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Committee Secretariat
Environment Committee
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To the Secretary of the Environment Select Committee

Urban Development Bill Parliamentary Submission

Introduction

The New Zealand Infrastructure Commission, Te Waihanga ('Infracom') welcomes the opportunity to submit on the Urban Development Bill and does not wish to be heard in support of its submission.

Infracom's purpose is to co-ordinate, develop, and promote an approach to infrastructure that improves the well-being of New Zealanders. Infracom must consider the long-term trends that impact on, or are impacted by, infrastructure.

It is widely understood that the current system is not enabling infrastructure to contribute its maximum value to the well-being of New Zealanders.

Infracom considers that to deliver better infrastructure outcomes, it is important that we strive for a planning and delivery system that:

- ensures that land supply, infrastructure and housing development meet demand at an affordable price
- enables and incentivises greater integration of land use and infrastructure decisions
- delivers more certainty to the market through a visible pipeline of works, and
- ensures central and local government have access to best practice planning, funding, financing and procurement.

We are submitting on the Urban Development Bill because urban development has a critical and long-term impact on the planning, funding and delivery of infrastructure in New Zealand's cities. Reform of associated legislation such as the Resource Management Act (RMA) and the Infrastructure Finance and Funding Bill are also critical to ensuring that infrastructure will support the long-term well-being of New Zealanders living in urban areas.

Executive Summary

Infracom supports the Urban Development Bill as a positive step to work around problems with New Zealand's governance, planning, funding and delivery system. The Bill provides Kāinga Ora with new powers such as the ability to change land use planning rules, acquire land, issue consents and develop infrastructure, as well as new funding tools. This is in conjunction with the proposed Infrastructure Funding and Financing Bill, which is intended to provide a funding and financing model to support the provision of infrastructure for housing and urban development that supports functioning urban land markets and reduces the impact of local authority financing and funding constraints. Infracom believes that these powers will enable Kāinga Ora to improve the pace and scale of the delivery of housing in New Zealand's fast-growing urban areas. Infracom acknowledges that the exercise of these powers will reduce the ability of individuals to effect existing property and objection rights, but believe that this is justified by the benefits that are envisaged by the proposed changes.

While Infracom supports the changes proposed by the Urban Development Bill, we are of the view that these changes are essentially designed to work around or override some of the constraints in the current system. The current reforms do not extend to the wider system in which urban development occurs and which is the primary driver of infrastructure and housing system failure. Local government structures, incentives, capacity, planning processes, resources and funding constraints, and weak integration between central and local government delivery of infrastructure are all part of this system. Infracom considers that wider reform is required to truly address the weaknesses in New Zealand's governance, planning, funding and delivery system. However, we are of the view that Kainga Ora could be disestablished once the broader system issues are addressed, including with the possibility of a sunset clause included in the Bill for a time when wider reform is complete.

While the Bill is not designed to address broader issues in the planning system, the successful achievement of economic, social and environmental outcomes to support sustainable communities requires wider reforms to be aligned in the future. It is important that the Bill aligns itself with reforms in the planning space, in particular the review of the Resource Management Act and reforms in the spatial planning framework. Spatial plans will be integral in informing Kāinga Ora's assessment of potential specified development projects. These plans should therefore be given greater prominence when assessing the constraints and opportunities of a potential specified development project than is the case in the current drafting of the legislation.

Infracom believes that the Bill would benefit from including a definition of infrastructure in clause 9. The broad objective of the Bill in clause 3(1) to "better co-ordinate use of land, infrastructure, and public assets to maximise public benefit from complex urban development projects" implies that the definition of infrastructure should be broad enough to capture social infrastructure, such as schools, hospitals, libraries and other civic amenities. The definition we propose is consistent with the definition in the New Zealand Infrastructure Commission/Te Waihanga Act 2019 and is as follows:

- ***"Infrastructure means physical infrastructure that is in New Zealand or that results in services in New Zealand"***.

