



Guideline for disposal of land held for a public work

LINZG15700

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Terms and definitions

Introduction For the purposes of this guideline the following terms and definitions apply.

Term/ Abbreviation	Definition
acquiring agency	a Crown agency or local authority that wishes to acquire land for a public work
beneficially entitled person	the donor of gifted land, or, where the donor has died, the person who benefits from the donor's estate at the time of death or subsequently, including those determined as entitled successors by the Māori Land Court
CE	Chief Executive of LINZ
Clearances	business group of LINZ Property Regulatory Group charged with making statutory decisions on work received from Crown property accredited suppliers
CMV	current market value
computer register	as defined in s 4 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 and created by the Registrar-General of Land under ss 7 to 14 of that Act; formerly known as certificate of title
Crown entity	as defined in s 7(1) of the Crown Entities Act 2004
Crown property accredited supplier	a private sector supplier of Crown property services, accredited by LINZ, and contracted by a vendor agency
disposal process	the process for disposing of land, including all relevant legislative and government policy requirements, that must be complied with once a vendor agency determines it no longer requires land for a public work
DOC	Department of Conservation

Term/ Abbreviation	Definition
donor	with reference to the GLP, the donor is the person who gifted the land, or if that person has died, is the beneficially entitled person who benefits from that person's estate at the time of death or subsequently, including those entitled successors as determined by the Māori Land Court.
Fenton Agreement	an agreement which under Ngati Whakaue gifted areas of land to the Crown in the 1880s for Rotorua township
former owner	the person from whom the land was acquired for a public work
GLP	gifted land policy
lawyer	as defined in s 6 of the Lawyers and Conveyancers Act 2006
LINZ	Land Information New Zealand
local authority	as defined in s 2 of the PWA
LVT	Land Valuation Tribunal
offer back	the requirement under s 40(2) of the PWA to offer to sell land that is no longer required for a public work by private contract to the person from whom it was acquired or the successor of that person
OTS	Office of Treaty Settlements
party	includes all natural and legal persons and other organisations and entities
PWA	Public Works Act 1981
Registrar-General of Land	the Registrar-General of Land appointed under s 4 of the Land Transfer Act 1952
RGL	Registrar-General of Land
right of first refusal	in Treaty settlements this is the right of an iwi to receive the first offer of land, before it is disposed of on the open market
RMA	Resource Management Act 1991

Term/ Abbreviation	Definition
s 40	section 40 of the PWA, including the requirement under s 40(2) of the PWA to offer to sell land that is no longer required for a public work by private contract to the person from whom it was acquired or the successor of that person
standard	LINZS15000: Standard for disposal of land held for a public work
successor	as defined in s 40(5) of the PWA
successor in title	the current owner of land that remains after part of its original title has been acquired for public works and subsequently declared surplus
territorial authority	as defined in s 5(1) of the Local Government Act 2002
Treaty	Treaty of Waitangi
Treaty settlement	an agreement between the Crown and a Māori claimant group to settle all of that claimant group's historical claims against the Crown, and includes Treaty settlement legislation and a Deed of Settlement
vendor agency	a Crown agency disposing of land under the PWA, including a Crown property accredited supplier that a vendor agency has contracted to dispose of the land

Foreword

Introduction The Public Works Act 1981 (PWA) sets out the procedures for disposing of land that was originally acquired for a public work but is no longer required for that public work. It ensures that those who have a recognised interest in the land are given priority when the land is disposed of.

Purpose Crown Property Regulatory of Land Information New Zealand has issued this guideline to complement *LINZS15000: Standard for disposal of land held for a public work*, by expanding on content and providing examples about the disposal process.

The area of interest is the disposal of land that was acquired for a public work and is no longer required for that purpose or for any other public work. It is important that recognised interests in the land be addressed in order of priority and using the correct processes.

Scope This guideline provides guidance and best practice in the processes for disposal of land held by the Crown under the PWA, and on the information required by Land Information New Zealand (LINZ) to enable it to fulfil its statutory obligations.

This guideline does not apply to Crown land held under the Land Act 1948.

Intended use of guideline This guideline is intended to assist vendor agencies when disposing of land under the PWA.

Continued on next page

Foreword, continued

References

It is intended that this guideline be read in conjunction with:

LINZ 2009, *LINZS15000: Standard for disposal of land held for a public work*, Crown Property Regulatory, LINZ, Wellington

LINZ 2009, *LINZS15001: Standard for Treaty of Waitangi settlement requirements for Crown land disposal*, Crown Property Regulatory, LINZ, Wellington

LINZ 2009, *LINZS15002: Standard for resumption and stopping of road*, Crown Property Regulatory, LINZ, Wellington

LINZ 2005, *Standard for the acquisition of land under the Public Works Act 1981*, Property Regulatory Group, LINZ, Wellington

Local Government Act 1974

Public Works Act 1981

Resource Management Act 1991

Te Ture Whenua Māori Act 1993

1. Provision of work to LINZ

Refer to Section 5.2 of the standard

Delegation of functions The Minister for Land Information, acting for the Minister of Lands, and the Chief Executive of LINZ (CE) have statutory powers under the PWA when dealing with land held by the Crown for public works.

