

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 critical to the Government's goal of ~~delivering~~ **delivery** more infrastructure to support rebuilding the economy and lowering the cost of living.

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 **also** support and align with broader relevant government priority areas such as infrastructure, housing, **and** resource management reform, **and climate adaptation.**

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:

7.1 **efficiency** and **clarity** of processes,

7.2 **modernisation** to align these processes with current context and practice,

7.3 **future-proofing** and **coherence** within the wider land system **and** to address challenges, and

7— due process around landowner **property rights**.

7.4

Background

The PWAA 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, justice facilities, and water services. There are a range of Key-users with different powers under of the PWA. Local -include Crown and local authority entities (for example NZ Transport Agency, the Ministry of Education, councils, and universities and Fire and Emergency New Zealand)), and I, as Minister, have direct access to network utility operators.

8 Attachment 1 outlines the users of the PWA. I exercise these powers to acquire land for the Crown, primarily for agencies such as the NZ Transport Agency and the Ministry of Education.

9 The PWA sets processes it sets for how land is acquired, compensated for, and disposed of when no longer required for public works. The Acquisition processes for acquiring land encourage reaching acquisition by agreement and consist of negotiations, issuing notices, and, if necessary, compulsory acquisition by proclamation of the Governor-General on my recommendation. 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.

11 Timeframes for acquiring land vary according to the negotiation circumstances but must feature a minimum of three months of good-faith negotiations after a first notice (notice of desire to acquire land) is issued. Generally, if a need for compulsory acquisition arises, the process takes up to 2 years, and one additional year if objections to the Environment Court are made.

12 In the last 25 years, Crown entities (excluding local authority entities) have acquired over 7,500 interests in land under the PWA, over 95% of which were by agreement. In the last five years, there have been 79 compulsory acquisitions, 65 for local authorities and 14 for Crown entities (13 for the NZ Transport Agency, and one for the Ministry of Education).

The PWA reflects and is guided by four key principles

13 The PWA reflects and is guided by the following principles:

13.1 the Crown and local authorities can acquire or take interests in land needed for a public work

13.2 the legislative procedures are fair and transparent for all parties, ensuring good faith negotiation and full compensation to leave landowners no better or worse off following PWA action

13.3 there is an independent and binding judicial check on the Crown's powers to take interests in land

13.4 where land is no longer required for a public work, the Crown and local authorities must offer the land back to former owners unless exemptions apply.

Despite a changing landscape and previous reviews, the PWA has not been substantially amended since ~~1988~~the 1980s

~~11~~14 The Overall, the PWA delivers land 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 a 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, considerations relating to Māori land, a need to accommodate a growing population, and the impacts of climate change.~~considerations relating to Māori land.~~

~~12~~15 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~~16 The PWA is critical to providing for core public interests by enabling the delivery of public 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.~~

17 Previous reviews revealed a strong interest in increasing protections for land held by Māori, and alignment of processes with features unique to Māori land tenure. Concerns include that Māori freehold land remains eligible for compulsory acquisition, disposal practices do not easily account for multiple ownership structures and have occasionally required payment for land that was acquired without compensation, and that ancestral land cannot be replaced by money or by other land that is not ancestral land.

~~14~~— 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~~18 A PWA provision is included in the Fast-track ~~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 proposes to streamline an

aspect of streamlines the process by which the Environment Court considers objections to compulsory acquisitions for FTA projects. While landowners retain the right to object, the Bill proposes that the Environment Court can adopt a finding of joint Ministers on alternative sites, routes or methods where these have been considered under the RMA approval process.

1619 Any fast-track projects will otherwise follow the existing PWA process. As such, any outcome of 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

1720 There are Government commitments and priorities, especially relating to infrastructure and development projects, for which land acquisition is essential. Initial ~~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.

