

BRF 21-450 Minor Changes to Public Works (Whenua Māori) Amendment Bill

Ki / To: Minister for Land Information

Rā / Date: 4 May 2021

Ngā mahi e hiahiatia ana / Action Sought

Minita/Minister	Hohenga/Action	Rā Mutunga/Deadline
Minister for Land Information	āmine/agree to forward this briefing to the Minister for Māori Development	10 May 2021
	āmine/agree to further consultation with iwi policy technicians on the draft of the Public Works (Whenua Māori) Amendment Bill	24 May 2021
Minister for Land Information and Minister for Māori Development	āmine/agree to minor and technical changes to the Public Works (Whenua Māori) Amendment Bill	24 May 2021

LINZ Whakapā / LINZ Contacts

Ingoa/Name	Tūnga/Position	Nama waea/ Contact number	Whakapā tuatahi/ First contact
Jamie Kerr	General Manager, Policy	021 819 826	<input type="checkbox"/>
Simon Skews-Poole	Policy Manager	04 460 0166	<input checked="" type="checkbox"/>
Rosie Parry	Senior Policy Advisor	04 471 6509	<input type="checkbox"/>
Brittany Goodwin	Policy Advisor	04 474 0908	<input type="checkbox"/>

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

Kounga/ Quality	<input type="checkbox"/> 1 Unsatisfactory	<input type="checkbox"/> 2 Fell short of expectations	<input type="checkbox"/> 3 Met expectations	<input type="checkbox"/> 4 Exceeded expectations	<input type="checkbox"/> 5 Greatly exceeded expectations
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Poto kōrero/
Comments

Pūtake/Purpose statement

This paper seeks your agreement to minor and technical changes to the Public Works (Whenua Māori) Amendment Bill (the Bill), following iwi technician feedback on a draft of the Bill in 2020. This briefing is one of two papers on the Public Works Act 1981 reform package. On 4 May, LINZ provided you with a briefing with further information on the Process review [BRF 21-356 refers].

Pānui whāinga/Key messages

- 1 This paper outlines minor and technical changes to the Public Works (Whenua Māori) Amendment Bill (the Bill), following feedback on a draft of the Bill in 2020. Officials undertook further work to understand the issues raised, and now seek agreement to make changes to the Bill.
- 2 As there has been limited consultation on the Bill, LINZ recommends providing an exposure draft to iwi technicians who have previously reviewed it for any additional feedback.

Tohutohu/Recommendations

Minister for Land Information

It is recommended that you:

- | | |
|---|-------------------------|
| 1. āmine/agree to forward this briefing to the Minister for Māori Development | <i>Agree / disagree</i> |
| 2. āmine/agree to further consultation with iwi technicians draft of the Public Works (Whenua Māori) Amendment Bill | <i>Agree / disagree</i> |

Jamie Kerr
Group Manager Policy, LINZ
Rā/date:

Hon Damien O'Connor
Minister for Land Information
Rā/date:

Minister for Land Information and Minister for Māori Development

It is recommended that you:

1. āmine/agree to minor changes to the Public Works (Whenua Māori) Amendment Bill:
 - a) Change the title of the Bill to Public Works (Whenua Māori Offer back, Compensation, and Other Matters) Amendment Bill. *Agree / disagree*
 - b) Remove the definition of 'protected Māori land' from the Interpretation section. *Agree / disagree*

2. āmine/agree to technical changes to the Public Works (Whenua Māori) Amendment Bill:
 - a) Allow Māori Customary Land to be returned via offer back process. *Agree / disagree*
 - b) Allow for land returned through offer back be returned at the status it held when first acquired, unless requested to be returned as general land. *Agree / disagree*
 - c) Before land for public works is transferred or set apart, interests of former owners are considered. Clarify that this includes the intended use of the land when first acquired for a public work. *Agree / disagree*

3. manatu/note that LINZ officials will work with Parliamentary Counsel Office to make the agreed changes to the Public Works (Whenua Māori) Amendment Bill *Agree / disagree*

Hon Damien O'Connor
Minister for Land Information
 Rā/date:



Jamie Kerr
Group Manager Policy, LINZ
 Rā/date:

Hon Willie Jackson
Minister for Māori Development
 Rā/date:

Tāpiritanga/Attachments

1. Draft of Public Works (Whenua Māori) Amendment Bill

Released under the Official Information Act 1982

Te Horopaki/Background

The Public Works (Whenua Māori) Amendment Bill

- 3 Te Puni Kōkiri (TPK) have progressed the Whenua Māori programme, to support whānau to achieve their aspirations for whenua Māori. TPK have advanced three streams of Whenua Māori reform, of which the Public Works (Whenua Māori) Amendment Bill (the Bill) is the third. Some proposals within the Bill stem from the previous Te Ture Whenua Māori Bill 2016, which was extensively consulted on, but did not progress to legislative change.
- 4 In December 2019, Cabinet agreed to make targeted adjustments to the Public Works Act 1981 (PWA) and Te Ture Whenua Māori Act 1993 [MCR-19-MIN-0054 and CAB-19-MIN-0660 refer]. The adjustments would improve the offer back and compensation provisions of the PWA regime and introduce principles aligning with Te Ture Whenua Māori Act 1993 (TTWMA) to promote the retention of protected Māori land. Cabinet deferred consideration of options for land acquisition to allow time for further policy development.
- 5 In early 2020, it was decided to split this work into a Bill on the agreed provisions and undertake further work on the deferred provisions. The Bill on agreed adjustments aims to address compensation and disposal issues in PWA processes, and introduces principles to ensure Māori interests are considered before the acquisition of Māori land. This scope reflects that Cabinet agreed to some policy changes and deferred consideration of changes to wider PWA land acquisition powers.
- 6 Following feedback from iwi policy technicians¹ (policy technicians) on a draft Bill in 2020, we propose minor and technical changes for your approval. LINZ is on track for Cabinet approval of the Bill by July 2021, should no further consultation be required.

Process review of the PWA

- 7 On 26 January, you requested further information on the possible scope and process of a review of the PWA to address specific issues with its design and operation within the current scope of the Act (a Process review). On 10 March, LINZ provided you with initial scope and a possible process for a Process review, and information on the how the Public Works (Whenua Māori) Amendment Bill fits within the Process review package [BRF 21-304]. LINZ recommended that the Public Works (Whenua Māori) Amendment Bill proceed separately from the Process review, and that deferred policy on Māori land acquisition should be in scope of a Process review. On 14 March 2021, you agreed to these recommendations.
- 8 On 4 May, LINZ provided you with a briefing with further information on the Process review [BRF 21-356 refers].

¹ Policy technicians were originally provided by the 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.

Your approval is required to make minor and technical changes to the the Public Works (Whenua Māori) Amendment Bill

- 9 Cabinet has given you and the Minister for Māori Development authority to make minor and technical changes to the draft Bill provided they are consistent with the agreed scope. As the Bill is now held by you, not jointly, TPK have indicated comfort in you signing off changes provided you seek agreement from the Minister for Māori Development.
- 10 LINZ assessed the feedback on the Bill. Some feedback by policy technicians was outside of the scope of the Cabinet decision in December 2019 [MCR-19-MIN-0054 refers] and LINZ has recommended the issues identified, along with land acquisition, be investigated as part of a Process review of the PWA.
- 11 The remaining issues raised by the policy technicians were minor or technical and within the Bill's scope and LINZ recommends you approve these.
- 12 Changes recommended below have been developed based on the policy technicians' feedback and comments from agencies such as Te Arawhiti. The changes will be workable for LINZ.
- 13 There are two minor changes we recommend you make:
- Change the Bill's title to reflect the Bill's scope – to Public Works (Whenua Māori Offer back, Compensation, and Other Matters) Amendment Bill
 - The current title of the Bill reflects the original package of Public Works Whenua Māori changes as presented to Cabinet in 2019. Since then, most aspects of the acquisition package have been split out.
 - Remove the definition of 'protected Māori land' from the interpretation section
 - Cabinet agreed to add a definition of 'protected Māori land' to make it clear which types of land the land acquisition proposals were impacting.
 - Including a definition is no longer required as the Infrastructure Funding and Financing Act 2020, which aligns with the Urban Development Act 2020, has already inserted a definition of 'protected Māori land' into the PWA². LINZ considers that this definition is appropriate in the context of the changes under the Bill, as it achieves the same intent that Cabinet agreed to.
- 14 There are three technical changes we recommend you make:
- Require land to be returned with the same status it held when first acquired, unless the offeree requests it to be returned as general land:
 - Currently, land is returned as general land by default. Cabinet agreed that once offer back of former Māori land is completed, the land is returned as Māori freehold land by default unless the new owners request the land be returned in general title. The intent of this proposal was to give affected Māori owners the opportunity to decide if land is returned as Māori freehold

² There is no policy impact of this definition on PWA processes.

