



Public Works (Offer Back of and Compensation for Acquired Land) Amendment Bill

139—1

Report of the Local Government and Environment Committee

Contents

Recommendation	2
Introduction	2
Submissions received	2
Retrospective application	2
Impact on future use of land	3
Current offer back and compensation provisions	4
Conclusion	5

Public Works (Offer Back of and Compensation for Acquired Land) Amendment Bill

Recommendation

The Local Government and Environment Committee has examined the Public Works (Offer Back of and Compensation for Acquired Land) Amendment Bill and recommends that it not be passed.

Introduction

The Public Works (Offer Back of and Compensation for Acquired Land) Amendment Bill was introduced as a Member's bill on 26 July 2007 in the name of Te Ururoa Flavell. The bill was referred to the Local Government and Environment Committee on 17 June 2009.

The bill seeks to ensure that former owners of Māori or general land taken or acquired by the Crown for the purposes of a public work are given the first right of refusal to purchase that land where the Crown no longer requires it for the public work for which it was originally taken or acquired. The bill as drafted would do this through amendments to section 40 of the Public Works Act 1981 (the Act).

The bill would also provide for solatium payments to be made for loss of land or opportunities associated with its use where land was acquired or alienated for a public works purpose for which it was not actually used. Where the former owners of the land are deceased, the bill would allow these rights to be exercised by their descendants.

Submissions received

We received and considered 71 submissions from various organisations and individuals, including infrastructure providers, groups representing Māori interests, and local authorities. Widely differing opinions on the bill were expressed in submissions. While many submitters acknowledged favourably the broad intent of the bill, they also raised significant concerns with the bill as drafted, and the potential impact of its provisions. Many of these concerns were reinforced in advice we received from Land Information New Zealand, the Government department that administers the Act.

We discuss below the main reasons why we believe this bill is not the appropriate vehicle for amending the Act to achieve the redress sought, and potential enhancements to the existing regime for public works in New Zealand.

Retrospective application

It would appear that the bill's offer back and solatium provisions are intended to apply retrospectively, which would have major financial, practical, and legal implications should this bill be enacted. We were advised that a number of previous Public Works Acts in New Zealand's history have all permitted land to be acquired for one use and used for another, if changes in use were in the public interest, and that this allowed the effective and efficient

management of land for public works purposes. Provisions proposed in the bill could undermine and invalidate these historical changes of use. In effect, all land where the current use is different from the original public work would become surplus on enactment of the bill, requiring the investigation of this land, and its offer back to former owners or successors, irrespective of whether the land was acquired compulsorily or by voluntary agreement. There are also ambiguities in the bill as introduced, including key terms such as “original public work”, and “descendant”, which are not defined and could present considerable legal difficulties.

We understand that there is no central and easily searchable register of land acquisitions, transfers, and disposals under the Act since it was first enacted in the 1870s, but that there are likely to be thousands of properties held by the Crown or local authorities that are not currently used for their originally intended public work, but still being used for a public work purpose. If the bill were passed, it is likely that every Crown agency, local authority, State-owned enterprise, and Crown research institute would have to make an initial assessment of all land under their control to establish whether the bill’s requirements affected that land. If any part of that land was not being used for the original work, a full offer-back investigation under section 40 of the Act would be instigated.

We consider the resulting workload would be unduly burdensome and costly, especially as implementing the offer-back provisions of the current regime can take up to 12 months for a single property. We are concerned too, that enactment of the bill could have unintended consequences, such as more land, including land offered back, having to be acquired or reacquired for essential public works, sometimes by compulsory acquisition.

Impact on future use of land

As well as causing disruption to the existing public works regime, the bill might adversely affect New Zealand’s future public works and infrastructure needs. At present, once land is acquired by the Crown, or local authorities for public works, it could have any or all of the following statuses over time:

- held for public work it was acquired for, for example in planning stages
- transferred or set apart for another public work
- in the process of being disposed of when no longer required for public works.

The rationale for this current ability to change the public works use of land is that it is more efficient and cost-effective to use land already in Crown or local authority ownership for a new public work, rather than to acquire more private land. The bill is unclear on what would be permitted in the way of future changes in use of land before that land was considered to be no longer required for the public work and should be offered back.

We are concerned about a number of possible effects. For example, the bill's provisions could prevent or hinder the strategic planning, managing, and holding and leasing of land for future works and infrastructure. They might also remove the existing ability to apply sections 50 and 52 of the current Act to transfer and set apart land for a public work without first offering back the land to the former owner or their successors. This would make section 40 almost unworkable because land would always have to be offered back and then reacquired for the proposed new, or changed, public work. The overall effect of such difficulties is likely to be increased compliance and other costs, which might deter investment in infrastructure and public works that require land to be acquired or held by the Crown and local authorities.

Current offer back and compensation provisions

Section 40 of the Act specifies how and when land should be disposed of to the former owner where it is no longer required for a public work. We were advised that the Act is not intended to facilitate anyone but the Crown, local authorities, and certain private entities using land for a public work, and that the intent of the bill is addressed by current mechanisms for redress for compensation and offer back, available through the Court system and Treaty of Waitangi settlement processes.

Nevertheless, it is apparent to us in the bill's motivation, and comments made in submissions to the bill, that significant concern remains about the effects of activities conducted under the various forms of the Act in New Zealand's history. The member in charge of this bill, Te Ururoa Flavell, submitted that there is a body of evidence in Waitangi Tribunal reports that the Act has been used as a tool to dispossess Māori of their land, and that the Crown has historically failed to honour its obligations to protect Māori land for use by Māori, as set out in Article II of the Treaty. We also heard examples of land now having a different use from the public work it was originally acquired for, or having no use at all, which suggest that the bill also raises issues that apply to non-Māori land.

Te Ururoa Flavell acknowledged the difficulty of amending the Act as his bill proposes, but submitted that a comprehensive review of section 40 and all sections incidental should be conducted by Land Information New Zealand. In his view, any overall review should include the following matters:

- the inclusion of a Treaty clause in the Act
- amendments to section 40 that acknowledge and address historical injustices committed under the Act
- the making of solatium payments by the Crown to beneficiaries
- the role of the Māori Land Court in determining solatium payments.

We understand that aspects of the Act are being reviewed in the second phase of the Government's reforms of the Resource Management Act 1991 (RMA). Areas of work that relate specifically to provisions within the Public Works Act concern

- eligibility for compensation in the Act and RMA
- the speed, flexibility, and equity of compensation under the Act and RMA

- objections and decision-making processes under the two Acts, and their alignment with related legislation.

We are advised that any options proposed to address the issues in question are subject to Cabinet approval.

Conclusion

This bill has stimulated valuable debate and we acknowledge the member in charge and submitters for their contributions. These contributions have highlighted issues that could be considered when the Act is reviewed. However, the debate has led us to conclude that the bill, if enacted, proposes measures that are likely to cause significant and wide-ranging costs and disruption. We therefore do not believe that this bill should be passed.

Appendix

Committee procedure

The Public Works (Offer Back of and Compensation for Acquired Land) Amendment Bill was referred to the committee on 17 June 2009. The closing date for submissions was 14 August 2009. 71 submissions from interested groups and individuals were received and considered. We heard 34 submissions.

We received advice from Land Information New Zealand and the Parliamentary Counsel Office.

Committee members

Chris Auchinvole (Chairperson)
Dr Cam Calder (from 24 June 2009)
David Garrett
Hon George Hawkins
Hon Shane Jones
Rahui Katene
Nikki Kaye
Sue Kedgley
Phil Twyford
Louise Upston
Nicky Wagner
Jonathan Young (until 24 June 2009)