References to LINZ in the standard should, unless otherwise advised, be considered to refer to the Manager Clearances, who acts under delegation from the Minister and the CE.

Address for provision of work All work that is submitted to LINZ for a statutory decision under the PWA and related legislation should be addressed to the following:

Manager Clearances
Land Information New Zealand
PO Box 5501
Wellington 6145

2. Potential requirement for another public work

Refer to Section 5.1(b) of the standard

Legislation Section 40(2) of the PWA only applies if the conditions in s 40(1) of the PWA have been met. One of these conditions is that the land is not required for any other public work.

If the land is required for another public work, then ss 50 and 52 of the PWA provide the mechanisms to effect the change to a new public work status.

Guideline The words 'required for any other public work' 'in s 40(1)(b) of the PWA should be interpreted to mean:

- (a) the land has been designated for another public work, or
 - (b) written notification has been given to the vendor agency that the land is needed for another public work, and
 - (c) the acquiring agency has demonstrated that there is an actual need for the land, or
 - (d) the acquiring agency has demonstrated that the land will be used for the proposed purpose, within a reasonable timeframe.
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Competing public work use

A vendor agency may agree to allow the land to be transferred, acknowledging another public work has precedence, but should that work not proceed, the current public work requirement remains – so the land is technically not surplus. For example, it is agreed to make the land available from a school for a road.

3. Setting apart under s 52 of the PWA

Refer to Section 6 of the standard

Legislation Section 52 of the PWA

Application of section 52 Section 52 applies where there is a change in purpose for which land is held. It does not apply to a change in proprietorship, which is achieved through s 50 of the PWA.

Guideline Vendor agencies sign an agreement and do not need to refer the agreement to LINZ. However, the vendor agency will need to provide a copy of the agreement when seeking execution of a gazette by LINZ to give effect to the agreement.

4. Land used for successive public works

Refer to Section 8.3 of the standard

Policy Where land has been used for a number of public works, there should be research back to the first acquisition of the land for a public work to determine if there are any possible former owners.

Application of section 40 If land was held for a public work, then declared Crown land after the introduction of the PWA on 1 February 1982, then set apart for a public work, and is no longer required, then s 40 should be considered for the first holding of the land as a public work.

5. Exemption from the requirement to offer back

Refer to Section 8 of the standard

Legislation Unless there are grounds for exemption under ss 40(2), (3), and (4) of the PWA, the CE, when disposing of land formerly held for a public work, must offer to sell the land to the person from whom it was acquired or their successor (offer back).

Case law The offer back and exemption process has been the subject of a number of significant legal challenges. Therefore the grounds for exemption must also be read along with the latest case law interpreting the relevant statutory provisions.

Guideline The facts of each case should be examined and dealt with on their own merits before reaching a conclusion.

If there is doubt that the exemptions from the requirement to offer back apply, then a recommendation to LINZ to make an offer under s 40(2) of the PWA should be made.

In this section This section contains guidelines on the following grounds for exemption from the requirement to offer back.

Ground for exemption	Legislation	See page
Impracticable to offer back	s 40(2)(a)	16
Unreasonable or unfair to offer back	s 40(2)(a)	18
Significant change in the character of the land	s 40(2)(b)	19
The land was acquired after 31 January 1982 and before 1 April 1988 for a public work that was not an essential work	s 40(3)	22

6. Impracticable to offer back

Refer to Sections 8 and 9 of the standard

Legislation Section 40(2)(a) of the PWA

Examples This section contains some examples of when it may be impracticable to make an offer back.

Example	See page
The former owner was a now defunct company	17
The former owner and their successors have died	17
Cannot offer back original parcels	17
The Crown cannot create a separate computer register	17

Continued on next page

Impracticable to offer back, continued

Former owner now a defunct company

If the land was acquired from a company that has since been wound up or dissolved, the vendor agency should ensure that the company has not merely changed its name or amalgamated with another company.

Former owner and successors have died

A lawyer without connection to the will maker should interpret the will for identification of a successor.

Care should be taken where only part of a person's land was originally acquired for a public work. The vendor agency should not overlook the requirement to apply the offer back provisions to the successor in title, if applicable.

Cannot offer back original parcels

The current land use, or the permanency and substantial nature of an improvement or its value, may make it impracticable to offer back the original parcels of land.

