

Proposed amendments to the Whenua Maori and the Public Works Package of proposals

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The New Zealand Maori Council submits that the bill in its current form requires closer scrutiny in order that it not meets the aspirations of Maori but proposed amendments and changes to the Public Works Act should also been taken in unison. It is not clear to Council that enough work has been done around the interplay between existing and owned Maori land by landowners, private land returning to Maori hands and then the return of Land that has been compulsorily acquired by the Crown over many years. This includes land that has been improved and then the policies around exemption of return based on a range of criteria that does more to exclude than include Maori. Dispute resolution and other matters must include a more detailed look at exemption, the return of land and so on. The Council would like to attach notes below that have been submitted through another process in relation to elements of proposed changes to the Act, the Public Works Act and related directions provided by changes in Government policy. We would like the opportunity to speak orally to the select-committee to provide additional context to the Bill, elements of the Maori Land Court, interplay with other legislation, exemptions around the return of land and so on.

Context

The Government is considering changes both to legislation and policy relating to the Public Works ACT. The attachments and this document relate to two things for consideration:

1. Compulsory acquisition of Maori land and its return to the original owners of said Maori land
2. Offer-back of Maori land (from the Crown to Maori)

Matters to consider:

- Maori's ability to appeal the compulsory acquisition of their land by the Crown for Public Works
- The ability of Maori to afford to purchase the land back
- The ability of Maori to access legal advice through the Maori Land Court
- Different legislative instruments and cross over of various other legislation
- Standardizing exemption criteria
- Introducing an independent review of decisions made that favor the Crown around exemptions

The overarching principle of any reform or amendments to the Public Works Act needs to ensure that Maori are not disadvantaged and have every first right to be able to regain their if it has been compulsorily acquired. The first principle should not be what benefit the Crown to take for such land – it should be about Maori who can repossess their land and therefore socially or economically developed that land. In addition to this land in question, if it is being returned, should include a make good clause whereby the land is being returned at original state or if there have been capital improvements, support to manage and maintain the improvements or further economically develop it. Notes to this feedback paper:

- Exemption Principles – need to be consistent across the Public Sector / some Government Agencies and Department may use different reasons for exemption. There is no reason why there are not standard exemption criteria. However there should be an independent assessment of the exemption applications or decisions made by a Government Department – and also reasons of capital value should be explicitly ruled out given there is no test for how a former Maori landowner who might take economic development advantage for the asset on the land in question. In other words, offer back, in our view should always be the first option.
- There should be more clarity if an exemption is sought that it is not a case that the land is to be vested within another Department or Agency for future use – and post that might face future disposal to someone else other than the original land owner – in other words land that may be sold into private hands and, as a result of Government policy, is not able to be claimed back.
- Greater clarity of former listed Maori land taken under acquisition that has latterly been listed as private land. A process of review to see how much and who formerly owned something before it was redefined.
- The establishment of capital fund. The reality is that Maori may be offered the land back but may not have the financial means to pay for it. The question of financial means may preclude a return to the former Maori landowner. If this is the case, then the question becomes could the former landowner access capital in a loan at cost price or share in the sale proceeds from the land being on-sold because the former owner has not been able to afford to purchase it back. The New Zealand Maori Council is looking at a policy specifically relating to this.
- There may need to be more consideration of the interplay between various other instruments such as the State-Owned Enterprise Act, the changes and reforms related to the Resource Management Act
- The Maori Land Court should be the first and only arbiter, but the court must also be fully resourced with an increase in funding to manage an ever increasing workload. In addition to this whanau who may want to see legal representation should be able to access a form of legal aid to either support a claim or make an appeal. The reality is individual whanau or landowners may not have, in the majority, the financial means to seek advice.
- Maori Land acquired for a purpose should not be repurposed for another purpose unless first offered back to the previous owner or unless otherwise agreed to by the previous owner. For example if land is acquired for a road but then is repurposed to build a bike path then the reasoning for the original compulsory acquisition should be void.
- Improvement of awareness campaigns (operational matter more than a legislative matter) of the rights of former landowners when it comes to the Maori Land Court and its functions.
- Section 41 and 134 need to be reviewed in respect of the notion of a Trust or less than five people.
- The section relating to the Ministers of Maori Development and the Minister for Te Arawhiti in respect of signing notice of intention to take land – it is our belief that the Minister for Te Arawhiti is there to provide advice and insights but has no legislative responsibility when it comes to the taking of land. This role should be replaced by the Minister of Treaty Settlements who has legislative authority to deal specifically in reference to Maori and Crown lands.
- The definitions around protected Maori land needs to be reviewed – in relation to the legislation that operates under Heritage New Zealand's legislation there should be a tighter definition of “protected Maori land” and how that legislation would interplay with the Public Works Act.

