



Definition of specified Māori land in NPS-HPL

Ministry for Primary Industries Manatū Ahu Matua	
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Date Submitted:	8 August 2022	Tracking #: BRF-1971 Ministry for Primary Industries: B22-0460
Security Level	Policy and Privacy Sensitive	MfE Priority: Urgent

	Action sought:	Response by:
To: Hon David PARKER, Minister for the Environment and; Hon Damien O'CONNOR, Minister of Agriculture	Confirm the definition of specified Māori land for the proposed NPS-HPL for ministerial consultation, noting the implications.	11 August 2022

Actions for Minister's Office Staff	Return the signed report to MfE.
Number of appendices and attachments: 3	Appendix 1: Definition of specified Māori land Appendix 2: Example of land captured under (e)(i) Appendix 3: Advice from LINZ re: status changes on title records

Key contacts

Position	Name	Cell phone	1st contact
Principal Author	Marijke Ransom	9(2)(a)	
Responsible Manager (MfE)	Jo Burton	9(2)(a)	
Responsible Manager (MPI)	Tom Corser	9(2)(a)	✓
Director (MfE)	Hayden Johnston	9(2)(a)	✓
Director (MPI)	Charlotte Denny	9(2)(a)	

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Definition of specified Māori land in NPS-HPL

Key Messages

1. The definition of 'specified Māori land' in the NPS-HPL is intended to capture land that Māori have a special interest in, to ensure the Government understands and delivers its obligations in accordance with the Treaty of Waitangi (te Tiriti).
2. On 1st of August, Minister Parker met with MfE officials and indicated he was comfortable with the definition, other than clause (e)(i). Clause (e)(i) relates to land that was previously Māori land but is now general (freehold) land. The definition is shown in Appendix 1.
3. This briefing seeks your confirmation to delete (e)(i) from the definition and gives additional information on the implications.
4. Subclause (e)(i) represents a small amount of former Māori customary and freehold land that was converted to general land for a range of historic reasons.
5. The (e)(i) limb is qualified by the land being "general land owned by Māori". Such land could be sold on the open market, but if sold to non-Māori, then it would no longer fall under the definition of "general land owned by Māori". There are no restrictions on sale for "general land owned by Māori".
6. Such status changes (intended to be captured by (e)(i)) will be evident on the title records. Any risks that exemptions be applied incorrectly to other types of 'general land owned by Māori' are considered to be low (refer to email from LINZ in Appendix 3).
7. The Exposure Draft version (October 2021) of the NPS included the definition of 'specified Māori land' (including the type of 'general land owned by Māori' referred to in (e)(i)) and this was generally supported by the iwi partners engaged. This approach was also supported by Te Arawhiti and Te Puni Kōkiri.
8. We note that definition of specified Māori land may be revisited as part of the transition of the NPS-HPL into the National Planning Framework.

Recommendations

We recommend that you:

- a. **Note** the definition of specified Māori land contained in Appendix 1.

Noted

- b. **Either Option 1**

Retain (e)(i) as part of the definition of specified Māori land for the proposed NPS-HPL.

Yes/No

- c. **Or Option 2**

Remove (e)(i) from the definition of specified Māori land for the proposed NPS-HPL.

Yes/No


- d. **Note** that MPI and MfE will update the Cabinet material based on your decision.

Noted

- e. **Note** that the definition of specified Māori land may be revisited as part of the transition of the NPS-HPL into the National Planning Framework.

Noted

Signature

Hayden Johnston Director - Water and Land Use Policy	
Charlotte Denny Director Natural Resources Policy	

Hon David PARKER, Minister for the Environment	
[Date field]	
Hon Damien O'CONNOR, Minister of Agriculture	
[Date field]	

Purpose

9. Minister Parker sought further explanation of the definition of specified Māori land in response to briefing BRF 1762 (MfE)/ B22-0342 (MPI) (*Approval of final advice package for Ministerial consultation and Cabinet*).
10. At a policy session held on the 1st of August, Minister Parker requested that (e)(i) of the definition relating to 'general land owned by Māori' was queried. It was proposed that (e)(i) be deleted from the definition as follows:

(e) *general land owned by Māori (as defined in Te Ture Whenua Māori Act 1993) if that land —*

 - (i) ~~*was previously Māori freehold land (as defined in Te Ture Whenua Māori Act 1993), and has ceased to have that status under an order of the Māori Land Court made on or after 1 July 1993 or pursuant to a declaration made under Part 1 of the Māori Affairs Amendment Act 1967; or*~~
 - (ii) *was previously Māori customary land or Māori freehold land (as defined in Te Ture Whenua Māori Act 1993), and has at any time been acquired by the Crown or any local or public body for a public work or other public purpose, and has been subsequently returned to its former Māori owners or their successors.*
11. Officials understand this request is based on concerns about the practicalities of distinguishing this land from other 'general land owned by Māori' and the ability to sell this land on the open market.
12. The purpose of this briefing is to:
 - a. confirm the definition of specified Māori land for the proposed NPS-HPL (contained in Appendix 1).
 - b. advise you of the implications of removing limb (e)(i) of the definition for the NPS-HPL including the possible implications for other emerging national direction (eg NPS for Indigenous Biodiversity where the 'general land owned by Māori' category has also been included in the definition of 'Māori lands').

Context

13. The NPS-HPL Cabinet paper is due to be lodged for Cabinet consideration this month (August 2022).
14. The definition of 'specified Māori land' in the NPS-HPL is intended to capture land that Māori have a special interest in, to ensure the Government understands and delivers its obligations in accordance with the Treaty of Waitangi (te Tiriti).
15. Recognising the existing and historical barriers to developing this land, the Treaty considerations linked to this land, and the impacts that various/different policies have on this land; the proposal is to exempt 'specified Māori land' from subdivision, use and development restrictions imposed by the NPS-HPL except that subdivision, use and development of Māori land identified as HPL must:
 - a. minimise or mitigate any actual loss or potential cumulative loss of HPL; and
 - b. avoid where possible or otherwise mitigate the reverse sensitivity effects on HPL.

16. This policy also recognises that Māori consider HPL as a taonga – emphasised in their general support for purpose and intent of NPS-HPL during consultation and engagement.
17. The definition of ‘specified Māori land’ for the NPS-HPL includes:
- Māori customary and freehold land (as defined by the Te Ture Whenua Māori Act 1993) (**limb a**)
 - Māori Reserves and Reservations (as defined by Māori Reserved Land Act 1955 or the Māori Affairs Act 1953, or the Te Ture Whenua Māori Act 1993 (**limb b and c**))
 - Treaty Settlement Land returned as part of redress for the settlement of Treaty of Waitangi claims; or by the exercise of rights under a Treaty settlement Act or Treaty settlement deed (**limb d**)
 - General land owned by Māori that was previously Māori customary land or Māori freehold land (as defined in Te Ture Whenua Māori Act 1993) and continues to be held and managed by Māori in accordance with tikanga) in the same way as Māori freehold and customary land (**limb e**)
 - land held by or on behalf of an iwi or hapū if the land was transferred from the Crown, a Crown body, or a local authority with the intention of returning the land to the holders of the mana whenua over the land (**limb f**).

Analysis and advice

18. Limb (e) of the definition is intended to capture general land owned by Māori **that was previously Māori customary land or Māori freehold land (as defined in Te Ture Whenua Māori Act 1993)** and continues to be held and managed by Māori in accordance with tikanga) in the same way as Māori freehold and customary land. The requirement that it be “general land owned by Māori” ensures it must remain in Māori ownership to qualify.
19. Subclause (e)(i) recognises that some land has only had a status change because of anomalies in the Māori land tenure system – for example, this may have happened during the assimilation policy of the late 1960s without the owner’s knowledge or agreement (see example in Appendix 2), or possibly to enable financing – and continues to have the same significance for the owners as if it were still Māori freehold land. It only affected small blocks of land (eg owned by four or less Māori) and does not represent all of the land affected by these status changes as some of the land has already been sold by Local Authorities for unpaid rates.
20. Subclause (e)(ii) is intended to be broadly consistent with s 41 of the Public Works Act 1981 “disposal of former Māori land when no longer required”. While the status of the land has been changed to general land owned by Māori, if it continues to be held and managed by Māori in accordance with tikanga, it should be subject to the same provisions of the proposed NPS-HPL.
21. Limb (e) is qualified by the land being “general land owned by Māori”. This requires under s 129 Te Ture Whenua Māori Act 1993 for the land to be “beneficially owned by a Māori or by a group of persons of whom a majority are Māori”. Such land could be sold on the open market, but if sold to non-Māori, then it would no longer fall under the definition of “general land owned by Māori”. There are no restrictions on sale for “general land owned by Māori”.

