



13 May 2016

In confidence

## The Public Works Act and Māori land

<b>LINZ reference number</b>	BRF 16-090					
<b>Priority</b>	Medium					
<b>Name of project</b>	Te Ture Whenua Māori Enablers					
<b>Work programme</b>	Output Plan or Ministerial Priority	<input type="checkbox"/>	Responding to ad-hoc requests	<input type="checkbox"/>	Other agency work (budget/governance)	<input type="checkbox"/>

### LINZ Contacts

Name	Position	Contact number	First contact?
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### Minister's office comments

- ☐ Noted
- ☐ Seen
- ☐ Approved
- ☐ Needs change
- ☐ Withdrawn
- ☐ Not seen by Minister
- ☐ Overtaken by events
- ☐ Referred to

### Comments

### Minister's feedback

1 = Was not satisfactory      2 = Fell short of my expectations in some respects      3 = Met my expectations  
4 = Met and sometimes exceeded my expectations      5 = Greatly exceeded my expectations

<b>Accuracy</b>	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5
<b>Scope</b>	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5
<b>Tone</b>	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5
<b>Timeliness</b>	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5
<b>Overall Quality</b>	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5

**Purpose**

To explain the purpose of the attached paper. It sets out proposals that could be included the Cabinet paper on the Public Works Act and Māori land due by the end of June.

We and officials from other agencies have developed the proposals recognising that Ministers have little appetite for significant reforms in this area.

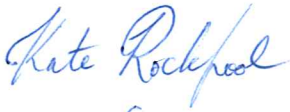
You and other relevant Ministers could use this paper to discuss which proposals you want us to develop for the Cabinet paper.

We think it may be preferable to have those discussions now rather than leave them until the paper has to be finalised in late June.

**Recommendations**

We recommended you:

1. **agree** to give copies of the attached paper to relevant Ministers — the Minister for Māori Development, the Minister of Transport, and the Minister of Local Government.
2. **agree** that your office arrange a meeting between you and the Minister for Māori Development (and the Minister of Transport if he wants to attend) to discuss which proposals you would like progressed in the Cabinet Paper.

  
for

Cindy O'Brien  
Manager Policy

Date: 13 / 05 / 2016

Hon Louise Upston  
Minister for Land Information

Date:     /     /

**Attachment**

1. The Public Works Act and Māori Land: Testing proposals that could be included in a Cabinet paper

## Background

1. On 2 February 2016, Cabinet directed Land Information New Zealand and Te Puni Kōkiri, in consultation with the Ministry of Transport, to present issues and a timeframe for the proposed amendments to the Public Works Act 1981 including Māori land specific issues, to Ministers for a report back to EGI, by 30 June 2016.
2. You will recall
  - the Minister for Māori Development proposed a number of changes to the Public Works Act and local government legislation in a paper "Te Ture Whenua Māori Bill final residual matters".
  - Cabinet deferred consideration of this paper at its meeting on 7 March 2016
  - your colleague Minister Adams chaired a meeting on 9 March 2016 at which Ministers agreed to scale back many of the proposals and delete those associated with the Public Works Act.
  - we discussed with you the possibility of Cabinet rescinding the 2 February direction at its meeting on 14 March 2016.
  - we gave you and aide memoire on 11 March 2016 "Notes for Cabinet meeting on March 2016 – Likely content of work previously agreed by Cabinet on the Public Works Act and Māori Land".
  - in the event, Cabinet did not rescind the 2 February 2016 direction at the 14 March 2016 Cabinet meeting.
3. We are conscious that Ministers have little appetite for significant reforms in this area.

## Proposals that might be included in the Cabinet paper

4. Officials from Land Information New Zealand, the Ministry of Transport, the New Zealand Transport Agency, Te Puni Kōkiri, and the Department of Internal Affairs have developed a set of proposals for Ministers to consider.
5. The proposals
  - address some of the issues raised by Māori land owners
  - focus on the PWA as it is used now, not how it has been misused in the past
  - will not affect the timeframes for acquiring land for major road projects.
6. Most of the proposals involve changes to the way the existing PWA is used and don't need any legislation.
7. A few of the proposals would need legislation, either
  - minor changes to the PWA
  - new provisions inserted in the Te Ture Whenua Māori Bill.

