

In Confidence and legal privilege required

Office of the Minister for Land Information

Chair, Cabinet Legislation Committee

Public Works (Whenua Māori) Amendment Bill: Approval for Introduction

Proposal

1. This paper proposes that the Public Works (Whenua Māori) Amendment Bill (the Bill) be approved for introduction to the House of Representatives.
2. The Bill holds a category 4 priority on the 2020 legislative programme: to be referred to select committee in the year.

Background

3. The proposals in this paper are part of the broader package of initiatives designed to support Te Puni Kōkiri's Māori Whenua Programme, with a focus on the Public Works Act 1981 (PWA).
4. The PWA enables land to be acquired for public works, and requires the offer back of land that is no longer needed. It ensures that no land owner will have land taken without compensation but does not adequately recognise the significance of land to Māori or the complexities of Māori land ownership.
5. There is an opportunity to improve the PWA to better facilitate Māori whānau and hapū retaining and regaining their lands, while ensuring land can be acquired for public works when necessary.
6. In December 2019, Cabinet agreed to make some targeted improvements to the PWA and Te Ture Whenua Māori Act 1993 (TTWMA) [CAB-19-MIN-0060 refers]. These changes will facilitate the offering back of former Māori land more effectively and with increased certainty, reduce the likelihood of under-compensation for Māori land owners where land is acquired, and ensure acquiring authorities take account of the association of Māori to land by including principles to the land acquisition process.
7. Targeted consultation with local authorities, Māori leadership groups, and Māori land owners during the development of these proposals indicates the changes are well supported. Consultation made it clear that some time is required to ensure the changes are workable, and for acquiring authorities to adjust their operational practices to meet the new requirements.
8. The Bill does not restrict the ability to take land for public works where necessary, but neither does it fully protect Māori land or comprehensively address issues arising from

Māori land being taken for a public work. Further work needs to be done on outstanding options land acquisition options from the previous Cabinet paper [CAB-19-MIN-0060 refers] to more thoroughly address this issue. Such work could highlight the need for a broader review of the PWA.

Policy

What the Bill does

9. The Bill amends the PWA and TTWMA to:
 - 9.1. Amend the offer back regime to:
 - a) require that the interest of the former Māori land owners be explicitly considered before any transfer of land under section 50 or 52 of the PWA;
 - b) broaden the circumstances in which the chief executive of Land Information New Zealand or the local authority dealing with offer back cases may apply to the Māori Land Court for an order under section 134 of TTWMA;
 - c) provide the Māori Land Court with powers to resolve disputes on price, and the terms and conditions of an offer back of former Māori land;
 - d) require that decisions to exempt former Māori land from an offer back be made publicly available; and
 - e) require that where an offer back of former Māori land is completed the land is returned as Māori freehold land by default, unless the new owners request for the land to be returned in general title.
 - 9.2. Adjust PWA compensation regime to:
 - a) provide that all separately-owned dwellings on a property are compensated when acquired under the PWA; and
 - b) provide for Māori freehold land to be valued as if it were general land for the purposes of compensation; and
 - 9.3. Introduce principles aligning with TTWMA that promotes the retention of protected Māori land.
10. The principles clause in the Bill aligns with the wording in TTWMA's preamble, to create clear expectations and direction on how the Crown ought to treat protected Māori land in the PWA context. The proposed PWA amendment differs in wording to ensure workability with the objectives of the PWA. This approach was supported by the Legislation Design and Advisory Committee (LDAC), which was consulted during the policy development phase.

What the bill does not do

11. This Bill does not:

- 11.1. restrict the ability of the Crown and Local Government to acquire land needed for public works;
- 11.2. address policy proposals for land acquisition that were not agreed by Cabinet [CAB-19-MIN-0660 refers]. Officials are continuing to develop further advice on changes to land acquisition;
- 11.3. impact recent Cabinet Committee (DEV) discussions around PWA changes to support the COVID-19 Recovery (Fast-track consenting) Bill which creates an RMA fast-track process; or
- 11.4. reflect a wider reform of the PWA. I support a future review of the PWA, in order to look at the regime more broadly.

