APPENDIX A

REFERENCE	MATTER / ISSUE	COMMENTARY	REQUESTED AMENDMENTS
Part 1, subpart 1 – Preliminary provisions			
Clauses 3 and 6, and the Bill more generally	Uncertainty about the role of Kāinga Ora and "partners" such as territorial authorities.	The Bill provides a mechanism to streamline and consolidate processes for selected urban development projects "initiated, facilitated, or undertaken" by Kāinga Ora. These concepts are not explained in the Bill. Kāinga Ora's functions, as set out in the Kāinga Ora-Homes and Communities Act 2019[1] refer to initiating, facilitating or undertaking urban development "whether on its own account, in partnership, or on behalf of other persons". Similarly, the explanatory notes to the Bill acknowledge "the essential role of territorial authorities" and refer to territorial authority "partnerships" with Kāinga Ora. However, it is unclear exactly what level of involvement would amount to initiating and facilitating (in particular) a development by Kāinga Ora. Similarly, the role of other parties (such as territorial authorities) is unclear. Kāinga Ora is arguably empowered under the Bill to treat territorial authorities as partners should it choose to do so, but a true concept of "partnership" with territorial authorities is not written into the Bill in a meaningful way.	The concept of partnership should be firmly written into the Bill and brought to life by amending the procedures in the Bill to require greater territorial authority involvement.
Clause 3 and 6, and the Bill more generally	Insufficient consideration to how the Bill will work in practice.	Related to the above point, the Bill lacks clarity about how some of its provisions apply (or not) when Kāinga Ora is not undertaking the development itself (i.e. only initiating or facilitating it). For example, clause 165 says that Kāinga Ora is responsible for the costs of any non-roading infrastructure, but is silent on what happens if it does not construct the works itself. Clause 168 says that non-roading infrastructure constructed by Kāinga Ora vests in the territorial authority, but does not address non-roading infrastructure constructed by others. Throughout the Bill, there is in general insufficient consideration given to how it will work in practice across the full range of possible development scenarios within the Bill's statutory purpose.	Application of relevant provisions should be clarified across the full range of development scenarios, in particular where Kāinga Ora is not undertaking the development itself.

1 Section 13(1)(f).

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The Bill generally	Insufficient consideration to cross-boundary issues.	The nature of territorial boundaries is such that areas suitable for urban development may lie across boundaries, in the Tauranga context, particularly the Western Bay of Plenty and Tauranga City boundaries. Kāinga Ora's ability to plan and develop unconstrained by territorial authority boundaries will have a real bearing on its ability to realise urban growth opportunities. This should be addressed, for example, section 75(2) of the RMA requires a district plan to state the processes for dealing with issues that cross territorial authority boundaries.	The Bill should be amended to clarify and facilitate developments that cross territorial authority boundaries.
Clauses 3 and 6, and the Bill more generally	Lack of accountability for Kāinga Ora to secure delivery of specified development projects.	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. There is provision for development agreements but these provisions are empowering rather than mandatory. If Kāinga Ora is the only party with direct access to the streamlined processes under the Bill, it should be accountable to deliver specified development projects. Similarly, the trade-off for the Bill's overriding of normal processes and other development opportunities should be accountability for delivering the benefits which the Bill is designed to facilitate.	Mechanisms should be built into the Bill to ensure accountability and delivery of projects e.g. automatic "unwinding" of special development projects if a specified development project is not given effect to within a certain period of time.
Clauses 9 and 10	Definition of "urban development project" is unclear.	The concept of an urban development project, which is central to the Bill, is not adequately defined. Clause 9 says it is defined in clause 10(3), but clause 10(3) simply says what it doesn't include – namely a project that is only to develop or redevelop public housing on land owned by Kāinga Ora. The purpose of that exclusion is also unclear.	"Urban development project" should be positively defined, presumably by reference to the definition of "urban development" in clause 10(1).
Part 1, subpart 4 – Restrictions on developing certain land			
Clause 20	Limited powers in relation to certain types	Clause 20 protects certain types of land from the exercise of powers under the Bill. That includes areas such as nature and scenic reserves, Maori customary land and Maori reservations, the common marine and coastal area in some circumstances and other	The Bill should provide express opportunities for partnering with Maori land

