

LAND TRANSFER BILL – ADDITIONAL POLICY APPROVALS

Proposal

1. This paper seeks additional policy approvals for the Land Transfer Bill (“the Bill”). Cabinet approved the bulk of the policy in November 2010 and the Bill is currently being drafted for introduction later this year. The paper also provides an update on related non-legislative measures approved by Cabinet at the same time.

Executive Summary

2. New Zealand has a world-leading land title registration system that facilitates the sale, purchase and development of property and ensures New Zealanders can have confidence in their property rights. The legislation that governs the system is, however, outdated. Cabinet therefore agreed in November 2010 to accept all the recommendations from the Law Commission report *A New Land Transfer Act* and to implement these via a Land Transfer Bill [CAB Min (10) 41/4 refers].
3. The Bill is aimed at simplifying, modernising and consolidating the land transfer legislation. In keeping with these objectives, I am asking you to approve two additional technical proposals:
 - repeal the Statutory Land Charges Registration Act 1928 and incorporate its provisions in the new Land Transfer Act;
 - incorporate the flat and office owning companies provisions (currently provided for in part 7 of the Land Transfer Act 1952) in the new Land Transfer Act rather than a separate act as previously agreed by Cabinet.
4. I am also proposing to simplify the administration of the new legislation by providing for sole administration by Land Information New Zealand (LINZ) rather than carrying over the current joint administration arrangement (LINZ and the Ministry of Justice) that exists in relation to the Land Transfer Act.

Background

5. On 15 November 2010, Cabinet agreed to accept all the recommendations from the Law Commission report *A New Land Transfer Act*¹ and invited me to issue

¹ *A New Land Transfer Act* documents the comprehensive review of the Land Transfer Act 1952 undertaken by the Law Commission in conjunction with Land Information New Zealand and with input from the Ministry of Justice.

drafting instructions to Parliamentary Counsel for a Land Transfer Bill to implement the recommendations [CAB Min (10) 41/4 refers].

6. *A New Land Transfer Act* made 25 recommendations and included a draft Land Transfer Bill intended to modernise, simplify and consolidate the land transfer legislation for enhanced clarity and accessibility. By accepting all of those recommendations, Cabinet effectively agreed to legislate to retain the current system of land title registration subject to some changes to ensure that people continue to be secure in their property ownership.
7. New Zealand has a world-leading land title registration system that facilitates the sale, purchase, and development of property and ensures New Zealanders can have confidence in their property rights. The legislation that governs the system is, however, outdated.
8. The primary statute (Land Transfer Act 1952 – “the LTA”) is 60 years old and much of it is based on legislation dating back over a hundred years. The LTA is focussed on paper-based land registration when in fact almost all land title registration is done electronically via Landonline, New Zealand’s only authoritative database for land title and survey information administered by Land Information New Zealand (“LINZ”).
9. Landonline integrates geodetic information (network of survey marks covering New Zealand) and cadastral survey plans that define the parcels of land together with land title records. It enables the digital and electronic recording and storage of location-based, multi-dimensional information. LINZ is actively working to increase the availability, accessibility and usability of a range of location based information including survey and title information.
10. In September 2011, I issued drafting instructions for the Land Transfer Bill (“the Bill”) which has a Category 4 priority (to be referred to a select committee in the year) in the 2012 Legislation Programme. I am seeking to introduce the Bill by the end of the year.
11. Cabinet also agreed to non-legislative measures targeting Māori land registration and the development of land-related statutes respectively.

Māori land registration

12. In relation to Māori land registration, *A New Land Transfer Act* identified administrative and policy issues regarding the relationship between the LTA and Te Ture Whenua Māori Act (“TTWMA”), which governs Māori Land. The administrative issues related to inconsistencies between the Māori Land records system (administered by the Māori Land Court) and the general land registry administered by LINZ. The policy issue was whether the law should be changed so that the TTWMA would override the LTA where transactions registered under the LTA result in alienations of Māori land that are inconsistent with the aims and objectives of TTWMA.
13. In view of the Law Commission’s concerns about these issues, Cabinet directed officials from Te Puni Kōkiri, LINZ and the Ministry of Justice (Te Puni Kōkiri

lead) to investigate what if any aspects of Māori land registration should be subject to review and to report back to the Ministers of Māori Affairs and Justice and the Minister for Land Information [CAB Min (10) 41/4 refers]. Officials reported back to ministers in August 2011.²

