



Protection of Māori Interests in Surplus Crown-Owned Land

Information for applicants

Disclaimer:

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Date of Publication: November 2005



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Foreword

The Protection Mechanism described in this booklet is an important process for safeguarding Māori interests in property that government agencies and departments wish to sell. The Protection Mechanism gives Māori the opportunity to indicate that particular surplus properties are important to them and may be a valued part of a future Treaty settlement. Such properties may be purchased by the Office of Treaty Settlements and held in a landbank until such time as they may be required for use in a settlement.

At the same time, the Protection Mechanism allows government agencies and departments to sell property surplus to their needs in an efficient and transparent manner. For successive governments, the Protection Mechanism has been a tangible sign of good faith towards Māori. It ensures that the government retains sufficient land for return to Māori through the Treaty settlement process and underlines a strong commitment to settling the wrongs of the past.

The Government has recently reviewed the Protection Mechanism to ensure that the most suitable property is protected for use in Treaty settlements. This information booklet is updated to reflect those changes.



Hon. Mark Burton

MINISTER IN CHARGE OF TREATY
OF WAITANGI NEGOTIATIONS



Hon. Mita Rinui

ASSOCIATE MINISTER IN CHARGE OF
TREATY OF WAITANGI NEGOTIATIONS

Introduction

This booklet tells you about the Protection Mechanism, and how you may apply to have properties protected under it.

What is the Protection Mechanism?

The Protection Mechanism is a Cabinet-agreed process for the Crown to consult with Māori when government departments, District Health Boards (DHBs) or Crown Research Institutes (CRIs) wish to sell surplus land. Māori are invited to express an interest in the Crown setting aside the surplus land for possible use in a future Treaty of Waitangi settlement.

If the Crown agrees to retain ownership of the property, the Office of Treaty Settlements will purchase the property and hold it in a regional landbank. A diagram of the Protection Mechanism process is overleaf.

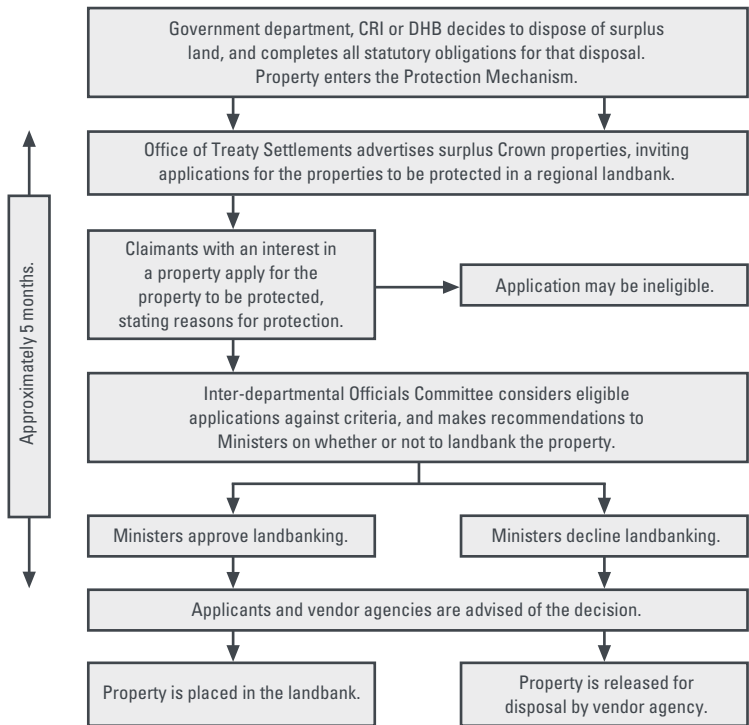
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Other forms of protection

Other types of former Crown property are protected through a different process, namely the various memorial systems for State-Owned Enterprise land, Crown forestry land and education land transferred to tertiary institutions. These allow the Waitangi Tribunal, under specified circumstances, to order the Crown to take back or “resume” a property to be used in settling a Treaty claim.

Another mechanism that protects Crown-owned land of particular significance to Māori is the Sites of Significance process. This is administered by Te Puni Kōkiri (the Ministry of Māori Development).

