



THE ASSOCIATION FOR RESOURCE MANAGEMENT PRACTITIONERS

Te Kahui Ture Taiao

URBAN DEVELOPMENT AUTHORITIES DISCUSSION DOCUMENT

**TO: Construction and Housing Markets, BRM
Ministry of Business, Innovation and Employment**
UDAConsult@mbie.govt.nz

Submission on behalf of the Resource Management Law Association of New Zealand Inc

Introduction

- 1 This Submission regarding the Urban Development Authorities (**UDA**) discussion document (**discussion document**) is made by the Resource Management Law Association of New Zealand Inc (**RMLA**).
- 2 The RMLA is concerned to promote within New Zealand:
 - a An understanding of Resource Management Law and its interpretation in a multi-disciplinary framework;
 - b Excellence in resource management policy and practice;
 - c Resource management processes which are legally sound, effective and efficient and which produce high quality environmental outcomes.
- 3 The RMLA has a mixed membership. Members include lawyers, planners, judges, environmental consultants, environmental engineers, local authority officers and councillors, central government policy analysts, industry representatives and others. Currently the Association has some 1,100 plus members. Within such an organisation there are inevitably a divergent range of interests in views of members.

- 4 While the membership has been consulted in preparing this submission, it is not possible for the RMLA to form a single universally accepted view on the proposed UDA legislation. It should also be noted that a number of members may be providing their own individual feedback and those may represent quite different approaches to the views expressed here.
- 5 For these reasons, this submission does not seek to advance any particular policy position in relation to the proposed UDA legislation, but rather is kept at a reasonably high level and is made with a view to ensuring that the proposed UDA legislation:
- a is consistent with the general framework of existing laws and policies of relevance, and the Resource Management Act 1991 (“**RMA**”);
 - b is practicable and workable; and
 - c will assist in promoting best practice.

SUBMISSION

Defining 'urban'

- 6 **Specific Matter:** The proposed legislation will support urban development wherever this may be including in Greenfield areas at or beyond the edge of an existing built up area. At this stage, the Government is not proposing to define the terms 'urban' and 'rural' in the proposed legislation.

[Proposal 12]

- 7 **Submission:** There is potential for uncertainty if the words 'urban' and 'rural' are not defined in the proposed legislation. For example, does the definition of 'urban' relate to 'future urban' zoned land or can it be defined in some other way? How close to an existing urban area must the development be before it will qualify? Lack of clarity could lead to increased cost for local government and applicants in assessing appropriate locations for development to occur on an ad hoc basis, and in unnecessary litigation in determining disputes over where development can take place.
- 8 **Recommendation:** Define 'urban' and 'rural' in a manner that clearly demonstrates where the proposed legislation will apply.
- 9 An example of how the rural/urban distinction has been applied can be found in the Auckland Unitary Plan Operative in Part (**Unitary Plan**). The Unitary Plan Rural Urban Boundary identifies (on the relevant planning maps) land potentially suitable for urban development. A similar line could be used to determine where urban development could take place under the proposed legislation. Alternatively, the distinction could be drawn based on the zoning under the district plan that applies to the area. For example,

the legislation may apply only to land that is zoned 'future urban' or similar under the existing plan.

Nature and scale of proposal to which UDA power may be applied

- 10 **Specific Matter:** The purpose of the proposed legislation is to better enable urban development at a large scale. It will apply to nationally or locally significant development projects that are complex or strategically important. However, the discussion document does not specify how large scale a development must be before it would qualify, or whether, for example, there must be a public interest or public benefit aspect to the proposal to be able to meet the threshold for qualification under the proposed legislation. It is also unclear from the discussion document whether the proposed legislation will define the term "nationally or locally significant development project".

[Proposals 1, 2, 17, 18, 19, 20 and 21]

- 11 **Submission:** The Government has sought feedback on whether it would be desirable to include criteria in the proposed legislation to govern its application and prevent inappropriate use.
- 12 The RMLA agrees that a set of criteria should be included in the legislation that require decision makers to take into account a range of matters when assessing whether UDA powers should be applied to a particular project. While a principles-based set of criteria would be preferred by the Government, the RMLA considers that there would also be value in including some prescriptive criteria to clarify more precisely what types of projects will qualify under the proposed legislation. One example would be to include a minimum project area to provide an indication of the scale a project must be before it can qualify. Another example would be to include thresholds regarding the number of dwellings that would be provided.
- 13 The RMLA acknowledges the point made in the discussion document that different thresholds may need to be applied to different areas. The National Policy Statement on Urban Development Capacity distinguishes between different sized urban areas in terms of what they are required to do to progress urban development. It would be possible for the proposed legislation to make similar distinctions in terms of what is required for a development to qualify based on the population size of the urban area in question.
- 14 **Recommendation:** Clarify whether a proposal must be of a specific scale or significance before the proposed legislation will be applied. This should include defining what kinds of developments will qualify as a "nationally or locally significant urban development project".

