

Disposal of state land in New Zealand

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SUMMARY

State land comprises around 45% of New Zealand's land area. Since the 1980s, government agencies have embarked on a significant process to dispose of land that the state no longer requires. Land may be disposed of to receive or save money, to encourage economic development, or meet other state needs. The way in which land is sold is set out in laws that only apply to the state. This legislation is designed to protect the public interest and the property rights of those with interests in such land.

The disposal of state land has at times been highly contentious, particularly where there is public interest in the land being sold. Decisions on why land is being sold have had to be defended in the media or through the courts.

A number of lessons have been identified from the New Zealand experience. The particulars of state land, and the differences this land has to private property should be accounted for in any disposal process. In particular, the high level of interest from citizens in how state land is dealt with requires transparency and accountability in all decisions-made on the future of this land. Specific laws may require this, but in general the way in which state land is sold should be as open as possible. Individual disposals should occur within wider, long-term planning, such as a formal disposal programme. This can assist with planning and the allocation of resources, as well as managing risk. Having good and complete information, including data on the possible uses for the land, will also assist with informed decisions.

Well-developed support mechanisms, such as strong financial accounting systems and the growth of electronic recording of information assist with making decisions on state land. The private sector can also assist state agencies deal with their land, however, it is important to ensure that the state employees disposing of the land have the knowledge and skills to make robust decisions about the land they administer. Sale by tenders, auctions or other public processes both enable the best market price to be obtained and can provide the public with confidence that where disposal of state land occurs, it is through an open and transparent process that is not arbitrary and does not favour particular individuals.

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1. INTRODUCTION

In New Zealand the state (the Crown) has historically been a significant owner of land, primarily to encourage development and settlement of land following British colonisation and to administer those properties required for state activities and infrastructure. Since the mid-1980s state agencies have been required by government to constantly reconsider the need to hold land, and where land is no longer required by the state, to dispose of it. For the last thirty years, state agencies like Land Information New Zealand (LINZ), the Ministry of Education and New Zealand Transport Agency have undertaken wide-ranging disposal programmes to rationalise land holdings.

This paper summaries the New Zealand context and provides background in to the significant disposals undertaken from the 1980s onwards. This paper uses LINZ as the example for how a New Zealand agency disposes of state land. It touches on the disposal process in New Zealand but primarily identifies ten learnings from this period that may be of interest to other jurisdictions contemplating significant disposal programmes.

2. STATE LAND IN NEW ZEALAND

2.1 New Zealand Context

State land in New Zealand is commonly referred to as Crown land, or Crown-owned land. This reflects the country's status as a constitutional monarchy. The head of state is Queen Elizabeth II. She reigns as the Queen of New Zealand, independently of her position as Queen of the United Kingdom. Her representative in New Zealand is the Governor-General, who has symbolic and ceremonial roles, and acts on the advice of Government Ministers. Like the United Kingdom, the government acts in the Queen's name. When New Zealanders talk about 'the Crown', they are usually referring not to the Queen as a person, but to the government as a whole. Crown land is, in effect, state land.

New Zealand became a British colony in 1840, following the signing of the Treaty of Waitangi between representatives of the British Crown and Māori tribal chiefs. The colonial government imported English common law to the colony, including land law concepts. This included the principle that the Crown is the underlying owner of all land and that the Crown grants others interests in that land.¹ This allodial estate is expressed by the Crown's power to resume ownership of privately owned land under the doctrine of Eminent Domain. The Crown sometimes exercises this right by acquiring privately owned land for public uses

¹ In English common law, the Crown has radical title or the allodium of all land, meaning that it is the ultimate "owner" of all land. However, the Crown can grant an ownership interest in that land – called an estate – to others.

(“public works”) and paying compensation to the landowner. Private ownership of land is based on a system of land registration known as the Torrens system.

Since 1840, governments have used land to encourage settlement and to enable the expansion of infrastructure across the country. The amount of state land in New Zealand has changed over time as land has been used by the state or disposed of to other people. At its peak, the state acquired 20 million hectares of land from its original Māori owners (over 75% of New Zealand’s total land area). Much of this was sold to settlers for development. In 1982, the state owned and controlled just over 55% of New Zealand’s land area. Today, it is estimated to be around 45%, most of which is land held for conservation purposes (national parks, reserves etc).

