

BRIEFING

Urban development and the use and management of Crown-owned land – meeting on Wednesday 9 May

Date:	3 May 2018	Priority:	Medium
Security classification:	In Confidence	Tracking number:	3075 17-18 [MBIE] BRF 18-266 [LINZ]

Action sought		
	Action sought	Deadline
Hon Phil Twyford Minister of Housing and Urban Development	Note the attached information for your meeting on 9 May Agree to the process for repurposing Crown-owned land	9 May 2018
Hon Eugenie Sage Minister for Land Information	Note the attached information for your meeting on 9 May Agree to the process for repurposing Crown-owned land	9 May 2018

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Di Anorpong	Manager, Construction and Housing Policy, MBIE	04 901 8743	s 9(2)(a)	✓
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Minister's office to complete:

☐ Approved

☐ Declined

☐ Noted

☐ Needs change

☐ Seen

☐ Overtaken by Events

☐ See Minister's Notes

☐ Withdrawn

Comments

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Purpose

1. This joint briefing provides you with information to support your discussion on how Crown-owned land can better be used to support urban development outcomes. It also seeks Minister Twyford's agreement to the proposed process for repurposing Crown-owned land.
2. You are meeting on Wednesday 9 May 2018 at 7am in Minister Twyford's office.

Recommendations

The Ministry of Business, Innovation and Employment and Land Information New Zealand recommend that you:

- a **Note** that this briefing supersedes the previous briefing on the use and management of Crown land and the Urban Development Authority (UDA) [MBIE briefing 1272 17-18 refers]
- b **Agree** to the following process for repurposing Crown-owned land for a UDA development project (from MBIE briefing 2239 17-18, advice repeated in Annex 1):
 - a. when Cabinet is asked to agree to a development project's area and strategic objectives, it also decides which Crown-owned land will be set apart for that project;
 - b. the repurposing is given effect by the Minister for Land Information, who has a statutory decision-making power under section 52 of the Public Works Act 1981 to declare any land held for one public work to be set apart for a different public work;
 - c. the terms of the setting apart, including the price, are agreed by the Minister responsible for the new legislation, the Minister of Finance, and the Minister responsible for the portfolio whose land would be transferred; and
 - d. when agreeing the price, the objective be to identify the fair market value of the land

Agree / Disagree



Di Anorpong
Manager, Construction and Housing Policy
Housing and Urban Branch, MBIE

3 / May 18
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Hon Phil Twyford
**Minister of Housing and Urban
Development**

..... / /



Jamie Kerr
Group Manager, Policy and Frameworks
Land Information New Zealand

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Hon Eugenie Sage
Minister for Land Information

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Context

3. Minister Twyford has expressed interest in exploring how Crown-owned land can be better used to support urban development outcomes.
4. In December, Minister Twyford requested advice on consolidating Crown-owned land, with the primary aim of providing the national Urban Development Authority (UDA) with land for development.
5. MBIE provided initial advice on 14 December 2017 [1272 17-18 refers]. The briefing recommended focussing on the Crown's 'surplus' urban land within a UDA project area, to align with the UDA's project-based approach. MBIE has since recommended processes to provide UDA development projects with Crown-owned land, as well as land owned by Crown agents [1297 17-18 and 2239 17-18 refer].
6. At the same time, LINZ has provided Minister Sage with advice on work underway to improve management of Crown-owned land and address challenges with agencies' current land-management practices [BRF 18-141 refers].
7. The meeting on Wednesday 9 May provides the opportunity to discuss how Crown-owned land could better be used to support urban development objectives. In particular, we recommend that Ministers discuss the proposed process for repurposing Crown-owned land for urban development projects (see Annex 1). Subject to Ministers' agreement to recommendation (b) in this briefing, we can include land assembly in the second UDA Cabinet paper for consideration by Cabinet next month.
8. The following sections summarise previous advice relevant to this discussion, and provide a suggested agenda for the meeting.

