



# Cabinet

## Minute of Decision

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### Legislating to Empower Complex Urban Development Projects: Powers Relating to Land Assembly, Reserves, Infrastructure and Funding

**Portfolio**                      **Housing and Urban Development**

On 20 August 2018, following reference from the Cabinet Economic Development Committee (DEV)p, Cabinet:

#### Background

- 1        **noted** that on 20 December 2017, the Cabinet Business Committee agreed in principle to establish a national urban development authority (UDA), and to develop new legislation that enables selected complex urban development projects to operate with more enabling development powers and land use rules [CBC-17-MIN-0051];
- 2        **noted** that on 28 May 2018, Cabinet agreed to the core components of the UDA and its enabling legislation, including the decision making framework and new statutory processes [CAB-18-MIN-0243];
- 3        **noted** that:
  - 3.1        the paper under DEV-18-SUB-0166 is the second in a series of papers on detailed policy proposals for urban development legislation that seek authority to issue drafting instructions;
  - 3.2        a third paper in the series, which covers the scope and application of the planning and consenting powers, has been submitted to DEV under DEV-18-SUB-0170;
  - 3.3        further papers are intended to cover:
    - 3.3.1        the approach to Māori interests; and
    - 3.3.2        final decisions on the UDA entity form, structure and governance arrangements, and its associated financing powers and permissions;

#### Legislative implications

- 4        **noted** that references in the paragraphs set out below to the ‘new legislation’ refer to the part of the new Bill that creates and governs the use of the more enabling development powers and processes, rather than to the resulting Act as a whole (which will also need to establish the new entity and prescribe its functions);

- 5 **agreed** that the new legislation bind the Crown;
- 6 **authorised** the Minister of Housing and Urban Development and the Minister for the Environment to make subsequent policy decisions on related details consistent with the policy proposals discussed in the paper under DEV-18-SUB-0166;
- 7 **invited** the Minister of Housing and Urban Development to issue drafting instructions as soon as possible to the Parliamentary Counsel Office to give effect to the policy decisions outlined below, and to give effect to any subsequent policy decisions made by the Minister of Housing and Urban Development and the Minister for the Environment on related details;
- 8 **noted** that:
- 8.1 the Housing Commission (Urban Development Powers) Amendment Bill has a category 5 priority on the 2018 Legislation Programme (to be referred to a select committee in 2018);
- 8.2 a draft Bill will not be ready to introduce to Parliament until 2019;
- 9 **agreed**:
- 9.1 to amend the decision referred to in paragraph 8.1 above to give the new legislation a category 6 priority on the 2018 Legislation Programme (instructions to be provided to PCO before the end of 2018);
- 9.2 subject to confirmation as part of the usual process for agreeing the next Legislation Programme, to give the new legislation a category 2 priority on the 2019 Legislation Programme (meaning the Bill must be passed by the end of 2019);

## Definitions

- 10 **agreed** that a reference in the paragraphs set out below to:
- 10.1 the term ‘nationally significant infrastructure’ includes:
- 10.1.1 the national grid electricity transmission network;
- 10.1.2 major gas or oil pipeline services (eg, Refinery to Auckland Pipeline from Marsden Point to Wiri);
- 10.1.3 State highways and government roads;
- 10.1.4 the New Zealand rail network, including suburban rail systems;
- 10.1.5 primary airports;
- 10.1.6 commercial ports;
- 10.1.7 any New Zealand Defence Force land, buildings or interests in land and airspace;
- 10.2 the ‘territorial authority’, is to the one or more territorial authorities responsible for those parts of any district that fall within a particular project area;
- 10.3 the ‘UDA’, is to the national urban development authority, referred to in a previous Cabinet decision as the Housing Commission [CBC-17-MIN-0051];

- 11** note that ‘development project’, ‘project area’, ‘strategic objectives’, ‘development plan’ and ‘project lead’ refer to the concepts that Cabinet has previously agreed [CAB-18-MIN-0243, paragraph 7];

## Application

- 12** noted that:

**12.1** the paper under DEV-18-SUB-0166 and the accompanying paper under DEV-18-SUB-0170 define the more enabling development powers the new legislation will make available for selected complex development projects (‘development powers’);

**12.2** Cabinet has previously agreed that in general none of the development powers can be exercised unless and until their proposed use has been approved in the development plan [CAB-18-MIN-0243, paragraph 13.4];

- 13** agreed that, subject to any specific provisions provided for in the recommendations for each development power, the new legislation provide that:

**13.1** the development plan determines how a development power is used in each particular instance, not whether that development power is available (e.g. the UDA automatically has the power to stop roads, but cannot stop any one particular road unless and until that proposal has been approved in the development plan);

**13.2** the application of a development power involves the following two or three steps:

**13.2.1** first, a proposal of how that development power will be used in a particular instance to achieve the strategic objectives of the relevant development project, which must be contained in the draft development plan that is prepared and published for each development project [CAB-18-MIN-0243, paragraph 12];

**13.2.2** secondly, approval of the proposed use of that development power, as part of the final approval of the development plan, which in some cases gives immediate effect to the proposed change (e.g. new land use regulations);

**13.2.3** thirdly, implementation of a change that is authorised in the approved development plan, but which can only be given effect at a later time (e.g. stopping a particular road);

**13.3** from the date the development project is established:

**13.3.1** subject to the process for applying development powers proposed above, all of the development powers automatically apply and are available to that development project;

**13.3.2** the UDA has the authority to exercise all of the relevant rights, powers and functions of each development power to the extent needed to prepare the proposals required for the development plan, to the exclusion of the person or entity that would otherwise have the authority to exercise those rights, powers and functions;

**13.3.3** the UDA can select which of the development powers to draw upon to make proposals in the development plan, and may select as many or as few of the powers as it considers necessary to achieve the strategic objectives;

**13.3.4** if and when the independent hearings panel reviews the draft development plan that the UDA recommends, it can propose to use additional development powers that the UDA has not proposed if it considers they are needed to achieve the strategic objectives;

**13.4** from the date the development plan is approved:

**13.4.1** the UDA has the authority to exercise all of the rights, powers and functions of each development power to the extent needed to implement the approved development plan and achieve the strategic objectives;

**13.4.2** the person or entity that would otherwise have the authority to exercise those rights, powers and functions can no longer do so;

### Refinement of policy proposals

**14** noted:

**14.1** the significance of the structure of the UDA entity to the proposals in the paper under DEV-18-SUB-0166;

**14.2** that the proposals are based on the expectation that the entity design for the UDA will be a Crown agent, and that if an alternative entity form is chosen, some of Cabinet's decisions on the matters in the paper under DEV-18-SUB-0166 may have to be revised to accommodate and reflect that decision;

### Proposals for land assembly

**15** noted that the land assembly proposals are subject to the decisions to be made on the upcoming Māori interests Cabinet paper, which will propose how compulsory acquisition and offer back obligations be applied to sensitive Māori land and how Treaty settlement obligations will be maintained;

**16** agreed, subject to confirming that the UDA is a body corporate with a separate legal personality, that the UDA is able to:

**16.1** buy and sell land, including an interest in land, by agreement without using the Public Works Act 1981 (the PWA);

**16.2** hold that land or interest in land in its own name without having to hold it for a particular public work;

### Repurposing Crown-owned land

**17** noted that:

**17.1** the Minister for Land Information has a power under the PWA to declare land held for a government work to be set apart for another government work without complying with any of the provisions of that Act that apply to new acquisitions;

**17.2** using that power, land can be set apart for the UDA:

**17.2.1** whether or not it is inside a project area; and

**17.2.2** at any time;

**18** agreed that:

- 18.1** when used for the UDA, the effect of a setting apart is to vest the land in the UDA;
- 18.2** any setting apart be on such terms and conditions (including price) as may be agreed by the Minister responsible for the UDA (UDA Minister), the Minister of Finance, the Minister for Land Information and the Minister whose portfolio oversees or is responsible for the land that is being set apart;
- 18.3** when agreeing the price of the land, the objective be to identify its fair market value, calculated as the residual value of the land after deducting the expected costs of development from the estimated capital value of the land and works when used for its highest and best use (excluding land banking);
- 18.4** the setting apart is not subject to sections 40 and 41 of the PWA (which require the Crown to offer land back to its previous owner), although those sections will continue to apply to any subsequent disposal to the extent provided in the recommendations below;
- 18.5** reserve land not be set apart in accordance with the above process, but instead be set apart in accordance with recommendations in the section on reserves, further below;

