



# Protection of Māori Interests in Surplus Crown-Owned Land

Information for Crown agencies

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### Disclaimer:

Material published in this booklet reflects policy and understanding at the time of publication. While all statements are believed to be correct, no liability can be accepted for any incorrect statement, omission or changes to the matters or policies referred to.

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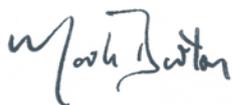
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## Foreword

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.



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MINISTER IN CHARGE OF TREATY  
OF WAITANGI NEGOTIATIONS



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ASSOCIATE MINISTER IN CHARGE OF  
TREATY OF WAITANGI NEGOTIATIONS

## Introduction

This booklet is published by the Office of Treaty Settlements (OTS) to help government departments and Crown agencies understand the process for the protection of Māori interests in surplus Crown-owned land (the Protection Mechanism).

## What is the Protection Mechanism?

The Protection Mechanism is a Cabinet-agreed process for the Crown to consult with Māori when it wishes 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.

Land held in the OTS landbank is available as commercial redress in the settlement of Treaty claims. Claimants have the option whether to accept landbanked land in the settlement of their claim or not. If accepted in settlement, landbanked properties are valued and the market value is deducted off the settlement quantum agreed for that claim.

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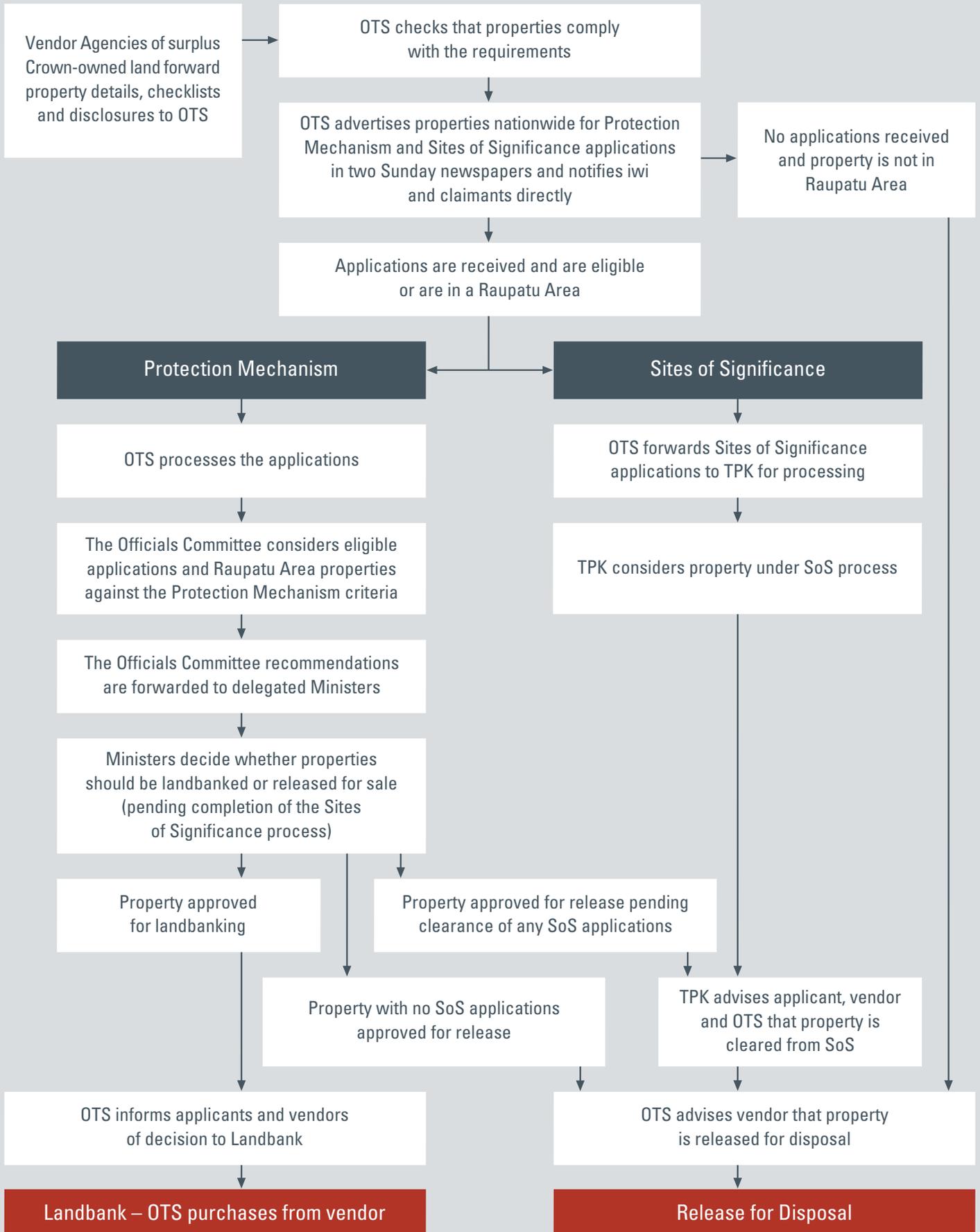
## Other Forms of Protection

