BUDDLE FINDLAY

DRAFT

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To: Zoe Genet

From: Brannavan Gnanalingam, Paul Beverley

Public Works Act 1981 (PWA) advice – Greater Wellington Regional Council – Kāpiti Coast District Council – Ngāti Toa Rangatira - Ngāti Haumia ki Paekākāriki – PRIVATE AND CONFIDENTIAL

Background

1. We are advised that the Crown currently holds approximately 550ha land for the Transmission Gully project. Waka Kotahi and the Wellington Gateway Partnership have not yet fulfilled all of the consenting requirements for construction of Transmission Gully, and accordingly, the land is not surplus and will not be, for the immediate future.

2. However, Greater Wellington Regional Council (**GWRC**) would like advice on potential options once approximately 450ha of the land is no longer needed following final completion of the project. GWRC would like advice on whether (and how) the land could be transferred for further public works.

3. We note that the land in question is comprised in a number of blocks, and was acquired from a number of different previous owners. The Crown / local authorities will need to go through the exercises below for *each* block of land.

4. We also understand that any project is likely to involve involvement with GWRC, Kāpiti Coast District Council (collectively **Councils**), Ngāti Toa Rangatira and Ngāti Haumia (all four parties comprising the **Rōpū**).

5. GWRC's strategic priorities include:

   (a) Working with mana whenua, to fulfil their aspirations, in the following priority order (where possible):

      (i) Mana whenua obtaining and retaining local control of these lands.

      (ii) Looking after the environment, and protecting / restoring the environmental values of the area.

      (iii) Providing opportunity for housing for mana whenua and the community.

   (b) Using the land for the following:

      (i) promotion of healthy ecosystems;

      (ii) kaitiakitanga, and working in partnership with mana whenua;

      (iii) community support, including soil and water protection, carbon and climate change resilience, cultural strength, community housing, recreation and amenity, food production from versatile soils, energy, and economic development.

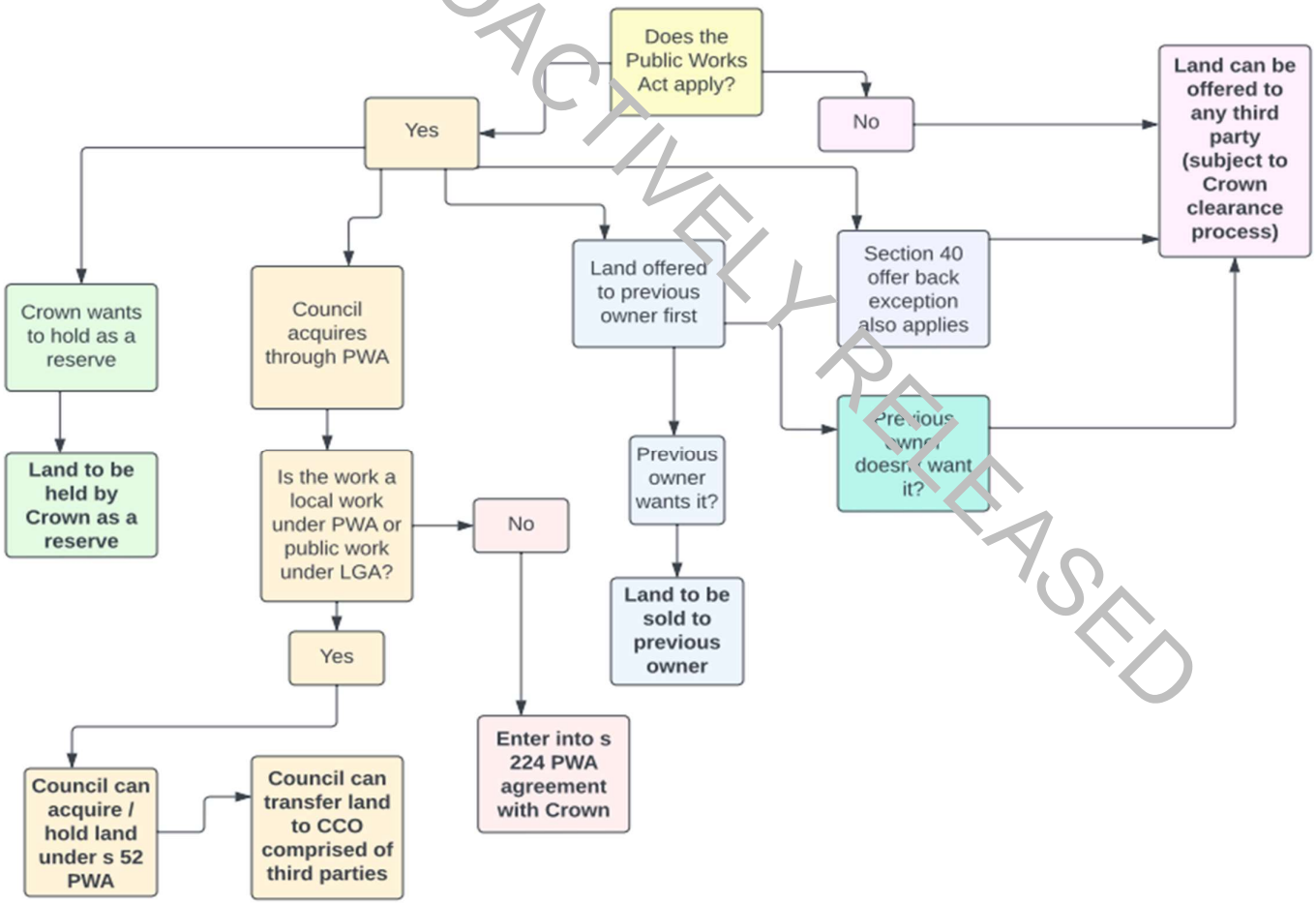
6. This memo sets out:

   (a) A legal analysis of the Public Works Act 1981 (**PWA**), and options for mana whenua and/or the Councils to secure the land within the PWA framework.

   (b) The availability of non-PWA options to achieve the above.

Executive Summary

7. We summarise the PWA position in the flow chart below.



8. Separately, we note the following in the context of mana whenua aspirations.

PWA applies?	Option	Level of mana whenua ownership / control
No	Land can be transferred directly to mana whenua	Full control / ownership. Subsequent arrangements can be entered into with the Rōpū, more generally
Yes	Land offered to previous owner to clear PWA obligations. Previous owner wants to acquire land	No control / ownership. Mana whenua would need to enter into separate arrangement with the landowner directly
Yes	Land offered to previous owner who does not want land / waives PWA rights. Land can be transferred directly to mana whenua	Full control / ownership. Subsequent arrangements can be entered into with the Rōpū, more generally
Yes	The Rōpū sets up a CCO and the land is transferred from Crown to Council to the Rōpū. Ongoing use must comply with the PWA and/or Local Government Act 2002 (**LGA**).	Co-ownership / co-management. Process subject to compliance with LGA / Rōpū agreeing form of CCO entity
Irrelevant	Crown retains ownership and sets up reserve. Ongoing use must comply with the Reserves Act 1977 (**Reserves Act**)	Crown will own land. Mana whenuawill not own land, and will be involved (at best) from a management perspective
Irrelevant	Land transferred to Council for reserve. Ongoing use must comply with the Reserves Act	Council will own land. Mana whenuawill not own land, and will be involved (at best) from a management perspective

9. We envisage the following next steps:

   (a) We anticipate that a variety of the above options will be considered by the parties (i.e. the parties do not need to commit to one option).

   (b) The Crown should obtain a preliminary s 40 PWA Report to determine the PWA obligations (if any) for all of the relevant land.

   (c) While this is occurring, GWRC should have discussions with Ngāti Toa Rangatira and Ngāti Haumia to discuss their aspirations, given the specific requirements of the PWA and the Crown processes. The parties should discuss the various intended uses of the land, and develop its thinking on specific locations.

   (d) GWRC should simultaneously have discussions with the Crown as to its processes and timing of any declaration that the land is surplus. Any discussions should also include any potential appetite for a s 224 PWA agreement (if required), and whether any transfer would require a full market purchase price or reduced purchase price for the land.

