

In Confidence

Office of the Minister of Housing and Urban Development
Office of the Minister for the Environment

Chair, Economic Development Committee

Legislation to empower complex urban development projects: powers relating to resource management planning and consenting

- 1 This paper seeks your agreement for a national urban development authority (UDA) to have more enabling resource management powers and processes within its development project areas (project areas).
- 2 This paper complements, and should be read alongside, a separate Cabinet paper the Minister of Housing and Urban Development is presenting on policy details for the UDA's powers relating to land assembly, reserves, infrastructure and funding.

Executive Summary

- 3 We have previously agreed to develop new legislation to enable central government to undertake complex urban development projects through a national UDA [CBC-17-MIN-0051 refers].
- 4 The Government has committed to delivering more affordable housing and liveable cities. The UDA, and the associated resource management powers and processes detailed in this paper, are one of the ways we can deliver on this priority.
- 5 This proposal does not seek agreement for any comprehensive review or reform of the Resource Management Act 1991 (RMA).
- 6 The resource management powers and processes that we propose be made available to the UDA are part of a suite of wider powers with appropriate checks and balances, which we are presenting to Cabinet in a series of Cabinet papers. These powers will enable complex, integrated urban development, including housing and infrastructure, at pace and scale.

Resource Management powers

- 7 In this Cabinet paper, we are seeking your agreement for the UDA to be able to use the following **enabling resource management powers within a project area**, where these are necessary to realise the project's strategic objectives. The extent and application of these powers will be set out in the development plan for each project. The powers are:
 - 7.1 Overriding (to extent of any conflict), adding to, or suspending provisions in existing RMA plans and regional policy statements (but not the whole plans), with exceptions for historic heritage and provisions from Treaty settlements;

- 7.2 having the ability to exercise some territorial authority functions within the project area, including:
 - 7.2.1 district council decision-making on resource consents, the compliance, monitoring and enforcement of those consents (except where the UDA is the applicant or is in partnership with the applicant) and related subdivision administration;
 - 7.2.2 the transfer or delegation of decision making functions; and
 - 7.2.3 setting administrative charges;
 - 7.3 altering, moving, removing or replacing existing designations and recommending new designations, except for nationally significant infrastructure.
- 8 We also propose that the UDA be a requiring authority that can apply for designations for infrastructure and public works, and a heritage protection authority that can require heritage orders. This will allow the UDA to use the RMA's processes for designations and heritage orders regardless of whether this is part of a formal development project approved by Order in Council.
 - 9 Not all of the proposed development powers will be useful or appropriate for every development project, or for the entire duration of a project. However, the resource management powers and processes proposed are likely to apply to some degree to most large urban development projects.
 - 10 All of the UDA's **development projects will benefit from more enabling resource management processes**. We propose that the following apply to all of the UDA's project areas for the duration of the project:
 - 10.1 all decisions on RMA plan changes and variations, resource consents, designations and heritage orders must be in accordance with the purpose and principles of the new legislation and must realise the project's strategic objectives;
 - 10.2 streamlined decision making on resource consents, including on notification, particularly for controlled and restricted discretionary activities;
 - 10.3 limited appeals on resource consent decisions;
 - 10.4 transitional provisions, which apply after the project is established, but before the development plan is approved (thus implementing the UDA powers). The UDA can veto or amend any plan change or land use or subdivision resource consent if this action is necessary to realise the development project's strategic objectives.
 - 11 The development plan will continue to direct urban development in the project area until the development project is completed. At this point, any powers allocated to the UDA lapse, and all planning and consenting is returned to the relevant local authorities. Local authorities will then manage these areas according to their plans, which will often have been amended during the UDA process.

- 12 Additionally, the **UDA may use existing RMA processes**, either in part or in full, to achieve its development projects. This includes the UDA's ability to exercise its requiring authority and heritage protection authority status.
- 13 We propose that in considering the environmental effects addressed through the development plan, the UDA must have particular regard to the views of the relevant local authorities.
- 14 This paper has one appendix with a table illustrating how development plan provisions override RMA plan provisions

Background

Previous Cabinet decisions on establishing the UDA with enabling powers

- 15 On 20 December 2017, the Cabinet Business Committee agreed in principle to establish the UDA, along with new legislation to enable selected complex urban development projects to operate with more enabling development powers and land use rules [CBC-17-MIN-0051 refers].
- 16 On 28 May 2018, Cabinet agreed to recommendations in the first of a series of Cabinet papers on detailed policy proposals for the UDA and enabling legislation [CAB-18-MIN-0243 refers]. Those recommendations covered:
 - 16.1 the core concepts for the form and establishment of the UDA and its projects, including the nature of areas where development might take place and the types of developments eligible;
 - 16.2 the decision making framework, principles and statutory processes by which the UDA will operate (including the content of the development plan, consultation processes and access to judicial review);
 - 16.3 the role of independent hearing panels in making a recommendation on a development plan, and the role of the Minister responsible for the UDA as the final decision maker on a development plan; and
 - 16.4 the roles of central and local government in UDA developments.
- 17 This paper defines the more enabling planning and consenting development powers the new legislation will make available for selected complex development projects. 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].
- 18 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).

Upcoming papers contain proposals for UDA enabling powers

- 19 Future Cabinet papers will cover other aspects of the UDA proposal required to enable urban development, including:

19.1 Māori interests; and

19.2 the UDA entity form, structure, governance and financial arrangements.

UDA will have enabling resource management powers within the project area

The UDA has powers to override RMA planning documents

- 20 Cabinet has agreed that existing resource management planning documents (e.g. regional policy statements, and regional and district plans), including any planning policy and rules, remain by default unless they are changed through the development plan process [CAB-18-MIN-0243 paragraph 11.2 refers].

Development Plan

- 21 Cabinet has set a process for the development of the development plan [CAB-18-MIN-0243], which includes:
- 21.1 two rounds of public consultation in which any member of the public may submit on the plan;
- 21.2 the hearing of submissions by an independent hearings panel (IHP) appointed by the UDA Minister and led by a current or former Environment Court judge.

RMA national direction applies to a development project

- 22 Cabinet also agreed that the development project's strategic objectives and the development plan must be consistent with national direction¹ under the RMA [CAB-18-MIN-0243 paragraphs 27.4 and 55.7 refer].

Development plan provisions sit overtop existing RMA plan provisions

- 23 We propose that the development plan will be able to **override (to the extent of any conflict), add to, or suspend** provisions in RMA planning documents for the duration of the development project. This will only occur where necessary to realise the project's strategic objectives. Otherwise, the RMA planning documents continue to apply in the project area. However, the development plan provisions take priority where they are in place.
- 24 The development plan cannot override, add to, or suspend any provisions arising from Treaty of Waitangi settlements and historic heritage matters as detailed in the section on heritage below.
- 25 Appendix 1 illustrates how a development plan may override, add to, or suspend rules in RMA planning documents.

¹ National Policy Statements, New Zealand Coastal Policy Statement, National Environmental Standards, National Planning Standards

A development plan must state whether resource consents require notification

- 26 The RMA currently provides for the status of notification for rules requiring resource consents to be specified in a plan. Local authorities may specify that a resource consent must be publicly notified; is precluded from public notification; or is precluded from limited notification. We propose that for development plan rules requiring resource consent as a controlled or restricted discretionary activity, any requirement for, or preclusion of, notification must be stated in the plan.
- 27 By requiring notification to be stated, greater certainty can be provided for plan users, including resource consent applicants. This approach provides discretion for the UDA to consider who needs to be involved when it exercises control over some aspects of the development, such as urban design. This also means more certainty is provided to the public about when they can have a say on a resource consent application.
- 28 We propose that for rules where notification requirements are not stated in the development plan, any decision by a consent authority to notify a resource consent application will be made on the basis of adverse effects as required under the RMA.

A development plan may reference and copy other provisions

- 29 Provisions in existing plans and policy statements prepared by local authorities and other agencies may have direct relevance to the development plan. The development plan can use this content to help achieve a project's strategic objectives. We propose that the development plan is able to replicate provisions from existing plans and policy statements², and incorporate provisions in them by reference. This will often have the effect of elevating the importance of these existing provisions within the project area.