14. Officials' findings on administrative issues were that significant progress had been made on various initiatives associated with Māori land registration, particularly measures aimed at completing and aligning data sets held by LINZ and the Māori Land Court. Officials considered that resolving these practical issues would, in conjunction with the passage of the Land Transfer Bill, avoid alienations of Māori land that are inconsistent with the aims and objectives of TTTWMA thus addressing the policy issue.
15. Officials therefore recommended, and ministers agreed, that a review of Māori land registration was not warranted at that time but that officials would monitor progress of the initiatives still in train and advise ministers if these initiatives did not adequately address the issues associated with Māori Land registration.
16. Subsequent to this work, the Associate Minister of Māori Affairs has established an independent panel to review the TTTWMA with a view to unlocking the economic potential of Māori land for its beneficiaries, while preserving its cultural significance for future generations [CAB Min (12) 17/1C refers]. The panel is tasked with reporting back to the Associate Minister of Māori Affairs by December 2012, with a report back to Cabinet by February 2013. Māori land registration, as it impacts on the utilisation of Māori land, is within the scope of the review but any recommendations that emerge in this area will be progressed through a separate policy and legislative process.

Development of land-related statutes

17. In relation to the development of land-related statutes, Cabinet directed officials from LINZ and the Ministry of Justice (LINZ lead) to produce guidelines for agencies to consider when developing legislation that will create interests that affect title to land. Cabinet also agreed that a related section should be added to the Legislation Advisory Committee guidelines [CAB Min (10) 41/4/ refers].
18. These measures were intended to address concerns about the proliferation of statutory rights, charges and interests in land that potentially undermine the integrity and accuracy of the register and the security of the registered owner's title. This undesirable situation has occurred through lack of awareness across government of how the LTA interfaces with other land-related statutes and a related lack of uniformity in approach to developing land-related statutes.
19. My priority at this time is readying the Land Transfer Bill for introduction later this year but I have tasked LINZ officials with commencing work on these guidelines, in consultation with the Ministry of Justice, in early 2013.

² The Minister for Courts was included in the report back because of that portfolio's responsibility for the Maori Land Court.

Comment

20. During the course of drafting the Land Transfer Bill, it has become apparent that two purely technical policy decisions are required to mandate drafting that will give full effect to the government's response to the Law Commission's review of the Land Transfer Act. In addition to these a third decision is to enable more efficient administration of the new Land Transfer Act.

Statutory Land Charges Registration Act 1928

21. Statutory land charges are charges created by statute that give notice of monies owing. Authorisation for registering the charges may come from the same statute or the Statutory Land Charges Registration Act 1928 (SLCRA). The SCLRA operates as a default mechanism, enabling charges to be registered if the statute that created them does not provide for registration.
22. The problem is that the multiplicity of statutory charging regimes, and the lack of uniformity regarding the mode and effect of registration, creates administrative difficulties for LINZ. It is proposed to address this problem by repealing the SCLRA and incorporating its provisions into the new Land Transfer Act. This would give the Registrar-General of Land more control over the whole regime of statutory land charges which would in turn improve consistency and simplify administration. The change is purely administrative and would not change the law in regard to the effects of registration such as priority.
23. This proposal is supported by agencies consulted by LINZ who administer statutory land charging regimes, including the Ministry of Justice who administers the SCLRA. It is consistent with the overall aims of the Bill which are to modernise, simplify and consolidate the land transfer legislation for enhanced clarity and accessibility. I note also that the Law Commission's draft bill appended to *A New Land Transfer Act* incorporated the SLCRA provisions on the assumption that the SLCRA would be repealed if the Commission's recommendations were agreed to by government.

Flat and office owning companies

24. On 15 November 2010, Cabinet agreed "that the regime for flat and office owning companies currently provided for in Part 7A of the Land Transfer Act 1952 should not be carried over to the new Land Transfer Act but should instead be provided for in a separate act" [CAB Min (10) 41/4 refers].
25. Flat and Office Owning Companies are a form of shared ownership of land introduced in the 1960's. The company owns the land and buildings and each shareholder owns a parcel of shares entitling them to exclusive occupancy (via lease or license) of part of the property.
26. Since the enactment of the Unit Titles Act in 1972, flat and office owning companies have been largely superseded by unit title landholdings. While it is still possible for flat and owning companies to be established, I am advised by

officials that none have been set up in recent years and that for all practical purposes, they appear to have been replaced by unit titles. Consequently, there are only 70 flat and office owning companies still in existence in New Zealand.

