

Manager Clearances
Land Information New Zealand
PO Box 5501
Wellington

**SECTION 40 PUBLIC WORKS ACT 1981 INVESTIGATION OF LAND SITUATED AT
TAURANGA TAUPO PRIMARY SCHOOL, SH 1, WAITETOKO**

LINZ FILE REFERENCE: CPC/2004/10054/A

LINZ PROJECT NO:

CLIENT: Ministry of Education

INTRODUCTION:

Ministry of Education declared the above property as surplus to their requirements on 30 July 2004. The purpose of this report is to investigate the implications of Section 40 of the Public Works Act 1981.

LEGAL DESCRIPTION:

Part 2B2M Tauranga Taupo Block, Part 2B2M3B3B Tauranga Taupo Block and Lot 1 DPS 12494.

AREA: 1.7460 ha

ENCUMBRANCES: None

LAND STATUS:

The land is comprised in Gazette Notice S490171 (NZ Gazette 1970 p1280) as additional land taken for a State Primary School in Block IV Tokimu Survey District, Taupo County, pursuant to section 32 of the Public Works Act 1928 and in Gazette Notice S466207 (NZ Gazette 1969 p2158) as land held for Maori Schools set apart for State Primary Schools, pursuant to section 25 of the Public Works Act 1928. The land is administered by the Ministry of Education by virtue of Section 143(2) Education Act 1989.

MINERAL STATUS:

The area coloured yellow on the attached plan (Part 2B2M Tauranga Taupo Block) was comprised in Provisional Register 256/9 prior to title issuing in 1949. There is no mention of minerals noted on either the Provisional Register or Certificate of Title prior to Crown acquisition for a Maori school. The land was taken under the Public Works Act 1928 and therefore the minerals are deemed to have not been included in the acquisition. The non-statute minerals are comprised in Certificate of Title 976/108 (part cancelled).

The areas coloured pink (Part 2B2M3B3B) and blue (Lot 1 DPS 12494) on the attached plan were comprised in Certificate of Title 8A/1061 as a Certificate in Lieu of Grant under The Native Land Act 1931. This Act was silent as to minerals therefore the minerals ran with the land.

The area coloured pink was taken for Crown land by Gazette Notice S314630 (NZ Gazette 1965 p615) under the Maori Affairs Act 1953. It was subsequently set apart for a Maori school under the Public Works Act 1928. The minerals were deemed to have been included



in the acquisition for Crown land but not the setting apart for the Maori school. Therefore the non-statue minerals remain in Gazette Notice S314630.

The area coloured blue was declared additional land taken for a state primary school pursuant to section 32 of the Public Works Act 1928. The minerals were deemed not to be included in the acquisition and therefore the non-statute minerals remain in Certificate of Title 8A/1061 (cancelled).

Gold, silver, petroleum and uranium are owned by the Crown by virtue of Section 10 Crown Minerals Act 1991.

CONTINGENT LIABILITY/CONTAMINATION ISSUES:

A fax from the Taupo District Council dated 14 July 2004 confirms that there are no known contamination issues.

Environment Waikato confirmed on 2 November 2004 that the property is not registered in their contamination file.

OTHER CLEARANCES:

The Department of Conservation have confirmed that there is no marginal strip requirement or conservation values on the land.

A gazette notice declaring the land no longer required for educational purposes pursuant to Section 5A Education Act 1989 came into force on 14 October 2004.

The property is no longer required for State Primary School purposes and is not required for another public work or for an exchange under Section 105 Public Works Act 1981.

Ministry of Education does not wish to retain a long term interest in the land.

LOCATION & PHYSICAL DESCRIPTION:

The property is located at 383 State Highway 1, Waitetoko.

The land has a level contour and is almost square in shape. Structural improvements consist of the main classroom block, a second class room and sheds.

The school residence was constructed in the 1940's and has been well maintained. It has a total floor area of 116.80m². Other improvements associated with the dwelling include a carport, single garage and garden shed. Please see the valuation for a comprehensive description of the improvements.

PRESENT ZONING & DESIGNATION:

The property is zoned Residential 1(D) under the District Plan.

Tauranga Taupo School Designation D25 is currently being uplifted.

VALUATION:

On 28 September 2004 Hugh was instructed to value this property. The valuation dated 20 May 2005 was Peer Reviewed by David McAlley on 1 June 2005. A copy of the original valuation signed by both valuers is included in the appendix along with the instructing email.



