

SENSITIVE

OFFICE OF THE MINISTER FOR LAND INFORMATION

Chair
Cabinet Domestic Policy Committee

**REVIEW OF LAND OF POTENTIAL INTEREST PROCESS FOR THE DISPOSAL
OF CROWN-OWNED LAND**

Proposal

1. In this paper I propose to rescind the Land of Potential Interest (LPI) process, and the Te Puni Kōkiri (TPK) and local government notification process established under CAB Min (07) 31/1A. I am proposing these changes to streamline and eliminate unnecessary duplication of government processes when disposing of Crown owned land.
2. This paper also proposes that a New Zealand Historic Places Trust (HPT) notification process established at the same time remain in place until the Ministry of Culture and Heritage (MCH) reviews this process and reports back to Cabinet by December 2010.
3. I propose that Ministers write to the agencies under their control advising them of values that they should take into account before disposing of properties, and provide guidance on how to obtain further information on those values and how to protect them.

Executive Summary

4. In 2007, Cabinet introduced the Land of Potential Interest (LPI) process following the occupation of a Landcorp property at Whenuakite in the Coromandel (CAB Min (07) 31/1A refers). The process was introduced to ensure that wider national interest values were identified before Crown-owned land is disposed of and, where appropriate, these interests are protected.
5. The process requires Land Information New Zealand (LINZ) to assess the disposal of Crown-owned land which meets certain 'sensitive' criteria (see Appendix Two) and seek approval from Ministers on whether the disposal can continue. This process was established along with notification processes for HPT, TPK and local government. This process was to be reviewed in 2009.
6. While there are a range of statutes and policies governing the disposal of land, they do not apply to every Crown agency. The processes introduced in 2007 were intended to provide for ministerial oversight of the disposal of certain properties.
7. The LPI process unnecessarily duplicates other land disposal processes. Since 2007, LINZ has provided 186 reports to Ministers under the LPI process and this has resulted in three properties being purchased by the Crown, and protections such as heritage covenants, being placed on another five properties.

8. The HPT notification process has resulted in eight protections over Crown land. Government departments also have to follow the Policy for Government Departments' Management of Historic Heritage 2004 (the Heritage Policy) when disposing of land.
9. The TPK and local government mandatory notification process has not proved valuable. This is because there are other avenues through which iwi and local authorities are informed of the disposal of such properties. These include advertisements for the Maori Protection Mechanism, offers of land to iwi under rights of first refusal, and local authorities proactively approaching the Crown seeking to acquire land.
10. I recommend that to streamline and eliminate unnecessary duplication of processes the LPI process and the TPK and local government notification processes established under CAB Min (07) 31/1A are rescinded. This paper also proposes that the HPT notification process established under the same Cabinet Minute remains in place in the interim until MCH reviews this process and reports back to Cabinet by December 2010.
11. Rescinding the LPI process will mean that there will be no formal process for considering values on land held by non-core Crown agencies, such as state owned enterprises, Crown research institutes and other Crown entities. The paper proposes two alternative options for dealing with such disposals:
 - Option One – Crown entities to consider values on land before disposal; or
 - Option Two – Crown entities to obtain written clearances before disposal.
12. I consider that Option One provides sufficient protection as it requires chief executives of vendor agencies to take direct responsibility for managing their land, including protecting any values present. However, should Cabinet consider that more formal protections are required to prevent the disposal of land containing significant national interest values then Option Two is appropriate.

Background

History of Process

13. In early 2007, local iwi occupied a 2,700 hectare Landcorp farm at Whenuakite in the Coromandel in protest at the proposed sale of the \$10 million property. The iwi requested that it be purchased for future Treaty settlement. Landcorp had previously notified the Office of Treaty Settlements (OTS) of the disposal. OTS decided not to purchase the land, primarily because it was not in active negotiations with local iwi and did not have the funds to purchase a property of that value.
14. After the occupation had ended, Ministers noted that while the land was not required by Landcorp or for Treaty settlement purposes, there were recreation or conservation values present on parts of the land which could warrant it being retained in Crown ownership. These had not been considered before the land was put on the market.
15. Ministers were concerned that this situation could be repeated for other properties when it may have been more appropriate to retain the land in Crown ownership. Ministers requested that a process be developed to enable ministerial oversight of disposals.

