

Submission by



to the

**Ministry of Business, Innovation and Employment
(MBIE)**

on the

Urban Development Authorities Discussion Document

May 2017

URBAN DEVELOPMENT AUTHORITIES DISCUSSION DOCUMENT SUBMISSION BY BUSINESSNZ¹

1.0 EXECUTIVE SUMMARY

- 1.1 BusinessNZ supports moves to free up more land for urban development but has concerns that Urban Development Authorities (UDA) will not adequately achieve the objective of ensuring land supply for housing and business development reflects changing market demands over time.
- 1.2 The aim of UDAs, as advocated in the Discussion Document, is to better enable urban development “at scale” by allowing central government and territorial authorities to access more enabling development powers and modify land-use rules.
- 1.3 Effectively, district plans can be ignored or rewritten and land compulsorily acquired for the approved projects which can then be passed to private developers for implementation and eventual on-sale.
- 1.4 The fact that UDAs are being considered calls into question the role of planning itself. Problems with undersupply of housing and business development in some areas, notably Auckland, stem from overly restrictive planning.
- 1.5 As long as developers pay the economic and environmental costs of associated infrastructure, development should be allowed wherever businesses and homeowners choose to build.
- 1.6 A more direct and urgent approach to planning reform is required as consistently advocated by BusinessNZ² and the wider family, not the replacement of one failed planning system with an even more ad hoc and uncertain regime, with significant powers and oversight by a single Minister. Arguably, the suggested approach could be seen as a hybrid form of central planning where central government and/or a territorial authority can propose an urban development project but both must agree on whether to progress it after an initial assessment.

¹ Background information on BusinessNZ is attached as Appendix 1.

² See for example BusinessNZ's submission to the Local Government and Environment Select Committee on the Resource Legislation Amendment Bill (March 2016) and BusinessNZ's submission to the NZ Productivity Commission on Better Urban Planning (October 2016) which covers these issues in some depth.

3.0 DISCUSSION

- 3.1 BusinessNZ welcomes the opportunity to comment on the *Urban Development Authorities Discussion Document* (“the Discussion Document”).
- 3.2 BusinessNZ supports moves encourage urban development but is concerned that the proposed UDA solution would lead to ad hoc decision-making and development uncertainty.
- 3.3 We are concerned that the Discussion Document is proposing new legislation that will, in effect, be a further tinkering with the Resource Management Act (RMA) and planning processes. We agree with the comments made by the Productivity Commission in its final report on Better Urban Planning (March 2017) and by the Prime Minister, at the time of the release of this report, that the time has come to stop tinkering with the RMA and that we should be working to develop a new law to replace the RMA that is more fit for purpose.
- 3.4 The novelty of the proposed UDAs will likely see one form of planning complexity and uncertainty replaced with another, for no substantive net gain. We believe the risk of unintended outcomes is high. For example, existing plans and consents allows for the operation of major infrastructure, such as ports. Any potential for UDAs to alter existing plans and consents in such a way as they might interfere with port operations or increase the risk of “reverse sensitivities” would be problematic.
- 3.5 For many years there has been a clear case of regulatory planning failure resulting in cost escalation and the rapid decoupling of land values inside and outside metropolitan urban limits.
- 3.6 The shortage of appropriately zoned and serviced land for both residential and business development has been decades in the making; it is not necessarily the result of current council activity but of successive councils using the 25-year-old Resource Management Act (RMA) in a way contrary to that intended. It was to have been enabling. Instead it has proved restrictive.
- 3.7 The real problem is that as long as planners constrain land supply and development, NZ will fail to achieve its growth potential.
- 3.8 As a general principle, individuals and companies should bear the full cost of their behaviour (i.e. costs should be internalised). Over-consumption of resources is always likely if the cost can be shifted on to third parties. Management of land use - and risk – is no different. If individuals and companies are to make rational decisions about land use, they should ideally

bear the cost (and benefits) associated with specific options/outcomes. If, on the other hand, individuals and companies are forced to pay a greater amount than any cost they impose, the outcome will either be a more expensive product and/or reduced commercial activity, with associated flow-on implications for employment etc.

