

# Acknowledgements

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The views expressed in this paper do not necessarily represent government policy, views of persons consulted or the views of those who advised on or researched aspects of the paper.

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# Foreword

In many ways, the history of public works legislation reflects this nation's recent history. Changes in technology, land ownership, and the development of towns and transport systems in nineteenth century United Kingdom profoundly influenced what happened in New Zealand. People arriving in New Zealand at that time disregarded the traditional approach to land tenure in this country. Besides introducing the land tenure system of England, they also developed the idea that a nationally-elected Government should be the central authority to undertake and own public works. This shaped legislation developed in the latter part of the 19th century and supported Sir Julius Vogel's extensive public works programme.



In New Zealand, the philosophy of serving the greater public interest at the least possible expense and inconvenience to the individual has underpinned the development and use of public works legislation. Governments built a network of roads and railways, and hundreds of bridges, which promoted a new pattern of settlement and use of inland areas. However, these developments had costs, particularly for Maori. Land was sometimes taken in the face of strong protest.

Public works legislation from 1870 onwards enabled communities to be provided with water, power, housing, schools, hospitals, ports and other public facilities, contributing to a rapid evolution of New Zealand's economy. The nation could not have been developed in the way that it has without this legislation. In the years after the 1939-45 war, however, land taken for inner-city motorways, public housing development, coal mining and other purposes prompted questions about the impact on the environment, heritage, the traditional concept of private land ownership, and other related issues.

The last two decades have brought even greater changes. New technologies are changing the face of many services, and there are new infrastructural needs. Private-sector operators are being offered opportunities to supply public services and utilities. The experience is mixed, but it is clear that the operators of utilities and other public services and facilities must take more than financial profit into account in the longer-term interests of communities and the nation.

The wider approach to the provision of public services and facilities, encompassing economic, social and environmental factors, makes it necessary to re-examine public works legislation. How far should the powers of local or central government extend to compulsorily acquire land and for what purposes? Who should profit from the added value that the community, through collective efforts, or the nation, through public works, gives to privately-held land nearby? There are a number of other questions and criticisms of the operation of the Public Works Act 1981. The Courts have determined some of the issues. The Waitangi Tribunal has examined issues relating to the impact of public works legislation on Maori, and has recommended legislative change.

Public consultation is critical. Public works legislation directly or indirectly affects every citizen. A key question is the balancing of individual rights and wider public needs. It is a balance between the undoubted benefits that flow from private ownership of land and the wider desire for public facilities, amenities and access. What should we do when land is no longer required for a public work? How should we address Maori concerns?

This discussion paper sets out many issues that have emerged in the early stages of the review. Wider consultation will improve the review process.

Public participation in the submission process is crucial. It will help formulate policy proposals that lead to effective government decisions. To make a difference, take the time to make a submission and contribute to this important legislative review.

Hon Matt Robson

*Minister for Land Information*

# Introduction

There has been no in-depth review of the Public Works Act 1981 since it was enacted. Over the last decade there has been mounting pressure for a comprehensive review of public works legislation. The Government has agreed to a comprehensive review and my department, Land Information New Zealand, is carrying out the review.



The Public Works Act is a substantial piece of legislation. The review is expected to take until 2002 when the Government is likely to introduce a Bill to Parliament. To support effective legislation, the review needs to identify issues and assess all available options.

This discussion paper focuses on key issues within the Government's terms of reference and presents some possible options for change. Commissioned research has analysed how other countries legislate for public works, how they have accommodated private providers of public services, and whether their legislation makes special provisions for aboriginal lands. This, together with legal historical research into New Zealand law, has provided the background necessary to consider what New Zealand might do. You can browse these documents on the LINZ-linked website [<http://www.pwareview.linz.govt.nz>]

The issues are complex, the solutions are not always self-evident, and there are many stakeholders. We have been very fortunate to have excellent preliminary input from some stakeholder groups. This has made the review process and preparation of this discussion paper more robust and comprehensive. There has been general agreement on the issues and difficulties arising from the Public Works Act. Different views on the solutions are to be expected recognising the diversity of parties and individuals affected by the acquisition of land for public works.

Some issues and options are likely to challenge strongly-held beliefs about property rights. This should mean vigorous debate during public consultation. Strong discussion adds to the integrity and rigour of the review and legislative process. There is a greater chance to "get it right" with the approach taken in this discussion paper of asking questions without having solutions already in mind.

It is essential that the issues raised in this document be widely considered during the public consultation round. We want you to express your views on particular areas of interest and relate your experience of the Public Works Act. I expect further insights and ideas will result from the public consultation. Relevant submissions will contribute to making legislation that is better, more efficient and aligned to today's needs and future needs. You can make an on-line submission through the website [<http://www.pwareview.linz.govt.nz>] or post your submission to Public Works Act Review, Land Information New Zealand, P O Box 5501, Wellington by 30 March 2001. Chapter 8 of this paper details the submission process.

A handwritten signature in black ink, appearing to read 'Russ Ballard', with a long horizontal flourish extending to the right.

Dr Russ Ballard

*Chief Executive of Land Information New Zealand*

# Overview

Land Information New Zealand is undertaking a comprehensive review of the Public Works Act 1981 (the Act).

## What does the Public Works Act do?

This Act and its predecessors have played a large part in the development of New Zealand's infrastructure. It has enabled land to be acquired, either by agreement or by compulsion, for the construction of roads, railways and airports; the provision of services such as electricity and water supply; and to build hospitals, schools and other public facilities throughout the country. The Act also contains provisions for disposal of land when it is no longer required for a public work.

## Why is a review necessary?

Although the present Act is a relatively recent piece of legislation, it is grounded in 19th century legislation. In the almost two decades since its enactment, New Zealand has undergone significant economic reforms, particularly with private sector provision of essential and other services that were formerly provided by the state. Over that time there have also been other changes in our society, such as the increasing awareness of the Treaty of Waitangi, the technological revolution and globalisation. A review is therefore timely so that we can continue to make provision for the facilities and infrastructural needs of today and for those likely to arise in the future. However, in doing so, a careful balance needs to be struck between the rights and obligations of the Crown, local authorities and certain other bodies to acquire land and the rights and obligations of the person with a legal interest in the land.

The aim of this review of the Act is to produce legislation that is clear, workable and sufficiently flexible to be able to meet current and future requirements for public works.

## What is the purpose of public consultation?

A key part of the review is to consult widely with the general public, stakeholders and Maori to obtain the views of users of the current legislation and those that have been or may be potentially affected by the legislation. These views will assist the policy development and legislation-making processes. Key issues have been identified in this discussion paper. The discussion paper is intended to provide a focus for, but not limit, public input on the review of the Act. Some options are also put forward for consideration and a number of these include provisions currently in force in other countries.

Issues likely to be of interest to Maori are considered throughout the paper. In addition, they have been summarised and cross-referenced in Chapter 7 in order to assist with the Maori consultation programme that will consist of 14 hui scheduled to run from late January through to early March 2001. The dates and locations of these hui will be publicly advertised when finalised.

## The Issues

The discussion paper is focused on broad issues rather than on details. It is important to resolve the high level principles first, because until these are resolved, matters of detail cannot be addressed.

The issues fall into seven key areas. The first two key areas relate to:

- what is a public work?; and
- who should be able to exercise public works powers?

Questions arise as to whether the current definition and powers should be expanded or contracted. There are arguments that can be made out for both sides, depending on the scope of the legislation that is envisaged.

Resolution of these issues will also influence, and to some extent be influenced by, considerations of the other areas which relate to:

- acquisition of land. For example, should acquisition by agreement be prescribed in legislation to the same extent as compulsory acquisition?
- compensation provisions. For example, who should be entitled to compensation and for what?

Currently, compensation is only paid to the person from whom the land is acquired and others that are affected during the construction of the work;

- disposal of land when it is no longer required for a public work. Currently, the legislation provides for an offer-back to the former owner unless the property meets certain exemption criteria. Whether this provision should be retained, modified or dispensed with needs further discussion;
- compliance and enforcement provisions which relate to both acquisition and disposal of land. In particular, compliance questions have been raised in respect of offer-back requirements for land that was once within the Crown estate but has subsequently transferred to private commercial entities along with the public work. The Act is silent on compliance and enforcement in these and other situations; and
- whether Treaty of Waitangi provisions should be included in any new legislation, the nature of any such provisions and on whom they would be binding. The Waitangi Tribunal has made a number of recommendations in its reports on public works claims and many of these have been included as options when discussing the particular issues.

Overlying these broad issues are the practical considerations of ensuring that any legislation is clear and easy to follow and implement. Consequently, any current administrative difficulties will need to be identified.

### How to make a submission

Land Information New Zealand seeks your views on these issues and how they would be best resolved, taking account of the variety of interests that are involved. Submissions need not be confined to the options presented. The close off date for submissions is 30 March 2001. The discussion paper and submission form are available from Land Information New Zealand offices and on line <http://www.pwareview.lin.govt.nz> Electronic submission is encouraged but those without access to this technology can post or fax their submissions as set out in Chapter 8.

# Background

## 1.1 Historical context

### 1.1.1 Legislative origins

The Public Works Act 1981 (the 1981 Act) is essentially grounded in the Public Works Act 1928, earlier public works legislation of 1876, 1882, 1894, 1905 and 1908, and the Immigration and Public Works Act 1870. The legislation derives from both English common law and statute law. The common law allows the Crown to acquire land compulsorily. Statute law allows compulsory acquisition, acquisition by agreement, and requires compensation to be paid.

The public utilities essential to the economic infrastructure of a new country are now largely complete. The process began in the 1870s with Sir Julius Vogel's massive public works programme. Low numbers of compulsory acquisitions in recent years reflect both the decreasing demands for land for public works and success in negotiating acquisition without the need to resort to the compulsory acquisition provisions of the 1981 Act.

### 1.1.2 Administering the legislation

Nineteenth century legislation refers to a "Minister for Public Works" and a "Public Works Department". The Public Works Act 1928 brought the Public Works Department and the Ministry of Works into a single unit. The responsible Minister became the Minister of Works, the head of the department, the Commissioner of Works. This arrangement lasted for more than 50 years until 1973, when the department was re-named the Ministry of Works and Development and the Minister of Works and Development became the responsible Minister.

The State Sector reforms of the 1980s saw the abolition of the Ministry of Works and Development in 1988. Parts of the 1981 Act considered in this Discussion Paper then came under the Department of Lands and the Minister of Lands. However, this arrangement was short-lived. The Department of Lands was abolished in 1990, and the Department of Survey and Land Information took over administering most of the 1981 Act. Legislation to restructure that department in 1996 defined "chief executive" (as referred to in section 40 of the 1981 Act) as the chief executive of Land Information New Zealand. The Minister of Lands has remained the Minister responsible for acquisition and disposal since 1988.

## 1.2 Public Works Act 1981 – summary of current act

The 1981 Act deals with the right of central and local government to acquire private land for public purposes, the procedures for acquiring this land and subsequent disposal when the land is no longer needed for public purposes. Since 1981 there have been several, mostly minor, legislative amendments dealing mainly with procedural and administrative matters.

The current provisions deal with:

- acquiring land for public works by negotiation or compulsorily;
- compensation;
- disposing of land held for public works; and
- administrative matters.