**The paper was prepared with other agencies ( including TPK) and officials support it.**

8. The proposals in the attached paper have been agreed between Te Puni Kōkiri, the Department of Internal Affairs, Ministry of Transport and the New Zealand Land Transport Agency.
9. Officials from the other agencies will brief their Ministers on the paper. Officials are likely to say the proposals are a reasonable starting point for relevant Ministers' consideration. The Ministry of Transport will say that the proposals would not slow down the Governments road building programme – but may generate costs which should be estimated.
10. Officials will cost those proposals which are to be included in the Cabinet paper. We don't expect any of the costs will be significant.
11. Officials say the Minister for Local Government is unlikely to want to meet over these issues. The Minister of Transport will decide whether he wants to participate once his officials brief him.

**Next Steps**

12. We propose the steps set out below

Give attached paper to your colleagues	early in the week beginning 16 May
Meet with the Minister for Māori development (and the Minister of Transport if he wants to attend)	late in the week beginning 16 May
Officials further develop proposals and estimate costs	up to 17 June
Officials give you a draft Cabinet paper	17 June
Lodge Cabinet paper	23 June

## **The Public Works Act and Māori Land**

**Testing proposals that could be included in a Cabinet paper**

Released under the Official Information Act 1982

## Summary of Proposals

Proposal	Does this proposal apply only to Māori land?	Does the proposal require legislation?	Do Ministers want the proposal included in the Cabinet paper
Purchase and compulsory taking			
Limiting the interest taken  [Would not apply to land for roads]	No	No <ul style="list-style-type: none"><li>just better guidance</li></ul>	<input type="checkbox"/> Yes <input type="checkbox"/> No
Being more transparent about land being used for a different public work	No	Yes <ul style="list-style-type: none"><li>requiring that agencies inform the people from whom land was taken of the new use</li></ul>	<input type="checkbox"/> Yes <input type="checkbox"/> No
A clearer set of criteria to test up front whether land can be taken	No	Legislative option <ul style="list-style-type: none"><li>amending PWA to include the tests in s(24)</li><li>empowering binding regulations or rules to be made</li><li>requiring taking agencies (including local authorities) to apply the regulations or rules</li><li>auditing compliance in some way</li></ul>	<input type="checkbox"/> Yes <input type="checkbox"/> No
		Non-legislative option <ul style="list-style-type: none"><li>providing standards and guidelines</li><li>encouraging acquiring agencies to apply and document them</li></ul>	<input type="checkbox"/> Yes <input type="checkbox"/> No
Compensation			
Compensation should not be reduced on account of Māori freehold land status	Yes	No, just ensure that guidance is more explicit	<input type="checkbox"/> Yes <input type="checkbox"/> No
Compensation should reflect loss of heritage value to owners of land being taken	No	Amendments to PWA and new subsidiary legislation to include a specified set valuation adjustments that reflect heritage value	<input type="checkbox"/> Yes <input type="checkbox"/> No
Offer back and Sale			

A larger role for the Māori Land Court to deal with offers back	Yes	<p>Yes</p> <ul style="list-style-type: none"> <li>probably in TTWM Bill, with consequential amendments to the PWA</li> </ul> <p>The jurisdiction would cover</p> <ul style="list-style-type: none"> <li>the party to whom the offer should be made</li> <li>the price and land status</li> </ul>	<input type="checkbox"/> Yes <input type="checkbox"/> No
Ensuring an offer back price reflects the acquisition price. For instance a zero price when land was originally taken without compensation should be reflected in the offerback price	No	<p>No</p> <ul style="list-style-type: none"> <li>done in strengthening guidelines for offer back price</li> </ul>	<input type="checkbox"/> Yes <input type="checkbox"/> No
Information services allow people to see whether land is still required for a public work or can be offered back or sold	No	<p>No</p> <ul style="list-style-type: none"> <li>just note in the Cabinet paper</li> </ul>	<input type="checkbox"/> Yes <input type="checkbox"/> No

