

BRF 24-304 Addressing land acquisition challenges under the Public Works Act 1981

Ki / To: Hon Chris Penk, Minister for Land Information

Rā / Date: 23 February 2024

Ngā mahi matua kia mahia/key actions required

Minita/Minister	Key action required: Agree/note/forward	Deadline when this action should be completed by
Hon Chris Penk, Minister for Land Information	Āmine/Agree to LINZ providing you with further advice on legislative and operational changes that would create efficiencies in the Public Works Act land acquisition process for projects that are fast-tracked under the Fast Track consenting regime, including agreeing to a 3-month review of practices and further advice on making changes to the PWA on a parallel track to the fast-track process.	1 March 2024
Minister Chris Penk, Minister for Land Information	Me tuku-whakamua/Forward to Hon Chris Bishop, Minister for Infrastructure, Hon Simeon Brown, Minister of Transport and Minister for Energy	23 February 2024
Hon Chris Bishop, Minister for infrastructure	Āmine/Agree to LINZ providing you with further advice on legislative and operational changes that would create efficiencies in the Public Works Act land acquisition process for projects that are fast-tracked under the Fast Track consenting regime, including agreeing to a 3-month review of practices and further advice on making changes to the PWA on a parallel track to the fast-track process.	1 March 2024
Hon Simeon Brown, Minister of Transport and Minister for Energy	Āmine/Agree to LINZ providing you with further advice on legislative and operational changes that would create efficiencies in the Public Works Act land acquisition process for projects that are fast-tracked under the Fast Track consenting regime, including agreeing to a 3-month review of practices and further advice on making changes to the PWA on a parallel track to the fast-track process.	1 March 2024

Toitū Te Whenua Land Information New Zealand Whakapā/contacts

Ingoa/Name	Tūnga/Position	Nama waea/ Contact number	Whakapā tuatahi/first contact
Amanda Moran	Head of Strategy and Policy	027 462 8250	<input checked="" type="checkbox"/>
Stacey Newlands	Leader, Strategy and Policy	04 460 0309	<input type="checkbox"/>

Ngā kōrero a te Minita/Minister's comments

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Pūtake/Purpose

- 1 On 8 February 2024, the delegated Ministers responsible for the Fast Track Consenting (FTC) Bill agreed that Toitū Te Whenua Land Information New Zealand (LINZ), working with the Ministry of Transport (MOT), Ministry of Business, Innovation and Employment (MBIE) and three delivery agencies (New Zealand Transport Agency (NZTA), KiwiRail and Transpower) would provide advice to the Minister for Land Information, the Minister for Infrastructure, and the Minister of Transport on:
 - the challenges raised by the Public Works Act 1981 (PWA)
 - potential options for resolving these and
 - the relationship to a one stop shop process (FTC).
- 2 This briefing provides you with initial advice on these matters, with a focus on the land acquisition process under the PWA.

Pānui whāinga/Key messages

- 3 The land acquisition process under the PWA can be time consuming and complex. This is due to the purpose of the Act, which is to allow the purchase of private land for Crown and public authority projects, including by compulsion.
- 4 Working with NZTA, KiwiRail and Transpower (the delivery agencies), LINZ has identified a range of changes that could be made to address these issues. Delivery agencies have also raised other potential changes which LINZ needs to explore further. Appendix 1 sets out these options. This will include exploring alternative approaches to the current Environment Court objection pathway for compulsory acquisition. [s 9(2)(h)]
- 5 In that context, LINZ proposes changes to the PWA that occur in parallel with the one stop shop FTC process. This could still mean making use of the FTC Bill process where legislative change is required. LINZ will work with Ministry for the Environment (MfE) to ensure the Bill has sufficient scope for this to occur.

Tohutohu/Recommendations

Toitū Te Whenua Land Information New Zealand recommends that you:

Hon Chris Penk, Minister for Land Information

- | | | |
|---|--|-------------------------|
| 1 | Me mātai/Note that initial scoping work has identified proposals that may be suitable to address challenges with land acquisition processes under the Public Works Act (as detailed in Appendix 1). | <i>Noted</i> |
| 2 | Āmine/Agree to LINZ providing you with further advice on legislative and operational changes that would create efficiencies in the Public Works Act land acquisition process for projects that are fast-tracked under the Fast Track consenting regime, including | <i>Agree / disagree</i> |

agreeing to a 3-month review of practices to speed up processes, and further advice on making changes to the PWA on a parallel track.

