

CABINET PAPER OVERVIEW

Te Ture Whenua Māori Reform

Purpose statement

1. This paper provides you with advice on the proposals outlined in the latest version of the draft Cabinet paper “Te Ture Whenua Māori Reform” (attached) which was provided to us on 7 October 2016.
2. This paper also responds to your request for information about previous Cabinet decisions and options for inserting the proposals into the Bill.
3. We understand that Ministers Flavell and Finlayson may be taking the papers straight to Cabinet to get policy approvals in time to insert the proposed amendments into Te Ture Whenua Māori Bill, via an ancillary departmental report. The Māori Affairs Select Committee has to report back to the House by 25 November 2016. We have received a draft version of the ancillary departmental report which mirrors the proposals contained in this version of the paper.
4. Ministers are meeting on Wednesday 19 October to discuss the Māori Land Service. This Cabinet paper may be raised at the discussion.

Details

5. Our main involvement with the Cabinet paper relates to how the Public Works Act 1981 (PWA) applies to Māori land. The following proposals have been primarily driven by Te Puni Kokiri (TPK) within the scope of the Te Ture Whenua Māori reforms. There has been no focus on the wider application of the PWA, including the impact of these proposals on general land. However, we are comfortable with the proposals in the October 7 version of the paper, which addresses our primary concerns.

PWA Proposal 1: Solatium payments

6. The proposal is to amend the solatium provisions in the PWA to provide that the solatium payments apply to all separately owned dwellings being acquired on Māori land.
7. 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 Court.
8. 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.
9. We are now comfortable with the proposal which was revised to address our earlier concerns.
10. Cabinet has not previously considered proposals to change the solatium payments in this way. However, Cabinet did agree last month to set out a process for future changes to the maximum solatium payment (which the Resource Legislation Amendment Bill increases from \$2,000 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.

PWA Proposal 2: Valuation of Māori land

11. 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 as Māori land is currently valued in the same way as general land for compensation for acquisitions by Crown agencies but we are now comfortable with it because it has been framed, at our request, as an “avoidance of doubt” provision.
12. Cabinet has not previously considered this issue.

PWA Proposal 3: Raising the threshold for acquiring Māori land compulsorily or by agreement

13. The paper proposes 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. The new test would be consistent with current good practice under the PWA and with the RMA designation requirements. We think Transport and NZTA will be more comfortable with this proposal. They, like us, had expressed concern to TPK about the earlier version of the proposal which required all reasonable alternatives to have been exhausted. We considered that this was too high a test, which would practically be difficult to pass. TPK has stepped back from this proposal as a result of our input.
15. Cabinet has not previously considered this issue.

PWA Proposal 4: Giving the Māori Land Court increased jurisdiction in relation to offers back

16. The proposal is to amend the PWA to give the Māori Land Court (MLC) 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.
17. The proposed jurisdiction excludes altering restrictive covenants, memorials and easements required by the agency offering the land back. We proposed this exclusion to ensure that any such interests in the land are protected during the offer-back process.
18. Cabinet has not previously considered this issue.
19. On Tuesday 18 October, we were approached by the Ministry of Justice (Justice) about this proposal. Justice is concerned about the impact on the MLC. The proposal would extend its functions to include matters such as resolving disputes over offer back price. Justice also noted that the principles behind the review were to reduce the MLC’s role, not extend it and this proposal may have an impact on the Court’s resources and funding. Justice has engaged directly with TPK and is briefing its Minister ahead of the ministerial meeting on Wednesday 19 October.
20. We have advised Justice that while we are comfortable with the proposal, we agree that it may have an impact on the Court in terms of resources. We have not had an opportunity to date to engage with TPK on the practical implementation issues with the proposal. We do not think it would be possible to consult wider on this proposal given the Committee’s report back deadline. There will only be a limited opportunity to address any concerns when drafting the PWA legislative amendments in the ancillary departmental report.

Investigating options to improve local authorities’ compliance

21. We will report back in conjunction with TPK to you, and the Minister and Associate Minister for Māori Development 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 PWA, and to consider the notifying of any changes of use to the people from whom the land was acquired.

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

Inserting proposed PWA amendments into Te Ture Whenua Māori Bill

23. 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 is 25 November 2016. The departmental report was presented on 12 October 2016, with a further ancillary departmental report to be presented once Cabinet has considered this paper.
24. TPK have agreed that our 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).
25. 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.
26. 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.
27. 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.

Additional matters in the Paper

28. There are also updates provided on three other matters:
- **Māori Land Service (MLS)** – a series of nationwide wānanga have been completed to co-design the main elements of the MLS with Māori land owners. The business case for the Māori Land Service is scheduled to be completed by early 2017.
 - **Unformed Roads (Paper Roads)** – these are legal roads that may only exist on land surveys and maps. We are working with DIA and TPK to develop a joint options paper to be provided to Ministers for consideration and feedback prior to being reported to EGI by 30 November 2016. The paper will set out possible solutions for streamlining road stopping procedures.
 - **Māori Land Landlocked by Crown Land** – TPK have been working with affected parties (the New Zealand Defence Force, New Zealand Transport Authority, Department of Conservation and KiwiRail Infrastructure) on a possible Accord that will set out the steps that agencies would take in instances where Crown owned land is partially or wholly land locking Māori land. TPK need to report back to EGI by 30 November on this work. We are involved in this work but are not at this stage an affected agency.
29. There are several additional matters included in the paper which we have no comment on as they address TPK and DIA concerns. These matters relate to:
- Non-Rating of Papakāinga Housing
 - Rates Rebate Scheme

- Rating Land as One Unit
- Criminal Proceeds Recovery Act
- Family Protection Claims and Testamentary Promises Claims involving Māori land
- Disposal of Crown shares in Māori freehold land

Next steps

30. We will provide further advice once we have received the final version of the Cabinet Paper.

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