



## Education Report: Crown acquisition of land occupied by licensed early childhood services

<b>To:</b>	Hon Chris Hipkins, Minister of Education		
<b>Date:</b>	16 September 2022	<b>Priority:</b>	High
<b>Security Level:</b>	In Confidence	<b>METIS No:</b>	1293352
<b>Drafter:</b>	Paul Scholey	<b>DDI:</b>	9(2)(a)
<b>Key contact and number:</b>	John Brooker	<b>DDI:</b>	
<b>Messaging seen by Communications team:</b>	No	<b>Round robin:</b>	No

### Purpose of report

This paper provides initial advice on responding to Crown acquisition of land occupied by licensed early childhood services. This paper is informed by discussions with representatives from Greater Wellington and Toitū Te Whenua Land Information New Zealand.

### Recommended Actions

The Ministry of Education recommends you:

- a. **note** that in July 2022 when the Committee of the Whole was considering the Education and Training Amendment Bill (No 2), an unsupported Supplementary Order Paper (SOP) was lodged by the National Party seeking to exclude from network management any licensed early childhood service on land that is acquired under the Public Works Act

**Noted**

- b. **note** that there is no provision in the current licensing regime for a licensed service to permanently relocate to an alternative site and once network management comes into effect a service that must permanently relocate will need to apply for network management approval and then licensing

**Noted**

- c. **indicate** your preferred option for services on land acquired under the Public Works Act
  - i. Status quo: no change (our preferred option); or
  - ii. Create a new exclusion under the Act; or
  - iii. Changes to the licensing regulations

**Noted**

- d. **Note** a change to the Act (rec cii above) cannot be achieved before 1 February 2023

**Noted**

- e. **Indicate** your preferred option below if you prefer a change to the licensing regulations (rec ciii above):

i. Not consult and seek policy and legislative decisions separately but with some shortened timelines for Ministerial and agency consultation; or	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>
ii. Consult and combine the policy and legislative decisions with some shortened timelines for consultation. This was also done for the Māori immersion services exclusion; or	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>
iii. Consult and seek policy and legislative decisions separately but the change comes into effect after 1 February 2023.	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>

### Proactive Release Recommendation

- f. **agree** that this Education Report is released once final decisions have been made.

☒ **Agree** ☐ **Disagree**

  
John Brooker  
**Group Manager**  
**Te Puna Kaupapahere - Policy**

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Hon Chris Hipkins  
**Minister of Education**

28/9/2022

## Background

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1. When the Committee of the Whole was considering the Education and Training Amendment Bill (No 2), a Supplementary Order Paper (SOP) was lodged by the National Party seeking to exclude from network management any licensed early childhood service, the premises of which are:
  - a. acquired by the Crown under Part 2 of the Public Works Act 1981; or
  - b. subject to notice of desire to acquire land under section 18(1) of the Public Works Act 1981; or
  - c. subject to notice of intention to take land under section 23 of the Public Works Act 1981.
2. These sections of the Public Works Act (PWA) relate to acquisition of land for public works.
3. The SOP was not supported by the Committee of the Whole.

### The PWA and RiverLink

4. The PWA gives the Crown power to acquire land from private landowners for public works, which may include works such as roads and schools.
5. If the Crown is considering acquiring land the first option to be explored is whether the land can be acquired voluntarily upon reaching a commercial agreement for purchase. If no agreement can be reached, the Crown may compulsorily acquire it, build around it, or cease the project.
6. RiverLink is a partnership between Hutt City Council, Greater Wellington, Waka Kotahi NZ Transport Agency, Taranaki Whānui ki te Upoko o te Ika and Ngāti Toa Rangatira. The project provides improved flood protection, upgraded and improved transport and safety connections and a more integrated connection to central Lower Hutt.
7. The RiverLink project has been in place since 2015 and construction is scheduled to begin in 2023. To progress the RiverLink project the government agencies have used the PWA to acquire land.
8. The RiverLink project will affect around 141 properties including 53 businesses in Lower Hutt.

