Cabinet

Minute of Decision

Urban Development Legislation: Māori Interests and Māori Crown Relationships

Portfolios **Māori Crown Relations: Te Arawhiti / Housing and Urban Development**

On 12 November 2018, following reference from the Cabinet Māori Crown Relations: Te Arawhiti Committee (CMR) Cabinet:

Background

1 **noted** that in December 2017, the Cabinet Business Committee:

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

1.2 agreed in principle, subject to policy decisions, to establish a national urban development authority (UDA);

1.3 noted that the new legislation has implications for Māori as landholders and as mana whenua, for the Crown's relationship with Māori and for the Crown's obligations under the Treaty of Waitangi and its principles;

1.4 agreed that the urban development legislation will:

1.4.1 ensure Māori interests are identified and protected;

1.4.2 recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga;

1.4.3 provide for both the Treaty of Waitangi and Te Ture Whenua Māori Act 1993 to be upheld;

1.4.4 ensure Treaty settlements are honoured in each urban development project, including where relevant by the UDA;

[CBC-17-MIN-0051]

2 **noted** that:

2.1 on 28 May 2018, Cabinet agreed to the core components of the new legislation, including the decision-making framework and new statutory processes [CAB-18-MIN-0243];

2.2 on 20 August 2018, Cabinet agreed to the scope and application of the more enabling development powers for the new legislation [CAB-18-MIN-0399.01];

2.3 the paper under CAB-18-SUB-0563 is the fourth in a series of papers on detailed policy proposals for urban development legislation that seek authority to issue drafting instructions;

2.4 further papers are intended to cover:

2.4.1 decisions on the form, function, governance and financial arrangements for each development project, including how territorial authorities are involved;

2.4.2 decisions on establishing the national UDA;

2.4.3 miscellaneous matters that were overlooked or out of scope in previous papers;

2.5 any implications for Māori arising from the further papers that are not addressed by this paper will be addressed in the relevant further paper;

3 **noted** that any references in the paragraphs below to:

3.1 a 'Treaty settlement' include 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;

3.2 the UDA includes:

3.2.1 the national UDA and any related decision-making bodies and subsidiaries; and

3.2.2 any other body given governance and decision-making functions to exercise the development powers and deliver a development project;

3.3 'development project', 'project area', 'strategic objectives', or 'development plan' are to the concepts that Cabinet has previously agreed in paragraph 7 of CAB-18-MIN-0243;

Legislative implications

4 **noted** that, unless the context requires otherwise, 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 (which will also need to establish the new entity and prescribe its functions);

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

6 **authorised** the Minister for Māori Crown Relations: Te Arawhiti, Minister of Finance and the Minister of Housing and Urban Development to make subsequent policy decisions consistent with the policy proposals in the paper under CAB-18-SUB-0563, and to report back to Cabinet for any significant policy decisions;

7 **invited** the Minister of Housing and Urban Development to issue drafting instructions to the Parliamentary Counsel Office to give effect to the policy decisions below, and to give effect to any subsequent policy decisions made in accordance with paragraph 6 above.;

Land acquisition and assembly

Compulsory acquisition

8 **agreed** that the following categories of land, including interests in the land such as easements or covenants, cannot be compulsorily acquired for the UDA (whether inside or outside a project area), namely:

8.1 Māori freehold land, as defined in Te Ture Whenua Māori Act 1993;

8.2 former Māori freehold land that:

8.2.1 is owned by a Māori or a group of persons of whom a majority are Māori; and

8.2.2 ceased to be Māori freehold land either pursuant to an order of the Māori Land Court made after 1 July 1993 or pursuant to a declaration issued under Part 1 of the Māori Affairs Amendment Act 1967;

8.3 land held by a post settlement governance entity (or an entity controlled by it) on behalf of a claimant group if the land was:

8.3.1 vested in, or transferred to, the post settlement governance entity as part of a Treaty settlement; or

8.3.2 acquired by the post settlement governance entity under a right of first or second refusal or a deferred selection process agreed in a Treaty settlement;

8.4 land held by an entity (or an entity controlled by it) on behalf of an iwi or hapu holding mana whenua if the land was vested in, or transferred to, the entity pursuant to an agreement with a Crown agency or local authority;

9 **noted** that:

9.1 the categories of land listed in paragraph 8 above will still be able to be acquired by the UDA, or developed in partnership with the UDA, by agreement with the landowner(s);

9.2 the Crown or a local authority will continue to have the power to take the categories of land listed in paragraph 8 above by compulsory acquisition under the Public Works Act 1981, including for the same purposes the UDA may seek to have the land acquired;