Various memorial systems for State-Owned Enterprise land, Crown forestry land and education land transferred to tertiary institutions protect other types of former Crown property. These processes 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 (SoS) process. Te Puni Kōkiri (TPK, the Ministry of Māori Development) administers the SoS process.



# Outline of the Protection Mechanism Process



## Which Properties Need to go Through the Protection Mechanism?

### Land Subject to the Protection Mechanism

The Protection Mechanism applies to surplus land owned by:

- The Crown and its departments. This includes:
  - land subject to the Public Works Act 1981
  - land subject to the Land Act 1948
  - Housing New Zealand Corporation properties that have an area greater than 1 hectare
  - Railways Corporation land, and LINZ land subject to the New Zealand Railways Corporation Restructuring Act 1990 that has not had clearance from the Crown Congress Joint Working Party process.
- Crown Research Institutes
- Public Health Sector entities including District Health Boards (DHBs) and the Crown Health Financing Agency, and
- Crown entities as agreed by Cabinet on a case-by-case basis. This includes properties owned by School Boards of Trustees.

### Land Exempt from the Protection Mechanism

The Protection Mechanism does not extend to:

- privately owned property
- land owned by regional or territorial authorities. This land is considered private property, and therefore not available for use in Treaty Settlements
- land subject to other forms of protection such as the use of statutory memorials in relation to land transferred to State-Owned Enterprises (section 27B of the State-Owned Enterprises Act 1986), Crown forest assets (section 36 of the Crown Forest Assets Act 1989) and Education assets transferred to tertiary institutions (section 206 of the Education Act 1989), and
- land in areas where all historical Treaty claims have been settled.

All queries on exemptions should be referred to the Property Analyst - Protection Mechanism at OTS in the first instance.

## Obtaining Clearances

Before OTS can process any property through the Protection Mechanism, OTS requires:

- confirmation that each property holds the appropriate clearances for immediate sale, and
- the information and disclosures necessary to ensure that the Officials Committee has information required to make a landbanking recommendation.

Vendors must complete three forms for this purpose. They are:

- 1 The Land Information New Zealand (LINZ) “Vendor Agency Disclosure” form, available from LINZ
- 2 The “OTS Vendor Disclosure” form (Appendix 1), and
- 3 The “Checklist for Properties to be Advertised in the Protection Mechanism and Sites of Significance Process” form (Appendix 2).

The agency responsible for providing the information must sign these forms.

Please note that LINZ administers the standards for the disposal of all Crown-owned land.

The LINZ requirements and disclosure form are set out in the **Accredited Supplier Standards Volume 2 - Disposal of Land** which is available on the LINZ website [www.linz.govt.nz](http://www.linz.govt.nz).

It is expected that vendor agencies will contract LINZ accredited suppliers (listed on the LINZ website) to ensure the appropriate clearances and approvals are obtained.