Released under the Official Information Act 1982

## Background

1. On 2 February 2016, Cabinet directed Land Information New Zealand and Te Puni Kōkiri, in consultation with the Ministry of Transport, to present issues and a timeframe for proposed amendments to the Public Works Act 1981 including Māori land specific issues, to Ministers for a report back to EGI, by 30 June 2016.
2. Officials have filtered possible issues so they:
  - address issues that concern owners of Māori land
  - focus on the PWA as it is used now
  - reflect views Ministers' have expressed in discussions on recent papers on whenua Māori enablers as part of Māori land reforms
  - do not significantly affect the timeframes for acquiring land for major road projects
  - can be made in the administration of the PWA, or
  - with only minor changes to the PWA.
3. This paper briefly describes the issues considered relevant by officials so the relevant Ministers can discuss whether they should be progressed for the June EGI paper.

### **Māori concerns about the PWA mostly relate to historic misuses of its powers**

4. Māori have long-held concerns about public works legislation operating to deprive them of their land.
5. In the past Māori land has been taken with little or no compensation. Māori landowners were not involved in decisions as much as they should have been. Notification provisions and timeframes often did not allow Māori landowners to participate effectively. In some cases, Māori land was actively targeted for acquisition.
6. Land has been kept by acquiring bodies for longer than needed. A particular concern is that land has been taken for one public work and later used for another purpose. Sometimes land has been sold with no offer back to the owners.
7. These concerns (or subsets of them) have been clearly and consistently articulated over many years in several contexts. The contexts include the Māori land marches in the 1970s, the development of the Te Ture Whenua Māori Act 1993 and a review of the Public Works Act in 2002, and private members bills which have sought to amend the PWA in relation to Māori land. PWA issues (though not strictly in scope) were also raised in submissions and hui on the Te Ture Whenua Māori Bill.

8. The Waitangi Tribunal delivered a comprehensive report on Public Works Act takings in 1997<sup>1</sup>. Significantly many Waitangi Tribunal reports on treaty claims contain a whole chapter on historic uses of public works legislation that have deprived iwi of land. Crown apologies and historical accounts in many Treaty settlements include reference to historic misuses of public works legislation.

**Very little Māori land is now taken under the PWA — and it is mostly for roads**

9. The Crown and local authorities have acquired a lot of land under public works legislation since it was first enacted in the 1860s. At various times the drivers have included railways, power stations, electricity distribution, schools hospitals, water, sewerage and roads.
10. The days of wholesale acquisition are over. There is there is much more activity around selling or disposing of land no longer needed than there is around acquiring new land.
11. The major driver for acquiring new land is road building. The Crown via the New Zealand Transport Authority (NZTA) acquires land for new motorways and major road projects involving state highways. Local authorities are acquiring land for new local roads, road widening and realignment.
12. This table gives a sense of the current scale of acquisition and of how often land is acquired compulsorily.

Acquisitions and compulsory takings under the PWA 1999 - 2015				
Acquiring agency	Total number of properties acquired by agreement	Number of which where Māori land	Total number of properties compulsorily acquired	Number of which Māori land
Crown entities	This figure is unknown but will be available for the Cabinet Paper*	This figure is unknown but will be available for the Cabinet Paper*	184	1
Local authorities and other entities able to use the PWA	This figure is unknown but the best available estimate is a few hundred per year	This figure is unknown but the best available estimates is around 10 per year at most	32	0
Network utility operators	N/A	N/A	0	1
*NZTA ( the Agency which takes most land) is preparing more data for the Cabinet paper				

<sup>1</sup> Public Works Act Takings of Maori Land 1840-1981 Cathy Marr Waitangi Tribunal Rangahaua Whanui Series

13. New roads have often not impacted on Māori land. Most major road projects have been in areas of high population and economic growth — precisely the areas where there tends to be little Māori land. At times though, major road projects do affect significant amounts of Māori land. The road of National Significance between Wellington airport and Levin is an example.
14. It is quite possible that in future there will be quite long periods where no major projects affect Māori land.