9.3 s 9(2)(g)(i)

9.4

Māori customary land and Māori reservations

10 **agreed** that existing protections under Te Ture Whenua Māori Act 1993 that prevent Māori customary land and Māori reservations (as both are defined in that Act) from being alienated or acquired under the Public Works Act 1981 will not be removed and will continue to apply;

Wāhi tapu and wāhi taonga

11 **agreed** that the UDA, in providing land use rules for the protection of historical and cultural heritage, may include new protections, or strengthen existing protections, for sites of significance for mana whenua;

Land development

Public land that was Māori land when it was acquired

12 **agreed** that, for public land that was Māori land, as defined in Te Ture Whenua Māori Act 1993, when it was acquired, the new legislation require the UDA to make reasonable efforts to engage with members of the whānau and hapū associated with the land (especially those members known to be former owners, and their descendants) to understand their aspirations for the land and to consider how those aspirations could be taken into account in the way the land is developed;

13 **agreed** that, notwithstanding decisions made in CAB-18-MIN-0399.01 regarding the application of the offer back provisions in sections 40 and 41 of the Public Works Act 1981, those provisions continue to apply, with the minor modifications set out below, to public land that was Māori land (as defined in Te Ture Whenua Māori Act 1993) when it was acquired if—

13.1 that land is owned by the UDA, whether or not the land falls within a project area; or

13.2 that land is publicly owned other than by the UDA and falls within a project area; and

13.3 through development, that land would pass out of public ownership (*e.g.* because it will be developed for KiwiBuild housing);

14 **agreed** that the offer back of public land that was Māori land when it was acquired can occur at any time but in any event must be made before the land is transferred out of public ownership or before construction of any development works on the land commences, whichever occurs first;

15 **agreed** that the offer back provisions in the Public Works Act 1981 will apply to public land that was Māori land when it was acquired with the following modifications:

15.1 the requirement in certain circumstances to offer the land first to the owner of adjacent land will not apply;

15.2 the exceptions to an offer back to former owners in section 40 of the Public Works Act 1981 will not apply;

15.3 the option to apply to the Māori Land Court through section 41 of the Public Works Act 1981 will be available regardless of the number of owners the land had when it was acquired or whether it was at that time vested in trustees;

16 **noted** that:

16.1 the offer back of public land that was Māori land when it was acquired takes priority over any right of first refusal under a Treaty settlement (as is currently the case) except in part of Auckland where the Protocol with the Tāmaki Collective will continue to take priority;

16.2 under the Housing Act 1955 there are currently exceptions to the offer back requirements that enable public land (including land that was Māori land when it was acquired) to be developed and sold out of public ownership without needing to be offered back first;

16.3 s 9(2)(g)(i)

17 **agreed** that if public land that was Māori land when it was acquired is to stay in public ownership following its development (*e.g.* for a road or school) then the offer back requirement will not apply unless and until at some future date the land is no longer required and becomes surplus as per the standard provisions of the Public Works Act 1981;

18 s 9(2)(f)(iv)

Rights of first (or second) refusal in Treaty settlements

19 **agreed** that if the UDA holds or controls land that is subject to a right of first or second refusal under a Treaty settlement (RFR land) and the UDA wishes to develop that land as part of the development plan:

19.1 the new legislation require the UDA to either:

19.1.1 first give the relevant post settlement governance entity the opportunity to be the developer of the RFR land on any terms and conditions that the UDA wishes to set for its development, regardless of the particular development outcomes the UDA is seeking for that land (*i.e.* regardless of whether or not the development is to assist in achieving the Crown's social objectives in relation to housing); or

19.1.2 negotiate some other alternative with the post settlement governance entity that is sufficiently attractive;

19.2 it be a condition of the relevant post settlement governance entity agreeing to the UDA's proposal that the post settlement governance entity must waive its right of first or second refusal;

19.3 the post settlement governance entity is free to choose whether or not to agree;

19.4 if the RFR land was also Māori land, as defined in Te Ture Whenua Māori Act 1993, when it was acquired, the UDA cannot make either proposal unless and until the offer back obligations set out above have been fulfilled (to the extent that they apply);

20 **noted** that where a post settlement governance entity does not agree to purchase RFR land on the terms and conditions set by the UDA, nor agrees to any alternative, the Crown and the UDA remain bound by the right of first or second refusal and, where that right is subsequently triggered, are required to offer the same land to the post settlement governance entity without any conditions attached;

21 **noted** that the requirement for the Crown to offer RFR land to a post settlement governance entity without any conditions attached is subject to exceptions, if any, that may apply to RFR land held by Housing New Zealand Corporation;