<p>Example</p>
<p>The situation could arise where the Crown has acquired several parcels of land from different owners and amalgamated these into one computer register before building substantial improvements that now straddle the original parcel boundaries.</p> <p>This may lead to an exemption from the requirement to offer back on the grounds that it would be impracticable to subdivide the land.</p> <p>However, if the improvements are not substantial or permanent, then demolition or sale for removal could be a practical option for the vendor agency to take, resulting in an offer back of the land under s 40(2) of the PWA.</p>

Crown cannot create a separate computer register

The rules applying to the land may be such that a separate computer register cannot be created. In some cases a territorial authority will only give subdivision consent subject to an amalgamation with adjoining land.

7. Unreasonable or unfair to offer back

Refer to Section 8 of the standard

Legislation Section 40(2)(a) of the PWA

General Under the PWA, the decision about what is 'unreasonable or unfair' rests with the CE.

To build a case, evidence on the individual merits of the case will need to be provided. Some examples of when it may be unreasonable or unfair to make an offer back are as follows.

History of acquisition discloses information

The history of acquisition may disclose if there was any compulsion involved or any outstanding agreements that should be taken into account in assessing whether it would be unreasonable or unfair for the Crown to offer back the land. For example, to show there was no compulsion, the vendor agency could provide evidence that the property had been on the open market for a length of time.

Acquisition at owner's insistence

If, at the owner's insistence, an entire property was purchased, even though only part of it was required for the public work, an exemption may be appropriate for the residual land, if that land was not used for the public work.

Pre-1982 agreement to sell land

The Crown may have entered into an agreement to sell the land before the PWA came into force on 1 February 1982. It may be appropriate to apply an exemption if the Crown could be in breach of such an agreement by offering back the land.

Land was Crown land before public work

In some cases the land may have been Crown land before first being held for a public work. In these cases it would usually be appropriate to apply for an exemption from offer back on the grounds of unreasonableness. The Crown need not offer back to itself.

8. Significant change in the character of the land

Refer to Section 8 of the standard

Legislation Section 40(2)(b) of the PWA

In this section This section contains the following topics.

Topic	See page
General	20
Factors to consider	20
Improvements constituting significant change	20
Significant change on only part of the land	21
Evidence of significant change	21

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Significant change in the character of the land, continued

General

Care should be taken when building a case to apply for significant change as a ground for exemption. The relevant case law applicable to significant change should be considered and applied.

Factors to consider

The significant change in character may be as a result of:

- (a) a change to the land itself, eg land reclamation or major landscaping work,
- (b) a change in zoning or use,
- (c) building improvements on the land (see the section on improvements below), or
- (d) demolition of improvements on the land at the time of acquisition.

There may be a combination of factors that together make a case for significant change having occurred.

Case law suggests that a potential test of significant change is whether the former owner could recognise the land as being the same land that was acquired from them for the public work.

Improvements constituting significant change

Factors to be considered when assessing whether improvements constitute a significant change in character include:

- (a) whether or not the improvements are suitable in scale, construction, and condition for the site and are likely to remain in use,
 - (b) whether or not the improvements have come to the end of their economic life (ie continue to add value to the land or are exhausted),
 - (c) the value of the improvements in relation to the capital value of the land
 - (d) whether or not the improvements are the 'highest and best use' of the land in terms of its zoning, physical characteristics, and public demand, or
 - (e) whether or not the improvements would likely be demolished to achieve the 'highest and best use'.
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Significant change in the character of the land, continued

Significant change on only part of the land

Where a significant change affects only part of the land, the case for exemption must be considered carefully. Where a large block of undeveloped land was acquired and a substantial improvement was erected in connection with the public work on one portion of the block, it is necessary to consider if the change is significant enough to warrant not offering back all of the property. If this is not considered to be the case, the recommendation should be that all the land be offered back, including that portion with the substantial improvement.

Where separate computer registers are readily available for the area of land covered by the improvement and the balance of the land, an exemption on the grounds of significant change should be considered separately for each parcel.

Where subdivision of the land covered by the improvement and the balance of the land is being considered, the costs of the subdivision and related approvals should be provided to LINZ to consider any exemption on the grounds of unreasonableness.

Evidence of significant change

Information and photographs should normally be provided to demonstrate that the character of the land has been changed significantly.

