

Whenua Māori and the Public Works Act Package of proposals

Compulsory acquisition

Opportunity:

We have an opportunity to ease a long-standing tension between the ability to compulsorily acquire protected Māori land and the principles of Te Tiriti o Waitangi.

The Public Works Act 1981 (PWA) has not been significantly amended since 1987 – Māori Crown relations have improved since then; the PWA should be amended to reflect this.

Securing the objectives of these amendments through legislation should better enable Māori landowners to realise the economic and social potential in their whenua, without significantly impacting on the ability to provide for public works.

Objective:

The objective of these proposals is to balance:

- the principles of Te Ture Whenua Māori Act 1993 so that protected Māori land is safeguarded; with
- the Crown and local authorities being able to undertake public works, and have access to the land necessary to complete them.

Package of proposals

We consider that the most effective means of ensuring this balance is by improving decision-making processes so that they are more robust. We have developed a package of three key policy proposals to create a more robust decision making process. As a package, these proposals should strike a balance between the two stated objectives. Note that these proposals are not mutually exclusive (i.e. they can be advanced alongside one another).

Package of proposals

| Proposals | Advantages | Disadvantages |
|--|---|---|
| Options to take a lesser interest in land would need to be exhausted before the fee simple is acquired (that is, before there is a change in ownership). AND | <ul style="list-style-type: none"> • More land is retained in Māori ownership • Improves Māori / Crown relationship • Better partnership options • No need for a disposal process where lesser interests acquired | <ul style="list-style-type: none"> • Likely to increase costs to the acquiring authority • Lesser interests not likely to be practical for large transport works • Owners may regard taking lesser interests as alienation land if they cannot use or connect with their whenua • Decrease in opportunities for Rights of First Refusal |
| The Minister for Māori Development and the Minister for Māori Crown Relations: Te Arawhiti would be added to the Ministerial decision making process for signing Notices of Intention to Take Land. AND | <ul style="list-style-type: none"> • Shared accountability • Greater visibility across Government about PWA decisions • Opportunity for Ministers to advocate for Māori interests • Potentially more Māori land retained in Māori ownership | <ul style="list-style-type: none"> • Longer decision making time • Increased risk of judicial review |
| Introduce a requirement that principles that promote the retention of protected Māori land be taken into consideration when making any decision on the acquisition of land. | <ul style="list-style-type: none"> • Provides clear expectations of the importance of the retention of protected Māori land • Judiciary understands Parliaments intent when hearing objections • Likely to improve Māori / Crown relationship • Potentially more Māori land retained in Māori ownership | <ul style="list-style-type: none"> • May not prove effective in retaining Māori land in Māori ownership if progressed in isolation |

What is 'protected' Māori land'?

The classes of land to which these new policies would apply is the same as the protected Māori land classes in the Urban Development Bill, that is:

- Māori freehold land as defined by Te Ture Whenua Māori Act 1993
- Former Māori freehold land that is owned by a Māori or a group of persons of whom a majority are Māori, and that ceased to be Māori freehold land in accordance with:
 - An order of the Māori Land Court made on or after 1 July 1993; or
 - A declaration of a change of status that was issued under Part 1 of the Māori Affairs Amendment Act 1967
- Land held by a post-settlement governance entity that was acquired –
 - As part of a Treaty settlement; or
 - Under a right of first refusal or a deferred selection process agreed in a Treaty settlement;
- Land held by or on behalf of an iwi or hapū if the land was transferred from the Crown or a local authority with the intention of returning the land to the holders of mana whenua over that land;
- Land constituted as a Māori reserve by or pursuant to the Māori Reserved Land Act 1955;
- Land set apart as a Māori reservation under Part 17 of Te Ture Whenua Māori Act 1993;
- Te Urewera land, as defined in section 7 of Te Urewera Act 2014.

Scenarios:

The scenarios below are illustrative of how the options could play out in practice. They are hypothetical and do not refer to any known project or public work.

