



MEETING BRIEFING

Urban Development and Transport Agency legislation: outstanding issues

Date:	28 March 2018	Priority:	High
Security classification:	In Confidence	Tracking number:	2704 17-18

Action sought		
	Action sought	Deadline
Hon Phil Twyford Minister of Housing and Urban Development	Read in advance of your meeting with colleagues on 29 March 2018. Forward a copy to Ministers Parkers and Jones ahead of your meeting.	29 March 2018

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Di Anorpong	Manager, Construction and Housing Policy	04 901 8743	s 9(2)(a)	
Andre Anderson	Principal Advisor, Housing Markets	04 474 2815	s 9(2)(a)	✓
Gillian Parry	Senior Policy Advisor, Construction and Housing Policy	04 901 8170		

The following departments/agencies have been consulted
Ministry for the Environment

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments



MEETING BRIEFING

Urban Development and Transport Agency legislation: outstanding issues

Date:	28 March 2018	Priority:	High
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Purpose

You are meeting with Ministers Parker and Jones on Thursday 29 March at 11:00am to discuss some of the outstanding issues relating to an earlier briefing provided on the Urban Development and Transport Agency legislation.

This briefing provides an annotated agenda outlining the outstanding issues for your discussion.

Recommendations

The Ministry of Business, Innovation and Employment recommends that you:

- a **Forward** this briefing to Ministers Parker, Jones and Sage and **discuss** the outstanding issues outlined in this briefing with your colleagues

Agree / Disagree

Di Anorpong
Manager, Construction and Housing Policy
Housing and Urban Branch, MBIE

28, 3, 18
..... / /

Hon Phil Twyford
**Minister of Housing and Urban
Development**

..... / /

Background

1. Following Cabinet's agreement to the high-level Cabinet paper *Establishing the Housing Commission and legislating to empower complex urban development projects* in December 2017, MBIE has provided you with a number of detailed briefings on various aspects of the new legislation.
2. We recommend that at your meeting with Ministers Parker and Jones on Thursday 29 March, you discuss some of the outstanding issues raised in the detailed briefing *Urban development authority legislation – fundamental issues* [1262 17-18]
3. This briefing provides an annotated agenda of these issues.
4. An overview diagram of the current proposed process is attached.

Annotated agenda

5. Below, we reproduce the recommendations that we suggest Ministers discuss on Thursday.
6. We recommend that you discuss Part 3 of the fundamentals briefing (paragraphs 118-157), which relates to finalising and approving development plans. In addition to reproducing the original recommendations, note that we also provide further advice on these matters below the table.