Out of scope of UDA policy development

Out of scope of UDA policy development

s 9(2)(f)(iv)

MBIE has proposed processes to provide the UDA with Crown-owned land for development

Compulsorily acquiring land for development from Crown agents

20. Ministers have already agreed that the urban development legislation will include an accelerated power to take land within a project area from Crown agents² [1297 17-18 refers]. This power will be implemented via the standard process under the Public Works Act 1981 (PWA), except that the Crown agent that owns the land being acquired will not have a right to object to the Environment Court under section 23 of the PWA.
21. MBIE has also provided advice on models for providing the UDA with HNZ land for development [2239 17-18 refers]. Although HNZ is a Crown agent, the volume of HNZ land likely to fall within scope of certain development projects means we consider a further accelerated process is merited in this case. The best model for providing HNZ land for development will depend on Ministers' decisions around the UDA's entity form.

Repurposing Crown-owned land for development

22. MBIE has proposed a process for repurposing Crown-owned land³ [2239 17-18 refers]. Under the proposed process, Cabinet would decide which Crown-owned land to repurpose for the UDA when agreeing a development project's area and strategic objectives. This would mean that Cabinet can consider what the best use of the land is from a whole-of-government perspective.

² Crown agents are the form of Crown entity that is closest to central government, and include HNZ, ACC, District Health Boards and Callaghan Innovation.

³ Referred to in the briefing 2239 17-18 as 'core Crown land'.

23. The proposed process for repurposing Crown-owned land is summarised in Annex 1. It would provide a straight-forward and relatively rapid means of providing the UDA with Crown-owned land within a project area.
24. The meeting on Wednesday 9 May provides an opportunity to discuss this proposal.

We consider that these proposals will provide the UDA with the land it needs for development

25. MBIE and LINZ consider that the accelerated PWA powers to take land from Crown agents and the proposed process for repurposing Crown-owned land will be sufficient to provide the UDA with land it needs in a project area for development. These proposals are complemented by the proposed list of specified works for which the UDA can seek compulsory acquisition of private land within a project area [1922 17-18 refers].
26. These land assembly proposals are well-aligned with the UDA's project-based approach. They mean that the UDA will be able to acquire and hold the land it needs to undertake urban development projects. For the time being we consider that these proposals will most effectively deliver the outcomes the UDA is seeking to achieve.
27. s 9(2)(f)(iv)

Proposed agenda for the meeting on Wednesday 9 May

28. MBIE and LINZ propose the following agenda for your meeting at 7am on Wednesday 9 May:
 - a. Discuss the current issues and problems for collective use and management of Crown-owned land, particularly in urban areas.
 - b. Discuss and agree the proposed process for repurposing Crown-owned land for urban development projects.
29. Your 7am meeting on Crown-owned land will be followed by a 7:30am meeting, where you are scheduled to discuss other UDA land assembly powers (specifically the PWA) and reserves. Decisions on these matters are needed for inclusion in the second UDA Cabinet paper for consideration by Cabinet next month.

List of annexes

Annex 1: Proposed process for repurposing Crown-owned land

Annex 2: Further information on Crown-owned land

Annex 1 – Proposed process for repurposing Crown-owned land

This annex repeats content from the MBIE briefing 2239 17-18.

Crown-owned land is 'repurposed'

1. Crown-owned land is not subject to compulsory acquisition, because the Crown cannot take land from itself. Instead, if one part of the Crown wants to purchase the land off another part of the Crown, this land is 'repurposed' from one government work (e.g. education) to another (e.g. housing).
2. Under the status quo, this repurposing is given effect by the Minister for Land Information, who has a statutory power under section 52 of the Public Works Act 1981 (PWA) to declare any land held for one public work to be set apart for a different public work. In practice, LINZ generally makes the decision on setting apart under delegation. This power is not subject to the PWA provisions that apply to acquisitions.

How to set apart Crown-owned land for the UDA?

3. We recommend that the decision on which Crown-owned land in a development project to set apart to the UDA be made by Cabinet when it is asked to agree to the project's area and strategic objectives. At this point, Cabinet would consider what the best use of the land is from a whole-of-government perspective.
4. LINZ advises that the existing process for setting apart Crown-owned land will be appropriate for the UDA. This means that the UDA legislation will not need to provide new or additional powers to give effect to Cabinet's decision on which Crown-owned land to set apart. The land would be set apart for 'urban development purposes'.

On what terms should the land be set apart?

