



Cabinet

Minute of Decision

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Legislating to Empower Complex Urban Development Projects

Portfolios **Housing and Urban Development / Environment**

On 28 May 2018, following reference from the Cabinet Economic Development Committee, Cabinet:

Background

1 **noted that:**

1.1 on 20 December 2017, the Cabinet Business Committee:

1.1.1 agreed in principle to establish a national urban development authority (UDA);

1.1.2 agreed to develop new legislation that enables selected complex urban development projects to operate with more enabling development powers and land use rules;

[CBC-17-MIN-0051]

1.2 the paper under CAB-18-SUB-0243 is the first of a series of papers on detailed policy proposals for the new legislation;

1.3 the functions of the national UDA will be wider than the powers and processes discussed in the paper under CAB-18-SUB-0243;

1.4 references in the paragraphs below to the 'new legislation' refer to the part of the new Bill that creates and governs the use of the more enabling development powers and processes, rather than to the resulting Act as a whole;

1.5 further papers will cover:

1.5.1 the establishment, structure, functions and powers of the national UDA;

1.5.2 the approach to appeal rights;

1.5.3 the scope and application of each of the more enabling development powers;

1.5.4 the approach to Māori interests;

Legislative implications

- 2 **noted** that the Housing Commission (Urban Development Powers) Amendment Bill has a category 5 priority on the 2018 Legislation Programme (to be referred to a select committee in 2018);
- 3 **agreed** that the new legislation bind the Crown;
- 4 **authorised** the Minister of Housing and Urban Development, the Minister for the Environment and the Minister of Local Government to make subsequent policy decisions on related details consistent with the policy proposals discussed in the paper under CAB-18-SUB-0243;
- 5 **invited** the Minister of Housing and Urban Development to issue drafting instructions to the Parliamentary Counsel Office to give effect to the proposals agreed in this minute and in accordance with paragraph 4 above;
- 6 **noted** the Minister of Housing and Urban Development and the Minister for the Environment will seek further policy decisions from Cabinet required for the new legislation over the next two months;

Core components

- 7 **agreed** that:
 - 7.1 development powers are any one of the more enabling statutory rights or powers intended to better support urban development that are included in the new legislation (proposed to be land assembly, land use planning and consenting, infrastructure provision, and funding);
 - 7.2 a development project is a programme of urban development for a selected geographic area;
 - 7.3 the project area is the discrete geographic area or areas in which a single development project is located;
 - 7.4 an urban area includes greenfield land suitable for current or future urban purposes;
 - 7.5 the strategic objectives are the project-specific objectives for urban development that define the aims for the development project and guide its planning and delivery;
 - 7.6 the principles are matters of importance that decision-makers must recognise and provide for, together with other matters that decision-makers must have particular regard to, that have a core role in shaping the strategic objectives;
 - 7.7 the development plan is the document that describes the programme of urban development for a particular development project, and that shows how relevant development powers will be exercised in the project area;
 - 7.8 the project lead is the entity accountable for delivering the strategic objectives of a particular development project, and for undertaking the overall project management and land owning functions (this will most often be the UDA, but in some cases can be another entity);

- 7.9 urban development includes:
- 7.9.1 bringing land and buildings into effective use, including through the subdivision or consolidation of land;
 - 7.9.2 the provision of land suitable for urban uses, including residential, commercial, industrial, social, cultural and recreational purposes;
 - 7.9.3 ensuring that affordable housing and social facilities are available to encourage people to live, work and play in the area;
 - 7.9.4 encouraging the development of industry and commerce, whether new or existing;
 - 7.9.5 creating an attractive and sustainable urban environment, including through the provision of public open spaces; and/or
 - 7.9.6 providing sufficient utility infrastructure, roads and public transport to support optimal urban use;

8 **noted** that a reference in the paragraphs set out below to:

- 8.1 ‘the Minister’ is to the Minister appointed by the Prime Minister to be responsible for the new legislation once it has been enacted;
- 8.2 the ‘RMA’ is to the Resource Management Act 1991;
- 8.3 ‘the territorial authority’ is to the one or more territorial authorities responsible for those parts of any district that fall within a particular project area;
- 8.4 a ‘Treaty settlement’ includes any legislation, deed, or deed of settlement arising from historical claims under the Treaty of Waitangi, or that provides redress in response to those claims, whether already executed or enacted, or to be executed or enacted in the future;
- 8.5 the ‘UDA’ is to the national urban development authority, referred to in the previous Cabinet decision as the Housing Commission [CBC-17-MIN-0051];

Scope

9 **noted**:

- 9.1 that the new legislation will be project-based, meaning that with some limited exceptions will only apply within the geographic scope of the project area;
- 9.2 Cabinet’s previous decisions regarding the scope of the new legislation [CBC-17-MIN-0051];

10 **agreed** that more than one contiguous geographic area be able to form part of a single development project;

Application

11 **agreed** that:

- 11.1 the national UDA be free in its discretion to progress aspects of a development project under existing rules (e.g. if the land use regulations of the existing district plan are already sufficiently enabling to realise the strategic objectives, the UDA can choose to leave them unchanged);

- 11.2 existing rules remain by default and continue to be binding unless they are changed through the new statutory process, and there is no need to consult or seek approval to undertake activities that are already permitted under the status quo;
- 11.3 to the extent the UDA does seek access to one or more of the development powers, the new process and legislative framework will apply instead of the process and framework that would otherwise apply under the status quo;
- 11.4 the intention is to create a single combined process through which changes can be made to multiple components of the urban environment that would otherwise need to be made through several different processes under the status quo;

Processes

12 **agreed** that the new legislation:

- 12.1 not establish any particular development projects upon its enactment;
- 12.2 provide for the following establishment and planning processes for each development project, as set out in more detail further below:
 - 12.2.1 initial assessment of the proposed development project;
 - 12.2.2 public consultation on the core elements of the proposed project;
 - 12.2.3 establishment of the development project;
 - 12.2.4 preparation and publication of the draft development plan for the project;
 - 12.2.5 public consultation on the draft development plan;
 - 12.2.6 publication of the UDA's recommended development plan;
 - 12.2.7 submissions on the recommended development plan;
 - 12.2.8 consideration of submissions by an independent hearings panel;
 - 12.2.9 recommended changes to the development plan;
 - 12.2.10 final approval of the development plan;

General matters

13 **agreed** that the new legislation:

- 13.1 provide that development projects are formally established by Order-in-Council on the recommendation of the Minister;
- 13.2 require the Minister, when making a recommendation, to recommend:
 - 13.2.1 the strategic objectives, including any conditions for the delivery of public benefits;
 - 13.2.2 the boundaries of the project area;

- 13.3 restrict the exercise of any development powers to:
- 13.3.1 the project area, where necessary to realise the strategic objectives;
 - 13.3.2 infrastructure outside the project area required to support the development project;
 - 13.3.3 uses that comply with obligations arising from Treaty settlements;
- 13.4 provide that:
- 13.4.1 apart from powers of compulsory land acquisition, none of the development powers can be exercised unless and until their proposed use has been approved in the development plan (subject to any further powers whose need to be used in advance may be identified during the drafting of the Bill);
 - 13.4.2 once approved, only the UDA will be able to authorise the actual use of the development powers identified in the approved development plan to deliver the strategic objectives;
- 13.5 require the UDA to prepare the development plan and recommend it;
- 14 **agreed** that, due to the nature of the development powers, the governing body of the new or existing entity established as the UDA must be publicly controlled;

No appeals

- 15 **agreed** that there be no right of appeal to the courts:
- 15.1 against the establishment of the development project or any of the contents of the Order-in-Council; or
 - 15.2 against the content of the development plan;
- 16 **agreed** that judicial review remains available;
- 17 **directed** officials to provide further advice on whether to retain appeals on points of law and, if so, to what extent any limitation should apply;
- 18 **authorised** the Minister of Housing and Urban Development and the Minister for the Environment to determine the manner and extent of any appeals on points of law, and to issue drafting instructions to the Parliamentary Counsel Office accordingly;
- 19 **invited** the Minister of Housing and Urban Development to report back to Cabinet with the decision when the draft Bill is presented to Cabinet for approval;

Eligibility criteria

- 20 **agreed** that the intention is to apply eligibility criteria that limit the ability for business-as-usual developments to access the new legislation;
- 21 **agreed** that the Minister in his or her opinion must be satisfied that the proposed development project:
- 21.1 has the realistic potential to deliver tangible net public benefits, considering both inside and outside the project area;

- 21.2 will facilitate urban development;
 - 21.3 will be undertaken in an urban area; and
 - 21.4 will deliver more than one development outcome;
- 22 **agreed** that, when addressing the potential for net public benefits, to the extent that they are relevant in each case, the Minister must consider all the likely outcomes from a development project, including:
- 22.1 physical outcomes (e.g. new houses, new commercial buildings, public spaces, community facilities);
 - 22.2 social outcomes (e.g. training/skills development, healthy housing, accessibility for people with disabilities);
 - 22.3 economic development (e.g. sector development, more jobs);
 - 22.4 remediation (e.g. decontamination, heritage conservation, building strengthening);
 - 22.5 environmental outcomes (e.g. enhancing, not just protecting or maintaining);
 - 22.6 major new facilities (e.g. sports stadium, concert hall, main railway station);
- 23 **agreed** that:
- 23.1 the eligibility criteria are necessary, but not necessarily sufficient, to establish a development project;
 - 23.2 provided the eligibility criteria are met, the Minister retains discretion over whether or not to recommend that a proposed project be established;

