



BRIEFING

Urban Development Legislation: approach to offer back to former Māori land owners and UDA engagement strategy

Date:	24 July 2018	Priority:	Medium
Security classification:	In Confidence	Tracking number:	18-19 0082

Action sought		
	Action sought	Deadline
Hon Phil Twyford Minister of Housing and Urban Development	Forward this briefing to Ministers Davis, Little, Mahuta, and Sage Discuss these issues with Ministers Davis, Little and Mahuta at your 26 July meeting	26 July 2018
Hon Jenny Salesa Associate Minister of Housing and Urban Development	For your information	N/A

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Di Anorpong	Manager, Urban Development Policy	(04) 901 8743	s 9(2)(a)	✓
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The following departments/agencies have been consulted
Ministry of Justice (Crown/ Māori Relations, Office of Treaty Settlements, Post Settlements Commitments Unit), Te Puni Kōkiri, Land Information New Zealand.

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☐ Withdrawn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 briefing provides advice to support your meeting with the Minister for Crown/Māori Relations (Hon Davis), Treaty of Waitangi Negotiations (Hon Little) and Māori Development (Hon Mahuta), and an advisor from the office of the Minister for Land Information (Hon Sage) on Thursday 26 July.
2. The meeting is planned to discuss:
 - the approach in the urban development authority (UDA) legislation to the offer back requirement (under section 40 of the Public Works Act) for former Māori freehold land
 - the draft engagement strategy for the UDA (Annex 1).

Executive summary

Offer back obligations and former Māori freehold land

3. The UDA will often work with private developers to deliver public works in UDA development areas. For some works that will end up in private ownership (e.g. housing or commercial buildings), the UDA will need the ability to transfer land to private developers to deliver the works. This is important to the success of the UDA's development model.
4. To enable such transfers, you have agreed that the urban development legislation will state that the sale of land to private developers to deliver public works does not, in and of itself, trigger an offer back obligation (the Crown's obligations to offer the land back to former owners or their successors). You have also agreed that the UDA and private developers will be able to sell finished works to private parties without triggering the offer back obligation.
5. Some Crown land in UDA project areas will be former Māori freehold land which the Crown has previously acquired, either by agreement or through compulsory acquisition. The proposals above would mean that such land could be transferred to a private developer without former owners (or their successors) first having the opportunity to decide whether to purchase the land (in situations where an offer back would otherwise apply).
6. Officials have developed options which would recognise the special nature of former Māori freehold land in this context. These options are outlined in this briefing, and summarised in the recommended actions below.

Draft UDA engagement strategy

7. We have drafted an engagement plan for the UDA that identifies our objectives, audiences, and strategies to support the development of the UDA. An implementation plan has been developed for the period before and after the release of the Cabinet papers. This is included as Annex 1.

8. Before the release of the Cabinet papers, you agreed to engage with some national Māori organisations and local government key stakeholders. You may be joined by other Ministers as appropriate. There are some risks with this approach but MBIE has provided strategies to mitigate these.
9. Once the Cabinet papers have been agreed to by Cabinet, you have decided to proactively release them. When this occurs, we propose that you release a media statement and hold a media stand-up. We will re-engage interested and affected partners and stakeholders and conduct regional hui/meetings to discuss the decisions, explain what the UDA will mean for them, how they can be involved, and next steps.

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

- a **Forward** this briefing to Ministers Davis, Little, Mahuta and Sage

Agree / Disagree

- b **Discuss** this briefing with Ministers Davis, Little and Mahuta, and Minister Sage's advisor at your 26 July meeting

Agree / Disagree

- c **Agree** to include one of the following options in the Māori interests UDA Cabinet paper:

- Option 1: Establish a process for the UDA to engage with Māori who have connections to former Māori freehold land in a UDA development area (*Ministry of Business, Innovation and Employment, Ministry of Justice, Te Puni Kōkiri and Land Information New Zealand support this option*)

