# 12 Other development models

**Key points**

- Three development models outside the mainstream of urban planning in New Zealand could each contribute to solving the serious problem of an inadequate supply of land and infrastructure to meet the demand for urban living and working in high-growth cities.
- The *first model* would supply more land and infrastructure at the fringe of cities by giving private developers greater scope to invest in large new subdivisions and supply them with the trunk transport and three-waters infrastructure normally supplied by councils.
- Land prices would fall towards their social opportunity cost; and investments with high social returns that are currently not happening (despite the availability of cheap capital) would begin to be realised.
- Competitive urban land markets would disrupt a well-entrenched trio of forces currently sustaining and increasing land and house prices. Those forces are land-use plans that allow only incremental geographic expansion of cities, council infrastructure providers who want to keep costs low by only expanding their existing networks incrementally, and landowners at the fringe and beyond who hope for large capital gains.
- Several options exist to address the ownership, funding, financing, operational and succession issues of new autonomous communities under the competitive urban-land-markets model. Legal clarity and policy support would be needed for developers, investors and prospective residents to have the confidence to proceed.
- A future planning system should allow and support competition in urban-land and infrastructure markets. These would complement other measures the Commission has proposed to make the planning system more responsive to the demand for urban growth.
- The *second model* establishes local urban development authorities (UDAs). New Zealand's largest urban councils are already adopting UDAs to redevelop existing urban areas of their cities. UDAs are a response to the challenge of delivering greater density within cities. Auckland and Christchurch have UDAs and Wellington is establishing one.
- UDAs offer the potential to redevelop sites to deliver large numbers of new dwellings. They can also take advantage of economies of scale to generate efficiencies, and foster a larger, more efficient and more capable construction industry.
- In a future planning system, government should pursue a range of opportunities to support local UDAs. These include providing for streamlined planning processes, and granting them powers of compulsory acquisition, within certain areas that are designated for redevelopment.
- The *third model* – the auctioning of development rights – has the potential to regulate density (eg, by increasing the number of multi-storey apartment blocks in an area up to a desired limit) and provide revenue to fund associated infrastructure costs or additional amenities to "compensate" affected communities.

This chapter presents three development models outside the current mainstream of urban planning in New Zealand (although examples are found in other countries). Each has the potential to help solve New Zealand's serious problem of inadequate supply of land and infrastructure to meet the demand for urban living and working.

This report, and the Commission's previous reports on *Housing affordability* and *Using land for housing,* all argue that much can and needs to be done to improve New Zealand's planning laws and institutions and the culture and capabilities of key players in the planning system. If this fails to happen, the current outcomes of lack of affordable housing, transport congestion, and poorly functioning urban labour markets will continue to impose high economic and social costs in high-growth urban areas.

The recommendations in this report to improve the planning system include a streamlined plan-making process, clearer statutory recognition of the benefits of developing the built environment while protecting the natural environment, and more and better ways to fund infrastructure. Yet the problem of the current system's inability to respond adequately to strong demand is likely to be deep-seated and, even with these changes, hard to shift.

The Commission offers the models in this chapter with an eye to applying even greater impetus and vigour to the problem of insufficient supply of development capacity at both the extensive and intensive margins of cities. By way of introduction, the essential ideas behind the three models are described below.

- Competitive markets for urban land and infrastructure supply. Under this model developers would have greater freedom and autonomy to establish new communities beyond the current urban footprint. This would include taking responsibility for transport, three waters and community infrastructure, and so relieve councils of the funding and capacity burdens for these. The model would directly attack the high price of land at the urban boundary, a key cause of unaffordable housing.
- Urban Development Authorities. This model is well established in other countries and is in use in Christchurch to rebuild its central business district (CBD) after the 2010-11 earthquakes. UDAs typically have access to special powers and streamlined land-use rules tailored to development needs in particular areas. These are geared to address the large risks of hold-out problems in trying to amalgamate key pieces of land in inner-city redevelopments.
- Auctions of development rights. Under this model councils have the power to auction development rights for denser development within cities. When inner cities densify, existing residents typically resist. Yet if larger, higher buildings were controlled in number, location and possibly other characteristics, there would be fewer bases for opposition. At the same time, limiting development opportunities creates valuable rights for those awarded them. Scope exists to allow councils to densify in this way and to auction the rights created. This is another form of value capture (Chapter 11). One use of the proceeds would be to enhance amenities in the new densified area, further reducing community resistance to development.

## 12.1 Model 1: competitive markets for urban land and infrastructure

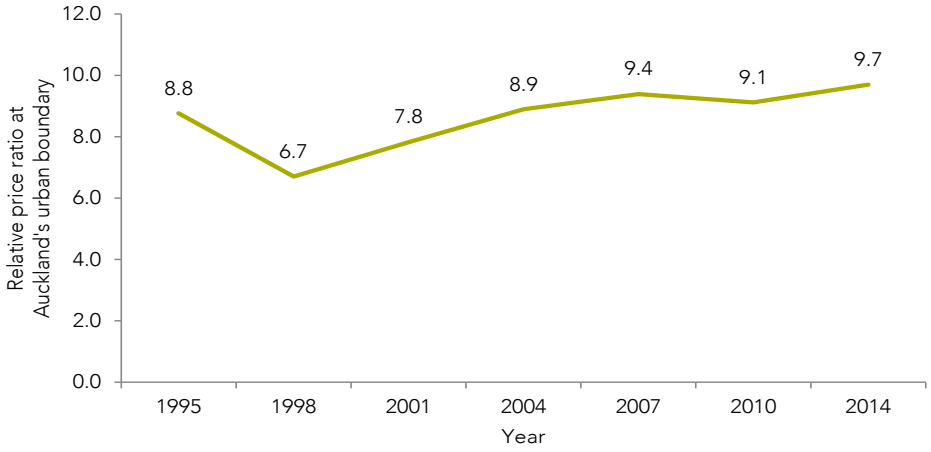
### The problem

Land markets in New Zealand's high-growth urban areas suffer from constricted supply. This is largely because councils release land zoned for development in relatively small tranches at the existing urban boundary. While this pattern of release may seem logical because it is neat, consistent with a compact urban form, and minimises the costs of connecting with existing infrastructure networks, it comes at a high social cost. The striking manifestation of this cost is the large discontinuity in land values at city boundaries between land zoned for development and land that is not.

The Commission investigated the ratio of land prices up to 2 km inside Auckland's Metropolitan Urban Limit (MUL) to 2 km outside the MUL in its *Using land for housing* inquiry. As shown in Figure 12.1, land inside the MUL was almost 10 times more expensive than land outside the MUL in 2014 and the ratio has generally increased over time.

The value of land up to 2 km outside the MUL will be influenced upwards by the prospect of it being one day zoned for residential use. Another comparison is between agricultural land in the Auckland region which has a market value of $20 000 to $50 000 a hectare, and average land values within the city that range from $8 million to $14 million a hectare – well over one hundred times greater.

**Figure 12.1 Ratio of residential land prices inside the MUL against land prices outside the MUL**




*Source:* NZPC, 2012a; Productivity Commission analysis of Quotable Value data.

These figures and large ratios illustrate several things.

- Supply of land for urban use is severely restricted – reflecting that councils zone only limited land (newly released land is almost always simply an incremental extension of the existing urban boundary); and that councils find it cost-effective only to release land close to existing infrastructure networks. The price differential also explains, and is partly explained by, speculation in housing markets and land banking. Speculation in the former adds to demand for land that is ready-to-go for housing. Speculation in the latter restricts supply when zoned, but unbuilt land is in relatively few hands – the landowners hold back sales to boost prices.
- The opportunity cost of more land for urban development (ie, its next best alternative use) is actually quite low – it is around its value for agricultural use. In turn this shows how valuable the economic activity of turning raw land into new houses (and other urban uses) is. The high prices people are willing to pay for houses indicate benefits to society. The cost to society (of at least the land component) is its next best alternative use and is far less. Yet artificially high land prices and other barriers to development mean that society is foregoing this large net benefit.

