Te Puni Kōkiri
REALISING MĀORI POTENTIAL

Land Information New Zealand
Toitū te whenua

To: Minister for Māori Development; Minister for Land Information

Further Policy Options for Amending the Public Works Act 1981

Date	27 June 2019	**Classification**	In confidence
LINZ reference	BRF 19-392	**Priority**	High

Action sought

Minister	Action	Suggested Deadline
Minister for Māori Development	**Note** that agencies have raised a number of issues with the proposals and timelines that warrant deeper consideration; **Note** that current timeframes allow for only procedural amendments with no Māori engagement and extended timeframes would enable more fulsome policy development with the input of Māori; **Note** that we are seeking in-principle policy decisions now in order to assist the direction of further investigation of the options; **Agree** to further development of the options in this briefing; **Agree** to extend the timeframe for policy development, Māori engagement, and the introduction of a Bill to the House (in early 2020); **Agree** to begin consultation with your Ministerial colleagues prior to a Cabinet paper being submitted.	4 July 2019
Minister for Land Information	**Note** that agencies have raised a number of issues with the proposals and timelines that warrant deeper consideration; **Note** that current timeframes allow for only procedural amendments with no Māori engagement and extended timeframes would enable more fulsome policy development with the input of Māori; **Note** that we are seeking in-principle policy decisions now in order to assist the direction of further investigation of the options; **Agree** to further development of the options in this briefing; **Agree** to extend the timeframe for policy development, Māori engagement, and the introduction of a Bill to the House (in early 2020); **Agree** to begin consultation with your Ministerial colleagues prior to a Cabinet paper being submitted.	4 July 2019

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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					
Overall Quality	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
Comments					
☐Noted	☐Seen	☐Approved	☐Overtaken by events		
☐Withdrawn	☐Not seen by Minister	☐Referred to:			

Purpose statement

This briefing provides you with:

a. policy options to amend the Public Works Act 1981 to change the way decisions are made when taking sensitive Māori land; and

b. a proposed process and timeframe towards the introduction of a Bill.

This briefing follows the previous high-level policy options briefing BRF 19-261.

Your joint decision is sought to direct officials as the options are further developed.

Key messages

1. The Whenua Māori work programme and subsequent proposed amendments to the Public Works Act 1981 (PWA) present an opportunity to create a more robust decision-making process for considering the taking of sensitive Māori land.
2. Amending the decision-making process will create two outcomes:
   2.1. Recognition that the PWA has historically been misused to discriminate against Māori and their whenua, and further recognition that Māori whenua is a taonga tuku iho that warrants different treatment to general land under the PWA; and
   2.2. Enhancing the protection of sensitive Māori land to ensure that any future takings are only as a last resort.
3. The options we have identified for consideration are:
   3.1. Requiring that the Crown complies with a general Treaty principles clause when considering the acquisition of sensitive Māori land;
   3.2. Requiring the Minister for Land Information and the Minister for Māori Development (or Minister for Māori Crown Relations: Te Arawhiti), depending on the land, to make joint decisions on making a recommendation to the Governor-General, and
   3.3. Requiring that acquiring authorities exhaust the practicality of taking a lesser interest in land before applying to the Minister for Land Information, or in the case of local authorities, before applying directly to the Governor-General.
4. A further option is being explored in which the Crown and local authorities would not acquire any interest in land, but instead rely on binding use agreements to undertake public works on sensitive Māori land. This option is being explored to fully understand its merits, potential risks and mitigations.
5. Agencies have raised a number of issues with the proposals. These issues relate to the risks to the provision of public works if the fee simple to sensitive Māori land could no longer be taken. We also need to better understand the cost implications of the options.
6. The paper proposes extending the current timeframe to provide more time to consider options and for engagement with Māori and Māori organisations (September – October 2019) prior to Cabinet consideration of options (November 2019). This engagement could be undertaken in parallel with discussions with other Ministers. Extending the timeframes would still mean that the Bill could be introduced to the House before the House rises for the general election.
7. At this stage the new decision-making process for the taking of sensitive Māori land applies to all public works. Depending on your degree of comfort with these options, you may choose to apply them to all public works or differentiate between network and site-specific infrastructure.