Current Market Valuation prepared by H F Corrigall, Dated 20 May 2005

Part 2B2M (Yellow Area)

Value of improvements	\$ 77,000
Value of land	\$ 1,798,000
Chattels	\$ 5000
Current market value	\$ 1,880,000

2B2M3B3B & Lot 1 DPS 12494 (Pink & Blue Areas)

Value of improvements	\$ 0
Value of land	\$ 750,000
Chattels	\$ 0
Current market value	\$ 750,000

SURVEY PLAN REQUIREMENTS:

As Part 2B2M and Part 2B2M3B3B are both held in part of a gazette notice, we require a Section 226 Certificate before we can raise separate title.

However for a numerous reasons, the site does not comply with the District Plan and the Council require subdivision before they will issue the Section 226. Therefore survey is required. Central Surveyors Limited were appointed on 19 July 2005.

Further Lot 1 DPS 12494 will be amalgamated with Part 2B2M3B3B as Lot 1 DPS 12494 is effectively landlocked and the former owners are the same people for both pieces of land.

TITLE REQUIREMENTS:

Orders for New Computer Freehold Registers will be submitted for signing when the survey plan is ready for lodgement.

ACQUISITION HISTORY:

Area Coloured Yellow: Pt 2B2M Tauranga Taupo

Pt 2B2M Tauranga Taupo was comprised in Certificate of Title 976/108 in the name of Ani Miria (Mrs Erickson) when 3 acres of the land was taken for a native school by Proclamation 10407 (NZ Gazette 1940 p2232) pursuant to Public Works Act 1928.

A letter from the Department of Educated dated 15 July 1969 indicates that compensation was awarded of £140 plus £7 interest by the Native Land Court sitting at Tokaanau on 24 September 1941.

This is supported by the court minutes dated 24 September 1941 which states that the land was taken by agreement and the Public Works Act used for convenience. The Crown agreeing with the owner to pay the sum of £140 for three acres. Ani Miria the owner donating one acre and the Crown paying for two acres at the rate of £70 per acre." Interest of £7 was also paid. ✓

SO Plan 30764 shows that there was heavy gorse and Manuka on the land at the time it was acquired in 1940. The land was later set apart for a state primary school by Gazette Notice S466207 (NZ Gazette 1969 p2158) pursuant to Public Works Act 1928. ✓

Area Coloured Pink: Pt 2B2M3B3B Tauranga Taupo

Pt 2B2M3B3B was comprised in Certificate of Title 8A/1061 in the names of Hepi Te Heuheu, Pateriki Hura, Brian Jones, Wairemana Tamaira, Waratana Ngahana and Iwi Mere Hauauru Tapu when 1 acre 20 perches was taken for Crown land by Gazette Notice S314630 (NZ Gazette 1965 p615) pursuant to the Maori Affairs Act 1953.

From the mid 1950's the Ministry of Works began discussions with the former owners to acquire additional land for the original school. Letters from the Ministry of Works dated 27 April 1959, 8 June 1962, 20 July 1962 and 31 January 1963 indicate difficulty with negotiating for the purchase of the school and that compulsory acquisition would be required. An application to the Maori Land Court dated 3 October 1964 confirms that the land was vested in trustees. A memorandum of transfer confirms that the land was sold for £5250. A Ministry of Works report dated 6 November 1964 describes the land as being "mainly flat land at road level between the main road and the lake on the north side of the school." This land was subsequently set apart for a Maori school by Gazette Notice S353199 (NZ Gazette 1966 p1234) pursuant to the Public Works Act 1928. This land was later set apart for State Primary School by Gazette Notice S466207 (NZ Gazette 1969 p2158) pursuant to the Public Works Act 1928.

Area Coloured Blue: Lot 1 DPS 12494

A further portion of 30.3 perches of Certificate of Title 8A/1061, held in the names of the same owners as area pink, was taken for a primary school by Gazette Notice S490171 (NZ Gazette 1970 p1280) pursuant to the Public Works Act 1928. The former owners were subdividing their land and the Taupo County Council gave approval to the scheme of subdivision conditional upon the amalgamation of Lot 1 with the adjacent Maori school or the adjacent esplanade reserve. The Maori owners requested through their Solicitors that the land be taken and added to the school site. It was agreed that no compensation was to be paid as the Maori owners would not have been able to subdivide their land if they didn't comply with the Council's imposed reserve contribution.

CONSIDERATIONS:**Area Coloured Yellow:****Section 40 (2)(a) Impractical, Unreasonable, Unfair**

Exemption under this section is not applicable as there is no evidence to suggest that the cost of offer back would exceed the value of the land, it was not on the open market at the time of acquisition and it was not Crown land prior to being set apart for a public work.