22 **agreed** that the UDA cannot develop RFR land without the prior agreement of the Minister for Māori Crown Relations: Te Arawhiti and the Minister of Housing and Urban Development unless the relevant post settlement governance entity has waived its RFR;

Māori land subdivision and Māori roadways

23 **noted** that under Te Ture Whenua Māori Act 1993, the Māori Land Court has exclusive jurisdiction to make partition orders, amalgamation orders, aggregation orders, and exchange orders in respect of Māori land, and to grant easements and lay out roadways over Māori land;

24 **noted** that, as Cabinet has agreed decision-makers must ensure the provisions of Te Ture Whenua Māori Act 1993 are upheld [CAB-18-MIN-0243], an application to the Māori Land Court will be necessary to do any of the things referred to in paragraph 23 above in a development project involving Māori land;

25 **agreed** that the UDA be given the same right as a territorial authority has to apply to the Māori Land Court for orders relating to Māori roadways or the stopping of unused roads or streets over Māori land;

26 **agreed** that the consent of the UDA be required, as if it were a territorial authority, before:

26.1 a Māori roadway can be laid out by the Māori Land Court if the roadway connects with a public road or State highway that is part of a development project;

26.2 a Māori roadway situated within a development project area can be declared a road or street;

26.3 an unused road or street over Māori freehold land within a development project area can be stopped by the Māori Land Court;

Treaty obligations

Reserves in Treaty settlements

27 **agreed** that, **if** under a Treaty settlement the fee simple estate in any land has been vested in a post settlement governance entity, and that land has been declared a reserve, and that land is within a project area, **then** irrespective of what type of reserve has been declared, before proposing removal of the reserve status or exercising any development power concerning that land, the UDA must obtain the written agreement of the post settlement governance entity;

28 **agreed** that, **if** under a Treaty settlement the fee simple estate in any land has been vested in a post settlement governance entity and that entity has later vested the land back in public ownership for use as a reserve, **then** before proposing removal of the reserve status or exercising any development power concerning that land the UDA must obtain the written agreement of the post settlement governance entity;

29 **agreed** that, **if** under a Treaty settlement a local authority has entered into a joint management agreement with the post settlement governance entity in relation to the management of a reserve, all or part of which is within the project area, **then** the UDA must first have regard to the views of the post settlement governance entity before proposing removal of the reserve status or exercising any development power concerning that reserve;

Funding powers

30 **agreed** that the provisions of Part 4 of the Local Government (Rating) Act 2002 dealing with the rating of Māori land apply to the UDA in the same way they apply to territorial authorities with the effect that the UDA will not have any greater powers than territorial authorities to levy, collect and enforce targeted rates on Māori land;

31 **agreed** that the protection under section 342 of Te Ture Whenua Māori Act 1993 preventing Māori customary land and beneficial freehold interests in Māori freehold land from being taken in execution or otherwise rendered available by any form of judicial process for payment of owners' debts or liabilities is not overridden with respect to development charges and other fees and charges imposed by the UDA;

32 **agreed** that any betterment payments calculated in respect of Māori land must take into account the restrictions applying to Māori land alienations and the unique features of Māori land tenure, including the fact that Māori land is not a freely tradeable commodity and there is no Māori land "market";

Participation opportunities

33 **agreed** that the new legislation require the UDA to provide any of the following groups who own land inside the project area with the opportunity to participate in development projects: iwi or hapū groups, post settlement governance entities, Māori land trusts and incorporations and urban Māori authorities;

Participation arrangements and Treaty settlements

34 **agreed** that, for consistency with the principles of the Treaty of Waitangi, the new legislation does not amend:

34.1 Treaty settlements;

34.2 provisions in other legislation that provide for Māori participation in decision-making;

34.3 provisions in legislation that take into account or otherwise expressly recognise the principles of the Treaty of Waitangi;

35 **noted** that the UDA is not covered by arrangements for Māori participation arising from Treaty settlement legislation or other legislation but, for consistency with the principles of the Treaty of Waitangi, the new legislation should make provision for the UDA to establish and maintain similar arrangements;

36 **directed** the Ministry of Housing and Urban Development to work with the Parliamentary Counsel Office, the Office of Treaty Settlements and the Settlement Commitments Unit of the Ministry of Justice to ensure the new legislation preserves the integrity of Treaty settlements and arrangements for iwi to participate in policy-making, decision-making and other local government processes;

Statutory acknowledgements

37 **noted** that under most Treaty settlements the Crown formally acknowledges statements made by the relevant iwi and hapū regarding their particular cultural, historical, spiritual, and traditional association with specified areas (a "statutory acknowledgement" applying to a "specified area");