"Administrative matters" the 1981 Act covers include:

- gazetting, revocation, amendments and registration of documents;
- powers of entry for surveys and investigations; legalisation, stopping, and exchanging of roads; railways and tramways;
- defence works;
- artificial lakes and secondary use of public works land; and irrigation.

# Review scope and process

## 2.1 Key drivers for the review

The Government has decided to undertake a review of the 1981 Act to:

- reflect changes in the social and economic environment relating to acquisition and disposal of land for public works;
- clarify the rights and obligations of former and current owners of property subject to the 1981 Act;
- ensure that exercise of the 1981 Act powers, functions and duties is within a statutory framework that accords with Treaty of Waitangi principles;
- ensure adequate provision for non-Crown providers of public services;
- reduce the risk of incurring further Crown liabilities; and
- make efficiency gains.

Land Information New Zealand, as the department responsible for administering the 1981 Act, is undertaking the review in accordance with the agreed terms of reference. The key components of the terms of reference are set out below.

## 2.2 Government decisions to date

The Government has decided that certain principles will apply to the new Act. These include:

- the right of the Crown, public bodies and certain specified authorities to acquire land for a public work, whether by agreement or compulsorily;
- local authorities' right to acquire land for a public work, whether by agreement or compulsorily;
- the balance between land owners' rights and the public good;
- that the Act's acquisition and disposal procedures are just and transparent for all parties; and
- Crown obligations under the Treaty of Waitangi.

## 2.3 Review objective

The review objective is to provide legislation that is clear, workable, sufficiently flexible to be able to meet current and future requirements for public works, and gives effect to Crown obligations under the Treaty of Waitangi.

## 2.4 Approach taken

The approach taken is a rigorous and consultative process that identifies and addresses broad key issues, including:

- who should be allowed to use the Public Works Act and for what purposes;
- acquisition of land for a public work and the extent to which private entities delivering public services should be accommodated;
- disposal of land no longer required for a public work;
- matters raised by the Waitangi Tribunal;
- problems in administering the current legislation;
- Crown and local authority exposure to risk; and
- whether Treaty of Waitangi provisions should be included in any new legislation.

## 2.5 Form of discussion document

Key drivers, Government decisions, review objectives and the approach taken have all shaped this Discussion Paper. Working parties of officials from government departments and stakeholders were convened to identify and explore the issues. This Discussion Paper deals, to a large extent, with all the key issues that have been raised. Including all the issues provides submitters with the widest scope for comment on the 1981 Act and options for the future.

# Key issues and possible options

## Introduction

This part of the paper discusses the issues identified and possible options for the future. Because the Public Works Act 1981 (the 1981 Act) is complex, the issues have been broken down into subject groups discussing:

- the definition of a Public Work and who can use the Act;
- acquisition and compensation;
- disposal of Public Works Act land;
- other matters (including reference to Treaty of Waitangi provisions, roading provisions and compliance issues); and
- summary of issues (covered in the above subject groups) that are of particular interest to Maori.

A background to the subject is provided before each issue is discussed, overseas legislation (Australia, Canada, the UK and USA) is considered, and options are identified. Some issues are common to more than one of these subject groups. Where this is the case, issues have been cross-referenced.

# What is a public work and who should have access to the Public Works Act?

A public work can cover a diverse range of activities including roads, railways, schools, hospitals, and scenic reserves. As noted below it can be seen that a public work might be defined as any activity that the Crown or any local authority is authorised to undertake.

## 3.1 What is a public work?

Section 2 of the 1981 Act defines “Public Work” and “Work” to mean:

- “Every Government work or local work that the Crown or any local authority is authorised to construct, undertake, establish, manage, operate, or maintain, and every use of land for any Government work or local work which the Crown or any local authority is authorised to construct, undertake, establish, manage, operate, or maintain by or under this or any other Act; and include anything required directly or indirectly for any such Government work or local work or use:*
- Every Government work or local work constructed, undertaken, established, managed, operated, or maintained by any Education Authority within the meaning of the Education Act 1964 and every use of land for any Government work or local work which such Education Authority constructs, undertakes, establishes, manages, operates, or maintains, and include anything required directly or indirectly for any such Government work or local work or use:*
- Any Government work or local work that is, or is required, for any university within the meaning of the Universities Act 1961.”*

## 3.2 Who can use the Public Works Act?

### 3.2.1 Central and local government powers

The Crown or any local authority is empowered to acquire any land for any public work. An acquisition can either be with the land owner’s agreement or, when agreement cannot be reached (or the land owner cannot be located or is deceased), the land may be acquired without the land owner’s consent (compulsory acquisition).

### 3.2.2 Powers of private providers

In addition to the Crown and local authorities, certain “private” organisations are able to use the compulsory acquisition powers of the 1981 Act. A network utility operator who is also a “requiring authority” can request the Crown (through the Minister of Lands) to compulsorily acquire land on its behalf as if the land were required for a Government work. The framework for determining who can become a requiring authority is set out in the Resource Management Act 1991 (rather than the 1981 Act). The Minister for the Environment can approve a network utility operator as a requiring authority for a particular project or a particular operation. The Resource Management Act defines a network utility operator as a person who:

- undertakes or proposes to undertake the distribution or transmission by pipeline of natural or manufactured gas, petroleum or geothermal energy; or*
- operates or proposes to operate a network for the purpose of telecommunication or radiocommunication; or*
- is an electricity operator or electricity distributor for the purpose of line function services; or*

- (d) undertakes or proposes to undertake the distribution of water for supply; or
  - (e) undertakes or proposes to undertake a drainage or sewerage system; or
  - (f) constructs, operates, or proposes to construct or operate, a road or railway; or
  - (g) is an airport authority for the purposes of operating an airport; or
  - (h) is a provider of any approach control service; or
  - (i) undertakes or proposes to undertake a project or work prescribed as a network utility operation.
- The effect of taking the land “as if the project or work were a Government work” is that:

- the land vests in the network utility operator instead of the Crown;
- claims for compensation are made against the Minister of Lands; and
- all costs that the Minister of Lands incurs can be recovered from network utility operators.

In the past central government and local authorities have operated most utilities. Most utilities are activities that must follow a continuous course, such as road or sewerage systems. Public works legislation for avoiding gaps in the network was formerly available. Some of the functions that utilities undertake are vital for human life (e.g. water supply), or business activity (e.g. telecommunications). The ability for private providers to have recourse to the compulsory acquisition provisions of the 1981 Act were considered necessary to prevent the situation where a land owner may hold out for excessive compensation where no other alternative site or route was available.

### Trends

To date, network utility operators with the opportunity to become requiring authorities (refer to glossary for definition) have been reluctant to begin the process of compulsory acquisition, preferring to negotiate agreement outside the constraints of the 1981 Act.

Two trends that can be seen in the granting of powers of compulsory acquisition to requiring authorities are:

- with public bodies using compulsory acquisition less for unessential works, the “public interest” element increases, while the “public work” definition becomes less relevant; and
- a restriction similar in many ways to the “essential works” concept discussed in Chapter 3.3.3 below may be necessary to keep the powers within proper bounds.

### 3.2.3 Heritage protection

The Resource Management Act also provides for a heritage protection authority (as approved by the Minister for the Environment) to request the Minister of Lands to acquire land on its behalf. In these cases the land vests in the heritage protection authority instead of the Crown.

## 3.3 Some history

Historically, public works legislation in New Zealand has only dealt with land held for a “public purpose”, i.e. central or local Government work. Thus, in the early statutes, the Crown had the power, for example, to take land compulsorily for a government railway under “middle-line proclamation”. However, private railways are mentioned only in the context of regulation for safety and similar reasons.

### 3.3.1 The common law

The common law has long recognised the need to cover some situations where the public interest outweighs the private damage (refer to glossary for definitions). In relation to land acquisition, the common law right of “eminent domain” (refer to glossary for definition) allows the state to resume private land. In New Zealand, this right derives from the Crown’s prerogative powers. Most reported instances of the Crown using this power relate to emergency situations in wartime. However, the more common approach, here and overseas, is for the state to put land acquisition powers in legislation.

### 3.3.2 Private benefit

It is not widely recognised that since the nineteenth century, “public works” legislation has enabled compulsory acquisition of land or interests in land for the benefit of private individuals.

The Public Works Act 1876 in places dealt with private benefits in ways not found in more recent Public Works Acts. One section allowed an owner who needed to connect to a public drain the right to drain

his or her property through adjoining land. Application had to be made to a Magistrate’s Court for an order to make the drainage works. Two Justices had to be satisfied that the works were necessary, that the land would be drained in a way causing the least possible damage, and that no injury would be done for which compensation was not payable.

The 1876 Act also gave the Governor powers to declare land within a proclaimed gold field to be a water race. The Governor could then “demise and lease any water race to any person willing to work the same” and the entire real and personal property would vest in the lessee during the period of the lease.

A number of private Acts empowered individuals to enter private properties to construct dams, provided they paid compensation. Another example, the Kaitangata Railway and Coal Company Limited Empowering Act 1875 gave the company the right to take land for its purpose subject to the payment of compensation.

The 1928 Public Works Act allowed any person owning timber or the right to cut timber on any land “from which there is no practical and suitable means or way of removing the same to any railway, road, mine, or sawmill, except by private land”, to take court action. The timber owner could summon the owner and occupier of the private land to appear before a Magistrate and “show cause why the applicant should not be authorised to construct a road or tramway over such lands for the removal of timber”. The Magistrate could make an order setting the route of the road or tramway, the amount of compensation to be paid, the time in which the road or tramway had to be built and how long the right was to last (not exceeding ten years).

### 3.3.3 Essential work concept

When the 1981 Act was originally enacted, the concept of an “essential work” was introduced. Under the originally-worded section, land could not be acquired compulsorily unless the work for which it was required was an essential work. The 1981 Act listed essential work and included such things as sewerage, hospitals, schools, roads, defence works, and police stations.

The essential work concept did not receive widespread acceptance, particularly from local authorities. Submissions by some local authorities before the Bill became law asked for the concept to be abolished, or expanded to include a large number of additional items, or extended to include all works that local authorities were empowered to undertake. Despite opposition to the proposal, the essential work philosophy was enacted with the inclusion of an additional section. This section allowed the Governor-General to declare any specific work to be an essential work for the purposes of the 1981 Act. In 1987, the concept of an essential work was removed from the 1981 Act. Consequently, land could be acquired compulsorily for any public work.

## 3.4 Issues – definition of a public work

Two major issues facing this review of the 1981 Act are defining a public work, and how far the powers of a revised Act might extend. The previous section of this paper highlighted the current wide definition of “public work”.

The current definition emphasises who has the power to undertake the work. This has resulted in a situation where the Crown or a local authority can use the 1981 Act for *any* activity they are authorised to undertake. With private providers increasingly supporting the public work framework, emphasising who has the power is perhaps less appropriate now than it was when the 1981 Act was first enacted.

If the concept of a private provider is to continue, ultimate ownership of the public work may be of lesser importance. Emphasis shifts from who can undertake the work to the public interest that causes the construction and operation of the work. It may not seem appropriate for anyone other than a Government body or local authority to be able to take land compulsorily. However, it could be argued that the public interest might be served by allowing those others to have similar rights. The “public interest” argument emphasises who benefits. In contrast, as noted above, the concept of a “public work” places more emphasis on who has the powers to undertake it.