16. Existing disposal processes that considered values on land (such as the Maori Protection Mechanism and notification to the Department of Conservation (DOC)) do not apply to all Crown agencies. For example, the NZ Fire Service and State-Owned Enterprises (SOEs) do not have to comply with the Maori Protection Mechanism. A summary of existing disposal processes, and the agencies they apply to, is attached as **Appendix One**.
17. In April 2007 Cabinet approved an interim process to ensure that such values are identified before Crown-owned land is disposed of and, where appropriate, these interests are protected (CAB Min (07) 11/3B refers). The interim process was developed by the Department of the Prime Minister and Cabinet and Treasury.
18. Following a wider review of disposal processes, Cabinet agreed in August 2007 to:
 - a. modify the interim process following a wider review of Crown disposal mechanisms, agreed by Cabinet (CAB Min (07) 31/1A confirming CBC Min (07) 17/1 refers). This created the following processes:
 - i. the current Land of Potential Interest process,
 - ii. a requirement for government departments to notify disposals to the NZ Historic Places Trust for assessment of heritage values, and
 - iii. a requirement for agencies to advise Te Puni Kōkiri, regional councils and territorial local authorities when land was placed on the market.
 - b. negotiate an agreement with Landcorp for Landcorp to retain at least 9 identified properties valued at approximately \$108 million as 'protected land'. The Crown compensated Landcorp and retained the right where appropriate to have any of the land transferred to the Crown on six months notice.
 - c. review the Land of Potential Interest process in February 2009 (CAB Min (07) 31/1A refers). This paper provides advice on that review.
19. The wider review recommended continuing the interim process, with some modifications. It was renamed as the LPI process. All other existing legislative and government policy requirements for the disposal of land remained in force.
20. In June 2009, officials reported back to Cabinet on the process and recommended that the LPI process be rescinded and replaced by a requirement for all agencies to consider whether any values should be protected before land is disposed of. Ministers requested that further consideration be given to options for protecting the Crown's interest in land.

How the LPI process works

21. When a government department, SOE or other Crown entity ("the vendor agency")¹ begin disposal of land it determines whether the land meets certain criteria. If so, the vendor agency must refer the land to LINZ.

¹ All SOEs and Crown entities have voluntarily agreed to comply with the LPI process. The LPI process does not apply to land held by local authorities.

22. LINZ consults with the following advising agencies on the values that might be of interest to them:
- DOC – Conservation, biodiversity and ecological values;
 - New Zealand Historic Places Trust (HPT) – Historic heritage values;
 - Sports and Recreation New Zealand (SPARC) - Recreation values;
 - TPK – Maori cultural and heritage values; and
 - OTS – Potential to use the land in a Treaty claim settlement.
23. This consultation normally takes up to four weeks. Agencies may need to inspect the land or undertake their own research. TPK usually seeks the views of the local iwi on the land, which can extend the consultation process for a significant period.
24. LINZ reports to a Ministerial group,² providing approximately three to four reports each week. If Ministers agree that protection of a value is required, the vendor agency must action this decision before disposing of the land.
25. Where a proposed protection affects the sale value of the land, the vendor agency may seek compensation from the Crown. Any such request is considered by the Ministerial group in consultation with the Minister of Finance. No disposals requiring compensation have been approved to date.
26. However, two cases, are currently awaiting ministerial decisions on whether compensation should be payable to the vendor agency for the imposition of a heritage covenant.
27. As part of the Cabinet decision to approve this process, LINZ received additional appropriations of \$0.110m in 2008/09 and outyears and the HPT received additional appropriations of \$0.185m in 2008/09 and outyears.³ (CAB Min (07) 31/1 refers)

The Historic Places Trust Notification Process

28. In addition to the LPI process, Cabinet agreed that all government departments should notify the HPT of disposals so it could assess historic heritage values (CAB Min (07) 31/1A refers). HPT would recommend protections such as recording of sites or heritage covenants, where appropriate, and seek to reach agreement with the vendor agency.
29. This requirement does not apply to district health boards, SOEs, Crown companies or Crown entities such as the NZ Fire Service Commission.

Te Puni Kōkiri and Local Government process

30. As part of the wider review of land disposal processes, Cabinet also agreed that TPK and relevant local government authorities be notified of proposed disposals (CAB Min

² Comprised of the Minister for State Owned Enterprises (lead), Minister for Land Information and the Minister in charge of the vendor agency

³ This amount for the Trust also includes funds for its role in the LPI process and the notification process identified in paragraph 30.

(07) 31/1A refers). In practice the vendor agency notifies the relevant territorial authorities, regional council and TPK when land is offered on the open market. Either the vendor agency or TPK then advise the local iwi. The iwi, territorial authority and regional council can then bid for the land if they wish. However, in an auction or tender, no priority will be given to these parties over other bidders for the land.

