



Cabinet Business Committee

In Confidence

CBC Min (07) 17/1

Copy Number:

Minute of Decision

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Disposal of Crown Land: Conclusions of Wider Review

On 20 August 2007, the Cabinet Business Committee:

Background

1 **noted** that on 28 March 2007, the Cabinet Policy Committee (POL):

- 1.1 agreed to the establishment of an Officials Group including representatives from the Department of the Prime Minister and Cabinet (lead), the Treasury, the State Services Commission, the Office of Treaty Settlements, Land Information New Zealand, Te Puni Kokiri, CCMAU and the Department of Conservation to undertake a review of policies and processes for considering the wider national interest where wider Crown agencies are considering the disposal of land;
- 1.2 agreed that the Officials Group will consider the implications of any proposals on other Crown objectives regarding prudent fiscal management, Crown agency performance and the Treaty settlement processes as part of their assessment, and include these implications in a report to POL;

[POL Min (07) 6/7]

2 **noted** that in April 2007, Cabinet agreed to an interim process to ensure relevant Ministers are notified when consideration is being given to the disposal of any land by Landcorp, or other Crown agencies, that would meet the Overseas Investment Act 2005 criteria of sensitive land [CAB Min (07) 11/3B];

Review of existing and interim process

- 3 **noted** that officials have reviewed existing land disposal processes, and the operation of the interim review process, and concluded that:
 - 3.1 existing processes do not protect the wider national interest where land is being disposed by non-departmental entities (State-owned enterprises or Crown entities);
 - 3.2 neither the existing nor the interim process adequately cover historic heritage, cultural, local or recreational values;

Modified interim process

4 **agreed** that the criteria for land subject to the interim process be modified to apply to land that meets the criteria set out in Annex 1 to this minute;

- 5 **agreed** to the significant changes to the interim land assessment criteria and process outlined in Annex 2 to this minute;
- 6 **agreed** that the modified interim process should become a permanent process for all Crown land disposals (see Annexes 3 and 4 of this minute for a description of the process);
- 7 **agreed** that the Historic Places Trust, Te Puni Kokiri and relevant local government authorities be notified of land being disposed of through the modified interim process to improve coverage of historic heritage, cultural, local and recreational values;
- 8 **agreed** that existing departmental land disposal processes be modified to require notification of the Historic Places Trust to assess historic heritage values, using a process modelled on the existing Department of Conservation notification process, with the primary protection mechanism, where appropriate, being heritage covenants [POL Min (03) 17/16];
- 9 **noted** that routine notification of local government authorities and Te Puni Kokiri will allow those groups to use their existing resources and powers to protect values of interest to them;
- 10 **noted** that the provision of routine notification to interest groups will not address any affordability problems that these groups have;
- 11 **noted** that the new Crown land sales process builds on and is in addition to the criteria used to assess 'cultural' and 'heritage' values of sensitive land under the Overseas Investment Act 2005;
- 12 **agreed** that the modified interim process be reviewed in February 2009;

Establishment of Ministerial Group

- 13 **agreed** that a Ministerial Group, comprising the Minister for State Owned Enterprises, Minister for Land Information and the landholding Minister, be formed to review land assessed through the Crown land sales process;
- 14 **agreed** that the Ministerial Group, in consultation with the Minister of Finance, be responsible for determining appropriate protection mechanisms and compensation, if any, for land on which protections are placed;

Compensation

- 15 **agreed** that there be an expectation that compensation is paid where protections placed on land reduce the value of land being disposed of by non-departmental entities;
- 16 **noted** that any compensation will require an additional appropriation;

Financial implications

- 17 **noted** that the proposed modified interim process will require additional assessment work for Te Puni Kokiri, Land Information New Zealand, Department of Conservation and the Historic Places Trust;

- 18 **approved** the following change to baselines to assess historic heritage values of Crown land proposed for disposal in 2008/09 and outyears, with a corresponding impact on the operating balance:

	\$m – increase/(decrease)			
	2007/08	2008/09	2009/10	2010/11 and Outyears
Vote Arts, Culture and Heritage Minister for Arts, Culture and Heritage				
Non-Departmental Output Expenses: Management of Historic Places	-	0.185	0.185	0.185

- 19 **approved** the following changes to appropriations for the additional costs of the land disposal assessment process, with a corresponding impact on the operating balance:

	\$m – increase/(decrease)			
	2007/08	2008/09	2009/10	2010/11 and Outyears
Vote Lands Minister for Land Information				
Departmental Output Expense: Standards and Quality Assurance	-	0.110	0.110	0.110

- 20 **noted** that should the number or complexity of assessments exceed estimated levels of demand, then one or more departments may seek additional funding in the 2008 Budget round.

