REGULATORY IMPACT STATEMENT

Te Ture Whenua Māori Reform

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by Te Puni Kōkiri. It accompanies the Cabinet paper: *Te Ture Whenua Māori Reform*.

This RIS provides an analysis of options related to issues that affect Māori land, being:

a. offer back of Māori land acquired / taken for public works;
b. the compensation for Māori land being acquired for public works;
c. evaluating alternatives to the purchase of Māori land;
d. rating of Papakāinga housing;
e. the operation of the rates rebate scheme;
f. rating land as one rating unit; and
g. kawenata tiaki whenua and historic cultural and scenic whenua tāpui.

For public works matters, this paper proposes an enhanced role for the Māori Land Court in facilitating offers back under the Public Works Act 1981 (**PWA**) to former Māori land owners; that compensation for Māori land not be reduced on account of Māori land status. That the element of additional compensation for acquisition of notified dwellings (solatium payments) apply to all separately owned homes on Māori land. That Māori land is only purchased it is reasonably necessary, that there has been adequate consideration of other options and that the principles of Te Ture Whenua Māori Act have been considered. To undertake the analysis Te Puni Kōkiri relied on information from Land Information New Zealand (**LINZ**) and the New Zealand Transport Agency (**NZTA**). Information on public works matters from councils was not available. As most public works projects are actioned by the Crown the information is viewed as sufficient for decision making purposes.

With respect to the rating of papakāinga housing this paper proposes technical amendments that include for up to two houses on a marae to be non-rateable and that councils would have discretion to make further housing on land adjacent or associated with a marae non-rateable. Grants by councils to marae to support their operation was considered out of scope by Te Puni Kōkiri as they would not involve rating. Information on marae and their financial health was available through Te Puni Kōkiri surveys. Te Puni Kōkiri obtained information from a sample of councils to enable decision making.

For the operation of the rates rebates scheme this paper proposes technical amendments so that each individually owned home on multiply owned Māori land will be able to qualify for rates rebates, with a separate rates invoice. Te Puni Kōkiri liaised with DIA and obtained information and advice from a sample of councils to construct the preferred option.

To address rating land as one rating unit this paper proposes minor technical amendments so that Māori land used as a single unit can more readily qualify to be treated as a single property for the purpose of setting rates.

To address rating issues related to land of cultural or historical interest or a place of special significance according to tikanga Māori it is proposed to make kawenata tiaki whenua and historic and scenic whenua tāpui non-rateable.

Te Puni Kōkiri discussed all rating and public works matters with LGNZ. The Minister of Local Government confirmed the approach to the rates rebate proposals with LGNZ.

This paper recognises particular aspects of the proposed policies will need attention due to the nature of and complexities associated with Māori land tenure. Each of the issues is targeted at situations that have not been adequately resolved through the application of law designed for communities as a whole. The essence of the issues in each case comes back to treating Māori equitably so that overall policy objectives can be fairly achieved.

As these matters relate specially to Māori land it is proposed to use Te Ture Whenua Māori Bill (**TTWMB**) to make consequential amendments to the relevant legislation.

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Date: 9 March 2017

REGULATORY IMPACT STATEMENT

Section One: Overview

Executive Summary

1. This RIS provides analysis of proposals and relevant alternatives in respect to Public Works Act 1981 (**PWA)** matters; rating of papakāinga housing associated with marae; the operation of the Rates Rebate Act 1974 (**RRA**), and the treatment of multiple rating units as one rating unit.

2. These matters are being addressed as part of the whenua Māori reform package to address issues associated with Māori land tenure. Each of the issues is targeted at situations that raise equity considerations with respect to Māori land.

3. All the proposals discussed within this RIS will be advanced through TTWMB, with consequential amendments to other legislation as required.

4. The recommended options recognise that current policy settings result in inequities for Māori land owners. The proposals for each subject area will:

   Public works

   - provide that the element of additional clarify and improve the workability of existing Māori Land Court jurisdiction to deal with matters arising from the offer back of all former Māori land to maximise the opportunity to return land to former Māori land owners and their successors that is no longer required for a public work;

   - ensure that Māori land owners receive equivalent compensation to general land owners in all cases in the event that Māori land is acquired / taken under the PWA;

   - compensation for acquisition of notified dwellings (solatium payments) is available to all separately owned homes on Māori land;

   - require that Māori land can only be acquired compulsorily or by agreement if the Chief Executive of the local authority or the Minister for Land Information is satisfied that the purchase is reasonably necessary, that there has been adequate consideration of other options and that the principles of Te Ture Whenua Māori Act have been considered;

   Non- rating papakāinga housing to support marae

   - allow for up to two non-rateable houses on marae;

   - give councils discretion to make housing associated with marae non-rateable;

Rates rebates

- provide a mechanism for owners of dwellings on multiply owned Māori land to receive rates rebates, where they would otherwise qualify but for their land title arrangements not qualifying them for a rates rebate;

Rating land as one rating unit

- provide a mechanism for Māori land to receive one set of uniform charges, where the land is used as one rating unit, and it is derived from the same original parent Māori land block and

Rating of land protected by kawenata tiaki whenua or scenic and heritage whenua tāpui

- Provide for land protected by scenic and heritage whenua tāpui to be non-rateable. Scenic and heritage whenua tāpui are contained in sub-sections 29 (1) (m), (n) and (o) of TTWMB. Where the land is used for permanent residential, agricultural, horticultural or commercial purposes it would be rateable.

- Provide for land protected by kawenata tiaki whenua to be non-rateable, subject to an appeal process. Where the land is used for permanent residential, agricultural, horticultural or commercial purposes it would be rateable.

5. Taken together the proposals will result in more equitable treatment for owners of Māori land or achieve policy objectives consistent with the objectives of Te Ture Whenua Māori Bill. The purpose and principles of Te Ture Whenua Māori Bill are contained within Section 3.

6. The proposals are to remedy situations where general law does not work or achieve the desired policy outcomes for Māori land. These are situations where owners of Māori land are disadvantaged by current law or it does not apply appropriately because of Māori land law issues.

Section Two

Public Works Act 1981

Background

7. In February 2016 Cabinet directed Land Information New Zealand (**LINZ**) and Te Puni Kōkiri, in consultation with the Ministry of Transport, to present issues and a timeframe for proposed amendments to the PWA, including Māori land specific issues, to Ministers for a report back to EGI, by 30 June 2016 [CAB-16-Min-0028 refers].

8. The PWA makes available to the Crown and local authorities the power to compulsorily acquire land in specified circumstances. It sets the process for the acquisition and taking of land. The current driver for acquiring new land is road building for state highways and enhancing local road networks. If the land is later surplus to requirements the PWA provides for the sale of land following an offer back process. Sale of land is typically at current market value but there is discretion to lower the price[1].

9. In recent times, very little Māori land has been compulsorily acquired under the PWA. According to LINZ figures, only one Māori freehold property has been compulsorily acquired in the past seven years compared to 183 general title properties. LINZ figures indicate that 29 acquisitions by agreement of Māori freehold land have been made since 2005 by central government agencies, out of approximately 2,000 acquisitions by agreement. No figures are available on purchases of Māori land by local authorities or network utility operators. Most major road projects have been in areas of high population and economic growth - areas that generally have limited Māori land. However, the new expressway between Otaki and Levin provides an example where between 11 and 28 blocks of Māori land may be affected.

10. A significant amount of land is divested by the Crown and local authorities each year. This is land no longer required for public works, much of it being surplus to roading projects. Since 1 January 2010 LINZ has made 1,246 decisions related to offer backs under the PWA. This has resulted in 638 offers to former owners or successors. Land status was not recorded so it is unknown how much of this is former Māori freehold land.

11. The New Zealand Transport Agency (**NZTA**) acquisition programme for 2015/16 involved $174 million and 305 properties acquired by agreement and a further 41 taken by proclamation. The NZTA budget forecast for the 2016/17 year is $140 million and approximately 200 properties. No former Māori land is planned for sale in the next financial year.

Offer Back Provisions

12. Land no longer required for the current or an alternate public work (or an exchange) is offered back to the former owner or their successor. There are some exceptions to the offer back provisions, the main exceptions being that return of the land is

[1] Subsection 2 (c) and (d) of section 40 of the PWA.

impractical, unreasonable, or unfair; or there has been significant change to the land.

13. Under section 40(5) of the PWA offers made under section 40 are limited to the owner or their immediate successors (usually their children). This means that land acquired is not offered back to the original owners if there are no surviving children of those who it was acquired from. This can result in the alienation of Māori land, where provisions to safeguard this land for its former Māori land owners could quite readily be achieved. It would be possible that a descendant of a former owner could notice the property being for sale and purchase it. However, it is more probable the sale would pass unnoticed where there is a large volume of property sales.

14. Offer back provisions apply to land acquired for a public work by Crown, local authorities and in certain circumstances network utility operators. For the Crown or local authorities, it does not matter whether the acquisition was agreed voluntarily or using the compulsory acquisition powers. It is the intended use that defines the need to offer back.

15. Currently if former Māori land[2] is subject to offer back, Part 3 of the PWA allows the agency offering land back to either:

   - offer the land back to the previous owners or their successor (as determined by the agency); or
   - if owned by 5 or more people, apply to the Māori Land Court (**MLC**) for an order under s 134 of Te Ture Whenua Māori Act (**TTWMA**) (and the equivalent s24 proposed in TTWMB). That power allows the MLC discretion to vest the land in individuals, a trustee or an incorporation. For this section to apply the land in question must have either been Māori freehold land or general land owned by Māori and not vested in any trustee or trustees, at the time that it was acquired/taken for public works.

16. Section 41 provides that agencies can choose to apply to the MLC for a vesting order. The LINZ standard[3] for disposal of land held for a public work only requires the vendor agency, once identifying that there is a former owner or successor, to choose whether to apply section 41(e) or not. LINZ guidelines[4] give no particular direction on how to deal with matters other than that consideration must be given to the issue.

17. The NZTA currently have the largest acquisition and disposal programme. NZTA disposed of 91 properties for $51 million in 2015/16. NZTA plan offer backs of approximately $42 million of property during 2016/17.

18. NZTA estimate that on average two offer backs per annum affect former Māori land. NZTA's major concern is finding people to deal with, in particular issues with Māori land trusts where trustees have passed away. It is estimated that there are either 2 or 3 offer backs of Maori land per annum in total.

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[2] On acquisition or taking land status changes to Crown land.

[3] LINZS15000 Standard for disposal of land held for a public work.

[4] LINZG15700 Guideline for disposal of land held for a public work.

Problem definition

19. Current offer back provisions related to Māori freehold land only apply in instances where the land, immediately before its acquisition was owned by four or more owners, and was not in a trust. The offer back provisions are optional[5] on agencies, are complex, and do not sufficiently empower the MLC to resolve issues. The offer back provisions need to be available in all cases. In addition, the current section 134 of TTWMA is not able to resolve disputes on price and terms; and the powers for vesting land are too general to be of much assistance when contentious issues arise on matters such as price, valuation, conditions, terms of payment, circumstances of acquisition, or cultural (rather than straight property) issues.

20. Māori who have land acquired from their tipuna (grandparent or ancestor) are not eligible to have the land returned to them because offer back under section 40 of the PWA is limited to successors.

21. The net effect of current legislation is that land that could be returned is not returned to Māori ownership.

Objective

22. The principal objective is to protect the right of owners of Māori land to retain, control, occupy, and develop their land as a taonga tuku iho for the benefit of present and future generations of owners, their whānau, and their hapū. This will be improved by providing that:

    - all former Māori land[6] surplus to a public work be offered back to the former owners regardless of the elapse of time; and
    - there is a single efficient and certain process for offer back of former Māori land.

