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Office of the Minister of Local Government
Office of te Minita Whanaketanga Māori

Chair
Māori Crown Relations: Te Arawhiti Committee

Whānau Development Through Whenua: Rating Matters

Proposal

1. This paper seeks Cabinet policy approval to amend the Local Government (Rating) Act 2002 (the Rating Act) to better enable Māori land owners to develop and use their land, including for housing, and to modernise provisions in the Rating Act relating to Māori freehold land (Māori land).

Executive summary

2. The proposals in this paper represent the next step in our programme of whānau development through whenua. We have previously agreed to invest \$56.1 million over four years in a whenua Māori programme to assist owners of Māori land to develop that land. We have also agreed to proposals to amend Te Ture Whenua Māori Act 1993 (TTWM Act) to improve outcomes for Māori land owners.
3. This paper presents a package of rating measures to:
 - support the development of, and provision of housing on, Māori land; and
 - to modernise rating legislation affecting Māori land.
4. Current rating practices have long been recognised as an impediment to owners engaging with and developing their land. In particular, the accumulation of rates arrears discourages owners from identifying with and putting forward proposals to use their land, for fear the local authority will first require them to pay off rates arrears. My proposals to address this are to:
 - provide local authorities with a power to write-off arrears; and
 - make unused Māori land (including Māori land protected by a Ngā Whenua Rahui kawenata) non-rateable.
5. Other key elements of my proposal are to:
 - provide a statutory remission process to promote rates remissions for land under development;
 - treat multiple Māori land rating units as one for the purpose of calculating rates if they are used as one economic unit, which will reduce uniform charges and lower the overall rates charged; and
 - allow multiple homes on a Māori land rating unit to have separate rate accounts, which will enable the owners to access rates rebates if they meet the requirements for a rebate and simplify the administration of rates in those cases.
6. I also propose some modernisation of the Rating Act, including protecting Māori land made general by amendments to the Māori Affairs Amendment Act 1967 from abandoned land or rating sales.

Background

Māori land

7. Māori land is governed by TTWM Act. The preamble to that Act includes the statement "it is desirable to recognise that land is a taonga tuku iho of special significance to Maori people and, for that reason, to promote the retention of that land in the hands of its owners, their whanau, and their hapū, and to protect wāhi tapu: and to facilitate the occupation, development, and utilisation of that land for the benefit of its owners, their whanau, and their hapū".
8. TTWM Act places a number of restrictions on the ability of owners to deal with Māori land. The land may not be sold without the approval of the Māori Land Court, which is required to prioritise ownership remaining with people with an ancestral relationship with the land. This makes it impractical to mortgage the land and precludes the land being sold on the general land market.
9. Māori land is approximately five per cent (about 1.4 million hectares) of the New Zealand land area and is predominately concentrated in the mid to upper North Island. Māori land is commonly held by multiple owners (some blocks have more than 1,000 owners). There are about 2.7 million interests in 27,212 Māori freehold land blocks. The average Māori land block is 52 hectares with 100 owners. Multiple ownership creates additional costs and challenges in achieving consensus for action, including collecting funds to pay rates.
10. Māori freehold land tends to be more isolated, in smaller holdings and, less 'useable' than general land: 80 per cent of Māori freehold land is classified as being of lower quality and only 17 per cent of Māori freehold land is considered suitable for arable use. Up to 20 per cent of land is considered landlocked, and about 16,000 (60 per cent) of Māori land titles are smaller than five hectares, with approximately 11,000 (40 per cent) being smaller than one hectare. Around a third of the total indigenous vegetation on private land is on Māori land, with approximately 25 per cent of Māori land having indigenous forest cover.
11. At the same time there are many examples of Māori land having been developed into successful farming units or being used for commercial forestry. Notwithstanding, it has been identified, through detailed whenua block by block analysis, that there is an opportunity to improve the performance of Māori land. This could result in estimated benefits of \$1.407 billion (present value (PV) \$387 million) - \$2.064 billion (PV \$650 million) over 40 years, increasing livelihoods and wellbeing derived from this land.¹
12. While much Māori land is in rural settings, there are significant areas of Māori land in some urban communities, especially Tauranga, Rotorua, and Taupō and in many smaller communities. Some of this land has been subdivided into house sites while some remains in large blocks that could, if the owners wished and were able, be substantially developed. In those locations vacant Māori land has the potential to provide homes for its owners.

The Whenua Māori programme

13. On 4 April 2018 I reported to the Cabinet Economic Development Committee on our programme of whānau development through whenua. The Committee agreed that

¹ "Paper Two: Support for Māori freehold landowners: Whenua Māori Programme Business case and access to contingency funding", considered by Māori Crown Relations: Te Arawhiti Committee on 11 December 2018, MCR-18-SUB-0018.

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opportunities exist to assist and improve the system for Māori landowners in managing Māori land and, that by doing so, additional economic returns can be achieved delivering social and cultural benefit for Māori. The paper outlined my intention to bring further proposals to Cabinet to make targeted amendments to other legislation affecting whenua Māori, including rating legislation [DEV-18-Min-0046 refers]. This paper fulfils that intention in relation to rating legislation.

14. The proposals in this paper complement other measures we are taking to facilitate the use of Māori land.

- 14.1 In Budget 2019 we allocated \$56.1 million over four years towards implementing the whenua Māori programme. This money is allocated to enable regional on-the-ground advisory services to Māori landowners, the creation of a Whenua Knowledge Hub and website; new and enhanced services for the Māori Land Court; the modernisation of the Māori Land Court information systems and support for legislative amendments to TTWM Act.