**Modern processes for acquisition under the PWA have significant protections for Māori land**

15. Public works generally need an authorisation under the Resource Management Act 1991 (the RMA), frequently in the form of a designation under Part 8. In many cases, RMA authorisation is obtained well before land is acquired under the PWA.
16. The process for getting a designation (like all RMA processes) must recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites of significance, wāhi tapu, and other taonga.
17. Land Information New Zealand (LINZ) makes decisions for Crown acquisitions and disposals under delegation from the Minister for Land Information or Chief Executive of LINZ, except for compulsory acquisition. LINZ has set standards<sup>2</sup> that the acquiring entity must comply with for these actions, and guidelines setting out operational best practice. Local authorities are not subject to the standards and guidelines.
18. The standards and guidelines are built around the PWA, related legislation and the extensive case law that has built up around it. For example, the guidelines indicate consideration of the following matters
  - the land has not been selected because it is Māori land or is undeveloped
  - all other practical alternatives to taking Māori land have been considered
  - Māori owners and relevant bodies have been consulted and their interests considered
  - any wāhi tapu (sites of significance) have been identified and proposals to protect them have been made.
19. The Minister for Land Information also performs the formal steps for compulsory takings by Crown departments and agencies.
20. An affected landowner can object to a compulsory taking and have that objection heard by the Environment Court. The court looks at whether the taking would be fair, sound, and reasonably necessary for the objective of the work. The court also looks at whether alternative sites, routes, or other methods of achieving the objective have been properly considered.
21. LINZ accredits private sector suppliers to undertake all investigations and negotiations relating to the acquisition and disposal of land by Crown departments and agencies under the PWA.

<sup>2</sup> Standard for the acquisition of land under the Public Works Act 1981 - LINZS15005 see <http://www.linz.govt.nz/regulatory/15005>, Guideline for the acquisition of land under the Public Works Act 1981 - LINZG15703 see <http://www.linz.govt.nz/regulatory/15703>

Accredited suppliers are typically lawyers, valuers or other property professionals. Those dealing with Māori land have to demonstrate technical competencies around Te Ture Whenua Māori Act 1993, Māori Land Court processes, the Treaty of Waitangi, Treaty of Waitangi settlement legislation, and tikanga Māori.

22. All accredited suppliers must have auditable processes for internal quality assurance, peer review and internal record-keeping systems.
23. The cumulative effect of these requirements is that Crown departments and agencies generally apply best practice and avoid taking Māori land even if that involves some additional cost.

## Issues discussed in this paper

24. We think that many of the major concerns about the PWA and Māori land are now largely historical and that there is no logic in making changes to address practices that no longer occur.
25. We have, though identified, a number of changes to the PWA and its administration that could make some useful marginal gains in retaining Māori land. This paper identifies issues organised around three main elements of the PWA:
  - purchase and compulsory taking
  - compensation
  - offer back and sale.
26. We have identified proposed changes to address each issue and indicated whether the proposals are legislative or non-legislative.
27. We have also identified whether the proposal is specific to Māori land.

### **These proposals do not meet the Iwi Leaders Group request for a complete prohibition on taking Māori Land under the PWA**

28. The Iwi Leaders Group addressed the PWA issues in a letter to the Prime Minister, dated 15 February 2016. The Leaders asked for:

“[a]commitment from the Crown to work through a process aimed at ensuring that no Māori land is taken for public works without the consent of the Māori land owners.”
29. Agencies do not consider that the Leaders’ proposal can be agreed to in the terms that they have suggested because:
  - excluding Māori land from the Public Works Act could act as a barrier to significant public works that benefit the wider community, including Māori
  - some people would see exclusion as an unreasonable preference to owners of Māori land

- The Waitangi Tribunal, in its comprehensive reports, has not gone as far as to rule out the compulsory acquisition of Māori land.
30. This paper does identify other potential changes to the PWA and its practices, as well as possible amendments to Te Ture Whenua Māori Bill, which could make processes under the PWA more transparent and provide better protection for Māori land.

