

Regulatory Impact Statement: Reform of Te Ture Whenua Māori Act 1993

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by Te Puni Kōkiri. It accompanies the Cabinet Paper titled *Māori Land Service*.

This RIS provides an analysis of options to improve the institutional and legislative framework governing Māori land. It follows a review of Te Ture Whenua Māori Act 1993 (TTWMA), which aimed to identify what form of legislative interventions might best support owners of Māori land in reaching their aspirations, while enabling the better utilisation of their land.

This is an updated version of the RIS that accompanied the Cabinet Paper *Te Ture Whenua Māori Bill: Implementation* [CAB Min (13) 43/6 refers]. The following sections of the RIS have been updated: Expected Impacts (pages 16-23); Conclusions and Recommendations (pages 25-26); Implementation Planning (pages 26-27); and Risks (pages 27-29).

This RIS summarises analysis of four options that represent differing levels of regulatory intervention and involvement in Māori land transactions. It also outlines analysis of the impacts of the preferred option, which would see light judicial oversight of Māori land transactions.

The proposed changes are expected to result in increased utilisation of Māori land through empowering Māori land owners and governors to make decisions themselves, supported by an enabling institutional environment.

There are some constraints on the analysis in this paper:

- the scope of the review was limited to legislative considerations, as set out in the TTWMA Review Panel's Terms of Reference;
- there is limited quantitative data on the current profile and utilisation of Māori land available to inform a detailed assessment of the scale of the problem, to develop aspects of proposed changes, and/or to predict the impacts of some proposed changes;
- it is difficult to predict how owners' behaviour and decision-making may change as a result of the increased choice and flexibility generated by the proposals; and
- the analysis of the financial implications is driven by a number of key assumptions, some of which have degrees of uncertainty. Greater certainty on the financial implications will become available as a detailed design and implementation plan for the proposed changes is developed in late 2014/early 2015.



Arawhetu Gray, Deputy Chief Executive, Policy Partnerships, Te Puni Kōkiri
Date

Status quo and problem definition

Previous Consideration

1. On 21 May 2012, Cabinet agreed that a Te Ture Whenua Māori Act 1993 (TTWMA) Review Panel (the Panel) be established to undertake work on what form of legislative interventions might best support Māori land owners in reaching their aspirations, while enabling the better utilisation of their land [CAB Min (12) 17/1C refers].
2. The review of TTWMA has been identified as Action 39 under the Natural Resources component of the Business Growth Agenda. The TTWMA review also has implications for the Government's better public services priority in terms of configuring the Māori land institutional framework to best support the achievement of Māori land utilisation.
3. He kai kei aku ringa: the Crown-Māori Economic Growth Partnership (HKKAR) [CAB Min (12) 40/7 refers] complements the legislative and institutional focus of the review of TTWMA by actively seeking to enable growth (Goal 4) and develop natural resources (Goal 5) through identifying and targeting resources to land blocks with development potential (Recommendation 17).
4. On 25 February 2013, Cabinet approved the 2013 Legislation Programme, including a Te Ture Whenua Māori Bill to be referred to a select committee in 2013 (Category 5) [CAB Min (13) 5/7].
5. On 25 March 2013, Cabinet agreed to publicly release the Panel's Discussion Document to seek feedback on propositions to improve Māori land utilisation and invited the Associate Minister of Māori Affairs to report Cabinet Economic Growth and Infrastructure Committee (EGI) with a final proposal [CAB Min (13) 9/11 refers].
6. On 9 September 2013, Cabinet agreed in principle, subject to agreement to an implementation plan, to a set of proposals to improve the utilisation of Māori land; authorised the Associate Minister of Māori Affairs to issue drafting instructions to Parliamentary Counsel Office on that basis; and invited the Associate Minister to report back to EGI with an implementation plan [CAB Min (13) 31/7 refers].
7. On 9 December 2013, Cabinet approved the implementation of proposals to improve the utilisation of Māori land, and noted that the implementation of these proposals will see a fundamental shift in the delivery of services to Māori land owners from a system with significant judicial involvement to one with a more administrative focus [CAB Min (13) 43/6 refers].
8. Cabinet also agreed that the Māori Land Court and Land Information New Zealand (LINZ) will continue to provide services to Māori land owners, and agreed that ongoing access to the Māori Land Court, as a judicial forum, remains an important part of the institutional framework supporting Māori Land Owners. Cabinet noted the preference for LINZ to deliver administrative Māori land services through an online channel supplemented by face-to-face services [CAB Min (13) 43/6 refers].
9. An earlier version of this RIS explored the impacts of those policy proposals, and accompanied the Cabinet Paper: *Te Ture Whenua Māori Bill: Implementation*. This RIS has now been updated to include further analysis that has taken place since September and December 2013, particularly around the range of operating

cost impacts associated with the proposals and the implementation of the proposals.

Status quo

10. Māori land is defined and governed by its own legislation: TTWMA. The preamble to TTWMA recognises that land is taonga tuku iho, of special significance to Māori that should be retained and developed for the benefit of the owners, their whānau and hapū. TTWMA also establishes the objectives, jurisdiction and powers of the Māori Land Court (MLC). The general objectives of the MLC are to promote and assist in the retention, effective use, management and development of Māori land.
11. Māori land comprises 1.466 million hectares¹ (ha), which is approximately 5.5 per cent of New Zealand's land mass. Most Māori land is situated in the north, centre and east of the North Island. There are 27,308 separate Māori freehold land titles with an average size of 53.7 ha. The smallest 10 per cent of titles average 0.79 ha and the largest 10 per cent of titles average 487 ha. The total number of ownership interests in all Māori land blocks is 2,710,214, with approximately 100 owners per title on average.

Problem definition

12. The Māori share of the total New Zealand asset base is estimated at \$36.9 billion. Around \$10.6 billion is held by Māori collectives such as Māori land entities.² Research estimates that 80 per cent of Māori land is under-performing³ and that Māori land could generate an extra \$8 billion in gross output and 3,600 jobs over a ten year period.⁴
13. Successful Māori land businesses are likely to operate on the most versatile and productive Māori land and are likely to succeed regardless of the legislative framework. More marginal or start-up businesses are likely to be impacted by the legislative framework, which makes it important to ensure that the framework is appropriate.
14. Research into the current legislative framework suggests that it does not adequately facilitate the utilisation of land.⁵ The Panel's work and consultation supports this hypothesis. In the absence of any change to the legislative framework governing Māori land, owners will continue to face high compliance costs in making decisions and effecting transactions relating to their land. Utilisation of Māori land (for economic or other purposes) is unlikely to achieve its potential, and the benefits that could flow from utilisation are unlikely to be realised by owners of Māori land.

¹ Māori Land Court (2012). *Māori Land Update – Ngā Āhuatanga o te Whenua, June 2012*.

² Business and Economic Research Limited (BERL), 2011. *The Asset Base, Income, Expenditure and GDP of the 2010 Māori Economy*. Wellington, New Zealand.

³ Ministry of Agriculture and Forestry (2011). *Māori Agribusiness in New Zealand: A study of the Māori freehold land resource*. Wellington, New Zealand.

⁴ Ministry for Primary Industries (2013). *Growing the Productive Base of Māori Freehold Land*. Wellington, New Zealand.

⁵ Noted, for example, in Dewes, Whaimutu, Walz, Tony and Martin, Doug (2011). *Owner Aspirations Regarding the Utilisation of Māori Land*. Wellington, New Zealand.

15. The Panel identified and consulted on three key areas (ownership, governance, institutional framework) within the current system which create barriers to owners achieving their aspirations with regard to their land. While there are other, non-legislative challenges with the current system, these are not within the scope of the Panel's recommendations.
16. The following table sets out a description of the current system in relation to each of the three areas, and identifies nine key problems:
 - owners are not able to make decisions themselves;
 - unengaged owners can inhibit decision making;
 - unengaged owners may result in Māori land not being utilised;
 - lack of choice and flexibility in establishing governance structures;
 - lack of accountability for Māori land governors;
 - the current mediation option is not comprehensive or efficient;
 - lack of succession to Māori land;
 - fragmentation of Māori land ownership; and
 - the identification of Māori land by status has not been effective.
17. The key issue identified in the assessment of the status quo, and in the Panel's review of TTWMA, is that the current framework is structured so that most matters relating to Māori land require some sort of judicial involvement. This disempowers owners' autonomous decision-making, and hinders choices about utilisation for Māori land owners as judicial involvement can be time consuming, expensive and complicated.

