

Coversheet: Whenua Māori and the Public Works Act.

Advising agencies	<i>Land Information New Zealand; Te Puni Kōkiri</i>
Decision sought	<i>Submit a paper to the Cabinet Legislation Committee seeking drafting instructions</i>
Proposing Ministers	<i>Hon Eugenie Sage; Hon Nanaia Mahuta</i>

Summary: Problem and Proposed Approach

<p>Problem Definition</p> <p>What problem or opportunity does this proposal seek to address? Why is Government intervention required?</p>
<p>There are three principal problems which the proposals in this regulatory impact statement seek to address:</p> <ul style="list-style-type: none"> (1) In its current form the compulsory acquisition powers contained in the Public Works Act 1981 (PWA) do not adequately recognise the importance of land to Maori, nor provide sufficient protection of the rights and interests of owners of Protected Maori Land¹ when land is being acquired for public works; (2) The offer-back provisions of the PWA overly (but unintentionally) restrict the extent to which former owners of protected Maori land to re-connect with their land, and so enhance their well-being; and (3) Public works that provide for the broader national, public, interest can find it impossible or impractical to completely avoid Protected Maori Land because of geographical, technical or financial difficulties and constraints. In this respect, an absolute ban on the use or acquisition of Maori land may be unworkable or undesirable. <p>Despite improvements in the way the provisions of the PWA are used by the Crown and local authorities, the fact remains that the PWA has not kept pace with improved implementation practice and without intervention:</p> <ul style="list-style-type: none"> a. explicit recognition of the important relationship between Maori and their land will continue to inadequate b. there is no guarantee in legislation against past poor practice and misuse of the PWA in the acquisition and disposal of protected Maori land occurring in the future c. the PWA will becoming increasingly inconsistent with other legislation that manages the Crown’s Treaty of Waitangi obligations and/or Maori interests d. an opportunity to improve Māori / Crown relations and help redress part injustices may be lost.

¹ Refer to Appendix One

Proposed Approach

How will Government intervention work to bring about the desired change? How is this the best option?

Under the proposals preferred in this statement, Government intervention would provide for more explicit recognition and protection of Maori interests, rights and relationships with Protected Maori Land through a mix of legislative changes to the PWA, and supporting non-regulatory measures.²

In respect to the acquisition of protected Maori land the proposals include:

- requirements to seek the permission of the Minister for Maori Development and Minister for Maori Crown Relations before protected Maori land is acquired
- new principles, aligned with the Te Ture Whenua Māori Act, to be included in the PWA, that must be taken into account when negotiating, or making decisions on, the acquisition of protected Maori land
- a requirement for acquiring authorities³ that are considering acquiring protected Maori land to have already exhausted options of leasing the land or making use of easements over the land before seeking a change of ownership.

In respect to the disposal and/or offer back of Protected Maori land, proposals include:

- a requirement in legislation for the Minister for Land Information to consider the interests of former owners of Protected Maori Land before transferring land to another party for another public purpose
- update Land Information New Zealand (LINZ) standards and guidelines with respect to making greater use of the Maori Land Court
- promote process transparency through the publication of any exemptions on the offering back of Protected Maori Land to former owners on the LINZ website
- require former Protected Maori land to be offered back as Maori land unless the prospective Maori owners request otherwise.

The legislative changes are recommended in order to codify good practice under the PWA into law, thereby ensuring:

- certainty of processes for all parties, including owners of Maori owned, acquiring authorities, and decision makers under the PWA
- greater consistency with other legislation that manages the Crown's obligations under the Treaty of Waitangi or which assist in managing the relationship of Maori with their lands.

The non-legislative measures are considered necessary to support the legislative measures to provide additional guidance for all parties and promote greater transparency in decision-making and implementation. For reasons of necessary operational flexibility, evolving practice improvements, and the large amount of detail involved, it would be inappropriate to include such guidance and transparency measures in the PWA itself.

² A working definition of Protected Māori Land is provided in Annex One

³ Crown, local authorities and network utility operators (e.g. telecommunications, electricity roading, rail, and gas network owners/operators)

Section B: Summary Impacts: Benefits and costs

Who are the main expected beneficiaries and what is the nature of the expected benefit?

The main expected beneficiaries

The main expected beneficiaries of proposed changes to land acquisition will be Māori freehold land owners, beneficiaries to Māori trusts and incorporations, the kaitiaki of Māori customary land and reservations, and owners of land returned in Treaty settlements.

The beneficiaries of the offer-back proposals are former Māori land owners who will have an improved likelihood of being offered back their former land, and being able to use it to improve their economic, social and cultural wellbeing.

Monetised Benefits

The incidence and scale of the benefits to beneficiaries are dependent on individual case-by-case circumstances. However, in aggregate there is a potential economic benefit from any increase in the use of leases over sensitive Māori land, where the landowners would benefit from up-front payments, or on-going rent.

There is also a potential economic benefit to be gained by Māori landowners where their land is retained and may be put (or kept) in productive use. The Māori share of the total New Zealand asset base is estimated at \$36.9 billion. Around \$10.6 billion is held by Māori collectives such as Māori land entities.⁴ Research estimates that 80 per cent of Māori land is under-performing⁵ and that Māori could generate an extra \$8 billion in gross output and 3600 jobs.⁶

Non-monetised Benefits

The main benefit for Māori will be the retention and re-ownership of Māori land by Māori. That gives effect to the purpose of Te Ture Whenua Māori Act, and better ensures the protection of Māori interests, as guaranteed by Te Tiriti o Waitangi.

The secondary beneficiaries will be the Crown and local authorities who will benefit from an improved relationship with Māori.

Over time, as the Crown and local authorities undertake more investigation into the land they currently hold, and the land they are looking to acquire, we would expect to see an improvement in historical land data, including a better understanding of the circumstances in which land was first acquired. Better data will improve decision-making by enabling effective, transparent engagement with the right parties.

⁴ Business and Economic Research Limited, 2011. *The Asset Base, Income, Expenditure and GDP of the 2010 Māori Economy*. Wellington, New Zealand.

⁵ Ministry of Agriculture and Forestry, 2011. *Māori Agribusiness in New Zealand: A study of the Māori freehold land source*. Wellington, New Zealand.

⁶ Ministry for Primary Industries, 2013. *Growing the Productive Base of Māori Freehold Land*. Wellington, New Zealand.

Where do the costs fall?

Monetised costs

We have not monetised the costs for the Crown or local authorities as these will differ significantly on a case by case basis.

Monetised costs will be mainly:

- an increase in compensation paid to owners to reach a sale by agreement,
- an increase in the cost to purchase land with more than one separately owned dwelling on Māori freehold land, and
- a potential loss between the current market value of surplus land and the lesser price at which it may be offered-back,

For large public works, we anticipate that the time cost and compensation paid will be relatively small compared to the whole cost of the public work. To illustrate, the median cost range of NZTA's projects in the infrastructure pipeline is \$5-25m; the average amount of compensation NZTA has paid a landowner for land acquired under the PWA is \$500,000.