38 **agreed** that **if** a specified area falls within the project area, **then** the UDA must record the statutory acknowledgement in the development plan, including a description of the specified area and the statement of association for that specified area;

39 **agreed** that, **if** under a Treaty settlement there is a statutory acknowledgement of a specified area, all or part of which falls within a project area, **then** the provisions of the settlement Act that apply to a consent authority apply equally to any consent authority for the project area under the new legislation, irrespective of whether the consent authority is the territorial authority, regional council or UDA;

40 **agreed** that, **if** a specified area falls within the project area and there is an application for a resource consent for an activity within, adjacent to, or directly affecting that specified area **then** the consent authority appointed under the new legislation must have regard to the statutory acknowledgement relating to the specified area in deciding whether the trustees of the post settlement governance entity are affected persons;

41 **agreed** that, **if**:

41.1 a specified area falls within the project area; and

41.2 there is an application for a resource consent for an activity within, adjacent to, or directly affecting that specified area; and

41.3 the Treaty settlement requires a consent authority to provide notice to the post settlement governance entity or a board, committee or authority described in the settlement; **then**:

41.4 the consent authority appointed under the new legislation must provide a summary of the resource consent application to the post settlement governance entity, board, committee or authority within the time limit specified in the Treaty settlement and before it makes any notification decision;

Deeds of recognition

42 **agreed** that **if** under a Treaty settlement all or part of a specified area falls within the project area and is the subject of a deed of recognition; and the UDA is undertaking one of the activities specified in the deed relating to any parts of the specified area that are owned and managed by the Crown, **then** the UDA must consult and have regard to the views of the post settlement governance entity concerning the association of that iwi or hapū with the area; and comply with the deed as if it were the Crown agency concerned;

Protection principles

43 **agreed** that **if** under a Treaty settlement:

43.1 a particular area that falls within the project area has been declared to be subject to an overlay classification; and

43.2 any development power could affect that area;

then, before exercising that power, the UDA must:

43.3 have particular regard to the statement of values that the Crown has acknowledged in the Treaty settlement relating to that area;

43.4 consult with the relevant post settlement governance entity and have particular regard to its views; and

43.5 have regard to the actions that Crown agencies have committed to taking in relation to the values that the Crown has acknowledged; and

43.6 consult with those Crown agencies;

Advisory boards or committees

44 **agreed** that **if**:

44.1 under a Treaty settlement, or an arrangement made pursuant to iwi participation legislation (as defined in the Resource Management Act 1991 but including the Resource Management Act) ("iwi participation arrangement"), an advisory board, committee or authority has been established to provide advice in relation to the management of a natural resource or reserve, all or part of which falls within the project area; **then**

44.2 the UDA must respond to the advice of that board, committee or authority in the manner provided in the Treaty settlement or the iwi participation arrangement as if the UDA were the relevant local authority, Crown agency or Minister to whom the advice would otherwise be directed;

45 **agreed** that **if** under a Treaty settlement, or an iwi participation arrangement, a local authority is required to invite advice from a board, committee or authority regarding a natural resource or reserve, all or part of which falls in a project area, **then** the UDA must seek and have regard to that advice as if it were the relevant local authority, provided that:

45.1 where that requirement is triggered by a statutory requirement for a local authority to review a regional policy statement, a regional plan or a district plan, then the same requirement applies to a UDA whenever it is required to review the development plan;

45.2 where that requirement is triggered by the local authority starting to prepare or change a regional policy statement, a regional plan or a district plan, then the same requirement applies to a UDA when it starts to prepare or change the development plan; and

45.3 where that requirement is triggered by the local authority notifying a regional policy statement, a regional plan or a district plan, then the same requirement applies to a UDA when it publishes the draft development plan for public consultation;

Resource management

46 **agreed** that **if** a Treaty settlement or an iwi participation arrangement provides for a post settlement governance entity or an iwi or hapū authority to produce a planning document or strategy in relation to a particular area or natural resource, all or part of which falls within the project area, **then** to the extent that the content of that planning document or management plan is relevant, the UDA must address that document or plan in the manner provided for in the Treaty settlement or iwi participation arrangement when preparing the development plan and making decisions under the new legislation, as if the UDA were the relevant local authority and the development plan were the relevant local authority planning document;

47 **agreed** that **if** under a Treaty settlement, or an iwi participation arrangement, a local authority must include in its planning document a statement of the resource management issues of significance to the relevant iwi or hapū, **then** the UDA must include the same statement in a development plan whose project area is covered by that Treaty settlement;