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	of land including Maori freehold land at Te Tumu.	significant land. Certain types of Maori-related land are protected from compulsory acquisition or the exercise of powers to construct non-roading infrastructure, without the written consent of the owner of the land. This could significantly limit the utility of the Bill in a Tauranga context – where there are areas of Maori freehold land located in areas identified for urban growth, or which are required to service new urban growth areas. Ownership structures and Maori Land Court processes make it difficult or impossible to advance development proposals affecting Maori freehold land (for example by changing status to access funding), even where the trustees are supportive.	trusts to deliver much needed urban growth projects, where that is supported by the trustees of the Maori land trust in respect of the land concerned.
Part 2, subpart 1 - How specified development projects are established			
Clauses 28 to 57	Uncertainty about timeframes to establish specified development project.	Establishment of specified development projects is a key part of the new process which is intended to be a streamlined or "fast-track" option. However, there are a number of steps in the specified development project establishment process which do not have prescribed timeframes. For example, there is no statutory timeframe for completion of a project assessment and project assessment report, or for the joint Ministers to make a decision on a project assessment report. If a project assessment report is referred back to Kāinga Ora, there are no statutory timeframes for that process. Similarly, there are no statuary timeframes for progressing the establishment order or appointing hearings commissioners. The absence of such timeframes creates uncertainty as to whether the intended fast-track benefits will be realised in practice. The process may end up being not particularly "streamlined".	Statutory timeframes should be included for all steps involved in the establishment of specified development projects, with a maximum total timeframe (e.g. 4 months) from initiation to completion.
Clause 28	Project governance body – Council representative's ability to influence development	Clause 28 describes key features of a specified development project: the project objectives, project area and project governance body. When establishing a project governance body, relevant territorial authorities who support the specified development project will be invited to nominate a representative where the governance body is to be a wholly Crown-owned	Territorial authority involvement in project governance should occur in every case (not being

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	delivery and implementation is uncertain.	subsidiary or a committee appointed by Kāinga Ora: clause 284. Under clause 285, those nominees must, if suitable, be appointed. This regime effectively forces territorial authorities to "trade" their support for involvement in project governance. Kāinga Ora should be required to appoint a territorial authority nominee to every project governance body (whether or not it is a Crown-owned subsidiary or a committee). Further, the role, functions and powers of the project governance body are not specified. It is therefore uncertain what influence, if any, a territorial authority's representative would have as a member of the project governance body.	contingent on "support" for a specified development project) and the role, functions and powers of the project governance body and its constituents should be specified.
Clause 30	Entry criteria – application of the specified development project mechanism to medium and small scale projects is unclear.	Clause 30 sets out the criteria for establishing a specified development project i.e. an urban development project that is accepted for entry into the streamlined process under the Bill. The first criterion requires the joint Ministers to be satisfied that it is appropriate for the project to be established as a specified development project having regard to subpart 1 of Part 1. This includes the Bill's purpose "to facilitate urban development that contributes to sustainable, inclusive, and thriving communities". There are also principles for specified development projects which encourage efficient and effective land use and infrastructure outcomes and promote the sustainable management of natural and physical resources. The extent to which being large in scale is a prerequisite for a project to qualify as a specified development project is not clear. Arguably, medium and small scale projects could satisfy the purpose of the Bill if they make a "contribution" to sustainable, inclusive, and thriving communities. However, the applicability of the process to medium and small scale developments is of such importance that it should be expressly confirmed in the Bill. Such a process to determine applicability also would need modification to be commensurate to the size and scale of the application. Arguably, medium and small scale developments should not have to go through the full process set out to be a specified development projects.	The potential application of the specified development project mechanism to medium and small scale projects should be expressly confirmed in the Bill, and a separate process be developed to enable them to be deemed a specified development project commensurate to the size and scale of the project.

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Clause 31	Initiation of the project assessment process – territorial authorities do not have the ability to formally initiate a project assessment.	Either Kāinga Ora on its own initiative, or the joint Ministers, select an urban development project for consideration by Kāinga Ora. Kāinga Ora then proceeds with a project assessment to determine whether a specified development project should be established. It is not open to territorial authorities to formally initiate a project assessment (although this could be indirectly achieved by engaging with Kāinga Ora or the joint Ministers to encourage them to do so). This overlooks the role and function of territorial authorities to manage the use, development, or protection of land in their district. It also overlooks the local knowledge and urban growth planning already underway with territorial authorities such as this Council.	Territorial authorities should have the ability make a "project assessment request" which necessarily triggers a project assessment by Kāinga Ora.
Clauses 33 to 49	Influence and control over the project assessment process – territorial authorities do not have the ability to "lead" the project assessment process.	The role of territorial authorities in the project assessment process is that of a key stakeholder with the ability to indicate support for projects under consideration by Kāinga Ora. The absence of "overall support" by territorial authorities should preclude a project being established as a specified development project unless it is considered to be "in the national interest": clause 30(h). "Overall support" is not defined or further elaborated on in the Bill and could be an area of contention, as could the meaning of "in the national interest". Importantly, territorial authorities do not have the ability to "lead" the project assessment process. This limits the ability of territorial authorities to effectively promote urban development projects, including those which are already in the planning stages, as being suitable to progress as specified development projects.	Territorial authorities should be able to carry out "territorial authority-led" project assessments as if they were Kāinga Ora. They should have the ability to initiate and undertake their own project assessments, including stakeholder engagement, administering the public notification process and preparation of the project assessment report and recommendation for consideration by the joint Ministers. The joint Ministers would remain the final decision-maker with the ability to refer the report back to the relevant

