



# Cabinet Economic Development Committee

## Minute of Decision

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### Legislating to Empower Complex Urban Development Projects: Powers Relating to Resource Management Planning and Consenting

**Portfolios**                      **Housing and Urban Development / Environment**

On 15 August 2018, the Cabinet Economic Development Committee (DEV):

#### Background

1        **noted** that:

1.1        that on 20 December 2017, Cabinet agreed [CBC-17-MIN-0051]:

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

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

1.2        the paper under DEV-18-SUB-0170 is:

1.2.1        the third in a series of Cabinet papers on detailed policy proposals for the new legislation that seek authority to issue drafting instructions;

1.2.2        accompanied by the second Cabinet paper in the series, which covers the scope and application of the infrastructure, reserves, land assembly, and funding powers [DEV-18-SUB-0166];

1.3        further Cabinet papers are intended to cover:

1.3.1        the approach to Māori interests; and

1.3.2        final decisions on the UDA entity form, structure and governance arrangements, and its associated financing powers and permissions;

1.4        references in the paragraphs set out 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;

#### Legislative implications

2        **agreed** that the new legislation bind the Crown;

- 3 **authorised** the Minister of Housing and Urban Development and the Minister for the Environment to make subsequent policy decisions on related details consistent with the policy proposals discussed in the paper under DEV-18-SUB-0170;
- 4 **directed** the Ministry of Business, Innovation and Employment and the Ministry for the Environment to issue drafting instructions as soon as possible to the Parliamentary Counsel Office to give effect to the policy decisions outlined below, and to give effect to any subsequent policy decisions made by the Minister of Housing and Urban Development and the Minister for the Environment on related details;
- 5 **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 three months;
- 6 **noted** that the Minister of Housing and Urban Development and the Minister for the Environment will publicly release the paper under DEV-18-SUB-0170 at an appropriate time;

## **Definitions**

- 7 **noted** that the independent hearings panel (IHP) established to review submissions on the recommended draft development plan will determine a view on the recommended plan and make recommendations to the Minister [CAB-18-MIN-0243, paragraph 60.5];
- 8 **noted** that a reference in the paragraphs set out below to:
- 8.1 the 'IHP' is an independent hearings panel;
  - 8.2 'the Minister' is to the Minister appointed by the Prime Minister to be responsible for the new legislation once it has been enacted;
  - 8.3 'nationally significant infrastructure' includes:
    - 8.3.1 the national grid electricity transmission network;
    - 8.3.2 major gas or oil pipeline services (eg, Refinery to Auckland Pipeline from Marsden Point to Wiri);
    - 8.3.3 State highways and government roads;
    - 8.3.4 the New Zealand rail network, including suburban rail systems;
    - 8.3.5 primary airports;
    - 8.3.6 commercial ports;
    - 8.3.7 any New Zealand Defence Force land, buildings or interests in land and airspace;
  - 8.4 the 'RMA' is to the Resource Management Act 1991;
  - 8.5 '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;

- 8.6 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;
- 8.7 the 'UDA' is to the national urban development authority, referred to in a previous Cabinet decision as the Housing Commission [CBC-17-MIN-0051];

### **RMA provisions continue to apply except where amended**

- 9 **agreed** that unless otherwise specified in the urban development legislation, for matters pertaining to resource management, including planning and consenting, the provisions of the Resource Management Act 1991 (RMA) apply to the development project and the project area;

### **The UDA decision-making hierarchy applies to RMA plan changes and consents within the project**

- 10 **agreed** that for the duration of the development project, when making decisions on provisions in a development plan for the project area; RMA plan and regional policy statement changes and variations for the project area; resource consents within the project area; and notices of requirement or amendments to designations and heritage orders in the project area:
  - 10.1 all decision-makers, including the UDA, the territorial authority, the regional council and any relevant Minister must act in accordance with the purpose and principles of the new legislation;
  - 10.2 in achieving those purposes and principles, make the decision that will best realise the relevant project's strategic objectives and maintain the cohesion of the development plan;
  - 10.3 in respect of decisions on resource consents, apply the provisions of sections 104 to 108A of the RMA, with references to 'Part 2' in sections 104 to 108A of the RMA being a reference to the purpose and principles of the new legislation;

