A Framework for Negotiation Toitū te whenua

Proposals for a Solution to Maori reserved land issues

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To all Owners and Tenants of Maori Reserved Land

E rau rangatira mā, tēnei te mihi atu nei ki a koutou e noho mai nā i ngā tōpito o tō tātou whenua, i roto anō hoki i ngā tini putanga kētanga me ngā tini paheke kētanga o te wā.

In 1991 a Review Team was appointed by Government to consider all issues relating to Maori reserved land. The submissions received by the Review Team highlighted the depth of concern felt by all tenants and owners of Maori reserved land.

The Government has spent a great deal of time analysing the recommendations of the Review Team and working through all the issues.

In developing its proposals for a solution to the issues of Maori reserved land, the Government has been mindful of the overriding need to balance the requirements and expectations of the respective parties.

What is required now is your consideration of the issues, and the Government's proposals. We are seeking your involvement in the process leading up to a new Maori Reserved Land Act.

This booklet is part of the consultation process. We ask that you read it carefully, assess the issues, consider the proposals, and assess how these propsals might affect you in the years to come.

The booklet briefly outlines the history of Maori reserved land lease issues and the problems associated with the leases. It outlines the Government's proposals for a solution, the way these proposals might be implemented over the coming years, and how these might affect you.

In the months August through October 1993 a Reserved Lands Panel will be holding public meetings throughout the country at which you will be able to present your own views, ask questions, and hear the opinions of other owners and tenants.

We believe the only fair and just solution is to create a framework in which owners and tenants of Maori reserved land can negotiate and determine their own futures. We invite your involvement in this important move toward a fairer, more secure future for everyone involved.

Hon Doug Kidd

Minister of Maori Affairs

THE HISTORY

The settlers wanted long term leases so they could put the necessary time and effort into making the land productive.

For the settlers it was the next best thing to owning land.

The lease arrangements were generally not discussed with the Maori owners and were, in some cases, made without their agreement.

Control of their land was out of their hands.

The Maori Reserved Land Act 1955 contained the laws concerning Maori reserved land.

Some Background

During the times of early European settlement in New Zealand the Government and the New Zealand Company made land deals which, in some cases, set aside portions of land for Maori ownership and use. The land however was to be looked after by the Crown on behalf of the Maori owners.

Much of the land was offered to the new settlers under lease arrangements, for farming or housing.

The settlers wanted long term leases so they could put the necessary time and effort into making the land productive.

Because they would be committing themselves to years of work before the profits started to show, the settlers also wanted guarantees that their leases would be renewed for as long as they wished to remain on the land.

The terms of the lease, such as the rent, were to be reviewed every 21 years.

For the settlers it was the next best thing to owning land, and the lease arrangements effectively meant they could stay on the land as long as they liked.

For the owners it was a different story.

Certainly the lease arrangements gave them an income from the rents, but as time went by, given the 21 year fixed rent period, the value of the rents subsequently dropped until they were of little worth to the owners.

An additional cause of concern was that rents were not always paid directly to the owners, but diverted to general Maori purposes.

The lease arrangements were generally not discussed with the Maori owners and were, in some cases, made without their agreement.

Control of their land was out of their hands, tied up in lease arrangements which gave their tenants lifetime security for generations.

Meanwhile, over time, the land was developed, and the tenants prospered. Then, in 1955, the Maori Reserved Land Bill was passed into law.

1955 Maori Reserved Land Act

The Maori Reserved Land Act 1955 contained the laws concerning Maori reserved land.

The Act set the rent for the leases. Farm rents were set at 5% of the value of the unimproved land (Government valuation). The rent for residential land in townships was set at 4%.

The rent was fixed for 21 years.

At the end of 21 years the rent could be changed depending on the up-dated Government valuation. Tenants were given the automatic right to renew the leases, and owners were effectively given no option but to comply.

This Act is essentially the law as it stands today.

For the land owners the Act serves to keep them locked into inappropriate lease arrangements. For many tenants the Act protects a lifetime commitment. It gives them the security they need to continue planning for the future.

