

AIDE MEMOIRE

Te Ture Whenua Māori Reform

Purpose statement

1. This paper responds to your request for advice about the Public Works Act-related proposals in the draft Cabinet paper “Te Ture Whenua Māori Reform”, including information about previous Cabinet decisions and options for inserting the proposals into Te Ture Whenua Māori Bill. It also updates you on our discussions with Te Puni Kokiri (TPK).

Details

Solatium payments

2. The proposal is to amend the solatium provisions in the Public Works Act 1981 (PWA) to provide that the solatium payments apply to all separately owned dwellings being acquired on Māori land. Currently under the PWA, the solatium payment (compensation payment for loss of the dwelling and separate from payment for the land) is limited to one dwelling. This means that for Māori Freehold Land where there are multiple homes on a single title, the solatium payment would have to be apportioned between the various owners.
3. We are comfortable with the proposal provided it is limited to situations where there are formal legal arrangements in relation to each dwelling.
4. **TPK have agreed to amend the Cabinet paper to provide that the solatium payments will only be made upon production of a status order from the Māori Land Court for each dwelling for which the payment is claimed.**
5. Cabinet has not previously considered proposals to change the solatium payments in this way. However, Cabinet did agree last week to increase the maximum solatium payment from \$20,000 to \$50,000 for the loss of a dwelling (limited to one dwelling per title) as part of additional policy decisions sought for the Resource Legislation Amendment Bill.

Valuation of Māori land

6. The proposal is to amend the PWA to provide that Māori land is valued at the same level as general land for compensation. We do not think the amendment is necessary and are only comfortable with this if it is framed as an “avoidance of doubt” provision. Māori land is currently valued in the same way as general land for compensation for acquisitions by Crown agencies.
7. **TPK have agreed to amend the Cabinet paper to clarify that the proposed amendment to the PWA regarding valuation of Māori Land, is only for the avoidance of doubt.**

Raising the threshold for acquiring Māori land compulsorily or by agreement

8. The proposal is to amend the PWA to raise the threshold for acquisitions from showing why it’s “reasonably necessary” to take the land to “demonstrate that there is no other reasonably viable option”.
9. We oppose this proposal. Māori land is very seldom taken under the PWA. Since 2005, there have only been 29 acquisitions by agreement that we are aware of (these include LINZ and

major NZTA acquisitions but we don't have data for local authorities). In that time there has only been one compulsory acquisition of Māori land.

10. Raising the threshold in this way would require acquiring agencies to incur significant costs and delays in demonstrating that there is "no reasonably viable alternative option". Consideration would have to be given to raising the threshold for general land also because of the optics, which would be especially pronounced where both Māori and general land are being acquired for particular public works. This would further increase costs and delays.
11. Raising the acquisition threshold would also undermine the Resource Management Act (RMA) designations process. The "no reasonable viable option" test is far higher than that for obtaining a designation over the land (which like the PWA is based on a third party assessing whether adequate consideration has been given to alternative routes, or options and an assessment that the work/land is reasonably necessary). This means that while an acquiring authority already has, or are able to obtain designations over Māori land, they would not be able to compulsorily acquire that land (as it would be extremely difficult to pass the proposed test).
12. The low incidence of Māori land acquisitions does not warrant this level of intervention. Because Māori land acquisitions are very rare, we think the effect of this change for Māori land owners would be largely symbolic.
13. **TPK have agreed to amend the Cabinet paper to provide that Māori land can only be acquired compulsorily or by agreement if the Chief Executive of the acquiring agency or the Minister for Land Information have considered the principles of Te Ture Whenua Māori Act and are satisfied that purchase is reasonably necessary and that there has been adequate consideration of other options.**
14. This is consistent with current good practice under the PWA and with the RMA designation requirements.
15. Cabinet has not previously considered this issue.

Giving the Māori Land Court ("MLC") increased jurisdiction in relation to offers back

16. The proposal is to amend the PWA to give the Māori Land Court increased jurisdiction to offers back. This includes deciding price and imposing conditions. We have concerns about extending jurisdiction to matters beyond the MLC's area of expertise. **We have discussed our concerns with TPK who are currently re-working the proposal to address these. We will update you early next week.**
17. Cabinet has not previously considered this issue.

Investigating options to improve local authorities' compliance

18. The proposal is for LINZ (in consultation with TPK) to investigate amending the PWA to require local authorities to comply with the LINZ standards and follow the related LINZ guidance regarding acquisitions, and to report back to Cabinet in March 2017. This is intended to promote a more consistent approach among local authorities to meeting their PWA obligations. Unlike the Crown acquiring agencies, they are not required to meet the LINZ standards.
19. We think it possible that there could be mechanisms short of amending the PWA that could encourage these agencies to operate consistently with our standards and guidance. We also think any report back should more properly be to you.
20. **We have asked TPK to amend the Cabinet paper to provide for LINZ officials (in consultation with TPK officials) to investigate ways of improving compliance by local authorities with the PWA requirements for land acquisition, and to report to the Minister for Land Information by 30 June 2017 on mechanisms for encouraging these bodies to follow the same standards and guidelines as the Crown acquiring agencies.**

21. We will update you next week on the TPK response.

Inserting proposed PWA amendments into Te Ture Whenua Māori Bill

22. TPK are aiming to have the Cabinet policy approvals in time to progress the proposals through the departmental report for the Bill which is currently before the Māori Affairs Committee. The report back date for the Bill has just been extended by two weeks to 25 November 2016.
23. You have asked whether the departmental report process provides more opportunity for public input or scrutiny than amendments via Supplementary Order Papers (SOPs) after the Bill is reported back to the House.
24. The public would only have an opportunity to comment on these proposed amendments if the select committee agreed to seek public comment on them. Otherwise, the submissions have closed off and the proposed amendments in the departmental report would not be subject to public comment. The Committee could also decide to seek comments just from particular stakeholders. If the committee does consult on these proposals that would require extending the report back for longer than has just been agreed.
25. So it is possible that the departmental report process would not result in any more public input than using the SOP process. However it would at least subject the proposals to scrutiny from the select committee.

LINZ Contacts

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