### **The UDA will have more enabling resource management powers within the project area**

#### **Override, add to, or suspend existing resource management plan provisions**

- 11 **agreed** that to best realise the strategic objectives of the development project, and subject to the requirements to uphold Treaty settlements (which will be set out in a subsequent Cabinet paper on Māori issues), the new legislation will enable the development plan to override (to the extent of any conflict), add to, or suspend existing or proposed district plan, regional plan (including regional coastal plan) and regional policy statement provisions that apply to the project area, in full or in part, for the duration of the development project;
- 12 **agreed** that district plan rules relating to managing and protecting scheduled historic heritage cannot be overridden in a way that would make them more permissive;

**Approval of provisions to override, add to, or suspend regional coastal plans**

- 13 **agreed** that:
- 13.1 the Minister for Conservation must approve draft development plan provisions that override, add to or suspend provisions in a regional coastal plan before the draft development plan is notified for public consultation;
  - 13.2 the Minister of Conservation may require amendments to the draft development plan provisions that override, add to or suspend regional coastal plan provisions as a condition of the approval referred to in paragraph 13.1 above;
  - 13.3 the Minister of Conservation must make a decision within 20 working days of receiving the draft development plan;
  - 13.4 before any subsequent changes by the UDA or the IHP to development plan provisions that override, add to or suspend regional coastal plan provisions, the changes must be approved by the Minister of Conservation in accordance with paragraphs 13.2 and 13.3 above;
- 14 **agreed** that the UDA Minister's approval of the final development plan includes approval of any development plan provisions that override, add to or suspend regional coastal plan provisions, without needing further approval from the Minister of Conservation;
- 15 **noted** that the Minister of Conservation, in making a decision on development plan provisions that override, add to, or suspend regional coastal plan provisions, must:
- 15.1 act in accordance with the purpose and principles of the new legislation; and
  - 15.2 make the decision that will best realise the relevant project's strategic objectives [CAB-18-MIN-0243, paragraph 30.1];

**Legal effect and content of the development plan**

- 16 **agreed** that the development plan may:
- 16.1 replicate provisions of existing instruments (existing instruments include plans, policy statements, strategies, regulations, standards, and other similar documents); or
  - 16.2 incorporate provisions in existing instruments by reference;
- 17 **agreed** that:
- 17.1 the development plan provisions, once approved by the Minister, and published in the New Zealand Gazette, automatically become an operative part of the relevant RMA planning document that applies to the project area;
  - 17.2 on Gazettal of the development plan, any existing provisions that are overridden or suspended cease to have legal effect in the project area;
  - 17.3 applicable provisions of the relevant local RMA documents, where not overridden, added to, or suspended, continue to have effect in the project area;
  - 17.4 all parts of the relevant local RMA documents continue to have legal effect, as prescribed, outside the project area;

- 18 **agreed** that in respect of resource management matters, the development plan must not be inconsistent with any of the following national level instruments under the RMA:
- 18.1 national policy statements;
  - 18.2 the New Zealand Coastal Policy Statement;
  - 18.3 national environmental standards;
  - 18.4 applicable provisions of the National Planning Standards, as they relate to:
    - 18.4.1 the structure and format, definitions, metrics, and requirements for electronic functionality and accessibility;
    - 18.4.2 spatial planning tools;
- 19 **agreed** that local authorities must include any development plan provisions that override, add to, or suspend existing RMA planning provisions in electronic versions of their plans and policy statements without using a Schedule 1 plan change process under the RMA;

### **Functions of the UDA in producing the development plan**

- 20 **noted** that the UDA is to develop and publish a draft development plan for the development project [CAB-18-MIN-0243];
- 21 **agreed** that the UDA has the following planning functions when producing a development plan:
- 21.1 establishing, implementing and reviewing policies, rules, and methods on resource management matters to achieve the strategic objectives;
  - 21.2 the control of the use of land for the purpose of:
    - 21.2.1 achieving the strategic objectives;
    - 21.2.2 ensuring there is sufficient development capacity in housing and business land to meet expected demand in the project area, and as a contribution to district and regional capacity;
    - 21.2.3 the avoidance or mitigation of risks from natural hazards;
    - 21.2.4 the strategic integration of infrastructure with land use;
    - 21.2.5 the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land;
  - 21.3 the control of the emission of noise and the mitigation of the effects of noise;
  - 21.4 the control of any actual or potential effects of activities in relation to the surface of water in rivers and lakes;