Section 40(2)(b) Significant Change

The school buildings and residence are located on area yellow. Given the residential zoning, there is doubt as to whether the school buildings are likely to remain in use. The site coverage of the improvements is a small percentage of the total area. The improvements are not the "highest and best use" of the land in terms of its zoning, physical characteristics, and public demand. The value of the improvements is not significant in relation to the capital value of the land. Therefore, there has not been a significant change to the character of the land and exemption is not applicable.

Section 40(2)(c) Offer Back at CMV

Not applicable, as we are recommending offer back at less than at current market value.

Section 40(2)(d) Offer Back at Less Than CMV

The former owner donated one of the three acres that the Crown acquired. There is no record which part of the site was gifted, so rather than apply the Gifted Land Policy, it would be reasonable to offer the land back based on a value for two-thirds of the area.

Section 40(3) Land acquired between 31.1.82 and 31.3.87

Exemption from offer back under Section 40(3) Public Works Act 1981 is not applicable as the land was not acquired between 31st day of January 1982 and the date of commencement of the Public Works Amendment Act (No. 2) 1987.

Section 40(4) Size Shape and Situation

The rectangular shaped parcel of land comprises 1.2141 hectares, has road frontage to State Highway 1 and is able to obtain its own Certificate of Title, therefore exemption under this subsection is not applicable.

Section 40(5) Successor-in-Title

Offer back to successor in title is not applicable as the land has since been extensively subdivided so offer back to the successor-in-title would not restore the former title.

Section 41(d) Re-vesting as Maori Land

Not applicable, as there was less than four beneficial owners of the Maori Freehold land at the time the Crown acquired it.

Area Coloured Pink:**Section 40 (2)(a) Impractical, Unreasonable, Unfair**

It is quite clear from the background information, the Crown had intended to acquire the land for additional land to the school from the outset. The fact that the first acquisition action was to take the land for Crown land, should not be taken to mean that exemption from offer back, on the basis that the Crown was the former owner, is applicable. There is no evidence to suggest that the cost of offer back would exceed the value of the land and it was not on the open market at the time of acquisition. Therefore, exemption under this subsection of the Act is not applicable.

Section 40(2)(b) Significant Change

The land was vacant when it was acquired by the Crown in 1965 and no improvements have been constructed on the land therefore exemption under this subsection is deemed not applicable.

Section 40(2)(c) Offer Back at CMV

Applicable, as there are no exemptions from offer back applicable.

Section 40(2)(d) Offer Back at Less Than CMV

The Gifted Land Policy is not applicable as compensation of £5250 was paid for the land.

Section 40(3) Land acquired between 31.1.82 and 31.3.87

Exemption from offer back under Section 40(3) Public Works Act 1981 is not applicable as the land was not acquired between 31st day of January 1982 and the date of commencement of the Public Works Amendment Act (No. 2) 1987.

Section 40(4) Size Shape and Situation

The rectangular shaped parcel of land comprises 4553m², has road frontage to State Highway 1 and is able to obtain its own Certificate of Title, therefore exemption under this subsection is not applicable.

Section 40(5) Successor-in-Title

Successor-in-title is not applicable as the land has since been extensively subdivided so offer back to the former owner would not restore the former title.

Section 41(d) Re-vesting as Maori Land

Deemed applicable, as there are more than four beneficial owners at the time the Crown acquired it. The land was Maori Freehold land and was not vested in a trustee.

Area Coloured Blue:**Section 40 (2)(a) Impractical, Unreasonable, Unfair**

On the face of it, it would appear that exemption under this subsection is applicable as the former owners were subdividing their land and the Taupo County Council approved the subdivision subject to this land either being either dedicated as a reserve or to be added to the school. The former owners opted to have the land added to the school site. Their subdivision would not have been approved if they had not have chosen to do so. Therefore the acquisition of this land was at the owner's insistence and the Crown did not acquire the land compulsorily therefore it would be unreasonable for the Crown to have to offer this land back to the former owners. However, a separate title will not be able to be obtained for this area. Because areas pink and blue were acquired from the same title and former owners, it would be reasonable to include area blue in the offer back of area pink. Therefore, exemption from offer back is not applicable.

Section 40(2)(b) Significant Change

The land was vacant when it was added to the school site and no improvements have been constructed on the land therefore exemption under this subsection is deemed not applicable.

Section 40(2)(c) Offer Back

Applicable, as there are no exemptions from offer back applicable.

