

To: Minister for Land Information

## Meeting with Minister Nanaia Mahuta on the Whenua Māori Amendment Bills

<b>Date</b>	9 February 2018	<b>Classification</b>	In confidence
<b>LINZ reference</b>	18-165	<b>Priority</b>	Medium

### Action sought

Minister	Action	Deadline
Minister for Land Information	<p><b>Note</b> that you are meeting with Hon Nanaia Mahuta, Minister for Māori Development at 9.30am on Wednesday 14 February 2018 in Minister Mahuta's office. Officials will attend the meeting.</p> <p><b>Note</b> that the purpose of the meeting is to discuss the Whenua Māori policy proposals that Minister Mahuta would like to progress through legislation.</p> <p><b>Discuss</b> the alternative timeframe for progressing the policy proposals to the timeframe put forward by Te Puni Kōkiri in its legislative bids.</p> <p><b>Forward</b> this briefing to Minister Mahuta's office for their information, in advance of the meeting.</p>	14 February 2018

### LINZ Contacts

Name	Position	Contact number	First contact
Jamie Kerr	Group Manager, Acting, Policy and Frameworks	021 819 826	<input checked="" type="checkbox"/>
Sarah Carson	Senior Policy Advisor	04 830 1918	<input type="checkbox"/>

### Minister's office to complete

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>Overall Quality</b>	<input type="checkbox"/>	1	<input type="checkbox"/>	2	<input type="checkbox"/>	3	<input type="checkbox"/>	4	<input type="checkbox"/>	5														
<b>Comments</b>																								

<input type="checkbox"/> Noted	<input type="checkbox"/> Seen	<input type="checkbox"/> Approved	<input type="checkbox"/> Overtaken by events
<input type="checkbox"/> Withdrawn	<input type="checkbox"/> Not seen by Minister	<input type="checkbox"/> Referred to:	

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## Purpose statement

The purpose of this briefing is to provide you with supporting information for your meeting with Hon Nanaia Mahuta, Minister for Māori Development. The purpose of the meeting is to discuss the Whenua Māori policy proposals Minister Mahuta would like to progress through legislation.

The meeting will be held at 9.30am on Wednesday 14 February 2018 in Minister Mahuta's office.

Draft speaking points are provided in Annex One.

## Key messages

1. The Minister for Māori Development, and Local Government, Hon Nanaia Mahuta, is considering ways to progress work to empower Māori landowners to realise the commercial and economic potential of their land.
2. The policy proposals were agreed under the previous Government and resulted in the Te Ture Whenua Māori Bill. This Bill was withdrawn on 20 December 2017. However, Minister Mahuta would like to progress the provisions regarding governance, Whenua Māori rating and land valuation in two new amendment bills.
3. Minister Mahuta may also like to progress amendments to the Public Works Act 1981 (PWA) to:
  - 3.1. Require stronger justifications for the Crown to acquire Māori freehold land
  - 3.2. Clarify compensation requirements and prohibitions to prevent acquisition of Māori customary land by the Crown, and
  - 3.3. Improve and strengthen offer-back processes.
4. We consider that the policy proposals concerning rating and valuation have merit, though considerable policy work is required to finalise the policy.
5. We consider that further policy development is still required on the PWA proposals. Currently, there is insufficient evidence to suggest that the property protections in the PWA need strengthening, or that Māori freehold land requires additional, stronger protections.
6. We recommend that you seek clarification from Minister Mahuta as to whether she would like to progress all or some of the previously proposed amendments to the PWA.
7. We recommend that, if the policy proposals are to be progressed, an alternative timeframe be required to ensure adequate consideration of the policy implications, and to allow for consultation. An alternative timeframe is provided in this briefing.
8. We have previously provided you with advice on the legislative bids for the proposed Bills [BRF 18-153 refers].

