

To: Minister for Land Information, Te Minita Whanaketanga Māori

Whenua Māori reform: Additional options for acquiring land under the Public Works Act 1981

Rā / Date	18 February 2020	Kōmakatanga / Classification	In confidence
LINZ reference	BRF 20-319	Whakaarotau / Priority	Medium

Ngā mahi e hiahiatia ana / Action sought

Minita / Minister	Hohenga / Action	Deadline
Minister for Land Information	<p>agree to either:</p> <ul style="list-style-type: none"> a. Option A (recommended) – Progress two separate bills (one in 2020 on offer-back, compensation and principles, a second in 2021 on land acquisition); <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> b. Option B – Progress a bill on offer-back, compensation and principles; <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> c. Option C – Report back to Māori Crown Relations Committee and progress a full package; <p>agree that any new land acquisition options would need to be tested with key stakeholders;</p> <p>agree to meet with your Ministerial colleagues to canvas their feedback on your preferred options;</p> <p>forward this paper to the Minister for Māori Crown Relations, the Minister for Treaty Negotiations, and the Minister of Transport; and</p> <p>agree that officials report back on options to follow up engagement with Te Tai Tokerau land owners, once Ministers have taken decisions regarding a bill scope and timing.</p>	<p>3 March 2020</p> <p>To discuss with officials at the next Weekly Meeting on 19 February.</p>
Te Minita Whanaketanga Māori	<p>agree to either:</p> <ul style="list-style-type: none"> a. Option A (recommended) – Progress two separate bills (one in 2020 on offer-back, compensation and principles, a second in 2021 on land acquisition); <p style="text-align: center;">OR</p>	<p>3 March 2020</p>

	<p>b. Option B – Progress a bill on offer-back, compensation and principles;</p> <p style="text-align: center;">OR</p> <p>c. Option C – Report back to Māori Crown Relations Committee and progress a full package;</p> <p>agree that any new land acquisition options would need to be tested with key stakeholders;</p> <p>agree to meet with your Ministerial colleagues to canvas their feedback on your preferred options;</p> <p>forward this paper to the Minister for Māori Crown Relations, the Minister for Treaty Negotiations, and the Minister of Transport; and</p> <p>agree that officials report back on options to follow up engagement with Te Tai Tokerau land owners, once Ministers have taken decisions regarding a bill scope and timing.</p>	
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Contacts

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Te Tari o te Minita 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:										

Pūtake / Purpose statement

This briefing provides you with:

- a. a proposed direction for the Whenua Māori Public Works Act 1981 (PWA) proposal, that will allow a PWA amendment Bill to be introduced in 2020 to enact the gains made thus far in the offer-back, compensation and principles provisions;
- b. updated opportunities to continue policy work on the land acquisition options, to find balance between protecting Māori land and progressing public works;
- c. options and anticipated timelines for the respective options.

Pānui whāinga / Key messages

1. We are ready to progress the offer-back, compensation and principles provisions that were agreed by the Māori-Crown Relations Committee (MCR) on 3 December 2019 [MCR-19-MIN-0054] and confirmed by Cabinet on 9 December 2019 [CAB-19-MIN-0660]. The offer-back amendments in particular were welcomed by Māori land owners during engagement.
2. Following the direction of MCR on 3 December, we have been working closely with key agencies on a revised set of options for land acquisition. These options raise further implementation issues which need to be worked through. The goal remains to find a solution that protects Māori land whilst enabling critical public works. Updated options consider questions such as what types of Māori land, if any, should be able to be compulsorily acquired and what constitutes critical public works.
3. Any update policy options will need to be tested with stakeholders for workability, which will take time. This means that an option to progress the offer-back, compensation, and principles provisions on their own in 2020, may be the most practical way forward. This would ensure that the gains made in the offerback, compensation, and principles provisions would not be lost. During engagement, Māori land owners indicated that the offer-back stage was of particular importance, as it would enable land to come back into Māori hands.
4. Further work could then be undertaken on the outstanding issues that MCR sought further advice on. While this option would mean a bill with further land acquisition proposals would not be introduced until 2021, it would enable updated policy options for land acquisition to be robust and well-considered.