9. Land acquired as a non-essential work

Refer to Section 8 of the standard

Legislation Section 40(3) of the PWA

Repealed definition of 'essential work'

The repealed, as from 31 March 1987, definition of 'essential work' from s 2 of the PWA is as follows:

"Essential work means any public work that is, or is required for,—

- (a) Drainage, sewerage, or rubbish disposal; or
- (b) Irrigation, river control, soil conservation, or water supply (including catchment areas); or
- (c) The production or distribution of energy; or
- (d) Any hospital or health centre under the Hospitals Act 1957 or any psychiatric hospital under the Mental Health Act 1969; or
- (e) Any university within the meaning of the Universities Act 1961, or any school, technical institute, or teacher's college established or to be established under Part 3 of the Education Act 1964; or
- (f) Any road, motorway, access way, service lane, railway, or aerodrome; or
- (g) Any air or sea navigational aid; or
- (h) Any Post Office telecommunications installation; or
- (i) Any defence work; or
- (j) Any police station or police training college or police communications installation; or
- (k) Any harbour works as defined in section 2(1) of the Harbours Act 1950; or
- (l) The creation of reserves or wildlife habitats for the protection of rare, endangered, or threatened species of flora or fauna;—

and includes any specific work that has been declared to be an essential work under section 3 of this Act"

Continued on next page

Land acquired as a non-essential work, Continued

Guideline

The offer back provisions under s 40(2) of the PWA do not apply to land that was acquired after the PWA came into force on 1 February 1982, where the land was not needed for an 'essential work' as defined in the PWA.

Such land could not be acquired under the compulsory acquisition provisions of the PWA and as a result s 40(2) does not apply.

The category of 'essential work' was repealed as from 1 April 1988.

10. Successors

Refer to Section 9 of the standard

Legislation Section 40(5) of the PWA

Guideline It is LINZ practice to:

- (a) interpret successor in probate to be limited to beneficiaries identified under the will (or intestacy),
 - (b) make all successors an offer jointly, irrespective of the shares in the estate that may be specified,
 - (c) recognise that acceptance by any one of the offerees will conclude an agreement where the offer is to more than one person. For example, if an offer is made to three successors, any one out of the three could accept if the other two decline the offer.
-

11. Size, shape, situation

Refer to Section 8 of the standard

Legislation Section 40(4) of the PWA

Introduction After a decision has been made that s 40(4) of the PWA applies, the following guidelines should be considered when implementing that decision and offering the land to an adjoining owner.

More than one adjacent owner If there is more than one adjacent owner, the vendor agency should consider the practicability of offering to sell land to all adjacent owners under s 40(4). The report to LINZ should identify how such a situation will be dealt with.

If there are grounds for disregarding one or more adjacent owners, these grounds should be clearly documented in the report to LINZ.

Application of Treaty settlements Some Treaty settlements, including the Waikato Raupatu Claims Settlement Act 1995 and the Ngāi Tahu Claims Settlement Act 1998, do not provide an exemption to a right of first refusal for land that falls under s 40(4). The right of first refusal will need to be complied with before the land can be offered to the adjacent owner under s 40(4) of the PWA.

The vendor agency should advise LINZ of the impact of any relevant Treaty settlement on the ability to offer the land to the adjacent owner under s 40(4) of the PWA.

If land not sold to adjacent owner If the land is not sold to the adjacent owner, the vendor agency should advise LINZ and identify what further actions are to be taken.

12. Effective date of offer back

Refer to Section 10 of the standard

Legislation Sections 40 and 41 of the PWA

Effective date For the purpose of obtaining a valuation for an offer back, the effective date of the offer is either:

- (a) the present day, or
- (b) an earlier date on which the offer back should have been made, if the offer has not been done in a timely manner, taking into account the circumstances of the case.

The vendor agency is responsible for ensuring that the disposal process leading up to making an offer under s 40 of the PWA is carried out in a timely manner, and advising LINZ where this is not the case.

Currency of valuation In practice, the vendor agency will obtain a valuation before completing the offer document and submitting it to LINZ for execution. Where the effective date is the present day, this means that the CMV will be determined at a date earlier than the date the offer will be made.

The vendor agency should consider whether there has been a delay between obtaining the valuation and submitting the offer to LINZ, and whether the valuation is still current or if it needs to be updated.

13. Staged approach to s 40 of the PWA

Refer to Sections 8 to 13 of the standard

Legislation Sections 40 and 41 of the PWA

Approval in stages LINZ may consider approval in stages, to facilitate the offer back process under ss 40 and 41 of the PWA. These stages may include:

- (a) determining whether the exemptions to offer back apply;
- (b) determining if there is anyone to offer back to, and either:
 - (i) executing the offer to the former owner or successor, or
 - (ii) requesting an exemption; and
- (c) concluding the offer back process, where an offer has been made and has been declined or has lapsed.

Each stage may be submitted to LINZ for a decision before the vendor agency continues the offer back process.

14. Negotiations over price

Refer to Sections 10 to 13 and Appendix C of the standard

Legislation Section 40(2A) of the PWA

Vendor agency negotiates Where an offeree provides a counter offer to an offer by the CE, the vendor agency would usually negotiate on behalf of the CE.