48 **agreed** that **if** under a Treaty settlement, or an iwi participation arrangement, the local authority must provide certain information or advice at the request of a post settlement governance entity or an iwi or hapū authority or of an advisory board or committee, and the UDA holds that information or can provide that advice, **then** the request can be directed to the UDA, who must provide that same information or advice as if it were the local authority, to the extent it is reasonably practical to do so;

49 **agreed** that **if** a Treaty settlement or an iwi participation arrangement provides for a post settlement governance entity or an iwi or hapū authority to produce or contribute to a planning document or management plan in relation to a particular area, all or part of which falls within the project area and requires the relevant local authority to have regard to the planning document or management plan when considering an application for a resource consent under the regional or district plan, **then** the UDA must have regard to that document or plan when considering an application for a resource consent under the development plan, as if it were the local authority and as if the development plan were the relevant regional or district plan;

50 **agreed** that **if** any Treaty settlement or iwi participation arrangement requires a local authority to keep and maintain, for each iwi and hapū within its region or district, a record of their contact details, their planning documents and the area within which they may exercise kaitiakitanga, **then** the UDA must keep and maintain a record of that information in respect of the project area;

Governance and decision-making

51 **agreed** that **if:**

51.1 a Treaty settlement, or an iwi participation arrangement, provides for a post settlement governance entity, or an iwi or hapū authority, or a particular board, committee or authority to produce a planning document or management plan in relation to a particular area, all or part of which falls within the project area; and

51.2 the Treaty settlement or iwi participation arrangement requires the relevant local authority to recognise and provide for matters dealt with in that document or plan when preparing its own planning document; **then**

51.3 the UDA must recognise and provide for matters dealt with in that document or plan when preparing the development plan, as if it were the local authority and as if the development plan were the local authority's planning document; and

51.4 the UDA must fulfil those obligations each time that it prepares or changes the development plan;

52 **agreed** that **if** under a Treaty settlement or an iwi participation arrangement, a post settlement governance entity or an iwi or hapū authority can appoint members to a standing committee of a local authority and that standing committee is responsible for preparing plans under the Resource Management Act 1991 in relation to an area or part of an area that falls within the project area, **then** when preparing the development plan the UDA must consult with the members appointed by the post settlement governance entity or iwi or hapū authority and have particular regard to their views;

53 **agreed** that **if** under a Treaty settlement, or iwi participation legislation, a natural resource is given its own legal personality, all or part of which falls within a project area, **then**

53.1 the natural resource may itself submit on and, if desired, object to the UDA's development plan; and the UDA must:

53.1.1 recognise and provide for the status and values specified for that natural resource in the Treaty settlement or the iwi participation arrangement;

53.1.2 consult with the natural resource's human representatives when preparing the development plan; and

53.1.3 where the Treaty settlement or iwi participation arrangement provides for a written strategy to be prepared or updated in respect of the natural resource:

53.1.3.1 must have particular regard to that strategy to the extent it relates to the development project;

53.1.3.2 may adopt or implement the strategy, wholly or in part, as part of the development plan;

53.1.3.3 may initiate a review of the development plan to comply with the obligations above; and

53.1.3.4 must notify the natural resource of the outcome of that review;

54 **agreed** that **if** under a Treaty settlement or an iwi participation arrangement a right is granted to a post settlement governance entity or an iwi or hapū authority, or a particular board, committee or authority established under the settlement or arrangement in relation to the appointment of persons to hear and determine resource consent applications that relate to a particular area, all of part of which falls within the project area, **then** that post settlement governance entity must be accorded the same rights in relation to the appointment of persons to hear and determine resource consent applications for activities that relate to that area under the development plan and the UDA must comply with the relevant provisions as if:

54.1 the UDA were the local authority; and

54.2 the development plan were the relevant planning document;

55 **agreed** that **if** a Treaty settlement or an iwi participation arrangement provides for a post settlement governance entity or an iwi or hapū authority, or a particular board, committee or authority established under the settlement or arrangement to produce a planning document or management plan in relation to a particular area or natural resource, all or part of which falls within the project area; and **either**:

55.1 the Treaty settlement or the iwi participation arrangement provides that that planning document is deemed to be part of the regional policy statement, regional plan or district plan; **or**

55.2 the Treaty settlement or the iwi participation arrangement provides that that planning document replaces or takes precedence over national direction;

then

55.3 the development plan cannot override, add to or suspend that planning document, which continues to apply to the project area; and

55.4 the UDA must ensure that the development plan is consistent with the planning document:

55.4.1 when preparing the development plan; or

55.4.2 if the planning document is produced after the development plan has been approved, by amending the development plan;