### **Compulsory acquisition**

- 19** agreed that the UDA will be able to apply to the Minister for Land Information to have land (including an interest in land) acquired by agreement or compulsion under Part 2 of the PWA;
- 20** agreed that the effect of any proclamation taking land for the purposes of the new legislation is to vest the land in the UDA instead of the Crown;
- 21** noted that the UDA is not intended to be the long-term owner of any of the specified works described further below, but needs the power to assemble land to control and shape its development for those works before transferring it to the appropriate person or entity;
- 22** agreed that the new legislation enable the UDA to apply to the Minister for Land Information to:
  - 22.1** acquire any land (or an interest in land), including by compulsory acquisition if necessary, at any time, whether or not a development project has been established and whether or not the relevant land is within a project area, for the specified works listed at paragraph 26 below;
  - 22.2** acquire land (or an interest in land), including by compulsion if necessary, with the intention of transferring that land or interest in land to another person or entity for a specified work, whether before or after development has been undertaken on that land;
  - 22.3** create legal encumbrances over private land within the project area to support the assets and operations of a third-party network utility operator (e.g. create an easement on private land to realign Transpower's national grid);
  - 22.4** remove any legal encumbrances from land within the project area, such as easements and covenants, provided that the owners of these interests are suitably provided for;

- 23** agreed that, notwithstanding paragraph 22.4 above:
- 23.1** no memorial noted on a land title under section 27B of the State Owned Enterprises Act 1986 (which provides for the Crown to resume land on the recommendation of the Waitangi Tribunal) can be removed;
  - 23.2** no heritage covenant noted on a land title under Part 3 of the Heritage New Zealand Pouhere Taonga Act 2014 (which provides for covenants to protect heritage values) can be removed;
- 24** noted that removal of conservation covenants and caveats requires the consent of the Minister of Conservation (further details are set out in the section on reserves, further below);
- 25** agreed that, during the existence of a development project, the prior approval of the Minister is required before any part of the Crown other than the UDA, a local authority, or a requiring authority, can seek the Minister for Land Information's exercise of a power of compulsory acquisition over any land or interest in land within the project area;

### **Listing which works are covered**

- 26** agreed that the new legislation specify that the UDA can apply to the Minister for Land Information to have land or an interest in land taken by compulsory acquisition under Part 2 of the PWA for one or more of the following works (specified works), without demonstrating that the work also meets the definition of 'public work' in the PWA:
- 26.1** drainage;
  - 26.2** stormwater;
  - 26.3** sewerage;
  - 26.4** water supply;
  - 26.5** waste disposal and recycling;
  - 26.6** works to avoid, remedy or mitigate the risks of natural hazards or climate change;
  - 26.7** soil conservation;
  - 26.8** energy infrastructure, including:
    - 26.8.1** the production or distribution of electricity, gas or other energy;
    - 26.8.2** the construction, acquisition or holding of any associated pipes and network infrastructure;
  - 26.9** hospitals or health centre facilities;
  - 26.10** education facilities, including tertiary institutions (universities, wānanga, polytechnics), schools, kindergartens, early childhood centres and kōhanga reo;
  - 26.11** roads, accessways, carparks or service lanes;
  - 26.12** pedestrian malls, shared paths, cycleways or walkways;
  - 26.13** railways, light rail, busways, terminals, stations or other public transport facilities;

- 26.14 airports;
  - 26.15 communications infrastructure;
  - 26.16 emergency services, including police facilities, fire stations, ambulance stations and helipads, or civil defence facilities;
  - 26.17 works for marine transport including quays, docks, piers, wharves, jetties and launching ramps; and dredging and other activities to facilitate access or remove obstructions;
  - 26.18 prisons and other correctional facilities;
  - 26.19 public open space, reserves and public memorials;
  - 26.20 cemeteries, crematoria and urupā;
  - 26.21 community facilities for educational, recreational and cultural activities (e.g. libraries or swimming pools), not including commercial facilities for these purposes;
  - 26.22 commercial community facilities for educational, recreational and cultural activities (e.g. swimming pools);
  - 26.23 housing, including dwellings, papakāinga, retirement villages, supported residential care facilities, night shelters, boarding houses and hostels, and structures that are ancillary to any of these items;
  - 26.24 commercial or industrial activities that either:
    - 26.24.1 are ancillary to housing; or
    - 26.24.2 involve the demolition, repair, replacement, reconfiguration or repurposing of existing use and development of any type in the project area, provided that the works enhance the wellbeing of the local or regional community;
  - 26.25 works to demolish, repair, replace, reconfigure or repurpose existing use and development of any type in the project area to enhance the wellbeing of the local or regional community, including but not limited to remedying or mitigating health or safety risks ('urban renewal');
  - 26.26 the reinstatement elsewhere of works that were located on land which has been compulsorily acquired for any of the above works, regardless of whether or not the re-installed works are one of the specified works;
- 27 **agreed** that any one specified work includes:
- 27.1 every use of land for that work;
  - 27.2 anything required directly or indirectly for that work; and
  - 27.3 maintenance of, replacement and upgrades to, that work;
- 28 **agreed** that the UDA also be empowered to seek the compulsory acquisition of land for any other work (including any commercial or industrial activity that is not a specified work) that meets the definition of 'public work' in the PWA;

## Compensation

- 29 **noted** that, if land (including an interest in land) is acquired under Part 2 of the PWA, the compensation provisions in Part 5 of that Act apply;
- 30 **agreed** that any claim for compensation under the PWA in respect of land or an interest in land acquired by agreement or compulsion, whether for a development project or for the UDA's functions more generally, must be made against the Minister for Land Information;
- 31 **agreed** that all costs and expenses incurred by the Minister for Land Information for the acquisition (including any compensation payable) will be recoverable from the UDA as a debt due to the Crown;
- 32 **agreed** that, if the UDA and owner agree, the owner may be paid for the land or interest in land with an equity stake in the development project;

## Compulsory acquisition of Crown agent land

- 33 **agreed** that the new legislation provide that the process set out in paragraph 34 below apply when the Minister for Land Information, on the recommendation of the UDA Minister, acquires land from a Crown agent by agreement or compulsion for a work that is either:
- 33.1 located within the project area; or
- 33.2 located outside the project area but required for infrastructure to support the development project;
- 34 **agreed** that in the circumstances referred to in paragraph 33 above:
- 34.1 the process for compulsory acquisition set out in Part 2 of the PWA applies, except that:
- 34.1.1 before issuing the notice of intention to take land under section 23 of the PWA, the Minister for Land Information must consult with the UDA Minister, the Minister of Finance, and the Minister whose portfolio oversees or is responsible for the relevant Crown agent, who must jointly consider whether the compulsory acquisition is in the public interest;
- 34.1.2 the Crown agent cannot object to the compulsory acquisition of the land under section 23(3) of the PWA (meaning the Crown agent cannot take the matter to the Environment Court); and
- 34.1.3 the transfer to the UDA is not subject to sections 40 and 41 of the PWA (which require the Crown to offer land back to its previous owner), although those sections will continue to apply to any subsequent disposal to the extent provided in the recommendations below;

## Land disposal

- 35 **noted** that:
- 35.1 under sections 40 and 41 of the PWA, land or an interest in land that is no longer required for a public work must first be offered back to its former owner before it can be sold to any other person or entity, regardless of whether the land was taken by compulsory acquisition or acquired by agreement (the 'offer back obligation');



- 35.2 the legal test is focussed on whether land is required for a public work, not on whether it is publicly or privately owned;
- 36 **noted** that in some cases the UDA will rely on private developers to deliver a specified work, and that it may wish to transfer land or an interest in land held under the PWA to a private developer for this purpose;
- 37 **agreed** that land the UDA purchased by agreement and owns in its own name is not subject to sections 40 and 41 of the PWA, meaning the UDA is free to sell this land without any restrictions;
- 38 **agreed** that, if the land or interest in land was acquired or subject to a declaration under the PWA, provided the UDA uses the right of resumption mechanism outlined below, the new legislation provide that the transfer to a private developer to deliver a specified work does not trigger any offer back obligation;
- 39 **noted** that Cabinet has previously agreed that the UDA have the power to vest certain infrastructure in appropriate receiving organisations, including in some cases without that organisation's prior agreement [CAB-18-MIN-0243, paragraph 70];
- 40 **agreed** that the new legislation provide that, for any of the specified works listed in paragraphs 26.1 to 26.21 above inclusive:
- 40.1 the UDA can transfer land it holds for any of these works to another person or entity without triggering any offer back obligation, provided that person or entity uses that land for that specified work (whether or not the specified work has yet been constructed);
- 40.2 if and when the transferee of that land no longer requires the land for the specified work, offer back obligations will apply again to the disposal of that land by the transferee, meaning that the land must first be offered back to its former owner or successors (i.e. the owner prior to the land being owned by the UDA or Crown);
- 41 **agreed** that, once construction of the specified work has been completed, the land owner (who may or may not be part of the Crown) of any of the specified works listed in paragraphs 26.22 (commercial community facilities), 26.23 (housing), 26.24 (commercial or industrial activities), 26.25 (urban renewal) and 26.26 (reinstatement) may dispose of the land and work by way of sale, lease, licence or tenancy to any person or entity without triggering any offer back obligation, and that offer back obligations do not apply to any subsequent disposal of the land by that person or entity;
- 42 **agreed** that any consideration of an obligation under sections 40 and 41 of the PWA be made by the chief executive of Land Information New Zealand;