Minimum requirements for a UDA proposal

- 15 **Specific Matter:** A development project will be initiated by central government, territorial authorities, or through an approach to the government from the private sector. If either central government or territorial authorities see "sufficient promise" in a proposal, an initial assessment of the project's potential will then be undertaken to determine whether the project should be progressed further.

[Proposals 22-24]

- 16 **Submission:** The discussion document does not specify how central or local government will evaluate an approach/application to establish whether a project has "sufficient promise" to qualify for an initial assessment. Further detail should be provided in the legislation as to how a project will be assessed to determine whether it has sufficient promise to move on to the initial assessment stage.
- 17 The discussion document also does not specify how an approach/application would be made to apply for such an initial evaluation to be undertaken, and what minimum requirements an application must have to determine whether it qualifies for an initial assessment (for example, whether a business case or spatial plan is required).
- 18 The RMLA submits that it would be desirable for the legislation to set some criteria around what information will need to be provided at the stage of the initial approach. This would ensure that the applications that are made are reasonably robust, and would also provide some certainty for applicants to be able to understand what information must be provided in support of their applications.
- 19 **Recommendation:** The legislation should specify how an application is made and the information to be included in the initial UDA proposal. This would ensure that an application meets minimum standards before it is submitted, and would save time and costs at the initial evaluation stage. One way in which this could be achieved would be to include a standard application form template in the legislation with specifics of what supporting documents are required.
- 20 The discussion document sets out (pages 26-27) a range of issues that would be addressed at the stage of the initial assessment of the proposal. Potentially, this list could be used to form the basis of an application form for the establishment stage of a project.

Definition of the UDA vehicle

- 21 **Specific Matter:** The proposal specifies that entities that are publicly controlled and willing to take on the role can be UDAs. This includes existing entities such as government departments and local authorities. The legislation will also provide for a new form of statutory entity to be established as a UDA.

Little detail is provided in the discussion document as to the structural and governance requirements that an entity must have to be a UDA or how the new type of entities proposed will be created. There is also little detail provided as to what entities will be able to become lead development entities and how such an entity must be structured.

[Proposals 56-61 and 67]

- 22 **Submission:** The RMLA submits that further detail should be provided in the legislation setting out the minimum requirements that proposed UDAs and lead development entities must meet before they can qualify under the legislation. This will help to ensure that the organisations that are chosen to fulfil the role of a UDA or lead development entity meet minimum standards.
- 23 **Recommendation:** Adopt a more refined set of criteria around which public entities may become UDAs, what entities may become lead development entities, and the structures that those entities must have in place. Such detail may include specific skills and knowledge the board of directors of a UDA (and/or lead development entity) must have, the size of the board, and an assessment of the track record of existing entities (eg past success or failure in similar projects).

Public participation

- 24 **Specific Matter:** The discussion document provides for the development of large-scale urban projects, with limited rights of public participation and very limited appeal rights. Public consultation will take place at the initial stage of establishing the UDA and when preparing a development plan for the proposed development area. Consultation with the public is largely by way of written submissions and without a formal hearing.

[Proposals 26-30, 33, 37-38, 41-46, 54, 108 and 109]

- 25 **Submission:** At the project establishment stage, the only way for many members of the public to be involved in the process is by way of written submission. However, the discussion document provides no clarity as to the weight that such submissions will be given in the process (Proposal 30 states that "amendments can be made to the proposal in light of feedback") and there is no right for the submitter to attend a public hearing to present their submission and call supporting evidence. As the proposal currently stands, by the end of the establishment stage, the development project, the area for the development project, the strategic objectives, the development powers, the UDA, the lead development entity and any conditions on the use of development powers will be set. This stage of the process essentially forms the foundation for the project in a setting where there is little opportunity for public participation and no rights of appeal.
- 26 The RMLA submits that a requirement to simply consult and consider submissions without any need for a formal hearing is inadequate given:

- (a) The likely scale of the proposals in question;

