In Confidence

Office of the Minister of Housing and Urban Development

Chair, Economic Development Committee

Legislating to empower complex urban development projects: Powers relating to land assembly, reserves, infrastructure and funding

Proposal

1. This paper seeks agreement to give the national urban development authority (UDA) more enabling development powers relating to land assembly, reserves, infrastructure, and funding. This will enable it to deliver complex urban development projects at scale and pace.

2. This paper complements, and should be read alongside, a separate Cabinet paper I am presenting with the Minister for the Environment on policy details for the UDA's planning and consenting powers.

Executive summary

3. This Government is taking a hands-on approach to tackling homelessness and unaffordable housing. We want to ensure much-needed urban development, housing and infrastructure is delivered strategically and in a short timeframe, especially in the areas most experiencing these challenges.

4. Cabinet has previously agreed to establish a UDA, and to develop new legislation giving the UDA access to a range of more enabling development powers to support and deliver complex urban development projects. [CBC-17-MIN-0051] Having these powers will enable the UDA to deliver the scale of urban development needed for KiwiBuild and for other significant projects in a more integrated and timely way.

5. This is the second in a series of papers seeking detailed policy decisions from Cabinet for the new legislation. A previous Cabinet paper covered the core concepts, decision-making framework and new statutory process underpinning the UDA. [CAB-18-MIN-0243]

6. This paper seeks agreement to enact the following more enabling development powers for the UDA:

    6.1. *Land assembly* – the UDA will be able to propose that Crown-owned land be repurposed for development. It will have access to compulsory acquisition powers. No offer back will be required when transferring land to private developers for delivery of a public work.

    6.2. *Reserves* – the UDA will be able to use a streamlined process to set apart all or part of certain types of existing reserves within a project area for development purposes. Public consultation and approval from the Minister of Conservation will be required before doing so. Scientific and nature reserves and some other types of lands (such as national parks, conservation land and Māori reserves) will be excluded.

6.3. *Infrastructure* – the UDA will have the power to construct, move and stop transport and water infrastructure, and work with other operators to build, move or alter other types of infrastructure. Other infrastructure powers include being able to: make, request changes to, or suspend by-laws relating to infrastructure; vest new development infrastructure at no cost to the host territorial authority; and require a territorial authority to provide infrastructure if no agreement is reached.

6.4. *Funding* – the UDA will be able to levy targeted rates, development contributions and betterment charges.

7. I propose the drafting of the new legislation starts as soon as possible, with a view to introducing a Bill as soon as possible in early 2019.

8. Later Cabinet papers will cover the UDA's form, structure and governance arrangements, and the management of Māori interests.

Background

The UDA is being established to deliver much-needed urban development

9. In December 2017, Cabinet agreed in principle to establish a national UDA to lead urban development and drive the delivery of the 100,000 affordable homes planned for KiwiBuild. [CBC-17-MIN-0051] In May 2018, Cabinet approved the core concepts, decision-making framework and new statutory process underpinning the UDA. [CAB-18-MIN-0243].

The UDA needs access to more enabling development powers to deliver significant urban development

10. Enabling development powers empower the UDA to support and deliver the unprecedented scale of urban development required in a short timeframe, especially in Auckland. They will do this by providing greater coordination, certainty and speed with which to change multiple components of the urban environment in support of particular development projects.

11. These powers will not be available automatically to every complex development project. Instead, the Government will select the particular development projects in which the more enabling development powers are available. The powers will only be available within the boundaries of the approved development project, with some limited exceptions[1]. They will only be able to be exercised once their proposed use has been approved in the development plan.

12. All of the development powers will be available to each complex development project selected by the Government, with the UDA selecting which ones are required to meet the project's strategic objectives. The development plan will then determine how the development power is used in a particular instance. For example, while the UDA will automatically be able to stop roads, it will not be able to stop a particular road without that proposal being approved in the development plan. This will provide clarity around which powers can be used, and how they can be used. It will also enable a more tailored approach to suit specific circumstances.

[1] There is a need to ensure that powers are available to enable infrastructure outside of the project area that is necessary to support the project (e.g. designations and compulsory land acquisition).

13. This paper deals with the policy details for the powers relating to land assembly, reserves, infrastructure and funding. Future Cabinet papers will cover the UDA's form, structure and governance arrangements, and the management of Māori interests.

Some of these powers may need to be revised depending on the UDA's entity form

14. The more enabling development powers in this paper have been designed on the basis of the UDA being established as a Crown agent. However, some of these powers may need to be revised if the UDA is to be established as a different type of entity.

Land assembly powers

Land assembly powers will make it easier for the UDA to assemble parcels of land for development

15. Unlike other countries, New Zealand has few tracts of derelict land or contiguous Crown land within its urban borders that can be used for large-scale urban development. This makes it difficult to assemble useful parcels of land from fragmented groups of properties to form commercially viable development projects in strategic sites.

16. To make it easier for the UDA to assemble parcels of land in both greenfield and brownfield areas, I want it to have access to a suite of land assembly powers. This will enable it to use Crown land, transfer land for development, and acquire private land more easily.

17. Unlike the other development powers, the land assembly powers will not be tied to a specific project area. This will enable the UDA to undertake smaller-scale developments that are not formally established as projects, and to acquire land in future development areas prior to any further uplift in land values following a project's announcement.

18. Subject to confirming that the UDA is a body corporate, the land assembly powers will include the ability to buy and sell land by agreement without using the Public Works Act 1981 (PWA), and, in those cases, hold land in its own name without needing to hold it for any particular public work.

Repurposing Crown-owned land

Crown-owned land can be repurposed for a UDA development project

19. Publicly-owned land is the principal foundation on which development projects are usually established (e.g. the regeneration of the London and Melbourne docks). The land can capitalise the project and provide a source of revenue. Development on public land can also incentivise or enable the development of adjacent privately-owned land.

20. Crown-owned land held for one public work can be 'repurposed' for a different public work. This repurposing is given effect by the Minister for Land Information.

21. This repurposing process will enable appropriate Crown-owned land to be set apart for the UDA. Land can be set apart at any time, whether or not it is inside a project area. In practice, I expect that most land will be set apart at the point that Cabinet agrees to establish a development project.

22. The terms of the repurposing, including the price, will be agreed by the Minister responsible for the UDA (the UDA Minister), the Minister of Finance, the Minister for Land Information and the Minister responsible for the portfolio whose land would be transferred. When agreeing the price, the objective will be to identify the fair market value of the land.

23. This repurposing process will not apply to reserves where the land is owned by the Crown. Instead the process proposed in the Reserves section of this paper will apply.

Compulsorily acquiring private land

The UDA will be able to compulsorily acquire private land, with checks and balances in place

24. I propose that the UDA be able to apply to the Minister for Land Information to compulsorily acquire private land (or an interest in land, such as an easement) under the PWA. The landowners will be compensated for the taking of their land or interest in land, as discussed below.

25. The new urban development legislation will include a range of provisions clarifying or modifying the way the PWA applies to the UDA so it can better carry out urban development projects. These proposals are discussed in the following sections.

26. I recognise compulsory acquisition is a significant power, and should not be used lightly. While the UDA will be required to attempt to acquire private land by agreement with the landowners, there will be some cases where it may need to access the power of compulsory acquisition. This will be especially important for land that is strategically important and/or needed to make its projects commercially viable.

27. I am confident the legislative framework will include sufficient protections to ensure the powers are not overused, and that there is independent oversight.

28. Safeguards in the new urban development legislation and the PWA include:

    28.1. requiring the UDA to attempt to first acquire the land by agreement;

    28.2. requiring the UDA to apply to the Minister for Land Information to exercise compulsory acquisition powers (like any other part of the Crown);

    28.3. requiring the Minister for Land Information, when making a decision, to be satisfied that:

        28.3.1. the objectives for which the land needs to be taken are clear;

        28.3.2. alternative sites or methods have been considered;

        28.3.3. it is fair, sound and reasonably necessary to invoke the powers;

    28.4. giving the affected landowner the right to object to the Environment Court (except Crown agents, as discussed in paragraphs 41-45).

29. The new legislation will also include provisions ensuring the Treaty of Waitangi and Te Ture Whenua Māori Act 1993 are upheld, and that Treaty settlements are not diminished with regard to the UDA's use of compulsory acquisition powers. These provisions will be discussed in the later Cabinet paper addressing Māori interests.

The UDA will be able to acquire land (or an interest in land) to transfer to a third party

30. The new urban development legislation will enable the UDA to acquire land (including an interest in land) with the intention of transferring it to another person or entity. For example, this will mean the UDA will be able to acquire land to transfer to a private developer for the construction of KiwiBuild homes.

31. This proposal will also enable the UDA to create legal encumbrances, such as easements and covenants, over land in favour of network utility providers (e.g. energy and telecommunications providers). This will address circumstances where the development plan calls for network corridors to be created or shifted.

32. This proposal will also mean that the UDA can remove legal encumbrances from land. This ability will not apply to memorials that have been placed on land by statute, such as Treaty settlement legislation and Te Ture Whenua Māori Act 1993 (where applicable). It will also not apply to conservation covenants and caveats; instead the process proposed in the Reserves section will apply.

The new legislation will make clearer the types of works for which the UDA can access compulsory acquisition powers

33. Under the PWA, the UDA will be able to seek compulsory acquisition for a broad range of works, including roads and housing. I do not consider any new types of works need to be covered.