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			territorial authority for further consideration.
Clause 34	Project assessment matters – business and residential capacity requirements are not among the matters listed.	Project assessments require identification of constraints and opportunities. Matters which must be addressed are listed in clause 34. The listed matters do not require assessment of whether establishing a specified development project increases supply of land or availability of housing to ensure an adequate supply of land for development. Such capacity requirements must be a key justification for the extensive suite of powers available to fast track specified development projects, and should therefore be established at the outset.	Project assessments should be required to justify specified development projects in terms of capacity requirements in the relevant district.
Clause 41	Project assessment report – preparation of concept plan is premature.	A project assessment report must include a concept plan that shows, generally, the layout of the land within the recommended project area after the project is delivered. However, it is unclear exactly what a concept plan entails. A concept plan precedes preparation and evaluation of the development plan. Depending on what exactly a concept plan entails, it may therefore be premature and create unhelpful expectations or concerns for submitters to the process. A plan showing the project area could, however, assist.	The requirement for a project assessment report to include a concept plan should be omitted (but a plan showing the project area could be required). If concepts plans are retained, it should be clarified exactly what they are.
Clause 57	No mandatory disestablishment date – unnecessary retention of powers by Kāinga Ora.	Clause 57 provides that Kāinga Ora *may* transfer certain assets related to a specified development project or disestablish a specified development project in accordance with the provisions set out in Schedule 2 i.e. disestablishment is discretionary. Because there is no mandatory disestablishment date, Kāinga Ora may unnecessarily retain its powers once a specified development project is complete. For example, Kāinga Ora would continue to be the road controlling authority for the project area part of the district, into the future.	That disestablishment of specified development projects be mandatory once a development is complete, to avoid unnecessary retention of powers by Kāinga Ora.
Part 2, subpart 2 – Preparation of development plans			

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Clauses to 58 to 78	Influence and control over the development plan process – territorial authorities do not have the ability to "lead" the preparation of development plans.	After the establishment date of a specified development project, Kāinga Ora must prepare a development plan for the project in accordance with subpart 2. The development plan is the core document that will determine how development will occur within a project area. It includes a structure plan, changes to existing RMA instruments, identification of protected or excluded areas, information on development powers available, funding sources and timeframes and phasing of development. Under the current legislative framework, territorial authorities face significant challenges in planning for the delivery of urban development projects at "scale and pace". These challenges include planning constraints, fragmentation of land ownership and achieving integration between land use planning and the funding and delivery of infrastructure. The development plan provides access to a suite of powers that currently exist through numerous separate pieces of legislation. The development plan process will enable these powers to be used in a more co-ordinated way than is currently open to territorial authorities under the current legislation. Having access to the co-ordinated suite of special powers associated with specified development projects would enable territorial authorities themselves to address some of the barriers to delivery of developed or "development ready" land.	Territorial authorities should be able to progress "territorial authority-led" development plans in the same way as Kāinga Ora. Accordingly, they could undertake the required consultation, prepare the draft development plan and supporting documents (i.e. evaluation report and infrastructure statement), administer the public notification and submission process and make recommendations on submissions to the IHP. The joint Ministers would remain the final decision-maker, on recommendation from the IHP.
Clauses 60, 69, 81 and 85	Substantive considerations for development plans – whether there is an appropriate balance between environmental protection and urban growth imperatives.	The statutory considerations applicable to development plans are substantially different to those which apply to plan changes under the RMA. Kāinga Ora is required to prepare a development plan that is "not inconsistent with" certain national planning instruments (clause 60) and "have regard to" certain local planning instruments and other policy documents (clause 69). It is required to prepare an evaluation report (which is similar to a section 32 report under the RMA) and an infrastructure statement describing proposed infrastructure and matters relating to its effects and delivery. In turn, the IHP must "have regard to" matters which include all the information provided by Kāinga Ora, the purpose of the Bill and principles in subpart 1 of Part 1, certain national planning instruments, certain local planning instruments and other policy documents and the project objectives. Finally,	Consideration should be given to whether the Bill reflects the appropriate balance between environmental protection and providing for urban growth.