Comment

31. Since the introduction of the interim process in March 2007 until July 2009, LINZ has reported to Ministers on 186 properties, broken down as follows:

	No of properties	Area (ha)	Value (\$m)
Land held by core Crown agencies – Govt departments, Defence, Police	82	3,051	\$93.00
Crown pastoral leases ⁴	18	118,164	-
Land held by SOEs, CRIs and Crown Entities	86 ⁵	12,766	\$428.10
TOTAL	186	133.981	\$521.10

32. Ministers have required the following protections under the LPI process before disposals could continue (in addition to actions agreed under other disposal processes):

Decision	Properties	Comments
Retention/purchase of land by the Crown	3	OTS purchased three NZ Fire Service properties (two in Wellington, one in Mt Maunganui) for use in future Treaty claim settlements
Protections required before disposal	5	Heritage covenants over: <ul style="list-style-type: none"> • buildings at AgResearch's Wallaceville research centre, Upper Hutt • school building at the former Douglas School, Taranaki • school building at the former Pollok School, South Auckland • state house built during WWII at Castor Bay, North Shore, Auckland • war memorial at Flock House Farm, Rangitikei
Disposal without protections being required ⁶	168	
Decisions pending	10	

⁴ Pastoral leases undergoing tenure review have been separated out as the land value is not recorded under the LPI process, because the values of land to be freeholded have yet to be advised to lessees.

⁵ Note that 60 of these properties (worth \$100m) were part of a one-off disposal of Transpower properties purchased for the North Island Grid Upgrade project.

⁶ This includes cases where additional investigations were required before disposal could occur.

Timing

33. In 2008, LINZ's average time for getting a report to Ministers was 45 working days. This included preparation of a draft report, consultation with advising agencies of up to 20 working days, seeking feedback from the vendor agency on any comments on values (which can take 10-15 working days) and completion of the final report. Some cases may take longer if further information or consultation is required, or if vendor agencies challenge any comments.
34. In some cases advising agencies have been unable to respond within the timeframes. This can be due to either resourcing or the delay in obtaining comments from stakeholders. For example, for a tranche of 40 Transpower properties, Ministers made a decision without TPK's comments (as none had been provided after 40 days), provided Transpower advised the local iwi directly of the proposed disposals.

Review of Land of Potential Interest Process

35. There have been only 8 out of 186 cases under the LPI process where Ministers have required protections. Where land has been protected it has been for heritage values or purchase by the Crown for use in future Treaty settlements. However, there are already processes in place to identify these values.
36. HPT had previously identified heritage values for four of the five properties where heritage covenants were created.⁷ The HPT process also allows for agreement between HPT and the vendor agency over any protection HPT might recommend. This could have occurred even if a ministerial decision under the LPI process had not been made.
37. The three NZ Fire Service properties were not subject to the landbanking requirements of the Maori Protection Mechanism (administered by OTS), so the LPI process did ensure these sites were protected when they may not have otherwise been. However, it appears that local iwi had previously expressed a view on some of the properties to either the Fire Service or OTS, so there was known interest in those sites.
38. As noted in Appendix One, some of the values assessed by the LPI process are also considered in existing disposal requirements. Many properties have passed through the LPI process relatively easily, often because they had already been cleared under other procedures such as DOC notification or the Protection Mechanism. In some cases, protections had already been developed before the land was referred under the LPI process, such as agreement to place covenants on land before disposal.
39. The LPI process also further complicates and lengthens the time involved in disposing of Crown-owned land. The process has tied up Ministers' time for what are very operational decisions.
40. The LPI process has also increased costs for vendor agencies, through delays in disposals and preparation of protections, which has put a financial strain on vendor agencies. Also, Crown-owned companies have been put at a competitive disadvantage to their private sector counterparts because of costs and delays.

⁷ The fourth property was assessed under the LPI process before the HPT notification process was introduced.

