MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

Department of Conservation
Te Papa Atawhai

BRIEFING

Urban Development Legislation: Revised powers over reserves

Date:	4 May 2018	**Priority:**	High
Security classification:	**In Confidence**	**Tracking numbers:**	2943 17-18 (MBIE) 18-B-0513 (DOC)

Action sought		
	Action sought	**Deadline**
Hon Phil Twyford **Minister of Housing and Urban Development**	**Discuss** these recommendations with the Minister of Conservation **Indicate** your preference for each option in the body of this paper	9 May 2018
Hon Eugenie Sage **Minister of Conservation**	**Discuss** these recommendations with the Minister of Housing and Urban Development **Indicate** your preference for each option in the body of this paper	9 May 2018
Hon Jenny Salesa **Associate Minister for Housing and Urban Development**	For your information.	N/A
Hon David Parker **Minister for the Environment**	For your information.	N/A

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)	✓
Peter Brunt	Director, Policy, DOC		s 9(2)(a)	✓

The following departments/agencies have been consulted					
☐ Treasury	☐ MoJ	☐ NZTE	☐ MSD	☐ TEC	☐ MoE
		☒ Other:	Ministry for Culture and Heritage, Heritage NZ, LINZ		

Minister's office to complete:

☐ Approved ☐ Declined
☐ Noted ☐ Needs change
☐ Seen ☐ Overtaken by Events
☐ See Minister's Notes ☐ Withdrawn

Comments:

BRIEFING

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Purpose

This briefing supersedes the Ministry of Business, Innovation and Employment (MBIE)'s 7 December 2017 briefing *Urban development legislation: powers over reserves* to Minister Twyford [1260 17-18 refers]. It provides revised recommendations on the proposed powers over reserves in the urban development legislation, and is for discussion at your meeting on 9 May 2018 at 7.30am. Decisions on these matters are needed for inclusion in the second urban development legislation Cabinet paper for consideration by Cabinet next month.

In this paper, the national Urban Development Authority is referred to as the UDA, and the Minister responsible for the urban development legislation is referred to as the UDA Minister.

Recommendations

MBIE and the Department of Conservation (DOC) recommend that you discuss these issues at your 9 May meeting and indicate your preference for each option in the body of this paper:

Excluded reserves

a. **agree** that the following types of land cannot be used for development purposes under the proposed legislation (but may still be included inside a project area while retaining their existing status):

   i. nature reserves
   ii. scientific reserves
   iii. Māori reserves under the Māori Reserved Land Act 1955
   iv. Māori reservations under Te Ture Whenua Māori Act 1993
   v. land administered under the National Parks Act 1980
   vi. land administered under the Conservation Act 1987
   vii. land administered under the Wildlife Act 1953
   viii. land administered under the Te Urewera Act 2014, and
   ix. any reserves administered under or covered by their own specific legislation (for example Hagley Park and the Auckland Volcanic Cones)

Agree / Disagree

b. **agree** that esplanade reserves and esplanade strips (as defined in the Resource Management Act 1991 (RMA)) within a project area can be used for development purposes only if:

   i. the UDA is satisfied that use of the area is essential to the development, and
   ii. the administering body agrees that the matters under section 229 of the RMA will be provided for at that location through means other than an esplanade reserve or strip.

Agree / Disagree

Powers over some reserves

c. **agree** that, subject to the checks and balances below, and following consultation with the public on its intentions as part of the development plan process, the UDA be able to achieve the strategic objectives of a development project by using all or part of certain existing reserves within a project area for development purposes

Agree / Disagree

d. **agree** that the UDA may only set apart reserve land for development purposes for the following types of existing reserves within a project area, which we have called "Identified Reserves":

   i. government purpose reserves
   ii. scenic reserves
   iii. historic reserves
   iv. recreation reserves, and
   v. local purpose reserves

Agree / Disagree

e. **note** that for Identified Reserves within a project area, development purposes could include purposes such as temporarily using reserve land for storing construction materials or burying infrastructure, reconfiguring reserve shape or size to better fit with the proposed development, swapping one reserve area for another, or building on part or all of a reserve.