## Resource management content of the development plan

- 22 **agreed** that in preparing the development plan, the UDA must have regard to:
- 22.1 the wider planning environment as expressed by the relevant regional policy statement, regional plan(s) and district plan;
  - 22.2 the key urban design qualities expressed in the Ministry for the Environment's *New Zealand Urban Design Protocol (2005)* and any subsequent editions of that document;
- 23 **agreed** that the development plan must identify how the planning powers are proposed to be exercised to recognise and provide for the purpose of the new legislation and the strategic objectives of the project;

## Policies, methods and rules

- 24 **agreed** that:
- 24.1 a UDA must include policies, methods and rules in a development plan for the purpose of:
    - 24.1.1 carrying out its functions;
    - 24.1.2 achieving the strategic objectives of the development project;
    - 24.1.3 specifying classes of activities consistent with those in the RMA;
  - 24.2 the UDA may include rules in a development plan that:
    - 24.2.1 apply throughout the project area or to part of the project area;
    - 24.2.2 apply differently to different parts of the project area;
    - 24.2.3 cover different classes of effects arising from an activity;
    - 24.2.4 apply all the time or for stated periods or seasons;
    - 24.2.5 are specific or general in their application;
    - 24.2.6 manage activities not anticipated by the development plan;
  - 24.3 any policies, methods or rules that override, add to, or suspend provisions in RMA plans and regional policy statements must be:
    - 24.3.1 clearly identified in the development plan;
    - 24.3.2 limited to the scope provided by the RMA for the content of plans and regional policy statements;

## Activity and notification status

- 25 **agreed** that a controlled activity or restricted discretionary activity provided for by a rule in the development plan must have its notification status (preclusion of public and/or limited notification or requiring public notification) stated in the development plan, unless not doing so is justified in the evaluation report (paragraph 30 below);

- 26 **agreed** that any consent application, which is not required to be non-notified by the rule in the development plan, may be non-notified, publicly notified or limited notified, as per the tests and requirements in sections 95A and 95B of the RMA;

#### **Protection of historic heritage continues**

- 27 **agreed** that the Heritage New Zealand Pouhere Taonga Act 2014 continues to apply to a project area, including in particular:
- 27.1 the archaeological provisions;
  - 27.2 heritage covenants entered into under that Act;
- 28 **agreed** that the development plan must, at a minimum, provide the same level of protection of historical and cultural heritage as the existing RMA plan provisions in the project area;
- 29 **noted** that protection of historic heritage and sites of significance to Māori in district and regional plans applies regardless of land ownership;

#### **Evaluation report for changes to RMA planning documents**

- 30 **agreed** that an evaluation report must be included as an addendum to the development plan that follows sections 32(1)(b) and (c), 32(2), 32(3), 32(4) and 32 (5)(b) of the RMA for any provisions that override, add to, or suspend provisions in RMA planning documents;
- 31 **agreed** that the evaluation be undertaken in the context of the purpose and principles of the new legislation, and the strategic objectives of the development project;

#### **The UDA can update the development plan to reflect RMA plan changes**

- 32 **agreed** that, where a RMA planning document is changed through a plan change, the UDA may update its development plan to override, add to, or suspend provisions that were part of the RMA plan change:
- 32.1 without using the development plan variation process [CAB-18-MIN-0243, paragraph 66];
  - 32.2 only in accordance with the development project's strategic objectives;
  - 32.3 only to the extent of the planning controls that existed within the project area prior to the RMA plan change;

#### **Override of RMA planning documents**

- 33 **agreed** that the resource management provisions of the development plan will cease to have effect on the date that the development project is disestablished;
- 34 **agreed** that:
- 34.1 prior to the development plan ceasing to have effect, the local authority is able to adopt the resource management provisions of the development plan into their RMA planning documents, either in part or in full;
  - 34.2 this will not require a Schedule 1 plan change process under the RMA;
- 35 **noted** that existing resource consents issued under or permitted by the development plan may be in effect at the time of disestablishment of the development project;

- 36 **agreed** that activities lawfully established under the development plan in the project area have all the protections of existing use under sections 10, 10A and 10B of the RMA;
- 37 **agreed** that the development plan can state that provisions that were inserted into RMA planning documents are withdrawn at specified times (e.g. at the end of a stage of development) before the project is disestablished;

### **The UDA can have the territorial authority's consenting, monitoring, compliance, enforcement powers within the project area**