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		the responsible Minister must "have regard to" certain national planning instruments (listed in clause 60) and certain local planning instruments and other policy documents (listed in clause 69). The overall effect of these provisions is that they are more "development friendly" than the statutory tests that would normally apply to plan changes under the RMA. For example, national and regional policy statements are to be "had regard to" rather than "given effect to", and consideration must be given to the strong development imperatives reflected in the purpose of the Bill and (most likely) the project objectives included in the establishment order for the specified development project. Similarly, the principles for specified development projects in clause 5 of the Bill provide a linkage to Part 2 of the RMA but specifically recognise that "amenity values may change". The project objectives *may* identify and seek to protect specific areas or features (clause 29) and project objectives are required to be consistent with existing national directions under the RMA (clause 30). Environmental constraints and opportunities are required to be addressed in Kāinga Ora's evaluation report in support to the proposed development plan (clause 73). Even so, there remains potential for environmental protection to be given lesser weight in decision-making.	
Clauses 62 to 66	Inclusion of non-RMA matters in development plan may inappropriately override normal processes.	The development plan may address numerous non-RMA matters which will have significant implications once the plan is operative. If something is in the development plan, then various other powers may be exercised automatically, without the rights of participation, objection or appeal which would otherwise apply. This calls into question whether the process for preparation and approval of the development plan sufficiently safeguards potentially affected rights – of the Council and the broader community. The only independent oversight of the development plan (i.e. apart from the Minister at final approval stage) is through the hearing of submissions by the IHP, but it is questionable whether the IHP is the appropriate entity to adjudicate on all of those	It should be required that these powers be exercised in partnership with councils (or at least with greater input from councils).

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		matters, and whether the Bill provides the necessary and appropriate context and guidance for such decision-making. The following issues arise in particular: *Revocation of reserve status (clause 142)* The Minister must give effect to a request to set aside (existing) "specified reserve" land for the purposes of the specified development project, if that is provided for in the development plan (clauses 142 and 143). "Setting apart as reserve" (see clause 143) in terms of clause 75(7)(a) is therefore using an existing reserve for the development, not setting aside a new reserve. This is therefore tantamount to reserve revocation. The specified reserves are recreation, historic, scenic, government purpose and local purpose reserves, and these may be ones which are vested in and/or administered by the Council. The threshold for Ministerial approval (clause 75(8)) is lower than in the Reserves Act. *Creation of new reserves (clause 144)* There does not appear to be any requirement for Ministerial approval to the creation of new reserves, at the draft development plan stage. Clause 75(7) and its requirement of prior approvals by the Minister of Conservation is limited to changes affecting existing reserves. Although the creation of the reserve must be in the approved development plan (clause 144), the Minister does not have to pre-approve under clause 75. Nor must the Council specifically approve the creation of new reserves, even though they may vest in the Council. *Construction of infrastructure on private land (clause 163)* There is no right of objection and/or appeal if works on private land are described in the development plan (as compared to if they are not, where clauses 159 to 162 apply). There is only a right of submission on the plan. The IHP presumably has jurisdiction to make recommendations on such issues – as they relate to content of the development plan – but is	

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		it appropriate for the IHP to perform this function in relation to matters affecting third party private property rights? (The process where the works are not in the development plan, and the "normal" process under s181 LGA, both involve appeals to the District Court.) Nor does the Bill contain any criteria by which to judge whether such works on private land are justified or appropriate, and therefore no statutory yardstick against which the IHP can determine a submission on the issue. *Altering other non-roading infrastructure (clause 166)* If the works are described in the development plan, other utility operators (this could be the Council) may not impose a condition on approving alteration of their utility (under the Utilities Access Act) which would prevent or unreasonably delay the project. This is a change from the normal Utilities Access Act regime and places non-roading infrastructure under the Bill in a preferential position, to the possible detriment of other infrastructure. *Bylaw changes* If a development plan sets out a proposed bylaw change, the Council must make the change as soon as practicable after the plan becomes operative (clause 181). Clause 63 (dealing with the content of development plans) requires Kāinga Ora to have carried out a similar process to the Council itself when making a bylaw e.g. s155 LGA determinations and public notice etc. Submissions on the proposed bylaw are simply part of submissions on the development plan. Is the IHP the right entity to address that?	
Clauses 69 to 88	Uncertainty about timeframes to produce development plan.	Preparation of development plans is a key part of the new process which is intended to be a streamlined or "fast-track" option. However, there are a number of steps in the development plan process which do not have prescribed timeframes. For example, there are no timeframes for preparation of a draft development plan, for Kāinga Ora to consider and make recommendations on submissions, for Kāinga Ora to advise the responsible Minister on IHP recommendations, and for the Minister's determination on a draft development plan.	Statutory timeframes should be included for all steps involved in the promulgation of development plans with a maximum total timeframe (e.g. 12 months) from initiation to completion.