The following list describes some of the information required before OTS will advertise a property. OTS requires:

- the appropriate LINZ clearances from offer back to former owners under section 40 of the Public Works Act 1981 and section 23 of the NZ Railways Corporation Restructuring Act 1990
- revocation of any Reserve Status; including uplift by gazette of education purpose under 5A the Education Lands Act 1949
- completed Department of Conservation requirements to notify for marginal strips under section 24 of the Conservation Act 1987
- Minister’s approvals where required i.e. Minister of Health/ Rail or SOE etc as appropriate under LINZ standards
- advice that the land is not subject to any statutory or contractual obligations
- a current market valuation, less than 6 months old
- a breakdown of holding costs for the past 12 months and details, and a cost estimate of maintenance currently outstanding
- a list of chattels and fixtures to be included in the sale
- details of any historic classification or archaeological site

- details of any liabilities and registered interests associated with the site including any outstanding enforcement notice, contamination or structure erected without the necessary permit
- details of any leases over the site including cross-leases
- details of any exemptions or restrictions sought from landbanking (i.e. if land cannot obtain separate title, is landlocked, a stopped road etc), and
- details of any requirement to transfer the property to a preferential vendor, or to a local authority for a public work under s 50 of the Public Works Act 1981, or to exchange for other land under s 106 of the Public Works Act 1981 (for fuller details refer to appendix 3).

## The Assessment Process

### Advertising and Direct Mailout

Consultation to identify Māori interests in surplus land is undertaken through advertising and direct mailout.

Upon receipt of properties from vendor agencies, OTS will check the property information received from vendor agencies, and when satisfied that vendors have met all OTS requirements, OTS will:

- arrange to mail a list of properties to all Treaty of Waitangi claimants on the OTS database, inviting applications for landbanking and Sites of Significance processing (for further detail of the SoS process refer to page 11)
- arrange for a list of properties to be advertised in the Sunday News and Sunday Star Times on the first Sunday of every month except January. The advertisement invites claimants to apply for the protection of surplus Crown properties under both the Protection Mechanism and the SoS process. Reference to the vendor is not advertised, unless it is necessary to identify the property
- place a copy of the advertisement on the OTS website ([www.ots.govt.nz](http://www.ots.govt.nz)) until the closing date for applications, and
- invoice the vendor for the cost of the advertisement. Note that there is provision for fast tracking the advertising process, allowing a property to be advertised outside the usual monthly advertisement. Agreement must be arranged in advance for the vendor to pay the extra cost of a fast-track advertisement.

OTS will generally advertise as long as there are at least ten properties ready for advertising and Māori have until the fifth Friday following the advertisement date to reply. An exception is made in December to allow for the Christmas period.

### Processing Applications

OTS processes claimants' applications. If there is a nil response to both the Protection Mechanism and SoS advertisement and the property is not in a Raupatu Area (for further information on Raupatu Areas refer to page 10), the property can be released from the Protection Mechanism process for disposal. OTS will advise the vendor agency accordingly.

For applications to be considered eligible, the applicant must have a registered claim with the Waitangi Tribunal and the claim must cover the property advertised. If an applicant does not have a registered claim with the Waitangi Tribunal, OTS invites the applicant to seek endorsement to act on behalf of a registered claimant group.

A summary report detailing the property, application information and local claims progress is prepared for the Interdepartmental Officials Committee on the Protection Mechanism for Surplus Crown Land (the Officials Committee). OTS refers SoS applications to Te Puni Kōkiri.

### The Officials Committee

The Officials Committee receives the summary reports and considers the applications. The Officials Committee is made up of representatives from:

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

The Property Analyst - Protection Mechanism at OTS provides the secretarial services and is responsible for any investigatory work.

The Officials Committee meets and considers each property and its applications in relation to the Cabinet-agreed criteria for protection. 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 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 Appendix 4.

The Officials Committee may, with the applicant's agreement, refer a landbanking application to the SoS process if it considers it would be more appropriate to deal with the application under that process.

A report containing the Officials Committee's recommendations is forwarded to the Minister of Finance, the Minister of Māori Affairs and the Associate Minister of Treaty of Waitangi Negotiations for their decision.

### **Ministers' Decision**

Ministers consider the Officials Committee report and decide whether each property be protected by landbanking or released for disposal. OTS then communicates the decisions to the applicants and the vendors.