2.2 State Land Reforms of the 1980s-1990s

In terms of how state land was managed, the most significant recent reforms were during ten-year period between 1986 and 1996. In 1987, the fourth Labour Government embarked on a wide range of economic reforms and government restructuring, including cutting government spending, reducing most taxes and reviewing the provision of services by state agencies.

State land was an integral part of these reforms. From 1987, state land holdings were rationalised by releasing surplus and under-utilised land for more efficient use in the private sector, with the money received used to repay the national debt. State land with commercial values was also transferred to state-owned enterprises, and land with natural conservation values (such as National Parks, and reserves) were transferred to the Department of Conservation. This reallocation process was done quickly, with new agencies up and running within an eighteen month period between 1986 and 1987. This allocation process also identified a range of land that was considered to be neither commercially useful or having significant conservation values. In 1987 this land (approximately four million hectares) was transferred to a third agency, now Land Information New Zealand (LINZ), to undertake management and, where possible, sale of this land.

This was accompanied by rationalisation in of the public sector workforce that dealt with state land matters. From the mid-1990s agencies were required to outsource the operational work associated with management and disposal of state land to the private sector. This resulted in the release of most state employees who dealt with state land. Some of these employees are now in the private sector, supplying those same services to state agencies, but on a fee-for-service basis.

2.3 Legal ownership of state land

While administered as an asset and used by individual state agencies, most state land is held in the name of Her Majesty the Queen. This reflects the legal status that the land is owned by the state (the Crown) rather than by each agency. Land is generally held for a public purpose (e.g. education, defence, highway, railways) and this will be noted on the computer register (title). Other areas of state land may not be recorded in a computer register (there is no requirement for the state to record its land in the land registration system). In such cases,

investigations into the status of land may be required to confirm state ownership, or the specific agency responsible for managing the land.

State-Owned Enterprises and other commercial entities will hold state land in computer registers in their own name. This reflects the fact that these entities are at arms length from the state and deliver services independently of the government. There is no central register of all state land, though each state agency records the land that it administers. In some cases, this information may be incomplete (see 5.4 below).

2.4 Property role of Land Information New Zealand (LINZ)

Land Information New Zealand (LINZ) is a government department which currently manages almost three million hectares of land (or around 8% of New Zealand's land area). The major part of this land, around 1.6 million hectares, is land in the high country regions of the South Island subject to perpetually renewable leases for pastoral farming purposes. Aside from pastoral land, LINZ administers more than 5,500 other Crown properties. These include 600,000 hectares of forest land and the beds of some of New Zealand's iconic lakes, such as Lake Wanaka and Lake Wakatipu and riverbeds.

LINZ also regulates the acquisition and disposal of land by all other state agencies by administering the relevant legislation, setting standards and making statutory decisions on the property transactions undertaken by other agencies. Many of these transactions are vital to the development of New Zealand's national infrastructure.²

3. CURRENT DISPOSAL PROCESS

3.1 Reasons to dispose of state land

A disposal, in its simplest form, is selling state land – land that the state has decided it no longer requires. New Zealand state agencies are expected to manage their assets in an efficient manner, including disposing of land no longer required. From an asset management point of view it is considered more appropriate to sell land to the public than landbank it for possible future use (and incur the future management costs for that land).

The decision to dispose of state land can usually be based on one of three reasons:

- **Economic** – the disposal will achieve revenue that can be spent on other government purposes
- **Strategic** – the disposal is undertaken to mitigate some future or potential liability or to assist the state in achieving another objective
- **Public interest** – the disposal is in the interest of the inhabitants of a particular community

² For more details see the LINZ Statement of Intent, available at: <http://www.linz.govt.nz/sites/default/files/docs/supporting-info/publications/statement-intent/statement-intent-2012-2015.pdf>

Disposals for economic reasons are motivated by the need to obtain revenue which can be returned to government to fund other state services, such as health or education, which might otherwise have to be funded through increased taxation. Some agencies are able to keep part or all of the revenue from sales to fund the other activities they undertake. In addition, the sale of state land avoids the government having to spend money to administer and maintain that land. Lands can also produce additional revenue from the jobs, and resources and other commodities that use of the sold lands could produce.