Negotiation process Negotiations should only be undertaken subject to the following:

- (a) counter offers are to be supported by a valuation from an independent registered valuer in accordance with the standard,
- (b) offerees are encouraged to agree to a meeting of valuers to attempt to resolve any dispute over CMV,
- (c) parties should try to agree on a dispute resolution process at the outset in the event valuers cannot agree on price, and
- (d) any agreement to enter a dispute resolution process must be ratified by LINZ.

15. Determination by Land Valuation Tribunal

Refer to Section 13.3 of the standard

Legislation Under s 40(2A) of the PWA, an offeree can request to have the price of an offer determined by the Land Valuation Tribunal (LVT).

Policy It is LINZ policy to only agree to refer the matter to the LVT if the offeree executes the offer, resulting in a contract subject only to the price being set by the LVT.

Management of LVT referrals LINZ usually manages referrals to the LVT with the Crown Law Office and the vendor agency.

16. Offer back of former Māori Land

Refer to Section 14 of the standard

Legislation Section 41 of the PWA

Background Section 41 needs to be considered for former Māori land. Where s 40(2) applies, ie there are no exemptions to offer back, then, if the land meets the requirements of s 41(a), (b), and (c), LINZ must either:

- (a) comply with s 40, or
 - (b) apply to the Māori Land Court for an order under s 134 of the Te Ture Whenua Māori Act 1993 to vest the land in specified persons or such persons as the Court finds entitled, subject to conditions including purchase price.
-

Application of sections 40 and 42 Where LINZ decides under s 41(d) to use s 40 as the means of offering the land then both ss 40 and 42 apply in the usual manner.

Where LINZ decides under s 41(e) to apply to the Māori Land Court to have the land vested in the former owner or their successor, then s 40 applies only to the extent that it has already been considered for the purposes of s 41, ie to determine whether the land is required to be offered back.

There is no specific requirement that ss 40 and 42 apply. Section 134(6) of the Te Ture Whenua Māori Act 1993 provides LINZ with discretion to specify the conditions of sale.

17. Gifted land policy

Refer to Section 15 of the standard

Background From time to time, landowners gifted land to the Crown to enable the provision of public works, such as rural schools, hospitals, post and telegraph sites. When the land is no longer used for the purpose for which it was gifted, there may be an obligation to return the land to the donor.

In 1993, Cabinet directed officials to report on ways in which the disposal procedure for surplus land could include the return of land gifted to the Crown, and to recommend how financial provision for the return of gifted land should be made.

The result was the gifted land policy (GLP), approved by Cabinet in 1995.

A past constraint preventing the return of gifted land to the donors was the reluctance by a vendor agency to return gifted land at nil value because of the need for a financial return on surplus assets.

The GLP addresses this constraint and provides for payment by LINZ to the vendor agency of the value of the gifted land, subject to Cabinet approval of funding.

Note that LINZ has a role under the GLP in cases where the disposal is being undertaken outside the LINZ statutory role under the PWA. An example is for conservation land or land held by a Crown entity.

In this section This section contains the following topics.

Topic	See page
Application of the gifted land policy	32
Identification of the donor or beneficially entitled person	34
Types of gifted land	35

18. Application of the gifted land policy

Refer to Section 15 of the standard

Priority of the gifted land policy in disposal The Crown's order of precedence for disposal processes is:

1. section 40 of the PWA or other Act that limits the disposal of land. Any investigation should consider whether the land was acquired by gift or purchase.
2. the GLP.
3. the Protection Mechanism and Sites of Significance processes.¹

Improvements Gifted land is returned at nil value on condition that the donor pays the value of any improvements on the land that were constructed by the Crown. The vendor agency has the discretion to offer the improvements to the donor at current market value or a lesser price.

The vendor agency may sell the improvements to another party for removal.

The vendor agency may, with the agreement of the new landowner, sell the improvements to a person or body who will become the new landowner's tenant.

There may be some situations where land and improvements were gifted and those improvements remain. Those improvements should be identified and form part of the land being returned.

Requirement for timely process Any potential delay in obtaining Cabinet approval to an appropriation to reimburse the vendor agency should not be a reason to delay making an offer back of gifted land.

Continued on next page

¹ See section 22 of this guideline, for further information on the Protection Mechanism and Sites of Significance processes.

Application of the gifted land policy, Continued

Period of offer While there is no set time period when an offer of gifted land is made outside the s 40 process, the vendor agency should provide a minimum of 40 working days, or greater, depending on the circumstances of the case.

The vendor agency should also actively manage interactions with the donor or beneficially entitled persons to ensure that due consideration of the offer is continuing.

19. Identification of the donor or beneficially entitled person

Refer to Section 15 of the standard

Evidence of entitlement The onus is on the donor or beneficially entitled person to provide evidence of entitlement, which may include statutory declarations or succession orders.