Options and impact analysis

23. The options for offer back of Māori land addressed in this RIS are:

    - **Option 1**: Status quo; and
    - **Option 2**: Facilitated approach (recommended).

Option 1 Status Quo

Description

24. Section 40 of the PWA sets out the process for offering land back which is surplus to requirements for public works. Under this provision land must first be offered back to the person from whom it was acquired or their successor. For former Māori land that was owned by 5 or more owners and not held in a trust, agencies have the choice of complying with the provisions of section 40, or applying to the MLC for a vesting order under section 134 of Te Ture Whenua Māori Act 1993.

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[5] Section 41 (d) PWA.

[6] As defined in Te Ture Whenua Bill, Māori land means Māori customary land and Māori freehold land.

25. For a vesting under section 134, the application may specify the person or persons in whom it is proposed the land shall be vested, the price to be paid for the land, the terms and conditions of payment and any other conditions. The land must then be vested as Māori freehold land.

26. There is a mix of jurisdictions for offer back of land under the PWA, with the Māori Land Court, the High Court and Land Valuation Tribunals all having roles in some circumstances.

Regulatory impact analysis

27. Any agency undertaking an offer back of former Māori land (that meets the criteria in section 41) has the choice of using or not using the assistance of the MLC. This discretion can mean that land is not offered back to the original owners.

28. The powers of the MLC to resolve issues are statutorily limited. This can mean that issues can be held in the MLC without easy mechanisms to resolve them.

29. Once successors to the land that was taken are deceased there is no obligation on Crown to offer land back to the descendants of those from who it was taken.

30. Māori land acquired or taken for public works has its status changed to Crown land upon being acquired/taken. When the Crown sells the surplus land (assuming no offer back under section 40) it sells the land as general land, effectively alienating the land from Māori land tenure. LINZ have confirmed that sales of former Māori land is given the status of general land when sold on the open market. All other status changes need to be consistent with the TTWMA and confirmed by the MLC.

Cost analysis

31. Costs will remain unchanged.

Risks

32. Former Māori land taken for public works that is surplus to requirements, is permanently alienated from its former owners.

33. Agencies are reluctant to use the MLC when matters cannot be effectively resolved by the MLC (inadequate powers).

34. The current approach of land not being offered back may be viewed as being inconsistent with the Treaty of Waitangi and the preamble to Te Ture Whenua Māori Act.

35. Land has its status changed from Māori land to general land.

Assessment

36. Current provisions inadequately address the issues associated with offer back of Māori land.

Option 2: Facilitated approach

Description

37. The facilitated approach contains the following elements:

    a) The Māori Land Court to have the ability to vest the beneficial and legal ownership of former Māori land in the hands of former land owners or their successors;

    b) Jurisdiction of the Māori Land Court will specifically exclude altering any easement, covenant or encumbrance required in respect of the land subject to offer-back;

    c) Disputes on price to be determined by the Land Valuation Tribunal, presided over by a Māori Land Court Judge;

    d) Agencies offering back former Māori land will continue to have discretion to use section 40 or 41 of the Public Works Act 1981. Exemptions to offer back in section 40 subsections (2) (a) and (b), and (4) of the PWA will continue to apply; and

    e) Require land to be returned as Māori land in all cases – where it was acquired / taken as Māori land.

Regulatory impact analysis

38. The new provisions provide a mechanism for offer back to apply beyond the person from who it was acquired and their successors. This will mean all former Māori land can be offered back to the descendants of the former owners, regardless of the elapse of time where section 41 is used.

39. MLC judges will have a role in facilitating the offer back of land. They will preside over disputes on the terms and consideration for the return of land.

40. Agencies will continue to have the choice to use section 40 or 41 provisions in all cases.

41. The change will remove the limit on using section 41 where the land was owned by 1 to 4 people or was vested in any trustee or trustees. Following the passage of TTWMB general land owned by Māori will not be a category of land so this provision will not apply.

42. Using the Land Valuation Tribunal with a Māori Land Court judge, will mean that existing mechanisms for determining property values will be enhanced by having a judge with specialist knowledge of Māori land law.

43. Agencies offering back land can have the need to return an interest less than an unencumbered complete freehold interest. This is because they or a third party require an interest for operational reasons (e.g. a drainage easement). It is not considered appropriate for the Māori Land Court to vary these without the consent of the party offering the land back. If agencies considered that there was a risk of changing the terms of easement, covenant or encumbrance they may choose to hold the land rather than returning it.

44. The exemptions within section 40 subsections (2) (a) and (b), and (4) of the PWA will continue to apply. Further analysis of the application of these provisions is

planned. As this work may impact on general title land and further analysis is desired this will not form part of the matters contained within Te Ture Whenua Māori Bill.

45. The new provisions will give the MLC the power to get past the issues that NZTA face with locating former owners.

46. It is anticipated that there will be 2 or 3 offer back cases per year handled by the MLC. This is based predominantly on estimates of volume from NZTA.

Cost analysis

47. This approach is overall expected to result in similar administration costs. There will be a small number of cases of additional cases before the MLC, but there will be procedures to resolve the matters expeditiously. The MLC will confirm arrangements where the agency has reached agreement with the former owners and / or successors.

48. In most cases where the disposing agency has appropriately contacted the former land owner or researched successors and reached agreement the MLC will formalising vesting the land in a brief hearing.

49. It is anticipated that there will be a slight increase in work for Land Valuation Tribunal as the previous procedures did not allow them determine price where section 41 was used.

Risks

50. The risk of former Māori land that is no longer required for public works not being appropriately offered back is significantly reduced.

51. While we anticipate that the number of properties affected by these provisions will be low and that there will be a minimal increase in work for the MLC, there is some risk that work volumes may be higher than expected (as there is a paucity of information available on future land disposal). We would anticipate that workloads would vary from year to year depending on the land disposal programmes of agencies holding land acquired for a public work.

52. Owners of general land may want improved offer back provisions.

Overall assessment

53. The current provisions are inadequate in three key areas:

- They are insufficient to deal with matters expeditiously in all cases.
- They do not allow the assistance of the MLC and Land Valuation Tribunal where needed.
- Māori land may not be offered back to successors of former owners.

54. The proposed provisions have several key benefits. They allow all former Māori land to be offered back to owners. This will prevent matters getting held up in the MLC due to insufficient powers to resolve the issues related to price, valuation, conditions, terms of payment, or cultural (rather than straight property) issues.

55. On balance it is recommended to extend the power of the MLC and Land Valuation Tribunal to deal with matters relating to the offer back of former Māori land. This approach is considered more consistent with the Treaty of Waitangi, the preamble of TTWMA and the purpose and principles of TTWMB than the current approach.

Māori land compensation level

56. When land is acquired or taken under the PWA the land is valued. The basis of valuation is:

> *…be that amount which the land if sold in the open market by a willing seller to a willing buyer on the specified date might be expected to realise…*

57. There are constraints on the trading of Māori land, so there is not a functioning market. Constraints on tradability and use of Māori land can be seen as lowering the value by valuers.

Problem definition

58. Owners of Māori land acquired under the PWA may get less compensation than equivalent general title land as discounts based on Māori freehold land tenure can be applied by valuers. The land has the same value to the Crown as general land, as the land becomes Crown land upon purchase.

59. Lower values are an unintended consequence of restrictions on sale and the procedures of TTWMA.

Objective

60. The principal objective is that owners of Māori land receive appropriate compensation for their land when it is acquired or taken.

Options and impact analysis

61. The options for Māori land compensation level in this RIS are:

- **Option 1**: **Status quo (Market value);** and
- **Option 2**: **Equivalent compensation (recommended)**.

Option 1 Status Quo

Description

62. Compensation is based on a market valuation of the land.

Regulatory impact analysis

63. Research indicates that in some cases a discount[7] has been applied when valuing Māori freehold land, leading to lower compensation provided to owners of Māori land. Land Information New Zealand and the New Zealand Transport Agency have advised that discounting valuations for Māori land status is not current practice. Correspondence with valuers has confirmed that there is a variable approach, some are discounting valuations while others are not. Valuers have expressed uncertainty and requested clarity on the most appropriate approach when valuing Māori freehold land for compensation purposes.

64. For equity reasons it is considered appropriate to pay the same compensation for equivalent land.

Cost analysis

65. Costs will remain unchanged.

Risks

66. Land acquisition is slower and more costly as compensation may not be sufficient to purchase another property.

Option 2: Equivalent compensation

Description

67. Māori land is to be valued as if it were general land for compensation purposes under the PWA.

Regulatory impact analysis

68. It is equitable that compensation should be the same for Māori land as it is for equivalent general land. This would have the effect that two similar blocks of land, one Māori freehold land and one general title land would receive the same level of compensation.

69. Some agencies pay compensation for Māori land at equivalent values to general land. Without clarifying the legislation there can be no surety that this is occurring across all organisations and in all situations.

Cost analysis

70. Research indicates that where discounts to compensation valuations under the PWA have been applied that this has been similar to the Māngatu adjustments that are currently applied to rating valuations i.e. from 3.5 to 15%.

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[7] The discount reflects the extra requirements and issues associated with selling or subdividing Māori freehold land.

71. Due to the low number of Māori land properties now being acquired, the practice of some agencies to apply equivalent valuation and the small size of adjustments, it is considered that there will negligible impact on the overall cost of public works.

72. It is considered that any small cost increase would be made up for by faster settlement of the land purchases.

Risks

73. No specific risks have been identified with this approach.

Overall assessment

74. The current approach is unclear and uncertain and can lead to inappropriately lower compensation for owners of Māori land. It is unreasonable for the Crown to pay lower compensation based on restrictions they have legislated for in TTWMA. This is especially so as the objectives of Te Ture Whenua Māori Act are to facilitate and promote the retention, use, development and control of Māori land.

75. One of the key elements of compensation is to allow the owner to be put back in the same situation they were in before the purchase. If lower compensation is paid for Māori land then the former owner will have a value gap (3.5 to 15%) to meet when purchasing a replacement property. We do not know how many properties this has applied to.

76. On balance, it is recommended that the methodology for valuing Māori land be clarified so that Māori land is valued as if it were general land for compensation purposes. This is current practice in some agencies and should be mandatory.

Alternatives to acquiring Māori land

77. Māori land can be acquired (purchased by agreement) or taken (compulsory purchase) without adequate consideration of other alternatives.

78. The purpose of TTWMB includes "*…to protect the right of owners of Māori land to retain, control, occupy, and develop their land as a taonga tuku iho for the benefit of present and future generations of owners, their whānau, and their hapū."*

79. There has been a strong call by Māori for remaining Māori land to remain in Māori ownership. Only 5.5% of New Zealand's land area remains as Māori land.

80. The effect of any one purchase of Māori land for a particular project is not hugely significant, but the collective effect of PWA purchases over time is very significant. There are significant legacy effects of past public works purchases where Māori land was targeted, sometimes without compensation.

81. The stopping of Māori freehold land from acquisition is not discussed as an option in this RIS. This option has recently been the subject of a Private Members Bill that failed to be supported to second reading.

Problem definition

82. Agencies are addressing the needs of particular public works projects without adequately balancing this against the objective of retaining Māori land.

Objective

83. The twin objective is to have lands that are required for public works to occur in a reasonably cost effective manner and to retain Māori land in Māori ownership.

Options and impact analysis

84. The options for alternatives to acquiring Māori land in this RIS are:

- **Option 1**: **Status quo**;
- **Option 2**: **Be satisfied that there has been adequate consideration of other options (recommended)**; and
- **Option 3**: **Be satisfied all alternate options are exhausted**.

Option 1 Status Quo

Description

85. Projects are developed based on the most cost effective option. Māori land can be treated the same as general land when agencies are considering projects.