Relevant development plan provisions can be integrated with RMA planning documents

- 30 Resource management functions (e.g. resource consenting, monitoring, compliance) and land-use planning for the project area needs to be integrated and work efficiently within the existing resource management system. To achieve this, we propose the development plan provisions (policies and rules) override, add to, or suspend existing provisions in RMA planning document. These development plan provisions will become deemed RMA planning document provisions once the Minister responsible for the UDA (the UDA Minister) approves the final development plan, for the duration of the project.
- 31 Local authorities will be able to incorporate these new development plan provisions into their ePlans, online plans and paper versions accordingly.
- 32 The "override, add to, or suspend" approach allows the UDA to continue operating under its particular plan provisions, regardless of any amendments local authorities make to their RMA planning documents during a project. Local authorities can also amend their RMA planning documents to manage the project area into the future, after the UDA project finishes. They are also able to manage the integration of the project area with the wider environment. At the time when a local authority regains responsibility over an area, if its relevant planning documents have not been updated in respect of the UDA project area, it will have the opportunity to adopt the provisions it wishes to retain (see paragraphs 47-50 below).

² Including plans prepared under the Zero Carbon Act, once enacted.

- 33 Despite being deemed RMA planning document provisions, the development plan provisions can only be changed by varying the development plan [CAB-18-MIN-0243 paragraphs 66-68 refer], unless in response to a RMA planning document plan change covering the project area (see paragraph 46 below).
- 34 We note that the draft first set of RMA National Planning Standards currently being developed includes a spatial planning tool currently called a Development Area. This tool can override existing plan provisions to enable development of a specific area for a period of time. The Minister for the Environment must approve the first set of National Planning Standards by 18 April 2019. From this date, the UDA can use the planning tools in the Planning Standards to help integrate development plan provisions with existing RMA planning documents.

Treaty settlements continue to have effect

- 35 Cabinet has agreed the development plan must give effect to any applicable Treaty settlements [CAB-18-MIN-0243 paragraph 54.2 refers]. As RMA planning documents may be prepared or changed to give effect to Treaty settlements, an existing development plan could potentially undermine a Treaty settlement where it prevails over the RMA planning document. We propose that a development plan may not override, add to, or suspend provisions in RMA planning documents that give effect to a Treaty settlement. The future Cabinet paper on Māori interests will include specific proposals for how we intend to ensure the UDA gives effect to the spirit and intent of Treaty settlements.

Protection of historic heritage continues

- 36 We propose the new legislation will continue to protect our built and natural heritage. We recognise that our historic heritage is important. This includes the special relationship of Māori with their ancestral land, waters and other resources in their rohe.
- 37 Cabinet has agreed the development plan must adopt at least the same level of protection for significant historic heritage and sites of significance for mana whenua provided for in existing district and regional plans [CAB-18-MIN-0243 paragraph 55.5 refers]. We propose that planning rules managing and protecting existing historic heritage in district and regional plans will continue to apply in project areas. The development plan may also include new protections, or strengthen existing protection, for historic heritage. To avoid doubt, we note that protection of historic heritage and sites of significance to Māori in district and regional plans apply regardless of land ownership.
- 38 Heritage orders and the relevant parts of Part 8 (Designations and Heritage Orders) of the RMA will continue to apply. The UDA will be a heritage protection authority, and can make a requirement for a heritage order to protect the special heritage qualities of a place or structure within a project area.
- 39 On the completion of a project, any heritage orders the UDA is responsible for as the heritage protection authority must be transferred to the relevant territorial authority or Heritage New Zealand Pouhere Taonga.

The Minister of Conservation has a role in approving development plan provisions that affect regional coastal plans

- 40 The scope of the development plan could cover areas of the coastal environment managed under regional coastal plans. Under the RMA, the Minister of Conservation has a role in approving regional coastal plans. We propose the Minister of Conservation continues this approval role in relation to any provisions which override, add to, or suspend existing provisions in regional coastal plans.
- 41 We propose the Minister of Conservation will be given 20 working days to approve, reject or change any draft development plan provisions that override, add to or suspend regional coastal plan provisions. The UDA must receive the Minister of Conservation's approval for these provisions before releasing the draft development plan for consultation and submissions. The Minister of Conservation must also approve any later changes to these provisions by the UDA or the IHP). Because of these earlier approvals, the UDA Minister is able to approve the final development plan without a separate approval from the Minister of Conservation.
- 42 When the Minister of Conservation makes decisions on the parts of the development plan that override, add to or suspend regional coastal plan provisions, the Minister must:
 - 42.1 act in accordance with the purpose and principles of the UDA legislation, and must make decisions to best realise the project's strategic objectives (CAB-18-MIN-0243 paragraph 30.1 refers); and
 - 42.2 ensure that the development plan provisions that override, add to or suspend regional coastal plan provisions are consistent with national policy statements, the New Zealand Coastal Policy Statement, national environmental standards, and national planning standards (structure, format, definitions, metrics, electronic functionality) (CAB-18-MIN-0243 paragraph 55.7 refers).

Evaluation report for changes to RMA planning documents

- 43 Currently, when changing RMA planning documents, local authorities must prepare and publish an evaluation report (under section 32 of the RMA) to assess the need, appropriateness, efficiency and effectiveness of the changes. We see significant value in requiring the UDA to complete a similar report for development projects. A project-specific evaluation report will provide a clear evidence base and analysis to support consultation on the proposed development plan. Members of the public and the IHP holding hearings on the proposed development plan will be able to evaluate the quality and effectiveness of the plan.
- 44 We propose that the UDA must publicly release an evaluation report that assesses the need, appropriateness, efficiency and effectiveness of any proposed override, addition to, or suspension of provisions in RMA planning documents, when notifying the recommended development plan for submissions. The evaluation report would apply relevant parts of section 32 of the RMA (Requirements for preparing and publishing evaluation reports) within the context of the purpose and principles of the new legislation and the strategic objectives of the project. The level of detail in this report would depend on the scale and significance of the anticipated effects of changes implemented through the development plan.

- 45 If the development plan contains no changes to RMA planning documents, the evaluation report would not be required.

The UDA can update development plans to reflect RMA plan changes

- 46 Local authorities may change their RMA plans during the lifetime of a development project. This may be to give effect to new national direction, to update standards, or to address new resource management issues. However, an RMA plan change could impact the achievement of the strategic objectives of a development project. To address this risk, we propose that the UDA is able to update its development plan to override, add to, or suspend provisions that were part of the RMA plan change. This update can be done without using the development plan variation process outlined in CAB-18-MIN-0243 paragraph 66. We propose that this update would be limited to retaining the development plan's strategic objectives and the planning provisions that applied before the RMA plan change happened, and would also remain consistent with national direction under the RMA.

Unless relevant local authorities adopt resource management provisions of the development plan, the provisions expire at the end of the project or before

- 47 We propose that a development plan will cease to have effect at the date the Order in Council establishing a project is revoked. Prior to this, we propose that the UDA provides the local authority with an opportunity to adopt the provisions of the development plan in part or in full without the need for a plan change process under Schedule 1 of the RMA. Where this does not occur, any provisions which overrode, added to, or suspended provisions in RMA planning documents will cease to have effect.
- 48 Whether or not the local authority has adopted the development plan provisions, active resource consents granted under the development plan rules will continue and activities established based on the development plan's permitted development rules will have existing use rights. We note that once exercised, land use resource consents continue in perpetuity under the RMA.
- 49 A development project may happen in stages and across different locations. We propose that the development plan can state that provisions that were inserted into RMA planning documents can be withdrawn at specified times (for instance, at the completion of a stage of the development) before the project is dis-established.
- 50 For example, stage 1 of a development may be completed well before stages 2 and 3. In this case, the development plan could state that the development plan's land use rules do not apply to the stage 1 area when the UDA publicly notifies that stage 1 has ended.

Additional weight given to consultation with local government

- 51 It will be important for the success of the development project, and for the positive management of environmental matters both in and surrounding the project area, that the UDA establishes and maintains strong relationships with the relevant regional council and territorial authority.
- 52 To achieve this, we propose that the UDA must have particular regard to the views of regional councils and territorial authorities when consulting with them as part of the

initial assessment of a proposed development project, and when preparing the draft development plan [CAB-18-MIN-0243 paragraphs 47 and 53.1 refer].

- 53 As part of this consultation, we propose giving regional councils and territorial authorities the opportunity to provide written comment and recommendations on the assessment of environmental effects [CAB-18-MIN 0243 paragraph 55.9 refers] at the project assessment stage and the draft development plan stage. Decision-makers must consider these written comments and recommendations, if provided, as part of the project's initial assessment and development plan process.