Agenda items: Fundamental issues briefing

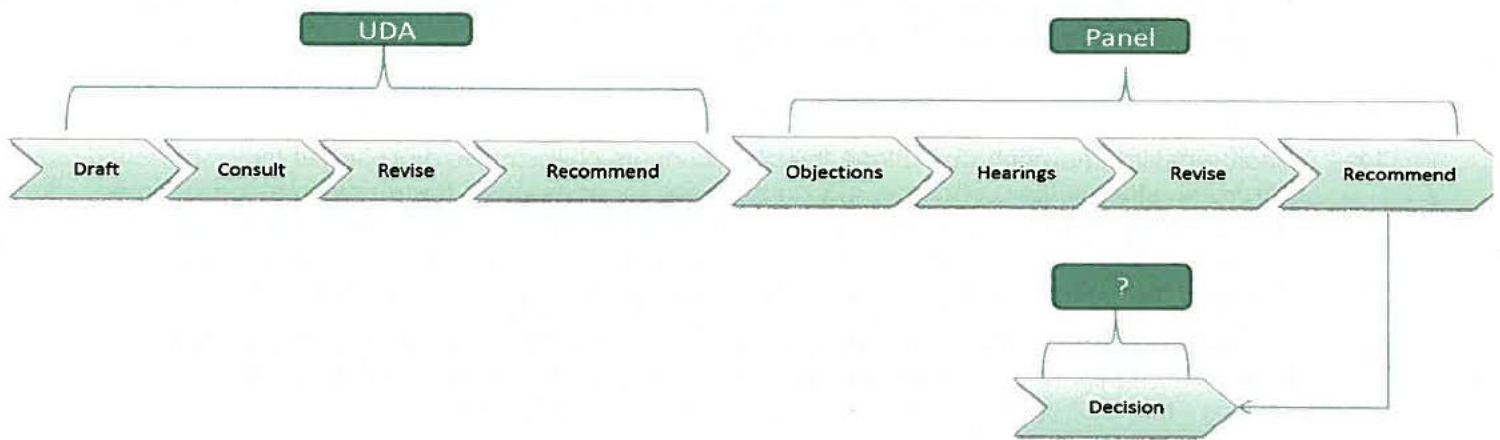
Outstanding topic	Recommendations	Comment
Part 3: Finalising and approving development plans <ul style="list-style-type: none"> • Section 3a: Appeals against the development plan (paras 118-133) 	17 <p><i>Officials recommend that:</i></p> <ul style="list-style-type: none"> • <i>affected persons be able to object to the recommended development plan within a specified time by written submission to the UDATA, stating the reason for the objections and the change the person seeks to the recommended plan</i> • <i>if objections are received—</i> <ul style="list-style-type: none"> ○ <i>the UDATA must submit the recommended development plan to independent commissioners for examination, and provide the independent commissioners with copies of the objections that the UDATA received, together with the UDATA's views on those objections</i> ○ <i>the independent commissioners review the objections and the relevant parts of the recommended development plan</i> ○ <i>the independent commissioners can seek further information from the UDATA, objectors or an independent technical expert by either holding informal hearings (which are not mandatory) or commissioning reports (with the</i> 	See further advice on an alternative approach below.

		<p><i>ability of the Minister to apply timeframes)</i></p> <ul style="list-style-type: none"> ○ <i>the independent commissioners can recommend to the Minister that the development plan can either: be approved as recommended by the UDATA; be approved subject to specified amendments that address the objections (and any consequential matters); or be rejected entirely.</i> 	
<ul style="list-style-type: none"> • Section 3b Final decision-maker for the development plan (paras 134-152) 	18	<p><i>Officials recommend that:</i></p> <ul style="list-style-type: none"> • <i>the new legislation not provide for any right of appeal to a court on the merits of a policy, rule or regulation included in a development plan, while retaining the ability to appeal to the courts on points of law and to apply to the courts for judicial review</i> • <i>that by default the final decision-maker for approval of the development plan is the Minister, but that if desired, he or she can transfer the authority to make the decision to independent commissioners who hear the submissions.</i> 	<p>This option is lost if Ministers prefer the alternative approach.</p> <p>Further advice below.</p>
<ul style="list-style-type: none"> • Section 3c Discretion over approval (paras 153-157) 	19	<p><i>Officials recommend that, when deciding whether to approve the development plan, the Minister have the ability to exercise his or her discretion over issues to which affected persons have objected.</i></p>	<p>Depending on Ministers' decision on the alternative approach</p>

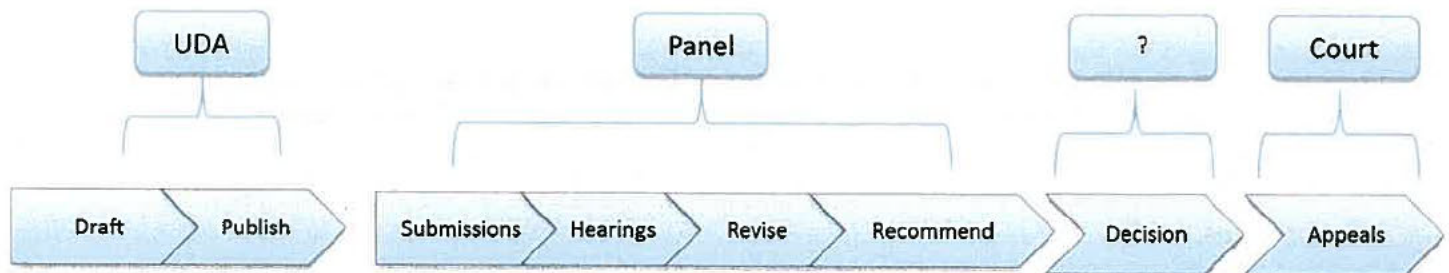
Further advice: Finalising and approving development plans