Section 40(2)(d) Gifted Land Policy

small reserve

Gifted Land Policy is not applicable, as although the Crown did not actually pay for the land, the former owners were subdividing their land which adjoined the school site and the Taupo County Council approved the subdivision subject to this small parcel of land being either dedicated as a reserve or being added to the school. The former owners opted to have the land added to the school site and as a result their subdivision went ahead. Therefore the owners primary motivation for this was not to gift this land to benefit children and the community, rather it was a financial decision that benefited themselves economically as it meant that they could subdivide their land, and presumably, make a profit. Had this not have been a condition imposed by the Council, they never would have gifted the land to the Crown. Nowadays, developers can often choose between dedicating land as a reserve or paying monies to the local authority as a reserve contribution. Should these former owners had paid this reserve contribution rather than dedicating land, they would never have had their money returned at a later stage, therefore it is unreasonable to return the land. Therefore Gifted Land Policy is not applicable.

Section 40(3) Land acquired between 31.1.82 and 31.3.87

Exemption from offer back under Section 40(3) Public Works Act 1981 is not applicable as the land was not acquired between 31st day of January 1982 and the date of commencement of the Public Works Amendment Act (No. 2) 1987.

Section 40(4) Size Shape and Situation

Not applicable, as the area can be amalgamated with area pink into a title, which could be sold to anyone who was not an adjoining owner.



Section 40(5) Successor-in-Title

Successor-in-title is not applicable as the land has since been extensively subdivided so offer back to the former owner would not restore the former title.

SUMMARY:

Area Coloured Yellow

No exemptions from offer back apply. The area should be offered back. *9/11*

Area Coloured Pink

No exemptions from offer back apply. The area should be offered back. Offer back under Section 41 applies.

Area Coloured Blue

No exemptions from offer back apply. The area should be offered back. Offer back under Section 41 applies. To be amalgamated and offered back with the area coloured pink.

RECOMMENDATION:

It is recommended that:

- the area coloured yellow on the attached plan be offered back to the former owner or successors at two-thirds of the Current Market Value pursuant to Section 40(2)(d) Public Works Act 1981, as the former owner gifted one-third of the land acquired by the Crown.
- the area pink coloured on the attached plan be offered back to the former owners or their successors, pursuant to Section 41(e) Public Works Act 1981.
- the area blue coloured on the attached plan be offered back to the former owners or their successors, pursuant to Section 41(e) Public Works Act 1981. Futhermore, this area is to be amalgamated and offered back with the area coloured pink.

Prepared by:

[Signature]

 Tim Papps
 DTZ New Zealand Limited

[Signature]

 Bronwyn Simmonds
 DTZ New Zealand Limited

Peer reviewed by:

[Signature]

 Wayne Smith
 Turley & Co

APPROVED/DECLINED

[Signature]

.....
 (In terms of a warrant from the Chief Crown Property Officer and the Commissioner of Crown Lands dated

[Handwritten notes]
 21/11 705

[Handwritten notes]
 Ak OF 288



Appendices

Appendix I	Vendor Agency Disclosure Form
Appendix II	Search Copies
Appendix III	Acquisition Information
Appendix IV	Department of Conservation Clearance
Appendix V	Contingent Liability Clearance
Appendix VI	Section 5A Gazette Notice
Appendix VII	Valuation Details

From: Steve Gilbert
To: Ross Sutherland
Date: 11/10/2005 12:39:27
Subject: d/b update

Morning Ross, can you enter plse:

AK01288 10054

4 units

unsure if Crown entitled to receive land as an addition to school as a condition of subdvn.

Steve

Steve Gilbert
Advisor Clearances
Land Information New Zealand
DDI 03 364 5918
Fax 03 365 9715

Decision Number: ~~AK~~ AK 01288 CPC File Reference: 10084
 Property Description:
 Type of Decision: *Drayt*
 Decision-maker: *R. Smitton* Peer Reviewer: *S. Smith*

Peer review	OK	Comments
Peer reviewer confirms that no conflict of interest exists that would preclude his/her involvement with this decision	✓	
All Working Papers completed and signed by decision-maker	✗	<i>Summary of Findings not</i>
Adequate documentary evidence obtained and cross-referenced to Working Papers	✓	
Decision-maker addressed all outstanding issues before making Findings	✓	<i>Transfer of Lot 1 to School</i>
Peer reviewer checks the analysis of data gathered, interpretation of data and calibre of conclusions reached by the decision-maker	✓	
Peer reviewer agrees that the methodology used to reach the Finding is appropriate		
Peer reviewer agrees that the Findings are appropriate		
Identify any issues that the Decision-maker should consider before making a decision (see below)	✓	<i>was not able to be made a transfer to school as a condition of subdn.</i>
Develop recommendations (see below)	✓	

Issues and Recommendations

I have identified the following issues and recommendations during this peer review:

Issue	Location	Std Ref	Recommendation
<i>SLP, part yellow</i>			<i>1. Agree SLP to apply to pt yellow</i>
<i>Lot 1. Was Crown entitled to receive this as a condition of the owner's subdn? Should SLP apply</i>			<i>2. Unless certain that Crown was entitled to receive this land as a subdn condition have to more closely consider</i>