34. However, stakeholders have told me that the existing PWA definitions have created some uncertainty about what types of works are covered, especially the less common types such as urban renewal. This is because the definitions include vague overarching tests rather than listing by name the types of works that are covered.[2]

35. I am concerned this uncertainty could impact the UDA's use of compulsory acquisition because it could create legal risk. To mitigate this risk, I propose naming the works for which the UDA can access compulsory acquisition in the new urban development legislation, rather than requiring it to demonstrate that every work it proposes to undertake meets the more generic tests in the PWA on a case by case basis.

36. Additionally, I want to include a catch-all provision that makes it clear the UDA can also ask to access compulsory acquisition powers for any works that are not listed, but meet the tests under the existing PWA definitions.

The UDA needs more flexibility over how it compensates landowners

37. I want to retain the existing compensation regime set out in the PWA for the UDA. This regime sets out how landowners should be compensated for the taking of their land or interest in land. Landowners are entitled to "full compensation" so they are in no better or worse position than they were before the public work commenced. This means that landowners are not able to be compensated so they make a profit from the public work.

[2] The tests were designed to future proof the legislation. Between 1981 and 1987, the PWA included a definitive list of public works for which compulsory acquisition was available ("essential works"). This provided certainty, but at the expense of flexibility. It was removed in 1987 as it was considered too restrictive.

38. However, I also propose giving the UDA more flexibility around the way landowners are compensated. In particular, the new legislation will allow compensation to be paid by way of an equity stake in the project. This will incentivise landowners to sell by agreement, enabling a faster acquisition process. It will also go some way towards enabling landowners to share in the proceeds of profitable works.

Compulsorily acquiring Crown agent land

There will be a streamlined process for compulsorily acquiring Crown agent land

39. I have already outlined the proposed process for repurposing Crown-owned land for the UDA. A different process is needed to provide the UDA with land held by Crown agents[3].

40. Crown agents can own land in their own right. This means that, in situations where the UDA wants to use Crown agent land for a development project, this land must be acquired, either by agreement or by compulsion where agreement cannot be reached.

41. I propose introducing a streamlined decision-making process for the UDA to compulsorily acquire land owned by Crown agents.

42. In my view, the current PWA decision-making criteria for compulsorily acquiring land are not appropriate for land owned by Crown agents. This is because the criteria are designed to help protect the private property rights of the current landowner rather than to ensure the best outcomes for New Zealand. In addition, allowing Crown agents to access the usual objection rights under the PWA could create significant delays.

43. I want to address both of these issues by removing Crown agents' rights of objection under the PWA, and replacing them with a new process focussed on achieving the public interest.

44. Decisions on Crown agent land will instead be made by the UDA Minister, the Minister of Finance, the Minister for Land Information, and the Minister whose portfolio oversees or is responsible for the relevant Crown agent. In making decisions, Ministers will be required to consider the best use of the land in the public interest.

45. Importantly, the requirement to try to purchase the land by agreement before resorting to compulsion will still apply. The Crown agent will also be able to challenge valuation decisions in the Land Valuation Tribunal in the usual way, and will have access to judicial review.

I will report back on arrangements for developing Housing New Zealand land

46. While Housing New Zealand Corporation (HNZ) is a Crown agent, compulsory acquisition may not be the best approach to developing its land. This is due to the scale of its land holdings in existing urban areas (e.g. HNZ holds around 20,000 land parcels in Auckland alone), and the importance of integrating its tenancy management considerations into the development process.

[3] Crown agents are the form of Crown entity that has the least independence from the Government while still being a separate entity governed by their own board. Examples of Crown agents include District Health Boards and Callaghan Innovation.

47. I propose doing further work on arrangements for developing HNZ land, and will report back as part of the future Cabinet paper on the UDA's form, structure and governance arrangements.

Transferring land to private developers to deliver public works

No offer back will be required when transferring land to private developers for delivering a public work

48. I recognise that the UDA may not have the resources to deliver all of the public works in a development area. In some cases, it will need to rely on private developers to deliver works. To enable this, the UDA may wish to transfer land to a private developer for delivery of the public works. For example, such transfers may be necessary when a developer needs to own the land to be able to borrow to finance development.

49. Under the PWA, when land is not required for a public work, it must be offered for sale back to the owner it was acquired from, or the owner's successors. This applies whether or not the land was previously acquired by agreement or compulsion, and is known as the 'offer back obligation'.

50. However, there is a degree of confusion about when these offer back obligations are triggered, especially when private developers are involved in the delivery of public works. This confusion means the UDA cannot be certain in what circumstances it can transfer land to a developer without first having to offer the land back to former owners.

51. To address this confusion, I propose the new legislation will state that no offer back is required when land is transferred from the UDA to a private developer for delivery of a public work. This would apply provided that the UDA uses the 'right of resumption' mechanism (described in the following section) to maintain control of the development outcomes.

52. Cabinet has previously agreed that the UDA will have the power to vest certain infrastructure in appropriate receiving organisations, for example by transferring drainage works to a territorial authority [CAB-18-MIN-0243]. To enable this, the legislation will state that the UDA can transfer land for such works without triggering offer back obligations. If the recipient of the land no longer needs it for the work, then offer back obligations will apply to the subsequent transfer away from the recipient.

53. Some types of works in UDA project areas will ultimately end up in private ownership, such as houses, commercial or industrial buildings, or works to demolish, replace or repair existing buildings ('urban renewal'). To enable this, the new urban development legislation will state that such works can be transferred to the end owner without triggering offer back obligations. This will ensure that completed KiwiBuild homes can be sold to intended recipients, without first having to offer them to previous owners of the land.

54. The proposals in this section would mean that offer back obligations do not apply for a broader range of works than under the status quo.[4]

[4] Under section 15 of the Housing Act 1955, offer back obligations do not apply to the transfer of State housing land, ancillary commercial buildings and works for the benefit of the land or its occupants, such as roads and drainage works.

55. There is a case for treating former Māori freehold land differently to other types of Crown-owned land in the context of offer backs. I will cover this matter separately in the later Cabinet paper on Māori interests.

The legislation will have a new mechanism to incentivise private developers to deliver the intended public works

56. Under the status quo, it could be difficult for the UDA to ensure that any land transferred to a private developer is used to deliver the intended public work.

57. To mitigate that risk, I propose including a new mechanism in the new urban development legislation to allow the Crown to take back (or 'resume') any land transferred to a private developer before the relevant public works are completed on agreed terms. This will incentivise the developer to deliver what is intended. While this will be a new feature in the context of compulsory acquisition, a similar right exists in the State Owned Enterprises Act 1986.

58. The right of resumption would require the UDA and developer to enter into a development agreement that enables the UDA to:

    58.1. step in to ensure the specified work is completed on the agreed terms; and

    58.2. if necessary, resume the land through a streamlined compulsory acquisition process.

59. Under this proposed right of resumption, there would be two key changes from the usual process under the PWA. First, the Crown would not be required to attempt to negotiate an agreed purchase before initiating the process for compulsory acquisition. Second, the landowner would have no right of objection to the Environment Court.

60. If this right is invoked, the landowner would be entitled to compensation equal to the sale price paid to acquire the land from the UDA plus the actual cost of any agreed improvements the developer has made.

61. In addition, the legislation will empower and require the Registrar General of Land to place a memorial on the title of the land involved, noting the Crown's right to resume it. This memorial will be removed only after the intended works are completed to the UDA's satisfaction, or if the UDA decides not to resume the land (in which case, any offer back obligations will apply again to the land).

Reserves powers

The UDA will have a suite of powers over certain types of reserves

62. Reserves are important assets to New Zealanders, especially to the community near them, as they provide open spaces and places for recreation and socialising, and can have cultural, historical and natural significance.

63. Some reserves will be critical to protect. Other reserves need to be considered as part of urban development, to ensure the UDA has the option of reconfiguring land for optimal design when assessing a development as a whole. I therefore propose the new urban development legislation gives the UDA a suite of powers over certain types of reserves.

64. While these powers focus on changes to existing reserves, the UDA will also have powers to create new reserves and public open spaces to enhance a community's social and cultural wellbeing as part of the UDA's place-making functions.

Protected land

I want to protect some reserves as they are important national assets

65. To reflect the importance of scientific and nature reserves as national assets, I want these types of reserves to be excluded from the application of the reserves powers described in this paper. Such reserves are all administered by the Department of Conservation (DOC), and are largely confined to isolated places around New Zealand that are not suitable for urban development (e.g. the Hen and Chicken Islands Nature Reserve in the Hauraki Gulf).

66. In addition, I propose the new legislative powers over reserves should not apply to any of the following types of land:

    66.1. Māori reserves under the Māori Reserved Land Act 1955;

    66.2. Māori reservations under Te Ture Whenua Māori Act 1993;

    66.3. land administered under the National Parks Act 1980;

    66.4. land administered under the Conservation Act 1987;

    66.5. land administered under the Wildlife Act 1953; and

    66.6. land protected under the Te Urewera Act 2014.