Attachments:

Offer-back of former Māori land			
<u>Opportunity:</u>			
We have an opportunity to improve the offer-back regime to provide a better chance for whānau to reconnect with their whenua. This will improve their ability to realise their cultural and economic aspirations regarding their whenua and will align the regime more towards the principles of Te Ture Whenua Māori Act 1993.			
<u>Objective:</u>			
The key policy objectives are:			
<ul style="list-style-type: none"> • Protect the interests of the former owners of Māori land. • Promote participation of Māori throughout the offer-back process. • Ensure that the process is clear and easy to understand. • Minimise the time/cost on agencies. 			
<u>Package of proposals</u>			
We have developed a package of eight policy proposals to create an enhanced process for the offer-back of surplus former Māori land. Note that these proposals are <u>not</u> mutually exclusive (i.e. they can be advanced alongside one another).			
Issue	Proposal	Potential advantages	Potential disadvantages
Main Policy Issues			
1. Transfer of land Former Māori land acquired for one purpose can be used for another purpose with informing the former owners, considering their interests, or offering it back to them	a. Provide that interests of former owners are considered when transferring land for another purpose	➤ Increase amount of land offered back	➤ Small cost to agencies
2. Use of the Māori Land Court There is a lack of specific direction and guidance on when to use the MLC	a. Enhance standards / guidelines on the appropriate use of MLC	➤ Better use of MLC leading to potentially increased amount of land offered back	➤ Small impact on resource of MLC
3. Support for former owners The current financial capacity of former owners can limit their ability to have their land returned	a. Enhance standards / guidelines on terms and price of offer-back	➤ Fairer price and terms where land is offered back leading to potentially increased ability to purchase land back	➤ Potentially less money received ➤ Potentially lengthen time of process
Other policy issues			
4. Restrictions on using s41 Section 41 and section 134 of TTWMA are not available if the land was owned by less than five people or vested in a trust before its acquisition for public works	a. Remove restrictive criteria from using s41	➤ Section 41 available in more circumstances ➤ Increased use of MLC leading to potentially increased amount of land offered back to former owners	➤ Nil
5. Powers of the Māori Land Court S134 of TTWMA (invoked in conjunction with S41 of the PWA) does not sufficiently empower the MLC to resolve disputes on price and terms	a. Additional powers for MLC to rule on terms/conditions	➤ Court able to impose fairer terms of sale (where disputed) ➤ Potentially easier for landowners to purchase land back	➤ Potential increased time/cost of process
	b. Disputes on price determined by MLC	➤ Increased ability to object to price ➤ Better consideration of Māori land	➤ Potentially less money received

Compulsory acquisition

Opportunity:

We have an opportunity to ease a long-standing tension between the ability to compulsorily acquire protected Māori land and the principles of Te Tiriti o Waitangi.

Securing the objectives of these amendments through legislation should better enable Māori landowners to realise the economic and social potential in their whenua, without significantly impacting on the ability to provide for public works.

Objective:

The objective of these proposals is to balance:

- the principles of Te Ture Whenua Māori Act 1993 so that protected Māori land is safeguarded; with
- the Crown and local authorities being able to undertake public works, and have access to the land necessary to complete them.

Package of proposals

We consider that the most effective means of ensuring this balance is by improving decision-making processes so that they are more robust. We have developed a package of three key policy proposals to create a more robust decision making process. As a package, these proposals should strike a balance between the two stated objectives. Note that these proposals are not mutually exclusive (i.e. they can be advanced alongside one another).

Package of proposals		
Proposals	Potential advantages	Potential disadvantages
<p>Options to take a lesser interest in land would need to be exhausted before the fee simple is acquired (that is, before there is a change in ownership).</p> <p>AND</p>	<ul style="list-style-type: none"> ➤ More land is retained in Māori ownership ➤ Improves Māori / Crown relationship ➤ Better partnership options ➤ No need for a disposal process where lesser interests acquired 	<ul style="list-style-type: none"> ➤ Likely to increase costs to the acquiring authority ➤ Lesser interests not likely to be practical for large transport works ➤ Owners may regard taking lesser interests as alienation land if they cannot use or connect with their whenua
<p>The Minister for Māori Development and the Minister for Māori Crown Relations: Te Arawhiti would be added to the Ministerial decision making process for signing Notices of Intention to Take Land.</p> <p>AND</p>	<ul style="list-style-type: none"> ➤ Shared accountability ➤ Greater visibility across Government about PWA decisions ➤ Opportunity for Ministers to advocate for Māori interests ➤ Potentially more Māori land retained in Māori ownership 	<ul style="list-style-type: none"> ➤ Longer decision making time ➤ Increased risk of judicial review
<p>Introduce a requirement that principles that promote the retention of protected Māori land be taken into consideration when making any decision on the acquisition of land.</p>	<ul style="list-style-type: none"> ➤ Provides clear expectations of the importance of the retention of protected Māori land ➤ Judiciary understands Parliaments intent when hearing objections ➤ Likely to improve Māori / Crown relationship ➤ Potentially more Māori land retained in Māori ownership 	<ul style="list-style-type: none"> ➤ May not prove effective in retaining Māori land in Māori ownership if progressed in isolation