The UDA has powers to exercise some territorial authority RMA functions within the project area

- 54 In the resource management system, a range of functions are carried out by local authorities. These functions have direct relevance to the UDA's ability to undertake a development project. These functions include district plan consenting, compliance, monitoring, and enforcement, recommendations on notices of requirement for designations and heritage orders (which are new and different from those of the territorial authority), and processing of consents required by National Environmental Standards.
- 55 In some cases, for activities occurring under the development plan, these functions will be more efficiently carried out by the UDA than the relevant local authority.
- 56 We propose that the UDA legislation authorises the UDA to exercise the following functions for the purpose of implementing the development plan:
- 56.1 consent authority – i.e. processing, granting and reviewing resource consents under the development plan, district plan and under relevant rules in national environmental statements, within the project area;
 - 56.2 subdivision of land, for example, approving a survey plan, within the project area;
 - 56.3 monitoring, compliance and enforcement of resource consents that the UDA has issued, and of permitted activities where the UDA wants to ensure that permitted conditions are being met;
 - 56.4 administrative charges, for example the cost of processing resource consent applications and certificates of compliance;
 - 56.5 transfer of powers to another public authority³, for when the UDA decides that a function allocated to it is more efficiently done by another public agency in a particular instance; and
 - 56.6 delegation of powers and functions to employees and other persons (e.g. independent commissioners).
- 57 However, the exercise of planning powers for a particular project will depend on: the scale and nature of the project; the capacity of territorial authorities; agreements with local authorities; and the degree of UDA intervention. For this reason, we propose

³ To transfer powers, a local authority must have used the special consultative procedure set out in section 83 of the Local Government Act 2002.

that the development plan for each project will allocate these RMA functions, what they are to be used for, and for how long.

- 58 The legislation will authorise the power to produce the development plan, including its resource management provisions [CAB-18-MIN-0243 paragraph 52 refers].
- 59 If the development plan gives the UDA the consenting function, the UDA may choose to delegate this function to the territorial authority, or to independent commissioners. Delegation to the larger territorial authorities may be effective as these territorial authorities may have capacity, and have access to knowledge and information, the UDA does not.
- 60 We propose the UDA must delegate its consenting, compliance, monitoring and enforcement functions to the territorial authority, or to independent commissioners (for consenting only), in any circumstances where the UDA is the applicant or in partnership with the applicant. This will avoid the UDA being both the applicant and the decision-maker.
- 61 Making decisions on regional plan consents, and compliance and monitoring over regional matters often relies on detailed technical information, systems and environmental knowledge, which is held by the regional council. For this reason, we propose that the regional council continues to process any regional resource consents needed in the project area (including for regional rules that are modified or added through the development plan).
- 62 The regional council will also keep compliance, monitoring, and enforcement roles under its regional plans. However, when making decisions on regional consents sought within the project area, the regional council must apply the decision-making framework set out in the UDA legislation.

The UDA will have powers over designations within the project area

- 63 Currently Ministers of the Crown, local authorities, and network utility operators with financial responsibility for a public work may exercise the right to designate land⁴ for the purpose of providing essential infrastructure through the lodging of a notice of requirement to the territorial authority.
- 64 Within a project area, designations may already exist and be contained in the relevant district plan for the area. At the time a district plan is reviewed, a requiring authority has to indicate whether it wishes to roll-over any existing designation. We propose that the same requirement apply in the context of a project area when a development plan is being prepared.
- 65 We propose the new legislation includes a power that enables a UDA to recommend altering, removing, or replacing an existing designation within its project area, but that the recommendation can only be confirmed with the Minister's approval. We also propose that for new designations that may be sought, the notice of requirement will be to the UDA, rather than the territorial authority, and the UDA will have the power to

⁴ Or in respect of any land, water, subsoil, or airspace where a restriction is necessary for the safe or efficient functioning or operation of a public work

approve or otherwise the requiring authority proceeding to lodge a notice of requirement for the work. We also propose that the new legislation provide the UDA with the right to issue and make recommendations on notices of requirement for heritage orders.

- 66 Nationally significant infrastructure (e.g. the National Grid, KiwiRail tracks, international and national airports, state highways and defence land) and associated designations would be exempt from the exercise of these powers. In addition, where an existing designation supporting network infrastructure is to be removed, the UDA, in preparing its development plan, must provide a replacement designation that serves the same function unless the requiring authority agrees otherwise.

- 67 The UDA will also have the status of a requiring authority under the RMA.

Development projects will benefit from streamlined resource management planning and decisions

All decisions must be made in accordance with the new legislation

- 68 As well as allocating RMA resource consent functions to the UDA, we propose streamlining the existing RMA processes for resource consents to ensure efficient decision-making within the project area. We propose:

68.1 decisions on resource consents within the project area must:

- 68.1.1 be in accordance with the purpose and principles of the new legislation;
- 68.1.2 realise the project's strategic objectives; and
- 68.1.3 be consistent with national direction;

68.2 timeframes for consent processes and rights of public hearing and appeal processes are limited.

- 69 The UDA, through the development plan, has the power to override (to the extent of any conflict), add to, or suspend provisions in RMA planning documents for the project area. Any activity that would meet the project's strategic objectives can be classified as a permitted activity (i.e. does not need resource consent). Activities that generally meet the development project's strategic objectives, but the UDA wants to have some control over can be classified as a controlled activity (i.e. guaranteed consent, but subject to conditions). By taking this approach, the UDA can use the development plan to promote the delivery of decisions on developments in a more straightforward and timely manner.

The UDA will have new streamlined resource consent, subdivision and land amalgamation processes

- 70 We propose introducing two new processes for processing resource consent applications in the project area. This is because the assessment and consultation that will happen during the development plan process will involve extensive public consultation and consideration by an independent hearings panel (IHP). To ensure

development is expedited, we propose introducing two new processes for processing resource consent applications in the project area.

- 71 The first process, Process A, will be for controlled and restricted discretionary activities under the development plan or district plan, or regional plan (including regional coastal plans). Process A consents for land use and subdivision activities will follow shorter time frames than is usual for a consent under the RMA. The streamlined changes for consenting, where they may differ from the RMA, are summarised in Table 1 below.

TABLE 1: Timeframes for resource consents in a project area

	Process A	Process B
Type of consent	Controlled, and restricted discretionary	Discretionary, non-complying
If non-notified, consent processed within:	10 working days for non-notified controlled and restricted discretionary land-use and subdivision activities 20 working days for any restricted discretionary activities requiring consent from the regional council	20 working days for discretionary and non-complying activities
Notification decision	Within 10 working days for controlled and restricted discretionary	20 working days for discretionary and non-complying
Submissions period	20 working days (consent authority can extend)	
Hearing	No hearing for restricted discretionary land use and subdivision activities Optional hearing for other restricted discretionary activities	Optional for discretionary Required for non-complying (unless no submissions received)
Decision-making	Must use UDA decision-making hierarchy, including the need to achieve the strategic objectives, plus must have regard to sections 104 to 108A of the RMA (as applicable)	
Decision date if a hearing is not held	Within 10 working days from lodgement of application for non-notified applications If notified, within 15 working days of close of submissions	If hearing held, within 15 working days from end of hearing If non-notified and no hearing, within 20 working days from lodgement of application If notified, but no hearing, within 20 working days of close of submissions
Appeals	Following any Environment Court appeal, further appeals cannot go higher than the High Court.	Following any Environment Court appeal, further appeals cannot go higher than the High Court.

- 72 Process B resource consents for discretionary and non-complying activities under the development plan, district plan, or regional plan will follow RMA processes, although with some shortened timeframes. Hearings for discretionary activities will be optional, but are mandatory for non-complying activity applications, unless no submissions are received.

Streamlined notification processes

- 73 When notification of a resource consent is required, we propose hearing requirements for notified consents be limited as set out in Table 1 below.
- 74 The intent of this limitation is to provide an avenue for notified parties to participate in the resource consent process, while reducing overall timeframes for a decision. By not providing for a hearing process, the timeframes for issuing a decision on the resource consent will be reduced. As there is no intent to curb appeal rights to the Environment Court, submitters will retain an avenue to appeal the resource consent decision.

Subdivision and amalgamation of land

- 75 Subdivision and the amalgamation of land, vesting of land and easements, and reclamations will continue to be authorised by section 218 and the processes of Part 10 of the RMA. However, the timeframes for processing controlled or restricted discretionary subdivision consents will be those for the streamlined Process A consenting track.

UDA has a role in advising UDA Minister on the IHP's recommendations

- 76 Cabinet has agreed that an IHP will hear submissions on the development plan, and that its recommendations will be reported to the UDA Minister who will then make a decision to accept or reject the development plan, or return it to the IHP for further consideration (CAB-18-MIN-0243 paragraph 65 refers).
- 77 We consider that the role of the UDA at this part of the process should be enhanced to ensure the UDA has an opportunity to respond to the IHP's recommendations, while retaining a robust and transparent process.
- 78 We therefore propose adding a role for the UDA in the development plan process to advise the UDA Minister on the IHP's recommendations before the UDA Minister makes a decision on the recommended development plan. If the UDA advises the Minister that the IHP's decisions regarding part or all of the development plan would limit achievement of the project's strategic objectives, the Minister can decide to refer the development plan back to the IHP for further consideration.