55.4.3 and in doing so, must consult with the relevant post settlement governance entity, board, committee or authority;

55.5 the UDA must make an explicit statement in the development plan on how the development plan retains consistency with the planning document and provide a copy to the relevant post settlement governance entity, board, committee or authority within 20 business days of the development plan being approved;

55.6 the UDA must not amend the development plan if that amendment would make the development plan inconsistent with the planning document;

55.7 whenever the planning document is reviewed and amended, the UDA must:

55.7.1 review the relevant parts of the development plan to check whether it is consistent with the amended planning document; and

55.7.2 if it is not consistent, amend the development plan to make it consistent with the amended planning document; and

55.7.3 in doing so, consult with the relevant post settlement governance entity, iwi or hapū authority, board, committee or authority;

55.8 the UDA must give effect to the planning document when carrying out any functions or exercising any powers under the new legislation that relate to or could affect the area or natural resource governed by the planning document;

55.9 **if** the Treaty settlement or the iwi participation arrangement provides for the post settlement governance entity, iwi or hapū authority, board, committee or authority to appoint persons to hear and make decisions on a resource consent application made under the district or regional plan, **then** the same power applies as if the consent authority appointed under the new legislation was the relevant consent authority under the Resource Management Act 1991 and the development plan was the relevant regional or district plan;

55.10 the UDA may (but is not required to) review the conditions of a resource consent to make them consistent with the planning document;

55.11 any requiring authority may (but is not required to) alter a designation to make it consistent with the planning document with the UDA's prior agreement;

56 **agreed** that the UDA is not bound by any mana whakahono a rohe arrangements that a local authority may have entered into under Part 5 of the Resource Management Act 1991;

Regulations

57 **agreed** that, if a Treaty settlement obligation, or an obligation made under an iwi participation arrangement, is not covered by the requirements set out in paragraphs 27, 29 and 37 to 56 above, the new legislation include a power for the Governor-General, acting on the joint recommendation of the Minister for Māori Crown Relations: Te Arawhiti and the Minister of Housing and Urban Development, to make regulations by Order-in-Council to have general effect or to apply to a specific development project prescribing requirements for when and how:

57.1 the UDA must give effect to the spirit and intent of Treaty settlements or iwi participation arrangements;

57.2 the UDA must respond to advice in relation to the management of a natural resource or reserve, all or part of which falls within the project area, given by an iwi authority or an advisory board, committee or authority established pursuant to the relevant Treaty settlement or iwi participation arrangement as if the UDA were the relevant local authority, Crown agency or Minister to whom the advice would otherwise be directed;

57.3 the UDA must include in a relevant development plan any statement of the resource management issues of significance to the relevant iwi or hapū that, under Treaty settlement or iwi participation arrangement, a local authority is required to include in its planning documents such as regional policy statements and district plans;

57.4 the UDA must provide information or advice, to the extent it is reasonably practicable to do so, to a post settlement governance entity or an iwi or hapū authority or an advisory board or committee that a local authority would be required to provide under a Treaty settlement or an iwi participation arrangement;

57.5 the UDA must give a right or entitlement to an iwi or hapū authority, a post settlement governance entity or a particular board, committee or authority established under a Treaty settlement (or pursuant to iwi participation legislation) in relation to the appointment of persons to consider resource consent applications for activities that relate to a development project area if the entity, board, committee or authority had the same right in respect of resource consent applications in that project area;

57.6 planning documents, such as the Vision and Strategy for the Waikato River, recognised by an iwi or hapū authority or prepared by a post settlement governance entity or a particular board, committee or authority established under Treaty settlement legislation or pursuant to iwi participation legislation must be given equivalent effect in development plans and UDA processes;

57.7 the UDA must give effect to the spirit and intent of Treaty settlements and iwi participation arrangements applying to the planning and consenting functions of local authorities in the development project area when those functions have been assumed by the UDA;

57.8 the UDA must comply with a protocol entered into by the Crown, a Minister or a Crown agency under a Treaty settlement or an iwi participation arrangement in respect of activities the UDA may undertake;

57.9 the UDA must seek advice regarding a natural resource or reserve, all or part of which falls in the project area, that a local authority would be required to seek under a Treaty settlement, an iwi participation arrangement or the Resource Management Act 1991, and how the UDA must treat that advice;

57.10 the UDA must address a planning document or management plan in relation to a particular area, natural resource or reserve, all or part of which falls within the project area, when the document or plan has been produced by a post settlement governance entity pursuant to a Treaty settlement or by an iwi or hapū authority pursuant to an iwi participation arrangement;