- 14.2 In December 2018 Cabinet approved amendments to TTWM Act [MCR-18-MIN-0016 refers]. These amendments are intended to improve outcomes for Māori land owners' prosperity and intergenerational wellbeing, supporting both protection and development opportunities over their land. They also seek to reduce the complexity and compliance that Māori land owners encounter when they engage with the Māori Land Court, while maintaining the overall scheme of the Māori land tenure system. This Bill is being drafted now and will be available for introduction to the House shortly.

Rating legislation for Māori land provides a barrier to its development and is in need of modernisation

15. Rates have long been identified as providing a barrier to owners engaging with and developing Māori land. The Shand Inquiry (2007) commented on the disincentive rates arrears present to the development of potentially productive land. The Inquiry concluded "the issue of rating Māori land is integral to the use and development of Māori land, and the resolution of rating issues will make a positive contribution to the broader objectives of Māori land development."²
16. The Auditor-General has identified rates arrears as a barrier to owners of Māori land building housing on their land. The Auditor-General also identified that owners were reluctant to build houses on Māori land for fear the local authority would pursue them for the rates on the whole land block.³
17. Issues about rating Māori land and the barriers rating presents to Māori land's use and development have been consistently raised during previous consultation with Māori land owners on whenua related matters and in many claims before the Waitangi Tribunal.
18. The Tribunal has also conducted thorough research into the history and problems of rating Māori land.⁴ It has become apparent from a review of that material that, apart from the prohibition on selling Māori land to pay rates arrears introduced in 1988, much of the present law about rating Māori land is largely unchanged from the Māori

2 "Funding Local Government", Report of the Local Government Rates Inquiry, August 2007.

3 "Government planning and support for housing on Māori land", Controller and Auditor-General, August 2001.

4 "Māori and Rating Law", Tom Bennion, Waitangi Tribunal Rangahaua Whanui Series, July 1997.

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Land Rating Act 1924.⁵ It is clear that this legislation needs to be modernised to bring it closer to present expectations of Māori Crown relations.

19. The previous Government proposed to deal with some of these matters with its proposals to reform TTWM Act, but the proposals were hastily put together. We have the opportunity to develop a more considered package of measures that integrates with our wider work programme around whenua Māori development and Māori Crown relations.

Comment

Overview of proposal

20. In summary, I propose that we **support the development of, and provision of housing on, Māori land** by:
 - 20.1 introducing an ability for local authorities to write off rate arrears;
 - 20.2 making unused Māori land (including Māori land protected by Ngā Whenua Rāhui kawenata) rating units⁶ non-rateable;
 - 20.3 providing a statutory rate remission process for Māori land under development;
 - 20.4 treating multiple Māori land blocks as one for rating purposes when they are used as one; and
 - 20.5 enabling individual houses on Māori land to be rated as if they were one rating unit.
21. I propose we **modernise the rating legislation** by:
 - 21.1 removing arbitrary two hectare land area restrictions from rates exemptions for marae and urupā;
 - 21.2 providing protection to Māori land made general land by amendments to the Māori Affairs Act in 1967 from the abandoned land and rating sale provisions of the Rating Act;
 - 21.3 clarifying the current exemption for marae, meeting places and meeting houses;
 - 21.4 clarifying the obligations on trustees not liable to pay rates for lack of income derived from land held in trust; and
 - 21.5 including clear purpose statements to the provisions of the Rating Act and the Local Government Act 2002 (LGA02) relating to Māori land rating.

Supporting the development of, and provision of housing on, Māori land

22. I propose five measures to support the development of, and provision of housing on, Māori land. Three are focused on removing rating impediments to development for all Māori land. The fourth is focused on promoting the development of small land blocks and the fifth is focused on putting homes on Māori land on a level playing field with homes on general land.

⁵ This Act was originally titled the Native Land Rating Act 1924 but has been retitled in accordance with the Māori Purposes Act 1947.

⁶ The Rating Valuations Act 1998 provides that where a property has a separate title, the land in that title shall be a rating unit. There are some limited exceptions to this principle. Where relevant, they are discussed in the body of this paper.

An ability to write off rates arrears

23. I propose that the Rating Act be amended to enable local authorities to write off rates on:
- all land if it considers the rates are uncollectable; and
 - Māori land only, where successors to interests in a block of land find themselves liable for rates debts of deceased owners.
24. The power would be an administrative power, provided to the chief executive of each local authority. To provide protection from abuse of the power, local authorities would be required to disclose the amount of rates written off each year in the notes to financial statements in their annual report.
25. Rates arrears are a significant disincentive to Māori landowners engaging with and developing their land. The presence of large rates arrears on Māori land inhibits constructive relationships between local authorities, iwi and Māori landowners.
26. Successors to interests in a block of Māori land that is in arrears effectively inherit the arrears. In the case of general land, if the owner passes away with debts in excess of their assets, the land would be sold and estate creditors suffer the shortfall. In the case of Māori land, because of the constraints on its sale, rates arrears are shared among current and future owners. This presents an impediment to the next generation of owners developing their whenua.
27. Local authorities have no statutory authority to write off rates. The LGA02 provides that elected members of a local authority can be held personally liable if the "local authority has intentionally or negligently failed to enforce the collection of money it is lawfully entitled to receive".⁷ The combined effect of these arrangements provides a powerful disincentive for local authorities to write off rates arrears.
28. The consequence is that local authorities tend to allow uncollected rates to accumulate, with penalties accruing, until they are prevented by statute from commencing collection action. Rates are not statute barred from collection until six years after the last payment date for the various rates instalments for the year. By the time a rate is statute barred, for every \$1,000 originally assessed, with accumulated penalties the outstanding debt will have grown to \$3,452. Since Māori land is over-represented in properties in arrears, this tends to disproportionately inflate the size of the rates arrears actually incurred on Māori land.
29. Currently the only tool local authorities have to manage arrears are rates remissions. Remitted rates are shown in the rates records as having been paid by the local authority. Local authorities can be reluctant to remit rates because that can be seen as condoning non-payment.
30. While my main concern is with the effect of rates arrears on the development of Māori land, I can see no reason why this power should be constrained only to Māori land. There may be rare cases where collection of rates on general land is impractical. In those cases, writing off rates may be more helpful than allowing rates arrears to accumulate until they are statute barred from collection.