### **Private developers delivering public works**

- 43 **agreed** that the new legislation:
- 43.1 empower the UDA to transfer land or an interest in land to a private developer to deliver the agreed work within an agreed period on the terms included in the agreement, including that:
- 43.1.1 the UDA can step in to ensure that agreed work is completed by the agreed date; and

- 43.1.2** the Crown can purchase the land or the interest in land if it is necessary to enable the UDA to ensure that the agreed work occurs (the ‘right of resumption’);
- 43.2** enable the UDA to apply to the Registrar General of Land to place a memorial on the title of that land in any record or title, before the land is transferred to the private developer, noting that the Crown has the right to resume the land or interest in land in the circumstances described in paragraph 43.1.2 above;
- 43.3** require the Registrar General of Land, on application by the UDA, to note the right of resumption on the title to the land;
- 43.4** require the UDA to apply to the Registrar General of Land to remove the memorial after either the agreed work has been delivered or the UDA has made a decision not to apply to the Minister of Land Information to resume the land or interest in land;
- 43.5** require the Registrar General of Land, on application by the UDA and for the usual fee, to remove the memorial;
- 43.6** if the agreed work has not been delivered and the UDA applies to the Registrar General of Land to remove the memorial without re-acquiring the land, prevent the land owner from transferring the land to another private party without first complying with sections 40-41 of the PWA, which require the land to be offered back to its former owner (i.e. the owner or successors prior to it being owned by the UDA or Crown);
- 43.7** provide that the right to transfer land subject to registering a memorial (as above) apply to any land the UDA wishes to transfer, whether or not a development project has been established and whether or not the relevant land is within a project area;
- 44** **agreed** that, if there is a memorial on the title of land recording the Crown’s power to resume the land in the circumstances described in paragraph 43.1.2 above, then the new legislation:
- 44.1** empower the Minister for Land Information, upon application by the UDA, to resume that land or interest in land for the work by acquiring or taking the land under Part 2 of the PWA, as if the land or interest in land were required for a government work within the meaning of that Act;
- 44.2** provide that:
- 44.2.1** the Minister for Land Information need not comply with section 18 of the PWA (which requires prior negotiations before land can be taken by compulsion);
- 44.2.2** the land owner has no right of objection to the Environment Court to the Minister taking the land, under section 23 of PWA;
- 44.2.3** the UDA has up until one year after the date agreed with the developer for completion of the works in which to apply to the Minister for Land Information to exercise its right to resume the land (but nothing prevents the Crown from thereafter taking the land under the standard processes in Part 2 of the PWA, if it is required for a public work);

- 44.2.4 the owner of the land or interest in land at the time it is compulsorily acquired in accordance with the right of resumption described above is entitled to compensation equal to the sale price paid by the developer to acquire that land from the UDA plus the actual cost of any improvements the developer has made in accordance with the relevant development agreement;
- 44.2.5 the effect of any declaration or proclamation acquiring or taking that land or interest in land is to vest the land in the UDA instead of the Crown;
- 44.3 empower the UDA to:
  - 44.3.1 transfer the land or interest in land to another private developer for that developer to deliver the work under a separate development agreement that also provides for the resumption of the land in the circumstances described in paragraph 43.1.2 above; or
  - 44.3.2 dispose of the land under sections 40-41 of the PWA, which requires the land to be offered back to its former owner (i.e. the owner prior to it being owned by the UDA, Crown or developer);

## Proposals for reserves

### Protected land

- 45 **agreed** 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):
  - 45.1 nature reserves;
  - 45.2 scientific reserves;
  - 45.3 Māori reserves under the Māori Reserved Land Act 1955;
  - 45.4 Māori reservations under Te Ture Whenua Māori Act 1993;
  - 45.5 land administered under the National Parks Act 1980;
  - 45.6 land administered under the Conservation Act 1987;
  - 45.7 land administered under the Wildlife Act 1953;
  - 45.8 land protected under the Te Urewera Act 2014;

### Strategic objectives

- 46 **noted** that the Minister of Conservation (as with all decision-makers) must act in accordance with the decision that will best realise the relevant project's strategic objectives, where any ambiguity regarding the strategic objectives must be resolved by reference to the new legislation's purpose and principles;
- 47 **agreed** that the UDA Minister must obtain the Minister of Conservation's approval in two stages in regard to any strategic objectives that concern making changes to an existing reserve:

- 47.1 in principle, before public consultation on the initial assessment; and
- 47.2 finally, before the UDA Minister recommends establishing a development project (including its strategic objectives) to Cabinet;

### **Powers over some reserves**

- 48 **agreed** that, subject to the checks and balances below, and as part of the development plan process that Cabinet has already approved [CAB-18-MIN-0243], the new legislation:
  - 48.1 empower the UDA to achieve the strategic objectives of a development project by using all or part of the following types of existing reserves within a project area for development purposes ('Identified Reserves'):
    - 48.1.1 government purpose reserves;
    - 48.1.2 scenic reserves;
    - 48.1.3 historic reserves;
    - 48.1.4 recreation reserves;
    - 48.1.5 local purpose reserves;
  - 48.2 provide that an Identified Reserve cannot be used for development purposes without the prior approval of the Minister of Conservation;
  - 48.3 enable the Minister of Conservation to impose conditions as part of any approval to use an Identified Reserve (e.g. to protect particular conservation, recreation, historic or other values);
  - 48.4 provide that any conditions imposed by the Minister of Conservation become rules in the development plan;
  - 48.5 enable the UDA Minister's approval of the development plan to include approval to:
    - 48.5.1 set apart a Crown-owned reserve, changing it, in whole or in part, from reserve purposes to development purposes;
    - 48.5.2 transfer administration of the former reserve land to the UDA;
  - 48.6 if and when non-Crown-owned reserve land has been acquired by the Crown (compulsorily if necessary), enable the UDA Minister to set apart that land for development purposes;
  - 48.7 enable the UDA, at a time appropriate to the development timetable, to set apart an Identified Reserve by *Gazette* notice, in accordance with the development plan approved by the UDA Minister;
- 49 **agreed** that setting apart reserve land using the new mechanism described above has the effect of changing the use to which the land can be put, and so removes the Reserves Act 1977 status over the land (and thus any controls such as bylaws or management plans);
- 50 **agreed** that when the setting apart is implemented by *Gazette* notice, this will allow the use of the land, temporarily or permanently, for purposes that would not be allowed under the Reserves Act 1977;

- 51 **noted** that some Identified Reserves will be subject to their own specific legislation as well as to the Reserves Act 1977;
- 52 **agreed** that the powers over reserves outlined above apply to all Identified Reserves, including those also subject to their own specific legislation;
- 53 **agreed** that there be a provision in the new Act which provides that if an Identified Reserve has its own specific legislation and the Identified Reserve is set apart for development purposes, then the specific legislation will no longer apply;
- 54 **noted** that the Minister of Conservation can include any conditions in their approval of the setting apart of an Identified Reserve, which could take into account provisions from any specific legislation that would no longer apply;

## Process

- 55 **agreed** that:
- 55.1 the reserve status and applicable controls continue to exist until the reserve status is changed by the *Gazette* notice that sets apart the land for its new purpose (as opposed to the status changing at the time the development plan is approved);
  - 55.2 the UDA can contract out any necessary maintenance of the reserves for as long as needed;
  - 55.3 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), the new legislation provide for the Minister of Conservation to give effect to the development plan when appropriate for the development timetable;
  - 55.4 the Minister of Conservation do this by publishing one or more notices in the *Gazette*:
    - 55.4.1 setting apart the Crown-owned land, thus changing it from development purposes to reserve purposes;
    - 55.4.2 classifying the reserve in accordance with the development plan and the classifications in the Reserves Act 1977;
    - 55.4.3 vesting the reserve in the appropriate administering body (expected to be the local authority in most cases) in accordance with the development plan;
  - 55.5 the proceeds or other financial aspects arising from any setting apart of reserve land be treated in the same way as they are now, which is set out in Part 4 of the Reserves Act 1977;
- 56 **agreed** that where the Minister of Conservation approves the setting apart of all or part of an Identified Reserve for development purposes, approval must be given, and any conditions specified, prior to the draft development plan being released for public consultation;
- 57 **agreed** that, when considering an Identified Reserve and the conditions that the Minister of Conservation has set for using all or part of that reserve, the Independent Hearings Panel cannot include in its final recommendation to the UDA Minister any further changes to that reserve or conditions without first obtaining the Minister of Conservation's prior agreement;

