

BRF 23-182 Updating Public Works Act Standards and Guidelines to enhance dealings with Māori landowners

Ki / To: Minister for Land Information

Rā / Date: 8 December 2022

Ngā mahi e hiahiatia ana / Action Sought

Minita/Minister	Hohenga/Action	Rā Mutunga/Deadline
Minister for Land Information	Note that LINZ will update its operational Standards and Guidelines to improve the fairness of the Public Works Act process for Māori landowners	13 January 2023

Toitū Te Whenua LINZ Whakapā / Contacts

Ingoa/Name	Tūnga/Position	Nama waea/ Contact number	Whakapā tuatahi/ First contact
Dan White	Policy Manager	04 460 0147	<input checked="" type="checkbox"/>
Nileema Narayan	Policy Advisor	04 471 7333	<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

To inform you of non-legislative measures Toitū Te Whenua Land Information New Zealand (LINZ) will take to advance some of the policy objectives of the deferred Public Works (Whenua Māori, Offer Back, Compensation, and Other Matters) Amendment Bill.

Pānui whāinga/Key messages

- 1 LINZ is undertaking a routine review of its regulatory Standards and Guidelines that inform the acquisition and disposal of land under the PWA. Initial work focusing on the "Standard for the disposal of land held for a public work" and its accompanying Guideline is due to be completed in the first half of 2023.
- 2 A second tranche of work focusing on the "Standard for the acquisition of land under the Public Works Act 1981" and its Guideline will commence in mid-2023.
- 3 To improve the fairness of the PWA process for Māori landowners, LINZ will use the review of the Standards and Guidelines to progress some of the changes proposed under the deferred Public Works (Whenua Māori Offer Back, Compensation, and Other Matters) Amendment Bill.
- 4 However, some of the anticipated changes may not be achievable to the same extent as proposed in the Bill as the Standards and Guidelines will need to comply with the PWA in its current form.
- 5 LINZ has identified other non-legislative measures to implement other aspects of the Bill, or otherwise contribute to improving procedural fairness in the treatment of Māori land. These include reviewing compensation for all landowners who have dwellings acquired under the PWA and reviewing the Gifted Lands Policy.
- 6 LINZ will report to you following completion of the review of the Standard for the disposal of land held for a public work" and its accompanying Guideline

Tohutohu/Recommendations

It is recommended that you:

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| 1. manatu/note that LINZ is updating its Public Works Act Standards and Guidelines | <i>Noted</i> |
| 2. manatu/note that some of the policy objectives in the Public Works (Whenua Māori Offer Back, Compensation, and Other Matters) Amendment Bill will be progressed through Standards and Guidelines | <i>Noted</i> |
| 3. manatu/note that LINZ will review the additional compensation paid for notified dwellings on land acquired under the Public Works Act | <i>Noted</i> |

- 4. manatu/note that LINZ will review and provide you with advice on updating the Gifted Lands Policy as an additional measure to improve the treatment of Māori land *Noted*

- 5. manatu/note that LINZ will update you once the work on the update of the "Standard for the acquisition of land under the Public Works Act 1981" has been completed *Noted*



Daniel White

Policy Manager, Toitū Te Whenua LINZ

Rā/date: 8/12/2022

Hon Damien O'Connor

Te Minita mō Toitū te Whenua

Rā/date:

Released under the Official Information Act 1982

Te Horopaki/Background

- 1 On 13 November 2022 you approved the legislation bid from the Land Information portfolio for 2023. This confirmed that the Public Works (Whenua Māori, Offer Back, Compensation, and Other Matters) Amendment Bill (the Bill) will not be included in the legislation programme for 2023.
- 2 The Bill intended to improve the fairness of the PWA process when dealing with Māori land. LINZ is now investigating options to progress some of the policy objectives of the Bill through non-legislative means, while noting that this approach has limitations over amending the PWA directly.

Some objectives of the Bill can be progressed through PWA Standards and Guidelines

- 3 As part of its regulatory stewardship role, LINZ has issued two sets of regulatory Standards and associated Guidelines for the acquisition and disposal of land under the PWA. These are:
 - a the “Standard for disposal of land held for a public work” (Disposal Standard) and Guideline; and
 - b the “Standard for the acquisition of land under the Public Works Act 1981” (Acquisition Standard) and Guideline.
- 4 The purpose of the Standards is to enable the Minister for Land Information (for acquisitions) or LINZ (for disposals) to assess legal compliance with the PWA. The corresponding Guidelines complements the Standards by instructing Crown agencies and accredited suppliers on how to best undertake PWA acquisitions and disposals. Some local authorities voluntarily choose to apply the Standards and Guidelines as best practice.
- 5 Both sets of Standards and Guidelines are due for review. The Disposal Standard and Guideline were last reviewed in 2009. The Acquisition Standard and Guideline were last reviewed in 2017.
- 6 LINZ has begun to review the Disposal Standard and Guideline. This is due to be completed in the first half of 2023. LINZ will undertake a review of the Acquisitions Standard and Guideline from mid-2023.
- 7 Some of the changes in the Bill relate to improving procedural fairness in the treatment of Māori land by Crown agencies and accredited suppliers. LINZ considers that several of these can be implemented through the review of the Standards and Guidelines. These are:
 - a issuing guidance on how Crown agencies can return Māori land in the status it was held immediately prior to its taking for a public work;
 - b issuing guidance on how the interests of former Māori landowners can be considered when land is transferred from one public work to another; and
 - c consider how principles which recognise Māori land as taonga tuku iho could be incorporated into the Acquisition Standard and Guideline.
- 8 The Bill also proposed to amend the PWA to provide for Māori freehold land to be valued as if it were general land for the purposes of compensation under the PWA. LINZ is considering