Tohutohu / Recommendations

It is recommended that you:

agree to either (circle one):

- a. **Option A (recommended)** – Progress two separate bills (one in 2020 on offer-back, compensation and principles, a second in 2021 on land acquisition);

OR

- b. **Option B** – Progress a bill on offer-back, compensation and principles;

OR

- c. **Option C** – Report back to Māori Crown Relations Committee and progress a full package;

agree that any new options would need to be tested with key groups;

agree to meet with your Ministerial colleagues to canvas their feedback on your preferred options;

forward this paper to the Minister for Māori Crown Relations, the Minister for Treaty of Waitangi Negotiations, and the Minister of Transport.

agree that officials report back on options to follow up engagement with Te Tai Tokerau land owners, once Ministers have taken decisions regarding a bill scope and timing.

Ruth Fischer-Smith

Policy Manager

Rā / Date: / /

Hon Eugenie Sage

Te Minita mō Toitu te Whenua

Rā / Date: / /

Hiria Pointon
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Rā / Date: / /

Hon Nanaia Mahuta

Te Minita Whanaketanga Māori

Rā / Date: / /

Released under the Official Information Act 1982

Te Horopaki / Background

5. The Whenua Māori Reforms: Proposals to Amend the Public Works Act 1981 Cabinet paper was considered by the MCR on 3 December 2019 [MCR-19-MIN-0054 refers].

Aspects of the proposal have been agreed by MCR

6. MCR agreed to all the offer-back proposals, compensation for compulsory acquisition and the proposal to introduce principles into the PWA [MCR-19-MIN-0054 refers]. Instructions have been provided to the Parliamentary Counsel Office (PCO) to develop a bill to give effect to Cabinet's decisions.
7. Once drafting is complete (estimated mid-March), we could provide you with a draft bill and associated Cabinet paper to submit to the Cabinet Legislation Committee before the House rises. This would mean an amendment bill could be introduced in May/June 2020.

Stakeholders support the proposals agreed by MCR

8. Central government agencies, acquiring authorities, local government and Māori land owners are all supportive of the proposals agreed by MCR. During engagement, Māori land owners in particular indicated that the offer-back stage was value, as it would enable land to come back into Māori hands. As the current amount of Māori land in New Zealand is low, Māori land owners were supportive of the options to improve offer-back provisions. They also support the compensation and principles provisions.

MCR deferred consideration of the land acquisition options

9. MCR deferred consideration of certain proposals regarding land acquisition and directed officials to provide further advice to MCR [MCR-19-MIN-0054 refers]. This referenced recent Cabinet decisions around the Urban Development Authority and the land acquisition regimes that have been proposed in that context.
10. Officials from Land Information New Zealand (LINZ), Te Puni Kōkiri (TPK) have been working closely with the Department of Internal Affairs, the Ministry of Transport and Te Arawhiti have been working together to scope further options for land acquisition that meet the objective of this project – to balance the retention of protected Māori land with the need for certainty for acquiring authorities requiring land for public works.

Officials are developing updated land acquisition options

Analysis of new options

11. There remains a fundamental tension between the ability to compulsorily acquire land and the preamble of the Te Ture Whenua Māori Act 1993, which emphasises the retention of Māori land. Further discussion is needed between officials and Ministers to determine the direction of revised proposals.
12. The options we are now developing offer stronger protections for Māori land than the options presented in the Cabinet paper. This approach goes further in recognising the historical wrongs Māori have faced under the Public Works Act as New Zealand was settled and developed.
13. As we have heard from Māori land owners and stakeholders, whenua Māori cannot be financially compensated and traded in the same way that general land can – it is a taonga tuku iho to be passed on through generations.
14. An approach that prioritises protection therefore ensures those wrongs do not occur again and that a te ao Māori approach is not side-lined in light of renewed focus on infrastructure spending.

15. At the same time, acquiring authorities require certainty in order to be planned and delivered for public benefit. Without certainty, public work projects such as roads or railways may incur significant cost and time delays or achieve suboptimal outcomes.
16. In developing updated options, we have agreed to establish the following workstreams to inform our advice to you, as joint Ministers:

Workstream One – updated options for land acquisition that reflect complexity of issues

- More detailed work to determine the circumstances in which compulsory acquisition may still be absolutely necessary, for example, for nationally or regionally significant infrastructure.
- This workstream will develop updated circumstances and criteria to assess and apply land acquisition approach, including concepts such as ‘value of proposed public works to the community and region’. This could potentially involve an intermediary step to inform acquisition decisions, such as a cross-agency advisory panel that reported to decision-making Ministers).

Workstream Two

- This workstream will develop scenarios involving a range of acquiring authorities, (including territorial authorities) and Maori land owners to test the workability of options. This will ensure options are not too ‘central government-centric’ and allow only workable options to be considered by Ministers. Consultation with local councils will be essential to test the options for workability.
- Scenarios could include NZTA undertaking a state highway work; local authority undertaking a local roading work; requiring authority undertaking linear infrastructure under the RMA; and/or the Ministry of Education undertaking a new school project.