Signature of Peer Reviewer: *[Signature]*

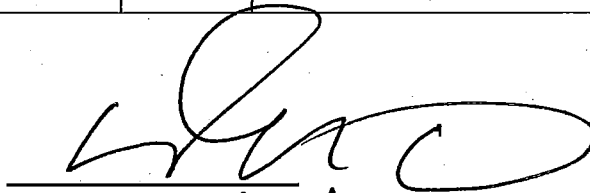
Date: *11/10/05*

Decision-maker's response/action

I have taken the following actions in consideration of the above issues:
(each action should be referenced to evidence on file)

Issue	Std Ref	Action
		Action as recommended.
		Advise supplier that issues for the subdivisional condition was entered in my system.

Signature of Decision-maker:
Date:


10/11/05

Summary of Findings

I have read the report and reviewed the attachments and completed the working papers and I have the following observations:

General	Ref:
<i>Agree with needs</i>	

I consulted with the following people as part of the quality assurance process:

None

Signature of Decision-maker:

Date:

[Signature]
07/10/03

Statutory Right of Repurchase

Stage I – Identification of Statutory Obligations

Objective: To determine whether a surplus property is subject to the Statutory Right of Repurchase under s.40 of the Public Works Act 1981 or s.23 of the NZ Railways Corporation Restructuring Act 1990

Risk: Property may not be offered back when there was a statutory obligation to do so

Detailed Tests:	Ref	Standard 4 Ref
1. Confirm Vendor Agency Disclosure Form complete	WP-1	9
2. Confirm land is not required for another public work	WP-1	6
3. Confirm Vendor Agency details correct	WP-1	9
4. Confirm statutory authority for action	WP-2/A	5
5. Review introduction and report	WP-2/A	14
6. Confirm legal description and area of property correct	WP-2/B	15
7. Identify all zoning, designations, encumbrances and interests in the land	WP-2/C	9.2
8. Confirm land status and mineral status correct	WP-2/D	15, 16
9. Identify any contamination or liability issues	WP-2/E	16
10. Confirm all relevant clearances obtained	WP-2/F	9.3
11. Ensure location and physical description confirmed	WP-2/G	16
12. Confirm valuation (if a relevant consideration)	WP-2/H	
13. Confirm any survey or titling issues that may affect property	WP-2/I	19
14. Confirm that acquisition history is complete and correct	WP-2/J	17
15. Consider application of Gifted Lands Policy	WP-2/K	17.2
16. Ensure that all possible exemptions to statutory offer were considered	WP-2/...	20
▪ Impracticable, unreasonable, unfair [s40(2)(a) or s23(1)(a)]	L	
▪ Significant change [s.40(2)(b) or s23(1)(b)]	M	
▪ Acquisition from local authority [s.23(1)(c)]	N	
▪ Land acquired between 31.1.82 – 31.3.87 [s40(3) or s22]	O	
▪ Size, shape and situation [s40(4) or s23(4)]	P	
17. Consider Accredited Supplier's summary	WP-2/Q	
18. Consider Accredited Supplier's recommendations	WP-2/R	

Key

Symbol	Explanation
✓	Comply
X	does not comply
–	Question is not applicable to this case
"	Ditto
?	Needs further investigation

Statutory Right of Repurchase

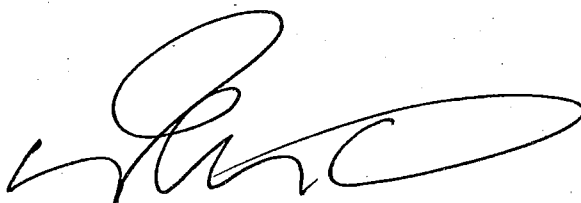
WP-1

Stage I – Identification of Statutory Obligations (Vendor Agency Disclosure Form)

Question	Comments	Findings	
		Yes	No
1. Has the form been correctly completed?		<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Has the form been signed and dated?		<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Does the VADF relate to the correct property? Legal description, area the same as in the s40/s23 report?		<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Is the Vendor one that is caught by S40/S23?		<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Has any other interest been expressed in the land for another public work?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. Has the Vendor confirmed that the land is surplus?		<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Has the "date surplus" been inserted?		<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Is the 'date surplus' earlier than the VADF?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
9. If the dates are the same have any actions occurred before this date that may affect the actual date the property was declared surplus?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
10. Does the Vendor intend to retain an interest in the land?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
11. Is the nature of this ongoing interest reconcilable with S40? Are the Vendor's proposed protections for the former owner appropriate?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
12. Confirm that appropriate clearances obtained and documentary evidence provided? <ul style="list-style-type: none"> ▪ S5A Education Lands Act 1949 <input checked="" type="checkbox"/> 14/10/05 ▪ Shareholding Ministers agreement to disposal for SOE, CRI or DHB land <input checked="" type="checkbox"/> ▪ TranzRail clearance for S23 <input checked="" type="checkbox"/> ▪ DOC clearance for Part IVA <input checked="" type="checkbox"/> ▪ DOC clearance for conservation requirements <input checked="" type="checkbox"/> ▪ Section 27B memorial addressed <input checked="" type="checkbox"/> 		<input type="checkbox"/>	<input type="checkbox"/>