⁷ Sections 44 to 46, Local Government Act 2002.

Making unused Māori land non-rateable

31. I propose that Māori land rating units that are entirely unused and land that is subject to a Ngā Whenua Rāhui kawenata⁸ be made non-rateable. At the time this occurred, existing arrears on that land would be written-off.
32. To support the implementation of this proposal, I propose as a working definition that unused land be defined as:
Unused land:
 - *includes land that is unoccupied or is used similarly to a reserve or conservation area, despite any personal visits to the land or any personal collection of kai or cultural or medicinal material from the land; and*
 - *excludes land that is leased or that is used for agricultural, horticultural, apicultural, commercial forestry, residential, commercial, industrial or community activity.*
33. I expect the financial impact of this proposal on local authorities to be low. This type of Māori land is the type on which rates collection is worst. Since the owners derive no economic benefit from this land, it generates no income to pay rates.
34. Much Māori land is unused. Unused land occurs in diverse situations, both urban and rural and varying in size between large properties covering hundreds of hectares and small house lots.
35. In some cases there is no legal or practical access to the land. The land may be landlocked, or access may be by an unformed road or by sea with no safe landing places. In other cases rate arrears are likely to build up as the owners derive no income or benefit from the land that would enable or justify the payment of rates. A particular issue with Māori land is the rating treatment of land subject to Ngā Whenua Rāhui kawenata. These covenants cover approximately 1/8th of all Māori land, and require the owners to preserve the land in its natural state. This can provide a range of benefits to Māori landowners and to the public good by preserving indigenous biodiversity and mātauranga Māori on Māori land.
36. While the write-off power proposed above may reduce this problem, its use is still dependent upon the local authority exercising its discretion. Making unused land non-rateable provides a much stronger springboard for enabling owners to develop their land with less fear that rates arrears will be an impediment to that development.
37. Since all properties, irrespective of their rating status, pay water, sewer and refuse collection rates where they are assessed, making unused urban Māori land non-rateable would still leave those properties liable for those rates. The rates arrears on those properties would be reduced, but not eliminated.
38. I have considered other options for this aspect of the proposals. We could limit an exemption of this nature only to land that has no legal or formed road access. However, the impediments to access make this land the most difficult land to develop. While this would provide relief to Māori land owners from being charged rates on land they can obtain no economic benefit from, it would be the least effective option in promoting our goal of encouraging Māori land development.

⁸ A Ngā Whenua Rāhui kawenata is a covenant between the owners of Māori land and the Crown to manage a block of Māori land to preserve and protect the natural and historic values of the land, or the spiritual and cultural values which Māori associate with the land.

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39. I also considered an option of making any part of a block of Māori land that is unused non-rateable. I have not proposed this option, other than where the land has a Ngā Whenua Rāhui kawenata, as unused land in this case is likely to have a comparatively low value compared to land that is in use. Making this land non-rateable may have little impact on the rates assessed. Also there are many examples in back country properties of farms with partially unused land. It would be difficult to justify an exemption for partially unused Māori land when no such exemption is available for general land.

A statutory rates remission process for land under development

40. I propose we introduce a statutory rates remission process for Māori land under development. Currently local authorities have considerable discretion over their rate remission policies for Māori land and may not include development remissions in their policies.
41. A statutory remission process will provide owners of Māori land a right to apply for a rate remission when land is under development, without having to rely on the local authority's policy. However, the decision about whether a remission is granted, for how long it is granted, and on what conditions it is granted, will remain with the local authority. This will allow local authorities to apply a nationally consistent approach to their decisions, without each council having to develop its own policy for land under development.
42. Providing rate remissions during development will allow scarce capital to be devoted to developing land, rather than paying rates. Once development is completed, the remission would cease and the land would be rateable in the same manner as any other land. In the long run this will be beneficial to local authorities as it strengthens both their rating base and their community.
43. During the development process owners are incurring the costs of development. However, the benefits that come from development, either by occupying the property for housing, or generating income if the development is for commercial purposes, are unlikely to commence until development is complete or well advanced. Managing cash flows through the development period is challenging for any land owner and will usually be more so for Māori landowners given the restrictions on mortgaging their properties to obtain development finance.
44. This would be in addition to, rather than in place of, the existing remission policies, which potentially cover a wider range of matters than land development. However, in relation to remissions for development, the statutory obligations I propose would take precedence over the local authority's current policies.
45. I propose that:
- 45.1 *Objective* – the objective of the remission be to facilitate the occupation, development and utilisation of Māori land for the benefit of its owners. This references the purpose of the TTWM Act.
 - 45.2 *Criteria for assessing applications* – applications shall be assessed against the following criteria:
 - 45.2.1 contribution to the objective;
 - 45.2.2 benefits to the district from creating new employment opportunities and new homes;

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- 45.2.3 benefits to the council from long-term enhancements to its rating base; and
- 45.2.4 benefits to Māori in the district from providing support for marae in the district.
- 45.3 *Considerations* – in determining the time period over which rates are remitted, and the amount of rates remitted, the local authority should seek to align the remission with the likely time:
 - 45.3.1 over which the development is expected to take place; and
 - 45.3.2 economic benefits will flow to landowners from the development and/or the owners are able to reside on the land.
- 45.4 *Conditions* – the council may make remissions conditional, in whole or in part, on particular development milestones being met.
- 46. The proposed criteria are designed to encourage the local authority to give balanced consideration to both the benefits to the community as a whole and the benefits to the landowners from development. The criteria relating to support for marae encourages local authorities to consider how development can support marae as an important piece of community infrastructure in their district.

