



BRIEFING

Urban Development Legislation: Further Advice on Resource Management Planning and Consenting

Date:	29 June 2018	Priority:	Medium
Security classification:	In Confidence	Tracking number:	MBIE: 3980 17-18 MfE: 2018-B-04712

Action sought		
	Action sought	Deadline
Hon Phil Twyford Minister of Housing and Urban Development , and Hon David Parker Minister for the Environment	Circulate the draft Cabinet paper for ministerial and cross party consultation and provide us with any feedback you would like incorporated.	23 July 2018

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
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Chris Worth	Senior Policy Advisor (MBIE)	(04) 901 8735		
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Rhodyn Law	Senior Analyst (MfE)		s 9(2)(a)	

The following departments/agencies have been consulted

The Treasury, Department of Internal Affairs, Land Information New Zealand, Department of Conservation, Ministry of Transport, New Zealand Transport Agency, Te Puni Kōkiri, Office of Treaty Settlements, Ministry of Justice, Ministry of Education, State Services Commission, Ministry for Primary Industries, New Zealand Defence Force, Heritage New Zealand, Pouhere Taonga, Ministry of Culture and Heritage, Ministry of Health, Housing New Zealand Corporation, Transpower New Zealand, Fire and Emergency New Zealand, and Parliamentary Counsel Office were consulted on the Cabinet paper to which this briefing refers. The Department of Prime Minister and Cabinet was informed.

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☐ Withdrawn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

This joint briefing accompanies an updated draft Cabinet paper for ministerial and cross-party consultation. The draft Cabinet paper sets out the planning and consenting policy for Urban Development Authority (UDA) developments (Annex 1) and is the third in a series of four Cabinet papers on detailed policy proposals for the UDA legislation.

This briefing provides advice in response to questions Minister Parker raised on the first draft of the Cabinet paper that we provided to you on 21 June 2018. This advice is now reflected in the draft Cabinet paper.

Recommended action

We recommend that you:

- note** that we have amended the draft Cabinet paper following Minister Parker's feedback on the first draft and for clarity
- note** that the preparation of the draft Cabinet paper has included the policy work on proposed changes to the Resource Management Act 1991 (RMA) on which Minister Parker is consulting with colleagues
- agree** to circulate the draft Cabinet paper for ministerial and cross-party consultation and provide any feedback to officials by Monday 23 July 2018

agree/disagree

- note** that we will provide you with a final Cabinet paper on Thursday 26 July 2018 for lodging with the Cabinet Office.



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

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Hon Phil Twyford
Minister of Housing and Urban Development

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Lesley Baddon
Director, Urban and Infrastructure
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Hon David Parker
Minister for the Environment

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Advice

1. Minister Parker has provided feedback after reviewing the first draft of the Cabinet paper on Resource Management Planning and Consenting and requested that we provide further advice on certain issues. This briefing note responds to Minister Parker's request and advises that:
 - a. rights to judicial review of the development plan must be exercised at the same time as points of law appeal rights
 - b. the proposed approach to appeals and judicial review of consenting decisions, designations, notices of requirement and heritage orders in the draft Cabinet paper should be retained
 - c. the proposed approach to notification of resource consents in the draft Cabinet paper should be retained
 - d. local authorities should be able to adopt provisions of the development plan into their RMA planning documents before the development plan ceases to be operative.
2. The draft Cabinet paper has been updated to reflect the above advice.

Should judicial review be limited until other appeal rights are exhausted?

3. In the first draft of the Cabinet paper we recommended that judicial review of the development plan only be available once points of law appeal rights have been exhausted. Minister Parker has expressed concern that this approach may cause undue delay and questioned why these processes could not occur concurrently.
4. The advice was based on the current RMA process which limits access to judicial review until after a right of appeal to the Environment Court has been exercised.¹ Alternatively, in the plan process for the Auckland Unitary Plan a person could not apply for both judicial review and a points of law appeal on the Auckland Unitary Plan unless applications for both proceedings were lodged together. In those cases where both proceedings were taken, the High Court either heard both proceedings together or managed the resolution of each process. This approach can allow the court to efficiently manage both types of proceedings without the time delay of requiring appeals to be resolved before judicial reviews can be heard.
5. On this basis, we recommend that appeals on the development plan take the same approach as the Auckland Unitary Plan process. This will ensure that appropriate rights to challenge the development plan are available, while avoiding undue delay. Requiring both proceedings to be heard together in the High Court should mitigate any inconsistency in decisions that could result from hearing both proceedings separately. This advice is reflected in amended **paragraphs 72-74** and in **recommendation 80** of the draft Cabinet paper.
6. For appeals on resource consent decisions, designations, notices of requirement and heritage orders, we recommend retaining the approach to appeals and judicial review that exist under section 296 of the RMA. This is to ensure access to a merit appeal is available for matters related directly to individual property rights. We do not consider that retaining this approach will result in undue delay as discussed in **paragraphs 75-77** of the draft Cabinet paper.
7. We therefore recommend that the proposal in the draft Cabinet paper be retained. The relevant **recommendations** are **81 and 82** of the draft Cabinet paper.