Statutory purpose

- 24 **agreed** that:
- 24.1 the intention is to give weight and priority to urban development, so that there is a presumption in favour of urban development in each project area;
 - 24.2 without constraining how the new legislation is formally drafted, the statutory purpose of the new legislation be to prioritise urban development in identified project areas that delivers well-functioning urban environments in order to enhance the social, economic, and cultural well-being, and health and safety of current and future generations, at the same time as:
 - 24.2.1 promoting the sustainable management of the natural and physical resources affected by the development project;
 - 24.2.2 contributing to an effective, efficient and safe land transport system;
 - 24.3 ‘sustainable management’ be defined by reference to section 5 of the RMA;

Principles

- 25 **agreed** that:
- 25.1 the new legislation state:
 - 25.1.1 matters of importance that decision-makers must recognise and provide for;
 - 25.1.2 other matters that they must have particular regard to;
 - 25.2 without constraining how the new legislation is formally drafted, the principles capture the critical considerations below, together with the other matters set out in more detail in the indicative principles in Appendix 1 to the paper under CAB-18-SUB-0243:
 - 25.2.1 the need to support environmental, cultural and heritage values, including the matters in sections 6 and 7 of the RMA;
 - 25.2.2 the need to facilitate and expedite positive urban change, including housing supply and affordability and the supply of good quality local infrastructure (as defined in section 10(2) of the Local Government Act 2002);
 - 25.2.3 the need to facilitate access within and between urban areas through a variety of transport modes;
 - 25.2.4 the need to improve the social and economic well-being of the community, including the provision of sufficient amenities and protected public open spaces;
- 26 **agreed** that, in achieving the purpose of the new legislation, all persons exercising functions and powers under it must take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi);

Strategic objectives

- 27 **agreed** that strategic objectives must:
- 27.1 be in accordance with the purpose and principles of the new legislation;
 - 27.2 be set by reference to the particular needs and presenting issues of the development project (i.e. be project specific);
 - 27.3 include:
 - 27.3.1 general objectives for the project, which state the broad goals that are relevant to the particular needs of the project area and its current and future community;¹ and

¹ An example of a general objective from the Manukau transformation project that Panuku Development Auckland is leading is Goal #1 of that project: “A strong, permanent residential population in Manukau Central, allowing it to function as a vibrant and connected quality compact centre and place of manaakitanga, with an emphasis on local as well as regional activities and identity, supported by new and revitalised urban spaces adjoining healthy neighbourhoods.”

27.3.2 specific objectives for each key aspect of the development project that are stated with greater particularity and describe how the general objectives will be realised;²

27.4 be consistent with national direction under the RMA;

27.5 if needed, can later be changed by following the same process by which they are first set (including a draft and public consultation);

28 **agreed** that, when setting the strategic objectives, the Minister must consider:

28.1 the initial assessment (described further below); and

28.2 the public's feedback on the draft objectives;

29 **agreed** that, to enable the government to clearly state its priorities for a development project and resolve any competing interests that may arise, the new legislation enable the government to give greater priority (and therefore greater weight in decision-making) to one or more strategic objectives within a particular development project;

Decision-making

30 **agreed** that:

30.1 any person performing or exercising functions, powers or duties under the new legislation must:

30.1.1 act in accordance with the purpose and principles of the new legislation;

30.1.2 make the decision that will best realise the relevant project's strategic objectives;

30.2 any ambiguity regarding the strategic objectives must be resolved by reference to the new legislation's purpose and principles;

31 **noted** that, notwithstanding that access to compulsory land acquisition is one of the proposed development powers, most decisions will continue to be made in accordance with the existing framework under the Public Works Act 1981, which will be covered in a future Cabinet paper;

32 **agreed** that decision-makers must ensure that Treaty settlement commitments and the provisions of Te Ture Whenua Māori Act 1993 are upheld, irrespective of the purpose and principles of the new legislation or the strategic objectives of a particular development project;

33 **noted** that, while being bound by the general decision-making framework described above:

33.1 for some types of decisions under the new legislation, decision-makers will need to consider additional matters (some of which are set out as part of the process below, while others will be set out in the further Cabinet papers that address the development powers);

² An example of a specific objective related to Goal #1 from the Manukau transformation project is: "The predominantly residential southern area (Wiri) will be substantially redeveloped to provide a better quality and range of housing (increasing the number of residents from 5,300 to 10,000), with an enlarged SuperClinic supporting healthy communities and creating local job opportunities."

