



23 November 2023

HUD2023-003212

s 9(2)(a)

Dear s 9(2)(a)

Thank you for your email of 10 October 2023 to Kāinga Ora – Homes and Communities requesting information under the Official Information Act 1982 (the Act). The following part of this request was transferred to Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development (the Ministry) for response:

*Can I also request a copy of any briefing document that Kāinga Ora has prepared for the Minister of Housing in relation to this issue?*

Two documents have been found to be within scope of your request and are released to you with some information withheld under the following sections of the Act:

Section of Act	Reason to withhold
9(2)(a)	To protect the privacy of natural persons
9(2)(b)(ii)	To protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information

The documents are detailed in the attached document schedule.

In terms of section 9(1) of the Act, I am satisfied that, in the circumstances, the decision to withhold information under section 9 of the Act is not outweighed by other considerations that render it desirable to make the information available in the public interest.

You have the right to seek an investigation and review of my response by the Ombudsman, in accordance with section 28(3) of the Act. The relevant details can be found on the Ombudsman's website at: [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz).

As part of our ongoing commitment to openness and transparency, the Ministry proactively releases information and documents that may be of interest to the public. As such, this response, with your personal details removed, may be published on our website.

Yours sincerely

Glenn Phillips  
Head of Crown Entity Monitoring

## Annex 1: Document schedule

Documents released – HUD2023-003212			
	Date	Document	Section of the Act applied
1.	26 September 2023	HUD2023-003125: Talking points for Cabinet: proposed land acquisition at The Neighbourhood at Ormiston	9(2)(a) 9(2)(b)(ii)
2.	2 October 2023	HUD2023-003142: Land acquisition of stage 3 - The Neighbourhood at Ormiston	9(2)(a) 9(2)(b)(ii)

## Aide-memoire

### TALKING POINTS FOR CABINET: PROPOSED LAND ACQUISITION AT THE NEIGHBOURHOOD AT ORMISTON

<b>Date</b>	26 September 2023	<b>Priority</b>	High
<b>Tracking number</b>	HUD 2023-003125		

### INFORMATION FOR MINISTER(S)

Hon Dr Megan Woods <b>Minister of Housing</b>	<b>Note</b> the contents of this aide-memoire and speaking notes for an oral update to Cabinet.
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### CONTACT FOR DISCUSSION

<b>Name</b>	<b>Position</b>	<b>Telephone</b>	<b>1st contact</b>
Brad Ward	DCE – Organisational Performance	s 9(2)(a)	✓

### OTHER AGENCIES CONSULTED

Kāinga Ora – Homes and Communities
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### MINISTER'S OFFICE TO COMPLETE

<input type="checkbox"/> Noted <input type="checkbox"/> Seen <input type="checkbox"/> See Minister's notes <input type="checkbox"/> Needs change <input type="checkbox"/> Overtaken by events <input type="checkbox"/> Declined <input type="checkbox"/> Referred to (specify) _____	Comments
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# Aide-memoire

TALKING POINTS FOR CABINET: PROPOSED LAND ACQUISITION AT THE NEIGHBOURHOOD AT ORMISTON			
Minister	Hon Dr Megan Woods, Minister of Housing		
Date	26 September 2023	Priority	High
Tracking number	HUD 2023-003125		

## Purpose

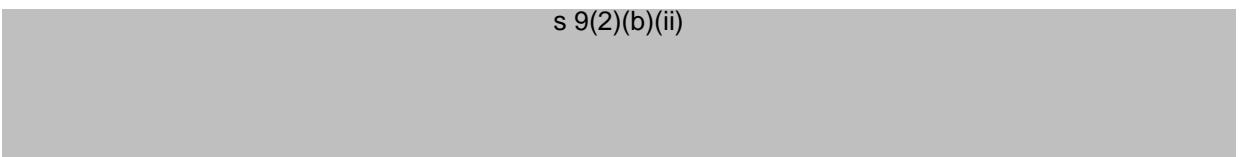


1. This aide-memoire responds to your request for talking points on a proposal to acquire land at The Neighbourhood at Ormiston (the Development) from The Neighbourhood South Limited (the Developer) with a preferred funding approach.
2. Due to the time sensitive nature of the transaction, Joint Ministers (Finance and Housing) will need to obtain Cabinet authority to have “power to act” to establish the appropriation and potentially delegate the execution of agreement to either Kāinga Ora or HUD.

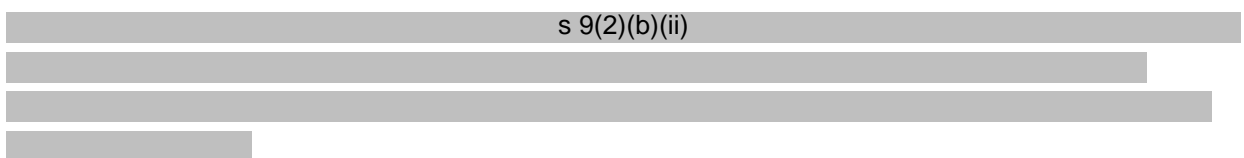
## Background

3. Kāinga Ora provided a briefing to you on the matter at The Neighbourhood at Ormiston [BN 23 055 refers]. You have requested Te Tūāpapa Kura Kāinga (HUD) and Kāinga Ora – Homes and Communities (Kāinga Ora) provide an Aide memoire and talking points for an oral item at Cabinet around options to protect the KiwiBuild buyers remaining in the Stage One development and ensuring the development continues without the Developer invoking the sunset clause by 6th October and relinquishing the Sale and Purchase Agreements (SPAs).
4. Various potential commercial options have been explored at a high level for assisting the 56 KiwiBuild buyers, however the Developer has been very clear that the only accepted solution for them is for a Government acquisition of the stage three land, and a cancellation of the KiwiBuild homes in stages two and three.
5. The land acquisition would provide the Developer with an immediate capital injection and allow them, in the first instance to complete the homes in stage one. The Developer indicated they would need confirmation of the acquisition before the sunset end period of 6th October 2023.
6. As outlined in BN 23 055, this approach comes with risks but given the Developers stance the proposed approach below is designed to minimise the residual risk that Developer may still choose to invoke the sunset clause.