Judicial Review and Limited Appeals

Judicial review and limited points of law appeals on the development plan are available

- 79 Cabinet has agreed that for the development plan, there is no right of appeal on merit, but judicial review remains available [CAB-18-MIN-0243 paragraphs 15 and 16 refer]. Cabinet delegated to us to determine the manner and extent of any appeals on points of law [CAB-18-MIN-0243 paragraphs 17 and 18 refer].
- 80 We have determined that points of law appeals should be available for submitters on the approved development plan. However, the Court of Appeal would be the final appeal court, rather than the Supreme Court.
- 81 Judicial review will also be available, but we propose that this right be required to be exercised at the same time as any points of law appeal. This approach is consistent with the one taken in the Auckland Unitary Plan process, where the High Court was directed to hear a points of law appeal and judicial review simultaneously if possible. This will ensure appropriate rights to challenge the development plan are available, but that these do not cause undue delay.

Appeals on resource consents within the project area are limited to the High Court

- 82 In the resource management system, less than 0.3% of resource consents were appealed between 2014 and 2016. We propose additional mitigation measures to reduce delays caused by appeals. These are:
- 82.1 the UDA will specify permitted activities where it can and carefully select which activities need to be more actively managed through a requirement for consent at the development plan development stage; and
- 82.2 the UDA will have power to specify that certain consents are non-notified, meaning they can only be appealed by the applicant.
- 83 To ensure access to justice while providing the certainty and speed that Cabinet has sought from the new process, we propose that an applicant (or submitters where a resource consent application has been notified) retain merit appeals to the Environment Court, but limit points of law appeals to the High Court as the final appeal court.
- 84 Again, judicial review will be available. For resource consents, this option can only be exercised once standard appeal rights are exhausted. This is because the right to appeal on merit to the Environment Court will be available⁵. In the case of a challenge to a notification decision on a resource consent application, judicial review will be available as there is no other appeal right for these decisions.

Right of objection

- 85 Under the RMA, the applicant for a resource consent has certain rights to object to the territorial authority on decisions on an application. We propose that for decisions on resource consents in the project area, the same objection rights apply, either to the

⁵ This is comparable to section 296 RMA No review of decisions unless right of appeal or reference to inquiry exercised.

UDA or, if the UDA is the applicant (or in partnership with the applicant), to the territorial authority.

- 86 Objection rights will provide a first, non-judicial recourse to review of decisions, and will help achieve time and cost efficiency gains as applicants would have to exercise their objection right before they could begin an appeal process through the courts.

Appeals on designations after the development plan is approved are limited to the High Court

- 87 For decisions on notices of requirement for designations or for heritage orders, we propose merit appeals to the Environment Court are retained, and points of law appeals are limited to the High Court.

Appeals on grounds of reasonable use of land are limited to the High Court

- 88 Under Section 85 of the RMA, the Environment Court may issue directions when a person considers that an RMA planning document would render the person's interest in land incapable of reasonable use. We propose the Environment Court have this power over planning provisions overridden, added to or suspended by a development plan (with any reference to the local authority to be read as a reference to the UDA). Consistent with the other limitations on appeals set out above, we propose that any appeals on the Environment Court's direction regarding land incapable of reasonable use are limited to points of law appeals to the High Court.

- 89 We note that the Environment Court can direct the UDA to acquire all or part of the land in question or the interest in the land under the Public Works Act 1981.

Transitional powers between project establishment and development plan approval

UDA approval of any land use that may prevent or hinder the strategic objectives

- 90 We propose that during the transition period between when the development project is set up by OIC and the development plan is approved, the UDA's approval is required for any plan change that affects land use rights in the project area, as well as any resource consents that allow for an activity to be undertaken. The UDA will have the right to veto any change in land use or resource consent that may negatively impact the realisation of the strategic objectives of the development project.

The UDA can use existing RMA processes

- 91 Although the UDA will have access to the suite of powers provided for by the legislation and implemented through the development plan for the project area, the UDA will have and may use all the existing provisions of the RMA as if it were a natural person for every project area.

Consultation

- 92 The Treasury, Department of Internal Affairs, Land Information New Zealand, Department of Conservation, Ministry of Transport, New Zealand Transport Agency, Te Puni Kōkiri, Office of Treaty Settlements, Ministry of Justice, Ministry of Education, State Services Commission, Ministry for Primary Industries, New Zealand Defence Force, Heritage New Zealand Pouhere Taonga, Ministry of Culture and Heritage, Ministry of Health, Housing New Zealand Corporation, Transpower New Zealand, Fire

and Emergency New Zealand, and Parliamentary Counsel Office were consulted on these proposals. The Department of Prime Minister and Cabinet was informed.

- 93 Some of the policies that are proposed are based on the Productivity Commission's recommendations in their 2017 report, *"Better Urban Planning"*, and their 2015 report, *"Using Land for Housing"*. These reports were informed by a process of open public consultation. Other proposals have been informed by the Government's 2008 discussion document, *"Building Sustainable Urban Communities"*, and by the 2017 discussion document, *"Urban Development Authorities"*.

Local government views

- 94 Local authorities are uneasy about the UDA having access to planning powers. Most of the concern is focused on the potential for the UDA to override regional or district plans. Developers, on the other hand, were enthusiastic about planning powers being available to the UDA to streamline developments at scale.
- 95 Local authorities were overwhelmingly in opposition to consenting powers being available to the UDA. Concerns were raised about: a lack of transparency; issues with capacity and capability of the UDA to undertake consenting functions; and the duplication of roles. Again, in contrast, developers strongly supported the transfer of consenting powers away from local authorities.
- 96 We consider that local authorities' concern around capacity and capability are mitigated by the proposal to establish a single national UDA. We also consider that concerns around transparency are mitigated by the proposal that the UDA must delegate resource consent decisions where it is the applicant or in partnership with the applicant, to an independent commissioner or the territorial authority. It is worth noting that local authorities use this same approach to ensure transparency for their own resource consents.
- 97 Submitters to the Discussion document, including a range of councils and iwi, were concerned about the RMA (especially Part 2, Purpose and Principles) being overridden. The proposed legislation includes Part 2 of the RMA within its purpose and principles [CAB-18-MIN-0243 paragraph 30 refers], and other matters (as captured by sections 104 to 108A (as applicable) of the RMA are included in decision-making requirements for resource consents.

Constitutional and NZ Bill of Rights Implications

Right to natural justice

- 98 Cabinet has previously agreed [CAB-18-MIN-0243 paragraphs 15 and 16 refer] that planning decisions in the development plan will not be subject to appeal to the Environment Court. This will reduce the options currently available to the parties involved to challenge the approved development plan.
- 99 To manage the impact of limiting these appeals, the legislation will require the following checks on the process for initiating the project, and on proposing and preparing a development plan [CAB-18-MIN-0243 paragraph 96 refers]. These are:
- 99.1 the opportunity for public and stakeholder engagement prior to setting strategic objectives through the Order in Council;

- 99.2 the opportunity for engagement at the draft development plan stage based on access to the relevant information needed to make informed submissions;
 - 99.3 the opportunity to formally submit to the development plan that the UDA recommends;
 - 99.4 the hearing and consideration of formal submissions by an IHP;
 - 99.5 limited right to appeal on points of law; and
 - 99.6 the right to apply for judicial review of any decision.
- 100 Appeal rights on merit will remain for decisions on resource consents. This is consistent with natural justice principles, which advocate against infringing on appeal rights around decisions that may impact directly on an individual person's property rights.

Legislative Implications

- 101 This paper proposes new legislation and seeks Cabinet's authority to instruct the Parliamentary Counsel Office (PCO) accordingly. Cabinet has previously agreed that these proposals be referred to PCO for drafting this year [CAB-17-MIN-0042]. The accompanying Cabinet paper "Legislating to empower complex urban development projects: powers relating to land assembly, reserves, infrastructure and funding" seeks amendment to CAB-17-MIN-0042, 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). Subject to confirmation as part of the usual process for agreeing the next Legislation Programme, the new legislation be given a category 2 priority on the 2019 Legislation Programme (meaning the Bill must be passed by the end of 2019).
- 102 We recommend that the new Act bind the Crown because the new legislation contains development powers that development projects comprising Crown land or those led by a Crown agent would benefit from having access to..

