

In Confidence

Office of the Minister of Housing

Cabinet Business Committee

Acquisition of additional land from Unitec for housing

Proposal

- 1 This paper informs Cabinet of my intention to formalise sale and purchase negotiations with Unitec Institute of Technology (Unitec) in respect of land required for State housing purposes at its Mt Albert campus. Specifically, this land is Lot BP1, which is approximately 3.2 hectares, and the F Lots, which are approximately 4.4 hectares.
- 2 Cabinet has previously agreed this land should be included in the housing development planned at the Unitec Site (the Site) and the relevant land is shown, with approximate boundaries, in Appendix 1.

Relation to Government priorities

- 3 This proposal relates to the Government's priorities to ensure everyone has a warm, dry home, and to build closer partnerships with Māori. It will enable centrally located land with the capacity for between 500 and 1000 homes, close to employment, transport and education, to be included in a vibrant, mixed-use community of public, affordable and market housing, in a development partnership with mana whenua.

Background: Negotiations with Unitec

- 4 On 5 March 2018, Cabinet agreed to acquire 29.3 hectares of land from Unitec to enable a master-planned, at-scale, housing development [CAB-18-MIN-0077 refers]. In the final sale and purchase agreement, Unitec also granted the Crown a first right to acquire additional land called the F Lots. HUD also asked Unitec if it would sell any of its BP Lots. The F and BP Lots were included in the development planning by Unitec's Wairaka Land Company, for business partnerships and commercial uses, rather than as being retained for the core campus.
- 5 The majority of Unitec's Mt Albert campus is right of first refusal (RFR) land.¹ Over the second half of 2018, Auckland iwi/ hapū and the Crown jointly prepared a high-level masterplan (Reference Plan) to guide development of the Site. In parallel, Unitec and the Ministry of Housing and Urban Development (HUD) engaged in sale and purchase negotiations for the F Lots.

¹ Under the Ngā Mana Whenua o Tāmaki Makaurau Redress Deed and Act 2014. The iwi/ hapū parties to this Deed and Act have the right to the first opportunity to develop the RFR land for housing as part of a Protocol administered by HUD, separately from the RFR.

- 6 In March 2019, Cabinet considered the Reference Plan. It showed development on the 26.5 hectares held for housing,² and Unitec's F and BP Lots as potential development acquisitions. Cabinet noted the Crown intended to complete negotiations with Unitec for the purchase of the F and BP Lots [CAB-19-MIN-0109.01 refers].³ Cabinet agreed to the public release of the Reference Plan, subject to engagement with stakeholders including Unitec.
- 7 Unitec opposed, and continues to oppose, the release of the Reference Plan largely due to the inclusion of the F and BP Lots.⁴ Subsequent negotiations to finalise the purchase of the F and Lot BP 1 from Unitec have failed, as, among other things:
 - 7.1 Unitec has been seeking a free carparking building on the F Lots (i.e. built and operated at no cost to Unitec). Unitec needs to reduce its car volumes and build carparking buildings to comply with the conditions of its resource consent from Auckland Council. It now advises it does not wish to sell the majority of the F Lots; and
 - 7.2 Unitec has plans to grant a 125-year lease over Lot BP1 for a retirement village. Unitec was initially reluctant to commit to negotiations with the Crown for this land. When it did agree to independent market valuations these did not meet its price expectations, and it has continued to discuss its proposal with the market.
- 8 In April 2019, Unitec wrote to Auckland iwi/ hapū regarding the retirement village proposal. It advised them the proposal would require it to exercise its RFR exemption for educational purposes. Iwi/ hapū advised the Crown they are prepared to test Unitec's exercise of this RFR exemption through the courts.
- 9 These inter-connected issues have delayed several key steps in the wider housing development that were scheduled to begin in mid-2019, including formal agreements with iwi/ hapū, detailed master-planning, and Auckland Council and community engagement.