7. We had previously recommended that an independent hearings panel be established to hear objections on the UDA's recommended development plan.¹ In terms of process, this step would occur after the UDA has consulted with the public on its draft plan and made any amendments to the plan it considers appropriate in light of the feedback it receives. Thus, the panel's role would be to provide an independent second hearing for those stakeholders who still hold concerns with the proposed plan after the first round of consultation.
8. The proposed model, which is illustrated below, was intended to provide a streamlined method for addressing stakeholder concerns without retaining appeal rights which would be likely to result in significant delays. A 'road-map' outlining the full process of the current proposal is attached at Annex 1.

¹ See paragraphs 52 and 53 of MBIE's introductory briefing dated 16 November 2017: *Legislation to establish a national urban development authority and empower complex development projects* [0854 17-18].



9. An alternative approach would be to develop a similar model to the hearings panel for the Auckland Unitary Plan. Under this model the panel would hear all submissions on the draft development plan, rather than just objections. The panel would then submit a revised plan to the UDA for consideration before being finalised.
10. Because the panel would conduct the first consultation with the public, it couldn't provide an independent second hearing. Consequently, some opportunity to appeal would still be required. This alternative model is illustrated below:



Comparison of the two approaches

11. While the alternative approach may seem a shorter process because it effectively removes a consultation step, it may take just as long in reality. This is due to the fact that the UDA would want to test its draft development plan with stakeholders before formally publishing for consultation. When considering the speed of the process, whether or not appeals to the courts are allowed will also be a key factor, noted below.

Decision-maker

12. Under the original proposal, the Minister is the decision-maker on the final development plan, with the discretion to delegate the decision to the independent hearings panel. Under the alternative, the UDA would take the role that the Auckland Council had in the AUP model. The panel would submit the recommended plan to the UDA who would decide to accept or reject the panel's suggested changes, and make the decision on the final plan.

13. The key consideration regarding who the decision-maker should be is that the development plan can include decisions to levy targeted rates on land owners in the project area. Traditionally, taxation decisions such as this are reserved to elected representatives, rather than delegated to appointed officials or judges.

Appeals

14. The alternative approach would lose the objections mechanism we'd proposed for addressing stakeholder concerns, raising the need for appeals on the merits in at least some circumstances. Under the AUP model, appeals were permitted on the areas where the Council had disagreed with the Panel's recommendations. In contrast, the original proposal envisaged that there would be no opportunity to appeal to the courts on the merits.
15. If appeals are allowed, this raises the question of which court would be most appropriate. Given the complexity of issues covered in the development plan (ie, not just land use changes), the environment court may not be the most appropriate.
16. At your meeting with Environment Court Judges on 22 March, the judges noted the difficulty with appeals on the Auckland Unitary Plan which were heard by two courts (Environment Court and High Court). The Judges recommended assigning one Court to hear all appeals under the urban development legislation, if appeals are retained.

Next steps

17. Your decisions on the outstanding issues raised in this briefing will be reflected in the upcoming detailed Cabinet papers, currently scheduled for consideration by Cabinet in May 2018.