Agree / Disagree

OR

- Option 2: Maintain status quo for offer backs (do not specify in the UDA legislation that the UDA will be able to transfer land to private developers to deliver public works without triggering the offer back obligation) AND the process outlined in option 1 (*Ministry of Justice and Te Puni Kōkiri also support this option*)

Agree / Disagree

OR

- Option 3: No different treatment of former Māori freehold land

Agree / Disagree

- d **Discuss** the general approach set out in the draft UDA engagement strategy at Annex 1

Agree / Disagree



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

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..... / /

Hon Phil Twyford
**Minister of Housing and Urban
Development**

..... / /

Context

This is part of a series of briefings relating to the UDA legislation

10. You have received a series of briefings on critical issues to the UDA legislation. This briefing covers an issue relevant to both land assembly and Māori interests (highlighted):
- Fundamentals: legislative design, decision-making, role of local government
 - Decision-making: priorities and principles
 - Organisational functions and form of the national UDA
 - Approach to Māori interests
 - Land assembly powers, especially compulsory acquisition
 - Infrastructure and funding powers
 - Planning and consenting powers
 - Powers to change reserves.

This briefing is for your meeting on offer back obligations and the UDA engagement strategy

11. You are meeting Ministers Davis, Little and Mahuta, and an advisor from Minister Sage's office, at 8:30am on Thursday 26 July. The meeting is to discuss:
- whether and how offer back obligations will apply to land held by the Crown which was formerly Māori freehold land
 - MBIE's proposed engagement strategy on the UDA Cabinet papers.
12. Your decisions on offer back obligations will be incorporated into the draft Cabinet paper on Māori interests and the UDA.

Offer back obligations and the UDA

The UDA will need to be able to transfer land to private developers to deliver public works

13. A variety of public works will be constructed in urban development project areas. This includes public works that will remain in public ownership (e.g. roads, energy infrastructure or schools) and those that will ultimately end up in private ownership (e.g. housing or commercial buildings).
14. The UDA will often work with the private sector to deliver these works. For works that will remain in public ownership, the UDA¹ will continue to own the land, which will then be transferred to the appropriate public entity once the work is complete (e.g. drainage works to territorial authorities). For works that will end up in private ownership, the UDA may need to transfer the land to a private developer, which will construct the works and then sell the completed works (e.g. housing) to the end owner.
15. The ability to transfer land to private developers will be an important component of the UDA's development model. The UDA will not have the resources to deliver all the works proposed to be undertaken in development projects and will need to work with the private sector. In some cases, the UDA may be able to come to an arrangement where it continues to own the

¹ Or the Crown, if the UDA is established as a department or departmental agency.

land while a private developer undertakes the development. In other situations, the developer will need ownership of land to borrow to fund the development.

16. The types of public works that are most likely to end up in private ownership are housing and commercial buildings.

You have agreed that the UDA will be able to transfer land to a private developer to deliver public works without triggering 'offer back' obligations

17. Section 40 of the Public Works Act 1981 provides that where the Crown holds land for a public work, and the land is no longer required for that public work or any other public work, the land must be offered back to the person from whom it was acquired or to the successor of that person (unless certain exceptions apply). This is known as the 'offer back obligation'.
18. Under the existing law, it is unclear whether the involvement of private developers in the delivery of public works 'triggers' the offer back obligation. s 9(2)(g)(i)
19. You have agreed the urban development legislation will:
- state that the sale of land to private developers to deliver public works does not, in and of itself, trigger an offer back obligation (MBIE briefing 1297 17-18 refers). This proposal was previously presented as a clarification of the existing law. Following further advice, the draft Cabinet paper now presents this as a new proposal.
 - include a 'right of resumption', which would allow the Crown to take back any land transferred to a private developer if it did not undertake the specified work on the agreed terms.
 - enable the UDA and private developers to sell finished works to private parties without triggering the offer back obligation (MBIE briefing 1922 17-18 refers).
20. While these proposals would mean that offer backs will not be triggered, any right of first refusal (RfR) under a Treaty of Waitangi settlement over Crown land will still apply.²

The urban development legislation will take a similar approach to section 15 of the Housing Act

21. Under section 15 of the Housing Act 1955, it is already possible to transfer land to private developers for the public work of State housing without triggering offer back obligations. Section 15 also covers commercial buildings that are ancillary to the houses, as well as works such as roads and drainage works that are for the benefit of the land or its occupiers.
22. It is proposed that the urban development legislation take a similar approach, thereby covering the other types of public works that will be delivered by private developers.
23. Section 15 of the Housing Act will expire in 2026. Including a similar provision in the UDA legislation will ensure that the UDA will be able to rely on the ability to transfer land to private developers after this date.

