

To: Minister for Land Information and Te Minita Whanaketanga Māori

Draft Cabinet Paper: Whenua Māori Public Works Act Amendments

Rā / Date	14 November 2019	Kōmakatanga / Classification	In confidence
LINZ reference	BRF 20-224	Whakaarotau / Priority	High

Ngā mahi e hiahiatia ana / Action sought

Minitia / Minister	Hohenga / Action	Deadline
<p>Te Minita Whanaketanga Māori</p> <p>The Minister for Land Information</p>	<p>Approve the attached draft Whenua Māori (Public Works Act) Amendments paper, subject to any amendments you may wish to make; Agree to initiate agency and Ministerial consultation on this paper;</p> <p>Agree to take the Cabinet paper to the Māori Crown Relations Committee on 3 December OR;</p> <p>Agree to take the Cabinet paper to the Development Committee on 11 December;</p> <p>Note that we will continue to make minor refinements to the paper during the consultation process;</p> <p>Lodge the Whenua Māori (Public Works Act) Amendments paper with Cabinet Office by 28 November, or 5 December (dependent on the above decision).</p>	20 November 2019

Contacts

Ingoa / Name	Tūnga / Position	Contact number	First contact
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Te Tari o te Minitia ki te Whakaoti / 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	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5
Comments					
<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 Withdrawn	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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Pūtake / Purpose statement

The attached Cabinet paper seeks agreement to amend the Public Works Act 1981 (**the PWA**) as part of the Whenua Māori reforms. The PWA amendments will minimise the compulsory acquisition of protected Māori land, and improve the offer-back process for the return of former Māori land, while enabling the Crown and local authorities to undertake and maintain public works where necessary.

Pānui whāinga / Key messages

1. The proposals in the cabinet paper represent the next step in TPK's programme of whānau development through whenua package of initiatives. The Government has previously agreed to:
 - 1.1. invest \$56.1 million over four years in a whenua Māori programme to assist owners of Māori land to develop that land;
 - 1.2. to amend Te Ture Whenua Māori Act 1993 (TTWMA); and
 - 1.3. amendments to rating legislation to improve outcomes for Māori land owners.
2. The attached cabinet paper presents a package of proposals to amend the PWA in order to:
 - 2.1. Minimise the compulsory acquisition of protected Māori land; and
 - 2.2. improve the process for the return of former Māori land no longer required for public purposes.
3. The Whenua Māori Public Works Act Amendments paper is intended to be lodged with the Cabinet Office by 28 November for consideration by the Māori Crown Relations Committee on on 3 December. In the event of a delay the fall-back position is to lodge the paper on 5 December, for consideration by Cabinet Development Committee on 11 December.

Tohutohu / Recommendations

It is recommended that joint Ministers:

1. **Approve** the attached draft Whenua Māori (Public Works Act) Amendments paper, subject to any amendments you may wish to make;
2. **Agree** to initiate agency and Ministerial consultation on this cabinet paper.
3. **Agree** to take the Cabinet paper to the Māori Crown Relations Committee on 3 December OR;
4. **Agree** to take the Cabinet paper to the Development Committee on 11 December.

Ruth Fischer-Smith

Policy Manager, Property and Investment (LINZ)

Rā / Date: / /

Charles Ngaki

Policy Manager, Economic Wealth (TPK)

Rā / Date: / /

Hon Nanaia Mahuta

Te Minita Whanaketanga Māori

Rā / Date: / /

Hon Eugenie Sage

Te Minita mō Toitu te Whenua

Rā / Date: / /

Tāpiritanga / Attachments

1. Whenua Māori Public Works Act Amendments cabinet paper

Released under the Official Information Act 1982

Te Horopaki / Background

1. The acquisition of land for public works the approach has changed significantly over the past few decades.
2. Māori land is now acquired infrequently. This is for two main reasons:
 - 2.1. There is so little of it left that it is not often encountered during project planning; and
 - 2.2. Acquiring authorities will try to avoid acquiring Māori land whenever possible
3. The infrequency of Māori land being acquired – especially by compulsion – does not diminish the fact that what remains of Māori land warrants protection. Rather, the rarity of Māori land relative to New Zealand's land area furthers the need to protect it from increasing land demand.
4. Despite many acquiring authorities avoiding Māori land when planning public works, as demands for land intensify, this 'in-principle' approach currently being used to avoid acquiring Māori land may be insufficient. The options in the Cabinet paper propose to embed these safeguards into legislation. This will protect a rare taonga tuku iho and improve Māori Crown relations, by reaffirming the Crown's commitment to the retention of Māori land with Māori landowners.
5. The proposals in this paper represent the next step in the Government's programme of whānau development through whenua. We have previously agreed to invest \$56.1 million over four years in a whenua Māori programme to assist owners of Māori land to develop that land. We have also agreed to proposals to amend TTWMA and rating legislation to improve outcomes for Māori land owners.
6. Previous briefings have informed you of the options under consideration and sought your direction on a preferred package of options [see BRF 19-218, BRF 19-261, BRF 19-266, BRF 19-392, BRF 20-081]. At the meeting of 11 November, you agreed to progress external engagement based on these proposals.

