

In Confidence

Office of the Minister for Land Information

Cabinet Business 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 projects to rebuild the economy and support New Zealand's growth and prosperity.

Executive Summary

3 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.

4 The PWA has not been substantively amended since 1988. I propose to review the PWA to facilitate the Government's delivery of public infrastructure while retaining the principles of the PWA. Targeted amendments will be focused on improving efficiency, effectiveness and clarity.

5 The review would focus on key issues in the PWA's land acquisition and compensation functions. The review would also support and align with resource management reform.

6 There will be strong public interest in any review 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 land owners and aligning the PWA with the principle of retention that underpins Te Ture Whenua Māori Act 1993.

7 Due to the PWA's significant powers and the level of public interest, I propose an Expert Advisory Panel is established to provide independent, specialist advice and to engage with critical stakeholders ahead of any reforms. The Expert Advisory Panel will be comprised of members with the necessary expertise, interests and skills related to the PWA, and the issues unique to Māori land. It is proposed that the Expert Advisory Panel is established for a period of two months to enable timely decision-making so that any targeted amendments to the PWA can be legislated by December 2025.

- 8 I propose the following criteria to ensure the review and any subsequent amendments to the PWA are focused on high-value changes which can be made in a timely manner:
- 8.1 **Efficiency** – improving process efficiency and removing unnecessary duplication
 - 8.2 **Effectiveness** – legislation is workable, fit for purpose and realises the Crown’s ability to undertake public works
 - 8.3 **Clarity** – providing transparency for those using and affected by PWA processes
- 9 The review will ensure that due process is taken to maintain property rights and natural justice for all affected parties, and that any proposed changes to the PWA are consistent with existing legal obligations under Treaty of Waitangi settlements and take into account the Māori land principles in Te Ture Whenua Māori Act 1993.

Background

The PWA provides land for public works, including critical national and local infrastructure

- 10 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. Local authority entities (for example, councils, universities and Fire and Emergency New Zealand) and I, as Minister, have direct access to 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.
- 11 Additionally, Section 186 of the Resource Management Act 1991 (RMA) allows network utility operators that are requiring authorities¹ to apply to me to have land that is required for a work to be acquired under the PWA. In these cases, the land would vest with the network utility operator, rather than the Crown. Network utility operators are defined in section 166 of the RMA and include entities that distribute gas, petroleum, geothermal energy, telecommunications, electricity, water and wastewater, or construct or operate roads, railway lines and airports. The Urban Development Act 2020 provides for Kainga Ora to access the PWA via myself as Minister regarding uses of land.
- 12 The PWA sets out processes for how land is acquired, compensated for, and disposed of when no longer required for public works. The processes for acquiring land encourage reaching acquisition by agreement and consist of negotiations and issuing notices. If necessary, land can be compulsorily acquired by proclamation of the Governor-General on my recommendation.

¹ *Requiring authorities* are defined in section 166 of the RMA and includes a network utility operator approved as a requiring authority under section 167.

- 13 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. Landowners may settle issues regarding compensation through the Land Valuation Tribunal. 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.
- 14 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 two years, and one additional year if objections to the Environment Court are made.
- 15 In the last 25 years, the Crown has acquired over 7,500 interests in land under the PWA, over 95% of which were by agreement.
- 16 In the last five years, there have been 79 compulsory acquisitions, 14 for the Crown (13 for the NZ Transport Agency, and one for the Ministry of Education) and 65 for local authorities.

The PWA reflects and is guided by four key principles

- 17 The PWA reflects and is guided by the following principles:
 - 17.1 the Crown and local authorities can acquire or take interests in land needed for a public work (network utility operator access is provided for through the RMA)
 - 17.2 that 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
 - 17.3 there is an independent and binding judicial check on the Crown's powers to take interests in land
 - 17.4 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

- 18 The PWA delivers land for public works while not significantly affecting private landowners' confidence in a stable property rights regime. 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.

- 19 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

- 20 The PWA is critical to the provision of core public interests by enabling the delivery of public works. However, there is an inherent tension between the ability to provide for these works and having processes that uphold a stable property rights regime for landowners.
- 21 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.
- 22 Whereas historically, the PWA played a significant role in the Crown's alienation of Māori land, current Crown practice is to not acquire Māori land wherever possible. Since 2015 Crown entities have acquired three parcels of Māori freehold land by agreement with their landowners, and one area of general land owned by Māori through compulsory acquisition at the request of its trustee.²

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

- 23 A PWA provision is included in the Fast-track Approvals Bill (the Bill). The Bill aims to accelerate the decision-making process for nationally and regionally significant projects. The PWA provision in the Bill proposes to streamline an aspect of the process by which the Environment Court considers objections to compulsory acquisitions for fast-track 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.
- 24 Any fast-track projects will otherwise follow the existing PWA process. As such, the PWA review will deliver for fast-track projects.

² [s 9(2)(g)(i)]

Proposed scope of review

I propose to review the PWA focusing on key issues in the PWA's land acquisition and compensation functions

- 25 Land acquisition is critical for our Government's commitments and priorities, especially relating to public infrastructure projects. Initial analysis by Land Information New Zealand (LINZ) in consultation with other agencies has revealed issues affecting the PWA's ability to support these efficiently and effectively in its land acquisition and compensation functions.
- 26 As such, I am seeking agreement to review the PWA to facilitate the Government's delivery of public infrastructure while retaining the principles of the PWA. Targeted amendments will be focused on improving efficiency, effectiveness, and clarity.
- 27 A targeted review allows me to resolve efficiency issues, ensure the regime is effective and fit for-purpose for delivering public infrastructure, and is clearer for users and affected landowners, providing high-value changes for New Zealand in a timely manner. This approach will also allow any changes to be made to the PWA to be in place by December 2025, to align with wider changes across the land management system, such as resource management reforms.
- 28 Non-exhaustively, the review and Panel would consider the following issues:
- 29 *Issues relating to acquisition and compensation*
- 29.1 considering access to PWA powers, specifically consideration of entity access and enabling greater collaboration between agencies, local authorities, and network utility operations when working on joint infrastructure projects
- 29.2 finding administrative efficiencies, such as adapting notice requirements and/or streamlining notification provisions and amending survey requirements, including when a full survey of land to be acquired needs to be completed
- 29.3 considering where there is 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
- 29.4 considering the process and opportunities for streamlining the transfer of land between agencies for public works to make the most of Crown land capital
- 29.5 considering improving incentives to reach early agreement with landowners faster
- 29.6 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.

Issues relating to clarity

- 29.7 considering technical changes to improve the clarity of the PWA such as removing redundant provisions.
- 30 Any proposals would need to ensure following structures are retained:
- 30.1 the fundamental principles of the PWA including natural justice and property rights, and
- 30.2 the Crown's Treaty settlement obligations are upheld.

I considered options to undertake a wider review of the PWA system

- 31 Significant changes to the operating environment of the PWA since its enactment and previous attempts at amendments to address known issues in the system could provide the basis for more fundamental review, such as assessing system objectives, principles and the balance of power contained within the PWA.
- 32 While this approach has value and allows scope to address the complete range of issues within the PWA, such as disposals processes and areas that allow for better future-proofing of the PWA, a complete review would take significant time and resource due to the complexity of the issues and the high-profile nature of land acquisition.
- 33 A more fundamental review would require significant analysis and consultation with stakeholders across government, local entities and key stakeholders as well as broad scale public consultation. The range of issues to be addressed are likely to be contentious, which could delay the progress of any proposed legislative amendments to address the issues raised by the review.

Consideration of criteria will ensure that any changes to the PWA are high-value and can be made in a timely manner

- 34 The review should consider the following criteria to ensure the review and any subsequent changes to be made to the PWA are high-value and can be made in a timely manner:
- 34.1 **Efficiency** – improving process efficiency and removing unnecessary duplication
- 34.2 **Effectiveness** – legislation is workable, fit for purpose and realises the Crown's ability to undertake public works
- 34.3 **Clarity** – providing transparency for those using and affected by PWA processes

I propose that LINZ establish an Expert Advisory Panel to provide independent advice to the review

- 35 Due to the PWA's significant powers and the level of public interest, I propose an Expert Advisory Panel is established by LINZ to provide independent, specialist advice on the review and to engage with critical stakeholders ahead of any reforms. The Expert Advisory Panel will be comprised of members with diverse expertise, interests and skills related to the PWA, including land and property law, infrastructure, local government, property rights, landownership, and Māori interests such as Māori land tenure and Treaty of Waitangi obligations.
- 36 I propose that the Expert Advisory Panel is established for a period of two months to enable timely decision-making so that any targeted amendments to the PWA can be legislated by December 2025.
- 37 To allow the Panel to be effective and to ensure any amendments to the PWA would support the timely delivery of critical public infrastructure, the scope will be targeted to the list outlined above. The Expert Advisory Panel will have the ability to test and refine the scope of the review within the two-month time period.
- 38 Subject to Cabinet approval, LINZ will establish an Expert Advisory Panel and commence work on the review. The membership and role of the Expert Advisory Panel will be set through terms of reference.
- 39 LINZ will provide secretariat support and policy analysis for the Panel, which will be funded from within LINZ's baseline

Consultation process

- 40 In addition to LINZ's consultation with other government agencies, the Expert Advisory Panel will undertake targeted external consultation with key stakeholders to inform policy proposals.
- 41 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, iwi and Māori (including post-settlement governance entities).
- 42 Select Committee would provide the first opportunity for public consultation on any amendments to the PWA. The powers to take land by compulsion from private landowners are among the strongest available to the Government and so any PWA amendments are expected to attract considerable interest.

Timeline and next steps

- 43 Subject to Cabinet agreement, I will report back in late 2024 seeking agreement to policy decisions and authority to instruct the Parliamentary Counsel Office to draft an amendment Bill. This could be enacted by late-2025, subject to legislative priorities.

Cost-of-living Implications

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

Financial Implications

45 LINZ will support the resourcing needs of a review through existing baseline funding. Any cost pressures this creates will be carefully managed. Any increase in costs for implementing changes will be determined and advised at a later date.

Legislative Implications

46 To accommodate any legislative reform following a review, I seek Cabinet's approval to include a Public Works Amendment Bill in the Legislation Programme. I seek Category 7 priority (policy development to continue in or beyond 2024) under Cabinet Office Circular (23) 04.

47 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

48 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

49 This paper does not have any climate change implications.

Population Implications

50 This paper 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 in terms of the PWA's relationship with their land interests.

Human Rights

51 This paper 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 Resources

- 52 Because of temporary resourcing needs, LINZ drew on the equivalent of one FTE contracting resource. LINZ's approach to contractors and consultants is being actively managed and these costs are being reduced across the organisation.

Consultation

- 53 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, Department of Internal Affairs, NZ Transport Agency Waka Kotahi, Ministry for Culture and Heritage, the Ministry of Business, Innovation and Employment, and the New Zealand Infrastructure Commission Te Waihanga. The Department of the Prime Minister and Cabinet and Parliamentary Counsel Office have been informed.

Communications

- 54 I intend to publicly announce the Expert Advisory Panel subject to Cabinet's agreement for a review.

Proactive Release

- 55 Consistent with Cabinet Office Circular (23) 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 Business Committee:

- 56 **Note** that the Public Works Act 1981 (PWA) is critical in enabling land to be acquired for public infrastructure projects, which the Government has committed to supporting and accelerating.
- 57 **Agree** to initiate a review of 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.
- 58 **Agree** that the review would focus on key issues in the PWA's land acquisition and compensation functions.
- 59 **Agree** to the proposed criteria for the review of the PWA, being:
- 59.1 efficiency,
 - 59.2 effectiveness, and

59.3 clarity.

60 **Note** that any proposals would need to ensure following structures are retained:

60.1 the fundamental principles of the PWA including natural justice and property rights, and

60.2 that the Crown's Treaty settlement obligations are upheld.

61 **Note** that due to the PWA's significant powers and the level of public interest, an Expert Advisory Panel will be established to provide independent, specialist advice and to engage with critical stakeholders ahead of any reforms.

62 **Note** the membership of the Expert Advisory Panel and the scope of the review will be refined and set through terms of reference.

63 **Agree** to include a Public Works Amendment Bill in the Legislative Programme as Category 7 (policy development to continue in or beyond 2024).

Authorised for lodgement

Hon Chris Penk

Minister for Land Information