

Chair
CABINET BUSINESS COMMITTEE

DISPOSAL OF CROWN LAND: CONCLUSIONS OF WIDER REVIEW

Executive Summary

1. In April 2007 Cabinet directed officials to review existing Crown land disposal processes to ensure that wider national interests are identified before Crown-owned land is disposed of and, where appropriate, these interests are protected.
2. In the interim, an Overseas Investment Act based process was applied to identify potential sensitive land disposals (CAB Min (07) 11/3B refers).
3. The Officials review identified that:
 - a) existing processes do not protect wider national interest where land is being disposed of by non-departmental entities (SOEs or Crown entities); and
 - b) neither the existing nor the interim processes adequately cover historic heritage, cultural, local or recreational values, where land is being disposed of by departments.
4. To address gaps in the coverage of non-departmental land disposals, I propose that a modified interim process continues to apply to both departmental and non-departmental entities. Voluntary compliance will be expected as Ministers are constrained in their ability to direct non-departmental entities on operational matters such as individual land sales.
5. A process that applies to all entities ensures that all significant land sales will be reviewed by a single Ministerial committee. This committee can then apply a consistent approach to protecting land of national importance
6. Where Ministers place any restrictions on land to protect wider national interests, the value of that land to the disposing agency will decrease. To maintain agency performance and encourage sensible landholding decisions, it may be necessary to compensate disposing agencies for their loss, particularly entities operating on a commercial arms-length basis from the Crown.

Proposal

7. This paper proposes that:

- a) the interim process be modified to improve its coverage of historic heritage, cultural, local and recreational values and to improve the relevance of the criteria that define land as being of potential interest; and
 - b) a modified interim process becomes a permanent process for all Crown land disposals
8. The cost of the new process applying to all Crown land disposals would be \$0.533 million per annum, of which \$0.238 million can be absorbed within existing departmental baselines. An additional appropriation of \$0.295 million would therefore be required. The majority of this cost reflects the extension of both processes to evaluate historic heritage, cultural, local and recreational values.

Background

9. On 2 April 2007 Cabinet directed Officials to review policies and processes for considering the wider national interest where Crown agencies are considering the disposal of land [CAB Min (07) 11/3B refers].

10. As part of this Cabinet:

directed the Officials' Group to undertake a review of policies and processes for considering the wider national interest where wider Crown agencies (Crown entities, SOEs and departments) are considering the disposal of land;

agreed that possible enhancements to current policies and processes should, where possible, be compatible with existing arrangements for accountability, performance and autonomy across the wider state sector; and

agreed that the Officials' Group would consider implications on other Crown objectives regarding prudent fiscal management, Crown agency performance and the Treaty settlement processes.

11. For the purposes of this review, "Crown agency":

- a) includes any government department, or non-departmental agency; but
- b) excludes agencies listed in Schedule Four of the Public Finance Act 1989.

12. Cabinet agreed this review should:

- a) develop the elements of 'wider national interest' to be considered when agencies are disposing of land;
- b) agree a definition of disposal that encompasses an appropriate range of transactions;
- c) identify the types of land currently held by wider Crown agencies that may attract wider national interest considerations if disposed of;
- d) investigate existing policies and processes for assessment of land prior to disposal;
- e) assess these policies and processes against the government's aim of ensuring adequate processes are in place to allow for sensitive land to remain in Crown ownership;
- f) assess options for improving policies and processes with minimal effect on current autonomy, accountability and performance requirements on Crown

entities, State owned enterprises and departments and the achievement of other government objectives.

13. At the same meeting, Cabinet established an interim process to ensure Ministers were notified when consideration was being given to the disposal of sensitive land. The interim process covers land defined as sensitive under the Overseas Investment Act 2005, or land with a value of \$1 million or more.

Results from the Interim Process

14. Between April 2007 and 30 July 2007, 70 properties were notified to Land Information NZ (LINZ) under the interim process. LINZ provided reports on 22 properties to Ministers of which only one found wider national interest values not already identified and/or protected through existing policies or processes. However, this property was subject to an offer-back under the Public Works Act, and so could not be retained in Crown ownership.