Outline of Protection Mechanism Process



Outline of Protection Mechanism Process

Purpose

The purpose of the Protection Mechanism is to balance two aims of government:

- a to safeguard the ability of the Crown to settle Treaty of Waitangi claims with Crown land, especially land of particular significance to claimants, and
- b to allow government to operate efficiently by disposing of surplus assets.

Land protected is not held for any particular claim or claimant group, even though it may have been protected on the basis of one group's application. No claimant group is required to accept the land in settlement of its claim.

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The Protection Mechanism has already protected some land in most areas of the country. An up to date list of land already protected in your area is available from the Land and Property section of the Office of Treaty Settlements' website, www.ots.govt.nz, or from the Property Analyst – Protection Mechanism at the Office of Treaty Settlements.

Following a review of the Protection Mechanism conducted during 2004, the former Crown Settlement Portfolio (which covers areas affected by raupatu, or confiscations under the New Zealand Settlements Act 1863) and Claim Specific Landbanks have been incorporated into their respective regional landbanks. Former Crown Settlement Portfolio areas, now known as Raupatu Areas, remain exempt from financial limits within their respective regional landbanks. More information about financial limits is provided on page 11.

Advertising of Properties

When a government department, District Health Board or Crown Research Institute wishes to dispose of surplus land, it must complete the necessary statutory obligations and responsibilities before the land can go through the Protection Mechanism.

The Office of Treaty Settlements will then advertise the surplus properties on the first Sunday of the month in the national newspapers, except in January, providing there are a sufficient number of properties to advertise. Treaty of Waitangi claimants, or any Māori group or individual who has previously applied under the Protection Mechanism or Sites of Significance process, are notified directly. If you would like to be added to the mailing list for direct notification, please let the Property Analyst – Protection Mechanism at the Office of Treaty Settlements know.

Surplus Crown-owned land in Raupatu Areas is no longer automatically landbanked, but will be advertised and considered by the Officials Committee for landbanking. In recognition of the significance of the breaches of the Treaty associated with raupatu, surplus properties in Raupatu Areas will be considered for landbanking whether or not an application is received. However, it is still important to make an application over a property that you would like to be landbanked. The additional information provided in an application may increase the likelihood that the property will be landbanked.

It is important that applications provide information that relates to the specific property, not just the general surrounding area.

If you wish to apply to have a property landbanked, you have 30 working days (longer over the holiday season) from the date of the advertisement in which to complete an application and send it to the Property Analyst – Protection Mechanism at the Office of Treaty Settlements. A sample application form is included at the back of this booklet. Additional copies of the form can be obtained from the Office of Treaty Settlements' website www.ots.govt.nz or from the Property Analyst – Protection Mechanism at the Office of Treaty Settlements.

Who May Apply to Landbank a Property?

The Protection Mechanism is designed to protect surplus Crown-owned properties for possible use in future Treaty of Waitangi settlements. For this reason, applicants must have a registered Treaty claim with the Waitangi Tribunal. You must be a registered claimant, or have your application endorsed by the registered claimant.

Exceptions can be made if your claim is in the process of being registered with the Waitangi Tribunal.

You will need to include your Waitangi Tribunal claim number, or that of your group, on the application form. If you are applying on behalf of a group, you must show that you are authorised to act on behalf of a registered claimant. You may be asked to clarify this information. Without proper endorsement from a registered claimant your application will not meet the landbanking criteria. However, as properties in a regional landbank are not protected for any particular claimant group, the property may be landbanked on the basis of another application.

If you or your group are not Treaty claimants but think that a property should be protected because of its historical, spiritual, or cultural significance, you can register your interest under the Sites of Significance process. This process is separate from the settlement of historical Treaty claims. Please contact your local Te Puni Kōkiri office for further information.

Information about the Property

Is the property in the claim area?

The property you apply to be protected must be located within the boundaries of the Waitangi Tribunal claim that you cite. This ensures that the property is available for the settlement of the claims in that region.

To apply to have a property protected, you will need to supply information with your application form. If you provide little or no supporting information, this will significantly reduce the likelihood of the property being recommended for landbanking. The following information is required by the Officials Committee in order to assess your application against the criteria for landbanking.