### 3.4.1 Use of the Public Works Act

*Should the New Zealand Government provide a mechanism to build essential services that the private sector can provide?*

In many cases the private sector can provide the infrastructure to support a public work the Crown or a local authority requires. Often a developer can enter into a normal commercial lease with the Crown or local authority if they already own the land without having to resort to the Public Works Act. However, while the commercial sector may be willing to develop a site for a public work, land may not be available in a particular locality. There needs to be a mechanism to ensure land is available to build essential services.

### 3.4.2 What is a “public work”?

*Is the current definition appropriate?*

The current definition of a public work includes activities the Crown or a local authority is authorised to undertake. This may be acceptable to the acquiring authority. However, the broad definition may result in land being used for works the general public may not see as being in the “public interest”.

### 3.4.3 Public work or public interest

*Should the definition of a “public work” or “public interest” relate to the proposed use of the land or to the status of the party providing the services?*

Currently the Resource Management Act allows any network utility operator (who is also a requiring authority) to request the Minister of Lands to consider compulsorily acquiring land on its behalf.

Ultimate ownership of a work may cloud public perception on whether private providers should use Public Works Act processes. Where the proposed land use can be shown to be in the wider public interest (refer to glossary for definition), ultimate ownership may not be relevant.

### 3.4.4 When does a property cease to be used for a public work?

It has been difficult to define the point at which a property ceases to be used for a public work. Many organisations that currently hold land acquired under a Public Works Act can lease their land for a purpose, which does not relate to the public work. It may be that income generated from this activity is used to support the continued operation of the work.

### 3.4.5 Overseas legislation

Australian Commonwealth, Canadian and UK laws do not define a public work. Compulsory acquisition processes are available to bodies and organisations with statutory purposes and duties in an empowering Act that allows the body or organisation to take land.

However, in Western Australia, a public work is more precisely defined as any work which the Crown, Government or local authority is authorised to do, as well as works such as railway, water supply, sewerage, hospitals, schools and many other specific works.

There is no definition of a public work in United States legislation. However a public project is defined as one for which property acquisition may be required for a public use, benefit or purpose. A body or organisation wishing to acquire land may approach the owner to negotiate a purchase. If no agreement is reached, the body or organisation wanting to acquire land must file a lawsuit. A Court will decide on the public interest, the requirement for the land, and even compensation the land owner will be paid.

In the UK, any person or body can apply for the Secretary of State to make a works order to obtain authorisation to construct works on any land.

### 3.4.6 Some options to consider

*Table 3.4 Definition of a Public Work and who can use the Public Works Act powers of Compulsory Acquisition*

Option	Pro	Con
Specifically define what constitutes a public work.	Would ensure certainty about when the Act should be used.	May be limiting if the list is too specific.
Limit Crown or local authority ability to compulsorily acquire land for activities considered to be essential or in the “public interest”.	<ul style="list-style-type: none"> <li>• More negotiations could be undertaken without the threat of compulsory acquisition affecting discussion.</li> <li>• Landowners would know exactly where they stood if approached with a request to purchase their land for a public work.</li> <li>• Would encourage the Crown or local authority to make greater use of private sector developers to provide the infrastructure to support the public work.</li> </ul>	<ul style="list-style-type: none"> <li>• May increase the cost of non-essential works where landowners are unwilling to sell.</li> <li>• Could increase the lead in time for non-essential work where land was not readily available.</li> <li>• Changing circumstances over time could lead to different views as to what is essential.</li> </ul>
Retain the status quo - Crown or local authorities can use the Public Works Act to acquire land for any activity they are authorised to undertake.	Would allow flexibility for the Crown or local authorities to operate effectively.	The Public Works Act could be used for purposes the public might not see as a public work.
Place more emphasis on who benefits from the work, i.e. “the public interest” rather than on who has the power to do the work.	<ul style="list-style-type: none"> <li>• Allows for greater flexibility as to who can construct and operate a public work.</li> <li>• Ensures ultimate ownership of a work does not distract from whether the work is necessary.</li> </ul>	May lead to an increase in private companies using Public Works Act compulsory acquisition provisions.
Allow market forces to dictate the acquisition/ construction of “non-essential” public works.	Would ensure any acquisition for a non-essential work did not result in a landowner feeling aggrieved with the acquisition by the Crown or local authority.	May limit Crown or local authority ability to operate efficiently where land is not readily available.

# Acquisition

## 4.1 Introduction

In the nineteenth century, the New Zealand Government passed Acts or ordinances for specific projects. This system allowed Parliament to decide what land would be taken for what purpose, and local authorities did not have their own powers to acquire land compulsorily.

The Public Works Act 1876 aimed to provide a central law and more power to local and road boards. It provided a system for land to be taken from different owners for a major work such as a railway. Such pieces of land would be shown on a map, and the Governor-General would sign a Proclamation taking the land.

The Public Works Act 1981 (the 1981 Act) allows the Crown or local authorities to acquire or enter land by agreement or compulsorily. It also provides a strict method for assessing the compensation payable to the land owner. (Note the reference to the land acquisition powers contained in section 247F of the Local Government Act 1974 which provide a link to the 1981 Act.) The 1981 Act allows land to be acquired subject to other interests, or for an interest in land such as an access right of way to be taken separately.

### 4.1.1 Others can use the PWA

The 1981 Act allows the Crown or local authorities to acquire land. Other (sometimes non-government) agencies also have limited access to the 1981 Act through the Resource Management Act 1991 (RMA). This Act gives special powers to “requiring authorities”.

For example, the Minister for the Environment may approve a network utility operator as a requiring authority for a particular project or a particular operation. The requiring authority can then apply to the Minister of Lands to take the land for a project or work using the 1981 Act as if the work was a Government work. If the Minister of Lands agrees, the land can be acquired or taken. This means:

- the land ownership vests in the network utility operator instead of the Crown;
- claims for compensation can be made against the Minister of Lands; and
- all costs the Minister of Lands incurs are recoverable from the network utility operator.

## 4.2 Acquisition by agreement

The history of Public Works Acts in New Zealand increasingly distinguishes between taking land compulsorily and purchase by agreement. The present Act clearly encourages reaching agreement so that compulsory provisions do not need to be used. Acquisition by agreement is more streamlined and less costly. It does not require time-consuming steps such as notice of desire, notice of intention and objections.

The Crown or local authority must negotiate with the land owner or the Maori Trustee or Public Trustee where appropriate. The Maori Trustee is involved where land is Maori freehold land, beneficially owned by more than four people and not vested in any trustees. The Public Trustee may be used in cases such as where an owner is an infant, mentally or legally disabled, or an absentee who cannot be located.

### 4.2.1 Issues

#### Acquiring a less than freehold interest

*Is it better for the Crown or another “acquirer” to negotiate purchase of rights, leasehold, strata, or other less than freehold interest, or enter into joint ventures with land owners?*

When acquiring land for a public work, an acquirer can currently acquire less than a freehold interest. The provision could be widened in new legislation to the purchase of a right to occupy or entering into a joint venture agreement with a land owner. This would enable land owners to continue to hold an interest in their land. This can be especially important if the owner has an emotional or cultural attachment to the land. It also enables the land owner to benefit from a public work that may also be a commercial enterprise.

In some cases this approach may not be appropriate due for example, to the nature of the work or the length of time for which the work is required to continue. There may also be problems in dealing with any improvements when the land is no longer required for the public work.

#### Overseas legislation

The Australian Native Title Act 1993 allows parties to enter into Indigenous Land Use Agreements that are independently negotiated and can be registered. These agreements do not cancel the native title.

This is also relevant to compulsory acquisition (refer to Chapter 4.3) and Maori land (refer to Chapter 7.4).

#### Compensation provisions where parties agree to an acquisition

*Should the Public Works Act not prescribe compensation formulae where an acquisition is by agreement so that acquiring authorities are free to negotiate an agreement to acquire land for a public work?*

Up until the 1981 Act was amended in 1987, agencies were able to purchase land by agreement, without using the Act's compensation provisions, where the work was not an essential work. In 1987, the 1981 Act was amended removing the reference to essential works. The current Act no longer specifically provides for consideration to be paid that is outside the compensation provisions of the 1981 Act.

Where both parties agree to an acquisition, an open market transaction is often not possible because of the 1981 Act's strict compensation requirements. These requirements do not allow the Crown or local authority to pay more for the land than the value determined by a registered valuer. Consequently, payment over and above a prescribed amount is unable to be traded off against time and administrative cost even if the overall cost to the Crown or the local authority is less than with the cost of a compulsory acquisition.

The desire for flexibility must be balanced against the principle that a land owner should not be placed in a better or worse position because their property was acquired for a public work. There also needs to be a control on how public agencies spend public money, and the boundaries within which they operate. The Public Finance Act 1989 encourages effective and efficient use of financial resources in departments and Crown entities. However, on its own this may not be sufficient to prevent inflated compensation being paid.

Consequently, any new regime to calculate and pay compensation should ensure:

- no distortion or inflation of the negotiated value of Public Works Act acquisitions;
- public money is not misspent; and
- an individual land owner does not unfairly and significantly benefit from land being acquired for a work that is in the overall public good.

#### Overseas legislation

In Australia, statutory compensation provisions do not apply if the land is available for public sale and the land is acquired by agreement. If the responsible Minister believes the acquisition is a normal commercial transaction with the parties on equal terms, the Minister may certify that it is a standard commercial transaction.

In Canada, statutory compensation only applies where the acquisition is compulsory. Otherwise negotiations do not fall within the statutory compensation regime.

In the UK, parties are free to negotiate compensation outside statutory compensation rules unless notices for compulsory acquisition have been served.

In the United States, the emphasis is on the parties reaching a negotiated agreement.

## 4.2 Some options to consider

Table 4.2 Acquisition by Agreement

Issue/Option	Pro	Con
Promote the negotiated purchase of rights, leasehold, strata, other less than freehold interest, or entering into joint ventures as an alternative to purchasing freehold?	<ul style="list-style-type: none"> <li>• Landowners can continue to hold an interest in their land where the land holds an emotional or cultural attachment.</li> <li>• Enables the landowner to benefit from a public work that may also be a commercial enterprise.</li> </ul>	Use of the provision might not be in the best interests of all affected parties, e.g. significantly increasing the long-term cost of the works.
Enable Crown or local authorities to apply non-legislated, negotiated, open market compensation where agreement is by negotiation?	<ul style="list-style-type: none"> <li>• Allows the Crown or local authority to make a flexible decision based on the costs and benefits of paying greater than the value a valuer determines.</li> <li>• Public Finance Act limits unjustifiable compensation by requiring efficient use of resources.</li> </ul>	<ul style="list-style-type: none"> <li>• A landowner may be offered less than they would have been entitled to under the Public Works Act.</li> <li>• The Crown/local authority may end up paying more than they need to thereby higher cost to the public.</li> </ul>

## 4.3 Compulsory acquisition

An underlying policy of the Public Works Act 1981 (the 1981 Act) was to minimise the extent to which land could be acquired compulsorily. The 1981 Act provides a simpler regime for acquisition by agreement than for compulsory acquisition, although compulsory acquisition procedures are used where land owners are unable to be located (absentee land owners). When the 1981 Act was originally enacted, until the Public Works Amendment Act (No. 2) 1987 removed references to "essential works", section 22 said land could not be acquired compulsorily unless the work for which it was required was an essential work. This issue is discussed further in Chapter 3.3.3 Essential work concept.