<p>Status Quo <i>Description of the current framework</i></p>	<p>Problem Definition <i>Why the current framework creates barriers for owners</i></p>
<p>Ownership</p> <p>The current legislative framework governing Māori land is structured so that many decisions cannot be taken by Māori land owners themselves, because the decisions are required to be endorsed by the MLC. For example, TTWMA requires the MLC to:</p> <ul style="list-style-type: none"> • approve sale/long-term lease of Māori land; • establish governance structures and appoint trustees; and • in the absence of a governance structure, confirm decisions made at meetings of assembled owners. <p>Two examples of owner decision-making processes are provided below.</p> <p>A long-term lease (more than 52 years) over Māori land requires the consent of at least 50% of owners (by number or by shareholding). The sale of land requires offering the right of first refusal to purchase the land to the preferred class of alienees (children and family of the owner seeking to alienate the land, other owners and their descendants) as well as the consent of 75% of owners (by number or by shareholding) and the approval of the MLC.</p> <p>An application to the MLC is required to establish a governance structure and appoint trustees. In the absence of a governance structure, TTWMA requires owners to apply to the MLC to call a meeting of assembled owners. All resolutions passed at the meeting are then subject to confirmation by the MLC, and the MLC may set aside any resolution if the meeting was conducted in a manner that was unfair to any owner or group of owners.</p>	<p>Owners are not able to make decisions themselves</p> <p>The current regime governing Māori land is structured so that many decisions cannot be taken by Māori land owners themselves because they are subject to endorsement by the MLC. Currently, this ranges from long-term lease decisions, to the establishment of trusts and incorporations, to ratifying the decisions of assembled owners. This serves to disempower owners and makes many decision-making processes unnecessarily complex. This can hinder choices about utilisation for Māori land owners as judicial involvement can be time consuming, expensive and complicated, which creates barriers to making and effecting utilisation decisions.</p>
<p>Ownership</p>	

Status Quo	
<i>Description of the current framework</i>	
<p>Māori land. The functions include responsibility for carrying out the terms of the trust, the proper administration and management of the business of the trust, the preservation of the assets of the trust and the collection and distribution of the income of the trust. Trustee powers include all such powers and authorities as may be necessary for the effective management of the trust and the achievement of its purposes.</p> <p>TTWMA enables the MLC to impose limitations or restrictions on trustees through the trust order, or to require a governor to appear before the MLC regarding non-compliance with trustee duties or statutory requirements. TTWMA empowers the MLC to make an order to remove a trustee at any time if certain conditions are met.</p>	
<i>Institutional framework</i>	
<p>The current legislation provides for the MLC to determine or facilitate the settlement of disputes. However, TTWMA only explicitly provides for mediation in prescribed circumstances: in relation to applications under the Māori Fisheries Act 2004, the Māori Commercial Aquaculture Claims Settlement Act 2004, and in relation to applications to determine the representation of Māori groups. TTWMA requires significant MLC involvement in these mediation processes. For example, in the event of successful mediation, the mediator is required to present the terms of the resolution to a Judge of the MLC, who may then include it in a MLC order. In the event of an unsuccessful mediation, the mediator must refer the matter to a Judge, stating what issues have, and have not been resolved. The Judge is then able to refer the unresolved issues back to mediation or to the MLC for determination.</p>	<p>Problem Definition</p> <p><i>Why the current framework creates barriers for owners</i></p> <p>The current functions and duties for governors of Māori land prescribed by the legislation are not specific enough to provide sufficient clarity to governors or accountability to Māori land owners. Instead, the current framework provides for the MLC to maintain accountability through establishing the entity, vetting trustees and being able to intervene if it considers necessary. The current framework also does not align with general trust and company law.</p>
	<p>The current mediation option is not comprehensive or efficient</p> <p>The limitations on mediation (in that it must be judicially-led and is only provided for in certain circumstances) mean owners are required to go to the MLC in the first instance, which can be time consuming, expensive, and complicated. The mediation options available can also be seen as more formal and adversarial in nature.</p>
<i>Institutional framework</i>	
<p>The legislative framework requires an extensive process for confirming succession to Māori land ownership interests. When an owner of Māori land passes away, TTWMA requires that an application for a succession</p>	<p>Lack of succession to Māori land</p> <p>The current system has overseen a lack of succession to Māori land. This results in dissociation of owners from their land, and</p>

Status Quo	Problem Definition
<p><i>Description of the current framework</i></p> <p>Many land ownership bases are also large and fragmented. The fragmentation of Māori land ownership interests has resulted in varying levels of engagement by potential and actual owners of Māori land. The level of engagement ranges from potential owners who are unaware of their ability to succeed to land ownership interests, through to those who have succeeded and actively participate in decision-making. Ownership registers may also include a number of owners who cannot be located or contacted, or who may be deceased.</p>	<p><i>Why the current framework creates barriers for owners</i></p> <p>Unengaged owners can inhibit decision-making</p> <p>Unengaged owners sometimes impact on the ability of engaged owners (defined as those who exercise a vote) to make decisions and effect land transactions because of the practical difficulties in locating and contacting unengaged owners. In some cases (for example, with deceased owners, or owners who are unaware of their potential ownership interests), this is impossible.</p>
<p>Governance</p> <p>As noted above, there are varying levels of owners' engagement with their land today. Some Māori land titles have a majority of owners who cannot or will not succeed to their ownership interests, despite attempts to encourage them to succeed. Owner-driven utilisation of the land cannot occur in these situations. TTWMA enables the MLC to appoint Te Tumu Paeroa (formerly the Māori Trustee) as an external manager to administer Māori land in the absence of engaged owners, if it is satisfied that the appointment of Te Tumu Paeroa would be broadly acceptable to the beneficiaries of the trust.</p>	<p>Unengaged owners may result in Māori land not being utilised</p> <p>Some Māori land titles have a majority of owners who cannot or will not succeed to their ownership interest despite attempts to encourage them to succeed. This makes owner-driven utilisation of the land problematic. There is an opportunity to broaden the range of organisations eligible to be appointed as external managers to assume administration responsibility for a Māori land title(s) in order to maintain or develop the land, identify potential owners and return the land.</p>
<p>TTWMA prescribes specific land governance structures currently available to owners of Māori land (Māori incorporation, or one of five types of trust). These structures are unique to Māori land and have specific restrictions and functions. The structures available include those that enable pooling and collective management of shares in Māori land and are designed to reduce the impact of fragmentation of the ownership base (whānau, kaitiaki and putea trusts, and Māori reservations) and to facilitate land management (ahu whenua and whenua tōpū trusts and Māori incorporations). Only approximately 41% of Māori land titles have a governance structure. Approximately 98% of governance structures on Māori land are ahu whenua trusts (68%), Māori reservations (28%) or Māori incorporations (2%).</p>	<p>Lack of choice and flexibility in establishing governance structures</p> <p>There is a lack of choice and flexibility in providing for governance structures to be established on Māori land. There is an opportunity to provide Māori land owners with greater choice and flexibility in the governance and management of their land, and to better align the legislative framework governing this with laws that apply to general land and corporate bodies. This includes providing for the ability to establish governance structures themselves and to establish other types of governance entities beyond those prescribed in TTWMA.</p>
<p>Governance</p> <p>TTWMA sets out a series of generic functions and powers of trustees for</p>	<p>Lack of accountability for Māori land governors</p>

<p>Status Quo <i>Description of the current framework</i></p> <p>order be made to the MLC in order for the land ownership interest(s) to be transferred to the person(s) entitled to receive them (usually an owner's children or siblings). In the presence of a will, the extent of the ownership interest is prescribed. Without a will, the ownership interest is divided equally among the owner's children or siblings. A surviving spouse also receives a life interest. A significant proportion of owners recorded on titles have passed away and their interests have not been succeeded to.</p> <p>The legislative framework does not allow for the collective ownership of Māori land. Ownership interests increase with each generation. The 27,308 Māori freehold land titles are currently held in 2,710,214 individual succeeded ownership interests – this is comparable to the number of interests represented in the rest of New Zealand's land area.</p>	<p>Problem Definition <i>Why the current framework creates barriers for owners</i></p> <p>presents issues regarding administration and decision-making (as discussed above). The simplification of succession processes can contribute to addressing this issue.</p> <p>Fragmentation of Māori land ownership The current system of succession has resulted in the fragmentation of Māori land ownership interests. This results in dissociation of owners from their land.</p> <p>An individualised system of ownership does not reflect the traditional nature of Māori land tenure, where land was collectively owned. While whānau trusts provide a vehicle to enable a trustee or trustees to hold individual ownership interests on behalf of a collective class, they do not provide for collective ownership of land parcels. An application to the MLC is required.</p>
<p>Institutional framework</p> <p>Māori land status is embedded in the title information of individual land parcels, rather than being immediately identifiable. Key points relating to this include:</p> <ul style="list-style-type: none"> • The MLC has jurisdiction to determine and change land 	<p>The identification of Māori land by status has not been effective Status is not always apparent or easy to ascertain, and often requires the formality of a status determination by the MLC. This carries compliance and judicial transaction costs to Māori land</p>