### **Proposed stage three land acquisition deal**


7. It is proposed that Cabinet approval is sought up to a maximum of \$40 million for the purpose with a delegation to Kāinga Ora or HUD to negotiate up to \$37.8 million before requiring Joint Ministers approval to the maximum amount.
8. This will purchase 171 lots.
9. The total value of the delegation to Kāinga Ora or HUD is based off a JLL valuation in May 2023 of \$37.8M equating to \$0.221m per lot.
10. The structure of the deal proposed is designed to maintain commercial tension and protect the KiwiBuild purchasers interests throughout the life of the development including:

- i)  s 9(2)(b)(ii)
- ii) 
- iii) 

11.  s 9(2)(b)(ii)

12. Note that the developer has expressed a higher purchase price circa \$45-\$46m however there has been no evidence presented to justify this amount.
13. The underwrite agreement between the Crown and the Developer will be cancelled to bring an end to the partnership in respect of underwritten homes in Stage 2 and 3 (approximately 120 Kiwibuild homes yet to be marketed or contracted).

### **Mitigation**

14. The Vendor is incentivized to remain on-site through the escrow sum, instalment payments and final payment equating to 55% of the value of transaction.
15.  s 9(2)(b)(ii)
16. The delivery of civil works on Stage 3 is evidenced in technical documents and progress payment schedules provided by the Vendors engineers McKenzie & Co.

## **Funding and administrative considerations**

17. The purchase would require Cabinet approval (or as proposed power to act delegated from Cabinet to Joint Ministers) as the scope of existing Vote Housing appropriations are insufficient and although funding sources have been identified this would still fit the requirement of needing new “Crown funding” as no funding has been appropriated for this purpose previously.
18. The funding source will be dependent on who administers the land purchase being HUD or Kāinga Ora

### *Kāinga Ora continue oversight of Development*

19. Kāinga Ora has the existing relationship and understanding of the existing development which will be fundamental in any agreed approach.
20. There are two existing delivery mechanisms for Kāinga Ora which fall within the current roles:
  - i) Kāinga Ora Land Programme
  - ii) Housing Agency Account (HAA) as an agent acting on behalf of the Crown
21. As outlined in BN 23 055, the land acquisition did not fall within the agreed strategic priority areas and Kāinga Ora investment committee discounted this as an investment under the Land Programme.
22. The HAA funds can only be used for “State Housing purposes” which has a very broad definition. The Account has been used for the Hobsonville Point development and current purchases of underwritten KiwiBuild properties (for on selling).
23. The HAA as of June 2023 had \$138 million available reserves which could cover the expected purchase price of the Stage 3 development land.
24. The broad scope of the HAA enables the Stage 3 land acquisition to proceed without a new appropriation, however the unique nature of the purchase would justify from HUD’s perspective the establishment of an appropriation to provide transparency.
25. Ihumātao and the Buy off the Plans appropriation are good examples of where there the scope of the existing appropriations and legislation were ambiguous so to remove the avoidance of doubt separate appropriations were established.
26. Further work will be required to identify how the internal costs associated with the deal (e.g., due diligence costs, project management resource) are funded (e.g., through capitalising onto the land value through the HAA or an operating appropriation to Kāinga Ora).

### *HUD oversight over Stage 3 Development*

27. HUD has not been involved with this development to date and may require additional due diligence to be undertaken to understand the extent of the commercial risks and how best to manage these on behalf of the Crown.
28. The Land for Housing Programme appropriation scope is insufficient to enable this purchase to be transacted without a specific appropriation being established for this purpose.

29. The resources within the HUD Land for Housing team could be utilised to oversee this development as a bespoke deal outside of the programme similar to how Ihumatao purchase is currently managed.
30. The specific appropriation if established for administration by HUD could be funded from two sources :

- i) Land for Housing Programme: \$349 million unallocated.

Reprioritising funding will limit the ability of the fund to meet objectives over the medium term as the pipeline amount of land that is being assessed for purchase is greater than available funds and this specific purchase may not rate as the highest impact against other proposals within the fund.

- ii) The Kāinga Ora Land Programme currently has \$317million in the appropriation to cover interest costs and non-market outcomes.

Reprioritising this funding limits the ability of the fund to meet its objectives over the medium term (reprioritising \$45 million represents nearly 25% of the non-market outcomes allocated over 20 years).

However the immediate need for access to the non-market allocation is limited with only two confirmed purchases in the fund.

### *Proposed Approach*

31. Based on the above, HUD recommends the preferred option would be to establish an appropriation for Kāinga Ora to acquire the Stage 3 land under the HAA on the basis that they have background understanding of the development, potential tools such as KiwiBuild to utilise the land and the uncommitted nature of the cash reserve within the HAA.
32. Due to the time sensitive nature of the transaction, power to act needs to be sought from Cabinet to authorise Joint Ministers (Finance and Housing) to establish appropriations and delegate to a specified amount to Kāinga Ora to negotiate on behalf of the Crown for the purchase of the stage 3 land.
33. Appendix A provides you with talking points to take this as an oral item to Cabinet on 2 October 2023.
34. Appendix B provides a separate note detailing the proposed terms of the purchase, any relevant legal considerations, how the 56 KiwiBuild buyers will be protected, and next steps needed for the purchase to go through.

## **Appendices**

Appendix A: Talking points for Cabinet: proposed land acquisition at The Neighbourhood at Ormiston.

Appendix B: Proposal Summary of Stage 3 land acquisition at The Neighbourhood at Ormiston.

## Appendix A: Talking points for Cabinet: proposed land acquisition at The Neighbourhood at Ormiston

### *Purpose of this oral update*

- The intention is to ensure 56 KiwiBuild first home buyers are able to settle into their properties in the coming months. In order to support this matter, the deal being proposed is unique and without any existing funded sources.
- As a result, I am seeking Cabinet to authorise Joint Ministers (Finance and Housing) to have “power to act” to establish appropriations up to \$40 million and delegate to a specified amount to Kāinga Ora to negotiate on behalf of the Crown for the purchase of the stage 3 land.