Setting apart mechanism for making changes to reserves

f. **agree** that the mechanism in the proposed legislation for using an Identified Reserve within a project area for development purposes is that the UDA Minister's approval of the development plan shall include approval to:

   i. set apart a Crown-owned reserve, changing it, in whole or in part, from reserve purposes to development purposes, and

   ii. transfer administration of the former reserve land to the UDA

Agree / Disagree

g. **agree** that once non-Crown-owned reserve land has been acquired by the Crown (compulsorily if necessary) and it becomes Crown-owned, it can also be set apart as Crown-owned land for development purposes

Agree / Disagree

h. **agree** that an Identified Reserve can be set apart by the UDA by *Gazette* notice, in accordance with the development plan approved by the UDA Minister, at a time appropriate to the development timetable

Agree / Disagree

i. **note** that setting apart reserve land using the new mechanism described above has the effect of removing the Reserves Act 1977 status over the land (and thus any controls such as bylaws or management plans) when the reserve status change is implemented by the UDA by *Gazette* notice, which will allow the use of the land, temporarily or permanently, for purposes that would not be allowed under the Reserves Act

j. **agree** that the reserve status and applicable controls will continue to exist until the reserve status is changed by *Gazette* notice which sets apart the land for its new purpose, as opposed to being changed by the development plan approval

Agree / Disagree

k. **agree** that conservation, recreation, historic or other values needing to be retained can be protected by rules in the approved development plan

Agree / Disagree

l. **agree** that the UDA can contract out any necessary maintenance of the reserves for as long as needed

Agree / Disagree

m. **agree** that once development work is complete for an area of UDA-administered Crown land, if the development plan requires that the land become reserve (to either create or reinstate reserve status), that the new legislation provides for the Minister of Conservation to give effect to the development plan when appropriate for the development timetable, by:

   i. setting apart the Crown-owned land, changing it from development purposes to reserve purposes, by notice in the *Gazette*

   ii. classifying the reserve by notice in the *Gazette* in accordance with the development plan and the classifications in the Reserves Act, and

   iii. vesting the reserve in the appropriate administering body (expected to be the local authority in most cases) through a notice in the *Gazette* in accordance with the development plan

Agree / Disagree

n. **agree** that the proceeds or other financial aspects arising from any setting apart of reserve land should be treated in the same way as they are now, which is set out in Part 4 of the Reserves Act.

Agree / Disagree

Decision-making process for the five types of Identified Reserves

o. **agree** that scenic, historic, and government purpose reserves may not be set apart without the prior agreement of the Minister of Conservation, who may impose certain conditions

Agree / Disagree

p. **agree**, for recreation and local purpose reserves, that:

EITHER

   i. these reserves do not require the Minister of Conservation's approval to be set apart (MBIE recommends)

Agree / Disagree

OR

   ii. these reserves require the Minister of Conservation's approval to be set apart (DOC recommends)

Agree / Disagree

q. **agree** that, for Identified Reserves where the Minister of Conservation is required to give approval for the setting apart for development purposes:

i. approval in principle be given, and draft conditions specified, prior to the draft development plan being released for public consultation, and

ii. final approval be given, and final conditions specified, after the independent hearings panel has made its recommendations to the UDA Minister and before the UDA Minister approves the development plan

Agree / Disagree

Additional checks and balances

r. **agree** to the following checks and balances over Identified Reserves:

i. To inform the initial assessment for Cabinet's decision on the project area's boundaries and strategic objectives, the UDA shall consult with all the key public and private stakeholders for the affected reserves, including Heritage New Zealand Pouhere Taonga (Heritage NZ) on historic and cultural heritage issues and DOC (including on reserves), who may both make recommendations

Agree / Disagree

ii. Before publishing the draft development plan, the UDA must consult on any proposed changes to an Identified Reserve (especially with regard to the values and purpose for which the reserve is held) with:

- the bodies that administer, manage and own the reserve
- any lease-, licence-, permit- or concession-holders, and
- Ministers who have jurisdiction over the Identified Reserve

