

## In Confidence

Office of the Minister for Land Information

Cabinet Economic Policy Committee

### Initiating a review of the Public Works Act 1981

#### Proposal

1 This paper seeks agreement to a review of the Public Works Act 1981 (PWA).

#### Relation to government priorities

2 The PWA is a critical mechanism for providing and managing land to support public works. In line with Government commitments, a review of the PWA will help to ensure that it facilitates the delivery of infrastructure and development projects for New Zealand's growth and prosperity.

#### Executive Summary

3 The PWA is critical to enabling land to be acquired for infrastructure and development projects, which this Government has committed to supporting and accelerating.

4 The PWA has not been substantively amended since 1988. I propose to review the PWA to ensure that it addresses issues that have emerged in its land acquisition, compensation, and disposal functions. The review would support and align with broader relevant government priority areas such as infrastructure, housing, and resource management reform.

5 There will be strong public interest in any review and reform of the PWA, which must balance a fundamental tension between the need to provide for public works and the property rights of landowners. Previous reviews have revealed a considerable interest in enhancing the PWA's protections of the property rights of Māori landowners.

6 Due to the PWA's significant powers and the level of public interest, a review would benefit from broadly considering the views of affected stakeholders. I propose external consultation ahead of final policy decisions and will report back to Cabinet, seeking agreement to invite public submissions on a discussion document.

7 I propose a broad set of criteria to inform the review process, to capture and consider the full range of effects of any changes to the PWA. These criteria are efficiency and clarity of processes, modernisation to align these processes with current context and practice, future-proofing and coherence within the wider land system and to address challenges, and due process around landowner property rights.

## Background

### *The Act provides land for public works, including critical national and local infrastructure*

- 8 The PWA provides powers to enable land to be acquired for delivering public works, such as roads, schools, defence works, and water services. Key users of the PWA include Crown and local authority entities (for example NZ Transport Agency, the Ministry of Education, councils, and universities), and network utility operators.
- 9 **Attachment 1** outlines the users of the PWA and the processes it sets for how land is acquired, compensated for, and disposed of when no longer required for works. Acquisition processes consist of negotiations, issuing notices, and, if necessary, compulsory acquisition. The Crown and local authorities attempt firstly, and wherever possible to reach acquisition by agreement. More than 95% of Crown acquisitions occur this way.
- 10 The PWA allows landowners to raise objections with the Environment Court prior to compulsory acquisition and guarantees full compensation, on the principle that landowners should be no better or worse off following an acquisition. When land is no longer needed for public works, the Crown or local authorities must offer the land back to its former owners or their successors, unless exceptions apply.

### *Despite a changing landscape and previous reviews, the PWA has not been substantially amended since the 1980s*

- 11 Overall, the PWA delivers for public works, while not significantly affecting private landowners' confidence in property rights. However, processes under the PWA can be lengthy and inefficient, and issues have emerged due to lack of substantive reform while the environment in which the PWA operates has evolved. This includes changes in the types of works occurring, changes in the types of entities delivering public works, regulatory changes across land systems, a need to accommodate a growing population, and considerations relating to Māori land.
- 12 A comprehensive review of the PWA occurred between 1998 and 2003 and attracted strong public interest, with subsequent and less intensive reviews in 2020 and 2021. Despite this, the PWA has not been significantly amended since 1988. This reflects the difficulties and contentiousness of making legislative changes that relate to property rights and compulsory acquisition powers.

### *Tensions with property rights, including those of Māori, are relevant to the PWA*

- 13 The PWA is critical to providing for core public interests by enabling the delivery of essential works. However, there is an inherent tension between the ability to provide for these works and having processes that uphold the property rights of landowners, which a review must carefully consider.
- 14 Previous reviews have revealed a strong interest for increasing the protections for the property rights of Māori, which the Waitangi Tribunal has recommended. A particular point of contention is that Māori freehold land remains eligible for compulsory acquisition.

*The Fast-track Approvals Bill will change land acquisition objections for some projects*

- 15 A PWA provision is included in the Fast-Track Approvals Bill. The Bill aims to accelerate the decision-making process for nationally and regionally significant infrastructure projects. The PWA provision in the Bill streamlines the process by which the Environment Court considers objections to compulsory acquisitions for FTA projects.
- 16 Any fast-track projects will otherwise follow the existing PWA process. As such, any changes to the PWA through this review will impact and benefit fast-track projects once the review is complete.