Non-monetised costs

Non-monetised costs are time costs:

- For acquiring land:
 - demonstrating that they have exhausted the practicality of taking a lesser interest,
 - waiting for the Minister for Māori Development or the Minister for Māori Crown Relations to provide consent to the taking,
 - demonstrating how they have complied with the principles in the Act
- For disposing or transferring land:
 - considering the interests of former Māori owners, including identifying those owners and speaking with them wherever possible;
 - taking an offer-back through the Māori Land Court processes more frequently, and
 - publicising a decision to exempt land from the offer-back process.

What are the likely risks and unintended impacts, how significant are they and how will they be minimised or mitigated?

There may be some uncertainty from acquiring authorities and Māori about how the new proposals will work in practice. Broad communication to all affected parties will be required to ensure effective implementation. Existing guidance and standards will be updated to reflect the new proposals. LINZ's internal processes will help ensure consistency across all parties using the PWA.

On-going engagement with Māori will provide transparency and certainty about how their land may be affected.

Communication to all affected parties will also mitigate any risk of delays in undertaking

public works due to uncertainty about the new processes.

Identify any significant incompatibility with the Government's 'Expectations for the design of regulatory systems'.

The Government's 'Expectations for the design of regulatory systems' states that agencies are expected to provide "affected and interested parties with appropriate opportunities to comment throughout the process and, in the right circumstances, to participate directly in the regulatory design process" (page 4).

On this occasion, the compressed and targeted engagement undertaken with affected parties – particularly Māori and local authorities has reduced the opportunity to comment, and there has not been an opportunity for direct participation. We intend to continue engagement after the submission of the Cabinet paper to further develop and refine the options. This will include going back to Māori landowner groups to test the developed proposals.

However, these circumstances are mitigated through the former TTWM Bill 2017 including proposals similar to the package discussed above, consultation has previously occurred with Maori landowners and iwi. This means that engaged parties would already be familiar with the intent behind this work. The consultation that has been undertaken during this phase of work has been a scaled down version of the 2017 consultation.

Section C: Evidence certainty and quality assurance

Agency rating of evidence certainty?

Quantitative – medium

Public Works Act data

There is no central register in an easily searchable format of how much land has been acquired (and subsequently disposed of) under the PWA. LINZ keeps records of statutory decisions it makes under the PWA, under delegation from the Minister of Land Information. Proclamations on the taking of land are published in the Gazette and LINZ keeps a record of how many have been published.

We are confident that, over the last 30 years very little Māori land has been acquired, by agreement or compulsion. Between 1998 and 2019 the Governor-General signed 312 Proclamations taking land under the Public Works Act. One of those Proclamations was to take Māori land.

By comparison, since 2005 29 parcels of Māori freehold land have been taken by agreement (with the agreement of the Māori Land Court), out of approximately 2000 negotiated agreements for all classes of land.

The majority of takings are for roads, mostly by the New Zealand Transport Agency.

Māori land data

The policy proposals would apply to several classes of Māori land. The largest class is Māori freehold land of which there is 1.4 million hectares, or around 5 per cent of New

Zealand's total land mass (26.8m hectares). Information about returned Treaty land is less well known, as this is often held as general land and indistinguishable on the title from non-Māori land.

Territorial Authority land and/or transaction data

The data held by councils on previous status of a parcel of land is inconsistent and incomplete. For some parcels of land, now held by a council, the transactional record of how that land came into Council ownership is either not available or difficult to locate (ie held in paper records). For other parcels of land, known to be former Māori land, the details of previous land status (Māori freehold or general) and the former owners may not be available or difficult to locate.

Qualitative – high

We have a high degree of confidence in the qualitative evidence of the impact of the compulsory acquisition powers on Māori, and whenua Māori. Any discussion on future land use and acquisition needs to be informed by New Zealand's history since 1840 – Māori continue to feel keenly the loss of land and the loss of opportunities it would have provided them and their whānau.

To be completed by quality assurers:

Quality Assurance Reviewing Agency:
Land information New Zealand, Ministry for the Environment
Quality Assurance Assessment:
Reviewer Comments and Recommendations:

Released under the Official Information Act 1982

Impact Statement: Compulsory acquisition and whenua Māori

Section 1: General information

Purpose
Land Information New Zealand and Te Puni Kōkiri are solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated.
This analysis and advice has been produced for the purpose of informing final decisions to proceed with a policy change to be taken by or on behalf of Cabinet.

Key Limitations or Constraints on Analysis
<p>Time Constraints</p> <p>Tight timeframes have limited of the amount and type of consultation associated with this work. Only a compressed form of consultation with stakeholder groups was possible, which included talks with key government departments, network utility operators, local government representatives, twelve territorial authorities, and a two hui with Māori landowners – one in Rotorua and one in Whangārei. This approach has reduced the opportunity for stakeholders to comment on this occasion, and there has not been an opportunity for direct participation.</p> <p>However the impact of this constraint is mitigated by the fact that many of the proposals are derived from proposals in the former Te Ture Whenua Maori Bill (withdrawn from the House in December 2017). This means that engaged parties would already be familiar with the intent behind this work. The consultation that has been undertaken during this phase of work has been a scaled down version of the 2017 consultation.</p> <p>Mitigation for these consultation constraints will likely include continued interaction in early 2020 with key Māori organisations, representing hapu and whanau, to best inform the final legislation, to ensure a pathway for their voices to be heard during public submissions, and to communicate continued intent and implementation of the changes.</p>
<p>Data Constraints</p> <p>A further constraint on our analysis has been the lack of a comprehensive database on the use of the PWA provisions to take Māori land, and how often it has been offered back. This is because of the historical nature of many takings, and because of how infrequently Māori land is now taken. Opportunities to develop a record of the history of Māori land acquisitions and offer-backs are still being considered.</p> <p>Therefore, the problem is understood in qualitative terms as there is little quantitative evidence to inform a policy rationale for change to the current system.</p> <p>Quantitative evidence of the potential impact of these proposals on public works is sparse and it is difficult to extrapolate what evidence we do have across the whole public works</p>

regime.

In response to this constraint, LINZ will monitoring the effect of the proposed changes (as described in section 7 of this document). Where this monitoring (the evaluation of it) demonstrates that the changes are not meeting the intended objectives, a further review will be considered. Of necessity, this monitoring, evaluation and review programme will entail LINZ collecting information sufficient to help fill the gaps identified above.