Agree / Disagree

iii. Before publishing the draft development plan, the UDA must consult on any proposed changes to an Identified Reserve (especially with regard to the values and purpose for which the reserve is held), and on any other matters, with Heritage NZ and DOC

Agree / Disagree

iv. When preparing the development plan, the UDA shall consider the provision of protected areas for open spaces for the future residents and users of a project area on an ongoing basis

Agree / Disagree

v. In deciding whether to agree to set apart all or part of an Identified Reserve where the Minister of Conservation is required to give approval, the Minister of Conservation shall:

- have regard to the classification of the reserve and the purpose of that classification under the relevant sections of the Reserves Act
- have regard to the values and issues of local significance, including as expressed in the reserves management plan (or relevant conservation management strategy) if one is available, and as identified by the UDA in public consultation, including with the bodies that administer, manage and own the reserve, and any lease-, licence-, permit- or concession-holders, and

- be satisfied that the reserve does not contain values of regional, national or international significance that should be retained in the public interest (unless these values would have no lesser protection under a new classification or reconfiguration)

Agree / Disagree

vi. Any protections required by the Minister of Conservation (including controls from applicable bylaws and reserve management plans) for the reserve land can be included in the development plan

Agree / Disagree

vii. The following additional check shall apply in regard to conservation covenants over private land:

- Where a covenant (under sections 76 to 77A of Reserves Act, or section 27 or 27A of Conservation Act) or a caveat (under section 137 of Land Transfer Act 1952[1]) over private land lies on a title in favour of Her Majesty the Queen (the Minister of Conservation), that the consent of the Minister of Conservation be required before the land is acquired by the Crown (thereby effectively revoking or cancelling the covenant or similar encumbrance), and

Agree / Disagree

s. **note** that MBIE is working with the Crown-Māori Roopu (the Office of Treaty Settlements, Te Puni Kookiri and the Post-Settlement Commitments Unit) on a Cabinet paper around how the urban development legislation will address Māori interests. Te Puni Kookiri and the Crown-Māori Roopu have provided separate advice to their Ministers, which we understand may be shared with you both shortly.

pp.

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Manager, Construction and Housing Policy
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4 / 5 / 18

Hon Phil Twyford
Minister for Housing and Urban Development
..... / ..... / .....

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Minister of Conservation
..... / ..... / .....

[1] This reference will become section 138 of Land Transfer Act 2017 when that section comes into effect sometime in the next 9 months.

Introduction

1. Reserves are important assets to New Zealanders, especially to the community near them, as they provide open spaces and places for recreation and socialising, and they can have cultural, historical and natural significance. Some reserves will be critical to protect. Other reserves need to be considered as part of urban development to ensure that the national urban development authority (the UDA) has the option to reconfigure land if appropriate for optimal design when assessing the development as a whole.

2. In the Ministry of Business, Innovation and Employment (MBIE)'s briefing *Urban development legislation: powers over reserves* to Minister Twyford dated 7 December 2017 [1260 17-18 refers], we described powers to make changes to some reserves, depending on the type of reserve.

3. Following further discussions with the Department of Conservation (DOC) and Land Information New Zealand (LINZ), this briefing now supersedes MBIE's 7 December briefing. We have written it as a joint MBIE/DOC briefing with only one outstanding issue of disagreement between agencies. LINZ supports the use of a new setting apart provision for the urban development legislation that is similar to section 52 of the Public Works Act 1981.

Excluded reserves

4. To reflect the very special nature of scientific and nature reserves as important national assets, MBIE and DOC recommend that these types of reserves be excluded from the application of the powers for reserves described in this briefing. Such reserves are all administered by DOC and are largely confined to isolated places around New Zealand that are not suitable for urban development (e.g. the Hen & Chicken Islands Nature Reserve in the Hauraki Gulf).