**Minister of Conservation's considerations**

- 58** noted that to give effect to the strategic objectives, Cabinet has previously agreed that any person exercising powers under the new legislation must act in accordance with the purpose and principles of the new legislation and make the decision that will best realise the relevant project's strategic objectives [CAB-18-MIN-0241];
- 59** agreed that, in addition to those general requirements on decision-makers in the new legislation, when deciding whether to agree to set apart all or part of an Identified Reserve, the Minister of Conservation must:
- 59.1** in the case of all Identified Reserves:
- 59.1.1** have regard to the classification of the reserve and the purpose of that classification under the relevant sections of the Reserves Act 1977;
  - 59.1.2** have regard to values and issues of local significance, including those 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;
  - 59.1.3** 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);
- 59.2** in the case of scenic reserves, also be satisfied that any loss of scenic values will be appropriately mitigated by:
- 59.2.1** implementing measures to improve any remaining part of the reserve; and/or
  - 59.2.2** offsetting the loss of all or part of the reserve by providing new reserve land, in proximity to the community that the original reserve served, that provides at a minimum for the same purpose and values as the original reserve;
- 59.3** in the case of historic reserves, also be satisfied that adequate provision will be made for public visual appreciation of, and appropriate public access to, the historic heritage values;
- 59.4** in the case of esplanade reserves and esplanade strips (types of local purpose reserves), also be satisfied that:
- 59.4.1** the UDA Minister considers that the use of the area is essential to the development;
  - 59.4.2** the relevant purposes under section 229 of the Resource Management Act 1991 will be provided for at that location through means other than an esplanade reserve or strip;

## Additional checks and balances

- 60** agreed that:
- 60.1** 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:
    - 60.1.1** the Department of Conservation;
    - 60.1.2** Heritage New Zealand Pouhere Taonga;
    - 60.1.3** the bodies that administer, manage and own the Identified Reserve;
    - 60.1.4** any lease-, licence-, permit- or concession-holders;
    - 60.1.5** Ministers who have jurisdiction over the Identified Reserve;
  - 60.2** where a Reserves Act or Conservation Act covenant, or a caveat (under section 137 of Land Transfer Act 1952) over private land lies on a title in favour of Her Majesty the Queen (the Minister of Conservation), 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);
- 61** agreed that the development plan specify which public open spaces will be classified as reserves under the Reserves Act 1977;
- 62** noted that a subsequent Cabinet paper will address how the new legislation will address Māori interests in reserves, subject to final Cabinet decisions;

## Proposals for infrastructure powers

### Principles for infrastructure provision

- 63** agreed that, when preparing the development plan, or undertaking infrastructure activities and functions, and exercising infrastructure powers, the UDA must consider the following:
- 63.1** the strategic objectives of the project to which the activity contributes;
  - 63.2** the coordination of infrastructure provision to achieve the integration, reliability, frequency, and coverage necessary to meet the needs of the users;
  - 63.3** the whole-of-life costs and benefits;
  - 63.4** for any network infrastructure, the performance, operational, service and compatibility requirements of the network utility operators and other agencies that will become the long-term custodians of those infrastructure assets;
- 64** agreed that the UDA must endeavour to establish collaborative and constructive relationships with local authorities, their council-controlled organisations and other infrastructure providers whose infrastructure is located within or connected to the project area during all phases of the development project;
- 65** agreed that the UDA and any organisation that it is partnering with to deliver a development project must follow the following principles in respect to that delivery:

- 65.1 the parties must give reasonable assistance in the performance of their respective infrastructure functions, duties, and powers under the new legislation;
- 65.2 the parties must work cooperatively with each other and with:
- 65.2.1 the New Zealand Railways Corporation;
  - 65.2.2 the Police;
  - 65.2.3 Fire and Emergency New Zealand;
  - 65.2.4 other organisations that have responsibilities in relation to roads, rail, water and transport networks;
- 66 **noted** that the UDA, relevant territorial authority and other development project partners are expected to work together in the selection of the project area and the drawing up of boundaries for that project area;
- 67 **agreed** that the UDA and the relevant territorial authority be guided in their project area choice, and the boundaries that define it, by the principle that the project area should, as far as practicable, incorporate those properties that are expected to benefit directly from (or be significantly affected by) the infrastructure associated with the project;

### Requirements on local government

- 68 **noted** that on 28 May 2018, Cabinet agreed that:
- 68.1 if a territorial authority agrees to support a development project, it can choose the terms on which it does so;
  - 68.2 those terms may include entering into a joint venture agreement with the UDA or project lead under which the territorial authority commits to:
    - 68.2.1 invest in the delivery of any supporting infrastructure when required by the project; and
    - 68.2.2 amend its strategic plans, policies or statements as appropriate to be consistent with the project's strategic objectives;
- [CAB-18-MIN-0243]
- 69 **agreed** that the UDA have the power to enter into binding agreements or contracts that require local authorities to alter or upgrade infrastructure outside the project area that is necessary to support development in that area;
- 70 **agreed** that where a territorial authority is unwilling or unable to commit to supporting a proposed development project, but the Minister considers the project to be in the national interest, the UDA may require the territorial authority to provide the infrastructure necessary to support the development project;
- 71 **agreed** that the exercise of the UDA power to require territorial authorities to provide infrastructure must only be considered if all efforts to establish a partnership agreement between the UDA and territorial authority have failed;
- 72 **agreed** that where a territorial authority is able to contribute to the required infrastructure costs, then the UDA and territorial authority may enter into an agreement to apportion the



costs of the infrastructure, guided by principles based on cost allocations according to matters including:

**72.1** the distribution of the benefits between the community as a whole and the parties in the project area;

**72.2** the extent to which UDA actions or inactions contributed to the need for the infrastructure;

**73** **agreed** that where the UDA requires a territorial authority to provide infrastructure and the territorial authority is unable to meet the costs of that infrastructure, then the UDA may meet the full capital cost of that infrastructure, provided that the UDA is first satisfied the benefits of doing so, across the project area and the surrounding area, outweigh the dis-benefits;

**74** **agreed** that the UDA is not bound to proceed with a project even where benefits of paying for all the infrastructure under the preceding outweigh the dis-benefits, and is not restricted from:

**74.1** withdrawing from the development project entirely; or

**74.2** modifying the project in such a way as to better ensure benefits outweigh dis-benefits;

**75** **noted** that the Minister of Housing and Infrastructure will report back on the process for resolving disputes between the territorial authority and UDA in respect to the cost and timing of the infrastructure, and UDA payments, in a later Cabinet paper;

**76** **noted** that in relation to the operation of the infrastructure required by the UDA, a territorial authority can recover its operational expenditure via rates levied over land or property in the project area;

### **Local government planning documents pertaining to infrastructure and funding**

**77** **agreed** that the territorial authority have a statutory duty to ensure planning documents incorporating infrastructure, funding and financing subject matter not be inconsistent with the strategic objectives of the development project and the development plan within three years of the development plan becoming operative;

**78** **agreed** that the local authorities within whose jurisdiction a project area is located have a duty to consult and collaborate with the UDA as a key stakeholder when preparing or amending:

**78.1** annual plans, long-term plans, infrastructure strategies, triennial agreements, rating policies and development contribution policies in so far as they relate to infrastructure or the funding or financing of infrastructure matters that will affect the project area;

**78.2** the infrastructure components of any spatial plan;

**78.3** regional land transport plans and regional public transport plans;

- 79** **agreed** that for the purpose of amending the plans above, public consultation undertaken as part of the development plan preparation be deemed to fulfil the consultation requirements of the Local Government Act 2002 and Land Transport Management Act 2004, provided that:
- 79.1** the relevant local authority has agreed;
  - 79.2** any public notice or documents associated with the development plan consultation process also identify that the UDA's consultation is also fulfilling consultation requirements under the Local Government Act 2002 and Land Transport Management Act 2004, and specify what the resultant changes under those acts will be;
  - 79.3** the material consulted on covers the same subject matter, and is of the same or similar nature as would otherwise have been consulted on had it been part of the plan or amendment under the Local Government Act 2002 or Land Transport Management Act 2004 (as relevant);
- 80** **agreed** that if no voluntary agreement can be reached to resolve any inconsistencies or issues between regional or local strategic plans and the strategic objectives of individual development projects, including agreeing potential infrastructure costs, then inconsistencies or issues may be referred to the development project's independent hearings panel to hear to resolve any differences and/or issues;