Beneficially entitled person and successor in title are different people If applying the GLP within a s 40 offer back and the beneficially entitled person is not a successor, the successor in title should still be considered. Each case must be dealt with on its own merits and be clearly documented.

Statutory precedence Where there is a successor and that person is different from the beneficially entitled person, s 40 takes precedence. This could occur where land was originally gifted to the Crown, but passed out of Crown ownership without first being offered back to the donor.

20. Types of gifted land

Refer to Section 15 of the standard

Absolute gift An absolute gift is a gift given free of conditions of use.

Unless there is evidence specifying that a gift was absolute, gifted land should be returned to its donor.

If the intended use of a gift is not clear, the vendor agency should err on the side of caution and assume:

- (a) the gift was not absolute,
 - (b) the land was given for a specific purpose, and
 - (c) the GLP applies.
-

Gift with conditions

The Crown owns many properties that were originally gifted for community purposes or with conditions of use specified. If these conditions of use no longer apply, eg the land is no longer used for the purpose it was gifted, or a specified period of time has passed, then the GLP applies.

Gifted by Māori

When assessing the validity of a claim on land gifted by Māori, the vendor agency should take into account that land may have been vested for use by the Crown for the time being, without reward, on the understanding that it would be returned to the donor when the Crown no longer requires it.

21. Ngāti Whakaue gifted lands policy

Refer to Section 16 of the standard

Background In the 1880s, Ngāti Whakaue gifted significant areas of land to the Crown for the Rotorua township under the Fenton Agreement.² This Agreement records that Ngāti Whakaue gifted land to the Crown for:

"... a Courthouse, Telegraph Office, schools, hospitals and other public objects, ... all medicinal waters ... shall be public reserves, ... forty acres to be laid off for burial ground [and] ... Pukeroa Hill to be a reserve for public recreation".³

In September 1993, the Crown and Ngāti Whakaue signed a Treaty Settlement for Ngāti Whakaue's claim to the Pukeroa Oruawhata Block. As part of this settlement, the Crown agreed to investigate the disposal of gifted lands should they ever become surplus, and any future changes of use of the gifted lands that might fall outside the scope of the original gifting.

Continued on next page

² The Fenton Agreement was signed in November 1880 between hapu of Te Arawa, including Ngāti Whakaue, and the Crown. It was negotiated to facilitate settlement of the Rotorua region, and the development of tourism, and to provide for the establishment of the township of Rotorua. The Thermal Springs Districts Act 1881 was passed to enable the Crown to carry out the Fenton Agreement and to open the thermal districts for settlement. (<http://nz01.terabyte.co.nz/ots/DocumentLibrary%5CNgatiWhakaue.htm>, content current as of 31 July 2008)

Ngāti Whakaue gifted lands policy, Continued

Policy

In 1994 Cabinet agreed to the Ngāti Whakaue GLP, which recognises that:

- (a) the Crown has a Treaty obligation to Ngāti Whakaue as the donor to act in good faith to actively protect the donor's interest in the gifted land,
- (b) when lands accepted by the Crown as gifted by Ngāti Whakaue are declared surplus, that land will be offered back at no cost, except that improvements will be offered at their CMV to Ngāti Whakaue, and
- (c) where it is proposed to change the use of gifted land to a use not contemplated in the terms of the Fenton Agreement, the Crown will consult and seek the agreement of Ngāti Whakaue.

In 1999, the Ngati Whakaue GLP was amended to include three options for dealing with improvements on the land. These options are to be submitted to Ngati Whakaue in each case of a disposal. Ngati Whakaue will then decide on its preferred option.

22. Subdivision

Refer to Section 4 of the standard

Legislation A subdivision must comply with the Resource Management Act 1991 (RMA).

Section 218 of the RMA defines the terms 'subdivision of land' and 'allotment'.