15. It currently takes at least six weeks to progress a property through the interim process to the point of submitting a report to Ministers. A breakdown of the properties notified to LINZ is set out below:

Table 1: Breakdown of properties considered by the interim process

Type of Agency	No. Properties	Total Area (hectares)	Total Value (\$ m)	Average Size/ Value
Government Departments ¹	46	833	\$80.9 m	18 ha / \$1.7m
SOEs, CRIs, DHBs & other Crown entities such as Fire Service	24	13,582	\$113.6 m	565 ha / \$4.7 m
Total	70	14,415	\$194.5 m	

16. Based on the interim process, an estimated 100 properties per annum will be referred for assessment by non-departmental entities. While it is estimated that approximately 250 properties per annum will be disposed of by departments, it is not known how many would qualify as land of potential interest.

Comment

Outcome of the Officials Review of existing processes

17. A number of statutes define how departmental held land may be disposed of including the:
- a) Public Works Act 1981 (including the transfer of land for another public work to local authorities);
 - b) Land Act 1948;
 - c) Conservation Act 1987, (including the requirement to create marginal strips over all Crown-owned land to be disposed of);
 - d) Reserves Act 1977;

¹ While Transit NZ is a Crown entity, it must comply with all relevant policies and processes in the disposal of its land under the Public Works Act 1981.

- e) NZ Railways Corporation Restructuring Act 1990;
- f) Health Sector (Transfers) Act 1993.

18. Each statute sets a separate land disposal regime and vests decision-making powers with the relevant Minister, chief executive or an independent statutory officer (such as the Commissioner of Crown Lands). Disposal of Crown-owned land is also subject to any relevant Treaty claim settlement legislation.

19. Depending on the agency holding the land, Cabinet policies also apply including:

- a) DOC Notification process to assess land for conservation values;
- b) Gifted Lands Policy;
- c) Mechanism for the Protection of Maori Interests;
- d) Sites of Significance;
- e) Policy for Government Departments' Management of Historic Heritage.

20. These policies and processes are noted in Annex (1), along with an indicative summary of which agencies are required to comply with them.

Assessment of Existing and Interim Processes

21. The Officials' Group review has determined that existing processes are generally sufficient for departments to identify and protect conservation, biodiversity and treaty values. However, these processes are less effective in assessing historic heritage, cultural, local and recreational values as:

- a) some interested agencies are not being routinely alerted of disposals. For example, the Historic Places Trust (HPT) is not advised of proposed land disposals. Local government also complain of not being routinely notified of impending disposals and, as a result, being unable to protect local interests;
- b) even where agencies are alerted, databases of properties with historic or cultural values are often incomplete.

22. For non-departmental entities (especially those entities with an arm's-length relationship to the Crown), conservation and Treaty processes do not universally apply. Even where processes do exist, such as Section 27B memorials on SOE land, these processes are not always seen to be effective. The interim process partly addresses this issue by allowing the assessment of land being disposed of by non-departmental entities; however, as this uses the same process as departmental disposals, it suffers the same weaknesses.

23. The Officials' Review therefore concluded that:

- a) existing processes do not protect wider national interest where land is being disposed of by non-departmental entities (SOEs or Crown entities); and
- b) neither the existing nor the interim process adequately cover historic heritage, cultural, local or recreational values.

24. Where existing policies do apply, however, they are more comprehensive and onerous than the interim process. This is because as existing processes apply to all land sales, whereas the interim process only covers 'sensitive' land.

Proposal to improve historic heritage, cultural, local and recreational assessments

25. To improve consideration of historic heritage, cultural, local or recreational values the following additional notification requirements are proposed:

- Historic Places Trust. This will allow the Trust to assess any interests in a property. This will be modelled on, and operated in parallel, to DOC processes and time frames. While purchase may be considered on rare occasions, the negotiation of heritage covenants prior to disposal, rather than purchase, would be the principal mechanism for protecting historic heritage. This is consistent with the approach Cabinet has approved in the 'Policy for Government Departments' Management of Historic Heritage' (POL Min (04) 19/1 refers);
- Te Puni Kokiri. This will combine with the establishment of new processes to assess Maori cultural values (values not included in the Sites of Significance process);
- relevant local authorities.

