



Submission to the
Environment Committee

Urban Development Bill

February 2020

Introduction

1. Tauranga City Council (TCC) welcomes the opportunity to submit on the Urban Development Bill.
2. We are happy to discuss our submission further with you or provide additional information and evidence that would be of assistance. Enquires should be directed to:

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3. This part of the submission focusses on higher-level issues with the Bill. We have also included an attachment in Appendix A seeking out in general terms amendments to the Bill which are sought by TCC. The appendix provides greater detail.

TCC supports in principle the general aims of the Bill

4. TCC supports the general intent of the Bill as a major step in helping to facilitate urban development. TCC welcomes legislation that provides a new streamlined process designed to allow urban growth to be planned and delivered “at scale and pace”, using a single coordinated procedure.
5. In particular, TCC supports a framework with a broad set of solutions, especially around planning, infrastructure funding, financing and delivery. Presently TCC faces substantial fiscal challenges in the funding and financing of infrastructure to support growth. In simple terms, if infrastructure cannot be funded and financed appropriately it will not be delivered and development capacity will not be realised.
6. As with other high-growth councils around New Zealand, TCC has also struggled to respond effectively to growth pressures under the current planning system. TCC therefore generally supports change that aims to facilitate quality urban growth which would in turn alleviate some of the problems felt in Tauranga City and many other urban areas of New Zealand – housing unaffordability, housing capacity, homelessness, congestion and poor transport choice.
7. Providing a new vehicle for addressing these problems (thereby contributing positively to people’s wellbeing) would align well with TCC’s strategic objectives for urban growth that are being developed through measures such as SmartGrowth, the Urban Form and Transport Initiative (refer to discussion below), the Te Papa Spatial Plan for intensification and a range of other projects.
8. However, to ensure the best possible outcomes for its district, TCC seeks changes to the Bill to:
 - Improve the utility as a vehicle *directly* available to councils to achieve their urban growth objectives and requirements; and to
 - Ensure that development under the Bill occurs in a manner which is appropriate and integrates with the exercise of its wider functions, duties and powers

9. As such, TCC's overall concerns with the Bill are:
- a) The Bill potentially offering a vehicle to deliver urban growth at "scale and pace". In this regard the Bill makes streamlined processes available to Kāinga Ora in relation to developments which Kāinga Ora initiates, facilitates or undertakes. However, there is no provision for local authorities to have direct access to these processes, or lead the project assessment process or prepare a development plan (which is the key document for the exercise of powers under the Bill – encompassing both RMA and non-RMA tools for planning, funding and delivering specified development projects), and in regard to process the Council's role appears to be one more of a stakeholder, rather than true partner.
 - b) The extensive powers which the Bill proposes to confer on Kāinga Ora, which the Council may potentially be affected by in a number of different capacities. It is however noted that opportunity is provided for within the Bill to delegate many of the functions of Kāinga Ora to a local authority.
 - c) The Bill's overall stance of "development at any cost" – where there is in fact a need to ensure that development under the Bill occurs in a manner which is appropriate and integrates with the exercise of its wider functions, duties and powers (and Council's overall strategic and implementation functions).
 - d) The impact of a specified development project on the exercise of the Council's wider functions and duties and powers. In this regard Councils are insufficiently protected or provided for in relation to many aspects of the specified development project process which will directly impact on them - in particular:
 - The lack of a specified development project needing to align with a Council's adopted settlement strategy (i.e for the Bay of Plenty Sub region, the SmartGrowth Strategy), Future Development Strategy, 30-year infrastructure long term plan, relevant growth policies and Council investment in infrastructure through the Long Term Plan;
 - the automatic vesting of Kāinga Ora-built infrastructure (which may not be designed in accordance with TCC's infrastructure development code);
 - obligations relating to targeted rates (which TCC may need to collect on behalf of Kāinga Ora)
 - development contributions levied by Kāinga Ora and what Kāinga Ora DC policy should include (i.e it is not clear whether Kāinga Ora must adhere to the Tauranga Development Contribution policy in setting up a development project).
 - the ability to influence or direct council bylaws.
 - e) The tool kit of powers afforded to Kāinga Ora may not be complete in regard to enabling the delivery of urban development, based upon TCC's experience in progressing complex planning projects;
10. Before addressing these matters (outlined further, below, or in detail in Appendix A), further context and background for TCC's submission is provided in the following sections.