Resource consent not required

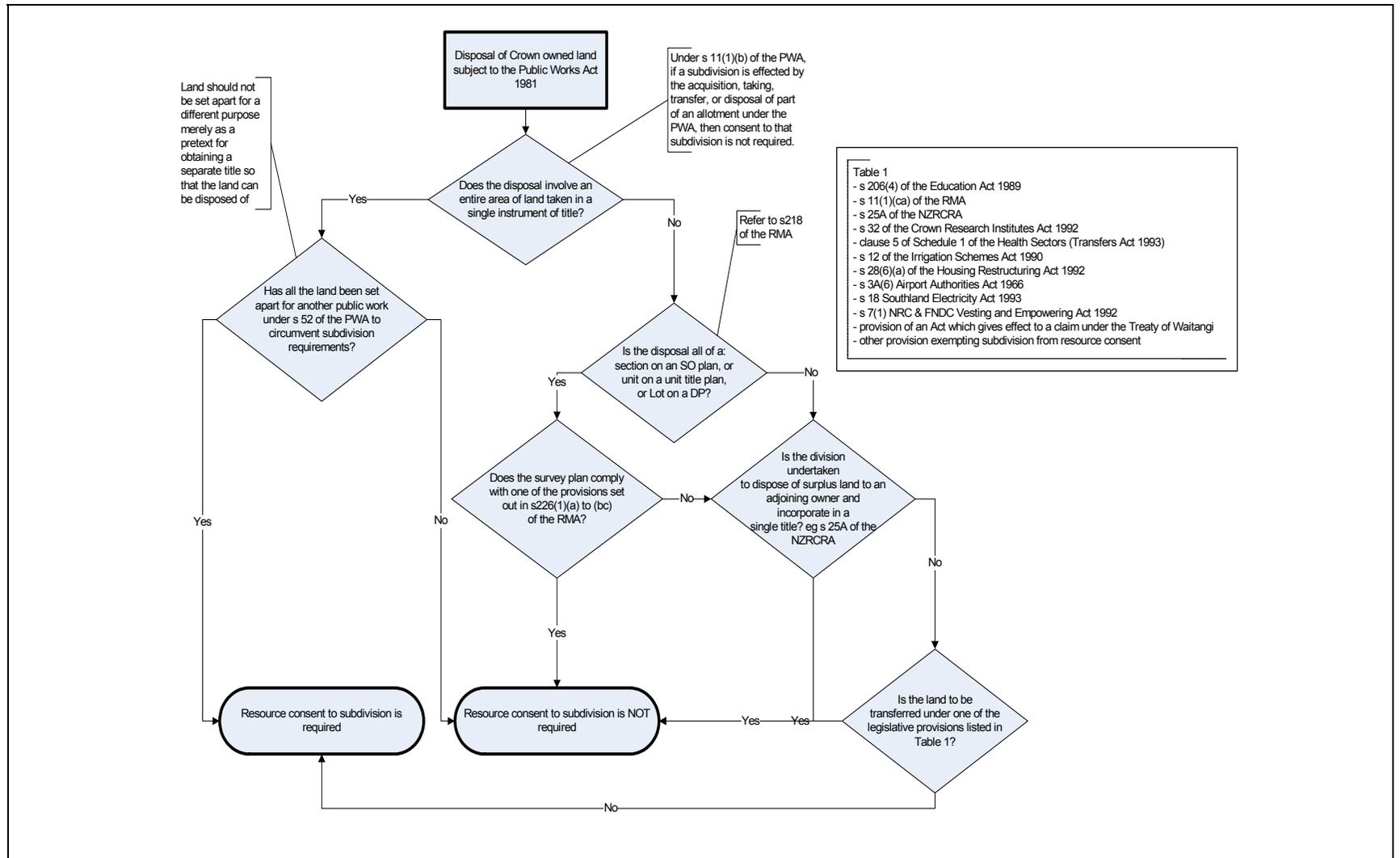
Where land no longer required for a public work comprises only part of a single instrument of title, resource consent will be required for the subdivision unless:

- (a) an exception permitted by s 11 of the RMA applies; or
 - (b) the division is to give effect to a subdivision shown on a survey plan, and the statutory approvals required by s 226 of the RMA have been obtained, or that section is otherwise complied with; or
 - (c) a separate parcel of land for a public work is to be disposed of pursuant to s 119(2)(a) of the PWA and is to be incorporated with adjoining land in a single computer register (note also requirements in respect of stopped roads in s 345(2) and (2A) of the Local Government Act 1974); or
 - (d) the division is to set apart land under s 52 of the PWA, provided the public work is one for which the land is legitimately needed, and not a pretext for obtaining a separate computer register for disposal purposes or to dispose of the balance; or
 - (e) the land is for Treaty settlement purposes. Claim settlement legislation tends to exempt such transfers from the provisions of Part 10 of the RMA (each case must be considered on its merits); or
 - (f) the land is exempted under another authority as authorised by other legislation from time to time.
-

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Flow chart

This flow chart can be used to decide whether resource consent is required for a subdivision where land no longer required for a public work comprises only part of a single instrument of title.



23. Market or reserve price under s 42 of the PWA

Refer to Section 17 of the standard

Date of assessment of value The vendor agency should ensure that the valuation is current. Generally, LINZ would consider a current valuation to be no older than three months prior to the date of tender, auction, or other sale.

However, the vendor agency should always consider the currency of any valuation and whether it needs to be updated before the land is advertised for sale or auction held. This is especially important in a rapidly changing property market.

24. Marketing and advertising

Refer to Section 19 of the standard

How long on the market? The marketing and advertising of a property to be disposed of should not be less than four weeks.

The actual time advertised on the market will depend on the circumstances of the property and the market conditions at the time.