Previous Cabinet decisions

12. Policy decisions were made by the Māori-Crown Relations Committee (MCR) on 3 December 2019. They agreed to offer back, compensation and principles provisions [MCR 19-MIN-0054 refers]. This was confirmed by Cabinet on 9 December 2019 [CAB-19-MIN-0660 refers].

Definition of protected Māori land

13. Cabinet agreed that the land affected by the principles and compensation proposals will include:
 - 13.1. Māori freehold land as defined by TTWMA;
 - 13.2. former Māori freehold land that is owned by a Māori person, or a group of persons of whom a majority are Māori, and that ceased to be Māori freehold land in accordance with:
 - 13.2.1. an order of the Māori Land Court made on or after 1 July 1993; or
 - 13.2.2. a declaration of a change of status that was issued under Part 1 of the Māori Affairs Amendment Act 1967;
 - 13.3. land held by a post-settlement governance entity that was acquired:
 - 13.3.1. as part of a Treaty settlement, or
 - 13.3.2. under a right of first refusal or a deferred selection process agreed in a Treaty settlement;
 - 13.4. 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;

13.5. land constituted as a Māori reserve by or pursuant to the Māori Reserved Land Act 1955;

13.6. land set apart as a Māori reservation under Part 17 of TTWMA; and

13.7. Te Urewera land, as defined in section 7 of Te Urewera Act 2014.

Additional decisions

14. Cabinet authorised the Minister for Māori Development and the Minister for Land Information to make minor and technical policy decisions in the development of the Bill, including the drafting of the principles.

15. I have made a minor and technical change to the definition of protected Māori land in the interpretation section of the PWA to ensure it aligns with that in the Urban Development and Infrastructure Funding and Financing Bill.

Impact analysis

16. A Regulatory Impact Assessment (RIA) was prepared and provided to Cabinet at the time that policy decisions were sought (on 3 December 2019), following review by a Quality Assurance Panel, with representatives from LINZ and the Treasury Regulatory Quality Team [CAB-19-MIN-0679 refers]. The review team considered that the RIA partially met the Quality Assurance criteria.

Compliance

17. The Bill complies with each of the following:

17.1. the principles of the Treaty of Waitangi

17.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993

17.3. the disclosure statement requirement

17.4. the principles and guidelines set out in the Privacy Act 1993

17.5. relevant international standards and obligations.

18. The Ministry of Justice has provided advice to the Attorney-General on the compatibility of the Bill with the New Zealand Bill of Rights Act 1990. If the Attorney General chooses to waive legal privilege to this advice, it will be published on the Ministry of Justice website at: <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/>

19. The Bill complies with LDAC guidelines.

Consultation

20. The following agencies have been consulted on the development of this Cabinet paper: The State Services Commission, The Treasury, The Department of Internal Affairs, Te Arawhiti, Te Puni Kōkiri, The Ministry of Education, The Ministry of

Justice; The Ministry of Transport/Waka Kotahi, New Zealand Transport Agency, and Kiwirail.

21. The Department of Prime Minister and Cabinet was informed.
22. Targeted engagement on the recommended proposals was carried out with Māori leadership groups, Māori land owner groups, local authorities and network utility operators during November 2019. We met with Te Tumu Paeroa (Office of the Māori Trustee) and the New Zealand Māori Council. We held hui with Māori land owners at marae in Rotorua and Whangarei, and with the local authorities those regions. In addition, we met with representative of network utility companies.
23. Further consultation was curtailed by COVID-19. Instead of this consultation, LINZ provided the draft Bill to two iwi policy technicians for comment. The iwi policy technicians are members of the Iwi Chairs Forum with legal expertise including in the Public Works Act. Documents could then be discussed further with Iwi Chair Forum principals.
24. Iwi policy technicians recognised that the Bill makes some gains for Māori, but are clear that the scope of the Bill stops it from addressing important issues for Māori – such as stopping more Māori land being acquired for public works. The iwi policy technicians are concerned that progressing the Bill will delay impetus for more substantive reforms of the Public Works Act in the near future.
25. Iwi policy technicians also provided detailed feedback on the drafting of the Bill. This has not yet been incorporated, but will be considered for inclusion in the departmental report for Select Committee.