41. Vendor agencies have also been concerned that in a few cases the Historic Places Trust has requested the vendor agency commission archaeological assessments or conservation reports before the Trust has provided a final view on a property. This has involved additional time and expense.
42. TPK considers that the LPI process is a useful mechanism to identify any cultural sensitivity with a disposal before it occurs. Existing processes such as the Sites of Significance process only consider a narrow range of values and not sites such as cultivation grounds, boundary markers and resource locations that may be of interest to iwi. TPK would like these values to be considered before disposal occurs.
43. OTS considers that, for government departments, Crown Research Institutes and District Health Boards at least, the existing Maori Protection Mechanism is sufficient to address any iwi interest in land. Requests by iwi to landbank properties often included details of why land is of interest to the iwi, including identifying any cultural sensitivity issues. The LPI process has provided a formal opportunity for properties being disposed of by SOEs, tertiary institutions and the NZ Fire Service to be considered for landbanking where these have significant value for Maori.
44. However, retaining the LPI process would continue duplication with other disposal clearance processes, such as the Maori Protection Mechanism and Sites of Significance processes. These provide a better method for government departments to identify and protect land. It does not appear to be efficient or necessary to retain a separate ministerial decision-making process for disposals of Crown-owned land, especially where over 90% of properties have to date been cleared under the LPI process with no protections required.
45. Moving decision-making on disposals to officials instead of Ministers may speed up assessment of land in some cases, however, it would not resolve the concerns about the delays in disposals and duplication with existing processes.
46. As only a handful of cases have warranted formal protection, and all but three of those cases are likely to have been protected under other processes, I consider that the LPI process is no longer required and recommend that it be rescinded.
47. Returning to the pre-2007 situation may result in a greater potential for Crown-owned land to be disposed of without all values being identified or protected. This may lead to criticism directed both at the vendor agency and the Crown. TPK is also concerned about the potential for further land occupations of SOE and Crown Research Institute (CRI) land should the LPI process be removed, as these agencies are not subject to existing government mechanisms.
48. In order to mitigate these risks to some extent, officials have identified two options for future disposals:

Option One – Crown entities consider values on land before disposal

49. Under this option, Ministers would write to all agencies under their control, identifying the wider national interest values that Government considered each agency should identify and address if necessary before the land is disposed of.

50. LINZ will also review its guidelines for the disposal of land to include best practice guidance for assessing wider national interest values, including where agencies can go to seek further advice on particular values. While these guidelines are primarily intended for use by government departments, they would serve as a best practice guide for all Crown agencies. TPK advises that such guidance could address its concern about cultural values that may not be currently being considered. LINZ will consult TPK when it reviews its guidelines.
51. While there would be no mandatory requirement for SOEs and CRIs to comply with this guidance there would be a clear statement of the Government's desire for all agencies to take account of wider national interest values, and to be accountable as to how such values are managed and if necessary protected.
52. This option reflects the responsibility of all Crown agencies to manage land and buildings on its balance sheet. This includes ensuring that any values that may be present on the land are properly identified and appropriately managed, both while the land is in Crown ownership and before it is disposed of.
53. The disposal of Crown-owned land will always be a matter of public interest. Vendor agencies must be aware of the potential for public interest, and occasionally, opposition to a particular disposal. The agency must monitor and take appropriate steps to manage that risk and keep Ministers informed of any issues.
54. This Option was recommended in the Cabinet paper provided in May 2009 (DOM (09) 35). Option Two was developed to reflect feedback from Ministers when that paper was considered at the Domestic Policy Cabinet Committee meeting.

Option Two – Crown entities obtain written clearances before disposal.

55. Under this option, Ministers would write to all non-core Crown agencies⁸ under their control requesting that they seek written clearance from advising agencies before disposing of land that meets the current LPI criteria. Each of the advising agencies (DOC, OTS, SPARC, TPK and HPT) would have to confirm within a set timeframe (unless otherwise agreed) whether there were any values that they wished to see protected before disposal. The process would apply to all land held by those agencies, not just the land that may be held in the name of Her Majesty the Queen.
56. I recommend that this process not apply to government departments, New Zealand Transport Agency, NZ Defence Force, NZ Police and the NZ Railways Corporation. This is because these agencies already have to comply with a number of disposal processes, such as notification to DOC or the HPT, and the Maori Protection Mechanism that identify the same values.
57. Certain land held by government departments is also subject to statutory processes that assess values on land or require ministerial approval before a disposal can commence. These include the vesting of reclaimed land by the Minister of Conservation under the Resource Management Act 1991, vesting of reserves under the Reserves Act 1977 and tenure review of Crown pastoral leases under the Crown Pastoral Land Act 1998.