- land or as general land, and reduce the administrative complexity of returning Māori land.
- The recommended change will allow land to also be returned as Māori customary land (unless the owners request otherwise) which is in keeping with the original policy intent.
 - Allow Māori Customary land to be returned via the offer back process:
 - In the current offer back process, there is no statutory provision for land that was Māori customary land when acquired to be returned to former owners, as the offer back process only formally facilitates return of land that was Māori freehold land or general land owned by Māori when acquired. This change would embed current informal practice into the PWA.
 - Clarify that before land is transferred or set apart for another public work, the interests of affected former owners and the original purpose of the land was taken for is considered.
 - Cabinet agreed that the PWA be amended to require that the interests of the affected former Māori owners be explicitly considered before any transfer or setting apart of land for another public work. This applies to land that had previous been taken for a public work, or other Crown land that is to be set apart for a public work. This will result in some additional administrative complexity for disposing agencies.
 - This change will clarify that the decision-maker will consider the public work that the land was originally acquired for and whether this affects the proposed transfer or setting apart – for example acquiring land for a school and transferring for an alternative purpose, such as to build a prison.
 - Māori have long held concerns about the return of land held for public work no longer required for its original public work purpose, and this change should make the process more transparent.

Risks with the Bill

- 15 Engagement with Māori has not been comprehensive, and there is a risk the government could be criticised for this. There was consultation on the Te Ture Whenua Māori Bill 2016, which contained some provisions included in the Bill, but did not proceed to legislative change³. The broader Whenua Māori programme has included consultation on the two earlier amendments related to Māori land. Consultation on the draft PWA Whenua Māori policy occurred in November 2019 with Māori landowners in Whangārei and Rotorua, prior to the Cabinet policy decisions. However, Māori groups who were consulted are not representative of the opinion of all Māori.

³ Local Government (Rating of Whenua Māori) Amendment Act and Te Ture Whenua Māori (Succession, Dispute Resolution, and Related Matters) Amendment Act

- 16 COVID-19 impacted the planned stakeholder engagement following the Cabinet decision to split out land acquisition from the Bill. Consultation on the draft Bill was limited to providing the Bill to policy technicians from the Iwi Chairs Forum and relevant agencies⁴ for comment, in July 2020. It is likely that Māori groups and Māori affected owners in general who were not consulted will have comments on the proposed amendments.
- 17 There is also a risk that the Bill is perceived as not addressing issues of significance to Māori and that issues raised by the iwi technicians which have not been able to be incorporated within the Bill will be raised again at Select Committee. As the Process review has Māori land acquisition in scope, and other Māori land process issues, this risk can be lessened through clear messaging about the review. If a Process review does not proceed, the risk would be heightened.

Mātanga kōrero/Consultation

- 18 Waka Kotahi, Te Arawhiti, Ministry of Transport, Te Puni Kōkiri, and the Ministry of Housing and Urban Development, have been consulted on this paper. The Department of Internal Affairs have been informed of this paper.
- 19 There is an opportunity for further engagement with Māori on the draft Bill, to mitigate the risks outlined above. LINZ recommends going back to policy technicians who commented on the draft Bill in 2020. By providing them with an updated version of the Bill they will see how their feedback has been reflected and be able to provide any further technical comments on the Bill. As you have indicated an interest in speaking to iwi technicians about the Process review, this conversation could also encompass the Bill.
- 20 An alternative approach could be targeted engagement with other Māori organisations or more comprehensive hui across the country. However, as the Bill is governed by the mandate of the Cabinet directive, there would not be opportunity to make substantive changes to the Bill in response to feedback.
- 21 Either approach would involve an increase in timeframes for the Bill. Consultation with policy technicians could be completed by July 2021, while more extensive consultation would significantly delay the Bill.
- 22 LINZ would discuss with Te Arawhiti the approach to any engagement.

Ngā Tāwhaitanga/Next Steps and angawā/timeframes

- 23 A bid for the Bill was submitted as part of the 2021 legislative bids process, which you signed off 29 January 2021 [BRF 21-243 refers]. The legislative bid recommended

⁴ Te Arawhiti, Te Puni Kōkiri, Ministry of Transport, Ministry of Housing and Urban Development, Waka Kotahi NZ Transport Agency, Ministry of Justice, Ministry of Education, Department of Internal Affairs, Kiwirail, Department of Prime Minister and Cabinet

Category 4 priority – to be referred to a select committee in the year. The progress of the Bill is on track to meet the revised timeframe of referral to select committee this year.

- 24 If you agree to the changes suggested above, LINZ officials will work with Parliamentary Counsel Office to update the Bill.
- 25 Indicative timeframes for the Bill if further consultation with policy technicians occurs:

Date	Action
May-July 2021	Consultation on draft Bill
August-September 2021	Bill finalised with PCO
October 2021	Cabinet Approval
November 2021	Introduction of the Bill to Parliament
December 2021- August 2022	Select Committee process
Late-2022	Date of enactment

[s 9(2)(h)]

[Redacted]

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