5. In addition, we recommend that new legislative powers over reserves should not apply to any of the following types of land:

   a. Māori reserves under the Māori Reserved Land Act 1955
   b. Māori reservations under Te Ture Whenua Māori Act 1993
   c. land administered under the National Parks Act 1980
   d. land administered under the Conservation Act 1987
   e. land administered under the Wildlife Act 1953
   f. land administered under the Te Urewera Act 2014, and
   g. any reserves administered under or covered by their own specific legislation (for example Hagley Park and the Auckland Volcanic Cones).

6. MBIE and DOC also recommend that new legislative powers apply with restrictions in relation to esplanade reserves and strips. These areas are important to protect public access, and other values, along the edges of watercourses and coastlines. Esplanade reserves and esplanade strips (as defined in the Resource Management Act 1991 (RMA)) within a project area should therefore be used for development purposes only if:

   i. the UDA is satisfied that use of the area is essential to the development, and
   ii. the administering body agrees that the matters under section 229 of the RMA will be provided for at that location through means other than an esplanade reserve or strip.

7. Esplanade reserves and esplanade strips will therefore generally not be available for use for development purposes, but could be used where, for example, the construction of a boardwalk to provide easier access along a riverbank could provide the same function and values as the esplanade reserve or strip it replaces.

Powers over some reserves

8. For some development projects, it may be desirable to enable urban development and better reserve outcomes by using certain types of existing reserves within a project area for development purposes and to do so through more streamlined processes.

9. Development purposes could include purposes such as temporarily using reserve land for storing construction materials or building buried infrastructure, reconfiguring reserve shape or size to better fit with the proposed development or the current needs of its community, swapping one reserve area for another, or building on part or all of a reserve.

Problems with existing legislation

10. The Resource Legislation Amendment Act 2017 has gone some way to integrating the RMA provisions for land use with reserves planning, and integrating reserves planning with other land use planning in development areas. However, reserves planning could be further streamlined and consolidated by the UDA to increase flexibility in any given scenario.

11. Compliance with overlapping legislative requirements (e.g. consultation, submission, hearing, objection and appeals) and timeframes for urban development projects, including for reserves, creates a complexity that can make it hard for developers (private, local government or central government). These overlapping requirements can make it difficult for developers to respond quickly to rapidly moving issues and opportunities that impact on the viability and usefulness of a development project.

12. These legislative requirements and processes are intended to achieve the purposes of the Acts in which they are found, but when taken as a whole, the purposes of some Acts can conflict with the purposes and principles of others.

Proposed solution

13. No one entity has all the powers required to undertake a large comprehensive urban development project and manage all foreseeable needs by itself, including for reserves. MBIE and DOC consider that consolidating most of these processes into a single approval body, the UDA, would create efficiencies, reduce consultation fatigue by submitters, and save time, which in turn will create more certainty for developers.

14. However, it is essential that the integration of reserves processes into the proposed urban development legislation is balanced with the fact that reserves are public assets that local communities often have strong connections to. Any urban development powers over reserves should have appropriate checks and balances to protect the values connected to these reserves, and the limitations on them should vary depending on the classification of the reserve.

15. To ensure adequate reserve provision within urban development areas it is recommended that the strategic objectives guide the relocation, formation and function of future (existing and new) reserve land. This is to ensure there is open space of sufficient quantity and quality for the projected population of a redevelopment area. Specifically, the legislation should state that, in

preparing the draft development plan, the UDA should have regard to the provision of protected areas for open spaces for future residents and users of a project area on an on-going basis.

Checks and balances

16. MBIE and DOC recommend that, subject to the checks and balances described below and following consultation with the public on its intentions as part of the development plan process, the new legislation should provide powers for the UDA to achieve the strategic objectives of a development project by using all or part of certain existing reserves within a project area for development purposes.

17. We recommend that these powers can be exercised only over the following five types of reserves identified within a specified development area, which we have called "Identified Reserves":

    a. government purpose reserves
    b. scenic reserves
    c. historic reserves
    d. recreation reserves, and
    e. local purpose reserves.