When the "essential work" concept was abolished this subsection was repealed. The result was that land could be compulsorily acquired for any public work.

No great immediate increase in compulsory acquisitions occurred as the 1981 Act was already framed in a way that encouraged reaching agreement with the owner. Before proceeding to take land, the 1981 Act requires the Minister or local authority to:

- serve notice of a desire to acquire the land on every person having an interest in the land; and
- lodge the notice with the District Land Registrar, who registers the notice against the affected land's certificate of title.

The Minister or local authority must make "every endeavour to negotiate in good faith" to reach an agreement to acquire the land.

After three months, if agreement cannot be reached, the Minister or local authority then goes to the next compulsory acquisition stage. The Minister signs a Notice of Intention. The notice is then published in the New Zealand Gazette, twice publicly notified (i.e. published in a newspaper), served separately on the owners and occupiers of the land, and other parties with an interest in the land, so far as they can be ascertained, and registered against the land's title. A Notice of Intention to take gives the owner information on acquisition details and the right to object to the Environment Court.

The Environment Court has binding power over the Crown and local authorities. The Court decides "whether, in its opinion, it would be fair, sound, and reasonably necessary for achieving the objectives of the Minister or local authority, as the case may require, for the land of the objector to be taken". The Court examines how adequately the Minister or local authority has considered alternative sites, routes, or other methods to achieve their objectives.

If no one objects, or the Court disallows the objections, the Minister recommends to the Governor-General to declare by Proclamation that the land is taken for the public work. The 1981 Act compensation machinery then operates to compensate the owner.

### 4.3.1 Issues

#### “Essential work”

*Should compulsory acquisition only be considered for site-specific or “essential” works?*

In the nineteenth century, the New Zealand Government passed Acts or ordinances for specific projects. Parliament decided what land would be taken for what purpose. The 1981 Act limited compulsory acquisition to a defined number of public works. However, the scope was widened in 1987 to include all public works. A mixture of the two processes could see compulsory acquisition being limited to works that legislation defines. Special legislation would be required where the work is outside a prescribed list.

This approach means Parliament as a whole decides what works are in the public interest. The cost would be the financial and time costs of passing an Act through Parliament to enable compulsory acquisition of land for a work that is in the public interest. This issue is discussed further in Chapter 3.3.3 Essential work concept.

#### Overseas legislation

In overseas legislation, the Minister, or in the USA the Courts, decide whether a body or organisation can use compulsory acquisition rules for a particular work. In Western Australia, legislation specifically defines public works.

#### Compulsory acquisition of land

*Should land only be acquired compulsorily in special circumstances?*

Another approach could be to distinguish not on the basis of the nature of the public work for which the land is to be used, but rather on the type, nature or characteristics of the land that is proposed to be taken. For example, some private land may be of such significance that it should only be taken as a last resort. In other cases, the present use of the land might mean that other land should, if possible, be sought in preference for the proposed public work. In relation to land with a reserve or other government status, section 52 of the 1981 Act provides for such land to be used for another public work with the consent of certain responsible Ministers.

Principles for the acquisition of private land might be that:

- land should not be acquired compulsorily if this can be avoided;
- where it is absolutely necessary to acquire land, a lesser interest such as a lease rather than purchase of freehold should be explored;
- there should be incentives to examine alternative routes/sites where sensitive land is initially proposed for acquisition for a Public Work;
- the aims of Te Ture Whenua Maori Act are considered in the acquisition of Maori land or wahi tapu;
- land should only be compulsorily acquired for a public work or purpose in exceptional circumstances and as a last resort in the national interest;
- where it is considered essential to acquire the freehold, land owners should have the right to have the question determined by an appropriate independent person or body; and
- where land has been acquired compulsorily, the title should be memorialised or caveated to protect the former owners' rights (see Chapter 5.4.4).

This discussion paper seeks views on:

- whether public works legislation should differentiate land acquisition on the basis of land status or use;
- whether public works legislation should make it more difficult to compulsorily acquire land through applying a more restrictive code or imposing some protected status on certain types or use of land;
- how the Act should deal with absentee land owners when wanting to acquire land;
- the possible elements of a more restrictive code; and
- the nature of any protected status.

Refer to paragraph 7.4 for further discussion on the acquisition of Maori land.

#### Environment Court role regarding land for roading and other “lineal” development

*Should parties need to go to the Environment Court for every acquisition that relates to a lineal development?*

Where a lineal development such as a highway or transmission line has been decided on, each owner can appeal a compulsory acquisition to the Environment Court. This is costly in terms of time and resources, and has no advantage once it has been decided that the land along the line to be taken is needed for the lineal development.

#### Overseas legislation

Some Canadian legislation says an inquiry can be dispensed with for lineal developments.

#### Private provider access to compulsory acquisition powers

The power to use Public Works Act compulsory acquisition powers has traditionally been confined to the Crown with limited opportunity for others to request the Crown to acquire land on their behalf. Devolution of public work type activities to private providers has also included the right to request the Crown to acquire land on their behalf. Where the Minister agrees to such an action the result may be that the Crown acquires the land and immediately transfers it to the private provider.

#### Overseas legislation

Legislation in those countries that we have considered does not separately identify private providers. The focus tends to be on the public good aspect of the work, rather than who provides the service. The Minister, or in the USA the Court, decides whether a body or organisation can use compulsory acquisition processes. In Western Australia, legislation specifically defines public works regardless of who provides the service - a public or private organisation. In Canada, federal Acts confer powers on both government agencies and private utility-type enterprises. In the province of Ontario some 8000 authorities have acquisition powers.

#### Lease only option for requiring authority

Where the Crown needs to compulsorily acquire an interest in land to support a requiring authority, should the Crown retain the interest in the land and lease to the requiring authority? This approach would ensure that any ongoing Crown statutory responsibilities remain with the Crown. Issues surrounding continuing property administration would need to be considered, as would the type of lease. Any lease provisions would need to be flexible enough to allow a requiring authority to operate in an efficient and cost-effective manner.

#### Overseas legislation

Overseas legislation provides for bodies or organisations with statutory authority to acquire land compulsorily to hold the land in their own right.

#### Becoming a requiring authority

*What process should be followed to determine who might become a requiring authority?*

Currently the Resource Management Act determines the criteria for a network utility operator to become a requiring authority and, consequently, who can request the Minister of Lands to invoke the 1981 Act compulsory acquisition processes on their behalf. This process is linked into the designation process also managed under the Resource Management Act. There is wide public consultation when considering the designation process. However no public consultation is required when the Minister for the Environment considers whether or not a network utility operator should become a requiring authority. Note that the Ministry for the Environment is currently undertaking a separate review of this process.

#### Competing developers

*Should a requiring authority have a commercial advantage over other providers?*

In future, a number of competing requiring authorities may wish the Crown to acquire land on their behalf. Set criteria for these types of situations may need to be spelt out in legislation and could include the possibility that competing providers share a common corridor.

A private provider which is able to request the Crown to acquire land on its behalf may have an unfair advantage over other providers without this ability. Existing lineal developments could be made available to any new network provider. This removes the risk of a monopoly situation and results in reduced acquisitions using the Public Works Act.

### 4.3.2 Some options to consider

Table 4.3 Compulsory Acquisition

Issue/Option	Pro	Con
Define essential work for compulsory acquisitions, with specific Acts of Parliament required where the work is outside the definition.	Parliament as a whole would decide what works are in the public interest.	The financial and time costs of passing an Act through Parliament.
Provide for land status or significance to be taken into account.	Active protection to particular classes, status or use of land deserving such protection particularly where provisions exist in separate legislation.	<ul style="list-style-type: none"> <li>• May increase project cost while alternate sites are being investigated.</li> <li>• May result in some landowners being unwilling to deal with the Crown, local authorities and other acquiring authorities under acquisition by agreement provisions.</li> <li>• Possible premium cost to overcome special protection.</li> <li>• Concern that all land should be treated equally.</li> </ul>
Limit the role of the Environment Court when undertaking a lineal development.	Would reduce the costs of lineal developments and potentially shorten the lead-in time for such developments.	Individual landowners may feel aggrieved if they have no right to take an individual case to the Environment Court.
Remove ability for requiring authorities to use the Public Works Act.	Ensures only public bodies use the Public Works Act and private providers operate in a truly competitive environment without resorting to the Public Works Act as a fall-back position.	May result in "public interest" work not being constructed due to lack of landowner co-operation.
Retain status quo - a requiring authority can request the Minister of Lands to compulsorily acquire land on its behalf, through becoming a requiring authority under the Resource Management Act.	Allows private providers to continue to construct "public good" works.	
Codify when and how requiring authorities can use compulsory Public Works Act provisions.	Ensures certainty about how and when private providers could resort to the Public Works Act.	
Where competing providers want the Minister to use the compulsory provisions of the Act, the selection process should be codified.	All interested parties will be fully aware of the selection criteria.	Possible greater administration costs.
Where a requiring authority requires land, the Crown retains the land freehold and leases the land to the requiring authority on a commercial basis for the duration of the work.	Any ongoing statutory obligations remain with the Crown.	<ul style="list-style-type: none"> <li>• Requiring authority loses ultimate control of the land.</li> <li>• Cost to the Crown to acquire the land and for ongoing administration of the lease.</li> </ul>

Table 4.3 Compulsory acquisition (continued)

Issue/Option	Pro	Con
Transfer freehold ownership of land to the requiring authority.	Allows the requiring authority complete control of the land.	Ongoing statutory obligations would need to be addressed.
Competing providers could be required to share a common corridor/area of land the Crown has purchased on their behalf.	Allows for competition without the need for a number of separate corridors or sites.	May be problems with co-locating incompatible services.

## 4.4 Compensation

From early days Public Works legislation has provided for compensation when land is taken or damaged in connection with public works. The term "compensation" is more often used than, say, "purchase price". This is because the perception is that an owner is being compensated for a loss, arising from the sale to the Crown or a local authority.

The term "full compensation", is used in all New Zealand Public Works Acts, starting with the Public Works Act 1876. Generally, the term is taken to mean putting the owner in a financial position as close as possible to what he or she would have been in if the acquisition had not taken place. The categories of compensation available have been added to over the years. Now compensation can include legal costs and removal and other expenses.

Principles are:

- no allowance simply for the compulsory nature of any land "taking" or acquisition;
- the land value is generally taken to be the amount the land might be sold for, if sold on the open market by a willing seller to a willing buyer on a specified date;
- any subsequent increase or reduction of land value for any land taken for a public work is not taken into account; and
- special suitability or adaptability of the land for any purpose is not taken into account if that suitability or adaptability can only be achieved through the use of statutory powers, or there is no market other than for the needs of the acquiring authority.

A claim for injurious affection while a public work was being built will only succeed if the claimant would have had an actionable case in law.

A "shadow of compulsion" is necessary before there is any entitlement to additional compensation such as "solatium", or assistance to purchase a dwelling, farm, commercial, or industrial property. Such compensation will only be paid if the owner was not a willing party to the land taking or acquisition, or was a willing party principally because the land had been "notified". Consequently, additional compensation will not be paid if the property was already on the market, and had not been designated or notified as being required for a public work.