Each year LINZ identifies parcels of land which it holds that could be included in an annual “disposal programme.” Land is generally included if the anticipated revenue exceeds the cost of selling the land. In LINZ’s case, each year government, through an agreement between LINZ and its Minister, sets a revenue target that the agency is required to achieve through its disposals. In 2011/12 this revenue target was NZD\$6m (€3.9m). Since 1990 LINZ has disposed of land worth an estimated NZ\$500 million (€320m) and has enabled other government agencies to dispose of over NZ\$1.5 billion (€970m) of land. This process is still continuing.

Examples of disposals undertaken for Strategic reasons include situations where the state’s interest may be of limited financial value and the return on sale will be less than actual disposal costs. However, the state may face significant costs in the future, such as major maintenance which could be significant. Disposal is therefore a realistic and cost effective option as a means of avoiding a future liability.

Sale of a property might also be in the public interest. For example, a local authority council was concerned that a large vacant site owned by LINZ was not available for development and was hindering the economic growth of the community. LINZ was able to make the site available to enable the council to take advantage of an opportunity for a major retail development. Similar situations can occur where state land lies vacant and either the local authority or developers wish to see it put to some economic use.

3.2 The disposal process in New Zealand

In order to dispose of state land, New Zealand agencies must comply with a range of requirements set by law and government direction. These may include:

- deciding whether to use the land for conservation purposes (protection of natural habitats or wildlife),
- offering the land back to the person from whom the state acquired the land, or
- offering the land as part of a settlement of historic claims against the state to the Māori tribe (iwi).³

³ These last two items are discussed in more detail in the paper “*Return of State Land in New Zealand – Offer Back and Treaty Claim Settlements*” presented by the author at the FIG Working Week 2011. A copy of the paper is available at <http://www.fig.net/pub/fig2011/techprog.htm>

In many cases, state land may be acquired by another state agency, or purchased by a former owner or Māori before the land is offered for sale on the open market. In order to achieve the best price, most disposals on the open market are undertaken through a public tender, auction or other competitive process to ensure the widest possible market for the land. Advice from a valuer is usually obtained to determine the expected market value for the land.

The terms and conditions for state land disposals are usually based on normal private sector practice. In most cases, private sector industry-standard commercial agreements are used as the contract between the state and the purchaser. However, specific conditions may be required to reflect the fact that the land is state-owned, or the need for any residual state interest. LINZ sets standards for the disposal of such land, and for state agencies LINZ will sign most sale and purchase agreements on behalf of the Crown.

4. ISSUES

The reforms of the 1980s-1990s significantly changed how state land was dealt with in New Zealand. While these reforms were only a small part of wider changes in government, they led to a completely different approach to dealing with state land. This has not been achieved without issues arising. The disposal of state land has at times been highly contentious, particularly where there is public interest in the land being sold. Parties such as Māori or community groups have taken court action to stop state land being sold by challenging the decisions made by state agencies or Ministers. In other cases, state land has been occupied by protestors or public campaigns have been waged to keep land in state ownership. Occasionally such action has led to a change in the law or specific protections being put in place for a property.

The public see state land as not just a financial asset, but something that benefits the community and should be retained in perpetuity. There may be demands for different uses of and, such as providing public access or retaining it for conservation use. Decisions on why land is being sold have had to be defended in the media or through the courts.

Not all state agencies will have employees who are knowledgeable in land matters. While state land is a critical enabler for many agencies (such as providing land for schools, defence sites, health facilities), management of that land is not core business for most agencies. In some instances they may be holding land that they no longer need to own. Across government as a whole, the operational costs of managing land may be higher than they need to be due to lack of specialist capability and economies of scale.

5. LEARNINGS

5.1 Disposal of state land is different to the sale of private property

While state land can be seen like other property as a commodity to be bought and sold, it is important to recognise the differences between state land and private land. As noted above, there is likely to be significant interest from the public in how the state deals with its land, usually more-so than for a comparable area of privately-owned land. Disposal of state land

can be politically contentious. Communities may have a view on how such land should be used and these views may be expressed through the political process. Also, there may be calls for transparency in how the state spends public moneys and it is important that the expenditure of public money on the disposal of state land can be justified.

