MINISTRY OF HOUSING
AND URBAN DEVELOPMENT

# Briefing

| Streamlined Specified Development Project Process | | | |
|---|---|---|---|
| **Date:** | 26 July 2019 | **Security level:** | In Confidence |
| **Priority:** | Medium | **Report number:** | BRF19/20070352 |

## Action sought

| | Action sought | Deadline |
|---|---|---|
| Hon Phil Twyford<br>**Minister for Urban Development** | Approve the proposed changes to the specified development project process.<br><br>Forward this paper to your Ministerial colleagues. | 2 August 2019 |
| Hon David Parker<br>**Minister for the Environment** | Approve the proposed changes to the specified development project process. | 2 August 2019 |
| Hon Nanaia Mahuta<br>**Minister of Local Government** | | |
| Cc Hon Kelvin Davis<br>**Minister for Māori Crown Relations: Te Arawhiti** | Note the proposed changes to the specified development project process. | 2 August 2019 |
| Cc Hon Grant Robertson<br>**Minister of Finance** | | |
| Cc Hon Dr Megan Woods<br>**Minister of Housing** | | |
| Cc Hon Kris Faafoi<br>**Associate Minister of Housing** | | |
| Cc Hon Eugenie Sage<br>**Minister of Conservation** | | |

## Contact for discussion

| Name | Position | Telephone | | 1st contact |
|---|---|---|---|---|
| Jessica Ranger | Manager Kāinga Ora Policy and Legislation | 04 831 6076 | s 9(2)(a) | ✓ |
| Mike Hurley | Senior Policy Advisor | 04 832 2413 | | |

## Other agencies consulted

The Treasury, SSC, the Urban Development Group (HNZ, HLC and KiwiBuild), MfE, MoT, NZTA, NZDF, DIA, DOC, MPI, Heritage New Zealand Pouhere Taonga, MCH, Te Arawhiti and TPK.

## Minister's office to complete

| | |
|---|---|
| ☐ Noted<br>☐ Seen<br>☐ Approved<br>☐ Needs change<br>☐ Not seen by Minister<br>☐ Overtaken by events<br>☐ Declined<br>☐ Referred to (specify)<br>_____ | **Comments** |

**Date returned to MHUD:**

_____

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# Briefing

## Streamlined Specified Development Project Process

| | | | |
|---|---|---|---|
| **For:** | Hon Phil Twyford, Minister for Urban Development<br>Hon David Parker, Minister for the Environment<br>Hon Nanaia Mahuta, Minister of Local Government | | |
| **Date:** | 26 July 2019 | **Security level:** | In Confidence |
| **Priority:** | Medium | **Report number:** | BRF19/20070352 |

## Purpose

1. This briefing seeks your approval to simplify the process for establishing a specified development project and amend the drafting instructions issued to Parliamentary Counsel Office.
2. This briefing also reports back on the independent advice obtained from a resource management lawyer on the streamlined process.

## Recommended actions

3. It is recommended that you:

   1. **note** Cabinet delegated authority to the Ministers of Housing and Urban Development and Local Government and Minister for the Environment to make subsequent policy decisions on related details consistent with the policy proposals on specified development projects (CAB-18-MIN-0243 refers) *Noted*

   2. **note** Ministers Twyford, Parker and Sage agreed in principle to a streamlined process for specified development projects at a meeting with officials on 24 June, and requested that a resource management lawyer review this process *Noted*

   3. **note** the changes to the specified development process will enable more complex projects to become specified development projects by: providing more flexibility around the initial assessment to better reflect the requirements of the particular project; requiring Ministerial approval earlier in the process so any issues can be identified and addressed early; and consolidating the two rounds of public consultation on the development plan into a single round, reducing the potential for consultation duplication and fatigue *Noted*

   4. s 9(2)(h) *Noted*

   5. **agree** to the streamlined process for establishing a specified development project as set out in this briefing *Agree / Disagree*

6. **agree** that the drafting instructions to the Parliamentary Counsel Office for the Urban Development Bill be amended to reflect the streamlined specified development process. *Agree / Disagree*

Jessica Ranger
**Manager, Kāinga Ora Policy and Legislation**
26 / 7 / 19

Hon Phil Twyford
**Minister for Urban Development**
..... / ..... / .....

Hon Minister Parker
**Minister for the Environment**
..... / ..... / .....

Hon Nanaia Mahuta
**Minister of Local Government**
..... / ..... / .....

## Background

4. As part of establishing Kāinga Ora – Homes and Communities, Cabinet made a series of policy decisions throughout 2018 that set up the Specified Development Project (SDP) process. The SDP process is intended for the types of projects that would struggle to progress under the current development regime. These are complex projects that are often constrained by a lack of coordination and integration.