## Measures already proposed

As mentioned, a number of measures proposed by the Commission in this report are geared to overcoming the restricted supply of land for urban uses in high-growth areas. For example:

- the use of independent hearing panels (IHPs) to review and approve council-proposed land-use plans (Chapter 8) will help to ensure that plans provide realistically for the growth of cities and the adequate release of land;
- the price-trigger mechanism, also described in Chapter 8, will prompt councils to take action to release more land to avoid the price difference between urban and rural land exceeding a certain threshold; and
- the guidance, funding tools and procurement tools described in Chapter 11 will help high-growth councils stay ahead of demand for infrastructure capacity that is an essential complement to raw land in making land available for houses and other urban uses.

Chapter 8 also describes a recent important measure that central government has taken to tackle inadequate land supply in high-growth urban areas – the coming into force of the National Policy Statement on Urban Development Capacity (NPS–UDC). This policy statement

> … provides direction to decision-makers under the Resource Management Act 1991 (RMA) on planning for urban environments. It recognises the national significance of well-functioning urban environments, with particular focus on ensuring that local authorities, through their planning, both:

- enable urban environments to grow and change in response to the changing needs of the communities, and future generations; and
- provide enough space for their populations to happily live and work. This can be both through allowing development to go "up" by intensifying existing urban areas, and "out" by releasing land in greenfield areas. (New Zealand Government, 2016, p. 3.)

The Commission recommendations and the NPS–UDC would together place greater pressure on councils and improve their ability to provide more infrastructure-serviced land supply. Yet these measures could still struggle to shift the current deep-seated patterns of behaviour that restrict supply. To shift them requires disrupting and changing three powerful interests: planners wedded to the paradigm of a compact city form; infrastructure providers who favour incremental network expansion so as to minimise costs; and landowners at the city fringe hoping for maximum capital gains.

A further measure that the Commission has examined could also help disrupt these interests. It would free up new suppliers who are willing to meet the demands of consumers. It would enable them to enter the market, and compete among themselves and with existing suppliers of land and infrastructure services. The effect would be to better meet currently unmet housing and business needs. A well-designed opening up of the market for urban land to competition could reinforce other measures and help reduce high and rising land prices to levels much closer to the opportunity cost of urban land. This would remove a key driver of high and rising house prices.

**F12.1** The forces that restrict the supply of new urban land and cause its price to greatly exceed its marginal opportunity cost are well entrenched. To shift them may require another measure to supplement the Commission's other recommendations and the new National Policy Statement on Urban Development Capacity. Opening the supply of urban land and infrastructure to greater competition would likely be an effective additional measure.

## How competitive urban land markets would work

Competitive urban land markets (CULMs) would greatly increase the freedom of entrepreneurs to supply development capacity anywhere within a broad band on the outskirts of growing cities. The freedom would be subject to not intruding on land designated for future use as public open spaces, infrastructure corridors, areas of significant conservation value and sites of significance to mana whenua. This is consistent with recommendation 10.1 that high-growth cities need to plan for several decades of future growth, including by making provision for these vital land-use categories.

The important new feature of CULMs is that new urban development would not have to be contiguous with existing urban areas. This is key to breaking the stranglehold on development land held by owners and land bankers at the fringe of cities that drives up land prices to multiples of its true opportunity cost. Indeed, the very possibility of developers buying land further out would make the market for urban land more competitive and force those landowners at the fringe to accept lower prices.

The CULM model would tackle the infrastructure barrier to the supply of ready-to-go land by giving developers greater autonomy to supply the infrastructure needs of new communities.[99] Developers would have a choice of investing in standalone arrangements for the three waters or connecting to existing networks. Either way, developers taking responsibility would relieve councils of the financial and capacity burdens that currently constrain infrastructure supply and, as a result, development. While developers would face higher upfront costs from having more responsibility for infrastructure, they can expect to offset these partly or completely through lower outlays when buying land.

[99] Predominant current practice is that developers are responsible for infrastructure within the boundaries of their subdivisions (eg, roads, footpaths, and underground services such as water, stormwater and wastewater pipes). Councils are responsible for connecting subdivisions to existing networks and ensuring that large fixed assets (eg, water supply and treatment, and wastewater treatment) have sufficient capacity. Developers make development contributions towards the costs incurred by councils (Chapters 10 and 11).

The simultaneous benefits of tackling both land and infrastructure bottlenecks in a manner that is "market-led" rather than "planner-led" underlie the potential power of CULMs. This power can realise the large social benefits of development not being realised now because of these bottlenecks. By reducing the market power of a small group of landowners and increasing housing supply, CULMs could make a significant contribution to the prize of affordable housing.

**Table 12.1 Comparing subdivision development under conventional and CULM models**

| Development component | Current model | CULM model |
|---|---|---|
| Land for subdivision | Land for subdivision is restricted to planner-designated land at the city fringe. | Development is free to occur anywhere in the area designated for future expansion in a Regional Spatial Strategy, with some exceptions. Development is not free to occur in infrastructure corridors, public open spaces, land with high conservation value and sites of significance to mana whenua. |
| Resource consent | Resource consent for a subdivision is conditioned on contiguity with existing urban areas and infrastructure networks, and on infrastructure capacity. | The resource consent allows for discontinuous development and for autonomous provision of three waters and connecting transport infrastructure. |
| Transport and three waters infrastructure[1] | The developer is responsible for the infrastructure within a subdivision; the council is responsible for connecting that infrastructure. | The developer is responsible for the infrastructure within a subdivision and for connecting that infrastructure (subject to quality and environmental conditions). |
| Funding[2] | Developers fund both the infrastructure within a subdivision and any development contributions (DCs). The funding comes from a portion of the sale price of properties they sell to new residents. Councils may levy targeted rates on the new residents. Operating costs are funded from user charges, targeted and/or general rates. | Developers fund both the infrastructure within a subdivision and any connecting infrastructure. The funding comes from sales to new residents and possibly also from a loan that then becomes the responsibility of residents. Operating costs are funded by residents through user charges, some form of "body corporate" levy, and rates (to the extent they use council infrastructure). |
| Financing[2] | Developers finance projects through short-term loans from banks or other sources. Residents normally finance house and land prices through a bank mortgage. Councils may borrow on wholesale markets to fund the capital costs of infrastructure not covered by DCs. | Developers have a larger and more complex financing task. They must finance potentially greater infrastructure costs, and recover these from new residents. In turn, the residents are likely to need a body-corporate entity to hold and service the loan, and collect levies for operational costs. |

*Source:* NZ Productivity Commission.

*Notes:*

1. Energy and telecommunication infrastructure – and social infrastructure (education and health facilities) – are not mentioned because these are provided on a demand basis that is unlikely to differ across the models.
2. As explained in Chapter 11, funding refers to obtaining enough funds in total to pay for infrastructure, while financing is using financial tools such as borrowing and lending to meet cash-payment obligations when they are due.

Table 12.1 sets out a comparison of the typical components of a subdivision development under the currently conventional New Zealand approach and under the CULM model. As previously explained, the main differences lie in where the development can take place, what the developer is responsible for, and how development and infrastructure costs are funded and financed. The CULM model resembles, in some

respects, the model of Municipal Utility Districts (MUDs) or Special Districts common in some states in the United States. MUDs and their specific design features grew out of fiscal constraints on US local authorities, and the longstanding US tax concession to holders of local authority bonds (the interest on such bonds is tax exempt). New Zealand rightly has no such tax concession, so a New Zealand MUD model having a different design may well be appropriate.