- 33.2 for example, the specific RMA provisions that will continue to apply to land use decisions and resource consents will be detailed in the Cabinet paper that addresses the planning and consenting development powers;

Territorial authorities' role

34 **agreed that:**

- 34.1 the UDA must approach each territorial authority³ whose area will fall within the proposed boundaries of a development project to seek its agreement to establishing the project;
- 34.2 the initial approach must occur before the first round of public consultation, when the territorial authority may indicate that it agrees in principle;
- 34.3 the territorial authority must formally decide whether to agree to the proposed development project being established after public consultation and before the Minister's recommendation to the Governor-General;
- 34.4 if the territorial authority does not agree to the development project being established, but the Minister in his or her opinion is satisfied that the project is in the national interest, the Minister may nevertheless recommend to the Governor-General that the development project be established;
- 34.5 once a territorial authority has agreed to the establishment of a development project, a later withdrawal of that agreement cannot preclude the development project from proceeding;

35 **agreed that:**

- 35.1 any agreement to a development project being established is separate from any agreement to support a development project with land or other capital investment (i.e. the one does not imply the other);
- 35.2 if the territorial authority agrees to support a development project, it can choose the terms on which it does so;
- 35.3 those terms may include entering into a joint venture agreement with the UDA or project lead under which the territorial authority commits to:
- 35.3.1 invest in the delivery of any supporting infrastructure when required by the project;
- 35.3.2 amend its strategic plans, policies or statements as appropriate to be consistent with the project's strategic objectives;

- 36 **agreed that** the new legislation require the territorial authority and regional council to have regard to the development plan where relevant when reviewing their own plans and policy statements;

37 **agreed that:**

- 37.1 the obligations, functions, duties and responsibilities of local government continue, except to the extent they are specifically allocated to the UDA under the new legislation;

³ Including unitary authorities.

37.2 the establishment of a development project does not prevent the local authority from assessing rates within the project area under its existing statutory authority to do so;

38 **agreed** that:

38.1 once a development project has been established, the UDA may ask the relevant local authority to:

38.1.1 provide all relevant information to assist the UDA to plan for the development project;

38.1.2 assess the likely impact of the development project on the services that the local authority provides and how best to manage that impact, including identifying the cost and timing implications for changes to its services;

38.2 the new legislation include a power for the chief executive of the UDA, with the Minister's prior approval, to issue an order in writing requiring the information and assessment described in the paragraph above, which the local authority must comply with;

38.3 if the local authority fails to comply with the order within 30 working days, the UDA can commission any other qualified person or organisation to provide the information and undertake the assessment and the cost of that advice must be paid for by the local authority;

Central government role

39 **agreed** that at the time Cabinet agrees to establish a development project, it also agree the extent to which:

39.1 each relevant central government department must:

39.1.1 support the realisation of that project's strategic objectives, contributing its planning and expertise as appropriate; and

39.1.2 amend its strategies, planning, forward budget and investment in order to do so;

39.2 it wishes to ask the responsible Minister for each relevant central government agency to use the levers available through the Crown Entities Act 2004 to do the same things;

39.3 for the avoidance of doubt:

39.3.1 there is no requirement for an all-of-government submission on the development plan;

39.3.2 the Department of Conservation is entitled to continue to exercise its advocacy role;

40 **agreed** that:

40.1 decisions with respect to the number, size, type and development needs of central government services in the project area (such as schools, fire stations and health facilities) must continue to be made by the central government agencies responsible for providing these services, and the UDA must consult these agencies in the preparation of the development plan accordingly;

- 40.2 the UDA cannot introduce, relocate, expand or disestablish any central government service – only the agency that provides that service can do so;
- 40.3 the relevant central government agency will continue to finance the construction and maintenance of any buildings required to support the provision of central government services in the project area;
- 40.4 where needed, the UDA is responsible for identifying the location of any new, extended or relocated central government services in the development plan, provided the UDA works closely with the relevant agency in advance and selects a location that meets that agency's needs;

41 agreed that:

- 41.1 once a development project has been established, the UDA may ask any relevant government department or agency to:
 - 41.1.1 provide all relevant information to assist the UDA to plan for the development project;
 - 41.1.2 assess the likely impact of the development project on the services that department or agency provides and how best to manage that impact, including identifying the cost and timing implications for changes to its public services;
- 41.2 the new legislation include a power for the chief executive of the UDA, with the Minister's prior approval, to issue an order in writing requiring the information and assessment described in the paragraph above, which the department or agency must comply with;
- 41.3 if the department or agency fails to comply with the order within 30 working days, the UDA can commission any other qualified person or organisation to provide the information and undertake the assessment and the cost of that advice must be paid for by the department or agency (i.e. not the UDA);