Treating multiple Māori land blocks as one for rating purposes

- 47. I propose that multiple blocks of Māori land that come from the same parent block be treated as one for the purpose of calculating their rates liability, if they are used as one business unit. If there is doubt about whether any particular block involved in such a proposal comes from the same parent land block, the local authority may apply to the Registrar of the Māori Land Court for a ruling. This would be implemented on the application of the entity or person using the land.
- 48. This will result in the same rates liability for say 10 blocks totalling 50 hectares in area as one 50 hectare block. The Far North District Council has taken this approach with some success, including one case where it supported the establishment of an Ahu Whenua trust covering 10 blocks of Māori land. Treating these blocks as one for rating purposes reduced the rates from \$18,000 to \$8,000 a year.
- 49. Section 20 of the Rating Act specifies that two or more rating units must be treated as one if they are:
 - owned by the same person or persons; and
 - used jointly as a single unit; and
 - contiguous or separated only by a road, railway, drain, water race, river, or stream (the contiguous test).
- 50. Māori land often fails to meet this test because progressive ownership succession means blocks rarely have exactly the same ownership. Titles from the original parent block may also have been alienated, meaning it does not meet the contiguous test. Treating blocks used as one as one rating unit for rating purposes will assist in making their development economic, supporting our regional development goals.

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Supporting the development of housing on Māori land

51. A key objective of the Whenua Māori Programme is to promote the use of Māori land by its owners for housing. Rating issues are frequently identified as one of the barriers to housing on Māori land.
52. I recommend allowing the practice of apportioning rates on a Māori land rating unit between different homes and treating those apportionments as a single rating unit for the purposes of the rates rebate scheme. This will put owners of homes on Māori land on a level playing field with other homeowners when it comes to accessing the rates rebate scheme.
53. Apportionment will make it easier for individual home owners to pay the rates for their homes and for local authorities to collect rates on homes on Māori land. I propose that once rates are apportioned, liability for rates on the home rests only with the home owner.
54. Strict application of the law means that the owners have to make a collective arrangement among themselves to collect rates from the various home occupants on the property, pay it over to the local authority, and manage among themselves the issues that arise where some owners are unable or unwilling to contribute their share. There are many Māori land sites with multiple homes on them. The extreme case officials have identified is a site with 187 homes on it. Sites with 10 or more homes are not uncommon. Frequently owners of Māori land aspire not only to build individual homes but communities of homes on their land, where the size of the site permits it.
55. The current rules around the definition of a rating unit focus on the individual title as the rating unit. Where multiple homes exist on one title, legally local authorities should keep them in one rate account. An exception occurs where an occupation order has been made under s 328 of TTWM Act. Such an order provides the owner in whose favour the order is made "exclusive use and occupation of the whole or any part of that land as a site for a house".
56. I do not regard reliance on occupation orders as a conclusive solution to the administrative problems in rating multiple homes on Māori land. Applicants have to incur costs in making such applications and may not be successful. The Court may only make an order if it is satisfied "that there is a sufficient degree of support for the application among the owners". With multiple owners who may be geographically spread far and wide, obtaining the necessary owner support for an order may be logistically impossible.
57. I note that currently there is no obligation on the Māori Land Court to notify the relevant territorial authority when an occupation order is made or changed. I propose a minor amendment to TTWM Act to require the Court to notify the territorial authority of any new or changed occupation orders so that the territorial authority can fulfil its obligations under the Rating Valuations Act 1998.

Modernising the Rating Act

58. My officials' research has shown that much of the current law relating to Māori land rating is little changed from the Māori Land Rating Act 1924.

Modernising marae, meeting place, meeting house and urupā rates exemptions

Removing two hectare limits on rates exemptions

59. Currently marae, meeting places, cemeteries, public crematoriums, burial grounds and urupa are exempt rates. However, the exemption is limited to a land area of two hectares. Most rates exemptions do not have area limits. For example, there are no area limits on churches, or on the exemptions for sports clubs or land used for the arts. There are limits of 1.5 hectares on the rates exemptions for theological colleges and for institutions that provide free maintenance or relief for persons in need.
60. I propose to remove the two hectare limit on the rates exemption for marae, meeting places, and meeting houses. I propose also to remove the two hectare limit on all cemeteries, burial grounds and urupā.⁹ In today's world I can see no justification for such an arbitrary land area exemption. My officials have consulted local authority rating officers and it is apparent that enforcement of these limits is patchy.

Extending marae exemptions to marae on general land

61. I also propose to remove the limitation that a marae must be on Māori freehold land to be exempt from rates. Research suggests there may be as many 164 marae that are on land with a general title and therefore potentially liable to pay rates. I can see no reason why the nature of the land title should affect the liability of a marae for rates.

Clarifying the meeting place exemption

62. I propose that the exemption for land reserved for a meeting place be qualified by stating that where land is reserved for multiple purposes, the exemption does not include land which is used predominantly for housing.
63. Currently land reserved for a meeting place under section 338 of TTWM Act, and used for the purposes of a meeting place, is non-rateable. Local authorities have encountered the situation where some owners of homes on Māori land have had reservations established for their home under section 338. Typically, the reservation is for multiple purposes, including as a "meeting place" for the whānau. The homeowners then decline to pay rates as their land is a meeting place. My advice is that this is an incorrect interpretation of the Act, but it would help local authorities to further clarify the exemption.