Frequently farmers and Maori groups have called for compensation to be in the form of an exchange of land comparable to the land which is being taken or acquired. At least since 1905 Public Works Acts have allowed the Crown to vest surplus Crown or public works land as a land exchange.

The 1981 Act allows for land to be granted as compensation where the owner personally used land being acquired, either as a dwelling place or "personally for any other purpose". Again the option is available only if the owner of the land is not a willing party to the taking or acquisition, or was a willing party to the taking or acquisition principally because the land had been notified.

A claim for compensation can not be made later than two years after the date of the Proclamation or declaration taking the land. However, the period may be extended up to six years.

## 4.4.1 Issues

### Widening compensation provisions

*Should access to the compensation provisions be widened?*

Currently, only those who have had property taken for the public work, or who are injuriously affected during construction of the work can be compensated. The criteria could be widened to include:

- land owners whose land has not been taken but who claim injurious affection through the operation of the public work; and
- land owners who have been approached for the acquisition of their land for a public work even though the land was not acquired.

The impacts of a public work designation are currently part of the resource consent process in the Resource Management Act 1991. However, no legislation provides for compensation to those who claim injurious affection through the operation of the work.

On occasion, land owners are approached or they are advised that their land is or may be required for a public work. In the event that their land is not acquired for a public work, the land owner may have incurred costs because of that approach or advice. These types of instances may warrant some compensation. (Note that section 76 of the 1981 Act provides for a refund of expenses where acquisition of “notified land” is abandoned.)

#### Overseas legislation

Overseas legislation only compensates those whose land was acquired or taken.

### Applying a solatium payment

*Can the payment of solatium be widened and increased?*

A “solatium” of \$2000 is a sum paid over and above purchase price and other payments. Essentially it is some recompense for loss and disruption when land acquired contains a dwelling used as a private residence.

The figure of \$500 was originally specified. This became \$2000 in the 1975 Public Works Amendment. It has been in place for 25 years, and now may be minimal given that the land values have increased and the Consumer Price Index has risen steadily during the period.

The solatium might be re-calculated to take into account the rate of inflation, and be inflation-indexed in future. The solatium could also be discretionary when acquiring land not involving a dwelling used as a private residence, thus allowing for flexible negotiations with land owners, and enabling the intrinsic (attachment) value of land to the land owner to be taken into consideration.

#### Overseas legislation

Each Australian State has different compensation legislation. One allows for payments to be made for intangible disadvantages resulting from the acquisition. There are no limits to possible compensation. Others allow for a discretionary solatium payment of up to 10% of the value of the property being acquired.

In Canada, if the costs and losses arising out of or incidental to the owner's disturbance cannot practically be estimated or determined, an allowance of up to 15% of the property value can be paid. Where a principal residence is being taken, some provincial statutes provide for an additional 5% to compensate for the inconvenience and cost of finding another residence.

## 4.4.2 Some options to consider

Table 4.4 Compensation

Issue/option	Pro	Con
Allow those whose land has not been taken but who claim injurious affection through the operation of the public work to also be compensated.	No one is detrimentally affected by a public work without compensation.	<ul style="list-style-type: none"> <li>• Increase in number of claims and cost.</li> <li>• Difficulty in determining/quantifying loss.</li> </ul>
Allow landowners who have been approached for the acquisition of their land for a public work, or who have been advised that their land is or may be required for a public work, and who incur costs because of that approach or advice to also be compensated in the event that the land is not acquired.	No one is detrimentally affected by a public work without compensation.	<ul style="list-style-type: none"> <li>• Increase in number of claims and cost.</li> </ul>
Widen solatium payment to include those who did not have a residence purchased, and increase the amount to keep pace with inflation.	<ul style="list-style-type: none"> <li>• This figure has been in place for 25 years, and now is considered to be extremely low.</li> <li>• Widening the criteria can assist negotiations with land owners.</li> </ul>	<ul style="list-style-type: none"> <li>• Increase the cost of acquisitions.</li> <li>• Risk that solatium will be paid in all cases.</li> </ul>
Widen use of solatium to provide for flexible negotiations with landowners, and for compensation for the intrinsic value of land to the landowner who has an attachment to the land.	<ul style="list-style-type: none"> <li>• Widening the criteria can assist negotiations with landowners.</li> <li>• Increased compensation when purchasing property of special value to owner.</li> </ul>	<ul style="list-style-type: none"> <li>• Increased cost of acquisitions.</li> <li>• Difficulty in determining criteria – may be subjective.</li> </ul>

# Disposal of land no longer required for a Public Work

## 5.1 Introduction

Along with providing for the acquisition of land for a public work, the Public Works Act 1981 (the 1981 Act) also contains various methods to dispose of land no longer required for a public work. In simple terms the disposal regime can be broken down into two main areas – offer back and open market disposal.

### 5.1.1 Offer back

This deals with any obligations that the Crown or a local authority may have to anyone from whom the land was acquired for the public work, or to their successor(s). This requirement is commonly referred to as the “Offer back” process. All land held for a public work and no longer required for that, or any other public work, must be considered in terms of the offer back criteria. The obligation to consider the offer back requirements is not limited to Crown agencies or local authorities. Many public works have in the past transferred to state owned enterprises, hospital and health services, Crown Research Institutes, airport authorities, Local Authority Trading Enterprises and others with offer back requirements being put on hold for the transfer purposes. Therefore, even though technically the land is no longer held for a public work, at the time those organisations no longer require the land “for the work” they are required to consider the offer back requirements “as if they are the Crown or a local authority”.

### 5.1.2 Open market disposal

Following consideration of any offer back requirements, Part III of the 1981 Act provides for a sale to be concluded using one of the following methods:

- offered for sale to the owner of any adjacent land at a price fixed by a registered valuer;
- offered for sale by public auction;
- offered for sale by public tender;
- offered for sale by private treaty (refer to glossary for definition); or
- offered for sale by public application (refer to glossary for definition) at a specified price.

The requirement to dispose of land in this manner is limited to land subject to the 1981 Act. Agencies such as state-owned enterprises, hospital and health services, and airport authorities are not required to follow this process. These organisations’ disposal regimes (after considering offer back requirements) are contained in separate legislation.

## 5.2 Some history

Disposal regimes have been remarkably consistent throughout the history of Public Works Acts within New Zealand through to 1954. The 1876 Public Works Act required that where land was no longer required for public use, the Governor-General was first to “cause” the land to be sold, by an Order in Council. The Act then required that following valuation the Minister offered the land:

“... first to the person then entitled to the land from which such land was originally severed; and if he refuses it, or cannot after due enquiry be found, then to the owner of the adjacent lands, or if there is more than one owner, then to each of such owners, in such order as the Minister ... thinks fit; and if no such owner accepts such an offer, may cause the land to be sold by public auction.”

The original wording in the 1876 Act remained substantially the same in subsequent Public Works Acts until the 1928 Act. The only substantial difference in the 1928 Act from the 1876 version was a proviso that allowed the Governor-General to declare surplus land held for a government work to be Crown land.

One recent Court of Appeal judgement regarding offer back matters noted that:

“... Offer back provisions allowing for sale to owners of land from which the subject land was severed have existed since 1876. Such provisions give effect to a legislative policy of re-amalgamating blocks of land where only part was acquired by the Crown. Owners of adjacent land have been alternative offerees. In both cases it was the person then holding title to the land who became entitled...” [Port Gisborne Ltd v Smiler (1999) 2 NZLR 695].

## 5.2.1 A change of direction

In 1954 there appears to have been a change in policy direction. The disposal procedures were amended to read:

“... The Minister or local authority, as the case may be, shall cause the land to be sold either by private contract to the owner of any adjacent lands, at a price fixed by a competent valuer, or by public auction or by public tender; and public notice shall be given of every auction...”

Notable differences from previous regimes are:

- that reference to the owners of land from which the subject land was severed is absent; and
- that owners of adjacent land are not given priority over people buying the land at any auction or by tender.

## 5.3 Current situation

### 5.3.1 Offer back to former owners (section 40)

The 1981 Act introduced a new regime to protect land owners. It required the Commissioner of Works (now Chief Executive of Land Information New Zealand) or local authority to dispose of land no longer required for a public work first to the person from whom the land was acquired for the public work (the former owner). Where the former owner has died, the land has to be offered to his successor, then to the owner of adjacent land, and finally to the public for public sale. The 1981 Act also reintroduced under the definition of “successor to the former owner” the concept of offering land to owners from which the subject land was severed (now termed successors in title) (refer to glossary for full definition).

A 1986 High Court judgement noted that:

“... the first step is in the interests of fairness to restore an owner to his former position; the second step embodies an old principle recognised in the English statutes of last century, it recognises that the person most likely to be affected is the adjacent land owner; the third step recognises the public interest that this type of land disposal must be on the open market so that the proper price is seen to be obtained from an identified purchaser who has to compete with other members of the public. The proper price principle is also recognised in the first and second steps because the price has to be fixed by an independent valuer unless, in the case of an original owner, the local authority (or the Chief Executive of LINZ) considers it reasonable to reduce the price.” [McNicholl v Auckland Regional Authority 10 TCL 13/6 (1987) BCL 366 CCA (2nd) H-15]

### Factors influencing change

In the late 1970s the Ministry of Works and Development carried out a major review of the Public Works Act 1928. About this time a Maori land march through the country took place. Maori protestors occupied Bastion Point and the Raglan Golf Course, calling for the return of this land to Maori now that it was no longer required for the purpose for which it had been taken. At the time of the Maori protests the land concerned was not held for a public work. It was Crown land under the Land Act 1948. If disposal of this land occurred today it would not be subject to the offer back requirements of the 1981 Act.

Federated Farmers, in making submissions to the review of the 1928 Act, said it was fair and just that land, no longer required for the purpose for which it was held, be returned to the person from whom the land was acquired. At this time the Government was acquiring land for the Clyde Dam hydro scheme and the Wellington motorway. How much of the acquired land would actually be used was not certain, as was how much land might be surplus on completion of the projects.

### Public concern in Britain too

In Britain, public concern had also led to offer back rules being formulated. The sale of land taken during the war years at Crichel Downs, with no regard to the persons from whom the land was acquired compulsorily, drew immense criticism. In October 1980 the Secretary of State for the Environment published new rules for comment. Under these rules the person from whom the land was acquired would have a right to have the land offered back, subject to some exceptions.

### The new regime

The 1981 Act offer back regime is much more detailed than in previous Acts. It recognises that the obligation to offer land to the person from whom it was acquired would only work satisfactorily if there were a number of exceptions.

Originally, the Commissioner of Works or a local authority were required to offer to sell land no longer required for the public work by private contract to the person from whom the land was acquired or to the successor of that person. Price would be fixed by a registered valuer. If the parties agreed, the Land Valuation Tribunal could determine the price. There were a number of pre-conditions. These included that the land was not required for any essential work, or exchange. There were also a number of exceptions to the offer back requirement. These were in cases where it was impractical, unreasonable, or unfair, or where the Commissioner of Works or local authority believed that because of the size, shape, or situation of the land it could not be expected to sell the land to any person who did not own adjacent land.

### Limited application

The new offer back regime only applied to land that was acquired before the commencement of the 1981 Act, or to land acquired for an essential work after the 1981 Act commenced. The significance was that, as originally enacted, offer back was only intended to apply where land had been acquired compulsorily or where the hint or threat of compulsion existed. Under earlier Acts the threat of compulsion was always present as compulsory acquisition could be used for any land taking. The 1981 Act originally limited compulsory acquisition to land required for essential works. This meant that where land was acquired by agreement for a non-essential work no offer back was required if the land became surplus.