Status Quo <i>Description of the current framework</i>	Problem Definition <i>Why the current framework creates barriers for owners</i>
<p>status. Almost all such determinations are historic.</p> <ul style="list-style-type: none"> • Māori land is subject to the Māori land regime, including protections to recognise its cultural significance, and most dealings cannot be effected by simply registering an instrument of conveyance. An order of the MLC is usually necessary and the dealing takes effect in the land transfer system when the order is registered. There are a number of examples of this where the courts have held that registration in breach of the protection regime nevertheless confers an indefeasible interest. • Because ownership determinations by freehold order are historic, many have been affected or overridden by subsequent orders of the MLC dealing with status or by the operation of previous Native/Māori land legislation. 	<p>owners and the MLC. It also carries risks of status-based protections being overlooked or unrecognised. The complexity of this regime contributes to the barriers to more effective utilisation of Māori land.</p>

Objectives

18. The policy proposals are aimed at focussing legislation on Māori land owners and their aspirations, by freeing up utilisation decision-making for engaged owners, while maintaining high thresholds for sale of Māori land. This aim aligns with the objectives set out in the current legislation:
 - to promote the retention of that land in the hands of its owners, their whānau, and their hapū, and to protect wāhi tapu; and
 - to facilitate the occupation, development, and utilisation of that land for the benefit of its owners, their whānau and their hapū.
19. The development of the options explored in this RIS has been guided by five propositions that were developed by the Panel and consulted on publicly:
 - utilisation of Māori land should be able to be determined by a majority of engaged owners;
 - all Māori land should be capable of utilisation and effective administration;
 - Māori land should have effective, fit for purpose, governance;
 - there should be an enabling institutional framework to support owners of Māori land to make decisions and resolve any disputes; and
 - excessive fragmentation of Māori land should be discouraged.
20. The feedback received during the Panel's consultation was generally supportive of the overall thrust of the propositions.
21. Although not represented in the five propositions listed above, a further policy objective of protection of Māori land has also guided the development of policy options explored in this RIS. Protection of Māori land as taonga tuku iho to be passed down to future generations has been a strong theme in the Panel's work and was strongly supported during the Panel's consultation.

Regulatory impact analysis

22. This RIS sets out four possible options for reforming the framework governing Māori land in order to better meet owners' aspirations for their land. The options are based on differing levels of regulatory intervention and involvement in transactions relating to Māori land:
 - **Option 1:** This option considers the impact of maintaining the status quo.
 - **Option 2:** This option proposes a strong degree of judicial oversight, with specific laws and judicial forum for Māori land, and a strong focus on protecting the retention of the land. This option maintains many features of the status quo framework, as well as empowering the MLC to pro-actively seek facilitation of under-utilised land.
 - **Option 3:** This option proposes light oversight of owner-driven decision-making, removing MLC involvement in most transactions, but maintaining protections for the retention of Māori land.
 - **Option 4:** This option proposes minimal specialist judicial involvement by removing the specific rules and judicial forum for Māori land, with Māori land to be governed under general law.

Options for a legislative and institutional framework that better supports aspirations of Māori land owners

Problem statement	Option 1: Status Quo	Option 2: Strong judicial oversight	Option 3: Light judicial oversight	Option 4: Minimal judicial oversight
Ownership				
Owners are not able to make decisions themselves	<ul style="list-style-type: none"> Judicial process required for most transactions 	<ul style="list-style-type: none"> (status quo) 	<ul style="list-style-type: none"> Remove requirement for extensive judicial involvement in transactions relating to Māori land except in case of sale 	<ul style="list-style-type: none"> Remove requirement for judicial involvement in any transactions relating to Māori land – removing specialist MLC jurisdiction and specific protections on Māori land
Unengaged owners can inhibit decision making	<ul style="list-style-type: none"> Owners required to obtain approval of portion of entire ownership base MLC acts on behalf of unengaged owners 	<ul style="list-style-type: none"> (status quo) 	<ul style="list-style-type: none"> Reduce onus on owners to obtain approval of unengaged owners in decisions, except in the case of sale (noting that safeguards such as minimum notice periods will apply and all owners will always be free to engage or re-engage simply by participating in decisions) Extensive judicial involvement no longer required except in case of sale (as proposed above) Incentivise engagement by enabling absentee voting 	<ul style="list-style-type: none"> Reduce onus on owners to obtain approval of unengaged owners (noting that notice requirements will apply and owners will always be free to participate in decisions) Extensive judicial involvement no longer required Incentivise engagement by enabling absentee voting

Problem statement	Option 1: Status Quo	Option 2: Strong judicial oversight	Option 3: Light judicial oversight	Option 4: Minimal judicial oversight
Governance				
Unengaged owners may result in Māori land not being utilised	<ul style="list-style-type: none"> MLC able to appoint Te Tumu Paeroa as external manager 	<ul style="list-style-type: none"> (status quo) MLC to pro-actively seek opportunities to appoint external managers to under-utilised parcels of land 	<ul style="list-style-type: none"> Broaden the range of organisations eligible to be appointed as external managers (by specifying eligibility criteria) Reduce the judicial burden by making appointment and supervision of external managers an administrative function 	<ul style="list-style-type: none"> No specific provision for the appointment of external managers to under-utilised Māori land – external managers may be appointed under general legislation if circumstances require
Lack of choice and flexibility in governance structures	<ul style="list-style-type: none"> Prescribed set of governance structures (five types of Māori trust and incorporation) Judicial process required to establish entities 	<ul style="list-style-type: none"> (status quo) 	<ul style="list-style-type: none"> Remove prescribed structures but maintain minimum provisions (aligned with other legislation such as Trustees Act and Companies Act), within which owners can choose entity structure of their choice Remove requirement for judicial involvement in Māori land transactions (as proposed above) will allow owners to establish governance entities without judicial involvement MLC to have jurisdiction to hear breaches of duty 	<ul style="list-style-type: none"> Remove prescribed structures and minimum provisions Remove requirement for judicial involvement in Māori land transactions (as proposed above) will allow owners to establish governance entities without judicial involvement
Lack of accountability for Māori land governors	<ul style="list-style-type: none"> Prescribed but generic functions and powers 	<ul style="list-style-type: none"> (status quo) 	<ul style="list-style-type: none"> Prescribe specific duties and obligations of governors (including penalties) that are better aligned with general trust and company law 	<ul style="list-style-type: none"> Remove prescribed but generic functions and powers, subject to the general law

Problem statement	Option 1: Status Quo	Option 2: Strong judicial oversight	Option 3: Light judicial oversight	Option 4: Minimal judicial oversight
<i>Institutional framework</i>				
The current mediation option is not comprehensive or efficient	<ul style="list-style-type: none"> Judicial process required for most transactions 	<ul style="list-style-type: none"> (status quo) 	<ul style="list-style-type: none"> Remove judicial involvement in many transactions (as noted above), with mediation services being provided separately Require disputes to be referred to mediation in the first instance, with MLC as a forum of last resort 	<ul style="list-style-type: none"> Rely on general mediation
Lack of succession to Māori land	<ul style="list-style-type: none"> Succession via a judicial process 	<ul style="list-style-type: none"> (status quo) 	<ul style="list-style-type: none"> Simplify succession through making it an administrative process 	<ul style="list-style-type: none"> Simplify succession through utilising general law
Fragmentation of Māori land ownership	<ul style="list-style-type: none"> Individualised shareholding system Succession processes require judicial involvement 	<ul style="list-style-type: none"> Phase in collective tenure system where all owners hold undefined interests in common Maintain involvement in succession processes 	<ul style="list-style-type: none"> Provide an option for owners to transition to a collective tenure system where all owners hold undefined interests in common, if they wish Transfer responsibility for confirming succession from judiciary to an administrative function 	<ul style="list-style-type: none"> Maintain individualised shareholding system Transfer responsibility for succession from judiciary to an administrative service
The identification of Māori land by status has not been effective	<ul style="list-style-type: none"> Māori land status embedded in title information 	<ul style="list-style-type: none"> (status quo) 	<ul style="list-style-type: none"> Consider provisions to ensure Māori land is clearly identified within the land titles register. 	<ul style="list-style-type: none"> Remove special status of Māori land altogether

Preliminary impact analysis

23. In a preliminary analysis, the four options were qualitatively assessed at a high level. This analysis sought to identify which option(s) should be considered for more detailed impact analysis. The four options were assessed in terms of whether each option:

- achieved the desired policy objectives; and
- addressed the nine issues identified in the problem definition.