**Proposed scope of review**

*I propose to review the PWA focusing on issues and Government priorities*

- 17 There are Government commitments and priorities, especially relating to infrastructure and development projects, for which land acquisition is essential. Additionally, initial analysis by Land Information New Zealand (LINZ) in consultation with other agencies has revealed issues affecting the PWA's efficiency and effectiveness across its land acquisition, compensation, and disposal functions.
- 18 I have considered three high-level approaches to a review of the PWA, progressively increasing in terms of the number of changes they would consider, the extent that they would affect the PWA's existing settings, and their required timeframes:
- 18.1 A targeted review that would modernise specific provisions in the PWA to improve its efficiency and align the PWA with the current context and practice for land acquisition, disposal and compensation
- 18.2 A targeted review as above, extended to consider broader shifts to align with and support Government objectives and priorities under infrastructure, housing and resource management (RM) reform programmes.
- 18.3 A fundamental review that would involve examining the system objectives of the PWA at a first-principles level, and potentially overhauling the framework of the legislation to future-proof the legislation for future challenges.
- 19 I am seeking agreement to a targeted review extended to consider Government priority areas. This approach allows enough scope to resolve efficiency issues and to consider broader shifts in light of Government priorities, while providing changes in a timely manner.
- 20 By contrast, I note that although the PWA has issues, its fundamental structures still permit land to be taken for public works without affecting confidence in property rights. This limits the added value of conducting a fundamental review.

*I propose broad criteria to consider a full range of effects*

- 21 The review should consider a wide range of effects and criteria. I propose that these criteria are:

- 21.1 Efficiency – improving process efficiency and removing unnecessary duplication
- 21.2 Modernisation – aligning the PWA with current context and practice, international best practice, modernising language, and ensuring land system coherence
- 21.3 Clarity – providing transparency for those using and affected by PWA processes
- 21.4 Property rights – ensuring that due process is taken to maintain natural justice for all affected parties
- 21.5 Future-proofing – ensuring the legislation considers future land acquisition challenges
- 21.6 System coherence – considering the future state of land processes in New Zealand, which parties exercise which powers, and the role of the PWA.

*Consultation will confirm the issues that a review would address*

- 22 Initial discussions between LINZ and government infrastructure agencies have revealed some efficiency and effectiveness issues in the PWA's acquisition, compensation, and disposal processes, as well as how these fit with nuances relating to Māori land. Non-exhaustively, a review would consider the following issues:

*Issues relating to acquisitional processes*

- 22.1 Adapting notice requirements. Prior to compulsory acquisition, entities must serve two notices, whereas other jurisdictions require only one.
- 22.2 Enabling greater collaboration between agencies, local authorities, and network utility operators when working on the same projects. Current settings require agencies to go through PWA processes separately, such as each agency having to acquire land for their part of the project individually.
- 22.3 Amending survey requirements, including when a full survey of land to be acquired needs to be completed.

*Issues relating to compensation functions*

- 22.4 Improving incentives for landowners to agree to acquisitions.
- 22.5 Aligning processes with international examples, including modernising dispute resolution and how and when payment occurs.
- 22.6 Addressing how Māori freehold land is valued compared with other types of land tenure during compensation.

*Issues relating to disposal functions*

- 22.7 Clarifying when land is surplus to requirements and ensuring its future use is considered in terms of other potential public works and disposal obligations.

- 22.8 Correcting issues with “offer back” provisions. Complexities have emerged in part due to case law for successors when the former owner has died.
- 22.9 Ensuring that offer back practices align with, recognise, and provide for the multiple ownership structures often associated with Māori freehold land.
- 23 Subject to Cabinet approval, LINZ will work with relevant agencies and external stakeholders to confirm a list of process issues that a review would consider.

*My preferred approach would consider broader shifts relating to Government priorities*

- 24 Under my preferred approach, a review will also consider opportunities to align with and support Government objectives and priorities under infrastructure, housing and RM reform programmes. This may result in shifts that would alter the PWA’s fundamental settings further than addressing targeted issues.
- 25 These fundamental areas would include areas solely within the PWA to support Government objectives, and consideration of whether work programmes across government may benefit from amending or aligning PWA provisions. Examples of these types of matters include:

*Broader shifts under the PWA to support Government objectives*

- 25.1 Supporting infrastructure delivery: Consider delivery entity access to the PWA to ensure relevant entities have efficient and effective access to PWA powers as appropriate, while upholding protections for property rights
- 25.2 Supporting infrastructure delivery: Explore whether proactively creating powers in the PWA to be used in an emergency could reduce response delays. Emergency management sometimes requires the urgent acquisition of land, for example to restore or relocate infrastructure. When emergencies occur, delivery entities must go through existing processes, or bespoke legislation must be prepared to accelerate these processes.