### *Background*

- The Neighbourhood South Limited (the Developer) is developing The Neighbourhood at Ormiston (the Development).
- The Development comprises of three stages totalling 295 KiwiBuild homes. 176 KiwiBuild homes are in stage 1 all of which have been sold at a KiwiBuild purchase price for three-bedroom homes of \$650k (prior to the KiwiBuild price caps increasing to \$860k).
- 56 of stage 1 houses are yet to settle with buyer sunset date on 6 October 2023.

### *Development under financial stress*

- Kāinga Ora and the Developer have been in discussions since March 2023 around approaches to provide assistance due to cost escalations relating to initial receivership, escalating construction costs and delays increasing financial costs.
- Various commercial solutions have been proposed to little response from the Developer including considered increasing price of KiwiBuild homes in latter stages of the development (stage 2 and 3).
- Without some form of intervention, the likelihood is that the Developer would either
  - o cancel the Sale and Purchase Agreements (SPAs) at the sunset date and resells the homes on the open market to achieve additional sales revenue.
  - o put the development into receivership (as the net sales from stage 1 are unlikely to cover the current shortfall).
- The developer’s preferred solution is for the Crown to acquire stage 3 land, and cancellation of KiwiBuild homes in stage 2 and 3 (none of which have been sold to eligible buyers) with a condition the Developer completes the 56 KiwiBuild homes in stage one.
- Acquiring stage 3 land provides the Developer with immediate capital injection and allow them in the first instance to complete homes in stage 1. Developer requires confirmation before sunset date of 6<sup>th</sup> October 2023.



### *Structure of the Land deal*

- Acquiring Stage 3 land of the development consists of up to 171 lots at a price of \$37.800M equating to 0.221M per lot.
- The structure of the deal proposed is designed to maintain commercial tension throughout the life of the development and protect KiwiBuild purchasers interests including:

○

s 9(2)(b)(ii)

○

○

○

- Note that the developer has expressed a higher purchase price circa \$45-\$46m however there has been no evidence presented to justify this amount.
- The underwrite agreement between the Crown and the Developer will be cancelled to bring an end to the partnership in respect of underwritten homes in Stage 2 (83 KiwiBuild homes) and Stage 3 (36 KiwiBuild homes) of the Development of which none have been sold.

### *Funding and Administrative considerations*

- Funding options are dependent on whether Kāinga Ora or HUD administers the Stage 3 land acquisition.
- All Funding options would require a new appropriation to be created including if the Housing Agency Account was used (due to the unique nature of the purchase to provide transparency).
- Preferred option would be for Kāinga Ora to acquire the Stage 3 land under the Housing Agency Account on the basis that they have background understanding of the development, have potential tools such as KiwiBuild underwrites on the subsequent development (with new partners) to utilise the land and the uncommitted nature of the cash reserve within the Housing Agency Account.
- The alternative option is to purchase the land through HUD and have responsibility for administering the relationship and reprioritising funds from another Crown programme (either Land for Housing or Kāinga Ora Land programme operating funding) as the Housing Agency Account funds can only be used by Kāinga Ora on behalf of the Crown.



**Appendix B: Summary of Stage 3 land acquisition at The Neighbourhood at Ormiston Proposal**

**COMMERCIAL TERMS**

s 9(2)(b)(ii)



















## Briefing

LAND ACQUISITION OF STAGE 3 - THE NEIGHBOURHOOD AT ORMISTON			
Date	2 October 2023	Priority	Urgent
Tracking number	HUD2023-003142		

ACTION SOUGHT FROM MINISTER(S)		
Minister	Action sought	Deadline
Rt Hon Chris Hipkins <b>Prime Minister</b>	<b>Agree</b> to the recommendations in this briefing.	2 October 2023
Hon Carmel Sepuloni <b>Deputy Prime Minister</b>		
Hon Grant Robertson <b>Minister of Finance</b>		
Hon Dr Megan Woods <b>Minister of Housing</b>		
Hon Kelvin Davis <b>Minister for Māori Crown Relations: Te Arawhiti</b>		

CONTACT FOR DISCUSSION			
Name	Position	Telephone	1 <sup>st</sup> contact
Brad Ward	DCE – Organisational Performance	s 9(2)(a)	✓

OTHER AGENCIES CONSULTED
Kāinga Ora – Homes and Communities

DATE RETURNED TO HUD:
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## Briefing

OBLAND ACQUISITION OF STAGE 3 - THE NEIGHBOURHOOD AT ORMISTON			
<b>Minister(s) receiving</b>		Rt Hon Chris Hipkins, Prime Minister Hon Carmel Sepuloni, Deputy Prime Minister Hon Grant Robertson, Minister of Finance Hon Dr Megan Woods, Minister of Housing Hon Kelvin Davis, Minister for Māori Crown Relations: Te Arawhiti	
<b>Date</b>	2 October 2023	<b>Priority</b>	Urgent
<b>Tracking number</b>	HUD2023-003142		

### Purpose

1. This briefing seeks agreement from Ministers with power to act (Prime Minister, Deputy Prime Minister, Minister of Housing, Minister of Finance and Minister for Māori Crown Relations) to establish an appropriation and authorise the purchase of stage 3 land at The Neighbourhood (the Site) at Ormiston for up to \$40 million to protect the interests of the 56 stage 1 KiwiBuild owners and secure continued development on the site.