⁸ State owned enterprises, Crown research institutes, Housing New Zealand Corporation, District Health Boards, tertiary institutions and other Crown entities

58. Requiring these agencies to seek the separate clearances above will create duplication and increase the number of cases that will have to be considered for what is likely to be little benefit.
59. I note that there will still be some duplication for certain agencies under this option. For example, Crown Research Institutes and Housing New Zealand Corporation⁹ will be subject to the Maori Protection Mechanism as well as the new process. However, the coverage of existing processes is not uniform across non-core Crown agencies. I consider that while duplication cannot be eliminated, this option minimises this and strikes a reasonable balance between efficient disposals and protection of significant values.
60. I recommend that a threshold remain for this process to avoid small properties, such as individual state houses being disposed of by Housing New Zealand Corporation as part of the Gateway Housing initiative, from being captured. Retaining criteria for consideration will focus attention on significant properties reducing the burden on individual agencies. Based on figures from the LPI process it is anticipated that with a threshold 15-20 properties would be subject to this process each year (approximately 1-2 per Crown entity).
61. The current criteria are based primarily on the criteria for sensitive land set out in the Overseas Investment Act 2005, with some modifications. This Act is currently under review, and changes may be made to the legislative criteria. However, the criteria for the LPI process are not dependent on the Act. I recommend that the criteria in Appendix Two remain, with the following changes:
- a. removal of the references to land held for Conservation purposes, as a reserve under the Reserves Act 1977 or under the Wildlife Act from Table 1. This is because Crown entities such as SOEs are unlikely to hold land under these Acts so these references can be omitted; and
 - b. deletion of references in Table 3 to reclamations and the vesting of reserves as these are the responsibility of the Department of Conservation.
62. This process places responsibility on the Crown entity to gather comments and to act on their responses. There would be no central oversight role, which Ministers and LINZ currently undertake. I consider that if this option is preferred it is more appropriate that the vendor and assessing agencies should attempt to reach agreement first, without involving Ministers at the outset (as happens under the current LPI process). Any disputes or issues over non-compliance with the process would be dealt with on a case-by-case basis.
63. Option Two would still impose costs and may delay some disposals, however, the process would be targeted on those agencies that do not have to comply with other disposal processes, reducing most of the current duplication. It would provide a greater level of assurance that land with values held by non-core Crown agencies is not being disposed of without consideration being given to protecting those values.

⁹ For land over 1 hectare.

Option Two process

64. The proposed process is as follows:
- a. After commencing a disposal, the vendor agency confirms whether the land meets the amended LPI criteria (see **Appendix Two**). If not, disposal continues.
 - b. If so, the vendor must notify DOC, SPARC, HPT, TPK and OTS (“the assessing agencies) as soon as possible of the proposed disposal, that it meets the LPI criteria and provide information identifying the land.
 - c. Each assessing agency considers the land and indicates in writing to the vendor agency as soon as possible within 20 working days whether there are values that it wishes to see protected in the property.
 - d. If after 20 working days, the assessing agency cannot identify values that it wishes to see protected, it will indicate to the vendor agency that it will take a maximum of a further 20 working days to confirm whether it has an interest and what further action it will take.
 - e. If no response is provided at the end of the 40 day period, the vendor can continue with the disposal, unless both agencies have mutually agreed to extend the timeframe further.
 - f. The assessing agency must recommend any protection it considers necessary and negotiate that protection with the vendor. If agreement can not be reached, the matter should be referred to the respective Chief Executives. If no resolution is obtained then the matter can be referred to respective Ministers for a decision.
 - g. The vendor must retain, for audit purposes, written evidence that responses have been obtained from all of the five assessing agencies before the land is disposed of.
65. Any protection agreed to by agencies (e.g. purchase by the Crown for Treaty settlement) will be put in place once all relevant statutory obligations have been met, such as compliance with the offer back obligations under section 40 of the Public Works Act 1981.
66. Setting a specific timeframe for responses to 40 working days, unless otherwise agreed will address vendor agency concerns about timeframes for disposal being significantly affected for properties where there are no values meriting protection.

Consultation with Māori

67. TPK notes that under the current LPI process it has always consulted with local iwi and reported to LINZ on the results for inclusion in the LPI reports to Ministers. TPK considers it cannot advise without consultation as such values are specific to a location and an associated history and only available from tangata whenua.
68. TPK considers that consultation must be meaningful to obtain advice from local iwi and that there should not be an arbitrary time limit. LINZ’s experience under the LPI process is that consultation with local iwi may take significantly longer than 40 working days. In some cases, no comments have been received from TPK over three or four

months after a case was notified. LINZ has had to report to Ministers without comments from TPK in order to ensure that the disposal can continue.

69. There is therefore a trade-off between full consultation with iwi and disposal of land in a timely and efficient manner. The proposed process in Option Two allows for vendor and assessing agencies to agree about an extended timeframe, should 20-40 working days not be sufficient for TPK to report back.

