



Briefing

Sunfield proposal – advice regarding section 29 of the Urban Development Act 2020

Date:	24 March 2022	Security level:	In Confidence
Priority:	High	Report number:	BRF21/22031250

Action sought

	Action sought	Deadline
Hon Grant Robertson Minister of Finance	Indicate whether you would like to direct Kāinga Ora to assess Sunfield as a potential Specified Development Project	6 April 2022
Hon Dr Megan Woods Minister of Housing	Indicate whether you would like to direct Kāinga Ora to assess Sunfield as a potential Specified Development Project	6 April 2022

Contact for discussion

Name	Position	Telephone	1 st contact
Jeremy Steele	General Manager, Policy and Legislation Design	04 832 2471	s 9(2)(a) ✓
Fiona McCarthy	Manager, Policy and Legislation Design	04 832 2594	s 9(2)(a)

Other agencies consulted

The Treasury, Kāinga Ora

Minister's office to complete

- ☐ Noted
- ☐ Seen
- ☐ Approved
- ☐ Needs change
- ☐ Not seen by Minister
- ☐ Overtaken by events
- ☐ Declined
- ☐ Referred to (specify)

Comments

Date returned to HUD:



Briefing

Sunfield proposal – advice regarding section 29 of the Urban Development Act 2020

For: Hon Grant Robertson, Minister of Finance
Hon Dr Megan Woods, Minister of Housing

Date: 24 March 2022

Security level: In Confidence

Priority: High

Report number: BRF21/22031250

Purpose

- 1 This briefing is intended to support you to exercise your statutory discretion under section 29 of the Urban Development Act 2020 as to whether to direct Kāinga Ora to assess the Sunfield Proposal as a potential specified development project.

Executive summary

- 2 The Urban Development Act 2020 (the UDA) established a streamlined planning and consenting process for urban development projects, known as the specified development project (SDP) process.
- 3 Section 29 of the UDA provides that an urban development project may be selected for assessment as a potential specified development project in one of two ways:
 - Kāinga Ora selects the project for assessment; or
 - the joint Ministers direct Kāinga Ora, in writing, to assess the project as a potential specified development project.
- 4 In October 2021, Winton Property Group requested that Kāinga Ora assess its Sunfield development as a potential SDP. This request was declined. Winton then requested that the Ministers of Finance and Housing, as “joint Ministers” under the UDA, direct Kāinga Ora to undertake a project assessment.
- 5 A project assessment is a detailed due diligence assessment of a project's suitability for the SDP process. Undertaking a project assessment does not indicate that a project will necessarily proceed via the SDP planning and consenting process. This requires a further decision by Ministers and the making of an Order in Council.
- 6 This paper provides advice to support your decision on whether to direct Kāinga Ora to conduct the assessment, including relevant considerations, implications, and risks. In making your decision, the following points are relevant:
 - There are no specific criteria in section 29 to be considered when making a decision on selecting a project for assessment. Section 29 was drafted broadly to give Kāinga Ora and Ministers broad discretion to determine which projects should be assessed as potential SDPs.
 - Your decision must be consistent with the purpose of the UDA (which is to facilitate urban development that contributes to sustainable, inclusive and thriving communities) and must take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

- However, consistency with the purpose of the UDA does not mean that any project that contributes to urban development is required to be assessed as an SDP. Rather, your decision should take into account the wider context and Government priorities, the current capacity of Kāinga Ora to undertake assessments, and its views on the likely strategic importance of the project, particularly relative to other projects.
7. Kāinga Ora advises that, at least initially, it can only undertake two to three SDP project assessments at a time. It is currently considering eight projects that it has identified as likely to be suited to becoming SDPs. In each of these cases, key partners have been identified and work has been undertaken to align objectives between central and local government agencies, iwi and private parties. This includes for projects such as S 9(2)(f)(iv)
 8. On balance, HUD believes that the benefits a direction to assess the Sunfield proposal could provide are outweighed by other relevant considerations and we do not recommend you direct Kāinga Ora to undertake this project assessment.
 9. If you do not direct Kāinga Ora at this time, this would not stop Kāinga Ora working with Winton to consider other ways it might support the Sunfield project, such as facilitating a discussion between Winton and Auckland Council.