Regulatory impact analysis

86. Research indicates that adequate consideration of the need to retain Māori land is not being demonstrated through land purchase processes. An example of this is Grace case[8] on the Kapiti Coast where even though land was considered of historic significance it was still pursued for purchase even though other reasonably viable options were available. This case illustrated that better consideration of the issues up front would have saved the Crown and the owner time and expense. Currently, agencies can view Māori land as being no different to general land except where there is some specific feature to justify special consideration (e.g. a pā site or urupā).

Cost analysis

87. Costs will remain unchanged.

Risks

88. Māori land will be alienated from Māori owners where viable alternatives exist. If Māori land issues are not considered early in projects then considerable delay and expense can occur if changes are needed when the project is well advanced.

Option 2: Be satisfied that there has been adequate consideration of other options.

Description

89. Māori land will only be acquired compulsorily or by agreement if the Chief Executive of the local authority or the Minister for Land Information is satisfied that the purchase is reasonably necessary, that there has been adequate consideration of

[8] Grace v Minister of Land Information [2014] NZEnvC 82 and Grace v New Zealand Transport Agency 317 Aotea MB 268.

other options and that the principles of Te Ture Whenua Māori Act have been considered.

90. The Environment Court will be able to review that appropriate deliberation has been given to issues by agencies where the compulsory acquisition of land is contested by a land owner.

Regulatory impact analysis

91. This policy is to assist agencies to deal with the conflicting objectives of creation of required public works in a cost effective manner and the retention of Māori land.

92. Some agencies report that they already have a preference for general land over Māori land. This is largely a response to the additional complexity of purchasing Māori land and community pressure to retain Māori land. Māori land tenure is often viewed as more complex because it is different to general land, involves the Māori Land Court, and there are additional communication issues associated with multiple ownership.

93. Where a property is designated, part of the test in section 171 of the Resource Management Act is that there must be adequate consideration of alternatives and that the work is reasonably necessary.

94. The tests for land to be compulsorily purchased (taken) under the PWA includes the adequacy of the consideration given to alternatives and whether it is reasonably necessary[9]. The extension to specifically include the principles of TTWMA when land is to be taken, recognises the importance of Māori freehold land.

95. There is currently no test required for agencies to acquire land by agreement, where there is no designation. This proposal closes this loophole. Land owners know that there is the ability for an agency to compulsorily take land under the PWA, and only reach agreement in that knowledge. Therefore agencies should give adequate consideration to the issues prior to engaging in a purchase by agreement process.

Cost analysis

96. If organisations investigate choices early in the planning stage of projects, costs will be minimised. For those organisations that proactively avoid impacting on Māori land, costs will be unchanged. Costs will generally increase when changes in design are required, on account of not having addressed all issues early in the process.

97. For organisations that are designating land considering all issues at the designation step will minimise cost.

Risks

98. The risk of needing to change a project through inadequate consideration of the effect on Māori land will be minimised. Costs for changing projects late in the process can be considerable.

99. Changing the test for purchase may affect some projects that are already underway. This risk is minimised by the tests being comparable to those for a designation

[9] Section 24 (7) of the PWA.

(purchase is reasonably necessary and that there has been adequate consideration of other options), but has the added context of Māori land. Most agencies will already be considering these issues due to heightened awareness of Māori land issues. Organisations will be able to minimise their costs and mitigate their risks by considering the principles of TTWMA where they are seeking a designation or to renew a designation on Māori freehold land.

100. The risk to Māori land owners of have their land taken when alternate options exist will reduced.

Option 3: Be satisfied all alternate options are exhausted.

Description

101. Agencies will be required to demonstrate that they have considered the principles of TTWMA and be satisfied that all reasonable alternatives to the acquisition of that land have been exhausted.

102. The Environment Court will be able to review that appropriate deliberation has been given to issues by agencies where this is contested by a land owner.

Regulatory impact analysis

103. This policy is to assist agencies to deal with the conflicting objectives for the creation of required public works in a cost effective manner and the retention of Māori land.

104. Some agencies report that they already have a preference for general land over Māori land. This is largely a response to the additional complexity of purchasing Māori land and community pressure to retain Māori land. Māori land tenure is often viewed as more complex because it is different to general land, involves the Māori Land Court, and there are additional communication issues associated with multiple ownership.

105. Where a property is designated, part of the test in section 171 of the Resource Management Act is that there must be adequate consideration of alternatives and that the work is reasonably necessary.

106. The tests for land to be compulsorily purchased (taken) under the PWA includes the adequacy of the consideration given to alternatives and whether it is reasonably necessary[10]. The proposed test of ‘be satisfied that all reasonable alternatives to the acquisition of that land have been exhausted’ is clearer that alternate choices are to be preferred over Māori land. The extension to specifically include the principles of TTWMA when land is to be taken, recognises the importance of Māori freehold land.

107. There is currently no test required for agencies to acquire land by agreement, where there is no designation. This proposal will close this loophole. Land owners know that there is the ability for an agency to compulsorily take land under the PWA, and only reach agreement in that knowledge. Therefore agencies should give full consideration to the issues prior to engaging in a purchase by agreement process.

[10] Section 24 (7) of the PWA.

Cost analysis

108. If organisations investigate choices early in the planning stage of projects, costs will be minimised. For those organisations that proactively avoid impacting on Māori land, costs will be unchanged. Costs will generally increase when changes in design are required, on account of not having addressed all issues early in the process. However, even where the taking or acquisition of Māori land is unavoidable, the threshold of exhausting all other reasonable options could involve increased litigation from landowners, where objection will not be on the nature of the public work, but an assessment over the reasonableness of other options for achieving that work, in the context of the public works presence on one piece of land.

109. For organisations that are designating land fully considering alternatives to Māori land at the designation step will minimise cost.

Risks

110. The risk of needing to change a project through inadequate consideration of the effect on Māori land will be minimised. Costs for changing projects late in the process can be considerable.

111. Changing the test for purchase may affect some projects that are already underway. This risk is minimised by the tests being of a similar nature to those for a designation (purchase is reasonably necessary and that there has been adequate consideration of other options), but has the added context of Māori land. Most agencies will already be considering these issues due to heightened awareness of Māori land issues. Organisations will be able to minimise their costs and mitigate their risks by considering the principles of TTWMA where they are seeking a designation or to renew a designation on Māori freehold land.

112. The risk of Māori land being purchased for public works will be reduced.

113. The threshold component 'all reasonable alternatives to the acquisition of that land have been exhausted' could be too open ended and may be difficult to implement practically. It would also lead to a conflict with the designations process, in that the test for being awarded a designation for land would be lower than that for compulsory acquisition. This may result in agencies receiving planning approval for a public work but not being able to secure the land over which the designation has been placed.

Overall assessment

114. With current policy settings there can be inadequate consideration of the need to retain Māori land. Agencies can purchase Māori land by agreement without adequate consideration of alternatives or consideration that it is reasonably necessary.

115. On balance a extending the tests within the PWA is needed to ensure that agencies are adequately considering all the issues. Both alternate tests appropriately include consideration of the principles of the Te Ture Whenua Māori Act.

116. The option 2 test includes 'that the purchase is reasonably necessary and that there has been adequate consideration of other options'. This is similar to current tests

so agencies will be familiar with the wording and is the preferred option for this reason.

117. The option 3 test includes ‘that all reasonable alternatives to the acquisition of that land have been exhausted’. There are questions about the practicality of this test for agencies.

118. Having agencies consider alternatives to Māori land early in projects will assist with meeting the twin objectives of undertaking public works cost effectively and retaining Māori land. The preferred option will also reduce the risk of projects needing last minute changes on account of significant Māori land issues.

Solatium Payments on Multiply Owned Māori Land (Home Loss Compensation)

Status quo

119. The PWA compensation regime allows for some compensation over and above the market value of land acquired or taken. These payments are often called “solatium” payments and have since 1981 been fixed at $2,000 payable where the land being taken contains the owners home.

120. Proposed changes to the PWA in the Resource Legislation Amendment Bill (**RLAB**) are:

- the solatium will increase from $2,000 to up to $50,000.
- the solatium payment will be up to $50,000 and is made up as follows:
  - a payment of $35,000 is paid to all eligible landowners;
  - $10,000 for early (within 6 months) written agreement to the acquisition;
  - $5,000 depending on their circumstances.
- a solatium for landowners whose acquired land does not include their home, as these landowners also suffer disturbance and inconvenience through acquisition. This amount is set at 10% of the value of the land acquired, from a minimum of $250 up to a maximum of $25,000.
- future changes to the amounts of the solatium to be made via Order in Council. This is so the amounts remain relevant.

121. The changes are partly intended to provide a more realistic level of compensation for interference with people’s lives and partly to encourage early agreement.

122. Current provisions and proposed changes to the PWA in the RLAB only allow one payment of additional compensation for acquisition of notified dwellings (solatium payment) per land title, yet there may be several separately owned homes on a single title. This means they share a single payment for the acquisition of a notified dwelling, raising equity issues for affected homeowners.

123. This issue was not considered when the new system was designed. The focus was on changing the amount of the solatium not the application to particular situations.

Problem definition

124. Compensation for loss of homes does not recognise separately owned homes can exist on multiply owned land. This presents as an equity issue as some affected home owners will only receive partial payment.

Objective

125. That all similarly affected home owners receive the same amount of additional compensation for acquisition of a notified dwelling (solatium payment).

Options and impact analysis

126. The options for home loss compensation on multiply owned Māori land in this RIS are:

- **Option 1**: **Status quo: One solatium payment shared by two or more homes;** and
- **Option 2**: **Each separately owned home receives a solatium payment** (recommended)

Option 1 Status Quo: One Solatium Payment Shared by Two or More Homes

Description

127. One solatium payment is made per title. Where there are multiple individually owned homes on a single title one solatium payment is shared between the home owners.

Regulatory impact analysis

128. Government from time to time overlooks the effect of policies on Māori freehold land. The situation of multiple separately owned houses on multiply owned Māori land is rare in urban situations, but much more common in rural areas.

129. The regulatory impact statement for RLAB has the proposal for amending solatium payments as

> *In addition to being compensated for the market value of their property, a solatium (form of compensation) is paid to landowners whose home (main residence) is being acquired. On vacant possession, it is paid for disruption, interference and other inconvenience.*

130. This proposal does not fulfil its objectives of compensating landowners for their main residence on multiply owned Māori land for disruption, interference and other inconvenience.

131. Likewise the current proposal for multiply owned Māori land does not fulfil the claimed conclusions

> *The proposed changes are expected to improve the efficiency of land acquisition processes under the PWA. The changes are likely to impact on both the fairness and perceived fairness of landowner compensation. While more efficient acquisition processes are expected, the impact of the proposal on infrastructure delivery times has not been specifically assessed.*

132. It is considered that Māori homeowners on multiply owned will find the compensation unfair. This may then impact on infrastructure delivery times.

Cost analysis

133. Costs are unchanged.

Risks

134. Part of the rationale for increasing solatium payments is that it makes it easier and faster to acquire land. A risk with the shared solatium approach is that it will slow acquisition, in particular where those sharing a payment are aware of the higher level of additional compensation received by others.

135. The cost of delays to projects could far exceed the cost of increased solatium payments.

Option 2: Each Separately Owned Home Receives Solatium Payment

Description

136. The element of additional compensation for acquisition of notified dwellings (solatium payments) applies to all separately owned homes being acquired, regardless of underlying title arrangements. Any payment for acquisition of notified land would apply to land outside the dwelling and curtilage of notified dwellings.

137. A separately owned dwelling is a dwelling where the owner has an occupation order; a lease or similar agreement recorded at the Māori land register; or obtains a declaration of equitable ownership from the Māori Land Court.