If Ministers have agreed to release a property from the Protection Mechanism but the property is subject to an SoS application, Ministers will agree to hold the property in the Protection Mechanism until cleared by Te Puni Kōkiri from any SoS applications.

The usual timeframe for processing a property through the Protection Mechanism is 5 months from advertising date until advice of the decision. More time should be allowed if there are SoS applications to be assessed.

### **Reviews**

Applicants have occasionally requested a review of the Ministers' decision. The Officials Committee will re-assess an application in terms of the criteria for land banking if:

- a new evidence is supplied that was not previously presented to the Committee
- b the property has not been sold or placed under a contract to sell in the meantime, and
- c the vendor agrees to place a halt on any sale while a review is carried out.

### **Withdrawal of Properties**

The vendor may withdraw a property from the Protection Mechanism at any stage up until Ministers have made their decision. After that time, the Officials Committee would need to seek Ministers' approval to rescind the previous decision and withdraw the property from the Protection Mechanism. Any decision to withdraw a property from the process should be for demonstrably unavoidable reasons only.

## Requirements during the Disposal and Protection Mechanism Process

### a) No Removal of Improvements

If the vendor intends to remove improvements from the property they should do so prior to the property being declared surplus and entering the Protection Mechanism. In a situation where improvements will be removed after the land has been placed in the Protection Mechanism, OTS must be advised, with details of the items involved.

### b) No Conditional Sales

It is inadvisable for vendors to enter into conditional sale and purchase agreements before a property is released from the Protection Mechanism as legal challenges are possible from Māori and/or prospective buyers.

### c) No Significant Lease Changes

During the disposal process, vendors should not enter into new leases or similar contractual agreements longer than 5 years including any right of renewal. A long term lease affects the use that Māori may have for the land and details of any existing long term leases will need to be disclosed and included in the advertisement for that property.

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## Recent Changes to the Protection Mechanism Process

The Protection Mechanism for Surplus Crown Land was established in 1993. The Mechanism has been reviewed several times, the most recent in July 2004. Prior to 2004, landbanked properties were held in Regional Landbanks, Claim Specific Landbanks or Crown Settlement Portfolio (Raupatu) Landbanks. Properties in Crown Settlement Portfolio areas were automatically landbanked, and properties in the former Whanganui, Muriwhenua and Whakatohea Claim Specific Landbanks were landbanked at the request of claimants in those areas.

In July 2004 Cabinet decided that all surplus Crown properties will be processed through the Protection Mechanism and, if approved for landbanking, will be held in Regional Landbanks only.

To accommodate these changes, the boundaries of the former Whanganui and Muriwhenua Claim Specific Landbanks were kept intact and renamed as separate Regional Landbanks. The former Whakatohea Claim Specific Landbank was incorporated into the Bay of Plenty Regional Landbank. The former Crown Settlement Portfolio areas of East Wairoa, Waiuku, Tauranga, Bay of Plenty, Taranaki, and Mohaka-Waikare were incorporated into larger Regional Landbanks. However, the original areas are now called “Raupatu Areas” and treated as separate sub-areas within the larger Regional Landbanks.

### **Regional Landbanks**

The Regional Landbank (RLB) areas are based on the Waitangi Tribunal's Rangahaua Whānui districts. Each RLB comprises a number of Treaty claim areas. The inclusion of land in a RLB is dependent on the operation of the Protection Mechanism. Land protected in RLBs is not held for any particular claim or claimant group even though land in RLBs may have been protected on the basis of one group's application. The properties protected represent a resource available to the Crown to offer in Treaty negotiations.

Each Regional Landbank has a financial limit, which establishes a maximum total value for properties to be protected in that area. These financial limits may be reviewed and are able to be adjusted.

### **Raupatu Areas**

These comprise the former Crown Settlement Portfolio areas and are areas affected by confiscations under the New Zealand Settlements Act 1863. To reflect the severity of confiscation and significance of raupatu and the fact that little land may be left in Crown ownership in Raupatu Areas, delegated Ministers agreed as part of the 2004 review that the Raupatu Areas be administered differently. The differences in relation to other areas in Regional Landbanks are:

- that all properties in Raupatu Areas will be considered by the Officials Committee for landbanking whether or not any application is received for landbanking. For all other properties the situation will stay the same as before the review; that is, if no application is received the property will not be considered for landbanking, and
- that Raupatu Areas have no financial limits.