The characteristics of state land may also be different. Information on the use of the land may be incomplete. In some cases, state land may not have been defined by survey in the cadastre or not be entered in any land registration system. Historic uses of the land for heavy industry or infrastructure may create issues of contamination or other concerns that need to be addressed, possibly before disposal.

5.2 Specific laws applying to state land need to be identified and understood by those undertaking disposals

There may be specific legal or government requirements that only apply to state land. In New Zealand, the rules for disposals of state land are set out in legislation such as the Public Works Act 1981 or Land Act 1948 or through policy requirements set by Ministers. These place specific requirements on the state that do not apply to private landowners. Non-compliance with these legislation, usually through lack of knowledge of the requirements, has led to courts ruling against the state and awarding damages to third parties (such as former owners, lessees or others with interests in the land).

It is important, before embarking on a disposal, to clearly identify the laws and other requirements that apply to the land, and ensure that these are complied with. These requirements may change over time; new legislation or government policy may affect whether and how land is disposed of. Care is required to ensure that everyone dealing with a disposal is fully aware of the current requirements. This requires training of staff and others involved in the disposal.

5.3 Disposals should occur within a clear and transparent framework

Enacting specific laws for the acquisition, management and disposal of state land can promote transparency and consistency in how the state deals with its land, and can protect the public interest and the rights of individuals that the state either purchases land from, or sells land to. This legislation can also set out who within government is responsible for making decisions about disposing the land, or has the power to sign sale contracts. In New Zealand, this decision-making rests with either the Minister or chief executive of the agency selling the land. While these powers may be delegated to state agency staff, there is still clear accountability for all decisions that are made in respect of these state assets.

These legal requirements and other information should also be available as widely as possible, so that all state agencies and their employees and contractors are aware of the rules that govern their actions. As a regulator of how other state agencies deal with their land, LINZ produces standards and guidelines setting out the processes state agencies need to consider when disposal is contemplated in order to comply with the law or Government policy requirements. These documents are available on the LINZ website and LINZ works with

agencies to build up their knowledge of what needs to be done to manage state land successfully.

In addition to legal requirements, it may be useful to develop objectives or strategies for disposal of land. The state may no longer require land for a wide range of reasons, including:

- obtaining revenue to fund state activities or repay debt
- consolidating its land holdings into fewer and/or larger areas to enable state resources to be better deployed
- freeing up land to the private sector to enable economic growth.

Clearly documenting the reasons the state is selling land enables accountability and the ability to measure whether a disposal programme has been successful.

While formal policies on when land will and will not be sold assists decision-making it is important to note that these policies should not be so bureaucratic or rigid as to discourage flexibility in how state land is dealt with or prohibit any discretion in decision-making (provided this discretion is exercised within proper accountability mechanisms).

5.4 A long-term disposal programme can assist with planning

The impetus to sell land to gain revenue for the state invariably influences the properties that are selected for the disposal. Priority may be given to selling land that would achieve an immediate and significant financial return, or which are easier to dispose of. For example, LINZ's initial revenue targets in 1996 were NZ\$25m (€16m). Priority was given to high value properties that were relatively easy to sell. As the portfolio of state land rarely increased, this meant that many of the more valuable or attractive properties were sold early in this process. This left a significant portfolio of land that was of lower value, and required more preparation for disposal. In 2012 LINZ's revenue target is \$NZ 6m (€3.9m), partly as a result of the greater difficulty in preparing land for sale and the lower value of what remained in state ownership. In some cases, the properties still held may cost more to sell (through survey requirement, raising of titles and addressing historic issues) than the actual revenue that can be realised.

However, this is not to say that this land should not be disposed of. By taking a longer-term view, it is important to identify what the holding costs of such land might be. If a piece of land is low value, but needs significant expenditure on maintenance in the future (e.g. to remove derelict buildings), it may be more effective to dispose of the land now and incur a loss, rather than have to spend money while it is in state ownership.

Planning for disposal of state land should be done on a rolling basis. That is, land should be identified and considered for disposal in later years and a clear strategy for how to prepare that land for disposal should be undertaken, subject to available funding. LINZ records the properties that may be economic to sell in the future or where a member of the public has expressed an interest to purchase. This information is reviewed annually to establish which of those properties should be selected in a disposal programme.