1821 I have considered three options for high-level approaches to a review of the PWA, ranging from targeted to fundamental reform, as follows: 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:

18.121.1 Approach A: 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, and disposal (examples at para 27).

18.221.2 Approach B: A ~~targeted~~ review of the PWA looking at the measures listed ~~as~~ above, and extended to consider broader shifts to align with and support Government ~~objectives and~~ priorities relating to ~~under~~ infrastructure, housing, and resource management and the climate adaptation (see para 29)(RM) reform programmes. (Preferred approach).

18.321.3 Approach C: A fundamental review that would involve examining the system objectives of the PWA at a first-principles level, and potentially overhauling the legislative framework of the legislation to future-proof the legislation ~~for future challenges.~~

1922 I am seeking agreement to Approach B, a review addressing targeted matters in addition ~~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.

2023 By contrast, I note that, although the PWA has issues, its fundamental structures and principles (outlined in paragraph 13) still permit land to be taken for public works without widely affecting confidence in property rights for land generally. This limits the added value of conducting a fundamental review, Approach C.

I propose broad criteria to consider a full range of effects

~~21.24~~ The review should consider a wide range of effects and criteria. I propose that these criteria are:

~~21.124.1~~ **Efficiency** – improving process efficiency and removing unnecessary duplication

~~21.224.2~~ **Modernisation** – aligning the PWA with current context and practice, international best practice, modernising language, and ensuring land system coherence

~~21.324.3~~ **Clarity** – providing transparency for those using and affected by PWA processes

~~21.41.1~~ **Property rights** – ensuring that due process is taken to maintain natural justice for all affected parties

~~21.524.4~~ **Future-proofing** – ensuring the legislation considers future land acquisition challenges

~~24.5~~ **System coherence** – considering the future state of land processes in New Zealand, which parties exercise which powers, and the role of the PWA

~~24.6~~ **Property rights** – ensuring that due process is taken to maintain natural justice for all affected parties

~~21.625~~ The review process will also ensure that any proposed changes to the PWA are consistent with existing legal obligations under Treaty of Waitangi settlements.

Consultation will confirm the targeted issues that a review would address

~~26~~ Initial discussions between LINZ and government infrastructure agencies have revealed some efficiency and effectiveness issues in the PWA's acquisition, compensation, and disposal processes, including as well as how these fit with features unique nuances relating to Māori land tenure and ownership. These targeted issues would retain the fundamental principles of the PWA.

~~2227~~ *-Non-exhaustively, a review under Approach A or Approach B would consider the following issues:*

Issues relating to acquisitionaequisitional processes

~~22.127.1~~ Adapting notice requirements. Prior to compulsory acquisition, entities must serve two notices, whereas other jurisdictions only require only one.

~~22.227.2~~ 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~~27.3 Amending survey requirements, including when a full survey of land to be acquired needs to be completed.

27.4 Clarifying the objection process including the relationship with the designation process under the Resource Management Act 1991.

Issues relating to compensation ~~processes~~functions

~~22.4~~27.5 Improving incentives for landowners to reach early agreement for agree to acquisitions.

~~22.5~~27.6 Aligning processes with international best practice~~examples~~, including modernising dispute resolution and how and when payment occurs.

~~22.6~~27.7 Addressing how Māori freehold land is valued compared with other types of land tenure ~~during compensation~~.

Issues relating to disposal ~~processes~~functions

~~22.7~~27.8 Clarifying when land is surplus to requirements and ensuring its future use is managed, transferred, or disposed~~considered in terms of as appropriate in relation to~~ other ~~potential~~ public works requirements and any disposal obligations.

~~22.8~~27.9 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~~27.10 Ensuring that “offer back” practices align with, recognise, and provide for the multiple ownership structures often associated with Māori freehold land and how this land was acquired.

~~23~~28 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 also consider broader shifts relating to Government priorities

~~24~~29 Under my preferred approach, Approach B, a review will also consider opportunities to align with and support Government ~~objectives and~~ priorities under infrastructure, housing, resource management and RM reform and climate adaptation programmes. This may result in shifts that would alter the PWA’s fundamental principles and settings further than simply under addressing targeted review (Approach A).~~issues.~~

~~25~~30 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:

Infrastructure *Broader shifts under the PWA to support Government objectives*

25.130.1 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 Infrastructure 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.