² The terms of the RfR will need to be met before land can be transferred to a private developer. The Māori interests Cabinet paper will address the importance of early engagement with RfR holders to see if the parties can agree an approach to RfR land. If no agreement is reached then the land must be offered to the RfR holder before it can be sold to a developer.

Options for the offer back for former Māori freehold land

The UDA offer back proposal would mean that former Māori freehold land (now held by the Crown) would not be offered back to former owners or their successors

24. Some Crown land in UDA project areas will be former Māori freehold land, which the Crown has previously acquired, either by agreement or through compulsory acquisition. We don't have information on the scale of this type of land in areas where the UDA will consider establishing development projects.
25. The proposal to enable the UDA to transfer land to private developers to deliver public works without triggering offer back obligations would also apply to such land. This would mean that former owners (or their successors) of former Māori freehold land would not have the opportunity to decide whether to purchase such land in circumstances where offer back obligations would otherwise have been triggered.
26. Once the land is transferred to a private developer and then on-sold to other private parties (e.g. those who purchase completed homes), the offer back obligations will no longer apply.

There is a case for treating Māori land differently to other types of land

27. The offer back proposals outlined above have implications for the Crown/ Māori relationship.
28. As set out in the draft Māori interests Cabinet paper (MBIE briefing 3277 17-18 refers), there is a good case for treating some types of Māori land differently in the urban development legislation. Reasons for this include:
 - Land is of fundamental importance to Māori identity and their cultural, social and economic wellbeing
 - Māori cannot replace land that is inextricably linked to their ancestors, history and identity
 - Māori have suffered historical land loss on a massive scale.
29. While former Māori freehold land is now held by the Crown, Māori may retain connections to some of this land.

We have developed options which would recognise the special nature of former Māori freehold land

30. The offer back obligation for former Māori freehold land applies to all parts of the Crown. However it is likely to arise more frequently in the case of the UDA due to the pace of development and the involvement of private developers. This may justify creating a separate process in the case of the UDA for such land.
31. We have worked with officials at the Ministry of Justice (MOJ), Te Puni Kōkiri (TPK), and Land Information New Zealand (LINZ) to develop options that would recognise the special circumstances of Crown land that was previously acquired from Māori (both by agreement and by compulsory acquisition).
32. One factor to consider when evaluating options is the impact on the UDA's development timeframes. The UDA is intended to undertake development projects at scale and pace. However, identifying former owners of Crown land and their successors can be a long and involved process, requiring examining records for Crown-owned land and tracing the history of the transfer of land parcels. We understand that such a process would take around 18 months for a suburb-sized development. Unless appropriately integrated into the UDA's development processes, this would have implications for the timeline and viability of some UDA development projects.

33. The options below apply to former Māori freehold land now held by the Crown which will no longer remain in Crown ownership under the UDA's development plan. Crown land which will remain in public ownership (e.g. roads, schools) would not trigger any offer back, and offer back obligations will continue to apply to this land – meaning that former owners would still have the option to purchase the land should offer back obligations be triggered in future.