### An amendment

The Public Works Amendment Act 1982 made a number of amendments to the regime. The word “impractical” was changed to “impracticable”, i.e. not capable of being put into practice. A further ground for exemption to the requirement to offer land back was also added. Offer back was not required where “there has been a significant change in the character of the land for the purposes of, or in connection with, the public work for which it was acquired or is held”. The 1982 amendment also broke up the latter part of the subsection into two further subsections dealing with price. The amendment also moved the Land Valuation Tribunal issue to a separate subsection. Thus the offer was to be made at the current market value determined by a registered valuer’s valuation or if the Commissioner of Works or local authority considers it reasonable to do so, at any lesser price.

### Another amendment

The other notable amendment to the offer back requirement occurred in 1987 where the reference to essential work was removed from most of the 1981 Act. This then allowed for land to be compulsorily acquired for what were previously classed as non-essential works. Consequently, a threat of compulsion existed for all acquisitions. This meant offer back had to be considered for all land held for a public work, except where the land had been acquired for a non-essential work between the enactment of the 1981 Act and the 1987 amendment.

### 5.3.2 Offer back of former Maori land

The 1981 Act specifically provides for offer back of former Maori land which immediately before being acquired for a public work was:

- Maori freehold land or General land owned by Maori (as those terms are defined in section 4 of Te Ture Whenua Maori Act 1993); and

- beneficially owned by more than four persons; and
- not vested in any trustee or trustees.

Where land meets these criteria the Chief Executive of LINZ, or a local authority, offers the land back in the same manner as for any other offer back. Alternatively, the LINZ Chief Executive or the local authority may apply to the appropriate Maori Land Court for an order under section 134 of Te Ture Whenua Maori Act 1993. A section 134 order vests the land in the offerees as Maori freehold land. There is discretion to determine which method will be used to facilitate offer back of former Maori land. In practice, where it is determined that land should be offered back, offerees are often canvassed to obtain their views as to the preferred way to return the land. Where possible their wishes are complied with.

### 5.3.3 Disposal following satisfaction of offer back obligations

The 1981 Act prescribes a number of methods to dispose of land exempted from offer back to former owners, or where former owners have declined to take up the offer. In these cases the chief executive of LINZ or the local authority may:

- cause the land to be offered for sale to the owner of any adjacent land at a price fixed by a registered valuer; or
- cause the land to be offered for sale by public auction, public tender, private treaty, or by public application at a specified price (refer to glossary for definitions).

It is at this time that the Crown's Treaty obligations are generally considered and surplus land made available for land banking purposes or offered to Maori under the "right of first refusal" procedures.

The 1981 Act requires public notice to be given of every public auction or invitation for public tenders, or applications at a specified price. Notice must also be served on the former owner if they can be readily ascertained and on every owner of land adjoining the land proposed to be sold, no later than 20 working days before the date of the auction, or the closing of tenders or applications.

The disposal process is designed to be open and fair with all interested parties being made aware of the Crown or local authority proposal to sell. The one exception is where the plan is to sell by private treaty. This concept was introduced to the 1981 Act by an amendment in 1988. In these cases the Chief Executive of LINZ or the local authority can deal with a proposed purchaser without having to publicly advertise or notify any potentially-interested parties.

### 5.3.4 Transfer for another public work (section 50)

The 1981 Act also allows transfer of land from an existing public work to another public work, whether the work is of the same kind or not, without triggering any of the 1981 Act disposal requirements.

The Minister of Lands can transfer land from the Crown to a local authority for another public work under this provision. Where this happens, statutory offer back obligations are deferred until the land becomes surplus to the latter public work.

### 5.3.5 Setting apart land for another public work (section 52)

The Minister can also set apart Crown land, public reserve etc. for a public work. The distinction between this Chapter and transfer described in Chapter 5.3.4 is that the land involved may not currently be held for a public work. Where this part of the 1981 Act is used to set aside land there is no requirement to comply with relevant 1981 Act acquisition requirements.

## 5.4 Issues

### 5.4.1 Need for an offer back regime

#### Offer back to former owner

*Where land is no longer required for a public work should the person from whom the land was acquired be given an opportunity to repurchase the land?*

The 1981 Act provides for full compensation to an owner where land is acquired for a public work. Given that the land owner has already been compensated for his or her loss, the rationale for an offer back regime needs to be considered. Administratively, the offer back provision is very costly to

implement. Generally, few former owners take up the offer. Possible reasons for this include former owners have purchased a replacement property, moved out of the area, or no longer have any affinity with the land. To ensure a former owner's continuing interest in the land is considered, it may be enough to simply advise them when the property is coming up for sale. They then have the opportunity to bid for the land along with the general public.

#### Overseas legislation

For all of the countries investigated, the disposal regimes are much simpler than those currently operating in New Zealand.

In Australia, under the Land Acquisition Act 1989, when authorising the disposal of land, the Minister has regard to the general principle that land should, if practicable, be first offered for sale to the former owner at the market value at the time the offer is made. This gives a decision-maker considerable discretion. It does not appear to create a pre-emptive right to a former owner, as is the case in New Zealand.

No overarching federal provisions govern land disposal in Canada. The provinces also have little in the way of offer back requirements. Those provinces that do apply an offer back type regime (Alberta, British Columbia, Manitoba, and Ontario) do so on a limited basis.

Notwithstanding the historical link between English and New Zealand law, the United Kingdom approach to offer back is far less regimented than the New Zealand position. The Land Clauses Consolidation Act 1845 controls some disposal. These rules still apply to some current transactions. However, application is quite limited. Other than the 1845 Act, the United Kingdom has no statutory obligation to offer land back to a former owner unless a specific empowering Act requires it. Instead, a set of non-statutory rules has been developed for central government to use when disposing of surplus land. These rules, known as the "Crichel Down Rules", generally require that land that becomes surplus within a prescribed period (within 25 years of acquisition, except for agricultural land acquired between 1935 and 1992) should be offered back to the original owners.

In the United States the only State which has any kind of regulated disposal mechanism is New York. A limited offer back regime operates where disposal occurs within 10 years of the original acquisition.

#### Offer back where compulsory provisions not invoked

*Should there be a distinction between people who co-operate with the Crown in the taking of their land and those that don't?*

Where land has been acquired from an owner who was an unwilling seller, it may be justified to give the owner some form of preferential treatment where the Crown or local authority no longer requires the land for a public work. In these cases offer back could be seen as a way to reunite a former owner with his or her land after the land had been compulsorily acquired for the greater good of the community. On the other hand, should a former owner who co-operated with the Crown or local authority, and agreed to have their land acquired for the public work without insisting on the compulsory provisions being invoked, be under a different regime to those who were unwilling sellers?

#### Overseas legislation

In Australia, Canada, and the United States offer back is only required where the compulsory provisions have been used.

In the United Kingdom, the offer back rules apply to all land acquired against a background of compulsion. They apply to a voluntary sale if the acquiring authority possessed a power to acquire the land compulsorily, even though they may not have used this power.

#### Expression of interest in receiving offer back obtained at time of acquisition

Where land is required for public work, the owner's view on some future offer back could be obtained at the time the land is acquired. Obtaining the owner's comments at the time of the acquisition could mean any offer back requirement could form part of the acquisition agreement. This may result in a more streamlined process with less Crown or local authority expenditure to attempt to locate someone who has no desire to receive an offer.

Retaining awareness that such an expression of interest exists may be difficult, especially where there is a significant period of time between the acquisition and when the land is no longer required for the public work, or administration of the land changes between Crown agencies.

## Some options to consider

Table 5.4.1 Need for an offer back regime

Option	Pro	Con
Retain the status quo - all land acquired for a public work is subject to an offer back provision when no longer required.	Ensures former owners continue to be able to reacquire their land if they wish (subject to some statutory exemptions).	<ul style="list-style-type: none"> <li>Existing offer back process very costly to implement.</li> <li>Continuing process may not be warranted given the low number of former owners who take up the offer.</li> </ul>
At the time land is acquired for a public work, ask an owner if he or she would require the land to be offered back to them if land is no longer required for the work.	Streamlined process, and removes the need to offer land back where a former owner has no further interest.	<ul style="list-style-type: none"> <li>A former owner may change his or her mind, or the land may take on greater significance to a former owner's successor with the passage of time, as they look at "rediscovering their roots".</li> <li>Difficulties in recording former owner's expression of interest over the life of the public work.</li> </ul>
Limit requirement to consider offer back to land compulsorily acquired.	<ul style="list-style-type: none"> <li>Reduces the cost of implementing offer back.</li> <li>Would more accurately reflect the true purpose of providing an offer back.</li> </ul>	Lack of compulsory acquisition may not necessarily reflect the true nature of negotiations with a former owner.
Cater for an individual's possible interest in their former land by notifying him or her at the time of disposal so that he or she can participate in any public offering of the land.	<ul style="list-style-type: none"> <li>Ensures former owners have a chance to reacquire their land if they wish.</li> <li>Greatly reduces surplus land disposal costs.</li> <li>Price obtained by the Crown or local authority would be better reflection of true market value due to the contestable nature of the disposal.</li> </ul>	<ul style="list-style-type: none"> <li>Acknowledgement of a priority right for former owner is lost.</li> <li>Reduces former owner's ability to negotiate purchase price.</li> </ul>

### 5.4.2 Scope of offer back

#### Mandatory offer back

*Should it be mandatory to offer land back in all cases?*

The 1981 Act currently has several exceptions to the requirement to offer land back to former owners or successors. A number of steps must be followed to decide whether offer back is required. This process could be simplified by reducing the exemptions to offering back the land. A legislated procedure could codify necessary steps that must be taken when attempting to locate a former owner. This would ensure transparency of process and inform all interested parties of the steps that must be undertaken prior to disposal on the open market.

#### Overseas legislation

In Australia, when authorising land disposal the Minister has regard to the general principle that the land should, if practicable, be first offered for sale to the former owner. Offer back is not required where a requiring authority has made substantial improvements to the land.

Where an offer back regime exists in Canada, there are no exemptions to the offer back requirement.

The United Kingdom rules contain a number of exemptions to the requirement to offer back, including where:

- fragmentation of the site due to offer back would reduce the land value;
- land is being transferred to the private sector to carry out the work;
- land is being transferred to a local authority or another government department; and
- where market value is so uncertain that offer back provisions would be insufficient to safeguard the public purse and a competitive sale is advised.

New York State is the only state within the United States with a regulated disposal regime. Offer back is not required where the property has been materially improved.

#### Automatic offer back where land not used within a specified timeframe

*Should land automatically be offered to a former owner if it has been acquired for a public work and then not used for that purpose within a specified timeframe?*

Some say where land was acquired for a public work, and not actually used for that purpose within a defined timeframe, the land should automatically be returned to the former owner. This view needs to be balanced against the nature of some projects and the need for some authorities to acquire land well in advance of any actual work construction. Key areas where this requirement may be appropriate are land purchased for a proposed road or railway.