24. Analysis was based on feedback received during public consultation on the Panel's Discussion Document, and on the experience and knowledge of officials and Panel members. A summary of this analysis is presented in the table below.

Preliminary impact analysis of four options	Option 1	Option 2	Option 3	Option 4
Extent to which option meets policy objectives				
Māori land is taonga tuku iho that should be protected and passed down to future generations	✓	✓	✓	x
Utilisation of Māori land should be able to be determined by a majority of engaged owners	x	x	✓	✓
All Māori land should be capable of utilisation and effective administration	x	x	✓	✓
Māori land should have effective, fit for purpose, governance	x	x	✓	✓
There should be an enabling institutional framework to support owners of Māori land to make decisions and resolve any disputes	x	x	✓	✓
Excessive fragmentation of Māori land should be discouraged	x	✓	✓	x
Extent to which option addresses issues in problem definition				
<i>Ownership</i>				
Owners are not able to make decisions themselves	x	x	✓	✓
Unengaged owners can inhibit decision making	x	x	✓	✓
<i>Governance</i>				
Unengaged owners may result in Māori land not being utilised	x	✓	✓	x
Lack of choice and flexibility in governance structures	x	x	✓	✓
Lack of accountability for Māori land governors	x	x	✓	✓
<i>Institutional Framework</i>				
The current mediation option is not comprehensive or efficient	x	x	✓	✓
Lack of succession to Māori land.	x	x	✓	✓
Fragmentation of Māori land ownership	x	✓	✓	x
The identification of Māori land by status has not been effective	x	x	✓	x

25. Options 1 and 2 (status quo and high judicial involvement) maintain the current regulatory protection of retention of Māori land, which extends to requiring a judicial process for many other transactions relating to Māori land (for example, the establishment of governance entities, the appointment of trustees and succession to ownership interests).
26. This high level of judicial oversight carries compliance costs for owners of Māori land, which contributes to these options being assessed as failing to meet several other policy outcomes (such as facilitating utilisation and empowering engaged owners to make their own decisions about land). It also means these options fail to address many of the problems associated with high compliance costs in the status quo problem definition.
27. Option 2 differs from Option 1 with the introduction of two new measures to address problems with the status quo: firstly, Option 2 would see the MLC proactively seeking opportunities to appoint external managers to under-utilised parcels of Māori land (without engaged owners), and secondly, it would see the phasing out of the current individualised shareholding tenure of Māori land.
28. Overall however, the analysis found Options 1 and 2 would not adequately achieve the desired policy outcomes or address the problems with the current Māori land system. These two options were not considered further.
29. Of the four options considered, Option 3 (light judicial involvement) was found to best achieve the policy outcomes and address the issues in the problem definition. This option was found to maintain protection of the retention of Māori land (achieving the first desired policy outcome) without imposing judicial processes on other transactions relating to Māori land. This would reduce compliance costs for owners of Māori land, therefore better empowering them to make autonomous decisions relating to their land (achieving several other policy objectives and addressing several aspects of the problem). Option 3 would also provide owners of Māori land with an option to transition to a system of collective ownership of parcels of land, satisfying the final policy objective and addressing a further issue associated with the status quo.
30. Option 4 (minimal judicial involvement) represents the largest departure from the status quo. This option would see all Māori land effectively converted to general freehold land and the specific legislative framework governing Māori land removed. The impacts of this option would likely address several of the problems associated with the current regulatory framework. However, it failed to meet two of the five policy objectives. In particular, it does not recognise Māori land as taonga tuku iho, which was a central tenet of the review of Māori land. On further consideration, this option was also found to carry significant political and legal risks (in terms of potential breach of the Treaty of Waitangi). These risks would also apply if Māori land status was retained (but all other specialist judicial oversight was removed). This option was therefore not further considered.
31. Following Cabinet agreement in December 2013 to the implementation of proposals to improve the utilisation of Māori land in line with Option 3 [CAB Min (13) 43/6 refers], Te Puni Kōkiri undertook more detailed analysis to better understand the impacts of Option 3. This was undertaken in consultation with the Ministry of Justice, LINZ, the Ministry of Business, Innovation and Employment, the Ministry for Primary Industries and central agencies.
32. The expected impacts of implementing Option 3 are summarised below. This has been informed by both initial impact analysis undertaken by Te Puni Kōkiri and

more detailed analysis following Cabinet's decisions in September and December 2013.

Expected impacts of implementing Option 3 (light judicial oversight)

Overall impacts

33. Legislation empowering Māori land owners is a necessary but not a sufficient condition to achieve the step change in Māori land utilisation that the Government is seeking. Allied to this is the need for a more proactive approach to the channelling of resources to support increased utilisation. This is occurring already through the Treaty settlement process. There is also a need to separately address other long standing issues such as building capability, improving access to finance, reducing debt (including rates arrears) and providing robust information and data. However, ensuring the rules governing Māori land are appropriately tailored to the needs of Māori land owners, particularly those who are wanting to make decisions, with appropriate safeguards, is crucial in underpinning both the achievement of Māori aspirations and Māori land utilisation.
34. Option 3 seeks to strike a balance between maintaining protections around the sale and governance of Māori land, and supporting the utilisation and development of land. In this context, the policy proposals are designed to:
 - remove requirements that no longer provide the intended benefits relative to the costs they impose. For example, it is proposed that the requirement for the MLC to approve the establishment of a governance entity is removed. These changes benefit owners and governors by reducing the need for them to spend time dealing with governance processes, so they can instead focus on value-adding activities;
 - streamline and improve the efficiency of the processes and functions that support the framework. For example, the proposed administrative services include an independent, purpose-designed mediation service to provide efficient and effective dispute resolution services for disputes relating to Māori land. The introduction of efficient and streamlined processes, such as the mediation service, makes it easier and cheaper for owners and governors of land to utilise the TTWMA framework; and
 - increase the flexibility of the framework, as an enabler for owners and governors of land. For example, under the proposals owners of land will have the flexibility to choose a governance or management entity structure of their choice. The changes are designed to provide sufficient flexibility to meet the changing needs of the owners of Māori land and support social and economic development.

Financial impacts

35. The December 2013 Cabinet paper included estimated one-off costs and the ongoing operational expenditure to implement the proposals. The annual operating expenditure was estimated to be between \$10.8 and \$13.3 million and one-off capital and operating costs were estimated to range between \$6.0 and \$9.6 million. The impact on operational expenditure was estimated to be fiscally neutral with savings ranging between -\$0.4 and \$1.8 million.
36. Officials have updated the financial estimate which puts annual operating expenditure between \$10.2 and \$15.5 million and one-off capital and operating

costs between \$4.5 and \$11.8 million. In updating this estimate, a range of transition scenarios have been tested against the initial estimates to determine the likely overall cost of implementation at different speeds of transition. A slower transition involves a lower level of short-term transitional costs but a higher level of ongoing operating costs, a faster transition will have higher short-term transitional costs but lower ongoing operating costs.

37. The lower level of ongoing operating costs are based on the assumption that the new operating model for the Māori Land Service will enable Māori land owners to administer or interact with their land interests primarily through an online channel supplemented by face to face services.
38. Officials have incorporated the following assumptions in developing this revised estimate:
 - Change costs of between \$557,000 - \$3.3 million (driven by speed of transition under different scenarios);
 - One-off cost of establishing updated governance structure (including secretariat): \$200,000;
 - Costs associated with managing transition implementation: \$3.8 million (\$950,000 per annum over four-year transition period);
 - Process and system costs: \$1.6 million (\$400,000 per annum over four-year transition period);
 - Costs associated with digitisation of Māori Land Court record: \$2.9 million; and
 - Costs associated with upgrading Māori Land Information System: \$3.4 million.
39. The assumptions on which the revised estimate is based do not include costs of:
 - Building a new technology solution – there will be costs for designing, building and testing a complex, interconnected technology system which will provide varying access securities to agencies and landowners; enable an extensive range of transactions to be conducted; be able to communicate with other systems in LINZ and the Māori Land Court; hold a substantial supporting set of data and information; and with an online access portal;
 - Implementing new functions and services required through a change in policy, such as external managers and mediation services;
 - Establishing a cross-agency project office to manage the design and delivery of the Māori land service; or
 - Overhead costs for running current Māori land services
40. Greater certainty on the financial implications will become available as a detailed business case for the proposed changes is developed in late 2014/early 2015.
41. The expected net benefits of the proposal are improved efficiency and effectiveness to owners of Māori land, enabling improvements in land utilisation. In this context, the proposal is designed to reduce compliance costs associated

with setting up governance entities for managing land use, make it easier for engaged owners to make decisions about the use of land and simplify the functions that support the land governance framework. It is assumed that these improvements will empower owners to make decisions, which will lead to greater utilisation and positive social and economic impacts.