### **Bylaws inside the project area**

- 81** **agreed** that the UDA may make its own bylaws, or suspend or amend any bylaw that relates to the construction, alteration or moving of infrastructure required to service the development project;
- 82** **agreed** that the power of the UDA to make, suspend or amend bylaws:
- 82.1** be limited to the extent necessary to implement the development plan;
  - 82.2** in respect to making bylaws, only relates to bylaws applying in the project area;
- 83** **agreed** that bylaws made or amended by the UDA can only be in force, or be suspended, up to a time whichever is the shorter of:
- 83.1** conclusion of the development project;
  - 83.2** a date agreed between the relevant territorial authority and UDA;
  - 83.3** the occurrence of an event or circumstance agreed between the UDA and the relevant territorial authority which is specified in the bylaw;
- 84** **agreed** that prior to creating, suspending or amending a bylaw within the project area, the UDA must consult with relevant local authorities on any amendments proposed to bylaws, in particular bylaws that may be amended permanently or new bylaws that would remain in effect once the development project is disestablished;
- 85** **agreed** that Local Government Act 2002 requirements relating to determining the appropriateness of a bylaw, consultation on bylaws and the procedural requirements for making a bylaw, apply with necessary modifications as though:
- 85.1** the UDA were a territorial authority;

- 85.2** the project area of the UDA was a district or region;
- 85.3** references to the special consultative procedure were references to a consultation process that includes public notification of a draft bylaw, a submission period of not less than 20 working days, and hearing of persons who have indicated they wish to be heard;
- 86** **agreed** that the UDA may, by mutual agreement with the relevant territorial authority, delegate the enforcement of bylaws made by the UDA to enforcement officers of the territorial authority;
- 87** **agreed** that the relevant territorial authority, if required by the UDA, must delegate responsibility for exercising the territorial authority's enforcement powers under Part 8 of the Local Government Act 2002 (with all necessary modifications) within the project area to the UDA insofar as they relate to the activities undertaken by the UDA, including responsibility for:
- 87.1** the appointment of enforcement officers to enforce bylaws;
- 87.2** the approval of enforcement actions to enforce bylaws;

### **Local authority bylaws that apply to an area wider than the project area**

- 88** **agreed** that the UDA may suspend or amend territorial authority bylaws that apply to an area wider than the project area which restrict or constrain the construction, alteration or moving of infrastructure required to service the development project;
- 89** **agreed** the UDA power to amend or suspend a territorial authority bylaw that applies to an area wider than the project area be subject to a process that incorporates:
- 89.1** the UDA providing written notice of the bylaw to be suspended or amended to the relevant territorial authority, and assessments that show:
- 89.1.1** the amendment or suspension complies with relevant statutory requirements;
- 89.1.2** the amended or suspended bylaw can be implemented and enforced in a cost-effective manner;
- 89.2** the territorial authority determining whether the proposed suspension or amendment complies with statutory requirements and can be implemented and enforced in a cost effective manner, and recommending remedies in the event it is determined the bylaws do not comply, or cannot be implemented in a cost-effective way;
- 89.3** upon receiving the determination from the territorial authority and having regard to the recommendations from the territorial authority, the UDA confirming the proposed bylaw and providing public notice of it;
- 89.4** the territorial authority adopting the amended bylaw of the UDA under the Local Government Act 2002, as though it were its own;

### **General infrastructure matters**

- 90** **agreed** that the UDA be a requiring authority under section 167 of the Resource Management Act 1991;

- 91 **agreed** that nothing authorises or empowers the UDA to do anything in respect of any property owned by any other person, without the owner's consent, unless specifically provided for in the new legislation;
- 92 **agreed**, subject to the further details set out below, that the UDA has powers to carry out works in relation to the design, construction, placement, connection, alteration, removal or demolition and disposal of all or any part of any building, structure or infrastructure;
- 93 **agreed** that the UDA have the same powers as a local authority under sections 451, 459-462 and 516 of the Local Government Act 1974 (which relate to drainage works);
- 94 **agreed** that the UDA follow the consultation process outlined below to undertake works for each of the following class of assets:
- 94.1 for nationally significant infrastructure, the UDA must obtain the network utility operator or the asset owner's agreement before any changes can be made to the infrastructure;
- 94.2 for all other infrastructure, the UDA may construct and alter any infrastructure, but must work constructively with, and consult and collaborate with, the existing network utility operator and/or the asset owner prior to undertaking works;
- 95 **agreed** that the UDA's functions will not include the provision of telecommunications, gas or electricity except where agreed and delegated, or authorised by the respective network owners or operators;

### **Consultation and coordination requirements**

- 96 **agreed** that the UDA must, when constructing, moving, demolishing, or altering any infrastructure, through consultation and collaboration, determine the potential effects on the relevant wider infrastructure network and how they should be managed, including operating requirements, standards and costs;
- 97 **agreed** that Fire and Emergency New Zealand be included in the list of stakeholders who must be consulted as part of the initial assessment prior to a development project being established;

### **General standards and quality assurance**

- 98 **agreed** that the UDA, or project lead, must obtain all necessary subdivision, resource and building consents required by law;
- 99 **agreed** that the UDA must comply with, and carry out any works, in accordance with the standards, terms and conditions set out in rules and conditions in the development plan or consents that have been obtained;
- 100 **agreed** that the new infrastructure provided for a development project must meet the standards agreed in consultation with the relevant territorial authority (or regional council where applicable), including those which are required to meet any existing standards or codes prescribed through legislation and regulation;
- 101 **agreed** that the UDA must meet any requirements agreed through consultation with, or otherwise prescribed by, the owner of nationally significant infrastructure;

**Powers of entry**

- 102** **agreed** that, within the project area, the UDA have powers to enter onto private land, but not into marae buildings or dwellings, for the purposes of:
- 102.1** surveying and/or inspecting the land and buildings;
  - 102.2** identifying and protecting infrastructure corridors and systems;
  - 102.3** carrying out any infrastructure work, function, duty, or power under the new legislation;
  - 102.4** monitoring and assessing the provision of any infrastructure works undertaken or authorised by the UDA;
  - 102.5** checking and assessing utility services;
- 103** **agreed** that, before entering the land, the UDA must notify the owner or occupier of its intent not less than 24 hours in advance of the intended entry if it is reasonably practicable to do so;
- 104** **agreed** that the relevant individuals on site must produce written evidence of their authorisation, if requested to do so, and that if the property is unoccupied those persons must leave a notice in a prominent place advising of their entry;

**Notification requirements for UDA infrastructure works**

- 105** **agreed** that the UDA must only carry out its infrastructure works having first notified and obtained the prior written consent of the owner or occupier of the land on which the construction or works are to occur;
- 106** **agreed** that the UDA must give reasonable notice of the intention to carry out infrastructure works, including the date it will begin and infrastructure likely to be affected, to property owners or occupiers and network utility operators where relevant;
- 107** **agreed** that, if the owner's consent cannot or has not been obtained, the UDA will have the same duty that a territorial authority has under Schedule 12 of the Local Government Act 2002 (which provides for the construction and undertaking of works on private land);
- 108** **agreed** that the UDA must undertake the works in accordance with any reasonable conditions that the property owner or occupier imposes following these notifications;
- 109** **agreed** that any disputes or objections regarding the terms and conditions imposed by the owner or occupier as above be referred to an independent decision maker for determination;
- 110** **noted** that the Minister of Housing and Urban Development will report back on the details of who the independent decision maker will be, and how they will determine matters, as part of a later Cabinet paper;
- 111** **agreed** that UDA notice provisions must be consistent with those in the Electricity Act 1992, the Gas Act 1992, or the Telecommunications Act 2001 that relate to network utility infrastructure works or maintenance;

**Land transport – general matters**

- 112** **agreed** that the UDA be an approved public organisation under the Land Transport Management Act 2003 and have the same powers and be subject to the same terms that apply to other approved public organisations;
- 113** **agreed** that, in respect to land and transport infrastructure within the project area, the UDA have the same powers that Auckland Transport has under the Local Government (Auckland Council) Amendment Act 2009, except that it will have no powers in relation to:
- 113.1** the ability to prosecute infringement offences for use of special vehicle lanes in Auckland, or the failure to pay public transport fares;
  - 113.2** functions and powers under the Land Transport Management Act 2003 in relation to preparation of regional land transport plans or membership of regional transport committees;
  - 113.3** functions and powers under the Land Transport Management Act 2003 in relation to public transport planning and regulation;
- 114** **noted** that the powers of Auckland Transport include the ability to:
- 114.1** lay out new roads;
  - 114.2** alter the course of any road;
  - 114.3** alter the width of a road;
  - 114.4** determine which part of a road shall be a carriageway;
  - 114.5** alter the level of any road;
  - 114.6** stop or close a road or any part of a road; make a temporary road while a road is being repaired;
  - 114.7** build or modify any footpath or cycleway;
  - 114.8** sell surplus soil;
- 115** **noted** that, under the above power, the UDA will have the power to commission and construct public transport facilities and ancillary infrastructure;
- 116** **noted** that the UDA will, as a road controlling authority, have the powers to make bylaws in respect to road use, heavy traffic, parking, signs and marking, livestock, and vegetation;
- 117** **noted** that the above powers do not extend to the naming of roads, or allocation of property numbers, which will remain the prerogative of the relevant territorial authority;