26. With these additional processes in place, land being disposed of by departments or notified by non-departmental entities to LINZ through the interim process would be assessed for the following potential values:

- a) Conservation: Including conservation, recreational, ecological and biodiversity values, this includes both the values on the piece of land itself, and the ability of the land to enhance or impinge on the values of neighbouring land;
- b) Historic heritage: This will be improved by capturing more sites of potential interest, though land adjoining heritage places will not be subject to the same requirements. However, existing registers and schedules of sites of historic interest are incomplete, and so some sites and buildings may continue to escape assessment. Once a site is included it will be assessed;
- c) Maori historic and cultural: As with other historic sites, existing databases of sites are incomplete. Once a site is included it will be assessed;
- d) Recreation: These will in part be protected through the 'protection of walkways' as part of the national network of tracks, foreshore and seabed and waterways under existing SPARC processes. The protection of areas with conservation, biodiversity, ecological and scenic values will also enhance the protection of recreation values. Due to the number of recreational interests and interest groups, it is not possible to capture all recreational values; and
- e) Potential use in an historical Treaty settlement: This would enable some assessment of whether the property should be considered for land banking, and/or whether some other form of retention of the land is required to facilitate its potential use in a Treaty settlement. This would not be required where the property will subsequently be processed through the Protection Mechanism for surplus Crown land, or where land banking no longer applies because a Treaty settlement has been reached in that area, i.e. much of the South Island. Therefore, the value will apply mainly to non-departmental land proposed for disposal, in the North Island.

27. The notification of local authorities will also allow consideration of sites for possible local values. If the land is subsequently placed on the open market, the local authority can then make offers on land of interest to it. However, no priority will be given to local government over other tenders for the land.

Proposal to protect wider national interest in land disposals

28. To ensure that national interests can be protected by land disposed of by the Crown I propose that the modified interim process continue to apply to all departmental and non-departmental entities.
29. The primary advantage of including all entities in the interim process is that it would allow consistent evaluation of wider national interests by a single Ministerial group. This would allow a superior overview of land disposals and an improved ability to trade-off different land values in determining whether to protect land.
30. The disadvantage of including departments in the modified interim approach is that Ministers may review a number of departmental properties on which they cannot legally make decisions due to existing statutory processes and requirements.
31. The modified interim process is also likely to be slower and result in some duplication of assessment effort as the LINZ assessment will replicate existing departmental efforts.
32. Where departments hold significant properties (e.g. Hobsonville, Whenuapai), these will often require Cabinet approval to dispose of the land. Other significant landholdings, such as pastoral leases, Crown forestry licences and conservation land, are subject to legislated disposal processes intended to identify many of the wider national interest criteria. The larger landholdings not subject to such controls are likely to be those held by non-departmental entities, with properties such as research institutes and farms.

Improvements to Interim process

33. A number of additional improvements are recommended to the process to:
 - a) more accurately capture land of potential interest;
 - b) exclude land from consideration where the government is bound by existing legislative, contractual or policy obligations;
 - c) improve assessment and Ministerial decision-making processes;
 - d) explicitly build in opportunities to alert other parties with an interest in land, including local government and Maori.
34. These changes include the adoption of modified criteria for land disposals that need to be reviewed by LINZ, the removal of certain transactions from the process and dropping the \$1 million threshold for land of interest. A description of the proposed criteria for 'Land of Interest' is outlined in annex (2). Significant proposed changes to the interim assessment process are outlined in annex (3). A diagram of how the interim process would operate is included in annex (4).
35. An outline of the assessment process is contained in annex (5). The assessment criteria used in this process make it more extensive than those used in the Overseas Investment Act process.

Other Issues - Scope of Processes

36. Due to legal restrictions, the modified interim disposal process is proposed to apply on a voluntary basis for non-departmental entities. This voluntary arrangement has

been acceptable to most non-departmental entities to date, with only one SOE declining to comply formally with the process. However, this SOE has sold a property and complied with the interim process in doing so. Officials are working to resolve issues this SOE has in complying, as it believes that formal compliance would be in breach of its Companies Act and SOE Act (and other legal) obligations.