Protecting Māori land made general in the 1960s from sale.

64. I propose to amend the Rating Act's provisions enabling abandoned land sales and rating sales to preclude the sale of Māori land (the 1967 land) arbitrarily converted to general land as a result of the Māori Affairs Amendment Act 1967 (the Amendment Act). I also propose that we prevent this land being leased by local authorities under the same provisions. I propose that for the purposes of the Rating Act local authorities be permitted, but not required, to treat this land as Māori land. This will enable local authorities to charge the occupier for rates if an adjoining land owner is using the land without any formal agreement with the owners.
65. The Amendment Act required Māori freehold land with less than four owners to have its status changed to general land. This change in status was made without owner

⁹ The fact that the two hectare limit applies to all cemeteries and burial grounds may be an unintended consequence of law drafting changes. In 1967 the limit applied only to urupā, by 1988 the law was somewhat ambiguous, and the limit was applied to all cemeteries in 2002. This may have been drafting "clarification" rather than policy intent.

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knowledge or consent. The Amendment Act was repealed in 1973 but affected land remained as general land. The retention of Māori land in Māori ownership is of fundamental importance, and this is reflected in TTWM Act. Had this land not been converted to general land by the Amendment Act, it would have retained its status of Māori freehold land and therefore maintained its protection from abandoned land and rating sales. The effects of the Amendment Act were raised as a significant issue in hui around the country during the 2007 Shand Inquiry.

66. A 2009 Cabinet paper estimated the amount of affected land to be 105,000 hectares. The paper noted that incomplete records made it difficult to accurately measure the amount of affected land.
67. The Rating Act provides local authorities two routes to collect rates on general land. Where land has been abandoned¹⁰, it can apply to the District Court for approval to sell the land. It can also apply to the High Court for permission to conduct a rating sale. It is therefore necessary to close off both sale avenues to effectively protect this land from further sale.
68. I recently enquired of local authorities of abandoned land sales in train. Waitomo District Council identified nine sales it had in train, and investigation showed that four of these were 1967 land. This satisfies me that this is still a living issue that should be addressed. I consider it is contrary to the Crown's Treaty obligations to allow these sales to continue.
69. Finally, both statutory provisions allow local authorities to lease land to recover rate arrears rather than sell it. My officials have been unable to identify any situation where local authorities have leased rather than sold land to collect arrears. However, leasing land without owner agreement is also a form of alienation and could create further complications about compensation for improvements made by lessees if the owners were identified and wished to re-engage with their land.
70. I am sympathetic to local authorities' wish to collect rates on this land, particularly where an adjoining land owner is actually using the land and deriving economic benefit from it. For Māori land, the person using the land is liable for the rates unless the land is vested in trustees.
71. Therefore, I have proposed that for rating purposes only, local authorities may treat 1967 land as Māori land for the purposes of collecting rates from a person other than the owner. This will allow local authorities to charge an occupier for rates on this land.

Clarifying trustees' obligations

72. The Rating Act provides that, if trustees¹¹ are liable to pay rates, the trustees are liable for rates only to the extent of the money derived from the land. From time to time local authorities are advised by trustees that the money derived from the land is insufficient to pay the rates. Currently they have no means of verifying that claim.
73. I propose that we add a provision to the Rating Act that where trustees state there is insufficient money derived from the land to pay the rates, they must, if requested by the local authority, provide copies of any accounts provided to beneficiaries to support that claim.

¹⁰ Land is considered abandoned if rates have been unpaid for three years or more and: the ratepayer is unknown; cannot be found after due inquiry and has no known agent in New Zealand; is deceased and has no personal representative; or has given notice to the local authority that he or she has abandoned the land.

¹¹ In the Rating Act, the term trustees covers both legal trustees and the board of an incorporation.

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74. I see this as an obligation with a low compliance cost. The local authority will not be able to require information that is not currently prepared by the trustees. I also expect local authorities to use their judgement in making such requests.

Including purpose statements

75. I propose that both the LGA02 and the Rating Act be amended to include the purpose statement of TTWM Act as the purpose of their specific provisions relating to Māori land rating. The purpose statement for the TTWM Act states *"it is desirable to recognise that land is a taonga tuku iho of special significance to Māori people and, for that reason, to promote the retention of that land in the hands of its owners, their whānau, and their hapū, and to protect wāhi tapu: and to facilitate the occupation, development, and utilisation of that land for the benefit of its owners, their whānau, and their hapū."*
76. Inclusion of purpose statements in statutes is an important way for Parliament to signal what legislation is intended to achieve. Section 5(1) of the Interpretation Act 1999 states "The meaning of an enactment must be ascertained from its text and in the light of its purpose". Hence purpose statements can assist users and the Courts in determining the meaning of particular statutory provisions.
77. While the absence of purpose statements has not directly contributed to the current problems with the rating legislation, I consider inclusion of purpose statements will encourage users of the legislation to think about the application of the specific provisions relating to Māori land in a constructive manner.
78. I intend, subject to advice from Parliamentary Counsel, that this would be done by adding a further clause to the overall purpose of the Rating Act and to the purpose of local authority revenue and finance policies.

Transition and implementation

79. Many of the measures I propose can be implemented immediately a Bill is passed. Some require a little time to enable local authorities to prepare their systems for the change. Some also need an education/information process to occur so that both owners of Māori land and local authority staff understand and are then able to successfully implement the proposals. Table 1 summarises the proposals and my recommendations for transition and implementation.