57.11 the UDA must take into account a planning document or management plan in relation to a particular area, all or part of which falls within the project area, when the document or plan was produced or contributed to by a post settlement governance entity pursuant to a Treaty settlement or by an iwi or hapū authority pursuant to an iwi participation arrangement;

57.12 the UDA must recognise and provide for a planning document or management plan in relation to a particular area, all or part of which falls within the project area, when the document or plan was produced by a post settlement governance entity pursuant to a Treaty settlement or by an iwi or hapū authority pursuant to an iwi participation arrangement;

57.13 the UDA, in preparing the development plan for the project area, must consult with the members of a committee of a local authority that includes members appointed by a post settlement governance entity pursuant to a Treaty settlement or by an iwi or hapū authority pursuant to an iwi participation arrangement, and how the UDA must treat the views of the members of that committee;

57.14 a natural resource given its own legal personality under Treaty settlement legislation or iwi participation legislation is able to engage with the UDA and its planning process, the status and values specified for that natural resource in the Treaty settlement or pursuant to an iwi participation arrangement must be recognised and provided for, and any written strategy for the natural resource must be adopted or treated by the UDA;

57.15 the UDA monitors the efficiency and effectiveness of its measures to give effect to the spirit and intent of arrangements in Treaty settlements or iwi participation arrangements;

58 **agreed** that consultation with post settlement governance entities and iwi or hapū authorities includes consultation on any regulations that would apply to the development project;

59 **agreed** that any project-specific regulations must be made at the same time as the Order in Council that establishes the relevant development project;

Other matters

Initial assessment of a proposed development

60 **noted** that in May 2018, Cabinet 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 [CAB-18-MIN-0243];

61 **agreed** that where the initial assessment identifies land that:

61.1 has been committed as redress under a Treaty settlement for which the settlement date has not yet occurred, then that land cannot be disposed of or developed if doing so would be inconsistent with the Treaty settlement;

61.2 has been committed as redress under a Treaty settlement with a delayed settlement date, then that land cannot be disposed of to any other party and cannot be developed without the agreement of the relevant post settlement governance entity;

61.3 is subject to a deferred selection right in a Treaty settlement, then, until the deferred selection right has expired, that land cannot be disposed of or developed without the agreement of the relevant post settlement governance entity;

62 **noted** that in May 2018, Cabinet agreed that the initial assessment must identify all relevant Māori interests, including land in the proposed project area in which Māori have an interest, together with the nature of that interest [CAB-18-MIN-0243];

63 **agreed** to amend the decision referred to in paragraph 62 above to include all relevant Māori customary interests in the marine and coastal area adjoining the development project area or that could be affected by the proposed development project;

Approval of development plan

64 **noted** that in May 2018, Cabinet agreed that:

64.1 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;

64.2 if the recommended plan does not comply, that Minister can recommend the changes that would be necessary to ensure compliance;

64.3 the Minister can make those changes to the development plan, irrespective of what either the UDA or independent panel have recommended;

[CAB-18-MIN-0243]

65 **rescinded** the decision referred to in paragraph 64 above; and instead

66 **agreed** that before a development plan can be approved:

66.1 the Minister for Māori Crown Relations: Te Arawhiti, the Minister for Treaty of Waitangi Negotiations, the Minister for the Environment and the Minister for Māori Development must be informed of the content of the recommended development plan;

66.2 written confirmation must be obtained from the Minister for Māori Crown Relations: Te Arawhiti that, in consultation with the Minister for the Environment, the Minister has considered the plan and is satisfied that:

66.2.1 any Treaty settlement arrangements or arrangements made pursuant to iwi participation legislation (as defined in the Resource Management Act 1991 but including the Resource Management Act) having effect in the project area have been identified;

66.2.2 the matters referred to in paragraphs 37 to 56 above have been appropriately provided for;

66.2.3 the requirements of any applicable regulations referred to in paragraph 57 have been complied with;

66.2.4 any identified settlement arrangements or participation arrangements not covered by paragraphs 37 to 56 or applicable regulations referred to in paragraph 57 have been appropriately provided for; and

66.2.5 the way in which the principles of the Treaty of Waitangi have been taken into account is appropriate;

66.3 written confirmation must be obtained from the Minister for Māori Development that they considered the plan and is satisfied that:

66.3.1 the plan is consistent with the principles set out in the Preamble to Te Ture Whenua Māori Act 1993; and

66.3.2 the provisions of Te Ture Whenua Māori Act 1993 have not been overridden;