- (b) The ability to override the existing planning framework (discussed further below); and
 - (c) The potential adverse effects that proposals of the type and scale contemplated by the proposed legislation may have.
- 27 At the development plan stage public participation is also largely by way of written submissions (as for the establishment stage, Proposal 39 states that the UDA can amend the plan in response to submissions). Submissions objecting to a development plan must be referred to independent commissioners for review, but there is no hearing before the commissioners unless they request further information, in which case an informal hearing may be held. There is no right to appeal to the Environment Court on the merits.
- 28 Most consent applications will be non-notified, and there is no appeal on the merits against a consent decision. For activities included in the development plan, an applicant for consent may appeal consent conditions, but there is no right of appeal for third parties. Both applicants and third parties may seek judicial review. For activities not expressly included in the development plan, an applicant and third parties will have rights to appeal to the Environment Court.
- 29 The development plan may also provide for activities that can "automatically proceed" without the need for development consent (equivalent to a permitted activity), which would have no rights of submission or public input.
- 30 The RMLA is concerned that the limitations on public participation under the current UDA proposal erodes access to environmental justice to an unacceptable level. Public feedback often results in better quality plans that meet the needs of local communities. The lack of participation of both the public and the Courts is likely to reduce the quality of assessment of projects of significance at a local, regional or possibly national scale and could result in disenfranchised local communities.
- 31 **Recommendation:** The RMLA considers that it is of critical importance that increased opportunities for public participation are included in the proposed legislation, including public notification and a call for submissions, rights to be heard before independent decisions makers (including calling of evidence) at a public hearing, a formal written decision, and rights of appeal to the Environment Court. This is particularly so in relation to the establishment stages of the project but arguably also in relation to the development plan stage. A similar process should also apply to the development consent process (including a process for submissions and a hearing).
- 32 For circumstances where a fast track process is required, it would be possible to include provisions in the legislation enabling a development proposal or consent application to be directly referred to the Environment Court, or alternatively to an independent hearing panel (like the Auckland Unitary Plan Independent Hearings Panel) or a board of inquiry. Guidance could be provided in the legislation to ensure that appropriate

timeframes are set which would balance the needs to adequately consult with the community with the need to advance significant development proposals in a timely manner.

Powers to override planning framework

- 33 **Specific Matter:** The development plan for an urban development may override all or part of existing and proposed district and regional plans, including Regional Policy Statements (**RPS**). A UDA would also be able to be granted the planning and consenting powers of a regional council and territorial authority.
- 34 Decision makers (whether they be the UDA, territorial authority or a regional council) must, when making planning and land use regulation decisions, have regard to the strategic objectives of the proposal first, then consider Part 2 matters, and finally consider the other matters listed in sections 66 and 74 or 104-107 of the RMA.
- 35 The consent authority for the development project area (whether it be the UDA, territorial authority or a regional council) must, when making decisions on development consents under the development plan, have regard to, first, the strategic objectives of the development project, second, the matters in Part 2, and third relevant matters in section 104-107 of the RMA.
- 36 There are also significantly reduced processing timeframes for development consents, with decisions on non-notified consents being made within 15 working days of receipt. Such short timeframes are unlikely to be conducive to thorough consideration of the issues, which may give rise to poor decision making.

[Proposals 97-109]

- 37 **Submission:** The RMLA is concerned that these proposals give the Government extremely broad powers to override statutory plans which have involved extensive community consultation (in accordance with Schedule 1 of the RMA), in favour of provisions formulated in circumstances where the public has had limited opportunities for public participation, and with limited rights of appeal. This is particularly concerning given that the development plan is given precedence over the provisions of Part 2 of the RMA in the context of decision making.
- 38 Given that the strategic objectives of the development project will be the primary consideration for decision makers in the development area, it will be important that the public have the ability to contribute to the processes for establishing a development project in a meaningful way.
- 39 Another factor that should be considered is how the implementation of the UDA process will affect existing planning processes, particularly in circumstances where a plan change process is presently well advanced or has recently been completed.

- 40 **Recommendation:** Increased opportunities for public participation at the establishment (and arguably the development plan) stage is essential, including public notification and a call for submissions, public hearings before independent decision makers (including rights to call evidence), a formal written decision, and rights of appeal to the Courts.
- 41 It would also be appropriate to set time limits for how soon after a plan change has taken place that a development plan may be implemented to prevent a situation occurring where parties to plan change processes have committed significant amounts of time and money to that process, only to have the relevant provisions overturned soon after. It may also be appropriate to set out a process to clarify application of the legislation to properties in the development area where a property owner has already sought resource consent, or is in the process of developing the land under the existing planning framework.



Signature of Maree Baker-Galloway, President, RMLA on behalf of the Resource Management Law Association

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Address for Service: RMLA, PO Box 89187, Torbay, Auckland 0742

Telephone: 027 272 3960

Email: karol.helmink@rmla.org.nz

Contact Person: Karol Helmink