9(2)(j)



10. Greater Wellington advised there are four licensed early childhood services affected by the Riverlink project:

9(2)(j)



11. Greater Wellington has been working with all four providers and come to separate agreements with each, reflecting the specific needs and interests of each owner. Agreements can include compensation for relocation costs, and business losses or equivalent reinstatement.<sup>1</sup>

9(2)(j)

## Legislative requirements

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### Current legislative requirements

13. There is no provision in the current licensing regime for a licensed service to permanently relocate to an alternative site. If a licensed service moves location permanently it needs to apply for a new probationary licence and pay the required fee.
14. This is a historical policy setting to reinforce that a significant proportion of the licensing requirements are based on the specific site and premise, therefore a licensing assessment is desirable to ensure the new facility can meet the minimum health and safety requirements set out in the regulations.
15. There is a provision in the regulations to temporarily relocate from one building to another for up to ten months (regulation 18 of Education (Early Childhood Services) Regulations 2008).

### **From 1 February 2023 a licensed service impacted by the PWA will need to seek network approval and then apply for a licence**

16. Under current legislative settings a licensed service<sup>2</sup> that permanently relocates will no longer be a licensed service. A provider in this circumstance would need to either:
- a. From now until 31 January 2023, apply for a probationary licence (and pay the required fee); or
  - b. From 1 February 2023, apply for network management approval (and pay the required fee), then apply for a probationary licence (and pay the required fee); or
  - c. Cease operating.

## Options

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17. Crown acquisition of land that licensed early childhood services operate from is not common. The possible rationale for intervening in this circumstance is that:
- a. the service is not new, therefore there is no additional impact on the licensed early childhood network; and
  - b. the Crown is acquiring the land under the PWA and should not disadvantage the service by requiring two regulatory steps (network management then licensing).

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<sup>1</sup> Equivalent reinstatement is where the land is devoted to a purpose of such a nature that there is no general demand or market for land for that purpose. Under this circumstance the Crown has a responsibility to develop an equivalent elsewhere. This provision is often used for churches.

<sup>2</sup> That is not an excluded Māori immersion service.

18. We have identified the following options for your consideration:
- a. Status quo: no change; or
  - b. Create a new exclusion under the Act; or
  - c. Changes to the licensing regulations.
19. There is no ability to relax the requirements under the status quo, i.e. not request some information. But the Ministry of Education can offer advice and support in line with its regulatory responsibility.

**Option 1: Status quo: no change**

20. Under this option, from 1 February 2023 a provider<sup>3</sup> in this circumstance would need to:
- a. Apply for network management approval (and pay the required fee), then
  - b. Apply for a probationary licence (and pay the required fee).
21. This option enables the Minister of Education to assess if the service is still needed within the network and suitability of the provider (network management) and then assess the proposed service and new building against education, health and safety requirements (licensing requirements).
22. This option is simpler to implement because it reflects the current and proposed provisions (some of which are not yet in force). This option has also been well signalled since 2020 in the Education and Training Act.
23. Providers may see a risk that their network management application could be declined. However, in our view it is likely that providers in this situation will be able to demonstrate strong community/parent need if they are quickly transferring their current enrolments to their new nearby location.

**Option 2: Changes to the Act**

24. Under this option we would create an exclusion from the requirement to seek network management approval similar to the proposed SOP. The provider would be able to apply for a new probationary licence directly. This option would reflect the current regulatory settings (i.e. those that apply network management requirements commence on 1 February 2023) and be similar to Māori immersion services that are also excluded from seeking network management approval.
25. This option would still require the service to apply for a new probationary licence (and pay the required fee). If a provider meets the licensing requirements it must be granted a licence and funded.
26. The Education and Training Bill (No 3) is not expected to be introduced until late 2022 or February 2023 which would mean this option could not be implemented in time for the commencement of network management on 1 February 2023.