30.2 *Broader shifts to support Government work programmes*

25.330.3 Housing 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 development such as housing and transport these purposes.

25.430.4 Climate adaptation: ~~(managed retreat)~~ There are ongoing discussions on how to manage the risks to land posed by natural hazards, including those exacerbated by increasing property damage through climate change (e.g. - induced flooding and erosion). ~~A review, which may require planned relocations of certain areas. While not permitted under current legal settings, a review would consider~~ explore the PWA's place, as part of wider policy options, the PWA in facilitating the adaptation of land uses to accommodate these risks, land acquisition.

2631 The review will consider work in the land space across government, including value capture and resource management RM reform, to and ensure there is cohesion across land systems.

2732 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

2833 In addition to LINZ consulting consultation with other government agencies, I seek agreement for the review process to include targeted external consultation with key stakeholders to inform ahead of policy proposals decisions.

2934 This would include targeted consultation with key users of the PWA, including local government and infrastructure agencies, and representatives of those affected by the PWA, including landowners, ~~and~~ iwi, Māori (including post-settlement governance entities), 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.

3035 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

3136 ~~Policy~~ ~~Following policy analysis, development of~~ proposals ~~will be developed,~~ and ~~tested/testing proposals~~ with stakeholders. I will report back to Cabinet later this year, seeking approval to release a discussion document calling for public submissions.

3237 Subject to Cabinet agreement, I will report back ~~in~~ early next year seeking agreement to policy decisions and authority ~~to~~ 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

3338 This paper does not have any direct implications for the cost of living.

Financial Implications

3439 ~~LINZ will support the resourcing needs of a~~ The review ~~through existing baseline funding. Any increase in will create~~ costs for ~~implementing changes will be determined LINZ and advised later agencies involved in consultation due to the time and resources that it requires.~~

Legislative Implications

3540 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

3641 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

3742 This paper does not have any climate change implications.

Population Implications

3843 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

3944 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. This includes considering how changes would affect the rights of landowners to be heard during acquisition processes.

Use of ~~External~~ External Resources

45 Because of temporary resourcing needs, LINZ drew from the assistance of one contractor. LINZ's approach to contractors and consultants is being actively managed and these costs are being reduced across the organisation.

40 ~~— Consultation [to complete].~~

Consultation

4146 LINZ has consulted with the following entities who support the recommendations of this paper: Ministry for the Environment, Ministry of Justice, the Treasury, Ministry for Housing and Urban Development, Te Arawhiti, Te Puni Kōkiri, Ministry for Primary Industries, Department of Conservation, Ministry of Transport, NZ Transport Agency Waka Kotahi, Ministry for Culture and Heritage, and the New Zealand Infrastructure Commission Te Waihangā. The Department of the Prime Minister and Cabinet has been informed. [to fill following departmental consultation]

Communications

4247 ~~[to complete according to preferred approach from Minister's office], noting standard practice of proactively releasing Cabinet paper]~~

Proactive Release

4348 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:

4449 **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.

4550 **Agree** to review the PWA to improve its efficiency and effectiveness, and to align and support of Government ~~objectives and~~ priorities under infrastructure, housing,

resource management and RM reform, and climate adaptation, while appropriately recognising property rights programmes.

46—Agree to the proposed criteria for the review of the PWA, being

46.1—efficiency,

46.2—modernisation,

50.1 clarity,

50.2 property rights, future-proofing,

50.3 and system coherence, and

4750.4 property rights.

4851 Agree to officials consulting with key external stakeholders during the development of a public discussion document.

4952 InviteDirect the Minister for Land Information to report back with following the development of a discussion document, and to seekseeking agreement to it being released for public consultation.

Authorised for lodgement

Hon Chris Penk

Minister for Land Information