

Chair, Cabinet

Acquisition of Unitec land for housing development

Proposal

- 1 This paper seeks Cabinet's in principle agreement to the Crown acquiring 29.3 hectares (ha) of land in Mt Albert, Auckland (the site) from Unitec Institute of Technology (Unitec) for state housing purposes.
- 2 The acquisition conforms to the existing delegations of the Minister of Housing and Urban Development and the Minister of Finance under the Land for Housing Programme [CBC-17-MIN-0100 refers].

Executive Summary

- 3 Unitec has deemed 29.3 ha of land in Mt Albert, Auckland surplus to its purposes and wants to pursue a straight sale of the land to the Crown to s 9(2)(b)(ii)
- 4 The site is a large portion of undeveloped land within 9 km of the Auckland CBD on Carrington Road, Mt Albert, Auckland that lends itself to a master-planned, scale development. An opportunity for residential development on this scale in central Auckland is rare and this site has the potential to deliver several of the Government's KiwiBuild and housing programme's objectives relating to increasing supply and providing public and affordable homes.
- 5 Over the last two and half years Unitec has completed comprehensive master planning and due diligence on the site's housing potential. Unitec's development planning indicates the site is appropriate for residential development of at least 2,675 homes; however it may be possible to significantly increase that yield.
- 6 A conditional sale and purchase agreement (the Agreement) has been agreed between the Crown and Unitec, subject to Joint Ministers approval of the acquisition under Cabinet delegations [CBC-17-MIN-0100 refers]. The intended settlement date for this transaction is 30 March 2018, and Unitec is currently seeking assurances that the Government is committed to this purchase.
- 7 The conditional compensation for the transfer of the site from its existing public work to state housing purposes is \$134 million (the transaction will be zero rated for GST). It is anticipated the purchase price for the land will be based on an up-front settlement of s 9(2)(i) in progress payments deferred until vacant possession is achieved.
- 8 I intend the development be a public sector-led residential development programme which has as its objective the delivery of public good outcomes including providing a mix of public and KiwiBuild housing, in addition to market priced housing to increase overall supply at pace.

- 9 To assist with assessing the development potential for public housing, MBIE has involved Homes, Land, Community (HLC) in the review of the significant due diligence material. Following this review and engaging a range of commercial property experts, MBIE and HLC consider that the purchase price of \$134 million reflects fair market value. I am confident that Government objectives for the site can be realised at this value.
- 10 I am committed to honouring the terms of the Crown's Treaty settlement obligations in my approach to the development of the site, in particular the Crown's obligations under the Department of Building and Housing (now MBIE) Protocol.
- 11 I intend to use the multi-year non-departmental capital appropriation: Vacant or Underutilised Crown Land Programme to complete the transaction. Sufficient funds of \$153.75 million remain in the appropriation. The acquisition of the site from Unitec is within the scope of the Vacant or Underutilised Crown Land Programme appropriation and delegations.
- 12 I have joint delegated authority, with the Minister of Finance, to make a broad range of decisions in relation to the Land for Housing Programme, including determining which sites to acquire using the multi-year non-departmental capital appropriation: Vacant or Underutilised Crown Land Programme.
- 13 I intend to make decisions in due course, in consultation with relevant ministerial colleagues, on the most appropriate development model to progress a residential development with associated services on the site. As necessary, and to the extent these decisions fall outside existing delegations, I will seek Cabinet agreement to next steps.

Background

- 14 Unitec is an Auckland tertiary institution with a large campus located centrally on Carrington Road, Mt Albert. Unitec has deemed 29.3 ha of land (the site) surplus to its purposes and wants to pursue a straight sale of the land to realise capital quickly. There is a need to contract the site quickly and cleanly as Unitec is under financial stress.
- 15 In November 2017 the Minister for Education and I met with the Chair of Unitec to discuss Unitec's surplus land and related issues. At this time I confirmed the Government's interest in opening negotiations with Unitec regarding the purchase of the site as I saw the potential to deliver on the Government's housing objectives.
- 16 I asked MBIE to negotiate on behalf of the Crown to acquire the site under the Housing Act 1955 for state housing purposes subject to Joint Ministerial approval of the terms of any acquisition.