A future mitigation to this challenge is a pilot data discovery and alignment project – whereby LINZ, TPK, and other central government partners (such as Māori Land Court) could partner with Māori landowners/whanau/hapu and the territorial authority in a region to amalgamate and translate between data sources. The result could be an amalgamated data set of whenua/land transactions and parcel history for a specific region. Due to newness and scale questions, such a project would likely be run first as a pilot.

Responsible Manager (signature and date):

Ruth Fischer-Smith
Manager: Property Systems and Investment
Policy and Overseas Investment
Land Information New Zealand

Manager
Te Puni Kōkiri

Released under the Official Information Act 1982

Section 2: Problem definition and objectives

2.1 What is the context within which action is proposed?

What the Public Works Act does

The Public Works Act 1981 provides the Crown with the statutory authority to acquire land for a public work. The Crown has the power to acquire or take land for a wide variety of purposes. The acquisition process generally takes place after all required consents for the use of the land have been granted, or a designation has been provided for by the territorial authority.

The current fundamental principles of the PWA include:

- the compulsory acquisition processes are set out in statute, including clearly defined decision-making processes and responsible parties;
- the right of the land owner to be compensated so that they are left in no better or worse situation than before the public work;
- the right of the land owner to object to compulsory acquisition and choose to have their objection determined independently.

The PWA contains a set of procedures and substantive controls that limit how far acquisition can interfere with the rights of landowners. Acquisition most often occurs with the landowner's agreement ('willing buyer, willing seller' or market negotiations). If agreement cannot be reached (or the landowner cannot be located or is deceased), the land may be taken without their consent (compulsory acquisition).

Under the PWA affected landowners are entitled to "full compensation" Compensation is based around current market value and a number of additional adjustments and payments (for example, business losses and moving costs). Disputes over valuation are heard by the Land Valuation Tribunal.

The PWA also sets out a mechanism to offer back land to former owners when it is no longer required for a public work. This land must be offered back to the previous owner, or the previous owner's successor. Under the PWA, any land acquired under the Act is, at the time of disposal, subject to offer back obligations unless an exemption applies.

Whenua Maori Programme

Amending the Public Works Act is an area of reform for the *Whenua Māori Programme* (The Programme) [MCR-18-MIN-0018 refers].

The Whenua Māori Programme applies to Māori land, held as Māori land titles. There are 27,357 separate Māori land titles, with an average size of 52 hectares. The total number of ownership interests in all Māori land blocks is 2,693,523 with approximately 98 owners per title on average.

The Programme supports Māori freehold land owners to achieve their whenua aspirations and attain sustainable intergenerational outcomes that benefit the wellbeing of whānau Māori and Aotearoa. The programme approach will support whānau Māori to realise the promise of tino rangatiratanga (*sovereignty*) over their whenua, and provide a basis for improving skills and increasing the connection of whānau Māori to their lands.

This includes legislation that is currently set for select committee process in February, to

improve the effectiveness of the Māori Land Court by providing it with additional powers to hear and settle claims over Māori land and its descendants. Process improvements such as enabling a Māori Land Court registrar to hear uncontested matters are also proposed. This part of the programme is led by Ministry of Justice. It also includes newly approved ability to begin the legislative process for a Bill on rating of Māori lands, which will introduce an updated rating valuation regime to apply to certain types of Māori land and better enable Māori landowners to develop and use their land, including for housing.

In addition to the advisory and regulatory services provided by the Programme, the PWA reforms will contribute to the building of closer partnerships with Māori and lifting Māori incomes, skills and opportunities.

Key to the delivery of Māori aspirations and intergenerational outcomes, and closer partnerships between Māori and the Crown is the retention of Māori land.

Related work

Further context for the development of the proposals presented in this RIS is the urban development legislation. Cabinet has previously agreed that Kāinga Ora – Homes and Communities will not be able to compulsorily acquire 'protected Māori land' – as defined in legislation – for any of its projects [CAB-18-MIN-0399.01 refers]. Following that decision, officials were asked to consider the implications of rolling out that provision to the rest of the Crown. Ministers chose not to progress a prohibition against the compulsory taking of protected Māori land.

The social and historical context in which whenua Māori and the PWA sits is well known. For a comprehensive overview see *Public Works Takings of Māori Land, 1840-1981* by Cathy Marr for the Waitangi Tribunal, 1997. While it is acknowledged that Māori land is infrequently taken in modern times, for Māori any discussion of the PWA and whenua Māori will still reignite past wrong-doing by the Crown. Māori continue to feel keenly not only the loss of land but also the inability for the cultural significance of the land to be reflected in compensation figures. The loss of opportunity in sharing in the development of the land is another area where Māori feel aggrieved – that is, the loss of opportunity to partner with the Crown on mutually beneficial works.

2.2 What regulatory system, or systems, are already in place?

The regulatory system relating to the acquisition of land under the PWA

The Public Works Act (PWA) is the key piece of legislation in this system – it is one of very few Acts in which land may be compulsorily acquired by the Crown or a local authority. Other options exist for the Crown or local authorities to purchase land in a 'willing buyer – willing seller' model (such as the purchasing options available to the Ministry of Housing and Urban Development), but the PWA is the only option for acquiring authorities to acquire land for public works. No private or market options are available.

Land Information New Zealand administers the PWA but it is not the primary 'user' of it. Land assembly powers (of which compulsory acquisition is the final step) in the PWA are provided to the Crown, local authorities (including, but not limited to local government) and network utility operators with requiring authority status under the Resource Management Act 1991.

The regulatory system relating to offer backs under the Public Works Act 1981

The obligation to offer back land acquired for public works to former owners is triggered when the land is no longer required for the public work, or for any other public work (including as an exchange for other land needed for a public work). The offer is made to the former owner(s) or their successor, or to the successor in title to the property from which the land being offered back was acquired.

Section 40 of the PWA is the main provision used for the disposal of land held for a public work to a former owner or their successor.⁷ Responsibility for complying with section 40 rests with:

- a. the chief executive of Land Information New Zealand (**LINZ**) for properties held by the Crown and Crown agencies for government works; or
- b. the chief executive of the local authority⁸ that holds land for a local work.

The relevant chief executive is required to make offers to former owners unless it is impracticable, unreasonable, or unfair to do so, or if there has been a significant change in the character of the land.⁹ Land can be offered either at market value or a lesser price if it is considered reasonable to do so. The former owner or their successor has 40 working days to accept an offer, unless the relevant chief executive extends this timeframe.

Section 41 of the PWA provides for the relevant chief executive, where land acquired for a public work was Māori freehold land, to either comply with section 40 or to apply to the Māori Land Court for a vesting order under section 134 of Te Ture Whenua Māori Act 1993 (**TTWMA**). Section 134 of TTWMA allows the Māori Land Court to change the status of any land to Māori freehold land and to vest it in those entitled to the land.