Acquisition proposal

- 10 I have met with the Ministers of Finance and Education to discuss the Crown's options, including walking away from the acquisitions or continuing to attempt to close the current sale and purchase negotiations with Unitec. We have agreed the Crown should consider the acquisition of the F Lots and Lot BP 1 under the Public Works Act 1981 (PWA) as a government work.
- 11 I will first attempt a further period of negotiations with Unitec on a willing buyer, willing seller, basis. If there is no agreement, then the procedures for acquisition of

² The Reference Plan excluded the Mason Clinic expansion land, as the sale to the Waitemata District Health Board was almost concluded by this stage.

s 9(2)(j)

⁴ Unitec's other significant issue is the illustrations which show the community gardens moving to allow development. HUD and mana whenua have made no decisions on the community gardens and there is no intention of allowing development on any culturally significant sites, as will be reflected in the detailed master-planning.

the land under the PWA set in action steps that may result in the compulsory acquisition of the land. This will:

- 11.1 ensure there is still an option for all parties to reach agreement on the sale and purchase of these lots;
 - 11.2 provide all parties with certainty about the extent of the future housing development, which will enable detailed planning and engagement with Auckland Council, Albert-Eden Local Board, Council-Controlled Organisations and the local community;
 - 11.3 provide Unitec with sale proceeds which will assist it to pay back the \$50 million Crown loan agreed by Cabinet [SWC-18-MIN-0105 refers]; and
 - 11.4 ensure there is no risk that Unitec, as an institution with a high degree of statutory independence, will pursue its retirement village proposal and escalate issues with the iwi/ hapū RFR holders to the courts. Unitec cannot mislead interested parties of the potential for the land to be acquired or taken for State housing purposes.
- 12 I will start by advising Unitec of my intentions and provide it with an offer based on market valuations for the F Lots and Lot BP 1, to try one further time to finalise a purchase. If this is not successful, the Crown will seek the agreement of the Minister of Land Information to initiate the PWA procedures for acquisition of land for State housing purposes. Any acquisition under this process will comply with LINZ's standards on the acquisition of land under the PWA. The steps in the PWA process are set out in Appendix 2.

Risks

- 13 A full PWA process can be prolonged. Unitec can decline an offer during the negotiation period and also object to the taking through the Environment Court or judicial review. Compensation payable under the PWA can be required to be resolved through the Land Valuation Tribunal.
- 14 The proposal will reduce the amount of land available to Unitec to around 17 hectares, some of which it uses for education, including trades education (house building) and for at-grade carparking. Unitec will need to complete the transition to its core campus and reduce its traffic, and reliance on free carparking buildings. Further detail on the risks and mitigations of this proposal is set out in Appendix 3.

Financial Implications

- 15 Independent valuations suggest Unitec's F Lots and Lot BP 1 are worth approximately \$56.4 million. There are sufficient funds for this purchase in the Multi-Year Non-Departmental Output Expense: *KiwiBuild Housing*.
- 16 If willing buyer, willing seller, negotiations with Unitec are successful then acquisitions will be able to proceed under the existing delegations of the Ministers of Finance and Housing and Urban Development for the Land for Housing Programme [CBC-17-MIN-0100 refers].
- 17 If the PWA process needs to be initiated, the timing any acquisition becomes more uncertain. The potential for this spend will need to be incorporated into the future

planning for the Multi-Year Non-Departmental Output Expense: *KiwiBuild Housing* appropriation.

Consultation

- 18 Land Information New Zealand, Te Arawhiti – the Office for Māori Crown Relations, the Tertiary Education Commission, Ministry of Education and Treasury have been consulted on this paper.

Communications

- 19 The proposal will be communicated as and when required as part of stakeholder and agency engagement on the Unitec housing development. No formal announcements are planned.

Proactive Release

- 20 I intend to delay the release of this paper, to allow initial commercial negotiations with Unitec to proceed in confidence. I will reconsider this decision at the point these negotiations are successful or if the PWA process is initiated.

