

BRF 24-406 Draft Cabinet paper for consultation: *Initiating a review of the Public Works Act 1981*

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

Rā / Date: 1 May 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
Minister for Land Information	Manatu/Note LINZ has incorporated feedback from departmental consultation on the draft Cabinet paper: <i>Initiating a review of the Public Works Act 1981</i>	2 May 2024
	Āmine/Agree to circulate the updated draft Cabinet paper for Ministerial consultation ahead of lodging the paper on 23 May 2024, for Cabinet Economic Policy Committee (ECO) on 29 May	2 May 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, Policy and Design	027 462 8250	<input checked="" type="checkbox"/>
Hannah O'Donnell	Leader, Policy	07 839 9447	<input type="checkbox"/>
Rosie Parry	Principal Advisor, Policy	04 471 6509	<input type="checkbox"/>
Allanah Lovelady	Senior Advisor, Policy	03 364 1335	<input type="checkbox"/>

Ngā kōrero a te Minita/Minister's comments

Pūtake/Purpose

This briefing provides you with the updated draft Cabinet paper *Initiating a review of the Public Works Act 1981* (at **Appendix 2**) following the incorporation of feedback arising from departmental consultation, and an overview of the feedback received.

Pānui whāinga/Key messages

- 1 You have requested a Cabinet paper seeking agreement to a review of the Public Works Act 1981 (PWA). Toitū Te Whenua Land Information New Zealand (LINZ) developed a draft Cabinet paper reflecting your preferred approach for a review [BRF 24-357 refers].
- 2 Departmental consultation on the draft Cabinet paper took place from 18 April to 26 April 2024. As expected, agency engagement with the proposal was high, with significant comment received on the content of the paper and the scope of the review. Agencies were largely supportive of the proposed approach.
- 3 Changes have been made to the draft Cabinet paper to incorporate comment received by agencies. The updated paper remains in line with the initial approach you agreed to. At a high-level, the feedback received through departmental consultation was focused on:
 - **Strengthening the framing of options:** LINZ has amended the paper to reflect the differences between the options and to strengthen the language around the proposal.
 - **Fast-track Approvals Bill:** Agencies showed support for having any changes raised through the Fast-track Approvals Bill considered during the review process. Given timing, LINZ will aim ensure system coherence to the extent that it is possible.
 - **PWA access:** As anticipated and reflected in the paper, departmental feedback showed strong engagement on PWA access provisions being widened to include Crown entities.
 - **Māori land issues:** LINZ received strong engagement around Māori land issues. The paper has been amended to provide a clearer discussion on Māori land matters to demonstrate an awareness of the complexities in this area.
 - **Climate adaptation and managed retreat:** Feedback reflected strong interest on managed retreat and climate adaptation. Agencies encouraged flexibility and working alongside other major policy reviews. The paper has been updated to reflect this.
 - **Stakeholder engagement:** Agencies clearly supported early, upfront and meaningful engagement with key stakeholders such as Māori and local authorities. This is in line with the proposed engagement approach.
 - **Natural justice considerations:** The importance of balancing natural justice considerations and an efficient and effective PWA process was raised. This feedback was noted and will inform the approach taken by the review.

- 4 An A3 overview is attached at **Appendix 1** and provides a description of key PWA processes. The updated draft Cabinet paper is provided at **Appendix 2**. A tracked version of the updated draft Cabinet paper is provided at **Appendix 3**.
- 5 Following your agreement with the content of the updated paper, the paper will need to be circulated for consultation with your Ministerial colleagues.
- 6 Ministerial consultation is proposed to take place between Monday 6 May 2024 and Wednesday 15 May 2024.

Toitū Te Whenua Land Information New Zealand recommends that you:

- 1 **Manatu/Note** LINZ has incorporated feedback from departmental consultation on the draft Cabinet paper: *Initiating a review of the Public Works Act 1981* Noted
- 2 **Amine/Agree** to circulate the updated draft Cabinet paper for Ministerial consultation ahead of lodging the paper on 23 May 2024, for Cabinet Economic Policy Committee (ECO) on 29 May 2024. Agree / disagree



Amanda Moran
Head of Strategy, Policy and Design
Toitū Te Whenua Land Information New Zealand

Rā/Date: **2 May 2024**

Hon Chris Penk

**Te Minita mō Toitū te Whenua/
Minister for Land Information**

Rā/Date:

Tāpiritanga/Attachments

- 1 A3 Overview of key PWA processes
- 2 Updated draft Cabinet paper: *Initiating a review of the Public Works Act 1981*

- 3 Tracked version of updated draft Cabinet paper: *Initiating a review of the Public Works Act 1981*

Te Horopaki/Background

- 1 In March 2024, LINZ provided you with advice outlining three possible approaches to the scope of a review of the Public Works Act 1981 (PWA) [BRF 24-357 refers]. You have indicated a preference for a targeted review, extended to consider broader shifts to align with and support Government objectives and priorities under infrastructure, housing and resource management reform programmes.
- 2 On 16 April 2024, LINZ provided you with a draft Cabinet paper seeking agreement from your Ministerial colleagues to review the PWA, in line with your preferred approach.
- 3 LINZ has since completed departmental consultation on the draft Cabinet paper. An A3 overview is attached at **Appendix 1** and provides a description of key PWA processes. The updated Cabinet paper, following incorporation of feedback received through departmental consultation, is attached at **Appendix 2**. A tracked version of the updated draft Cabinet paper is provided at **Appendix 3**.

The draft Cabinet paper received high agency engagement during consultation

- 4 LINZ initiated departmental consultation on the draft Cabinet paper on 18 April 2024. This consultation closed on 26 April 2024.
- 5 As expected, agency engagement with the proposal was high, with significant comment received on the content of the paper and the scope of the review.
- 6 Agencies were largely supportive of the proposed option for a targeted review, extended to consider broader shifts to align with and support Government objectives and priorities under infrastructure, housing and resource management reform programmes. No significant changes to the proposal were raised during departmental consultation. However, officials anticipate it is likely that additional issues may be raised during Ministerial consultation and through stakeholder engagement throughout the review process.
- 7 LINZ is taking care to ensure the scope of the review remains targeted, efficient and effective, whilst retaining the ability to be agile to respond to feedback from you, your Ministerial colleagues, agencies and stakeholders. Changes have been made to the draft Cabinet paper to incorporate comment received by agencies. These changes remain in line with the initial approach you agreed to. LINZ will consider all departmental feedback in its policy analysis during the review.
- 8 The following paragraphs summarise the feedback received through departmental consultation, and consequential amendments to the draft Cabinet paper as a result.

Strengthening the framing of options

- 9 Feedback from agencies recommended strengthening the framing around the review options, to ensure they read as distinct from one another and to provide Ministers with a clear overview of the levels of intervention that were considered. There is broad support for the proposed review approach.
- 10 LINZ has amended the paper to reflect the differences between the options and to strengthen the language around the value of a targeted review, extended to consider broader shifts to align with and support Government objectives and priorities under infrastructure, housing and resource management reform programmes.

Fast-track Approvals Bill

- 11 Agencies showed support for any changes raised through the Fast-track Approvals Bill to be considered during the review process. Agencies would also like any changes to the PWA through this review to be developed in a way that can be of benefit to fast-track projects once the review is complete.
- 12 LINZ anticipates that the PWA and Fast-track Approvals Bill processes will be complementary. Given timing and the need for a coherent PWA regime, it is likely that wider PWA changes proposed through submissions on the Fast-track Approvals Bill would be better considered through a PWA review than that further changes to the PWA be included in the Fast-track Approvals legislation.

PWA Access

- 13 As anticipated and reflected in the draft Cabinet paper, departmental feedback showed strong interest in PWA access provisions being widened to include Crown entities. The Ministry for the Environment (MfE) noted that any work on PWA access provisions could be informed by previous work undertaken on designation powers regarding the PWA.

Māori land issues

- 14 LINZ received strong feedback around Māori land issues which reiterated the importance of examining Māori land issues as proposed. Treaty of Waitangi impact analysis has been recommended as part of the review, due to the significance of implications for Māori under any reform. Te Puni Kōkiri (TPK) raised a concern that the proposal lacks explicit references to or acknowledgment of the Treaty obligations relating to protecting Māori land rights and the partnership between Māori and the Crown.
- 15 Te Arawhiti and TPK advised that framing around Māori land issues in the paper should make explicit that there are features unique to Māori land tenure (as indicated by the Te Ture Whenua Māori Act 1993), and historic contentions regarding Māori land and the PWA. Agencies also supported proposals to review acquisition of Māori land in all forms to align with operational practice.
- 16 The Cabinet paper has been amended to reflect the feedback received on Māori land issues under the PWA. The paper provides a clearer discussion on Māori land matters, with a succinct explanation of key points of contention in anticipation of the review. Providing greater clarity around these issues upfront demonstrates an awareness of the complexities

and matters unique to Māori land title and focuses discussions regarding Māori land within the current agreed scope of the review.

- 17 Further, agencies outlined the need for robust and meaningful engagement with Māori during the review process and recommended that LINZ engage with groups able to represent wider Māori interests in land outside of iwi, such as Māori land trusts and incorporations, and marae. The paper has been amended to reflect that engagement will take place with representatives of Māori to respond to this. This language is supported by Te Arawhiti.

Climate adaptation and managed retreat

- 18 Feedback reflected strong interest on managed retreat and climate adaptation. Agencies such as the Ministry for Primary Industries encouraged the need for flexibility when approaching the issue as it may relate to many types of land (including for example, primary sector land no longer fit for purpose due to changing climate pressures). The Treasury and MfE raised the need to ensure that any consideration of climate-related land use changes under the PWA must be examined alongside and in step with wider policy options relating to managed retreat (for example, land use planning tools).
- 19 Similarly, MfE encouraged the review to work alongside other major policy reviews more broadly such as reforms of the Resource Management Act 1991, and the Infrastructure Funding and Financing Act 2020.
- 20 LINZ has amended the Cabinet paper to reflect the feedback received, ensuring the proposal regarding climate adaptation and managed retreat is flexible enough to encompass the concurrent workstreams and issues in this area.

Stakeholder engagement

- 21 Agencies clearly supported early, upfront and meaningful engagement with key stakeholders during the review process. In addition to meaningful engagement with Māori, the Department of Internal Affairs and Te Arawhiti noted in particular that local authorities will need significant engagement as a key user of PWA acquisition processes.
- 22 LINZ has noted this feedback, which aligns with its proposed stakeholder engagement approach. LINZ will work closely with local authorities as key users of the PWA throughout the review.

Natural justice considerations

- 23 The Ministry of Justice has raised the importance of ensuring natural justice/human rights and objections processes remain in place in the PWA through any review and subsequent amendments.
- 24 The New Zealand Infrastructure Commission Te Waihangā support the inclusion of access to natural justice and objections pathways in the review to ensure processes are clear and streamlined. However, TPK indicated that further analysis must be undertaken to understand the implications of any expedited objections process for Māori.
- 25 LINZ has noted this feedback which will inform the approach taken by the review.

Ngā Tāwhaitanga/Next Steps

- 26 You have indicated to officials you would like to present the draft Cabinet paper at the Cabinet Economic Policy Committee (ECO) on 29 May 2024.
- 27 The updated draft Cabinet paper is provided at **Appendix 2**. Following your agreement with the content of the updated paper, the paper will need to be circulated for consultation with your Ministerial colleagues.
- 28 A timeline for next steps for this Cabinet paper process is outlined below.

Action	Date
Ministerial consultation	Monday 6 May – Wednesday 15 May 2024
Updated draft Cabinet paper provided to your office following Ministerial consultation	Monday 20 May 2024
Paper lodged in CabNet	10am, Thursday 23 May 2024
Cabinet Committee (ECO)	Wednesday 29 May 2024
Cabinet	Tuesday 4 June 2024

- 29 Officials are available to discuss the contents of this briefing and draft Cabinet paper.

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