## Proposals

### Purchase and compulsory taking

#### Limiting the interest taken

31. The PWA allows any interest in land to be taken — the full freehold or lesser interests like a lease, a right of way or other easement. Acquiring agencies can also acquire an interest defined in terms of subsoil, surface, or airspace, leaving the rest of the land with the owner.
32. Agencies often ignore the possibility of taking lesser interests and take the full freehold because it is administratively easier to deal with.
33. In many cases, it would be quite feasible to take a lesser interest. A number of smaller power stations sit on leases of Māori land. These arrangements have their origins in policies of the Electricity Corporation in the 1970s. Some schools and police stations now operate under a lease, on land that has been returned to iwi under Treaty settlements. Works such as sewerage pipes may be placed by obtaining an easement on a property, rather than the freehold interest.
34. There could be very real symbolic value to some owners — including Māori landowners in retaining the underlying ownership of land. Other owners may have no desire to do so and would prefer the whole of the interest in the land to be taken.
35. The full freehold will still be needed for roads. Road controlling authorities need the full freehold to effectively run state highways and local roads. The legislation for roads closely ties freehold ownership with control, safety, financial, and administration powers.

Not specific to Māori land

Non-legislative and would not apply to roads

#### LINZ's standards and guidelines could

- explain how it is possible to take a lesser interest
- recommend that where owners want to retain the freehold interest agencies consider whether a lesser interest could be appropriate to operate the public work
- recommend that when the work ends (or reduces in scale or scope) the interest held by the taking agency would be surrendered or narrowed.
- refer to the desirability of retaining Māori land

#### Being more transparent about land being used for a different public work

36. When land taken for one public work is no longer needed for that work, the PWA provides that it can be set apart for another public work without triggering a requirement to offer back. There is no right to object to its new use.
37. In addition, an existing public work can be transferred between the Crown and a local authority for a public work without triggering an offer back
38. It would be inefficient to change these settings so that land was to be returned and then reacquired or retaken for any new work. That approach would generate delays and transactions costs. It would limit strategic planning and make it harder to manage land for future works and infrastructure. It would also hold out the possibility of the return of land where this was in fact unlikely to happen.
39. The Crown has already responded to Māori concerns about land being transferred to local authorities where it is freed from Treaty-based Crown obligations to Māori. In 2000, Cabinet agreed that Māori interests are to be a relevant consideration when the Crown contemplates a transfer to a local authority.
40. The vendor agency must prepare a report on the proposed transfer including advice provided by the Office of Treaty Settlements and Māori owners on the type of protection required. Often the local authority and Māori agree to an arrangement which sees the Crown getting a first option to purchase if the land become surplus.
41. We think the Crown could be more transparent about the transfer of public works between its departments and agencies. A Gazette notice usually records when land held by one agency for one public work is transferred to another. These notices record the changes in purpose and holding agency but they are not very effective in signalling the new use to the people from whom the land was taken.
42. We suggest adding a process to notify the people from whom the land was taken. The agency seeking to use the land for a new public work would need to signal its proposal for the new use. Any agency proposing a new use would effectively need to engage with any

owners who remained interested in the land and its future use — and explain why the land is needed.

43. Where the original owners have died, the obligation would be to engage with their successors, or a reasonable proxy for them. In the case of Māori land the proxy could be an iwi or hapū group or (where one exists) a governance entity under a treaty settlement.
44. This requirement should filter out cases where an agency wants to use land taken under the PWA simply because it is administratively convenient to do so.

Not specific to Māori land	Legislation needed
<ul style="list-style-type: none"><li>• amendments to the PWA requiring change of use to be notified to the people from whom land was taken, their successors, or a reasonable proxy for them.</li></ul>	