The site

- 17 The surplus land forms a site of 29.3 ha and is a large portion of undeveloped land within 9 km of the Auckland CBD on Carrington Road, Mt Albert, Auckland. The land is a mix of green and brownfields, and lends itself to a master-planned, scale development. An opportunity for residential development on this scale in central Auckland is rare and this site has the potential to deliver several objectives of the Government's KiwiBuild housing programme including increasing supply and providing public and affordable homes.

- 18 The site is owned by Unitec and held for tertiary education purposes. However the Crown retains an oversight of the site through the provisions of the Education Act 1989. Before Unitec sells the land to the Crown (or the private sector, should settlement not be completed), it will seek the consent of the Secretary for Education.
- 19 Over the last two and half years Unitec has completed comprehensive master planning and due diligence on the site's housing potential, and successfully sought zoning changes to enable development. Unitec's development planning indicates the site is appropriate for residential development of at least 2,675 homes; however it may be possible to significantly increase that yield.
- 20 Based on the review of the due diligence reports provided by Unitec, officials consider that there are no significant impediments (beyond those expected from a brownfield/greenfield site of this size) to residential and mixed use development of sufficient scale to achieve the public good and housing outcomes sought by the Government.

Sale and purchase terms

- 21 MBIE have been negotiating the acquisition on behalf of the Crown and the terms of a sale and purchase agreement (the Agreement) for the site are agreed between the Crown and Unitec, conditional on joint Ministerial approval to acquisition. The intended settlement date for this transaction is 30 March 2018. The Agreement was signed on behalf of Unitec on 21 December 2017 and Land Information New Zealand on behalf of the Crown on 13 February 2018.
- 22 The conditional compensation for the transfer of the site from its existing public work to state housing purposes is \$134 million (the transaction will be zero rated for GST). The purchase price for the land will be based on an up-front settlement of s 9(2)(i) in progress payments deferred until vacant possession is achieved.

23 s 9(2)(i)

24

Other interests at the site

- 25 The previous Ministerial directions to Unitec to arrange a sale of approximately two ha of land to the Waitemata DHB for the expansion of the Mason Clinic will become the responsibility of MBIE, effective immediately upon execution of the Agreement.

The Land for Housing Programme – appropriation and delegations

- 26 In December 2017 Cabinet agreed to a new capital expenditure appropriation of \$220 million (the Capital Fund) for the Land for Housing Programme, which will be used to acquire both private land and existing Crown land.
- 27 To facilitate KiwiBuild and wider housing development, Cabinet agreed to —
- a) use the Capital Fund to acquire land that is suitable for residential development;
 - b) on-sell that land to developers who will use their own capital to develop the land; and
 - c) require that each site is developed subject to conditions, so that its development contributes to addressing the Government’s social objectives in relation to housing, in particular by delivering outcomes with respect to:
 - i. increasing total housing supply in supply-constrained markets;
 - ii. the pace of construction; and
 - iii. the proportion of new dwellings built for public housing or for KiwiBuild [CBC-17-MIN-0100 refers].
- 28 I have joint delegated authority (with the Minister of Finance) to make a broad range of decisions in relation to the Land for Housing Programme, including determining which sites to acquire with the funding appropriated for the Programme and approving the terms of land purchase, development and on-sale agreements.
- 29 The Land for Housing Programme builds on the Crown Land Development Programme established in December 2015 to acquire vacant or underutilised Crown-owned land and then on-sell it to private developers. A total of \$252.2 million of capital was appropriated to fund land acquisitions for that programme (under the multi-year non-departmental capital appropriation: Vacant or Underutilised Crown Land Programme), of which \$153.75 million remains, and which I propose be used to fund this purchase.
- 30 The two Programmes operate in parallel, managed by the same officials in MBIE and with delegated responsibility for decision-making to the same Ministers; Minister of Finance and the Minister of Housing and Urban Development [CBC-17-MIN-0100 refers].