Regulatory Impact Analysis

- 103 The Regulatory Quality Team (RQT) at the Treasury reviewed the Regulatory Impact Assessment (RIA), "*Supporting complex urban development projects with dedicated legislation*", produced by the Ministry of Business, Innovation and Employment (MBIE) and dated May 2018. The review team considers that it meets the Quality Assurance criteria.
- 104 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.
- 105 RQT notes that implementation of the UDA (including form, budget, and reporting) will be addressed in separate advice to be submitted to Cabinet later this year. The Minister of Housing and Urban Development has since requested that MBIE chair a

cross-agency report back assessing the entity options for the UDA, which will inform the Minister's report back to Cabinet in September 2018.

Publicity

- 106 The Minister of Housing and Urban Development will manage the publicity resulting from any decisions recommended in this paper, in consultation with the Prime Minister and the Minister for the Environment.
- 107 The Minister of Housing and Urban Development and Minister for the Environment will release this Cabinet paper to the public at an appropriate time.

Recommendations

We recommend that the Economic Development Committee:

- 1 **note:**
 - 1.1 on 20 December 2017, Cabinet agreed [CBC-17-MIN-0051]:
 - 1.1.1 in principle to establish a national urban development authority (UDA); and
 - 1.1.2 to develop new legislation that enables selected complex urban development projects to operate with more enabling development powers and land use rules;
 - 1.2 this is:
 - 1.2.1 the third in a series of Cabinet papers on detailed policy proposals for the new legislation that seek authority to issue drafting instructions;
 - 1.2.2 is accompanied by the second Cabinet paper in the series, which covers the scope and application of the infrastructure, reserves, land assembly, and funding powers;
 - 1.3 further Cabinet papers are intended to cover:
 - 1.3.1 the approach to Māori interests; and
 - 1.3.2 final decisions on the UDA entity form, structure and governance arrangements, and its associated financing powers and permissions;
 - 1.4 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;
- 2 **agree** the new legislation bind the Crown;
- 3 **authorise** the Minister of Housing and Urban Development and the Minister for the Environment to make subsequent policy decisions on related details consistent with the policy decisions in this Cabinet paper;
- 4 **direct** the Ministry of Business, Innovation and Employment and the Ministry for the Environment 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 and the Minister for the Environment on related details;

- 5 **note** the Minister of Housing and Urban Development and the Minister for the Environment will seek further policy decisions from Cabinet required for the new legislation over the next three months;
- 6 **note** that the Minister of Housing and Urban Development and Minister for the Environment will release this Cabinet paper to the public at an appropriate time;
- 7 **note** that the independent hearings panel (IHP) established to review submissions on the recommended draft development plan, determine a view on the recommended plan and make recommendation on the plan's approval to the Minister [CAB-18-MIN-0243 paragraph 60.5 refers];
- 8 **note** that a reference in the paragraphs set out below to [also noted in CAB-18-MIN-0243 paragraph 8]:
- 8.1 the 'IHP' is an independent hearings panel;
- 8.2 'the Minister' is to the Minister appointed by the Prime Minister to be responsible for the new legislation once it has been enacted;
- 8.3 'nationally significant infrastructure' includes:
- 8.3.1 the national grid electricity transmission network;
- 8.3.2 major gas or oil pipeline services (eg, Refinery to Auckland Pipeline from Marsden Point to Wiri);
- 8.3.3 state highways and government roads;
- 8.3.4 the New Zealand rail network, including suburban rail systems;
- 8.3.5 primary airports;
- 8.3.6 commercial ports; and
- 8.3.7 any Defence Force land, buildings or interests in land and airspace;
- 8.4 the 'RMA' is to the Resource Management Act 1991;
- 8.5 '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;
- 8.6 a 'Treaty settlement' includes any legislation, deed, or deed of settlement arising from historical claims under the Treaty of Waitangi, or that provides redress in response to those claims, whether already executed or enacted, or to be executed or enacted in the future; and
- 8.7 the 'UDA' is to the national urban development authority, referred to in a previous Cabinet decision as the Housing Commission [CBC-17-MIN-0051];

RMA provisions continue to apply except where amended

- 9 **agree** that unless otherwise specified in the urban development legislation, for matters pertaining to resource management, including planning and consenting, the provisions of the Resource Management Act 1991 (RMA) apply to the development project and the project area;

The UDA decision-making hierarchy applies to RMA plan changes and consents within the project

- 10 **agree** that, for the duration of the development project, when making decisions on:
- 10.1 provisions in a development plan for the project area;

- 10.2 RMA plan and regional policy statement changes and variations for the project area;
- 10.3 resource consents within the project area; and
- 10.4 notices of requirement or amendments to designations and heritage orders in the project area;
- 10.5 all decision-makers, including the UDA, the territorial authority, the regional council and any relevant Minister must act in accordance with the purpose and principles of the new legislation;
- 10.6 in achieving those purposes and principles, make the decision that will best realise the relevant project's strategic objectives;
- 10.7 in respect of decisions on resource consents, apply the provisions of sections 104 to 108A of the RMA, with references to 'Part 2' in sections 104 to 108A of the RMA being a reference to the purpose and principles of the new legislation;

The UDA will have more enabling resource management powers within the project area

Override, add to, or suspend existing resource management plan provisions

- 11 **agree** that to best realise the strategic objectives of the development project, and subject to the requirements to uphold Treaty settlements set out in the recommendations in the Cabinet paper on Māori issues, the new legislation enables the development plan to **override (to the extent of any conflict), add to, or suspend** existing or proposed district plan, regional plan (including regional coastal plan) and regional policy statement provisions that apply to the project area, in full or in part, for the duration of the development project;
- 12 **agree** that district plan rules relating to managing and protecting scheduled historic heritage cannot be overridden in a way that would make them more permissive;

Approval of provisions to override, add to, or suspend regional coastal plans

- 13 **agree** that:
 - 13.1 the Minister for Conservation must approve draft development plan provisions that override, add to or suspend provisions in a regional coastal plan before the draft development plan is notified for public consultation;
 - 13.2 the Minister of Conservation may require amendments to the draft development plan provisions that override, add to or suspend regional coastal plan provisions as a condition of the approval in recommendation 13.1;
 - 13.3 the Minister of Conservation must make a decision within 20 working days of receiving the draft development plan;
 - 13.4 before any subsequent changes by the UDA or the IHP to development plan provisions that override, add to or suspend regional coastal plan provisions, the changes must be approved by the Minister of Conservation in accordance with recommendations 13.2 and 13.3 above;
- 14 **agree** that the UDA Minister's approval of the final development plan includes approval of any development plan provisions that override, add to or suspend regional coastal plan provisions, without needing further approval from the Minister of Conservation;

- 15 **note** that the Minister of Conservation in making a decision on development plan provisions that override, add to, or suspend regional coastal plan provisions must:
- 15.1 act in accordance with the purpose and principles of the new legislation; and
 - 15.2 make the decision that will best realise the relevant project's strategic objectives [CAB-18-MIN-0243 paragraph 30.1 refers];

Legal effect and content of the development plan

- 16 **agree** that the development plan may:
- 16.1 replicate provisions of existing instruments (existing instruments include plans, policy statements, strategies, regulations, standards, and other similar documents); or
 - 16.2 incorporate provisions in existing instruments by reference;
- 17 **agree** that:
- 17.1 the development plan provisions, once approved by the Minister, and published in the New Zealand Gazette, automatically become an operative part of the relevant RMA planning document that applies to the project area;
 - 17.2 on Gazettal of the development plan, any existing provisions that are overridden or suspended cease to have legal effect in the project area;
 - 17.3 applicable provisions of the relevant local RMA documents where not overridden, added to, or suspended, continue to have effect in the project area;
 - 17.4 all parts of the relevant local RMA documents continue to have legal effect, as prescribed, outside the project area;
- 18 **agree** that in respect of resource management matters, the development plan must not be inconsistent with any of the following national level instruments under the RMA:
- 18.1 national policy statements;
 - 18.2 the New Zealand coastal policy statement;
 - 18.3 national environmental standards;
 - 18.4 applicable provisions of the National Planning Standards, as they relate to:
 - 18.4.1 structure and format, definitions, metrics, and requirements for electronic functionality and accessibility;
 - 18.4.2 spatial planning tools;
- 19 **agree** that local authorities must include any development plan provisions that override, add to, or suspend existing RMA planning provisions in electronic versions of their plans and policy statements without using a Schedule 1 plan change process under the RMA;

Functions of the UDA in producing the development plan

- 20 **note** that the UDA is to develop and publish a draft development plan for the development project [CAB-18-MIN-0243 refers];
- 21 **agree** that the UDA has the following planning functions when producing a development plan:

- 21.1 establishing, implementing and reviewing policies, rules, and methods on resource management matters to achieve the strategic objectives;
- 21.2 the control of the use of land for the purpose of:
 - 21.2.1 achieving the strategic objectives;
 - 21.2.2 ensuring there is sufficient development capacity in housing and business land to meet expected demand in the project area, and as a contribution to district and regional capacity;
 - 21.2.3 the avoidance or mitigation of risks from natural hazards;
 - 21.2.4 the strategic integration of infrastructure with land use;
 - 21.2.5 the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land;
- 21.3 the control of the emission of noise and the mitigation of the effects of noise;
- 21.4 the control of any actual or potential effects of activities in relation to the surface of water in rivers and lakes;

Resource management content of the development plan

- 22 **agree** that in preparing the development plan, the UDA must have regard to:
 - 22.1 the wider planning environment as expressed by the relevant regional policy statement, regional plan(s) and district plan; and
 - 22.2 the key urban design qualities expressed in the Ministry for the Environment's "New Zealand Urban Design Protocol (2005)" and any subsequent editions of that document;
- 23 **agree** that the development plan must identify how the planning powers are proposed to be exercised to recognise and provide for the purpose of the new legislation and the strategic objectives of the project;

Policies, Methods and Rules

- 24 **agree** that:
 - 24.1 a UDA must include policies, methods and rules in a development plan for the purpose of:
 - 24.1.1 carrying out its functions;
 - 24.1.2 achieving the strategic objectives of the development project;
 - 24.1.3 specifying classes of activities consistent with those in the RMA;
 - 24.2 the UDA may include rules in a development plan that:
 - 24.2.1 apply throughout the project area or to part of the project area;
 - 24.2.2 apply differently to different parts of the project area; or
 - 24.2.3 cover different classes of effects arising from an activity;
 - 24.2.4 apply all the time or for stated periods or seasons;
 - 24.2.5 are specific or general in their application;

- 24.2.6 manage activities not anticipated by the development plan;
- 24.3 any policies, methods or rules that override, add to, or suspend provisions in RMA plans and regional policy statements must be:
 - 24.3.1 clearly identified in the development plan;
 - 24.3.2 limited to the scope provided by the RMA for the content of plans and regional policy statements;

Activity and notification status

- 25 **agree** that a controlled activity or restricted discretionary activity provided for by a rule in the development plan must have its notification status (preclusion of public and/or limited notification or requiring public notification) stated in the development plan unless not doing so is justified in the evaluation report (see Recommendation 30);
- 26 **agree** that any consent application, which is not required to be non-notified by the rule in the development plan, may be non-notified, publicly notified or limited notified, as per the tests and requirements in sections 95A and 95B of the RMA;

Protection of historic heritage continues

- 27 **agree** that the Heritage New Zealand Pouhere Taonga Act 2014 continues to apply to a project area, including in particular:
 - 27.1 the archaeological provisions; and
 - 27.2 heritage covenants entered into under that Act;
- 28 **agree** that the development plan must, at a minimum, provide the same level of protection of historical and cultural heritage as the existing RMA plan provisions in the project area;
- 29 **note** that protection of historic heritage and sites of significance to Māori in district and regional plans applies regardless of land ownership;

Evaluation report for changes to RMA planning documents

- 30 **agree** that an evaluation report must be included as an addendum to the development plan that follows sections 32(1)(b) and (c), 32(2), 32(3), 32(4) and 32 (5)(b) of the RMA for any provisions that override, add to, or suspend provisions in RMA planning documents;
- 31 **agree** that the evaluation is undertaken in the context of the purpose and principles of the new legislation and the strategic objectives of the development project;

The UDA can update the development plan to reflect RMA plan changes

- 32 **agree** that, where a RMA planning document is changed through a plan change, the UDA may update its development plan to override, add to, or suspend provisions that were part of the RMA plan change:
 - 32.1 without using the development plan variation process [CAB-18-MIN-0243 paragraph 66 refers];
 - 32.2 only in accordance with the development project's strategic objectives; and
 - 32.3 only to the extent of the planning controls that existed within the project area prior to the RMA plan change;

Override of RMA planning documents expire at the end of the project or before

- 33 **agree** that the resource management provisions of the development plan will cease to have effect on the date that the development project is disestablished;
- 34 **agree** that:
- 34.1 prior to the development plan ceasing to have effect, the local authority is able to adopt the resource management provisions of the development plan into their RMA planning documents, either in part or in full;
 - 34.2 this will not require a Schedule 1 plan change process under the RMA;
- 35 **note** that existing resource consents issued under or permitted by the development plan may be in effect at the time of disestablishment of the development project;
- 36 **agree** that activities lawfully established under the development plan in the project area have all the protections of existing use under sections 10, 10A and 10B of the RMA;
- 37 **agree** that the development plan can state that provisions that were inserted into RMA planning documents are withdrawn at specified times (e.g. at the end of a stage of development) before the project is disestablished;

The UDA can have the territorial authority's consenting, monitoring, compliance, enforcement powers within the project area

- 38 **agree** that within a project area for the duration of the development project, after the Minister's approval of the development plan, the UDA will exercise, subject to any restrictions or conditions in the development plan, the following territorial authority functions and powers under the RMA and the new legislation:
- 38.1 consent authority (the power to grant and decline land use and subdivision consents, and consents required by a national environmental standard);
 - 38.2 subdivision, amalgamation, reclamations and related functions in Part 10 of the RMA;
 - 38.3 monitoring, compliance and enforcement of resource consents (except for those resource consents issued by territorial authorities or regional councils), and of permitted activities (excluding permitted activity rules in regional plans);
- 39 **agree** that for regional consents, the regional council will remain the consenting authority, however, the regional council may transfer this function to the UDA under section 33 of the RMA;

Delegation and transfer of consenting, monitoring, compliance, enforcement functions

- 40 **agree** that the UDA may transfer any of the powers or functions listed in recommendation 38 to another person or organisation, provided this transfer is included in the development plan;
- 41 **agree** that the UDA may delegate to an employee, an independent commissioner, or the local territorial authority (if the local territorial authority agrees) the functions or powers listed in recommendation 37 except for this power of delegation;

- 42 **agree** that when the UDA is the applicant for a land use or subdivision consent, or a consent required by a national environmental standard, in circumstances where the authority itself is acting as the developer (and is therefore the applicant), or is in partnership with the applicant, the UDA must delegate its consent authority decision-making to one or more independent commissioners or to the territorial authority;
- 43 **agree** that the relevant territorial authority or regional council must inform the UDA within 5 working days of receipt of the application of any resource consents to the relevant territorial authority or regional council applied for within or partly within the project area for the duration of the development project;

Compliance, monitoring, and enforcement (including offences and penalties)

- 44 **agree** that the compliance, monitoring, and enforcement regime under the new legislation will be in accordance with the RMA, with relevant RMA provisions applying to a UDA as if it were a local authority (regional council and territorial authority), including RMA provisions:
- 44.1 for a duty to avoid, remedy or mitigate adverse effects;
 - 44.2 to give certain information;
 - 44.3 to monitor for compliance with this Act, the development plan, and national environmental standards (where applicable);
 - 44.4 for enforcement notices and abatement notices; and
 - 44.5 for offences and penalties as generally stipulated in sections 338 and 339 of the RMA;
- 45 **agree** that to carry out its compliance, monitoring, and enforcement responsibilities, the UDA may authorise enforcement officers as under section 38 of the RMA;
- 46 **agree** that responsibility for compliance, monitoring, and enforcement for resource conditions issued by a local authority, and for permitted activity rules in regional plans, remains with the relevant local authority;
- 47 **agree** that the UDA must act in accordance with the Ministry for the Environment's Compliance, Monitoring and Enforcement Guidelines and report information to the National Monitoring System;

The UDA may levy charges

- 48 **agree** that the UDA may levy charges to the initiator of private development plan changes to recoup UDA costs [CAB-18-MIN-0243 paragraph 67 refers];
- 49 **agree** that the UDA may fix administrative charges for undertaking planning, consenting, monitoring, compliance and enforcement functions and powers under this legislation and the RMA, as set out in section 36 of the RMA, with any reference to a:
- 49.1 local authority also including the UDA;
 - 49.2 plan or policy statement also including the development plan;
 - 49.3 resource consent also including a resource consent from, or as a result of, provisions in the development plan;
 - 49.4 permitted activity also including permitted activities in the development plan;

- 50 **agree** that if the UDA fixes administrative charges, these charges must be prescribed in the development plan, which can only be adjusted in either or both of the following ways, as prescribed in the development plan:
- 50.1 by way of a formula which takes account of cost movements due to inflation and automatically adjusts the administrative charge; or
 - 50.2 by a regular review period at which time the administrative charges may be amended to reflect changing costs to the UDA;
- 51 **agree** that the UDA must publicly notify any adjustments to its administrative charges as a result of recommendation 50 as soon as practicable after any amendment is made;
- 52 **agree** that at all times, any administrative charge set must be for the sole purpose of recovering the reasonable costs incurred by the UDA in respect of the activity to which the charge relates;
- 53 **agree** that local authorities may charge the UDA for any actions which the UDA sets as a mandatory requirement for the local authority;