An illustrative map showing the location of RLBs, including Raupatu Areas, is attached at Appendix 5.

## Sites of Significance Process

The Sites of Significance (SoS) process is another means by which Māori interests in Crown-owned lands are considered for protection. OTS advertises for SoS applications at the same time it advertises for Protection Mechanism applications and the two processes work in tandem. Māori can apply for protection under either the Protection Mechanism or the SoS process.

The SoS process is administered by Te Puni Kōkiri and is open to any Māori who can prove an association with the site, irrespective of whether or not they have a Treaty of Waitangi claim. The aim of the process is to obtain protection for sites that meet “significance” criteria using existing statutory and administrative provisions. If a property meets the criteria for protection, the vendor and applicant need to negotiate and agree over the type of protection to be given. Properties that have been released from landbanking will not be able to be disposed of until OTS is advised by Te Puni Kōkiri that a property is released from the SoS process. OTS will in turn advise the vendor. If a property subject to SoS is to be landbanked, OTS will purchase the property and negotiate appropriate protection before the property is disposed of.

Further details are contained in Te Puni Kōkiri’s booklet entitled “Sites of Significance Process” obtainable from the Manager of the Sites of Significance Process, Te Puni Kōkiri, PO Box 3943, Wellington, Phone: (04) 922 6000.

## 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](http://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.

Phone 04 494-9800 or [reception.ots@justice.govt.nz](mailto:reception.ots@justice.govt.nz)

PO Box 919, Wellington

[www.ots.govt.nz](http://www.ots.govt.nz)

## Appendix 1: OTS Vendor Disclosure

### Introduction

The following disclosure form comprises the Office of Treaty Settlements (OTS) requirements for vendor disclosure in relation to properties that may be purchased by OTS and as required by Cabinet. The disclosure is to be addressed to OTS in the form set out below and delivered to the OTS Accredited Agent. Vendors may omit the words in brackets in the “Representation and Disclosure” section where appropriate.

### Form of Disclosure:

To Her Majesty the Queen in Right of New Zealand acting by and through the Office of Treaty Settlements,

This letter comprises disclosure in respect to:

*[Insert property name, street address and legal description].*

All representations and disclosures made below shall be deemed to be repeated on the first day of every month following and on the settlement date except in so far as we notify you otherwise.

We have made all reasonable enquires prior to making the representations, warranties and disclosures. As far as we are aware, all the information contained in this letter and any other written information we have or will give to you is true and correct in all respects and represents all the material information relating to the above-described property.

### Representation and Disclosure

- 1 We confirm that:
  - a the (following) (or attached) list is a list of all chattels and fixtures that are to be included in the sale.  
*[list]*, and
  - b all the chattels and fixtures listed will be our unencumbered property at the time of giving and taking possession.
- 2 We confirm that:
  - a where we have carried out or caused or permitted to be carried out any work on the property, and
  - b we have in each and every case obtained or caused to be obtained a permit or building consent or resource consent as required, and where a code compliance certificate was also required, such a code compliance certificate was duly issued (except as disclosed below):  
*[details of work carried out without a required building consent or permit or resource consent or for which no code compliance certificate was issued]*

3 We confirm that where we have obtained a renewable resource consent or hold a current resource consent, we have and are currently complying with any such resource consent and that we have complied and are complying with our obligations under the Resource Management Act.

*[details of current resource consents, including renewable consents]*

4 We confirm that we have complied with all our obligations under the Building Act 1991 (except as disclosed below).

*[disclosure]*

5 As far as we are aware the following documents, copies of which are attached, constitute all leases, licences and occupancy rights and arrangements affecting the property.

*[disclosure]*

6 We are not aware of any variations or amendments to the above documents except as disclosed therein (or hereafter).

*[disclosure]*

7 We are not aware of any easements affecting the property or other interests and rights in the property other than those that are readily apparent from the Title (except as disclosed below).