RECOMMENDED ACTIONS	
2. It is recommended that you:	
a. <b>Note</b> that The Neighbourhood South Limited (the Developer) is developing The Neighbourhood at Ormiston (the Development) and was to contain 295 KiwiBuild homes over three stages.	<i>Noted</i>
b. <b>Note</b> 56 houses in stage 1 (based off previous KiwiBuild purchase price for three-bedroom homes of \$650,000) are yet to settle with the sunset date due on 6 October 2023	<i>Noted</i>
c. <b>Note</b> the Developer is under financial stress due to cost escalations relating to the initial receivership, escalating construction costs and delays increasing financial costs.	<i>Noted</i>
d. <b>Note</b> Kāinga Ora has worked with the Developer on providing various commercial solutions that have to date not reduced the likelihood of triggering the sunset clause of the KiwiBuild properties in stage 1.	<i>Noted</i>



e.	<b>Note</b> at this stage, the option most likely to protect the interests of the KiwiBuild first home buyers and secure future development on the site is to purchase stage 3 land and that the land is developed up to point of subdivision and include a condition that the 56 KiwiBuild homes in stage 1 are completed and settled.	<i>Noted</i>
f.	<b>Note</b> that the purchase of stage 3 land will ensure that approximately 170 homes are developed on this site.	<i>Noted</i>
g.	<b>Note</b> the Treasury does not support the purchase of stage 3 land.	<i>Noted</i>
h.	<b>Agree</b> to complete the purchase of stage 3 land at the Neighbourhood at Ormiston for up to \$40 million under the Housing Act 1955 (using funds held in the Housing Agency Account).	
<i>Rt Hon Chris Hipkins</i> <i>Hon Carmel Sepuloni</i> <i>Hon Grant Robertson</i> <i>Hon Dr Megan Woods</i> <i>Hon Kelvin Davis</i>		<i>Agree/ Disagree</i> <i>Agree/ Disagree</i> <i>Agree/ Disagree</i> <i>Agree/ Disagree</i> <i>Agree/ Disagree</i>

**Te Tūāpapa Kura Kāinga**

Ministry of Housing and Urban Development

**i. Agree** to establish the following new appropriation:

<b>Vote</b>	<b>Appropriation Minister</b>	<b>Appropriation Administrator</b>	<b>Title</b>	<b>Type</b>	<b>Scope</b>
Housing and Urban Development	Minister of Housing	Ministry of Housing and Urban Development	Land purchase within the Housing Agency Account	Non-Departmental Capital Expense	This appropriation is limited to the purchase of land for State Housing purposes in accordance with the Housing Act 1955.

*Rt Hon Chris Hipkins**Agree/ Disagree**Hon Carmel Sepuloni**Agree/ Disagree**Hon Grant Robertson**Agree/ Disagree**Hon Dr Megan Woods**Agree/ Disagree**Hon Kelvin Davis**Agree/ Disagree***j. Agree** to fund the new appropriation using up to \$40 million cash within the Housing Agency Account.*Hon Grant Robertson**Agree/ Disagree**Hon Dr Megan Woods**Agree/ Disagree*



<p>k. <b>Approve</b> the following changes to appropriation to give effect to the decision in recommendation i above, with a corresponding impact on net debt across the forecast period:</p>						
	\$m – increase/(decrease)					
<b>Vote Housing and Urban Development Minister of Housing</b>	<b>2023/24</b>	<b>2024/25</b>	<b>2025/26</b>	<b>2026/27</b>	<b>2027/28 &amp; Outyears</b>	
<b>Non-Departmental Capital Expenditure:</b> Land purchase within the Housing Agency Account	40.000	-	-	-	-	
<p><i>Hon Grant Robertson</i></p> <p><i>Hon Dr Megan Woods</i></p>						<p><i>Approved/ Not Approved</i></p> <p><i>Approved/ Not Approved</i></p>
<p>l. <b>Agree</b> that the proposed change to appropriations for 2023/24 above be included in the 2023/24 Supplementary Estimates and that, in the interim, the increase be met from Imprest Supply.</p>						
<p><i>Hon Grant Robertson</i></p> <p><i>Hon Dr Megan Woods</i></p>						<p><i>Agree/ Disagree</i></p> <p><i>Agree/ Disagree</i></p>
<p>m. <b>Agree</b> that that the expenses incurred under recommendation j above be charged against the multi-year capital allowance (MYCA) set aside in Budget 2023.</p>						
<p><i>Hon Grant Robertson</i></p> <p><i>Hon Dr Megan Woods</i></p>						<p><i>Agree/ Disagree</i></p> <p><i>Agree/ Disagree</i></p>



<p><i>Land acquisition</i></p> <p>n. <b>Authorise</b> Kāinga Ora on behalf of the Crown to negotiate the purchase of stage 3 land at The Neighbourhood at Ormiston for up to \$40 million including a condition for the Developer to complete and handover the remaining 56 KiwiBuild properties in stage 1.</p>	
<p><i>Rt Hon Chris Hipkins</i></p> <p><i>Hon Carmel Sepuloni</i></p> <p><i>Hon Grant Robertson</i></p> <p><i>Hon Dr Megan Woods</i></p> <p><i>Hon Kelvin Davis</i></p>	<p><i>Agree/ Disagree</i></p> <p><i>Agree/ Disagree</i></p> <p><i>Agree/ Disagree</i></p> <p><i>Agree/ Disagree</i></p> <p><i>Agree/ Disagree</i></p>
<p>o. <b>Authorise</b> the Chief Executive of Kāinga Ora or other Kāinga Ora officials with delegated authority to do all things reasonably necessary to give effect to the acquisition of the Site, including:</p> <ul style="list-style-type: none"><li>• Paying the purchase price up to \$40 million;</li><li>• Signing the sale and purchase agreement with the Developer based on the commercial terms attached as Annex 1;</li><li>• Transfer funding between bank accounts within the Housing Agency Account to facilitate the purchase; and</li><li>• Signing all necessary documentation to complete the acquisition of Site and transfer ownership to the Crown through the use of the Housing Agency Account</li><li>• Kāinga Ora being satisfied with the due diligence report being provided by the developer.</li></ul>	
<p><i>Rt Hon Chris Hipkins</i></p> <p><i>Hon Carmel Sepuloni</i></p> <p><i>Hon Grant Robertson</i></p> <p><i>Hon Dr Megan Woods</i></p> <p><i>Hon Kelvin Davis</i></p>	<p><i>Agree/ Disagree</i></p> <p><i>Agree/ Disagree</i></p> <p><i>Agree/ Disagree</i></p> <p><i>Agree/ Disagree</i></p> <p><i>Agree/ Disagree</i></p>