- 38 **agreed** that within a project area for the duration of the development project, after the Minister's approval of the development plan, the UDA will exercise, subject to any restrictions or conditions in the development plan, the following territorial authority functions and powers under the RMA and the new legislation:
- 38.1 consent authority (the power to grant and decline land use and subdivision consents, and consents required by a national environmental standard);
  - 38.2 subdivision, amalgamation, reclamations and related functions in Part 10 of the RMA;
  - 38.3 monitoring, compliance and enforcement of resource consents (except for those resource consents issued by territorial authorities or regional councils), and of permitted activities (excluding permitted activity rules in regional plans);
- 39 **agreed** that for regional consents, the regional council will remain the consenting authority, but that the regional council may transfer this function to the UDA under section 33 of the RMA;

### **Delegation and transfer of consenting, monitoring, compliance, enforcement functions**

- 40 **agreed** that the UDA may transfer any of the powers or functions listed in paragraph 38 above to another person or organisation, provided this transfer is included in the development plan;
- 41 **agreed** that the UDA may delegate to an employee, an independent commissioner, or the local territorial authority (if the local territorial authority agrees) the functions or powers listed in paragraph 38 except for this power of delegation;
- 42 **agreed** that when the UDA is the applicant for a land use or subdivision consent, or a consent required by a national environmental standard, in circumstances where the authority itself is acting as the developer (and is therefore the applicant), or is in partnership with the applicant, the UDA must delegate its consent authority decision-making to one or more independent commissioners or to the territorial authority;
- 43 **agreed** that the relevant territorial authority or regional council must inform the UDA within five working days of receipt of the application of any resource consents to the relevant territorial authority or regional council applied for within or partly within the project area for the duration of the development project;

**Compliance, monitoring, and enforcement (including offences and penalties)**

- 44 **agreed** that the compliance, monitoring, and enforcement regime under the new legislation will be in accordance with the RMA, with relevant RMA provisions applying to a UDA as if it were a local authority (regional council and territorial authority), including RMA provisions:
- 44.1 for a duty to avoid, remedy or mitigate adverse effects;
  - 44.2 to give certain information;
  - 44.3 to monitor for compliance with this Act, the development plan, and national environmental standards (where applicable);
  - 44.4 for enforcement notices and abatement notices;
  - 44.5 for offences and penalties as generally stipulated in sections 338 and 339 of the RMA;
- 45 **agreed** that to carry out its compliance, monitoring, and enforcement responsibilities, the UDA may authorise enforcement officers as under section 38 of the RMA;
- 46 **agreed** that responsibility for compliance, monitoring, and enforcement for resource conditions issued by a local authority, and for permitted activity rules in regional plans, remains with the relevant local authority;
- 47 **agreed** that the UDA must act in accordance with the Ministry for the Environment's Compliance, Monitoring and Enforcement Guidelines and report information to the National Monitoring System;

**The UDA may levy charges**

- 48 **agreed** that the UDA may levy charges to the initiator of private development plan changes to recoup UDA costs [CAB-18-MIN-0243, paragraph 67];
- 49 **agreed** that the UDA may fix administrative charges for undertaking planning, consenting, monitoring, compliance and enforcement functions and powers under this legislation and the RMA, as set out in section 36 of the RMA, with any reference to a:
- 49.1 local authority also including the UDA;
  - 49.2 plan or policy statement also including the development plan;
  - 49.3 resource consent also including a resource consent from, or as a result of, provisions in the development plan;
  - 49.4 permitted activity also including permitted activities in the development plan;
- 50 **agreed** that if the UDA fixes administrative charges, these charges must be prescribed in the development plan, which can only be adjusted in either or both of the following ways, as prescribed in the development plan:
- 50.1 by way of a formula that takes account of cost movements due to inflation and automatically adjusts the administrative charge; or
  - 50.2 by a regular review period, at which time the administrative charges may be amended to reflect changing costs to the UDA;

- 51 **agreed** that the UDA must publicly notify any adjustments to its administrative charges as a result of paragraph 50 above as soon as practicable after any amendment is made;
- 52 **agreed** that at all times, any administrative charge set must be for the sole purpose of recovering the reasonable costs incurred by the UDA in respect of the activity to which the charge relates;
- 53 **agreed** that local authorities may charge the UDA for any actions which the UDA sets as a mandatory requirement for the local authority;