Other issues

18. Note that other issues remain to be considered. Officials are preparing further advice to support Ministers to provide direction on the preferred decision-making framework for the new legislation.
19. In addition, Ministers are yet to provide direction on the issues raised in the following three briefings.
 - *Urban development legislation – land acquisition* [1922 17-18]
 - *Urban development legislation – powers over reserves* [1260 17-18]
 - *Urban development legislation – planning and consenting* [1307 17-18]
20. As the first two briefings concern issues in Minister Sage's portfolios, we recommend you wait to discuss these issues until Minister Sage is present. The third briefing is contingent on the further advice on the preferred decision-making framework.

Further meetings

21. We recommend scheduling at least two further meetings with Ministers Parkers, Sage and Jones to discuss these remaining issues, with a final 'wash-up' meeting to review the full range of decisions before the Cabinet papers are submitted. In order to meet the May Cabinet timeline, we suggest these meetings take place before the end of April.

Current process proposal

Establishment phase

1. Project identified

The UDA or local government propose a new development project for consideration



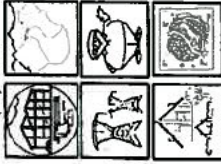
2. Initial assessment

The UDA prepares an assessment of the development proposal and seeks information



3. Public consultation

The UDA seeks public feedback on the strategic objectives and the proposed project area



4. Development plan

UDA may revise the development plan following feedback



5. Public consultation

Draft development plan issued for public consultation



6. Development plan prepared

The UDA produces detailed draft development plan



7. Decision to establish

Order in Council to establish project



Local government agreement sought



8. Objections

Objections to draft development plan lodged (many)



9. Development plan approved

Minister reviews and makes final decision on approving the development plan

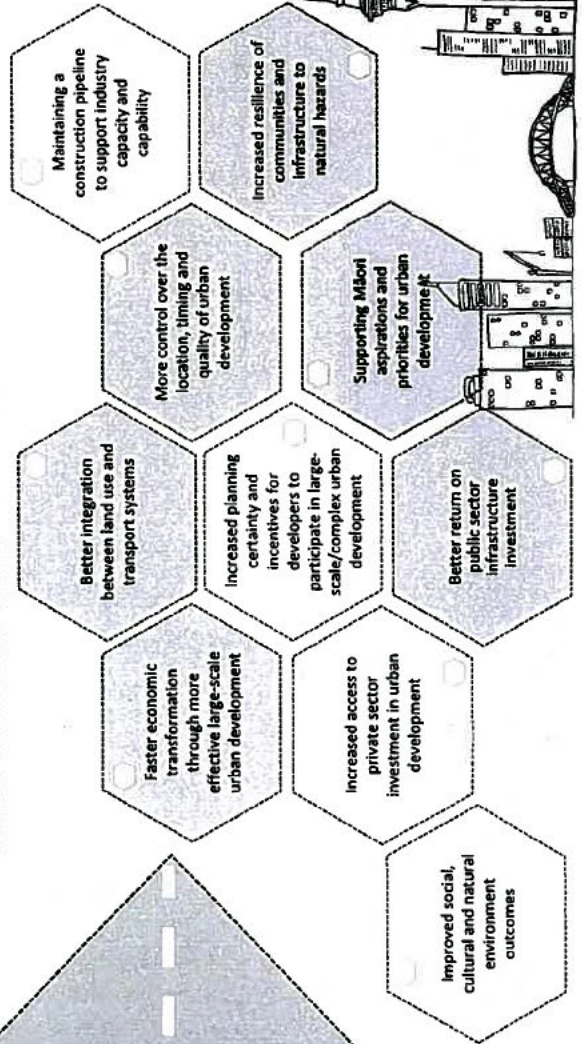


Awaiting Ministers decision

Awaiting Ministers decision

Development plan phase

What outcomes will be achieved?



Key

- UDA
- Territorial Authority
- Min
- Cabinet
- Independent Commissioners
- Affected person
- Minister
- General public
- Utility providers
- Regional councils
- Central government departments

Local government agreement
Central government must seek local government agreement (with a reserve power to override)

Objections process

- Development plan objections sent to Independent commissioners
- Commissioners consider plans and objections
- Commissioners make recommendations and provide advice to Minister



