

14 March 2017

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AIDE MEMOIRE

Te Ture Whenua Māori Reform Cabinet Paper

Purpose statement

1. This paper provides you with advice on the proposals outlined in the latest version of the Cabinet paper “Te Ture Whenua Māori Reform” which will be considered at EGI on Wednesday 15 March 2017.

Key message

2. We recommend that you support the paper. The contentious proposals, from an earlier version of the paper considered by EGI last December, have been revised and approved for inclusion in this paper by all the relevant Ministers.

Background

3. The Cabinet paper will report on the progress of Te Ture Whenua Maori land reform programme. It will also seek agreement for additions to be made to the Te Ture Whenua Māori Bill (TTWM Bill) by a Supplementary Order Paper (SOP).
4. EGI considered an earlier version of the paper on 7 December 2016. Ministers found some proposals contentious so EGI deferred the paper and invited the Minister for Māori Development and the Associate Minister for Māori Development to consult further with relevant Ministers.
5. The proposals most relevant to LINZ related to the Public Works Act 1981 (PWA). There were two contentious issues in that set of proposed amendments:
 - changes to the acquisition process for Māori land
 - changes to the offer back process for Māori land.
6. Te Puni Kōkiri (TPK) was directed by Minister Flavell to consult us and the Ministry of Justice (MoJ) on these contentious proposals. We worked with both agencies to develop the revised proposals, incorporated into this paper, which have been approved by you and Ministers Flavell, Finlayson and Adams.

Revised PWA proposals

Acquisition of Māori Land

7. The PWA gives the Crown, local authorities and network utility operators the power to compulsorily acquire land in specified circumstances.
8. The revised proposal is 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 is satisfied that:
 - the purchase is necessary
 - there has been adequate consideration of other options
 - the principles of Te Ture Whenua Māori Act have been considered.

9. The first two bullet points are existing tests that apply to the compulsory acquisition of all land and are generally considered whenever a property is acquired by agreement.
10. The third bullet point reflects that the special status of land held under Te Ture Whenua Māori Act should be taken into account before an acquisition occurs. The purpose of that Act is to retain such land in Māori ownership. Linking acquisitions under the PWA to the principles of Te Ture Whenua Māori Act would ensure that the unique status of Māori land is formally considered in every acquisition.
11. The revised proposal provides the additional assurance Minister Flavell is seeking about Māori land not being acquired for public works except as a matter of last resort while also minimising costs and delays that would otherwise result from raising the acquisition threshold.

Offer back of Māori Land

12. Under the PWA, land that was Māori freehold land at the time it was taken or acquired for a public work is offered back to the previous owners when it is no longer required for public works. The Māori Land Court is involved in this process.
13. The revised proposal includes amendments to the PWA that would require that:
 - where an offer back is accepted for any land that was Māori land when it was acquired, the land will vest back to the former owners or their successors as Māori land
 - a Māori Land Court judge can preside over a Land Valuation Tribunal (LVT) that is hearing any dispute over offer back price. Currently, the Bill allows a Māori Land Court judge to sit on an LVT hearing involving the valuation of Māori land under a series of Acts, including for offer backs under railways legislation.
14. The revised proposal addresses MoJ's concern that the increase in the Māori Land Court's jurisdiction was inconsistent with a key aim of the Te Ture Whenua Māori reforms which is to reduce the role of the Māori Land Court. MoJ have confirmed that Minister Adams is now comfortable with all of the proposals.

Other PWA proposals

15. The proposals below were not contentious when the earlier version of the Cabinet paper went to EGI last December. Most have been carried over to this paper unchanged.

Solatium payments

16. Where land is acquired/ taken under the PWA, a solatium payment is made to the owners of any affected dwelling. The provision does not recognise that there may be more than one separately owned dwelling on Māori land so multiple dwellings must share a single solatium payment. The proposed amendment will provide for solatium payments to be made to each separately owned dwelling on Māori freehold land.

Valuation of Māori land acquired/taken under the PWA

17. TPK have been advised by valuers of instances where the Māori freehold land acquired/taken under the PWA is valued lower than similar general land on account of it having a Māori land title. The policy intent has always been that Māori freehold land should be valued the same as general land.
18. The proposal is to amend the PWA to clarify that Māori land must be valued as if it were "private land that is not Māori land", for compensation purposes. (The Bill introduces the new term "private land that is not Māori freehold land" to describe land currently referred to as general land).

Future work - investigating options to improve local authorities' compliance and exploring offer back exemptions

19. There is a proposal for LINZ and TPK (LINZ lead) to report to Ministers by 30 November 2017 on mechanisms (including standards and guidance) to encourage non-Crown acquiring agencies to meet the same standards as Crown acquiring agencies for PWA acquisitions. Also, to consider notifying people that the land is acquired from about any changes of use.
20. 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.
21. There is also a proposal for this report back to be expanded to cover advice on exemptions to offer back.

Other proposals not related to the PWA

Landlocked Māori Land

22. Landlocked Māori land is a piece of land to which there is no reasonable access. TPK is leading work on non-legislative proposals to address the barriers to Māori land utilisation caused by landlocked land. These include supporting landowner capability, better communications to landowners about options for accessing landlocked land, and a Crown agency Accord. The Accord will establish a framework for how government agencies respond to instances of landlocked Māori land. The key objective is to identify and support the provision of reasonable access to Māori land where it is wholly or partially landlocked by Crown owned land. We are not named in the Accord as we do not hold any land that landlocks Māori land.

Unformed (paper) roads

23. An unformed road (commonly known as a paper road) is a legally recognised road that provides public access to a particular area or feature and whose ownership lies with either a territorial authority or the Crown. The Department of Internal Affairs is leading work on proposals to address the barriers caused by unformed roads. Agencies, including LINZ, are developing a joint options paper with possible solutions in relation to unformed roads. A report back to EGI is expected by 30 November 2017.

Proposals not affecting the Land Information portfolio

24. We did not comment on the proposals below as they do not affect LINZ. These proposals relate to:
 - Non-Rating of Papakāinga Housing
 - Rates Rebate Scheme
 - Rating Land as One Unit
 - Non-rateability of Land Protected by kawenata tiaki whenua, or scenic and heritage whenua tāpui
 - Family Protection and Testamentary Promises Claims involving Māori Land
 - Succession to Māori freehold land ownership shares
 - Disposal of Crown shares in Māori freehold land.

Next steps

25. The Cabinet paper proposes that these amendments be progressed through an SOP which will be tabled within three days of Cabinet approval.
26. TPK advises that the Committee of the Whole stage is scheduled for April 2017.

LINZ Contacts

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