1967 Maori Affairs Amendment Act

In 1967 the Crown passed the Maori Affairs Amendment Act which inserted new clauses into the Maori Reserved Land Act.

The new legislation gave tenants the right to buy the land they leased, regardless of whether all owners agreed. This legislation was repealed in 1975.

The 1975 Commission

In 1975 the Government established a Commission to look at the whole problem and consider whether or not the law needed to be changed.

The 1975 Commission found that the Maori owners had been treated unfairly from the beginning.

The Commission recommended that the rent be reviewed more often, and suggested a new formula for setting the rent. The Commission also made some recommendations about the term of the leases, but still gave tenants the everlasting right of renewal. None of the Commission's recommendations were acted upon by the Government of the day.

The Government did allow the land to be passed over to Maori land trusts and incorporations to look after. However, the trusts and incorporations were not allowed to change the terms of the lease.

Maori owners got more and more frustrated at the unfairness of the leases. Since 1978 a number of committees considered the issues, but nothing was done.

The 1991 Review Team

In 1991 the Government set up a Review Team to take another look at the 1975 Commission's recommendations, and to call for submissions from owners and tenants.

The views expressed in the submissions to the Review Team highlighted the main concerns of the respective parties.

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The Land is their Life

THE ISSUES

From the Tenants point of view

"We have worked this land for generations. It is our family and our life"

the family.

become family homes or estates.

Long term Planning is Threatened

Tenants fear that if the lease arrangements are altered they may not be able to afford to stay on the land and that their income may be jeopardised. Many have loans, plans and investments based on the current lease terms.

Many of the tenants have lived on the land for several generations

The land is their life. The history of the family is centred on it and any threat to the security of the lease threatens the security of

now and have developed strong emotional ties to the land. Farmers

have planned to pass farms on to sons and daughters. Houses have

The Contracts are Legal and Binding

The leases were taken up by the settlers, and subsequent owners, on the understanding that they were entering into an agreement, with fixed terms, guaranteeing them use of the land for as long as they desired.

Many paid near freehold prices as the arrangement was almost as good as ownership and the terms of the lease were fixed.

While many of the leaseholders understand the situation is essentially unfair to the land owners, they believe it is the responsibility of the Crown to pay for the unfair situation it created.

To change the lease terms is to break a legal contract. If any change is made, compensation should be paid.

"If any change is to be made, compensation should be paid because changing the lease terms means breaking a legal contract"

There are Solutions

Some tenants have suggested that the owners sell the land to them, or buy the leases back from the tenants.

There were suggestions that the lease terms be set at 99 or 100 years and that there be shorter rent reviews, with rents linked to the Consumer Price Index.

Some wanted the solutions to be worked out on a case by case basis. Many wanted to negotiate directly with the Maori owners.

"We need to resolve the issues and we're prepared to negotiate"

From the Owners point of view

They Have Never been Consulted

Maori reserved land owners have had perpetual leases imposed without proper consultation. From the outset lease arrangements were generally negotiated on their behalf without their consent.

The Maori Reserved Land Act 1955 perpetuated the unfair treatment.

Then during the period when the 1967 legislation was in place land was sold to tenants without the consent of all the landowners.

The Land Belongs to Them

While no one has actually disputed the ownership of the land, there is every likelihood, under the current law, that some owners would never be able to occupy their land again because the tenants can continue to renew their leases for as long as they like.

The Maori Reserved Land Act of 1955 also does not take account of the traditional political, economic and spiritual connections Maori have with the land.

Lease Terms are Inappropriate

The rent formula originally set may have been fair at the time.

However, as the value of the land went up, the real return on the leases went down. Owners were no longer receiving rents based on what the land was really worth.

Twenty one years is a long time between rent reviews.

A rental set at review time can rapidly become out-of-date and owners must wait a long time for the next review.

There are Solutions

The owners are not necessarily seeking the return of all the land. They simply want the same rights as other owners of leased land.

Some are prepared to renew the leases. Others would like to sell the land and acquire alternative sections of land. Still others would like to occupy the land themselves.

The owners are keen to negotiate with tenants on a case by case basis.