¹ Section 296 RMA - No review of decisions unless right of appeal or reference to inquiry exercised.

Limiting notification as part of the consent process

8. Minister Parker has requested further advice on the extent to which notification requirements should be limited when considering resource consents in the development area.

Determining whether a resource consent should be notified

9. We recommended that the development plan must specify whether the public notification of resource consents is required or public and/or limited notification are precluded. This specification of notification is limited to controlled and restricted discretionary activity rules requiring resource consent under the development plan.
10. The RMA currently provides for the status of notification to be specified in a plan on a voluntary basis. Requiring the notification status to be specified provides greater certainty for plan users, including applicants. This approach provides the UDA with the discretion to exercise control over some aspects of the development (such as urban design), while indicating that other aspects are acceptable (such as building location and height). It also provides the public with greater certainty as to when they can and cannot have a say on development activities.
11. Where an activity requiring resource consent is more likely to have effects on neighbouring properties or the wider environment, existing RMA notification requirements are recommended. This requires the processing authority to determine notification on an effects basis.
12. We therefore recommend that the proposal in the draft Cabinet paper be retained. The relevant **recommendations** are **27 and 28** of the draft Cabinet paper.

Submissions and hearings on notified consents

13. When a resource consent is required to be notified, we recommended that the process for hearing submissions on notified consents be limited. The draft Cabinet paper sets out these limitations for Process A (controlled and restricted discretionary) and Process B (discretionary and non-complying) (**page 13** of the draft Cabinet paper). For Process A, it is recommended that notified parties are able to make written submissions, with no provision for a formal hearing of submissions where the notified consent is for a land use or subdivision activity.
14. This limitation is intended to provide an appropriate avenue for notified parties to have their written submissions considered in any resource consent decision, while reducing delays incurred by a formal hearing (potentially up to six months from the date of notification). In our view, this written submissions process is sufficient to mitigate the risk that submitters would appeal to the Environment Court on the basis that their concerns had not been sufficiently considered.
15. The 2017 amendments to the RMA restrict public notification of certain activities, and appeals on these activities to the Environment Court.² The UDA proposal includes greater access to notification and appeals than currently exist in the RMA. However, as some restriction of notification of appeals is proposed, there is a risk of unintended consequences arising from the UDA proposal.

² The current proposal to amend the RMA includes removing these provisions.

16. We recommend that the proposal for notification in the draft Cabinet paper be retained. The relevant **recommendations** are **61-75** of the draft Cabinet paper.

Adopting development plan provisions into RMA planning documents

17. After further analysis undertaken following Minister Parker's feedback on the draft Cabinet paper, we now recommend that at the end of the development process the local authority should have an opportunity to adopt the resource management provisions of the development plan into its own RMA planning documents.
18. This could be achieved by the UDA giving notice to the local authority of the development plan's revocation and its intention to cease the project from whence development plan provisions cease to be operative. The local authority could then adopt any provisions it wished to retain without the need for a Schedule 1 RMA process. This would provide local authorities with the opportunity to accommodate the new activities enabled under the development plan over time where they have not yet done their own plan changes, and provide a mechanism for ensuring continuity for the local authority, community and developers.
19. This change is reflected in **paragraphs 43-46** and **recommendation 36** in the amended draft Cabinet Paper.

Next steps

20. If you are both satisfied with the draft Cabinet paper, it can be circulated for ministerial and cross-party consultation.
21. After we have incorporated any feedback you wish to reflect in the final Cabinet paper (by Monday 23 July), it can be lodged on Thursday 26 July in time for DEV (1 August).
22. Further Cabinet papers will be provided on:
 - a. Māori interests and the Crown/Māori relationship (joint paper by Ministers Davis and Twyford). Note that a meeting is being arranged between Ministers Davis, Twyford, Little, Parker, Mahuta, Jones and Sage to discuss this paper.
 - b. Organisational issues (joint paper by Ministers Twyford and Parker) including matters on entity form and structure, financing, and local government and Māori representation.

Annexes

Annex 1: Draft Cabinet paper

Annex 1: Draft Cabinet paper

Draft Cabinet paper: Urban Development Legislation: Resource Management Planning and Consenting