- 3 **Me tuku-whakamua/Forward** to Hon Chris Bishop, Minister for Infrastructure and Hon Simeon Brown, Minister of Transport and Minister for Energy *Forward*

Hon Chris Bishop, Minister for Infrastructure

- 4 **Me mātai/Note** that initial scoping work has identified proposals that may be suitable to address challenges with land acquisition processes under the Public Works Act (as detailed in Appendix 1). *Noted*
- 5 **Āmine/Agree** to LINZ providing you with further advice on legislative and operational changes that would create efficiencies in the Public Works Act land acquisition process for projects that are fast-tracked under the Fast Track consenting regime, including agreeing to a 3-month review of practices to speed up processes, and further advice on making changes to the PWA on a parallel track. *Agree / disagree*

Hon Simeon Brown, Minister of Transport and Minister for Energy

- 6 **Me mātai/Note** that initial scoping work has identified proposals that may be suitable to address challenges with land acquisition processes under the Public Works Act (as detailed in Appendix 1). *Noted*
- 7 **Āmine/Agree** to LINZ providing you with further advice on legislative and operational changes that would create efficiencies in the Public Works Act land acquisition process for projects that are fast-tracked under the Fast Track consenting regime, including agreeing to a 3-month review of practices to speed up processes, and further advice on making changes to the PWA on a parallel track. *Agree / disagree*



Stacey Newlands
 Kaiarahi / Leader – Strategy, Policy, and
 Design

**Toitū Te Whenua Land Information New
 Zealand**

Rā/Date:

Hon Chris Penk
Minister for Land Information
 Rā/Date:

Hon Chris Bishop

Minister of Housing

Minister for Infrastructure

Minister Responsible for RMA Reform

Rā/Date:

Hon Simeon Brown

Minister for Energy

Minister of Local Government

Minister of Transport

Rā/Date:

Tāpiritanga/Attachments

Appendix 1: Detailed information on PWA delay areas.

Appendix 2: Flowchart of the PWA acquisition process.

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The Public Works Act (PWA) 1981

- 6 The Public Works Act 1981 (PWA) provides the statutory power for the Crown and local authorities to acquire land from private landowners for government and local public works. This enables the delivery of critical infrastructure such as roads, housing, schools, water services and electricity transmission.
- 7 The PWA aims to balance the fundamental tension between the property rights of private landowners with the Crown's ability to enable public works to go ahead. Although the scope of the PWA is broader, this briefing is focussed on land acquisition. LINZ can provide separate advice to the Minister for Land Information on options to streamline processes in the full PWA if desired.

How the PWA operates

- 8 The PWA sets out the process for land acquisition. The majority of land acquisitions are concluded by negotiation with landowners. Issuing statutory notices under the PWA often encourages landowners to complete negotiations.
- 9 To acquire land, the Crown enters negotiations with landowners in the first instance to try to reach agreement. Under current practice, landowners are advised in writing of the need to acquire their land. Formal notices may also be given during negotiations. At a minimum the Crown must endeavour to negotiate in good faith for a minimum of three months after the formal notice of desire to acquire land.
- 10 If the property cannot be acquired by agreement, the Crown can move to acquire land by compulsion. Some PWA timeframes depend on the behaviour of individual landowners, as any single landowner has the right to pursue actions appropriate to them. The Crown pays for all reasonable professional costs such as valuation and legal fees to ensure that landowners have the opportunity to seek independent advice on the process.
- 11 Landowners have the right to object to the taking of their land if the Crown commences a compulsory acquisition process. Landowner objections to compulsory acquisition of their land are heard by the Environment Court. More detail on the PWA process is included in Appendix 2.