Signature of Decision-maker: _____

Date: _____


07/10/05

3 areas
Yellow Pink Blue

Statutory Right of Repurchase

WP-2

Stage I - Identification of Statutory Obligations (Report and Recommendation)

	Question	Comments	Findings	
			Yes	No
A	Has the correct statutory authority, including subsection been stated?		✓	
A	Is the CPC file reference correct/consistent?		✓	
A	Are there any unusual statements in the Introduction about how the property is being dealt with?		✓	
B	Are the area and legal description correct compared to the title, VADF or plan?		✓	
C	Will the effect of any zoning or designation affect the ability to make any offerback?	<i>Designation being captured</i>		✓
C	Does the zoning reflect the conditions of the surrounding land?	<i>Preservation</i>	✓	
C	If the land is zoned for the purposes of the public work are the steps proposed to address this appropriate?		—	—
C	Are the effects of any interests, encumbrance and relevant legislation clearly explained?		✓	
D	Land status correct?		✓	
D	Has a current copy of the correct title been provided?		✓	
D	Has an adequate mineral search including the Crown Grant, title history and reservations been undertaken?		✓	
D	Is the continuity of mineral ownership clear?		✓	
D	Did original grantee have the mineral ownership?	<i>Alone M&T args.</i>	✓	
D	If land is held by an SOE, were minerals specifically addressed at the time the land was transferred from the Crown?		—	—
E	How does the Vendor plan to address any identified contamination/liability? Note existence of liability when considering valuation & offer (Stage II)		—	—
F	Is the land required for exchange under S105 PWA?			✓
F	Are all other relevant clearances identified and the impacts clear?	<i>DOZ & SEA</i>	✓	
G	Have an adequate physical description and photographs been produced (if necessary)		✓	
G	Are any improvements adequately described? Are they removable?	<i>(a) YES (b) NO</i>	✓	
H	Has a current market valuation been obtained or is the roll value stated	<i>CMV pr'd</i>	—	—
I	If land is part of a title, what is the intention to create a separate title?		—	—
I	Are survey requirements for separate title stated?		✓	
I	If subdivision required, has all information been provided on the requirements?		—	—
I	Resource consent requirements to effect offer back considered?		—	—
I	Vendor comment on the subdivision needed for the proposed offer back provided?		—	—
I	Alternatives to subdivision considered to enable an offer to be made?		—	—

Statutory Right of Repurchase

WP-2

Stage I - Identification of Statutory Obligations (Report and Recommendation)

	Question	Comments	Findings	
			Yes	No
J	Confirm the date the land was acquired and who from		✓	
J	Is the area declared surplus the same as that acquired?		✓	
J	Relevant Proclamations and Gazette Notices provided		✓	
J	Confirm the level of compensation paid at time of acquisition?		✓	
J	Clear that the land was acquired for a public work and the purpose?		✓	
J	Does the investigation look back to first acquisition for a public work (if land passed through different Crown and local agencies or was Crown land prior to use for current public work)?		✓	
J	Have historic titles been provided?		✓	
J	Is it clear how the Crown was involved in the purchase (i.e. who approached who, open market sale)		✓	
J	Is the evidence provided on the negotiations correct and sufficient?		✓	
J	Was land designated at the time it was acquired or subject to a ministerial requirement?	<i>Prob not</i>		✓
J	Has the zoning at the time of acquisition been stated and effects explained?			✓
K ^{tea}	Has the Gifted Lands Policy been considered and is it applicable in this case?	<i>(a) yes (b) no subdivisional scheme</i>	✓	✓
L	Have impracticable, unreasonable, unfair been considered separately?			✓
M	If significant change is being argued was the designated public work permitted by the zoning at the time of acquisition or currently			✓
M	Confirm that details have been provided as to: <ul style="list-style-type: none"> ▪ Age of the structures or changes ▪ What land is being used for ▪ How the property has changed from the time of acquisition ▪ Permanency of the structures or changes ▪ Location of structures (do they go across parcel boundaries) ▪ Economic life of structures or changes 	<i>Ad on area yellow long</i>	✓	
N	Clear evidence provided that railway land was acquired from local authority		✓	
O	Is evidence sufficient that the land acquired between 31/1/82 and 31/3/87?		✓	
O	If so, did the public work fit within the definition of an essential work?		✓	
P	If land is held in a separate title can it be titled within the district scheme?		✓	
P	Are proposals for non-complying lots stated?		✓	
P	Is the evidence of non-compliance with titling requirements sufficient?		✓	
P	Even if there is a title or title can be raised, is it still appropriate to offer it separately?		✓	