Context and background

Tauranga City Council is a high-growth Council and Faces Challenges with Growth Management

11. Tauranga is the fifth-largest city in New Zealand, with over 140,000 residents. Tauranga's population is projected to grow to almost 200,000 people by 2063. This growth will occur in a constrained regional harbour landscape.
12. TCC is a high-growth Council, facing numerous challenges and competing priorities that require careful consideration and balance through the planning process. These include:
 - a) Substantial urban development pressures;
 - b) Dependence on landowners to release land for development;
 - c) Differing views about land release and development among the owners of Maori land;
 - d) A housing shortage and high housing costs;
 - e) Limited housing diversity;
 - f) Lengthy *Resource Management Act 1991* (RMA) timeframes for re-zoning potential development areas;
 - g) Significant landscape, ecological and natural hazard constraints (which are largely already mapped and understood); and,
 - h) Substantial transport issues, including dependence on the planning, funding and delivery of state highway projects.
13. Tauranga faces a housing shortfall of approximately 910 dwellings in the next three years, and, if urban intensification and greenfield urban growth are not enabled, the shortfall is projected to reach approximately 4,800 dwellings over the next 4 - 10 years¹. As such, TCC is prioritising the delivery of planning frameworks and infrastructure development programmes to support urban intensification and greenfield urban growth.
14. TCC is working to resolve growth pressures through initiatives including the following:
 - a) The '[SmartGrowth](#)' strategy, established in 2004 uses a 50-year planning horizon and promotes consideration of environmental, social, economic and cultural matters and a balanced approach to growth management across the Western Bay of Plenty sub-region. TCC has worked in conjunction with its [SmartGrowth partners](#) to plan for sustainable and coordinated urban growth such as the development of a clear settlement pattern, objectives and policies through the Bay of Plenty Regional Policy Statement for managing urban growth, including managing environmental values;
 - b) TCC is a partner in the '[Urban Form and Transport Initiative](#)' (UFTI) launched in March 2019. UFTI builds on the successes of SmartGrowth to develop a vision and plan for urban development and transport infrastructure to meet community needs into the future. UFTI aims to develop a long-term, integrated masterplan for urban development and transport that aligns with the central government's transport policy statement and urban growth agenda;
 - c) TCC is progressing structure planning and plan change projects to help resolve the short-term housing supply challenges. These being residential intensification planning projects throughout the City, greenfield growth areas for the Te Tumu (7,000 - 8,000 dwellings) and Tauriko West (3,000 dwellings) urban growth areas, and other associated work programs which will lead to future housing and business land delivery. However:

¹ Veros Property Services Ltd: *Western Bay Sub-Region Residential Development Capacity Review May 2019*.

- Progression of the Te Tumu urban growth area faces substantial risks and delays beyond TCC's control, associated with Maori land and Maori Land Court matters.
 - Advancement of the Tauriko West urban growth area depends on the development of access between the growth area and State Highway 29A. However, at the time of writing, funding is unavailable to enable the NZTA to programme these significant highway upgrades.
- d) TCC has initiated spatial planning and plan changes to further enable residential intensification (e.g. duplexes, terraced housing, apartments and other, more intensive, residential typologies) in established areas. However, urban intensification is constrained in many areas by:
- Climate change, flooding and earthquake shaking risks across most of the coastal strip from Mauao (Mount Maunganui) to Papamoa;
 - Private land covenants which prevent further subdivision and intensification in most subdivisions developed since the 1990's. Covenants constrain approximately half of the urban area of Tauranga;
 - Rear lot infill subdivision over older areas has fragmented land ownership, increased the value of capital improvements that need to be written off to enable redevelopment, and increased the complexity of assembling land to enable a reasonable scale of redevelopment;
 - The scarcity of large-scale brownfield redevelopment sites; and,
 - Economic challenges faced by the property development industry, from a funding and profitability perspective.
15. For these reasons, if Tauranga is to continue to grow it must continue to grow outwards as well as upwards.

Utility of the Bill as a vehicle to achieve urban growth at "scale and pace"

16. The Bill makes streamlined processes available to Kāinga Ora in relation to developments which Kāinga Ora initiates, facilitates or undertakes.
17. Importantly, there is no provision for local authorities to have direct access to these processes, for example by being able to initiate a project assessment (which determines entry to the processes under the Bill as a "specified development project"), or lead the project assessment process or prepare a development plan (which is the key document for the exercise of powers under the Bill – encompassing both RMA and non-RMA tools for planning, funding and delivering specified development projects).
18. The Bill provides that a specified development project should not be established unless there is "overall support" from the Council (or it is "in the national interest"), but the Council's role is otherwise largely that of a stakeholder (whom Kāinga Ora is obliged to consult at certain stages) or submitter. The explanatory notes to the Bill acknowledge "the essential role of territorial authorities" and refer to territorial authority "partnerships" with Kāinga Ora, but a true concept of "partnership" is not written into the Bill in a meaningful way. This concept should be firmly written into the Bill and brought to life by amending the procedures in the Bill to require greater territorial authority involvement.