*Broader shifts to support Government work programmes*

- 25.3 Corridor protection: Under the Going for Housing Growth policy, the Government has committed to having measures in place to enable intensive growth around certain transit corridors. A review would explore the role of the PWA in protecting corridor land for these purposes.
- 25.4 Climate adaptation (managed retreat): There are ongoing discussions on how to manage increasing property damage through climate-induced flooding and erosion, which may require planned relocations of certain areas. While not permitted under current legal settings, a review would explore the role of the PWA in land acquisition.
- 26 The review will consider work in the land space across government, including value capture and RM reform, and ensure there is cohesion across land systems.

- 27 As work progresses, I will discuss with relevant Ministerial colleagues which of these and other matters are appropriate for inclusion in a review of the PWA and for any related policy changes.

### **Consultation process**

- 28 In addition to LINZ consultation with other government agencies, I seek agreement for the review process to include external consultation with key stakeholders ahead of policy decisions.
- 29 This would include targeted consultation with representatives of those affected by the PWA, including landowners and iwi, and users of the PWA, critically local government. This consultation will inform the development of a public discussion document, which I will seek Cabinet agreement to release.
- 30 The powers to take land by compulsion from private landowners are among the strongest available to the Government and so any PWA amendments will attract considerable interest. As there has not been a significant opportunity for public consultation on the whole PWA since 2001, there is a need to test public views on PWA matters. Public consultation would ensure issues are known as early as possible, improving the quality of proposals, and preventing issues from being raised late in the legislative process that would require subsequent and time-consuming reworking.

### **Timeline and next steps**

- 31 Following policy analysis, development of proposals, and testing proposals with stakeholders, I will report back to Cabinet later this year, seeking approval to release a discussion document calling for public submissions.
- 32 Subject to Cabinet agreement, I will report back in early next year seeking agreement to policy decisions and authority instruct the Parliamentary Counsel Office to draft an amendment Bill. This could be enacted by mid-2026, subject to legislative priorities.

### **Cost-of-living Implications**

- 33 This paper does not have any direct implications for the cost of living.

### **Financial Implications**

- 34 The review will create costs for LINZ and agencies involved in consultation due to the time and resources that it requires.

### **Legislative Implications**

- 35 Initiating a review will not itself result in any legislative changes, however its findings may result in eventual proposals for amending the Public Works Act 1981. I will report on legislative implications when I present policy proposals to Cabinet.

## Impact Analysis

### Regulatory Impact Statement

- 36 There is no requirement to provide a Regulatory Impact Analysis as no decision to create or amend legislation or regulation is being sought.

### Climate Implications of Policy Assessment

- 37 This paper does not have any climate change implications.

### Population Implications

- 38 This paper itself does not have any direct implications for specific population groups. However, it notes that a review should recognise the unique historic and contemporary experiences and concerns of Māori as mana whenua in terms of the PWA's relationship with their land interests.

### Human Rights

- 39 This paper itself does not have any direct implications on human rights. However, it acknowledges that reviewing and reforming any processes relating to property rights, particularly relating to objections, must take care to consider the rights of landowners to natural justice under section 27(1) of the Bill of Rights Act 1990.

### Use of external Resources

- 40 Because of temporary resourcing needs, LINZ drew from the assistance of one contractor in preparing this cabinet paper, who will be involved in the review process in the short term. LINZ's approach to contractors and consultants is being actively managed and these costs are being reduced across the organisation.

### Consultation

- 41 [to fill following departmental consultation]

### Communications

- 42 [to complete according to preferred approach from Minister's office, noting standard practice of proactively releasing Cabinet paper]

### Proactive Release

- 43 Consistent with Cabinet Office Circular 18 (4), I propose to release this paper proactively, subject to due diligence requirements and redactions as appropriate under the Official Information Act 1982.

## Recommendations

The Minister for Land Information recommends that the Cabinet Economic Policy Committee:

- 44 **Note** that the Public Works Act 1981 (PWA) is critical in enabling land to be acquired for infrastructure and development projects, which the Government has committed to supporting and accelerating
- 45 **Agree** to review the PWA to improve its efficiency and effectiveness, and to align and support of Government objectives and priorities under infrastructure, housing and RM reform programmes.
- 46 **Agree** to proposed criteria for the review of the PWA, being efficiency, modernisation, clarity, property rights, future-proofing, and system coherence
- 47 **Agree** to officials consulting with key external stakeholders during the development of a public discussion document
- 48 **Direct** the Minister for Land Information to report back following the development of a discussion document, seeking agreement to it being released for public consultation.

Authorised for lodgement

Hon Chris Penk

Minister for Land Information