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		Even if it is assumed these matters will be dealt with quickly, promulgation of a development plan could take 12-15 months, excluding High Court appeals (which are limited to points of law). The absence of statutory timeframes creates uncertainty as to whether the intended fast-track benefits will be realised in practice. In particular, the "one-size-fits-all" process could prevent smaller scale projects from progressing quickly.	Further, there should be the option for a bespoke development plan process to be included in the establishment order, similar to the streamlined planning process under Part 5 of Schedule 1 of the RMA. If appropriate to the project, steps in the process could be omitted or shortened, or the establishment order could direct a time period within which the process must be completed.
Clause 90	Relationship between development plans and planning provisions relating to high value areas.	Planning provisions relating to historic heritage prevail over a development plan unless the development plan is more stringent. It is unclear why similar treatment is not given to other "high value areas" under section 6 of the RMA, such as outstanding natural landscapes and features, significant ecological areas and significant cultural areas.	Consider whether the Bill reflects the appropriate balance between environmental protection and providing for urban growth.
Part 3, subpart 4 - Infrastructure			
Clauses 148 to 154	Unnecessarily expansive and potentially problematic roading powers conferred upon Kāinga Ora.	Kāinga Ora may be conferred roading powers through the development plan (clause 149). If conferred, these powers apply to all roads in the project area (clause 149(2)), including Council roads which may already be there. If Kāinga Ora has these powers, the territorial authority does not (clause 153). This is a model already used in Auckland (Auckland Council owns the roads and Auckland Transport controls and manages them).	There is no need for Kāinga Ora, as the developer/provider of roading infrastructure, to also operate the roads nor to have the full suite of roading powers held by a

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		The suite of roading powers is very broad – the same powers as Auckland Transport has in Auckland (apart from Auckland Transport's bylaw-making power). A major difference, however, is that Auckland Transport has a specific legislative focus on control and management of the transport system; Kāinga Ora does not and may not have expertise in that area. It is unclear why Kāinga Ora needs to be able to operate the roading system within its project area and how that satisfies the purpose of the Bill which is focused on facilitating development rather than operation of infrastructure. In comparison, Kāinga Ora is not empowered to operate non-roading infrastructure such as water supply, wastewater and drainage infrastructure (clause 146(5). The extensive roading powers which may be conferred (clause 148) include regulatory powers e.g. as an enforcement authority. There are also potential concerns about the interface between Kāinga Ora's roading function within the project area and the Council's roading function outside it. It is difficult to see why this dual operator scenario is necessary, and how it will work in practice i.e. at the boundary of the project area, "jurisdiction" (see clause 151(a)) will shift from Kāinga Ora to the Council. Although Kāinga Ora has the power to delegate to other parties including territorial authorities (see below), if the Council retained its normal role within the project area there would be no need to do so. Also, a power to delegate does not address the more fundamental question of why Kāinga Ora has the powers in the first place. Clause 165 says that Kāinga Ora is responsible for the costs of any new non-roading infrastructure that it constructs. There is no equivalent in the case of roading infrastructure. It is unclear if that omission is intentional and if so what the implications are.	road controlling authority. This role can be satisfactorily carried out by territorial authorities, in the normal way.
Clause 149	Inadequate influence and control over roading infrastructure that will vest in territorial authorities.	It appears that roads, even though constructed by Kāinga Ora, will be owned by territorial authorities in the normal way, without any formal vesting (clause 149(6)). However, there is no provision for specific input by the Council into roading assets they will be acquiring. This is particularly problematic because Kāinga Ora is the consent authority and so through that will have the ability to determine the location and standard of roading aspects to vest in territorial authorities (assuming applications are not delegated to the Council). Territorial authorities are "key stakeholders" who must be consulted, and may make submissions on	Territorial authorities should have a greater say in the roading assets that will be vested in them.

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		development plans, but otherwise have no particular influence or control over how roading infrastructure is established notwithstanding the potentially significant consequences for them.	
Clauses 155 to 170	Inappropriately broad powers to establishment non-roading infrastructure in project area.	Kāinga Ora has extensive powers to construct infrastructure under roads using the Utilities Access Act and related Utilities Access Code (clause 157). Despite anything in the Utilities Access Code, a corridor manager or utility operator may not impose conditions that would prevent or unreasonably delay delivery of the project or achievement of the project objectives. Effectively the normal "rules" governing competing infrastructure in roads are put to one side and specified development infrastructure has preferential status. Even allowing for a streamlined process, it is questionable whether this is appropriate and why the usual Utilities Access Code provisions are regarded as inadequate. For non-roading land, Kāinga Ora must either have the landowner's consent or have followed the statutory approval process (or the works must have been specified in the development plan - see above). The approval process is similar to s181/Schedule 12 of the LGA but the grounds for objection are more limited. In particular, the hearings commissioner (who hears objections) must approve the works if a failure to proceed with them would, or would likely, prevent or unreasonably delay delivery of the project or achieving the project objectives (clause 161(4)). The touchstone is the project itself rather than, say, the reasonableness of construction on the other person's land and possible alternatives to that. There is a right of appeal to the District Court, but the Court must apply the same test (clause 162(4)). Compared to the status quo, this is therefore a potentially significant inroad into private property rights but it may also affect non-roading land owned by councils.	Kāinga Ora's powers to construct infrastructure under roads and other (possibly private) land are inappropriately weighted in favour of its specified development projects, to the potential detriment of existing infrastructure and private property rights, and should be amended to provide better balance.
Clause 168	Inadequate influence and control over non-roading infrastructure that will vest in territorial authorities.	Non-roading infrastructure vests in the territorial authority (or other controlling authority – it might be a council controlled organisation) as soon as practicable after it is connected to the territorial authority's system. Again, there are no provisions for specific council approval or input into the relevant infrastructure before it is constructed. Kāinga Ora's powers in relation to bylaws and to act as a consent authority means that Kāinga Ora will likely determine the standard of infrastructure to vest. Yet, territorial authorities will be responsible for ongoing operation and maintenance costs under clause 167. Transfer is by agreement or failing that imposed by Order in Council (Schedule 2).	Territorial authorities should have greater influence and control over the non-roading assets that will be vested in them.