## Recommendations

It is recommended that you:

1. **Note** that you are meeting with Hon Nanaia Mahuta, Minister for Māori Development at 9.30am on Wednesday 14 February 2018 in Minister Mahuta's office. Officials will attend the meeting.
2. **Note** that the purpose of the meeting is to discuss the Whenua Māori policy proposals Minister Mahuta would like to progress through legislation.
3. **Discuss** the alternative timeframe for progressing the policy proposals to the timeframe put forward by Te Puni Kōkiri in its legislative bids.
4. **Forward** this briefing to Minister Mahuta's office for their information, in advance of the meeting.

Jamie Kerr

**Group Manager Acting, Policy and Frameworks**

Date:     /     /

Hon Eugenie Sage

**Minister for Land Information**

Date:     /     /

## Attachments

1. Draft speaking points

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## Background

1. Policy development to amend the Te Ture Whenua Māori Act 1993 began under the previous Government and resulted in an amendment Bill. The Bill was withdrawn on 20 December 2017.
2. The withdrawn Bill proposed a “new approach that aims to increase the ability of Māori land owners to use their land by empowering them to make decisions by and for themselves, supported by an owner-focussed Māori land service. At the same time, it aims to maintain, and even to strengthen, the protections that currently exist for the retention of Māori land for the benefit of future generations (a taonga tuku iho) by virtue of whakapapa.”<sup>1</sup>
3. The aims set out in the introduction of the withdrawn Bill remain the same; Minister Mahuta is looking to progress many of the same proposals in the previous Bill relating to governance, ratings and valuation. The status of the proposals that would require consequential amendments to the PWA remain unclear. As you have responsibility for the PWA, your agreement is required in order to progress any legislative amendments to the PWA.

## Policy proposal: ratings and valuation

*More detailed work is required on the fiscal implications of the ratings and valuation proposals*

4. Te Puni Kōkiri’s (TPK) objective regarding the rating and valuation of Māori freehold land was to promote better utilisation of Māori freehold land where possible, and recognise its particular characteristics where appropriate.
5. TPK propose setting a formula in regulations made under the Rating Valuations Act 1998 that would discount the rating valuation for each parcel of land. The discount would be applied according to the number of collective landowners and the number/type of unique characteristics on the land (for instance, whether there were pā sites on the land).
6. This discounting approach is based on case law – *Valuer-General v Mangatu Inc [1991] 3 NZLR 641*. However new legislation offers an opportunity to design a more efficient rating valuation process for Māori freehold land that will reduce rating valuations on this type of property.
7. LINZ supports reviewing the valuation approach to Māori freehold land, although the extent of the impact of any changes on increased land utilisation is unclear. We also support a discounting approach, including setting both minimum and maximum discounts. Work has previously been undertaken with TPK on possible options for the discount formula, however, consensus was not reached before the Bill was withdrawn and there are outstanding issues to be resolved. The following table sets out the issues and our suggested response:

**Table 1: Outstanding Ratings and Valuation Issues**

Issue	Indicative LINZ Response
<b>Respecting tikanga when valuing Māori freehold land:</b> Applying a transactional approach to discounting land valuations based on the presence of culturally sensitive sites does not always accord with tikanga Māori.	Apply a capped, flat discount to all Māori freehold land, to avoid land owners needing to register their culturally sensitive sites. The discount rate could be the same as the highest available discount rate used in the <i>Mangatu Inc</i> case law, or higher.
<b>Determining evidence:</b> Similar to the issue above, some of the sites of significance for which a discount would apply are very difficult to prove. For example, it is very difficult to prove that a site had historic gardens.	As above

<sup>1</sup> Te Ture Whenua Māori Bill Introduction:  
<http://www.legislation.govt.nz/bill/government/2016/0126/latest/d56e931.html>

Issue	Indicative LINZ Response
<p><b>Fiscal impacts on local government:</b> Councils will miss out on revenue earned through rates when discounts are applied to Māori freehold land. In some cases the loss is immaterial if the landowners are not paying rates at all, but in other cases the discount will represent a revenue reduction. In either case, Councils may not be able to fund the services they need to, or reduce any debt.</p>	<p>More work is required, with the Department of Internal Affairs (DIA), to establish the actual fiscal impact of a ratings discount on councils with a high proportion of Māori freehold land parcels. Some councils may be able to make their own adjustments but others may not be able to maintain their core functions and services at the reduced level. There may be funding options we could explore if Ministers agreed.</p>