#### **Clearer criteria to test whether land can be taken**

45. Currently any affected owner can test any taking under the PWA by an objection under s23(3). These objections are heard by the Environment Court. The court looks at whether the taking would be fair, sound, and reasonably necessary for the objective of the work. The court also looks at whether alternative sites, routes, or other methods of achieving the objective have been properly considered. The tests are very similar to those for testing proposed designations under part 8 RMA.
46. A lot of case law and guidance has evolved around these tests for compulsory taking. If Māori Land is involved, the Environment Court looks very carefully at the cultural and spiritual values associated with the land and can (and does) recommend against taking Māori land.
47. We don't think we need to change any of the tests themselves. We do think:
  - the tests could be clearer
  - the tests could be applied up front
  - acquiring agencies could be more transparent about how they apply the tests
  - guidance on the tests could be improved and applied more widely.
48. We think there are two possible approaches to making these criteria clearer
  - a legislative and more heavy handed approach
  - a light handed non-legislative approach

Not specific to Māori land	Legislation needed
<ul style="list-style-type: none"> <li>• amend the PWA to include the tests in s24 ( the main power to take land)</li> <li>• allow binding regulations or rules to be made</li> <li>• require taking agencies (including local authorities ) to apply the regulations or rules</li> <li>• audit compliance in some way</li> </ul> <p>There would be significant costs associated with any audit function — and officials would need to estimate them.</p>	

or

Not specific to Māori land	Non legislative
<ul style="list-style-type: none"> <li>• improving guidance and encouraging all acquiring agencies to use it .</li> </ul> <p>Acquiring agencies ought to embrace any useful guidance as it should protect them against challenges to their actions</p> <p>Some local authorities already follow the LINZ standards and guidelines voluntarily</p>	

## Compensation

49. The PWA and case law closely prescribe how compensation is calculated. The current settings are based around current market value and a number of additional adjustments and payments for things like businesses losses, and taking someone's home. There is no mechanism to address the cultural or spiritual values associated with Māori land, (or with other land).

### Compensation should not be reduced for Māori land

50. Best practice generally fixes compensation for Māori land on the same basis as for general land. Research suggests there may be some cases where a discount has inappropriately been applied to Māori land.

51.

Specific to Māori land	Non-legislative
<ul style="list-style-type: none"> <li>• LINZ guidelines could recommend that Māori land is to be valued on the same basis as general land for compensation purposes.</li> </ul>	

**Compensation should reflect social, cultural, and heritage values to owners of land being taken**

52. Historical sites like burial grounds operate to drive market values down because they limit the use of land. Compensation payments are driven down along with the market value. It is arguable that where a historical site is of a positive value to the owners they should receive more compensation because something of additional value is being taken from them.
53. We think there is a reasonable case for compensating owners for loss of heritage or cultural sites on their land which are of value to them. A good analogy is with the additional payments made for loss of people's homes.
54. Any new form of compensation would require a change to the PWA. We think that a framework for assessing social, cultural, and heritage values would have to be set out in subsidiary legislation, standards, or guidelines. Without such a framework, many different valuation methods would be in play and it would be very difficult to resolve disputes about valuations.
55. Officials do not think these changes would necessarily add delay to acquisition. They would just be another component in the initial calculation of possible compensation — and would not add an extra step to the process. It may make it easier to acquire properties by agreement and speed the acquisition process.
56. Officials would need to estimate the extra costs, but we do not think they would be significant in the context of the total costs of compensating owners. We think relatively few properties would attract this additional form of compensation.

Not specific to Māori land	Legislation needed
<ul style="list-style-type: none"><li>• simple amendment to the PWA to create new form of compensation</li><li>• the development of a valuation framework reflects social, cultural, and heritage values, this would possibly new subsidiary legislation</li><li>• the design and maintenance of the framework would involve the Valuer-General</li><li>• officials would need to estimate additional costs</li></ul>	

**Compensation for loss of homes should recognise that several separately owned homes can exist on one parcel of land**

57. The PWA compensation regime has always allowed for some compensation over and above the market value of land acquired or taken. These payments are often called “solatium” payments and have since 1981 been fixed at \$2000 payable where the land being taken contains the owners home.