Processes

42 noted that the process will include two rounds of public consultation;

43 agreed that:

- 43.1 the period of both rounds of public consultation must be open for not less than one month;
- 43.2 Māori be engaged early to allow enough time for meaningful discussions and decisions that satisfy Treaty settlements and/or Te Ture Whenua Māori Act requirements or other iwi/hapū decision-making processes;
- 43.3 provided the consultation information includes the matters required to be published under the RMA, the Local Government Act 2002 or Land Transport Management Act 2003, either round of public consultation for the development project is deemed to fulfil each Act's consultation requirements, including for amendments to the local authority's annual plan, long-term plan, land transport plan, public transport plan, or RMA plan;

Project identification

- 44 **agreed** that:
- 44.1 any person may recommend a development project for consideration, including territorial authorities, the private sector, Māori land owners, mana whenua, Māori developers, iwi and central government;
 - 44.2 the UDA can select which proposals it considers; but
 - 44.3 the Minister may direct the UDA to assess a potential development project and recommend whether it be established;

Initial assessment

- 45 **agreed** that prior to the Minister publicly proposing a development project for consideration, an initial assessment of the project must be undertaken by the UDA that is sufficient to:
- 45.1 enable the Minister to make an informed decision regarding whether to proceed to public consultation;
 - 45.2 enable the public to make informed submissions on the proposed development project;
- 46 **agreed** that the initial assessment may include content from earlier investigations into urban development proposals and projects ^{s 9(2)(f)(iv)} [REDACTED]
- 47 **agreed** that, to inform the initial assessment, the following stakeholders must be consulted, irrespective of whether they have previously been consulted as part of an earlier proposal:
- 47.1 the territorial authority;
 - 47.2 the regional council;
 - 47.3 the owners of public land inside the proposed project area;
 - 47.4 relevant central government agencies, to inform existing or anticipated public services within the project area;
 - 47.5 owners of any nationally significant infrastructure in the proposed project area;⁴
 - 47.6 both public and private network utility operators who own or operate utilities or other infrastructure within the proposed project area, or who are proposing to construct such infrastructure;
 - 47.7 relevant post-settlement governance entities, Māori land owners, mana whenua and iwi/Māori developers that are best placed to identify:
 - 47.7.1 land or natural resources in the proposed project area in which Māori have an interest, together with the nature of that interest; and

⁴ Transpower's national grid; KiwiRail's railway tracks and corridors; international and national airports; sea ports; inter-regional oil and gas pipelines; state highways; and defence or security service facilities.

47.7.2 whether land owners and relevant post-settlement governance entities would like to partner to develop their land as part of delivering the development project;

noting the particular importance of undertaking early engagement with these groups in order to fulfil the Crown's Treaty obligations:

47.7.3 the Office of Treaty Settlements, which is best placed to identify Crown land that may be needed for future Treaty settlements;

47.7.4 Heritage New Zealand Pouhere Taonga, which may make recommendations to the UDA on measures to conserve and protect historic heritage;

47.7.5 the Department of Conservation;

47.7.6 the proposed project board; and

47.7.7 the proposed project lead;

48 **agreed** that the initial assessment must:

48.1 assess the development opportunity;

48.2 describe the expected public benefits that the development project will deliver when completed;

48.3 assess the likely impact of the development project, both inside and outside the proposed project area;

48.4 have regard to stakeholders' feedback;

48.5 recommend the geographic boundaries of the development project;

48.6 recommend the strategic objectives for the development project;

48.7 recommend the entity to be accountable for delivering the strategic objectives, which may or may not be the same entity as the UDA;

48.8 consider the current land use planning provisions and applicable local authority plans;

48.9 provide an initial plan that visually describes how the development project may look (the 'concept plan');

48.10 identify all relevant Māori interests, including:

48.10.1 land in the proposed project area in which Māori have an interest, together with the nature of that interest;

48.10.2 whether land owners and relevant post-settlement governance entities would like to partner to develop their land as part of delivering the development project;

48.10.3 Treaty settlement commitments that relate to the proposed project area; and

48.11 include:

- 48.11.1 an environmental assessment that considers the potential for environmental effects of the proposed development, how adverse effects may be avoided, remedied or mitigated, and how positive effects may be enhanced;
- 48.11.2 an assessment of reserves within the proposed project area, including the nature, location, purpose, values and interests associated with them;
- 48.11.3 in order to identify sites of historical and cultural significance, both an archaeological assessment and an assessment of the historic heritage values of the land, which assessments must be provided to Heritage New Zealand Pouhere Taonga;