Contentious matters

26. This Bill has the potential to be contentious, as it deals with issues of Māori land and public works.
27. Because the Bill does not restrict the ability to take land for public works, those seeking greater protection for Māori land from acquisition may consider that this Bill does not go far enough in providing that protection.

Binding on the Crown

28. The Bill amends the existing PWA, and TTWMA which are already binding on the Crown [MCR-19-MIN-0054 and CAB-19-MIN-0660 refers].
29. The Bill does not propose to create a new agency.

Allocation of decision-making powers

30. The Bill does not affect the allocation of decision-making powers between the executive, the courts and the tribunals. However, it does provide additional powers for the Māori Land Court, as per 9.1(c) above.

Associated regulations

31. Regulations are not required to bring the Bill into operation.

Other instruments

32. The Bill does not include any provision empowering the making of other instruments that are deemed to be legislative instruments or disallowable instruments or both.

Definition of Minister/department

33. The Bill does not amend the current PWA definition of Minister, department (or equivalent government agency) or chief executive of a department (or equivalent position).

Commencement of legislation

34. The Public Works (Whenua Māori) Amendment Bill will come into force 12 months from the day after the date of Royal assent.

Parliamentary stages

35. The Bill holds a category 4 priority on the 2020 legislative programme: to be referred to select committee in the year.
36. However, progress on the Bill has been delayed by Covid-19. In the time available it will only be possible to have it introduced (tabled) before the House rises on 6 August 2020.
37. I propose to refer the Bill to the Māori Affairs Committee and that the Bill be enacted by the end of 2021.

Proactive Release

38. I propose to proactively release this paper and the associated Cabinet policy paper following introduction of the Bill to Parliament, subject to any redactions in accordance with proactive release guidelines, the Official Information Act 1981, and the redaction of any legally privileged content.

Recommendations

The Minister for Land Information recommends that the Committee:

1. **note** the Bill holds a category 4 priority on the 2020 legislative programme: to be referred to select committee in the year.
2. **note** that progress on the Bill has been delayed by Covid-19. In the time available it will only be possible to have it introduced (tabled) before the House rises on 6 August 2020.
3. **note** that the Bill amends the Public Works Act 1981 (PWA) and Te Ture Whenua Māori Act 1993 (TTWMA) to:
 - 3.1. Amend the offer back regime to:
 - a) require that the interest of the former Māori land owners be explicitly considered before any transfer of land under section 50 or 52 of the PWA;
 - b) broaden the circumstances in which the chief executive of Land Information New Zealand or the local authority dealing with offer back cases may apply to the Māori Land Court for an order under section 134 of TTWMA;
 - c) provide the Māori Land Court with powers to resolve disputes on price, and the terms and conditions of an offer back of former Māori land; and
 - d) require that where an offer back of former Māori land is completed the land is returned as Māori freehold land by default, unless the new owners request for the land to be returned in general title.
 - 3.2. Adjust the compensation regime to:
 - a) provide that all separately-owned dwellings on a property are compensated when acquired under the PWA; and
 - b) provide for Māori freehold land to be valued as if it were general land for the purposes of compensation.
 - 3.3. Introduce principles aligning with TTWMA that promotes the retention of protected Māori land.
4. **note** that the Bill as drafted reflects Cabinet policy decisions [CAB-19-MIN-0054 and CAB-19-MIN-0660 refer];
5. **note** that work will be undertaken to address issues with the Bill raised by iwi policy technicians;
6. **note** that further work will be undertaken to consider outstanding issues, including land acquisition options from the previous Cabinet paper [MCR-19-MIN-0054 refers];
7. **approve** the Public Works (Whenua Māori) Amendment Bill for introduction;

8. **agree** that the Bill be introduced from 28 July 2020; and
9. **agree** that the Government propose that the Bill be:
 - 9.1. referred to the Māori Affairs Committee for consideration; and
 - 9.2. enacted by the end of 2021.

Authorised for lodgement

Hon Eugenie Sage
Minister for Land Information

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