Regulatory impact analysis

138. The portion of compensations payments that relates to the deprival of someone's home (solatium payments) should logically be paid for each individually owned home, where multiple homes exist on a property. The logic is that where the interference to people's lives which is being compensated and that this interference is doubled when more two homes are involved, tripled when there are three and so on.

139. This would also result in a faster process to acquire the required land for public works.

140. As Māori land title arrangements are different to general land, owners of Māori land are being disadvantaged by how the law around solatium payments is constructed.

141. Investment property would not qualify for additional solatium payments. Where there are multiple houses in single ownership (e.g. an owner occupied house plus a rental flat there would be one solatium payment).

142. The Regulatory impact analysis for the RLAB proposal is primarily based on quantum of payment not application of payment. The RLAB did not consider any alternate options and did not specifically consider Māori title arrangements.

Cost analysis

143. There will be a small increase to project costs where more than one separately owned house exists on a single title. This will be mitigated by making it easier to purchase Māori land with multiple separately owned houses.

Risks

144. There are no perceived risks.

Overall assessment

145. On balance both for equity reasons and for the efficiency of completing future public work it is recommended that solatium payments are made for each individually owned dwelling regardless of underlying title arrangements. The ability for the Māori Land Court to make a declaration of equitable ownership of houses on Māori land gives agencies surety that solatium payments will be made only where they are appropriate. This change is likely to positively impact both the fairness and perceived fairness of landowner compensation.

Section Three

Non-rating of Papakāinga Housing to Support Marae

Background

146. In March 2016 Cabinet directed the Department of Internal Affairs and Te Puni Kōkiri to undertake further work on the issues associated with rates in relation to papakāinga housing associated with marae and provide options to delegated Ministers [Rec 16.2, CAB-16-MIN-0100].

147. The Cabinet directive responds to a request made by the Iwi Chairs Forum to the Prime Minister in February 2016 that housing on marae sites be non-rateable. It was acknowledged that service rates would be paid, which includes matters such as rates for rubbish collection and water reticulation. In the Iwi Chairs Forum's letter of 2 February 2017 they clarified their position and now propose that up to 6 houses on a papakāinga (multiple houses on one block of land) that support a marae be non-rateable where these houses provide the kaikōrero/speakers, kaikaranga/callers, ringawera/cooks and kaitiaki/caretakers.

148. There are a range of definitions of papakāinga housing from a narrow definition of 'housing on Māori freehold land' to a broader definition that captures the wider context of papakāinga housing as part of a settlement. A fuller definition is as follows:

> *Papakāinga relates to a village or settlement, the idea of a homestead, an area or local vicinity that holds close kinship ties. "Kainga" refers to "place of abode". "Papa" refers to 'the earth floor/site of a native house' indicating the strong association that each community has with the land.*[11]*.*

149. A marae needs people living close by to support its effective operation and to maintain cultural traditions.

150. There are approximately 1,067 marae nationally. Te Puni Kōkiri estimates 11% of marae have housing on the same lot as the wharenui (meeting house)[12]. It is estimated that there are approximately 700 flats / houses on marae sites.

151. The option of provision of grants to marae was considered out of scope.

Role of papakāinga housing in nurturing marae

152. Papakāinga housing plays an important role in nurturing and supporting the social and cultural fabric of Māori communities.

Function of marae

153. The marae (meeting grounds) is the focal point of Māori communities throughout New Zealand. A marae is a fenced-in complex of carved buildings and grounds that belongs to a particular iwi (tribe), hapū (sub tribe) or whānau (family). Māori people

[11] Submission by the Waihaha Māori lands trust on proposed Waikato regional policy statement 2010

[12] Based on data supplied by Gisborne, Far North, Rotorua, Western Bay and Whakatāne District and Tauranga City Councils.

see their marae as tūrangawaewae - their place to stand and belong. Marae are used for meetings, celebrations, funerals, educational workshops and other important tribal events. The marae is a place where the Māori culture can be celebrated, where the Māori language can be spoken. Marae are increasingly being used as a hub for social services and to educate the wider community.

Marae Personnel

154. Members of local Māori communities play a supporting and nurturing role for their marae. Having whānau live at or near the marae enables a range of benefits, from protocol and education to practical support for visitors.

155. Those whānau members living in papakāinga housing fulfil a variety of roles from kaumātua and kuia who ensure cultural tikanga (custom) and kawa (practice) of the marae are followed, in order to uphold the mana of their whānau and hapū. Other resident roles include kaitiaki (guardianship) responsibilities to carry out all the functions required to operate and manage the marae to meet their formal obligations to manuhiri (visitors and dignitaries). In essence, residents living on or near the marae perform a range of cultural roles to support their marae, which is their cultural centre of learning. Certain roles include the transmission of cultural knowledge and traditions (education)[13]; leadership (mana and authority of all cultural activities pertaining to the maintenance of tikanga and kawa of the marae on behalf of the whānau, hapū and iwi); operational maintenance and physical running of the marae (caretaker functions).

156. Those people that provide active support to the marae are effectively providing support for a range of social services and community services. In education supporters provide the equivalent roles for a marae that a principal, teacher and caretaker provide within a school.

Marae usage

157. A range of community services are provided from marae. Many of these services are targeted at the community as a whole, not just the Māori community.

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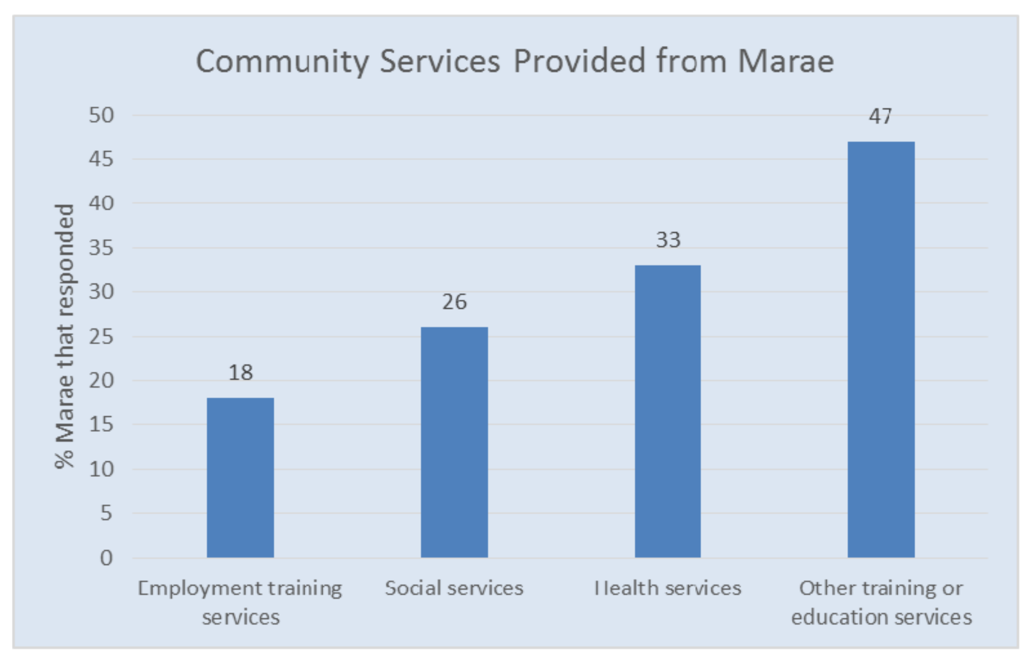
[13] Marae report 'the Status of Marae in 2009', prepared by Te Puni Kōkiri, details a variety of important social uses. In 2008 84% of marae reported use by schools or other educational providers, 67% reported use by health providers and 61% reported use by social service providers.



Rates treatment of schools and other government housing

158. Examples of non-rateable provisions that apply to where people are living include:

- residential accommodation where it is used by a principal, teacher or caretaker, provided that it is let at a subsidised rental;
- living accommodation for hospital purposes and child welfare, when owned or used by a District Health Board[14];
- children's health camps (trading as Stand Children's services); and
- land used by an institution to provide for the free maintenance and relief of persons in need, but limited to a land area of 1.5 hectares in each case.

159. However, government policy on rating of houses is inconsistent. For example, police stations and corrections facilities are fully rateable (which includes any staff housing), as is the entire Housing New Zealand estate.

160. A clear distinction exists between papakāinga housing and non-rateable school and hospital housing, which the occupants cannot own, and therefore cannot directly benefit (in terms of capital gain in property value for example) from the provision of local authority services to those properties. The occupants will generally only occupy such housing as a condition of their employment. However, Māori freehold land is not saleable in the way that general is. Owners regard themselves as kaitiaki for future generations. The land is not being held for capital gains.

Rating of housing associated with marae overview

161. There are many uses being made of marae that have elements of similarity to non-rateability of school and hospital housing. Marae are increasingly being used as a base by government for delivery of social and health programmes. This is additional

[14] Clause 8, Schedule 1, Local Government (Rating) Act 2002.

to the educative and community benefit of preserving Māori customary practices including kawa, tikanga and iwi knowledge.

162. Te Puni Kōkiri propose that, for equity reasons, similar non-rateability provisions should extend to certain housing on marae. As with all other non-rateable uses this housing (just as the marae itself is) would be liable for service rates for services provided[15].

Rates are a tax used by council to fund services

163. Rates collected by councils are used for a broad range of services for local communities, from the provision of local roads, lighting, footpaths, water, sewerage, refuse collection and disposal, regulatory functions (e.g. RMA and Building Act), biosecurity, flood protection, public transport, reserves and community facilities.

164. There is a rigorous system within the Local Government Act 2002 (**LGA**) through which local authorities must consult on their spending proposals at the beginning of the financial year and account for them at the end of the year.

165. Rates can be set on a variety of bases including values, area, and consumption (e.g. water rates based on volume). Additionally, there can be fixed rates per property, per separately used or occupied part of a property or per connection (e.g. sewage connection). Around 60% of the rates on Māori freehold land are based on the value of the property, with most of the remainder being fixed charges.

166. Where a particular group of properties are excluded from payment of any particular rates those costs are shared amongst other properties. Depending on how the council set their rates this may be over the entire council district or a small subset of properties in a particular locality. This means that if some Māori land owners are exempt from paying rates because of these policies those rates charges will need to be shared amongst other ratepayers in the District if the same level of services are to be maintained.

167. All land is rateable under section 7 of the Local Government (Rating) Act 2002 (**LGRA**), except where it is made specifically non-rateable by that or any other Act[16]. Schedule 1 of the LGRA defines those properties that are non-rateable, while schedule 2 defines those properties that are 50% rateable. Fully and partially non-rateable land is defined by use of the land, ownership and a combination of those factors (e.g. land used or owned by the Crown land is not automatically non-rateable). Councils do not have discretion regarding non-rateable properties but do have wide discretion to remit or postpone rates.

168. Non-rateability for all property excludes targeted rates for water supply, sewage disposal or refuse collection where the service is supplied[17].

Current rating of housing on marae

169. Current rating practice for housing on marae is variable, both between and within local authorities.

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[15] Section 9, Local Government Rating Act 2002.
[16] Section 7 Local Government (Rating) Act 2002.
[17] Section 9, Local Government Rating Act 2002.

Current Rating Regime for Houses on Marae – Select Districts[18]

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	Marae	No. with housing	No. of homes	Non-rateable Housing		Housing with full rates
				No rates	Service rates only	
Gisborne	43	4	9	1	3	0
Rotorua	30	7	198	1	3	3
Tauranga	10	0	0	0	0	0
Western BOP	24	5	9	0	3	2
Whakatane	48	5	13	1	0	4
Total	**155**	**21**	**229**	**3**	**9**	**9**

Notes:

- In Rotorua District Council there is one marae with 187 houses on the same lot as the Wharenui (meeting house). This property's valuation was apportioned into rateable and non-rateable sections (marae portion).