Statutory Right of Repurchase

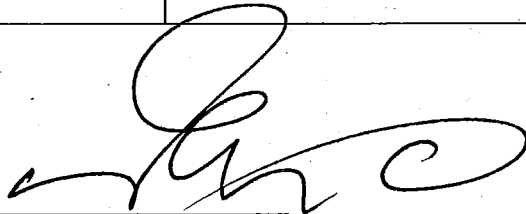
WP-2

Stage I - Identification of Statutory Obligations (Report and Recommendation)

	Question	Comments	Findings	
			Yes	No
P	Does report state how should land will be dealt with if adjoining owner says no to the offer?			<input checked="" type="checkbox"/>
Q	Does the summary consider all relevant facts?		<input checked="" type="checkbox"/>	
R	Does the recommendation link appropriately to the summary?		<input checked="" type="checkbox"/>	
R	Is the recommendation specific to the property?		<input checked="" type="checkbox"/>	
R	Does the recommendation state the statutory authority, including subsection?		<input checked="" type="checkbox"/>	
R	Is all of the surplus property considered and recommendations provided?		<input checked="" type="checkbox"/>	
R	Is each area in the report covered by a separate recommendation?		<input checked="" type="checkbox"/>	
R	Is the recommendation supported by the facts?		<input checked="" type="checkbox"/>	
R	Is the recommendation supported by the analysis in the report?		<input checked="" type="checkbox"/>	
R	Is a further recommendation provided if the initial recommendation is that a statutory offer is required and the conditions of s.41(a),(b) or (c) are satisfied?			<input checked="" type="checkbox"/>
R	Has the report been signed and dated? Evidence of peer review?		<input checked="" type="checkbox"/>	

Signature of Decision-maker: _____

Date: _____


 07/10/05

Statutory Right of Repurchase

Stage II – Identification of Former Owners and Offer

Objective: To determine, where a property is to be offered back, that the former owners or their successors have been correctly identified and that the offer complies with s.40 of the Public Works Act 1981 or s.23 of the NZ Railways Corporation Restructuring Act 1990

Risk: Property may not be offered back to the correct former owner or successor
Offer may not protect the Crown or be inappropriate

Detailed Tests:	Ref	Standard
1. Confirm that report on former owner links to previous reports	WP-3/A	
2. Confirm that former owners correctly identified	WP-3/B	
3. Confirm that successors (including successors in title correctly identified	WP-3/C	
4. Confirm that former owners/successors correctly located	WP-3/D	
5. Ensure that valuation for the land is appropriate	WP-3/E	
6. Confirm that where former owners/successors cannot be located that exemption from offer back is warranted	WP-3/F	
7. Ensure that Offer of Sale document is correct and that any amendments are appropriate	WP-4	
8. Ensure that proper process has been followed where offer back is for former Maori land	WP-5	

Statutory Right of Repurchase

WP-3

Stage II - Identification of Former Owners and Offer (Report)

	Question	Comments	Findings	
			Yes	No
A	Does this report correlate with the Stage I report - right land, recommendations, applicable dates			
A	Have all special conditions imposed at time of Stage I decision been met?			
A	Are all clearances held (see clearance matrix)			
B	Former owner correctly identified and sufficient evidence provided?			
B	If the former owner was a company or other such body has a suitable search been completed?			
B	Has the effect of any former company, trust executor partial interest ownership been considered?			
B	If the former owner was a company no longer on the register, what reason did this occur for? Has it merged e.g.?			
C	If former owner is deceased, has a copy of the will been provided?			
C	If former owner is deceased, has a solicitor's interpretation of the will been provided?			
C	Did solicitor look at testamentary beneficiaries rather than successors?			
C	Does solicitor's interpretation of s.40 align with LINZ interpretation?			
C	Was solicitor's briefing sufficient?			
C	If former owner died intestate, interpretation under the Administration supported by a solicitor's opinion?			
C	Copy of certificates of death, birth certificates, etc provided?			
C	All successors in probate identified or considered?			
C	All successors in title identified or considered?			
C	Copies of CFR(s) for adjoining land provided where offer is to successor in title?			
D	Details provided of attempts made to locate former owners/successors?			
D	Public notices obtained to locate former owner/successors? Notices properly advertised?			
D	Statutory declaration obtained if there is doubt over offeree's identity?			
D	Does evidence support any recommendation that it is unreasonable to offer to more than one person?			
E	Effective date of valuation clear? Is date in accordance with date surplus?			
E	Is valuation for the precise area of land?			
E	Has valuation treated/included GST appropriately?			
E	Instructions to valuer provided? Appropriate?			
E	Has the valuation accounted for any previously identified contamination/liability issues?			
E	If valuation is based on a proposed zoning, how imminent is the proposed zoning? Has it been through objection/appeal period?			