Historic Places Trust Notification

70. The separate HPT notification process has provided 471 heritage assessments for Crown properties to May 2009. Recommendations on heritage protection were made in 58 cases, including agreement to 8 heritage covenants. Many of the other recommendations were for the Crown agency selling the land to undertake further investigations such as archaeological surveys, while other decisions on protections are still pending.
71. Several Crown entities, SOEs and District Health Boards have agreed to comply with this process. Government agencies that must comply with this process are also subject to the Heritage Policy monitored by MCH, which requires the consideration and protection where appropriate of historic heritage when managing and disposing of land.
72. MCH has undertaken a review of the Policy for the Protection of Heritage by Government Departments ("the Heritage Policy") and it is currently with the Minister for Arts, Culture and Heritage. I consider that the Government's policies and processes relating to heritage protection should be considered together. Therefore I recommend that Cabinet direct MCH to report back to Cabinet on the future of the HPT notification process by December 2010 to account for any decisions made on the Heritage Policy.

TPK and local government notification

73. Officials consider that the requirement to notify TPK and local government is an unnecessary duplication. Other avenues exist whereby iwi and local authorities are informed of the disposal of such properties (such as the Maori Protection Mechanism, and offers of land to iwi in Treaty settlements or where local authorities approach the Crown seeking to acquire land). This is appropriate as the local authorities should be proactively identifying land requirements and deal directly with Crown agencies as early as possible, rather than relying on being notified of a sale when land is put on the market.

Conclusion

74. I recommend that the LPI process and the notification to TPK and local government established under CAB Min (07) 31/1A be rescinded. I also recommend that the HPT notification process established under the same Cabinet Minute remain in the interim, but I recommend the Ministry of Culture and Heritage (MCH) review this process and report back to Cabinet by December 2010. In effect this would involve rescinding all of the recommendations in CAB Min (07) 31/1A except for recommendations 8 and 18, which established the HPT process.
75. I recommend that the following options be considered for disposals by Crown entities:

1. Option One – Crown entities to consider values on land before disposal; or
2. Option Two – Crown entities to obtain written clearances before disposal.

76. I consider that Option One provides sufficient protection as it requires chief executives of vendor agencies to take direct responsibility for managing their land, including protecting any values present. However, should Cabinet consider that more formal protections are required to prevent the disposal of land containing significant national interest values then Option Two is appropriate.

Consultation

77. The following departments/agencies have been consulted on this paper: Department of Conservation, Department of Prime Minister and Cabinet, Housing New Zealand Corporation, the Office of Treaty Settlements, the Ministry for Culture and Heritage, NZ Historic Places Trust, Te Puni Kōkiri, Crown Company Monitoring Advisory Unit (CCMAU), Sport and Recreation New Zealand, and the Treasury.

78. CCMAU prefers Option One, as the other options impose unreasonable and unnecessary costs on Crown-owned commercial entities. There is a potential that Option Two will (if implemented) place SOEs, CRIs and Crown entities at a commercial disadvantage compared with their private sector counterparts which do not have to comply with such a process when they dispose of surplus land.

79. CCMAU contends that Option One is likely to achieve the same or similar outcomes as Option Two without the associated costs. It is in the commercial interests of each Crown-owned company to dispose of sensitive land in a considered and responsible manner, given the risk of ministerial intervention, land occupation and/or adverse media coverage without first consulting with potentially interested stakeholders. It is also incumbent on SOEs and CRIs to behave in a socially responsible manner, in accordance with their respective Acts.

Financial Implications

80. Funding for the LPI process initiative for LINZ in Vote Lands was approved at \$0.110m per annum from 2008/09. This funding has been offered back as savings from 2009/10. The 2008/09 funds were retained as part of the March Baseline Update.

81. As the HPT activities are only moderately affected by the proposals in this paper, MCH officials have recommended that the appropriation of \$0.185m to the Historic Places Trust remain in place until the report back in December 2010.

Human Rights Implications

82. There are no human rights implications associated with this paper.

Treaty of Waitangi Implications

83. The proposals in this paper are consistent with Treaty of Waitangi obligations.

Legislative Implications

84. There are no legislative implications associated with this paper.

Regulatory Impact Analysis

85. No regulatory impact statement has been prepared as the proposed changes will not result in a bill or regulations.

Publicity

86. Publicity about rescinding these processes will have to be carefully handled. However, rescinding the process will streamline the disposition of Crown land, eliminate unnecessary bureaucracy, improve efficiency and may facilitate the sale of assets no longer required by government agencies. I propose to prepare a media release in consultation with the Minister of SOEs.