The rest of this chapter refers to communities created under a CULMs model as Autonomous Community Districts (ACDs). The next section examines design options for CULMs and ACDs.

## Design choices for CULMs and ACDs

The main design choices for new communities under the CULM model concern:

- funding and financing;
- the roles of, and relation between, the developer and the legal entity that takes over from the developer in owning and managing the collective property and debts of the community; and
- the relationship between an ACD and the city it is linked to by proximity, jobs and other economic ties, including residents' access to city-level local public goods such as major recreational and cultural facilities.

### What developers do now

It is helpful to note what some developers in New Zealand do now. They undertake developments that, to a considerable extent, rival the scale and scope of ACD projects. For example, some developers are lead investors in large new subdivisions with many hundreds of properties. They buy large blocks of land, invest in (within-subdivision) infrastructure at scale, and finance their projects with risk capital amounting to many millions of dollars. Box 12.1 gives some examples. So ACDs are not unrealistic – some large developers already have the capacity to handle their scale and complexity.

Examples also exist of developers investing in connecting infrastructure:

- Fulton Hogan built and paid for motorway interchange ramps at its Millwater development in Auckland[100] and then handed ownership to the local authority or the NZTA.[101]; and
- Progressive Enterprises paid and built essential stormwater infrastructure when developing its Countdown store at Hobsonville (sub. DR55, p. 3):

> [W]hen developing its Countdown store at Hobsonville, significant stormwater works were required to establish the supermarket. In order to progress development of the supermarket and satisfy increasing demand, Progressive paid upfront for the stormwater works to be constructed, rather than wait for the Council to carry out the works at some undetermined future time. Hobsonville Countdown is an example of why the planning system needs to provide sufficient flexibility for the provision of infrastructure to service residential and business development. While land identified for potential development may not currently be serviced by infrastructure, there may be situations where a developer is prepared to fund or construct the infrastructure in order to bring the development of that land forward.

Box 12.1 **Examples of large developer-led subdivisions in New Zealand**

**Pegasus town, North Canterbury**

Pegasus town is 25 km north of Christchurch in the Waimakariri District of Canterbury. It is still being developed, with plans for a population of 6 000 and 1 700 houses. In May 2016 the population was over 2 500, with 970 houses completed. The town has retail stores and office space, a school, a golf and sports club, a recreational lake and is adjacent to the coast. The project was first proposed by Southern

[100] The cost of the ramps added around $5 000 to the price of each section in the development, but the arrangement was an effective means of overcoming delays in the provision of a vital piece of infrastructure.

[101] A developer told the Commission that it would have been willing to contribute to the construction of a water main, the lack of which was holding up a large amount of development, but existing processes were too rigid and rule-bound to allow this sort of deal.

Capital with Infinity Investment Group as the developer. Major earthworks began in 2006 and the first residents moved into the town in September 2008. It ran into financial trouble in late 2012 with the developers going into receivership. Todd Property Group bought the assets and undertook infrastructure investment to complete the project.

### Pauanui, Coromandel Peninsula

Pauanui is a beach resort that the Hopper brothers, who worked as developers on the north shore of Auckland, began in the late 1960s. The area had dense mature pine trees, no infrastructure and difficult vehicle access. The developers worked with an Auckland urban designer on layout and infrastructure plans – roads, water supply, wastewater, stormwater, and parks and reserves. They then financed and undertook the work. Thames Borough Council (which later became Thames-Coromandel District Council) backed the development, most crucially with consents and in securing funds for the 11 km access road. The development proceeded in stages, each stage releasing further sections for sale. The permanent population is less than 1 000, but this swells to around 15 000 in the peak summer period.

### Whitby, near Wellington

In 1967 Whitby Developments Consortium bought 3 000 acres in the Pauatahanui area to develop a new community, which was to have been the first of several "neighbourhoods" for the new Pauatahanui city. The first sale of sections took place in 1970. Rapid development started in the early 1980s. Whitby began under two local bodies, Porirua City and Hutt County until local government reform in the 1980s when it came entirely under Porirua City. A shopping precinct, schools, library and community facilities were built in the 1980s (the last two by the local authority). Whitby Consortium sold its remaining holdings, including the golf course to Whitby Coastal Estates in 2000. The golf course was subdivided to become the Duck Creek subdivision. In 2012 the southern section of the subdivision was sold to Todd Property Investments for subsequent development. The current population and number of dwellings are about 12 500 and 4 000 respectively.

*Source*: Mitchell, 2016; Whitby Residents' Association, 2013.

Yet these large projects in which developers played a leading role still required the permission of, and resources from, local planners and other public agencies (eg, the NZTA). Without such permission and resources, no development takes place. In addition, even if a future planning system granted developers greater autonomy to undertake them, uncertainties about critical design features could undermine the confidence of developers, financiers and home buyers to the extent they would not happen. This may be the reason behind the observation in the Commission's *Using land for housing* report (NZPC, 2015a) that "(t)here appear to be few barriers to pursuing this [MUD] model of development in New Zealand and little enthusiasm for the model among the development community".

## Funding and financing under the CULMs model

A key feature of the CULMs model is that developers are responsible for funding and financing all water, transport and community infrastructure required to make a new settlement viable, and not just parts within a subdivision. Aspects of such infrastructure could include a safe source, treatment and piping of water, collection and treatment of wastewater and stormwater to environmental standards, and a new or upgraded connecting road. These are expensive items, so developers and investors could be liable for large capital raisings and additional financial risks.

On the benefit side, councils and the NZTA are freed from these burdens. This removes their budget constraints and debt limits that often cause holdups to urban development. Essentially, the debts from the funds borrowed to finance these capital works are shifted from public to private balance sheets.

A developer's business model is of course to earn a return on investment. In the case of an ACD project, as with subdivisions under the current model, the return comes from the sale of properties to new residents

who in turn typically finance this cost by conventional mortgage arrangements. The developer's costs that need to be covered under the current model may well include development contributions to councils for the full or partial cost of connecting infrastructure. Again, once passed onto property purchasers, this process puts costs fairly immediately onto private balance sheets. To this extent, an ACD development would not be very different from what happens now.

However, beyond a certain point, the new residents of an ACD may be unwilling or unable to take on upfront their share of the large infrastructure costs incurred by the developer. An alternative, typically used by MUDs in the United States, is to set up an entity that takes over financing responsibility from the developer in return for ownership of the infrastructure assets. This entity then services and repays the debt over time by means of levies on residents who contract to pay these when purchasing their properties.

### The need for a body-corporate type entity

In addition to taking over any remaining debt obligation, an entity will be needed to manage the ongoing ownership, operation and maintenance of the infrastructure on behalf of the community. Leaving this in the hands of a private business such as the developer, or a firm taking over from the developer, opens residents to the risk of exploitation by a monopoly supplier. These risks could be reduced either by terms in the original purchase contract, or by setting up a body-corporate entity that represents the collective interests of residents. A further reason for such an entity is that, even if direct user charges cover most of the operating and maintenance costs of the community's infrastructure services, an entity will need to take collective decisions to deal with particular situations that arise from time to time. Two such situations are storm damage, or the opportunity to join a local pest eradication scheme to encourage native flora and fauna.

An important design issue for ACDs is therefore the structure and governance of the body-corporate entity and its powers to set charges, take collective decision and levy residents. One option is to simply use a standard body-corporate legal structure common in multi-dwelling apartment blocks in New Zealand. In the United States, MUD governing bodies have revenue-raising powers akin to the rating powers of local authorities.