**Additional powers relating to parking and light rail**

- 118** **agreed** that the UDA have the ability to provide parking places and buildings within the project area as though it were a local authority acting under section 591 of the Local Government Act 1974, and may levy fees and charges for the use of those parking places and buildings;

- 119** agreed that the new legislation provide powers for the UDA to construct, divert, alter or join, close, move or remove a light rail track within the project area and construct or re-locate any associated underlying or surface infrastructure within the light rail corridor;

### **Arrangements upon the approval of a development plan**

- 120** agreed that, once the development plan is approved, the UDA:
- 120.1** becomes the corridor manager for all roads in the project area under the Utilities Access Act 2010;
  - 120.2** has the power to take ownership of, or capture, the land required for roading purposes, or have transferred to the UDA all roads (other than State highways or government roads), or parts of roads, identified in the development plan at no cost, along with maintenance responsibilities;
  - 120.3** may, by mutual agreement, defer the transfer of ownership, transfer or capture (but not the control) of roads, land, and ancillary items to a mutually agreed date;
  - 120.4** may enter into agreements with the relevant territorial authority for the maintenance of new and existing roads or other land transport infrastructure within the project area;
  - 120.5** may, by agreement with the relevant territorial authority, delegate any of its functions or powers to the local authority, or in the case of Auckland, to Auckland Transport, for a fixed period;
  - 120.6** may delegate powers for the enforcement of non-moving vehicle bylaws to the relevant territorial authority;

### **Consultation and collaboration**

- 121** agreed that the UDA, when preparing a development plan or exercising powers in respect to roads, must:
- 121.1** consult and collaborate with the New Zealand Transport Agency in respect to the design, location, timing and funding of the road and any connections, where that road is a State highway or government road,
  - 121.2** ensure any roading alterations or connections must meet the construction and operation standards of the New Zealand Transport Agency;
  - 121.3** obtain the New Zealand Transport Agency's design input, operational agreement and approval before constructing any road that connects to a State highway;
  - 121.4** where the road concerned remains under the control of a territorial authority, work constructively with and consult the territorial authority in respect to design, performance standards, timing of works and management of wider network effects;
  - 121.5** where a road is a private road, give at least one month's written notice of the intention to undertake roading works to affected landowners and ensure suitable alternative access is available;

**Māori roadways**

- 122** noted that procedures for dealing with Māori roadways and with the owners of any Māori freehold land on which a Māori roadway is situated are contained in Te Ture Whenua Māori Act 1993, and that the implications of this will be addressed in the later Cabinet paper concerning Māori interests;
- 123** agreed that, for Māori roadways, as defined in the Local Government Act 1974 and the Land Transport Management Act 2003, the relevant territorial authority retain powers in respect to maintenance, repair or improvement;
- 124** agreed that the UDA may request the territorial authority exercise its powers to undertake maintenance, repair or improvement works on Māori roadways where these are within the project area;

**Additional processes relating to roading and the moving of roads**

- 125** agreed that any new road or road alteration that is part of a development project and is to be funded through the National Land Transport Fund, must be identified, through consultation and collaboration with the relevant regional council, in the regional land transport plan (or plans) for the region or regions in which it will be constructed;
- 126** agreed that, once the development project is completed, or earlier by mutual agreement with the local authority, the UDA:
- 126.1** vest or transfer roading or transport infrastructure to the relevant local authority along with maintenance responsibilities;
  - 126.2** may transfer any outstanding debt and revenue stream to repay that debt to the local authority;
- 127** agreed that the responsibility, functions and powers to move, realign or alter any State highway or other government roads to give effect to a development plan, other than constructing connections into the project area, remain solely with the New Zealand Transport Agency (or its delegate), yet must be undertaken in negotiation with the UDA;
- 128** agreed that where a road is first proposed to be moved as part of the development plan preparation process, then:
- 128.1** the road to be closed and, where relevant, the replacement road being created must be identified in the development plan and the consultation, hearings and objections process for the development plan apply;
  - 128.2** at an appropriate time after the development plan has been approved, the UDA must lodge a survey plan with the Chief Surveyor of the land district in which the road is situated that shows the road to be closed and, where relevant, the replacement road being created;
- 129** agreed that where a road is proposed to be moved subsequent to the development plan being approved, then provisions of Schedule 10 (road stopping) of the Local Government Act 1974 apply as if the UDA were a territorial authority and references to a district plan were a reference to the development plan;



## Cooperation requirements relating to public transport

- 130** **agreed** that before the UDA can exercise powers to commission and construct public transport facilities and ancillary infrastructure as though it were a territorial authority, it must consult (and if appropriate collaborate) with, as relevant, the New Zealand Transport Agency and the appropriate regional council and public transport providers within whose jurisdiction the project area is situated;
- 131** **agreed** that the UDA have no powers to force regional public transport network providers and service route providers to integrate the proposed development project's requirements into public transport systems and networks, but that the regional council within whose area a development project is located must:
- 131.1** when a public transport service will travel within or connect a project area, consult the UDA when renewing contracts for those public transport services, and service route providers;
- 131.2** have regard to the needs for public transport in the project area when reviewing its regional land transport plan and regional public transport plan;
- 132** **agreed** that when commissioning and constructing works, performing functions and exercising powers related to public transport, the UDA must abide by the following principles:
- 132.1** work in collaboration or partnership with relevant local authorities and public transport operators to ensure the delivery of services and infrastructure necessary to meet the needs of passengers;
- 132.2** the provision of public transport infrastructure be coordinated to achieve the integration, reliability, frequency and coverage necessary to encourage public transport use and growth;
- 132.3** have regard to the efficient movement of people, vehicles, freight and access requirements of emergency services;

## Three waters and drainage

- 133** **agreed** that the UDA have the power to commission, construct, alter and repair three waters and drainage infrastructure within a project area as though it were a territorial authority;
- 134** **agreed** that such works can take place in, on, along, over, across, or under any road, public land, private land or land owned by or under the control of the UDA;
- 135** **agreed** that, for the purposes of three waters and drainage infrastructure within a project area, the UDA may open or break up any road on public or private land, temporarily stop traffic, install and maintain fire hydrants, and/or construct new watercourse outfalls and defences (e.g. stop banks);
- 136** **agreed** that the UDA may build, modify or repair any drainage channel or drainage works as required in the development plan, and for that purpose:
- 136.1** contract with the owner of any private land and acquire the relevant easements from landowners for the purpose of constructing and maintaining drainage works;
- 136.2** undertake drainage works under or over any land, road, stream or river within the project area provided it does not impede navigational movement;

- 136.3** alter the course or level of any stream, river, or channel subject to having obtained any necessary resource consents;
- 136.4** alter any drain, sewer, gas pipe, other pipe, cable, or other apparatus of any kind on or under any road or public place, within the project area;
- 137** **agreed** that the exercising of powers relating to land drainage be undertaken subject to the general requirements for nationally significant infrastructure, where such infrastructure is present or affected;
- 138** **agreed** that the exercising of powers with respect to three waters and drainage works and alteration of existing or new water courses be subject to the provisions of the relevant national direction, objectives, policies, rules and resource consent requirements of applicable regional plans and strategies that relate to the project area;
- 139** **agreed** that, to ensure continuity of network water services within the project area, the UDA may, with agreement of the territorial authority, either be:
- 139.1** deemed a local government organisation and be responsible for water infrastructure;  
or
- 139.2** contracted by the territorial authority to construct, alter or remove water infrastructure;
- 140** **agreed** that in carrying out the works described above, the UDA:
- 140.1** must not take any action that could compromise a territorial authority's obligation to maintain water services to communities in its district;
- 140.2** must ensure that any stormwater discharge from the infrastructure system (either inside or outside the project area) meets the requirements of the development plan and relevant consents;
- 140.3** must remedy or mitigate any negative upstream or downstream effects that occur as a result of the UDA's actions;
- 141** **agreed** that, once the development project is completed, or earlier by mutual agreement with the local authority, the UDA:
- 141.1** vest or transfer three waters and drainage assets to the relevant local authority along with maintenance responsibilities;
- 141.2** may transfer any outstanding debt and revenue stream to repay that debt to the local authority;

### **Private utilities**

- 142** **agreed** that the UDA, provided private infrastructure assets in the project area are not nationally significant, may:
- 142.1** request or contract the owner of the assets to install new infrastructure assets or raise, lower, or alter the position of infrastructure assets that are fixed to, or installed, over or under any road;
- 142.2** require network utility operators to install or alter existing network utility assets (gas, electricity, and telecommunications) within road corridors;

- 143** **agreed** that the relevant provisions of the Gas Act 1992, Electricity Act 1992, Telecommunications Act 2001, and Utilities Access Act 2010, apply with regard to:
- 143.1** the allocation of costs associated with moving utility assets;
  - 143.2** the work that is to be done by network utility operators in relation to state highways or roads funded through the national land transport fund, as if all references to the New Zealand Transport Agency were references to the UDA, as appropriate;
- 144** **agreed** that the existing owner of any network utility infrastructure continues to own and maintain their infrastructure within the project area and keep their rights of access, unless otherwise negotiated with the UDA;