- 3.9 If individuals are reasonably informed about known and potential risks, BusinessNZ considers they should be free to go about their lawful business. This can, for example, include developing housing on potentially flood-prone land provided any potential impacts on third parties are effectively mitigated.
- 3.10 As long as developers pay the economic and environmental costs of associated infrastructure, development should be allowed where businesses and owners choose to build. Under current planning, regulation is increasingly likely to restrict or control land use.
- 3.11 Given that land users largely internalise the costs and benefits of land use, the case for controls is weak, and will, as outlined above, have unintended consequences, particularly by adding to the cost of land and housing. This increased cost will ultimately be reflected in reduced economic growth, not to mention reduced housing affordability, with associated poverty implications.

“The major obstacle here is the combination of the Resource Management Act 1991 and the Local Government Act 2002. These give the planners effective power to decide how and where we should live, as opposed to what one might have thought the role of local authorities would be which is to provide us with services where and when we want them. Councils impose metropolitan urban limits and intensification of buildings while it is clear that what buyers want is larger houses and a suburban lifestyle. The council policies also drive prices up and make it harder for first time buyers to get onto the property ladder, reinforcing the divide between those who already have and those who do not.”³

- 3.12 Given the above considerations, BusinessNZ also believes greater consideration should be given to paying compensation for loss of property rights and regulatory takings to ensure local and central government take better account of the effects of unnecessarily restricting the use of property and associated land development.
- 3.13 Investors too must have confidence that any assets they purchase or improve upon will be safe from confiscation and unreasonable restrictions or alternatively, that they will be compensated for any erosion of property rights. Otherwise, there will be limited incentive for anyone to undertake long-term investment.

³ Child poverty and inequality - The New Zealand Law Journal (November 2014)

- 3.14 Property developers who see themselves as at the mercy of the territorial authority, with little guarantee of long term security in their investment, will have little incentive to invest. And territorial authorities will have little incentive to fully investigate housing affordability options; confiscating developers' land and money is an easy option. The proposed UDAs would effectively allow Councils to ride rough-shod over established property rights although payments under the current Public Works will be required for land obtained by a UDA.
- 3.15 It is a long-held view that regulatory takings should not be legislatively condoned; an acknowledgment of the right to compensation is at the core of property rights with a general presumption that these should not be diminished without compensation. BusinessNZ considers the payment of compensation to be a vital check and balance for the economic system.
- 3.16 The need to compensate for regulatory takings is hardly a new or novel concept in public policy terms. Over recent years the Crown, in the process of regulating private property rights in the public interest, *has* provided compensation, most notably in the areas of carbon emissions and fisheries management.
- 3.17 The compensation principle recognises that local democracy and the ability for local communities to make relevant choices are important but not costless.
- 3.18 If local authorities had to provide compensation for regulatory takings BusinessNZ would expect them to take more care when regulating private interests in the public interest. One or two initial test cases would then very likely show the need for regulatory takings as low.
- 3.19 BusinessNZ recognises that in some cases, the transaction costs involved in determining the winners and losers in a regulatory taking might be disproportionately high, making the payment of compensation impractical. This possibility reinforces the importance of having both a sound process (including robust decision making requirements) and appeal rights.

APPENDIX 1

Background information on BusinessNZ

BusinessNZ is New Zealand's largest business advocacy body, representing:

- Regional business groups [EMA](#), [Business Central](#), [Canterbury Employers' Chamber of Commerce](#), and [Employers Otago Southland](#)
- [Major Companies Group](#) of New Zealand's largest businesses
- [Gold Group](#) of medium sized businesses
- [Affiliated Industries Group](#) of national industry associations
- [ExportNZ](#) representing New Zealand exporting enterprises
- [ManufacturingNZ](#) representing New Zealand manufacturing enterprises
- [Sustainable Business Council](#) of enterprises leading sustainable business practice
- [BusinessNZ Energy Council](#) of enterprises leading sustainable energy production and use
- [Buy NZ Made](#) representing producers, retailers and consumers of New Zealand-made goods

BusinessNZ is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

In addition to advocacy and services for enterprise, BusinessNZ contributes to Government, tripartite working parties and international bodies including the International Labour Organisation ([ILO](#)), the International Organisation of Employers ([IOE](#)) and the Business and Industry Advisory Council ([BIAC](#)) to the Organisation for Economic Cooperation and Development ([OECD](#)).