p.	<b>Note</b> the Site will have at least 171 dwellings, therefore Kāinga Ora intends at a later date to seek joint Ministers approval for a scheme of development.	
	<i>Hon Grant Robertson</i>	<i>Noted</i>
	<i>Hon Dr Megan Woods</i>	<i>Noted</i>
q.	<b>Note</b> that the Site will be held for State housing purposes under the Housing Act 1955, and the types of uses considered for the Site must either remain within the scope of this public purpose, or further decisions must be sought from relevant Ministers.	
	<i>Hon Grant Robertson</i>	<i>Noted</i>
	<i>Hon Dr Megan Woods</i>	<i>Noted</i>





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Brad Ward  
**Deputy Chief Executive,**  
**Organisational**  
**Performance, Te Tūāpapa Kura Kāinga**  
**- Ministry of**  
**Housing and Urban**  
**Development**  
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Rt Hon Chris Hipkins  
**Prime Minister**  
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Hon Carmel Sepuloni  
**Deputy Prime Minister**  
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Hon Grant Robertson  
**Minister of Finance**  
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Hon Dr Megan Woods  
**Minister of Housing**  
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Hon Kelvin Davis  
**Minister for Māori Crown Relations: Te**  
**Arawhiti**  
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## Background

3. The Neighbourhood South Limited (the Developer) is developing The Neighbourhood at Ormiston (the Development). The Development comprises of three stages totalling 295 KiwiBuild homes.
4. A total of 176 KiwiBuild homes are in stage 1, all of which have been sold at a KiwiBuild purchase price for three-bedroom homes of \$650k (prior to the KiwiBuild price caps increasing to \$860k). The total homes settled, and the buyers who have moved in is 120, leaving 56 homes to be completed. The current market value of the 56 homes is estimated to be \$770k - \$830k each.
5. The Sunset Date in the Sale and Purchase Agreement (SPA) for the 56 remaining buyers is 30 September 2023. The Developer has five working days following this date in which they can exercise their option to cancel the Sale and Purchase Agreement. The latest they can do this is 5pm on 6 October 2023.

## Developer under financial stress

6. The Developer approached Kāinga Ora in March 2023 asserting that the development could fail, due to financial stress caused by cost escalation, and asked for assistance. Despite multiple requests to the Developer, there has been no hard evidence provided on the extent of the financial issues they face.
7. Kāinga Ora has been in discussions with the Developer for some months to develop commercially appropriate options for restoring financial viability to the project. Negotiations between Kāinga Ora and the Developer have been progressing on the possibility of Kāinga Ora:
  - 7.1 Agreeing to use the latest KiwiBuild price caps for the KiwiBuild homes in stages two and three; and
  - 7.2 Acquiring the stage three land with a condition that the Developer complete the 56 KiwiBuild homes in stage one.
8. Agreeing to use the latest KiwiBuild price caps for the KiwiBuild homes stages two and three is possible, but the Developer has indicated this would not be enough to restore financial viability to the development - land acquisition must be part of any agreement.
9. Without some form of intervention, the likelihood is that the Developer would either:
  - 9.1 cancel the Sale and Purchase Agreements (SPAs) at the sunset date and resell the homes on the open market to achieve additional sales revenue impacting 56 KiwiBuild owners who cannot proceed with the purchase and access their first home.
  - 9.2 put the development into receivership (as the net sales from stage 1 are unlikely to cover the current shortfall).
10. The Developer's preferred solution is for the Crown to acquire stage 3 land, and cancellation of KiwiBuild homes underwritten currently by the Crown in stage 2 and 3



(none of which have been sold to eligible buyers) with a condition the Developer completes the 56 KiwiBuild homes in stage 1. For stage 2, the Developer will develop and build housing for the open market.

11. Acquiring stage 3 land provides the Developer with an immediate capital injection and allows them in the first instance to complete homes in stage 1. Developer requires confirmation before 6 October 2023, being the last date they can cancel the SPAs of the sale of the 56 remaining KiwiBuild homes in stage one.

### **Structure of the stage 3 land acquisition**

12. Acquiring stage 3 land of the Development consists of up to 171 lots at a price of \$37.800 million (plus GST if any) equating to \$0.221 million per lot. The proposed price is based on JLL valuation in May 2023.
13. In order to provide a negotiating contingency, it is recommended you approve an upper limit of \$40 million to purchase stage 3 land.
14. The structure of the deal proposed is designed to maintain commercial tension throughout the life of the stage 3 Development and protect KiwiBuild purchasers' interests including:

14.1

s 9(2)(b)(ii)

14.2

14.3

14.4

15. Note that the Developer has requested a higher purchase price circa \$45-\$46 million however there has been no evidence presented to justify this amount.
16. The underwrite agreement between the Crown and the Developer will be cancelled to bring an end to the partnership in respect of underwritten homes in Stage 2 and Stage 3 (approximately 119 KiwiBuild homes yet to be marketed for sale).



### *Mitigation*

17. s 9(2)(b)(ii)

18.

19.

### **What can the land be used for**

20. The demand for housing in this area has been strong and is forecasted to require an additional 4,000 homes by 2033.
21. Current assessment of the Site's best future use is for a mix of affordable and market homes. The affordable homes would be KiwiBuild homes under the current settings including using underwrite tools to unlock the developer's finance.
22. Further options can be assessed once civil works are completed including the opportunity to provide community housing providers and lwi developers through a land tender process.

