

Further information on the Public Works Act Whenua Māori reforms

Ki / To: Minister for Land Information

Rā / Date: 1 December 2020

Pūtake/Purpose statement

- 1 To provide further information on the Public Works Act Whenua Māori reforms that LINZ has been developing with Te Puni Kōkiri.

Key messages

- 2 The current Whenua Māori reforms to the Public Works Act 1981 (PWA) began as part of Te Puni Kōkiri's Whānau Development through Whenua programme intended to improve outcomes for Māori land owners.
- 3 The Public Works Act (Whenua Māori) Amendment Bill (the Bill) aims to address PWA compensation and disposal issues. This scope reflects that Cabinet agreed to some policy changes and deferred consideration of changes to PWA land acquisition powers [MCR-19-MIN-0054 refers].
- 4 The PWA land acquisition powers are a critical and contentious issue for Māori, including being the source of historic grievances. The powers of compulsory acquisition are also critical for the Crown's ability to undertake public works.
- 5 Targeted engagement identified some risks to the Crown in progressing the Bill as drafted, because:
 - a the gains the Bill provides for Māori may be overshadowed by the lack of tangible protections from compulsory acquisition for Māori land, and
 - b a number of minor policy and drafting matters in the Bill need to be resolved.
- 6 LINZ will provide further advice on the different options for you to proceed with PWA related reforms prior to Parliament's summer recess. This advice will include the Whenua Māori reforms and options for a broader review of the PWA.

Te Horopaki/Background

Origins of the Public Works Act 1981 Whenua Māori reforms

- 7 The current Whenua Māori reforms to the PWA began as part of Te Puni Kōkiri's Whānau Development through Whenua programme intended to improve outcomes for Māori land¹ owners. Enhancements to improve the efficiency and effectiveness of the PWA in relation to non-Māori land were not in scope.

¹ This is wider than Māori freehold land and includes a range of land that might be owned by Māori, including land returned under a Treaty claim settlement.

- 8 The improved outcomes were to be achieved by better recognising the unique characteristics of Māori whenua and the association of Māori with their whenua.
- 9 LINZ took the lead on developing policy proposals for the PWA land acquisition powers while Te Puni Kōkiri led development of policy changes to the disposal processes.
- 10 Targetted engagement on the preferred proposals was carried out with Māori leadership groups, Māori land owner groups, local authorities and network utility operators during November 2019. Te Puni Kōkiri organised hui with Māori land owners at marae in Rotorua and Whangārei, and separate meetings with the local authorities of those areas. The hui with Māori land owners were intended to build on prior consultation around similar PWA reforms (namely during Te Ture Whenua Māori Bill development).
- 11 The engagement highlighted ongoing grievances relating to land acquisition, or land not being returned to former Māori land owners. Despite this underlying sentiment, reactions to the proposed changes were generally positive, particularly in relation to changes to land acquisition and offer back processes.
- 12 Following this engagement, a final package of policy proposals was prepared for Cabinet. The reforms proposed to address – at least in part – Waitangi Tribunal recommendations² relating to the PWA land acquisition and offer back processes.

Separation of the Whenua Māori reforms into two – the current Bill and issues that were deferred by Cabinet

- 13 In December 2019, Cabinet agreed to some elements of the proposed package of PWA policy reforms. The changes that were deferred related to land acquisition powers intended to discourage compulsory acquisition of Māori land and provide extra Ministerial checks³ before compulsory acquisition of Māori land or land returned in a Treaty settlement [MCR-19-MIN-0054 refers]. The key recommendations are set out in **Appendix 1**.
- 14 The policy changes to land acquisition powers were intended to balance the desire to stop (or reduce) instances of Māori land being compulsorily acquired with the need to maintain powers for the Crown (and local government) to acquire land needed for public works – with reasonable certainty and administrative efficiency. However, as LINZ understands it, the land acquisition proposals did not sufficiently achieve this balance.
- 15 In early 2020, the Minister for Land Information and Minister for Māori Development decided to proceed with drafting a bill to progress the changes agreed by Cabinet.
- 16 The aim was to introduce a bill before the end of the Parliamentary term. Drafting was expected to be completed in time to enable stakeholder engagement before introduction, at around March 2020.