Streamlined resource consent process for the development project

- 54 **agree** that the RMA resource consent process continues to apply when a resource consent application is made for a discretionary or non-complying activity under the regional plan or development plan provisions that override, add to or suspend regional plan provisions;

Process A: for controlled, and restricted discretionary, activities

- 55 **agree** that Process A applies when a resource consent application is made for a controlled or restricted discretionary activity under the development plan, the district plan or regional plan;
- 56 **agree** that if an application is non-notified, it must be processed and the determination made:
- 56.1 within 10 working days after the application is first lodged for controlled or restricted discretionary land use and subdivision activities; and
 - 56.2 within 20 working days for other controlled and restricted discretionary activities;
- 57 **agree** that if public notification or limited notification is required:
- 57.1 any notification decision must be made within 10 working days after the day the application was first lodged with the consent authority;
 - 57.2 the time limit for making submissions is 20 working days from the date of notification;
 - 57.3 the consent authority, at its own discretion, may extend the time limit for making submissions;
- 58 **agree** that the consent authority must receive and give formal consideration to written submissions, and:
- 58.1 for controlled and restricted discretionary land use and subdivision activities, hold no public hearing;
 - 58.2 for other controlled and restricted discretionary activities, hold a public hearing if one or more submitters has requested to be heard;

- 59 **agree** a written decision on the resource consent application, and any conditions, must be issued in accordance with section 113 of the RMA, with references to the development plan and strategic objectives, as appropriate;
- 60 **agree** that:
- 60.1 if the application was notified and a hearing is not held, notice of decision must be given within 20 working days after the closing date of submissions on the application;
 - 60.2 if the application was notified and a hearing is held, notice of decision must be given within 15 working days after the end of the hearing;

Process B – Resource consent for discretionary and non-complying district plan consents within the project area

- 61 **agree** that Process B applies when a resource consent application is made for a discretionary activity or non-complying activity under the district plan or development plan provisions that override, add to or suspend district plan provisions within the project area;
- 62 **agree** that if an application is non-notified, it must be processed and the determination made within 20 working days of receipt of the application;
- 63 **agree** that if public notification or limited notification is required:
- 63.1 any notification decision must be made within 20 working days after the day the application was first lodged with the consent authority;
 - 63.2 the time limit for making submissions is 20 working days from the date of notification; and
 - 63.3 the consent authority, at its own discretion, may extend the time limit for making submissions;
- 64 **agree** that the consent authority must receive and give formal consideration to written submissions, and must hold a public hearing if one or more submitters has requested to be heard;
- 65 **agree** a written decision on the resource consent application, and any conditions, must be issued in accordance with section 113 of the RMA, with references to the development plan and strategic objectives, as appropriate;
- 66 **agree** that:
- 66.1 if a hearing is held, notice of decision must be given within 15 working days after the end of the hearing;
 - 66.2 if the application was notified and a hearing is not held, notice of decision must be given within 20 working days after the closing date of submissions on the application;

Making an application for resource consent in a project area

- 67 **agree** that an application for resource consent in the project area must comply with Schedule 4 (Information required in application for resource consent) of the RMA, adapted to apply to the new legislation's purpose and principles and the project's strategic objectives, as appropriate;

- 68 **agree** that if an application does not meet the information requirements in recommendation 67 above:
- 68.1 the consent authority may, within 5 working days for a Process A consent application and 10 working days for a Process B consent application, determine that the application is incomplete;
 - 68.2 the consent authority must immediately return the incomplete application to the applicant, with written reasons for the determination;
 - 68.3 if after an application has been returned as incomplete, that application is lodged again with the consent authority, that application is to be treated as a new application;

UDA can advise the Minister on the IHP's recommendations

- 69 **agree** that the UDA has an opportunity to advise the Minister on the IHP's recommendations before the Minister makes a decision on the IHP's recommended development plan;
- 70 **agree** that if the UDA advises the Minister that the IHP's decisions regarding part or all of the development plan would limit achievement of the project's strategic objectives, the Minister can decide to refer the development plan back to the IHP for further consideration;

Judicial Review and Appeals

Judicial Review and appeal rights on the development plan

- 71 **note** that Cabinet:
- 71.1 agreed that there are no rights to merit appeal on the development plan [CAB-18-MIN-0243 paragraph 15];
 - 71.2 delegated to the Minister of Housing and Urban Development and the Minister for the Environment to determine the manner and extent of any appeals on points of law [CAB-18-MIN-0243 paragraphs 17 and 18];
- 72 **note** that the Minister of Housing and Urban Development and the Minister for the Environment have determined that appeals on points of law are allowed on the development plan generally (i.e. including with regard to non-planning matters), with the Court of Appeal being the final appeal court;
- 73 **agree** that any applications for judicial review must be lodged at the same time as a points of law appeal and that both proceedings must then be heard together in the High Court unless it is impracticable to do so;

Appeal rights on resource consents in the project area

- 74 **agree** that:
- 74.1 with respect to the consent authority's decision on a Process A or Process B resource consent, the following parties may appeal that decision (in full or in part) to the Environment Court:
 - 74.1.1 the applicant or consent holder;

- 74.1.2 any person who made a submission on the application (but only on a matter raised in their submission); and
- 74.1.3 in relation to a resource consent for a restricted coastal activity, the Minister of Conservation;
- 74.2 if there is a right to refer any matter to appeal to the Environment Court against a decision of a consent authority or any person under the new legislation or any other Act:
 - 74.2.1 no application for review under the Judicial Review Procedure Act 2016 may be made; and
 - 74.2.2 no proceedings seeking a writ of, or in the nature of, mandamus, prohibition, or certiorari, or a declaration or injunction in relation to that decision may be heard;

to or by the High Court unless the right has been exercised by the applicant in the proceedings and the Environment Court has made a decision;
- 75 **agree** that for a points of law appeal on resource consents, the High Court is the final court of appeal;

Objections to resource consent conditions

- 76 **agree** that the applicant for resource consent in the project area has the right of objection set out in sections 357 and 357A(1)(f) and (g) of the RMA;
- 77 **agree** that objections will be considered by the UDA unless it is the applicant for the resource consent, in which case the territorial authority will consider the objection;

Appeal rights on designations and heritage orders

- 78 **agree** that for decisions on notices of requirement for designations or for heritage orders, merit appeals to the Environment Court are retained and points of law appeals are limited to the High Court;

Appeals on grounds of reasonable use of land are limited to the High Court

- 79 **agree** that:
 - 79.1 the Environment Court may issue directions when a person considers that provisions in a development plan that override, add to or suspend an RMA planning document's provisions would render the person's interest in land incapable of reasonable use under Section 85 of the RMA (with any reference to the local authority to be read as a reference to the UDA);
 - 79.2 any appeals on the Environment Court's direction regarding land incapable of reasonable use are limited to points of law appeals to the High Court;

Designations

- 80 **agree** that RMA provisions regarding designations apply, except as specified below;
- 81 **agree** that the UDA is a requiring authority under the RMA;
- 82 **agree** that Part 8 of the RMA, as modified by recommendation 84, applies to designations for nationally significant infrastructure;
- 83 **agree** that for all other designations:

- 83.1 should a requiring authority want to establish a new designation or significantly alter an existing designation in the project area (whether as part of the development plan or at a later time):
- 83.1.1 the requiring authority must obtain the prior approval of the UDA to lodge a notice of requirement;
 - 83.1.2 subject to considering the needs that will be met by the designation, the UDA has discretion over whether or not to approve the requiring authority proceeding to lodge a notice of requirement for the work;
 - 83.1.3 where there is a dispute between the UDA and a requiring authority over the lodgement of a notice of requirement, the matter be determined by an independent decision maker;
 - 83.1.4 the Minister responsible for the urban development legislation makes the final determination, following a recommendation from the independent panel or adjudication as per the disputes resolution process, as to whether the requiring authority may proceed with lodging its notice of requirement, or not;
 - 83.1.5 this process does not apply to alterations to designations requested by the requiring authority where the alteration:
 - 83.1.5.1 involves no more than a minor change to the effects on the environment associated with the use or proposed use of land or any water concerned; or
 - 83.1.5.2 involves only minor changes or adjustments to the boundaries of the designation or requirement; and
 - 83.1.5.3 written notice of the proposed alteration has been given to every owner or occupier of the land directly affected and those owners or occupiers agree with the alteration;