- Potential requests for additional Crown funding

37. While the formal notification process will alert groups to the potential disposal of land, nothing in this process will give precedence to certain groups. This is because most disposals of land by the Crown require a public and competitive disposal process, with specific exceptions. The process will also not address issues of affordability for local councils, heritage groups or recreational users. It is therefore possible that there will be greater calls on the Crown for assistance or to purchase sites on other groups' behalf.

- Compensation

38. A potential risk in protecting sensitive land is that the resulting delays or restrictions on land sales may impose significant costs on wider Crown agencies. If Crown agencies consider that costs are likely to be significant, then landholding decisions may be discouraged and agency performance may be impaired.

39. To offset these risks, it is desirable that all assessment processes are timely. In addition, it will be important to ensure that Crown agencies are not impaired from performing, while also ensuring that adequate opportunity exists to protect land with wider national interests.

40. Where Ministers place any protection on land because of its wider national interest, the value of that land to the disposing agency would decrease, and capital would not be available to the agency if the land were retained. To maintain agency performance and encourage sensible landholding decisions, it may be necessary to compensate the disposing agency for its loss, particularly any entity operating on a commercial arms-length basis from the Crown.

Decision-making Processes for land with wider national interests

41. It is proposed that a Ministerial group comprising the Minister for SOEs, Minister for Land Information and the landholding Minister be formed. This Ministerial group will assess whether land assessed under the modified interim process as having wider national interest should be protected. The Ministerial group would also identify the most appropriate protective mechanism on a case-by-case basis to protect land (e.g. covenants on the land, Heritage listing, Land Banking or a prohibition on sale where this is legally possible). This Ministerial group would also consider what, if any, compensation should be paid to the disposing agency.

Financial Implications

42. Expanding processes to include historic heritage, cultural and local values will require additional assessment work for Te Puni Kokiri, Office of Treaty Settlements, Land Information New Zealand, the Department of Conservation and the Historic Places Trust. The estimated additional costs are as follows:

Agency	Cost for 250 departmental & non-departmental properties
Land Information NZ	\$110,000
Office of Treaty Settlements	\$74,000
Department of Conservation	\$79,000
NZ Historic Places Trust	\$185,000
Te Puni Kokiri	\$85,000
Total	\$533,000

43. If the modified interim process proceeds, the Office of Treaty Settlements, Department of Conservation and Te Puni Kokiri will absorb their additional costs within existing baselines.

44. Any compensation payments to protect land would be an additional expense. Papers seeking approval for compensation would be presented to Cabinet on a case-by-case basis as required.

Legislative Implications

45. There are no legislative implications. The process will operate alongside existing legislative and administrative rules.

Regulatory Impact Statement

46. No legislative or regulatory changes are proposed. A regulatory impact statement is therefore not required.

Treaty Implications

47. Continuation of the interim process will provide the Office of Treaty Settlements with improved opportunity to consider non-departmental properties for Land Banking purposes. As Land Banked properties are purchased at market rates, non-departmental entities are unlikely to be discouraged from participating in Land Banking.

Human Rights Act

48. There are no Human Rights Act Implications.

Publicity

49. The Office of the Minister for Land Information will notify departments of agreed changes to disposal processes for Crown land and notification requirements. Chief Executives will be requested to confirm that appropriate processes are in place.

Consultation

50. The Department of Prime Minister and Cabinet, Land Information New Zealand, the Department of Conservation, the Office of Treaty Settlements, the Ministry for Culture and Heritage, the State Services Commission, NZ Historic Places Trust, MAF, Te Puni Kokiri, the Treasury, Crown Law and CCMAU provided input into the review of the interim process.