### **Streamlined resource consent process for the development project**

- 54 **agreed** that the RMA resource consent process continues to apply when a resource consent application is made for a discretionary or non-complying activity under the regional plan or development plan provisions that override, add to or suspend regional plan provisions;

#### **Process A: for controlled, and restricted discretionary, activities**

- 55 **agreed** that Process A applies when a resource consent application is made for a controlled or restricted discretionary activity under the development plan, the district plan or regional plan;
- 56 **agreed** that if an application is non-notified, it must be processed and the determination made:
- 56.1 within 10 working days after the application is first lodged for controlled or restricted discretionary land use and subdivision activities;
  - 56.2 within 20 working days for other controlled and restricted discretionary activities;
- 57 **agreed** that if public notification or limited notification is required:
- 57.1 any notification decision must be made within 10 working days after the day the application was first lodged with the consent authority;
  - 57.2 the time limit for making submissions is 20 working days from the date of notification;
  - 57.3 the consent authority, at its own discretion, may extend the time limit for making submissions;
- 58 **agreed** that the consent authority must receive and give formal consideration to written submissions, and:
- 58.1 for controlled and restricted discretionary land use and subdivision activities, hold no public hearing;
  - 58.2 for other controlled and restricted discretionary activities, hold a public hearing if one or more submitters has requested to be heard;
- 59 **agreed** that a written decision on the resource consent application, and any conditions, must be issued in accordance with section 113 of the RMA, with references to the development plan and strategic objectives, as appropriate;

60 **agreed** that:

60.1 if the application was notified and a hearing is not held, notice of decision must be given within 20 working days after the closing date of submissions on the application;

60.2 if the application was notified and a hearing is held, notice of decision must be given within 15 working days after the end of the hearing;

**Process B: resource consent for discretionary and non-complying district plan consents within the project area**

61 **agreed** that Process B applies when a resource consent application is made for a discretionary activity or non-complying activity under the district plan or development plan provisions that override, add to or suspend district plan provisions within the project area;

62 **agreed** that if an application is non-notified, it must be processed and the determination made within 20 working days of receipt of the application;

63 **agreed** that if public notification or limited notification is required:

63.1 any notification decision must be made within 20 working days after the day the application was first lodged with the consent authority;

63.2 the time limit for making submissions is 20 working days from the date of notification;

63.3 the consent authority, at its own discretion, may extend the time limit for making submissions;

64 **agreed** that the consent authority must receive and give formal consideration to written submissions, and must hold a public hearing if one or more submitters has requested to be heard;

65 **agreed** that a written decision on the resource consent application, and any conditions, must be issued in accordance with section 113 of the RMA, with references to the development plan and strategic objectives, as appropriate;

66 **agreed** that:

66.1 if a hearing is held, notice of decision must be given within 15 working days after the end of the hearing;

66.2 if the application was notified and a hearing is not held, notice of decision must be given within 20 working days after the closing date of submissions on the application;

**Making an application for resource consent in a project area**

67 **agreed** that an application for resource consent in the project area must comply with Schedule 4 (Information required in application for resource consent) of the RMA, adapted to apply to the new legislation's purpose and principles and the project's strategic objectives, as appropriate;

- 68 **agreed** that if an application does not meet the information requirements outlined in paragraph 67 above:
- 68.1 the consent authority may, within five working days for a Process A consent application and 10 working days for a Process B consent application, determine that the application is incomplete;
  - 68.2 the consent authority must immediately return the incomplete application to the applicant, with written reasons for the determination;
  - 68.3 if, after an application has been returned as incomplete, that application is lodged again with the consent authority, that application is to be treated as a new application;

### **UDA can advise the Minister on the IHP's recommendations**

- 69 **agreed** that the UDA has an opportunity to advise the Minister on the IHP's recommendations before the Minister makes a decision on the IHP's recommended development plan;
- 70 **agreed** that if the UDA advises the Minister that the IHP's decisions regarding part or all of the development plan would limit achievement of the project's strategic objectives, the Minister can decide to refer the development plan back to the IHP for further consideration;