Some owners have indicated that they are prepared to take account of special circumstances and negotiate more appropriate lease terms.

On the issue of compensation, owners expect to be compensated for past losses, and believe the Crown should meet any compensation payable to the tenants. "We have been treated like children, as though we are incapable of making our own decisions"

"The land is one of our most significant assets. We want to choose what's most appropriate for our land"

"A leaseholder in 1970, for example, would be paying rent based on 4-5% of the 1950 government valuation. In 1970 the land was actually worth ten times its 1950 valuation"

"We want to end the injustices and the uncertainty for everyone"

THE FRAMEWORK FOR NEGOTIATION

In 1993 the Government is ready to take the first step toward a long term solution for all parties.

The solution is the creation of a framework for negotiation, in which the rights and requirements of both owners and tenants are recognised.

The solution does not address the issue of compensation for past losses. Rather, it focuses on the situation as it stands today, and looks to the future.

The Government recognises that many tenants have asked to purchase the land. The Government also recognises that tenants need a suitable period of time to work and plan for their future business and personal lives.

The Government is also anxious to return to Maori owners the ordinary rights other land owners have. The Government will not allow any situation to arise that might pressure owners to sell. It recognises that decisions about Maori reserved land must also be consistent with the spirit of the Maori Land Act (Te Ture Whenua Maori) 1993, which reflects the traditional Maori view that land is held in trust for the collective benefit of the owners and their descendents.

The proposals presented here by the Government are not presented as the only options available. Tenants and owners will still be free to negotiate mutually suitable arrangements at any time, as they have been in the past.

The Government wants to create an environment in which owners and tenants can acknowledge the position and expectations of the other - and choose to negotiate on that basis.

These are the proposals being considered in the creation of a framework for fair and equitable negotiation. It is in relation to these that the opinions of owners and tenants are now being sought.

Rents

The first decision that needs to be made relates to the level of rents. Clearly owners should be able to earn a market rental just as other land owners can. At the same time tenants do need sufficient time to prepare for change.

A compromise is being proposed.

The compromise would involve all tenants beginning to pay a market rent at the same time, irrespective of where they are in the lease cycle.

The move to a market rent would recognise that the current Reserved Land Act formula for setting rents does not give owners a fair return.

Therefore the proposal is that all rents be reviewed to market levels 14 years after the passing of the new legislation.

If we assume a new Act will be passed in 1994, all rents would then be reviewed in 2008, giving owners a fair market return within a reasonable timeframe, and giving tenants adequate notice of change.

After this one off special review, the rent would then be reviewed regularly every 7 years. The seven year cycle would begin in relation to the time the lease started.

This chart gives owners and tenants a clear idea of the implications of this proposal. Start with the year of the current lease term and then read across to establish future rent reviews and the rules which would apply to these reviews.

REI	VT REVIEW	PROPOSAL	
Start of Current 21 Year Term	Next Rent Review (current rules)	One Off Rent Review (new rules)	Seven Year Cycle (new rules)
1972	1993	2008	2014
1973	1994	2008	2015
1974	1995	2008	2009
1975	1996	2008	2010
1976	1997	2008	2011
1977	1998	2008	2012
1978	1999	2008	2013
1979	2000	2008	2014
1980	2001	2008	2015
1981	2002	2008	2009
1982	2003	2008	2010
1983	2004	2008	2011
1984	2005	2008	2012
1985	2006	2008	2013
1986	2007	2008	2014
1987		2008	2015
1988		2008	2009
1989		2008	2010
1990		2008	2011
1991		2008	2012
1992		2008	2013
1993		2008	2014

These figures assume that new legislation incorporating this proposal would be implemented in 1994.

So, for example:

A tenant whose current lease term began in 1975 would be due for the usual rent review in 1996, at the end of the 21 year term. At this time the rent would be assessed at 4-5% of the value of the unimproved land, and a new 21 year term would start.

However in 2008, all tenants would have rents set at market rates. From that point, rent reviews would occur at year 7, then year 14, and then at the renewal of the lease term. So, this tenant would have further rent reviews in 2008 with all other tenants, and then in 2010 which is year 14 of the lease term.