Option 1 – Establish a process for the UDA to engage with Māori who have connections to former freehold Māori land in a UDA development area

34. This option proposes a process for constructive engagement with Māori who have connections to former freehold Māori land in a project area. This would give whānau and hapū the opportunity to develop the land (if there is no RfR over the land), or to agree with the UDA a range of other outcomes that would reflect their connections to the land.
35. At the beginning of the establishment of a development project, the UDA would be required to identify which public land in the project area was freehold Māori land at the point it was acquired by the Crown or a territorial authority. This would involve identifying the status of the land and the hapū associated with the land, as opposed to identifying the specific former owners and their successors. We understand that this process is likely to take less time compared to around 18 months to identify former owners and successors.³
36. The UDA would then approach members of the hapū associated with the land. This process would also provide an opportunity for whānau associated with the land to come forward. The UDA would aim to understand the aspirations of these groups for housing and urban development, and discuss how the UDA's plans could incorporate these aspirations.
37. We envisage that there are a range of possible outcomes that could follow:
- a. Māori associated with the land may express an interest in being involved as development partners, in which case the UDA could offer the opportunity to develop the land, with conditions attached specifying development outcomes for the land (e.g. a certain number or typology of housing). Any applicable RfRs would have to be addressed first (see paragraph 40 below).
 - b. The UDA and Māori associated with the land could agree to other ways of recognising their connections to the land – for example in the layout of the development project, in street names, or reserve names or locations. Another outcome could be seeking to influence the development to achieve specific Māori housing outcomes.
 - c. Māori partners may decline to be involved, in which case the UDA may choose to transfer the land to a private developer for development. Offer back obligations would not apply to the transfer.
38. The engagement with Māori with connections to the former Māori freehold land would take place concurrently as the UDA prepares its development plan. We imagine that the two processes will be inter-related, as discussions with Māori parties will feed into the preparation of the development plan.
39. This process would help mitigate the impact of removing the offer back obligation for former Māori freehold land. Additionally, MOJ and TPK note that it could complement Option 2 outlined below.
40. It will be important for the UDA to engage with RfR holders in parallel to this process. If the land is transferred to a private developer, any applicable RfRs would apply. This means the UDA would need to offer the land to the RfR holder and the RfR holder would have to waive their RfR prior to it being offered to a private developer.

³ The times for both processes will depend on the size of the proposed development area and how long ago the land was acquired.

41. It is important to note that the hapū that the UDA engages with may not necessarily be the exact same people as the former owners and their successors from whom the Crown originally acquired the land. This could lead to disagreements over which parties should appropriately work with the UDA in the development project.
42. Option 1 would build on the UDA's broader approach to engaging with Māori – requiring early and meaningful engagement, which continues throughout the development process.⁴
43. This option would recognise the special circumstances of former Māori freehold land now held by the Crown, and would mean that Māori would have the opportunity to be involved in discussions around the development of this land. It would also avoid a significant impact on the UDA's development timeline, which could result from identifying the former owners of the land and their successors.
44. MBIE, MOJ, TPK and LINZ support this proposal.

Option 2 – Maintain status quo for offer backs (do not specify in urban development legislation that the UDA will be able to transfer land to private developers to deliver public works without triggering offer back obligation)

45. This option is to change the decision to have the urban development legislation state that the UDA will be able to transfer land to a private developer to deliver public works without triggering applicable offer back obligations. The process outlined in option 1 would apply in addition to this option.
46. Retaining the offer back obligations could have a significant impact on UDA development timelines. We understand that it will take 18 months on average to identify the former owners of Crown land in a suburb-sized UDA project area. While some of this work could be undertaken in parallel to other UDA processes, it would still need to be completed by the time the UDA prepares the detailed draft development plan, which we expect will take 6-12 months.
47. Retaining offer backs would also impact the ability of the UDA to secure the development outcomes it seeks. Offer backs to former owners would be made without conditions, meaning that the UDA could not require a certain number of houses to be built, or even that the land be developed at all.
48. In addition, private developers may be less willing to be involved in UDA development projects owing to uncertainties about whether land they intend to develop may instead be bought by the offer-back-holder.
49. There are some mitigations to the impact of this option. Firstly, section 15 of Housing Act will still apply (until it expires in 2026), meaning that the UDA will be able to transfer land for State housing purposes (and ancillary works) without triggering offer back obligations. In addition, it is possible that the number of offer-backs could be lower in practice – for example, if there has been a significant change in the character of the land, the offer back may no longer be applicable.
50. MBIE does not support this option. We consider that retaining the status quo for offer backs would negatively impact the ability of the UDA to undertake development projects at pace and scale.