Fleur Gaston
Secretary

Reference: CBC (07) 164

Present:

Rt Hon Helen Clark (Chair)
Hon Dr Michael Cullen
Hon Jim Anderton
Hon Steve Maharey
Hon Annette King
Hon Trevor Mallard
Hon Pete Hodgson
Hon Parekura Horomia
Hon Mark Burton
Hon David Parker

Officials present from:

Department of the Prime Minister and Cabinet

Copies to: (see over)

PROPOSED REVIEW PROCESS & CRITERIA

Criteria for “Land of Potential Interest”

Land of potential interest includes any disposal of the type of land identified in Table 1 or 2 below but excludes transactions in Table 3:

Table 1: Land is of potential interest if it is or includes

Land is of potential interest if it is or includes the following type of land and exceeds
Non-urban land	5 hectares
Land on islands specified in Part 2 of Schedule 1 to the Overseas Investment Act	0.4 hectares
Land on other islands (other than North or South Island, but including the islands adjacent to the North/South Island)	-
Foreshore or seabed (other than public foreshore and seabed)	-
Bed of a lake	0.4 hectares
Land held for conservation purposes under the Conservation Act 1987	0.4 hectares
Land that a district plan or proposed district plan under the Resource Management Act 1991 provides is to be used as a reserve, as a public park, for recreation purposes, or as open space	0.4 hectares
Land subject to a heritage order, or a requirement for a heritage order, under the Resource Management Act 1991 or by the Historic Places Trust under the Historic Places Act 1993	-
A historic place, historic area, wahi tapu, or wahi tapu area that is registered or for which there is an application or proposal for registration under the Historic Places Act 1993	-
Land held under the Reserves Act 1977, or Wildlife Act 1953	0.4 hectares
Wetland (as defined in the Resource Management Act section 3)	-
Coastal dunelands	-
An archaeological site included in the New Zealand Archaeological Site Recording Scheme	-
Land identified in a Plan, or Proposed Plan, or a Regional Policy Statement prepared under the Resource Management Act as having historic heritage value	-
Land identified in a Plan, proposed Plan, or a Regional Policy Statement prepared under the Resource Management Act as having outstanding natural features, outstanding landscapes, significant indigenous vegetation, or significant habitats of indigenous fauna	-

Table 2: Land A is of potential interest if it adjoins ...

Land is of potential interest if it <u>adjoins</u> land of the following type and land A exceeds
Foreshore	0.2 hectares
Bed of a lake	0.4 hectares
Land held for conservation purposes under the Conservation Act 1987 (if that conservation land exceeds 0.4 ha)	0.4 hectares
Any scientific, scenic, historic, or nature reserve under the Reserves Act 1977 that is administered by DOC and that exceeds 0.4 hectares in area	0.4 hectares
Govt Purpose (wildlife management) reserves under the Reserves Act, and land managed under the Wildlife Act	0.4 hectares
Any regional park created under the Local Government Act 1974	0.4 hectares
Land that is listed, or in a class listed, as a reserve, a public park, or other sensitive area by the regulator under s 37 of the Overseas Investment Act 2005	0.4 hectares
Land that adjoins the sea or a lake and exceeds 0.4 hectares and is one of the following types of land: <ul style="list-style-type: none"> • an esplanade reserve or esplanade strip (within the meaning of section 2(1) of the RMA 1991); or • a recreation reserve under the Reserves Act 1977; or • a road (as defined in section 315(1) of the Local Government Act 1974); or • a Maori reservation to which section 340 of Te Ture Whenua Maori Act 1993 applies 	0.4 hectares
Any national park under the National Parks Act	0.4 hectares
Wetland or coastal duneland	0.4 hectares

Table 2 continued:

Land is of potential interest if it <u>adjoins</u> land of the following type and land A exceeds
Land that is subject to a heritage order, or a requirement for a heritage order, under the Resource Management Act 1991 or by the Historic Places Trust under the Historic Places Act 1993	-
Land that includes a historic place, historic area, wahi tapu or wahi tapu area that is registered or for which there is application or proposal for registration under the Historic Places Act 1993;	-
Land identified in a Plan, or Proposed Plan, or a Regional Policy Statement prepared under the Resource Management Act as having historic heritage value	-

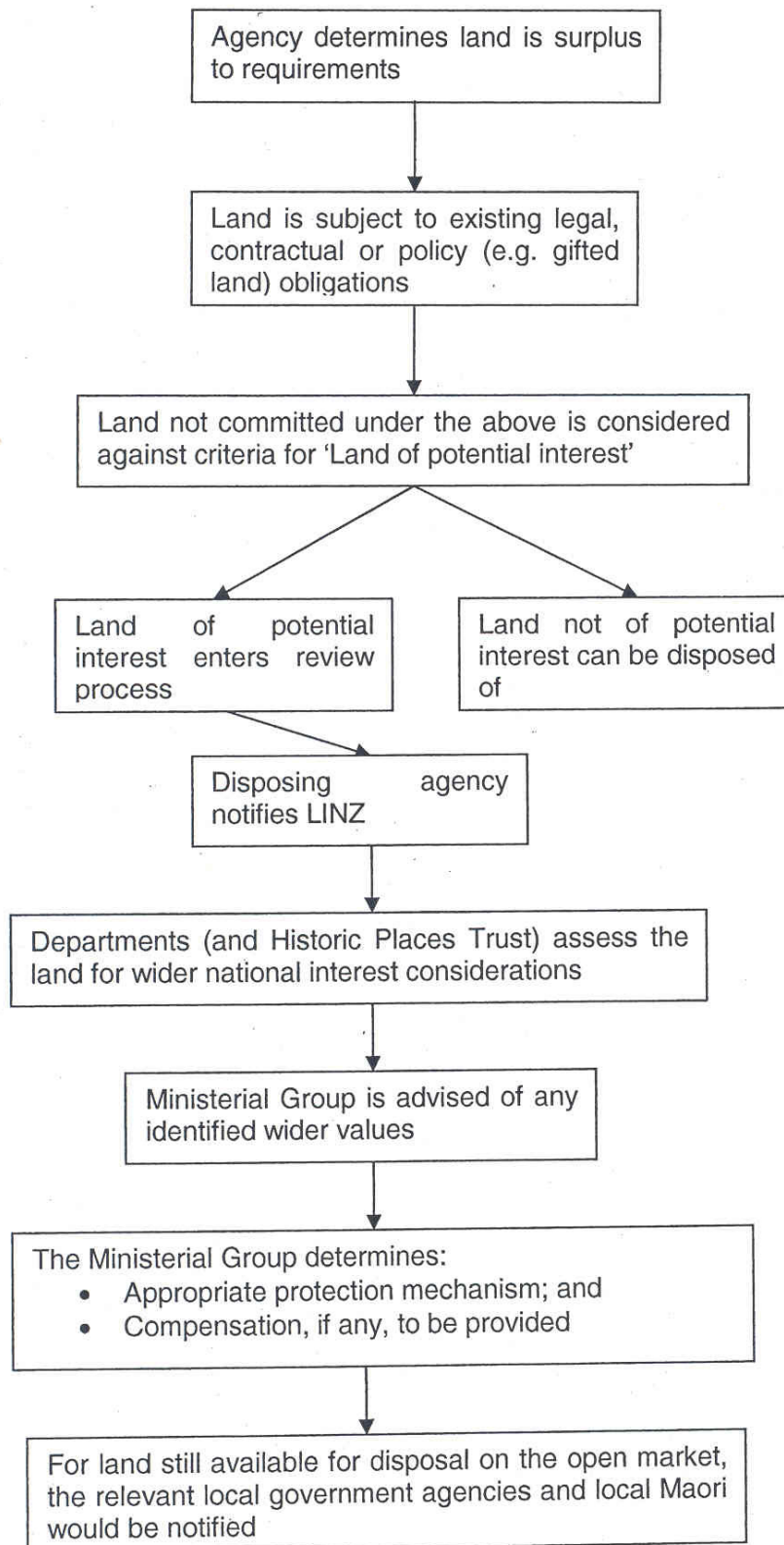
Table 3: Land is excluded from land of interest if it is a result of the following transactions:

Type of transaction
Land that is bought back by original owners (e.g., under Public Works Act offer-back, or gifted land policy)
A Crown-to-Crown transaction (except if the transaction moves land further away from the departments)
Land swap (except if they substantially worsen potential wider national interests)
New land leases less than 25 years
Leases over 25 years of new coastal reclamations
The vesting of reserves in administering bodies
Formerly privately-owned land that has been forfeit to the Crown under the Proceeds of Crime Act 1991 where disposal is by way of Court order, or where third parties, such as banks, have valid interests in the property up for disposal.

Significant Changes between the modified interim process and the Interim Process

Major proposed changes from the interim process include:

- \$1 million threshold no longer applies. This prevents the capture of non-sensitive, but high-value, land particularly in urban areas;
- Crown-to-Crown transactions would be excluded, except where the transaction moves land further away from the Crown (for example, from a department to a SOE). Crown-to-local authority transfers would also be excluded, as these are statutory processes and therefore outside of Ministers' ability to control.
- Land swaps will only be subject to the review process if they substantially worsen potential wider national interests (e.g., swapping native bush land for farmland).
- New land leases will only be subject to the review process if the lease is for a duration greater than 25 years. This is proposed as leases of shorter duration are unlikely to result in significant changes to the usage of the land (e.g., substantial land redevelopment). The requirement for new leases does not apply to transfers and subleases in existing leases. Long-term leases (over 25 years) of new coastal reclamations are also excluded, as such reclamations are subject to extensive consent processes under the RMA including Ministerial approval;
- The vesting of reserves in administering bodies (such as local authorities) is excluded. Although vesting is akin to transfer, the Crown retains the underlying ownership of the land and may cancel the vesting should that be necessary. The administering body must manage the reserve in accordance with the Act, which also ensures that the public interest in the reserve is protected.
- In some cases there are legal restrictions that mean that land may have to be sold (such as section 40 of the Public Works Act 1981 requiring offer-back to former owners). In these cases it is proposed that this land be excluded from any land review process, as there is little that this process could achieve. A Ministerial review of such land may also create a public impression that Ministers are responsible for sales of potentially sensitive land.
- The Government's Gifted Land Policy (STA (95) M 11/3) and Ngati Whakaue Gifted Lands Policy (CAB (94) M 38/8) require that if land that has been gifted to the Crown for a specific purpose, it should be offered back to the donors if the land is no longer required for that purpose. It is not considered appropriate for the Crown to retain that land for another reason without first offering it to the donors. It is therefore also proposed that the interim processes should only be considered after compliance with the Government's and Ngati Whakaue's Gifted Land Policy.

Proposed Process for the Modified Interim Land Review

Outline of LINZ Interim Assessment Process and Criteria

For agencies subject to the proposed modified interim process, the full process would involve:

- c) disposing agencies notifying Land Information New Zealand (LINZ) of any land that meets the criteria for land of potential interest;
- d) LINZ investigating whether the land is subject to DOC and HPT notification processes, statutory offer-back provisions, rights of first refusal, the gifted lands policy and the protection mechanism. If so, Ministers will be informed accordingly, as these processes and rights predetermine what may be done with the land, including consideration of wider national interests;
- e) other relevant departments and the Historic Places Trust would assess the land for wider national interest considerations;
- f) a Ministerial group would be advised of any wider values that departments identify as requiring protection before disposal;
- g) the Ministerial group would determine:
 - i. The appropriate protective mechanism;
 - ii. Compensation, if any, to be provided; and
- h) for land still being considered for disposal, the relevant local government organisations, and TPK, would be notified when land was offered on the open market.

Once land has been referred to LINZ, it will be assessed by the relevant agency for "sensitive values". For example, TPK will conduct an assessment of whether land is culturally significant to Māori where it is land on which traditional cultural practices have taken place. This will include identifying:

- Burial places
- Traditional religious ceremony sites
- Wānanga sites
- Sources of water for healing or death rites
- Sites for gathering of traditional food, roanga materials, craft materials, or building materials
- Battle sites
- Traditional housing sites
- Boundary markers
- Acknowledged sacred landscape features