Offer back provisions apply to land acquired for a public work by the Crown, local authorities and in certain circumstances network utility operators. This can also include land acquired by the Crown by confiscation or prior to public works legislation if that land has continued up to its disposal to be used as a public work. The obligation applies regardless of whether the acquisition was agreed voluntarily or using the compulsory acquisition powers.

LINZ publishes standards and guidelines for disposal of land held for a public work.¹⁰ These aim to ensure that Crown agencies and their suppliers address the rights of those with a recognised interest in the land when the land is disposed of. However, they do not give any additional direction or guidance on the treatment of former Māori land in the offer back process.

An offer back has statutory priority over a right of first refusal under a Treaty settlement. The right of first refusal only occurs if the land is exempted from offer back or the land is not reacquired by the former owner.

Since 2010, for Crown disposals, the chief executive of LINZ has offered back, through the Māori Land Court twelve properties to former Māori land owners.

⁷ For the purposes of s40 successor means the person who would have been entitled to the land under the will or intestacy of that person had he owned the land at the date of his death; and; in any case where part of a person's land was acquired or taken, includes the successor in title of that person. See *Williams v Auckland Council* [2015] NZCA 479, 9 October 2015, where the Court of Appeal held that the test in s40(5) 'is whether a person would have been entitled to the land under the will or intestacy of the person who owned the land at the time of the acquisition had that person owned it at the date of his or her death'.

⁸ Under the PWA local authority is wider than territorial and regional councils, and includes universities, airport authorities, and polytechnics.

⁹ In addition, where the relevant chief executive believes on reasonable grounds that, because of the size, shape, or situation of the land it could not expect to sell the land to any person who did not own adjacent land, the land may be sold to an owner of adjacent land at a negotiated price.

¹⁰ LINZS15000 Standard for disposal of land held for a public work; LINZG15700 Guideline for disposal of land held for a public work.

2.3 What is the policy problem or opportunity?

Problem 1: *In its current form the compulsory acquisition powers contained in the Public Works Act 1981 (PWA) do not adequately recognise the importance of land to Maori, nor provide sufficient protection of the rights and interests of owners of Protected Maori Land¹¹ when land is being acquired for public works.*

Explanation

Te ao Māori shapes a uniquely Māori view of the world. A te ao Māori view of whenua is that it is not simply an economically tradable asset. It is a taonga tuku iho, a tūrangawaewae, and a provider of familial and spiritual connections through whakapapa and kaitiakitanga. It may be put to productive, economic use for the benefit of whanau, iwi and hapū.

“Te Tiriti o Waitangi puts significant weight on the principles of partnership, active protection of Māori interests and redress to address past wrongs – including on-going disparity and inequity experienced by Māori..”¹²

The Public Works Act (PWA), and its previous versions, has been used to actively discriminate against Māori by making it easier to acquire Māori land than general land by providing for the right to take Māori land without informing the owners, and the right to take Māori land without compensation.

Despite the ways in which the PWA has been deliberately mis-used in the past, and the obligation on the Crown to actively protect Māori interests, te ao Māori is not reflected in the PWA at all.

There are 27,357 separate Māori land titles, with an average size of 52 hectares. The total number of ownership interests in all Māori land blocks is 2,693,523 with approximately 98 owners per title on average. This represents just 5% of New Zealand’s land area, such that the importance to Maori of their retaining and getting back land is very high.

However, despite the above, there are still likely to be legitimate circumstances where a public work will need to make use of, or acquire, Maori land for a public work. Such circumstances can arise when, for example, infrastructure is of a continuous contiguous nature (e.g. a road, railway, or pipeline) that is essential to a particular community or national network, and there is no viable alternative that does not involve the use or acquisition of Maori land. In these circumstances protected Māori land may still be acquired, even in compulsion.

Problem 2: *The offer-back provisions of the PWA overly (but unintentionally) restrict the extent to which former owners of protected Maori land to re-connect with their land, and so enhance their well-being. Key contributing factors to this situation are the PWA:*

- a. *not sufficiently recognising the relationship of Maori with their land when land used for*

¹¹ Refer to Appendix One

¹² An Indigenous Approach to the Living Standards Framework, January 2019.
<https://treasury.govt.nz/publications/dp/dp-19-01>

one public work is transferred and used for a different public purpose

- b. *being unclear on the appropriate use of the Maori Land Court, and the Court's limited powers.*

Explanation

We have identified the following policy issues with the offer-back regime in relation to former Māori land:

- c. Former Māori land acquired for one public purpose can remain alienated by being used for different public purposes, without providing for an opportunity for Māori to reconnect with their whenua;
- d. There is a lack of specific direction and guidance for decision makers on when the Māori Land Court should be utilised for the offer back of former Māori land¹³; and
- e. The current financial capacity of former owners and the terms that land is offered back on can limit their ability to purchase the land and reconnect with their whenua.
- f. Section 41 of the PWA and section 134 of TTWMA are not available if the land was owned by four or fewer people or vested in a trust before its taking or acquisition for public works. The sections are also restricted to land that was formerly Māori freehold land or General land owned by Māori (as defined in section 4 of TTWMA), and exclude former Māori customary land.
- g. Section 134 of TTWMA does not sufficiently empower the Māori Land Court to resolve disputes on conditions, prices and terms.
- h. The process of deciding whether any exemptions to offer back apply can lack transparency and options for challenging these decisions can be expensive.
- i. Former Māori land can be returned as general land, bypassing the status change requirements and protective mechanisms of TTWMA.

Together, these issues result in the fundamental problem of landowners not being able to reconnect with their whenua and therefore lose the opportunity to utilise their whenua to enhance inter-generational wellbeing.

There is an opportunity to improve the offer-back regime to provide a better chance for whānau to reconnect with their whenua. This will improve their ability to realise their cultural and economic aspirations regarding their whenua and will align the regime more towards the principles of TTWMA.

While compulsory land acquisition has been the biggest issue for Māori historically, ensuring that surplus land is offered back to the former owners is a more contemporary issue for former owners of Māori land.

Ensuring the system is fit for future use

Public works that provide for the broader national public interest can find it impossible or impractical to completely avoid Protected Maori Land because of geographical, technical or financial difficulties and constraints.

Although in the previous two decades this issue has largely been worked through via

¹³ Case law and legal advice can provide some assistance.

negotiation between parties (only 2 acquisitions in 2 decades), we do not know what future infrastructure needs may require (e.g. electric car charging networks). For this reason, these amendments are not seeking a ban on the acquisition of Māori land. This also takes into consideration that if offer-back principles begin to function more efficiently, Māori landowners may encounter more frequent need to interact with agencies and territorial authorities, around lands deemed critical to a public work.

The intention of these current amendments to the PWA is to continue to drive those processes through negotiation and exhaustion of all alternatives to compulsory acquisition.

2.4 Are there any constraints on the scope for decision making?

Limitations as to scope

Although part of a wider Whenua Māori Programme aimed at addressing a range of matters that create impediments for Māori land owners, the Ministers for Land Information and Maori Development have determined that the scope the proposals that are the subject of this regulatory impact statement be limited to changes to the Public Works Act 1981 (and associated non-regulatory supporting measures).

Broadly similar land acquisition and disposal powers that exist in the Urban Development Bill (2017) are not within the scope of these proposals, nor are changes that may arise out of the concurrent reviews of the Resource Management Act 1991 (which sets out the statutory definition of “requiring authority” - being entities that have access to PWA powers to acquire land for certain works).

Decisions taken in relation to other programmes where consistency is desirable

Cabinet has previously agreed that *Kāinga Ora – Homes and Communities*, acting in its role as a urban development authority, would not be able to access the compulsory acquisition powers in the PWA to acquire protected Māori land.

Cabinet’s decisions concerning *Kāinga Ora – Homes and Communities* have now been incorporated into section 20 of the Urban Development Bill introduced into Parliament in 2019.

Following Cabinet’s decisions on *Kāinga Ora – Homes and Communities*, Ministers sought advice on the implications of ‘rolling out’ those decisions to the rest of the Crown. The concept of “Protected Maori land” in respect to the proposals that are the subject of this regulatory impact statement broadly aligns the Maori land components of the “Protected Land” definition of section 20 of the Urban Development Bill.

2.5 What do stakeholders think?

To ascertain the views of Crown agencies we established a Technical Advisory Group that included representatives from:

- Te Puni Kōkiri

- Te Arawhiti
- Department of Internal Affairs
- Ministry of Transport
- New Zealand Transport Agency
- KiwiRail, and
- Ministry of Education

We also consulted with the New Zealand Defence Force, Department of Corrections and the Ministry of Health. We have also met with an accredited supplier – accredited suppliers negotiate on behalf of the Crown.

In general, Te Puni Kōkiri and Te Arawhiti shared a view that the PWA remains a critical issue for Māori – regardless of the historical nature of some of the takings.

The other Crown agencies who undertake takings and public works thought that the acquisition policies and practices that they have adopted for Māori land have sufficiently addressed the problem. Some of those policies included not using the PWA for takings at all – instead relying on a long-term acquisitions programme, and avoiding routes or corridors that included any Māori land.

The accredited supplier with whom we spoke said that Māori land owners and general land owners sold their land by agreement at about the same rate. However, they noted that where Māori land owners did not want to sell by agreement increasing the compensation that would be paid is not persuasive.

On the options in particular, the agencies undertaking public works focussed their comments on the option to exhaust the practicality of taking a lesser interest in land before progressing to take the fee simple (for example, taking an easement instead of the title in fee simple). The main comment was that taking a lesser interest in land would add an administrative burden, especially for transport infrastructure in which multiple parcels of land along a route are required. There are particular concerns about lesser interests for transport infrastructure in which access to the road must be secured and maintained.

The Department of Internal Affairs is comfortable with the option of requiring local government (as captured by 'local authorities') to seek the consent of the relevant Māori Minister before sending a Notice of Intention to Take Land to the Governor-General.

It is indisputable that the majority of Māori stakeholders oppose the compulsory acquisition of Māori land.

Regarding the offer back provisions Māori have long-held concerns about the process, including:

- land being used for alternative public works or exempted from an offer-back without their knowledge (which has been a particular grievance featured in several claims to the Waitangi Tribunal);
- disputes over the correct people to whom an offer should be made, and
- where offers back have been made, the costs have sometimes meant that Māori are unable to regain ownership of their land (a recent example is the 2016 offer back of surplus land associated with the Gisborne airport (Awapuni 1F3)).

2.6 Objectives sought to be met in addressing the problems identified

The objectives that are sought to be met in addressing the problems identified in this regulatory impact assessment are:

1. **to better safeguard the interests of owners of Protected Māori Land** that may be the subject of acquisition under the PWA in a manner that is consistent with the principles of Te Ture Whenua Māori Act 1993
2. **to reduce the barriers in the PWA offer back process** that restrict former owners of Protected Maori Land to reconnect with that land and enhance their cultural, social and economic wellbeing
3. **to ensure the Crown and local authorities are still able to undertake public works**, and have access to the land necessary to complete them when there is no other feasible alternative to using Maori Land.

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Section 3: Options identification

3.1 What options are available to address the problem?

The available options to address the problem are:

1. status quo
2. Non-legislative change
3. Legislative change
4. A combined package of regulatory and non-regulatory changes (options 2 and 3 combined)

The options considered in this Regulatory Impact Statement are recommended as a package of both non-legislative and legislative interventions, they are:

1. **Status quo:**

Take no new specific actions. Legislation, regulations remain the same as provided for currently, and implementation practice is left to evolve naturally without any specific new actions arising from this review.

2. **Non-legislative package:**

1. LINZ's Standards and Guidance on the disposal of land held for a public work would be updated to cover:
 - When to use the Māori Land Court to process a disposal, and
 - How to determine the price and terms of an offer-back.
2. An exemption to offer-back any surplus former Māori land would be published on the LINZ website.
3. Former Māori land would be returned as Māori land by default, unless the owners request it to be general land.
4. Transferring agencies would be required to explicitly consider the interests of former Māori owners when transferring land for another public purpose.

3. **Legislative package:**

That the PWA be amended to include proposals to:

1. include a statement of principles that must be met when negotiating and deciding upon the taking of protected Māori land;
2. require that acquiring authorities exhaust the practicality of taking a lesser interest in land before progressing to take the fee simple;
3. Require that the Minister for Land Information seeks the consent of the Minister for Māori Development (for land administered under Te Ture Whenua Māori Act 1993), or the Minister for Māori Crown Relations (for land returned under a Treaty settlement or deed) whichever is relevant, before signing a Notice of Intention to Take Land;
4. Provide that for the purposes of calculating compensation for acquisition, whether by compulsion or agreement, Māori freehold land is valued as if it is general land.
5. Remove the restrictions on the circumstances in which the Māori Land Court can be used for an offer-back.
6. Provide the Māori Land Court with powers to rule on disputes on terms, conditions, and price.

4. **Combined regulatory and non-regulatory packages (2 and 3 together):**

Cabinet agrees to progress both packages at the same time:

Regulatory proposals

1. include a statement of principles that must be met when negotiating and deciding upon the taking of protected Māori land;
2. require that acquiring authorities exhaust the practicality of taking a lesser interest in land before progressing to take the fee simple;
3. Require that the Minister for Land Information seeks the consent of the Minister for Māori Development (for land administered under Te Ture Whenua Māori Act 1993), or the Minister for Māori Crown Relations (for land returned under a Treaty settlement or deed) whichever is relevant, before signing a Notice of Intention to Take Land;
4. Provide that for the purposes of calculating compensation for acquisition, whether by compulsion or agreement, Māori freehold land is valued as if it is general land.
5. Remove the restrictions on the circumstances in which the Māori Land Court can be used for an offer-back.
6. Provide the Māori Land Court with powers to rule on disputes on terms, conditions, and price.

Supporting non-regulatory proposals

1. Updates to LINZ Guidelines on the disposal of land taken for public works
2. Exemptions to offer-backs being posted on the LINZ website
3. Former Māori land would be returned as Māori land by default, unless the owners request it to be general land.
4. Agencies would be required to explicitly consider the interests of former Māori owners when transferring land for another public purpose.

3.2 What criteria, in addition to monetary costs and benefits, have been used to assess the likely impacts of the options under consideration?

The criteria we have used to assess the likely impacts of the options are:

- Effectiveness in terms of
 - Protecting Maori interests relating to Protected Maori Land
 - Removing barriers in the offer back process to former owners of Protected Maori Land
 - Ensuring land remains available for public works for public works where there is no viable alternative;
- Efficiency, and
- Certainty/transparency.

3.3 What other options have been ruled out of scope, or not considered, and why?

- *List the options and briefly explain why they were ruled out of scope or not given further consideration.*

During policy development we considered a number of other options that were not ultimately progressed. Those options were:

1. Binding use agreement

Te Arawhiti proposed a new land tenure option during policy development. It would have meant that acquiring authorities held land in contract with all rights of ownership, but the title remained with the Māori landowners. We sought Crown Law advice on the implications and potential mitigations of this options and considered that the costs outweighed the benefits at this time.

2. Ban on compulsory acquisition

This option was presented to Ministers – it would have ‘rolled out’ the ban on the use of compulsory acquisition that Cabinet previously agreed would apply to Kainga Ora – Homes and Communities [CAB-18-MIN-0399.01 refers]. This option was not recommended by officials and not progressed by Ministers because the potential for negative unintended consequences and impact on the provision of public works was too great.

3. Restricted to certain works

This option would have meant distinguishing between works that were considered to warrant retaining the status quo for Māori land, and those that did not. We did not see a practical way to create this distinction. We note that under the status quo the consent of the Minister for Māori Development is already required if land is required for private housing (section 5 Housing Act 1955).

4. Restricted to certain entities

This option would have meant distinguishing between entities who were able to access the PWA and those who were not, or who could only access the PWA with modifications. We consider that any re-consideration of access to the PWA ought to happen as part of any future review to the PWA and apply to all land.

5. Restricted to new works – status quo for upgrades, maintenance and repair of existing works still permissible.

This option would have meant limiting or restricting the use of compulsory acquisition for new public works – for instance, a new expressway. The status quo or an amended form of the PWA would apply to existing works – for instance, to allow for road alignment of an existing expressway. We concluded that this option would have added compliance and administration costs that would have outweighed any potential benefit.

6. Inclusion of a general Treaty principles clause

We sought advice from the Legislation Design and Advisory Committee on the use of Treaty principles clauses (see section 8 of the Resource Management Act 1991 for an example). Their advice recommended building Treaty-consistent requirements or mechanisms into the operative provisions of the legislation. We consider that the provisions recommended in this package of proposals build Treaty-consistent mechanisms into the PWA. We recommend the

inclusion of a bespoke principles clause to provide clear expectations of the importance of the retention of protected Māori land.

7. Requirements to use the Māori Land Court, without the availability of discretion

The PWA provides for certain parties acting under the PWA to use the Māori Land Court in certain circumstances (such as in undertaking an offer-back of surplus former Māori land). We had considered making it a requirement that the Māori Land Court is used in all cases. We have decided not to progress this option because in some cases it may not meet our objectives. For example, undertaking the offer-back through Land Information New Zealand may be faster than the Māori Land Court where the former owners are already identified.

Amendments to the PWA that would have affected general land (except for general land returned in a Treaty settlement) have been ruled out of scope of this work.

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Section 4: Impact Analysis

Marginal impact: How does each of the options identified at section 3.1 compare with the counterfactual, under each of the criteria set out in section 3.2?

Evaluation criteria		Option 1: Status quo	Option 2: Non-legislative package	Option 3: Legislative package	Option 4: Combination – non-legislative and legislative
Effectiveness (extent to which objectives are met)	Better safeguarding of the interests of owners of Protected Māori Land	0	+	++	++
	Reducing barriers to former owners under the offer back process	0	+	+	++
	Ensuring that land can continue to be acquired for public works where it is required.	0	0	0	+
Efficiency	0	0	-	-	
Certainty/Transparency	0	+	++	++	
Overall assessment	0	+	++	++	

Key:

- ++ much better than doing nothing/the status quo
- + better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

Section 5: Conclusions

5.1 What option, or combination of options, is likely best to address the problem, meet the policy objectives and deliver the highest net benefits?

We recommend progressing the combination option package. Being:

Regulatory proposals

7. include a statement of principles that must be met when negotiating and deciding upon the taking of protected Māori land;
8. require that acquiring authorities exhaust the practicality of taking a lesser interest in land before progressing to take the fee simple;
9. Require that the Minister for Land Information seeks the consent of the Minister for Māori Development (for land administered under Te Ture Whenua Māori Act 1993), or the Minister for Māori Crown Relations (for land returned under a Treaty settlement or deed) whichever is relevant, before signing a Notice of Intention to Take Land;
10. Provide that for the purposes of calculating compensation for acquisition, whether by compulsion or agreement, Māori freehold land is valued as if it is general land.
11. Remove the restrictions on the circumstances in which the Māori Land Court can be used for an offer-back.
12. Provide the Māori Land Court with powers to rule on disputes on terms, conditions, and price.

Supporting non-regulatory proposals

5. Updates to LINZ Guidelines on the disposal of land taken for public works
6. Exemptions to offer-backs being posted on the LINZ website
7. Former Māori land would be returned as Māori land by default, unless the owners request it to be general land.
8. Agencies would be required to explicitly consider the interests of former Māori owners when transferring land for another public purpose.

The impact assessment determined that the combination package and the legislative package have the same impact.

However, not progressing with the combination package will mean that the benefits gained from the options in the non-legislative package will not be realised at all. The primary beneficiaries of the non-legislative package are Māori landowners – there will be little to no impact on acquiring authorities.

Our assessment concludes that the combination package provides for greater benefits than just the legislative package (and much more than just the non-legislative package).

There has been little strong opposition to these options. Acquiring authorities have told us that many of the options on land acquisition align with their existing policies. Māori stakeholders have provided constructive input into how the options could be better defined and more impactful – we have taken these comments into consideration.

5.2 Summary table of costs and benefits of the preferred approach

The costs and benefits analysis of this section applies only to non-monetised costs.

We have not undertaken a cost and benefits analysis of the monetised costs of the preferred approach due to the very high variety of public works undertaken, the unique circumstances that apply in each public work, and the difficulty in predicting future public works that may include protected Māori land.

Non-monetised costs

Acquiring authorities:

Acquiring authorities would need to allow time in their project planning and disposal processes to comply with the new requirements to:

- Exhaust the practicality of lesser interests before progressing to any application for the fee simple, if required.
- On-going time costs associated with managing lesser interests.
- Allow for the Minister for Land Information to seek the consent of the relevant Māori Minister – this may extend the time it takes to receive a Proclamation if one is signed.
- Consider the interests of former Māori land owners before transferring land to another agency;
- Refer to the Māori Land Court if the guidance and standards recommend it.

Land Information New Zealand:

Land Information New Zealand makes certain decisions under delegation from the chief executive, and provides material to the Minister for Land Information to support the Minister to make a decision on a Notice of Intention to Take Land. There would be an increase in the time it takes to prepare a briefing to the Minister for Land Information to include supporting material from the acquiring authority on the exhaustion of lesser interests.

There would also be a time and resourcing cost associated with publishing decisions to exempt former Māori land on the LINZ website.

We also anticipate a potential time cost in guiding accredited suppliers through the new process when they are looking to acquire Māori land on behalf of an acquiring authority.

Māori Land Court:

The proposals to provide additional powers to the Māori Land Court will increase the length of time the Māori Land Court takes to make a ruling, although in the case of rulings on price, this is time that would otherwise be spent at the Land Valuation Tribunal. How long Māori Land Court hearings take to be set and heard vary widely depending on the circumstances.

There may be a small increase in the Court's workload if it receives more orders under section 41 of the PWA (Disposal of former Māori land when no longer required).

Non-monetised administration and legal costs

Acquiring authorities:

Acquiring authorities who take a lesser interest in Māori land – such as a lease – may face an increase in administration costs over the cost of acquiring the fee simple, especially with

respect to lessors. There may also be an increase in legal costs as acquiring authorities seek any advice on the new proposals.

Land Information New Zealand

Land Information New Zealand will face an increase in time and administration costs associated with:

- providing additional information to the Minister for Land Information;
- publishing decisions to exempt former Māori land from an offer-back, and
- updating guidance and standards.

We do not anticipate that these costs will be high due to the low volume of acquisitions and offer-backs of protected Māori land. There is a minor increase in the risk of legal action against the Minister for Land Information at the Environment Court or judicial review if Māori landowners consider there has been a breach of the new proposals.

Non-monetised benefits

The primary beneficiaries of the preferred approach are Māori landowners. Māori landowners would benefit from the retention of their taonga tuku iho (treasure handed down through generations) and the social, cultural and economic benefits that derive from protecting the connection with their whenua.

Similarly, former Māori land owners and their whānau would benefit from being able to buy back their land on more favourable terms/conditions and price.

Where land was not offered-back due to a transfer or exemption, the increase in transparency as a result of these proposals will still be beneficial. It is important to Māori that they know what is happening with land to which they still have a connection even if they no longer own it.

5.3 What other impacts is this approach likely to have?

- *Other likely impacts which cannot be included in the table above, eg because they cannot readily be assigned to a specific stakeholder group, or they cannot clearly be described as costs or benefits*
- *Potential risks and uncertainties*

This approach is likely to uncover historical facts that were previously unknown and may need to be rectified. For example, determining the circumstances in which Māori land was acquired may reveal inequities and injustices that the descendants want addressed. Redress options through Te Arawhiti may be an appropriate mitigation.

There is also a risk that offering protections to certain classes of land encourages others to advocate for similar protections for other classes of land, such as land subject a heritage protection order. We will need to address these issues as they arise.

5.4 Is the preferred option compatible with the Government's 'Expectations for the design of regulatory systems'?

The Government's 'Expectations for the design of regulatory systems' states that agencies are expected to provide "affected and interested parties with appropriate opportunities to comment throughout the process and, in the right circumstances, to participate directly in the regulatory design process" (page 4).

The compressed and targeted consultation we have been able to undertake with affected parties – particularly Māori and local authorities has reduced the opportunity to comment, and there has not been an opportunity for direct participation. We intend to continue to engage with stakeholders in the new year, after Cabinet has considered the Cabinet paper.

Section 6: Implementation and operation

6.1 How will the new arrangements work in practice?

Implementation:

The preferred option would be implemented through:

- changes to the Public Works Act 1981 – following normal parliamentary legislative processes
- Updates to LINZ's Guidelines and Standards: 'The acquisition of land under the Public Works Act 1981' and 'The disposal of land held for a public work'.
- A new page on the LINZ Website (or other website as appropriate) which allows website visitors to view exemptions to offer-backs
- Changes to practice whereby former Maori land which is being offered back will be offered back as Maori land unless the parties to whom it will be offered back declare that it should be another type of land

Both regulatory and non-regulatory proposals are variants of, or codify, processes that LINZ already applies and are therefore within the capacity and capability of LINZ to administer.

Other than LINZ, other Government agencies, network utility operators, and local authorities with responsibilities for public works will be affected by the preferred option.

Any concerns expressed by these parties in respect of their ability to implement the proposed changes will be addressed during the development of the Cabinet Legislation Paper and the drafting of the Bill.

Communications

LINZ will communicate the progress of regulatory and non-regulatory changes to those groups and stakeholders consulted during the preparation of the policy for the changes directly. Proposed communiques would be issued at:

- The time the Bill is introduced
- When Select Committee calls for submissions
- When the Bill is passed

It is proposed a broader range of parties will, subject to Cabinet agreement, be informed through press-releases at the following Cabinet decisions on policy, and when the Bill has passed its third reading.

Transitional arrangements

Both regulatory and non-regulatory proposals would apply to all new actions to acquire or dispose of land under the PWA as upon the Amendment Act receiving Royal assent.

Regulatory proposals would not apply to any pending Notice of Intention to Take Land at the time the Amendment Act receives Royal assent.

Timing of non-regulatory proposals

The proposed timing for implementing proposals is set out below. However, because a number of actions are dependent on when land is being acquired or disposed of, LINZ cannot give a precise timing as to when some of the actions will first occur:

- Work on updating the LINZ Guidelines would be made as soon as policy decisions have been taken by Cabinet
- Work on updating the LINZ website to allow visitors to view exemptions of offer-back will occur post Cabinet decisions, but timing is dependent the next proposals to dispose of land where an exemption is being given
- Changes to practice whereby former Maori land is offered back as Maori freehold land will be as soon as practicable following Cabinet agreement, but is also dependent on the timing of when the next disposal of former Maori land takes place.

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6.2 What are the implementation risks?