49 **agreed** that, before any decisions are made for either the disposal or development of land that may potentially be needed to settle future Treaty settlements, the Minister must consult with the Minister for Treaty of Waitangi Negotiations;

50 **agreed** that, where relevant to the proposed development project, the initial assessment may also include:

50.1 a high level business case for public investment that considers:

- 50.1.1 how commercially feasible the development project is expected to be;
- 50.1.2 how much investment is required to establish the project;
- 50.1.3 the recommended source of that investment;
- 50.1.4 the public land needed to capitalise the project;
- 50.1.5 the estimated cost of the new or upgraded infrastructure, community facilities and public services that the development project is likely to require;

50.2 the residential, commercial and social features of the proposed project area;

50.3 patterns of property ownership;

50.4 the nature of public landholdings;

50.5 identification of existing designations and protections (including under statute and subordinate instruments);

50.6 the impact of the proposed development project when the project is wound up;

Decision to undertake public consultation

51 **agreed** that the Minister must consider the initial assessment of the proposed development project and, if the Minister is satisfied that the project warrants the initial support of government, the new legislation:

51.1 enable the UDA to consult the public on a proposed development project;

51.2 require the UDA to announce for public consultation the proposed development project, area, strategic objectives, and nominated project lead, supported by the assessment of the proposed development project, including the concept plan;

- 51.3 provide for consultation to be open for no less than 20 and no more than 30 working days;
- 51.4 enable any member of the public to make submissions in response to each proposed development project;
- 51.5 ensure amendments to the proposal are considered in light of feedback;

Responsibility for the development plan

52 **agreed** that:

- 52.1 the new legislation require the UDA to develop and publish a draft development plan for the development project by the date specified in the Order-in-Council establishing the project;
- 52.2 in its discretion, the UDA may delegate another party to manage the preparation of the development plan and consideration of submissions (e.g. the project lead), but the UDA remains responsible for its preparation and accountable for ensuring it adheres to the strategic objectives;

Plan preparation

53 **agreed** that, when preparing the draft development plan, the new legislation require the UDA to:

- 53.1 consult with:
 - 53.1.1 the same persons that must be consulted for the initial assessment of a proposed development project;
 - 53.1.2 representatives of the existing community within the project area, including residents, business owners and workers;
 - 53.1.3 the bodies that administer, manage or own any reserve in the project area (or owned it prior to it being transferred to the development project), especially with respect to the values and purpose for which the land is held;
- 53.2 describe the treatment of Crown land in the project area that is subject to a right of first refusal, deferred selection, deferred purchase or other relevant redress as part of a Treaty settlement;
- 53.3 confirm whether the owners of Māori land and/or post-settlement governance entities wish to develop their land as part of the development project;

Content of the development plan

54 **agreed** that the development plan must give effect to:

- 54.1 the strategic objectives of the development project;
- 54.2 any applicable Treaty settlements;

- 55 **agreed** that the development plan must also:
- 55.1 identify which of the development powers is needed and how they are being exercised to realise the strategic objectives;
 - 55.2 outline how development will be undertaken within the project and describe the project's spatial pattern, any staging of development and development densities;
 - 55.3 show how commitments arising out of the settlements of Treaty claims are being complied with;
 - 55.4 describe Māori cultural relationships to land or other resources in the project area and how these interests will be catered for;
 - 55.5 adopt the same level of protection for significant historic heritage and sites of significance for mana whenua usually provided for through district and regional plans;
 - 55.6 if the project area includes Māori land (as defined in Te Ture Whenua Māori Act 1993), provide for the protections and processes applying to that land under existing legislation (e.g. Te Ture Whenua Māori Act 1993 and Part 4 of the Local Government (Rating) Act 2002);
 - 55.7 be consistent with the following documents of national direction under the RMA:
 - 55.7.1 national policy statements;
 - 55.7.2 the New Zealand coastal policy statement;
 - 55.7.3 national environmental standards;
 - 55.7.4 applicable provisions of the national planning standards as they relate to structure and format, definitions, metrics, and requirements for electronic functionality and accessibility;
 - 55.8 be consistent with national land transport policy;
 - 55.9 include an assessment of effects on the environment, including cumulative effects;
 - 55.10 show how the heritage assessments undertaken during the initial assessment are being reflected;
 - 55.11 include an assessment of the efficiency and effectiveness of any proposed rules on land use and on managing environmental effects;
- 56 **agreed** that, if there is any ambiguity regarding the meaning of a document produced under another Act (e.g. national direction under the RMA), then the purpose, principles and framework of that Act determine its meaning, rather than the purpose and principles of the new legislation;
- 57 **agreed** that, in preparing the development plan, the UDA must have regard to the wider planning environment as expressed by:
- 57.1 the relevant RMA regional policy statement, regional plan and district plan;
 - 57.2 the regional land transport plan;