#### Former Public Works Act land

*Should land acquired under an earlier Public Works Act, but since declared Crown land under the Land Act 1948, be subject to offer back when disposal is considered?*

Before the 1981 Act, surplus land was declared Crown land under the Land Act to facilitate disposal. Some of this land remains in Crown ownership. At the time the land was declared Crown land the Public Works Act 1928 did not contain any requirement to consider offer back. This land currently is not subject to any requirement to consider offer back, in spite of its earlier public work status. Under the 1981 Act offer back requirements would need to be considered before declaring any land to be Crown land.

#### Exemption from offer back on the grounds of significant change

*Is it appropriate to continue to exempt properties from offer back on the grounds that there has been a significant change in the character of the land?*

Significant change describes situations where the nature or condition of the land has been altered to such an extent that it bears little resemblance to what it was like when it was acquired by the Crown or local authority. An example could be where land acquired from a farm is now an excavated quarry.

Historical research has failed to find any rationale for not offering land back because there has been a significant change in the character of the land. The reason may be that the former owner could not claim to have any continuing affinity with the land because it has changed in character. It could be argued that a former owner should not receive an offer if land has significantly changed in character. An equal argument could be that the former owners' money is as good as any one else's and they should be given the opportunity to take up the offer of repurchase despite the significant change. Determining what is significant change is very subjective and, perhaps, the former owner should be consulted before a decision is made to exempt the land from offer back. What may seem significant to one group may not be to another. This exemption has been used in the past to transfer control of an ongoing work to private providers.

#### Overseas legislation

Australia, United Kingdom and the United States all include a general provision exempting a property from offer back where significant change has occurred to the land.

## Disposal of separate estates or strata title

*Should an offer back obligation be required for disposing of strata rights where the balance of the estate is to remain for the public work?*

Sometimes a land holding agency still requires the land for a public work but may not require the complete estate. For example, the air rights over a particular public work may be capable of being sold. At issue is the nature of an interest that will trigger an offer back.

## Long term leases/encumbrances

*Should an agency be able to enter into long term leases/encumbrances to the possible detriment of former owners?*

At times agencies may enter into long-term leases or encumbrances over public works land before disposal to former owners. For example, while a block of land is no longer required for a public work, the Crown and a gas supplier may agree to a long term easement over the land to allow a pipeline to run underground. The conditions of this easement, such as not building above the pipeline, could transfer with the land, restricting the use a former owner could make of the land.

Sometimes, the presence of a long-term lease or an encumbrance may make the property unattractive to former owners. There may need to be safeguards in the legislation to prevent an agency from encumbering a property in a way that makes the former owner less able to take up any offer. This would have to be balanced against giving the Crown or local authority the flexibility to maximise use of the land.

## Overseas legislation

Australia specifically provides for reservation of interests in the land at the time of disposal. The legislation says disposal may be subject to the reservation to the acquiring authority of a specified interest in the land, e.g. an easement in gross over the land, or a restriction on the use of the land.

## Some options to consider

Table 5.4.2 Scope of offer back

Option	Pro	Con
Require offer back in all cases except where it is impracticable to do so.	Streamlines the offer back process and removes the necessity for detailed consideration of when to offer back.	Could result in land being offered back where there is a legitimate reason for exempting the property.
Require land that has not been used for a public work within a specified timeframe following acquisition to be returned to the former owner automatically at current market value.	Ensures land not acquired ahead of time without a definite development in mind.	Projects requiring long lead in times would need to be catered for.
Widen the requirement to consider offer back for land that was formerly acquired for a public work, but is now Crown land under the Land Act.	Ensures land does not transfer out of Crown ownership without due consideration of any former owner's rights.	<ul style="list-style-type: none"> <li>Increased costs for disposal of Crown land.</li> <li>Widens the current ambit of offer back.</li> </ul>
Remove significant change in character as grounds for an exemption to offer back.	<ul style="list-style-type: none"> <li>Reinforces former owner's right to receive an offer.</li> <li>Removes need for subjective assessment of what is significant.</li> </ul>	May increase the cost of compliance, as the number of properties being offered back would increase.

Table 5.4.2 Scope of offer back (continued)

Option	Pro	Con
Retain significant change in character as grounds for an exemption to offer back but require the former owner to be consulted before a decision is made to exempt the land from offer back.	Allows views of former owner to be taken into consideration.	May increase administrative costs through having to locate former owners prior to making a decision.
Clarify the relationship between the disposal of a separate estate or strata title and the offer back obligations.	Ensures all interested parties are fully aware of when the offer back obligations are triggered.	
Codify the relationship between long term leases/encumbrances and former owner's rights.	Provides certainty for all interested parties.	Reduces flexibility for the Crown or local authority to maximise use of the land.

## 5.4.3 Level of offer back

### Offer to successor of former owner

*Should the right to receive an offer back extend to a former owner's successor, or be limited to the actual party from whom the land was acquired?*

The 1981 Act requires land to be offered back to the former owner or to his or her successor.

"Successor" is defined in the 1981 Act as someone who would have been entitled to the land under the will or intestacy of the former owner had the former owner owned the land at the date of his death. Where only part of the former owner's land was acquired or taken, "successor" includes the former owner's successor in title.

In many instances a former owner has died and the Crown or local authority has to undertake an often lengthy and expensive process in an attempt to locate the former owner's successors. The justification for offering land back to a former owner appears to be well founded. The former owner may have felt an affinity for the land and may not have been a willing seller. They should, therefore, have first opportunity to repurchase the property when it is no longer required for the public work. When considering the requirement to offer land to a successor, these sentiments may not be so strong. However, successors may have an equally strong affinity with the land, for example, where a family farm is involved.

### Overseas legislation

In Australia, the former owner is entitled to receive an offer. If he or she is deceased the Minister has discretion to offer to anyone considered to be fairly entitled to the benefit of the offer, having regard to interests existing in the land immediately before the acquisition.

In Canada, four provinces have offer back regimes. Of these, Alberta and Manitoba only require an offer to former owners. However, British Columbia and Ontario extend the requirement to offer to successors in probate.

In the United Kingdom offers are made to former owners or their successors in probate.

In the United States only the former owner is entitled to receive an offer.

### Level of succession for the purposes of offer back

If the right to receive an offer extends further than the former owner, should that right pass to present day successors or be limited to one generation of successor?

Currently, the former owner's will or intestacy determines who is a successor in probate. This generally limits a successor to one generation unless a former owner's will specifically mentions further generations. Note that a different offer back regime is operating for former Maori land where the Maori Land Court is involved in vesting that land. In such cases the Maori Land Court take a wider definition of successor that equates to present day descendants.

The definition of successor could be widened to come through to present-day successors. Potentially this could require detailed searching of many wills to trace the line of succession and may result in the requirement to offer back to numerous successors. The resulting administrative costs to the Crown or local authority can be high. An alternative is to offer to successors in genealogy rather than successors in probate. While this would remove the need for detailed searching of wills through a number of generations, this has the potential to increase the number of people to whom an offer must be made, increasing compliance costs and making the system more cumbersome and difficult to implement. Following on from the previous question, the rationale for requiring such an offer needs to be considered.

### Offer to successor in title of former owner

*Should successors in title to a former owner also be entitled to receive an offer to purchase land no longer required for a public work?*

Where part of a person's land has been acquired for a public work, the definition of "successor" currently includes a successor in title. In other words, a successor in title could be any person who holds the balance of the original land holding not acquired. Where the balance of the land has passed out of the former owner's family however, the new owners would generally have purchased the land with no expectation that an offer of public works land might come their way in future.

The requirement to offer land to a successor in title appears to be historical. Through to 1954 such a provision existed in prior Public Works Acts. This appears to operate on the principle that reamalgamation of the earlier title boundaries is desirable to prevent a proliferation of subdivision. The continuing need for such a requirement needs to be examined. This is especially so given the Crown's current policy objective to make land owned by the Crown available for use in Treaty of Waitangi settlements. Applying the amalgamation philosophy means the land is not available to the Crown.

There are currently problems in implementing offers where the "original" land has been subdivided. Competing successors in title may be interested in the portion being offered back.

More generally, some might believe that offering the land to a successor in title means the land is being offered to a class of successor who has no legitimate claim. Court decisions have identified that the successor in title and re-amalgamation may be valid considerations as the people most affected by land sales are those who own adjoining land.

### Overseas legislation

In Australia, Canada, and the United States, the only time a successor in title is entitled to receive an offer is where they are also the former owner.

The United Kingdom rules do not provide for offering back to a successor in title.

### Crown or local authority discretion

*Should the statutory decision-maker, Crown or local authority, be able to decide between offering land back to a successor in probate or a successor in title?*

Historically, the Crown or local authority was able to decide between successor in probate or successor in title depending on the circumstances of each case. This allowed a focus on the land and ensured that the land was disposed of in the most practical and appropriate way. In more recent times, following a number of Court decisions, land has been offered back on the basis of an established priority of succession. This requires that a successor in probate has a higher priority than a successor in title. This may result in the land being disposed of in a manner which is not necessarily the most practical.

### Inclusion of a sunset clause

*Should there be a sunset clause that limits obligation to offer land to a former owner to a defined number of years following acquisition? If so, how long should this period be?*

The 1981 Act requires offer back when land is no longer required for a public work. Where a long period of time elapses between the land acquisition and the subsequent decision that it is no longer required, the offer back process often becomes difficult to implement. For example, when considering the offer back requirements for a property acquired for a public work over 100 years ago, the chance of there

being a live successor to whom the property could be offered is unlikely. Currently a lengthy and expensive process needs to be worked through to prove no one is entitled to receive an offer. Limiting the time for which an offer back obligation might run following acquisition could be an option.

### Overseas legislation

The time limits set in various overseas jurisdictions range from two years through to 25 years.

In Australia, a sunset clause of seven years exists after which no offer is required.

In Canada, no sunset clause exists for offers in Ontario and Manitoba. However, British Columbia and Alberta limit offer back to a two-year period from the date of acquisition.

In the United Kingdom a sunset clause of 25 years exists after which no offer is required. An exception to this sunset clause exists for agricultural land acquired between 1 January 1935 and 30 October 1992.

In the United States an offer only needs to be made where the property becomes surplus to the requiring authority's needs within a 10-year time frame.

### Some options to consider

Table 5.4.3 Level of offer back

Issue/option	Pro	Con
Limit the offer back obligation to the former owner only.	<ul style="list-style-type: none"> <li>• Would lower offer back cost and be in line with original offer back purpose - to reunite the former owner with his or her land.</li> <li>• Could increase the availability of land for other Crown obligations such as Treaty settlements.</li> </ul>	May be considered unfair where there is a strong family affinity with an area of land.
Widen requirement to offer back to present day successors in probate or present day successors in genealogy.	Ensures land could be returned to the former owner's family.	<ul style="list-style-type: none"> <li>• Would significantly increase the cost and time involved in implementing an offer back.</li> <li>• Could upset legitimate family arrangements or go against the wishes of a former owner.</li> </ul>
Remove the requirement to consider offering to successors in title to the former owner.	<ul style="list-style-type: none"> <li>• Would be consistent with the original purpose of offer back.</li> <li>• Could increase the availability of land for other Crown obligations such as Treaty settlements.</li> </ul>	Could result in an increase in the number of substandard properties being sold as separate sections when for practical purposes they should be amalgamated with adjoining land.
Allow the Crown or local authority to decide between successor in probate and successor in title.	<ul style="list-style-type: none"> <li>• Allows flexibility to re-establish former title boundaries where appropriate.</li> <li>• Allows land to be disposed of in the most practical manner.</li> </ul>	Could be considered inequitable to put a successor in title's rights ahead of a former owner's successors.