Is the property significant or unique?

You need to supply detailed information describing the significance of the property to your claimant group. This information will be used to assess the overall significance of the property in relation to other properties in the landbank, and to justify the costs of holding the property in the regional landbank. It is important that the information relates to the specific property, not just the general surrounding area.

There are three headings (on the application form) under which you can give information about the significance of the property. You **must** give **site-specific** information under one or more of the following headings:

- a **the cultural or historical importance of the property** (the information you have may mean it is appropriate for you also to apply for the protection of the property as a site of significance under Te Puni Kōkiri's process. Alternatively you may only wish to make a Sites of Significance application)
- b **a future use of the property after settlement**, and/or
- c **the uniqueness of the property**. You may consider that this particular property cannot be replaced because it is the subject of a particular claim or it is considered highly desirable for settlement because, for example, it is adjacent to a marae. In such cases, specific details about how the property relates to your claim would be useful.

Detailed information on the reasons why the property is essential will assist the Officials Committee in preparing recommendations. A *pro forma*-type application (where the information is minimal, simply refers to your statement of claim, or where the same information is used for all applications) is not useful. Such applications are unlikely to meet the criteria for protection.

Assessment Process

The Office of Treaty Settlements will notify you that it has received your application.

Your application will be considered by an Officials Committee made up of representatives of six departments:

- Office of Treaty Settlements (Chair)
- The Treasury
- Crown Company Monitoring Advisory Unit
- Te Puni Kōkiri
- Ministry of Health
- Land Information New Zealand

The Officials Committee

The Officials Committee will assess your applications against the Cabinet-approved Protection Mechanism criteria.

For each property, the Officials Committee assesses whether:

- a the reasons given for the significance of the site or its proposed future use are sufficient evidence for the Crown to protect it
- b the reasons given justify the cost of holding the property in the regional landbank. This is particularly important if the property is unable to be tenanted while in the landbank
- c if the financial limit has been reached in the claim area, the property is of such significance that an exception should be made and the property protected anyway, and
- d the property should be protected because negotiations on a settlement may be in progress or are about to begin. If claimants are likely to enter negotiations in the reasonably short term, landbanking may be recommended even when the financial limit has been reached or the site's significance has not been established.

The full criteria are outlined in the attached appendix. The criteria in (2) relate to the setting of financial limits in each claim area, and are not used to assess individual properties.

Ministers' Decision

The Officials Committee will recommend to Ministers which properties should be protected or released for sale by the vendor agency. The Minister in Charge of Treaty of Waitangi Negotiations, the Minister of Māori Affairs, and the Minister of Finance make the final decision.

You will be notified of the outcome once Ministers have made a decision. This will take approximately 5 months from when the property was first advertised in the Protection Mechanism. On occasions this could take longer when the Officials Committee seeks further information before making a recommendation.

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Financial Limits

The country is divided into regional landbank areas. Each regional landbank has a financial limit, which establishes a maximum total value for properties to be protected in that area. These financial limits are reviewed annually and are able to be adjusted.

Unlimited Financial Areas

There is no financial limit to the total value of properties landbanked in the East Wairoa, Waiuku, Tauranga, Bay of Plenty, Taranaki, and Mohaka-Waikare Raupatu Areas. This recognises the significance of the breaches of the Treaty associated with raupatu, or confiscation. These areas were formerly covered by the Crown Settlement Portfolio, and are now subsets (called Raupatu Areas) of their respective regional landbanks.

Exemptions from Landbanking

Vendor Preference Policy

Cabinet has agreed that in exceptional circumstances Cabinet may, on a case by case basis, consider exempting a property from landbanking to allow it to be sold to a specific third party. This policy may be applied, for example, when surplus land is required to provide continuing community services. Cabinet will consider such exemptions taking into account advice from the Officials Committee based on applications from Māori received and considered under the Protection Mechanism. Advice to Cabinet includes assessment by the Officials Committee. You will be advised in writing if Cabinet decides that the property is to be exempted from landbanking.