## Policy proposal: amendments to the PWA

*The Public Works Act 1981 contains protections for Māori freehold land*

8. When the Te Ture Whenua Māori Amendment Bill was in the House, a Supplementary Order Paper (SOP) was submitted which sought agreement to provide that:
  - 8.1. the Minister or a local authority must consider certain matters, and be satisfied that it is reasonably necessary, before acquiring or taking Māori land under the PWA;
  - 8.2. that when Māori freehold land is acquired, it should be valued as if it were general land;
  - 8.3. if the land was Māori freehold land when it was taken, it must be returned to its previous owners or their successors as Māori freehold land, and
  - 8.4. if the land was Māori freehold land when it was acquired under the Public Works Act 1981 and the land is proposed to be vested in its former owners or their successors by application to the Māori Land Court, the Court may seek to have the purchase price determined by a Land Valuation Tribunal (chaired by a Māori Land Court judge for that purpose) before the Court makes an order vesting the land as Māori freehold land.
9. While TPK has previously provided advice to Minister Mahuta on retaining these proposals in the new Bills, the proposals were not specifically included in the Whenua Māori (Land Access, Valuation and Rating) Amendment Bill bid which was submitted to Cabinet. We recommend you seek clarification from Minister Mahuta as to her intentions in this area.

### Requiring that you consider certain matters before acquiring Māori land is contentious

10. Requiring you, as Minister for Land Information, to consider certain matters and be satisfied that it is reasonably necessary before acquiring or taking Māori land is an addition to the current requirements that is not applied when general land is acquired or taken.
11. Adding a requirement that you consider certain matters before agreeing to the taking of Māori land would have the effect of treating Māori and general land differently. The public and some of your colleagues may consider this to amount to 'preferential treatment'.
12. Creating different 'classes' of land for the purposes of compulsory acquisition is also likely to prompt calls from the public that other land be given stronger protection – land with identified or perceived heritage or perceived conservation values, for example.
13. If this proposal was progressed, more time to work through its implications would be required. We would need to analyse options to balance the trade-offs between protecting property rights and sensitive parcels of land, with maintaining the purpose for which compulsory acquisition may be used and ensuring compulsory acquisition does not unduly affect one status of land over another.

Land Information New Zealand currently uses its discretion when offering-back Māori land

14. The previous proposals concerning offer-back provisions for Māori land were that if land was Māori freehold land when it was taken, it must be returned to its previous owners or their successors as Māori freehold land [not general land].
15. The current process in the PWA enables the Chief Executive of Land Information New Zealand to decide to either offer land back as general land, or apply to the Māori Land Court for an order vesting the land as either Māori land or general land. Currently, applications are made to the Māori Land Court where offer-back applications are complex – often regarding the succession of multiple owners.
16. For Crown offer-backs, current practice is that land is returned as Māori freehold land if that was the status it held when it was acquired. While this may not be the same practice for offer-back by local authorities we have not seen any specific cases.
17. Therefore, given the current practice regarding the use of discretion in applying to the Māori Land Court, we do not consider that there is sufficient evidence of Māori land being 'lost' as general land to warrant legislative change.
18. Should you wish, we can undertake further policy work and consultation with iwi, stakeholders, and Te Puni Kōkiri and provide further advice.

**Timeframes**

19. The following table compares the timing proposed in Te Puni Kōkiri's legislative bid with an indicative, alternative, timeframe.
20. The indicative timeline is predicated on progressing the ratings and valuation work only. Undertaking concurrent work on the PWA would require a longer timeframe and more resources than LINZ currently has available.
21. We also note that the Department of Internal Affairs (DIA) has recommended a longer timeframe to allow for its existing legislative priorities to be progressed, and because it also considers that further policy work is required. Based on its current work programme, DIA recommends issuing drafting instructions by December 2018. We are happy to support DIA in this work.