Setting apart mechanism for making changes to reserves

18. MBIE and DOC propose a process to make changes to these Identified Reserves using a provision based on the concept of setting apart in section 52 of the Public Works Act, as set out below. The new provision will be in the new legislation and so is not an amendment to section 52, which will continue to exist as is.

19. We have divided this section into setting apart Crown-owned and non-Crown-owned reserve land.

Crown-owned reserve land

20. Section 52(1) and (2) of the Public Works Act provide that the Minister of Lands[2] can, by notice in the *Gazette*, set apart a public reserve for another public work. The Minister of Conservation is, however, required to give consent and must consult with the administering body (if any) of the reserve before agreeing to the setting apart of a reserve for a different public work.

21. We recommend that for Crown-owned reserve land the new legislation include a concept similar to section 52 of the Public Works Act for the UDA Minister to approve, as part of the development plan, the:

    a. setting apart the Crown-owned reserve, changing it, in whole or in part, from reserve purposes to development purposes, and
    b. transfer administration of the former reserve land to the UDA.

22. Since two rounds of consultation (and consideration by an independent hearings panel) will already have been carried out as part of the development plan public consultation process,

[2] The powers of the Minister of Lands under the Public Works Act 1981 are exercised by the Minister for Land Information.

there is no benefit to consulting again when the Minister of Conservation makes his or her decision on how a reserve will be dealt with in the development plan.

23. The new provision therefore needs to make it clear that there is no need for consultation, although the UDA would be required to declare the land set apart through a notice in the *Gazette*. This would be an administrative power which merely gives effect to the setting apart decisions already made by the UDA Minister when he/she approved the development plan.

24. These steps have the effect of removing the Reserves Act 1977 status over the land (and thus any controls such as bylaws or management plans), allowing the use of the land, temporarily or permanently, for purposes that would not be allowed under the Reserves Act. Conservation, recreation, historic or other values needing to be retained would be protected by rules in the approved development plan.

25. Accordingly we recommend that the reserve status and applicable controls of an Identified Reserve continue to exist until the reserve status is changed by *Gazette* notice which sets apart the land for its new purpose, and not by the development plan approval

26. Once the former reserve land is set apart, the UDA could contract out any necessary administering functions, including maintenance, for as long as needed.

27. Once development work is complete for an area of UDA-administered Crown-owned land, the development plan may require that the land become reserve land (to either create or reinstate reserve status). To enable this, we recommend that the new legislation include a power for the Minister of Conservation to give effect to the approved development plan by setting apart the Crown-owned land, changing it from development purposes to reserve purposes, by notice in the *Gazette*.

28. The land would then be unclassified reserve land that needs to be classified by the Minister of Conservation and normally vested in an administering body (usually the local authority).

29. Classification and vesting under sections 16 and 26 of the Reserves Act both normally require public processes. Since public consultation about the intended classification and setting apart will have been undertaken as part of the development plan consultation process, there will be no need for further consultation.

30. The tasks of reserve classification and vesting require certain documentation work to be undertaken by DOC. This means it will be administratively more efficient and less costly for the setting apart from development purposes to reserve purposes process described above to be carried out by the Minister of Conservation rather than the UDA Minister.

31. We therefore recommend that, once development work is completed for an area of UDA-administered Crown-owned land, if the development plan requires that the land become reserve (to either create or reinstate reserve status), the new legislation provide for the Minister of Conservation to give effect to the development plan when appropriate for the development timetable, by:

    a. setting apart the Crown-owned land, changing it from development purposes to reserve purposes, by notice in the *Gazette*

    b. classifying the reserve by notice in the *Gazette* in accordance with the development plan and the classifications in the Reserves Act, and

c. vesting the reserve in the appropriate administering body (expected to be the local authority in most cases) through a notice in the *Gazette* in accordance with the development plan.

32. Underlying Crown ownership would be retained, thereby preventing the administering body (most likely the local authority) from selling the reserve land in future, except with the agreement of the Minister of Conservation.