19. Measures such as the Bill's provision for relevant territorial authorities who support a specified development project to nominate a representative to the project governance body (which is a key feature of specified development projects) are acknowledged. However, TCC considers that these measures are not enough. Further, these provisions need refinement because the role, functions and powers of the project governance body are not specified. If territorial authorities do not support a specified development project, they are shut out of project governance altogether.
20. Such limited and uncertain involvement is unsatisfactory given the potential implications of a specified development project for TCC and its communities.
21. Although many of the powers provided to Kāinga Ora under the Bill (largely implemented through the development plan) are currently available to territorial authorities under separate pieces of existing legislation, that should not be a reason to provide such limited involvement and opportunities for territorial authorities.
22. As the context and background above shows, territorial authorities such as TCC are facing significant challenges in planning for the delivery of urban development projects at "scale and pace". The processes under the Bill enable the existing powers to be exercised in a more streamlined and coordinated way than is currently available. Therefore, having access to the coordinated suite of special powers associated with specified development projects could enable territorial authorities themselves to address some of the barriers to delivery of urban growth.
23. Providing such limited involvement and opportunities for territorial authorities also overlooks that territorial authorities are particularly well placed to identify and plan for appropriate urban development projects in their districts (many are already in train or in the planning stages). These activities align with and support councils' statutory purpose of promoting the social, economic, environmental, and cultural well-being of communities.
24. In addition to the points above, there does not seem to be any obligation on Kāinga Ora to actually secure delivery of a development – either itself or through requiring someone else to do so. If Kāinga Ora is the only party with direct access to the processes under the Bill, then arguably it should be accountable to deliver specified development projects. Kāinga Ora's effective monopoly on urban development in a project area should be balanced by equivalent performance responsibilities.
25. These matters suggest that there is considerable room for improvement of the Bill as a vehicle to deliver urban growth "at scale and pace", which is the stated intention in the explanatory notes of the Bill.

Impact of specified development project on the exercise of TCC's wider functions, duties and powers

26. The powers given to Kāinga Ora (and correspondingly taken away from councils) are extensive.
27. TCC has concerns that it is insufficiently protected or provided for in relation to many aspects of the specified development project process which will directly impact on it, in particular:
 - a) the automatic vesting of Kāinga Ora-built infrastructure (which may not be designed in accordance with TCC's infrastructure development code);
 - b) obligations relating to targeted rates (which TCC may need to collect on behalf of Kāinga Ora);
 - c) development contributions levied by Kāinga Ora and what Kāinga Ora DC policy should include (i.e it is not clear whether Kāinga Ora must adhere to the Tauranga Development Contribution policy in setting up a development project);

- d) the ability to influence or direct council bylaws.
- 28. The need for Kāinga Ora to have some those powers is not clear and it is questionable whether as a non-democratically elected body it is appropriate for it to do so.
- 29. There is also a lack of clarity as to how the provisions work when Kāinga Ora is “initiating” or “facilitating” a development, rather than undertaking it itself, and when the development is not on land owned by Kāinga Ora. Clarity is important, given the considerable advantages that a specified development project may have under the Bill compared to “normal” projects progressing under the RMA and other relevant legislation.
- 30. The relevant provisions should be refined and improved to avoid adverse impacts on the exercise of TCC’s wider functions, duties and powers.

Is the tool-kit afforded to Kāinga Ora right?

- 31. While the tool-kit provided to Kāinga Ora is extensive, it appears limited to be able to tackle some of the recent development history or areas such as Tauranga. Approximately half of Tauranga’s urban area is subject to private covenants on land titles that prevent further subdivision and intensification (most subdivisions built from the 1990’s onwards). There are numerous examples of such covenants frustrating development plans, including a recent example where 200 homes are unable to be delivered because of a private covenant in favour of adjoining land.
- 32. The view of Land Information New Zealand (LINZ) (which administers the PWA) appears to be that the PWA does not provide a direct power to extinguish existing interests in land (such as leases and covenants) only to acquire interests. It may be possible to extinguish interests on acquiring the underlying land if you can show they are of no appreciable effect/value, however that is a discretionary matter for LINZ (exercised late in the process at the point where the land is taken) and for that reason introduces an unwelcome degree of uncertainty in many cases.
- 33. Kāinga Ora (or any other planning authority) should have more specific powers in this respect – which would still presumably enable compensation claims for losses suffered for the interest/s extinguished.

Changes sought

- 34. The amendments to the Bill sought by TCC are set out in the table attached as Appendix A.