Recommended actions

10. It is recommended that you:

1. **Note** the contents of this briefing *Noted*
2. **Consider** the mandatory and other considerations identified as relevant to a decision whether or not to direct Kāinga Ora to assess Sunfield as a potential Specified Development Project *Considered*
3. **Agree** to either:
 - 3.1 **Direct** Kāinga Ora to assess Sunfield as a potential Specified Development Project *Agree / Disagree*
 - OR**
 - 3.2 **Not direct** Kāinga Ora to assess Sunfield as a potential Specified Development Project (**officials' preference**). *Agree / Disagree*

Jeremy Steele
**General Manager, Policy and
Legislation Design**

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Hon Dr Megan Woods
Minister of Housing

..... / /

Hon Grant Robertson
Minister of Finance

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Overview

- 11 In early October 2021, Winton Property Group (Winton) requested Kāinga Ora assess its Sunfield development as a potential specified development project (SDP) under section 29 of Urban Development Act (UDA). On 23 November 2021, Kāinga Ora announced its decision not to select the Sunfield development for this assessment. Following this decision, Winton wrote to Ministers Robertson, Woods and Parker and requested that Ministers direct Kāinga Ora to undertake the assessment.
- 12 The Minister of Housing met with representatives from Winton on 9 December 2021. Following this meeting, the Minister of Housing requested advice from officials to support a decision by joint ministers (Housing and Finance) on whether to direct Kāinga Ora to assess the project as a potential SDP.
- 13 This paper provides advice on mandatory considerations for this decision, and other factors we consider relevant which you may take into account.
- 14 This advice is independent from the decision made by Kāinga Ora and is not a review of the statutory decision made by Kāinga Ora.

Background

Overview of the Sunfield development proposal

- 15 Sunfield is intended to be a master planned development across 221 hectares of contiguous land between the suburbs of Takanini and Papakura in southern Auckland. We understand that much of the land in the proposed development sits outside the Auckland Rural Urban Boundary. None of the land in the proposed area is currently zoned for urban development.
- 16 It would encompass a new four hectare town centre with retail and community buildings built around the 15-minute neighbourhood concept, and car-less living. The proposal would provide approximately 4,400 residential units, three retirement villages, and 250,000 sqm of employment, healthcare, and education floorspace.

The specified development project process

- 17 The UDA established a streamlined process for planning and consenting of selected urban development projects, called the SDP process. Complex urban development projects require multiple statutory approvals and processes to proceed, along with alignment between investment objectives and timeframes for multiple local and central government agencies and private organisations.
- 18 The SDP process was designed to obtain these approvals through a single process. It also provides for Ministerial involvement, which can support the alignment of objectives across central and local government agencies, iwi, and private organisations.

Direction under section 29

- 19 The first formal stage of the SDP process is 'project assessment'. A project assessment is a detailed due diligence process. Under section 29 of the UDA, a potential urban development project, or an urban development project that is already being carried out, may be selected for assessment as a potential specified development project in one of two ways:
 - Kāinga Ora selects the project for assessment; or
 - the joint Ministers direct Kāinga Ora, in writing, to assess the project as a potential specified development project.
- 20 There are no specific criteria in section 29 to be considered when deciding whether to select a project for assessment. Section 29 was drafted broadly to give Kāinga Ora and Ministers broad discretion to determine which projects should be assessed as potential SDPs.
- 21 In making a decision, Ministers should consider any mandatory and other relevant considerations. The scheme of the UDA is clear that Ministers should not be undertaking a detailed assessment of the proposed project (as that occurs only if a project is selected for assessment, with the detailed assessment role reserved for Kāinga Ora).

Project assessment

- 22 The UDA provides that Kāinga Ora must assess a project selected in accordance with section 29 by:
- identifying constraints and opportunities associated with the project in relation to the project land, Treaty settlements, Māori interests, and alignment with the relevant local authorities' urban growth plans
 - undertaking engagement with Māori and key stakeholders
 - seeking views from Māori entities that have an interest in the land or adjoining land to the development, and hāpu connected to any former Māori land within the development area
 - following a specific process if the project includes a specified conservation-related area
 - publicly notifying the proposed key features of the project and inviting feedback from the general public.
- 23 On completion of a project assessment, or in some cases earlier, Kāinga Ora must prepare a project assessment report, which recommends to joint Ministers whether or not the project should be established as an SDP.
- 24 An early report is possible where Kāinga Ora decides during its assessment not to recommend the project be established as an SDP.
- 25 However, despite this, where you have directed Kāinga Ora to undertake an assessment, Kāinga Ora is likely to undertake a full and thorough assessment, performing many if not all of the specified steps, even if it decides early on that a project is unlikely to be suited to becoming an SDP. This is, firstly, to ensure that any assessment report contains full information to assist your subsequent decision as to whether to accept their recommendation or to refer the project back to Kāinga Ora for further work. Secondly, it is to reduce the risk of judicial review if decisions are not favourable to third parties.
- 26 There is no expectation that an assessed project progresses beyond this stage. A project only proceeds to subsequent SDP stages if:
- as a result of the project assessment (or further work on a project assessment), Kāinga Ora recommends the project be established as an SDP and therefore proceed to the development plan stage (the formal planning stage of the project)
 - Ministers accept this recommendation.
- 27 If joint Ministers decide the project should proceed, an Order in Council is made (by the Governor-General following consideration by Cabinet) establishing the SDP. Following this, a development plan is prepared, is formally consulted on, and goes through an Independent Hearings Panel. The plan is then approved by the Minister of Housing before development may begin.