### **Options for administration and funding**

23. Funding options are dependent on whether Kāinga Ora or HUD administers the stage 3 land acquisition.

#### *Administration of the Development*

24. Kāinga Ora has the existing relationship and understanding of the existing development which will be fundamental in any agreed approach.
25. The resources within the HUD Land for Housing team could be utilised to purchase the Site and to oversee this development as a bespoke deal outside of the programme similar to how the purchase of Ihumatao is currently managed. However, HUD has not been involved with this development to date and may require additional due diligence to be undertaken to understand the extent of the commercial risks and how best to manage these on behalf of the Crown.

#### *Funding of the Development*

26. Assuming Kāinga Ora are preferred to administer the land purchase there are two existing funding options to reprioritise funding from to acquire stage 3 land as follows:

26.1 Kāinga Ora Land Programme

26.2 Agency Account (HAA) as an agent acting on behalf of the Crown.



27. The Kāinga Ora Land programme has funding available to accommodate this transaction and Kāinga Ora staff have assessed acquiring this site under this programme. However, the Kāinga Ora Investment Committee discounted this as an investment under their Land Programme as it did not fall within the agreed strategic priority areas.
28. As of June 2023, the HAA had \$138 million of available reserves which could cover the expected purchase price of the stage 3 land. The HAA funds can only be used for “State Housing purposes” which has a very broad definition. The Account has been used for the Hobsonville Point development and current purchases of underwritten KiwiBuild properties (for on selling).
29. The broad scope of the HAA enables the stage 3 land acquisition to proceed without a new appropriation, however the unique nature of the purchase would justify the establishment of a separate appropriation.
30. Ihumātao and the Buying off the Plans appropriations are good examples of where the scope of the existing appropriations and legislative requirements created some ambiguity. To remove the avoidance of doubt separate appropriations were established for the Ihumātao transaction and the Buy off the Plans programme. Regardless of who is confirmed to administer this transaction, a new appropriation is the preferred approach to ensure legislative compliance.
31. If HUD was to be the preferred administrator, then the funding source would need to come from the Land for Housing Programme which has currently \$349 million unallocated.
32. Reprioritising funding from the Land for Housing Programme will limit the ability of the fund to meet objectives over the short to medium term as the pipeline amount of land that is being assessed for purchase is greater than available funds and this specific purchase may not rate as the highest impact against other proposals within the fund.
33. Regardless of who administers the land development, further work will be required to identify how the internal costs associated with the deal such as due diligence costs, holding costs and project management resource are funded. HUD will work with Kāinga Ora to agree on an approach to funding on-going work.

#### *Recommended Approach*

34. It was noted that Cabinet [CAB-23-MIN-0429 refers] has agreed that the preferred option would be for Kāinga Ora to acquire the stage 3 land on behalf of the Crown using the Housing Agency Account on the basis they have background understanding of the Development, have potential tools such as KiwiBuild underwrites on the subsequent stage 3 development (with new partners) to utilise the land and the uncommitted nature of the cash reserve within the Housing Agency Account.



## Financial Implications

35. This briefing seeks Ministers with power to act (Prime Minister, Deputy Prime Minister, Minister of Housing, Minister of Finance and Minister for Māori Crown Relations) agreement to finalise any changes to appropriations necessary to give effect to the purchase.
36. The appropriation arrangements will comprise:
  - 36.1 The establishment of a new appropriation in Vote Housing and Urban Development, The Neighbourhood at Ormiston, to fund the acquisition of the stage 3 land;
  - 36.2 Funding will be sourced from the cash balance within the Housing Agency Account for the new appropriation. There will remain sufficient funds in the Housing Agency Account to continue to conduct the Buying off the Plans programme to use funding in the event of underwrites being called upon. If these underwrites were triggered, the dwellings would be purchased and subsequently sold allowing for the funding to be returned to the Buying off the Plans programme for future underwrite triggers. This significantly reduces the risk to the Crown with any residual risk being significantly lower than the underwrite value.
37. The transaction would increase net debt of up to \$40 million and therefore should be offset by charge against the multi-year capital allowance (MYCA). There are no anticipated impacts on the operating balance or OBEGAL.
38. A risk of the stage 3 land acquisition, as with all land programme purchases, is that the land cannot be sold for the price at which it is being acquired. In due course, there may need to be adjustments and additional Crown funding or an impairment appropriation to recognise losses.

## Risks and reservations

39. As part of the consultation with the Treasury, the following risks and issues were raised:

RISK/IMPLICATION	MITIGATION
<p>The precedent risk associated with the transaction. If Ministers agree to this land acquisition to support a developer facing financial constraints, other KiwiBuild developers may form expectations of additional financial support, increasing the fiscal impact above the cost of the \$40 million acquisition.</p>	<p>The issues at Ormiston are unique with the predominant root cause stemming from the homes being sold very early in the development process. There are other contributing causes including poor management which led to the initial receivership, the receivership costs, build cost increases and financial cost increases.</p> <p>There are no remaining KiwiBuild developments in the pipeline where presales to KiwiBuild buyers were made prior to the commencement of onsite civil works, thereby reducing the risk of prolonged delays in the early stages of the development cycle.</p> <p>Kāinga Ora has changed process since the Ormiston underwrite was done in that we do not sell the KiwiBuild homes until we are satisfied that the homes will be completed and the development is financially viable. This is checked through regular reporting from the Developer and a requirement for the funder to alert us early if there are funding concerns.</p> <p>This mitigates the possibility of KiwiBuild homes being sold and then left incomplete due to a development failing financially.</p> <p>Due diligence on developers wanting to participate in the programme is more in-depth in 2023, than it was in 2019 (when the Ormiston opportunity was originally contracted).</p> <p>KiwiBuild developments are in supported locations and acquiring land purchased at valuation is not necessarily a problematic precedent. It could be considered as evidence of our commitment to partner with private sector residential developers when they reach certain stress thresholds.</p>
<p>The \$40 million would be sourced from the Housing Agency Account, which includes funds to cover exposure of the KiwiBuild underwrites. Utilising this funding for the acquisition would reduce the Crown's ability to cover the underwrite exposure and originate new underwrite transactions.</p>	<p>As part of the KiwiBuild settings refresh, criteria have been strengthened to minimise the likelihood of underwrites being triggered.</p> <p>However, in the event that a significant portion of the underwritten portfolio crystallises, the settings should enable the purchase and sale of the properties in a timely manner minimising the impact on the Housing Agency Account.</p>
<p>Assurances that adequate due diligence has been undertaken for the purchase of this land have not been provided to date. We have not seen information on flood risk, contamination, climate change or other relevant due diligence reports that are expected for land acquisitions.</p>	<p>The Developer has provided legal, planning, technical, cost and ongoing works information for Kāinga Ora to conduct due diligence on the land. Kainga Ora experts are reviewing these. Time constraints mean we are relying on developer's reports rather than obtaining our own, which adds a small degree of risk, however this is mitigated by regular reporting provided from developer.</p> <p>There is a clause in the draft sale agreement that requires the purchaser (Kāinga Ora) to obtain all required internal and Ministerial approvals. This includes a clause that will cover Kāinga Ora being</p>