options to achieve this operationally through standards, guidelines, or instructions to valuers.

Implementing aspects of the Bill through Standards and Guidelines has limitations

- 9 While LINZ intends to capture the changes set out above within the updated PWA Standards and Guidelines, the extent to which this is possible depends on compliance with the PWA and the outcome of stakeholder consultation. It is likely that some of the anticipated changes may not be achievable to the same extent as proposed in the Bill.
- 10 Local authorities exercise their powers under the PWA separately to the Crown. LINZ cannot require them to comply with the Standards and Guidelines. However, LINZ will consider undertaking an engagement programme to increase the visibility of the updated Standards and Guidelines to encourage their adoption by local authorities.
- 11 LINZ will consult with key Crown agencies when updating the Standards. It will invite Te Puni Kōkiri (as co-developer of the proposals in the Bill) to comment on the draft documents before they are finalised. LINZ will also undertake targeted consultation with key stakeholders (including the Iwi Technicians Group who were consulted during the preparation of the Bill) and plans to ensure policy objectives have been addressed, as far as possible.

LINZ will investigate the possibility of progressing some objectives of the Bill through other non-legislative means

- 12 The Bill would have broadened the circumstances in which an offer back of land can be referred to the Māori Land Court (MLC). The MLC could then determine offer back matters such as who the land should be returned to (which is less restrictive than who land can be offered back to under the PWA's legislative requirements).
- 13 While it is not possible to achieve this objective through PWA Standards and Guidelines, LINZ will consider how to progress alternative options for the return of Māori land through referral to the MLC outside the PWA. This includes considering recent case law that holds that the Chief Executive of LINZ is not, in certain cases, restricted to using s41 which allows for the offer back in certain circumstances to be referred to the MLC.
- 14 Section 72 of the PWA allows for additional compensation of up to \$50,000 to be paid to landowners if there are dwellings on the land. The Bill would have amended the PWA compensation regime to provide compensation for each individual dwelling when there are multiple dwellings on the land. This situation is more likely to occur on Māori freehold land.

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



Some objectives of the Bill cannot be progressed without legislation

16 The Bill would have provided greater jurisdiction to the MLC to resolve disputes under the PWA offer back process. This includes determining who land should be offered back to, and setting the price to be paid for the land. At present, the MLC can only confirm the purchase price specified by the agency that has applied to the MLC. The jurisdiction of the MLC can only be changed through legislation. [s 9(2)(g)(i)]

[Redacted text block]

17 The Bill would have facilitated the offer back of Māori customary land. The PWA offer back process does not allow for Māori customary land to be returned in the status it was held when it was first taken or acquired. However, as there are no known cases of Māori customary land being taken or acquired under the PWA, or under earlier versions of the PWA, there is a low probability of this issue arising.

Other non-legislative measures to improve fairness for Māori landowners

18 Consistent with the spirit of the Bill, LINZ has identified an additional opportunity to improve procedural fairness by modernising the Gifted Lands Policy (GLP). The GLP deals with the disposal of land, including Māori land, which was gifted to the Crown by the former landowner. The GLP provides for gifted land to be returned at nil cost. The offeree pays for the value of any Crown improvements (such as buildings) that remain on the land.

19 The GLP was approved by Cabinet in 1995 and predates most Treaty claims settlements. Given that the GLP has not been substantially reviewed since 1995, there is an opportunity to modernise the GLP to better facilitate the return of Māori land subject to Cabinet approval.

Ngā Tāwhaitanga/Next Steps

20 An indicative timeline for the key actions is below:

Action	Timeframe
Disposals Standard and Guideline	Review underway with completion and publication in the first half of 2023.
Review of additional compensation for dwellings	Process to begin in the first half of 2023. Advice to be provided to Ministers mid-2023 if required.
Review of Gifted Lands Policy	
Acquisition Standard and Guideline	Review to commence in the second half of 2023 and is estimated to take 18 months to complete.

21 LINZ will report to you following completion of the update to the “Standard for the acquisition of land under the Public Works Act 1981” and its Guideline.