### **Offences, penalties and enforcement**

- 145** **agreed** that it be an offence to wilfully or negligently destroys, damages, stops, obstructs, or otherwise interferes with any water supply, stormwater works, wastewater works, protective works and drainage works, land transport works or property vested in, owned, constructed, under the control of, or used by the UDA;
- 146** **agreed** that, except as otherwise provided in paragraph 147 below, a person who commits an offence as described above is liable for, as the case may be:
- 146.1** the amount of the destruction or damage;
  - 146.2** the cost incurred by the relevant entity in removing the stoppage or obstruction; or
  - 146.3** any loss or expenses incurred by the entity because of the stoppage, obstruction, or interference;
- 147** **agreed** that in relation to three waters infrastructure, penalties will be the same as those provided in section 242(1) and (3) of the Local Government Act 2002;
- 148** **agreed** that it be an offence, that is liable for conviction, if a person intentionally prevents, obstructs or impedes an enforcement officer or other person authorised by the UDA, from carrying out their functions or duties;
- 149** **agreed** that it be an offence to incite any other person to commit an offence as described above;
- 150** **noted** that in relation to the obstruction of enforcement officers or UDA agents, penalties will be the same as those provided in section 242(2) of the Local Government Act 2002 (which relate to the obstruction of enforcement officers);
- 151** **noted** that the list of offences reflects those outlined in section 357(1) of the Local Government Act 1974 with all necessary modifications;
- 152** **agreed** that in relation to land transport infrastructure, including roads, light rail, busways, cycleways and footpaths, penalties will be the same as those provided in section 357(1) of the Local Government Act 1974;
- 153** **agreed** that it be an offence to act contrary to, or fail to comply with, a direction or prohibition given under the new legislation, or under an authority given to the UDA or its delegates;

- 154** agreed that the Minister of Housing and Urban Development be given delegated authority to decide, in consultation with the Minister of Justice, appropriate penalties for failures to comply with directions and prohibitions from the UDA or its delegates;

### **Defence to offences under the new legislation**

- 155** agreed that it is a defence to any offence under the new legislation or under by-laws made under the new legislation, if the court is satisfied that:

- 155.1** the act giving rise to the offence was necessary to protect life or property, prevent serious injury or avoid actual or likely significant damage to the environment;
- 155.2** the conduct of the defendant was reasonable in the circumstances;
- 155.3** the act or omission giving rise to the offence was due to an action or event beyond the control of the defendant and the action or event could not have been foreseen or prevented; and
- 155.4** the effects of the act or omission of the defendant were adequately remedied or mitigated by the defendant, to the extent practicable, after the offence occurred;

### **Relationship between offences under the new legislation and under other enactments**

- 156** agreed that an offence or penalty prescribed by the new legislation, or bylaws made by the UDA under the new legislation, must not be treated as repealing or otherwise affecting the provisions of any other Act under which the same act or default which is an offence and for which a penalty is prescribed;
- 157** agreed that while a person may be proceeded against under the new legislation, they may not be punished under both the new legislation (or bylaw made under it) and any other Act in respect to the same act, default or failure;

### **Green infrastructure**

- 158** agreed that the UDA have the power to provide, modify, or move green infrastructure (which includes natural eco-systems and built products, technologies and practices that primarily use natural elements or engineered systems mimicking natural processes to provide utility services) or set requirements for other parties to provide green infrastructure within the project area;

### **Proposals for funding powers**

#### **General authorisation and purpose for the UDA to levy targeted rates**

- 159** agreed that the UDA have the same powers to set and assess a targeted rate within the project area as if it were a territorial authority acting under the Local Government (Rating Act) 2002, except as provided for in the recommendations below;
- 160** agreed that the purpose of the targeted rate be for funding of the UDA's works and activities (including those relating to the provision or modification of infrastructure), and to help the UDA to pay for activities within the project area that are undertaken in cooperation or collaboration with partners to the development project;

- 161** noted that the general authorisation above would allow the UDA to use revenue from targeted rates to repay borrowing for its development projects, repay bonds, and pay others to deliver assets or services on behalf of the UDA;

#### **Limits of the UDA's use of targeted rates**

- 162** agreed that the UDA may only set and assess a targeted rate authorised by the Local Government (Rating) Act 2002 on land or property within the project area;
- 163** agreed that the limit on using targeted rates, set on a uniform basis, for more than 30 percent of total rates revenue (under section 21 of the Local Government (Rating) Act 2002) does not apply to the UDA's use of targeted rates within the project area;

#### **Liability for UDA targeted rates**

- 164** agreed that the UDA may set a targeted rate for some or all rating units in the project area, using the categories of land set out in Schedule 2 of the Local Government (Rating) Act 2002, but also including the use to which land can be put under an approved development plan;
- 165** agreed that the factors that may be used by the UDA to calculate the liability for targeted rates be the factors set out in Schedule 3 of the Local Government (Rating) Act 2002;

#### **Plans relevant to the setting of UDA targeted rates**

- 166** agreed that the UDA must have, as part of its development plan, a funding impact statement, which outlines why and how various funding sources will be used to fund the capital and operations needs of the UDA;
- 167** agreed that the funding impact statement in the development plan must identify the sources of funding to be used by the UDA, the amount of funding expected to be produced from each source, and how the funds are to be applied;
- 168** agreed that the UDA prepare an annual budget for each financial year, in respect to each project area, which includes:
- 168.1** a description of the activities and projects for the financial year necessary to implement the development plan; and
  - 168.2** in accordance with the funding impact statement, the funding required and the sources of those funds;
- 169** agreed that the UDA must provide an opportunity for parties who have an interest in land in the project area to view and make submissions on each year's annual budget, including any proposed targeted rate that will be used to fund the works and activities of the UDA;

#### **Procedure for assessing and setting UDA targeted rates**

- 170** agreed that the process for setting rates be the same as that required for a local authority acting under sections 23 and 24 of the Local Government (Rating) Act 2002, as though:
- 170.1** references to a local authority were references to the UDA;
  - 170.2** references to long-term plans and funding impact statements were references to corresponding sections of the UDA's development plan and annual budget;

- 171 **agreed** that, when assessing and setting targeted rates, the UDA must have regard to, and take all reasonable steps to be consistent with, the approach of the territorial authority that will have responsibility for the collection, recovery and enforcement of the UDA's targeted rates;
- 172 **noted** that the Minister of Housing and Urban Development will provide further details of how the UDA will set rates and pass annual rating resolutions throughout the life of the development project, as part of the Cabinet paper on the entity form, structure and governance arrangements for the UDA;

#### **Matters the UDA must consider when setting targeted rates**

- 173 **agreed** that when setting targeted rates, the UDA must consider the same matters under section 101(3) of the Local Government Act 2002 (which relates to needs for, and sources of, funding) that a local authority must consider, but including the following modifications:
- 173.1 references to community outcomes become references to achieving the strategic objectives of the development project;
- 173.2 the UDA must consider the impact on equity arising out of the use of uniform charges on people and businesses inside the project area;

#### **Collection of UDA targeted rates by territorial authority and recovery of costs**

- 174 **agreed** that the UDA must appoint the territorial authority, within whose boundaries the project area lies, to collect targeted rates on its behalf as though it were a local authority acting under section 53 of the Local Government (Rating) Act 2002, and that the territorial authority must accept the appointment;
- 175 **agreed** that, where the UDA appoints a territorial authority to collect rates, the territorial authority also be responsible for maintenance of rating records and information, delivery of the rates assessment and invoice (communications with ratepayers), and the recovery of those rates and enforcement through the courts;
- 176 **agreed** that where the UDA is dissatisfied with the enforcement actions or territorial authority, the UDA have the ability to take enforcement action itself;
- 177 **agreed** that a territorial authority may, through an agreement with the UDA made prior to collecting rates for the first time, recover from the UDA the actual costs of the administration, collection, recovery and enforcement of the targeted rate;
- 178 **agreed** that the territorial authority's costs for the administration, collection and recovery of rates can be incorporated into the total amount of the rates to be set and assessed;
- 179 **agreed** that if the territorial authority fails to enforce the collection and recovery of UDA rates, the UDA may enforce and collect using the provisions of the Local Government (Rating) Act 2002, and that the provisions of the Local Government (Rating) Act 2002 shall apply as if the UDA were the territorial authority;

#### **UDA targeted rating information and record keeping arrangements**

- 180 **agreed** that if the UDA levies a targeted rate, it must provide the territorial authority with the relevant information necessary to maintain the accuracy of the territorial authority's rating information database;