   (e) The Councils should have internal discussions as to whether a CCO could be a viable option. If so, then the Councils should have a discussion with Ngāti Toa Rangatira and Ngāti Haumia as to the structure of the CCO.

10. We are happy to assist in any of the above, or provide further detail, as required. We set out our reasoning below.

THE PWA

11. The key initial question to determine is the extent to which the PWA applies, and the purposes for which the land is to be used following any transfer. This will inform the Crown's, and Councils', approach.

12. Under the PWA, once land is no longer required (i.e. surplus), the Crown would first need to offer the land back to the previous owners at the current market value. In this context:

   (a) the previous owner is the person from whom the Crown acquired the land; or

   (b) if the previous owner was a Crown body or a local authority, the owner from whom that Crown body or local authority acquired the land.

13. Whether land is "no longer required" will depend on the circumstances – it is a question of both law and fact.

14. The Crown / local authorities have long held the right to acquire land for a local / government work using compulsory powers. The common law presumption is, if land is owned by the Crown or a local authority, it had previously been acquired via compulsion. A local authority would otherwise need to show that it acquired the land on the open market (on a willing buyer / willing seller basis) to displace that presumption.

15. A failure to comply with the PWA offer back provisions could give risk to a claim in negligence against the Crown / local authority, or result in a judicial review or an injunction being sought.

16. Fundamentally, we note that the PWA is a significant power reserved to the Crown / local authorities. It provides an exception to the idea that the Crown / local authority cannot arbitrarily deprive somebody of their property. The Crown / local authority is therefore required to ensure that in using or complying with the PWA, it:

    (a) acts in good faith.

    (b) acts for a public purpose or for the benefit of the public.

    (c) takes no more than what is required and only for so long as the land is required.

    (d) does not use this power to benefit a third person.

    Therefore, the Crown / local authorities should be cautious about any attempt that artificially attempts to get around the PWA process or any obligation owed to previous owners.

DOES THE PWA APPLY?

17. The initial question is whether sections 40(1) and (2) of the PWA (**Offer Back Provisions**) apply to the land in question. The applicability (or non-applicability) of the Offer Back Provisions will dictate the strategy (see flow chart in the executive summary).

18. The Offer Back Provisions provide that if land held under the PWA or any other act or in any other manner for public work is:

    (a) no longer required for that public work; and

    (b) is not required for any other public work; and

    (c) is not required for any exchange under s 105 (i.e. as compensation for land being taken for another public work); then

    (d) the land shall be offered by private contract to the person from whom it was acquired or their successor at the current market value (or at any lesser price, if the Chief Executive of LINZ considers it reasonable to do so).

19. In relation to that:

    (a) The presumption is, if the Crown or a local authority is the owner of the land, then it is held for a public work. For the Offer Back Provisions *not* to apply, the Crown or local authority would need to demonstrate that it acquired the land on the open market and at an arm's length.

    (b) Alternatively, the Offer Back Provisions do not apply if one of the statutory exceptions contained in s 40(2)(a) or (b) apply. The Crown or local authority would need to demonstrate either that:

        (i) It would be impracticable, unreasonable, or unfair to offer the land back.

        (ii) There has been a significant change in the character of the land for the purposes, or in connection with, the public work for which it was acquired or is held.

Whether these exceptions apply is usually determined by a LINZ accredited agent.

(c) The Offer Back Provisions do not apply if the previous owner or successor cannot be found. We note that a successor is defined in two ways:

(i) If the whole property was originally taken, then the successor is the person who would have been entitled to the land under the will or intestacy of that person, had they owned the land at the date of their death.

(ii) If part of the property was originally taken, then the successor is the current owner of the remainder of the property.

(d) If the previous owner or successor does not want the land, then the Crown / local authority may dispose of the land as they wish (as per s 42 of the PWA).

20. The usual first step is for the Crown or a local authority to obtain a Section 40 Report from a LINZ accredited agent to determine whether:

(a) the Offer Back Obligations exist; and/or

(b) any of the exceptions set out in paragraph 19 apply.

