political and policy underpinnings, scope and purpose, which lie across a range of cabinet papers and aspirations – both of government and community.

Discussion document:

[This paper is contributed by Jade Kake, an architectural designer, writer/researcher, and housing and papakāinga practitioner and advocate.](#)

Under the previous government, a proposal to establish urban development authorities to fast-track development and tackle complex urban regeneration projects was put out for public consultation. The discussion document proposed to grant these new urban development authorities a range of enabling powers, currently housed within various parts of government, to be consolidated within an entity or entities. These included the power to compulsorily acquire land, to consolidate Crown land holdings, to override the Resource Management Act, to override the district plan, to become the consenting authority (provided the urban development authority was not also the developer), and to develop new (or reroute existing) infrastructure.

In the 2017 proposal, iwi were relegated to the role of a potential development entity, and there was a worrying lack of provision for existing resource management arrangements (including those established through the Resource Management Act and bespoke Treaty settlement legislation), and

the historical use and misuse of the Public Works Act in relation to whenua Māori. Submissions were received from various Māori individuals and organisations seeking to increase Māori participation within the urban development authority structure (including co-governance), and to include appropriate safeguards to ensure Treaty rights (including rights of first refusal), resource management and environmental protection roles would not be undermined by any future urban development authority legislation.

The proposal included options to separate the urban development authority (or authorities) from the development entity, and at the time I questioned whether iwi or other Māori entities might be able to become an urban development authority, or the development entity, or both. As the proposal has not yet progressed to legislation, I could see many potential opportunities for positive Māori input, and for Māori rights and interests to be appropriately enshrined within the legislation. It was my view, then and now, that if a leading role for Māori were to be established at every level, this mechanism would be in a unique position to repair our broken housing system, particularly in areas like Auckland. During the 2017 election, the introduction of urban development authorities seemed certain, with both major parties promising to introduce urban development authority legislation if elected.

Fast-forward to December 2017, and the first of a series of cabinet papers – entitled Establishing the Housing Commission and Legislating to Empower Complex Urban Development Projects – was introduced to cabinet. This was followed by a paper on Legislating to Empower Complex Urban Development Projects in May 2018, two papers detailing the proposed powers to be granted through the proposed legislation in August 2018, and two further papers in November 2018 – one seeking Cabinet approval to proceed with Establishing the national urban development authority and a companion paper detailing Urban development legislation: Māori interests and Māori Crown relationships. All cabinet papers were released proactively to the public in November 2018.

The Establishing the national urban development authority cabinet paper provides a high-level summary of the urban development authority proposal. Under the proposal, a single national urban development authority will be established as a Crown entity (a government-owned company, regulated under the Crown Entities Act 2004). It's important to note that more locally or project-focussed sub-entities can be established as subsidiaries of the national urban development authority, with their own governance arrangements. Additionally, the Crown Entities Act includes provisions to delegate functions and powers to another entity (including iwi).

The new entity will have four core urban development functions – initiating/commissioning projects, delivering development projects, exercising statutory powers, and delivering programmes – and will consolidate Housing New Zealand, HLC, and the Kiwibuild unit into a single entity. To effectively undertake its development function, the authority will have access to a range of existing statutory functions, including shortened planning and consenting processes, building, charging and funding infrastructure, consolidating Crown land holdings and compulsorily acquiring land, and reconfiguring reserves.

The entity will operate at arm's length from the Minister of Housing and Urban Development, who will instruct the urban development authority through government policy statements, statements of intent, and letters of expectation. One exception to this is complex development projects – on these projects, the urban development authority will work more closely with the Minister, who will make the final decision on the development plan for complex urban development projects.

One aspect of the proposal that could be strengthened is governance of the urban development authority and any subsidiary boards. The cabinet paper recommends that the new entity must

consider the range of options available to involve territorial authorities and Māori, and consider appropriate delegations as a legislative requirement (including representation on subsidiary boards). There are some options here – representation on the urban development authority governance board, representation on subsidiary project boards (wholly- or majority-owned by government), as an independent entity with functions and powers delegated by the urban development authority, and as a development entity for projects.

The proposal alludes to the need for Māori representation on the urban development authority board to represent Māori as key stakeholders, but does not (yet) require it. Territorial authorities (local government) and Māori entities are not considered equally in the proposal, with the paper stipulating that the bill “will provide for the right of territorial authorities to appoint a minimum of one of the members of a committee or wholly-owned subsidiary for consideration for appointment,” and “will include provisions requiring the new entity to take into account the desirability of partnership, and the involvement of territorial authorities and Māori, in urban development projects.”

The Māori interests and Māori Crown relationships paper sets out the requirement that the urban development authority must take into account the principles of the Treaty of Waitangi. The paper is exceedingly thorough, and carefully considers the retention of existing provisions for participation established through the RMA and bespoke Treaty settlement legislation, protection Māori land under Te Ture Whenua Māori Act 1993 and treaty settlement land from compulsory acquisition. The proposal is also careful not to undercut any existing right of first refusal provision, (including the development protocol with the Tāmaki Collective), and to retain provisions to offer back public land (that was Māori land when it was acquired) to the original owners. Overall, the proposal has carefully considered all facets of the potential interactions between the new urban development authority legislation, Te Ture Whenua Māori Act 1993 (and other legislation pertaining to Māori land), the Local Government Act 2002, the Resource Management Act 1991, and bespoke Treaty settlement legislation.

The paper includes significant provisions to ensure the new urban development authority meets its Treaty obligations, with the aim of providing for full and meaningful engagement with Māori at all stages of development. The proposal envisions active partnership; Māori (including iwi, hapū, post-settlement governance authorities, Māori land trust and incorporations, and urban Māori authorities) are required to be consulted at pre-establishment, project initiation, and proposal development stage. The paper also takes into account and acknowledges that Māori decision-making processes may not always align with project timelines – and that these processes must be accommodated irrespective of that.

There is a high degree of accountability built into the process, and checks at balances every step of the way. Before a project can proceed, the development plan must demonstrate the ways in which the principles of the Treaty have been taken into account, and that the provisions of Te Ture Whenua Māori Act have not been overridden. The proposal must then be approved by both the Minister for Māori-Crown Relations, and the Minister for Māori Development. This could be strengthened through specific reference to Te Tiriti o Waitangi – which has been recognised by the Waitangi Tribunal as the authoritative document – rather than the English language version of the text.

The Kāinga Strategic Action Plan proposes a specific Māori urban development authority for Tāmaki Makaurau, a move which is currently not supported by the Ministry of Housing and Urban Development (on the proviso that the goals and aspirations underpinning a Māori urban development authority could be accommodated within the government’s proposed structure). The

best way, in my view, to progress the proposal for a Māori urban development authority for Tāmaki Makaurau is to establish a purpose-built Māori or iwi-led entity, and to seek delegation of powers from the national Housing and Urban Development Authority (the government's current working title for the new entity) on projects within a defined geographic scope. Alternatively, significant iwi and Māori representation (ideally 50% in the spirit of Treaty partnership) could be sought on any Auckland-focussed subsidiary of the national Housing and Urban Development Authority. This could be advocated for by the Independent Māori Statutory Board.

So where to next? The government has signalled that the legislation will be drafted and introduced in mid-2019. It is expected that public submissions will be invited through a full select committee process.