### The relationship between a MUD and its local authority

An ACD developer and the relevant local authority should work constructively with each other. Yet because the developer would take care of infrastructure needs and impose a minimal burden on council resources, local authorities would be bound to grant resource consent to developers for an ACD providing the proposal satisfied clear criteria. The choice of criteria is a design question, but likely inclusions would be along the lines that the development:

- lies within the area designated for urban growth over the next several decades;
- does not intrude on spaces designated in the Regional Spatial Strategy (RSS) as infrastructure corridors, public open spaces, areas of high conservation value; or sites of particular significance to mana whenua;
- complies with capacity needs and quality standards for infrastructure and the built environment; and
- complies with the Regional Policy Statement for the Natural Environment (RPS-NE).

When an ACD is up and running, it will of course be subject to the local authority's regulatory jurisdiction on matters such as liquor licensing and dangerous dogs. Scope may exist for the ACD community to purchase council services such as solid rubbish collection and disposal. If the ACD has chosen to connect to mains water and wastewater, it would of course be subject to council rates and charges for ongoing water and wastewater services. The guiding rule should be that charges for services are set to recover the cost that an efficient provider would incur, including a reasonable return on capital and for risk.

Residents of an ACD community will stand to enjoy the broader benefits of the nearby urban area such as access to jobs, education opportunities and cultural and recreational facilities. To the extent this provision costs the urban council money not recovered by user charges and relies on rates funding (eg, the cost of roads and other amenities with the character of local public goods (Chapter 3)), it would be proper and reasonable for the ACD residents to pay a rate to the council. But the rate would be less than for city residents because of the self-sufficiency of the ACD in providing its own infrastructure and amenities.

A final set of design issues relates to how an ACD's status and arrangements might change once the main nearby urban area expands to become contiguous with the boundary of the ACD. At this point it may be sensible (for economic and administrative reasons) for the local authority to take over the ACD's infrastructure and public amenities. If the local authority did not, it could be faced with a balkanised patchwork of ACDs interspersed with conventional developments. This would raise difficult boundary issues[102], and is unlikely to be efficient for this reason and for not taking the opportunity to exploit scale economies. Clearly the principles governing takeovers of ACD assets should be clear and agreed from the start. They would include provisions for dealing with any debts still on the books of the collective entity and for the local authority to acquire some or all of the entity's equity interest in its assets on fair terms.

### A range of models exist

In setting the laws and institutions for CULMs, choices exist in the degree of autonomy accorded developers; the funding and financing of ACDs; the structure, governance and powers of their body-corporate entities; and the rules for local authorities to take over ownership and responsibility for infrastructure assets and services once urban areas expand to encompass an ACD. These choices imply a continuum of possible arrangements. Given the novelty of CULMs in New Zealand, it would be important to resolve the many gaps and uncertainties so that developers, investors and prospective residents gain the confidence to proceed.

**F12.2** A continuum of possible arrangements exist to address the ownership, funding, financing, operational and succession issues that would arise for new communities constructed under the competitive urban-land-markets model. Legal clarity and other reassurance will be needed for developers, investors and prospective residents to have the confidence to proceed.

## Preferred model for CULMs in New Zealand

This subsection examines the form of CULMs that would work best in New Zealand. It places CULMs in the context of a future urban planning system for New Zealand as set out in this report. Other parts of this system will provide important pillars to help make CULMs work to benefit society. Those main benefits are making housing affordable and prompting adequate responses to demands for greater urban capacity. Other features of the system will make important parallel contributions to achieving these benefits.

Effective CULMs will depend on the new approach to plan-making recommended by the Commission. The key is to develop RSSs that provide a platform for integrating spatial and infrastructure strategy and land-use planning (Chapters 10 and 13). The RSS will define the long-term envelope of land available outside current city boundaries where developers can choose to buy land and initiate ACDs. Augmenting the RSS will be a city's district or unitary plan and its infrastructure plan that will make clear the scope for the city to densify within its existing footprint. Armed with this information and population growth projections, developers can make sensible decisions about whether or not to invest in an ACD and the extent it would require infrastructure investment.

Developers would be very conscious of price information, comparing the relative costs of densifying within the city (if that is permitted) and greenfield development, and weighing these against the demand for different types of residential living. If the choice is greenfield, the price of land at the city fringe versus further out will be another key consideration. As argued above, the possibility under the CULM model to go further out will put competitive pressure on landowners at the fringe and deny them the market power they currently enjoy. This, plus removing impediments to infrastructure supply, is key to cutting land prices and building enough urban capacity to meet demand.

### Requirements for more private development initiatives

One impediment to private investment in trunk infrastructure to support an ACD is that few mechanisms exist for private developers to secure long-term payment obligations from, and governance by, groups of property owners who benefit. As noted, it is common to use body-corporate arrangements to fund and

[102] An example of difficult boundary issues is sorting out responsibility for corrective action and cost when a downstream infrastructure problem is caused by a deficiency in the upstream infrastructure on the other side of a boundary.

govern common services to a defined building, campus, or development. While it may be theoretically possible to extend body-corporate or other bespoke contractual arrangements to cover the funding and governance of a large infrastructure project, such as an ACD, the Commission is not aware of any examples in New Zealand. In contrast, in jurisdictions where this form of development has legislated mechanisms, such arrangements are regularly used.[103]

The Commission recommends developing a legal vehicle that is purpose-built for handling the challenges of financing and governing large ACD projects that potentially yield benefits to a large number of property owners and which are likely to run for 20–30 years. Developing the details of a vehicle along these lines is a significant piece of work that the Commission does not attempt in this report. Even so, it would expect this work to address the following issues (some of which have been already noted above):

- The procedural requirements to propose and establish an ACD. The need is for a clear set of procedures for the initiator of an ACD to follow when proposing to establish one.
- The basis for consent by the participating property owners. The financial obligations of an ACD would certainly fall on the homeowners who choose to purchase properties within it. However, they could also fall, with consent, on other property owners located within a defined area and on other developers who benefit from access to the newly installed infrastructure.
- The extent and nature of the property-owner obligations to pay and how payment amounts are determined through time.
- The governance of the ACD and its associated trunk infrastructure, and the role of the various stakeholders in governance (eg, the roles of participating property owners, any equity and debt providers, the local authority, and central government agencies with a possible significant interest such as the NZTA and the Ministry of Education).
- The terms of reversion of the assets to the local authority or the NZTA once all financial obligations have been met. The assets of an ACD would likely revert to the relevant local authority or government agency once all financial obligations have been met, similar to most BOOT (Build Own Operate Transfer) arrangements.
- The ability of the local authority to buy out the ACD prior to reversion. As noted, it would be useful for the local authority to have an option to buy out the ACD under certain circumstances.
- How to handle any force majeure events.

In addition to the above issues, greater private willingness to invest in trunk infrastructure to make possible large ACD projects is likely to require supporting policies in the following areas.

- Commercial interconnection agreements. The efficient involvement of a private provider to supply trunk infrastructure in a market dominated by a single council or CCO supplier (eg, in the three waters or in transport) may require commercial interconnection terms for connection to the existing networks. And once the additional trunk infrastructure is in place, situations may arise where others (eg, another developer, or council infrastructure provider) wishes to negotiate interconnection terms with the private provider. The development over recent years of interconnection terms in other sectors in New Zealand dominated by single-suppliers (eg, in telecommunications and electricity) has been slow and litigious. The development of such terms should be based on legislated economic principles. It could also be assisted by appointing the Commerce Commission, which has extensive experience in setting interconnection terms in other sectors, to resolve any disputes.
- Setting of physical or service-potential standards. In situations where assets built by one party vest with another, either immediately or after an extended period of time (eg, after 20 years under an ACD as described above), the vestee party (eg, the council or a CCO) will likely need to be able to define the

[103] Examples of such jurisdictions include the US states of Texas and Florida.

quality of the assets from a physical or service-potential perspective. This standard setting process is also likely to require a dispute resolution procedure.

