

12 August 2009

The Secretariat  
Local Government and Environment Select Committee  
Parliament Buildings  
WELLINGTON

Dear Sir / Madam

**SUBMISSION ON PUBLIC WORKS (OFFER BACK OF AND COMPENSATION FOR ACQUIRED LAND) AMENDMENT BILL**

**1.0 INTRODUCTION**

1.1 Hamilton City Council (HCC) welcomes the opportunity to make a submission to The Local Government and Environment Select Committee (the Committee) on the Public Works (Offer Back of and Compensation for Acquired Land) Amendment Bill (the Amendment Bill).

**2.0 GENERAL COMMENTS**

2.1 HCC has a number of general concerns regarding the current content of the Amendment Bill as it:

- (a) applies to land held for public works by local authorities although it implies that it only affects land held by the Crown;
- (b) may create financial liability for local authorities if the provisions for a solatium payment are extended to local authorities;
- (c) removes the ability to change the public work for which the land is held;
- (d) creates may legal questions in its present form.

In general, HCC is of the view that the Bill to amend the Public Works Act 1981 appears to raise many questions and uncertainty regarding land acquired for public works and HCC hopes that these issues will be properly considered by the Select Committee. Therefore, HCC does not support the progression of the Amendment Bill in this form.

2.2 The following section outlines a number of the questions raised by this Bill and where possible, provides examples to illustrate the point.

**3.0 SPECIFIC ISSUES CREATED BY THE AMENDMENT BILL**

3.1 The Amendment Bill raises a number of more specific potential issues for local authorities in dealing with land that may be held for public works. In addition, the Amendment Bill does not clarify current issues that exist under the Public Works Act 1981:

- (a) The Bill states that its purposes are to ensure that former owners of land who have been deprived of that land by the Crown for the purposes of a public work are given the first right of refusal to purchase that land where the Crown no longer requires it for that public work for which it was originally acquired. This implies that it only applies to land held by the Crown but the actual amendments to section 40 apply generally to land held for a public work.

HCC is concerned that this lack of specificity could be interpreted as not being restricted to land held by the Crown, but will be extended to apply to land held for a public works by local authorities.

- (b) The offer-back provisions will apply even where the land was acquired from a landowner willing to sell. No hint of compulsion is relevant. Until now, where it is clear that the land was sold by contract willingly, it was open to a local authority to consider that it was unreasonable or unfair to offer the land back. Under the Bill, any land held for a public work and no longer required, must be offered back. There will be a temptation for local authorities to buy land from a willing vendor but not specifying any public work purpose. Under the Court of Appeal decision in *Ports of Gisborne v Smiler* land acquired by a public authority but for no public purpose is not held for a public work and therefore does not need to be offered back.
- (c) Land held for a public work will not be able to be used for another public work. There are occasions where land is held for a specific work but used legitimately for another purpose for the benefit of the public.
- (d) The Bill does not clarify when land is "no longer required" for the original public work. Under present case law, local authorities need to take care that they do not landbank land. If land is held after its purpose is discarded, the previous landowner can seek to buy the land back at the value of the land at the time when it became surplus to requirements.
- (e) The solatium payment will come from the Crown under the present drafting of the Bill. HCC is concerned that this could easily be changed before it is enacted to include local authorities as being liable for solatium payments where local authorities acquire or historically have had land transferred from other entities for public works.
- (f) The solatium payment is "for the loss of use and the loss of opportunities associated with the use of that land". This payment seems inequitable where the land has been acquired willingly and/or for full value. It is open to the Land Valuation Tribunal to take into account the circumstances surrounding the compulsory acquisition of the land, but there are no guidelines as to how the solatium payment is to be assessed, particularly on a voluntary acquisition. The solatium payment will be separate from any right to buy back the land.
- (g) The solatium payment applies where land has not been used for the public work. The Amendment Bill is unclear as to when that is to be assessed. Land can legitimately be acquired and held for a long period e.g. for a planned arterial road when justified. It would appear that a previous

landowner could apply for a solatium payment even if the land is still required for the public work but has not been used for that purpose as yet.

- (h) Statutory provisions are not normally retrospective. However it is conceivable that situations exist where land was originally acquired for one purpose but used for another public work. The Amendment Bill is not clear as to whether the other use means that the land can no longer be used for its original purpose, thereby triggering the need to offer the land back.

For example, it is unclear what happens if land is acquired for roading by the New Zealand Transport Agency and subsequently sold to a local authority for roading. Is that still the original purpose or does the transfer mean that it cannot be used for its original purpose?

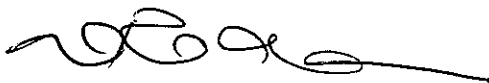
The Council can point to several occasions when land has been held by the Crown for motorway, but later sold to the Council for roading purposes (e.g. arterial route). It could be argued that the same broad purpose is being fulfilled. But if the Crown no longer requires it, then that indicates that it is no longer needed for its original purpose and is surplus, and should be offered back.

- (i) If the solatium payment is extended to be payable by local authorities, then the Council could inherit claims. For example, considerable land held for motorway has been acquired by the Council for other roading purposes. If this is not use of the land for its original purpose then we query whether the Council be deemed to have acquired the obligation to pay the solatium even though the land was originally acquired by the Crown.
- (j) While many historic land acquisitions are been for very specific purposes, other land over the years has been acquired for purposes which are not always clear public works. For example, land has been acquired in Hamilton under the Public Works Act for "better utilisation". It is obviously difficult to determine when or whether that land is being used for its original purpose.

#### 4.0 CONCLUDING COMMENTS

- 4.1 HCC trusts that the points made in this submission are helpful to the Committee when considering all submissions to the Amendment Bill.
- 4.2 HCC **does wish to be heard** at the hearings held by the Committee in support of this submission.

Yours faithfully



**Michael Redman**  
Chief Executive