170. Land used for marae purposes up to 2 hectares is non-rateable[19]. Under TTWMB all marae will be statutorily exempt from the payment of rates regardless of the size, in line with the rates treatment for churches. Permanent residential accommodation on marae, however, will be rateable.

171. Officials consider that policy choices should not limit current arrangements that exist for the payment of rates in specific localities (e.g. remissions and postponements).

Problem definition

172. The current rates regime does not recognise the value of papakāinga housing in supporting the contribution that marae make to Māori and wider local communities. Local support of marae is critical to their effective operation.

Objective

173. Rating of papakāinga housing associated with marae both supports marae and is fair on the community as a whole.

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18 The table above was generated from information supplied by each council. It shows how many marae exist within each district, the number of houses on the same lot as the marae and how the housing of each of the marae are rated. Note that some councils have specific policies for rating papakāinga housing e.g. Far North District Council charge one set of uniform charges to papakāinga housing development,

19 Clause 12 and 13, Schedule 1, Local Government (Rating) Act 2002.

Options and impact analysis

174. The five options considered in this RIS are:

- **Option 1**: **Status quo;**
- **Option 2**: **Council discretion on rateability;**
- **Option 3 Council discretion and up to two mandated non-rateable dwellings on a marae;** (recommended)
- **Option 4**: **Council discretion and up to two mandated non-rateable dwellings;** and
- **Option 5**: **All papakāinga housing non-rateable.**

Option 1 Status Quo

Description

175. Māori land used for residential housing on or associated with marae would continue to be rateable. Councils retain the ability to remit or postpone rates in accordance with their rates remission or postponement policies.

Regulatory impact analysis

176. No firm direction to guide councils regarding the rating of housing associated with marae.

177. This approach will not fulfil the policy objective of providing support to marae.

Cost analysis

178. Costs will remain unchanged.

Risks

179. Lack of support for marae risks a reduction in community services and social cohesion provided by marae.

Option 2: Council discretion on rateability

Description

180. Councils would have specific discretion to only charge service rates for any papakāinga housing associated with a marae. To be associated the housing would need to be in the area of influence of the marae. This option provides councils with discretion for the location and number of houses covered by the policy.

Regulatory impact analysis

181. This option recognises that some councils are already exercising discretion on the rating of housing on marae. It would give councils greater powers and direction in this area. It would be administratively easier than having councils rate the houses and then remit the rates. It would be accompanied by guidance on the use of the mechanism which would be jointly prepared by the Department of Internal Affairs and Te Puni Kōkiri. This would allow councils to give targeted consideration of these issues appropriate to their circumstances and with greater direction.

182. The policies would be made against specified legislative criteria. The criteria would guide councils in applying the policy. This would work in a similar manner to consideration of Schedule 11 of the LGA for remissions policies. Schedule 11 is attached as Annex 2.

183. It is probable that this approach would lead to haphazard application as councils are likely to adopt differing policies, but this would be no more or less so than policies in relation to other rating matters.

Cost analysis

184. Councils would have discretion on the level of support provided to marae. We anticipate that that rates would be reduced on average by $750 per each house made non-rateable.

185. No ongoing costs to central government.

Risks

186. A lack of support for marae risks a reduction in community services and social cohesion provided by marae. Analysis indicates that a range of social services are based on marae. The ability to use marae social services would be supported by the provision of rates reduction to those actively working on and supporting the marae.

187. Marae provide important social services to Māori communities. Social cohesion and support would be reduced if the cultural dimension of marae were to be reduced.

188. Councils will be able to actively manage the redistribution of rates and balance the wider communities views of rates reduction in the robust political way that councils address many issues.

Option 3: Council discretion and up to two mandated non-rateable dwellings on a marae site

Description

189. With this option up to two dwellings on a marae would be non-rateable. The administering body for the marae would nominate the non-rateable houses. Councils would have discretion to make additional papakāinga houses non-rateable.

Regulatory impact analysis

190. Te Puni Kōkiri officials recommend two houses as this recognises the different roles that individuals play on a marae, yet keeps the burden on the remainder of the community low. The vast majority of marae with housing on the same lot have fewer than five houses. Te Puni Kōkiri and the Department of Internal Affairs would provide guidance on the use of the new mechanisms and policy requirements for rating papakāinga housing on or associated with marae.

191. The administering body for the marae would mandate which houses will be non-rateable. This decision would be made by the administering body for the marae at an annual general meeting. Advice would be provided on the application of this mechanism in a guide to be provided by the Department of Internal Affairs and Te Puni Kōkiri.

192. This approach provides a consistent minimum level of support to marae with housing on site. As mandatory support is limited to the marae site the vast majority of marae (89%) would receive no benefit. Councils would have discretion to enhance the application.

Cost analysis

193. This option is estimated to lead to a reduction of local authority rates revenue of $130,000 per annum (Estimate, half with one house at $750 per annum and half with two houses at $1500 per annum). This would be 0.003 percent of total council rates revenue. For those councils that already deem housing on marae non-rateable there would be no cost change to the council provided they use their discretion not to rate where there are more than two houses on a marae. The cost of the discretionary policy to make additional papakāinga housing non-rateable would depend on council decisions.

194. Those properties that will be non-rateable would still pay service rates.

Risks

195. The costs are modest and councils retain discretion for non-rating further papakāinga housing.

196. There is the risk of a diminishing role for marae and a consequent loss of social and cultural support unless councils take up the policy to assist marae where housing is not on the marae site.

197. Risks and benefits of this option are small due to the low number of marae with onsite housing.

Option 4: Council discretion and up to two mandated non-rateable dwellings associated with the marae

Description

198. With this option up to two houses associated with the marae would be non-rateable. The administering body for the marae would nominate the non-rateable houses. Council would have discretion to make additional papakāinga houses non-rateable.

199. This option is essentially the same as Option 3 except that there would be no requirement for the housing to be located on the marae.

Regulatory impact analysis

200. Te Puni Kōkiri officials recommend two dwellings in order to provide more flexibility in recognising the different roles that individuals play on a marae, yet keeps the burden on the remainder of the community low. The vast majority of marae with housing on the same lot have fewer than five houses. Te Puni Kōkiri and the Department of Internal Affairs would provide guidance on the use of the new mechanisms and policy requirements for rating papakāinga housing on or associated with marae.

201. The administering body for the marae would mandate which houses will be non-rateable. This decision would be made by the administering body for the marae at an annual general meeting. Advice would be provided on the application of this mechanism in a guide to be provided by the Department of Internal Affairs and Te Puni Kōkiri.

202. This option allows all marae to receive a consistent level of minimum support, with council discretion for further support. Accordingly, there is a very strong case to allow non-rateability of up to two houses associated with the marae.

Cost analysis

203. This option is estimated to lead to a reduction of local authority rates revenue of $1.6 million per annum if all marae were to have two non-rateable houses. (Estimate 1067 marae at $1500 per annum). Those properties that are made non-rateable would still pay service rates.

Risks

204. The wider community could view the policy as too generous, with the council being unable to reduce the level of support to marae.

205. The risk of a diminishing role for marae and a consequent loss of social and cultural support would be reduced. It is likely that the policy would assist marae to function even better in the future and provide more social and cultural support for the community.

206. A further positive risk is that the Māori language will be more actively supported and promoted, as it is extensively used on marae.

Option 5: All papakāinga housing non-rateable

Description

207. This option provides that all dwellings on or associated with the marae on Māori land would be only charged service rates. The Department of Internal Affairs and Te Puni Kōkiri would provide explanatory material to assist councils to interpret the new statutory provisions. A sub option is to limit this approach to marae sites only.

Regulatory impact analysis

208. This option would provide the greatest support to marae. It could be argued that all housing on Māori land is papakāinga housing. This policy may be regarded as too open ended by communities.

Cost analysis

209. It is estimated that the rates revenue for councils would be reduced by $525,000 if limited to houses on marae. We are unable to estimate the costs if it were to apply to all Māori land.

Risks

210. This policy option could result in the perverse consequence of reduced service level to communities on account of reductions to councils' income. This risk would be greatest where councils rate separate communities according to expenditure within that community, as the costs would be shared within that particular community, as opposed to the whole council.

211. Risks of community backlash and / or reduction in council service levels would be reduced if non-rateability of papakāinga housing is limited to marae sites.

212. If all papakāinga housing is made non-rateable there are likely to be a significant redistribution of rates to other ratepayers, which is difficult to calculate at a national level.

Overall assessment

213. In total councils raise over $4.5 billion in rates. The reduction in rates through one house per marae being non-rateable, excluding service charges, is approximately $800,000. This would have a negligible effect on the rates take, as it is 0.018% of total rates collected by councils. For up to two houses <u>on</u> a marae site the cost is estimated at $130,000 or 0.003% of total rates revenue across the Country.

214. The policy will have a bigger financial effect on smaller councils with disproportionate amounts of marae and papakāinga housing. Many, particularly rural councils, tie expenditure in an area to rates for that area. If the policy were to involve too many houses in a particular location it could have the effect of reducing needed community services in the area.

215. The status quo option is considered unlikely to achieve the objective of ensuring continuing support for marae. Providing councils the power to make dwellings on or associated with marae will provide greater direction to councils, but at best would result in haphazard application. Making all papakāinga housing on or associated with marae non-rateable could have perverse effects on individual communities and result in reduction of services.

216. On balance having two houses on marae non-rateable would fulfil the objective of providing support to marae yet not over burden communities as a whole. Two houses recognises that there are a range of roles that support marae. The houses will still pay service rates. The critical element is that it provides support directly to those that are local to the marae. This policy will encourage the community hub

aspects of marae. It will promote the social and cultural cohesion that marae provide.

217. The policy will create circumstances where some dwellings that are closely associated with a marae and its operations are exempt from paying rates while others that similarly contribute to their marae are not exempt from paying rates.

218. If the policy were extended to two houses associated with marae the costs and benefits would be greater.

219. It would mean that certain people who live in papakāinga housing would not pay rates (other than service charges). The burden of their rates would then fall on the rest of the community.

220. If the policies substantially reduce rates councils may respond by reducing the level of services they provide, either across the board or to particular communities (e.g. reduced maintenance of roads and reserves). This could adversely affect the communities this policy seeks to support.

221. On this basis, Te Puni Kōkiri recommend against any blanket statutory provisions which would make all papakāinga housing non-rateable.

Section Four

Rates Rebate Scheme

Background

222. In March 2016 Cabinet directed DIA and Te Puni Kōkiri to undertake further work on issues associated with the rates rebate scheme (**RRS**) in relation multiple housing on Māori land [CAB-16-MIN-0100].

223. The RRS was established by the Rates Rebate Act 1973 (**RRA**) to provide a subsidy to low-income homeowners on the cost of their rates.

224. Applicants must meet specific criteria and apply for a rates rebate directly to their council. The successful applicants have the approved rebate applied to their rates account. The scheme currently provides for rebates of up to $610 per annum.

225. Currently the RRS provides around 105,000 ratepayer subsidies with a total cost of $50.3 million in the year ending 30 June 2015, down from $50.8 million the previous year. The average rebate is just under $560.

226. The RRS excludes properties where there are multiple houses in a rating unit (except for the company share flat exemption) or that are principally used for commercial or farming purposes. This has the effect of excluding residential rental properties from the scheme.

Status quo

227. The RRA restricts qualification for the RRS as follows:

- a property needs to be a residential rating unit under the Local Government (Rating) Act 2002;
- the property must be the owner's usual place of residence; and
- the household income, in combination with the rates assessed and other relevant factors, must be low enough to qualify the ratepayer for a rebate.