51. The Ministry for Culture and Heritage supports the proposal to base the definition of land subject to the modified interim process on the definition of sensitive land in the Overseas Investment Act, with appropriate enhancements (Annex 2, Tables 1 and 2). The Ministry is concerned, however, that requirements to assess land adjoining land of historic heritage value have been reduced (while requirements to assess land adjoining land of natural heritage value have been increased). Adjoining land may provide an important setting for an historic heritage property and should, in the Ministry's view, be assessed under the proposed process. In addition to the land currently specified in Table 2, the Ministry considers that the Table should include land adjoining:

- (i) land that includes 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; and
- (ii) land identified in a Plan, proposed Plan, or a Regional Policy Statement prepared under the Resource Management Act as having historic heritage value.

52. Local Government New Zealand has also been consulted in the development of this paper.

Recommendations

I recommend that POL:

1. **note** that Cabinet directed officials to review policies and processes for considering the wider national interest where Crown agencies are considering the disposal of Crown land;
2. **note** that officials have reviewed existing land disposal processes and the operation of the interim review process and concluded that:
 - a) existing processes do not protect wider national interest where land is being disposed of by non-departmental entities (SOEs or Crown entities); and
 - b) neither the existing nor the interim process adequately cover historic heritage, cultural, local or recreational values;
3. **agree** that the criteria for land subject to the interim process be modified to apply to land that meets the criteria set out in annex 2 (tables 1 through table 3);
4. **note** that significant changes to the interim land assessment criteria and process are outlined in annex 3;
5. **agree** the modified interim process should become a permanent process for all Crown land disposals;
6. **agree** that that the Historic Places Trust, Te Puni Kokiri and relevant local government be notified of land being disposed of through the modified interim process to improve coverage of historic heritage, cultural, local and recreational values;
7. **note** that routine notification of local Government and Te Puni Kokiri will allow those groups to use their existing resources and powers to protect values of interest to them;
8. **note** that the provision of routine notification to interest groups will not address any affordability problems that these groups have ;
9. **note** 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;
10. **agree** 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;
11. **agree** 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;

12. **agree** 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;
13. **note** that any compensation will require an additional appropriation;
14. **note** that the proposed modified interim process will require additional assessment work for Te Puni Kokiri, Land Information NZ, Department of Conservation and the Historic Places Trust;
15. **approve** 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:

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

16. **approve** the following changes to appropriations for the additional costs of the land disposal assessment process, with a corresponding impact on the operating balance:

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

17. **note** 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; and
18. **agree** that the modified interim process be reviewed in February 2009.

Hon Dr Michael Cullen
Minister of Finance

Hon Trevor Mallard
Minister for State Owned Enterprises

Hon David Parker
Minister for Land Information

Application of Legislation and Policies

This table is a general summary of the policy and legislation provisions that apply to Crown-owned land being sold. There may be exemptions or additional requirements depending on the land being held and the legal status of the agency holding the land.

	Type of Land*								
	Land held for Public Work (Govt Depts)	Land held for Public Work (Crown entities)	Crown land (incl Crown revoked reserves)	Conservation and Reserve Land	State Owned Enterprise Land	Crown Research Institute Land	DHB (ex CHE/HHS)	NZ Fire Service	Tertiary Institutes (incl. Universities)
Policies									
DOC Notification	Yes	Yes	Yes	Yes	No	No	Yes	No	No
Gifted Lands	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Protection Mechanism	Yes	Yes	Yes	Yes	No	Yes	Yes	No	No
Sites of Significance	Yes	Yes	Yes	Yes	No	Yes	Yes	No	No
Heritage	Yes	No	Yes	Yes	No	No	No	No	No
Legislation									
Marginal Strips (s.24 Conservation Act)	Yes	Yes	Yes	Yes	Yes ²	Yes ²	Yes	No	No
s.40 Public Works Act/s.23 NZRC	Yes	Yes	No	Yes	Yes ²	Yes ²	Yes	No	Yes
Treaty Settlement Acts	Yes	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes	Yes

-
2. Marginal strips will likely apply if the land was transferred to the SOE/CRI by the Crown, but not if the SOE/CRI acquired the land itself on the open market. Similarly, s.40 PWA will apply depending on the history of the land – land acquired by the SOE after its establishment will not be subject to the PWA, as it was not acquired for a public work.
3. This will depend on when the agency required the land and the definition of the land captured by the settlement (this may vary between settlements).