Powers over some reserves

The UDA will have access to powers enabling certain types of existing reserves to be used for urban development and for better reserve outcomes

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

68. Using part or all of a reserve for development purposes could include: temporarily or permanently using reserve land for activities such as storing construction materials or building buried infrastructure; reconfiguring reserve shape or size to better fit with the proposed development or the current needs of its community; swapping one reserve area for another; creating a new reserve; or building on part or all of a reserve.

69. I propose the new legislation provides powers for the UDA to achieve the strategic objectives of a development project by, if appropriate, using all or part of certain existing reserves within a project area for development purposes. This will be subject to a range of checks and balances (discussed below), and following consultation with the public as part of the development plan process.

These powers will only be able to be exercised over Identified Reserves

70. I propose these powers can be exercised only over the following five types of reserves identified within a project area, known as Identified Reserves:

    70.1. government purpose reserves;

    70.2. scenic reserves;

    70.3. historic reserves;

    70.4. recreation reserves; and

    70.5. local purpose reserves.

71. To be consistent with existing safeguards in legislation, in particular under the PWA and the Reserves Act 1977, I propose the Minister of Conservation's consent be required before any powers can be exercised over Identified Reserves.

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

Open spaces

Development plans will need to specify which public open spaces in a development area will be classified as reserves

73. Cabinet has previously agreed the statutory purpose and principles of the new urban development legislation [CAB-18-MIN-0241]. The new principles include the need to recognise and provide for sufficient amenities and protected public open spaces.

74. Cabinet also agreed that each development project must have strategic objectives set in accordance with the purpose and principles of the new legislation that reflect the particular needs of that development project.

75. The development plan must give effect to the strategic objectives, so it will set out the provision of public open spaces and protections for reserves. I am proposing the development plan specifies which public open spaces in a development area identified by the UDA, in consultation with DOC, will be classified as reserves under the Reserves Act 1977, upon completion of the development project.

Setting apart mechanism for making changes to reserves

The UDA Minister will be able to set apart Crown-owned reserve land for development

76. Setting apart is the process of specifically stating what land owned by the Crown is to be used for. The land is set apart for a specific purpose and that purpose is often recorded via a *New Zealand Gazette (Gazette)* notice and/or on the computer register if one exists. Where the land has been set apart for some form of reserve, that setting apart will be revoked and the land will be set apart for a new purpose related to the proposed development.

77. For Crown-owned reserve land, I propose the new urban development legislation includes a provision based on section 52 of the PWA enabling the UDA Minister to approve, as part of the development plan:

    77.1. the setting apart of the Crown-owned reserve, changing it, in whole or in part, from reserve purposes to development purposes; and

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

78. The public will be consulted on this as part of the public consultation process on the development plan.

79. These steps have the effect of changing the use to which the land can be put and so removing the Reserves Act status over the land (and thus any controls such as bylaws or management plans). The land can then be used, temporarily or permanently, for purposes that would not be allowed under the Reserves Act 1977.

80. Some Identified Reserves are subject to their own specific legislation in addition to the Reserves Act 1977. Much of this specific legislation relates to racecourses, which are recreational reserves, but can also relate to other types of reserves.

81. I propose that the reserves powers in the new urban development legislation will be able to over-ride this specific legislation. This is because it will conflict with the reserve being set apart for development purposes under the new urban development legislation. As such, I propose that the new urban development legislation specifies that the specific legislation will not apply if these Identified Reserves are set apart using the new legislation. The setting apart will, in effect, remove both the application of the Reserves Act 1977 and the application of the legislation specific to it. This will allow the use of the land, temporarily or permanently, for purposes that would not be allowed under the Reserves Act 1977 or its specific legislation.

82. There has to be agreement from the Minister of Conservation that a reserve will be used for development purposes, and the Minister of Conservation can impose conditions on that agreement. As such, these conditions could include provisions from the specific legislation if they are appropriate to continue.

83. I propose the reserve status and applicable controls of an Identified Reserve, and its own legislation if applicable, continue to exist until the reserve status is changed by a *Gazette* notice, which sets apart the land for its new purpose, and not by the UDA Minister's approval of the development plan.

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

Once development is completed, the Minister of Conservation can create a reserve

85. Once development work is completed, if the development plan requires that an area of land become reserve (to either create or reinstate reserve status), I propose the new urban development legislation enables the Minister of Conservation to give effect to the development plan by creating a reserve. The Minister of Conservation will do this by publishing one or more notices in the *Gazette*:

    85.1. setting apart the Crown-owned land, thus changing it from development purposes to reserve purposes;

85.2. classifying the reserve in accordance with the development plan and the classifications in the Reserves Act 1977; and

85.3. vesting the reserve in the appropriate administering body (expected to be the local authority in most cases) in accordance with the development plan.

86. Classification and vesting under sections 16 and 26 of the Reserves Act 1977 both require public processes. Since public consultation about the intended classification and setting apart will have been undertaken as part of the development plan consultation process, there will be no need for further consultation.

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

The same setting apart process will apply to non-Crown-owned reserve land

88. I am proposing that the same process for setting apart for development purposes will apply to non-Crown-owned reserve land that has been acquired by the Crown (compulsorily if necessary) for the development, therefore becoming Crown-owned land. Examples of this include reserves owned by territorial authorities. In most cases, I expect that the local authority, if it has agreed to the development, will be willing for the land to be transferred into Crown ownership to enable the development project to be undertaken.

The UDA and the Minister of Conservation will be able to set apart land at the time appropriate to the development timetable

89. Once a development plan, which includes the approval of setting apart an Identified Reserve, has been approved by the UDA Minister, I propose the new urban development legislation allows the UDA to defer transferring administration of the former Identified Reserve land to a time appropriate for the development timetable, as required. Likewise, the legislation needs to allow the Minister of Conservation to set apart development land for reserve purposes at the time appropriate to the development timetable.

90. The UDA will be required to declare the land to be set apart at a specified date through a notice in the *Gazette*. This is an administrative power, which merely gives effect to the setting apart decisions already made by the UDA Minister when approving the development plan.

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

Any proceeds from setting apart reserve land should be treated in accordance with the Reserves Act 1977

92. I propose the proceeds or other financial aspects arising from any setting apart of reserve land should be treated in the same way as they are now, which is set out in Part 4 of the Reserves Act 1977.

Process for setting apart reserves

The UDA Minister will need the Minister of Conservation's approval on any strategic objectives for a development that affects reserves

93. There are two stages that must be undertaken before a development project can begin:

    93.1. the initial assessment and establishment of the project; and

    93.2. the development and approval of the development plan.

94. To inform the initial assessment, the UDA has to consult with all the key public and private stakeholders for the affected reserves, including Heritage New Zealand Pouhere Taonga (on historic and archaeological issues) and DOC (on reserves, amongst other things). Both can make recommendations. This will ensure that early advice about which sites could, or should not, be considered for development can inform the subsequent Cabinet decision on the project's boundaries and strategic objectives.

95. When consulting on strategic objectives that might change an existing reserve, I propose requiring the UDA Minister to obtain the Minister of Conservation's approval in two stages:

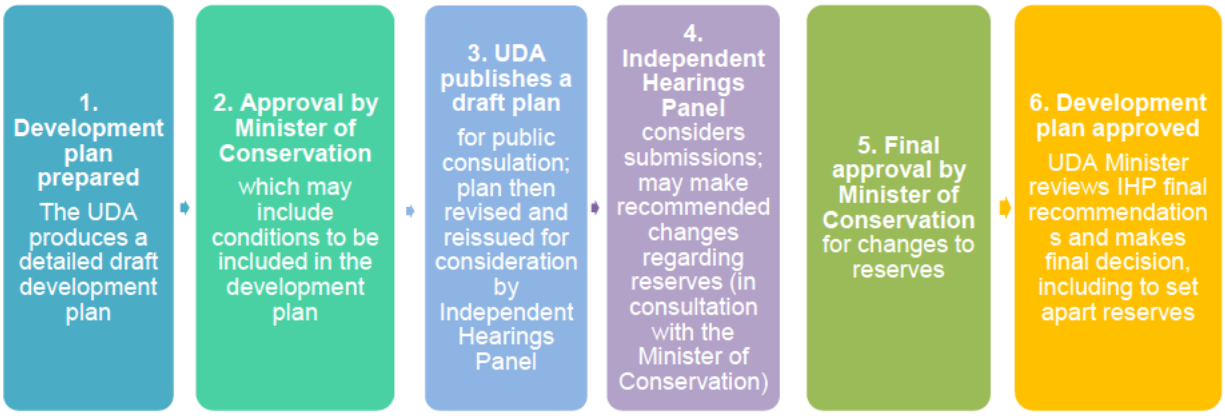
    95.1. in principle, before public consultation on the initial assessment; and

    95.2. finally, before the UDA Minister recommends establishing a development project (including its strategic objectives) to Cabinet.

96. As with all decision-makers, there will be a requirement on the Minister of Conservation to act in accordance with the purpose and principles of the new urban development legislation, and to make the decision that will best realise the relevant project's strategic objectives.

Further checks by Minister of Conservation

97. This diagram sets out the proposed process for obtaining the Minister of Conservation's consent for setting apart Identified Reserves and imposing any conditions during the development plan approval process.



98. Where the Minister of Conservation approves the setting apart of all or part of an Identified Reserve for development purposes, I am proposing approval must be given, and any conditions specified, prior to the draft development plan being released for public consultation.