228. The RRS excludes properties where there are multiple houses on a rating unit (except for the company share flat exemption) or that are principally used for commercial or farming purposes. This has the effect of excluding residential rental properties from the scheme. It also excludes long-term residential interests that are not registered on a title, such as many retirement villages where occupancy is by right of an occupation licence.

229. The table below illustrates how title arrangements affect the application of the RRS.

Title arrangements determine rates rebate qualification, not use

Ownership arrangement	Land ownership	House ownership	Rates rebate qualification
Multiply owned Māori land with occupation order/lease	Yes	Yes	Entitled
Multiply owned Māori land without occupation order/lease	Yes	Yes	Not Entitled
Unit title	Yes	Yes	Entitled
Cross lease	Yes	Yes	Entitled
Company share[20]	Yes	Yes	Entitled
Licence to occupy[21]	No	No	Not Entitled

Occupation orders becoming leases in Te Ture Whenua Māori reform process

230. Currently the Māori Land Court can confer occupation orders on Māori freehold land. This gives a formal right to live on the land and build or occupy a house. Occupation orders are defined in the Rating Valuation Rules as constituting a rating unit, and are therefore eligible for rates rebate.

231. Occupation orders are to become leases for residential housing purposes in the new Te Ture Whenua Māori Act. TTWMB as it stands proposes consequential amendment to Section 5B, Rating Valuations Act 1998, to provide for leases under section 129 and 130 of TTWMB to replace the occupation orders. The Valuer-General has the discretion to amend the Rating Valuation Rules so that leases will constitute rating units and then be capable of qualifying for the RRS. If this occurs it will largely preserve the status quo arrangements of those properties that currently qualify.

232. There are equivalent lease provisions within TTWMB for whenua tāpui which should have similar treatment. Additionally there are residential licence to occupy agreements recorded on the Māori land register. Where these have similar elements to a qualifying lease (including exclusive occupation of a defined area) and have a lengthy term they should be afforded similar treatment. It is proposed that the Rating Valuations Act 1998 be updated via TTWMB to include all long term leases where the lessee owns or will own the improvements along with agreements

[20] Company share flats have a special exemption to qualify as they do not meet the rating unit test.
[21] With licence to occupy arrangements there is neither land nor building ownership rights.

of a similar nature. The Valuer-General will be invited to update the Rating Valuation Rules.

233. Leases and former occupation orders based only on a life interest will not be separate rating units. This is consistent with how life interests in general land are treated in the Rating Valuation Rules, as a life interest for part of a title (or part of a cross lease or part of a unit title) does not constitute a rating unit. They are considered more of an occupancy than an ownership.

234. There is a requirement in TTWMB for all leases or similar dispositions to be recorded in the Māori land register.

235. It is estimated that approximately 72 low income households with occupation orders currently receive rates rebates. Once Te Ture Whenua Māori Bill is passed any properties where the occupation order is only based on a life interest would no longer qualify for rates rebate. We are unable to quantify the number of affected properties. However, we anticipate that the number will be very low due to the practice of including a term within occupation agreements. The Māori Land Court have 994 electronically recorded occupation orders. There are a further 165 electronically recoded licences to occupy. However, only a small percentage (estimate 7%) of these will qualify for rate rebates based on the uptake for occupation orders.

236. Named licences to occupy, where they confer exclusive occupation, they are in reality leases. If they are long term in nature it is envisaged that they will also be separate rating units. If they received rates rebates at the same rate as occupation order properties then a further 12 low income families would qualify.

237. The effect of these changes will be that following the passing of Te Ture Whenua Māori Bill all current and future qualifying leases or similar arrangements will be eligible for the rates rebate. This will mean that some arrangements not currently qualifying (licence to occupy with the elements of a lease) will qualify. However, where an occupation order was only based on a life interest the property would no longer qualify. Overall this arrangement is as close to the current qualification and provisions for general land as possible. It is therefore called the minimal change option.

Problem definition

238. The RRS is not currently available for individually owned houses on multiply owned Māori land that do not have an occupation order. This is an equity issue where Māori homeowners do not qualify for rates relief due to the nature of the title arrangement.

Objective

239. Low income home owners have access to the RRS.

Options and impact analysis

240. The options for rates rebates in this regulatory impact statement are:

- **Option 1**: **Recorded leases only**
- **Option 2**: **All separately owned houses with separate invoice** (recommended)
- **Option 3**: **All separately owned houses with single invoice.**

Option 1 Recorded leases only

Description

241. This option would amend the Rating Valuations Act 1998 so all Māori freehold land with a long term lease or equivalent agreement recorded in the Māori land register, and where the lessee owns or will own the improvements, can be a separate property. The Valuer-General would be invited to update the rating valuation rules, so these leases are separate rating units. This will require consequential amendment to the Local Government (Rating) Act 2002.

242. This option would only apply to those properties with a qualifying lease (i.e. informal arrangements would not qualify). Where the lease term is defined only by a life interest, a currently qualifying property would no longer qualify.

Regulatory impact analysis

243. Experience has shown that many Māori houses have been excluded from the RRS through the administrative barrier of creating an occupation order. The barrier will be slightly lower for the creation of a lease under sections 41, 42, 128 or 129 of TTWMB as there would not be a formal hearing in the Māori land Court, unless required by the Chief Executive of the Māori Land Service. A similar level of process to get agreement for a lease will be required to a former occupation order. In practice to get through the process a higher level of documentation may be required as Māori Land Court Judges have considerable discretion to accept oral evidence.

244. Advice commissioned by Te Puni Kōkiri estimates that the cost for a lease would be between $1,000 and $5,000 including GST. Te Puni Kōkiri will construct standard terms and conditions to minimise the cost. Advice to Te Puni Kōkiri indicates that it would take between 12 and 24 months to reach agreement on and document the lease. The outcome of seeking a lease is uncertain (i.e. there is no guarantee of acceptance by the collective owners or governance body).

245. Those in need of a rates rebate (most current applicants are retired people) may lack the resources or ability to complete the process required to document and get agreement for a lease to be lodged. The cost-benefit of undertaking this step is prohibitive for low-income families. This means that households on Māori freehold land are being put to an expense, on account of their land tenure that Te Puni Kōkiri does not consider is warranted. The process is both expensive and time consuming, without a guaranteed outcome. It represents a considerable administrative barrier to qualification, in particular for a low income individual or family. It is unlikely the reach of the RRS will be improved by this provision.

Cost analysis

246. It is anticipated that there will be small rise to the cost of the RRS. There are 165 electronically recoded licences to occupy. However, only a small percentage (estimate 7%) of these will qualify for rate rebates based on the uptake for occupation orders. Based on a typical rates rebate payment of $550[22] we estimate that the additional cost will be $6,600 per annum.

Risks

247. Government's policy objective to assist low income families with their rates bills will be less fulfilled compared to alternate options.

248. Councils are less likely to have their rates paid if rebates are unavailable to low income whānau.

Option 2: All separately owned houses with separate invoice (includes option 1)

Description

249. This includes Option 1, but also allows all other separately owned houses on Māori freehold land to qualify for the RRS, with a separate rates invoice for the home owner. A separately owned house is where an owner has a house on the land by virtue of being an owner of the land, not by virtue of a lease or formal tenancy. The owner would need to meet the other requirements of the scheme.

250. The owner or governance body would be able to request partitioning of the land for rates rebate purposes. If there is a dispute about the ownership of a home the council may apply to the Māori Land Court for a direction on whether the request should be actioned. The rates record would need to be kept for each part of the rating record.

251. The rates assessment for the whole property would identify the rates that apply for the house and the remainder of the property. The rates would need to be separately accounted for by councils. This would not remove ultimate responsibility for rates from the owners of the land as a whole. The definition of a ratepayer will be updated in rates legislation including the Rates Rebate Act 1973 and the Local Government Rating Act 2002.

252. This will work as follows:

Step 1: Homeowner applies for a rates rebate

Step 2: Council completes a rates calculation based on an apportioned valuation

Step 3: Council holds rates rebate information on Māori land within their rating information database (this will be open to the objection process)

Step 4: Council sends a separate rates invoice

Step 5: Council credits rebate against individual rates account

[22] Based on average rebate for occupation orders.

253. The owner(s) of the apportioned property would need to meet all other tests associated with the RRS. Part of the test for company flats under section 7 (6) of the rates rebate act is that the company that home owner has a share in, owns the land on which the flats are erected[23]. Owners of houses on Māori land directly owns a share in the land on which their house is built.

254. The rating apportionment would remain while the property attracts rates rebates.

Regulatory impact analysis

255. Uniform or fixed amount rates can be set per home (separately used or inhabited part of a rating unit). This means that a property with two houses can be charged two uniform rates payments, three houses three uniform rates payments etc. It is therefore appropriate that the rates rebate mechanism reflects the way rates are charged.

256. The cost to councils of having their valuation service provider complete a rating apportionment is estimated at $150 + GST, with a typical turnaround time of one month. This is one tenth the cost of preparing lease documentation and will take a small fraction of the time to organise.

Cost analysis

257. Te Puni Kōkiri estimates that 222 low income households that are subject to informal occupation arrangements on Māori freehold land will benefit from the RRS under Option 2. It is estimated that the cost of the RRS would increase by approximately $146,821. The appropriation for the RRS is currently 5% higher than anticipated expenditure. The estimated additional cost of this option is less than 0.3%. So unless there is an additional upsurge over 4.7% the appropriation would not be exceeded.

Risks

258. When setting up the provision the council will need to communicate with both the applicant and other land owners so that all parties are clear about the effect of creating a separately rateable part of a rating unit.

Option 3: All separately owned houses with single invoice (includes option 1)

Description

259. This includes Option 1, but allows all separately owned houses on Māori freehold land to qualify for the RRS, with a single rates invoice for the home owner. A separately owned house is where an owner has a house on the land by virtue of being an owner of the land, not by virtue of a lease or formal tenancy. The owner would need to meet the other requirements of the scheme. The owner or governance body would be able to request partitioning of the land for rates rebate purposes. If there is a dispute about the ownership of a home the council may apply to the Māori Land Court for a direction on whether the request should be actioned. The rates assessment for the whole property would identify the rates that apply for

[23] Occupation can include a surviving partner to an owner, and would take the form of a life interest. Following the life interest the house must pass to someone connected to the land, usually children of the former land owner.

the qualifying house and the remainder of the property. This would not remove ultimate responsibility for rates from the owners of the land as a whole.

260. This will work as follows:

Step 1: Homeowner applies for a rates rebate

Step 2: Council completes a rates calculation based on an apportioned valuation

Step 3: Council holds rates rebate information on Māori land within their rating information database. This will be open to the objection process

Step 4: Council sends a single rates invoice

Step 5: Council refunds the rebate directly to the applicant or credits the rate account.

261. The owner and the apportioned property would need to meet all other tests associated with the RRS. Part of the test for company share flats under section 7(6) of the RRA is that the company that home owner has a share in, owns the land on which the flats are erected[24]. Owners of houses on Māori land directly own a share in the land on which their house is built. Surviving spouses of former owners would also qualify by this mechanism.

262. The rating apportionment would remain while the property attracts rates rebates.

Regulatory impact analysis

263. Option 3 is essentially the same as Option 2 except there is no separate rates invoice. Councils would either credit the rate account for the whole property with the rates rebate or pay the amount directly to the applicant.

264. As this approach is similar to Option 2 this analysis only covers the differences.

265. It is considered it would be clearer for both applicants and councils if there were a separate invoice.

Cost analysis

266. Costs are anticipated as being the same as option two.

Risks

267. It is perceived that there would be slightly higher risks for councils and applicants as the application on the payment to a rates account would be more confusing where there is only a single rate account.

Overall assessment

268. Current provisions inadequately address the issues. As a minimum there needs to be amendment to legislation to more completely address the consequential effects of occupation orders becoming leases under TTWMB.