	<p>satisfied with the due diligence (DD) reports provided.</p> <p>NB: Kāinga Ora had previously supported the land through approval of the underwrite for the developer to construct 36 KiwiBuild and 134 open market homes upon it.</p>
s 9(2)(b)(ii)	s 9(2)(b)(ii)
<p>The benefits to the 56 KiwiBuild buyers and the value of the land are heavily outweighed by the \$40 million cost of the land and other risks associated with this transaction.</p> <p>If this transaction is not supported and the developer were to cancel the Sale and Purchase Agreements, Kāinga Ora could look to support any affected first home buyers to find alternative homeownership options</p>	<p>We would reiterate that KiwiBuild developments are in supported locations and acquiring land purchased at valuation is not necessarily a problematic precedent. It could be considered as evidence of our commitment to partner with private sector residential developers when they reach certain stress thresholds.</p> <p>The land is valued at \$37.800 million, and this is the intended purchase price. Offering buyers an alternate home will not mitigate the reputational damage the cancellation of Sales and Purchase agreements will cause. Further, there are no new 3-bed homes in Ormiston for \$650,000 available through the programme.</p> <p>Kāinga Ora has investigated ways it could assist affected buyers into other Kiwibuild homes that are available in other developments and would continue to do so should the land acquisition not be supported. There are constraints around this, and it may be difficult to match buyer requirements and pricing would be higher than the purchased price of the homes they have been waiting for.</p>





## Consultation

40. The Treasury have provided the following comments to this land acquisition proposal.
41. We do not support this land acquisition. The transaction would set a significant precedent that government would support other developers facing financial constraints, and it creates a precedent risk that funding from the Housing Agency Account could be transferred or reprioritised in the future to fund other activities. This would increase fiscal risk to the Crown if underwrites are triggered. This transaction would also have an adverse impact on Net Debt of up to \$40m.
42. The benefits to the 56 KiwiBuild buyers and the value of the land are heavily outweighed by the \$40m cost of the land and other risks associated with this transaction. If Ministers do not support this transaction and the developer were to cancel the Sale and Purchase Agreements, Kāinga Ora could look to support any affected first home buyers to find alternative homeownership options (as proposed in a previous briefing to Minister Woods [BN 23 055 refers]).
43. Treasury was engaged late and has not seen the details of this transaction so are not well placed to recommend secondary action. However, if Ministers wish to proceed, we recommend that you seek further assurances from Kāinga Ora and HUD on the suitability of the site for development, and that the structure and detailed parameters of the agreement create a strong incentive for the developer to deliver the KiwiBuild homes.
44. We have urgently reviewed the financial recs and are broadly comfortable with them as they are written. We would like to note that the scope statement is broadly acceptable provided that MHUD are comfortable that land purchase is within the scope of 'State Housing Purposes' as defined in accordance with the Housing Agency Act 1955. The Treasury are not in a position to confirm whether this acquisition is in accordance and suggests that Ministers seek further legal assurances.



## **Annex 1: Commercial Terms of Stage 3 land acquisition at The Neighbourhood at Ormiston Proposal**

s 9(2)(b)(ii)



s 9(2)(b)(ii)



s 9(2)(b)(ii)