Also, for example:

A tenant whose current lease term began in 1988 would not be due for a rent review under the current rules until 2009. Therefore this tenant would have a rent review to market rates in 2008, and the next review would be in 2009, at the end of the current term. From then on rent would be reviewed every seven years.

Length of Lease

The next major issue to be resolved is the length of the lease.

The current automatic renewal of the leases each 21 years has effectively removed the rights of ownership from the land owners. On the other hand, it has provided tenants with security of tenure as if they owned the land.

There can be no real solution without the removal of this perpetual renewal, but tenants do need notice and time to adapt.

The proposal is that the term of existing leases remain the same, and that the current 21 year term continue. When the current lease term expires tenants would then be offered a further two terms of 21 years. After that time renewal would not be automatic. The length of any further leases would be entirely subject to negotiation between the owners and intending tenants.

In this scenario, existing tenants are guaranteed between 42 and 63 years on the land they are leasing, depending on how long the current 21 year term has to run.

The Government has also considered whether compensation should be paid to tenants for the loss of the automatic right to renew leases. It believes that by granting an additional two 21 year terms before automatic renewal of the lease ends, there is no need to compensate tenants. In economic terms, a lease of 42 to 63 years is as good as a lease which lasts forever.

The additional two terms allow the tenants to continue living on the land for at least a further generation.

Owners would begin receiving market rentals from 2008, which is effectively most of the future lease period. In receiving realistic market rentals, owners would then be in a stronger position to plan and invest for future generations.

Sale

The Government wants to ensure that both tenants and owners are given first right of refusal should either choose to sell the land, or the leasehold interests, between now and the end of the final lease term.

The proposal is that where owners collectively decide to sell their land, the first option to buy would be given to the tenant. Many tenants have already expressed their desire to purchase the property they lease.

On the other hand, tenants may wish to sell their interests in the property, that is, the lease and the improvements (sheds, fences, fruit trees or any other improvements on the land). It is proposed that if they decide to sell their interests before the expiry of the lease, they in turn would give landowners first option to buy.

Upon expiry of the lease, owners could then pay tenants for the value of the improvements, or they might extend the lease for a further 21 years, and then own the improvements at the end of that time. Alternatively, they can come to different arrangements at the end of the lease period.

What is being sought is maximum room for negotiation between the tenants and landowners.

They are ultimately in the best position to determine the most mutually satisfactory solution. It is highly desirable that owners and tenants agree their own terms rather than Government deciding what the terms should be.

Residential Properties

The 1991 Review Team reported that land owners wished to recognise the special circumstances of their tenants who use the land for residential purposes in urban areas. Owners understand that it would be stressful for tenants of residential land to be unsure about the future occupation of their homes.

The proposal then is that existing tenants, living in residential properties (in townships) which are on Maori reserved land, be granted lifetime tenancy rights. This means that leases would be extended a further two terms of 21 years like other leases, or for the tenants lifetime, whichever is the longer.

Where one partner dies, the other may also continue to live in the property for the rest of his or her lifetime. The lease would end three months after the death of the surviving partner, giving families time to make necessary arrangements.

The tenant's estate would still however own the improvements.

Owners could then either purchase the improvements, grant an additional 21 year term and own the improvements at the end of the term, or negotiate alternative arrangements with the tenant's estate.

The lifetime occupancy right would only apply to the tenants living in the houses at the time the new legislation is passed. These tenants would still have their rent reviewed in the same way as for other leases.

Once again it is envisaged that owners and tenants will feel free, at any time, to negotiate other arrangements.

THE FUTURE

The Government recognises that some owners and tenants of Maori reserved land have already begun to negotiate.

For others this consultation phase, and the passing of new legislation in 1994, will signal future negotiation taking place within a fairer and more equitable framework.

In this consultation phase there is much to consider. To help you in your deliberations you may wish to read the 1991 Review Team's Report which is available nationwide.

For immediate reference, a summary comparison between the Review Team's recommendations and the Government's proposals is presented on the following pages.