42. While it is difficult to quantify these benefits, analysis commissioned by Te Puni Kōkiri estimates that the policy proposals could result in greater use of the land governance framework and, as a result, an increase in land utilisation decisions and a resulting uplift in the economic utilisation of approximately 300 currently under or not fully utilised land blocks. Continued improvements in utilisation will be better enabled by Option 3, the impacts of which will be monitored over time.
43. Wider benefits are more difficult to quantify given that it is difficult to predict how owners' behaviour may change as a result of increased choice. It is also difficult to attribute legislative change with wider benefits given the contribution of other factors. However, research provides an estimate of the potential ceiling that could be reached: an extra \$8 billion in gross output and 3,600 new jobs for the primary sector over a ten year period.⁶

Impacts on owners of Māori land

44. Implementing Option 3 is expected to result in increased utilisation of Māori land through improvements to the governance framework and a reduction of the compliance burden for owners and governors of Māori land. In particular, engaged owners will enjoy faster and simpler processes when making utilisation decisions and resolving disputes – for example, they will not be required to obtain MLC approval of decisions in order to effect transactions (other than sale). Option 3 aims to extend to owners of Māori land many of the same freedoms and obligations enjoyed by owners of general freehold land, while retaining the protections accorded to that land as taonga tuku iho.
45. Unengaged owners of Māori land are also likely to be impacted. Unengaged owners may be incentivised to become engaged with their land and participate in decision-making due to reduced transaction costs and easier engagement processes (such as enabled absentee voting). Their land will be more likely to be utilised, either through the decisions of engaged owners, or through the appointment of external managers. The proposal to broaden the range of organisations eligible for appointment as external managers will create competition (in both cost and quality of service), which is expected to provide further benefits to unengaged owners.
46. It is important to note that unengaged owners will always have the option to re-engage, simply by participating in decision-making relating to the land. Prescribing the duties and obligations of Māori land governance entities is likely to support better awareness of these obligations among owners of Māori land, and may lead to better decision-making by governance entities of Māori land.
47. The proposal that officials give consideration to provisions to ensure Māori land is clearly identified is expected to give owners of Māori land greater certainty in the classification of their land under the proposed new Māori land title system, reducing the risk that protections are overlooked or unrecognised.

⁶ Ministry for Primary Industries (2013). *Growing the Productive Base of Māori Freehold Land*. Wellington: New Zealand.

48. Owners of Māori land will enjoy the option of transitioning to a system of collective ownership of their land, if they wish. This would reduce compliance and transaction costs for those owners and will prevent the further fractionalisation of ownership interests for those owners. Those owners who prefer to maintain existing defined ownership interests would not be impacted.

Impacts on government agencies

49. The proposed changes to the institutional framework supporting Māori land require the following services to be delivered by government agencies:
- supporting owner decision-making processes;
 - appointing and overseeing external managers;
 - maintaining the record of Māori land ownership and titles;
 - providing information services for Māori land ownership and title;
 - providing registry services for Māori land governance entities; and
 - administering a mediation service for Māori land disputes.
50. On 9 December 2013, Cabinet agreed to an implementation plan with proposals to improve the utilisation of Māori land. The intent of the reforms is to create an enabling institutional environment to empower and assist Māori land owners to optimise utilisation of their land as determined by them. The implementation of proposals relates to the transition of Māori land services from a system with significant judicial involvement to one with more of an administrative focus. The transition will result in a fundamental shift in how services will be delivered to Māori land owners. The key Māori land services to be provided include:
- supporting owner decision-making processes;
 - appointing and overseeing external managers;
 - maintaining the record of Māori land ownership and titles;
 - providing information services for Māori land ownership and title;
 - providing registry services for Māori land governance entities; and
 - administering a mediation service for Māori land disputes.
51. Cabinet agreed that the Māori Land Court and LINZ continue to deliver services to Māori land owners. Cabinet agreed that ongoing access to the Māori Land Court, as a judicial forum, remains an important part of the institutional framework supporting Māori land owners [CAB Min (13) 43/6 refers]. The Māori Land Court will be responsible for ensuring that Māori land retention thresholds are adhered to, resolving serious disputes unable to be resolved through mediation, clarifying and interpreting the law and enabling governors to be held to account. The Māori Land Court will retain its jurisdiction in specialised areas and will continue to be supported by the Ministry of Justice.
52. Cabinet noted that the preference is for LINZ to deliver administrative Māori land services primarily through an online channel supplemented by face to face services [CAB Min (13) 43/6 refers]. It was proposed that the primary service delivery channel would be Landonline, which enables land information to be

accessed and transactions to be conducted remotely⁷. It was proposed that Landonline would be supported through the procurement of face to face services for mediation, external management, support for owner decision-making and information provision through community outreach services. The provision of face to face services recognises that some Māori land services will not be able to be delivered online. It also recognises that some Māori land owners have limited online access or prefer to engage on a face to face basis.

53. Cabinet agreed that the Minister for Land Information and the Associate Minister of Māori Affairs, in consultation with the Minister of Māori Affairs, the Minister of Justice and the Minister for Courts, jointly report back to EGI in June 2014: for a final decision on LINZ as the preferred provider; with the next stage of the detailed implementation plan [CAB Min (13) 43/6 refers].
54. Further analysis has been undertaken since December 2013. Officials have concluded that a multi-agency approach aligning services with agency core business would result in a better service for Māori land owners. The core business of the agencies that currently deliver services to Māori land owners:
 - Te Puni Kōkiri: represents whānau/hapū/iwi Māori rights and interests through leveraging its regional office network linked to communities;
 - Ministry of Justice: provides administration for New Zealand Courts and Tribunals and ancillary services across a distributed network; and
 - Land Information New Zealand: provides authoritative source of information on property rights, including land ownership.
55. The Cabinet paper to which this RIS relates seeks Cabinet agreement to the development of a Māori Land Service which will provide access to a suite of services led and delivered across multiple agencies. The Māori Land Service will comprise administrative services provided by Te Puni Kōkiri and LINZ and the refocused judicial services provided by the Māori Land Court. LINZ will provide the interface through a single online entry point.
56. Māori land owners will be directed to the appropriate agency through the online entry portal, depending on the nature of their enquiry. If enquiries are received directly by other agencies, as many generic enquiries will be answered as possible at the point of contact before referring complex enquiries to the relevant agency. To ensure a seamless service for Māori land owners, agencies will need to be coordinated to ensure consistent advice and information provision.

Allocation of services

57. In allocating services to agencies, a set of criteria were considered alongside agency core business, including alignment with agency cultural context and operating environment; core functions objectives and outputs; the needs of the end user; and the ability of the agency to implement the changes effectively.
58. The Cabinet paper to which this RIS relates, *Māori Land Service*, seeks approval to allocate responsibility for administrative Māori land services to the lead

⁷ LINZ is currently developing a detailed business case for an upgrade of Landonline, known as Advanced Survey and Title Services (ASaTS) and will report back to EGI in 2014 following the general election.

agencies as set out in column 1 of Table 1 below. Each agency's lead or supporting role for each service in the future state is set out in columns 2-4.

