

To: Minister for Land Information

## Draft Whenua Māori PWA LEG Paper and Bill – For Ministerial Consultation

<b>Rā / Date</b>	26 June 2020	<b>Kōmakatanga / Classification</b>	In confidence
<b>LINZ reference</b>	BRF 20-649	<b>Whakaarotau / Priority</b>	High

### Ngā mahi e hiahiatia ana / Action sought

<b>Minita / Minister</b>	<b>Hohenga / Action</b>	<b>Deadline</b>
Minister for Land Information, Hon Eugenie Sage	<p><b>Undertake</b> consultation on the draft LEG paper and Bill</p> <p><b>Forward</b> this briefing and attachments to Hon Nanaia Mahuta</p> <p><b>Agree</b> that officials share the draft LEG paper and draft Bill with iwi policy technicians</p>	30 June 2020

### LINZ Contacts

<b>Ingoa / Name</b>	<b>Tūnga / Position</b>	<b>Contact number</b>	<b>First contact</b>
Ruth Fischer-Smith	Manager Policy	0272756448	<input checked="" type="checkbox"/>
Brittany Goodwin	Graduate Policy Advisor	04 474 0908	<input type="checkbox"/>

### 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		
<b>Overall Quality</b>	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5
<b>Comments</b>					
<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 Withdrawn	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 attaches the draft Public Works (Whenua Māori) Amendment Bill (the Bill) and LEG paper for you to forward for Ministerial consultation. We expect an updated version of the Bill from PCO on Monday 29 June.

## Tohutohu / Recommendations

It is recommended that you:

- |  |                  |
|--|------------------|
| 1. <b>undertake</b> consultation on the draft LEG paper and Bill, subject to any changes you wish to make.                                       | Agree / Disagree |
| 2. <b>āmine / agree</b> to forward this briefing and attachments to Hon Nanaia Mahuta  | Agree / Disagree |
| 3. <b>āmine / agree</b> that officials share the Public Works (Whenua Māori) Amendment Bill (the Bill) and LEG paper with iwi policy technicians | Agree / Disagree |

Ruth Fischer-Smith

Manager, Policy

Rā / Date:     /     /

Hon Eugenie Sage

Te Minita mō Toitū te Whenua

Rā / Date:     /     /

## Tāpiritanga / Attachments

**Annex 1:** Draft Public Works (Whenua Māori) Amendment Bill

**Annex 2:** Draft LEG paper

## Te Horopaki / Background

1. In December 2019, Cabinet agreed to a number of changes to the Public Works Act 1981 (PWA) to make the offer back process simpler, more certain and more transparent for Māori [CAB-19-MIN-0660]. It also agreed to update provisions for compensation of Māori land to improve equity and to include principles to consider the association of Māori to land.
2. LINZ and Te Puni Kōkiri (TPK) have worked jointly on the policy proposals and drafting for this Bill [see recent papers BRF 20-306, BRF 20-319, BRF 20-383].
3. You and Hon Mahuta, as the Minister of Māori Development, have agreed that you will sponsor the Bill because the PWA comes under the Land Information portfolio. This means that LINZ leads support for the Cabinet and Bill introduction process, with TPK closely involved.

## A draft Bill and LEG paper are ready for Ministerial Consultation

4. This briefing attaches a draft Bill and Cabinet LEG paper for your review and consultation with your Ministerial colleagues (30 June-13 July).
5. The draft Bill reflects decisions made at Cabinet in December 2019 to better protect Māori interests in land under the PWA. This will be achieved by:
  - 5.1. 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.
  - 5.2. 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
  - 5.3. Introduce principles aligning with TTWMA that promotes the retention of protected Māori land.

## **Mātanga kōrero / Consultation**

6. We have consulted agencies on the LEG paper and the draft Bill paper, and their feedback has been incorporated. This includes: Te Arawhiti, Department of Internal Affairs, Waka Kotahi NZ Transport Agency, Ministry of Education, Kiwirail, Ministry of Transport, Ministry of Justice, the Treasury, Department of Prime Minister and Cabinet, State Services Commission.
7. Departmental comments include:
  - 7.1. DIA provided some minor feedback on issues relating to local government, for example approving that local government is included in definitions of protected Māori land, and noted no significant issues with the drafting of the Bill.
  - 7.2. Waka Kotahi NZ Transport Agency (Waka Kotahi) suggested some wording changes, such as specifying that that an offer back is not required if there is a related or similar public work occurring as a result of a transfer. This has been incorporated into the drafting of the Bill.
  - 7.3. Te Arawhiti provided significant comments on the Bill. We have incorporated suggested wording changes into the drafting where possible, such as in the principles clause to make it stronger.
8. This feedback was incorporated through minor and technical changes to the Bill. No other agencies required changes to the content of the Bill or LEG paper.

### *Some comments from agencies can be addressed in standards and guidelines*

9. We intend to amend the LINZ standards and guidelines for the PWA, to provide further detail on how these changes will work in practice. We are suggesting a 12-month implementation period for the Bill, to allow time to consult internally and externally with affected parties (e.g. local government and acquiring authorities).
10. Waka Kotahi have expressed concern at how the changes in this Bill will be operationalised, which we believe can be addressed in the Standards and guidelines. Waka Kotahi have expressed general comfort with this approach, although their concern remains around the use of the principles clause.
11. We could provide an exposure draft of standards and guidelines to use during the Select Committee process. This provide some further clarity on how changes could work in practice and allow acquiring authorities and transport officials the opportunity to comment on the drafts.

### *Some departmental comments are out of scope for the Cabinet mandate for the Bill*

12. Te Arawhiti provided some comments that were outside of the scope of this Bill. This included changes to the offerback process that would change how the offerback pathways operated. These comments are outside the scope of the Bill because they impact who former Māori land is offered back to. We intend to meet with Te Arawhiti and discuss their feedback and the rationale for anything we were not able to change.
13. Waka Kotahi have recommended wording changes to the principles clause that LINZ and TPK officials believe would weaken the clause. They have concerns that the clause as it is currently

drafted will create less certainty for transport projects. We believe these concerns could be better addressed in the standards and guidelines.

*We suggest consultation with iwi policy technicians*

14. This can mitigate some of the scope concerns raised. It would also build on the relationship we have developed with iwi policy technicians during the PWA fast-track Bill. This has created a feedback loop, and helped iwi feel comfortable about policy decisions being made.
15. We seek your agreement to share the draft Bill and LEG paper with iwi policy technicians. This is important for legislative design and for the Crown as a Treaty of Waitangi partner.
  - 15.1. Te Arawhiti and TPK have strongly recommended we engage with iwi policy technicians to avoid having implications on the Māori Crown relationship.

### **Ngā Tāwhaitanga / Next Steps**

16. Your office will provide the draft Bill and the draft LEG paper to your Ministerial colleagues for consultation from 30 June-13 July. We can support your office with any changes you wish to make.
17. If you agree, we will share the draft LEG paper and Bill with iwi policy technicians during Ministerial consultation. We can incorporate any changes at the same time as Ministerial comments.
18. PCO has advised they should have an updated version of the bill on Monday 29 June. We will forward this in time to support Ministerial consultation.
19. Key timeframes for the Bill are below:

Date	Action
Tuesday 30 June - Monday 13 July	Ministerial consultation
Thursday 16 July	LEG paper lodged
Wednesday 21 July	Cabinet Legislation Committee
Monday 27 July	Cabinet
Tuesday 28 July	Bill can be introduced (tabled)

[ s 9(2)(h) ]

Released under the Official Information Act 1982

**Annex 2:** Draft LEG paper

Released under the Official Information Act 1982