58. Proposed changes to the PWA in the Resource Legislation Amendment Bill would introduce a more complex system. It provides for a payment if the owner's home is taken, a payment for reaching an agreement quickly, and a payment linked to the personal circumstances of the owner. The new system allows the maximum amounts payable to be varied by Order in Council.
59. The changes are partly intended to provide a more realistic level of compensation for interference with people's lives and partly to encourage early agreement.
60. Critically, under both systems there is one solatium payment for loss of a home regardless of how many homes exist on the land being taken (\$2,000 under the existing system and \$35,000 under the new one). Where two or more homes exist on the land being taken the owners share the payment.
61. There are cases where several separately owned homes exist on one piece of land. Examples exist on general land, and are relatively common on multiply owned Māori land.
62. In the case of multiply owned Māori land, the owners often grant leases or licences to occupy to several of the owners who establish their homes on the land. Sometimes these leases or licences are granted by or recorded in the Māori Land Court (as occupation orders). In other cases they exist as unregistered interests.
63. When land containing more than one home is acquired on one piece of land, the owners have to share the solatium payment between them.
64. The portion of the solatium payments related to the deprivation of someone's home should arguably be paid for each individually owned home in cases where multiple homes exist on a property. The argument goes that it is the interference to people's lives which is being compensated and that this interference is doubled when more than two homes are involved, tripled when there are three and so on.
65. Investment properties would not qualify for additional solatium payments. Where there are multiple houses in single ownership e.g. an owner occupied house plus a rental flat, there would be one solatium payment.
66. This issue was not raised when the new system was designed and none of the 20 or so submissions on the PWA provisions in the Resource Legislation Amendment Bill raised it. It would though be possible to address it in the Resource Legislation Amendment Bill or at a later date by amending the PWA.

Not specific to Māori land	Legislation needed
<ul style="list-style-type: none"> <li>amend the PWA at some future date so the element of solatium payments that relate to owners being deprived of homes apply to each home being taken</li> </ul>	

## Offer back and sale

67. The Public Works Act 1981 introduced a comprehensive process of offer-back. The process applies to any land held for a public work but no longer needed for that or any other public work.
68. The land has to be offered back to the person from whom it was acquired or their successor, unless particular exemptions set out in the PWA apply.

## For Māori land: A larger role for the Māori Land Court to deal with offers back

69. If Māori land is involved current provisions (s 41 PWA) allow the agency offering land back to either
- offer the land back to the previous owners or their successors (as determined by the agency)
  - apply to the Māori Land Court for an order under s 134 Te Ture Whenua Māori Act (s24 in the Te Ture Whenua Māori Bill.). Those powers allow the court wide discretion to vest the land in individuals, a trustee or an incorporation
70. These settings may not be ideal. In all but the simplest cases it may be preferable for the Māori Land Court to effectively manage the offer back.
71. The Māori Land Court may be much better placed to identify a person, group or other entity that could most equitably receive the offer back. The court could take into account the complex succession processes associated with Māori land and potentially take into account matters like whether an iwi or other group has already received redress under Treaty settlements.
72. We also think the Māori Land Court could be given jurisdiction to decide on the status of the land to be offered back. The PWA is silent on this issue. In practice, agencies generally try to return Māori land with its Māori land status intact. Owners though sometimes prefer to have it offered back as general land and agencies sometimes comply with their wishes.
73. The Māori Land Court could also set the price for an offer back. The court already looks at price in many dealings with Māori land.
74. The Māori Land Court would be much better placed than agencies to deal with this issue and in particular would take into account the overarching requirement of retaining Māori land.

Specific to Māori land	Legislation needed
<ul style="list-style-type: none"><li>• amendments to the PWA to give the Māori land court jurisdiction to deal with matters associated with offers back of Māori land</li><li>• supporting provisions would probably have to be designed and introduced into the TTWM Bill</li></ul>	

### Better calibrating the payment required in an offer back

75. The PWA offer back regime starts with an assumption that land will be offered back at current market value. There is a discretion to offer back at a lower price but no reasons or criteria are specified.
76. In some cases, agencies reduce the payment required for an offer back if little or no compensation was paid for the original taking. Officials think it is plausible to codify the approach to reducing offer back prices in all such cases. The approach could also be constructed to take account of whether redress has already been provided in Treaty settlements.
77. In the case of Māori land, the approach could be built into the suggested jurisdiction for the Māori Land Court to deal with offers.