Scenario (Māori land is retained)

- Gisborne District Council is looking to undertake an urban renewal project in an area of Gisborne zoned as commercial/light industrial. The Council intends to improve transport links and public spaces to encourage more people and businesses into the area.
- The Council would like to acquire property and demolish a building there to expand the small park and playground it owns next door. The land on which the building is located is owned by Te Runanganui o Ngāti Porou – the post-settlement governance entity (PSGE) established following their Treaty settlement – and was purchased with money received in the settlement. It is held as general land.
- The PSGE does not want to sell the land – it had purchased the land and building with the intention of developing it to lease, and for use by its members.
- The Council meets with the PSGE to discuss its intentions for urban renewal project and learn more about the PSGE's own plans. As a result of the meeting, and influenced by the new, higher standards for the compulsory acquisition of Maori land, the Council opts not to acquire the land. Instead, it develops the park and playground it owns to make better use of the site. The PSGE, which broadly supports the project, agrees to move forward the development of its building to align it with the timeframes of the Council's project.

Scenario (lesser interest acquired):

- Auckland Transport (a local authority under the PWA) is overhauling its urban bus network. The project includes new routes and the creation of 'bus hubs' across the city where passengers will transfer routes.
- The routes will follow the existing local road network so no private land is required. The creation of the hubs does require the purchase of land.
- Following public consultation, Auckland Transport have identified where five hubs will be located. These hubs are all close to existing amenities and services such as the hospital, tertiary education institutions and connections with the ferry service.
- The land surrounding the hospital was included in a Treaty settlement and is now administered by a post-settlement governance entity (PSGE).
- During negotiations, the PSGE indicates that it does not want to sell its land to Auckland Transport. Auckland Transport explores alternative options to purchasing the fee simple that would still give it rights and access over the land. Auckland Transport offers a lease arrangement with the PSGE.
- A lease is agreed and is signed for seven years. This length is agreed because it is long enough to provide security for the project, while short enough to enable flexibility in the bus network. Auckland Transport has a right to renew the lease; at the time of the renewal both parties are able to renegotiate any terms and conditions.

Scenario (progress to compulsory acquisition):

- KiwiRail is constructing a rail link in Northland. The new line will require a route corridor and associated stations and ancillary works. Local authorities will use the corridor to construct electricity, telecommunications and gas lines.
- Three routes have been identified which, on average, cover 23 parcels of land. Each route includes some protected Māori land – Māori freehold land and returned Treaty land.
- KiwiRail identifies its preferred route and begins negotiating with the relevant landowners to acquire the land. It is able to acquire most of the land through negotiated agreement.
- The beneficial owners of one parcel of Māori freehold land do not want to sell their land.
- Before asking the Minister for Land Information to sign a Notice of Desire KiwiRail details the planning and due diligence it has undertaken on the land it needs, and the tenures it considers necessary to undertake the work. In its view, the fee simple is the most appropriate tenure; no lesser interests could be agreed between parties.
- Land Information New Zealand (under delegation from the Minister for Land Information) issues a Notice of Desire. This begins the 3 month statutory period of negotiation, during which the land owners receive an indicative valuation and receive legal advice (on-going).
- While no agreement is reached during this period the owners do not lodge an objection to the Environment Court.
- KiwiRail applies to both the Minister for Land Information and the Minister for Māori Development with a request to sign a Notice of Intention to Take. The application details the same information that was included in the Notice of Desire and is provided to both Ministers.
- KiwiRail's application makes it clear that the land in question sits in the middle of the preferred route, providing no safe way of diverting the route. The preferred route was selected as it is safest, and avoids areas of ecological significance. The fee simple is the preferred type of interest in the land as it ensures access to the site and adjoining sites and is the most cost-effective.
- After consulting each other, both Ministers sign the Notice of Intention and recommend the Governor-General takes the land.¹

¹ Note that a split decision results in the Notice of Intention not being recommended to the Governor-General.