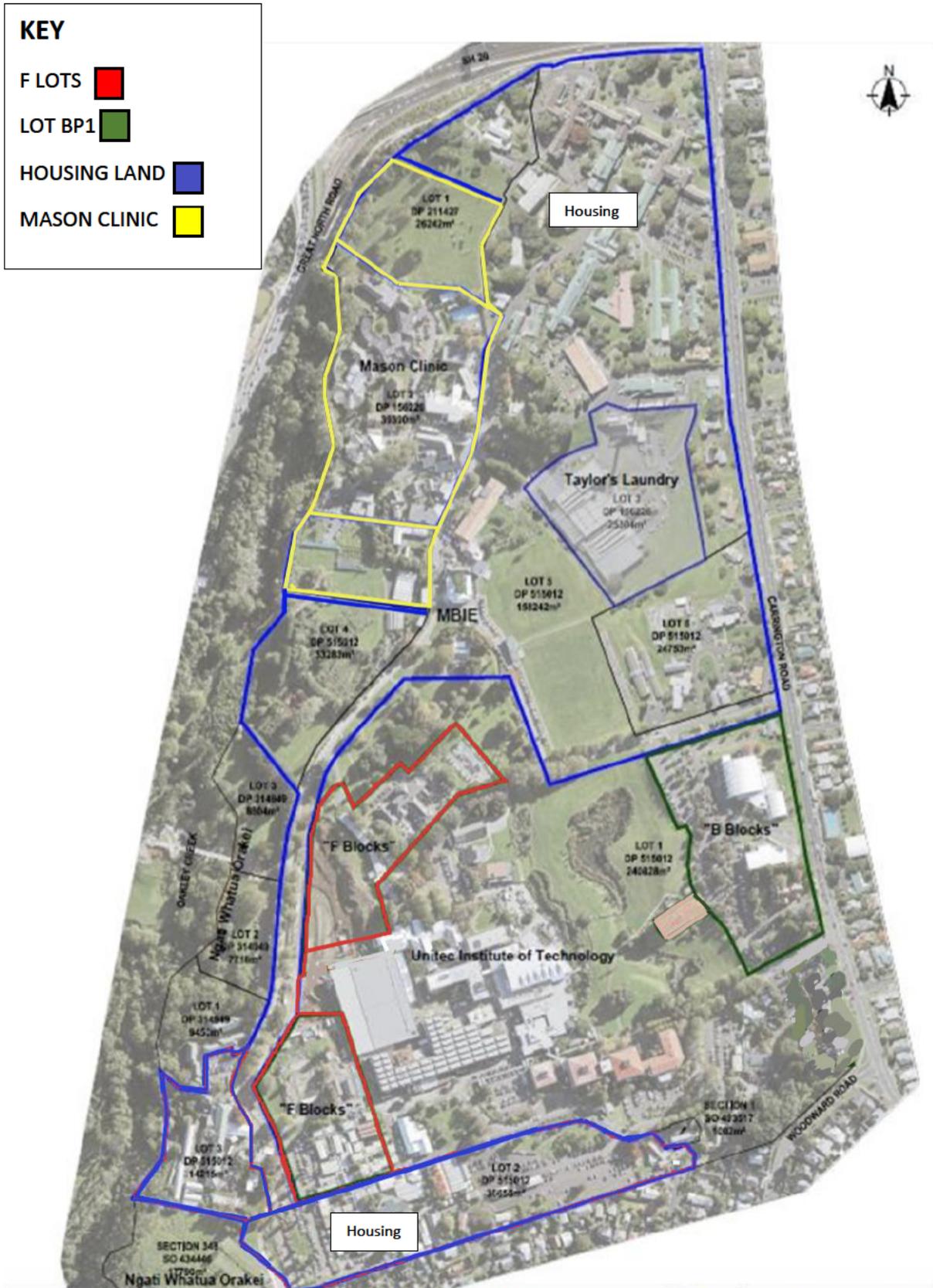
Recommendations

- 21 The Minister of Housing recommends that the Committee:
- 1 **note** that in March 2019, Cabinet noted that the Crown intended to complete negotiations with Unitec Institute of Technology (Unitec) for the purchase of the F and BP Lots [CAB-19-MIN-0109.01 refers];
 - 2 **note** that it has not been possible for the Crown to reach agreement with Unitec, despite a lengthy period of negotiations;
 - 3 **agree** to the Crown, through the Ministry of Housing and Urban Development, making a further market offer to Unitec for Lot BP 1 and the F Lots, as identified in Appendix 1;
 - 4 **note** if willing buyer, willing seller negotiations with Unitec are successful, then agreement to the final terms of the acquisition will come within the existing delegations of the Minister of Finance and Minister of Housing and Urban Development [CBC-17-MIN-0100 refers];
 - 5 **note** if these negotiations are not successful, the Crown intends to commence acquisition procedures to acquire or take the land as a public work – State housing purposes – under the Public Works Act 1981 (PWA), with the agreement of the Minister for Land Information;
 - 6 **note** the PWA process timing is more uncertain than willing buyer, willing seller negotiations, and other Ministers and agencies have key roles in determining whether the acquisition or taking of the F and B Blocks under the PWA can proceed and in approving the final terms of any acquisition or taking.

Authorised for lodgement

Hon Dr Megan Woods
Minister of Housing

Appendix 1: Additional land for acquisition at the Unitec Site



Appendix 2: Steps under the PWA for the acquisition of land held by Unitec

Step 1: Agreement of the Minister for Land Information obtained to initiate the procedures under the Public Works Act 1981, which then comes under the oversight of a LINZ accredited supplier, who prepares the necessary reports to support the proposed acquisition.

Step 2: All persons having a registered interest in the land are served with the Crown's Notice of Desire to acquire the land for public works, which is also registered on the title.

Step 3: A valuation is carried out by a registered valuer. The landowner is invited to sell the land, and advised of the estimated amount of compensation to which the landowner would be entitled if procedures to take the land are initiated.

Step 4: There is a period of three months of endeavour to negotiate in good faith to agree to acquire the land. If this is successful, the Minister for Land Information may acquire the land.