99. Following public consultation on a draft development plan, the UDA will publish its recommended draft development plan. This will be followed by the Independent Hearing Panel (IHP) considering any submissions on that draft plan, and preparing a report and recommendations. To ensure political accountability for the use of the development powers, I propose that the UDA Minister approve the final plan.

100. I am also proposing the IHP cannot include any changes to an Identified Reserve, or conditions that the Minister of Conservation has set for using all or part of that reserve, in its final recommendation to the UDA Minister without first obtaining the prior agreement of the Minister of Conservation.

The Minister of Conservation's decision criteria for setting apart an Identified Reserve

101. In addition to the general requirements on decision-makers in the new urban development legislation, when deciding whether to agree to set apart all or part of an Identified Reserve, the Minister of Conservation will:

    101.1. have regard to the classification of the reserve and the purpose of that classification under the relevant sections of the Reserves Act 1977;

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

    101.3. 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).

102. In the case of scenic reserves, the Minister of Conservation will also need to be satisfied that any loss of scenic values will be appropriately mitigated by:

    102.1. implementing measures to improve the remaining part of the reserve; and/or

    102.2. 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.

103. For historic reserves, the Minister of Conservation will also need to be satisfied adequate provision will be made to provide for public visual appreciation of, and appropriate public access to, the historic heritage values.

104. For esplanade reserves and esplanade strips (being local purpose reserves), to protect public access and other values along the edges of watercourses and coastlines, the Minister of Conservation will need to be satisfied that:

    104.1. the UDA Minister considers that use of the area is essential to the development; and

    104.2. 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.

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

The UDA must consult on any proposed changes to an Identified Reserve before publishing the draft development plan

106. 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:

    106.1. the Department of Conservation;

    106.2. Heritage New Zealand Pouhere Taonga on historic and cultural heritage issues;

    106.3. the bodies that administer, manage and own the reserve;

    106.4. any lease-, licence-, permit- or concession-holders; and

    106.5. Ministers who have jurisdiction over the reserve.

There will be an additional check relating to conservation covenants

107. I am proposing the following additional check regarding conservation covenants over private land. Where a covenant[5] or a caveat (under section 137 of Land Transfer Act 1952[6]) over private land lies on a title in favour of Her Majesty the Queen, the Minister of Conservation's consent is required before the land is acquired by the Crown (therefore effectively revoking or cancelling the covenant or similar encumbrance).

A future Cabinet paper will look at how the reserves powers impact on Māori interests

108. A future Cabinet paper will discuss how the proposed reserves powers relate to Māori interests.

Reserve management plans and reserves bylaws

109. Setting apart a reserve using the new urban development legislation will mean that reserve management plans and reserve bylaws will cease to apply to that former reserve land. However, as part of the development plan, any protections (including controls from applicable bylaws and reserve management plans) required by the Minister of Conservation for any reserve land must be included in the development plan as conditions to the Minister of Conservation's approval.

[5] Under sections 76 to 77A of Reserves Act 1977, or section 27 or 27A of Conservation Act.
[6] This reference will become section 138 of Land Transfer Act 2017 when that section comes into effect sometime in the next 9 months.

Infrastructure Powers

The UDA needs a broad range of powers so infrastructure can be delivered efficiently and effectively

110. Mechanisms for planning and delivering infrastructure in New Zealand are complex. Different categories of infrastructure are planned for and delivered by an array of public, mixed and private sector bodies. Under current settings, no single entity has the full range of powers needed to undertake a comprehensive development at scale and pace. Furthermore, the infrastructure planning, provision, funding and financing powers that do exist can be slow and complex, and are spread across many statutes.

111. I expect the UDA will work constructively and collaboratively with local authorities and infrastructure providers. However, occasions may arise where, for matters of appropriateness, integration, capacity or capability, the UDA will need its own infrastructure powers. While these powers will generally be exercised alongside those of the territorial authority, the UDA may need to exercise a full range of powers when a local authority or other infrastructure provider is unable, unwilling or too slow to exercise their powers.

112. All the necessary infrastructure powers need to be available to the UDA when undertaking a development to ensure:

    112.1. the right infrastructure is in the right place at the right time;

    112.2. there is efficient and coordinated development of growth centres and corridors, including the integration of land use with transport infrastructure and other forms of infrastructure; and

    112.3. the powers are coordinated and accessible in a manner to maximise procedural efficiency.

113. Therefore, I am proposing the UDA has a broad range of powers to construct, provide, modify and protect infrastructure within the development project area. Many of the existing statutory safeguards that exist for these powers will continue to apply, though modified, to reflect that the entity using them is the UDA. The principal guiding and authorising document will be the development plan.

114. As an additional safeguard, none of these powers will override any requirements for the UDA to seek resource consents or building consents, when and where required.

The Urban Development Authority's relationship with stakeholders

The new legislation will ensure a partnership-based approach is progressed

115. Because the UDA will be dependent on infrastructure outside the project area, it is important that it works closely and collaboratively with territorial authorities and other stakeholders, including government agencies (e.g. the New Zealand Transport Agency) and private network utility providers (e.g. energy and telecommunications). If such relationships are not established, there is a risk that network connectivity or capacity could be compromised.

116. To ensure a partnership-based approach is progressed, I propose that:

    116.1. the legislation requires the UDA to consult, collaborate and work constructively with relevant territorial authorities, other central government agencies, and private utility providers; and

    116.2. there should be an expectation on territorial authorities to work constructively with the UDA.

117. To maximise the effectiveness of this partnership approach, and to increase the likelihood of the development project's strategic objectives being met, consultation and collaboration will need to begin at the outset of the project and continue throughout its lifecycle. The collaboration is expected to include territorial authority involvement in the selection of the project area and its boundaries.

118. As a guiding principle, the selection of the project area by the UDA and its partners, should as far as practicable incorporate those properties expected to directly benefit or be significantly affected by the provision of infrastructure associated with the project.

The UDA and territorial authorities will enter into a binding infrastructure and cost-sharing agreement if they agree to collaborate on a development project

119. Once a territorial authority has agreed to collaborate with the UDA, I am proposing the UDA and the territorial authority enter into a binding infrastructure and cost-sharing agreement. The agreement will:

    119.1. act as a safeguard against changes in circumstances that could compromise parties' commitments to the development during the implementation or construction stages; and

    119.2. provide certainty for all parties as to what is expected of them, the roles they will play, and the financial commitment they are responsible for.

120. I envisage the signing of the binding infrastructure and cost-sharing agreement will only take place after preliminary discussions about infrastructure and funding have taken place between the UDA and the territorial authority.

When partnership is not possible, the UDA will be able to require territorial authorities to provide the infrastructure necessary for development

121. Establishing a constructive partnership between the UDA and territorial authorities may not always be possible. Territorial authorities may not agree to work collaboratively with the UDA, either by opposing the development project or by being unwilling to make infrastructure commitments.

122. The UDA Minister may recommend to the Governor-General that a development project progresses, even when there is no territorial authority support, if it is in the national interest.

123. In such cases, the UDA may require the territorial authority to provide the infrastructure necessary for the development. Where this occurs, the UDA and relevant territorial authority may enter into a cost-sharing agreement. Under such an agreement, the apportionment of infrastructure costs would be guided by principles based on cost allocations according to:

    123.1. the distribution of the benefits between the community as a whole and the parties in the project area; and

    123.2. the extent to which the UDA actions or inactions contributed to the need for the infrastructure.

124. Where a territorial authority is required by the UDA to provide infrastructure, but is unable to meet the costs, the UDA may meet the total cost, provided that the benefits of doing outweigh the dis-benefits.

125. If the UDA is unable to meet the full cost of the infrastructure outside the project area, and no cost-sharing arrangement with the territorial authority can be agreed, then it can consider: scaling back the project; changing the project's specifications; seeking additional private capital; or withdrawing from the project.

126. I will provide more information around how disputes arising over a cost-sharing agreement will be dealt with in the future Cabinet paper discussing the UDA's form, structure and governance arrangements. This is because the processes for resolving these disputes will depend on the form of the UDA[7].

Local authorities will need to ensure consistency between their own plans and the objectives of the development project and development plan

127. It is important that the UDA's development projects and timelines are not frustrated by local authority plans restricting the provision of infrastructure in or to the project area.

128. I propose the new urban development legislation requires local authorities to ensure their Local Government Act 2002 and Land Transport Management Act 2003 plans are not inconsistent with the objectives of the development project and the development plan, whether or not they have agreed to a development project. This requirement will operate alongside the one which requires local authorities to have regard to the development plan, where relevant, when reviewing their plans and policy statements.[8]

129. Ensuring their plans are not inconsistent may require local authorities to amend their planning documents and bring forward infrastructure projects outside the project area. Given that UDA project development will likely take several years, the requirement to change plans should not present significant issues for councils.

130. If a plan is not aligned with the strategic objectives, the new urban development legislation will enable it to be amended through one of the following mechanisms:

    130.1. a truncated plan amendment process, where consultation undertaken as part of the development plan preparation process is deemed to have fulfilled the consultation and hearing requirements of the Local Government Act 2002; or

[7] For example, hearings over proposed rates and rates increases are normally heard by elected members (of a council), but the governance arrangements for the UDA have not yet been decided.
[8] Agreed by Cabinet on 28 May 2018 [CAB-18-MIN-0243 refers].