² The Waitangi Tribunal has recommended that the PWA be amended to give effect to the principles of the Treaty of Waitangi, as well as recommending changes to land acquisition and offer back processes for Māori land.

³ From the Minister for Māori Development in relation to Māori land or the Minister for Māori Crown Relations: Te Arawhiti, in relation to land that was returned in a Treaty settlement.

- 17 It was intended that work considering changes to land acquisition powers – the matters deferred by Cabinet – would be re-started once a bill was sufficiently progressed. An extended period of stakeholder engagement was considered beneficial to progress any changes to land acquisition powers, given the significant and competing interests. No work on the land acquisition powers has been undertaken since the December 2019 Cabinet decision.

Tūranga/Current status

Public Works (Whenua Māori) Amendment Bill (the Bill)

- 18 A Public Works (Whenua Māori) Amendment Bill (the Bill) has been drafted. The Bill will support the Māori Crown relationship and Māori aspirations to retain and regain Māori land by amending the PWA and the Te Ture Whenua Māori Act 1993 (TTWM) to:
- a improve the offer back processes so that they better recognise the strong association of Māori to land and facilitate the return of former Māori land more effectively,
 - b improve the compensation regime so that it is fairer for Māori land owners and reflects the complex ownership of Māori land, and
 - c introduce principles that must be considered before acquiring land to support the retention of protected Māori land.
- 19 A detailed table setting out what the Bill does is included as **Appendix 2**.

The Bill is paused to consider feedback on risks to the Māori-Crown relationship

- 20 COVID-19 caused a delay to drafting and impacted the planned stakeholder engagement. Consultation was limited to providing the Bill to two iwi policy technicians⁴ for comment, in July 2020.
- 21 The iwi policy technicians' feedback indicated potential risks to the Māori-Crown relationship from the Bill in its current form. One risk was that the gains the Bill provides for Māori could be overshadowed by the lack of tangible protections from compulsory acquisition for Māori land – particularly in comparison to the Urban Development Act 2020⁵. A second risk arose from the drafting of the Bill which illuminated technical issues that LINZ had not previously investigated. A summary of the iwi policy technicians' feedback is included as **Appendix 3**.
- 22 The iwi policy technicians' feedback largely mirrored feedback Te Arawhiti had provided on the Bill through agency consultation.
- 23 After the feedback, Te Puni Kōkiri supported progressing the Bill. Te Puni Kōkiri's perspective was that the Bill would be understood as a first step that provided valuable gains for Māori, and further amendments to the PWA could be considered in the future.

⁴ Iwi policy technicians were originally provided by the National Iwi Chairs Forum to support the Ministry for the Environment Resource Management Act COVID-19 Fast-Track Consenting process. They have legal expertise including in the Public Works Act.

⁵ The Urban Development Act 2020 (UDA) specifies that Māori land may not be compulsorily acquired for a work that Kāinga Ora is undertaking for the purpose of urban development – the details of what land is protected are in sections 16-21, and 250-258 of the UDA.

- 24 In July 2020, the Minister for Land Information determined the Bill was not ready for introduction to Parliament prior to the election. Instead, LINZ was to consider the issues that were raised by iwi policy technicians – particularly those that could be addressed by minor drafting changes to the Bill.

Tūkupu/Comment

LINZ's view of the PWA Whenua Māori reforms

- 25 LINZ supports the intent of the Bill, but considers the drafting issues raised by iwi policy technicians should be thoroughly considered before the Bill would be ready to introduce to Parliament
- 26 The iwi policy technicians are the only group who have provided feedback on the Bill. All prior engagement, including the 2019 hui, was on the broader scoped Whenua Māori reforms – including the land acquisition changes. There may be benefits in some form of wider public consultation on the Bill. This will be considered in our forthcoming advice on the different options to proceed with PWA related reforms.
- 27 Changing land acquisition powers to protect Māori land as part of the targeted Whenua Māori reforms is likely to continue to prove difficult because it remains a contentious issue for Māori and parts of the Crown alike.