*The SDP process will speed up development by enabling better coordination and integration*

5. The value in the SDP process is that it brings together processes that are currently spread across different legislation and agencies. These processes usually run sequentially rather than concurrently. All have their own appeal rights providing numerous opportunities for re-litigation, potentially affecting development timeliness and certainty.

6. The SDP process will mean that projects can go through multiple processes concurrently so they are applied in a joined-up way. This will mean that the planning, infrastructure and potential funding can be addressed up front allowing for a more streamlined process and so speeding up delivery.

7. The key benefit of the SDP process is that it will provide Kāinga Ora with access to a tool-kit of existing development powers that is currently spread across central and local government. The toolkit will include powers around:

    a. shortened planning and consenting processes

    b. funding for infrastructure and development activities

    c. building and changing infrastructure

    d. bringing together parcels of land

    e. reconfiguring reserves.

*Complex projects will benefit from the SDP process*

8. Work earlier this year regarding the transition of large-scale projects into SDPs highlighted that scale alone is not necessarily a factor that will drive projects to go through the SDP process. Instead, it is the complexity that is more likely to result in a project going through the SDP process. An SDP enables the existing processes to be accessed concurrently rather than sequentially.

9. We anticipate that large-scale projects will weigh up the benefits of becoming an SDP. While some will be enabled enough under existing processes, there will be others that benefit from becoming an SDP and accessing the toolkit of existing development powers.

10. s 9(2)(i)

11. There will be a mechanism in the Urban Development Bill to enable existing large-scale projects to transition to the appropriate stage of the SDP process, provided they have substantially met the requirements for that stage and all those preceding it. Requiring these

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s 9(2)(i)

projects to go through the SDP process from the beginning could result in duplication and delays.

12. We are also working on how we can enable a project to transition into an SDP if it gets underway while using a standard process and then identifies that it would be beneficial for the project to access the toolkit of existing development powers by becoming an SDP.

*Need for change*

13. A proposed SDP process was laid out in a series of four Cabinet papers in 2018. While testing that process with agencies and industry experts, an opportunity was identified to further simplify the process and better deliver on the intended outcomes of the SDP process.

14. Ministers Twyford, Parker and Sage met with officials on 24 June and agreed in principle on an approach to streamline the proposed SDP process. Ministers Davis, Robertson, and Mahuta were invited to the meeting and sent officials on their behalf. Officials were asked to seek advice from a resource management lawyer on the proposed changes.

*You have delegated authority to make changes to this process*

15. Cabinet has delegated authority to the Ministers of Housing and Urban Development and Local Government and Minister for the Environment to make decisions relating to specified development projects (CAB-18-MIN-0243 refers).

16. This briefing seeks your approval to reflect the streamlined SDP process in the Urban Development Bill that is currently being drafted for introduction this October.

## Streamlined Specified Development Project process

17. The proposed streamlined process is shown below. More details around the proposed process and the changes that have been made included in Annex A.

### More Flexibility

18. The SDP process seeks to enable complex urban development to occur at pace. This briefing proposes changes to streamline the SDP process and make its potential use viable for a larger range of urban development projects.[2]

[2] Note it is only the process to establish an SDP that officials propose to simplify. The development powers available to Kāinga Ora through an SDP remain the same.

19. The simplified SDP process will improve flexibility in the following ways:

    a. The complexity, local conditions and local community will vary between projects and locations. The revised SDP process is more flexible so that it can be tailored to reflect the particular issues being addressed and be suited to the local community.

    b. The streamlined SDP process provides early public engagement to allow the stakeholders' needs and aspirations to inform the setting of the project's strategic objectives and project area. This will enable processes which maximise community buy-in and result in a more informed project.

    c. The streamlined process also ensures that proposals can be easily changed in the early planning stages to reflect issues, opportunities or constraints that have been identified during engagement. Allowing for these changes earlier in the process provides a cost saving and decreases complexity.

    d. Due diligence activities during the initial assessment phase have been made less prescriptive. This allows Kāinga Ora to scale the due diligence activities to reflect the project. This minimises expenditure on investigating issues obviously not applicable to the project area.

    e. The engagement required during the initial assessment has been streamlined. It will still ensure that meaningful engagement with Māori, key stakeholders and the local community occurs early in the process. It also allows the process to be tailored to the needs of the local community and key stakeholders.

    f. The two rounds of public consultation on the development plan have been consolidated into a single round. This reduces the burden on the community as they will not be required to provide written submissions at more than one point reducing the risk of submitter fatigue and duplication in the SDP process.

20. Earlier Ministerial consultation has also been included in the process. This will give Ministers earlier visibility of the proposal, and the ability to identify and respond to potential issues at an earlier stage. This ensures issues are picked up and addressed before the project has progressed too far, decreasing legal risks and saving the cost of later-stage revisions.