The Crown / local authority can rely on the LINZ report in order to determine its next steps.

21. In our view, the Crown should commission a s 40 report from a LINZ accredited agent to determine whether the Offer Back Obligations exist or not, which can be done (carefully) prior to the land becoming surplus.

WHAT HAPPENS IF THE OFFER BACK OBLIGATIONS DO NOT APPLY?

22. The Crown / local authority is free to dispose of the land as they wish. In this regard:

(a) The third party acquiring the land does not need to put the land to any specific purpose.

(b) The Crown / local authority is entitled to transfer the land subject to any conditions it may deem necessary.

23. If the landowner is the Crown, the Crown goes through its Crown property disposal process when it disposes of land. The Crown follows the four steps below:

(a) Is the land needed for any other public work?

(b) Should the land be offered back as per the Offer Back Obligations?

(c) Can the land be offered to iwi under a Treaty settlement (e.g. as a Right of First Refusal)? Alternatively, the Crown may elect to "land bank" the land for a future Treaty settlement. We do note that the Crown has not fully settled all Treaty claims in the Kāpiti region.

(d) Sell the land on the open market.

24. GWRC should discuss potential future options with the Crown at an early stage, for the following reasons:

(a) The Crown will need to follow its own processes, separately from Councils' wishes (given the Crown currently owes the Offer Back Obligations).

(b) The Councils will not want the Crown declaring the land surplus prior to Councils determining their approach and indicating a requirement to use the land for another public work. As soon as the land is declared surplus, the Offer Back Obligations (if any) will start.

(c) Councils would want to advise the Crown of its interest, particularly if other Crown bodies may also express an interest in the land through the Crown property disposal process (e.g. Department of Conservation, Te Arawhiti).

(d) The Crown will likely work through its s 50 transfer obligations (if the land is going to Council), which will require Council to have significantly progressed its planned uses of the land / CCO or co-governance structure.

(e) The Crown will likely need to work through its own appropriations / balance sheet analysis in order to determine for what consideration any land could be offered to third parties (including to the Councils) and whether any Ministerial sign-offs are required. The Councils will want to discuss upfront the Crown's appetite for any transfer at less than market rates.

25. If the landowner is a local authority, then the local authority is free to dispose of the land, subject to compliance with the LGA. For completeness, we set out the disposal process under the LGA in Appendix 1.

26. If the Offer Back Obligations do not apply, the land could be offered directly to mana whenua on any terms and for any price (subject to internal requirements, and any appropriations and balance sheet issues being resolved).

27. One point to note is that if such land is to be used for community housing purposes, the Crown / Councils may need to discuss with mana whenua the status of the land. We understand that a lot of Crown funding for papakāinga housing is contingent on the land being classified as Māori freehold land. This will require a separate (or subsequent) application to the Māori Land Court for the status to be changed. However, this should be discussed with mana whenua, as such classification does have an impact on development / ability to raise finance.

WHAT HAPPENS IF THE OFFER BACK OBLIGATIONS DO APPLY?

28. There are two options in this situation:

(a) Find an alternative "public work". This could result, for example, in a transfer from the Crown to a local authority to a Council-Controlled Organisation (see below).

(b) Offer the land back to the previous owner or their successor first to determine whether they want the land or not.

29. The latter situation is straightforward:

(a) If the previous owner or their successor want the land at the market price offered, then the Crown / local authority is bound to sell the land to that previous owner or their successor.

(b) If the previous owner or their successor do not want the land, then the Crown / local authority is free to dispose of the land as they wish. Paragraphs 22 to 26 above would then apply.

30. In these circumstances, if ultimately the intent is for the land to end up with some involvement with mana whenua, then this would be a high-risk approach by the Crown. We understand that much of the land in question was recently acquired by the Crown. That means it is more likely that the previous owner or their successor is contactable / in a position to acquire the land.