- 57.3 the regional public transport plan;
- 57.4 the long term plans of relevant local authorities;
- 57.5 the key urban design qualities expressed in the Ministry for the Environment's New Zealand Urban Design Protocol (2005) and any subsequent editions or replacements of that document;

Public consultation

- 58 **agreed** that the new legislation:
 - 58.1 enable any member of the public to make a submission in response to the draft development plan;
 - 58.2 provide that submissions must be received for no less than 20 working days;
 - 58.3 provide that no formal hearings are required;
 - 58.4 require the UDA (or project lead) to consider amending the draft development plan in light of submissions;
 - 58.5 require the UDA to publish its recommended development plan, together with a summary of the submissions received and an explanation for its decisions;

Independent hearings panel

- 59 **agreed** that:
 - 59.1 the new legislation enable any person to submit on the recommended development plan within 20 working days by written submission to the UDA stating the change the person seeks to the recommended plan;
 - 59.2 the person making the submission need not have submitted on the draft development plan;
 - 59.3 if no submissions are received, the new legislation require the UDA to submit its recommended development plan for approval to the Minister;
- 60 **agreed** that the new legislation:
 - 60.1 empower the Minister to appoint an independent panel of no less than three expert commissioners, chaired by a current or former Environment Court Judge;
 - 60.2 empower the Minister to specify a timeframe for the independent hearings panel process, up to a maximum of nine months;
 - 60.3 require the UDA to:
 - 60.3.1 submit the UDA's recommended development plan to the independent panel for review;
 - 60.3.2 provide the panel with copies of the submissions that the UDA received, together with the UDA's views on those submissions;
 - 60.4 provide that the panel must apply the same decision-making framework as the UDA, with the same priority and weighting;

- 60.5 direct the panel to:
 - 60.5.1 review the submissions and the relevant parts of the recommended development plan;
 - 60.5.2 seek, at the panel's discretion, further information from the UDA, a submitter or an independent expert;
 - 60.5.3 determine the panel's view of the matters in the recommended development plan that relate to the submission, including any consequential or counterbalancing amendments to the plan that may be desirable as a result of addressing the objections;
 - 60.5.4 recommend to the Minister that the development plan be:
 - 60.5.4.1 approved as recommended by the UDA;
 - 60.5.4.2 be approved subject to specified amendments that address the submissions (and any consequential or counterbalancing matters); or
 - 60.5.4.3 be rejected entirely;
- 61 **authorised** the Minister of Housing and Urban Development and the Minister for the Environment to:
 - 61.1 determine criteria for appointing the members of the independent hearings panel;
 - 61.2 determine any considerations that should apply to the appointment decision;
 - 61.3 issue drafting instructions to the Parliamentary Counsel Office accordingly;
- 62 **agreed** that the new legislation:
 - 62.1 provide for the independent panel:
 - 62.1.1 to hold a hearing;
 - 62.1.2 to have discretion over whether to hold formal or informal hearings, who is heard, and the time allowed to make a presentation;
 - 62.2 require any hearing to be held in public unless there is a need to protect sensitive information;
 - 62.3 require no fewer than two independent commissioners to be present at each hearing session;
 - 62.4 provide that, at any hearing session, the independent panel at its discretion:
 - 62.4.1 may allow a party to question any other party or witness;
 - 62.4.2 must receive evidence written or spoken in te reo Māori;
 - 62.4.3 may direct mediation or conferencing between parties and experts;
 - 62.5 provide that in all other respects the independent panel must establish a procedure for hearing sessions that:

- 62.5.1 is appropriate and fair in the circumstances (including in respect of the granting to a person of any waiver of the requirements of the independent panel);
- 62.5.2 avoids unnecessary formality;
- 62.5.3 recognises tikanga Māori where appropriate;
- 62.6 require the UDA to attend hearing sessions to explain its decisions on the recommended development plan, including doing any of the following:
 - 62.6.1 clarifying or discussing matters in the UDA's recommended development plan;
 - 62.6.2 giving evidence;
 - 62.6.3 speaking to submissions or addressing issues raised by them;
 - 62.6.4 providing any other relevant information as requested by the independent panel;

Treaty settlement obligations

63 agreed that:

- 63.1 before a development plan can be approved, the Minister responsible for Treaty settlement commitments must confirm in writing that the recommended development plan complies with all relevant Treaty settlement obligations;
- 63.2 if the recommended plan does not comply, that Minister can recommend the changes that would be necessary to ensure compliance;
- 63.3 the Minister can make those changes to the development plan, irrespective of what either the UDA or independent panel have recommended;

64 noted that:

- 64.1 some Treaty settlements provide Māori with certain processes in which Māori views and interests must be sought and in some cases given effect, particularly with respect to land use planning and consenting under RMA processes;
- 64.2 because redress is specific to each Treaty settlement, a specific approach tailored to each development project and the Treaty settlements that apply in that project area is required;
- 64.3 accordingly, there will be further obligations regarding the way in which the UDA and development plan needs to approach Māori interests that are not included in these proposals, which will be addressed in a future Cabinet paper;
- 64.4 s 9(2)(h) 

Approval of the development plan

- 65 **agreed** that the new legislation provide that the Minister:
- 65.1 may approve a development plan only if the Minister is satisfied that the plan has the potential to deliver the strategic objectives set for the development project; and
 - 65.2 must decide to either:
 - 65.2.1 approve the development plan as recommended by the independent panel (or as recommended by the UDA if no submissions are lodged); or
 - 65.2.2 refer the recommended development plan back to the independent panel for further consideration, with or without any recommended changes, after which the independent panel must resubmit a revised recommended development plan to the Minister; or
 - 65.2.3 reject the proposed development plan in its entirety;

Variations to the development plan

- 66 **agreed** that:
- 66.1 when there is more than one stage to a development plan:
 - 66.1.1 the first stage must be developed in detail in the initial development plan, but the UDA may if it prefers only outline the concept for the second and subsequent stages; and
 - 66.1.2 if so, the preparation of the development plan for the later stages must be undertaken using the same process as for the creation of the development plan for the first stage;
 - 66.2 the development plan must be reviewed at least once every ten years;
 - 66.3 the UDA can initiate a review of the development plan at any time and for any reason, including if the UDA wants to adopt a third party's recommended change; and
 - 66.4 any variation to the development plan must be made using the same process as that used for the creation of the development plan, including variations to add detail to later stages of the development; but
 - 66.5 minor or technical amendments to the development plan may be made with the Minister's approval, without having to follow the same process again;
- 67 **agreed** that private plan changes (changes by third parties) be allowed, provided that:
- 67.1 two years has elapsed since the development plan was approved; and
 - 67.2 the UDA was not anticipating making a plan change in relation to the same area; and
 - 67.3 the plan change must only apply to part of the development plan or project area, and not the entire development plan or project area;
- 68 **noted** that there will be no provision for variations to proposed development plans (i.e. changes to plans that are still being prepared by the UDA);

Dis-establishment of development projects

69 **agreed** that:

69.1 the Governor-General by Order-in-Council on the recommendation of the Minister can disestablish a development project in either of the following circumstances:

69.1.1 a development project has achieved its strategic objectives; or

69.1.2 the Minister determines on reasonable grounds (e.g. through ongoing monitoring) that the UDA or project lead is not, and is unlikely to ever be, in a position to deliver a particular development project's strategic objectives, including if either the project or the entity itself is no longer financially viable;

69.2 no development powers may be exercised from the date the development project is dis-established, even if their use has been approved in the development plan;

70 **agreed** that, when the UDA or other relevant public entity owns any infrastructure at the time that the development project is wound up:

70.1 if there is no debt attached to those assets, the new legislation include a power to vest the infrastructure at no cost in the appropriate receiving organisation (regardless of whether it agrees to accept the assets);

70.2 if those assets have debt or other financial liabilities attached to them, the new legislation provide for those assets to be transferred to a receiving organisation only with that organisation's prior agreement;

70.3 if the assets are carrying debt and no organisation is willing to receive them, ownership and debt obligations must remain as they are and any UDA or other public entity that owns the assets must continue to exist until the debt is repaid, albeit solely as a holding vehicle;

70.4 if a private vehicle owns the assets, that vehicle must continue to own them (and collect any revenue stream) until the debt is fully repaid, at which point the legislation include a power to vest the assets in the appropriate receiving organisation;

71 **authorised** the Minister of Housing and Urban Development to determine the further details required regarding disestablishment and vesting of assets for inclusion in the Bill, and to issue drafting instructions to the Parliamentary Counsel Office accordingly.

Michael Webster
Secretary of the Cabinet

Hard-copy distribution:

Prime Minister
Deputy Prime Minister
Minister of Housing and Urban Development
Minister for the Environment