### **Judicial Review and Appeals**

#### **Judicial Review and appeal rights on the development plan**

- 71 **noted** that Cabinet has previously:
- 71.1 agreed that there are no rights to merit appeal on the development plan [CAB-18-MIN-0243, paragraph 15];
  - 71.2 delegated to the Minister of Housing and Urban Development and the Minister for the Environment the authority to determine the manner and extent of any appeals on points of law [CAB-18-MIN-0243, paragraphs 17 and 18];
- 72 **noted** that the Minister of Housing and Urban Development and the Minister for the Environment have determined that appeals on points of law should be allowed on the development plan generally (i.e. including with regard to non-planning matters), with the Court of Appeal being the final appeal court;
- 73 **agreed** that any applications for judicial review must be lodged at the same time as a points of law appeal, and that both proceedings must then be heard together in the High Court unless it is impracticable to do so;

#### **Appeal rights on resource consents in the project area**

- 74 **agreed** that:
- 74.1.1 with respect to the consent authority's decision on a Process A or Process B resource consent, the following parties may appeal that decision (in full or in part) to the Environment Court:
    - 74.1.1.1 the applicant or consent holder;

74.1.1.2 any person who made a submission on the application (but only on a matter raised in their submission);

74.1.1.3 in relation to a resource consent for a restricted coastal activity, the Minister of Conservation;

74.1.2 if there is a right to refer any matter to appeal to the Environment Court against a decision of a consent authority or any person under the new legislation or any other Act:

74.1.2.1 no application for review under the Judicial Review Procedure Act 2016 may be made; and

74.1.2.2 no proceedings seeking a writ of, or in the nature of, mandamus, prohibition, or certiorari, or a declaration or injunction in relation to that decision may be heard;

to or by the High Court, unless the right has been exercised by the applicant in the proceedings and the Environment Court has made a decision;

75 **agreed** that for a points of law appeal on resource consents, the High Court is the final court of appeal;

#### **Objections to resource consent conditions**

76 **agreed** that the applicant for resource consent in the project area has the right of objection set out in sections 357 and 357A(1)(f) and (g) of the RMA;

77 **agreed** that objections will be considered by the UDA unless it is the applicant for the resource consent, in which case the territorial authority will consider the objection;

#### **Appeal rights on designations and heritage orders**

78 **agreed** that for decisions on notices of requirement for designations or for heritage orders, merit appeals to the Environment Court be retained and points of law appeals be limited to the High Court;

#### **Appeals on grounds of reasonable use of land are limited to the High Court**

79 **agreed** that:

79.1 the Environment Court may issue directions when a person considers that provisions in a development plan that override, add to or suspend an RMA planning document's provisions would render the person's interest in land incapable of reasonable use under Section 85 of the RMA (with any reference to the local authority to be read as a reference to the UDA);

79.2 any appeals on the Environment Court's direction regarding land incapable of reasonable use are limited to points of law appeals to the High Court;

#### **Designations**

80 **agreed** that RMA provisions regarding designations apply, except as specified below;

81 **agreed** that the UDA be a requiring authority under the RMA;

- 82 **agreed** that Part 8 of the RMA, as modified by paragraph 85 below, applies to designations for nationally significant infrastructure;
- 83 **agreed** that for all other designations:
- 83.1 should a requiring authority want to establish a new designation or significantly alter an existing designation in the project area (whether as part of the development plan or at a later time):
- 83.1.1 the requiring authority must obtain the prior approval of the UDA to lodge a notice of requirement;
  - 83.1.2 subject to considering the needs that will be met by the designation, the UDA has discretion over whether or not to approve the requiring authority proceeding to lodge a notice of requirement for the work;
  - 83.1.3 where there is a dispute between the UDA and a requiring authority over the lodgement of a notice of requirement, the matter be determined by an independent decision maker;
  - 83.1.4 the Minister responsible for the urban development legislation makes the final determination, following a recommendation from the independent panel or adjudication as per the disputes resolution process, as to whether the requiring authority may proceed with lodging its notice of requirement, or not;
  - 83.1.5 this process does not apply to alterations to designations requested by the requiring authority where the alteration:
    - 83.1.5.1 involves no more than a minor change to the effects on the environment associated with the use or proposed use of land or any water concerned; or
    - 83.1.5.2 involves only minor changes or adjustments to the boundaries of the designation or requirement; and
    - 83.1.5.3 written notice of the proposed alteration has been given to every owner or occupier of the land directly affected and those owners or occupiers agree with the alteration;

84 s 9(2)(f)(iv)