Table 1: Allocation of services to lead agencies

1. Future Services	2. Te Puni Kōkiri's role	3. LINZ's role	4. Ministry of Justice's role
Support owner decision-making Lead agency and rationale: Te Puni Kōkiri (linked to communities through regional presence)	Te Puni Kōkiri will provide advice to owners on governance structure options and establishment	LINZ will provide access to electronic title and ownership records	The Māori Land Court will continue to provide access to Court records, including historic title and ownership records
Appoint external managers Lead agency and rationale: Te Puni Kōkiri (linked to communities through regional presence, and is a continuation of services under owner decision-making above)	Te Puni Kōkiri will appoint and oversee external managers to assess potential of underutilised land blocks pending owner-initiated governance	LINZ will provide access to electronic title and ownership records	The Māori Land Court will continue to provide access to Court records, including historic records
Maintain register of Māori land ownership and title Lead agency and rationale: LINZ (aligns with role as authoritative source of information on land ownership, and enables the consolidation of all legal title and	As part of the seamless service, if Te Puni Kōkiri receives any direct enquiries relating to title and beneficial interests, staff will answer as many generic questions as possible before referring customers to LINZ	LINZ will maintain the register of title and beneficial interests for Māori land and maintain systems and services to enable access to the register; complete applications for succession; and transmit information to the Māori Land	The Māori Land Court will transmit Court orders affecting title and ownership to LINZ for registration, and maintain the Court record

1. Future Services	2. Te Puni Kōkiri's role	3. LINZ's role	4. Ministry of Justice's role
beneficial interest information in one system)		Court	
Information and research services Lead agency and rationale: LINZ (an extension of services provided to maintain the register of Māori land ownership and titles above and aligns with goals to enable appropriate access to land ownership information)	As part of the seamless service, if Te Puni Kōkiri receives any direct enquiries relating to accessing and searching title and beneficial interests, staff will answer as many generic questions as possible before referring customers to LINZ	LINZ will provide access to systems and services for people to access and search electronic Māori land title and beneficial records	The Māori Land Court will continue to provide access to Court records (including historic records)
Governance registry services Lead agency and rationale: LINZ (providing the registry through the same online platform as title and beneficial interests records will ensure a complete record of Māori land)	Te Puni Kōkiri will ensure relevant information is included on the registry that flows out of owner decision-making and external manager services above, which will include administering hui for land owners	LINZ will provide the IT system to record the governance entities	The Māori Land Court will provide access to Court records, including historic and paper records
Administer mediation services Lead agency and rationale:	Te Puni Kōkiri will administer a mediation service to resolve Māori	As part of the seamless service, if LINZ receives any direct enquiries	The Māori Land Court will be enabled to direct parties to the mediation

1. Future Services	2. Te Puni Kōkiri's role	3. LINZ's role	4. Ministry of Justice's role
Te Puni Kōkiri (linked to communities through regional presence and existing role in facilitating meetings, requires similar set of services that will support owner decision-making service above)	land disputes (including for Court-directed mediation)	relating to disputes, staff will answer as many generic questions as possible before referring Māori land owners to Te Puni Kōkiri or the Ministry of Justice as appropriate	service and hold judicial settlement conferences

59. The Ministry of Justice will continue to provide administrative services to the Māori Land Court. LINZ will design the whole-of-government online entry point for Māori land owners as well as the IT systems to support the register of title and beneficial interests for Māori land, and record Māori land governance entities.
60. The expected financial implications of this proposal are mentioned above in paragraphs 37 – 39. There will also be implications for LINZ's systems and capabilities.
61. The role and jurisdiction of the MLC in terms of judicial processes would be refocused under Option 3, with the MLC focussing on retention decisions, greater accountability, complex disputes and existing specialist areas. Option 3 will reduce the judicial workload of the MLC, freeing up resources to work on processing complex cases more quickly, or allowing cost savings to be realised. These changes also represent significant impacts on the workload and resourcing of the Ministry of Justice.

Impacts on other parties

62. The proposal to broaden the range of organisations that may be eligible for appointment as external managers of Māori land will also impact on Te Tumu Paeroa, (who is currently the only agency eligible for appointment as an external manager of Māori land). Other prospective external managers, including Māori trusts and incorporations or professional trustee companies such as Guardian Trust will have the opportunity to provide services to new clients. The impacts on these organisations are unable to be assessed at this time, due to the uncertainty about how many appointments of external managers could be made in future and the limited data on the profile of under-utilised Māori land.

Consultation on options

Consultation on Discussion Document

63. On 3 April 2013, the Minister and Associate Minister of Māori Affairs publicly released a Discussion Document developed by the Panel. 189 written submissions were received and 20 public hui were held.

64. The targeted feedback received during the consultation hui was generally supportive of the overall thrust of the propositions to improve the utilisation of Māori land through the empowerment of Māori land owners. Overall, discussion focussed on what the propositions mean in practice and how they would be implemented. The common themes from the hui and submissions included:

Ownership

- general support for an engaged owner concept;
- agreement that remaining Māori land must not be sold and support for the retention of the current high threshold for the sale of Māori land;

Governance

- agreement that robust and accountable governance is crucial;
- differing views on the concept of an external manager, but general support from written submissions;

Institutional Framework

- general support for mediation;
- general support for resolving fragmentation issues but no consensus on how this might be achieved;
- differing views on collective or individual ownership and voting by shareholding or by owner; and
- rejection of the Panel's suggestion that decision-making rights be limited to owners that have a minimum ownership interest.

65. A wide range of other issues were also raised that are beyond the scope of the propositions and the review.

66. Feedback received through this consultation has informed the development of the policy proposals set out in the accompanying Cabinet paper: *Māori Land Service*.

Consultation on further policy development

67. The Treasury; Ministry of Justice; Ministry for Primary Industries; Ministry of Business, Innovation and Employment; Ministry for the Environment; Land Information New Zealand; Department of Conservation; Department of Internal Affairs and the Office of Treaty Settlements were consulted on the Cabinet paper: *Te Ture Whenua Māori Bill: Implementation* and the previous version of this RIS [CAB Min (13) 43/6 refers].

68. The Department of the Prime Minister and Cabinet was also informed of that Cabinet paper.

69. The Ministry of Justice, Ministry for Primary Industries, Ministry of Business, Innovation and Employment, Department of Conservation, Ministry for the Environment and Department of Internal Affairs have been consulted on the Cabinet paper: *Māori Land Service* that this RIS accompanies. The Cabinet paper was jointly prepared with Land Information New Zealand.

70. The Treasury, the Department of the Prime Minister and Cabinet and the State Services Commission have been informed.
71. The Minister of Māori Affairs has agreed to the submission of the Cabinet paper: *Māori Land Service*.

Consultation on RIS

72. The Treasury; State Services Commission, Ministry of Justice; Ministry for Primary Industries; Ministry of Business, Innovation and Employment; Ministry for the Environment; Land Information New Zealand; Department of Conservation and Department of Internal Affairs have been consulted on the RIS.
73. The Department of the Prime Minister and Cabinet has been informed of the RIS.

Conclusions and recommendations

74. As set out in this paper, Te Puni Kōkiri has analysed four options for reforming the legislative and institutional framework governing Māori land, and undertaken more detailed impact analysis of one of those options (Option 3). Based on that analysis, Te Puni Kōkiri recommends progressing Option 3. In summary, Option 3 contains the following recommendations:

Ownership

- enable engaged Māori land owners to make utilisation decisions without the need for judicial involvement;
- continue to include protections for the retention of Māori land;

Governance

- improve the mechanisms for the appointment of external managers to administer under-utilised Māori land blocks;
- allow Māori land owners to establish governance entities themselves;
- prescribe the duties and obligations of Māori land governance entities and align these with the general law;

Institutional Framework

- support Māori land owners with administrative services to be provided by an existing government agency or agencies including:
 - i. administering a mediation service;
 - ii. appointing and overseeing of external managers in appropriate cases;
 - iii. managing decision-making processes for owners to establish governance entities;
 - iv. maintaining the record of Māori land ownership and titles;
 - v. providing information and registry services;
- refocus the jurisdiction of the MLC to primarily retention decisions, complex disputes and existing specialised areas;
- ensure Māori land is correctly identified; and
- provide an option to transition to collective ownership.

75. It is proposed that a multi-agency approach (as outlined above) is adopted, which would align services with agency core business to provide a better service for Māori land owners.
76. The option seeks to provide the conditions in which greater owner-driven utilisation of Māori land can occur. Ensuring the rules governing Māori land are appropriately tailored to the needs of Māori land owners, particularly those who are wanting to make decisions, with appropriate safeguards, is crucial in underpinning the achievement of Māori aspirations and Māori land development.
77. The proposed changes are designed to result in increased utilisation of Māori land through empowering Māori land owners and governors to make decisions themselves, supported by an enabling institutional environment.
78. As noted above, officials have updated the financial estimate which puts annual operating expenditure between \$10.2 and \$15.5 million and one-off capital and operating costs between \$4.5 and \$11.8 million.
79. Following the December 2014 report back, Te Puni Kōkiri will work with LINZ to monitor the impacts of the proposed changes, in terms of how well the framework supports Māori land owners to achieve their aspirations, and in terms of the fiscal impacts (see Monitoring, evaluation and review section below).
80. Te Puni Kōkiri therefore recommends proceeding with Option 3. Cabinet agreement is sought to progress the proposals under this option through the introduction of a new Te Ture Whenua Māori Bill in late 2014/early 2015.

