Submission of the Society of Local Government Managers on *Urban Development Authorities: A Discussion Document*

The Society of Local Government Managers (SOLGM) welcomes the opportunity to submit on *Urban Development Authorities: A Discussion Document* (the document).

The proposed urban development authority (UDA) legislation is another tool in the toolkit for enabling truly large scale development. SOLGM considers that the proposals have been mostly well thought through and commends those who put them together.

We have some reservations about the powers that the UDAs will have to override plans and policies and would like to suggest some safeguards against this. Other than this, we have no major concerns with the proposals and largely make requests for clarification or comments that are intended to provide for better implementation for the proposals.

We note that some proposals are quite high level and therefore note our expectation that this submission will be made 'without prejudice' to a future submission when legislation reaches the house.

Who are we?

SOLGM is a professional society of around local government Chief Executives, senior managers, and council staff with significant policy or operational responsibilities. We are an apolitical organisation. Our contribution lies in our wealth of knowledge of the local government sector and of the technical, practical and managerial implications of legislation.

Our vision is:
professional local government management, leading staff and enabling communities to shape their future.

Our primary role is to help local authorities perform their roles and responsibilities as effectively and efficiently as possible. We have an interest in all aspects of the management of local authorities from the provision of advice to elected members, to the planning and delivery of services, to the less glamorous but equally important supporting activities such as electoral management and the collection of rates.

Although we work closely and constructively with Local Government New Zealand, we are an independent body with a very different role. In preparing this submission,

we have seen and generally agree with, the comments in the Local Government New Zealand submission.

SOLGM supports the establishment of UDAs in principle …

SOLGM notes that the proposed UDA legislation is intended to be enabling, flexible, and reliant on the building of constructive relationships between central government, local government and other players (such as the development community). That is to say, the legislation intends that the UDA model would be a further tool in the toolkit. We consider that the design of the proposals is generally consistent with this intention.

But suspects they will find only limited use in New Zealand ..

We would caution against 'overselling' the benefits of the UDA model. The design clearly favours very large scale developments. For example, we are advised that the Barangaroo Development in Sydney has approximately 700,000m^2 of floorspace set within an area that includes a 6 ha headland park, 5.2 ha of other cultural and recreational space, and a large mixed retail/office development. Similarly, we understand the London Docklands project has resulted in 22,000 new houses (and 10,000 refurbished houses), together with "several huge new shopping malls, a post-16 college and campus for new University of East London and leisure facilities: watersports marina, and a national indoor sports centre".[1]

We can conceive of relatively few projects in New Zealand that could approach this scale. In our view the document's use of the Tamaki Regeneration Project as an analogy is well founded both in terms of the size (some 7500 new homes) and the regenerative element of the project. Hobsonville might be another example. In practice we suspect the application of the UDA model will be limited to a few large projects in and around Auckland, Christchurch, Wellington and possibly Hamilton and Tauranga.

We have noted that the UDA model seems predicated on some ability to 'crash through' existing planning and other rules. However, the UDA model comes with a rigourous analytical and establishment phase, as well as the requirements to prepare and consult on a development plan. While this is as it should be, we doubt that this model will be a significant 'fast tracking' over the existing process. Barangaroo is an example, first proposed in 2003, work on the site did not start in earnest until 2012 and is not due for completion until 2023. While a very large and complex project this

[1] London Docklands Inner City Redevelopment Case Study – downloaded from http://exploregeography.net/london-docklands-inner-city-redevelopment-case-study/, information last retrieved on 13 April 2017.

suggests UDAs may not provide the mechanism for building large amounts of housing quickly.

SOLGM is uncertain about elements of the proposal's scope …

The proposal applies only to urban areas, a UDA model cannot be used for rural development opportunities. The document does not propose to define the terms 'urban' and 'rural' indicating that these terms would carry their usual meanings. The Oxford Dictionary defines 'urban' as *'living in, or situated in a town or city'* and rural as *'in, or of the country'*. We suggest that both these definitions are unhelpfully vague when used in a legislative context.

For example, many of the UDA models overseas (including the examples cited in the document) have been 'brownfields' development and can be readily seen as 'situated in' a city. A project such as Tamaki Regeneration would be likewise. What is not so clear to us is whether a greenfield development on an urban fringe, or perhaps with a small amount of distance between the 'town or city' and the area could be said to meet this definition of urban.

To take an example, as Auckland grows development is taking place in several of the smaller townships along State Highway One (Pokeno for example). Development at scale is a tightly defined area (especially based around a small community) minimises the cost of infrastructural provision. The creation of transport nodes likewise. But, would the above 'normal meaning' of urban, applied in a legislative context allow the UDA model to be based around a small community such as Bombay, Mercer or Waiuku.