Comment

- 31 I have agreed progressing acquisition of the site for state housing purposes. The Minister of Finance and I will approve the terms of any acquisition, to ensure that the Government’s objectives relating to housing, including KiwiBuild, can be realised in the development.
- 32 To assist with assessing the development potential for public housing, MBIE has involved Homes, Land, Community (HLC) in the review of the due diligence material and provided that agency with all relevant reports. Unitec’s comprehensive master planning and due diligence has greatly assisted the Crown in completing the acquisition as quickly as possible. I have been keen to ensure this acquisition proceeds as quickly as possible, due to the potential of the site for residential development, including public and

affordable housing,

s 9(2)(b)(ii)

- 33 MBIE and HLC are confident that the purchase price of \$134 million reflects fair market value. The Crown has had access to significant due diligence material and engaged a range of legal, valuation, project management, civil and infrastructure and quantity surveying experts to inform this view. I consider that Government objectives for the site can be realised at this value, acknowledging that some market risk in buying land exists.
- 34 The purchase price of \$134 million is based on Unitec's development model and estimated housing potential of 2,675 dwellings. There is capacity to significantly increase this yield and alter the development model to extract further value from the purchase price including increased proportions of higher density affordable housing.
- 35 Commercial property experts review of the due diligence information estimated approximate development costs of \$185 million for the site, that results in a developed land price of approximately \$1088 per square metre (undeveloped land price of \$457 per square metre, development costs of \$631 per square metre). This is a commercially competitive rate in the current Auckland market with the mix of typologies and density that can be realised on the site. As a comparison in 2015 in Hobsonville a site was sold developed at \$800 per square metre and in 2016 in Mt Albert a site was sold undeveloped at \$1020 per square metre.
- 36 The development model, when chosen, will determine who bears the costs of development. s 9(2)(g)(i)
- 37 I intend the development be a public sector-led residential development programme which has as its objective the delivery of public good outcomes including providing a mix of public and KiwiBuild housing, in addition to market priced housing to increase overall supply at pace.
- 38 My intended approach deviates from the usual development model used successfully under the Land for Housing / Crown Land Development Programmes in Auckland (which is based on the Crown contracting outcomes with iwi and private sector developers rather than undertaking the development more directly). I anticipate considerably more oversight will be required at all stages of this development to ensure the Government objectives for the site can be realised.
- 39 I intend to make decisions in due course, in consultation with relevant ministerial colleagues, on the most appropriate development model to progress housing and associated services on the site. That will also involve decisions on the proportions of public and KiwiBuild housing to be delivered on the site.
- 40 In determining the most appropriate development model for the site the Crown may need to make trade-offs between recouping its investment in full and realising broader social objectives, including the proportion of public and KiwiBuild housing). As necessary, and to the extent these decisions fall outside existing delegations, I will seek Cabinet agreement to next steps.

Treaty settlement obligations

- 41 I am committed to honouring the terms of the Crown's Treaty settlements in my approach to the development of the site. These rights include the Department of Building and Housing (now MBIE) Protocol (the Protocol) and a right of first refusal (RFR).
- 42 As I intend to develop the land for housing, the Protocol rather than the RFR applies at this site. However, the RFR also affects how the Crown may approach this development. I have outlined below the differences between the Protocol and the obligations that apply under a RFR.

Rights of First Refusal

- 43 All of the Unitec campus, other than a small block at the north-western corner, is subject to a right of first refusal (RFR) under the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014 (Tāmaki Collective Act).
- 44 A RFR provides iwi with a first right to purchase RFR land if the Crown¹ intends to dispose of it. In recent times in Auckland, and elsewhere, the Crown has wished to facilitate the development of RFR land for housing.

45 s 9(2)(h)

46 Outside Auckland, if the Crown intends to develop land for housing and to dispose of that land the Crown must first either comply with the RFR obligations, or negotiate with iwi.

47 Iwi may agree to waive or otherwise amend the terms of their RFR, but are under no obligation to negotiate. s 9(2)(g)(i)

Department of Building and Housing (now MBIE) Protocol

- 48 The Tāmaki Collective Treaty settlement has different terms because, at the time the settlement was negotiated, the Crown anticipated that it may wish to develop Crown land in Auckland for housing, potentially through Housing New Zealand Corporation (HNZC) or by disposal to the private sector.
- 49 The Crown sought inclusion of a broad exemption to the Tāmaki Collective RFR, to enable disposals for housing purposes. The Tāmaki Collective was not prepared to agree to this exemption, so a compromise was negotiated, which became the Protocol.