31. Alternatively, the parties could negotiate directly with the previous owners, with a view to paying a settlement figure, in exchange for that owner waiving their rights to have the land offered back. This option must be approached with caution, as the previous owner will still retain the right to have the land offered back. Care must be taken not to pressure any previous owner into accepting a settlement offer for fear they will not get their land back at all. Negotiation and settlement cannot be in substitution for an offer, but may be an alternative if the previous owner is agreeable to that approach.

FINDING AN ALTERNATIVE "PUBLIC WORK"

32. The Councils would need to acquire the land for a local or public work. We note that a CCO or mana whenua could not acquire the land directly in this way.

33. In order for land to be transferred to one or both Councils, they would need to satisfy one of the two statutory mechanisms under which they could acquire the land:

(a) The PWA allows a local authority to acquire any land required for a "local work" for which it has "financial responsibility."[1] The key test would be demonstrating that the planned work in question is a "local work".

(b) Section 189 of the LGA allows a local authority to purchase, or take in the manner provided by the PWA, any land or interest in land, whether within or outside its district, that may be necessary or convenient for the purposes of, or in connection with, any public work that Council was empowered to undertake, construct, or provide immediately before 1 July 2003.

34. In *Commercial Properties Ltd v Hutt City Council,*[2] the interplay between these two sections was considered, and the Judge held that the provisions in the LGA create a stand-alone power for local authorities to compulsorily acquire private property.

35. The two acts provide two different standards for a local authority to acquire land:

(a) Under the PWA, a local authority can only acquire land if it is required for a local work for which the authority has financial responsibility, and the work is constructed by or under the control of that local authority.

(b) In contrast, under the LGA, land may be acquired if necessary or *convenient* for the purposes of, *or in connection with*, a public work. This is a broader test, which may assist a local authority in drafting its objectives for acquiring the land in question.

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[1] Section 16, PWA.
[2] [2019] NZHC 2243.

36. The tests for public works / local works are broad, and we think the planned uses of the land are currently likely to fall into the definition for which the Councils have financial responsibility. However, we would need to assess these in closer detail once specific projects are determined. If the work does not qualify as a local work under the PWA or a public work under the LGA, then we note an alternative approach as set out in paragraph 40 below.

37. Further, in the context of works in and around Paekākāriki:

    (a) As was relevant in the facts of *Commercial Properties Ltd v Hutt City Council*, under the Local Government Act 1974, "urban renewal" was declared a public work for the purposes of the PWA. Accordingly, in that case, Hutt City Council did not have to show that the work was a "local work", and therefore they did not need to construct or control the construction of the work themselves.

    (b) Urban renewal was defined as:

    "… the conservation, repair, or redevelopment of any land, or of any building on any land, within any urban part of the district (or the encouragement thereof), the standard of which should in the opinion of the council be improved; and includes the improvement, reconstruction, extension, development, and redevelopment of the utility services, roading, the landscape, and community and social facilities and services within that part."

38. Once either the PWA or LGA threshold is met, then the Councils are required to follow the s 50 PWA processes to progress the taking of the land. Section 50 entitles a public work to be transferred to a local authority (subject to the local authority requiring it for a public work). We note that land transferred for a public work to the Crown or a local authority can in some circumstances also be vested as a reserve under the Reserves Act, which we discuss in more detail below.

39. However, once the land is in local authority ownership, then the land could be on-transferred to a CCO, without triggering any Offer Back Obligations.

40. We consider the proposed works are likely to meet the test for "local work" under the PWA. However, if there is any risk that the works do not meet the tests set out in paragraph 35 for "local work" under the PWA or "public work" under the LGA, then the Councils could not directly acquire the land. Council would need to consider liaising with the Crown as to whether a s 224 Public Works Act Agreement could be used instead. In relation to that:

    (a) Section 224 of the PWA allows the Crown and local authority to 'combine' in works of both national and local importance.

    (b) This will require sign-off from the Minister of Finance and any other Minister of the Crown.

    (c) The parties effectively enter into a joint venture for the acquisition, execution, control, and management of the undertaking, although either the Crown or a local authority could likely 'lead' the project.