While the legislation could specify a minimum population, this might also preclude some forms of greenfield development. We have seen and agree with proposals that urban development refer to:

- areas of land zoned urban in an operative district plan or
- areas of land zoned as 'future urban' (or similar) in an operative city or district plan.

As a more general concern, the limiting of scope to urban development (however defined) does little to promote regional development. We are aware that rural development agencies exist in some overseas jurisdictions – for example India and some parts of the United States. There may be merit in an examination of these models in the future – after all one of the best mechanisms for managing growth in the main centres is to ensure that sufficient economic opportunity exists elsewhere.

A second scope concern lies in the term 'locally significant'. We consider that this term is vague - literally any urban development project could be deemed locally

significant. The term significant carrries a meaning in the Local Government context that may or may mot be unhelpful here. We would prefer that the legislation set out more clearly when UDAs may or may not be used.

There should be some alignment with the priorities of the local council and with those of the government, and a compelling reason to confer UDA powers. Looking at the overseas models it seems to us that the definitions of scope in the South Australian model appear to come closest to the circumstance we had in mind.

Who is the responsible Minister?

The proposal has been coy as to which Minister will have overall responsibility for the legislation. The proposal has been issued in the name of the Minister of Building and Construction and the Minister for the Environment, and appears to have been 'written' primarily by officials from MBIE. We also note that the Ministers of Land Information and Conservation appear to have roles that are circumstance specific.

This suggests the Government sees UDAs as a tool for addressing housing affordability. Although we agree that this is one reason, we observe that this has not been the main driver for the employment of UDA mechanisms overseas. The Australian and United Kingdom legislation tends to refer to economic development. Although we have not looked at all of the case studies cited we note that those we have considered have actually been mixed commercial/residential developments (though the commercial space may have been to provide a funding stream for the development).

The combination of the Building and Environment portfolios is unusual in our experience and may be something unique to this Government. We suggest that once the proposal moves to a legislative phase the right place to locate the Ministerial responsibility is with the Minister of Economic Development.

Public good outcomes are a must …

We fully support proposal 21, which allows the Government to include public good outcomes within the strategic objectives for a particular development. UDAs could have potentially very sweeping powers (including powers to require public expenditures and override some plans). Government must be able to ensure that these powers achieve public policy ends and are not used as a means of guaranteeing a private pecuniary end.

The document gives some good examples of the types of outcomes that might be appropriate for a development that is primarily residential in nature. We would like

to gain a better understanding of the type of public good outcomes that a commercially focussed development might be required to generate (for example land use, employment, and so on).

Being clear about the public good outcomes from a particular project is likely to become a key issue during the consultation process. It is therefore critical that these public good outcomes be clearly specified in terms that are relevant to the community, together with appropriate measures of performance.

It was unclear to us whether sanctions would or could apply in the event that a UDA does not meet the specified objectives. The proposal needs to give further thought to the interface between the proposed UDA legislation and other legislation that governs the relevant corporate forms. For example, is the intent that a local authority could appoint and remove members of the governing body of the CCO (as allowed for under section 57 of the Local Government Act 2002).

Regional councils need to be engaged in the initial assessment ...

There is a small disconnect regarding the role of regional councils in the establishment phase. The (otherwise extremely helpful) infographic on pages 14 and 15 of the document implies that regional councils would be involved in the initial assessment. This does not appear as clearly spelt out in the body of the proposal.

SOLGM submits that regional councils should be included as one of those bodies that must be engaged in the initial assessment phase. UDAs could easily create demand or management implications for regional council provided services such as transport systems or flood protection schemes. Regional councils also have access to information about matter such as transport systems, natural hazards, historic flood levels, drainage issues and areas of significant indigenous flora and fauna.

In short, engaging the relevant regional council(s) will assist to:

- review the existing context for the development
- examine the nature of any public landholdings in the area (regional councils own land too)
- assess the development opportunity and the challenges that need to be overcome, including any impact on existing infrastructure and
- assess the likely issues, potential impacts and risks of the development project on its community, councils, and existing infrastructure providers when the project is wound up.

Powers to override previously agreed strategic directions concern us …

UDAs will have sweeping powers to override or direct amendments to the following documents:

- district plans
- regional plans
- regional policy statements
- long-term plans
- regional land transport plans
- public transport plans.

Each of the above documents has been through an exhaustive process of consultation with other local authorities and stakeholders. Depending on the size and nature of the development and the nature of the amendments requested, an amendment could undermine the achievement of all or part of the plan's objectives.

There are several safeguards that could be inserted into the legislation to reduce the chance of this happening. These include:

- inserting regional councils into the list of agencies that must be consulted in the initial assessment
- inserting a requirement that the initial assessment include an analysis and assessment of the fit between the proposed development objectives and any plans and policies in force in any local authority in the affected area
- inserting a requirement that the development plan identify any inconsistencies with existing plans and policies. (There is a requirement to assess the effectiveness and efficiency of land use rules in force in the area, but as our colleagues at LGNZ note, it is far from clear who does this and what happens once this assessment has been prepared.

The organisational form of UDAs will be vital …

The document notes that UDAs will be publicly controlled, and that these could be anything from a unit within in government department to a Crown owned company, a council-controlled organisation or a territorial authority.

As best we've been able to ascertain almost all of the overseas examples referred to in the document have been advanced by bodies that have operated with some distance from political control. Generally, but not always, these bodies have been established using corporate models – indeed in many of the jurisdictions that employ the UDA model they are more commonly known as *urban development corporations*. It is no accident that the two New Zealand bodies that are closest to the way the

UDA model is meant to work (Panuku Development Corporation and Otakaro Limited) have both been established as bodies corporate.

Development is a complex commercial activity, development on the scale envisaged here all the more so. The form of a UDA needs to reflect a clear commercial focus on achieving the strategic objectives for the development. These may occasionally conflict with the policy making and regulatory functions of a department or territorial authority, or get 'slowed' by a focus on other priorities of a Minister or Council. The UDAs may also need to retain the ability to operate at arms-length from political decision-making.

One of the reasons that local authorities are likely to select a CCO model is that there are ready made accountability requirements specified in the Local Government Act 2002 (and in the legislation that applies to the particular form).[2] This is particularly appropriate for bodies that will be able to 'require' local authorities to amend their policies or plans, and to require local authorities to add to their rates of tax. We also note that this form of accountability lends itself well to the broad, has the body met the strategic objectives type questions.

While we would like to see the legislation retain the flexibility for a range of organisational forms, we would suggest that there should be some presumption in favour of a corporate form and that a clear and compelling case should be required before abandoning these models.

SOLGM accepts that UDAs should be subject to an <u>appropriate</u> degree of central monitoring …

UDA powers are quite broad. As we've noted there is some expectation that these will be contributing to wider strategic objectives of the local authority and the government. We accept that central government should be monitoring the performance of UDAs to give itself and the nation some assurance that these unusual powers are being used in the national interest. There may also be circumstances where central government has an element of purchase interest, such as where UDAs are accepting grants or subsidies from central government.

However there needs to be some separation between the accountability that the system of UDAs has vis a vis achievement of the purpose of the legislation and the accountability that the UDA has to its shareholder. That is to say, whether a UDA in meeting the strategic objectives and aspects of the development plan are first and foremost a matter between the UDA and its shareholders. The development plan

[2] For example, a corporate CCO is governed by the accountability requirements in both the Local Government Act 2002 and the Companies Act 1956.

should provide performance measures by which the success of the UDA can be adjudged.

It is appropriate for central government to monitor performance of the system as a whole. The regime for doing so will be complex, and should be the subject of consultation with the sector, We submit that the legislation should require consultation with LGNZ in developing such a regime.

The proposals misunderstood the nature of Mayoral powers …

There are several references in the document to Mayors making decisions on behalf of council. Even with the changes to Mayoral powers that were made in the Auckland legislation and in s41A of the Local Government Act, Mayors do not have Executive powers.

The power under section 41A is a power to lead the development of plans and policies. Where the Mayor chooses to exercise that power they will identify a particular direction or position, which may extend as far as preparing a draft for the council to consider. But this is not an Executive power - the full council gets to decide on the plan or policy, it is up to the Mayor to convince a majority of their council colleagues of the merit of their case.

Unless the UDA legislation specifically provides otherwise, a Mayor that signs off on a UDA proposal on their own will have acted unlawfully. A Mayor that makes a financial commitment in this way could be held personally liable.

We recommend that references to "the agreement of the Mayor" be replaced with "the agreement of the affected local authority" or similar.

Funding arrangements are more complex than the proposal makes them appear …

It is highly likely that most UDAs will be constructed as some form of publicly owned corporate (be it a CCO or a crown owned company etc). A UDA should therefore have powers to sell and lease land within the development area, indeed we do not see how a UDA could operate 'at arms length' without it.

We also note that these bodies will be given powers to borrow. Again we support this but we wonder whether the legislation should contain a clarification that the Crown and shareholding local authorities are not responsible for, and cannot guarantee the debts of a UDA.

We also agree that the UDAs will need powers to assess targeted infrastructure charges (TICs). Although the document is clear that TICs will be levied only on properties that are situated in the development area, it is not clear how these will constructed or calculated.

We have assumed that the TICs will be set in a manner similar to targeted rates, that is to say that TICs would be based on land or characteristics of land. In effect the local authority becomes a collection agent for the UDA, just as territorial authorities currently do for five of the eleven regional councils. We have no objections to this in principle but we do sound two notes of caution. First is that the UDA should meet its fair share of any cost of collection and enforcement (just as the regional councils do where the territorials collect rates on their behalf). The second concern is that the legislation needs to be very clear in the collection and enforcement powers that are given to the collecting authorities. A recent High Court decision has called into question which collection and enforcement powers can be delegated to a territorial authority, pointing at what appear to be flaws in the Rating Act.[3]

The UDA will be required to consult on a proposal to levy a TIC as part of the development plan. This includes the rationale for the charge, its coverage and likely amount. The UDA is a publicly accountable body and it's therefore appropriate that they consult in this way. However, we are unclear what mechanisms might exist to cater for circumstances where a change needs to be made. Over the last fifteen years, construction prices have moved at approximately twice the rate of headline inflation. Individual circumstances can result in the price of an infrastructural project moving significantly 'overnight'.

We also concur that a UDA should have access to revenue raised via development contributions. We note the differences in treatment between the TICs (set by the UDA and collected by territorials) and development contributions (set and collected by the UDA). We do not understand the reasons for the difference in approach. The complexities of determining the nexus between development and infrastructure costs, determining units of demand and the like all make development contribution a (generally) more complex funding mechanism than a TIC would be. Some UDAs could be large scale developments – SOLGM considers that this may mean some unwinding some of the legislative limitations on community infrastructure.

SOLGM agrees that a mechanism for funding 'spillover' benefits is a necessity, and that this should be a 'two-way' mechanism i.e. the UDA can recoup part of the cost for benefits that accrue outside the development area, and likewise that the territorial can recoup development contributions for trunk infrastructure. The

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[3] *Mangawhai Residents and Ratepayers Association and Others* vs *Northland Regional Council and Kaipara District Council* (2016). We are happy to discuss the implications of this decision in further detail if that would be helpful.

economic principles that underpin a robust analysis of this nature are complex and will need some guidance for UDAs.

The proposals need to think more about the internal capability of UDAs

We submit that the funding powers that are available to UDAs are many and complex, and that this means that a UDA will need access to people who understand the commercial world, but who also understand public sector concepts such the obligations inherent in the power to tax.

Of course funding is only a small part of the full range of skills and knowledge required in a UDA (e.g knowledge of the RMA, health and safety, public sector procurement etc). One of the key aspects that the shareholders and those who 'sign off' the UDA proposals will need to consider is the capability requirements both at 'governance' and 'staff' levels.

We were unable to locate any direct reference to these matters in the document – they appear to have been treated as an implicit assumption or part of the cost of doing business. We submit that the initial assessment should include some assessment of the likely capability needs, and that the development plan needs to provide this assurance by including an indicative budget.

There may be merit in 'accrediting' the development contributions commissioners as 'decision-makers' for UDA purposes …

SOLGM notes that the document contains several proposals where matters can be referred to an independent body. Three that leapt out at us were

- hearing objections to a development plan
- certain processes where existing designations and heritage orders will not be 'rolled' over or where a new designation is sought
- disputes over cross-boundary funding decisions will be referred to independent decision-makers.

We note that many of the skill sets that the decision-makers would need are similar to those that the development contributions commissioners (under the LGA) require. Many of the development contributions commissioners are also accredited commissioners for RMA purposes. We submit that there might be merit in

'accrediting' the existing dozen or so commissioners as decision-makers for UDA purposes.[4]

The proposals are weak in their treatment of transitional and legacy matters …

We do not consider that the transitional and legacy issues on the transfer of the development to the TA have been adequately considered. What happens at the end of the process and the development doesn't conform to the relevant district plan, regional plan or regional policy statement? There will be existing use rights, but that's not a good basis for developments in the longer term. Will councils need to amend the rules in their plans or provide spot zones for these developments longer term? How are ongoing operational costs for infrastructure and renewals going to be addressed. The process seems weak in these transitional and legacy areas.

[4] Development contribution commissioners were created to hear and determine objections to development contributions under the LGA. As we understand there have been few objections to date, though there is a register of some 15 commissioners. It seems unlikely that adding UDA related functions to this list will strain the existing capacity.