- 84 **note** that we intend to report back on the process for resolving disputes between the requiring authority and UDA about the lodgement of a notice of requirement, in a later Cabinet paper;

Notification and processing of a new designation

- 85 **agree** that in giving notice of its requirement to establish a designation and in establishing a designation, a requiring authority and the UDA are to follow the procedures for establishing a designation set out in Part 8 of the RMA, with the following modifications:
- 85.1 any reference to the territorial authority may be read as a reference to the UDA (as the context requires);
 - 85.2 any reference to a plan, plan change or plan variation is a reference to the development plan or proposed development plan for the project area;
 - 85.3 all decisions on the designation will be taken in accordance with the decision-making hierarchy set out in CAB-18-MIN-0243 paragraphs 30-32;
- 86 **agree** that if a UDA decides to issue a notice of requirement for a designation and:
- 86.1 the designation is within the project area, then the UDA must follow the process outlined in section 168A of Part 8 of the RMA;

- 86.2 the designation is outside the project area, then the UDA must follow the processes outlined in section 168 and Part 8 of the RMA for the establishment of a designation;

If a designation already exists in a project area

- 87 **agree** that where a designation already exists within a project area at the time the development plan is being prepared:
- 87.1 the requiring authority may seek a roll-over of the designation;
 - 87.2 other than for nationally significant infrastructure, the UDA can recommend the alteration, removal, amendment or replacement of a designation within its area as a part of its recommended development plan;
 - 87.3 for a designation that supports network infrastructure, if the designation is to be altered, removed, amended or replaced, the UDA, in preparing its development plan, must provide an amended or replacement designation that serves the same function (i.e. maintains network connections), unless the requiring authority agrees otherwise;
 - 87.4 the requiring authority can object to the UDA's recommendation for altering, removing, amending or replacing the designation through submission to the IHP, which will consider the UDA's recommendation and the requiring authority's submission and make a recommendation to the Minister; and
 - 87.5 final approval of either the roll-over, alteration, removal, amendment or replacement of the designation occurs through the Minister's approval of the development plan;

Transfer of rights and responsibilities for designations

- 88 **agree** that:
- 88.1 where the financial responsibility for a project or work or network utility operation inside the project area is transferred from one requiring authority to another, responsibility for any relevant designation is also transferred;
 - 88.2 the requiring authority which transfers responsibility for the designation inside the project area must advise the UDA Minister, the Minister for the Environment and the UDA and the transfer must be noted in the development plan, without using the process for varying the development plan and without undue formality;

Removal of designation after development plan is in place

- 89 **agree** that if a requiring authority no longer wants a designation or part of a designation within the project area:
- 89.1 it must give notice to:
 - 89.1.1 the UDA concerned;
 - 89.1.2 every person who is known by the requiring authority to be the owner or occupier of any land to which the designation relates; and
 - 89.1.3 every other person who, in the opinion of the requiring authority, is likely to be affected by the designation;

- 89.2 as soon as reasonably practicable after receiving notice, the UDA must amend the development plan accordingly, without using the process for undertaking development plan variations and without undue formality;
- 89.3 the same process applies, with all necessary modifications, to a notice by a UDA to withdraw its own designation or part of a designation within its own project area;
- 89.4 notwithstanding recommendations 88.2 and 88.3, where a UDA considers the effect of the removal of all or part of a designation on the remaining designation is more than minor, it may, within 20 working days of receipt of the notice decline to remove the designation or that part;
- 89.5 a requiring authority may object to any decision to decline removal of the designation or that part of a designation, and the matter be determined by an independent decision maker;

Lapsing of a designation

- 90 **agree** that sections 184 and 184A of the RMA apply to the lapsing of a designation as if the development plan was the district plan and the UDA was the territorial authority, but any right of objection under section 357 of the RMA must be dealt with by an independent decision maker;

Compulsory acquisition powers of a network utility operator

- 91 **agree** that a network utility operator that is a requiring authority may continue to apply to the Minister for Land Information to have land required for a project or work inside the project area acquired or taken pursuant to section 186 of the RMA, subject to the UDA's prior agreement;

Heritage orders

- 92 **agree** that for heritage orders, Part 8 of the RMA applies with the following amendments: for the purpose of heritage orders within the project area;
 - 92.1 "heritage protection authority" includes a UDA acting on either its own motion or on the recommendation of an iwi authority; and
 - 92.2 the provisions of Part 8 of the RMA apply to a UDA as if it were a territorial authority;
- 93 **agree** that at project completion:
 - 93.1 any heritage orders the UDA is responsible for as the heritage protection authority must be transferred to the relevant territorial authority or Heritage New Zealand Pouhere Taonga;
 - 93.2 the transfer of responsibility for the heritage order must be made by amending the district plan accordingly and publicly notifying the amendment as soon as is reasonably practicable, without using a process set out in Schedule 1 of the RMA;

Subdivision and amalgamation of land

94 agree that:

- 94.1 for the purpose of subdividing, amalgamating, or vesting of land and of easements and reclamations in the project area, the provisions of Part 10 of the RMA apply;
- 94.2 if a development plan is in place, Part 10 should be read as if the UDA was the territorial authority and any reference to a plan, plan change or plan variation is a reference to the development plan or proposed development plan for the project area, except that:
 - 94.2.1 the timeframes for processing a resource consent for the subdivision or amalgamation of land (where the activity is a controlled or restricted discretionary activity) are those detailed for processing a Process A resource consent application;
- 94.3 all planning decisions on subdivision consents or permissions on subdividing, amalgamating, or vesting of land and on easements and reclamations must be made in accordance with the decision-making hierarchy set out in CAB-18-MIN-0243 paragraphs 30-32 and sections 104 to 108A of the RMA as applicable;

Transitional powers between project establishment and development plan approval

95 agree that during the period after a development project has been established, but before the development plan takes effect:

- 95.1 the existing provisions of the regional policy statement, regional plan and district plan (and any applicable proposed plans or policy statements) continue to apply until the development plan takes effect, but all planning or consenting decisions that apply to the development project or project area become subject to the decision-making hierarchy set out in recommendation 8 above;
- 95.2 the existing consent authorities continue to be responsible for consenting within the project area;
- 95.3 the relevant consent authorities must inform the UDA of any plan changes or resource consent applications initiated or lodged within the project area, including those that were initiated or lodged before the development project was established but that have not been given effect to;
- 95.4 provided it is necessary to realise the development project's strategic objectives in respect of the project area:
 - 95.4.1 the UDA can veto or require amendment to any plan change that the local authority is considering, but that has not been made operative; and
 - 95.4.2 the UDA can veto, require amendment to, or require conditions to be attached to, any land use or subdivision resource consent that the regional council or territorial authority as consent authority is considering;
- 95.5 rights of appeal as provided for a resource consent in the project area apply to the UDA's exercise of its veto rights;

The UDA can use existing RMA processes

96 **agree** that the UDA will have the full and usual powers of a natural person under the RMA;

Additional weight to consultation with regional councils and territorial authorities

97 **agree** that:

- 97.1 as part of the initial assessment of a proposed development project, the UDA must consult the relevant regional council and territorial authorities on environmental matters and have particular regard to their views;
- 97.2 when preparing the draft development plan, the UDA must consult with the relevant regional council and territorial authorities on environmental matters and have particular regard to their views;
- 97.3 as part of its consultation with the regional council and with territorial authorities, the UDA must provide the assessment of environmental effects [CAB-18-MIN-0243 paragraphs 48.11.1 and Rec 55.9 refer] undertaken for the proposed project at the initial assessment stage and the development plan stage;
- 97.4 the regional council and territorial authorities for the project area may make recommendations to decision-makers on both of these environmental assessments, and these decision-makers must take the recommendations into consideration and may rely on them in their decision-making.

Authorised for lodgement

Hon Phil Twyford

Minister of Housing and Urban Development

Hon David Parker

Minister for the Environment

Appendix 1

Examples of how a development plan can override RMA plans

	RMA plan	Development plan	Result
Override	Height limit of buildings is 8 metres.	Height limit of buildings is 15 metres.	The height limit of buildings within the project area is 15 metres.
Add to	Any activity not mentioned is a 'discretionary activity' (requires resource consent).	A community hall at 15 Kahu St is a 'permitted activity'.	A new community hall at that site does not need a resource consent.
Suspend	Under earthworks rule in district plan earthworks are limited to an area of 250m ² or volume of 250m ³ .	This earthworks rule is suspended in the project area.	Earthworks that do not require consent under a regional rule within the specified area can happen without needing a resource consent for earthworks.
Not mentioned	A home business is permitted if it meets noise and parking standards.	Not mentioned.	The RMA plan rules for home businesses continue to apply as under the relevant RMA plan.