(d) The local authority is entitled to acquire the land.[3]

(e) The rights and obligations under such agreement can be assigned to another party (e.g. a CCO).[4] We do not think the land could be assigned to a non-CCO or non-local authority, as that will likely trigger the Offer Back Obligations. Any such transfer to a CCO should be discussed with the Crown in advance to manage expectations.

COUNCIL-CONTROLLED ORGANISATIONS AND THE PUBLIC WORKS ACT

41. The Councils could consider creating a CCO under the LGA. GWRC, in particular, will obviously be familiar with CCOs, given its operations with Zealandia, Wellington Water, Basin Reserve Trust etc.. A CCO structure could be used formally to give legal effect to the Rōpū.

42. We think that a CCO may be an attractive option if the land cannot be directly transferred back to Ngāti Toa Rangatira and/or Ngāti Haumia. As you know, a CCO (despite the name) is simply required to have 50% ownership, voting rights or control held by one or more local authorities. The other 50% can, for example, be a third party, such as Ngāti Toa Rangatira and/or Ngāti Haumia.

43. The advantages of a CCO are that the PWA would not apply to any transfer of land from Council to the CCO. Specifically:

(a) Schedule 9, Clause 2 of the LGA provides that sections 40 to 42 of the PWA do not apply to any transfer of land to a CCO. A CCO is treated as if it were a local authority.

(b) The CCO would have obligations to offer land back to any previous owners once the CCO no longer required the land (and it wasn't required for any other public work). In the meantime, the CCO would need to register a caveat on the title to protect any previous owners' interests.[5]

44. We do not see the continuing obligation to comply with the PWA / the caveat as significant issues. It is unlikely that a CCO, comprised of Council and mana whenua, would want to dispose of the land in the medium to long-term.

45. As part of establishing that entity, the Rōpū would also need to determine how such entity would operate.

46. The Rōpū would determine:

(a) the appropriate structure e.g. a company, charitable trust or joint venture;

(b) the CCO's objectives e.g. profit-focus or public benefit / social purpose focus or both; and

(c) control / shares e.g. Council's holdings or control will need to comply with the minimum requirements of the LGA[6] (e.g. 50%, or more of any voting rights).

[3] Section 224(2)(b) PWA.
[4] Section 224(2)(g) PWA
[5] Schedule 9, Clause 3, LGA.
[6] Set out in s 6, LGA

47. As you know, a key requirement under the LGA is that consultation is required before a CCO can be established (including with mana whenua).[7] This is a key step in the process, and the Council(s) will need to take care to follow the LGA process. The timing of consultation will need to factor in Crown timing / any risk of declaration that the land could be (or deemed to be) surplus. This will include:

    (a) Providing reasonable access to relevant information. The general principle is that council should conduct its business in an open, transparent, and democratically accountable manner.[8] Given this, we would expect the Council(s) to provide full and frank disclosure to the public as to its plans with formalising the Rōpū, and the CCO. In order to do this, the Council(s) will need to have progressed its negotiations with Ngāti Toa Rangatira / Ngāti Haumia prior to wider consultation, so that this information could be provided to the public.

    (b) Encouraging people to present their views.

    (c) Giving clear information on the purpose and scope of the consultation.

    (d) Providing reasonable opportunities for people to present their views to the Councils.

    (e) Councils receiving those views with an open mind. Councils cannot pre-determine matters on which it is consulting and there must be a genuine willingness to listen.

    (f) Providing submitters with access to a clear record of relevant decisions / material.

48. The application of the Councils' respective significance and engagement policy under s 76AA will also need to be considered. This may be relevant to the procedural requirements for establishing the CCO, particularly if any council strategic assets or significant activities may be transferred or carried out by a CCO. We have not examined the Councils' respective significance and engagement policies, but can do so if this option is to be explored.

49. The Councils would obviously be aware of the benefits of CCOs from its existing operations. In particular:

    (a) A CCO could also be a useful vehicle for the parties to manage their liability going forward e.g. health and safety, tax.

    (b) The CCO may also be able to contract directly with the specific works.

    (c) A CCO could also provide opportunities for new relationships, new governance options, and new leaders (including from mana whenua) to be involved within a Council framework.