**F12.3** Enabling private providers to develop Autonomous Community Developments beyond current city footprints and to invest in associated trunk infrastructure to support them would make land and infrastructure markets more competitive and likely yield high social returns through meeting demand for urban expansion and affordable housing.

**R12.1** The government should facilitate Competitive Urban Land Markets in a future urban planning system. This would include creating a policy and legal framework to support private developers and investors to build and finance trunk infrastructure and Autonomous Community Developments.

## 12.2 Model 2: urban development authorities

To provide sufficient urban capacity in high-growth cities effectively and efficiently is likely to require cities to grow both out and up. While CULMs focus on growing cities out, the Commission also recommends the judicious use of UDAs to support cities to densify existing urban areas.

In its *Using land and for housing* inquiry, the Commission identified the important roles that UDAs can play in enabling urban regeneration and residential development (NZPC, 2015a). This section discusses:

- several models of UDA overseas;
- UDAs and economies of scale in development;
- local initiatives that are very similar to UDAs within New Zealand;
- the roles and functions of UDAs; and
- measures to support the operation of UDAs, including:
  - powers to amalgamate land;
  - the availability of streamlined planning and consenting processes for specified developments; and
  - other measures such as making Crown land available, partnering in specific projects, and ensuring that the Government's housing agency cooperates where relevant.

### International experience with urban development authorities

Government land organisations (GLOs) – generally known as urban development agencies – play an important role in urban regeneration and residential growth strategies in Australia, the United Kingdom, Hong Kong and parts of the United States. Urban development agencies have a range of forms and functions, but typically lead the development of specified areas. They may be permanent or time-limited bodies. In some cases, they may have compulsory acquisition or planning powers, allowing them to amalgamate smaller landholdings and rezone the combined site.

The Australian Productivity Commission (APC), in its review of planning, zoning and development assessments, concluded that GLOs can play an important part in speeding up and de-risking development:

> Greenfield subdivision developments seem to proceed more 'smoothly' in areas where some development has already occurred. As such, there may be a role for GLOs as the first developer into new settlement areas. This would provide precedent planning decisions on which other developers could base their due diligence and ensure major 'lead in' infrastructure was in place. (APC, 2011c, p. 184)

Discussing VicUrban (now Places Victoria), the APC pointed to the usefulness of GLOs in initiating complex brownfield developments:

> VicUrban is a recent example of the increasing trend for GLO activities to be directed toward infill [brownfield] developments. In these developments, some of the projects are so complex and high risk that they are unable to attract private sector interest at least in the early stages of development. As a result, many GLOs work to reduce the complexity of projects (for example, by remedying issues such as fragmented land holdings … and 'derisk' development sites (for example, restore contaminated soil) to a level where it is feasible for private sector developers to subsequently complete projects. (p. 153)

Davison et al. (2012) cites other possible benefits from the involvement of UDAs in land development, including:

- the potential for UDAs, as the owners or regulators of the land, to attach conditions to its final use to achieve social objectives (eg, greater provision of lower-cost housing);
- greater scope to manage urban renewal, so that "processes of change proceed in a co-ordinated manner"; and
- an enhanced ability, as the owners of amalgamated or renewed land, to capture some of the uplift in land value that accrues from redevelopment for community use (pp. 87–88).

UDAs also play a role in bringing affordable housing to market in some Australian states, but their effectiveness appears to depend on the agencies having sufficient planning powers, independence and clear targets (Davison et al., 2012, pp. 88–89). Kelly's (2011) review of "place-based development" concluded that

> [m]any of the most successful organisations have used temporary planning powers, owned or acquired substantial amounts of land, and combined public and private investment. (p. 20)

In its *Using land for housing* inquiry, the Commission heard that some UDAs in Australia were pioneering the development of new housing typologies, such as smaller apartments and new design formats. These strategies were aimed at increasing housing choice. This innovation also sets a precedent (and gives confidence) for private sector developers to follow (ie, a "demonstration effect") (NZPC, 2015x).

**F12.4** Urban development authorities are commonly used overseas and can play an important role in de-risking development, providing a demonstration effect for private sector developers to follow, and bringing land to market.

## Taking advantage of economies of scale in development

UDAs can undertake large-scale developments. This offers a number of benefits, including the ability to generate economies of scale that can drive down infrastructure and construction costs. Larger developments are also important to attract overseas developers who may be better able to innovate and operate at scale.

The Hobsonville Land Company provides an example of what a UDA of similar or larger scale could achieve. The Company was able to attract successful tenders from AV Jennings to be its building partner because of the size of the development opportunities presented. AV Jennings is one of Australia's leading development companies, and had not previously operated in New Zealand. Growing the size of New Zealand construction firms, or attracting large firms to operate in New Zealand, is likely to require large-scale developments on large sites.

## New Zealand initiatives to establish urban development authorities

A number of entities have suggested UDAs for New Zealand.

- In 2006 a report commissioned by the Ministry for the Environment proposed creating both national and regional urban transformation corporations, to undertake urban regeneration, and demonstrate commercially viable, sustainable developments (SGS Economics & Planning, 2006).

- A 2008 discussion paper from an inter-agency Sustainable Urban Development Unit sought feedback on a development organisation to coordinate planning and investment, assemble land, and operate streamlined planning and consenting processes.

- The Urban Taskforce (2009), reporting to the Minister for Building and Construction, recommended creating "an Urban Development Agency model based on a set of clear partnering principles to deliver urban development projects" (p. 4). It said:

> To accelerate both the quantity and quality of urban development, a tried and tested approach to complex urban development is needed. Urban development agency models are commonly used to bring all the parts of an important development package together in a consistent and integrated manner. (p. 3)

New Zealand's three largest cities either have a UDA or intend to establish one.

### Auckland

In May 2015 Auckland Council set up Panuku Development Auckland as a council controlled organisation (CCO) formed from merging two existing CCOs involved in developing property. Panuku manages Auckland Council's property acquisitions and disposals, and manages and supports urban redevelopment projects in areas such as Wynyard Quarter, Ormiston and Hobsonville Point. It held $700 million in assets in 2016, and budgeted for operating expenditure of $60 million and revenues of $74 million in 2017 (Panuku Development Auckland, 2016a, p. 36).

The mission of Panuku is to

> rejuvenate urban Auckland, from small projects that refresh a site or building, to major transformations of town centres or neighbourhoods. Panuku improves the uses of land and buildings that Auckland Council owns, attract private investment and together we unlock their potential to create spaces Aucklanders love. (Panuku Development Auckland, 2016b, p. 5)

Panuku's activities cover four broad areas:

1. Redevelopment of urban locations and council owned land within the rural urban boundary
2. Redevelopment of council non-service property and, where appropriate, review of council service property
3. Management of council non-service property and a range of other council owned commercial assets
4. Other property related services such as strategic property advice, acquisitions and disposals.

(Panuku Development Auckland, 2015b, p. 5)

### Wellington City

The Wellington City Council plans to establish a UDA to "unlock development potential in the city by removing barriers to development " (Wellington City Council, 2016a, p. 48). The Council anticipates that the agency will:

1. Lead and co-ordinate the regeneration of strategic precincts – assemble and prepare land for development, procure private partners and undertake other co-ordinating actions to deliver broad-scale urban regeneration in key parts of the city.
2. Increase supply of affordable housing – support delivery of new medium-density and affordable housing in strategic locations (eg around suburban shopping centres).
3. Deliver large-scale Council development projects – deliver Council development projects above a specified value threshold that would otherwise be delivered from in-house.
4. Catalyse the market through demonstration projects – conceptualise and lead delivery of demonstration projects to catalyse the market in support of Council objectives (quality medium-density housing, high-quality urban design, green buildings).
5. Optimise development outcomes on strategic sites – intervene and take a leadership role in strategic areas where earthquake-prone building issues are preventing a timely market response. (WCC, 2016b, p. 6)

The Council is working on a detailed proposal to establish the agency. That proposal covers "what type of entity the agency will be, its accountability and monitoring arrangements, its funding model, and areas of focus" (Wellington City Council, 2016a, p. 48).