Implementation

Implementation planning

81. The significance of the changes required for the preferred option (Option 3) to be adopted requires the development of new legislation. As noted above, proposed changes to the institutional framework mean government agencies will need to deliver the following services in future:
 - supporting owner decision-making processes;
 - appointing and overseeing external managers;
 - maintaining the record of Māori land ownership and titles;
 - providing information services for Māori land ownership and title;
 - providing registry services for Māori land governance entities; and
 - administering a mediation service for Māori land disputes.
82. The phased transition from a judicial to an administrative system could occur over a three to five year period. This takes into account the need to maintain continuity of service delivery to Māori land owners, to progressively roll out legislative change as and when the new services are able to be delivered and to allow for more detailed consideration of the Budget implications and organisational changes required. The impact on current staff will be addressed as part of the next stage of a detailed implementation plan. The timing may be impacted by legislative priorities.
83. The preference is for the primary service delivery channel to be Landonline, which allows land information to be accessed and land transactions to be conducted remotely, supported by face to face services. This recognises that

some of the Māori land services will not be able to be delivered through or are unsuitable for an online medium only, that online access is not available or is limited for some Māori land owners and that some prefer to engage on a face to face basis. This could involve a community outreach programme, where procured providers will provide information and assistance directly to Māori land owners at appropriate venues including marae rather than owners having to visit regional offices. Face to face services could be rolled out with online services in 2017. These services include mediation, external management, support for owner decision making and information provision through community outreach services.

84. It is intended that mediation in the Māori land context be a broader alternative dispute resolution concept involving Māori land owners being able to directly access mediation to provide assistance with working through the underlying issues and encouraging resolution of them through the use of a facilitative approach which encourages the parties to reach their own settlements. Mediation will be focussed on assisting the relationship between the parties as a whole without necessarily being constrained by a legally defined cause of action. There will be a requirement for most disputes to enter into mediation in the first instance and for the parties to have attempted to resolve the dispute amongst themselves before mediation can be entered into.
85. Under this scenario, Māori land ownership information currently held in electronic or physical forms by the Ministry of Justice on behalf of the Māori Land Court would be migrated to Landonline. There are clear efficiency gains to be had by consolidating these records with LINZ-held records relating to the legal title into a single system. This will greatly assist in improving the integrity and accessibility of Māori land information for Māori land owners.
86. It is proposed that the Bill be introduced and passed in early 2015 with the legislation coming into force in two stages. Commencement of non-service related provisions will occur six months after enactment. The service-related provisions will commence subject to the roll out of Māori land services.
87. It is proposed that Te Puni Kōkiri administer the new legislation and be responsible for assessing its impact. Quantitative and qualitative assessment will be undertaken, culminating in a review of the legislation five years after commencement. Further detailed planning needs to be undertaken prior to the enactment of the Bill.
88. It is proposed that officials report to the Associate Minister of Māori Affairs, the Minister for Land Information, the Minister of Māori Affairs, the Minister for Courts and the Minister of Justice in December 2014:
 - with options for the governance and accountability arrangements for the Māori Land Service; and
 - information on the design, plan and costs of transition to the Māori Land Service to support bids for Budget 2015.

Risks of the policy proposals

89. There is a risk that legislative change will not achieve the expected gains in the productivity of Māori land. The analysis is cited in the Impacts section of this RIS. However, legislative change alone will not be sufficient to achieve the step change in Māori land utilisation the Government is seeking. Other issues will also

need to be addressed (such as access to finance, building capability and the provision of robust data). This risk can be managed by continuing to consider policy options to address these issues. This risk and possible mitigations will be considered as implementation planning progresses.

Ownership

90. The view that the current system of vetting governance and utilisation decisions by the MLC enables poor decisions to be avoided is based on the assumption that Judges will decline to approve decisions that, in their judgement, are poor or risky. Empowering engaged owners to make decisions free from judicial scrutiny could, therefore, be argued to carry a risk of increased exposure to the consequences of poor decision-making or poor governance appointments.
91. This risk is acknowledged, but it needs to be re-evaluated given the objectives and focus of the proposals, which recognise that owners of Māori land should not be treated by the framework paternalistically as requiring extra protections, but rather as holders of rights who are capable and should be empowered to exercise those rights and make decisions about their land based on their free and informed consent. In this regard the proposals are consistent with the approach taken by the beneficiaries of significant Treaty settlement assets and their Post Settlement Governance Entities. It is important to note that the high threshold for the permanent alienation of Māori land will be maintained. Other safeguards (for example, the mandatory provisions applying to governance entities) will be prescribed in legislation.
92. There is a risk that the proposal to reduce the onus on engaged owners to obtain the approval of unengaged owners in decisions (except in the case of sale) will be perceived as disempowering unengaged owners. It is important to note in this context that safeguards such as minimum notice periods for major transactions will continue to apply, and that all owners will always be free to engage or re-engage, simply by participating in decisions relating to the land.

Governance

93. The risks associated with external management include the perception that Māori land is essentially being transferred to a third party and that, in the event of failure, the land will bear any outstanding debt. These risks will be mitigated by setting clear and transparent processes and accountabilities for the appointment and operation of external managers.
94. The risks associated with empowering engaged owners to establish governance entities themselves could carry a risk of poor decision-making or governance appointments. However, it is important to note that the high threshold for the sale of Māori land will be retained and other safeguards for utilisation decisions (for example, clearly prescribed governors' duties and obligations) will be prescribed in legislation.
95. The key risk of specifying the duties of Māori land governors is that it will discourage people from becoming governors or bind existing governors who were appointed before these obligations were prescribed. This is a particular concern given the low numbers of Māori land governors. This risk will be managed through implementation of the new system supported by information and training.

Institutional framework

96. There is potential risk that under the proposed changes, the specialist expertise of the MLC bench will be under-utilised. As with any court, the jurisdiction of the MLC does not remain static and will always be subject to policy changes from time to time. In the case of MLC Judges, less demand for sitting time or other judicial work in the MLC will lead to greater availability to act as Presiding Members in the Waitangi Tribunal, both for inquiries and for urgency applications, and increases their potential to be warranted as Alternate Environment Judges in appropriate cases.

Implementation

97. Te Puni Kōkiri and other agencies identified the following implementation risks:

- potential under-estimation of transition or on-going costs;
- potential negative impacts change management processes may have on the productivity of the MLC before and during implementation;
- anxiety about change among stakeholders; and
- potential lack of sector capacity to support the number and type of mediations resulting from the changes.


98. The risk of under-estimation will be mitigated by the development of a detailed design and implementation plan in late 2014/early 2015. This further planning will also include the development of a comprehensive communications plan and consideration of how to build further capacity in the mediation sector to support the proposed new mediation service.

Monitoring, evaluation and review

99. Te Puni Kōkiri will continue to administer the new legislation. As the administering agency, Te Puni Kōkiri will be responsible for monitoring the impacts of the new institutional framework on owners of Māori land, and measuring the extent to which the framework supports owners to achieve their aspirations.
100. Te Puni Kōkiri proposes to monitor and evaluate these impacts within a framework comprising two levels firstly, measurement of volumes and efficiency of owner engagement with government agencies related to Māori land decisions and transactions; and secondly, engagement with Māori land owners to receive feedback and understand their perceptions and experiences of the new institutional framework.
101. Te Puni Kōkiri intends to work with LINZ and the Ministry of Justice to develop baseline data and to put in place ongoing measurement of:
- volume of enquiries received from Māori land owners, the distribution across subject of enquiry (e.g. information on governance structure options; information on succession), channel of enquiry (e.g. online, face to face), the time taken to respond to the enquiry, and a sample of customer feedback on this engagement;
 - volume and impacts of Crown-appointed external management of Māori land. This will include quantitative and qualitative data (for example, case studies) on assessments and appointments;

- volume of transactions which require updates to Māori land ownership and title records, including the number of successions;
 - the level of data relating to Māori land that is available online for land owners to search and access records;
 - volume of new Māori land governance entities established; and
 - volume of mediations initiated and completed, and the outcome of those mediations.
102. Some baseline data is available, and will enable the impacts to be compared with the status quo. Te Puni Kōkiri intends to report on this monitoring and evaluation one, three and five years after all of the changes come into force.
103. At the second level, Te Puni Kōkiri will engage with owners of Māori land by way of written or online survey two and four years following full commencement. This will be followed with broader engagement (including regional hui) five years following full commencement.
104. This monitoring and evaluation will inform a review of the changes to be undertaken five years following implementation. This review will be undertaken by Te Puni Kōkiri (or on behalf of Te Puni Kōkiri). Full terms of reference will be developed at the appropriate time, but the review will in general aim to assess how effective the legislative changes have been in supporting Māori land owners to achieve their aspirations and increase the utilisation of Māori land. The review will also consider the relationships between the policy and operational agencies (that is, Te Puni Kōkiri, Ministry of Justice and Land Information New Zealand) and identify any areas for improved governance, effectiveness or efficiency.

