



20 April 2021

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Tēnā koe Ms Willis

GOVERNMENT PURCHASE OF LAND AT IHUMĀTAO

Background

Thank you for your letter dated 16 March 2021, requesting that I inquire (under section 18 of the Public Audit Act 2001) into the use of public money to purchase the land at Te Puke Tāpapatanga a Hape (commonly referred to as Ihumātao).

You raised a concern that there has been a potential misuse of Government money intended for the “Land for Housing Programme”. Specifically, you are concerned that:

- \$29.9 million of the appropriation for that Programme has been used to purchase the land at Ihumātao from Fletcher Residential Limited;
- the use of that amount was outside the appropriation for that Programme; and
- accordingly, the use of the money for the purchase may be an unlawful use of public money.

As you will be aware, issues about whether expenditure is lawfully incurred are managed as part of my Controller role as well as my role as the auditor of government departments. We work closely with the Treasury on these issues.

To further understand the concern you have raised, we asked the Treasury and the Ministry of Housing and Urban Development (the Ministry) to provide us with more information about the payment, including how the payment was intended to be authorised.

The Land for Housing Programme and the KiwiBuild Housing appropriation

In Budget 2018, Parliament authorised the establishment of a multi-year appropriation under Vote Building and Housing for KiwiBuild Housing, to expire on 30 June 2022. The scope of that appropriation was limited to “the acquisition, construction and provision of KiwiBuild dwellings”.

On 1 October 2018, a new Vote was established (Vote Housing and Urban Development) to coincide with the establishment of the new Ministry of Housing and Urban Development. The KiwiBuild Housing appropriation was transferred to the new Vote. Land purchases for KiwiBuild Housing under the Land for Housing Programme have been authorised under the KiwiBuild Housing appropriation.

New appropriation for the Ihumātao land purchase

As you note in your letter, the Treasury advised Ministers that, in its opinion, the proposed Ihumātao transaction did not fit with the Land for Housing Programme's intent and, moreover, that there was a risk that the expenditure on the land purchase would not fit within the appropriation scope of the KiwiBuild Housing appropriation.

On 3 February 2021, the Ministry asked the Minister of Finance and the Minister of Housing to approve the establishment of a new appropriation, Te Puke Tāpapatanga a Hape (Ihumātao), within Vote Housing and Urban Development. The scope of the new appropriation described in that request was to be limited to "the purchase of land at Te Puke Tāpapatanga a Hape (Ihumātao) through the Land for Housing Programme for housing and related purposes".

On 9 February 2021, the Ministers agreed to the establishment of the new appropriation for \$29.9 million and delegated authority to the Ministry to sign the sale and purchase agreement. The Ministry signed the sale and purchase agreement on 11 February 2021, and the transaction was settled on 17 February 2021.

Imprest supply

Whenever the Government wishes to incur expenditure on items not covered by existing appropriations in the Budget for the year,¹ the administering department is required to seek approval to:²

- establish a new appropriation (through the next Appropriation (Supplementary Estimates) Bill); and
- incur expenditure in the meantime under the authority provided by Parliament through the Imprest Supply Act.

These are standard requirements, which are met in the great majority of cases when new spending authorities are sought during the year.

However, in this instance, the Ministry made two errors in the approval document for the new appropriation:

1. It omitted to request approval to use the necessary authority from Parliament available under Imprest Supply; and
2. It omitted to request that the new appropriation be included in the next Appropriation (Supplementary Estimates) Bill.³ This approval is needed because Imprest Supply provides only interim authority.

In my Controller role, my Office works with the Treasury to routinely monitor public expenditure against appropriations. As part of that work, the Treasury alerted us, on 12 March 2021, to the errors in authorising the expenditure for the land at Ihumātao, as noted above.

Our conclusion

In our view, the intent of the document prepared by the Ministry, and the intent of the joint Ministers, was to establish a new appropriation that would provide authority for the purchase of the land at Ihumātao. However, as described above, there were two important omissions from the approval for the expenditure. As a result, the payment of \$29.9 million used to purchase the land was incurred without the proper authority.

¹ And as enacted in the latest Appropriation (Estimates) Act.

² Approval must be given by Cabinet or, for fiscally neutral transfers, by the relevant appropriation Minister and the Minister of Finance ("joint Ministers").

³ Inclusion in the Appropriation (Supplementary Estimates) Bill ensures that Parliament appropriates the expenditure before the end of the financial year, when the Imprest Supply authority expires.

To summarise, the concern you raised (that the Government unlawfully used the KiwiBuild Housing appropriation to authorise the land purchase) did not eventuate. The expenditure was unappropriated for a different reason. Because the Ministry did not seek the correct approvals, the expenditure was incurred without appropriation and without authority to use imprest supply. For these reasons, the payment is unlawful until validated by Parliament as part of an Appropriation (Confirmation and Validation) Act.

There are standard procedures, as part of our Controller work, for dealing with unappropriated expenditure such as this:

- We will confirm, through the Ministry's auditor, the amount of expenditure incurred without appropriation.
- The Ministry is required to report the unappropriated expenditure in its annual report for 2020/21,⁴ and we will audit that report.
- The Government is required to report the unappropriated expenditure in the *Financial Statements of the Government of New Zealand for 2020/21*,⁵ and we will audit that report.
- The Minister of Housing is required to explain the matter to the House of Representatives and seek validation of the expenditure from Parliament through the Appropriation (Confirmation and Validation) Bill for 2020/21.⁶

I do not intend to carry out further inquiry work into this matter as it will be addressed in the normal course of my Controller work.

Thank you for taking the time to write to me and bringing your concerns to my attention. A copy of this letter is being sent to the Ministry of Housing and Urban Development and to the Treasury. Given the public interest in this matter, I intend to also publish this information on our website.

Nāku noa, nā



John Ryan
Controller and Auditor-General

⁴ Section 54A(c) of the Public Finance Act 1989.

⁵ Section 27(2)(c)(ii) of the Public Finance Act 1989.

⁶ Section 26C of the Public Finance Act 1989.