¹ For these purposes of this paper, "Crown" and "Crown land" does not include Housing New Zealand Corporation (HNZC) and HLC land. The situation for HNZC is usually different, both because it often develops land it owns for state housing without intending to dispose of it and because it has negotiated an RFR exception for itself in recent Treaty settlements.

- 50 The Protocol applies wherever the Crown intends to develop land that it owns which is subject to the RFR to “achieve, or assist in achieving, the Crown’s social objectives in relation to housing or services related to housing”; and involve a party other than the Crown (including both a private buyer or Crown body such as HNZC) in that development. The Protocol provides that, in these circumstances, iwi (through the RFR rights’ holder²) will have the first opportunity to be the developer subject to meeting the Crown’s intended social objectives in relation to housing.
- 51 In the Protocol an exemption exists in circumstances where:
- achievement of Crown’s social objectives in relation to housing or services related to housing in the opinion of the Department would be frustrated in whole or in part by exercising the protocol; and/or
 - Crown’s social objectives in relation to housing or services related to housing would be achieved, but applying the protocol would substantially increase cost or reduce efficiency for the Crown.
- 52 The Protocol represents a compromise for the Crown and the Tāmaki Collective. It provides fewer protections for iwi than standard RFR terms as above, but does pre-suppose engagement between Crown and iwi on housing developments on RFR land.
- 53 The Crown has spent some time negotiating how the Protocol operates in practice, including signing a relationship agreement, called the Mahi Ngātahi Agreement, which sets some parameters and minimum expectations for housing development opportunities. The Protocol is attached as Annex 1.
- 54 I have recently engaged with the Tāmaki Collective on developing Crown land in Auckland. I have also met individually with several iwi leaders and discussed the Unitec opportunity. As I wish to ensure the development on the site achieves this Government’s public good objectives, I anticipate that I will need to spend more time with the RFR rights’ holders, and their iwi shareholders in the Tāmaki Collective, discussing the approach to the development opportunity, including prior to any announcement of Government acquisition of the site.

Next steps

- 55 Joint Ministers have received advice from officials seeking joint Ministerial approval to acquire the Unitec site. Under the terms of the conditional Agreement joint Ministerial approval to the acquisition is required today, Monday 5 March 2018, and I intend to provide that approval subject to Cabinet agreement in principle to this proposal.
- 56 Following approval to acquire, several technical steps relating to land acquisition need to occur prior to settlement on 30 March 2018. Unitec will also need to satisfy conditions relating to the approval of the Unitec Council and approval of the Secretary of Education prior to settlement date.

Consultation

- 57 The Treasury has been consulted on the contents of this paper.

Financial Implications

² Whenua Haumi Roroa o Tāmaki Makaurau Limited Partnership.

- 58 The purchase price stated on the Agreement is \$134 million (the transaction will be zero rated for GST). The purchase price for the land will be based on an up-front settlement of [REDACTED] s 9(2)(i) in progress payments deferred until vacant possession is achieved. I intend to use the multi-year non-departmental capital appropriation: Vacant or Underutilised Crown Land Programme to complete the transaction. Sufficient funds remain in this appropriation (\$153.75 million) to settle this transaction.
- 59 The proposed acquisition and development is within the scope of the Vacant or Underutilised Crown Land Programme appropriation and delegations. MBIE is currently working through the financial implications relating to the subsequent development of this site with Treasury, as these depend on the final development model chosen.
- 60 I will report back to Cabinet to seek agreement to the next steps, including any financial implications of the development of the site, following further engagement with Ngā Mana Whenua o Tāmaki Makaurau and relevant Ministerial colleagues.

Human Rights

- 61 This proposal is consistent with the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Legislative Implications

- 62 This proposal has no impacts on legislation or regulation.

Regulatory Impact Analysis

- 63 The Regulatory Impact Analysis requirements do not apply to this proposal.