*[disclosure]*

8 We are not aware of any outstanding enforcement or other notice, requisition or proceeding issued by any relevant authority (except as listed below).

*[disclosure]*

9 We have not received any notice of:

- a Any order or resolution for the compulsory acquisition of all or part of the property, or
- b Any proposal for road widening which would affect the property (except as disclosed below).

*[disclosure]*

10 We know of no contamination of the land or buildings or any past use of the site which could cause contamination (except as disclosed below).

*[disclosure]*

11 The property is/is not listed as a heritage site or does/does not contain any heritage buildings listed with the Historic Places Trust, in a Territorial Authority plan or other historical or heritage group or body, or to contain any known archaeological sites.

*[details of any historical, heritage or archaeological listing including any files and reports that are associated with the history and heritage of the site or its listing]*

Signed: \_\_\_\_\_ Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Organisation: \_\_\_\_\_



# Checklist for Properties to be Advertised in the Protection Mechanism and Sites of Significance Process

To be completed by the vendor agency  
or agent acting on the vendor's behalf

OTS Property Number

- 1 Property Name   
Address
- 2 Vendor Unique Property Number (if applicable)
- 3 Māori Block from which the land was acquired
- 4 Copy of LINZ Vendor Agency Disclosure form and attachments provided Yes  No
- 5 Copy of a recent valuation report (no later than 6 months) attached Yes  No
- 6 Date that the vendor agency confirmed the property as surplus  /
- 7 Copy of OTS Vendor Disclosure Form and attachments provided Yes  No
- 8 Offerback
- (a) Has this property been exempt from the offerback requirements of Section 40 of the Public Works Act 1981 or Section 23 of the New Zealand Railways Corporation Restructuring Act 1990 or has an offerback been made and not accepted? Yes  No
- (b) Date cleared from offerback requirements of Section 40 of the Public Works Act 1981 or Section 23 of the New Zealand Railways Corporation Restructuring Act 1990  /
- (c) If offerback not accepted, please provide details of outcome (Attach any further information to this form)
- (d) Copy of the Offerback report provided Yes  No  Not Applicable
- 9 Other statutory or contractual or equitable obligations?
- (a) Was property the subject of any other statutory or other contractual or equitable obligations? Yes  No
- (b) If Yes, describe the nature of the statutory or contractual or equitable obligations (Attach any further information to this form)
- (c) Date property cleared from the statutory or contractual or equitable obligations  /
- 10 Sale
- (a) Is the property ready for immediate sale? Yes  No
- (b) Is the property capable of being sold? Yes  No   
(i.e. the property has a separate Certificate of Title or is able to be Titled)
- (c) Is the property described for advertising as it is intended to be marketed? Yes  No
- (d) Are any improvements to be removed after signing this document? Yes  No   
(if yes, please attach details)
- (e) Are the improvements sited within the legal boundaries? Yes  No
- (f) Does the property share utilities in common with another property? Yes  No
- 11 Is there a reasonable probability that the property can obtain a building permit in the future, if required? (This generally applies to land where the nature or size of the land might restrict its future use, e.g. severed roads, rail corridors, stopped roads.) Yes  No

# Checklist for Properties to be Advertised in the Protection Mechanism and Sites of Significance Process



Protection of Māori Interests  
in Surplus Crown-Owned Land

Continued

OTS Property Number

12 Are you seeking an exemption for this property from being landbanked:

- (a) in order to sell it to a specific third party? *(in accordance with TOW (97) M 6/4)* Yes  No
- (b) for the purposes of transferring it to a Local Authority for a Public Work? *(s.50 PW Act 1981)* Yes  No
- (c) to exchange it for other land? *(s.106 PW Act 1981)* Yes  No

13 Holding Costs *(last financial year)*

	Full Year Basis <i>(excl. GST)</i>
<b>REVENUE</b>	
Rent	
Other <i>(produce, farming, plant, etc.)</i>	
<b>TOTAL REVENUE</b>	\$
<b>COSTS</b>	
Rates <i>(provide estimate if not currently rated)</i>	
Insurance	
Repairs and un-programmed maintenance	
Programmed maintenance	
Other	
<b>TOTAL COSTS</b>	\$
<b>SURPLUS / DEFICIT</b>	\$