Non-Crown-owned reserve land

33. For non-Crown-owned reserve land, for example reserves owned by territorial authorities, we recommend that once the land has been acquired by the Crown (compulsorily if necessary) and it becomes Crown-owned land, this same process for setting apart for development purposes would apply. In most cases, we expect that the local authority, if it has agreed to the development, would be willing for the land to be transferred into Crown ownership to enable the development project to be undertaken.

Timing

34. We recommend that, once the development plan has been approved by the UDA Minister (which includes the approval of setting apart a reserve), the legislation allow the UDA to defer transferring administration of the former Identified Reserve land to a time appropriate for the development timetable, as required. Likewise, the legislation needs to allow the Minister of Conservation to set apart development land for reserve purposes at the time appropriate to the development timetable.

35. The reserve status and applicable controls will continue to exist until the reserve status is changed by *Gazette* notice, and not by the development plan approval.

Proceeds

36. MBIE recommends that the proceeds or other financial aspects arising from any setting apart of reserve land should be treated in the same way as they are now, which is set out in Part 4 of the Reserves Act. If Ministers requested, we could provide further advice to Ministers on some finer details of such financial matters.

Outstanding issue where MBIE and DOC have differing views

37. MBIE and DOC have differing views on the proposed decision-making process for the five types of Identified Reserves.

38. MBIE and DOC agree that scenic, historic, and government purpose reserves are likely to contain values that contribute to New Zealand's heritage (e.g. particular fauna, flora, or historic features) with regional, national or in some cases international significance, particularly for some historic reserves.

39. As such, these reserves may not be set apart without the prior agreement of the Minister of Conservation, who may impose certain conditions. These conditions will be incorporated within the development plan.

40. For recreation and local purpose reserves, MBIE and DOC have differing views about whether the Minister of Conservation's prior agreement should also be obtained before the reserve is set apart. We set out our opposing views below, and then discuss the process in the next section.

MBIE's view

41. MBIE recommends that the approval to set apart local purpose and recreation reserves should only sit with the UDA Minister (in his/her approval of the development plan) and not involve the Minister of Conservation as well because it is more efficient to do so. In particular, we would like to keep the decision-making over these reserves with the UDA Minister because:

    a. giving the decision-making to the UDA Minister consolidates decision-making for the two classifications of reserves that are most commonly found in New Zealand urban areas, in order to streamline and consolidate decision-making and development, and to increase flexibility in any given scenario
    b. any proposed changes to recreation and local purpose reserves will require prior consultation with the bodies that administer, manage and own the reserve, as well as with any lease-, licence-, other permit- or concession-holders, and with Ministers who have jurisdiction over that reserve, especially with respect to the values and purpose for which the land is held
    c. the public consultation on the development plan will provide the public with the opportunity to express their concerns
    d. the independent hearings panel will provide a hearing of any concerns
    e. we have recommended that the development plan, including any proposed changes to recreation and local purpose reserves, must be approved by the UDA Minister, and
    f. the UDA Minister will also have political accountability to Parliament for any changes made to reserves.

42. To ensure there is still careful consideration of the values and purpose in recreation and local purpose reserves, MBIE also recommends that DOC and Heritage NZ be consulted and may make recommendations to the UDA on any proposed changes to those reserves as part of an initial assessment, and that they both be consulted again prior to the publication of the draft development plan.

DOC's view

43. DOC considers that there is no need to distinguish between the five Identified Reserves. Section 52 of the Public Works Act requires that the Minister of Conservation's consent be obtained before the setting apart of any reserve, land managed under the Conservation Act or Wildlife Act, or, where applicable, part of the common marine and coastal area. The Minister of Conservation's consent is also required under the Reserves Act for the revoking of any reserve. These same requirements are appropriate in the case of any setting apart for UDA development purposes.

44. The Ministry for Culture and Heritage (MCH) and Heritage NZ have advised that Heritage NZ's data record that at least 68 recreation reserves contain historic places identified on the New Zealand Heritage List / Rārangi Kōrero, and 54 local purpose reserves are known to contain places on the New Zealand Heritage List or scheduled in district plans. These reserves may therefore have significant cultural and historical values. With this in mind, DOC, MCH, and Heritage NZ agree that recreation and local purpose reserves should not be set apart without the prior agreement of the Minister of Conservation, who may impose certain conditions.