[24] Occupation can include a surviving partner to an owner, and would take the form of a life interest. Following the life interest the house must pass to someone connected to the land, usually children of the former land owner.

269. The recorded leases only option will provide a significant barrier to low income whānau, both in terms of cost and the difficulty of achieving an agreement to a lease document.

270. The single invoice option is similar in most respects to the individual invoice option, but is more likely to cause confusion and administrative difficulties.

271. On balance the preferred pathway forward is to allow all separately houses to qualify for the rates rebate regardless of underlying title arrangements, with a separate invoice. This is considered the most effective and lowest overall cost option.

Section Five

Rating Land as One Unit

Background

272. Section 20 of the Local Government (Rating) Act 2002 provides for land to be rated as if it were a single unit applies where two or more rating units are used jointly as a single unit, are owned by the same person or persons and are contiguous.

273. The Far North District Council in their submission to the select committee highlighted the issue of multiple blocks of Māori land each being charged a set of uniform rates where they are being farmed or used as one operation. They cited an example where 10 sets of uniform charges were payable by a single farming operation. The blocks do not meet the test for treatment as a single unit.

Problem definition

274. Blocks of ancestral Māori land used as one are being excluded from having rates calculated as if they were a single rating unit on account of differences in individual lot ownership or where they are no longer contiguous.

Objective

275. To moderate the effect of rates (uniform charges) on Māori farms and businesses where the land is used for one operation.

Options and impact analysis

276. The options for rates rebates in this regulatory impact statement are:

- **Option 1**: **Status quo**
- **Option 2**: **Rating Land as One Unit** (recommended)

Option 1 Status Quo

Description

277. This option requires land used jointly as a single unit to have identical ownership and meet the test of being contiguous to achieve to be treated as one unit for the setting of rates.

278. Adjacent Māori land blocks often have similar but not identical ownership, but the owners whakapapa back to the same owners of the original parent Māori land block. Māori land blocks now have an average of 106 owners and rising, making it increasingly unlikely that they will have identical ownership. Any difference in ownership results in non-application of the rates calculation as a single unit provision.

279. It is common for councils to have remissions policies where land is not contiguous, so only one set of uniform rates is paid. These policies address the needs of many farmers. However, due to variation in ownership on Māori land typically these remissions policies do not apply to farmers of Māori land.

Cost analysis

280. No cost implications.

Risks

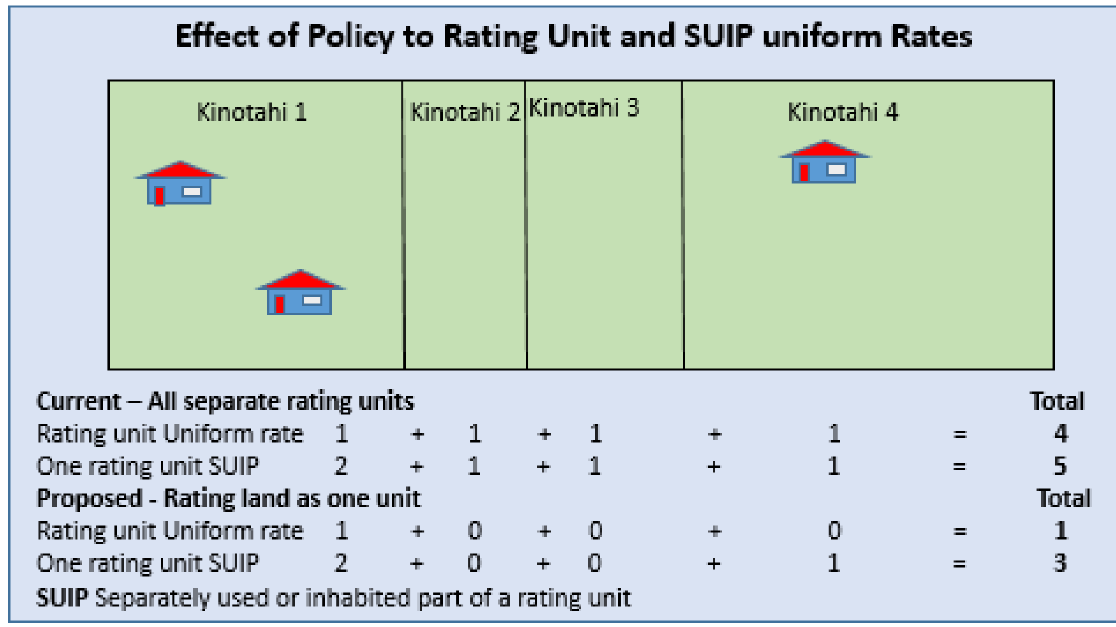
281. Government's policy objective to assist Māori utilise their land may be limited in effectiveness by the effect of multiple uniform rates.

Option 2: Rating Land as One Unit

Description

282. This option allows that on application by an affected owner or ratepayer, for two or more rating units to be treated as one unit for setting a rate if those units are used jointly as a single unit; are derived from the same original parent Māori land block; and include Māori freehold land.

283. As councils can charge uniform rates per rating unit or per separately used or inhabited part of a rating unit (**SUIP**). The effect is illustrated by the diagram below.



284. In the example above, the properties currently pay one set of uniform rates per property, under the proposed approach, where properties pass the tests (used jointly as a single unit; are derived from the same original parent Māori land block; and include Māori freehold land) they will pay one set of uniform rates for the four properties. If the Council applies SUIP rating, properties currently pay five sets of uniform rates as one property pays 2 sets. Under the proposed approach, where properties pass the tests they will pay three set of uniform rates for the four properties.

Regulatory impact analysis

285. It is common for ownership to vary between adjacent blocks. However, there is a strong family connection of ownership and frequently many owners in common between blocks.

286. It is common for some land of the original parent block of Māori land to have been alienated, which can mean that land fails to meet the contiguous test. Looking past the strict test of currently being contiguous reflects the former situation of the ancestral family holding. Likewise it is common for some land blocks to have had a status change (including those that were changed without owner consent or in many cases knowledge by the Māori Affairs Amendment Act 1967). These properties are included as the objective improve the effectiveness of land utilisation.

287. It is common for Māori land owners to face high rates as a proportion of income. In a recent study of Māori freehold land rating more than a quarter of properties had rates that exceeded half of net income[25].

288. This option provides an incentive to use land jointly and promotes the economic use of land. In particular it will encourage reduced administration and the economic use of small blocks of Māori land.

289. The provision would be on application because we do not want to create a positive obligation on councils to search these matters out. It is mandatory for them to apply the provision once it comes to their attention.

Cost analysis

290. It is difficult to estimate the costs because there is no available information on how Māori land is used jointly. The effect of council rates remission policies also need to be considered. Overall due to the modest number of properties that will meet the new criteria it is not expected to be a significant burden on councils.

291. It is probable that this policy will lead to more land coming into production giving the owners the ability to pay rates. The rates will be more appropriate to the income being received, and rates will be more likely to be paid. The Far North District Council submission provided an example of how this would work. They stated that they were better to have a lower level of rates than have the land sit idle with no rates paid.

Risks

292. Risk of the scheme being too broad are substantially reduced by limiting application to the same original parent Māori land block.

Overall assessment

293. The current policy settings often excludes Māori land from treatment as a single unit through the technicalities associated with common ownership and being strictly contiguous. This can lead to a high rates burden on small parcels of Māori land.

294. The recommended option recognises that Māori land that is derived from an original block can be used as one unit. It is considered appropriate to look past the technicalities of having precisely the same ownership, and the absolute need for the land to be contiguous, to the objective. The proposal recognises the historic whānau structure of Māori land, and promotes the efficient use of land.

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[25] Halstead Consulting, Incidence of Rates Māori Freehold Land 2015.

Section Six

Rating of land protected by kawenata tiaki whenua or scenic and heritage whenua tāpui

Background

295. Kawenata[26] tiaki whenua are for preservation and protection of places of cultural or historical interest; or places of special significance according to tikanga Māori. Whenua tāpui are place of cultural or historical interest, a place of scenic interest or a place of special significance according to tikanga Māori[27]. Both kawenata tiaki whenua and whenua tāpui are provided for in Te Ture Whenua Māori Bill.

296. The non-rateability of kawenata tiaki whenua has been raised by the Iwi Leaders Group on the basis that this land would be managed for purposes that are similar to other lands which are exempt from rates under the Local Government (Rating) Act 2002.

297. If land has wāhi tapu (a place sacred to Māori in the traditional, spiritual, religious, ritual, or mythological sense) or wāhi tūpuna (a place important to Māori for its ancestral significance and associated cultural and traditional values) present it will be prohibited from becoming a whenua tāpui for the common use and benefit for the people of New Zealand[28].

Problem definition

298. The requirement for the payment of rates may limit the creation of kawenata tiaki whenua which could lead to the loss of these sites of special significance. New Zealand could suffer an erosion of heritage values as a result.

299. Making kawenata tiaki whenua non-rateable aligns with rating of conservation land and reserves, land owned or used for Queen Elizabeth II Trust, and proposed for land which has a covenant over it under the Nga Whenua Rāhui programme.

300. The requirement of whenua tāpui to be for the common use and benefit of the people of New Zealand and the prohibition of land including wāhi tapu or wāhi tipuna unfairly limits the application of non-rateability.

Objective

301. The objectives are:

- To encourage the preservation and protection of places of cultural or historical interest; and places of special significance according to tikanga Māori; and
- To give equivalent protection from rates that that is given though other similar heritage provisions.

[26] Covenant.

[27] Te Ture Whenua Māori Bill section 29 (1) (m), (n) and (o) or section, or Te Ture Whenua Māori Act section 338 (1)

[28] Te Ture Whenua Māori Bill section 32 (5), or Te Ture Whenua Māori Act section 340 (1)

Options and impact analysis

302. The options for rating of kawenata tiaki whenua and whenua tāpui in this regulatory impact statement are:

- **Option 1**: **Status quo**
- **Option 2**: **Non-rateability of land protected by kawenata tiaki whenua (with appeal) and scenic and heritage whenua tāpui**
- **Option 3**: **Non-rateability of land protected by kawenata tiaki whenua (with MLC application) and scenic and heritage whenua tāpui** (recommended)

Option 1 Status Quo

Description

303. Land protected by kawenata tiaki whenua will be rateable. Scenic and heritage whenua tāpui will continue to be rateable except where the local authority consents to establishment of a whenua tāpui[29] and it is for the common use and benefit of the people of New Zealand.

304. There are no cost implications.

Risks

305. Rateability of kawenata tiaki whenua and scenic and heritage whenua tāpui will discourage their creation or extension. The effect being the erosion New Zealand's heritage and scenic values. It would also be at odds with provisions which already provide for land managed for conservation purposes under other schemes to be exempt from rates.

Option 2: Non-rateability of land protected by kawenata tiaki whenua (with appeal), or scenic and heritage whenua tāpui

Description

306. Land protected by scenic and heritage whenua tāpui established by the Māori Land Court will be non-rateable. Scenic and heritage whenua tāpui are contained in sub-sections 29 (1) (m), (n) and (o) of TTWMB. Where the land is used for permanent residential, agricultural, horticultural or commercial purposes it would be rateable.

307. Land protected by kawenata tiaki whenua would be non-rateable, subject to an appeal process. Where the land is used for permanent residential, agricultural, horticultural or commercial purposes it would be rateable.

308. Where a council wishes to test the validity of the kawenata tiaki whenua the appeal process is that they would apply to the Māori Land Court for review. The governance entity would need to satisfy the Māori Land Court that the kawenata meets the statutory requirements. If the Māori Land Court was not satisfied that the kawenata was meeting the statutory requirements it would declare the land rateable,

[29] The local authority must consent to the establishment of the whenua tāpui, Te Ture Whenua Māori Bill section 32 (5) (a), or Te Ture Whenua Māori Act section 340 (2).

even though there is a kawenata tiaki whenua. The kawenata tiaki whenua would continue regardless of the outcome.