*(For further clarification of costs, attach additional pages).*

14 Details of outstanding maintenance:

OUTSTANDING MAINTENANCE ITEM(S)	Estimated Cost <i>(excl. GST)</i>
<b>TOTAL ESTIMATED COST</b>	\$

*(For additional outstanding maintenance, attach additional pages).*

- 15 Does the land, buildings or any part thereof hold a heritage listing? Yes  No
- 16 Does the land, buildings or any part thereof have any known contamination? Yes  No
- 17 (a) Is the property subject to a lease? Yes  No
- (b) If yes, provide date of final lease expiry *(including renewals)*:

*NOTE: No property will be advertised through the Protection Mechanism and Sites of Significance Processes, unless the above information is provided and any relevant statutory requirements or contractual obligations have been met.*

Vendor or Agent sign-off:

*Print Name and Date*

Recommended/Not Recommended for Advertising by OTS:

*Print Name and Date*

Property Analyst– Protection Mechanism Approval to Advertise:

*Print Name and Date*

## Appendix 3: Exemptions from being Landbanked for Required Purposes

### Vendor Preference Policy – Transfer to Specific Third Party

Cabinet has agreed that in exceptional circumstances, Delegated Ministers 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.

### Transfer to a Local Authority for a Public Work under s50 of the Public Works Act 1981

This situation occurs when a local authority wants to acquire Public Works Act land held by the Crown for a local work, for example a road or sewage system.

### Land Exchange for Other Land under s106 of the Public Works Act 1981

This relates to Public Works Act land, held by the Crown, that is proposed to be exchanged for general land under section 106 Public Works Act 1981.

Requirements for the above must be identified to OTS. The property may qualify for an exemption from being landbanked but must still be considered for the protection of Māori interests and must therefore proceed through the landbanking process of advertising and deliberation by the Officials Committee on the Protection Mechanism for Surplus Crown Land.

The advertisement will need to separately identify these properties and the purpose of the proposed transfer on the basis that the Crown wishes to consider its Treaty obligations before deciding whether or not to transfer the land. The Officials Committee will consider whether applications received meet the Protection Mechanism criteria and its significance to Māori. It may suggest the land, if transferred, be subject to some form of protection of Māori Interests. An example would be for provision to be made through a Right of First Refusal for the Crown to re-acquire the property when the reason for transferring it ceases in which case it can be re-considered for landbanking when subsequently declared surplus. Following advertising and the Committee's deliberation, OTS will advise the vendor agency of the details of the Committee's recommendation.

**For a transfer to a preferential third party (Vendor Preference policy)**, the vendor must submit a paper to the delegated Ministers holding authority for the Protection Mechanism, requesting the property be exempted from landbanking; the paper must include any comment from the Officials Committee on the merits of holding the land for use in a future Treaty settlement (TOW (97) M6/4 refers).

**For a transfer to a local authority for a public work or a land exchange** the Minister of Land Information New Zealand (LINZ) or delegatee give final approval. The vendor must employ a LINZ accredited supplier to prepare a report and recommendation to LINZ taking into account the comments of the Officials Committee and any from Te Puni Kōkiri resulting from Sites of Significance applications.

In considering the report LINZ will balance this comment against the nature of the work and its importance to the community, and the availability of other sites for the public work. If the land is within a settled Treaty claim area it will not have to be processed through the Protection Mechanism process described above, but if the settled area is subject to a right of first refusal (RFR), the accredited supplier may, depending on the relevant Treaty settlement legislation, need to consult with the relevant Governance Entity and seek its views as to the transfer. If the transfer to the local authority is approved, the property transfers subject to any conditions that the LINZ delegatee imposes to protect Māori interests.

Fuller detail is contained in the LINZ Accredited Supplier Standard no. 23 “Transfer for Another Public Work”.

## Appendix 4: 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.

## Appendix 5: Regional Landbanks Map