⁴ Ministers have agreed that, at the initial assessment stage of establishing a development project, the UDA will be required to assess existing Treaty settlement commitments (including RfRs); assess mana whenua interests; identify Māori land in the project area; and consult with the Office of Treaty Settlements to identify land required for future settlements. Through this process, the UDA will work closely with Māori to establish arrangements for Māori to participate in decision making and to give effect to the spirit and intent of existing arrangements made through Treaty settlements or other legislation.

51. MOJ and TPK support this option as it would retain the offer back obligation on former Māori freehold land and ensure engagement with former owners as outlined in option 1.

Option 3 – No different treatment of former Māori freehold land

52. Former Māori freehold land would be treated the same as all other Crown land subject to an offer back. Under the urban development legislation, offer back obligations would not be triggered when land is transferred to a private developer for delivery of public works, or when a private developer or the UDA sell a completed work.
53. This option would not acknowledge the special circumstances of land previously acquired from Māori and would likely be viewed negatively by Māori.
54. This option would provide a faster development timeline, as the UDA would not have to identify former owners, or hāpu associated with former owners. It would mean that the UDA would have more certainty in preparing its development plans and transferring land to developers to deliver public works.
55. MOJ and TPK do not support this option. MBIE prefers option 1 to this option.

We have drafted an engagement plan for the UDA

56. The draft engagement plan identifies our objectives, audiences, and strategies to support the development of the UDA. An action plan has been developed for the period covering release of the Cabinet papers. It includes activities before and after the release.
57. Our objectives for engaging with stakeholders are to:
- a. inform our partners and stakeholders about the UDA and what it means for them
 - b. manage stakeholders' expectations about what the UDA will and won't deliver
 - c. encourage and empower our partners and stakeholders to support and advocate for the UDA
 - d. encourage our Treaty partners and stakeholders' input on certain details.
58. Our engagement strategies are to:
- a. position the UDA as a positive development for NZ
 - b. educate stakeholders, the media and public about the rationale for the UDA, its role and the benefits it will deliver
 - c. respect the Treaty partnership protocols, ensure engagement is early, broad and inclusive and provide opportunities for hui
 - d. shape the opinions of influencers by providing them with information about the initiative, including its benefits and progress
 - e. proactively engage with partners and stakeholders.

Engagement prior to the release of the Cabinet papers

59. You previously agreed that you and other Ministers will engage with some national Māori organisations and local government key stakeholders prior to the release of the Cabinet papers to demonstrate goodwill and trust, and to hear their thoughts on the proposals.
60. We understand that you and Minister Mahuta agreed to host a meeting of key Māori organisations prior to the public release. MBIE has suggested some national Māori organisations to engage with which are included in the Draft UDA implementation plan for

engagement at Annex 1. We understand Minister Mahuta will also suggest some Māori groups to engage with.

61. Treaty partners and key stakeholders include iwi/ Māori groups, Local Government New Zealand (LGNZ) and their Metro Mayors forum, selected council Mayors (of Auckland, Hamilton, Tauranga, Wellington, Hutt City, Porirua, Christchurch and Queenstown), Property Council New Zealand and Infrastructure New Zealand.

Risks

62. s 9(2)(g)(i)

63. There are also risks to the Crown- Māori relationship if engagement with Māori isn't handled well or if we are unable to show how Māori interests in a UDA project area are protected. To mitigate these risks officials will support Ministers at these meetings with material to show how these interests will be protected, including graphics and questions and answers.

Engagement when Cabinet papers are released

64. We propose you release a media statement and hold a media stand-up when the Cabinet papers are released. Other stakeholder channels proposed include direct emails to stakeholders, summary documents and information on the MBIE or Ministry of Housing and Urban Development website and supporting graphics.
65. After the release of the Cabinet papers, we propose that officials re-engage interested and affected partners and stakeholders through regional hui/meetings to explain the decisions, what the UDA will mean for them, how they can be involved, as well as next steps and opportunities to influence how the UDA will operate.