LINZ also keeps its land holding under constant review to meet present and future requirements, with a few to disposing of land that is not needed as soon as possible. Unexpected issues may arise with some properties that prevent them being disposed of. Other properties may need to be substituted to meet the targets for the year. Primarily, the LINZ disposal programme is risk-based, in that the properties are continually reviewed and any risks are identified. This informs the decision-making about whether the state should keep the land, and if not, identify any actions that must be taken before disposal can occur.

5.5 Obtaining good information on each parcel of land is vital

In many cases records on state land may be incomplete. Much of the land that LINZ holds may have been state owned since the nineteenth century. Over time the records about the land have become fragmented and are now often difficult to locate. For example, records on which agency owns a parcel of state land may be incomplete, leading to disputes over who controls the land and can make decisions on its future. Alternately, there may be contamination or other hazards present on land, or obligations that the state has entered into in the past that affect disposal.

In 2005, LINZ inspected all the properties it administered to identify and assess any risks which may be present. Action was taken to address any immediate risks, and the information from this exercise informs the day-to-day management of the land and any decisions on disposal. LINZ now undertakes a due diligence exercise on a property before deciding to sell it. This is to identify the details of the land, its physical characteristics, any historic information that may affect the decision, and the potential uses for the land. Where possible, LINZ aims to dispose of land to enable its best use. This system was based on that used in states in Australia, such as New South Wales⁴ and Tasmania.

Some properties held by the state may be in poor condition or pose a risk to others. The risks to the state from continuing to own a property may be able to be minimized or the risk transferred to a third party who is prepared to take responsibility in the future for the risk. For example, a purchaser may be prepared to take responsibility for land with contamination in exchange for paying a price that takes that contamination into account.

Part of this process also involves assessing the uses that the land can be put to. The possible uses will depend on the type of land, its location and physical characteristics. It is important to note that there may be more alternative uses. In the mountainous areas of the South Island, LINZ administers a large area land that is leased for pastoral farming. This land has both natural values and economic use. Through a statutory and public consultation process called tenure review, LINZ reviews the land and makes decisions about what land can be sold and what should be retained and added to the conservation estate administered by DOC.

⁴ See http://www.lpma.nsw.gov.au/crown_land/assessments for details on the New South Wales approach to assessing land.

Gathering as much information as possible and assessing the land enables a fully informed decision on whether disposal of the land is the best option and, if so, whether any specific actions are required to protect any public interest in the land.

5.6 Robust and transparent decision-making is appropriate

As noted above, there may be significant interest in state land and decisions about its future. Such decisions may be open to public challenge, litigation or other scrutiny. It is important to ensure that the decisions made can be easily identified and justified if such challenges occur. LINZ has a documented decision-making process for the high-risk decisions made on its land. This includes requirements for record-keeping and advice to decision-makers on what high-risk issues may exist with a particular disposal.⁵ This is particularly important where the people making the decisions are relying on work being undertaken by others, including private sector contractors.

State agencies should consider documenting their decision-making on such land and have a process for reviewing and assuring the quality of any reports from the private contractor (including getting independent technical advice if necessary).

5.7 Financial reporting systems can assist with disposals...

State land is an important commercial asset. In New Zealand, the introduction of accrual accounting has required state agencies to deal with land as a commercial asset, to plan for the future of the land and make decisions as to the long-term need to retain such land. Each property is recorded as a separate entry on an agency's asset register (the Crown balance sheet), with an assessed or estimated market value. Regular reporting is required for this land and where it is disposed of, the land is removed from the agency's financial records.

Managers are able to make decisions on the future of their properties by knowing the value, the future requirements and the potential future management costs. Any disposal of land must be accounted for, and where possible the recorded value of the asset realized (or any "loss on sale" be financially accounted for and approved by government). Statutory and government policy requirements to achieve fair market value for all state assets have also been good drivers as it encourage open and transparent sale processes.

Use of accrual accounting or other financial systems can encourage consistent and transparent disposal of land, in accordance with international best practice in terms of asset management.