Advice on mandatory considerations

- 28 When deciding whether to direct Kāinga Ora to undertake a project assessment, there are the following mandatory considerations:
- You must exercise your decision-making power in a way that is consistent with the purpose of the UDA which is set out in the following box:

Section 3 of the UDA

- 1) The purpose of this Act is to facilitate urban development that contributes to sustainable, inclusive and thriving communities.

2) To that end, this Act –

- (a) provides a mechanism to streamline and consolidate processes for selected urban development projects initiated, facilitated, or undertaken by Kāinga Ora–Homes and Communities (referred to in this Act as Kāinga Ora); and
- (b) provides powers for the acquisition, development, and disposal of land used for the purpose of Kāinga Ora performing its urban development functions; and
- (c) provides additional powers, rights and duties for the purpose of Kāinga Ora performing its urban development functions.

- you are required to take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) as per section 4 of the UDA.

29 Advice on these two mandatory considerations is outlined below.

Consistency with the purpose of the UDA

30 Consistency with the purpose of the UDA does not mean that any project that contributes to sustainable, inclusive and thriving communities must be progressed as an SDP. It is a mandatory, but not the only relevant, consideration. In the context of this advice, it means you should not exercise your discretion to give a direction to Kāinga Ora under section 29 unless you are satisfied that the Sunfield project could meet the purpose of the UDA.

Treaty of Waitangi principles

31 The UDA requires you to take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) when making this decision. These principles are being constantly developed by the courts and the Waitangi Tribunal, but importantly include:

- the principle of partnership
- the principle of active protection
- the principle of redress.

32 Taking into account these principles requires you to:

- carefully identify the Treaty interest(s)
- determine whether “active protection” of the interests is required
- produce a decision which balances the interest(s) at play in accordance with the statutory direction.

33 A small part of the proposed Sunfield area is land subject to a statutory acknowledgement in the Ngāti Tamaoho Claims Settlement Act 2018. This recognises the association between Ngāti Tamaoho and a particular site or area and enhances the ability of the iwi to participate in Resource Management Act 1991 (RMA) processes. Should you direct Kāinga Ora to undertake a project assessment, it would be required to engage with Māori entities including Ngāti Tamaoho, under section 33 of the UDA about the proposed SDP. The commitment would also be carried over into the UDA planning and consenting processes if a direction to Kāinga Ora to assess the Sunfield project resulted in eventual establishment of an SDP.

34 The Sunfield proposal does not propose any particular involvement of Māori or iwi, and HUD has not identified any other Treaty interests that might be engaged by the decision you make. If you direct Kāinga Ora to undertake an assessment it will, of course, be required to take the principles of the Treaty into account when making its own decision whether to recommend the establishment of the SDP.

Other relevant considerations

35 Your decision under section 29 should also take into account the wider context including any possible constraints on the current capacity of Kāinga Ora to undertake assessments, its urban development functions, and Government priorities. In this regard we note the following:

- The UDA creates a framework for SDPs, but SDPs will not be an appropriate pathway for all developments. Directing Kāinga Ora to assess every proposed project would be inconsistent with the purpose and scheme of the UDA, which clearly contemplates a wide discretion for both Kāinga Ora and Ministers as to selection of projects to move to the assessment phase
- A project may still proceed via standard processes if it does not become an SDP (including relevant RMA processes). Plan changes would be required for the Sunfield project, which Winton would need to pursue through Auckland Council.

36 As assessing SDPs will require substantial Crown resource to manage – both from Kāinga Ora and other central government agencies that need to engage in the assessment – it is appropriate to consider the impact on the wider government work programme and the extent to which a project is aligned with strategic priorities as set out in the Government Policy Statement on Housing and Urban Development (GPS-HUD).