Table 1: Summary of transition proposals

Proposal	Recommended implementation
<i>Supporting the development of, and provision of housing on, Māori land</i>	
1. Ability to write off rates arrears.	Immediate.
2. Making unused land non-rateable.	At the commencement of the first financial year that is four months after the Bill is passed. The effect of this is that if the Bill is passed before the end of February, the provision would commence on the following 1 July. If the Bill is passed between March to the end of June, commencement would be deferred by one year. This gives local authorities the time to research the current use of the land affected.

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3. Statutory rate remission process for land under development.	Immediate.
4. Treating multiple Māori land blocks as one for rating purposes.	At the commencement of the first financial year that is four months after the Bill is passed. The provision would typically apply at the commencement of a rating year. This gives time to educate local authorities and owners of Māori land on the process.
5. Allowing apportionments for homes on Māori land.	At the commencement of the first financial year that is four months after the Bill is passed. The provision would typically apply at the commencement of a rating year. This gives time to educate local authorities and owners of Māori land on the process.
<i>Modernising the Rating Act</i>	
6. Removing two hectare limits on rates exemptions for marae and urupa.	Immediate.
7. Clarifying the meeting place exemption.	At the commencement of the first financial year that is four months after the Bill is passed. The provision would typically apply at the commencement of a rating year. This gives time to educate local authorities and owners of Māori land on the process.
8. Protecting Māori land made general from sale.	Immediate.
9. Clarifying trustees obligations.	At the commencement of the first financial year that is four months after the Bill is passed. The provision would typically apply at the commencement of a rating year. This gives time to educate local authorities and owners of Māori land on the process.
10. Including purpose statements in the LGA02 and the Rating Act.	Immediate.

Treaty considerations

80. Some Māori argue that rating Māori land is contrary to their right of full, exclusive and undisturbed possession of their land. The Waitangi Tribunal addressed this in the Hauraki report. The Tribunal concluded that it could see no problem in Treaty terms with the concept of rating Māori land.¹²

81. However, that conclusion was qualified by the need for the Crown to be careful to ensure adequate assistance was offered to Māori landowners to develop their land and avoid the problems of fragmented title. The Tribunal also noted the need to monitor the implementation of the Rating Act to ensure it provided an equitable basis for rating Māori land. The proposals in this paper are consistent with the Tribunal's conclusions.

¹² "The Hauraki Report", WAI 686, Vol 3, p 1018, 2006.

Consultation

82. The Shand Inquiry in 2007 included extensive consultation with Māori on rating Māori land. It held 11 hui specifically on that issue. In the follow up to the Shand Inquiry in 2008, Te Puni Kōkiri ran a further 11 regional workshops with Māori landowners on rating and valuation issues. Further submissions addressed these issues in the previous Government's Te Ture Whenua Māori Bill.
83. For those reasons I have not consulted Māori in preparing these proposals. Māori have already told us what they think of the present situation. A thorough Select Committee process will provide further opportunity for input from Māori landowners.
84. In preparing these proposals, my officials held a workshop with rating officers from local authorities with significant Māori land in their districts. This provided helpful input from the people that have to administer the current law.
85. Local Government New Zealand and the Society of Local Government Managers have reviewed a draft of this paper. Both are supportive of the proposals.
86. This paper was jointly prepared by the Department of Internal Affairs and Te Puni Kōkiri. The Ministry of Justice, Te Arawhiti, the Ministry of Housing and Urban Development, the Department of Conservation and the Treasury have been consulted. The Department of the Prime Minister and Cabinet has been informed.

Financial implications

Financial implications for the Crown

87. Enabling home owners on Māori land to access the rates rebate scheme will have financial implications for the Crown. Data on the number of homes on Māori land is sparse. In total there are 27,212 Māori land blocks. Available data suggests that approximately 9,800 of these blocks have no improvements leaving approximately 17,400 blocks which may have some development.
88. My officials' inquiry into individual properties suggests most homes are single homes on individual titles, and the occupants would already potentially qualify for the rates rebate. However, having multiple homes on one rating unit is not uncommon, especially in the vicinity of marae where they are effectively part of the marae community. Establishing the household incomes of such homeowners, the rates charged, and therefore the potential eligibility of homeowners for rates rebates is difficult. I can see no reason why low income owners of these homes should be denied access to rates rebates simply because of the land tenure arrangements imposed through TTWM Act.
89. Cabinet has also recently agreed to legislative changes that will make online applications for rates rebates possible. This may have a positive effect on uptake of the scheme. The appropriation for the rates rebate scheme in 2019/20 is \$57.500m and the interim unaudited cost for 2018/2019 is \$51.745m.
90. The Department of Internal Affairs will be recommending the appropriation for the scheme be adjusted down in the 2019 October Baseline Update to reflect current demand. This adjustment will also be reflected in outyears. Depending upon future demand for the scheme, the Department may need to seek an increase in the appropriation for the 2021/22 financial year and subsequent years to accommodate the increased eligibility from this proposal.

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Financial implications for local government

91. The Bill has varied financial implications for local government. These are detailed in Appendix A. Key points are:
- 91.1 enabling local authorities to write off rates will provide cash flow advantages to local authorities. They are required to pay output tax to the Inland Revenue Department (IRD) when rates are invoiced. However, they cannot recover that output tax from the IRD until the rates are written off, which currently is six years after they have been paid. Enabling local authorities to write off rates will allow earlier recovery of the GST output tax;
 - 91.2 theoretically other proposals, such as making unused land non-rateable and treating multiple Māori land blocks as one for rating purposes will reduce local authority rate revenue. In practice, rates on this land frequently remain unpaid anyway. To the extent that these and my other proposals bring more land into use they will in the long run boost local authority revenue as where Māori land is used, rates are generally paid; and
 - 91.3 the housing proposals will assist local authorities to collect rates. Low income households will be better able to access rates rebates, which will help rates collection directly, and better arrangements for home owners on Māori land will also help in making rates payments easier.
92. Overall, I consider that these proposals will, in the long run, be financially beneficial for local authorities.