50. The disadvantages of a CCO are more tied to process:

    (a) As noted above, the Councils will need to take care that it adequately consults. There could be obvious implications on timing of any transfer to the CCO or if there is a community opposition.

[7] Section 56, LGA.
[8] Section 14(1)(a)(i), LGA

(b) The Councils would also need to liaise with Ngāti Toa Rangatira / Ngāti Haumia on co-ownership via a CCO. Council would need to work through an appropriate structure with them.

(c) The Rōpū would need to set up a framework for the CCO itself. These negotiations can take some time e.g. who is liable for what, costs, tax, health and safety, decision-making, profits etc.

(d) Obviously with a CCO, that CCO would have ongoing requirements in terms of reporting, auditing, decision-making etc. GWRC will be familiar with these requirements, given its current use of CCOs.

(e) In addition, Ngāti Toa Rangatira / Ngāti Haumia may be more hesitant to accept joint management and/or co-ownership of the land.

ALTERNATIVES TO THE PWA

CAN THE PWA BE OVERRIDDEN BY LEGISLATION?

51. In short, we do not consider that it is likely that Offer Back Obligations would be overridden by legislation in this case, except in the case of reserves (which is, effectively, a continuing public work), for the reasons given below.

High threshold

52. Offer Back Obligations can be overridden by legislation, as they are statutory obligations and so can be modified by statute. However, in practice the threshold for such legislation to be passed is high.

53. The fundamental principle is that the Government cannot take a person's property without "good justification". Good justification requires a fair process, exhausting options to negotiate with the property owner, and providing adequate compensation for the property rights at issue. The Governments' primary advisor on legislative design, the Legislation Design Advisory Commission (LDAC), has articulated this principle as being one of the fundamental constitutional principles and values of New Zealand law (4. Fundamental constitutional principles and values of New Zealand law | The Legislation Design and Advisory Committee (ldac.org.nz)).

54. In light of that fundamental principle, the threshold for legislation intended to override Offer Back Obligations under the PWA will be extremely high. We are aware of only one instance of legislation being used to override the Offer Back Obligations, which was in the context of a novel and ground-breaking Treaty settlement (Te Urewera Act 2014). That legislation does not serve as a precedent for overriding property rights more generally.

Legislative options

55. We have considered the four types of Bills that can be introduced to Parliament, and analysed practical and legal issues in relation to each type of Bill:

(a) **Private Bills:** these types of Bills are promoted for the benefit of a particular person or group, and we consider it highly unlikely that the Crown would view it as appropriate to override property rights without legislation promoted by the Crown itself.

(b) **Local Bills:** these Bills are intended to affect a local area, and are not usually used in relation to private rights. We consider it unlikely the Clerk of the House would consider it appropriate to introduce a local Bill for the purpose of dealing with or transferring Crown-owned land and overriding private property rights.

(c) **Members' Bills:** these Bills are not automatically introduced into Parliament. Rather, a ballot system is used to choose the bills that are introduced, meaning there is no certainty that the Bill will ever be introduced.

(d) **Government Bills**: we consider this is the only type of Bill that could feasibly be introduced for this purpose, but we do not consider the "good justification" test set out above is likely to be met, including because all options for negotiation with the previous

RESERVES ACT

56. Another option for management of the land, is to have the land vested as a reserve under the Reserves Act. Depending on the purposes for which the reserve is to be held, this can be done for a public work (provided it was vested in the Crown or a local authority). Please let us know if you would like further information on this option.

57. An administering body can also be appointed to control or manage a reserve that is vested in the Crown. Under the Reserves Act, there is no provision for more than one separate entity to be appointed as separate administering bodies in respect of one reserve. However, a separate body could be set up, with representatives appointed by each entity with an interest in that reserve, to manage the reserve as one administering body. Whether or not this is achievable here will depend on the structure of the transfer and ownership of the reserve.

58. At best, such an option would amount to co-management, rather than co-ownership. A reserve may not meet the parties' aspirations for the land, and so we have set out details here briefly.