## Necessary Safeguards

21. Safeguards are still proposed to ensure particular interests and issues are adequately managed throughout the SDP process. A development plan will still be required for every SDP. As with the previous iteration of the process, Cabinet approval must be sought (unless delegated) for key stages of an SDP. This includes:

    a. approving the setting of the project area and the strategic objectives

    b. approving the development plan to be notified for consultation (written submissions)

    c. approving the final development.

22. Criteria for the decision making will be provided in legislation and will require input from other Ministers when their portfolio is potentially affected by the proposal. In practice, we expect that these stages will require Cabinet approval as per Cabinet Manual requirements.

23. Although the simplified process provides more flexibility it is important that appropriate safeguards are in place to protect environmental, infrastructure, historic heritage and Māori interests. Where it is feasible, the SDP process will link into existing processes and use existing safeguards. Specific protections around the interests are discussed in more detail below.

### *Strategic Objectives*

24. Each SDP will have a set of strategic objectives. These objectives are developed at the same time as the project area is being identified. They then guide all decision making within the project area. The strategic objectives can identify any features or areas within the project area that must be protected or enhanced as part of the development.

*Specific protections for Māori Interests*

25. Cabinet has previously agreed that the Urban Development Bill will include measures to ensure Māori interests are identified and protected. Some of these measures are provided for in the Kāinga Ora—Homes and Communities Bill and others will be contained in this Bill.

26. Broadly, these measures address:

    a. the need to protect sensitive land

    b. the need to maintain consistency with participation arrangements in Treaty settlement legislation

    c. the need for engagement with relevant post settlement governance entities, owners of Māori land and representatives of mana whenua groups (to identify areas of significance and any mutual or compatible development aspirations and Māori housing needs).

27. Many of these measures are applicable to any urban development project undertaken by Kāinga Ora, not just those using the SDP process. Where these measures apply in the SDP process, they will be accommodated within the proposed process changes and be able to be aligned with a streamlined process without compromising the protections.

28. Where they are applicable, Te Ture Whenua Māori Act 1993 and the Marine and Coastal Area (Takutai Moana) Act 2011 will continue to apply within identified SDP areas.

*Specific protections for significant environmental features*

29. The revised SDP process recognises the importance of protecting the environment and ensuring good access to open spaces.

30. Any provisions within a development plan must not be inconsistent with national direction under the Resource Management Act 1991 (RMA). Under the RMA, plans must give effect to national direction. The different requirement under this Bill is to allow the development plan to rely on the existing provisions in RMA plans for the national direction requirements. If the development plan does not amend existing RMA provisions, the existing provisions will still apply in the development area.

31. Approval from the Minister of Conservation will still be required for the removal, reconfiguration and use of any reserve. The limitation on which reserves can be reconfigured or developed as part of an SDP will be retained.

*Specific protections for infrastructure*

32. Infrastructure is a key consideration of any projects and it is essential to ensure potential impacts on nationally significantly infrastructure are identified and addressed.

33. Nationally significant infrastructure providers must be engaged with during the initial assessment stages to ensure that the operation of the infrastructure is able to continue during construction and upon completion of the proposed development. Previous versions of the SDP process only required this engagement when the infrastructure is within a proposed project area. Stakeholder feedback has identified that engagement is just as important when the infrastructure is within close proximity to the project area. The requirement to engage with nationally significant infrastructure providers is being extended to when the infrastructure is adjacent to or within the project area.

*Protections for historic heritage values*

34. There will be an ongoing need to ensure that historic heritage values are appropriately managed through the SDP process.

35. A development plan under the SDP process cannot make any existing RMA provisions that protect historic heritage more permissive. The Heritage New Zealand Pouhere Taonga Act 2014 will still apply within project areas. As part of the initial assessment a heritage assessment, at a relevant level of detail to the area, will need to be provided to or obtained from Heritage New Zealand Pouhere Taonga (HNZPT). HNZPT already hold a number of

heritage assessments and where relevant these existing heritage assessments will be able to be used as part of the initial assessment. HNZPT will be able to make recommendations for the protection of historic heritage.

### RMA Lawyer Review

36. s 9(2)(h)

## Risks

37. There is a risk that there will be pressure to undertake projects quickly without following good practice processes. In addition to the proposed safeguards (consultation processes, Ministerial approvals and appeal rights), it is also proposed that a regulation-making power be included in the Urban Development Bill that can set minimum engagement, consultation and process requirements. If it is considered that developments are not following robust processes, then regulations could be prepared and applied to SDPs to ensure appropriate process is followed.