27. Given the small number of people affected by the flat and office company owning provisions, I now consider it preferable to incorporate these provisions into the new Land Transfer Act rather than creating a new stand alone statute. This is consistent with the Bill's objective of consolidating land transfer legislation and will simplify administration. It will also enhance accessibility as those conversant with these provisions will have been used to accessing them via the LTA and so might reasonably expect to find them carried over to the new Land Transfer Act.

Administration of the new legislation

28. The Land Transfer Act 1952 and the Land Transfer Amendment Act 1963 are jointly administered by Land Information New Zealand and the Ministry of Justice. The Land Transfer (Computer Registers and Electronic Lodgement) Act 2002 which substantially altered the way in which land transfer legislation operated in practice is solely administered by LINZ. The practical reality is that all of the land transfer legislation is administered by LINZ. The key statutory official under the legislation, the Registrar-General of Land, sits within LINZ. The powers and duties of the Registrar-General can only be delegated to employees of LINZ. Under current legislation the Ministry of Justice does not have any specified roles, functions or powers.
29. All three of the above statutes will be replaced by the new Land Transfer Act. I propose that the administration of this legislation be simplified by providing for LINZ to solely administer the Land Transfer Act.

Consultation

30. The Ministry of Justice, Te Puni Kōkiri, the Ministry of Business, Innovation and Employment and the Crown Law Office were consulted on this paper and their comments were incorporated. The State Services Commission and the Department of the Prime Minister and Cabinet were informed of the contents of this paper.

Financial implications

31. There are no financial implications associated with these proposals.

Human Rights

32. All of the proposals appear to be consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Legislative implications

33. Drafting instructions were issued in September 2011 for the Land Transfer Bill which has a Category 4 priority (to be referred to a select committee in the year) in the 2012 Legislation Programme.

Regulatory impact analysis

34. There are no regulatory impacts associated with these proposals.

Publicity

35. I am seeking the agreement of Cabinet for LINZ to publicly release this paper on its website.

Recommendations

36. It is recommended that you:
1. **note** that on 15 November 2010, Cabinet agreed to accept all the recommendations from the Law Commission report *A New Land Transfer Act* and invited the Minister for Land Information to issue drafting instructions to Parliamentary Counsel for a Land Transfer Bill to implement the recommendations [CAB Min (10) 41/4 refers];
 2. **note** that I am seeking to have the Land Transfer Bill which has a Category 4 priority (to be referred to a select committee in the year) in the 2012 Legislation Programme introduced by the end of this year;
 3. **note** that the proposal to repeal the Statutory Land Charges Registration Act 1928 and incorporate its provisions into the new Land Transfer Act via the Land Transfer Bill would not change the law but would simplify administration;
 4. **agree** that the Statutory Land Charges Registration Act 1928 should be repealed and its provisions incorporated into the new Land Transfer Act via the Land Transfer Bill;
 5. **note** that on 15 November 2010 Cabinet agreed that the regime for flat and office owning companies provided for in Part 7 of the Land Transfer Act should not be carried over to the new Land Transfer Act but should instead be provided for in a separate Act (CAB Min (10) 41/4);
 - 5.1 **agree** to recommend to Cabinet that it rescind the decision referred to in paragraph 5 above; and instead
 - 5.2 **agree** that for ease of administration and access, the flat and office owning companies provisions should be included in the new Land Transfer Act;

6. **note** that Cabinet agreed on 15 November 2010 to replace the Land Transfer Act 1952, the Land Transfer Amendment Act 1963 and the Land Transfer (Computer Registration and Electronic Lodgement) Amendment Act 2002 with a new Land Transfer Act;
7. **note** that for all practical purposes the above statutes are administered by Land Information New Zealand;
8. **agree** that Land Information New Zealand should be the sole administrator of the new Land Transfer Act.

Hon Maurice Williamson
Minister for Land Information