5.8 ...as can good electronic record systems

⁵ See Trevor Knowles, *State and Public Sector Land Management in New Zealand: An Outline of the Background and Administration Processes*, paper to FIG/FAO/CNG International Seminar on State and Public Sector Land Management, Verona, Italy, September 9-10, 2008, http://www.fig.net/commission7/verona_fao_2008/proceedings.htm

Having a computerised record of all land managed by a state agency has enabled better management of that land. This is due to having clear, easy to access information on each parcel (such as location, legal description, area) and being able to immediately see any leases or licenses or management issues. LINZ's current system is also linked to its finance system. This enables integrated and one-step recording of transactions on land (such as additions and disposals), which makes accrual accounting easier.

As with any database, it is important to ensure that the information is complete and as up to date as possible. Integrating the database with a GIS tool (to better identify property boundaries and location and enable easier searching for specific land parcels) and any relevant information in an electronic document and paper file management systems would also provide benefits to land management. It also enables accurate records to be kept of the disposal process undertaken. In September 2012 LINZ will initiate a new electronic land management system in conjunction with the Department of Conservation. This system will record the over 40% of New Zealand's land area administered by the two agencies.

5.9 A developed private sector real estate industry can assist state agencies

Outsourcing operational disposal work (such as investigations, arranging marketing) to the private sector has enabled state agencies to achieve savings, reduce staffing levels, while maintaining efficient management of land assets and retaining responsibility and authority for the land with the state. The private sector can bring commercial property experience, and many of the activities which can be contracted out (such as facilities management, tendering, leasing or licensing) mirror those in the private sector. However, this requires a strongly developed private property sector. There are also a number of best practice requirements, including:

- open, transparent and competitive tendering processes,
- assessment that the private sector applicants have the skills, competencies and systems in place to manage state land,
- clear contract specifications that set out the term, the services to be provided, and the measures by which performance will be judged,
- recognition that state land is different than commercial property in some aspects,
- clear information and reporting lines to ensure that the state agency is aware of what is happening on its land, and
- the state agency should document its decision-making on such land and have a process for reviewing and assuring the quality of any reports from the private contractor.

5.10 Retention of knowledge on state land is crucial to long-term success

In most cases, the state will continue to own significant areas of land. Those dealing with state land now and into the future will need to maintain a level of knowledge and expertise that enables the state agency to make good decisions on the land. As staff change, some of this 'institutional knowledge' can be lost. LINZ is currently developing a training programme in conjunction with private sector industry groups, to ensure that basic knowledge of state

land continues in to the future. In addition, the use of electronic record systems will also help retain key information about state land.

Even where much of the work is outsourced it is still important for state agencies to retain staff who have a good understanding of the issues associated with state land, and how government processes may influence decisions on land.

5.11 Development of internal and external training initiatives can maintain knowledge

A key issue for LINZ in the last few years has been ensuring that the intuitional knowledge (the information held by the state employees dealing with the land) is retained. Due to a reduction staff and an aging workforce, many of the technical experts in state land management are retiring or leaving state sector. New staff members, most of whom have backgrounds in the private property industry, are coming in with only a rudimentary knowledge of the particular issues surrounding state land. In addition, there is no educational qualification in state land management and most new workers have to learn how do the work as they do it.

To help correct this, LINZ has partnered with a private property industry professional body to develop training modules in state land management and disposal. In addition, LINZ has commenced recording information on state land issues electronically, on an internal website, much like an internal Wikipedia, to enable staff to search and identify particular key technical information. This will be combined with a formal mentoring and training process to pass knowledge from the technical experts to new staff. It is hoped that these initiatives will help retain knowledge on state land matters within government, provide initial training for new staff, and help maintain the skills of the private sector contractors working for the state.

5.12 All disposals should be informed by independent market valuation advice

Setting the expected price for a disposal relies on having good information on what the market value of the land is likely to be. In New Zealand, this is achieved by obtaining a valuation of the land before sale, from an independent, private sector registered valuer.⁶ This indicates the potential current market value of the land and gives LINZ a benchmark to consider bids for the land from prospective purchasers. This independent advice may also identify issues with the land that may not have been picked up by LINZ's previous due diligence work (see 5.5 above). LINZ also uses this information to update its asset register and project potential future revenue.