Recommendations

87. The Minister for Land Information recommends that the Committee:

1. **note** that CAB Min (07) 31/1A established the current Land of Potential Interest process, and the Historic Places and Te Puni Kōkiri and local government notification;
2. **note** that since the introduction of the Land of Potential Interest process in March 2007,
 - 2.1 LINZ has reported to Ministers on 186 disposals, encompassing approximately 133,980 hectares of land; and
 - 2.2 Ministers have sought formal protections over 8 properties before disposal; and
 - 2.2.1 the Crown purchased three of these properties for future Treaty settlements, and
 - 2.2.2 heritage covenants were placed over five properties;
3. **note** that the current Land of Potential Interest process unnecessarily duplicates other land disposal processes;
4. **agree** that the Land of Potential Interest process, and the Te Puni Kōkiri and local government notification process established under CAB Min (07) 31/1A are no longer required;
5. **agree** to rescind all the recommendations in CAB Min (07) 31/1A for disposal of Crown land except for recommendations 8 and 18 of that Minute, which introduced the Historic Places Trust notification process and approved funding to the Historic Places Trust to undertake that function;

6. **agree** that any current cases going through the Land of Potential Interest process be discontinued and disposing agencies dispose of them in accordance with the decisions outlined in this paper;
7. **note** that the Ministry of Culture and Heritage will review the Historic Places Trust notification process and report back to Cabinet by December 2010 on whether this process should be retained;
8. **agree** that the Historic Places Trust notification process remain until the report back in recommendation 7 occurs;
9. **agree** that the appropriation of \$0.185m to the Historic Places Trust remain until the report back in recommendation 7 occurs;

10. **EITHER**

Option One

- 10.1. **direct** Land Information New Zealand to prepare a draft letter for Ministers to send to agencies under their control:
 - 10.1.1. advising of these decisions;
 - 10.1.2. advising each agency of the values that it should consider before disposing of properties, and how to obtain further information on those values and how to protect them where appropriate;
 - 10.1.3. reiterating the responsibility of each Chief Executive to manage land in an appropriate manner, and
 - 10.1.4. reiterating the need to advise the relevant Minister of any issues arising from the management and disposal of that land.
- 10.2. **note** that Land Information New Zealand will review its guidelines for the disposal of land to provide best practice guidance on the consideration and protection of any values on land;
- 10.3. **note** that Land Information New Zealand will consult Te Puni Kokiri and other agencies when it reviews its guidelines;

OR

Option Two

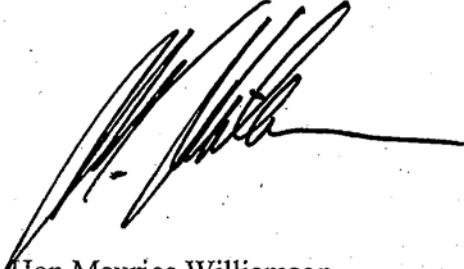
- 10.4. **agree** that the following process and timeframes be implemented to replace the Land of Potential Interest process:
 - 10.4.1. after deciding to dispose of land, the vendor agency confirms whether the property meets any of the criteria as set out in Appendix Two. If not, disposal may continue;

- 10.4.2. If the land meets any of the criteria, the vendor must notify Department of Conservation, Sport and Recreation New Zealand, Historic Places Trust, Te Puni Kokiri and Office of Treaty Settlements (the assessing agencies) of the proposed disposal, that the land meets the criteria and provide information identifying the land;
- 10.4.3. Each assessing agency will indicate in writing as soon as possible whether there are values that it wishes to see protected in the land;
- 10.4.4. As soon as all assessing agencies have indicated that they have no interest in the land then the vendor agency is free to commence its standard disposal process;
- 10.4.5. After 20 working days if any assessing agency cannot confirm that it has no interest in the land it will indicate to the vendor that it will take a maximum of a further 20 working days to confirm whether it has an interest and what further action it will take; and
- 10.4.6. If no response is provided at the end of the 40 day period, the vendor can continue with the disposal, unless otherwise agreed between the two agencies.