45. Where significant values exist within a local purpose or recreation reserve, the public will be more reassured that these values have been considered if the Minister of Conservation has given consent to use the reserve for development purposes, subject to conditions, than if the UDA Minister has made the decision. Having different decision-makers considering similar kinds

of values (e.g. significance of historic sites) depending on the reserve classification would imply that different tests will be applied.

46. In most cases, recreation and local purpose reserves will not have values of national or international significance, or site-specific historic values. In such situations, given the importance of UDA-type developments to the wider national interest, the Minister of Conservation would be unlikely to decline to approve the use of a reserve. DOC cannot see any delay or inefficiency likely to arise as a result of the Minister of Conservation giving approval as opposed to the UDA Minister.

47. In summary, where no significant values exist, DOC considers that the Minister of Conservation can approve the use of the reserve as quickly and efficiently as the UDA Minister. Where significant values do exist, having the Minister of Conservation as the decision-maker will increase public confidence in the decision. Requiring the Minister of Conservation's consent for setting apart any reserve is consistent with existing safeguards under the Public Works Act and dealing with reserves under the Reserves Act.

Process

48. In MBIE's introductory briefing to you dated 16 November 2017 [0854 17-18 refers], MBIE recommended that two stages should be undertaken before a development project can occur:
    a. initial assessment and establishment of the project, and
    b. developing and approving the development plan.

Initial assessment

49. To inform the initial assessment, the UDA has to consult with all the key public and private stakeholders for the affected reserves, including Heritage NZ on historic and archaeological issues and the Department of Conservation on reserves (amongst other things), who may both make recommendations. This would ensure that early advice about which sites could, or should not, be considered for development can inform the subsequent Cabinet decision on the project's boundaries and strategic objectives.

Development plan

50. The development plan is the planning document that would describe the programme of urban development for a particular development project and that would show how relevant development powers would be exercised in the project area. Where projects have already commenced (such as Tāmaki), the process would be adapted to accommodate the stage that the project has already reached.

51. Following public consultation on a draft plan, MBIE recommended in our earlier briefing that the UDA would publish its recommended plan, followed by a suitable mechanism for considering any objections to that plan. To ensure political accountability for the use of the development powers, MBIE recommended that the Minister responsible for the legislation approve the final plan.

Consultation with DOC and Heritage NZ

52. Building on this earlier advice, MBIE and DOC now recommend that the UDA must again consult on any proposed changes to an Identified Reserve (especially with regard to the values

and purpose for which the reserve is held), and on other matters, with DOC and Heritage NZ before the draft development plan is published.

Obtaining the Minister of Conservation's consent

53. The diagram below sets out the proposed process for obtaining the Minister of Conservation's consent for setting apart relevant Identified Reserves during the development plan approval process.

54. At step 2 in the above diagram, the Minister of Conservation would have the ability to give his/her agreement in principle to a reserve being set apart, but subject to the public submissions on the development plan. At step 5, the Minister of Conservation may withdraw approval, confirm his/her approval, or make changes to any of his/her conditions of approval.

55. If the Minister of Conservation's approval is not required for any Identified Reserves (e.g. if Ministers agree to MBIE's approach in regard to recreation and local purpose reserves), steps 2 and 5 would be omitted for those reserves.

56. MBIE and DOC recommend that, for Identified Reserves where the Minister of Conservation is required to give approval for the setting apart for development purposes, that:

    a. approval in principle be given, and draft conditions specified, prior to the draft development plan being released for public consultation, and

    b. final approval be given, and final conditions specified, after the independent hearings panel has made its recommendations to the UDA Minister and before the UDA Minister approves the development plan.