Closed tenders A vendor agency cannot use a closed tender as a method of offering land for disposal under s 42 of the PWA, as s 42(1)(d) requires that the sale of land be offered by 'public tender'.

25. Disclosure

Refer to Sections 20 and 21 of the standard

Disclosure to prospective purchasers The vendor agency should advise all prospective purchasers in writing:

- (a) of any statutory restrictions or physical encumbrances that the land is subject to,
- (b) of the former use of the land, and
- (c) that prospective purchasers should seek independent advice on the impact of any encumbrances, restrictions, or former use.

26. Clearances required before disposal

Refer to Appendix E of the standard

Clearances The sections below identify the external clearances, meaning external to LINZ, required during the disposal of public works land. These clearances may only apply to certain vendor agencies.

Each vendor agency should ensure that it is aware of its obligations under each of these processes.

In this section This section contains information on the following clearances:

Topic	See page
Department of Conservation notification and marginal strips	44
New Zealand Historic Places Trust Pouhere Taonga notification	44
Housing New Zealand Corporation notification	45
Office of Treaty Settlements Protection Mechanism	45
Sites of Significance process	46

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Clearances required before disposal, continued

Department of Conservation notification and marginal strips

Under s 24(2A) of the Conservation Act 1987, a vendor agency must advise the Department of Conservation (DOC) of the intention to dispose of land so that the marginal strip requirements can be assessed, including whether a strip wider than 20 metres is required. In 2003, this notification process was expanded to enable DOC to identify any conservation values on the land that required protection before disposal.

Vendor agencies must notify the relevant DOC Conservancy prior to commencing any formal disposal process and seek confirmation from DOC of the position regarding marginal strips and conservation values.

In 2007, the Government also directed its departments that when disposing of Crown-owned land on or after 1 July 2007, they must identify and survey waterways that qualify for the reservation of marginal strips. Such surveys must be in accordance with the Surveyor-General's requirements.

New Zealand Historic Places Trust Pouhere Taonga notification

Introduced in 2007, this process requires vendor agencies to advise the New Zealand Historic Places Trust Pouhere Taonga of all disposals at the same time they are referred to DOC (see above). The Trust will assess whether there are any historic heritage values that need protection before the land is transferred to another agency or disposed of. The process does not apply to disposals where DOC was notified before 27 August 2007, but takes effect from that date.

All disposals should be notified to the Trust, via email at landdisposal@historic.org.nz.

Note that government departments, the New Zealand Defence Force, the New Zealand Police, and the Parliamentary Service must also consider the Policy for Government Departments' Management of Historic Heritage 2004. No clearance is required but this policy sets out factors that vendor agencies should consider when disposing of land that may have heritage values.

The policy is available on the Ministry of Culture & Heritage website:

<http://www.mch.govt.nz/publications/her-policy/heritage-policy.html>⁵.

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⁵ Accessed 1 October 2009

Clearances required before disposal, continued

Housing New Zealand Corporation notification

Introduced in 2008, this process requires vendor agencies to advise the Housing New Zealand Corporation (HNZC) when the agency no longer requires land for a public work. This is to assess whether the land is suitable to be used for housing purposes, ie for another public work.

Vendor agencies should advise HNZC at the same time as the disposal is referred to DOC and the New Zealand Historic Places Trust Pouhere Taonga (see above).

Where HNZC requires the land for housing, it and the vendor agency will proceed with the transfer of land, as per existing protocols and arrangements, and seek the appropriate statutory approval.

If the land is owned by a state-owned enterprise, Crown research institute or other Crown entity, then HNZC would usually acquire the land under s 17 of the PWA.

Office of Treaty Settlements Protection Mechanism

The Protection Mechanism is a process for the Crown to consult with Māori when it wishes to sell surplus land. Māori are invited to express an interest in the Crown setting aside the land for possible use in a future Treaty settlement. If the Crown agrees to retain the property, the Office of Treaty Settlements (OTS) will purchase the property and hold it in a landbank.

This process is further described in the OTS booklet *Protection of Māori Interests in Surplus Crown-Owned Land – Information for Crown agencies*, available on the Office of Treaty Settlements website: <http://www.ots.govt.nz/>⁶.

Continued on next page

⁶ Accessed 1 October 2009

Clearances required before disposal, continued

Sites of Significance process

Separate from the Treaty settlement process and Protection Mechanism, the Crown accepts a responsibility to protect wāhi tapu and other sites of historical, spiritual, and cultural significance to Māori on surplus Crown land. This responsibility is administered by Te Puni Kōkiri.

An application form for the submitting of land into the Sites of Significance process is available on the Office of Treaty Settlements website: <http://www.ots.govt.nz/>⁷.

⁷ Accessed 1 October 2009