Using the process

- 12 The Crown concluded 931 land acquisitions since 1 July 2018. The majority (913) were resolved through agreement with the landowner. In 247 of those cases the Crown started compulsory land acquisition processes but ultimately concluded negotiations by agreement. In 18 cases land acquisition was concluded by compulsion (the Governor-General issuing a Proclamation taking the land).
- 13 Compulsory land acquisition and objection processes can take up to 2 years (where an objection to the Environment Court is made), but this is unusual. Only 12 objections to compulsory land acquisition were made in the last five and a half years, and not all of these

resulted in the full objection being completed (as an owner may have withdrawn their objection if they subsequently reached agreement with the Crown).

Challenges with the PWA and potential options

- 14 The overarching concern of the delivery agencies is the time it takes for the PWA to be applied when infrastructure proposals require private land. This applies to acquisition by agreement and compulsory acquisition. Delivery agencies find PWA acquisition processes to be slow and complex and a barrier to the delivery of infrastructure, especially when delivering at pace.
- 15 The delivery agencies have suggested options to amend the legislation, including exploring changes to the current Environment Court objection pathway, as well as changes to operational practices to improve certainty and time frames for land acquisition processes. LINZ agrees that work should occur on these options and will work with other agencies on ways to further develop options that support the faster delivery of nationally or regionally significant infrastructure. These options are discussed in Appendix 1.
- 16 Many of the issues involve balancing competing interests between delivering public infrastructure and private property rights. Specific areas of acquisition, particularly notification and negotiation timeframes, and compensation and objection processes, have greater impact on property rights and the existing PWA process in these areas aims to preserve both natural justice and equitable outcomes for the Crown and landowners.

Other parties in the PWA process

- 17 Other agencies acquire land using the PWA process – for example, regional and territorial councils, Fire and Emergency New Zealand (FENZ) and universities (included in the definition of “local authorities” under the PWA). For example, in the period since 1 July 2018 the Governor-General issued 68 Proclamations for compulsory acquisition from local authorities, compared with 18 for central government. They will have an interest in any changes to the PWA, as that will directly affect their operations. LINZ considers it would be beneficial to engage with these agencies.
- 18 The current FTC policy decisions have excluded Māori Land or land returned as part of a Treaty Settlement from the FTC process. We have also taken this approach as part of the PWA work.

Relationship with the one stop shop (FTC) process

- 19 The one stop shop (FTC process) is to support the faster delivery of nationally or regionally significant infrastructure. The key purpose of the PWA is to procure land for public works, including infrastructure and national and regional development projects. This means there is significant overlap.
- 20 LINZ proposes making changes to the PWA that will occur in parallel with the one stop shop FTC process. This could mean making use of the FTC Bill process where legislative change is required. LINZ will work with MfE to ensure the Bill has sufficient scope for this to occur.

Crown Law advice – legally privileged

21 [s 9(2)(h)]

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Mātanga kōrero/Consultation

- 26 LINZ has worked with the Ministry for Business, Innovation and Employment, the Ministry of Transport and delivery agencies (New Zealand Transport Agency, KiwiRail and Transpower) to develop this advice.
- 27 While there are some areas of agreement, there are a range of views on the options as expressed in Appendix 1.

Ngā Tāwhaitanga/Next Steps and/or angawā/timeframes

- 28 LINZ will continue to work with other agencies to provide further advice on legislative and operational changes that would create efficiencies in the Public Works Act land acquisition process for projects that are fast-tracked under the Fast Track consenting regime.

Next step	Who the work is to be completed by	Date/deadline
Provide further advice on legislative and operational changes that would create efficiencies in the Public Works Act land acquisition process for projects that are fast-tracked under the Fast Track consenting regime, including the compulsory land acquisition objection process.	Land Information New Zealand	27 March 2024