Capacity to undertake assessments

- 37 Kāinga Ora has constrained capacity to undertake project assessments, especially while it is still in the process of implementing its processes to operationalise its role under the UDA. An SDP project assessment is likely to take around 6 to 9 months if the assessment is straightforward (one where challenges and risks have already been identified during project selection). A partial assessment would also take at least several months, and longer if engagement proves difficult.
- 38 Currently Kāinga Ora is not undertaking any project assessments. As will be outlined further below, it has identified strong candidates for assessment which it expects to begin assessing shortly.
- 39 Initially Kāinga Ora estimates that it can do two to three project assessments at a time, without a significant impact on other work. In time, much of the assessment phase could be outsourced. However, the ability for Kāinga Ora to realise efficiency gains from outsourcing is likely to be limited at the early stages, where it is still working out how best to operationalise the UDA.
- 40 It is possible that the assessment by Kāinga Ora of the Sunfield project will take less work owing to due diligence investigation work Winton has already completed. However, efficiencies gained as a result may not be significant. Kāinga Ora would still need to review and test any due diligence information provided and in some circumstances this may require replicating work already undertaken by Winton.
- 41 Given these constraints, it is important that the projects that will get the greatest benefit from the SDP process and most closely reflect government priorities as reflected in the GPS-HUD are prioritised for project assessment.

Prioritisation and partnership

- 42 SDPs will ultimately be successful based on how effectively parties involved work together. While the UDA does not explicitly require partnership with Kāinga Ora as part of the SDP process, its operating principles require Kāinga Ora to take a partnering approach when carrying out its urban development functions. The GPS-HUD also emphasises the importance of partnership in its ways of working.
- 43 Kāinga Ora has a pipeline of projects that it considers to be potential SDP candidates. These projects have all been developed through spatial partnerships or other strategic partnerships, have involved extensive multi-party conversations and strong collaboration, and are consistent with the aims set out in the GPS-HUD. They would be progressed from a position where considerable work has been undertaken already to identify relevant partners and align priorities across local and central government bodies, iwi and private parties. Generally, HUD considers that these projects that have resulted from partnerships, and have demonstrated good relationships, should be prioritised from a Kāinga Ora resourcing point of view.
- 44 Currently eight of these appear to be strong candidates for assessment.

s 9(2)(f)(iv)

s 9(2)(f)(iv)

A selection decision on two potential SDPs

It is likely that assessing Sunfield would slow down the assessment of these projects and could delay the commencement of delivery if s 9(2)(f)(iv) are progressed as SDPs.

- 45 While not required, local government support for SDPs is generally expected to be the norm. When considering whether to establish an SDP, joint Ministers need to be satisfied that either there is overall support from the relevant territorial authority for the project being established as an SDP, or the project is in the national interest (for which there is a high bar). While this support is not required to be demonstrated until the completion of the project assessment it is currently unclear what Auckland Council and other stakeholders' views are in relation to the Sunfield proposal.
- 46 There is some evidence that Winton has been reluctant to take a partnership approach in this project to date. For example, it did not take up the opportunity to attend a meeting with Auckland Council facilitated by Kāinga Ora, and engagement with the council about the development otherwise appears to be limited. This contrasts with other projects, where private parties have been engaging closely with Kāinga Ora prior to any decisions on selection for project assessment, and local authorities are already highly engaged.
- 47 In short, while it is acknowledged that Winton could develop strong relationships with relevant parties during the project assessment phase, the lack of this engagement to date means it is more uncertain whether the project assessment would lead to a recommendation that the project becomes an SDP. For the other projects above, it is clearer what the views of stakeholders are.

Additional information

Implication of not giving a direction under section 29

- 48 You have signalled a desire for Kāinga Ora to play a more facilitative role in urban development, rather than focus on delivering projects itself. If you choose not to direct Kāinga Ora, it may signal to other developers that for projects to be considered as potential SDPs there will need to be a clear delivery role for Kāinga Ora, despite this not being the rationale for your decision. HUD considers that this can be managed via clear communication regarding the types of projects that Kāinga Ora will look to assess.
49. Plan changes are required for the Sunfield development to proceed, either via the RMA or through the SDP process under the UDA. These changes will include changing the Rural Urban Boundary under the Auckland Unitary Plan, which would require a change to the regional policy statement. We do not consider that this would necessarily make the project unviable, however it may be challenging.
50. If you do not direct Kāinga Ora at this time, this would not stop Kāinga Ora working with Winton to consider other opportunities to support the project, such as facilitating a discussion between Winton and Auckland Council.

s 9(2)(h)

51. s 9(2)(h)

HUD's recommendation

- 52 On balance, HUD recommends that you do not direct Kāinga Ora to commence a project assessment of the Sunfield development.
- 53 HUD believes that the benefits that a direction to assess could provide, including a contribution to the purpose of the UDA, are outweighed by the impact on other Government

priorities. In addition, these benefits may also arise whether or not the project is established as an SDP.

Consultation

- 54 HUD officials have engaged with Kāinga Ora, to understand the impact of a direction under section 29 of the UDA.
- 55 The Treasury has been consulted.

Next steps

- 56 If you decide to direct under section 29, HUD will draft a letter for you to provide to Kāinga Ora.
- 57 HUD will also draft a letter for you to send to Winton to advise the outcome of your decision.