Urban Development Bill – Talking points for oral hearing on submission

1. Kia ora, tatou. My concerns with this Bill relate mainly to the interface with the Resource Management Act and the new Zero Carbon framework. I'm all in favour of procedural improvements that make sense. But they do not need to undermine fundamental environmental law.

Let me deal first with the lack of environmental bottom lines

2. The Bill takes the very unusual approach of making the purpose of the RMA a 'principle' of the new Act. On a cursory reading, nothing has changed: Both the new Act and the RMA require decision makers to 'promote' sustainable management. However, that is not the legal effect.

3. To double check my legal intuitions I sought an independent legal opinion, which I am tabling today, which explains the problems with it in detail. The nub of it is that the principles of the new Act will be subservient to its purpose (just as the principles of the RMA are subservient to its purpose). This means that sustainable management will only have to be promoted to the extent that doing so would, "facilitate urban development that contributes to sustainable, inclusive, and thriving communities" - whatever those words might mean. In my view, this is the sort of loose, promotional language that is best reserved for places like the dust jackets of books that need some 'selling'. It doesn't belong on the statute book. The purpose of this Bill is to facilitate specified urban development projects.

4. Let me come back to the RMA. As the Royal Forest and Bird Society put it in its submission (at paragraph 14):

> "While the Bill purports to include environmental safeguards … there are no clear environmental bottom lines with respect to ensuring the purpose of the RMA is achieved".

5. This is unacceptable for three reasons:

   - First, there is no evidence that the purpose of the RMA is a barrier to achieving the Government's objectives. The Regulatory Impact Statement does not make that case, and neither did the Productivity Commission in its report *Using Land for Housing*;

- Secondly, the bottom lines set out in section 5(2) of the RMA are foundational and should not be compromised[1]. We can and should meet whatever needs we may have for urban development without breaching those rudimentary requirements; and,

- Thirdly, any development undertaken pursuant to this Bill will eventually need to be managed under the RMA. Requiring local authorities to administer and enforce consents granted to meet one purpose (*section 5 of the RMA*) under legislation designed to achieve another one (*clause 3's 'sustainable, inclusive and thriving communities*) could well create challenges. It will certainly create complexity.

6. For those reasons, clause 3 should be reworded to make it clear that the purpose of the new Act is subject to the bottom lines specified in section 5(2) of the RMA. The legal opinion I have circulated provides one formula that would do just that as well as propose a sober purpose clause that says what the purpose of this Bill actually is.

I turn now to the lack of appropriate gateway tests

8 The Bill provides for the Government of the day to effectively oust the RMA and other legislation without having to demonstrate why that is necessary. For example, ministers will merely be required to 'have regard to' the statutory purpose of the new Act in making decisions on whether to establish a specified development project. As such, they will be able to proceed even if the project involved could be delivered just as easily under existing statutes.

7. The Bill as drafted validates an excessive and unnecessary power of over-reach in the hands of Ministers. It is even more objectionable given the very broad definition of 'urban development' set out in clause 10. It goes far beyond housing to include anything that is part of, 'the development and renewal of urban environments' and, 'related commercial, industrial, community, or other amenities, infrastructure, facilities, services or works'. Virtually anything could be commenced in an urban setting under this expansive definition – for instance a new port, an oil refinery or a casino. You might think that's extravagant. Surely Kainga Ora wouldn't be indulging in this sort of 'urban development'? Well there is nothing to stop it – section 13 (1) (f) of the Kainga Ora Act 2019 extends to "*development and renewal of urban environments, whether or not this includes housing development*" and includes the exact same list of things I

[1] For ease of reference, section 5(2) reads as follows:

'…(a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

(c) avoiding, remedying, or mitigating any adverse effects of activities on the environment'.

have just quoted from clause 10. Put the Act and the Bill together and you have drafting that has clearly been intended to encompass the widest array of imaginable situations.

8. In saying all this, I recognize that projects will have to meet various other criteria under clause 30, including either having 'overall' support from the relevant territorial authority or being in the national interest. These criteria go to the merit or value of the proposal. But the fact that a project is meritorious or even necessary does not of itself mean that special powers are necessary to deliver it. That involves quite different considerations which are likely to be about process difficulties.

9. Allowing the RMA and other legislation to be set aside for an almost unlimited array of possible circumstances will completely undermine the integrity of the planning system.

10. I recommend that the Committee should propose changes to the Bill to ensure that the new powers are only used when they are needed. At the very least, the Government should be required to carried out an evaluation which shows that access to the powers sought for a project are reasonably necessary to achieve the purpose of the new Act. These evaluations should include describing the particular barriers or impediments that the project would face if it was progressed under whatever legislation the government proposes to override.

Unduly weak obligations in respect of emissions reduction plans

12 Finally, the Bill does not do enough to manage the impacts of urban form on our emissions of greenhouse gases. Kāinga Ora is not required to undertake development in a way which is consistent with the Government's own emissions reduction plans, or even to say why it is not doing so.

13 Decisions on urban form and the built environment will have long-lasting consequences for our emissions profile and our ability to meet the 2050 target. Kāinga Ora should be required to act in a way that is consistent with emissions reduction plans unless there is good reason not to and in that case should be required to spell those reasons out.