You will be kept fully informed of every step in the consultation phase. If you would like clarification of this phase, or of any of the points raised in this booklet, please contact your nearest Te Puni Kokiri Regional Office.

COMPARISON BETWEEN THE MAIN RECOMMENDATIONS MADE BY THE 1991 REVIEW TEAM AND GOVERNMENT PROPOSALS

REVIEW TEAM

TERMINATION OF LEASES

The period of transition to terminating leases to extend between 21 and 42 years, based on the expiry date of existing leases, plus a further 21 year terminating lease period.

RENTAL AND RENT REVIEW

That the period of rent review during the transition period be set at 7 years for all leases.

That the rent payable during the transition period be established by a process of agreed market rent setting, supported by arbitration.

That the first rent review under the new system should take place on the next 7 year anniversary of the commencement of the existing lease (i.e. 7, 14, 21 years).

COMPENSATION

Residential tenants or their estate should be compensated for any difference in market value resulting from the sale of a terminating lease as distinct from a perpetual lease.

Tenants be entitled to compensation for improvements left on the land at the time of sale or transfer.

Crown to assist Maori owners to purchase improvements (minimum 50% of purchase price).

Crown to accept responsibility for compensating provable loss with respect to difference between the rent fixed in the current lease and the new rent payable.

GOVERNMENT PROPOSAL

TERMINATION OF LEASES

Leases should terminate at the end of their existing term, plus two further periods of 21 years (this will provide existing tenants with between 42 and 63 years further tenure under the leases depending on the date at which leases were last renewed).

RENTAL AND RENT REVIEW

Rent for all leases to be reviewed in 14 years time to market rent. In the meantime the existing rental rate, subject to the normal review at the commencement of each 21 year term, should remain as currently set.

Rent reviews thereafter would occur at the end of year 7, and year 14, of each lease term, and at renewal (that is, 7 year review periods).

COMPENSATION

No compensation would be payable to residential tenants in view of lifetime tenancy rights.

In view of the extra transition period, no compensation be payable by the Crown to the tenants.

At termination of the two 21 year lease periods, instead of assistance being made available to Maori owners, owners would be given the opportunity to either purchase the improvements at valuation, or grant an additional 21 year lease and own the improvements at the end of that time.

By mutual agreement, owners and tenants be able to come to a different arrangement to that suggested by the Government.

REVIEW TEAM

RIGHT OF REFUSAL

Maori owners have right of first refusal during the transition period in the event that a tenant wishes to sell or transfer his/her leasehold interest.

RESIDENTIAL LEASES

Rent levels and review periods to apply as for all other leases.

Existing tenants to have lifetime occupancy rights.

The surviving spouse of the existing tenant to have lifetime occupancy rights.

In the event of the proposed sale or transfer (other than to a surviving spouse) of a residential lease the Maori owner shall be given first right of refusal.

In the event of the first right of refusal not being exercised by the Maori owner, the lease should be transferred only as a terminating lease as distinct from a perpetual lease.

The Crown should accept responsibility for negotiating the purchase of residential land with the encumbrance of existing leases if such is sought by the Maori owner. The principle of land for land is recommended as the appropriate approach. The final choice to rest with the Maori owners.

GOVERNMENT PROPOSAL

RIGHT OF REFUSAL

Owners should be granted the first right of refusal to purchase leasehold interests if offered for sale.

In addition, tenants should be granted the first right of refusal to purchase the land if offered for sale.

RESIDENTIAL LEASES

Rent levels and review periods to apply as for all other leases.

Existing tenants and their surviving spouses (including common law spouses) would be granted lifetime occupancy rights with the lease expiring 3 months after the death of the tenant or his/her spouse, whichever is the later.

Owners to be granted the first right of refusal to purchase leasehold interests if offered for sale.

Tenants are granted the first right of refusal to purchase the land if offered for sale.

Landowners would be empowered to sell their interest in land, on a voluntary basis.

COPIES OF THE 1991 REVIEW TEAM'S REPORT

Copies of the Report are available through:

- Public libraries
- MP Electorate Offices
- Citizens Advice Bureau
- Maori Trustee Regional Offices
- Te Puni Kokiri Regional Offices