Regulatory impact analysis

309. There are a range of existing heritage measures that can make similar land non-rateable. Some of these relate to the status of the land (e.g. a national park) and others relate to a particular owner (e.g. land used for a local authority reserve). Examples also exist of other covenanted land being non-rateable (e.g. land covenanted to the Queen Elizabeth the Second National Trust).

310. Arguably a difference is that there is no third party involvement in establishing a non-rateable status for a kawenata tiaki whenua. In other situations non-rateability applies to any land that the organisation uses for particular purposes (such as churches or a wide range of local authority uses). The lack of third party involvement in this situation is mitigated by the council being able to confirm that the kawenata tiaki whenua meets the statutory requirements in the Māori Land Court. In any event if the land was being used for an economic activity it would be rateable.

311. Whenua tāpui are created following a notified hearing in the Māori Land Court, which provides third party involvement.

Cost analysis

312. It is difficult to estimate the fiscal impact on councils. We would expect the new provisions to apply to a small number of existing whenua tāpui. We do not expect a rush to establish kawenata tiaki whenua, but rather a steady uptake over time due to cost and process of establishing the covenants. We would expect this new provision to impact less than one percent of Māori land.

313. Where a council disputes a kawenata tiaki whenua the cost is likely to be moderate as the maximum application fee to the Māori Land Court is currently $200. The cost would be further contained if council staff represent the council in the Māori Land Court. The onus of proof to support the kawenata tiaki whenua rests with the governance entity that created the kawenata.

Risks

314. The risk of the policy applying too widely is prevented by the costs and process of setting up covenants. Any attempt to rort the system though inappropriate covenants is prevented by the requirement for the land to be rateable where it is used for permanent residential, agricultural, horticultural or commercial purposes.

Option 3: Non-rateability of land protected by kawenata tiaki whenua (with application), or scenic and heritage whenua tāpui

Description

315. Land protected by scenic and heritage whenua tāpui (established by the Māori Land Court) will be non-rateable. Scenic and heritage whenua tāpui are contained in sub-sections 29 (1) (m), (n) and (o) of TTWMB. Where the land is used for permanent residential, agricultural, horticultural or commercial purposes it would be rateable.

316. Land protected by kawenata tiaki whenua will be non-rateable, on application to the Māori Land Court by the land owner. Where the land is used for permanent residential, agricultural, horticultural or commercial purposes it would be rateable.

317. Where a kawenata tiaki whenua is put in place by a governance body, they could choose to have it confirmed with the Māori Land Court to achieve non-rateability. Where a governance body wishes to achieve non-rateable status for land protected by kawenata tiaki whenua they would lodge an application with the Māori Land Court for an order confirming that the kawenata tiaki whenua meets the statutory purposes. The application would detail the reasons for the kawenata tiaki whenua and would be supported by written evidence (in affidavit form). The council would be notified, and given a copy of the application. The application would be dealt with by the Māori Land Court on the papers unless the council requests a hearing. The governance body would provide a copy of the order of confirmation from the Māori Land Court to the council, who would then make the land non-rateable.

318. If the Māori Land Court was not satisfied that the kawenata tiaki whenua was meeting the statutory rating requirements the kawenata would nevertheless continue but the land would be rateable.

Regulatory impact analysis

319. There are a range of existing heritage measures that can make similar land non-rateable. Some of these relate to status of the land (e.g. a national park) others relate to a particular owner (e.g. land used by a local authority reserve). Examples also exist of covenanted land being non-rateable (e.g. land covenanted to the Queen Elizabeth the Second National Trust).

320. The Māori Land Court will provide third party involvement in establishing a non-rateable status for kawenata tiaki whenua through confirmation that they meet the statutory purposes (following an application from the land owner).

321. Whenua tāpui are created following a notified hearing in the Māori Land Court, which provides third party involvement. Kawenata tiaki whenua and whenua tāpui are now similar to other situations where non-rateability applies to any land that the organisation uses for particular purposes (such as churches or a wide range of local authority uses).

Cost analysis

322. It is difficult to estimate the fiscal impact on councils. We would expect the new provisions to apply to a small number of existing whenua tāpui. We do not expect a rush to establish kawenata tiaki whenua, but rather a steady uptake over time due to cost and process of establishing the covenants. We would expect this new provision to impact less than one percent of Māori land.

323. Councils would face no significant administrative costs unless they require a hearing on whether the kawenata tiaki whenua meets the statutory purposes. Where a council questions a kawenata tiaki whenua the cost is likely to be moderate if council staff represent the council in the Māori Land Court. The onus of proof to support the kawenata tiaki whenua rests with the governance entity that created the kawenata tiaki whenua.

Risks

324. Risks are minimised through Māori Land Court involvement in rateability for kawenata and establishing whenua tāpui. Furthermore, any attempt to rort the system though is prevented by the requirement for the land to be rateable where it is used for permanent residential, agricultural, horticultural or commercial purposes.

Overall assessment

325. Where land covenanted or reserved for scenic, heritage or tikanga reasons it is appropriate for local authority rates to be forgiven. This aligns with a range of other non-rateability provisions.

326. It will assist with the preservation of scenic, heritage sites and places of special significance

327. It will remove restriction that sites that are wāhi tapu or wāhi tūpuna are prevented from achieving non-rateability because they are prevented from becoming qualifying whenua tāpui.

328. Option 3 (with application) is preferred over option 2 (with appeal) as it provides local government with the surety that both kawenata tiaki whenua and whenua tāpui are being set up for the statutory purposes. Option 3 also minimises council costs and provides certainty of process to governing bodies.

Section Seven – Consultation on the Cabinet paper and Regulatory Impact Statement

Consultation

330. Analysis within this RIS was informed by a set of inter-agency discussion papers. The discussion papers were independently reviewed by Sir Peter Blanchard and Associate Professor Linda Te Aho. The independent reviews supported the recommended options.

331. The Ministers for Justice, Local Government, Land Information and Transport discussed and refined the recommended options in this RIS as a result of bilateral meetings with the Minister for Māori Development and the Associate Minister for Māori Development.

332. Land Information New Zealand, the Department of Internal Affairs, the Ministry of Transport, the Ministry of Justice and the New Zealand Transport Agency have been consulted on this RIS.

333. Te Puni Kōkiri discussed all rating and public works matters with LGNZ. The Minister of Local Government confirmed the approach to the rates rebate proposals with LGNZ.

334. The Department of Prime Minister and Cabinet has been informed of this RIS.

335. No departmental comments were received:

Conclusion and Recommendations

336. As set out in this paper, Te Puni Kōkiri has analysed issues for Māori land related to public works, rating of papakāinga housing, rates rebates, rating Māori land as one unit and the non-rateability of land protected by kawenata tiaki whenua, or scenic and heritage whenua tāpui. Each section contains recommended policy settings. The preferred options are:

Public Works Act

- Solatium payments: provide for the element of additional compensation for acquisition of notified dwellings (solatium payments) apply to all separately owned dwellings being acquired on Māori land. A separately owned dwelling is a dwelling where the owner has an occupation order; a lease or similar agreement recorded at the Māori land register; or obtains a declaration of equitable ownership from the Māori Land Court. Currently home owners on multiply owned Māori land share a single solatium payment;

- Valuation of Māori land acquired/taken under PWA: clarify for the avoidance of doubt that Māori land must be valued as if it were general land for compensation purposes under the Public Works Act 1981;

- Offer back of surplus land: clarify and improve the workability of existing Māori Land Court jurisdiction to deal with matters arising from the offer back of all former Māori land which is not needed for public works, including

- the Māori Land Court to have the ability to vest the beneficial and legal ownership of former Māori land in the hands of former land owners or their successors;

- Jurisdiction of the Māori Land Court will specifically exclude altering any easement, covenant or encumbrance required in respect of the land subject to offer-back;

- Disputes on price to be determined by the Land Valuation Tribunal, presided over by a Māori Land Court Judge;

- Agencies offering back former Māori land will continue to have discretion to use section 40 or 41 of the Public Works Act 1981. Exemptions to offer back in section 40 subsections (2) (a) and (b), and (4) of the PWA will continue to apply; and

- Require land to be returned as Māori land in all cases – where it was acquired / taken as Māori land.

- Alternatives to Acquiring Māori land: require that Māori land can only be acquired compulsorily or by agreement if the Chief Executive of the local authority or the Minister for Land Information is satisfied that the purchase is reasonably necessary, that there has been adequate consideration of other options and that the principles of Te Ture Whenua Māori Act have been considered.

Non-rating of papakāinga housing

- Non-rating on a marae: allow for non-rateability (excluding service charges) for permanent dwellings (up to 2 dwellings) on a marae, which are nominated by the administering body for the marae; and

- Council discretion: provide councils with discretion to make permanent residential accommodation on, adjacent to or associated with a marae non-rateable (service charges are still payable).

Rates rebates

- Allow qualification for rate rebate: enable an owner of an individual freehold interest in Māori freehold land to receive a separate rates invoice to qualify for the Rates Rebate Scheme if the owner has a house on the land (by virtue of being an owner of the land, not by virtue of a lease or formal tenancy); and otherwise meets the requirements of the Rates Rebate Scheme.

Rating Land as One Unit

- Rating land as one unit: so on application by an affected owner or ratepayer, two or more rating units are treated as one unit for setting a rate if those units are used jointly as a single unit; are derived from the same original parent Māori land parcel; and include Māori freehold land.

Non-rateability of land protected by kawenata tiaki whenua, or scenic and heritage whenua tāpui

- Non-rateability of land protected by or scenic and heritage whenua tāpui: Land protected by scenic and heritage whenua tāpui to be non-rateable. Scenic and heritage whenua tāpui are contained in sub-sections 29 (1) (m), (n) and (o) of TTWMB. Where the land is used for permanent residential, agricultural, horticultural or commercial purposes it would be rateable.

- Non-rateability of land protected by kawenata tiaki whenua: Land protected by kawenata tiaki whenua to be non-rateable, subject to an appeal process. Where the land is used for permanent residential, agricultural, horticultural or commercial purposes it would be rateable.

337. Analysis undertaken by Te Puni Kōkiri has found the options that best achieved the desired policy objectives for Māori land, and best addresses the issues associated with the current legislative framework.

338. The public works matters will come into effect when parts 1 to 9 the Te Ture Whenua Māori Bill come into effect.

339. LINZ will reflect changes to the PWA in their standards and guidelines on the PWA.

340. The rates rebate, rating of papakāinga housing and rating land as one unit provisions will come into effect at the same time as other rates provisions come into effect. This will be on the 1 July that falls at least 9 months after the date of Royal assent and after the date on which Parts 1 to 9 of the Te Ture Whenua Māori Bill come into force.

341. Te Puni Kōkiri and DIA will jointly provide guidance to councils on the changes to rating matters.

342. Councils are advised of changes to the law at conferences run by Local Government New Zealand and the Society for Local Government Managers.

343. Changes will be notified to owners as part of the communication plan for the whole reform process. This will include effects of TTWMB, the matters in this RIS and establishment of the Māori Land Service.

Monitoring, Evaluation and review

344. The matters within this RIS are all consequential amendments to other legislation. Monitoring, evaluation and review will occur as the responsible agency reviews the relevant legislation from time to time.

345. Te Puni Kōkiri will request that LINZ record land title status for all situation where they processing applications by Crown agencies for purchase or sale of land.

346. Te Puni Kōkiri has twice surveyed councils on rates for Māori freehold land. A follow up survey two years after implementation of the policies would be beneficial to understand the effects.