11. If Ministers agree to Option Two then:

- 11.1. **agree** that the process in 10.4 apply to state owned enterprises, Crown research institutes, district health boards, tertiary institutions and other Crown entities;
- 11.2. **agree** that any agency that considers protection of a value is necessary must negotiate that protection directly with the vendor agency;
- 11.3. **agree** that if agreement on protection cannot be reached, the matter should be referred to the respective Chief Executives for a decision;
- 11.4. **agree** that if a matter can not be agreed between agencies the matter will be referred to joint Ministers for a decision;
- 11.5. **agree** that the vendor agency must retain, for audit purposes, written evidence that responses have been obtained from all assessing agencies before the land is disposed of;
- 11.6. **agree** that any protection must be created before the land is disposed of;
- 11.7. **agree** that the criteria in Appendix Two be modified by:
 - 11.7.1. removal of the references to land held for Conservation purposes, as a reserve under the Reserves Act 1977 or under the Wildlife Act 1953 from Table 1; and
 - 11.7.2. deletion of reference in Table 3 to coastal reclamations and the vesting of reserves.

- 11.8. **direct** Land Information New Zealand to prepare a draft letter for Ministers to send to agencies under their control, advising of the decisions in this paper and requesting that Crown Entities follow the process outlined in recommendation 10.4;
12. **note** that the approved funding for Vote Lands of \$0.110m per annum for the Land of Potential Interest process was offered back as savings from 2009/10;
13. **note** that all publicity will be handled by the Minister for Land Information and the Minister for State Owned Enterprises.



Hon Maurice Williamson
Minister for Land Information

16 / 9 / 2009

Some information in this paper has been withheld under the Official Information Act 1982.

APPENDIX ONE – APPLICATION OF EXISTING LAND DISPOSAL PROCESSES

The following table identifies the existing, non-statutory disposal processes and which types of Crown agencies the policies apply to

	Govt Departments, NZ Defence Force, Police	State Owned Enterprises	Crown Research Institutes	District Health Boards	NZ Fire Service	Other Crown entities	Tertiary Institutions	Values
Process and values considered								
Department of Conservation notification Assesses land for marginal strip requirements and any conservation values (including some recreation uses)	✓			✓				Conservation
Historic Places Trust notification	✓		✓ ¹⁰	✓ ¹⁰				Heritage
Housing NZ Corporation notification Assessment for possible use for state housing or urban development	✓	✓ ¹¹	✓ ¹¹	✓ ¹¹	✓ ¹¹	✓ ¹¹		
Gifted Land Policy Assessment of whether land was gifted to the Crown for a particular use and, if so, enable return of the land at nil cost	✓	✓ ¹¹	✓ ¹¹	✓ ¹¹	✓ ¹¹	✓ ¹¹	✓ ¹¹	
Land of Potential Interest process	✓	✓ ¹¹	✓ ¹¹	✓ ¹¹	✓ ¹¹	✓ ¹¹	✓ ¹¹	Conservation, Heritage, Recreation, Use for Treaty Settlement, Maori cultural values
Sites of Significance Assessment and protection of wahi tapu and other major sites of historical, spiritual and cultural significance to Maori.	✓		✓	✓				Maori cultural values
Mechanism for the Protection of Maori Interests (Protection Mechanism) Maori express an interest in land for possible use in a future Treaty settlement. If the Crown agrees to retain the property, OTS will purchase the property and hold it in a landbank.	✓		✓	✓		✓ ¹²		Use for Treaty Settlement

¹⁰ Most CRIs and some DHBs have voluntarily chosen to comply with this process.

¹¹ Compliance on a voluntary basis as requested by Ministers

¹² For Housing New Zealand Corporation this process applies only to land over 1 hectare

APPENDIX TWO - LAND OF POTENTIAL INTEREST CRITERIA

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 ¹³	0.4 ha
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 ha
Land held for conservation purposes under the Conservation Act 1987	0.4 ha
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 ha
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 ha
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	—

¹³ Part 2 of the Overseas Investment Act 2005 identifies these islands as: Arapawa Island, Best Island, Great Barrier Island (Aotea Island), Great Mercury Island (Ahuahu), Jakkett Island, Kawau Island, Matakana Island, Mayor Island (Tuhua), Motiti Island, Motuhoa Island, Rakino Island, Rangiwaia Island, Slipper Island (Whakahau), Stewart Island/Rakiura, Waiheke Island and Whanganui Island

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 ha
Bed of a lake	0.4 ha
Land held for conservation purposes under the Conservation Act 1987 (if that conservation land exceeds 0.4 ha)	0.4 ha
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 ha
Govt Purpose (wildlife management) reserves under the Reserves Act, and land managed under the Wildlife Act	0.4 ha
Any regional park created under the Local Government Act 1974	0.4 ha
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 ha
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 ha
Any national park under the National Parks Act	0.4 ha
Wetland or coastal duneland	0.4 ha
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 is 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
New leases over 25 years of 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