Next steps

66. Your preferred option for the offer back and former Māori freehold land will be incorporated into the draft Māori interests urban development legislation Cabinet paper. We will provide you and Minister Davis with the draft Cabinet paper for comment in the week of 13 August.

Annexes

Annex 1: Draft UDA implementation plan for engagement

Annex 1: Draft UDA implementation plan for engagement

Date / milestone	Audience	Communications/ engagement objective	Communication activity	Engagement activity	Messages	Responsible
September/ October Build-up to release of Cabinet papers	National Māori organisations: - Iwi Chairs' forum - FOMA - Māori Council - Te Matapihi As nominated by Min Mahuta	To demonstrate goodwill by informing early and trusting them with embargoed information To seek support To listen To explain what the UDA will mean for them	Key messages Talking points Slide pack A3 graphic	Hui	<ul style="list-style-type: none"> - Here's what we heard from you and where we're up to - Explain decisions, ramifications and next steps - How a UDA impact Māori, opportunities - Sensitive Māori land is excluded - S40 offer back - Changes from the discussion document 	Ministers Twyford and Mahuta with support from officials
	LGNZ Selected council Mayors - Auckland, Wellington, Hutt City, Porirua, Christchurch, Tauranga, Queenstown, Hamilton Metro Mayors forum Property Council Infrastructure NZ	To demonstrate goodwill by informing early and trusting them with embargoed information To seek support To listen To explain what the UDA will mean for them	Key messages Talking points Slide pack A3 graphic	Minister to attend meeting of Metro Mayors Ministers to meet others as organised	<ul style="list-style-type: none"> - Here's what we heard from you and where we're up to - Next steps - What's changed from previous discussions and the discussion document - I'll email the papers when they're released 	Minister Twyford with support from officials Minister's office

Date / milestone	Audience	Communications/ engagement objective	Communication activity	Engagement activity	Messages	Responsible
1 to 2 weeks before public announcement	Iwi groups engaged with in 2017 (updated list)	To (re)engage early and provide head's-up before public announcement	Key messages Talking points	Email	<ul style="list-style-type: none"> - Explain progress (announcement is coming) - Explain plan to hold regional hui and seek interest in attending 	Jo Doyle
	Government agencies	To provide head's-up and key messages before public announcement	Key messages Talking points Detail on policy agreed	Email Offer information session	<ul style="list-style-type: none"> - Explain the Cabinet decisions and coming announcement - Use the key messages so there's a consistent message from across government. 	Di Anorpong and UDA team
Mid-to-late October Cabinet papers released	All above	To inform the papers have been released To listen	Press release Update website, add papers to website	Email	<ul style="list-style-type: none"> - Refer to earlier engagement - As we alerted you, the Govt. has agreed to set up a UDA - Papers are available on website - Alert to future engagement opportunities - What/how/why 	Minister Twyford
	Other identified stakeholders Public	To inform the papers have been released To listen	Press release Update website, add papers to website	Email	<ul style="list-style-type: none"> - The Govt. has agreed to set up a national UDA - Papers are available on website - Alert to future engagement opportunities - What/how/why 	Minister Twyford

Date / milestone	Audience	Communications/ engagement objective	Communication activity	Engagement activity	Messages	Responsible
October/Nov Engagement	Iwi groups engaged with in 2017 and others interested in a hui	To inform To listen	Key messages Talking points Slide pack A3 graphic	Regional hui	<ul style="list-style-type: none"> - Changes from the discussion document What a UDA could mean for you - Where can you influence - Where your input from prior consultation has been incorporated. 	Di and UDA team
	Other stakeholders, as requested	To inform To listen	Key messages Talking points Slide pack A3 graphic	Meetings	<ul style="list-style-type: none"> - What a UDA could mean for you - Where can you influence 	Di and UDA team