Appendix 1: Detailed information on PWA delay areas

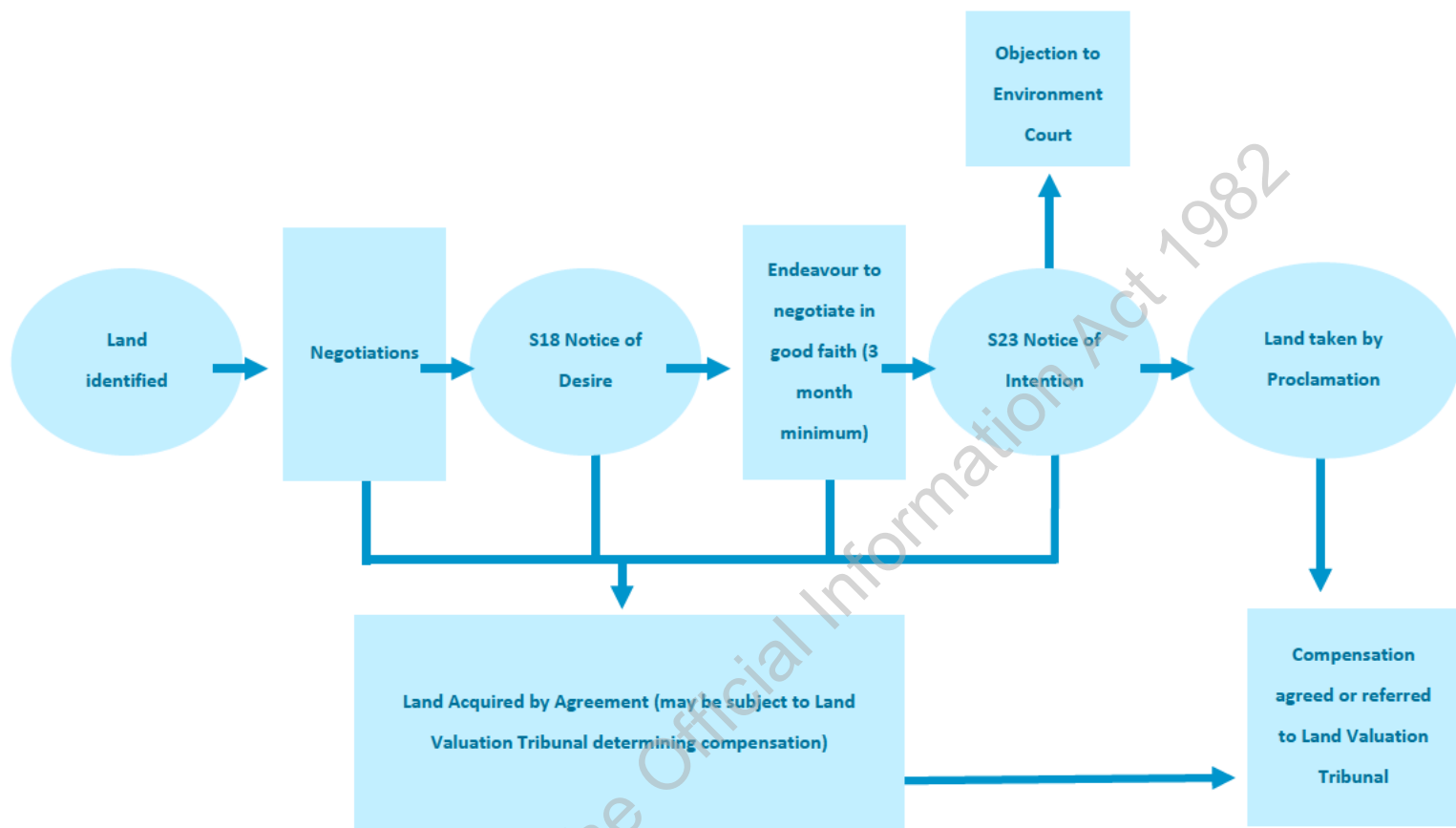
Appendix 2: Flowchart of the PWA acquisition process.

Appendix 1: Detailed information on PWA delay areas (attached)

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Appendix 2: Acquisition process

The acquisition of land under the PWA involves several steps, depending on whether an agreement to sell is successfully negotiated with a landowner and anyone with an interest in the land such as a lease, licence or easement.



The Crown and a landowner can reach a negotiated agreement at any time in the above process, up until when the Governor-General signs a Proclamation.