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Transfer of Public Works Act Land held by the Crown to a Local Authority for a Public Work

This is a consultation process to deal with the situation when a local authority wants to acquire Public Works Act land held by the Crown for a local work, for example a road or sewerage system. As part of this process the interests of Māori are considered and, if confirmed, protected. This process aims to make sure that, if appropriate, the relevant land is not lost to the Treaty of Waitangi settlement process, and that matters relating to sites of significance are addressed. It weighs up the competing interests of local authority requirements for land for a local work and the interests of Māori.

As part of this process, the Office of Treaty Settlements and Te Puni Kōkiri use the Protection Mechanism and Sites of Significance processes to identify any Māori interests, and then advise the government on how these interests may be appropriately taken into account before the land is transferred to the local authority. The Minister for Land Information (the Minister) considers this advice in deciding to either approve or decline the transfer to the local authority under section 50 of the Public Works Act 1981.

The factors that the Minister takes into account in making a decision include:

- a the nature of the work and its importance to the community
- b the availability of other sites for the public work, and
- c the significance of the property to Māori and the issue of any encumbrances or protections that could be placed on the land to protect Māori interests.

The Minister balances Māori interests against the wider community interest in the proposed public work when he or she assesses what, if any, measures should be adopted to protect those Māori interests.

What do you have to do and why?

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The vendor agency advises the Office of Treaty Settlements of the proposed public work. Land proposed for transfer to a local authority is advertised at the same time as surplus Crown properties, and identified separately in that advertisement. OTS seeks your comments on the significance of the property through the Protection Mechanism so that officials can consider your interests. Please submit your application on the form at the back of this booklet, just as you would for a property being proposed for landbanking.

We also invite you to make any comments about the local public work proposal that relates to the property advertised.

Any information you provide will help the Minister consider your interests before making a decision on whether or not to transfer the land to the local authority. However, you can choose not to make any comments if you wish.

It is possible that these properties will not be surplus to the requirements of the Crown agency. In such cases, if the property is not transferred to the local authority then the Crown agency will continue to hold the land for the existing public work. If the property becomes surplus at some time in the future, the standard processes for the disposal of surplus Crown land will be applied.

Protected Properties

The Office of Treaty Settlements has compiled a list of properties that have been landbanked. This list is updated regularly, and is available from the Office of Treaty Settlements website at www.ots.govt.nz and the Property Analyst – Protection Mechanism.

Enquiries

Please direct your enquiries to the Property Analyst – Protection Mechanism at the Office of Treaty Settlements, who will know more about individual properties and the format for applications.

04 494-9800 or reception.ots@justice.govt.nz
PO Box 919 Wellington
www.ots.govt.nz

Appendix: Protection Mechanism Criteria

Eligibility of Properties for Protection

- 1 Under the Protection Mechanism, a property may be protected, if:
 - a a Treaty claimant applies for protection of a property that is in the area covered by the claim. This means that applications must be endorsed by a claimant or a claimant group having a registered claim with the Waitangi Tribunal, although allowances may be made for applicants in the process of lodging a claim with the Waitangi Tribunal
 - b in requesting such protection, the claimant provides clear reasons relating to:
 - i the cultural or historical importance of the property, or
 - ii its future use by the claimant group after settlement, or
 - iii specific features of the property mean that the property is not substitutable. These features may include that the particular property is very specifically the subject of a claim, and
 - c on balance, the Crown accepts the claimant's reasons. The Crown may decline a property for protection if the holding costs are likely to be significant relative to the importance of the property demonstrated by applicants.

Financial Limits

- 2 The property will then be protected unless one, or more, of the following apply:
 - a the Crown considers that the value of the properties already being protected in the claim area is becoming high relative to the Crown's assessment of the likely value of settlements in the area
 - b the Crown considers that the value of the properties already being protected in the claim area is becoming high relative to other claim areas the Crown assesses as similar
 - c the Crown considers that sufficient land has been protected already in view of: 2(a) and (b) above, and
 - i the availability of other Crown land in the area that may be used for settlements
 - ii the need to allow room for properties of particularly high significance to be protected in the future
 - iii how far off claims are to being settled, and the extent of current knowledge of claims in the area, and
 - iv part-settlements already reached in the claim area.