130.2. where the territorial authority and UDA agree sufficient time is available, the normal plan change or amendment processes provided for under the Local Government Act 2002 or Land Transport Management Act 2003.

131. Changes to local authority plans have the potential to create additional funding pressures on local authorities. By way of mitigation, the UDA will be expected to fund its share of the cost of any additional infrastructure, or the cost of infrastructure that was either not anticipated or had to be brought forward in time.

The UDA will be able to fund infrastructure out of sequence or outside the project area

132. The UDA may bring forward the delivery of infrastructure, out of sequence from what is outlined in local strategic plans. It may also require infrastructure outside of the project area to be altered or upgraded. This could happen either directly on the initiative of the UDA, or indirectly through a local authority amending its plan.

133. In both cases, this could disrupt and place financial pressures on the local authority within whose jurisdiction such infrastructure is located. Consequently, I propose that, in consultation and collaboration with the relevant local authority, the UDA will fund its fair and proportional share of infrastructure that is out-of-sequence and/or outside the project area.

134. When a local authority is unable to fund this infrastructure, the UDA may fund the infrastructure required, or arrange alternative financing arrangements. Any infrastructure that is paid for and/or built by the UDA will vest in the relevant local authority upon completion of the development project (or earlier by mutual agreement).

The UDA will have the power to create, suspend or amend by-laws

135. Sometimes there may be bylaws within a project area that get in the way of achieving the project's objectives. There may also be circumstances where the UDA may need powers to restrict or control activities. Therefore, I am proposing the UDA has powers to create its own bylaws, and suspend or amend local authority bylaws within the project area.

136. The bylaws created or changed by the UDA will not be permanent. They will only exist for the duration of the development project, or until a date agreed between the UDA and the relevant territorial authority (whichever occurs sooner). A UDA may also amend or repeal its own bylaws at any time.

137. The process for creating, suspending or amending bylaws will form part of the development plan process in the first instance. However, where bylaws need to be created, amended or suspended at a later date, the UDA may do so by:

137.1. *for bylaws that apply inside the UDA's project area* – a process of consulting the relevant local authority; preparing a draft of the new proposal; and seeking submissions and holding hearings on the proposed bylaw (or amendment or proposal to suspend). This would be done as though the UDA is a local authority acting under the Local Government Act 2002; or

137.2. *for bylaws that apply outside the UDA's project area* – a process of notifying the relevant territorial authority of the bylaw to be amended or suspended, then incorporating any changes recommended by the territorial authority. The territorial authority would then adopt the bylaw as though it were its own (following the resolution processes set out in the Local Government Act 2002).

138. These bylaw powers will be limited to sites or activities that are related to specific project areas or their objectives. This will include bylaws relating to functions of the UDA as the road controlling authority and road corridor manager for roads within a project area.

139. I do not consider it necessary for the UDA to require bylaws intended to protect, or which can aid the protection of, air or water quality to be suspended, amended or created (e.g. bylaws relating to the disposal of trade wastes, or which assist with silt and sedimentation control). Therefore, I propose that powers to override bylaws relating to these matters are not provided for in the new urban development legislation.

140. I also do not believe it is warranted for the UDA to have the power to revoke a local authority bylaw, or require the local authority to revoke bylaws. Bylaws will generally have wider application than inside the project area as they usually intend to meet the broader needs of the community. However, as provided for above, the application of the bylaw to the project area could be suspended or amended for the duration of the development works, if justified.

Infrastructure of national significance

Any benefits of the UDA making changes to infrastructure of national significance are outweighed by the wider risks

141. In 2017, stakeholders provided feedback on a discussion document looking at an urban development authority. One of the key pieces of feedback was that some infrastructure networks are of high national significance. These include:

    141.1. the national grid electricity transmission network;

    141.2. major gas or oil pipeline services (e.g. Refinery to Auckland Pipeline from Marsden Point to Wiri);

    141.3. state highways and government roads;

    141.4. the New Zealand rail network, including suburban rail systems;

    141.5. primary airports;

    141.6. commercial ports; and

    141.7. any Defence Force land, buildings or interests in land and airspace.

142. In my view, any benefits derived from the UDA making changes to this infrastructure are outweighed by wider risks to public supply, operator and public safety. There are also potentially high costs involved in the UDA undertaking works on these networks. Such costs could increase significantly if remedial actions are required because UDA works interfere with or undermine network operations, or do not meet performance requirements or standards.

143. To manage this risk, I propose the new urban development legislation provides greater protection for nationally significant infrastructure, including any associated designations. Any works by the UDA on this infrastructure must have operator input and approval as part of the initial assessment. Operators will also have the opportunity to consult on, or collaborate (dependent on project circumstances) with the UDA during the preparation of the project development plan.

144. As the effects of a development can have effects on nationally significant infrastructure both inside and outside the UDA project area itself (e.g. increased demand on roading and electricity networks, including the national grid), the UDA would need to consult with operators irrespective of whether their infrastructure was in the project area from the phases of the urban development project.

Infrastructure powers in more detail

The UDA will have powers relating to green infrastructure

145. I am proposing that the UDA can provide, modify or move green infrastructure, or set requirements for others to provide green infrastructure within the project area. Green infrastructure includes natural eco-systems (such as streams) and built products, technologies and practices (such as rain gardens) that primarily use natural elements or engineered systems mimicking natural processes to provide utility services.

The UDA will have powers to enable the creation of an integrated transport system

146. An integrated transport system is necessary for providing a diversity of travel options, and ensuring modal choice and accessibility between the project area and the wider city. Although a range of transport services and infrastructure types can, and are, provided by local authorities and the New Zealand Transport Agency, a lot of transport infrastructure within urban development tends to be provided by developers.

147. As the UDA is likely to play the role of a developer (and in some cases a local authority), it will need powers to stop, modify and construct transport networks and public transport facilities or services to meet a development project's strategic objectives[9]. I propose the UDA has essentially the same powers as Auckland Transport for building, moving and managing land transport infrastructure. However, the UDA will not be given powers that are more appropriately left with local authorities, such as preparing regional land transport plans, setting or enforcing public transport fares, or enforcing moving vehicle offences.

148. I also want the legislation to make the UDA an approved public organisation under the Land Transport Management Act 2003. This will enable the UDA to access the Government's National Land Transport Fund and associated co-investment funding programme to support the construction of major local roads or connections to state highways within a project area.

149. The UDA will become road controlling authority and corridor manager for all roads within the project area so that it can manage access to and activities on roads for the duration of the project. I consider this power necessary in circumstances where the relevant territorial authority may be unable or unwilling to exercise their powers as a road controlling authority or corridor manager in the project area.

150. With regard to Māori roadways, the UDA will have the same functions, powers and responsibilities as a territorial authority acting under section 324A of the Local Government Act 1974. This will include a duty for the UDA to consult with the relevant iwi or hapū (or owners, as appropriate) prior to altering or using the road or the land on which it sits.

[9] There will be caution required for nationally significant infrastructure.

151. Infrastructure that is paid for or built by the UDA within the project area will vest in the appropriate infrastructure operator upon completion of the development project (or earlier by mutual agreement). In most instances, this is likely to be the relevant territorial authority. Where there is any outstanding debt in relation to this infrastructure, both the debt and revenue stream to pay for it will also be transferred, such that the net effect would be material change to a territorial authority's crucial debt-to-revenue ratio.

152. Particular care will need to be taken regarding public transport, as regional councils co-ordinate land transport strategic planning and contract service delivery from private providers. The UDA will not have the ability to direct regional councils and public transport operators to provide additional public services or network changes, so as to avoid immediate adverse impacts on regional council budgets and their contracts with operators. Such an action could also trigger a formal review of regional land transport plans, which could then lead to re-allocations of regional public transport funding.

153. To support each UDA project's transport requirements, I propose that regional councils have a duty to collaborate with the UDA when developing their regional land transport plans, the regional public transport plans, 30-year infrastructure strategies, and for decisions arising from other projects (e.g. the Auckland Transport alignment project).

154. This duty will apply where such plans or projects will affect the UDA project area, either by virtue of the project area being in the region, or where the UDA project is in an adjoining region, but is served by the transport services managed or controlled by the regional council.

The UDA will have powers to build, modify or move water infrastructure

155. The provision of high-quality 'three waters' services (drinking water, wastewater, and stormwater) and drainage is critical to the success of urban developments. As with transport infrastructure, trunk and headwork infrastructure tends to be provided by territorial authorities, with developers providing much of the infrastructure within a subdivision. As a developer itself, the UDA will need powers to commission, construct, alter and repair three waters infrastructure within a project area. I therefore propose that UDA have similar powers to a territorial authority to build, modify or move water infrastructure.

156. Responsibilities of the UDA may include:

    156.1. sourcing, treating and transporting potable water (via treatment plants, pumping stations and water mains) to the project area;

    156.2. collecting, transporting, treating and disposing of wastewater from the project area; and

    156.3. stormwater management.

157. I also want the UDA to have the power to drain land, or repair, upgrade or move existing drainage systems, subject to any rules or resource consents required by a regional plan prepared under the Resource Management Act 1991.

158. Although I envisage care will be taken in project area site selection and design processes to avoid wetlands, the UDA may still be faced with having to manage sites or connecting routes that have poor drainage. In other instances, it may be taking over brownfield or greyfield sites that have existing drainage systems that need to be repaired or need to be moved.