#### **Notification and processing of a new designation**

- 85 **agreed** that in giving notice of its requirement to establish a designation and in establishing a designation, a requiring authority and the UDA are to follow the procedures for establishing a designation set out in Part 8 of the RMA, with the following modifications:
- 85.1 any reference to the territorial authority may be read as a reference to the UDA (as the context requires);
  - 85.2 any reference to a plan, plan change or plan variation is a reference to the development plan or proposed development plan for the project area;

85.3 all decisions on the designation will be taken in accordance with the decision-making hierarchy set out in CAB-18-MIN-0243, paragraphs 30-32;

86 **agreed** that if a UDA decides to issue a notice of requirement for a designation and:

86.1 the designation is within the project area, then the UDA must follow the process outlined in section 168A of Part 8 of the RMA;

86.2 the designation is outside the project area, then the UDA must follow the processes outlined in section 168 and Part 8 of the RMA for the establishment of a designation;

#### **If a designation already exists in a project area**

87 **agreed** that where a designation already exists within a project area at the time the development plan is being prepared:

87.1 the requiring authority may seek a roll-over of the designation;

87.2 other than for nationally significant infrastructure, the UDA can recommend the alteration, removal, amendment or replacement of a designation within its area as a part of its recommended development plan;

87.3 for a designation that supports network infrastructure, if the designation is to be altered, removed, amended or replaced, the UDA, in preparing its development plan, must provide an amended or replacement designation that serves the same function (i.e. maintains network connections), unless the requiring authority agrees otherwise;

87.4 the requiring authority can object to the UDA's recommendation for altering, removing, amending or replacing the designation through submission to the IHP, which will consider the UDA's recommendation and the requiring authority's submission and make a recommendation to the Minister;

87.5 final approval of either the roll-over, alteration, removal, amendment or replacement of the designation occurs through the Minister's approval of the development plan;

#### **Transfer of rights and responsibilities for designations**

88 **agreed** that:

88.1 where the financial responsibility for a project or work or network utility operation inside the project area is transferred from one requiring authority to another, responsibility for any relevant designation is also transferred;

88.2 the requiring authority which transfers responsibility for the designation inside the project area must advise the UDA Minister, the Minister for the Environment and the UDA and the transfer must be noted in the development plan, without using the process for varying the development plan and without undue formality;

#### **Removal of designation after development plan is in place**

89 **agreed** that if a requiring authority no longer wants a designation or part of a designation within the project area:

89.1 it must give notice to:

89.1.1 the UDA concerned;

- 89.1.2 every person who is known by the requiring authority to be the owner or occupier of any land to which the designation relates;
- 89.1.3 every other person who, in the opinion of the requiring authority, is likely to be affected by the designation;
- 89.2 as soon as reasonably practicable after receiving notice, the UDA must amend the development plan accordingly, without using the process for undertaking development plan variations and without undue formality;
- 89.3 the same process applies, with all necessary modifications, to a notice by a UDA to withdraw its own designation or part of a designation within its own project area;
- 89.4 notwithstanding paragraphs 89.2 and 89.3 above, where a UDA considers the effect of the removal of all or part of a designation on the remaining designation is more than minor, it may, within 20 working days of receipt of the notice decline to remove the designation or that part;
- 89.5 a requiring authority may object to any decision to decline removal of the designation or that part of a designation, and the matter be determined by an independent decision maker;

#### **Lapsing of a designation**

- 90 **agreed** that sections 184 and 184A of the RMA apply to the lapsing of a designation as if the development plan was the district plan and the UDA was the territorial authority, but that any right of objection under section 357 of the RMA must be dealt with by an independent decision maker;

#### **Compulsory acquisition powers of a network utility operator**

- 91 **agreed** that a network utility operator that is a requiring authority may continue to apply to the Minister for Land Information to have land required for a project or work inside the project area acquired or taken pursuant to section 186 of the RMA, subject to the UDA's prior agreement;

#### **Heritage orders**

- 92 **agreed** that for heritage orders, Part 8 of the RMA applies with the following amendments:
  - 92.1 'heritage protection authority' includes a UDA acting on either its own motion or on the recommendation of an iwi authority;
  - 92.2 the provisions of Part 8 of the RMA apply to a UDA as if it were a territorial authority;
- 93 **agreed** that at project completion:
  - 93.1 any heritage orders the UDA is responsible for as the heritage protection authority must be transferred to the relevant territorial authority or Heritage New Zealand Pouhere Taonga;
  - 93.2 the transfer of responsibility for the heritage order must be made by amending the district plan accordingly and publicly notifying the amendment as soon as is reasonably practicable, without using a process set out in Schedule 1 of the RMA;