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 Is)	—
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 A 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 	- - - -
any national park under the National Parks Act	0.4 hectares
wetland or coastal duneland	0.4 hectares

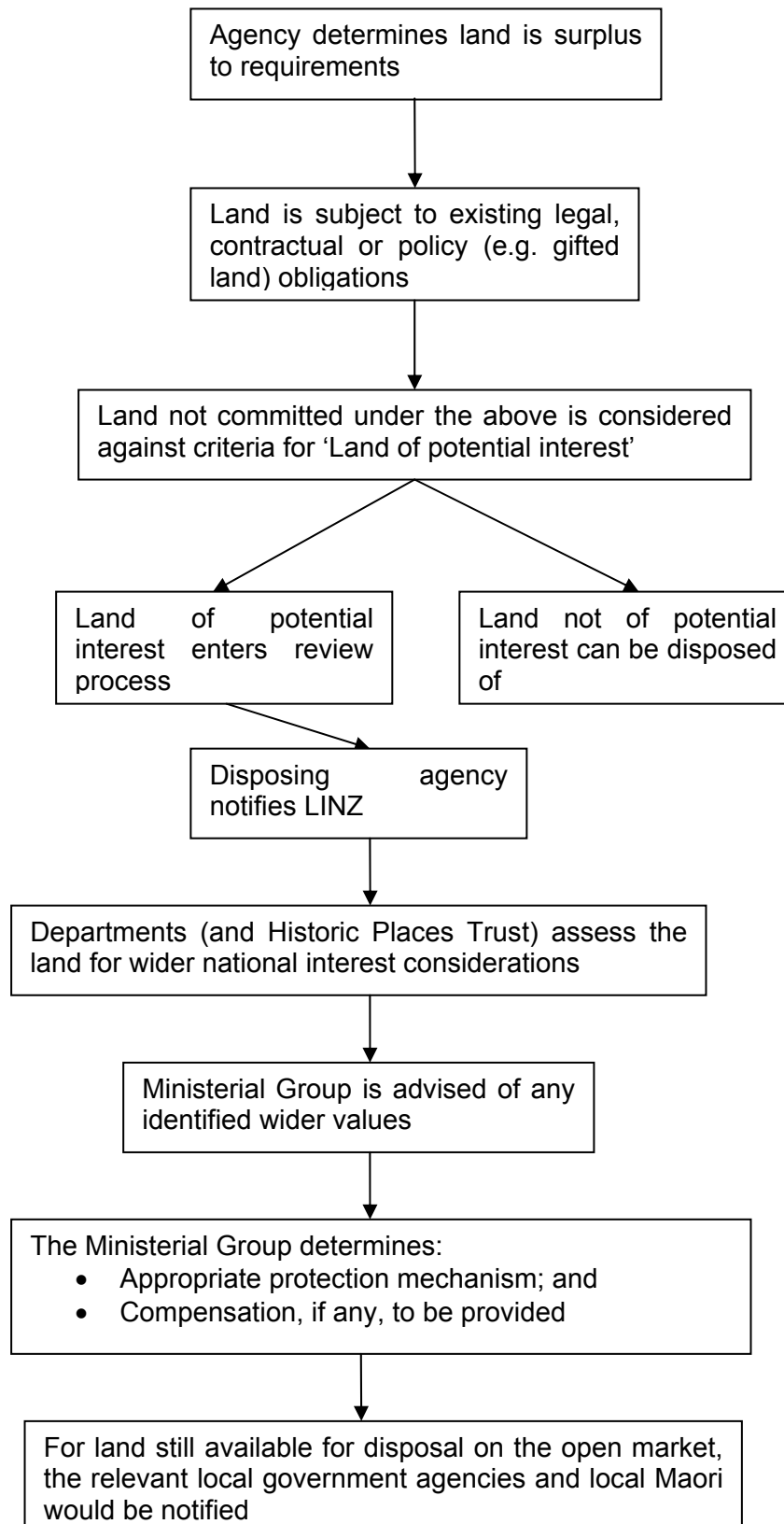
Table 3 Land is excluded from land of interest if it is a result of the following transactions:

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