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Clauses 171 to 184	Unnecessary and potentially inappropriate powers in relation to Council bylaws.	Kāinga Ora cannot make bylaws but it can carry out all of the preliminary steps in the bylaw-making process (similar to what the Council would do itself) and then request or require the Council to make the change (which includes making a new bylaw). A bylaw change can only be "required" (and the Council must make the change within 20 working days) if Kāinga Ora has roading powers and the change relates to the safe and effective operation of roads within or at the boundary of the project area (clauses 179 and 180). All other requested bylaw changes may be refused but reasons must be given (clause 177). Those reasons would have to be reasonably based. These provisions involve a significant inroad into the Council's normal bylaw-making function within its district. It is unclear why Kāinga Ora needs access to bylaw-making powers in relation to non-roading infrastructure given that that infrastructure will vest in the Council soon after connection. For roading infrastructure, access to the bylaw-making powers may be appropriate if Kāinga Ora is managing and controlling (i.e. operating), the roads within the project area but, as stated above, it is unclear why it needs to do this. The possibility of inconsistent or at least different bylaw regimes in close proximity depending on whether infrastructure is inside or outside the project area is inherently problematic and should be avoided. If the legislation provided for a greater level of Council influence at an earlier stage, it may be unnecessary for Kāinga Ora to have some of these quasi-regulatory powers which are arguably inappropriate for an entity which is not democratically accountable. Instead, the Council could maintain its normal regulatory role over the entire district (including the project area).	Kāinga Ora should not have access to bylaw-making powers in relation to non-roading infrastructure, because it will not be operating that infrastructure. Likewise, if Kāinga Ora will not be a road controlling authority (see submission for clauses 148 to 154 above), then it should not have bylaw-making powers in respect of roads either.
Part 4, subpart 2 – Targeted rates			
Clauses 187 to 217	Lack of integration between Kāinga Ora targeted rates and Council rates processes.	Section 190 provides that Kāinga Ora may be authorised by Order in Council to set targeted rates. Any such rates are then assessed and collected by the Council in an equivalent manner to its own rates. Oddly, the Act does not seem to contain a section requiring the Council to pay over the rates revenue to Kāinga Ora. This will need to be added. There should also be	The provisions dealing with Kāinga Ora's targeted rates need to be closely reviewed to better provide for workable integration

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		provision for the Council to be reimbursed for its costs in carrying out this role (equivalent to the situation where territorial authorities collect regional council rates). The possible types of targeted rates, including the liability factors, are broadly similar to what the Council could set itself. The rate can only be for an activity relating to infrastructure, reserves or community facilities. There is no power to rate outside the project area (clause 65(1)(d)), even though the benefit of the activity could be outside that area e.g. a reserve or community facility. Non-rateable land is not liable (clause 188), although the exception in s9 of the Local Government Rating Act for rates for water supply and sewage disposal is missing and will need to be added. Given that the Council is doing everything but set the rate, the Bill needs to better integrate the Kāinga Ora rate and associated information with the Council's own processes. At present the Bill has no requirements in terms of advance notice by Kāinga Ora to the Council of the rate it proposes to set. Likewise, clause 211 obliges the Council to include information relevant to Kāinga Ora's rate in the rating information database but that necessitates sufficient advance warning to the Council of the proposed rate and thus what information will be needed. Section 213 says that Kāinga Ora must provide the relevant information, but in many cases the information (e.g. rateable values) will already be held by the Council and so this will be unnecessary. More fundamentally, the Bill does not address the potential implications of dual rating entities for the same land (i.e. within the project area) and the combined impact on ratepayers in terms of affordability etc. The Kāinga Ora targeted rate cannot be to fund an activity which is already funded by council rates (under clause 190(2)(c)) however it will still be an additional rate or rates on top of the Council rates). Although there may be merit in Kāinga Ora setting its own rates rather than the Council being required to do so on its behalf (another theoretical possibility), it is likely that the Council will be perceived as the rating authority for Kāinga Ora's rates as well, but without any control over what those rates are. One possible way of ameliorating this at least in part would be to give the Council a formal role in the process leading up to the Order in Council which authorises the targeted rates to be set.	with council's own rating processes and policies, to enable territorial authorities to perform their role under the Bill and to ensure that negative impacts on ratepayers are avoided. In particular councils should have a formal role in the process leading up to the Order in Council which authorises the targeted rates to be set.