Human rights, gender and disability issues

93. The proposals in this paper do not affect human rights, gender or disability issues.

Legislative implications

94. The proposals in this paper would be implemented through a Whenua Māori (Rating and Other Matters) Bill. This Bill has a category 4 in the 2019 legislation programme – to be referred to select committee this year.

Impact analysis

95. A Regulatory Impact Assessment (RIA) has been prepared and attached to this Cabinet paper. The Department of Internal Affairs' Regulatory Impact Analysis panel (the Panel) has reviewed the RIA in accordance with the quality assurance criteria set out in the CabGuide. The Panel considers that the information and analysis summarised in the RIA meets the quality assurance criteria.

Publicity

96. I propose to make no public announcements about this work until the Bill is introduced. I consider that public debate is best to occur when the specific details of the Bill are agreed and in the public arena. Issues around Māori land always have the potential to be controversial. However, this package of proposals is clearly directed at enabling Māori land owners to develop and use their land and to support our regional development priorities. I will develop a communications package for the Bill that emphasises these points.

Proactive Release

97. For the same reasons as outlined above, I propose to defer proactive release of this paper until the introduction of a Bill reflecting these decisions.

Recommendations

98. The Minister of Local Government and for Māori Development recommends that the Māori Crown Relations: Te Arawhiti Committee:

Background

1. **note** that rates have long been identified as a barrier to owners engaging with and developing Māori land;
2. **note** that addressing rating issues with Māori land will support the Government's programme to assist and improve the system for Māori landowners in managing Māori freehold land and, that by doing so, additional economic returns can be achieved delivering social and cultural benefits for Māori;
3. **note** that much of the present law about rating Māori land is largely unchanged from 1924 and needs to be modernised to bring it closer to present expectations of Māori Crown relations;

Supporting the development of, and provision of housing on, Māori land

Writing off rates

4. **agree** to amend the Local Government (Rating) Act 2002 (the Rating Act) to enable the chief executive of any local authority to write off rates arrears:
 - 4.1 On any land if the chief executive considers the rates are uncollectable; and
 - 4.2 On Māori freehold land only, where successors to interests in a block of land find themselves liable for rates debts of deceased owners;
5. **agree** that local authorities be required to disclose the amount of rates written off each year in notes to the financial statements in their annual report;

Making unused land non-rateable

6. **agree** that Māori land rating units that are entirely unused be made non-rateable;
7. **agree** that Māori land subject to Ngā Whenua Rāhui kawenata be made non-rateable;
8. **agree** that any existing rates arrears on this land be written off at the time the land becomes non-rateable;

Statutory rates remissions for land under development

9. **agree** that the Rating Act be amended to include a statutory rate remission process for Māori land under development;
10. **note** this remission would be in addition to, rather than in place of, existing council rate remission policies;
11. **agree** that the objective of such remissions be to facilitate the occupation, development and utilisation of Māori land for the benefit of its owners;
12. **agree** that the criteria for assessing applications be:
 - 12.1 contribution to the objective;

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- 12.2 benefits to the district from creating new employment opportunities and new homes;
- 12.3 benefits to the council from long-term enhancements to its rating base; and
- 12.4 benefits to Māori in the district from providing support for marae in the district;
- 13. **agree** that in determining the time period over which rates are remitted, and the amount of rates remitted, the local authority should seek to align the remission with the likely time:
 - 13.1 over which the development is expected to take place; and
 - 13.2 economic benefits will flow to landowners from the development and/or the owners are able to reside on the land;
- 14. **agree** the local authority may make remissions conditional, in whole or in part, on particular development milestones being met;

Treating multiple Māori land blocks as one for rating purposes

- 15. **agree** to permit multiple blocks of Māori land as one for the purpose of calculating their rates liability, provided they are used as one economic unit and come from the same original parent land block;

Supporting the development of housing on Māori land

- 16. **agree** to permit the practice of apportioning rates on a Māori land rating unit between different homes;
- 17. **agree** that apportioned rating units be treated as a single rating unit for the purposes of the rates rebate scheme;
- 18. **agree** that liability for rates on homes on apportioned rating units lie exclusively with the occupier of that home;

Modernising the Rating Act

Removing two-hectare limits

- 19. **agree** to remove the two-hectare limit on the rates exemptions for marae, meeting places and meeting houses;
- 20. **agree** to remove the two-hectare limit on rates exemptions for cemeteries, burial grounds and urupā;

Updating marae and meeting place exemptions

- 21. **agree** to extend the rates exemption for marae to marae on general land;
- 22. **agree** to clarify the current rates exemption for meeting places to make it clear the exemption does not include land used predominantly for housing;

Protecting Māori land reclassified as general land from abandoned land and rating sales

- 23. **note** that the Māori Affairs Amendment Act 1967 required Māori land (the 1967 land) with less than four owners to be reclassified as general land;
- 24. **note** that this change in status occurred without the knowledge or consent of the owners;

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25. **note** that one effect of this change in status was to expose the 1967 land to the abandoned land and rating sale provisions of the Rating Act;
26. **note** that some of this land is still being sold by local authorities under the Rating Act;
27. **agree** that the Rating Act be amended to exclude this land from sale or lease under the abandoned land or rating sale provisions;
28. **agree** that the Rating Act provide that, as with other Māori land, the occupier of 1967 land be liable for rates on that land if the owners of the land are unknown;

Clarifying trustees' obligations

29. **note** that trustees of Māori land are liable for rates only to the extent of the money derived from the land;
30. **agree** the Rating Act be amended to require trustees, if they claim there is insufficient money derived from the land to pay rates, at the request of the local authority provide copies of any accounts provided to beneficiaries to support their claim;