**Table 2: Timeframe Options**

<b>Step</b>	<b>Te Puni Kōkiri Timeframe</b>	<b>Indicative LINZ Timeframe</b>
Ratings and valuation policy development	Completed	March - April 2018
Public Works Act 1981 policy development	Completed	Not recommended to progress
Policy approvals obtained from Cabinet	26 March 2018	May 2018 (for the ratings and valuation components)
Draft Bill approved by LEG and Cabinet for introduction	18 October 2018	August 2018 (a shorter drafting period has been suggested since we recommend that only the ratings and valuation components progress to drafting)
Policy decisions for ratings and valuation regulations obtained from Cabinet	9 November 2018	September 2018. Policy development for the regulations can progress concurrently to the Bill.
Report back from Select Committee	20 May 2019	March 2019
Date of enactment	6 August 2019	June 2019

## Conclusion and Recommendations

22. We support the overall objective of the Whenua Māori proposals. There is merit in making adjustments to the discount applied to Māori freehold land for rating adjustments. We will continue to work with TPK and the Department of Internal Affairs on the detail of this proposal. We are also able to work with TPK to agree a timeline for this work, should Ministers wish to progress these proposals.
23. We do not support the proposed amendments to the PWA, as we do not consider there is sufficient evidence to warrant what would amount to fundamental changes to the Act. If Ministers do wish to progress change to the PWA, a longer timeframe would be required. It would also require us to re-prioritise our resources. We would be happy to discuss with this you in the context of your portfolio priorities.

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## Attachment One: Speaking Points

### *There is merit in pursuing options to empower Māori landowners*

- Work to empower Māori landowners to realise the commercial and economic potential of their land is well-supported and will produce long-term outcomes for Māori.
- The policy proposals regarding Whenua Māori rating and land valuation will contribute towards enabling Māori to realise the commercial and economic potential of their land.

### *Further work is required on the detail of the ratings and valuation proposals*

- LINZ considers that there is still further work to do on the detail of the valuation policy. It could be made a lot simpler. In particular, LINZ recommends that the discount valuers apply would be made up of a lump sum discount, plus a percentage adjustment. The discount would be capped.
- The lump sum plus percentage approach would replace the discount agreed under the previous Government which comprised a lump sum plus the sum of multiple percentage adjustments for various factors (such as the existence of various sites of significance).
- LINZ identified three issues with the previous approach:
  - Applying a discount (or 'adjustment') for each individual factor found on the site does not respect tikanga Māori; the approach is too "transactional" for such sensitive land;
  - It is very difficult to prove the presence of some sites of significance, such as historic gardens. Asking Māori to prove the presence of these sites is contentious: evidence may not be available, or the evidence may be through oral histories, not typically understood as evidence for valuation purposes.
  - The fiscal impact of applying a discount (either through the TPK or LINZ recommended options) is still to be quantified. More work is required to understand the impact, and consider what potential remedies there may be.

*There is no evidence to support amendments to the Public Works Act 1981*

Adding protections for Māori land

- Te Puni Kōkiri has not provided evidence of Māori land being treated unfairly or differently to general land for compulsory acquisitions.
- There is no evidence to warrant adding protections for Māori land, over and above the protections that currently apply to all land.
- If there were to be stronger protections for Māori land, this is likely to be considered 'preferential treatment'. It would also prompt calls for other classes of land to be similarly protected.
- Adding additional protections for various classes of land could undermine the effective functioning of the PWA and limit the ability of the Crown to acquire land for a public purpose.

Offering back Māori land as Māori freehold land

- There is also no evidence to suggest that Māori freehold land is being alienated from Māori as a result of the offer-back provisions in the PWA.
- Not all landowners want their land to be returned as Māori freehold land; this preference ought to be respected.
- In practice, it is rare for LINZ to offer-back Māori land as general land. More often, LINZ applies to the Māori Land Court for an order regarding succession and ownership, unless it is very obvious.
- If this proposal was to progress, further policy development and consultation is necessary in order to better understand the problem definition.