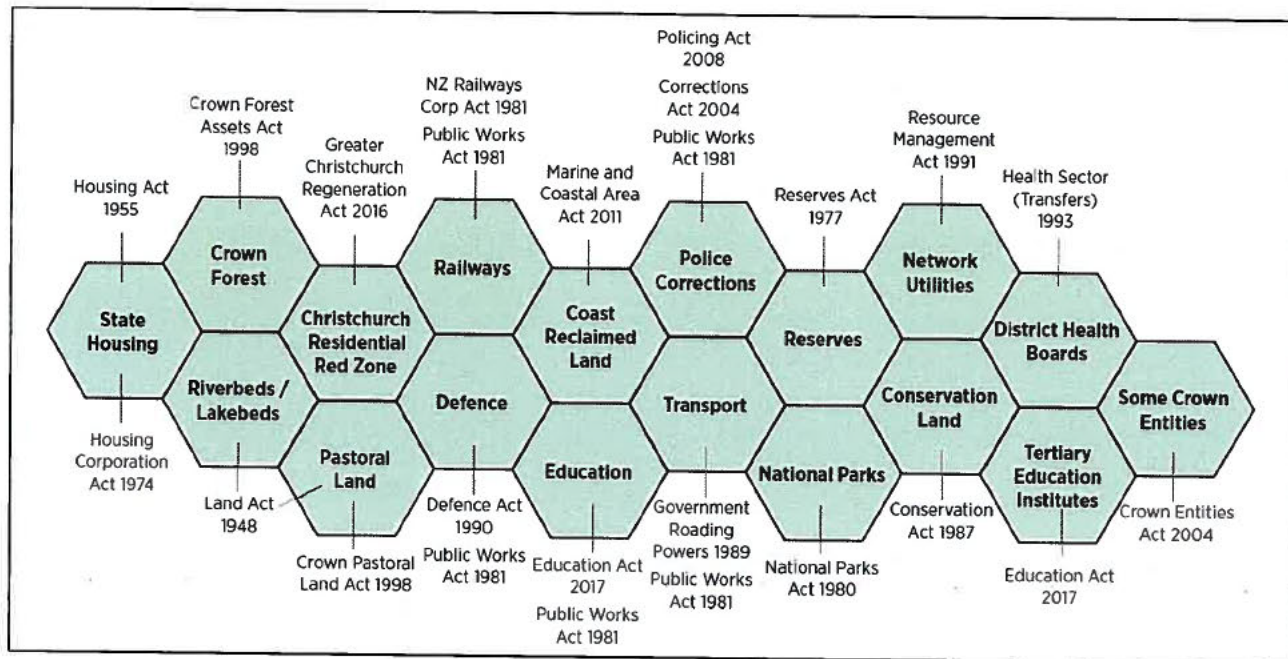
5. We suggest that the new legislation provide for how the terms of the setting apart are agreed, including the price. Further policy work is needed to develop the process for agreeing these terms. MBIE and LINZ will work together on this.
6. Land and asset transfers should occur at market prices to avoid the potential for pricing to be distorted.
7. Rather than leave the matter for negotiation between the two agencies involved, we suggest that the terms of setting apart be determined by agreement between the Minister of Finance, the Minister responsible for the new legislation and the Minister responsible for the portfolio whose land would be set apart. We suggest that the overarching aim be for the land to be transferred within the Crown at fair market value. Treasury notes that having Ministers agree the terms of transfer would override the accountabilities of entity chief executives.

Issues

8. The main issue is the risk that land still needed for another public purpose is set apart to the UDA for development. The check against that risk is the requirement for Cabinet to decide what the best use of public land is. That will ensure that the views of the Minister responsible for the portfolio whose land would be set apart can represent the interests of the department or agency that currently holds it.

Annex 2: Further information on Crown-owned land

Legislation governing Crown-owned land



Disposing of Crown-owned land

1. Agencies disposing of Crown-owned land must determine whether the land is required for another public work (including local works), whether the land is subject to offer-back obligations to the former owners or successors, and whether there are any Treaty Settlement Rights of First Refusal or other Treaty of Waitangi obligations to be met.
2. If land is transferred to another agency (or other established entity) then that entity would be responsible for ensuring that the same disposal process is carried out on each parcel of land it holds prior to that land being sold on the open market.