### Christchurch

The Christchurch City Council and central government have each established their own UDA in Christchurch over the last three years; and have jointly established a third.

The Council established Development Christchurch Ltd (DCL) in 2015 as a CCO owned by Christchurch City Holding Ltd (CCHL) – also a CCO. DCL's role is to provide commercial and strategic advice to the Council, seek development opportunities to benefit the city, and engage with outside interests through an "investor-ready city" strategy. CCHL funds DCL in the form of equity, currently set at $1.5 million each year (Development Christchurch, 2016).

Two other UDAs were established when the Canterbury Earthquake Recovery Authority (CERA) was wound up in April 2016.

Central government established Ōtākaro Ltd as a Crown company listed on schedule A of the Public Finance Act 1989 and governed by an independent board. The Minister of Finance and the Minister supporting Greater Christchurch Regeneration are the shareholding Ministers. Ōtākaro manages Crown land and delivers anchor projects such as the planned convention centre, in consultation with the other two agencies. It has been set up for a limited term of no more than seven years, with the purpose of

> contribut[ing] to the regeneration of Christchurch by adding value to defined anchor projects and Crown land in a manner which balances a desire to achieve good commercial outcomes against the Crown's regeneration objectives, and by supporting the Crown's exit over time on favourable terms. Ministers expect Otakaro to:
>
> - deliver defined Crown anchor projects and investments within expected time, cost and quality criteria;
> - act as a credible market participant in project procurement, contracting and land transaction;
> - add value to the Crown's investment in defined anchor projects and land; and
> - support the Crown's exit from these interests held through Otakaro on favourable terms. (Minister supporting Greater Christchurch Regeneration, 2016)

Central government funds the capital and operating expenditure of Ōtākaro Ltd. In 2017 Ōtākaro is projected to have operating expenses of $137 million and revenue of $121 million in the year to 30 June 2017, with capital assets of $166 million at the end of June 2017 (Ōtākaro Ltd., 2016).

The Greater Christchurch Regeneration Act 2016 established Regenerate Christchurch as a statutory entity for a period of five years. The Council and central government each appoint members to its governing board, one on the nomination of Te Rūnanga o Ngāi Tahu. Central government and the Council each contributes $4 million a year to fund Regenerate Christchurch's operations (Regenerate Christchurch, 2016).

Regenerate Christchurch works with the Council on Regeneration Plans, including for land in the residential red zone and the central city (Minister supporting Greater Christchurch Regeneration & Mayor of Christchurch, 2016).

Regenerate Christchurch has a number of other statutory roles. It:

- makes recommendations and provides advice to the Minister on the development, revocation and amendment of planning instruments and changes;
- facilitates increased investment;
- comments on regeneration outcomes and interventions and the contribution of Ōtākaro Limited and Development Christchurch Limited; and

- provides independent advice on regeneration activities to the Council and the Minister (Greater Christchurch Regeneration Act, 2016, s. 123)

At the end of Regenerate Christchurch's life in 2021, the Governor-General may appoint a CCO nominated by the Council as a successor organisation to take over its assets and liabilities (Greater Christchurch Regeneration Act, 2016, s 134).

**F12.5** New Zealand's largest cities have established local urban development authorities or are planning to establish them.

Submitters to the *Using land for housing* inquiry were positive about the role that a UDA could play in enabling residential development in our fastest-growing cities. Some argued that UDAs should focus on affordable housing goals, or the needs of Māori whānau.

Submitters generally preferred local UDAs rather than a single national UDA. The Commission agreed that a national UDA was likely to be counterproductive, particularly if it competed with local UDAs already established or being established (NZPC, 2015a).

## The role, functions and powers of urban development authorities

The Commission considers that local councils should be responsible for determining how local UDAs are governed, structured, and capitalised, and for determining the focus of their activities.

*Using land for housing* inquiry participants had a range of views on the role, functions and powers that UDAs should have (NZPC, 2015a). Common suggestions were that UDAs:

- should be able to focus on affordable or social housing;
- need to operate collaboratively with local government, central government, communities, and the private sector;
- need to be well structured, well governed, and well capitalised; and
- would benefit from having regulatory powers, in particular the power to compulsorily acquire land as a last resort to assemble sites.

Where UDAs focus on delivering affordable housing, this should be consistent with the findings in Commission's *Land for housing report* on policies targeting lower-cost housing (eg, through contributions of public land). However, UDAs may benefit from additional regulatory and acquisition powers to support their activities.

## Supporting local urban development authorities

The Commission agrees that local UDAs are most likely to be effective where central government supports them as they undertake their work.

The Housing Accords and Special Housing Areas Act 2013 (HASHA Act) has introduced common and streamlined approval processes for particular types of residential developments in declared areas. The Governor-General may designate "qualifying developments" and "special housing areas", where more permissive planning rules and streamlined consenting processes would apply. Most local authorities who discussed the HASHA Act in the *Using land for housing* inquiry were positive about it (NZPC, 2015a). The HASHA Act was due to begin expiring in September 2016. However, Parliament amended the Act in September 2016 to postpone the start of the expiry period until 2019.

Support for local UDAs should build on the relationships that local and central government have developed through Housing Accords. This model of designated developments offers the potential for central and local government to agree on redevelopment projects that offer the potential to deliver significant volumes of housing, within which the UDA will operate with different powers and land use rules. This is similar to the models that Places Victoria and Economic Development Queensland use in Australia.

**R12.2** A future planning system should include a legislated regime similar to Special Housing Areas, in which certain developments undertaken by local urban development authorities are designated by Order in Council as having the potential to deliver significant numbers of dwellings, and within which the urban development authority will operate with different powers and land use rules.

To be clear, UDAs would be able to operate outside such 'designated developments', but would not have any special powers or streamlined planning and consenting requirements in doing so.

The HASHA Act defines a qualifying development in a special housing area as a development that will:

- be predominantly residential; that is, the primary purpose of the development is to supply dwellings; any non-residential activities provided for are ancillary to quality residential development (such as recreational, mixed use, retail, or town centre land uses);
- have dwellings and other buildings no higher than 6 storeys, and a maximum calculated height of 27 metres;
- contain no fewer than the prescribed minimum number of dwellings to be built; and
- contain not less than the prescribed percentage (if any) of affordable dwellings.

These requirements will be too limiting for the type of urban development that UDAs are expected to undertake. In particular, the redevelopment of town centres will require higher buildings. Further, to be economically viable, redevelopment of town centres will also need to facilitate uses that are not just ancillary to residential activities.

**R12.3** A future planning system should provide for "designated developments" undertaken by local urban development authorities to allow higher height and storey limits than in the Special Housing Areas regime, and to allow non-residential uses that may be necessary for the development to be economically viable.