## **Subdivision and amalgamation of land**

94 **agreed** that:

- 94.1 for the purpose of subdividing, amalgamating, or vesting of land and of easements and reclamations in the project area, the provisions of Part 10 of the RMA apply;
- 94.2 if a development plan is in place, Part 10 should be read as if the UDA was the territorial authority, and any reference to a plan, plan change or plan variation is a reference to the development plan or proposed development plan for the project area, except that:
  - 94.2.1 the timeframes for processing a resource consent for the subdivision or amalgamation of land (where the activity is a controlled or restricted discretionary activity) are those detailed for processing a Process A resource consent application;
- 94.3 all planning decisions on subdivision consents or permissions on subdividing, amalgamating, or vesting of land and on easements and reclamations must be made in accordance with the decision-making hierarchy set out in CAB-18-MIN-0243, paragraphs 30-32 and sections 104 to 108A of the RMA as applicable;

## **Transitional powers between project establishment and development plan approval**

95 **agreed** that during the period after a development project has been established, but before the development plan takes effect:

- 95.1 the existing provisions of the regional policy statement, regional plan and district plan (and any applicable proposed plans or policy statements) continue to apply until the development plan takes effect, but that all planning or consenting decisions that apply to the development project or project area become subject to the decision-making hierarchy set out in paragraph 10 above;
- 95.2 the existing consent authorities continue to be responsible for consenting within the project area;
- 95.3 the relevant consent authorities must inform the UDA of any plan changes or resource consent applications initiated or lodged within the project area, including those that were initiated or lodged before the development project was established but that have not been given effect to;
- 95.4 provided it is necessary to realise the development project's strategic objectives in respect of the project area:
  - 95.4.1 the UDA can veto or require amendment to any plan change that the local authority is considering, but that has not been made operative;
  - 95.4.2 the UDA can veto, require amendment to, or require conditions to be attached to, any land use or subdivision resource consent that the regional council or territorial authority as consent authority is considering;
- 95.5 rights of appeal as provided for a resource consent in the project area apply to the UDA's exercise of its veto rights;

### The UDA can use existing RMA processes

96 **agreed** that the UDA will have the full and usual powers of a natural person under the RMA;

### Additional weight to consultation with regional councils and territorial authorities

97 **agreed** that:

97.1.1 as part of the initial assessment of a proposed development project, the UDA must consult the relevant regional council and territorial authorities on environmental matters and have particular regard to their views;

97.1.2 when preparing the draft development plan, the UDA must consult with the relevant regional council and territorial authorities on environmental matters, and have particular regard to their views;

97.1.3 as part of its consultation with the regional council and with territorial authorities, the UDA must provide the assessment of environmental effects undertaken for the proposed project at the initial assessment stage and the development plan stage [CAB-18-MIN-0243, paragraphs 48.11.1 and 55.9];

97.1.4 the regional council and territorial authorities for the project area may make recommendations to decision-makers on both of these environmental assessments, and these decision-makers must take the recommendations into consideration and may rely on them in their decision-making;

### General

98 s 9(2)(f)(iv)

[Redacted text block]

Janine Harvey  
Committee Secretary

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**Hard-copy distribution: (see over)**

**Present:**

Rt Hon Winston Peters  
Hon Kelvin Davis  
Hon Grant Robertson (Chair)  
Hon Phil Twyford  
Hon Dr Megan Woods  
Hon Chris Hipkins  
Hon David Parker  
Hon Nanaia Mahuta  
Hon Iain Lees-Galloway  
Hon Jenny Salesa  
Hon Damien O'Connor  
Hon Clare Curran  
Hon Shane Jones  
Hon Kris Faafoi  
Hon Willie Jackson  
Hon Meka Whaitiri  
Hon James Shaw  
Hon Eugenie Sage

**Officials present from:**

Office of the Prime Minister  
Officials Committee for DEV  
Treasury  
Ministry of Business, Innovation and Employment  
Ministry for the Environment  
Department of Conservation

**Hard-copy distribution:**

Minister of Housing and Urban Development  
Minister for the Environment