Recommendations

It is recommended that you:

Note that agencies have raised a number of issues with the proposals and timelines that warrant deeper consideration;

Note that current timeframes allow for only procedural amendments with no Māori engagement and extended timeframes would enable more fulsome policy development with the input of Māori;

Note that we are seeking in-principle policy decisions now in order to assist the direction of further investigation of the options;

Agree to further development of the options in this briefing;

Agree to extend the timeframe for policy development, Māori engagement, and the introduction of a Bill to the House (in early 2020);

Agree to begin consultation with your Ministerial colleagues prior to a Cabinet paper being submitted.

Joseph Shannon

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Date: / /

Rahera Ohia

Deputy Chief Executive, Policy Partnerships

Date: / /

Hon Eugenie Sage

Minister for Land Information

Date: / /

Hon Nanaia Mahuta

Minister for Māori Development

Date: / /

Attachments

Summary Table of Recommended Policy Options

Summary of options not progressed

Background

1. On 29 March 2019 you received the joint briefing *High Level Options for Amending the Public Works Act 1981: Land Acquisition* [BRF 19-261 refers].
2. That briefing provided five options for amending the Public Works Act 1981 (PWA):
   - 2.1. **Option 1: Highest protection:** No sensitive Māori land could be compulsorily acquired.
   - 2.2. **Option 2: Decision-making:** Sensitive Māori land may only be compulsorily acquired through an amended decision-making process.
   - 2.3. **Option 3: Certain public works:** Sensitive Māori land may only be compulsorily acquired for certain public works such as core infrastructure or flood protection.
   - 2.4. **Option 4: Certain classes of land:** Some classes of sensitive Māori land could be afforded the highest protection from compulsory acquisition, while others could only be acquired after meeting the criteria in Options 2 and 3.
   - 2.5. **Option 5: Status quo:** No change in the way the PWA applies to sensitive Māori land.
3. We noted in the previous briefing that these options are not mutually exclusive.
4. You met with officials on 9 May 2019 to discuss your views on these options.
5. We understand that you sought further advice on Options 2 and 3. Officials are working through the recommended approach for Option 4 and will be able to advise you soon.
6. Since May a further option has been identified and is in the process of being explored. This involves the Crown and local authorities not acquiring any interest in land, but instead relying on binding use agreements to undertake public works on sensitive Māori land.

Context

7. The options presented in this briefing focus on the decision-making process for the taking of land. The current process is largely the same for general land as it is for Māori land, except for some involvement of the Māori Land Court.
8. Acquisition involves the following steps:
   - 8.1. The Crown acquiring agency or network utility operator that requires the land attempts to negotiate with owners to reach an agreement. If an agreement is reached, LINZ signs the agreement on behalf of the Minister for Land Information under s17 of the PWA.
   - 8.2. The Crown acquiring agency may request that LINZ signs a Notice of Desire to Acquire Land which formally invites the owner to sell the land.[1] The Crown acquiring agency must try to further negotiate in good faith for at least another three months. This may occur at the start of, or during the above negotiations.
   - 8.3. If agreement is still not reached, the Crown acquiring agency may ask the Minister for Land Information to sign a Notice of Intention to Take Land. Local authorities sign these Notices themselves. The owner can object to this Notice before the Environment Court.
   - 8.4. If there is no objection, or if the Environment Court does not uphold any objection, the Minister for Land Information may be asked to recommend that the Governor-General take the land by a Proclamation (s26 of the PWA). If this occurs, the land will vest in the Crown after the Proclamation is published. If a local authority needs to take land by Proclamation, LINZ will prepare a briefing to the Minister for Land Information advising that the required procedural steps under the PWA have been taken.

[1] An amendment to the PWA in 2017 enabled this power to be delegated from the Minister to LINZ.