59. The most straightforward way that joint administration has been done previously is through legislation. For example, this has been done before in Treaty settlements, where the relevant governance entities appoint a specified number of members each to a joint management body.[9] While legislation is the most straightforward way to achieve this, depending on the structure of the transfer, this could still be achieved through transfer and gazette notice. If this is an option the parties are interested in, we can look into this further.

60. There are some caveats to the reserve option:

(a) A reserve can be vested in an entity that is not the Crown or a local authority, but such body needs to have authority to have the reserve vested in it through legislation (or some other lawful authority).

(b) If the reserve is not held for a public work, and / or if the ultimate owner of the reserve isn't the Crown, a local authority or a CCO, then the Offer Back Obligations will apply.

[9] See section 111 of the Maniapoto Claims Settlement Act 2022 for an example of joint management body provisions, and the joint vesting provisions in sections 98 and 99 (in that situation, the land was both jointly owned by each governance entity in shares, as well as each governance entity appointing members to the joint management body to control and manage the reserve).

(c) Any reserve will be subject to the additional restrictions in the Reserves Act around use, management, the granting of interests, and disposal, among others. Some of these restrictions include public notification before making changes or taking certain steps. This option will likely result in Ngāti Toa Rangatira and/or Ngāti Haumia having less control over the land, which we understand is one of their aspirations for the land.

61. A reserve may be a good option for land that:

(a) The parties intend to be managed in a similar way to a reserve anyway, ie public access, no need to grant interests over or to on-sell, or to protect some value on the land.

(b) Ngāti Toa Rangatira and/or Ngāti Haumia has not identified as wanting more control over.

(c) Ngāti Toa Rangatira and/or Ngāti Haumia may otherwise have concerns being a landowner for, e.g. the land has the potential for significant liability from a health and safety, contamination, nuisance, building maintenance etc. perspective.

Appendix 1: Local Government Act disposal process

1. GWRC will be well familiar with its LGA requirements, but we set out the below as considerations in any sale of the land. If GWRC intends to sell the land at below market price to a third party, then GWRC would also need to ensure it can explain why it is doing so.

2. Under section 12 of the LGA, a local authority has full capacity to do any act or enter into any transaction, and for that purpose has full rights, powers and privileges. GWRC therefore has the power to enter into a transaction to sell land. However, it must exercise the power in accordance with the purposes, principles and processes set out in the LGA.

3. This includes seeking to give effect to the purpose of local government, in particular to promote the social, economic, environmental and cultural wellbeing of communities in the present and for the future (section 10(1)(b)).

4. GWRC must also perform its role in accordance with the principles set out in section 14 of LGA. We note these principles include the requirement to undertake commercial transactions in accordance with sound business practice, and to assess expected returns and risks of investing in or undertaking commercial activities (section 14(1)(f) and (fa)).

5. However, more generally, GWRC would need to be satisfied that making the decision to approve the sale is consistent with the principles in section 14. Relevant principles include the requirement for prudent stewardship, effective and efficient use of resources, and taking a sustainable development approach, including considering social, economic and cultural wellbeing and the needs of future generations.

6. The LGA has requirements applying to every decision made by a local authority. GWRC must be satisfied that deciding to the sale of the land in question is made in accordance with these processes.

7. GWRC has adopted a significance and engagement policy under section 76AA. GWRC would need to consider whether the policy applies to the proposed sale and, if so, carry out engagement or consultation to the extent contemplated by the policy.

8. More generally, sections 76 to 81 set out processes GWRC needs to follow when making decisions. In particular GWRC must consider all reasonably practicable options (section 77) and the views and preferences of persons likely to be affected by, or have an interest in, the matter (section 78). However, under section 79, GWRC has discretion to make judgements about the extent to which it complies with section 77 and 78, in proportion to the significance of the particular decision.

9. In relation to using land for any sale, GWRC must be satisfied about the judgement it has made on the process to be followed in making the decision. It must be satisfied that the extent to which it has complied with section 77 and 78 is appropriate and proportionate to the significance of the decision. In this regard, GWRC can take into account the process it would typically follow in making decisions of a comparable nature, value and significance.