Publicity

- 64 I intend to announce the Government's acquisition of the site once the transaction is unconditional (the last satisfaction date for Unitec's completion is 19 March 2018).

Recommendations

The Minister of Housing and Urban Development recommends that Cabinet:

- 1 **note** the Crown has conditional agreement to acquire 29.3 hectares of land in Mt Albert, Auckland from Unitec Institute of Technology for state housing purposes;
- 2 **note** that comprehensive master planning and due diligence on the site's housing potential has been completed that indicates the site is appropriate for residential development of at least 2,675 homes;
- 3 **note** that the conditional compensation for the site is \$134 million, based on an up-front settlement of [REDACTED] s 9(2)(i) in progress payments deferred until vacant possession is achieved;
- 4 **note** that the purchase price of \$134 million reflects fair market value based on MBIE, HLC and commercial property experts review of the comprehensive master planning and due diligence;

- 5 **note** that agreement to the final terms of the acquisition come within existing delegations of the Ministers of Finance and Housing and Urban Development within the scope of the Vacant or Underutilised Crown Land Programme appropriation;
- 6 **note** that the intention is the development on the site is a public sector-led residential development programme which includes public good outcomes and social objectives relating to housing;
- 7 **note** that the Minister of Housing and Urban Development has recently engaged with iwi of Ngā Mana Whenua o Tāmaki Makaurau on the potential acquisition of the site;
- 8 **note** that decisions will be made in due course on the most appropriate development model to progress housing and associated services on the site, including to ensure consistency with the Crown's Treaty settlement commitments to Ngā Mana Whenua o Tāmaki Makaurau;
- 9 **agree** in principle to the Ministers of Finance and Housing and Urban Development approving the acquisition of 29.3 hectares of land in Mt Albert, Auckland for \$134 million from Unitec Institute of Technology for state housing purposes;
- 10 **invite** the Minister of Housing and Urban Development to report back to Cabinet to seek agreement to the next steps, including any financial implications of the development of the site, following further engagement with Ngā Mana Whenua o Tāmaki Makaurau and relevant Ministerial colleagues.

Authorised for lodgement

Hon Phil Twyford

Minister of Housing and Urban Development

Annex 1: Protocol between the Department of Building and Housing and Ngā Mana Whenua o Tāmaki Makaurau

1. If the Crown intends to:
 - a. develop land it owns that is subject to the Tāmaki Collective's RFR to achieve, or assist in achieving, the Crown's social objectives in relation to housing or services related to housing; and
 - b. involve a party other than the Crown (including a private buyer or Crown body) in that development

the Department of Building and Housing (the Department) shall first provide the Collective the opportunity to be the developer, subject to meeting the intended Crown social objectives in relation to housing or services related to housing, and on such terms as might be offered to the private sector.
2. The opportunity will be provided via a letter from the Department to the Collective inviting them to make a proposal to develop the land. The letter will set out the terms and conditions the proposal must meet, including any known requirements for the development.
3. If the Collective does not accept or meet the terms and conditions of the Crown's invitation, or the Crown determines that the proposal submitted will not meet the intended objectives, the Crown may sell land to a private party under the RFR exclusion or transfer the land to a Crown body.
4. The Crown will endeavour in good faith to provide the Collective with the opportunities set out in this protocol. The Crown reserves the right to trigger the exclusion in clause 81 of the draft settlement legislation, or transfer land to a Crown body without first making an offer under this protocol in circumstances where:
 - achievement of Crown's social objectives in relation to housing or services related to housing in the opinion of the Department would be frustrated in whole or in part by exercising the protocol; and/or
 - Crown's social objectives in relation to housing or services related to housing would be achieved, but applying the protocol would substantially increase cost or reduce efficiency for the Crown.
5. In this agreement:
 - a. "Crown" refers to the Crown or Sovereign as defined in section 2(1) of the Public Finance Act 1989.
 - b. "Crown Body" is as defined in the Tāmaki Collective settlement legislation.
 - c. Land owned by the Crown does not include Housing New Zealand Corporation land.
6. The Department considers that its obligations under this protocol have already been met in respect of land at Weymouth currently set apart for state housing purposes.