22. These status changes will be evident on the title records. Any risks that exemptions be applied incorrectly to other types of 'general land owned by Māori' are considered to be low, particularly if guidance was provided to assist applicants and decision makers identify the distinguishing title information (see advice received from LINZ in Appendix 3).
23. The quantum of land that would be captured by (e)(i) is estimated to be a fraction of all of the general land owned by Māori in Aotearoa /New Zealand (NZ), being limited to a specific period in time and for particular reasons (estimated to be in the hundreds of hectares only). Even less will be HPL considering that HPL (in terms of LUC1-3) is only 9% of Māori customary and freehold land.
24. The Exposure Draft version (October 2021) of the NPS included the definition of 'specified Māori land' (including 'general land owned by Māori' referred to in (e)(i)) and this was generally supported by the iwi partners engaged. This approach was also supported by Te Arawhiti and Te Puni Kōkiri.
25. Removing (e)(i) from the definition could have consequences for other emerging national direction i.e. NPS-IB where a category for 'general land owned by Māori' was also included in the NPS-IB Exposure Draft definition of Māori lands. The implications of narrowing the definition in the NPS-IB would be greater than the NPS-HPL as most of this land (whilst a relative small amount of the total 'general land owned by Māori') is likely to have regenerating native vegetation and indigenous biodiversity.

Table 1: Pros and Cons of Options

	Option 1: Retain (e)(i)	Option 2: Remove (e)(i)
Pros	<ul style="list-style-type: none"> Captures land that Treaty Partners consider should be subject to the same protections as other categories of specified Māori land. Avoids queries/challenges from Agencies and Treaty Partners involved in Exposure Draft testing who supported the broad definition. 	<ul style="list-style-type: none"> Avoids uncertainties with confirming whether land qualifies or not and whether land that does qualify must remain in Māori ownership or not.
Cons	<ul style="list-style-type: none"> Guidance required to assist implementation eg how to confirm if land qualifies. 	<ul style="list-style-type: none"> Excludes land that may warrant the same level of protection as other categories of specified Māori land. I.e. May not be Treaty compliant. Raises risk of challenges to the definition from Agencies and Treaty Partners involved in Exposure Draft testing who supported the broad definition.

Next steps

26. Once Ministers have confirmed the preferred definition of specified Māori land, the Cabinet Paper and NPS-HPL can be circulated for ministerial consultation. Any final instructions on any amendments can be provided in advance of lodging the final package for Cabinet consideration (DEV) to approve the gazettal of the NPS-HPL.

Proactively released under the Official Information Act

Appendix 1: Proposed Definition of Māori Land

Agreeing to Option 1 (recommendation b) results in the highlighted section being retained

Agreeing to Option 2 (recommendation c) results in the highlighted section being deleted

specified Māori land means land that is any of the following:

- (a) Māori customary land or Māori freehold land (as defined in Te Ture Whenua Māori Act 1993):
- (b) land vested in the Māori Trustee that—
 - (i) is constituted as a Māori reserve by or under the Māori Reserved Land Act 1955; and
 - (ii) remains subject to that Act:
- (c) land set apart as a Māori reservation under Part 17 of Te Ture Whenua Māori Act 1993 or its predecessor, the Māori Affairs Act 1953:
- (d) Treaty settlement land, being land held by a post-settlement governance entity (as defined in the Urban Development Act 2020) where the land was transferred or vested and held (including land held in the name of a person such as a tipuna of the claimant group, rather than the entity itself):
 - (i) as part of redress for the settlement of Treaty of Waitangi claims; or
 - (ii) by the exercise of rights under a Treaty settlement Act or Treaty settlement deed:
- (e) general land owned by Māori (as defined in Te Ture Whenua Māori Act 1993) if that land —
 - (i) was previously Māori freehold land (as defined in Te Ture Whenua Māori Act 1993), and has ceased to have that status under an order of the Māori Land Court made on or after 1 July 1993 or pursuant to a declaration made under Part 1 of the Māori Affairs Amendment Act 1967; or
 - (ii) was previously Māori customary land or Māori freehold land (as defined in Te Ture Whenua Māori Act 1993), and has at any time been acquired by the Crown or any local or public body for a public work or other public purpose, and has been subsequently returned to its former Māori owners or their successors
- (f) land held by or on behalf of an iwi or hapū if the land was transferred from the Crown, a Crown body, or a local authority with the intention of returning the land to the holders of the mana whenua over the land

Appendix 2: Example of land captured under (e)(i)

Letter from Minister of Local Government showing issues with Māori Affairs Amendment Act 1967 land. Taken from: [Local-Government.pdf](#) (lgnz.co.nz)

Hon Nanaia Mahuta

MP for Hauraki-Waikato

Minister for Māori Development

Minister of Local Government

Associate Minister for the Environment



Via email

Tēnā koe

I am writing to advise you of an issue concerning the potential sale of Māori land identified by local authorities as abandoned under the Local Government (Rating) Act 2002 (the Rating Act).

As you may be aware, the Maori Affairs Amendment Act 1967 converted to general land any Māori land that had four or fewer owners. This was done without the consent of the affected land owners. As a consequence, Te Ture Whenua Maori Act 1993 does not cover this land, and the land may be publicly notified by local authorities as abandoned under the Rating Act and subsequently sold. Without protection, this land is particularly vulnerable to alienation due to rates arrears. In many cases, to all intents and purposes, this is still viewed as Māori land with the same cultural associations and values.

Before considering the sale of abandoned land, I encourage councils to thoroughly research the land's title to determine if there are any historical Māori interests, including Māori land made general by the 1967 amendment. Where such interests exist, I strongly urge councils to consider alternative options to selling the land, including working with local iwi and Māori land owners to identify owners and assist them to achieve their aspirations for both retention and utilisation of the land. This will avoid negatively impacting relationships with iwi, Māori land owners and your communities.

I would also appreciate a list of lands that are classified as abandoned in your council area. Please provide this information to my Local Government Private Secretary Mark Batt at mark.batt@parliament.govt.nz.

Thank you for your consideration of this matter.

Heoi anō

Hon Nanaia Mahuta
Minister of Local Government

Appendix 3: Advice from LINZ re: status changes on title records

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Forward

Reply All

Reply

Fri 5/08/2022 2:38 pm

RE: [IN-CONFIDENCE]Title Records 'general land owned by Māori' status changes

SS

Siobhan Simpson <SSimpson@linz.govt.nz>

To

Marijke Ransom

Cc

[IN-CONFIDENCE]

Follow up

Start by Monday, 8 August 2022. Due by Monday, 8 August 2022.

You forwarded this message on 8/08/2022 10:05 am.

WN318_55_Title_Current_View.pdf

154 KB

Kia ora Marijke

Land that was previously Māori customary or Māori freehold land and has become general land or is general land owned by Māori. There will be a memorial on the current and historic view of the title that states this. I've attached a copy of the current view for Record of Title WN318/55 so you have an example of what this looks like in practice.

If land status has changed to 'general land owned by Māori' because of the Court order, this will be clear from the memorial on the title.

However, if the land's status changed to general land, this doesn't mean that it couldn't be 'general land owned by Māori'. For example, if ownership of general land changes, it could subsequently become 'general land owned by Māori' because of who the owners are. That status won't be obvious from the title as there is no requirement on an owner to register that status on their title.

I hope that all makes sense – please let me know if you have any questions or there's any more information you need.

Nga mihi

Siobhan Simpson

Principal Solicitor

Property Rights

ssimpson@linz.govt.nz | bdi (a)

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(a)

Toitū Te Whenua

Land Information

New Zealand

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Briefing Note – BRF-1971

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[IN-CONFIDENCE]