Decision-Making Options under Consideration

9. In our previous advice we identified five options to amend the way in which decisions on the taking of land are made:
    9.1. Considering the role the Māori Land Court could play;
    9.2. Including additional Ministers when deciding on applications to take sensitive Māori land;
    9.3. Requiring that acquiring authorities exhaust the practicality of taking a lesser interest in land before progressing to compulsory acquisition as a last resort;
    9.4. Requiring that acquiring authorities meet a national or regional interest test; and
    9.5. Requiring that the decision to take sensitive Māori land aligns with the principles of Te Tiriti o Waitangi and/or the preamble of Te Whenua Māori Act 1993.
10. In our view, the options we consider to potentially be most impactful for the on-going protection of sensitive Māori land are on the inclusion of additional Ministers, and the exhaustion of lesser interests. The inclusion of a Treaty principles clause could be valuable in providing clear direction to acquiring authorities that the retention of sensitive Māori land is of fundamental importance to Māori and this should be carefully balanced with the need to acquire the land for a public work.
11. We note there is the potential for options that apply to sensitive Māori land to create precedent effects for the treatment of all land. For example, general landowners may expect acquiring authorities to exhaust the practicality of taking a lesser interest in their land, which could significantly increase the number of lesser interests entered into.
12. Currently, the PWA treats all landowners in the same way; some general landowners may perceive that their land is easier to acquire.
13. With regard to the role of the Māori Land Court, there are already existing provisions to enable Māori Land Court Judges to identify owners, appoint agents and hear cases at the Environment Court. There is merit in exploring whether there should be a requirement that a Māori Land Court Judge presides over disputes related to sensitive Māori land. However, further work on the rationale and implications of this would need to be explored.
14. With regard to a national / regional test, there is merit in considering this option. However, we believe this ought to be introduced in a wider piece of work in a cohesive, aligned approach with the designation regime under the Resource Management Act 1991.
15. Further detail on our views on the role of the Māori Land Court and a national or regional interest test are provided in Attachment Two

Including additional decision-making Ministers

16. In considering whether to make a recommendation to the Governor-General to take land there is no requirement for the Minister for Land Information to consult or discuss an application with other relevant Ministers, although the Minister may choose to do so.
17. Including additional Ministers would ensure greater scrutiny on the taking of sensitive Māori land.
18. Our recommended option is that the Minister for Land Information and the Minister for Māori Development (for land held under Te Ture Whenua Māori Act 1993) or the Minister for Māori / Crown Relations (for land that is part of a Treaty settlement) make a joint decision before recommending to the Governor-General that the land is taken.
19. The policy intent behind this option is comparable to the decision-making regime in the Overseas Investment Act 2005. That is, both Ministers would receive the same information on the proposed taking and would make a decision based on the same criteria. In the case of a split decision, the application would be declined.

20. This option would provide a final check in the process to ensure that the acquisition is absolutely necessary (balancing the needs of retaining sensitive Māori land and the delivery of public works). However, if one of the consenting Ministers objected, the acquiring agency would need to find an alternative option, and this would add time and cost to the project.
21. The inclusion of additional Ministers would increase the time it takes to come to a decision. However, we do not consider that the time required would be significantly longer than current timelines. LINZ would ensure that advice was provided to all Ministers with adequate time for consideration and discussion.
22. One key draw back to this option is that it does not include local authorities. The PWA provides for a parallel system for the Crown and local authorities in which local authorities may make recommendations directly to the Governor-General.
23. In our view, agencies with access to the use of compulsory acquisition should be required to use it in the same or similar way given that the effect on Māori landowners is the same.
24. We had considered requiring local authorities to comply with the Standards. However, as local authorities can make recommendations to take land directly to the Governor-General, there is no existing way for LINZ to monitor whether local authorities are complying with the Standards, and no enforcement tools if non-compliance was discovered.
25. Creating a monitoring and enforcement regime, and a vehicle for requiring local authorities to comply with the Standards would need further investigation.

Taking a lesser interest in land

26. In negotiating the acquisition of any land, acquiring authorities are already able to negotiate for a lesser interest, such as a lease or easement.
27. Compulsory acquisition may also be sought for a lesser interest – compulsory acquisition does not only need to be for the fee simple. However, we are not aware of compulsory acquisition ever having been used to acquire a lease.
28. Once the PWA process begins, most acquiring authorities will try to provide security of tenure by acquiring the fee simple.
29. Use of lease arrangements under the PWA is relatively new. We are not aware of any leases that have come up for renewal or rent review so there is no evidence yet of how parties re-negotiate a lease or rent charges. It may also be administratively easier to acquire the fee simple in comparison to a lesser interest such as a lease (which requires some ongoing administration).
30. We recommend that:
    30.1. in making a recommendation to the Governor-General on the taking of sensitive Māori land, the Minister for Land Information and other additional Minister consider the extent to which the acquiring authority has exhausted the practicality of taking a lesser interest in land. In the case of local authorities, that consideration will be the responsibility of the chief executive. In effect, decision-makers will be asked to decide whether it is fair, sound, and reasonably necessary that the land and the particular estate is taken for a public work;
    30.2. LINZ prepares standards and guidance on the way in which acquiring authorities could negotiate for a lesser interest prior to progressing to a Notice of Intention to Take Land, and what ‘exhaustion’ might entail;
    30.3. sensitive Māori land owners be able to object to the Environment Court if they consider that the acquiring authority is progressing to a Notice of Intention to Take Land without adequately exhausting the practicality of lesser interests, and