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Clause 215	Potential confusion from dual rates assessment and collection processes.	Clause 215 says that Kāinga Ora may by notice assume the Council's functions, powers or duties under the subpart i.e. in relation to Kāinga Ora's targeted rates. It is hard to see why that would be desirable given the systems and particular expertise which rates assessment and collection requires, and the inevitable confusion if there are dual processes.	Remove Kāinga Ora's ability to give notice assuming councils' functions, powers or duties under Part 4, subpart 2 (i.e. targeted rates).
Part 4, subpart 3 – Development contributions			
Clauses 218 to 234	Absence of matters prescribed for content of Kāinga Ora's DC policy	Kāinga Ora's development contributions (DC) regime broadly mirrors the Council's. However, there is nothing (equivalent to ss106 and 201 to 202A LGA) prescribing what Kāinga Ora's DC policy must contain (including the schedule of assets). This is fundamental.	The required contents of a Kāinga Ora DC policy should be prescribed in the Bill.
Clauses 218 to 234	Absence of express restriction on using DCs for maintenance rather than capital expenditure.	The Act does not contain the equivalent of s204 of the Local Government ACT 2002 (LGA) which states that DCs must be used for capital expenditure and not maintenance. This gives the impression that Kāinga Ora DCs may not be limited to capital expenditure.	The Bill should contain the equivalent of s204 of the LGA.
Clauses 218 to 234	Lack of clarity and provision to ensure appropriate integration between Kāinga Ora and Council DC regimes.	A key issue for the Council will be how Kāinga Ora's DC regime applies alongside the Council's own. There may be a consequential impact in that the Council's DC policy would have been prepared on an assumption that it will be funding relevant assets in the project area, whereas that will no longer be the case. Kāinga Ora can require DCs for any development – not limited to a development within the project area – but only if the new assets required by the development are in the project area; or directly benefit or are required for a development in the project area. This seems reasonable – Kāinga Ora's schedule of assets (assuming this is added) will be assets either within the project area or nearby (and serving development in the project area). However, there needs to be coordination between Kāinga Ora and the Council to ensure that assets (especially those where the need for the asset may arise from development both inside and outside a project area, such as reserves and community facilities) are not	The Council should be consulted in the development of Kāinga Ora's DC policy or at the very least Kāinga Ora should be required to take into account the Council's DC policy when making its own, to ensure there are no overlaps or gaps.

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		considered in isolation from each other. At present in the Bill, the relationship between the two regimes is unclear.	
Clauses 222 and 230	Council's role in withholding certificates etc pending payment of DCs.	The Bill says that Kāinga Ora can require DCs to be paid at the normal trigger points (date of resource consent, building consent, service connection or by agreement) and that Kāinga Ora can withhold the relevant certificate etc until the DC is paid. However, Kāinga Ora will not necessarily be issuing those certificates (for example under the Building Act). The relevant clauses implicitly acknowledge that by saying the relevant council can agree with Kāinga Ora to exercise the powers on its behalf (clauses 222(4) and 230(3)). As addressed in the following row, there may be circumstances where Council DCs are also required, and Kāinga Ora is the authority with the ability to withhold certificates etc pending payment of Council DCs. There should be reciprocal provisions providing for Kāinga Ora to agree to exercise powers on behalf of councils, to ensure that all applicable Council DCs are collected.	There should be reciprocal provisions providing for Kāinga Ora to exercise powers for councils (i.e. by withholding certificates etc pending payment of Council DCs), to ensure that Council DCs are collected.
Clause 223	Lack of clarity about relationship between Kāinga Ora and Council DC regimes	The Bill adapts the LGA's normal prohibition against double-dipping on DCs (clause 223) but clause 223(1)(c) says Kāinga Ora cannot require DCs if they are already payable to the Council for the same purpose (except by Kāinga Ora). It is unclear what this subclause is directed at (including the exception for payments by Kāinga Ora itself), because Kāinga Ora and Council DCs can only ever relate to different capital expenditure. The Kāinga Ora regime does not seem to preclude the Council from continuing to require DCs for a development where that is permitted by its own policy i.e. where the normal preconditions for DCs are met. This may occur, for example, where the Council's DC policy requires contributions for "Citywide" infrastructure such as water treatment plants. If the Council's DCs are not collected in respect of such projects, there could be a considerable funding shortfall. This is of such importance that it should be expressly stated in the Bill that such DCs can still be collected by or on behalf of the Council under the LGA. Obviously such provisions would need to preclude the Council from collecting DCs where the new assets are being provided by Kāinga Ora rather than the Council.	It should be expressly stated that Council DCs for assets provided by the Council (and not Kāinga Ora), such as "Citywide" infrastructure, can still be collected by or on behalf of the Council under the LGA.