Consultation on Cabinet and Cabinet Committee Submissions

Certification by Department:	
Guidance on consultation requirements for Cabinet/Cabinet committee papers is provided in the CabGuide (see Procedures: Consultation): http://www.cabguide.cabinetoffice.govt.nz/procedures/consultation	
Departments/agencies consulted: The attached submission has implications for the following departments/agencies whose views have been sought and are accurately reflected in the submission: The Treasury; the State Services Commission; the Ministries of Justice, and Business, Innovation and Employment; the Ministry for Primary Industries; the Ministry for the Environment; the Departments of Internal Affairs, and Conservation. (Submission jointly prepared with Land Information New Zealand)	
Departments/agencies informed: In addition to those listed above, the following departments/agencies have an interest in the submission and have been informed: The Department of the Prime Minister and Cabinet	
Others consulted: Other interested groups have been consulted as follows:	
Name, Title, Department: Arawhetu Gray, Deputy Chief Executive, Policy Partnerships, Te Puni Kōkiri	
Date: 25/06/2014	Signature 

If this form covers two pages ensure that both certification sections are completed and attached in the back of the submission as separate submissions.

Certification by Minister:

Ministers should be prepared to update and amplify the advice below when the submission is discussed at Cabinet/Cabinet committee.

The attached proposal:

Consultation at
Ministerial level

- ☒ **has been** consulted with the Minister of Finance
[required for all submissions seeking new funding]
- ☐ **has been** consulted with the following portfolio Ministers: Land Information (joint submission), Justice, Māori Affairs, Courts, Economic Development
- ☐ **did not need** consultation with other Ministers

ECONOMIC DEVELOPMENT
LAND INFORMATION
FINANCE

JUSTICE
COURTS
MAORI AFFAIRS

Discussion with
National caucus

- ☐ **has been** or ☒ **will be** discussed with the government caucus
- ☐ **does not need** discussion with the government caucus

Discussion with
other parties

- ☒ **has been** discussed with the following other parties represented in Parliament:
- ☐ Act Party ☒ Māori Party ☐ United Future Party
- ☐ Other [specify]
- ☐ **will be** discussed with the following other parties represented in Parliament:
- ☐ Act Party ☐ Māori Party ☐ United Future Party
- ☐ Other [specify]
- ☐ **does not need** discussion with other parties represented in Parliament

Portfolio

Māori Affairs

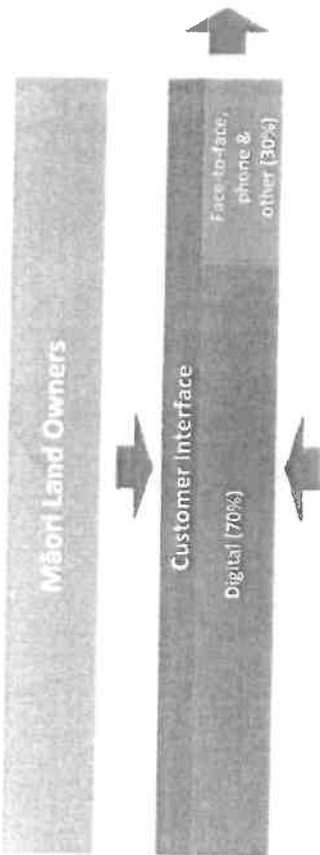
Date

25, 6, 2014

Signature

C. J. Furlay

Appendix 1: Future State



Policy Drivers

- Moving Māori land from a local service to a national service
- Improving the utilisation of Māori land
- Enabling Māori Land Owners to achieve their aspirations
- Enabling Māori land owners to make decisions
- Providing an enabling institutional framework
- Maintaining the appropriate retention of Māori land

Māori Land Service Design Features

- Seamless provision of Māori land services to customers by responsible agencies
- Provision of a key entry point for Māori land owner enquiries
- Alignment with land agencies' core business
- Planned and required transition to the new system over time
- Futureproofing the delivery of services through the integration of electronic channels consistent with best practice
- Investment decisions strongly impacted by the cost of Government's investment programme

Key Agency Strengths

- Te Pūkaki**
Regulating who can hold our Māori rights and interests through leveraging Regional Offices to local communities
- Ministry of Justice**
Administration for New Zealand Courts and Tribunals and ancillary services across a distributed network
- Land Information New Zealand**
Provides authoritative source of information on property rights including land ownership

BPS Result 10 Target: An average of 70% of New Zealanders' most common transactions with Government will be completed in a digital environment by 2017

Administer mediation services

Lead Agency TPK

Facilitation	Court-directed mediation services
<p>Description: Provides facilitation services to assist Māori land owners to resolve disputes</p> <p>Agency delivery: TPK – Deliver this function through leveraging regional presence (includes independent mediation)</p> <p>Rationale for delivery: Linked to communities through regional presence and facilitating meetings</p>	<p>Description: Mediation services to assist the resolution of disputes in Māori Land Court proceedings</p> <p>Agency delivery: Justice – Administer services for Māori Land Court-ordered mediation</p> <p>Rationale for delivery: Administration for New Zealand Courts and Tribunals and ancillary services across a distributed network</p>

Māori Land Court

Description: Māori Land Court retains its role with a refocused jurisdiction

Agency delivery: Justice – Provide administrative services to the Māori Land Court

Rationale for delivery: Responsibility to administer Courts

Māori Land Service

Supporting owner decision-making	Appointing external managers	Maintain the register of Māori land ownership	Information & research services	Governance registry services
<p>Lead Agency TPK</p> <p>Description: Provides guidance and advice to Māori land owners on governance structure options and establishment, maintains systems and services to administer processes for owners (e.g. in the absence of a governance entity)</p> <p>Agency delivery: LINZ – to provide an online platform consisting of electronic title and beneficial records</p> <p>TPK – Provide electronic and face-to-face assistance</p> <p>Rationale for delivery: Linked to communities through regional presence</p>	<p>Lead Agency TPK</p> <p>Description: Appoints and oversees external management services to assess the potential for Māori land blocks to be utilised or developed pending owner-initiated governance</p> <p>Agency delivery: This is a new service that requires further scoping</p> <p>Rationale for delivery: Linked to communities through regional presence, and is a continuation of services under owner decision making</p>	<p>Lead Agency LINZ</p> <p>Description: Maintains the record of Māori land (including succession), provides land registry services, manages and updates records for Māori freehold land registered under the Land Transfer Act</p> <p>Agency delivery: LINZ – Maintain the register of title and beneficial interests for Māori freehold land and maintain systems and series to enable access to the register</p> <p>Justice – Ensure the maintenance of the Māori Land Court record, transmit Māori Land Court orders to LINZ</p> <p>Rationale for delivery: Enables the consolidation of legal and beneficial title information in one system</p>	<p>Lead Agency LINZ</p> <p>Description: Maintains systems and services for people to access and search Māori land ownership and title records</p> <p>Agency delivery: LINZ – Deliver this function through a system linked to Advanced Survey and Title Services (ASATS)</p> <p>TPK – Provide information on TTWMA online and through publications</p> <p>Justice – continue to provide online Māori Land Court cases</p> <p>Rationale for delivery: Enables the consolidation of legal and beneficial title information in one system, and improved access to land ownership information</p>	<p>Lead Agency LINZ</p> <p>Description: Provides IT systems to underpin the registration and recording of governance bodies</p> <p>Agency delivery: LINZ – Scope/design the IT system</p> <p>Rationale for delivery: Providing the registry through the same online platform as title and beneficial records will ensure a complete record of Māori land</p> <p>The provision of registry services requires further scoping</p>