## Amalgamating land

In a 2006 paper for the Ministry for the Environment, R Neil Gray argued that the "land problem" in New Zealand was different to other countries:

> In the UK and US and Australia, urban regeneration is often proposed as a means of revitalising large tracts of derelict land (redundant docklands, factories etc). By contrast, New Zealand (particularly Auckland) has few such areas. Nor does New Zealand have large tracts of contiguous Crown land within its urban borders, or tracts of leasehold land. The problem in the New Zealand context is how to amalgamate small parcels of valuable urban land, into larger blocks that permit meaningful development. (p. 5)

Auckland is not entirely without such large contiguous sites, but they are rare. Many of the largest developments that are under way or currently being completed have involved repurposing brownfield sites, such as Hobsonville, Stonefields, and Three Kings. However, it is notable in each case that little or no amalgamation was integral to the project, with sites owned by either the Crown or Winstone.

Many submitters to the *Using land for housing* inquiry considered land fragmentation to be a problem as it made it difficult to take advantage of economies of scale in development, increased the difficulty of coordinating and allocating the costs of infrastructure, and created risks of holdouts due to raised expectations about future land values (NZPC, 2015a). A review of the Auckland Regional Growth Strategy noted that progress towards more intensive development was being hindered by, among other things, the difficulty of amalgamating sites in key areas (Regional Growth Forum, 2007).

In its 2012 report on *Housing affordability*, the Commission noted the desirability of "bringing significant tracts of both greenfield and brownfield land to the market in Auckland and Christchurch" (p. 102). Significant scale economies can be achieved in land development and building, but this often requires the aggregation of smaller parcels of land. The Ministry of Business, Innovation and Employment (MBIE) has also identified fragmented land ownership as a constraint on residential housing supply, limiting the opportunity for large-scale development opportunities (MBIE, 2014b). The Urban Taskforce report (2009) identified "difficulty in aggregating significant areas of residentially zoned land" as a barrier to high-quality, larger-scale urban developments (p. 17). The Commission concluded in its draft report on *Using land for housing* that a failure in coordination was preventing many large residential developments.

In its draft report on *Using land for housing* the Commission discussed at length the economics of land assembly, and the case for compulsory acquisition powers to address housing shortages. The Commission came to a number of conclusions around the use of acquisition powers (see Appendix B of NZPC, 2015a).

- Holdouts in land assembly projects impose a supply-side externality, with the direct implication that government can correct the allocative inefficiency through compulsory acquisition (known as "eminent domain" in the United States) (Miceli, 2011).
- Assembly problems are more significant in the centre of cities, because lot sizes are generally smaller and ownership more dispersed than greenfield land on the fringe of cities. As a result, holdout problems in urban areas bias development towards the urban fringe.
- Private property rights serve essential economic purposes. But they are not absolute, and can be restricted in accordance with law where doing so is in the public interest.
- Circumstances exist in which the economic and social harms that result from a housing shortage should be considered sufficient to justify the compulsory acquisition of land for the construction of housing.
- The housing shortage produces significant social and economic harms, (as outlined in Chapters 3 and 6 in the current report).
- Most countries provide power for the government to acquire property for public purposes, with compensation.
- Compulsory acquisition powers can be effective without being exercised, by facilitating negotiated acquisitions. Both the public agency and the landowner usually prefer these agreements to compulsory acquisition, although they still involve coercion.
- Theoretical alternatives are available in the economic literature to overcome holdout problems. Few mechanisms ensure only efficient developments proceed and owners are fairly compensated. Where they do, the mechanisms rely on unreasonable assumptions (eg, that government can correctly predict the likelihood of developers purchasing land at given prices).
- Any proposal for compulsory acquisition of Māori land would face sensitive Treaty of Waitangi /Tiriti o Waitangi issues. Past legislation on compulsory acquisition has contained explicitly discriminatory provisions for taking Māori land (Marr, 1997). The Waitangi Tribunal has consistently argued that the compulsory acquisition of Māori land for public works is almost always a breach of the Treaty (see, for example, Wai 863). Any regime to compulsorily acquire land for housing developments needs to recognise both the associated risks and positive partnership opportunities.

## The power of local authorities to acquire land for housing is unclear

Compulsory acquisition of land in New Zealand is provided for in a number of New Zealand statutes, based around the Public Works Act 1981 (PWA).

- The PWA gives the Minister of Land the "power to acquire any land, required for any Government work" (s 16 (1)).[104] Government work is "a work or an intended work that is to be constructed, undertaken,

[104] The courts have held that land was "required" if its acquisition was, viewed objectively, essential or reasonably necessary rather than, in some general sense, desired (*Seaton v Minister for Land Information* [SC 44/2012 [2013]).

established, managed, operated, or maintained by or under the control of the Crown or any Minister of the Crown for any public purpose", including any work that the Crown is authorised to undertake by any other Act. Local authorities are similarly empowered to acquire land for local works. Local work means a work constructed or intended to be constructed by or under the control of a local authority, or for the time being under the control of a local authority. Taking of land wholly for private purposes is not authorised (see *Bartrum v Manurewa Borough* [1962] NZLR 21).

- The Local Government Act 2002 (LGA) authorises local authorities to compulsorily acquire land that "is necessary or convenient for the purposes of, or in connection with, any public work that the local authority was empowered to undertake immediately before 1 July 2003" (s 189). At that time, local authorities had the explicit power to "undertake and carry out urban renewal in the district" (s 644B of the Local Government Act 1974).
- The Canterbury Earthquake Recovery Act 2011 provides the Minister with the power to acquire land, but imposes a narrower compensations regime than would be available under the PWA. These powers have been used to amalgamate sites required for the East Frame of central Christchurch. The East Frame is intended to deliver about 750 dwellings on about 13 hectares, as well as retail and recreation facilities. The Crown had to acquire 92 properties for the East Frame. Most were acquired by agreement, but 9 were compulsorily acquired (Brownlee, 2013).
- Section 5 of the Housing Act 1955 gives the Governor-General power to use the PWA to take land required for "State housing purposes"; the taking of Māori land under this provision requires the consent of the Minister of Māori Affairs. Section 2 defines State housing purposes as

  > the erection, acquisition, or holding of dwellings and ancillary commercial buildings by the Crown under this Act for disposal by way of sale, lease, or tenancy; and includes the acquisition of land by the Crown—
  >
  > (a) as sites for dwellings and ancillary commercial buildings:
  >
  > (b) for schemes of development and subdivision into sites for dwellings:
  >
  > (c) for motorways, roads, streets, access ways, service lanes, reserves, pumping stations, drainage and water works, river and flood protection works, and other works upon or for the benefit of the land so acquired or the occupiers thereof.

The application of existing compulsory acquisition powers to situations of urban development is unclear (Sustainable Urban Development Unit, 2008). Whether, and the extent to which, a local government can compulsorily acquire land for urban regeneration or housing is uncertain. The powers under the LGA appear to be seldom, if ever used; so their application is uncertain, particularly given the unusual construction of the power.

**F12.6** The ability of local authorities to compulsorily acquire land for housing or urban regeneration is unclear.

Compulsory acquisition powers are a significant limit on private property rights, which should not be made available lightly. Where such powers are available, they should be exercised with restraint and subject to appropriate restraining institutional structures.

The Commission considers that locally established UDAs should have the support of compulsory acquisition powers in some circumstances, and that such powers are justifiable to overcome holdout problems in urban regeneration given the wider public interest in a liveable built environment.

The powers should be modelled around the existing provisions of the PWA, which contains a well-established process and a number of safeguards for controlling the use of acquisition powers by the Crown, local authorities, network utilities or River Boards. These safeguards include:

- statutory processes to be followed, including an obligation to first negotiate in good faith to acquire the land;

- the right to object to compulsory acquisition to the Environment Court, which enquires into whether alternatives have been considered, and decides whether the taking is "fair, sound and reasonably necessary" – these findings are binding on the Crown or local authority; and appeals from the Environment Court are available on questions of law;
- if the amount of compensation cannot be agreed, then the Land Valuation Tribunal will determine the amount of compensation; and
- the High Court has inherent powers of judicial review over a Minister or local authority's decisions to acquire land, with further appeals possible.