There are three ways to progress

Option A (Recommended): Progress two separate Bills - one in 2020 for offer-back, compensation, and principles, and a secondary Bill in 2021 focussed on land acquisition

17. This option would advance Cabinet-agreed amendments to the PWA related to offer-back, compensation and principles provisions, with a bill ready for introduction in May 2020.
18. As per the workstreams identified above, further work on land acquisition would be undertaken for a potential Public Works Amendment Bill to be introduced in the next Parliamentary term. This would allow officials more time to develop updated options that are robust, workable and balance the various interests in compulsory acquisition and Māori land.
19. Progressing a smaller bill now would progress amendments of significance for Māori land owners. During engagement, Māori land owners indicated that the offer-back stage was of particular importance, as it would establish a clear pathway for land that is no longer needed for public works to come back into Māori hands.
20. Splitting off the acquisition options would mitigate some of the timing concerns that the lack of consensus on the options has raised. If the proposal were to remain as one bill that encompassed the provisions agreed by MCR and those still needing further development, it is possible the bill would not be introduced before the House rises.
21. We seek your direction on whether you are comfortable progressing a standalone bill on the offerback, compensation, and principles provisions for introduction in May 2020, and a second bill on further land acquisition provisions in 2021.

Option B: Progress a Bill on the agreed provisions – offerback, compensation, and principles

22. This option would advance Cabinet-agreed amendments to the PWA related to offer-back, compensation and principles provisions, with a bill ready for introduction in May 2020. This would mean that you, as joint Ministers, advise MCR that further land acquisition options need substantial work, and that they are being deferred for the time being in favour of the already agreed provisions.
23. As land acquisition options have been highly debated, and there has been difficulty reaching a consensus on a workable option, progressing a Bill on the provisions already agreed by MCR will ensure the provisions already agreed by Cabinet are not lost.

Option C: Progress the status quo package as per Cabinet paper

24. This option would progress the full package of options as laid out in the Cabinet paper taken to MCR on 3 December – offer-back, principles, compensation, land acquisition and decision-making.
25. Since MCR have directed officials to provide advice back on the land acquisition options [MCR-19-MIN-0054 refers], you would need to submit a Cabinet policy paper to MCR seeking its agreement to land acquisition options. This could include the options previously submitted to MCR, together with an explanation of how these are still the best options.
26. A bill that covers all the options could then be drafted. We suggest that you speak with the Leader of the House about whether a larger bill could be accommodated in the legislative programme if this is the option you prefer.
27. It is likely that the same issues raised during the previous MCR meeting would be discussed again at a further meeting of MCR. It is possible that MCR may not reach agreement on the land acquisition options and the already agreed provisions would be held up by this delay.

Further consultation required

28. We recommend further testing with stakeholders for any options progressed. This would include officials going back to those that we have consulted in the past with new options. This would include Māori landowner groups, acquiring authorities, and territorial authorities (local councils).

Timing and process

29. Anticipated timelines for the three options are included in the table below.

Option A: Progress two separate bills	Timeframe
Provide advice back to MCR	April 2020
Introduction of first Bill (including offerback, compensation, principles)	May 2020
Additional development of land acquisition options	Early-mid 2020
Extended stakeholder engagement	Late 2020
Introduction of additional Bill (land acquisition option)	2021

Option B: Progress a bill on offer-back, compensation and principles	Timeframe
Provide advice back to MCR	April 2020
Introduction of Bill (including offerback, compensation, principles)	May 2020
Reconsideration of land acquisition options in new parliamentary term	2021

Option C: Report back to Māori Crown Relations Committee and progress a full package	Timeframe
Provide original proposals back to MCR	April 2020
Introduction of Bill (including offerback, compensation, principles, and land acquisition options)	July 2020 (if not delayed by debate on land acquisition options)

Next steps

30. We recommend you meet with each other, as joint Ministers, to discuss the proposals laid out in this paper. We are working with your offices to arrange this.
31. Once you an agreed option between you, we recommend that you schedule a joint ministers meeting with Minister Little, Minster Davis, and Minister Twyford. We can support these conversations by providing a letter alongside the forwarded copy of this paper, or with any other supporting material required.
32. We will report back on options to follow up engagement with Te Tai Tokerau once Ministers have taken decisions regarding a bill scope and timing. This responds to the invitation extended to officials in November 2019 to return for further hui on the proposals being progressed.