It is important to keep this information up to date. LINZ ensures that the valuations it obtains are periodically updated, usually with the valuation being no more than between three to six months older than the proposed disposal date. This is to ensure that any changes in the possible market for the land are identified.

⁶ Since 1998 state agencies have outsourced valuation work to private sector valuers.

Bids for state land which are significantly below the assessed market value should not be immediately accepted. Such bids might indicate that the market conditions the state's valuer assessed are incorrect, however, they may also be an effort by the bidders to undersell the value of the land to obtain it for a bargain. Where this occurs state agencies should seek additional advice if necessary before proceeding further with the disposal. State agencies should not sell land if the possible revenue is significantly less than what the state agency's independent advice says it is worth.

5.13 Sale by an open, competitive process is more likely to obtain the best price

There are a number of different methods by which land can be sold. These can include:

- sale by informal bidding process, such as for residential properties, concluded by a private sale agreement between the state and the successful purchaser,
- auctions where prospective purchasers bid against each other publicly and the highest bid is accepted
- tenders where prospective purchasers submit sealed bids for the land individually to the state agency and the best bid is selected.

Which method is appropriate will depend on the nature of the land and an assessment of what the market will respond to obtain the best result. Whichever method used should be documented to formalize the sale process and create certainty for all parties bidding for the land that they will be treated fairly and consistently.

Selling land on the open market, through a competitive process such as an auction, tender, or public listing is likely to achieve a greater return than disposal to a particular party. This is of course due to the competitive nature of such processes. It also enables the state agency to accept the highest bidder and turn down offers that do not meet the anticipated sale price. It also enables the state to demonstrate that it has obtained an open market value. As an example LINZ enabled use of an area of land following the expiry of a lease. The holder of the expired lease was a bidder for the land, however, the competitive tender process obtained a revenue three times higher than what the ex-lessee had bid, for the same proposed activity.

6. CONCLUSIONS

State land is a national resource that can provide benefits economically, socially and environmentally. As a finite resource it is important to have a robust management and decision-making regime as to how that resource should be allocated. This regime should be able to demonstrate that decisions on how that land is disposed of are not arbitrary, but are transparent, consistent and accountable.

Hard decisions on balancing commercial and environmental considerations may be required. This is aided by using all available information on the land to fully inform those decision-makers, and having the support mechanisms, such as financial systems and mechanisms for knowledge retention. Once a decision to dispose of land is made, open sale processes provide

the double benefit of usually achieving the best price, and reducing the potential for allegations of improper dealings in land.

REFERENCES

- Craig Harris, “*Return of State Land in New Zealand – Offer Back and Treaty Claim Settlements*” presented by the author at the FIG Working Week 2011
<http://www.fig.net/pub/fig2011/techprog.htm>
- *LINZ Statement of Intent 2012-2015*:
<http://www.linz.govt.nz/sites/default/files/docs/supporting-info/publications/statement-intent/statement-intent-2012-2015.pdf>
- S D Brown, *Presentation on the Crown’s Historic and Contemporary Involvement with Land And Property in New Zealand*, Presentation to Auckland University, May 2000.
- Standards for Disposal of land under the Public Works Act 1981 at www.linz.govt.nz
- Standards for Treaty settlement requirements for disposal of Crown owned land at www.linz.govt.nz
- Trevor Knowles, *State and Public Sector Land Management in New Zealand: An Outline of the Background and Administration Processes*, paper to FIG/FAO/CNG International Seminar on State and Public Sector Land Management, Verona, Italy, September 9-10, 2008,
http://www.fig.net/commission7/verona_fao_2008/proceedings.htm

BIOGRAPHICAL NOTES

I have worked in the Crown property area at the Department of Survey and Land Information and LINZ since 1995, in both operational and regulatory roles. In 1999, I was part of an interagency team charged with reviewing the Public Works Act 1981 and Land Act 1948, and I am currently on a similar team reviewing the compensation provisions of the PWA.

Following a period as advisor to the Minister of Lands, I was appointed manager of LINZ’s Crown Property Regulatory team. My team is responsible for administration of the PWA, setting standards and guidelines for the acquisition and disposal of land by Crown agencies under the PWA and Land Act 1948, and Treaty claim settlement legislation. In 2012 I was appointed Deputy Commissioner of Crown Lands in addition to my existing roles.

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