Land Information New Zealand
Toitū te whenua

29 September 2016 BRF 17-135

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 attached draft Cabinet paper "Te Ture Whenua Māori Reform". This paper also responds to your request for information about previous Cabinet decisions and options for inserting the proposals into the Bill.
2. We received the paper late yesterday and met with TPK today to discuss it. We understand that Ministers Flavell and Finlayson will be taking the papers straight to Cabinet on 10 October to get policy approvals in time to insert the proposed amendments into Te Ture Whenua Maori Bill departmental report. We have not had time to review the attached RIS which we've only just received.

Details

Solatium payments

3. 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.
4. A separately owned dwelling is a dwelling where the owner has an occupation order; a lease or similar agreement recorded at the Māori land register; or obtains a declaration of ownership from the Māori Land.
5. 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.
6. We are now comfortable with the proposal which was revised to address our earlier concerns.
7. Cabinet has not previously considered proposals to change the solatium payments in this way. However, Cabinet did agree a few weeks ago 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

8. The proposal is to amend the PWA to clarify that Māori land is valued at the same level as general land for compensation. We do not think the amendment is necessary but we are now comfortable with it because it has been framed, at our request, as an "avoidance of doubt" provision.

9. Māori land is currently valued in the same way as general land for compensation for acquisitions by Crown agencies and we did not want the paper to give Ministers the impression that this is not currently happening.

Raising the threshold for acquiring Māori land compulsorily or by agreement

10. 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 "must recognise the principles of Te Ture Whenua Māori Act and be satisfied that all reasonable alternatives to the acquisition of that land have been exhausted."

11. 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.

12. Raising the threshold in this way would require acquiring agencies to incur significant costs and delays in demonstrating that "all reasonable alternatives to the acquisition of that land have been exhausted". 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.

13. Raising the acquisition threshold would also undermine the Resource Management Act (RMA) designations process. The proposed 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).

14. 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.

15. **TPK agreed today to advise Ministers Flavell and Finlayson to amend the 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.**

16. If the above change is made, the new test would be consistent with current good practice under the PWA and with the RMA designation requirements. This will still give rise to the optics issue however it is much more workable and less expensive than the current proposal.

17. We think MoT and LTSA will be more comfortable with this proposal than with the current proposal. They, like us, had expressed concern to TPK about the earlier version of the proposal however they appeared to be more relaxed about it than us.

18. Cabinet has not previously considered this issue.

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

19. The proposal is to amend the PWA to give the Māori Land Court increased jurisdiction in relation to offers back. This includes hearing disputes on price and imposing conditions. We had concerns about extending jurisdiction to matters beyond the MLC's area of expertise.

20. **TPK agreed today to amend the Cabinet paper to say that the proposed jurisdiction excludes altering restrictive covenants, memorials and easements required by the agency offering the land back.**

21. Cabinet has not previously considered this issue.

Investigating options to improve local authorities' compliance

22. The recommendation is for LINZ and TPK to report back to the Minister for Land Information, and the Minister and Associate Minister for Māori Development by 30 June 2017 on the application of standards and guidelines to local authorities and network utilities, and to consider the notifying of any changes of use to the people from whom the land was acquired.

23. This is intended to address TPK's concern about local authorities and network utility operators not having to comply with the LINZ standards and follow the related LINZ guidance regarding acquisitions. The aim is to promote a more consistent approach among non-Crown agencies acquiring land.

24. **We have asked TPK to amend the Cabinet paper to provide for LINZ and TPK (LINZ lead) to report back to Ministers by 30 June 2017 on mechanisms (including standards and guidance) to encourage non-Crown acquiring agencies to meet the same standards as Crown acquiring agencies for acquisitions under the Public Works Act, and to consider the notifying of any changes of use to the people from whom the land was acquired.**

25. We think the current recommendation is tied too much to the LINZ standards and guidance when there are other options to encourage non-Crown agencies to meet equivalent standards that should be investigated. We will update you when we have TPK's response.

Inserting proposed PWA amendments into Te Ture Whenua Māori Bill

26. 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. The departmental report will be presented on 12 October 2016.

27. TPK have agreed that LINZ officials will attend the select committee meetings to advise on proposed amendments to our legislation (Land Transfer and Rating Valuation Acts as well as the PWA).

28. 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.

29. 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.

30. 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.

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