159. Draining of land, or moving or repairing drainage systems, can have significant ecological impacts, as well as upstream and downstream impacts such as flooding or contamination. Therefore, such works will remain subject to any application of regional plan rules or resource consent requirements intended to avoid, remedy or mitigate significant adverse effects on the environment.

160. It is important that any works undertaken or contracted by the UDA must not compromise existing services or the ability of a local authority to serve communities in its district. I propose that, when planning and providing water infrastructure or drainage works, the UDA must work constructively and consult or collaborate with the local authority (including council-controlled organisations), government agencies and relevant landowners.

161. Any three waters or drainage infrastructure that is paid for and or built by the UDA within the project area will vest in the relevant local authority upon completion of the development project (or earlier by mutual agreement). Where there is any outstanding debt in relation to this infrastructure, both the debt and revenue stream to pay for it will also be transferred.

The UDA will be responsible for ensure new developments are fully connected to energy and telecommunications networks

162. The UDA will be responsible for ensuring new developments are fully connected to existing private network utility services, including gas, electricity and telecommunications. I propose the UDA may request or contract private operators to install, modify or move their assets to cater to the needs of the development project and those who will live or work within the project area.

163. Unless specifically negotiated with the UDA, the existing owner of any network utility infrastructure will continue to own and maintain their infrastructure within the project area, and keep their rights of access once a development project is established.

There will be offences, penalties and enforcement relating to actions compromising a development's strategic objectives and outcomes

164. Over the course of a development project, there will sometimes be instances where the actions of people, whether deliberate or through negligence, may compromise a development's strategic objectives and outcomes. Examples of potential offences include: obstructing enforcement officers or agents of the UDA; obstructing or damaging land transport or three waters infrastructure works or property; and failing to comply with the UDA's plan rules or bylaws.

165. There is no guarantee that the territorial authority will always agree to take on enforcement responsibilities for UDA rules and bylaws within the project area. While it would be preferable for a territorial authority to be an enforcement agency, the UDA needs to have a reserve power to enforce its own development plan.

166. In such cases, I propose the offender be liable for conviction, enforcing penalties set out in existing legislation (Local Government Act 1974, Local Government Act 2002 and Land Transport Act 1962). Depending on the circumstances of the offence, I propose that the offender would also be ordered to pay the costs incurred by the relevant entity in mitigating the offender's actions or for repairs to damaged works or property.

167. However, it is important that the new urban development legislation allows for defence to be presented, which if satisfactory to the court would result in penalties not being enforced. I propose for a defence to be successful, the offender would need to prove that their actions were necessary, their conduct was reasonable, the offence was caused by a factor beyond their control, and the effects of the action were mitigated to the extent possible by the offender.

168. I am also proposing the UDA has the same power as a territorial authority to enter onto private land, but not a marae or dwellings, for surveying, or for checking, protecting and maintaining infrastructure.

Funding powers

169. It is important the UDA has revenue streams that allow it to fund and pay for its projects, including land, infrastructure and building work so that:

    169.1. debt and borrowing can be repaid and funds are able to be recycled into further UDA development projects (or further phases of the same development project);

    169.2. development projects are commercially viable and attractive to others who may wish to partner with the UDA in delivering a project;

    169.3. community support for establishing a project area is obtained;

    169.4. the development and associated infrastructure is built to a standard that provides a quality environment for residents and businesses, and benefits or minimises adverse effects on the environment;

    169.5. negative impacts on the Crown balance sheet are minimised in the long term; and

    169.6. the potential inability or unwillingness of debt-constrained local authorities to provide, expand, allow connection to, or have vested in them infrastructure required by the UDA is overcome.

170. Where possible, the local residents and businesses that will benefit directly from new or upgraded infrastructure within the project area should pay their fair share of the construction costs. This is consistent with the view of the Productivity Commission's 2017 *Better Urban Planning* report.

Proposed funding mechanisms for works within the project area

171. As well as being able to acquire and sell land (including associated infrastructure) to fund development projects, I want the UDA to have the following powers and mechanisms available to it:

    171.1. targeted rates

    171.2. development contributions;

    171.3. service charges; and

    171.4. betterment payments.

The UDA will be able to charge targeted rates to pay for infrastructure, services or assets

172. Local authorities have an ability to charge a targeted rate for the provision of infrastructure or services within a defined geographic area, or according to certain specified circumstances. Revenue from targeted rates can be put to a variety of specified purposes, including repaying borrowing or bonds for identified projects or services.

173. I propose the new urban development legislation include powers to enable the UDA to apply a similar form of targeted rate on property owners in the project area to pay for constructing or expanding infrastructure, services or assets from which they will benefit. This targeted rate would be imposed over and above any other rate imposed by the local authority for services and infrastructure that are not provided by the UDA.

174. Restricting the powers of the UDA to impose a targeted rate or charge on properties within a project area would address likely wider community concerns about the equity of alternative options, such as setting a general rate on all ratepayers in a district to fund localised infrastructure, works and services. This is particularly applicable in larger urban areas where many residents would be remote from, and not interact with, a development project.

175. I also propose the UDA be required to consult with affected landowners on targeted rates or any equivalent charge it proposes to impose through the preparation of a rating policy (prepared as part of a development plan). The UDA will be required to follow a similar process to a local authority when reviewing and updating its rating policy and setting rates each subsequent year, but with modifications to incorporate the particular consultation and decision-making unique to the UDA.

176. While set by the UDA, the targeted rate or charge would be administered, collected and enforced by the relevant territorial authority on behalf of the UDA, with the revenue provided to the UDA. The territorial authority would have the ability to recover its costs of administering, collecting and enforcing the rate from the UDA. I consider this arrangement will avoid complications and inefficiencies that may otherwise arise through the UDA duplicating local authority roles and record-keeping functions.

177. I intend for the UDA's targeted rate to be separate from, but additional to, any other territorial authority rate that may apply to a property or rating unit in the project area. The rate must be shown separately in any rates assessment notice or invoice. This is because the local authority will still be providing services or other infrastructure to the project area, which will not be provided by the UDA.

Targeted rating accountability and representation matters will be dependent on entity form, structure and governance

178. A targeted rate is a form of locally applied tax. A general principle of law is that there should be no taxation without appropriate representation and accountability. Normally this would be met through having locally elected representatives (such as a council) making rating decisions.

179. The precise approach to managing matters of representation and UDA accountability will depend on the governance arrangements for the UDA. I intend to finalise the governance arrangements as part of the future Cabinet paper on the UDA's entity form and structure.

Development contributions will enable the UDA to get developers to pay their share of UDA infrastructure they will benefit from

180. There may be occasions where land within a development project area is owned and under development by parties who are not associated with, or partnered with, the UDA. Therefore, these parties have not reached a cost-sharing agreement with the UDA. In these cases, it is fair for such developers to pay their share for UDA-provided infrastructure that their developments will benefit from.

181. Within a development project area, I propose that the UDA will have the broadly the same powers as a territorial authority to require private developers to pay development contributions, including the power to enter into development agreements. Development contributions are a pro-rata upfront payment that a developer pays for their share of the capital costs a territorial authority incurs when providing infrastructure for the benefit of the developer's development.

182. Similar to territorial authorities, the UDA would be required to prepare and consult on a development contributions policy. This will form part of the development plan.

183. Furthermore, where development contributions are being proposed as part of the development plan process, I propose that objections and considerations to development contributions be determined by the development project's independent hearing panel instead of processes contained in the Local Government Act 2002.

184. Where the development contributions policy needs to be reviewed or amended, subsequent to the approval of the UDA's development plan, the normal reconsiderations and objection processes for development contributions under the Local Government Act 2002 will apply, as though the UDA is a territorial authority.

The UDA will be able to charge a service charge

185. There may be cases where development contributions or targeted rates are considered inappropriate or inefficient, but a person is clearly benefitting by connecting to a service provided by the UDA. In these cases, I am proposing that the UDA can charge for connections to UDA-provided water infrastructure, or for the use of other UDA-provided services, other than those associated with transport networks (where connection charges may be impractical or inappropriate[10]).

[10] For example public transport fares are more appropriate set by the relevant regional council and / or the service operator

186. The service charge will take a similar form to the fees and charges that local authorities set under section 150 of the Local Government Act 2002. The fees and charges will initially be consulted on and set as part of the development plan, and then updated through UDA bylaws in a manner similar to how local authorities do now.

The UDA will have powers to require landowners to pay betterment to help offset infrastructure costs

187. To help offset the costs of acquiring land for infrastructure works, I propose the UDA has similar powers to require a land owner to pay betterment as a territorial authority under the Local Government Act 1974.

188. The ability to require betterment payments enables money to be recouped from persons who are identified as having benefitted from works undertaken by the UDA through an increase in the value of their land.

189. Under section 326 of the Local Government Act 1974, the ability to require betterment payments will only apply where:

    189.1. the landowner's land fronts onto a transport improvement work provided by the UDA (whether in the project area or immediately adjacent to it); and

    189.2. the transport improvement work concerned results in an increase in the value of the landowner's land.

190. However, this section only deals with situations of road construction or widening. It has not been modified since 1985, and takes no account of other improvements that can take place within or alongside a road corridor, such as the provision of light rail, busway or cycleway facilities.