Ngā Tāwhaitanga/Next Steps

- 28 LINZ is available to discuss your views on the Whenua Māori reforms.
- 29 LINZ is preparing advice on different options to proceed with PWA related reforms for you to consider during Parliament's summer recess. The advice will consider the Whenua Māori reforms and options for a broader review of the PWA.
- 30 The Public Works Whenua Māori reforms have been a joint effort of LINZ and Te Puni Kōkiri. It may be beneficial to meet with the Minister for Māori Development before deciding how you want to proceed. LINZ can provide you with support for this engagement.

LINZ Whakapā / LINZ Contacts

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Appendix 1

Policy decisions made by Cabinet [MCR-19-MIN-0054 and CAB-19-MIN-0660 refers]

	Agreed	Deferred
Land acquisition (either voluntary acquisition or compulsory acquisition)	All separately owned dwellings on a property are compensated (improves outcomes for Māori land with multiple dwellings) when being acquired (voluntary or compulsorily).	Require the consent of the Minister for Māori Development before compulsory acquisition of Māori land.
	For purposes of compensation under the Public Works Act 1981, Māori freehold land be valued as if it were general land when being acquired (voluntary or compulsorily).	Require the consent of the Minister for Māori Crown Relations: Te Arawhiti before compulsory acquisition of land that was returned in a Treaty settlement.
	Introduce principles aligning with Te Ture Whenua Māori Act that promote the retention of protected Māori land.	Must exhaust the practicality of taking a 'lesser interest' (eg, a long-term lease) in Māori land before compulsory acquisition of land.
Disposal of land (that is not needed for a public work)	Consider the interests of former Māori land owners before repurposing land for another public work.	
	Remove some limitations that stop former Māori land from going through the Māori Land Court offer back process.	
	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.	
	Require decisions to exempt former Māori land from an offer back to be made publicly available.	
	Former Māori land to be offered back as Māori freehold land by default, unless the new owners request for the land to be returned in general title.	

Appendix 2

What does the Bill change?

Area of PWA	Change
Offer back The Bill amends the offer back process to increase transparency and certainty and improve opportunities for Māori to buy their former land via the offer back process.	Transparency will be increased by requiring decisions to exempt former Māori land ⁶ from offer back provisions to be made publicly available, including the rationale for the exemption.
	Where land is already used for public works, the Bill requires the interest of former Māori land owners to be explicitly considered before the land is set apart or transferred to be used for an alternative public work.
	The Māori Land Court is provided with increased powers to resolve disputes on an offer back of former Māori land.
	The Bill also broadens the circumstances when the Māori Land Court can be applied to for an order under section 134 of Te Ture Whenua Māori Act, to reduce administrative complexity.
	The Bill requires that former Māori land be returned as Māori freehold land by default, unless the new owners request for the land to be returned in general title.
Principles for acquisition The Bill introduces principles that promote the retention of protected Māori land in relation to the exercise of land acquisition powers.	The principles require any entity using the Public Works Act to take into account the interests of owners of protected Māori land ⁷ when seeking to acquire Māori land.
Compensation The Bill improves compensation provisions to reduce Māori land owners being under-compensated compared to other land owners.	Compensation is to be paid for all separately-owned dwellings on a property that is acquired.
	Māori freehold land is valued as if it were general land for the purposes of compensation.

⁶ Land that was Māori freehold land at the time it was acquired.

⁷ This is wider than Māori freehold land, and includes a range of land that might be owned by Māori, including land returned under the Treaty claim settlement.

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

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Released under the Official Information Act 1982

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