Given the criticality of social infrastructure in creating a sense of well-being for communities, it is important for Kāinga Ora to consult with key providers of this infrastructure. Infracom recommends that key government departments who provide social infrastructure be included in the list of key stakeholders with whom Kāinga Ora should engage with under clause 35 of the Bill. This would include the providers of healthcare, schooling and prisons. We recommend that clause 35(3)(g) is amended to read:

- ***"Where any other infrastructure may be affected by the project, the relevant infrastructure operator"***

It is plausible that territorial authorities within a region could be have differing views on the merits of establishing a specified development project. Infracom therefore recommends that clause 30 of the bill is broadened so that Ministers have the power to consider both the regional or national interest when assessing the establishment of a specified development project. We recommend that clause 30(h)(ii) be amended to include the word regional, as follows:

- ***“Consider that the project is in the regional or national interest.”***

General comments

The Urban Development Bill seeks to balance the needs of the community, region and future generations with property rights and individual interests. We welcome this approach, and are supportive of the objective of the Bill.

Once the Bill is enacted, Kāinga Ora will have extensive powers to:

- cancel, amend, or suspend land use rules in planning documents in a project area
- act as a consent authority and issue resource consents for specified development projects
- act as a heritage protection authority
- acquire property and modify reserves
- build and reconfigure infrastructure, including transport and utilities and
- fund projects through the use of targeted rates and development contributions.

Inevitably, the exercise of those powers will involve some reduction in the ability of individuals to exercise existing property and objection rights, but Infracom agrees with the Ministry of Justice's New Zealand Bill of Rights Act 1990 analysis that this is proportionate and justified; for example, in respect of clause 27.

The complexity of the current system is constraining investment in large scale, transformational development projects needed to support the growth in New Zealand's urban centres. There are several challenges within the current system that the Bill is seeking to address. These include:

- a lack of co-ordination between central government, local government and the private sector
- constraints in the planning system
- fragmented parcels of land
- underinvestment in infrastructure and
- difficulty accessing funding.

By addressing these challenges, the Bill seeks to reduce the risk associated with complex developments and create more opportunities to meet the needs and aspirations of New Zealand's regions, cities and their communities.

We support the intent behind the Bill, which is to speed up the availability of housing in growth centres. We also understand the need for central government to establish extensive powers to over-ride local government regulation, which has created delays, costs and uncertainties for developers.

We recognise that the Bill may not be a long-term solution to a complex problem that will need to be addressed at the system-level, in particular across the Resource Management,

Local Government and Land Transport Management Acts. With that in mind, we are of the view that Kainga Ora could be disestablished once the broader system issues are addressed, including with the possibility of a sunset clause included in the Bill for a time when wider reform is complete.

We acknowledge that the Government is currently reviewing the Resource Management Act, and we have provided our views to the Resource Management Review Panel on this.

Need for adequate resourcing

These changes will centralise current planning and consenting functions, allowing a flexible and co-ordinated approach to transformational urban development. We note that for Kāinga Ora and Councils to effectively deliver the outcomes intended by the purpose of the Bill, they will need to be adequately resourced, with the appropriate level of skills, capability and capacity. Without sufficient resources, there is a risk that urban development might not occur at the intended pace or scale. We consider that a lack of capacity and capability is one of the key reasons that has constrained the ability of local and regional councils to undertake development projects to adequately effect change.

Need for a co-ordinated approach

Infracom considers that reform to the institutional framework needs to move from a reactive effects-based model to an outcomes-oriented system. The current model underplays infrastructure's contribution to overall well-being and ignores the ability of infrastructure to shape and regenerate communities. The Urban Development Bill is part of a major programme of reform that is underway that incentivises a focus on outcomes. While the Bill is not designed to address wider issues in the planning system, the successful achievement of economic, social, cultural and environmental outcomes to support sustainable communities requires these reforms to be aligned in the future.

Of particular importance is how the Bill aligns with reforms in the planning space. As noted above, the Resource Management Review Panel is leading a review aiming to improve environmental outcomes and enable better and more timely development. The scope of the review includes assessing the Resource Management Act and how it interfaces with other legislation.¹ The Urban Development Bill gives Kāinga Ora the power to act as a resource consent authority and override requirements in the Resource Management Act in certain circumstances. This addresses some of the problems we see with the resource management system, in particular:

- Taking over some of the functions that local government lack the capacity, capability and funding tools to undertake
- Increased flexibility to support the availability of land and infrastructure to support real time demand for housing
- A simplified decision-making system, reducing complexity and inefficiency, and
- Clearer responsibilities and accountabilities.