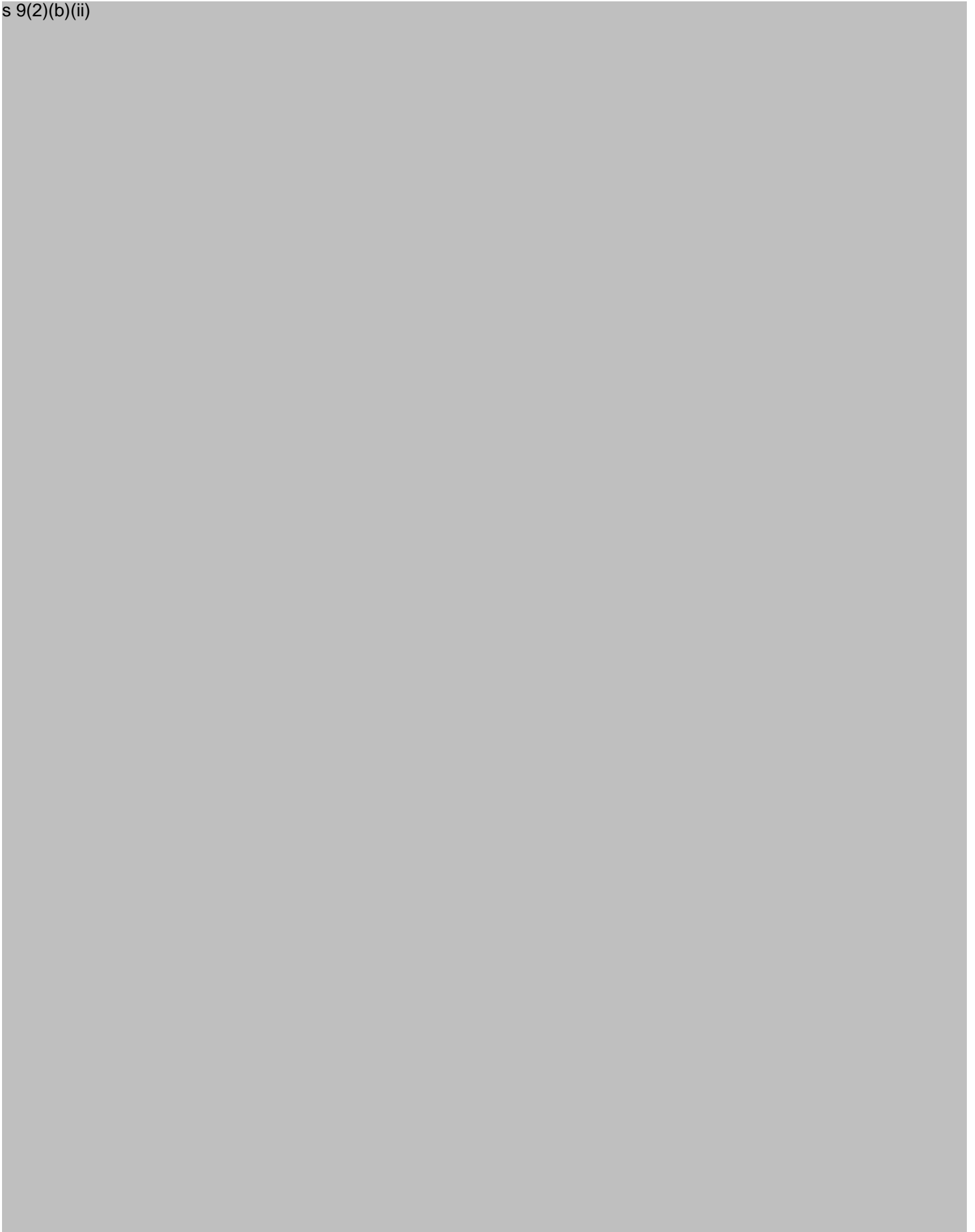
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s 9(2)(b)(ii)

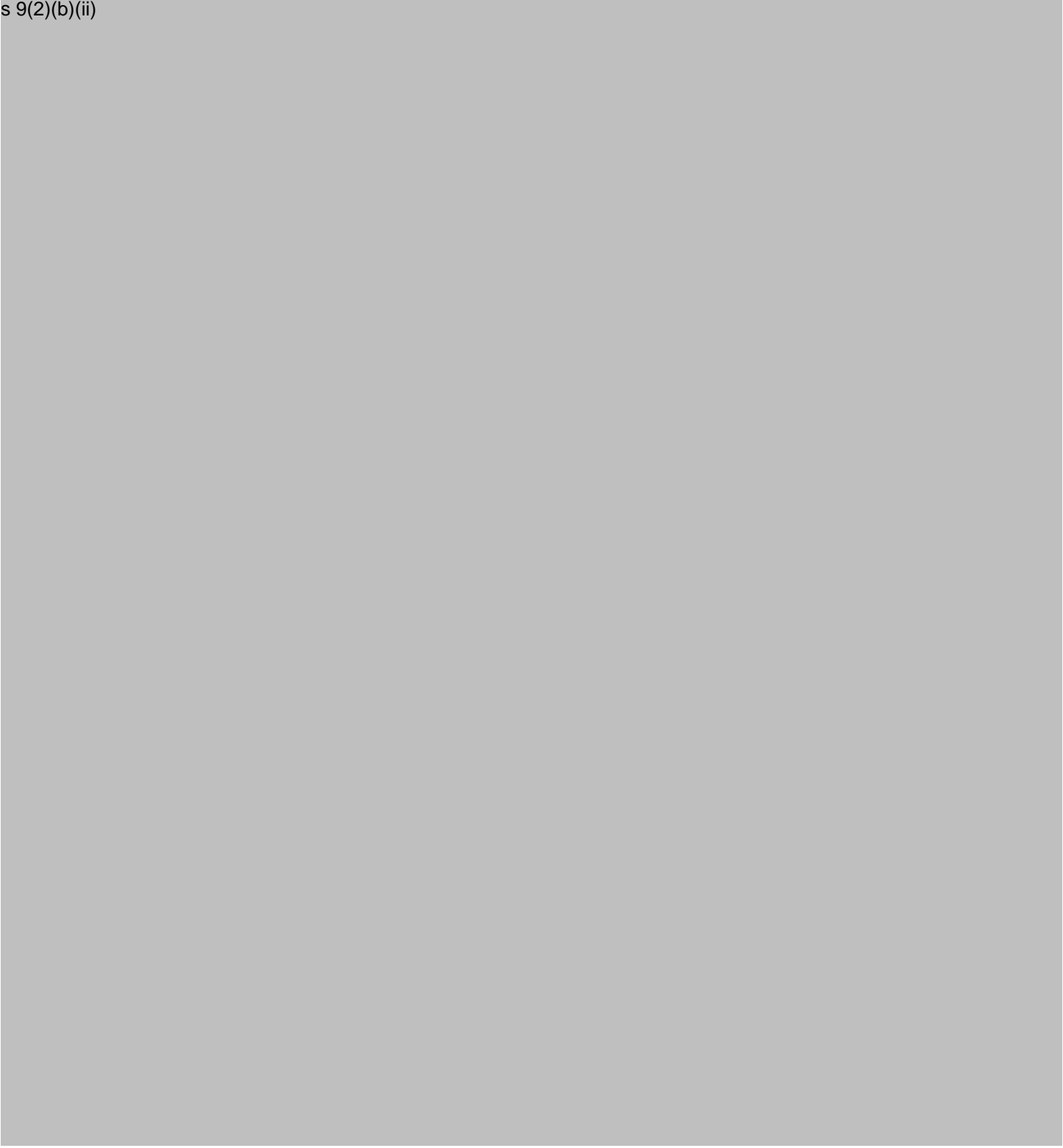


s 9(2)(b)(ii)





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