191. With busway and cycleway facilities now becoming more common, and with light rail planned for the near future, I want the new urban development legislation to allow betterment to be applied in circumstances where land is required for these types of infrastructure.

192. As there will likely be few occasions in which betterment payments can be required, I do not see betterment powers as a main source of funding, but as a complementary mechanism to other possible value capture mechanisms.

I have asked for further advice on other value capture mechanisms

193. Value-capture mechanisms, such as taxing land-value uplift, have been identified by the Productivity Commission as potential options for funding infrastructure development and upgrades to cope with urban growth.

194. Value capture mechanisms reserve for the community some of the increase in land value that is created by public actions, such as land re-zoning for higher densities, or providing new or improved infrastructure (extending roads or services to a new area). The value of the uplift is generally capitalised in the property price, and a levy is charged to property owners based on the increase in value accrued by the properties that benefit.

195. Overseas experience indicates that value-capture approaches require careful design and consideration before being introduced, as most involve some form of tax or levy. If poorly timed or applied, such taxes or levies can undermine the commercial feasibility of a project, making some projects no longer attractive to potential partners. It can also put severe stress on residents or businesses that may not be able to pay the amount demanded and so have to sell their property.

196. Although the UDA will have access to value-capture mechanisms in the form of buying and selling land and the limited use of betterment, further powers which use a taxation or levying approach may be added at a later date (as "bolt-on" powers).

197. Work on a value capture approach that imposes some form of tax or levy on an increase in land value is being undertaken separately to the UDA proposals and to a different timetable. The different timetable is intended to ensure alignment and consistency with the work and preliminary findings of the Taxation Working Group, Urban Growth Agenda (infrastructure funding and financing work stream), Three Waters Review and the Local Government Funding Inquiry.

Managing project area across-boundary funding issues

198. Benefits accruing to landowners from UDA works will not necessarily stop at the boundary of the project area (e.g. a roading improvement or new park that could be used by people living outside the project area). Equally, new developments within the project area are likely to use and benefit from infrastructure and services that exist outside the project area (e.g. libraries, parks, public transport services, or water treatment and storage facilities).

The UDA will not have the power to collect revenue from those living outside the project area

199. The ability for the UDA to charge rates or require development contributions or other charges from those outside the project area could be problematic in terms of transparency, accountability and administrative complexity. Therefore, I propose that only the relevant local authority, not the UDA, has the power to collect revenue from residents living outside the project area.

200. A cost-sharing approach, if it takes place, would need to be in accordance with a funding agreement developed between the UDA and local authority. This would need to take into account the scale and nature of costs incurred (or which will be incurred), and the extent to which people in and outside the development area will benefit.

201. Where a local authority and the UDA cannot agree on how costs should be shared, the matter can be referred to the independent hearing panel appointed to make decisions on the development project.

Local authorities will be able to recover the costs of infrastructure and services it provides to the project area

202. I propose that a local authority be able to recover the costs of infrastructure and services it provides to the development project area, whether or not the assets or staff that provide those services are physically located in the project area.

203. Unless otherwise agreed by the local authority and UDA, cost recovery would be through:

    203.1. existing development contribution mechanisms, as though the UDA were a regular developer; and

    203.2. existing rating and charging mechanisms, as appropriate, applied to residents and businesses in the project area (in a similar way to how charges and rates are imposed on those outside the development).

204. This approach is considered the simplest to implement. The ability of local authorities to charge rates can continue provided it does not charge for the same infrastructure and services as the UDA does.

205. I propose that the flexibility for local authorities to enter into bespoke funding and cost sharing contracts or agreements[11] with the UDA be retained. In some instances, existing local authority funding and cost-recovery approaches may be insufficiently flexible to meet the needs or circumstances of the local authority or the UDA. An example of such flexibility could involve the UDA paying for works that may otherwise have been paid for by the local authority, in order to bring forward in time infrastructure that the local authority may not yet be in a position to provide.

Safeguards on the use of funding powers

206. Similar funding power checks and balances to those that apply to local authorities are also expected to apply to the UDA, except where the first use of the powers is proposed during the development plan preparation process. In this case, objections or appeals (other than those relating to betterment) will be considered by the independent hearing panel in the first instance. Regarding betterment, objections will continue to be determined by the Land Valuation Tribunal as already provided in the Local Government Act.

207. As there could be a number of infrastructure owners and operators working in or having jurisdiction over the same project area, I propose the UDA be prohibited from engaging in double dipping (forcing developers, builders or homeowners to pay twice for the same assets or activities). This restriction would be similar in application to section 200 of the Local Government Act 2002, which exists to prevent double dipping when charging development contributions.

Third party provision of infrastructure

208. To help reduce the cost of infrastructure falling on territorial authority balance sheets, I propose private investors or infrastructure providers also be allowed to help fund or provide infrastructure in the project area. Proposals to help enable and incentivise this to occur, such as the use of infrastructure bonds and the securing of revenue streams, will be covered in the future Cabinet paper on entity structure and cover the financing powers and permissions for the UDA.

[11] For example, under the power of general competence and development agreement provisions of the Local Government Act 2002.

Consultation

209. The Treasury, Ministry for the Environment, Department of Internal Affairs, Land Information New Zealand, Department of Conservation, Ministry of Transport, New Zealand Transport Agency, Te Puni Kōkiri, Office of Treaty Settlements, Ministry of Justice, Ministry of Education, State Services Commission, Ministry for Primary Industries, New Zealand Defence Force, Heritage New Zealand Pouhere Taonga, Ministry of Culture and Heritage, Ministry of Health, Housing New Zealand Corporation, Transpower New Zealand, Fire and Emergency New Zealand, Legislation Design and Advisory Committee and Parliamentary Counsel Office were consulted on these proposals. The Department of Prime Minister and Cabinet was informed.

210. There has been considerable consultation on many of the powers in this paper. Some of this was done through discussion documents issued by the Government in 2008 and 2017, and some was done through open public consultation as part of the development of Productivity Commission reports in 2015 and 2017. There have been discussions with a range of councils and network utility operators and owners about what the UDA could and should do, including infrastructure and funding powers.

Local government has been generally supportive of the UDA approach

211. Local government had previously been generally supportive of a UDA approach where the local authorities held an effective right of veto over development projects proceeding.

212. In 2018, testing of proposals with a selected group of local authorities found that while a partnership between central and local government was preferred, there could be times when central government may need to proceed without local government agreement. However, all of the local authorities agreed this may not be a significant issue if the objectives of the council and the Government were still generally aligned.

213. While councils were concerned about the impact of UDA developments on council balance sheets and the loss of planning control in the project area, this was offset by councils recognising the potential for the UDA to undertake transformative developments and potentially pay for its own infrastructure, in a way that local developments and councils cannot currently.

214. Local authorities agreed that the UDA should have the ability to levy targeted rates, and that local authorities collect the rates on behalf of the UDA. This was provided that the local authority was able to recover its costs from the UDA; UDA rates were shown separately in invoices; and the ability of the local authority to levy rates was not adversely impacted.

Legislative Implications

215. This paper proposes new legislation and seeks Cabinet's authority to instruct the PCO accordingly. Cabinet has previously agreed that these proposals be referred to PCO for drafting this year [CAB-17-MIN-0042].

216. I recommend that the new Act bind the Crown. This is because the new legislation contains development powers that development projects comprising Crown-owned land or projects led by a Crown agent would benefit from being able to access.

217. The Ministry of Business, Innovation and Employment (MBIE)[12] will engage with the Legislation Design and Advisory Committee on issues arising under the Legislation Guidelines during the drafting process, and report back to Cabinet on any concerns.

Impact Analysis

218. The Regulatory Quality Team (RQT) at the Treasury reviewed the Regulatory Impact Assessment (RIA), "Supporting complex urban development projects with dedicated legislation", produced by MBIE and dated May 2018. The review team considers that it meets the Quality Assurance criteria.

219. While the RIA is lengthy, MBIE has developed the analysis over a number of years and the detailed analysis reflects that time and effort. The RIA has a clear structure, and exhibits clear thinking on the nature of the problem and the available options for each issue. The analysis also identifies that there are adverse potential impacts for current residents and property owners.

220. RQT notes that implementation of the UDA (including form, budget, and reporting) will be addressed by MBIE and the State Services Commission in separate advice to be submitted to Cabinet later this year.

Human Rights

221. The new legislation is not intended to create any new powers of compulsory land acquisition. Instead, I am proposing that the new urban development legislation enables the UDA to ask the Crown to exercise the current powers of compulsory acquisition for existing types of public works. The main risk is that this increases the frequency with which these powers are used, with the potential to reduce public confidence in freehold land title. This could result in landowners being discouraged from investing in the development of their land. Crown agent land may also be compulsorily acquired, with the right to appeal to the Environment Court replaced with decisions made by Ministers in the public interest.

222. The check against this risk is that the final decision on compulsory land acquisition will continue to be made by the Minister for Land Information, and will continue to be subject to the safeguards provided in the PWA.

Publicity

223. I will manage the publicity resulting from any decisions recommended in this paper in consultation with the Prime Minister and the Minister for the Environment.

Proactive Release

224. I will release this Cabinet paper to the public at an appropriate time.

[12] From 1 October 2018, this work will be led by the Ministry of Housing and Urban Development.