REFERENCE	MATTER / ISSUE	COMMENTARY	REQUESTED AMENDMENTS
Part 5, General land acquisition powers			
Clauses 250 to 253	Lack of clarity in relation to Kāinga Ora's compulsory acquisition powers.	Kāinga Ora has access to Public Works Act (PWA) compulsory acquisition powers, through the Minister for Land Information. The key concept is that of a "specified work" which is a work for the purpose of urban development as defined (i.e. wider than a specified development project) and includes housing and urban renewal. It appears that a "specified work" is not a public work as such (e.g. see clauses 251(3), 269, 270); rather, the Bill's regime applies in lieu of the PWA (though the Bill's regime applies certain PWA provisions). Kāinga Ora may request the Minister to transfer an existing public work or to acquire or take land for Kāinga Ora. The specified work must be "initiated, facilitated or undertaken" by Kāinga Ora i.e. Kāinga Ora need not be carrying out the work itself or (perhaps) need not have financial responsibility for it. The power therefore seems to be broader than the Council's PWA powers of acquisition. It seems that where the existing public work is on land owned by a council, the Minister must formally acquire or take the land from the council (clauses 251(2)(b) and 253). This is surprising – a mechanism for transferring the land for the new public work would be more efficient.	Access to PWA compulsory acquisition powers should be available to the planning authority (which should be expanded to include councils as set out above). There should be a mechanism for transferring land owned by councils for an existing public work.
Clause 253	Incomplete tool-kit of powers, particularly in relation to extinguishing private covenants and leases.	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 can't be delivered because of a private covenant in favour of adjoining land. The view of Land Information New Zealand (LINZ) (which administers the PWA) appears to be that the PWA doesn't 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. Kāinga Ora (or any other planning authority) should have more specific	The Bill should provide specific powers to extinguish existing interests in land (such as leases and private land covenants) to avoid specified development projects being frustrated by property issues.

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		powers in this respect – which would still presumably enable compensation claims for losses suffered for the interest/s extinguished.	
Clauses 251 and 253	Lack of clarity as to whether the Minister is obliged to acquire land if requested to do so by Kāinga Ora.	It is unclear whether the Minister is obliged to acquire land if requested to do so by Kāinga Ora – the language in the Bill is ambiguous: clause 251(2) says "must", clause 253(1) starts with "may" but subclause (1)(b) refers to the Minister being required to acquire or take the land.	To avoid confusion and potentially litigation, it should be clarified whether the Minister is obliged to acquire land if requested to do so by Kāinga Ora.
Clauses 267 to 270	Lack of clarity about offer back requirement where land is required for a local work by the Council.	If land acquired by Kāinga Ora is no longer required for the specified work then there is an offer back requirement (applying ss40 and 42 of the PWA), unless the specified work completed on the land is one of the types specified in clause 267, including housing and works for urban renewal. There is power for the Minister to declare land to be set apart for a different public work (clause 269) or disposed of for a different public work (clause 270). However, it is not clear whether the offer back requirement applies where land is required for another public work in particular a local work by the Council.	It should be clarified that the offer back requirement does not apply where land is required for a local work of the Council.

REFERENCE	MATTER / ISSUE	COMMENTARY	REQUESTED AMENDMENTS
Part 6, subpart 3 - Delegations			
Clauses 289 to 293	Kāinga Ora's powers to delegate to others.	Pursuant to the Crown Entities Act 2004, Kāinga Ora may delegate both within and outside the organisation (including to the project governance body) any of its functions or powers, apart from the power to set a targeted rate and the land acquisition powers in Part 5 (clause 291(2)). The power to delegate outside the organisation is subject to Ministerial approval as well as that of the relevant territorial authority if the proposed delegation is to a local authority. Delegations to territorial authorities may be a useful option in relation to functions and powers in respect of which territorial authorities have greater experience and expertise in performing e.g. road controlling authority functions. However, it is questionable whether some territorial authority powers should be conferred on Kāinga Ora in the first place, if there is a high likelihood they will then need to be delegated back to the Council. Clause 291 lists functions and powers that may not be delegated outside Kāinga Ora, namely targeted rates under Part 4 and compulsory acquisition under Part 5. The ability to delegate a number of other functions and powers should also be limited. For example, it would not be appropriate for private developers to exercise powers under the Bill to make regulatory decisions (i.e. as the consent authority) on matters such as resource consent applications. However, further limitations on Kāinga Ora's ability to delegate such powers should not preclude Kāinga Ora from delegating to territorial authorities e.g. territorial authorities should be added to the list of persons in clause 291(1) who may be delegated the more arduous powers under the Bill.	The functions and powers under clause 291(2) that can't be delegated outside Kāinga Ora should be expanded to include other appropriate matters, and territorial authorities should be added to the list of persons in clause 291(1) who may be delegated the more arduous powers.