Not specific to Māori land	Non-legislative
<p>Strengthen the guidelines</p> <ul style="list-style-type: none"><li>• specify how to calculate the price required when land is offered back</li><li>• price could depend on the level of compensation made when the land was taken</li><li>• payment could generally be zero if there was no compensation at the time of acquisition</li></ul> <p>In the case of Māori land the approach could be applied by the Māori Land Court which would automatically build in retention of Māori land as a criterion</p>	

### Information services allow people to see whether land is still required for a public work or can be offered back or sold

78. We think people—including Māori—have been concerned about the PWA because once land has been acquired it has been absorbed into a system that has been opaque and largely impenetrable to non-experts.
79. It has been difficult to know what land agencies have acquired under the PWA, what they still hold, what real need they have for it, or whether other agencies might want it for another work. Many agencies have not had a full understanding of their own holdings.
80. This situation is improving as agencies get better databases and web based tools that catalogue their holdings. This is especially true of major land holding agencies LINZ, NZTA and DoC. All these agencies now record their holdings with modern databases and spatial tools.

81. Transfers and disposals for a number of Crown agencies are being centralised at LINZ and a web portal (screenshot in appendix 1) is available to participating agencies. Several iwi groups also have access to the portal to search for properties that are coming up for disposal in their rohe.
82. The LINZ data service also provides a dataset of Crown land held by LINZ. The dataset can be used in geographic information systems or be extracted as text files.
83. LINZ also routinely responds to enquiries about what has happened with Crown land including
- investigating historical cases where owners think appropriate compensation was not paid
  - Investigating whether an agency still requires land or should offer it back.
84. The logical direction of travel is towards a public facing catalogue of land held by all major land holding departments and agencies, and what is happening to it. It could give early warning of land likely to come up for disposal along with the information about it. A facility like this would help anyone to test whether an agency still needs land for a public work. It could also allow them to note an interest as someone potentially entitled to an offer back.

Not specific to Māori land	Non-legislative
<ul style="list-style-type: none"><li>• note in the Cabinet paper the quite extensive information available about land taken under the PWA</li><li>• note in the Cabinet paper the direction of travel towards public facing, web based services that will allow people to see what is happening with land taken under the PWA</li></ul>	

## Appendix 1

Crown Property Disposal

My account Log out

Land Information New Zealand  
*hauā te wānanga*

Crown Property Disposal Portal  
*Tomokanga Tuku Raua a te Karanga*

Search / Rapu

Home  
*Kāinga*

Browse Current Listings  
*Tirohia ki ngā raua o nāianei*

My Listings  
*Āhu raua*

Outstanding Notifications  
*Translation goes here*

Part Reserve 1923

Part Reserve 1923, adjoining sections 1, 2, 3 SO 19500

The subject property is located 20 kilometres from Hinds adjoining the Rangitata River Bed. The land is a long narrow forked shaped parcel being part of the Rangitata South Brand river bed. It runs in a southeast northeast direction and is approximately 4,000 metres in length and varies greatly in depth and width.

Status: RFR Notified  
*Te tūnga: Kua oti te whakamāhio atu*

Add to My Listings

### Detailed Information

*Ngā tīra māhioranga*

Crown Property Disposals ID	62
Address	123 Street Road Suburb City Postcode
Territorial authority	Wellington City
Legal description	Lot 1 Deposited Plan 99410
Area	999ha
NaPALIS ID	A1234567
Crown agency	LINZ
Administered under	Public Works Act 1981
Purpose	---
Land use	RURAL

### Detailed description

*Whakamārama āhono*

The subject property is located 20 kilometres from Hinds adjoining the Rangitata River Bed. The land is a long narrow forked shaped parcel being part of the Rangitata South Brand river bed. It runs in a southeast northeast direction and is approximately 4,000 metres in length and varies greatly in depth and width.

The land itself varies from reasonable patches of silt to very rocky country. The land is

Iwi responses *Translation goes here*
20 days remaining

Ngāti Poneke

Notified - awaiting response

Respond