Statutory Right of Repurchase

WP-3

Stage II - Identification of Former Owners and Offer (Report)

	Question	Comments	Findings	
			Yes	No
E	Grounds for an offer at less than current market value (CMV) provided?			
E	Vendor comments on offering at less than CMV provided?			
E	Vendor aware that it must seek appropriation to cover such offers?			
F	Does the recommendation state the statutory authority?			
F	Is all of the surplus property considered and recommendations provided?			
F	Is each area in the report covered by a separate recommendation?			
F	Is the recommendation supported by the facts?			
F	Is the recommendation supported by the analysis in the report?			
F	Has the report been signed and dated? Evidence of peer review?			

Signature of Decision-maker: _____

Date:

Statutory Right of Repurchase

WP-4

Stage II - Identification of Former Owners and Offer (Offer of Sale)

Question	Comments	Findings	
		Yes	No
Standard offer of sale document used (except for s.40(4)/s23(4))			
Standard ASP used for s.40(4)/s.23(4) offers			
Are the correct number of originals of the offer presented?			
Offer correct as to legal description and area?			
Does the price in offer accord with the valuation?			
Where part only of an area is being sold, is a plan attached to the offer?			
Have the full and correct names of the offerees been stated in the offer?			
Amendments made for offers made for SOE or other Crown entities			
Any conditions in the offer identified? Do these impede acceptance?			
Have all special conditions required in Stage I and II been carried into the offer?			
Is clause 1.1 of offer correct – is the land being offered back at CMV or an earlier date?			
Standard offer amended if offer is to a giftee under gifted lands policy?			
Offeree formally advised that offer includes additional land			
Ensure that offer clearly distinguishes between the land subject to offer and additional land			
Confirm that the inclusion of additional land does not create a detriment to the offeree accepting the offer			
Confirm that no severances in a separate title are included in the additional area			
Confirm that offer clearly states what minerals, if any, are being offered?			
Is the mineral clause correct/follows from Stage I report?			
Statutory Decision-maker's attestation correct?			
Letter accompanying the offer clear			
Has each successor been advised of the simultaneous offer to others?			

Signature of Decision-maker: _____

Date:

Administrative Law Checklist

Taken from *Judge over your Shoulder* this checklist is a final review before a statutory decision is made.

Question	Yes/ No	Comments
1. Have you identified the specific power you are acting under?		
2. Is the person with the legal power making the decision?		
3. Are you satisfied that no question of bias arises?		
4. Have you identified persons prejudicially affected by the proposed decision?		
5. If so, have they been fully informed of the proposal and given an opportunity to make representations?		
6. Has proper consideration been given to their representations?		
7. Is this apparent from the recommendation?		
8. If affected persons have not been fully consulted, have you taken legal advice on this point?		
9. Have you checked that your facts are accurate?		
10. Are you satisfied that the purpose you are acting for is authorised by the legislation?		
11. Have you taken into account all relevant matters?		
12. Are these apparent from the recommendation?		
13. Have you ensured that none of your considerations are improper or irrelevant?		
14. Are you being consistent with previous practise and/or expressed policy or representations made?		
15. If not, have you taken legal advice on this point?		
16. Have you considered the particular merits of the case and not simply applied a predetermined policy?		
17. Is this apparent from your recommendation?		
18. Have you clearly set out all the reasons for your recommendation?		
19. Are you satisfied that, from an objective standpoint, all interested persons have been treated fairly and the decision is a reasonable one?		
20. Do you accept the Supplier's recommendation?		
21. If, not have you considered whether further consultation should be carried out before the decision is made?		
22. Are you satisfied your reasons are proper?		
23. Are those reasons apparent from the papers?		
24. Does the letter properly record the consultations that have been carried out and/or the submissions that have been received?		
25. Does the letter properly record the reasons for the decision either by reference to an attached "approved" recommendation or in the body of the letter itself?		

Signature of Decision-maker: _____

Date: