

# Expert Advisory Panel (Public Works Act review) – Terms of Reference

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## Context

The Public Works Act 1981 (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 projects to rebuild the economy and support New Zealand's growth and prosperity.

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 users with different powers under the PWA.

The PWA has not been substantively amended since 1988. 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.

The Government has agreed to review the PWA to facilitate the Government's delivery of public infrastructure while retaining the principles of the PWA, through targeted amendments focused on improving efficiency, effectiveness, and clarity.

To support this review, the Minister for Land Information has agreed for Toitū Te Whenua Land Information New Zealand (LINZ) to establish an Expert Advisory Panel (the Panel) to provide independent, specialist advice and to engage with critical stakeholders ahead of any reforms. Independent, specialist advice is required given the complexities of the PWA and the diverse interests and issues that may arise during the review.

## Purpose and scope

**The purpose of the Panel is to provide LINZ with independent specialist advice on potential reforms to the PWA that would better facilitate infrastructure delivery in New Zealand, while retaining the fundamental principles of the regime.**

Advice will be focused on improving efficiency, effectiveness, and clarity of the PWA. There will be a particular focus on the PWA's land acquisition and compensation functions. The aim of this scope is to keep the review focused on key improvements that would support the delivery of infrastructure.

Matters that are within scope include:

- a) access to PWA powers, specifically entity access and enabling greater collaboration between agencies, local authorities, and network utility operators when working on joint infrastructure projects,

- b) administrative efficiencies, such as adapting notice requirements and/or streamlining notification provisions and amending survey timing requirements, including when a full survey of land to be acquired needs to be completed,
- c) duplication of efforts that can be removed such as clarifying the objection process, including the relationship with the designation process under the Resource Management Act 1991,
- d) improving incentives to reach early agreement with landowners faster,
- e) aligning compensation processes with international best practice, including modernising dispute resolution and how and when payment occurs including addressing how Māori freehold land is valued compared with other types of land tenure, and
- f) technical changes to improve the clarity of the PWA, such as removing redundant areas.

Matters that are more aligned with disposal functions and offer back obligations are out of scope.

In providing advice and any recommendations, the Panel will need to ensure that the fundamental principles of the PWA are maintained, specifically:

- a) that the Crown and local authorities can acquire or take interests in land needed for public work (network utility operator access is provided through the RMA),
- b) that legislative procedures are fair and transparent for all parties, ensuring good faith negotiations and full compensation to leave landowners no better or worse off following PWA action,
- c) that there is an independent and binding judicial check on the power of the Crown and local authorities to take interests in land, and
- d) where land is no longer required for public work, the Crown and local authorities must offer the land back to former owners unless exemptions apply.

The advice provided by the Panel must also uphold the Crown's Treaty settlement obligations and take into account the Māori land principles in Te Ture Whenua Māori Act 1993.

As an advisory body, the Panel is not responsible for final decisions on policy or implementation matters.

### **Deliverables, meetings and timing**

It is expected that the Panel will operate from July to September 2024. Any decision to extend the duration of the Panel will be made by LINZ.

There will be five substantial Panel meetings [dates TBC], consisting of:

- a) **2 July:** commencement meeting (including the Chief Executive of LINZ and Minister for Land Information) to discuss the work programme, confirm agreement to the Terms of Reference, and agree on approach to deliver report,
- b) **July and August:** three 'options analysis' sessions with discussions on key subject areas and with key stakeholders, and
- c) **Early September:** final meeting to discuss conclusions of the Panel (potentially including the Chief Executive of LINZ and Minister for Land Information), findings from the review, and draft the framework of the final paper.

The Panel will deliver a paper to the Chief Executive of LINZ on the matters within scope, including options and considerations, within three weeks following the final meeting of the Panel.

It is expected that the Panel will undertake targeted engagement with key stakeholders, including users, in the development of its paper. Suggested organisations that should be included in this engagement are attached at Appendix 1.

To maximise the Panel's ability to undertake stakeholder engagement, a further Panel meeting may be arranged to enable this.

### **Panel membership and appointments**

All Panel members will be appointed by the Chief Executive of LINZ. The Panel will have five members, including the Chair. Members will be selected for their skills, experience and knowledge of working in sectors that interact with the operation of the PWA, including:

- a) knowledge and expertise of the procedures for the acquisition of land for government and local works,
- b) knowledge, expertise, and experience in the delivery of public infrastructure,
- c) specialist expertise in land and property development law, and
- d) knowledge, expertise, and understanding of whenua Māori (Māori Land).

The Panel will have an independent Chair. The Chair will have the skills, experience and knowledge expected of members. In addition, the Chair should have significant experience of governance and previous experience as a Chair, and able to move a project forward where there may be conflicting views. Familiarity with government processes would be useful.

The Chair will need to be willing and able to effectively facilitate the Panel in both in-person and remote settings, including both settings simultaneously (ie, where some

members are attending in person and others are participating remotely). The Chair will be responsible for working with the secretariat to ensure it is able to meet the demands of the Panel within its available resources.

Responsibilities of Panel members are that they:

- a) have the capacity and capability to fulfil the role and are fully committed for the duration stated, including being available to attend meetings,
- b) are able to provide constructive input and advice to the project,
- c) are able to actively assist with issue resolution,
- d) are willing to maintain the confidentiality of information provided for their advice, comment, and critique (including by signing a non-disclosure agreement), and
- e) are able and willing to differentiate between their own views and the views of the Panel, and will accurately report the views of the Panel in any wider engagement with the sector or the public.

Quorum and decision-making

- a) a quorum of three members, including the Chair, is required for decisions to be made. In the event that the Chair is not present the secretariat will appoint a member to Chair the meeting,
- b) where a decision on a proposed approach or way forward needs to be made, the aim is to achieve consensus amongst all members. Where consensus is unable to be reached, each Panel member, including the Chair, have an equal vote. In the instance of a split vote however, the Chair can make the final determination.

### **Role of the Toitū Te Whenua Land Information New Zealand**

LINZ will provide secretariat support for the Panel. This includes coordinating meetings and arranging travel and accommodation, or reimbursement for actual and reasonable travel and expenses, as required. The secretariat will ensure members have the resources and information they need to be effective in their role, and will be responsible for formally recording the Panel's discussions and distributing draft minutes to members after meetings.

LINZ will also provide research and analytical support to the Panel in the development of their advice. This may include:

- a) preparing background papers on key issues,
- b) providing advice on the feasibility of options,
- c) assisting the Panel in writing its paper,

- d) facilitating and supporting discussions with key stakeholders in the Panel's targeted consultation, and
- e) any other matters that may be relevant to the Panel's deliberations.

#### Agenda., Papers and Minutes

- a) The secretariat will agree the agenda with the Chair no later than 5 days prior to a Panel meeting, with the final agendas and papers to be distributed by email from [PWAPanelSecretariat@linz.govt.nz](mailto:PWAPanelSecretariat@linz.govt.nz) no later than 3 working days prior to the meeting.
- b) Draft Minutes will be distributed to the panel no later than 3 working days following a meeting.

#### **Administration and fees**

The Chair will lead meetings of the Panel. If the designated Chair is unavailable or unable to perform their duties at any time, the secretariat may ask another member to act as the Chair.

The Panel can be regarded as a consultancy and members will be contracted by and report to LINZ. Contracts for fees remuneration will be arranged by LINZ.

The Chair and members will be reimbursed for actual and reasonable travel, meal, and accommodation costs on receipt of invoice. The Chair and members will seek approval from LINZ if they intend to claim reimbursement for other expenses.

#### **Media**

The primary function of the Panel is to advise LINZ. The Panel and its members acting in that capacity will not make media statements without the prior agreement of LINZ.

If members are asked to provide comment on any issue relating to the work of the Panel, or relating to the issues the Panel is considering, they will forward that question or request to the secretariat.

#### **Confidentiality**

The work of the Panel is confidential, unless otherwise agreed by LINZ. Members will maintain this confidence and will not disclose information about the operation of the Panel, or information and analysis shared with the Panel, to any person without the above agreement.

All Panel members will have completed non-disclosure agreements with the secretariat.

#### **Conflicts of interest**

Members will perform their role in good faith, with honesty and impartiality, and will avoid situations that may compromise their integrity, or otherwise lead to conflicts of interest.

Members will disclose any conflicts of interest during the appointment process. Members who have a specific, real or perceived conflict of interest in relation to an issue or item will advise the Chair and recuse themselves from consideration of those issues or items.

A conflict of interest register will be maintained by LINZ. The Panel will regularly review and consider updates to the conflict of interest register as a standing item of their agenda.

If members of the Panel develop new, relevant conflicts of interest, whether real, potential or perceived, they will inform the Chair and the secretariat as soon as is reasonably practicable.

### **Amendments**

LINZ may amend these Terms of Reference at any time following consultation with the Chair.

## Appendix 1: Suggested stakeholders to be included in targeted engagement

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*[Note: draft list for feedback/suggested additions]*

Auckland Council / Auckland Transport / Eke Panuku Development Auckland

Federated Farmers of New Zealand

Federation of Māori Authorities

Infrastructure New Zealand

KiwiRail

Local Authority Property Association

Local Government New Zealand

NZ Transport Agency Waka Kotahi

Iwi Chairs Forum | via Jamie Tuuta

Taituarā | Local Government Professionals Aotearoa

Te Tumu Paeroa

Te Waihanga | New Zealand Infrastructure Commission

Transpower New Zealand

Urban Development Institute of New Zealand