30.4. to protect the Crown's interests, the lessor (the landowners) would have no right to terminate the lease prior to its termination date.

31. A requirement to exhaust the practicality of taking a lesser interest places an onus on the acquiring authority to demonstrate why not only the land is required for the work, but why the fee simple is required. At the moment, acquiring authorities must consider alternative routes, sites, and methods, but not alternative estates or tenures (though they may do through their own practices). In some cases a lease will likely provide for the same outcome as the fee simple.

32. This option would provide the means for acquiring authorities to meet the Treaty principles requirement that sensitive Māori land is only taken as a last resort.

33. One potential barrier to acquiring authorities using leases is the cost implications. Over the length of the lease or the life of the work, a lease will be more costly than acquiring the fee simple because of the administrative costs to the agency in managing the leases they hold and the potential for rent to be higher than the purchase price over the life of the work.

34. More time is required to work with the Treasury on the cost implications of a potential increase in leases and the potential for flow-on increases in the cost of undertaking public works across the whole system – Crown, local authorities and network utility operators. At a project-level, we do not anticipate a large overall increase in costs given the small amount of sensitive Māori land acquired for public works but any impact would be long-term.

35. We have spoken with the New Zealand Transport Agency (NZTA) and KiwiRail about the impact such a requirement may have on the construction, maintenance and operation of the state highway and rail network. We consider that the potential cost and administrative burden of managing a transport network with disparate tenures is such that it may almost always be impractical to acquire a lesser interest.

36. NZTA is the biggest current user of the PWA (accounting for nearly 90 per cent of compulsory acquisition), so the impact of the options on NZTA in particular needs to be carefully considered.

Treaty Principles

37. Our previous advice to you noted that the Waitangi Tribunal recommended that the PWA should be interpreted and administered so as to give effect to the principles of the Treaty of Waitangi. This could be achieved in part by including a general Treaty principles clause into Part 2 of the PWA – the Part that addresses acquisitions.

38. A general principles clause could read: "In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to the acquisition of sensitive Māori land, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). The effect of taking into the account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) shall be that sensitive Māori land is only taken as a last resort."

39. We recommend that the Treaty principles option is progressed alongside the options on additional Ministers and lesser interests. On its own a Treaty principles clause is not enough to ensure adequate protection of sensitive Māori land.

40. There is legal uncertainty about the way in which a Treaty clause would be interpreted by the Courts, and uncertainty about how the Crown is prepared to give effect to it under the PWA.

41. One potential mitigation for these uncertainties will be drawing upon agencies' current understanding of the designation regime under the Resource Management Act 1991 (the RMA), and the relationship it has to the Treaty clause in the RMA[2]. Most agencies who acquire land

[2] Section 8 of the Resource Management Act: "In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)."

under the PWA will also require a designation under the RMA so there is already comparable institutional capability in addressing Treaty principles.

42. Further work is required to determine whether or how this option could apply to local authorities. While local authorities are not a Treaty partner, the Crown should ensure that the legislation that provides them with statutory powers is consistent with the principles of the Treaty of Waitangi.

43. However, we do not necessarily see the exclusion of local authorities from this option as a significant concern. We do not consider that local authorities need to be treated as if they were Treaty partners in order for the objectives of the PWA reforms to be met. The options on the exhaustion of lesser interests and encouraging complying with the Standards and guidelines would still apply and be impactful for sensitive Māori landowners.

Agency Feedback

44. In preparing our advice we have discussed the high-level options, and some more detailed policy options, with the Technical Advisory Group. We have also separately sought feedback from the New Zealand Defence Force, the Department of Corrections, the Ministry of Health and the Ministry for the Environment.