Step 5: If negotiations fail, a Notice of Intention to Take Land is served on the owner.

Step 6: The Notice is published in the Gazette. An objection can be made to the Environment Court by any person with an interest in the land. It is also possible to object to the Ombudsman, or take a judicial review.

Step 7: Subject to the outcome of any court processes, the Minister for Land Information may submit a recommendation to the Governor-General to issue a Proclamation to declare the land taken.

Appendix 3. Risks and mitigations

Risk	Mitigation
<p>Unitec objects to the PWA process, and lodges objections through one of the available avenues such as the Environment Court.</p>	<p>The PWA process is overseen by the LINZ accredited suppliers and will be informed at all stages by legal advice.</p> <p>The PWA process, while prescriptive and straightforward, is more involved than willing buyer and willing seller negotiations for both parties. Willing buyer, willing seller negotiations are usually successful, and are more likely to succeed once Unitec accepts the Crown is serious about acquiring the land.</p>
<p>The use of the PWA process to acquire this land for development is seen by the public as controversial and unwarranted.</p>	<p>The possibility of the development on this land was promoted through the Unitec and Wairaka Land Company engagement with the Auckland Unitary Plan.</p> <p>s 9(2)(j) [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>HUD's communications strategy will include a full range of responses to possible concerns.</p>
<p>The PWA process becomes prolonged, delaying other aspects of the development.</p>	<p>It is possible for the Crown to withdraw from the PWA process if it becomes apparent the costs will outweigh the benefits. This will be kept under active review, and decisions will be made with input from experienced PWA lawyers.</p>
<p>The use of the PWA is seen as a precedent by other agencies.</p>	<p>This is a possibility. Kāinga Ora – Homes and Communities will have access to acquisition powers under the Urban Development Bill. It is more likely to look to the precedents established by NZTA for roading, but proposals such as these where a site is well suited to urban regeneration may also be considered precedents.</p>



Cabinet Business Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Acquisition of Additional Land from Unitec for Housing

Portfolio **Housing**

On 8 April 2020, the Cabinet Business Committee:

- 1 **noted** that:
 - 1.1 in March 2018, Cabinet agreed in principle Joint Ministers approving the acquisition of 29.3 hectares of land from Unitec Institute of Technology (Unitec) to enable State housing development [CAB-18-MIN-0077];
 - 1.2 in March 2019, Cabinet noted that the Crown intended to complete negotiations for the additional purchase of Unitec's F and B Blocks [CAB-19-MIN-0109.01];
- 2 **noted** that it has not been possible for the Crown to reach agreement with Unitec, despite a lengthy period of negotiations;
- 3 **agreed** to the Crown, through the Ministry of Housing and Urban Development, making a further market offer to Unitec for Lot BP 1 and the F Lots, as identified in Appendix 1 attached to the paper under CBC-20-SUB-0022;
- 4 **noted** that if willing buyer, willing seller negotiations with Unitec are successful, then agreement to the final terms of the acquisition will come within the existing delegations of the Minister of Finance and Minister of Housing and Urban Development [CBC-17-MIN-0100];
- 5 **noted** that if these negotiations are not successful, the Crown intends to commence acquisition procedures to acquire or take the land as a public work – State housing purposes – under the Public Works Act 1981 (PWA), with the agreement of the Minister for Land Information;
- 6 **noted** that the PWA process timing is more uncertain than willing buyer, willing seller negotiations, and other Ministers and agencies have key roles in determining whether the acquisition or taking of the F and B Blocks under the PWA can proceed and in approving the final terms of any acquisition or taking.

Vivien Meek
Committee Secretary

Present:

Rt Hon Jacinda Ardern (Chair)
Rt Hon Winston Peters
Hon Grant Robertson
Hon Phil Twyford
Hon Dr Megan Woods
Hon Chris Hipkins
Hon Andrew Little
Hon Carmel Sepuloni
Hon Dr David Clark
Hon David Parker
Hon Nanaia Mahuta
Hon Jenny Salesa
Hon Damien O'Connor
Hon Kris Faafoi
Hon Ron Mark
Hon Tracey Martin
Hon James Shaw

Officials present from:

Office of the Prime Minister
Department of the Prime Minister and Cabinet
Treasury



Cabinet Business Committee

Summary

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Acquisition of Additional Land from Unitec for Housing

Portfolio **Housing**

This paper notes that negotiations to purchase land for housing from Unitec Institute of Technology (Unitec) has been unsuccessful and seeks agreement for the Crown to make a further market offer to Unitec for Lot F and BP1, shown in **Appendix 1** attached to the paper.

If negotiations are unsuccessful, the Crown intends to commence acquisition of the land under the Public Works Act 1981. The public works acquisition process can be prolonged, as set out in **Appendix 2**.

The Minister of Housing recommends that the Committee:

- 1 note that:
 - 1.1 in March 2018, Cabinet agreed in principle Joint Ministers approving the acquisition of 29.3 hectares of land from Unitec Institute of Technology (Unitec) to enable State housing development [CAB-18-MIN-0077];
 - 1.2 in March 2019, Cabinet noted that the Crown intended to complete negotiations for the additional purchase of Unitec's F and B Blocks [CAB-19-MIN-0109.01];
- 2 note that it has not been possible for the Crown to reach agreement with Unitec, despite a lengthy period of negotiations;
- 3 agree to the Crown, through the Ministry of Housing and Urban Development, making a further market offer to Unitec for Lot BP 1 and the F Lots, as identified in Appendix 1 attached to the paper under CBC-20-SUB-0022;
- 4 note that if willing buyer, willing seller negotiations with Unitec are successful, then agreement to the final terms of the acquisition will come within the existing delegations of the Minister of Finance and Minister of Housing and Urban Development [CBC-17-MIN-0100];
- 5 note that if these negotiations are not successful, the Crown intends to commence acquisition procedures to acquire or take the land as a public work – State housing purposes – under the Public Works Act 1981 (PWA), with the agreement of the Minister for Land Information;

- 6 note that the PWA process timing is more uncertain than willing buyer, willing seller negotiations, and other Ministers and agencies have key roles in determining whether the acquisition or taking of the F and B Blocks under the PWA can proceed and in approving the final terms of any acquisition or taking.

Rachel Clarke
Committee Secretary