**Use of UDA targeted rates as security for loans**

- 181** agreed that the UDA be able to use the ability to levy targeted rates and the revenue it receives from targeted rates as security for loans or the performance of any obligations under any incidental arrangement in the same manner as a local authority under sections 114 and 115 of Local Government Act 2002;

**Restrictions on 'double dipping' when UDA applies a targeted rate**

- 182** agreed that a property or land in a project area cannot be charged a rate by both the UDA and the territorial authority where the effect is that the ratepayer pays twice for the same service or asset;
- 183** noted that, other than set out in these paragraphs, the existing rating powers of local authorities in respect of the project area are unaffected;

**UDA rating remissions, postponements and rebates**

- 184** noted that, where a rating and rates remission policy forms part of a development plan the UDA has the same powers and responsibilities as a local authority under the Local Government Act 2002 in respect to the remission or postponement of rates;
- 185** agreed that the UDA's rates remission and postponement policy may form part of a development plan, and its preparation may be undertaken as part of the development plan process;
- 186** agreed that the provisions of the Rates Rebates Act 1973 apply to a targeted rate levied by the UDA, as though the UDA were a territorial authority;

**General authorisation for the UDA to require development contributions**

- 187** agreed that the UDA have the same powers as a territorial authority to require the payment of development contributions from those undertaking development or building work within the project area when a resource consent is granted, a building consent is granted, or a service connection is approved;
- 188** agreed that where the UDA is the consent authority and is responsible for the granting of resource consents or service connections, it may:
- 188.1** issue the notice of requirement and collect the development contribution itself; or
  - 188.2** by agreement, delegate the collection of development contributions to the relevant local authority; or
  - 188.3** where a development contribution is triggered by a building consent issued in the project area, the relevant building consent authority may require and collect the development contribution on behalf of the UDA;
- 189** agreed that the UDA may, by agreement with a developer or builder, require a development contribution to be paid on a particular date or on the completion of a particular development or building milestone;
- 190** agreed that the UDA may charge a development contribution on the capital costs of infrastructure that have been levied on the UDA by the territorial authority;
- 191** agreed that the UDA may levy developers and builders operating within the project area for the development contributions that the UDA incurs and pays to the territorial authority;

## Purpose and principles of UDA development contributions

- 192 **agreed** that all persons exercising duties and functions relating the preparation of UDA development contributions, or requiring development contributions on behalf of the UDA, must have regard to the purpose and principles for development contributions set out in sections 197AA and 197AB of the Local Government Act 2002, as if the UDA were the territorial authority;

## Requirement for the UDA to have a development contribution policy

- 193 **agreed** that the UDA must prepare, consult on and adopt a development contributions policy before it can require the payment of a development contribution for the first time;
- 194 **agreed** that the UDA's first development contribution policy must be prepared as part of the development plan, using same consultation and hearing processes as that used for the development plan;
- 195 **agreed** that the same requirements as to the content and public availability of development contributions policies (including schedules of assets and development contributions methodologies) that apply to territorial authorities under the Local Government Act 2002 apply to the policy prepared by the UDA, with any necessary modifications;

## Reviews of the UDA development contribution policy

- 196 **agreed** that the UDA may review its development contributions policy at any time, but not less than once every three years;
- 197 **agreed** that any review of the UDA's development contributions policy that takes place after the approval of the development plan be undertaken in a manner consistent with the process for reviewing development contributions set out in the Local Government Act 2002, that includes:
- 197.1 consultation with stakeholders;
  - 197.2 an opportunity to make submissions on a draft policy or review proposals of not less than 20 working days; and
  - 197.3 hearings before decision makers appointed by the UDA;

## UDA development contribution reconsiderations and objections

- 198 **agreed** that requests for reconsiderations of development contribution requirements be heard and determined by the UDA;
- 199 **agreed** that objections to development contributions be considered and determined according to the process set out in the Local Government Act 2002 with all necessary modifications;
- 200 **agreed** that the UDA have the same powers as a territorial authority to withhold consents if development contributions are not paid;



**Changes to development contributions and refunds**

- 201 **agreed** that the UDA is obligated to repay any development contribution it has collected, or return any land taken as a contribution, from a developer if that developer's development does not proceed or the UDA does not provide the infrastructure for which the contribution was taken;
- 202 **agreed** that the UDA may retain a reasonable share of the development contribution or land taken equal to the value of the costs that had already been incurred by the UDA in relation to the development or building work, including the cost of administration;

**Development agreements in lieu of development contributions**

- 203 **agreed** that the UDA be able to enter into development agreements under the Local Government Act 2002 with those undertaking development or building works in the project area, or project partners, in lieu of those parties paying all or part of a development contribution to the UDA;
- 204 **agreed** that the UDA be able to enter into a development agreement with a territorial authority in lieu of the UDA paying all or some of a development contribution to that territorial authority;

**Safeguards against double dipping when charging development contributions**

- 205 **agreed** that a territorial authority may only require a development contribution for infrastructure provided by the UDA where the territorial authority and UDA have agreed that the territorial authority will collect the contribution on behalf of the UDA;
- 206 **agreed** that the UDA cannot levy a development contribution on any development in or outside the project area to the extent that the infrastructure has been provided or funded by a territorial authority;
- 207 **agreed** that the UDA may require the payment of development contributions where another entity owns or manages infrastructure, provided that the UDA has incurred, or will incur capital expenditure in relation to that infrastructure;
- 208 **agreed** that the UDA may, by agreement, levy and collect development contributions within the project area on behalf of a third party to the extent that the third party is not levying charges or requiring payments of its own;

**Fees and charges for UDA-provided services and connections to UDA infrastructure**

- 209 **agreed** the UDA have the same ability as a local authority to impose a fee or charge for the use of its services or connection to its infrastructure (except that relating to land transport) on users or those who benefit where the amount being charged is not already covered by a targeted rate, development contribution or betterment payment;
- 210 **agreed** that the fee or charge may be consulted on and set in the development plan as part of the development plan preparation process in the first instance, with any subsequent or amended fee or charge set by way of a bylaw prepared and consulted on by the UDA;

**UDA use of betterment payments**

- 211** agreed that the UDA can require payment of betterment from landowners, as if it were a local authority acting under the Local Government Act 1974, in relation to the building and widening of roads where land is to be acquired from landowners;
- 212** agreed that, in addition to the building and widening of roads, the UDA can also require betterment payments to be made where the UDA needs to acquire land for light rail, a busway or a cycleway and an uplift in the value of the affected parties' land is expected as a result of those works;
- 213** agreed that the provisions of section 326 of the Local Government Act 1974 that relate to the following matters apply as if the UDA was a territorial authority:
- 213.1** claims for betterment;
  - 213.2** memoranda of charges on titles;
  - 213.3** determinations of disputes before the Land Valuation Tribunal;
  - 213.4** use of money from betterment;

**Across-boundary funding arrangements for infrastructure**

- 214** agreed that the UDA may, as part of a binding agreement, recover costs from the territorial authority for infrastructure the UDA constructs that benefits property owners outside the project area;
- 215** agreed that the territorial authority may, as part of a binding agreement, recover costs from the UDA for infrastructure the territorial authority constructs that benefits property owners within the project area;
- 216** agreed that the starting point for establishing an appropriate share of costs be the equivalent of the development contributions that the UDA would otherwise have been required to pay, adjusted to reflect the costs that have been, or will be, incurred by the UDA in providing infrastructure that the territorial authority would normally have provided;

**Independent disputes adjudication for across-boundary funding arrangements**

- 217** agreed that the UDA, the territorial authority, or both may apply to an independent decision maker if agreement between the parties cannot be reached on any combination of the following matters:
- 217.1** the amount to be paid; or
  - 217.2** the timing of any amounts to be paid; or
  - 217.3** the infrastructure to be provided by each party, including when it is to be provided; or
  - 217.4** any other matter related to cost-sharing arrangements;
- 218** agreed that the UDA and the territorial authority will be bound by the decision of the independent decision maker in respect to the matters set out in the above paragraphs;

- 219** **agreed** that, in coming to a decision, the independent decision maker must consider the relative proportions to which each party benefits from the expenditure that has been, or will be, incurred and the degree to which the actions or needs of each party gave rise to that expenditure;
- 220** **noted** that the Minister of Housing and Urban Development will provide details on who the independent decision maker will be and the processes under which they will be appointed in a later Cabinet paper;
- 221** **noted** that additional work is being carried out on value capture (taxing an uplift in land value resulting from public works or rezoning of land), but that this work is separate, and on a different timetable, to ensure alignment with other work on approaches for infrastructure funding and financing, and taxation.

Michael Webster  
Secretary of the Cabinet

*Secretary's Note: This minute replaces DEV-18-MIN-0166. Cabinet amended paragraph 6, with a consequential amendment to paragraph 7.*

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**Hard-copy distribution:**

Prime Minister  
Deputy Prime Minister  
Minister of Housing and Urban Development  
Minister for the Environment