45. [s 9(2)(g)(i)] [redacted]

46. [s 9(2)(g)(i)] [redacted]

Additional policy option: Use Agreements

47. In feedback on the options Te Arawhiti identified a further option where the title of the land remains with the Māori landholder and instead the land acquiring agencies acquire a use agreement with owners of sensitive Māori land. This option is based on precedents in existing legislation and work done in Treaty Settlements.

48. Under this approach an acquiring authority would hold an agreement with the landowners that gives them the right to control and manage land as if it was the owner. The period of the use agreement would be set as appropriate with an automatic right of renewal. The titleholder (in this case, the owners of sensitive Māori land) would still be able to sell the title, subject to any applicable Māori Land Court requirements.

49. Compensation would still be payable to the landowners based on the value of the rights ceded by the binding use agreement. There would be no option for the Crown or local authority to transfer the agreement to another acquiring authority or use it for another public work.

50. When the land becomes surplus to the Crown, the use agreement is terminated and the land is returned to the Māori owners in a state agreed through the use agreement. An important benefit of this option is that the Māori owners would not have to purchase the property back from land acquiring agency as title of the land has remained with them.

51. We consider that there is merit in considering this option in greater detail. This option would represent a significant change to the PWA and to land law more generally. There are a number of practical issues to be worked through, such as how to value the rights ceded by the binding use agreement, the fiscal implications of progressing a public work without an interest in the land on which the work is situated, and the terms and conditions of the agreement that ought to be statutory requirements.

52. Further, as acquiring authorities had concerns about our policy options, we anticipate that there will be similar concerns about a proposal which would result in them having no interest in the land on which they were investing and undertaking public works.

53. Progressing this option would require more time than current timeframes allow, although work can begin immediately.

Applying the options to different types of works

54. In our previous advice to you, we presented an option in which sensitive Māori land would be protected from compulsory acquisition for certain types of public works. We considered that it may still be appropriate to take land for network infrastructure and flood protection, but not for 'site-specific' infrastructure such as schools or prisons.

55. You discussed this option at your last joint meeting although no preferred option was identified at the time.

56. Following further policy development, we do not currently see a strong rationale in differentiating between types of public works. It is very rare for compulsory acquisition to be used for site-specific works. Therefore, not differentiating between types of public works presents a very low risk that compulsory acquisition will be used for works such as schools or prisons.

57. Works to mitigate the effects of climate change such as community retreat would be considered site-specific. We recommend keeping the status quo with respect to the types of works for which compulsory acquisition may be used so that any future need may be provided for.

58. We further consider that the decision-making options provide adequate protection of sensitive Māori land from compulsory acquisition for any work, so that further protection based on the type of work is not required.

59. In particular, the requirement that acquiring authorities exhaust the practicality of taking a lesser interest in land is likely to reduce need to prevent compulsory acquisition from being used for site-specific infrastructure as leases may be more suitable. Where it is not practical to arrange a lease, compulsory acquisition as a last resort is still provided for.

60. Not differentiating between types of works also ensures flexibility and does not constrain future Crown or local authority land needs.

Consultation

61. We have consulted with the Ministry of Justice, Te Arawhiti, the Ministry of Health, the Department of Internal Affairs, the Department of Corrections, the New Zealand Defence Force, the Technical Advisory Group[3], and the Legislation Design and Advisory Committee.

Next Steps and timeframes

62. We would like to meet with you to discuss these options. Once we have your direction on your preferred options, the revised timeframe proposed is:

    62.1. July/August 2019 – Draft Cabinet paper prepared

    62.2. August 2019 – Oral item at the Māori Crown Relations Cabinet Committee

    62.3. September/October 2019 – Ministers further socialise options with Cabinet colleagues (presentation material will be provided to facilitate engagement)

    62.4. September/October 2019 – Engagement with Māori / organisations

    62.5. November 2019 – Cabinet Policy decisions

[3] Comprising: Te Puni Kōkiri, Te Arawhiti, the Department of Internal Affairs, the Ministry of Education, KiwiRail, the Ministry of Transport and New Zealand Transport Agency.