Prioritisation within Financial Limits

- d within what the Crown considers is affordable in the current year for protecting properties, the property is not of sufficient priority, in terms of the property-specific criteria, relative to other properties for which protection is sought. In prioritising properties, the Crown may also take into account:
 - i the likely holding costs of the property
 - ii the stated significance of the properties
 - iii the availability of Crown land within different regions of the claim area, and
 - iv the date on which the property was advertised.



Application for Landbanking

of Surplus
Crown-Owned Land

OTS OFFICE USE
File Reference: PM 03 00 00 04

Date and time received:

Entered into database:

Signature:

Note: (i) Please complete a separate form for each property being applied for

(ii) Please complete the details below and overleaf in block letters

(iii) The information you supply will be held in strict confidence by those staff working on the Protection Mechanism, and

(iv) Your privacy is respected, as is the sensitive nature of the information you provide.

Applicant's Name:

Iwi/Hapu/Organisation:

Address:

Telephone:

Fax:

1 Which property do you wish to have landbanked?

Property Number:

(Use a separate form for each property being applied for. Your application seeks to place this property in a regional landbank) Refer to the information booklet on the Protection Mechanism for more details.

2 (a) Do you have a claim registered with the Waitangi Tribunal?

Yes:

No:

(If the claim is not in your name please provide a written endorsement authorising you to act on behalf of the registered claimants)

(b) If Yes, what is the Wai Number allocated by the Waitangi Tribunal?

Wai Number:

3 Is the property you wish to have landbanked within your claim boundaries?

Yes:

No:

(The surplus property must be sited within the area covered by the Waitangi Tribunal claim you have specified, in order for your application to be considered)

4 (a) Have you made applications for other properties advertised with this property?

Yes:

No:

(b) If Yes, list the other property numbers:

I hereby certify that the information provided on this form is correct and accurate to the best of my knowledge:

Name:

Date:

Signature:

Property Number:

Landbanking Application Information

Every application must include supporting information to be completed below. The information you supply must provide clear reasons why you wish to have this particular property included in a regional landbank. These reasons will relate to the cultural or historical importance of the property or its future use, or establish that the specific features of the property mean that it is unique and can not be replaced by another.

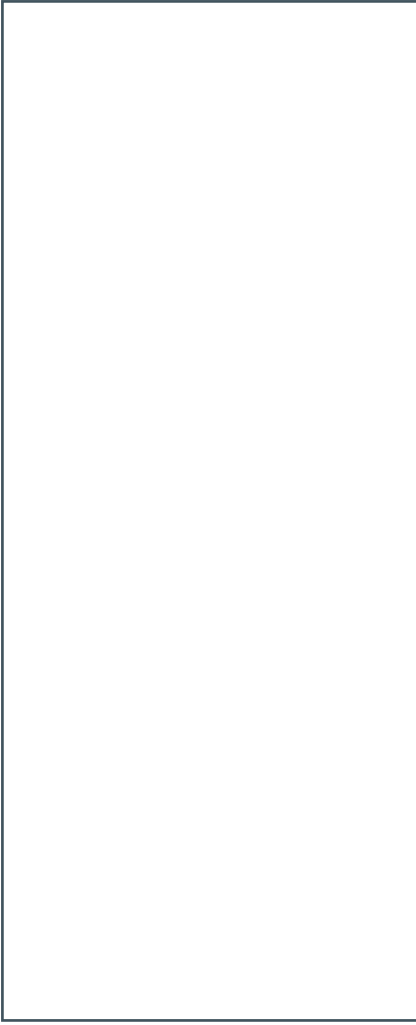
If the boxes below do not allow enough space for your application information, please attach any additional information to this form.

Note that a decision to landbank this property will be based partly on your reasons – refer to the booklet on Information for Applicants, which explains the criteria upon which all applications will be assessed.

The cultural or historical importance of this surplus property:

AND/OR

The future use by
the claimant group
after settlement:



AND/OR

The specific features
of the property mean
that it is unique and can
not be replaced
by another:



