

To: Minister for Land Information and Te Minita Whanaketanga Māori**Draft Cabinet Paper: Whenua Māori Public Works Act Amendments**

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| Rā / Date | 28 November 2019 | Kōmakatanga / Classification | In confidence |
| LINZ reference | BRF 20-271 | Whakaarotau / Priority | High |

Ngā mahi e hiahiatia ana / Action sought

| Minitia / Minister | Hohenga / Action | Deadline |
|---|---|------------------|
| Te Minita Whanaketanga Māori The Minister for Land Information | <p>Approve the attached draft Whenua Māori Public Works Act Amendments paper, subject to any amendments you may wish to make;</p> <p>Agree to take the Cabinet paper to the Māori Crown Relations Committee on 3 December;</p> <p>Lodge the Whenua Māori Public Works Act Amendments paper with Cabinet Office by Thursday 28 November.</p> | 28 November 2019 |

Contacts

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Te Tari o te Minitia ki te Whakaoti / Minister's office to complete

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|--|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|
| <p>1 = Was not satisfactory 2 = Fell short of my expectations in some respects 3 = Met my expectations</p> <p>4 = Met and sometimes exceeded my expectations 5 = Greatly exceeded my expectations</p> | | | | | |
| Overall Quality | <input type="checkbox"/> 1 | <input type="checkbox"/> 2 | <input type="checkbox"/> 3 | <input type="checkbox"/> 4 | <input type="checkbox"/> 5 |
| Comments | | | | | |

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| <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 Withdrawn | 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 purpose of this briefing is to provide you with a final Whenua Māori Public Works Act Amendments paper to lodge with the Māori Crown Relations Cabinet Committee (Annex One). Talking points you may wish to use at Cabinet are provided in Annex Two.

The attached Cabinet paper seeks agreement to amend the Public Works Act 1981 (PWA) to minimise the compulsory acquisition of protected Māori land, and improve the offer-back process for the return of former Māori land. The amendments will still enable the Crown and local authorities to undertake and maintain public works.

Pānui whāinga / Key messages

1. The proposals in the cabinet paper represent the next step in TPK's programme of whānau development through a 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. amend Te Ture Whenua Māori Act 1993 (TTWMA) to improve processes for succession to land, dispute resolution and efficiency of the Māori Land Court; and
 - 1.3. amend rating legislation to improve outcomes for Māori land owners.
2. The amendment proposals for the Public Works Act are the final part of the Whenua Māori package. The attached cabinet paper presents a package of proposals to amend the PWA to:
 - 2.1. minimise the compulsory acquisition of protected Māori land;
 - 2.2. improve the process for the return of former Māori land no longer required for public purposes, and
 - 2.3. continue to enable the availability of land for public works.
3. The Whenua Māori (Public Works Act) Amendments paper is intended to be lodged with the Cabinet Office by **10am Thursday 28 November** for consideration by the Māori Crown Relations Committee on 3 December. Hon Eugenie Sage's office will lodge the paper, as the Minister responsible for the PWA.

Tohutohu / Recommendations

It is recommended that joint Ministers:

1. **Approve** the attached final Whenua Māori Public Works Act Amendments Cabinet Paper, subject to any amendments you may wish to make;

2. **Agree** to take the Cabinet Paper to the Māori Crown Relations Committee on 3 December;
3. **Lodge** the Whenua Māori Public Works Act Amendments paper with Cabinet Office by 10am Thursday 28 November; and
4. **Agree** to proactively release the Cabinet Paper.

Ruth Fischer-Smith

Policy Manager, Property and Investment (LINZ)

Rā / Date: / /

Charles Ngaki

Policy Manager, Economic Wealth (TPK)

Rā / Date: / /

Hon Eugenie Sage

Te Minitia mō Toitu te Whenua

Rā / Date: / /

Hon Nanaia Mahuta

Te Minita Whanaketanga Māori

Rā / Date: / /

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Tāpiritanga / Attachments

1. Whenua Māori Public Works Act Amendments cabinet paper
2. Talking points for Minister of Land Information
3. Comment from Ministry of Transport and New Zealand Transport Agency

Te Horopaki / Background

1. 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.
2. You received a first draft of the cabinet paper on 15 November [BRF 20-224 refers]. This was then circulated for ministerial and agency consultation.
3. Since you received the first draft of the cabinet paper, LINZ and TPK have engaged with iwi, hapū, Māori land owners, network utility operators and councils¹.
4. We have been invited back to Whangārei for marae hui in February 2020, to discuss further enacting these amendments in practice. We will work with joint Ministers on appropriate levels of attendance for those hui.

Mātanga kōrero / Engagement and consultation

5. The stakeholder engagement confirmed that, for Māori the offer-back obligations and processes are higher priority, as acquisitions now happen infrequently. Key themes included the need to align these proposals closely with impact on the Māori Land Court and the need to effectively consider the interests of former Māori landowners when transferring land from its original purpose to a significantly different purpose.
6. The response of local councils so far has also been largely supportive of the proposals. Councils raised the importance of broad and consistent communication with all councils, following enactment of these proposals. This will be important for councils to understand their new obligations for processing any transactions involving Māori land.
7. We received clear agency feedback from Te Arawhiti, the Department of Internal Affairs, Ministry of Education, KiwiRail, New Zealand Defence Force, Ministry of Transport and NZTA.
8. Further agencies that received the paper included: Ministry of Health, Department of Corrections, Ministry for the Environment, Ministry of Business, Innovation and

¹ Rotorua, Tauranga, Taupō, Ōpōtiki, Gisborne, Western Bay of Plenty, Wairoa, Whangārei, Far North, and Kaipara

Employment, the State Service Commission, and the Department of the Prime Minister and Cabinet.

9. Many of the issues agencies raised can be addressed during preparation of the Cabinet Legislation paper, such as finalising the principles. We have incorporated the others into the final version of the Cabinet paper.

Comment from the Ministry of Transport and New Zealand Transport Agency

10. The Ministry of Transport (MOT) and NZTA have provided Minister Twyford with their comments, as the transport sector is one that needs to consider or use the PWA with some frequency. Full comments are attached as Annex 3.

11. [s 9(2)(g)(i)]

12. We note that the Minister of Transport may raise these questions at the Cabinet Committee discussion.

Response from Land Information New Zealand

13. We understand that for most transport works the fee simple will always be required.
14. However, there may be instances in which lesser interests are required and we do not wish to remove the possibility of their consideration by progressing with an exemption.
15. We note also that this exemption would also apply to local government as they undertake local roading works. Local government have not raised these concerns.
16. We see these as being issues that can continue to be addressed through legislative design process and/or through operational decisions. For example, we can work with NZTA on a template for use in their applications for protected Māori land to minimise compliance costs.
17. As we evaluate the package of proposals we can consider their impact on transport works and any future reform could include an exemption if that is found to be the most appropriate approach.

Key changes to incorporate feedback for final Cabinet paper

18. We have collated further data on Māori land that has been acquired under the PWA and have updated the cabinet paper with these statistics (paragraph 10).

Direction of the principles to align with Te Ture Whenua Māori Act (TTWMA)

19. To give some clarity to Ministers about the direction of the proposed principles, we have included the draft principles we previously provided to joint Ministers [BRF 20-081].
20. The draft principles read:

This Act (the PWA) recognises that Māori have strong associations with protected lands. Since time immemorial Māori have exercised and continue to exercise control over their lands, resources, and taonga in accordance with tikanga Māori and, consistent with the guarantees given to Māori in Te Tiriti o Waitangi, to protect the right of owners of Māori land to retain, control, occupy, and develop their land as a taonga tuku iho for the benefit of present and future generations of owners, their whānau, and their hapū.

In recognition of the strong association of Māori to protected lands parties with functions, duties and powers under this Act must actively work to balance the need for land for public works with the protection of the interests of owners of protected land to retain, control, occupy, and develop protected land for the benefit of present and future generations.

21. The proposal is to include aspects of the principles into both the preamble and section 18 of the PWA. We will continue to work with yourselves and key agencies to improve the wording of these principles, ahead of the Legislation Committee agreement to the draft Bill. We acknowledge that acquiring authorities need as much clarity and certainty about application of the principles as part of the acquisition process as possible to progress with public works.

Publishing decisions to exempt land from an offer-back

22. The cabinet paper previously recommended that when former Māori land is exempted from an offer-back obligation the decision will be published on the LINZ website. We heard from stakeholders that the LINZ website is not well-known enough for it to be an adequate forum for notifications.
23. Instead, exemption decisions for former Māori land will be published on both the LINZ website and on the National Panui of the Māori Land Court.

Opportunities for future work

24. During consultation two issues were raised which have merit but are out of scope of these reforms. They relate to judges sitting on the Māori Land Court and the PWA's relationship to other legislation. These issues are described in paragraphs 65-70 of the Cabinet paper.

Angawā / Timeframes and next steps

25. This paper will need to be lodged on Thursday 28 November, to be taken to the Cabinet Māori Crown Relations (MCR) on 3 December and Cabinet on 9 December. We have

approval to lodge it later than the usual 10am deadline. We will work with the Minister of Land Information's office to support this process.

26. Following approval from Cabinet we will begin providing drafting instructions to the Parliamentary Counsel Office and working them on the drafting of a Bill.
27. An indicative date for the introduction of a Bill is June 2020.

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Annex One: Whenua Māori Public Works Act Amendments Cabinet paper

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Annex Two: Talking points for Hon Eugenie Sage

Minister of Māori Development introduces the Paper first, as part of the full Whenua Māori reforms (talking points provided separately by Te Puni Kokiri)

Minister for Land Information speaks second – talking points below

- The proposals in this Cabinet paper are the first major improvements to the Public Works Act since 1987.
- This is an opportunity for Government to update the Public Works Act to reflect best practice and more modern thinking.
- Our objectives when developing these proposals are to:
 - protect 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
 - reduce the barriers in the PWA offer back process that restrict former owners of protected Māori land to reconnect with that land and enhance their cultural, social and economic wellbeing
 - ensure the Crown and local authorities are still able to undertake public works and have access and security to the land necessary to complete them.
- These proposals will meet all three of these objectives.
- The Public Works Act gives the Crown the right to compulsorily take land for public works. It has been mis-used in the past – Māori land has been actively targeted and inadequately compensated. Many Māori share stories of land being taken without them even knowing about it.
- A lot has improved since then. I understand that the Crown and local authorities now actively try to avoid taking Māori land, and many others will avoid using compulsory acquisition at all.

- However it is still important to clarify the law in regard to acquisitions, so that all parties have the same and consistent information on how to approach the process. This will best help avoid compulsory acquisitions wherever possible.
- The offer back process is a more contemporary issue for Māori. It is important to them that they have a chance to buy back their land and that the process to do so is simple and transparent.
- The offer-back obligations in the Public Works Act require the Crown and local authorities to offer land they have acquired back to its former owners once it is no longer needed for any public work.

Comments to anticipated questions from Ministers

- Only five per cent of New Zealand's total land area is Māori land. The total number of ownership interests in all Māori land blocks is 2,693,523 with approximately 98 owners per title on average.
- In the past five years three parcels of Maori freehold land have been acquired by agreement. No areas of Maori freehold land were taken compulsorily.
- I understand that there is a particular need for certainty for transport works. Officials are working to reduce the compliance costs associated with exhausting the practicality of lesser interests in land for public roads and railways. This could include support for demonstrating how the practicality of lesser interests have already been exhausted in the application for a compulsory acquisition. Officials will also look at the impact of this package of proposals on the transport sector as part of its evaluation of the amendments.
- We are aware of 3 current acquisitions which include land that might be captured by the reforms – these acquisitions have not been completed.

- One example is an acquisition of land held by a post settlement governance entity (PSGE) returned through a Treaty settlement for a state highway.
- We are also aware of approximately 12 parcels of land that have been offered for return to former Māori land owners since 2010.
- We know that data is often inconsistent or incomplete. We are exploring opportunities to partner across central agencies and with Māori and local government partners to improve access and consistency of our land transaction data.

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Annex Three: Advice to Minister Twyford from Ministry of Transport and New Zealand Transport Agency

Ministry of Transport:

Purpose of this aide memoire

1. Your office has asked for advice on changes to the Public Works Act 1981 (PWA) set out in a Whenua Māori Reforms Package schedule to be considered by MCR on 3 December 2019.

Context

2. The PWA amendments proposed in the Whanau Māori Package aim to minimise compulsory acquisition of Māori land and improve offer-back processes. The Ministerial and Departmental consultation has been undertaken at the same time.
3. The New Zealand Transport Agency (NZTA), KiwiRail and Ministry of Transport (MOT) were asked to comment on the proposals before the departmental consultation, but it is evident from the draft Cabinet paper that the issues raised have not been addressed.

Lesser interest

4. The paper proposes that acquiring authorities exhaust the practicality of taking a lesser interest in protected Māori land² before initiated acquisition processes (Recommendation 6.4 refers). We understand 'lesser interest' would involve a lease or easement where the land reverts to Māori control at a termination date.
5. Land Information New Zealand (LINZ) agree a lesser interest is impractical for roads and other linear transport like railways, but want the duty to consider taking a lesser interest to apply as it may become feasible in the future.

6. [s 9(2)(g)(i)]
[Redacted]

7. [s 9(2)(g)(i)]
[Redacted]

8. [s 9(2)(g)(i)]
[Redacted]

Other issues

9. Other issues raised with LINZ without resolution include lack of clarity around:

² Protected Māori land has been defined broadly. While Māori land has been much reduced, Māori land is still commonly identified in the course of developing transport projects.

³ This has lead to roads taking on some unique characteristics. Public roads have no title and no 'owner'. They can only be closed under the express authority of Parliament.

⁴ NZTA, KiwiRail and local authorities

- a. the role of approving Ministers, including apparent conflicts of interest;
 - b. the role of the Māori Land Court in determining valuations, including the cost of providing the Court with this capability;
 - c. process sequencing, with consultation considered at the end of processes rather than early in processes;
 - d. the ability to transfer interests in land between transport providers.
10. In our view these issues are not as critical as the lesser interest issue, but the paper would benefit from additional work to resolve these uncertainties.

New Zealand Transport Agency:

Whenua Māori Reforms – Package of proposals to amend the Public Works Act 1981 and protect Māori land

26 November 2019

Minister’s office has asked for the Transport Agency’s comments on the proposals in the Whenua Māori Reforms draft Cabinet paper. Minister Sage will be taking the paper to DEV on 3 December and feedback is required by 26 November.

The Transport Agency supports the proposed Whenua Māori Reform amendments to the Public Works Act 1981 (PWA), subject to the following concerns and observations:

Acquisition

- The Transport Agency is committed to applying the principles of the Treaty of Waitangi and only compulsorily acquires Māori land as a matter of last resort.

- [s 9(2)(g)(i)]
[Redacted]

- [s 9(2)(g)(i)]
[Redacted]

- [s 9(2)(g)(i)]
[Redacted]

[s 9(2)(g)(i)]

Disposal

- It will be problematic if network improvements and minor changes in the land transport system trigger an offer back obligation (to the original land owner) where land is transferred between road controlling authorities or is repurposed in minor ways, for example, from being part of a roadway to a bus stop. The Cabinet paper does not address what counts as a 'significant change of purpose' to trigger an offer back obligation. We raise this as an issue to monitor at the LEG Committee stage.

The Transport Agency has raised these issues, and some further procedural matters relating to land valuations, with Land Information New Zealand and is working closely with the Ministry of Transport and other infrastructure agencies to ensure that transport sector concerns are addressed.

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