62.6. March 2020 – Cabinet agreement to introduce Legislation

62.7. April 2020 - Introduction of legislation

63. The extended timeframe will allow for deeper policy development and for targeted consultation on the government's policy proposals. The proposed engagement process during September and October would need to be reasonably tight and targeted to enable Cabinet decisions to be sought in November 2019.Using this extended timeframe would still allow for a Bill to be introduced to the House before the House rises for the general election.

Conclusion and/or Recommendations

64. A summary of our recommended policy options is included in Attachment One.

Attachment One: Summary Table of Recommended Options

The key criterion we have used when evaluation these policy options is balance. Balance means that each option balances the need to protect sensitive Māori land from compulsory acquisition with the needs of the Crown and local authorities to acquire land to complete their works.

Additional criteria include:

Efficiency (including administrative implications)

Effectiveness in achieving the objective of protecting sensitive Māori land, and

Flexibility so that future Crown and local authority needs can be met, and that case by case situations can be addressed by decision-makers.

Option	Criteria			
	Balance	Efficiency	Effectiveness	Flexibility
Treaty Principles				
Amend the PWA to include a general Treaty principles clause to the effect of: "In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to the acquisition of sensitive Māori land, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). The effect of taking into the account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) shall be that sensitive Māori land is only taken as a last resort."	√√	√	√	√√
Additional Ministers				
Require the joint decision on a taking with the Minister for Land Information and the Minister for Māori Development or the Minister for Treaty Negotiations (depending on the land).	√	√	√√	√√
Lesser Interests				
Require that the Minister for Land Information considers the extent to which the acquiring authority has exhausted the practicality of taking a lesser interest in land. In the case of local authorities, that consideration will be the responsibility of the chief executive. Owners would have a right to object to the Environment Court, but no right to terminate the lease prior to renewal.	√√	√	√√	√
Binding Use Agreements				
Provide for binding use agreements to be used to undertake public works on sensitive Māori land. Acquiring authorities would be required to exhaust the practicality of a use agreement, in addition to lesser interests.	√√	×	√√	√

Attachment Two: Summary of other options

Role of the Māori Land Court

1. Under the PWA, the Māori Land Court's role is identifying the beneficial owners of Māori freehold land and appointing an agent as a representative during negotiations.
2. LINZ's *Guidance on the Acquisition of Land under the Public Works Act* recommends that where there is uncertainty about the ownership of land, the acquiring authority should proceed through the Māori Land Court.
3. The Environment Court hears objections to the compulsory acquisition of any land, including Māori freehold land.
4. A Māori Land Court judge may be an alternate judge for hearings at the Environment Court. Under the Resource Management Act 1991, an alternate Environment Judge may act as an Environment Judge when the Principal Environment Judge, in consultation with the Chief District Court Judge or Chief Maori Land Court Judge, considers it necessary for the alternate Environment Judge to do so (section 252).
5. We consider that the existing role of the Māori Land Court in identifying owners, appointing agents, and hearing cases at the Environment Court is the appropriate role for the PWA context. At present, we do not see a policy rationale in expanding the role of the Court beyond these functions. However, we consider there is merit in exploring the option to require that a Māori Land Court Judge (acting as an alternate Environment Court Judge) presides over disputes related to the acquisition of sensitive Māori land.

National / Regional Interest Test

6. There is merit in considering the introduction of a national or regional interest test into the planning and acquisition system.
7. A test could provide for clarity and certainty to the sector and to landowners about the approach that will be applied to the acquisition of land (we recommend that the test is used for all acquisitions, with criteria for Māori interests wherever relevant).
8. However, in our view, a national or regional interest test ought to be introduced in a cohesive, aligned approach with the designation regime under the Resource Management Act.
9. There is already some degree of alignment between the Resource Management Act and the PWA (both require the consideration of alternative routes, sites and methods for designations and acquisitions, for example), but more could be done to improve efficiencies and ensure that all sensitive Māori land that may be sought for a public work was identified during the planning stages of a project.
10. A test could be applied at those early stages so that it was clear to all parties whether compulsory acquisition could eventually be used to take sensitive Māori land. The sooner into a project that is known, the easier it is to find alternatives, negotiate with landowners and minimise disruption.
11. The development of a national or regional interest test for use in both designations and acquisitions would require collaboration with the Ministry for the Environment. No work is currently underway on proposals for a test or improved alignment.