There are also ongoing reforms in the spatial planning institutional framework. Infracom considers that spatial planning is the key mechanism through which to agree a long-term vision for a place and to ensure that the relevant stakeholders are at the table to plan the infrastructure and services needed to deliver that vision. We understand that the Resource Management Review Panel is also considering the creation of a separate spatial planning Act. The intention is for spatial plans to replace at least some of the existing planning

¹ The Local Government Act 2002, Land Transport Management Act 2003 and the Climate Change Response Act (as amended by the Climate Change Response (Zero Carbon) Amendment Act 2019).

instruments. Regional spatial plans would be joint partnerships between central and local government, including relationships with iwi.

A more integrated approach to spatial planning is also being promoted by Urban Growth Partnerships. These partnerships are targeted at high growth areas, and seek to maintain “a long term and enduring relationship between the Crown, local government, iwi and local communities to deliver the Urban Growth Agenda objectives.”² The aim of these partnerships is to facilitate large scale urban development quickly, and ensure that government investment in infrastructure is aligned to help deliver “connected, thriving and sustainable urban communities.”³ Spatial plans will be integral in informing Kāinga Ora’s high level review of the constraints and opportunities that may arise when assessing a project as a potential specified development project.⁴ Infracom considers that such spatial plans should be given greater prominence in Kāinga Ora’s assessment of potential specified development projects than is the case in the current drafting of the legislation. We make further comments on this in our specific comments section below.

Risks

Infracom is supportive of increasing the planning and delivery powers of Kāinga Ora. It is our view that the planning and delivery of infrastructure requiring scope and scale would benefit from delivery by regional and national agencies with the capability and resources to act strategically across the wider system. However, we acknowledge that there is risk associated with this approach. We note that the Bill seeks to mitigate the risks associated with centralised control through mandated comprehensive engagement and consultation requirements.

While the Urban Development Bill is a step forward in working towards co-ordinated, outcomes-based objectives, further reforms need to be considered to ensure that incentives and resources are aligned nationally, regionally and locally.

The Infrastructure Funding and Financing Bill is intended to promote access to private capital markets to finance infrastructure development in support of housing. This is also a positive development.

However, the current reforms do not extend to the wider system in which urban development occurs and which is the primary driver of infrastructure and housing system failure. Local government structures, incentives, capacity, planning processes, resources and funding constraints, and weak integration between central and local government delivery of infrastructure are all part of this system.

The current reforms are essentially designed to work around or override some of these constraints but Infracom considers that wider reform is needed to properly address the weaknesses in New Zealand’s governance, planning, funding and delivery system.

Specific comments

This section of our submission comments on specific clauses in the legislation, and how they could be improved to better meet the objective of the Bill. There are three main areas on which we wish to comment:

- the definition of infrastructure
- consultation and engagement with appropriate stakeholders, and
- the importance of key planning documents

² <https://www.hud.govt.nz/urban-development/urban-growth-agenda/>

³ <https://www.hud.govt.nz/urban-development/urban-growth-agenda/>

⁴ Part 2, sections 31-34 of the Urban Development Bill

The definition of infrastructure

We believe that the Bill would benefit from the inclusion of a clear definition of infrastructure. Infracom categorises infrastructure into horizontal and vertical. Horizontal infrastructure includes infrastructure such as roads, pipes, rails and wires. Vertical infrastructure includes infrastructure such as schools, hospitals and prisons and other social and recreational facilities. Vertical infrastructure could be thought of more broadly as social infrastructure, including schools, hospitals, prisons, libraries, swimming pools and other civic amenities.

One specific area of the Bill where Infracom considers would benefit from an interpretation of infrastructure to include social infrastructure is in clause 59. Clause 59 specifies the functions of Kāinga Ora in preparing, amending, or reviewing a development plan, including:

- b) controlling the actual or potential effects of the use, development, and protection of land:
 - i. to achieve the project objectives
 - ii. to ensure, as far as is reasonably practicable, that, as a contribution to district and regional capacity, there is sufficient land for residential and business development to meet the expected demand in the project area
 - iii. to avoid or mitigate risks from natural hazards
 - iv. to develop (or provide for the development of) infrastructure and its integration with land use.