Proposed options

7. There is a fundamental tension between the ability to compulsorily acquire land under the PWA, and the preamble of TTWMA which explicitly promotes the retention of Māori land.
8. Our objective of the proposals is that in assembling land for any public work the acquiring authority appropriately recognises the importance of the retention of protected Māori land in Māori ownership.
9. You have agreed to a package of proposals that will:
 - 9.1. Minimise the compulsory acquisition of protected Māori land and align any acquisition with the principles of Te Ture Whenua Māori Act 1993,

- 9.2. Enable the Crown and local authorities to remain able to undertake public works, and
- 9.3. improve processes for the return of former Māori land.
10. Full proposals are listed within the cabinet paper, paragraphs 24-44, and as per A3s previously circulated [BRF 20-081 refers].
11. We have made several adjustments based on your previous Ministers' discussions. They include:
- 11.1. Te Tiriti Principles will be directly included into the PWA at a later date: you have decided not to include reference to the Treaty of Waitangi principles as part of this current package of options. You have identified that there is an opportunity to consider this at a later date, with the benefit of evidence from this current package of proposals to assist that process. Consideration of the principles of Te Ture Whenua Māori Act 1993 are included in the package, which promote the retention of Māori land.
- 11.2. Testing the use of principles: Minister Sage raised the question with LINZ officials of how we would determine if any principles had been met. We have improved the proposals to now include a specific requirement that parties acting under the PWA meet the principles (to be included in both the preamble of the PWA and in section 18). This would act as a form of test to ensure that those acquiring land would have to demonstrate these principles have been met.

Mātanga kōrero / Consultation

12. Early policy options were tested with a technical advisory group consisting of representatives from the New Zealand Transport Agency, the Ministry of Transport, the Ministry of Education, the Department of Internal Affairs, KiwiRail, and Te Arawhiti.
13. As agreed at your 11 November meeting, targeted engagement on the recommended proposals is scheduled with Māori leadership groups, Māori landowner groups, local councils and network utility operators.
14. Key input from the meetings we have held to date confirms the need for further policy work on the exemptions to the offer-back of former Māori land, and how to consider the interests of former Māori owners before transferring land.
15. These themes align with key guidance you provided during your meeting with officials from TPK and LINZ on 11 November. We will continue to improve the clarity of these points, and others that may be raised during the remaining engagement process.
16. Your approval is required to initiate further agency and Ministerial consultation on this paper. This will include technical advisory group input, as part of agency consultation.
17. We will continue to refine the cabinet paper throughout the course of Ministerial consultation, as feedback and comments are incorporated.

Angawā / Timeframes

18. Timeframes are tight for this work. To gain Cabinet approval prior to the end of 2019, there are two options for the consideration of this paper at Cabinet Committee and Cabinet.
19. The first option (preferred) is to take the paper to the Cabinet Māori Crown Relations (MCR) as has been the intention throughout this work. However, this committee has been moved from 10 December, to 3 December. This would shorten the timeframe for agency and Ministerial consultation.

Table 1: Timeframe for Māori Crown Relations Committee

Cabinet Paper and RIA to Ministers' Offices	15 November
Agency/Ministerial consultation	18-25 November
Lodgement	28 November
MCR Cabinet Committee	3 December
Cabinet	9 December

20. The second option is to take the paper to the Cabinet Economic Development Committee (DEV). This meets on 11 December. This would give a longer period to undertake agency and Ministerial consultation. However, there may have a longer list of potential papers seeking to be considered at this meeting, so there is a risk that the paper may not make it onto the agenda.

Table 2: Timeframe for Development Committee

Cabinet Paper and RIA to Ministers' Offices	15 November
Agency/Ministerial consultation	18 November - 2 December
Lodgement	5 December
DEV Cabinet Committee	11 December
Cabinet	16 December

21. We recommend pursuing the first option of MCR Committee on 3 December. If shortened timeframes and/or full Committee agendas mean that neither is possible, we will support you to lodge the paper at the first MCR Committee in 2020 on 18 February.