Additional checks and balances

57. MBIE and DOC recommend a number of additional checks and balances on the powers over Identified Reserves:

    a. In deciding whether to agree to set apart all or part of an Identified Reserve where the Minister of Conservation is required to give approval, in addition having regard to the strategic objectives of the development project, the Minister of Conservation shall:

        i. have regard to the classification of the reserve and the purpose of that classification under the relevant sections of the Reserves Act

        ii. have regard to the values and issues of local significance, including as expressed in the reserve's management plan (or relevant conservation management strategy) if one is available, and as identified by the UDA in public consultation, including with the bodies that administer, manage and own the reserve, and any lease-, licence-, permit- or concession-holders, and

iii. be satisfied that the reserve does not contain values of regional, national or international significance that should be retained in the public interest (unless these values would have no lesser protection under a new classification or reconfiguration).

b. Before publishing the draft development plan, the UDA must consult on any proposed changes to an Identified Reserve (especially with regard to the values and purpose for which the reserve is held) with the bodies that administer, manage and own the reserve, as well as with any lease-, licence-, permit- or concession-holders, and with Ministers who have jurisdiction over the reserve, especially about the values and purpose for which the reserve is held.

c. Careful consideration shall be given to the provision of protected areas for open spaces for the future residents and users of a project area on an ongoing basis.

58. MBIE and DOC recommend the following additional check in regard to conservation covenants over private land:

a. Where a covenant (under sections 76 to 77A of Reserves Act, or section 27 or 27A of Conservation Act) or a caveat (under section 137 of Land Transfer Act 1952[3]) over private land lies on a title in favour of Her Majesty the Queen (the Minister of Conservation), that the consent of the Minister of Conservation be required before the land is acquired by the Crown (thereby effectively revoking or cancelling the covenant or similar encumbrance).

59. MBIE is working with the Crown-Māori Roopu (the Office of Treaty Settlements, Te Puni Kookiri and the Post-Settlement Commitments Unit) on a Cabinet paper around how the urban development legislation will address Māori interests. Te Puni Kookiri and the Crown-Māori Roopu have provided separate advice to their Ministers, which we understand may be shared with you both shortly.

Reserve management plans and reserves bylaws

60. Setting apart a reserve using the proposed new provision would mean that reserve management plans and reserves bylaws would cease to apply to that former reserve land. However, as part of the development plan, any required protections (including controls from applicable bylaws and reserve management plans) for the reserve land could be included in the development plan.

61. Any variations to the development plan (including to protections for reserves) are possible but unlikely as they would need to go through a new consultation and objections process with the public and the independent hearings panel.

Previous public consultation

62. In February 2017, MBIE published a discussion document on *Urban Development Authorities.* Submitters' concerns relating to reserves, including proposed checks and balances, are included in Annex 1.

Annexes

Annex 1: Submissions on 2017 discussion document

[3] This reference will become section 138 of Land Transfer Act 2017 when that section comes into effect sometime in the next 9 months.

Annex 1: Submissions on 2017 discussion document

- In February 2017, MBIE published a discussion document titled *Urban Development Authorities*. The document sought feedback on proposed new legislation to enable central and local government to accelerate and support urban development projects, overseen by urban development authorities.
- In the submissions received from the public and stakeholders on the discussion document, submissions were made in favour of and against the proposal to enable an urban development authority to have powers to make certain changes to reserves. The majority of submitters were against the proposal.
- A range of councils, developers, non-governmental organisations and some public groups supported the reserves proposals. Submitters in favour of the powers over reserves supported the ability to relocate and repurpose reserve land as a critical part of urban regeneration. They felt, that as part of the community consultation on the development plan, the community would have the opportunity to comment on the location and provision of open spaces.
- Some submitters said that there are cases where revocations and exchanges could be appropriate, where reserves established in the past may no longer retain their original function, have little foreseeable future value and are not located to provide a community resource.
- The submitters opposing the reserves proposals included local boards, councils, public groups and individuals. Many highlighted the importance of reserves to people's mental and physical wellbeing, especially where developments have greater housing density. Some submitters proposed that scenic, historic and government purpose reserves should not be included in the legislation, as they have important values requiring protection.
- Where the Minister of Conservation makes decisions about reserves, submitters were concerned that a reserve's values should be protected for the local community as well as for national and international interests.