## Consultation

38. The Treasury, State Services Commission, the Urban Development Group (HNZ, HLC and KiwiBuild), Ministry for the Environment, Ministry of Transport, New Zealand Transport Agency, New Zealand Defence Force, Department of Internal Affairs, Department of Conservation, Ministry of Primary Industries, Heritage New Zealand Pouhere Taonga, Ministry of Culture and Heritage, Office of Māori/Crown Relations: Te Arawhiti and Te Puni Kōkiri were asked to provide feedback on the proposals in this briefing.

39. Most of the agencies did not provide any specific comments but those that did were generally supportive. Some agencies sought minor changes that don't affect the overall process that have been incorporated, such as recognising that effects on infrastructure can occur during construction phases and clarifying that HNZPT has the ability to make recommendations around the historic heritage. HNZ raised some implementation issues that will be addressed through drafting of the Bill.

## Next steps

40. We will work with the Parliamentary Counsel Office and other government agencies to incorporate the simplified process into the Urban Development Bill. We are working towards introduction of the Bill in October.

## Annex A: Streamlined Specified Development Project Process

# A streamlined Specified Development Project (SDP) process

Aim: to simplify and streamline, ensuring the SDP process is more enabling, while maintaining appropriate checks and balances.

Why: feedback from stakeholders is that current process is too prescriptive and will add considerable cost and time.

## Part 1: Identifying proposal and clarifying intent

**Purpose:** to engage with the relevant stakeholders, ensure appropriate due diligence is undertaken, set clear strategic direction and boundaries for the project area

**Initial assessment:** includes public and stakeholder engagement and due diligence requirements → **Report to Ministers:** seek approval to prepare development plan → **Decision notice:** publicising project's strategic objectives and proposed boundaries

## Part 2: Shaping the development plan

**Purpose:** to prepare a development plan which sets the form of development and associated powers, while reflecting the strategic objectives set by the Government

**Development plan:** draft and gain approval from Ministers to consult on it → **Public consultation** → **Kāinga Ora report on submissions to IHP:** to inform its deliberations

## Part 3: Approving the development

**Purpose:** to enable independent review and Ministerial approval of final development plan

**Independent Hearing Panel** ↔ **Ministerial decision:** approve/reject development plan or seek further advice from IHP

*Reduced prescription still reflects Cabinet's decisions*

- Moves focus from detailing the process, to the outcomes and information sought from the initial assessment.
- Provides Ministers with a framework for deciding when a project should proceed.
- Maintains early and meaningful engagement with Māori.
- Maintains need for historic heritage and environmental assessments and recommendations.
- Enables a greater range of channels for information gathering and engagement with the public and stakeholders.
- Requires input from relevant Ministers into decision to proceed.

- Ensures relevant Ministers are involved at the development plan stage and are able to identify any issues or limitations before public consultation.
- Reduces the risk of duplication by removing the need to revise the development plan after consultation while still allowing Kāinga Ora to provide a view to the IHP on potential changes.
- A revised or marked up plan can be part of the Kāinga Ora report to the IHP.
- Consolidates the public consultation into one round rather than two.

- Independent Hearing Panel process is unchanged.
- Feedback loop created to ensure independent review of any changes to development plan.
- Relevant and collective Ministerial input when making changes to the development plan.
- Minister of Finance and relevant Urban Development or Housing Minister(s) have final approval as responsible Ministers.

*Simplification delivers overall benefit*

| Benefits | Risks & mitigations | Benefits | Risks & mitigations | Benefits | Risks & mitigations |
|---|---|---|---|---|---|
| • Creates flexibility and removes prescription.<br>• Public and stakeholders are involved in early and meaningful engagement.<br>• Early Māori involvement.<br>• Gives Ministers confidence in appropriate due diligence and engagement for decision making.<br>• Reduces risk of initial assessment becoming a tick box exercise. | • There is a risk that the initial assessment and due diligence will not be robust if detailed requirements are not set out in legislation.<br>• Risks are mitigated by the requirement for public engagement and a framework for Ministerial decision-making. | • Approval from all relevant Ministers is sought pre-consultation. Concerns can be addressed before it is released publicly.<br>• Public have the opportunity to submit at a stage when more detail is known.<br>• Reduces burden for public/submitter involvement.<br>• Onus is on a good plan to be produced up front. | • Kāinga Ora will not be able to make changes to the development plan after the submission process. It can, however, provide its views on any requested changes to IHP through the report on submissions. | • Full submissions and IHP process as originally intended<br>• Broader group of Ministers involved in approval process.<br>• Reduces risk of changes being made after IHP without public input. | • May increase time at end of process.<br>• However, as Ministers are more involved earlier in the process it may reduce need for amendments at the end. |

## Next steps

Are Ministers happy for officials to proceed with the suggested changes?
If yes, officials will work with the Parliamentary Counsel Office on drafting for the Urban Development Bill.