Recommendations

I recommend that the Economic Development Committee:

1. **note** that on 20 December 2017, Cabinet agreed [CBC-17-MIN-0051] 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;

2. **note** that on 28 May 2018 Cabinet agreed [CAB-17-MIN-0243] the core components of the UDA and its enabling legislation, including the decision making framework and new statutory processes;

3. **note** that:

    3.1. this is the second in a series of Cabinet papers on detailed policy proposals for urban development legislation that seek authority to issue drafting instructions;

    3.2. it is accompanied by the third Cabinet paper in the series, which covers the scope and application of the planning and consenting powers;

    3.3. further Cabinet 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;

4. **note** that references in these recommendations 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. **agree** that the new legislation bind the Crown;

6. **authorise** the Minister of Housing and Urban Development to make subsequent policy decisions on related details consistent with the policy proposals discussed in this paper;

7. **invite** the Minister of Housing and Urban Development to issue drafting instructions as soon as possible to the Parliamentary Counsel Office (PCO) to give effect to the policy decisions in this paper, and to give effect to any subsequent policy decisions made by the Minister of Housing and Urban Development on related details;

8. **note** that:

    8.1. Cabinet has previously agreed that the Housing Commission (Urban Development Powers) Amendment Bill be given 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. **agree:**

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 the year);

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. **agree** 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; and

10.1.7. any 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 refers];

Application

12. **note:**

12.1. this paper and the accompanying paper define the more enabling development powers the new legislation will make available for selected complex development projects ('development powers');

12.2. Cabinet has 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 refers];

13. **agree**, 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 refers];

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); and

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 recommended 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; and

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. **note** that these recommendations 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 this paper may have to be revised to accommodate and reflect that decision;

Proposals for land assembly

15. **note** that the land assembly proposals are subject to the decisions 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. **agree**, 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 ("PWA"); and

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. **note** 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. **agree** 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; and

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. **agree** 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. **agree** 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. **note** 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. **agree** 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;

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. **agree** that notwithstanding recommendation 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. **note** 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. **agree** 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. **agree** 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. **agree** 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. **agree** 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. **note** 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. **agree** 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. **agree** 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. **agree** 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. **agree** that the new legislation provide that the process set out in recommendation 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. **agree** that in the circumstances in recommendation 33:

    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. **note** 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. **note** 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. **agree** 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. **agree** 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 recommended 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. **note** Cabinet has agreed 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 refers];

40. **agree** the new legislation provide that, for any of the specified works listed in recommendations 26.1 to 26.21 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. **agree**, 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 recommendations 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. **agree** that any consideration of an obligation under sections 40 and 41 of the PWA is made by the chief executive of Land Information New Zealand;

Private developers delivering public works

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

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; and

45.8. land protected under the Te Urewera Act 2014;

Strategic objectives

46. **note** 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. **agree** 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. **agree** 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; and

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; and

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. **agree** 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. **agree** 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. **note** that some Identified Reserves will be subject to their own specific legislation as well as to the Reserves Act 1977;

52. **agree** that the powers over reserves recommended above apply to all Identified Reserves, including those also subject to their own specific legislation;

53. **agree** 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. **note** that the Minister of Conservation can include any conditions in his/her 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. **agree** 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; and

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. **agree** 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. **agree** 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. **note** that to give effect to the strategic objectives, Cabinet has decided [CAB-18-MIN-0241] 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;

59. **agree** 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; and

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; and

59.4.2. that 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. **agree** 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; and

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. **agree** that the development plan specify which public open spaces will be classified as reserves under the Reserves Act 1977;

62. **note** 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. **agree** 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; and

    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. **agree** 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. **agree** 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; and

        65.2.4. other organisations that have responsibilities in relation to roads, rail, water and transport networks;

66. **note** 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. **agree** 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. **note** that on 28 May 2018, Cabinet agreed that [CAB-18-MIN-0243]:

    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;

69. **agree** 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. **agree** 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. **agree** 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. **agree** 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; and

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

73. **agree** 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. **agree** 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. **note** 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. **note** 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. **agree** 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. **agree** 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; and

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

79. **agree** 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; and

    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. **agree** 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. **agree** 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. **agree** 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; and

    82.2. in respect to making bylaws, only relates to bylaws applying in the project area;

83. **agree** 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. **agree** 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. **agree** 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; and

    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. **agree** 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. **agree** 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; and

    87.2. the approval of enforcement actions to enforce bylaws;

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

88. **agree** that the UDA may suspend or amend territorial authority bylaws that apply to an area wider than the project are which restrict or constrain the construction, alteration or moving of infrastructure required to service the development project;

89. **agree** 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; and

        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; and

    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. **agree** that the UDA be a requiring authority under section 167 of the Resource Management Act 1991;

91. **agree** 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. **agree**, 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. **agree** 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. **agree** that the UDA follow the following consultation process 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; and

    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. **agree** 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. **agree** 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. **agree** 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. **agree** that the UDA, or project lead, must obtain all necessary subdivision, resource and building consents required by law;

99. **agree** 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. **agree** 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. **agree** 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. **agree** 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; and

    102.5. checking and assessing utility services;

103. **agree** 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. **agree** that the relevant individuals on site must produce written evidence of their authorisation, if requested to do so, and 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. **agree** 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. **agree** 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. **agree** 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. **agree** that the UDA must undertake the works in accordance with any reasonable conditions that the property owner or occupier imposes following these notifications;

109. **agree** 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. **note** 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. **agree** 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. **agree** 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. **agree** 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. **note** that the powers of Auckland Transport include the ability to lay out new roads; alter the course of any road; alter the width of a road; determine which part of a road shall be a carriageway; alter the level of any road; stop or close a road or any part of a road; make a temporary road while a road is being repaired; build or modify any footpath or cycleway; and sell surplus soil;

115. **note** that, under the powers above, the UDA will have the power to commission and construct public transport facilities and ancillary infrastructure;

116. **note** 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. **note** that the powers above 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. **agree** 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. **agree** 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. **agree** 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. **agree** 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; and

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. **note** 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 the implications of this will be addressed in the later Cabinet paper concerning Māori interests;

123. **agree** 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. **agree** 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. **agree** 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. **agree** 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; and

126.2. may transfer any outstanding debt and revenue stream to repay that debt to the local authority;

127. **agree** 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. **agree** 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; and

    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. **agree** 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. **agree** 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. **agree** 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 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; and

    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. **agree** 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; and

    132.3. have regard to the efficient movement of people, vehicles, freight and access requirements of emergency services;

Three waters and drainage

133. **agree** 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. **agree** 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. **agree** 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. **agree** 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; and

    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. **agree** 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. **agree** 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. **agree** 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. **agree** 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; and

140.3. must remedy or mitigate any negative upstream or downstream effects that occur as a result of the UDA's actions;

141. **agree** 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; and

141.2. may transfer any outstanding debt and revenue stream to repay that debt to the local authority;

Private utilities

142. **agree** 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; and

142.2. require network utility operators to install or alter existing network utility assets (gas, electricity, and telecommunications) within road corridors;

143. **agree** 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; and

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. **agree** 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. **agree** 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. **agree** that, except as otherwise provided in recommendation 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. **agree** 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. **agree** 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. **agree** that it be an offence to incite any other person to commit an offence as described above;

150. **note** 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. **note** that the list of offences reflects those outlined in section 357(1) of the Local Government Act 1974 with all necessary modifications;

152. **agree** 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. **agree** 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. **agree** 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. **agree** 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:

155.1. that 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. **agree** 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. **agree** 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. **agree** 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. **agree** 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. **agree** 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. **note** 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. **agree** 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. **agree** 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. **agree** 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. **agree** 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. **agree** 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. **agree** 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. **agree** 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. **agree** 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. **agree** 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; and

    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. **agree** 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. **note** 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. **agree** 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; and

    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. **agree** 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 the territorial authority must accept the appointment;

175. **agree** 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. **agree** that where the UDA is dissatisfied with the enforcement actions or territorial authority, the UDA have the ability to take enforcement action itself;

177. **agree** 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. **agree** 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. **agree** 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 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. **agree** 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. **agree** 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. **agree** 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. **note** that, other than set out in these recommendations, the existing rating powers of local authorities in respect of the project area are unaffected;

UDA rating remissions, postponements and rebates

184. **note** 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. **agree** 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. **agree** 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. **agree** 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. **agree** 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. **agree** 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. **agree** 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. **agree** 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. **agree** 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. **agree** 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. **agree** 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. **agree** 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. **agree** that the UDA may review its development contributions policy at any time, but not less than once every three years;

197. **agree** 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. **agree** that requests for reconsiderations of development contribution requirements be heard and determined by the UDA;

199. **agree** 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. **agree** 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. **agree** 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. **agree** 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. **agree** 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. **agree** 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. **agree** 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. **agree** 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. **agree** 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. **agree** 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. **agree** 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. **agree** 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. **agree** 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. **agree** 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. **agree** 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; and

    213.4. use of money from betterment;

Across-boundary funding arrangements for infrastructure

214. **agree** 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. **agree** 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. **agree** 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. **agree** 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. **agree** 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 recommendation above;

219. **agree** 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. **note** 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. **note** 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.

Authorised for lodgement

Hon Phil Twyford

Minister of Housing and Urban Development