



# Cabinet Māori Crown Relations - Te Arawhiti Committee

## Minute of Decision

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### Paper One : Te Ture Whenua Māori Amendment Bill

Portfolio Justice / Māori Development

On 11 December 2018, the Cabinet Māori Crown Relations - Te Arawhiti Committee:

#### Background and Context

1 noted that, in April 2018, Cabinet:

- 1.1 agreed that opportunities exist to assist and improve the system for Māori land owners in managing freehold land and, that by doing so, additional economic returns can be achieved delivering social and cultural benefit for Māori;
- 1.2 invited Te Minita Whanaketanga Māori and the Minister of Justice to report back with a paper:
  - 1.2.1 seeking agreement to amendments to Te Ture Whenua Māori Act 1993 (TTWM Act);
  - 1.2.2 that provide options for realising opportunities for Māori land and to seek agreement to an approach on the options and proposed programme of activity to design and deliver services for Māori land owners;

[CAB-18-MIN-0143]

2 noted that a companion paper *Paper two: Support for Maori Freehold Landowners Whenua Māori Programme* attached under MCR-18-SUB-0018 reports back on the request noted in paragraph 1.2.2 above;

#### Amendments to Te Ture Whenua Māori Act

3 agreed that targeted amendments be made to TTWM Act that support the Māori Land Court and strengthen the regulatory framework for Māori land tenure;

#### Succession

##### Application process

4 agreed that TTWM Act should allow a Māori Land Court registrar to process simple and uncontested succession applications for interests in Māori land;

**Succession for whāngai and adopted children**

- 5 **noted** that adopted children may succeed to their adopted parent's interests in Māori land in the same way as any natural child;
- 6 **noted** that whāngai may only succeed to interests in Māori land if the Māori Land Court recognises them as whāngai of the deceased and makes provision for them to succeed to the same or any specified lesser extent as if the whāngai had been a natural child of the deceased;
- 1 **agreed** to align the approach to succession for whāngai and adopted children and provide that their eligibility to succeed to Māori land interests should be determined in accordance with tikanga Māori;
- 7 **agreed** that the Māori Land Court may provide a life interest in the estate of the deceased to a whāngai or adopted child who is not entitled to succeed to their whāngai or adopted parent's estate;

**Eligibility to succeed in accordance with tikanga Māori**

- 8 **noted** that:
- 1.1 TTWM Act currently enables a person to succeed to Māori land despite not having a connection to that land in accordance with tikanga Māori;
- 1.2 this position risks Māori land interests being transferred away from the hapū but any change to the position will affect existing property rights and be contentious;
- 9 **agreed** to provide in the Bill, for the purposes of testing at select committee:
- 1.3 that in order to succeed to Māori land, beneficiaries must be associated with the land in accordance with tikanga Māori;
- 1.4 that a Māori person who is an owner of Māori land at the commencement of the amendment shall be deemed to be an eligible successor; and
- 1.5 that any owner of Māori land who is not deemed to be an eligible successor may bequeath their land interests to their children;

**Surviving spouse or partner of Māori land owner**

- 10 **noted** that a surviving spouse or partner of a deceased Māori land owner who dies intestate is entitled to a life interest in the ownership of the owner's interests, which do not pass to the deceased owner's descendants until their spouse or partner has died or remarried;
- 11 **agreed** that a surviving spouse or partner should be only able to receive a life interest in income or grants from the deceased owner's interests in Māori land, and occupation rights in respect of a family home that is situated on Māori land, but should not be able to participate in decision-making about that land;

**Dispute resolution process (mediation)**

- 12 **agreed** that TTWM Act should include provisions establishing a process to enable Māori land owners to resolve disputes about their land based on tikanga Māori;

- 13 **agreed** that the key components of this process should be that:
- 1.6 the process would be limited to matters within the Māori Land Court's jurisdiction and administered by the Māori Land Court;
  - 1.7 the process would be fully funded (except that parties would be required to meet their own legal costs), with mechanisms built into the process to ensure it was only used in appropriate cases;
  - 1.8 the process would not be compulsory, with any party able to withdraw from the process at any time;
  - 1.9 the process would be available for proceedings that were already before the Māori Land Court, as well as disputes for which court proceedings had not been initiated;
  - 1.1 the dispute resolution process would be confidential and without prejudice. Where an agreement is reached, the terms of settlement would be final and binding on the parties.

#### Jurisdiction of Māori Land Court

- 14 **agreed** that the Māori Land Court should have jurisdiction (in addition to the District Court and High Court as currently) to deal with matters relating to Māori land under the following provisions:
- 1.2 section 446 of the Local Government Act 1974;
  - 1.3 sections 48, 50, 55, 61, 74 and 76 of the Government Rounding Powers Act 1989; and
  - 1.4 Part 3 (relating to mortgage of Māori land) and sections 313 and 317 of the Property Law Act 2007;
- 15 **agreed** that the Māori Land Court should have jurisdiction (in addition to the High Court and Family Court as currently) to hear and decide claims under the Family Protection Act 1955 and the Law Reform (Testamentary Promises) Act 1949 when a claim relates to an estate with interests in Māori land;

#### Functionality of the Māori Land Court

- 16 **agreed** that the following amendments be made to improve the functionality of the Māori Land Court;
- 1.5 allow a Māori Land Court registrar to deal with simple and uncontested trust matters;
  - 1.6 enable a Judge of the Māori Land Court to convene a judicial settlement conference to give parties an opportunity to reach settlement of a claim or issue;
  - 1.7 allow the Māori Land Court judges to appoint experts in tikanga Māori and whakapapa ("pūwānanga") to assist, as additional members of the court, in particular cases;
  - 1.8 authorise the Māori Land Court to grant equitable relief if satisfied that it is necessary to achieve a just outcome and other remedies are insufficient to achieve that outcome;

- 1.9 enable a Māori Land Court order for the recovery of land to be enforced by the Māori Land Court, rather than by the District or High Court as currently;
- 1.10 extend the ability of the Māori Land Court to issue injunctions to include the power to compel action;

#### Māori housing tenure

- 17 **agreed** that the following amendments be made to improve Māori housing tenure:
- 1.11 enable the Māori Land Court to grant occupation orders in favour of a beneficiary of a whānau trust provided the trustees of the whānau trust consent;
- 1.12 allow the trustees of a Māori reservation to grant a lease or occupation license for the purpose of papakāinga housing for terms exceeding 14 years;
- 1.1 remove the requirement that applications to form Māori reservations must be approved by the Chief Executive, Te Puni Kōkiri after they have been determined by the Māori Land Court;

#### Minor and technical amendments

- 18 **agreed** to the amendments set out in Appendix 1 of the paper under MCR-18-SUB-0016, to:
- 1.2 improve the accountability of governance bodies;
- 1.3 strengthen the protections for promoting the retention of Māori land;
- 1.4 clarify the law of adverse possession in relation to Māori land;
- 1.5 address miscellaneous matters;
- 1.6 Financial implications
- 19 **noted** that the Ministry of Justice will require additional funding of \$0.591 million during 2018/19 for the implementation of these legislative changes;
- 20 **noted** that the companion paper attached under MCR-18-SUB-0018 proposes that the additional funding required by the Ministry of Justice in paragraph 20 above be drawn from the \$7.000 million Whenua Māori Reforms contingency fund that was established as part of Budget 2018;
- 21 **noted** that the estimated implementation costs for the Ministry of Justice and Te Puni Kōkiri associated with the legislative amendments to TTWM Act are \$3.504 million in 2019/20 and a further \$0.716 million in 2020/21;
- 22 **noted** that the estimated on-going operating costs for the Ministry of Justice associated with the legislative amendments to TTWM Act are \$2.528 million in 2019/20, \$4.745 million in 2020/21, \$4.826 million in 2021/22 and 4.616 million in 2022/23 and outyears;
- 23 **noted** that as part of Budget 2019 additional funding of \$20.935 million over four years will be sought for the additional costs outlined in paragraphs 22 and 23 above;
- 24 **agreed** that the decisions in paragraphs 3 to 19 above are subject to funding through the Budget 2019 process;

**Legislative implications**

- 25 **agreed** to include the above decisions in Te Ture Whenua Māori Amendment Bill (TTWM Bill);
- 26 [REDACTED]
- 27 [REDACTED]
- 28 **invited** Te Minita Whanaketanga Māori and the Minister of Justice to prepare drafting instructions for the Parliamentary Counsel Office to give effect to the decisions in paragraphs 3 to 19 above;
- 29 **agreed** that TTWM Bill will not be introduced until final budget decisions have been made and the financial resources for the proposed amendments have been secured;
- 30 **authorised** Te Minita Whanaketanga Māori and the Minister of Justice to approve further minor and technical amendments, if required;

**Next steps**

- 31 **invited** Te Minita Whanaketanga Māori to carry out further work on the role, function and parameters of pūwananga;
- 32 **noted** that the Minister of Local Government and the Minister for Land Information intend to submit a joint paper to MCR in early 2019 seeking agreement to further amendments to address a range of matters that create impediments for Māori land owners (such as valuation, rating and public works);
- 33 **noted** that Te Minita Whanaketanga Māori intends to submit a paper to MCR in late 2019 outlining the process to consider whether further improvements to Māori land law are required, including additional legislative amendments.

Rachel Clarke  
Committee Secretary

**Present:**

Hon Kelvin Davis (Chair)  
Hon Grant Robertson  
Hon Andrew Little  
Hon David Parker  
Hon Nanaia Mahuta  
Hon Stuart Nash  
Hon Shane Jones  
Hon Peeni Henare  
Hon Willie Jackson  
Hon Eugenie Sage

**Officials present from:**

Office of the Prime Minister  
Officials Committee for MCR

**Hard-copy distribution:**

Minister of Justice  
Minister for Māori Development  
Minister for Land Information