The following table outlines other potential risks that may be associated with the implementation of the preferred option in this analysis. These risks have not been included in the main assessment because of their low-likelihood of occurrence and because the parties which may encounter them cannot be determined with any preciseness (such that they remain theoretical risks for the purposes of this analysis).

Risk	Likelihood	Impact	Mitigation
Some public works may not progress.	Unlikely	High	Use the 'last resort' provision which enables acquiring authorities to compulsorily acquire sensitive Māori land where the land and fee simple is required.
Some public works may progress using a less preferred route or site.	Somewhat Unlikely	Modest	Consideration of alternatives is already part of the land designation and acquisition process. If no suitable alternative can be found, and lesser interests have been exhausted then the last resort provision may be used.
Increase in cost to acquiring authorities in undertaking public works (on-going and upfront).	Likely	Modest	The cost of land acquisition is small compared to the total cost of many public works projects. The 'last resort' provision could be used if an agreement cannot be reached, and the Land Valuation Tribunal would settle disputes over compensation. Any increase in the use of leases would increase an acquiring authority's on-going costs which would need to be met by the Crown/local authority.
Significant increase in cost to local authorities pushes them toward or over their debt limit	Likely for some high debt councils	High if councils are in breach of LGFA ¹⁴ debt covenants	Work underway on the Infrastructure Funding and Finance model, and the establishment of special purpose vehicles could address debt limits.
Inefficient administrative burden on acquiring authorities managing disparate estates and tenures in land.	Unlikely	Low	The acquiring authority will be able to consider the practicality of lesser interests when negotiating with land owners. The extent to which a lesser interest is impractical can be determined by the Environment Court.

¹⁴ Local Government Funding Agency

Expectation or desire among landowners of “general land” that the amendments be expanded to include them.	Likely	Low	General land (except general land associated with a Treaty settlement) is out of scope of these amendments. The policy rationale will focus on the Māori / Crown relationship.
The definition of Protected Māori Land does not completely capture all land of significance to Māori.	Unlikely	Modest	The scope of land to be included in these amendments has been deliberately broad so as to capture as much as possible. A final list can be developed during development of the Cabinet Legislation paper and Bill to capture any other land identified.

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Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

- How will you know whether the impacts anticipated actually materialise?
- System-level monitoring and evaluation
- Are there already monitoring and evaluation provisions in place for the system as a whole (ie, the broader legislation within which this arrangement sits)? If so, what are they?
- Are data on system-level impacts already being collected?
- Are data on implementation and operational issues, including enforcement, already being collected?
- New data collection
- Will you need to collect extra data that is not already being collected? Please specify.

Monitoring

The effect of regulatory and non-regulatory proposals that comprise the preferred option will be monitored and analysed as part of systems in place to collect data on the overall LINZ administration and implementation of the Public Works Act 1981 which covers:

- The number of acquisitions made by negotiated agreement;
- The number of Notices of Intention to Take Land which have been issued through LINZ
- Compensation payments made by type

Existing data is proposed to be supplemented by new qualitative and quantitative information as follows:

Proposal to be monitored	Indicator of impact(s)	Source of data
1. Principles to be met when negotiating / taking Maori land	<ul style="list-style-type: none"> • Evidence of principles being considered in materials forwarded to LINZ under the PWA 	<ul style="list-style-type: none"> • Documents forwarded to LINZ from acquiring authorities
2. Lesser interest option must be exhausted before land is taken	<ul style="list-style-type: none"> • Evidence that options to lease land were considered, and reasons why this was not possible, is contained in documents provided to LINZ when land is being acquired • Follow-up qualitative surveys of Maori Land owners asking if option of leasing land was discussed with them, and if so, why this was not practicable 	<ul style="list-style-type: none"> • Documents forwarded to LINZ from acquiring authorities • Surveys of Maori land owners that are subject to acquisition processes under the PWA
3. Consent required from the Minister of Maori Development and Minister for Maori Crown Relations	<ul style="list-style-type: none"> • All applicable applications have written consents from Ministers as required. 	<ul style="list-style-type: none"> • Documentation forwarded to LINZ by acquiring authorities and/or • Consent documentation from relevant Ministers' offices (if not already part of other PWA documentation)
4. Maori land is valued as general land	<ul style="list-style-type: none"> • The basis for valuations in documents provided to LINZ 	<ul style="list-style-type: none"> • Documents supplied to LINZ from acquiring authorities

	either state, or show other evidence that Maori land has been valued as general land	proposing to acquire Maori land under the PWA
5. Removal of restrictions on Maori Land Court to consider offer backs	<ul style="list-style-type: none"> • Number and type of cases before the Maori Land Court that relate to offer back • Number of cases decided for / against the party initiating proceedings 	<ul style="list-style-type: none"> • Maori Land Court records
6. Maori Land Court dispute ruling powers	<ul style="list-style-type: none"> • Number of disputes relating to prices, terms or conditions 	<ul style="list-style-type: none"> • Maori Land Court records
7. Former Maori land returned to Maori as Maori land unless requested	<ul style="list-style-type: none"> • Proportion of offer-backs in which former Maori land is offered back as Maori land 	<ul style="list-style-type: none"> • LINZ records, including title record information
8. The interests of former Māori owners is considered when transferring land for another public purpose	<ul style="list-style-type: none"> • Evidence of the interests of former Maori owners, and their interests have been considered, is contained in documentation prepared by acquiring authorities. 	<ul style="list-style-type: none"> • Documentation forwarded to LINZ from acquiring authorities when a transfer is proposed

In addition to the above, it is also proposed to undertake qualitative surveys of landowner perspectives of the PWA land acquisition process, to assist LINZ and TPK understanding what made landowners come to an agreement to have land acquired (if anything). It is also proposed to undertake pilot research into the historical records of former Māori land in a given location (for example, in Whangārei). This will assist us in understanding the complexities of land records in New Zealand and how feasible it may be to roll the pilot out nationally. The results of the research would be used when undertaking actions such as determining an appropriate price for an offer-back.

Monitoring timing

Monitoring will take place as documentation is received from acquiring authorities expressing their intent to acquire Maori land under the PWA. However, as such acquisitions are relatively infrequent, it is difficult to predict when there will be sufficient information to make an informed analysis on the effect of the proposed change.

To make a reasonably informed assessment of the effect of the change associated with the preferred option, LINZ considers a sample of at least 10 acquisitions / disposals is needed.

7.2 When and how will the new arrangements be reviewed?

The proposals would be reviewed in any subsequent review of the Public Works Act 1981. A regulatory review of the Act was undertaken earlier in 2019, the last full review of the Act was in 2000.

An increase in objections to the Environment Court, or an increase in judicial review may prompt an earlier review. Similarly, if there was strong public pushback to any Māori land identified for taking.

Appendix One: Definition of Protected Maori land

For the purposes of this regulatory impact statement, and the proposals in it, *Protected Maori Land* means:

- 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.

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