Including purpose statements in relevant legislation

31. **agree** to amend the Local Government Act 2002 and the Rating Act to include the purpose statement of Te Ture Whenua Māori Act 1993 as the purpose of the specific provisions of those Acts relating to rating Māori land;

Transition and Implementation

32. **note** that some of these proposals will require a little time for local authorities and owners of Māori land to prepare for their implementation;
33. **note** that some measures need to commence at the beginning of a financial year;
34. **agree** that the following proposals commence at the first financial year that is four months after the Bill is passed:
 - 34.1 making unused land non-rateable;
 - 34.2 treating multiple Māori land blocks as one for rating purposes;
 - 34.3 allowing apportionments for homes on Māori land;
 - 34.4 clarifying the meeting place exemption; and
 - 34.5 clarifying trustee obligations;

Financial implications

35. **note** that the proposals for supporting the development of housing on Māori land will extend the number of homeowners that are potentially eligible for a rates rebate;
36. **note** that the existing appropriation for the rates rebate scheme for the current year and outyears will be adjusted to reflect current demand in the 2019 October Baseline Update;
37. **note** that, depending upon future demand for the scheme, an increase to the appropriation for the rates rebate scheme may be necessary in 2021/22 and outyears;

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Other matters

38. **note** that the Whenua Māori (Rating and Other Matters) Bill has a priority 4 in the legislation programme; and
39. **invite** the Minister of Local Government to issue drafting instructions to the Parliamentary Counsel Office to proceed with this Bill.

Authorised for lodgement

Hon Nanaia Mahuta

Minister of Local Government
Minita Whanaketanga Māori

Released by the Minister for Māori Development

Appendix A: Financial implications of proposals for local authorities

Proposal	Implications
Writing off arrears.	<p>This proposal is an enabling proposal. Local authorities will not be required to write-off rates, but may choose to do so. Therefore, the financial effects will depend upon the decisions local authorities make.</p> <p>Importantly, The Department of Internal Affairs expects that the proposal will be used to write off rates earlier than would otherwise occur, so that the proposal will affect the time at which rates are written off, rather than the amount of rates written off.</p> <p>Therefore, there would be no loss of income to local authorities. There would also be a cash flow advantage to local authorities, in that an earlier writing-off of rates will result in an earlier recovery of GST input tax which the local authority has paid to the Inland revenue department when the rates were originally invoiced.</p>
Making unused land and land subject to Ngā Whenua Rāhui kawenata non-rateable.	<p>This type of Māori land is the class of Māori land on which rates collection is the poorest. It includes, but is not limited to, landlocked and inaccessible Māori land. Owners are reluctant to pay rates on this land because they derive no economic benefits from the land and are likely to perceive themselves as not receiving benefit from council services.</p> <p>It is likely that local authorities do receive a small amount of income from this land, so there would be a small financial cost to local authorities of making this land non-rateable.</p> <p>There would also be an administrative cost to local authorities in identifying unused land and adjusting rating records to apply the new law. In the cases where a Ngā Whenua Rāhui kawenata applied to part of a rating unit, the local authority would have to contract its valuation service provider to split the value of the property between the rateable and non-rateable part of the property. This would be a desktop exercise, so would have a low cost to process (likely less than \$200 per affected rating unit).</p> <p>A key objective of the proposed transition provisions for the Bill would be to provide local authorities with sufficient time to use existing staff resources to carry out this work.</p>
Rates remissions for land under development	<p>This is an enabling provision. Local authorities will not be required to remit rates when development occurs but may choose to do so. Therefore, the financial effects will depend upon the decisions local authorities make.</p> <p>There is a small risk that if a local authority remits rates, and a development does not proceed, the local authority will be unable to recover the remitted rates.</p>
Treating multiple Māori land blocks as one for rating purposes	<p>The amount of uniform charges assessed for each rating unit varies from council to council, and can vary within different parts of a council district. Charges in the order of \$1,000 per rating unit are common. While the impact on the rates for individual properties is significant, the likely impact of this proposal on local authority incomes is low, because it will take time for owners of Māori land to take advantage of the opportunity presented, and many properties are not suited to development.</p>

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	For example, if a council foregoes uniform charges of \$1,000 per annum on 100 rating units, the cost to the council is \$100,000 per annum. Far North District Council has rates revenue of \$79.4 million in 2017/18; Gisborne District Council has rates revenue of \$54.6 million in 2017/18. The impact of foregone revenue from this proposal on local authority incomes would therefore be small.
Apportioning rates for homes on Māori land	Local authorities would likely engage their valuation service providers to carry out the apportionment. This can be done as a desktop exercise, so the cost would be small. The outcome of the proposal should be improved rates collection on these properties, which will financially benefit the local authority. Providing access to the rates rebate scheme will help low income homeowners on Māori land to pay their rates. Simplifying the administration of rates payment for homeowners should also improve collection.
Removing two-hectare limits on exemptions for marae and urupa	Local authorities are not typically treating marae and urupā as exempt now, rather than applying the existing law strictly. For that reason, the cost of this proposal to local authorities should be immaterial.
Protecting Māori land reclassified as general land from abandoned land and rating sales	Given the limited information on the amount of this land left, quantifying the cost of this proposal is not possible. A key aspect of this proposal is that, if the land is occupied, the occupier of the land becomes liable for the rates on the land, which should assist local authorities in collecting rates for this land.
Clarifying trustee obligations	This proposal should assist local authorities to collect rates from land administered by trustees. It has no impact on local authority costs, but quantifying the amount of improved rates collection is not practicable.