



# Urban Development Act - Major Changes

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In this article we summarise the key aspects of the Urban Development Act (UDA) which came into force in August 2020. The UDA granted significant new development powers to Crown entity Kainga Ora - Homes and Communities (KO) to initiate and undertake large-scale comprehensive urban development.

Who is this for?

- Local authorities;

- Property developers and investors;
- Infrastructure and utility providers;
- Māori; and
- Urban communities who may be affected by KO's new development powers.

### Purpose of the UDA

The UDA provides the means for KO to perform its urban development function under the Kainga Ora-Homes and Communities Act 2019 to enable comprehensive, large-scale and timely urban development that delivers a range of economic, social and environmental outcomes. The key mechanism for achieving this is through large scale comprehensive development process.

### What does the UDA provide?

The UDA enables KO to initiate, facilitate and carry out large scale urban development within “Specified Development Project Areas” (SDP), through a new Specified Development Process. Once a SDP is established and a Development Plan approved by the Minister, KO is given a wide “tool kit” of new powers to accomplish its development objectives within the SDP area which include the ability to:

- Override, add to or suspend provisions in regional and district plans or policy statements;
- Act as a territorial consenting and requiring authority, take over monitoring and enforcement functions including for subdivision consents – note not for regional consents;
- Create, re-configure and reclassify reserves;
- Build, change and move infrastructure (roads, water supply, wastewater and drainage); and
- Set and collect targeted rates, certain charges and require development contributions or betterment payments.

KO also has general land acquisition powers

In addition to the specific powers relating to SDPs, the UDA grants KO new general powers to compulsorily acquire land for specified works, which is not confined to work under a SDP and is broadly defined for the purpose of urban development. These powers allow for land taken by KO to be transferred to a developer undertaking the specified work and also allow for land taken to be used for another specified work different from its initial purpose. These powers don't apply to Māori land.

How does the SDP process work?

#### *Stage 1: Establishing a Special Development Project (SDP)*

To access the SDP process, a project first needs to go through an establishment process to be approved as a SDP. All proposed SDPs must identify the following “key features”:

- Project objectives – setting out the key outcomes and outputs the project aims to deliver;
- A project area, defined by geographical boundaries (note areas do not have to be contiguous); and
- A project governance body.

To establish a SDP:

- KO carries out an initial assessment of the proposed SPD, which includes specific engagement requirements for Maori with an interest in the proposed project area (or adjoining land), and specified key stakeholders. Minister of Conservation approval is also required if it involves conservation land and public feedback must be sought.
- KO then prepares a draft project assessment report which is provided to relevant territorial authorities who must respond indicating support (and any conditions of support) or opposition and any proposed changes which would allow them to support.

- KO finalises its project assessment report together with final recommendation and provides this to Joint Ministers who will make the decision to accept or reject the recommendation.
- If Joint Ministers approve the SDP they provide a recommendation to the Governor General and an Order in Council declares the SDP established.

### *Stage 2: Preparing a Development Plan*

Once a SDP is established, a Project Development Plan (PDP) also needs to be prepared and approved before development under an established SDP can start. To obtain approval for a PDP:

- KO prepares:
  - A draft PDP, which includes a structure plan to describe in general terms the development proposals for the SPD, relevant planning matters, rules, designations, details of roading and infrastructure and funding sources; and
  - An evaluation report on the provisions of the draft PDP.
- The Minister approves the release of the draft PDP for public comment. Public submissions are received and considered by KO which will make recommendations.
- The proposed PDP, submissions and recommendations of KO are then forwarded to an Independent Hearing Panel (IHP) made up of no less than 3 members chaired by a current or former Environment Court Judge to provide an independent consideration of the PDP. The IHP considers submissions and the proposed PDP and makes recommendations to the Minister (noting where it disagreed with the recommendations of KO and why).
- The Minister reviews the PDP and recommendations by the IHP and can approve, amend or reject based on IHP recommendations or ask IHP for further advice or reconsideration. If approved, KO must notify the PDP in the Gazette.

A limited right of appeal is provided for submitters to the High Court on a question of law, with a final right of appeal to the Court of Appeal. The PDP will become operative on the date set out in the Gazette notice or when any appeals have been settled. Once the PDP is operative KO will obtain its special development powers in

relation to the area under the SDP (as set out above) and development can begin as set out in the PDP.

### Māori Interests

The UDA provides significant protections for Māori including early direct engagement and the ability for interested Māori entities to participate in development in the proposed project area. There are also a number of protections to ensure Māori land and land subject to a future Treaty settlement / claim are not included within a SDP, unless this has been approved by the relevant interested Māori parties.

### Comment

The UDA is a strong shift back towards central government directed and enabled development with the Government taking a much more “hands on” development role in relation to large scale “whole of community” development. Whilst appropriately providing for significant protections and input for Māori, affected local communities and landowners have a far more restricted ability to be involved and their land could be subject to compulsory acquisition.

It remains to be seen how the SDP process will fit in with local authority urban development and planning strategies and to what extent KO can and will take on the role as consenting and requiring authority and responsibility over monitoring and enforcement. If KO is to undertake these functions (along with other local authority functions for infrastructure and rating) this will require a significant expansion of human and capital resourcing from what KO currently has. Care will need to be taken to ensure this does not result in a duplication of resources and effort between local authorities and the EPA.

In practice much will depend on the approach taken by KO.

### Want to know more?

If you would like to find out more about the UDA and how it may affect you, please contact a member of our Team.