66.4 if either the Minister for Māori Crown Relations: Te Arawhiti or the Minister for Māori Development is not satisfied about any relevant matter, they may recommend changes to the development plan to provide for that matter before providing written confirmation;

66.5 the plan may be changed as recommended by the Minister for Māori Crown Relations: Te Arawhiti or the Minister for Māori Development without any further hearings or other process;

Allowing for decision-making processes

67 **noted** that:

67.1 decision-making by Māori land owners is generally governed by the Māori Assembled Owners Regulations 1995 and involves Māori Land Court processes;

67.2 in some circumstances, statutory timeframes for Māori land owners to respond to notices are automatically extended under section 181 of Te Ture Whenua Māori Act 1993;

67.3 Māori land trusts and incorporations will have to follow processes prescribed in their trust orders or in the Māori Incorporations Constitution Regulations 1994;

67.4 post settlement governance entities will have to follow processes prescribed in their trust deeds or other constitutional documents;

67.5 iwi and hapū will need to follow processes consistent with their tikanga;

68 **noted** that the requirements outlined in paragraph 66 above will not always align with processes and timeframes prescribed for the UDA in the new legislation but failure to allow for them could be considered inconsistent with the Treaty principle of good faith;

69 **agreed** that the new legislation enable the UDA to adjust its processes and timeframes, including those prescribed in the legislation, to the extent reasonably necessary (and no more) to accommodate the decision-making processes that post settlement governance entities, Māori land owners, trusts and incorporations, and iwi and hapū are required to follow for legal compliance or logistical reasons;

Effective engagement

70 **noted** that engagement with Māori by the UDA will need to be appropriate, meaningful and effective and of a standard that is consistent with the principles of the Treaty of Waitangi;

71 **agreed** that the new legislation require the UDA to:

71.1 maintain systems and processes to ensure there is capability and capacity:

71.1.1 to uphold the Treaty of Waitangi and its principles;

71.1.2 to understand and apply Te Ture Whenua Māori Act 1993;

71.1.3 to be able to engage with Māori and to understand Māori perspectives;

71.2 ensure any party to which the UDA delegates management of preparing the development plan and considering submissions has knowledge of the Treaty of Waitangi and its principles and the capability and capacity to engage effectively with Māori and to understand Māori perspectives;

Addressing Māori land tenure system

72 **noted** that as the new legislation is being drafted it is likely the need will arise for technical provisions to address the interface with the Māori land tenure system under Te Ture Whenua Māori Act 1993 because, among other things:

72.1 the owners of Māori freehold land are not free to decide to participate in a development project without going through the processes required under Te Ture Whenua Māori Act 1993, including Māori Land Court processes, and meeting statutory thresholds of agreement among owners;

72.2 there are restrictions around alienating Māori freehold land, including rights of first refusal in favour of members of the preferred classes of alienee, and requirements for confirmation by the Māori Land Court;

73 **directed** the Ministry of Housing and Urban Development and Te Puni Kōkiri to work with the Parliamentary Counsel Office to develop any further provisions needed to address the interface between the new legislation and the Māori land tenure system and preserve the integrity of that system;

Takutai moana customary interests

74 **directed** the Ministry of Housing and Urban Development and the Māori Crown Relations Roopu to work with the Parliamentary Counsel Office to ensure the new legislation addresses the interface with the Marine and Coastal Area (Takutai Moana) Act;

Related decisions

75 **noted** that Cabinet has taken decisions on the companion paper, *Establishing a National Urban Development Authority*, attached under DEV-18-SUB-0265, on the options for establishing the UDA [DEV-18-MIN-0265];

76 **agreed** that the measures in the paper under CAB-18-SUB-0563 will apply not just to the UDA but also to any committees or subsidiaries created by the UDA, and external entities delegated functions and powers with approval by the UDA Minister;

77 **agreed** that:

77.1 the matters set out in paragraphs 37 to 56 above apply when the UDA (and its constituent entities and any committees or subsidiaries created by the UDA) are undertaking large-scale complex development projects established under the new legislation; and

77.2 all other measures proposed in the paper under CAB-18-SUB-0563 apply when the UDA (and its constituent entities and any committees or subsidiaries created by the UDA) undertake any urban development, with any issues relating to this provision to be addressed in a subsequent Cabinet paper;

78 **noted** that the Minister of Housing and Urban Development intends to seek direction on measures for protecting Māori interests during the transition period, as part of a report back to Cabinet in April 2019.

Martin Bell
for Secretary of the Cabinet

Hard-copy distribution:
Prime Minister
Deputy Prime Minister
Minister for Māori Crown Relations: Te Arawhiti
Minister of Finance
Minister of Housing and Urban Development