In preparing development plans, Kāinga Ora is therefore required to ensure that there is sufficient land for residential and business development to meet the expected demand in the project area. Given the broad objective as per clause 3(1) of the Bill to “better co-ordinate use of land, infrastructure, and public assets to maximise public benefit from complex urban development projects”, Infracom believes that ensuring that there is also sufficient land for social infrastructure requirements is in line with the Bill’s purpose. Clause 59 does provide for the development and integration of infrastructure, however what is characterised as infrastructure is not currently defined in the Bill.

While it is implied in the Bill that Kāinga Ora should consider infrastructure requirements more broadly, for example in clause 74, we believe that this could be made more explicit in the drafting of the legislation.

We note that clause 147 of the Bill categorises infrastructure as roading or non-roading infrastructure and provides a definition of non-roading infrastructure. Because this clause only applies to Part 3, Subpart 4 of the Bill, which discusses Kāinga Ora’s powers as a requiring authority to construct roading and non-roading infrastructure for specified projects, the definition of non-roading infrastructure here is relatively limited. We agree that this definition makes sense for Part 3, Subpart 4. For reference, the definition of non-roading infrastructure in clause 147(1) is limited to:

- the supply of reticulated drinking water
- sewage and wastewater removal, or treatment, or both
- stormwater drainage
- supply of water through water races
- trade wastes disposal
- land drainage and rivers clearance.

We believe clause 9 could be amended to include a definition of infrastructure that is consistent with the New Zealand Infrastructure Commission/Te Waihanga Act 2019. Clause 3 of this Act defines infrastructure as follows:

- ***“Infrastructure means physical infrastructure that is in New Zealand or that results in services in New Zealand”.***

Consultation and engagement with stakeholders

Clause 35 defines the key stakeholders with whom Kāinga Ora should engage. This includes:

- f) the owners and operators of any nationally significant infrastructure (as defined in clause 9) that will be, or is likely to be, affected by the project; and
- g) if Kāinga Ora identifies any other infrastructure as infrastructure that may be affected by the project, the relevant infrastructure operator

Given the criticality of social infrastructure in creating a sense of well-being for communities, Infracom recommends that key government departments who provide social infrastructure should be able to be included in this section and it should be objective, not subjective. This would include, (but is not necessarily limited to), the providers of healthcare, schooling and prisons. Kāinga Ora would therefore be required to consult with these stakeholders when assessing potential specified development areas. Clause 35(3)(g) could be amended to read:

- ***“Where any other infrastructure may be affected by the project, the relevant infrastructure operator”***

In conjunction with the addition of a broader definition of infrastructure in clause 9, this amendment would allow social infrastructure operators who may be affected by a specified development project to require Kāinga Ora to engage with them.

Importance of key planning documentation

Infracom believes that the Bill should be drafted to reflect the importance of key planning documents such as spatial plans when assessing potential specified development areas. As currently drafted, the Bill is only required to consider key planning documents at a high level. In clause 34, when assessing constraints and opportunities Kāinga Ora is required to consider:

- h) at a high level, the extent to which the project (including any infrastructure requirements identified) aligns with any documents that are published by a relevant local authority and that set out its plans (whether alone or with other local authorities or entities) for urban growth

While a more detailed consideration of key planning documents such as spatial plans may be captured by the requirement of the Territorial Authority to indicate support in clause 43 of the Bill, Infracom believes it would be more effective for these plans to be considered in the early assessment phase and that development areas are allocated in spatial plans as a major, long term decision about land use.

Infracom considers it is reasonable for Kāinga Ora to have to inform itself with some particularity of the local authority planning documents that may be overridden, and the relevant content of those documents.

National or regional interest

Clause 30 discusses the criteria for establishing specified development projects. In accepting a recommendation from Kāinga Ora, joint Ministers:

- h) Either
 - i. are satisfied that there is overall support from the relevant territorial authorities for the project being established as a specified development project; or
 - ii. consider that the project is in the national interest.

It is plausible that territorial authorities within a region could be divided on the merits of a development project. Infracom therefore believes that there is merit in changing clause 30(h)(ii) to provide scope for Ministers to consider both regional and national interests:

- ***“Consider that the project is in the regional or national interest.”***

Yours sincerely,



Jon Grayson
Interim Chief Executive