**Option 3: Changes to the licensing regulations**

27. Under this option we would amend the regulations to allow a permanent change to location for services impacted by the PWA. It would still be important that there is some checking by Ministry of Education officials of the premises, to ensure that they meet that

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<sup>3</sup> That is not an excluded Māori immersion service.

aspect of the licensing regulations, but other requirements, such as curriculum could be assumed to continue.

28. We would need to discuss with the Parliamentary Counsel Office what form this amendment would take. For example, it may be most suitable to create a separate type of transfer for this specific circumstance, rather than use the 'amendment' provisions in the regulations.

***Our preferred option is Option 1***

29. On balance our preferred option is Option 1: the status quo. Most existing services will be well placed to meet the requirements of network management if they are responding to a community need and not operating in an area where there is oversupply of services. Network management has been well signalled since 2019. We have not been able to identify any other sectors where government provides an additional regulatory protection following acquisition under the PWA.<sup>4</sup>

***If you prefer Options 2 and 3 (legislative change)***

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**We recommend a narrow scope**

30. If you prefer Options 2 or 3 we will need to define what circumstances the exclusion applies to. We recommend a narrow scope of land acquired under the PWA and Urban Development Act 2020 only. The Urban Development Act gives Kāinga Ora powers to acquire land.
31. We do not recommend an exclusion apply to:
- a. Acts of God, such as earthquakes or tsunamis – as this is too unpredictable and could become unworkable. In large scale acts of God such as earthquakes, whole communities may relocate, and early childhood services may no longer be required or different services may be required. The current licensing regime provides for temporary relocations up to ten months.
  - b. Acts of externals, such as fire, or earthquake strengthening – as the range of circumstances would be difficult to define. The current licensing regime provides for temporary relocations up to ten months.

**We recommend the service should be substantively similar**

32. If you prefer Options 2 or 3, we recommend that the service must be substantively similar in terms of service type, location, operation, management and governance. The intent would be to retain the overall nature of the service that was previously operating. Allowance could be made for changes in numbers of children to align with the size of the new premises.
33. We would also recommend the service be established as soon as reasonably practicable following Crown acquisition of the land or end of lease agreements so as to not be disruptive to parents. We have recently provided you with advice to define early learning services that will 'permanently cease to operate' [METIS 1291344 refers]. The timeframe to establish a service following Crown acquisition should be as soon as practicable and not exceed the permanently cease to operate timeframe so as to not get captured by that regulation.

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<sup>4</sup> The Canterbury Earthquake Recovery Act 2011 created an abbreviated power to acquire land based on PWA provisions, but compensation was determined under the PWA.

## **We would recommend consultation**

34. In developing the exclusion for Māori immersion services, we undertook some targeted consultation with key affected groups. If you prefer Options 2 or 3, we recommend some level of consultation. 9(2)(j)

## **Next Steps**

35. Timing to implement a regulatory change ahead of 1 February 2023 is not possible for Option 2 (changing the Act) and extremely tight for Option 3 (changing the licensing regulations). If you choose to proceed with Option 3, we will not be able to consult, and seek policy approval and legislative approval separately before the end of the year.

### **Option 1: Status quo: no change**

9(2)(j)

### **Option 2: Create a new exclusion under the Act**

37. For Option 2 we would need to come back to you with further advice on likely timing, but this could not be implemented by 1 February 2023.

### **Option 3: Changes to the licensing regulations**

38. For Option 3 our possible pathways are to either:
- a. Not consult and seek policy and legislative decisions separately but with some shortened timelines for Ministerial and agency consultation; or
  - b. Consult and combine the policy and legislative decisions with some shortened timelines for consultation. This was also done for the Māori immersion services exclusion but will likely require some signalling to Cabinet (e.g. through an oral item); or
  - c. Consult, and seek policy and legislative decisions separately but the change comes into effect after 1 February 2023.
39. Our preference under this option is b above as it ensure the regime comes into effect at the same time as the provisions in the Act and proposed regulations.