**R12.4** A future planning system should provide compulsory acquisition powers to local urban development authorities for 'designated developments', subject to the normal processes, compensation and protections of the Public Works Act.

However, the "offer back" provisions of the PWA will need to be limited to situations where the land is no longer needed for the development. It would be impractical to take land, redevelop it significantly, and be required to offer the land back to the original owner.

**R12.5** The Government should adjust the "offer back" provisions of the Public Works Act for use by urban development authorities, so that they are not obliged to offer back land that has been significantly redeveloped.

## Planning and consenting processes

The Commission does not see a good case for granting local UDAs planning powers of their own, as they are wholly owned by local councils, and need to work in close collaboration with those councils. However, in the *Land for housing* inquiry, councils and developers generally considered the expedited planning processes of HASHA were very positive (NZPC 2015a).

Special Housing Areas operate with streamlined consenting and plan change timeframes, and with notification limited to immediate neighbours. This model should also apply to "designated developments" undertaken by UDAs. Councils or UDAs will have opportunities, apart from the consent process, to consult with communities about redevelopment proposals.

**R12.6** The Government should provide for "designated developments" undertaken by local urban development authorities to operate under streamlined planning and consenting processes. This should include restricting public notification.

## Other support for local urban development authorities

Government has a range of ways in which it can support the activity of local UDAs, including through making Crown land available (NZPC, 2015a), partnering in specific projects, and ensuring that Housing New Zealand cooperates where relevant.

**R12.7** The Government should look at other opportunities to support the activity of local urban development authorities to deliver on cities' goals for urban redevelopment, including through making Crown land available, partnering in specific projects, and ensuring that Housing New Zealand cooperates where relevant.

## 12.3 Model 3: auctions of development rights

Auctioning development rights is another tool that councils could use to help achieve greater density close to the centres of high-growth cities. The ability to sell development rights in certain circumstances would provide councils with a means to increase density, but only up to a pre-agreed limit, and at the same time gather revenue for associated infrastructure costs or other uses. This section examines the advantages and disadvantages of councils having the power to sell development rights.

### The problem

Economist and urban researcher Arthur Grimes caused a stir as a panel speaker in Auckland in July 2016 when he suggested that planning rules should allow a large number of high-rise apartments along the prestigious harbour-front road of Tamaki Drive:

> Auckland also has plenty of opportunities for intensification in areas where developers would wish to intensify and where people wish to live. For instance, Tamaki Drive is ready made for high-rise apartments where tens of thousands of people would no doubt wish to purchase apartments. Of course climate change may make development on Tamaki Drive a risk, but a few blocks back from the sea – on the ridges overlooking the harbour – would work just as well. Lift the restrictions on the heights of new developments, and I expect that we would see an utter transformation in the intensity of housing from Orakei through to Glendowie. (Grimes, 2016)

Many were shocked at the thought of a "Surfers Paradise" forest of high-rise apartment blocks along this stretch of coast. Equally prestigious Herne Bay has two multi-storey apartment buildings. They are accepted parts of the landscape and do not give rise to any significant negative spillovers on neighbouring properties. The buildings date back to an earlier, more permissive era and no more have been consented following the tightening of planning rules.

These two examples in inner Auckland illustrate the problem – on the one hand, the strong need for higher-density, more affordable apartment living; on the other hand, the many people who feel a high-rise forest is unacceptable.

### Auctioning development rights as a solution

A solution to the conundrum just described would be for councils to allow a greater number of (but not too many) multi-storey apartment buildings. A general rule in the district or unitary plan permitting them would risk a "Surfers Paradise" forest. Yet on what basis could they be fairly limited? Allowing councils to only auction development rights to the optimal number of multi-storey buildings could be one solution. But who decides the optimal number?

Councils auctioning development rights as a means to regulate density within cities has a number of potential benefits because it would enable:

- increased density, but within a predetermined limit;
- efficient allocation of the rights to increase density to those who value them most highly;
- imposition of conditions on the rights that minimise risks of adverse spillover effects from the development (eg, by specifying that multi-storey buildings are sufficiently spaced from each other, surrounded by a minimum area of green space, and/or do not encroach on defined view shafts);
- reduction of risks of holdouts by existing landowners when developers are assembling land parcels (because the rights would not pertain to particular locations, the developer would have the flexibility to find contiguous owners willing to sell at market prices);
- revenue raising from the sale of rights that could be used to help cover costs that fall on councils (eg, investment in additional infrastructure) and/or to fund local amenities that improve liveability in the area; and
- a boost to overcoming the resistance of NIMBYs by limiting the quantity and controlling other characteristics of the increase in density, and through the improved local amenities that "sweeten the pill" for existing residents.

Two submitters supported councils having the power to sell development rights (Wellington City Council, sub. DR68; and LGNZ, sub. DR113). Yet the power could also have some downsides. For example, councils could be tempted to overuse the power so as to raise additional revenue (Allison Tindale, sub. DR110, p. 10) or even set standard controls more stringently so as to increase the number of development rights they can sell (New Zealand Initiative, sub. DR75, p. 8). The Property Council expressed the concern that "(t)o allow councils to auction and sell additional development rights is arguably appropriating private property rights and then selling them back to the rightful right holder" (DR118, p. 17).

Greater Christchurch Urban Development Strategy (sub. DR83, p. 19) suggested a variation on awarding rights to develop above the standard thresholds "to incentivise broader quality outcomes above what might be required through a standard consenting route (e.g. density bonuses)".

The Commission acknowledges some downside risks would exist if councils have the power to sell development rights. Yet it believes these risks can be satisfactorily managed and mitigated. For example, the power could be limited to high-growth city councils that face the need to densify inner-city areas; and the IHP process for reviewing local authority plans would limit the moral hazard of councils setting density thresholds low so as to sell more rights to exceed them.

Australian states have used the sale of development rights to help fund infrastructure development. The approach was used in Victoria in the 1990s when air rights were sold at Melbourne Central Station to contribute to the cost of building the station. This facilitated significant retail and commercial development (Infrastructure Victoria, 2016a, p. 18). Used in this way, the sale of development rights can be seen as a form of value capture (Chapter 11) where those who benefit from development contribute to its costs. This form of value capture differs from targeted rates in three ways:

- it tends to be focused on large one-off projects;
- the initial burden falls on developers rather than on targeted ratepayers; and
- the value is captured through some form of sale process, rather than by an estimate of the contribution of infrastructure to land values.

This section has used the terminology of "auctioning" development rights. A broader term would be "selling" them. Councils and their advisors would decide the best way to run a sale process – just as private sellers of houses have the choice of open auctions, open tenders, closed tenders or a fixed price. The advantage of auction and tender processes is that they are a way to reveal the value of the rights and to ensure – as far as possible – that the rights go to those who value them most highly. But these processes also have downsides.

Overall, the Commission finds that allowing councils to sell development rights would, in the right circumstances, be a useful way to regulate the density of development (eg, by restricting the number of multi-storey apartment blocks in an area) and provide revenue to fund associated infrastructure costs or additional services to "compensate" affected communities.

**F12.7** Auctioning development rights to higher-than-normal density limits would enable councils to regulate development density efficiently in some cases (eg, by restricting the number of multi-storey apartment blocks in an area) and raise revenue to help fund associated infrastructure needs, and/or provide additional amenities to "compensate" affected communities.

**R12.8** In a future planning system councils should have the power to sell development rights as a means to achieve greater density in growing cities. They would use the power to efficiently regulate the number of structures that significantly exceed normal planning density rules. And they would spend the revenue raised on associated infrastructure costs and/or to provide additional amenities to affected communities.