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Table 5.4.3 Level of offer back (continued)

Issue/option	Pro	Con
Limit the time period for Crown or a local authority to consider offering surplus land back to former owners.	<ul style="list-style-type: none"> <li>Streamlines offer back process and removes necessity for futile investigations where acquisition has occurred a long time ago.</li> <li>Could increase the availability of land for other Crown obligations such as Treaty settlements.</li> </ul>	If applied to land acquired under earlier public works acts it could be considered unfair by some former owners who are expecting an offer back and who may have been waiting for some time for an offer back to be made.

#### 5.4.4 Administration of offer back

##### Trigger for disposal action

*What should be the trigger for implementing a statutory offer regime – when the land is no longer required, or when the Crown or a local authority proposes to sell or is in a position to sell the land?*

The 1981 Act currently requires the Crown or local authority to start to consider offer back at the time the land is no longer required for the public work. No account is taken of problems that may be experienced in readying the property for disposal. For example, titling, easements, or contamination issues may mean the property is not available for disposal until some future time. The disposing agency may not have the resources to dispose of the land. To avoid any doubt about when former owners might expect an offer (assuming one is required) an amended Act could specify when an offer will be made and the consequent offer price. The amended Act could require offer back when the Crown or local authority proposes to sell the land or is in a position to sell the land. This type of wording is consistent with words in the New Zealand Railways Corporation Restructuring Act 1990. In that Act, the offer back requirements for railway land apply when surplus land is proposed to be sold.

##### Overseas legislation

The trigger for implementing any offer back varies between countries. In Australia and Canada the trigger is when the decision is taken to dispose of the surplus land. Both the United Kingdom and the United States require the offer back process to be implemented when the land becomes surplus to requirements.

##### Purchase price of offer back

*Should land always be offered back at current market value as determined by a registered valuer or should there be discretion to offer at a lower value?*

Where offer back is required, any offer is generally made at current market value, unless grounds exist to make the offer at a lesser price. The Waitangi Tribunal has recommended that the Crown be able to negotiate return to Maori of any lands compulsorily taken under the public works legislation where the land is no longer required for any public purpose. Depending on the circumstances of each case, this return could be at no consideration, or at a negotiated price that may be less than current market value. The Waitangi Tribunal recommended that the quantum of compensation should be based on a fair return to Maori for the Crown's use of the land, and how long the land has been used for any public purpose.

This argument could apply to any land requiring an offer back, rather than just former Maori land. When considering this type of recommendation it should be remembered that the Crown (on behalf of the taxpayers) acquired the land at a fair price and the owner had the use of the money. If the circumstances suggest an offer at less than current market value, the discretion to offer back at less than current market value may be exercised under the 1981 Act.

##### Overseas legislation

All overseas offer back regimes require land to be offered back at the current market value at the time of the offer. Land cannot be offered back at any lesser price. However, some legislation provides for an independent party to determine purchase price where there is a dispute.

#### Criteria for offer back at less than current market value

*Should there be general criteria for offering land back at less than current market value? If so, what should these criteria be and should they be contained in the legislation?*

Currently the 1981 Act allows the Chief Executive of LINZ or a local authority to offer land back at less than current market value where it is reasonable to do so. To ensure this discretion is applied in a consistent way, it may be useful to set down a broad framework.

Following inquiries into the Ngai Tahu, Te Maunga, and Turangi claims, the Waitangi Tribunal made a number of recommendations on the application and administration of public works legislation. A detailed commentary on these recommendations is contained in Chapter 7 of this discussion paper. One recommendation relating to the offer back of former Maori land was that:

The offer back provisions should be amended to require the Crown:

- to offer to return surplus land to Maori ownership at the earliest possible opportunity with the least cost and inconvenience to the former owners. When determining the price at which the land is offered back to former Maori owners, the Crown should:
  - share with the owners the increased value in the land arising from the use and development of their land;
  - have regard to former Maori owners' means;
  - have regard to the circumstances surrounding the compulsory acquisitions to such land; and
  - have regard to the special circumstances of multiple Maori owners and to seek accommodation in such circumstances.

It needs to be considered whether the recommended provisions, if adopted, should apply to general land as well as Maori land. The 1981 Act allows for offering land back at less than current market value. This discretion recognises some of the circumstances that the Tribunal has identified namely:

- the land was gifted to the Crown for a specific purpose and that purpose has passed; and
- the Crown compulsorily took the land and no (or inadequate) compensation was paid.

Where the Crown originally paid fair compensation for the land there may be no justification for sharing the increased value. This could amount to the Crown compensating twice. Further, the operation of the public work on the land acquired (for example, roads) may have benefited the surrounding owners. A counter argument could be that the Crown has used the land at the expense of the former owners and should therefore share the benefit of that use.

##### Protection of former owners' rights

*Should a caveat/memorial type of process be implemented to identify the rights of former owners?*

Precedent exists for this type of process to be implemented to better protect the rights of former owners. The Local Government Amendment Act (No 2) 1989, Crown Research Institutes Act 1992, and a number of other Acts defer the requirement to consider offer back where land was transferred to (among others) a local authority trading enterprise or Crown research institute. The obligation to consider offer back transferred to organisations receiving the land. To protect former owners' rights, caveats had to be registered against the transferred certificates of title.

If this process was extended to all public works land, the Registrar General of Land could decline to register any sale of that land on the open market until provided with assurance that the offer back process has been complied with and that the caveat/memorial could be removed.

The use of a caveat/memorial type process may have merit, particularly where the land is leaving immediate Crown or local authority control (for example, to go to airport authorities, network utility operators, state owned enterprises). Problems could arise where land is not currently described in a certificate of title. There may also be difficulties in removing caveats from certificates of title even if the requirements have been met.

##### Offer to wider family, whanau/hapu members

*To assist in the aims of returning land to former owners, and the aims of Te Ture Whenua Maori Act, should the Crown (or the local authority?) offer surplus land to family, whanau/hapu members where former owners declined (or were unable) to take up a repurchase offer?*

Te Ture Whenua Maori Act 1993 promotes the retention of Maori land and General land owned by Maori in the hands of the Maori owners; and the effective use, management, and development, by or on behalf of the owners of Maori land and General land owned by Maori.

The 1981 Act does not provide for an alternative offer to families and extended families (whanau and hapu) when a former owner or successors are alive and decline an offer back. The Waitangi Tribunal recommended this approach and an approach along these lines would also be advantageous to non-Maori. However, such an approach would go well beyond the original intention of reuniting the former owner with his or her land. Alternatively, there may be a place for a “nominee”. If a former owner or successor cannot purchase, but the family wants to do so, they can under such an arrangement.

### Some options to consider

Table 5.4.4 Administration of offer back

Issue/option	Pro	Con
Clarify timing for implementing any offer back so the obligation does not arise until the Crown or local authority is able to dispose of the surplus land.	Former owners would know when they might expect to receive an offer back.	<ul style="list-style-type: none"> <li>• May not provide an incentive to action a disposal of land after being declared surplus.</li> <li>• May be a long period of time from when land is surplus until it is ready for sale.</li> </ul>
Clarify offer back value to take into consideration the recommendations of the Waitangi Tribunal.	Would facilitate the return of land to original ownership.	May reduce the return to the Crown if the ability to offer back at less than current market value is widened.
Codify general criteria under which land might be offered back at less than current market value.	Provides certainty for all interested parties.	Reduces flexibility for discretion to apply in special cases.
Consider the feasibility of caveating/memorialisating titles to protect former owners' interests.	Protects rights of former owners.	<ul style="list-style-type: none"> <li>• May cause difficulties where land is not described in a title.</li> <li>• Removing caveats at time of disposal may be difficult.</li> </ul>
Allow for an offer to be taken up by a nominee where a former owner declines the offer or is unable to take up the offer. Provision could apply irrespective of whether the land was former Maori land or not.	Allows both Maori and non-Maori to assign offer back rights if this policy were applied generally and facilitates easier restoration of the Maori land estate.	May be inconsistent with the original purpose of offer back to protect the rights of former owners.

## 5.4.5 Former Maori land

### Reinstating former Maori land

*Should the Crown or local authority be obliged to offer former Maori land back as Maori land when it is no longer required for the public work?*

Offerees are generally able to choose how they wish to receive the land. The thrust of Te Ture Whenua Maori Act is to preserve the status of Maori land. This suggests it may be incumbent on the Crown (or local authority?) to return the land as Maori land (as opposed to general land owned by Maori). By insisting that former Maori land be returned as Maori land, potential offerees lose the opportunity to choose how they would like to receive an offer and may also have limited ability to take up an offer

because it is difficult to use Maori land for security to obtain finance. Note that where land is returned as Maori land an offeree is able to later change the land status under the provisions of Te Ture Whenua Maori Act.

### Some options to consider

Table 5.4.5 Former Maori land

Issue/Option	Pro	Con
Where former Maori land is subject to offer back, require the land to be returned to former owners in the same status as it was prior to the acquisition for the public work.	Would be consistent with the thrust of Te Ture Whenua Maori Act.	<ul style="list-style-type: none"> <li>• May limit former owners' ability to take up an offer due to the difficulty in securing finance.</li> <li>• Criticism could be levelled at the Crown or local authority for removing offerees' ability to choose how they wish to hold the land.</li> </ul>
Retain the status quo - offerees can choose how they would like to hold the land.	Allows offerees to make an informed choice about how they would prefer to hold land.	May be inconsistent with the thrust of Te Ture Whenua Maori Act to preserve Maori land.

## 5.4.6 Compliance/enforcement issues

Major restructuring of the public sector since the mid 1980s saw the establishment of State Owned Enterprises, airport companies, Crown Health Enterprises, Crown entities, and Local Authority Trading Enterprises. In some cases, private enterprise began to provide public services. Control and ownership of “public works” are no longer the sole responsibility of the Crown and local authorities.

In many instances, control and ownership of a public work on land originally acquired by the Crown or a local authority has transferred to a private provider. This can lead to problems with complying with Crown or local authority statutory requirements, particularly obligations to offer land back to former owners. Generally where land transfers out of the immediate Crown or local authority umbrella with an ongoing public work requirement, a saving provision in the transferring legislation requires offer back obligations to be considered when the private provider no longer needs land for the “public work”. Problems arise because of the competing objectives of private and non-government providers. Private providers aim to maximise return from land and to operate in a commercial manner as opposed to meeting the statutory requirement to consider former owner's rights. Existing legislation does not ensure land users comply with ongoing statutory obligations. It is also silent on enforcement issues.

### Compliance responsibility

*Who is responsible for compliance and who can enforce compliance?*

Where the Crown compulsorily takes land on behalf of a requiring authority, the Crown remains responsible for complying with any statutory responsibilities to a former owner (should the land be declared surplus at a later date).

It may be appropriate to pass on the responsibility for compliance with statutory requirements to private providers. This has to be considered carefully due to the potential for competing objectives to cause a conflict of interest. On moral grounds it may not be appropriate to require a private organisation to take on Crown or local authority obligations especially where the Crown or local authority was involved in the original acquisition. The legislation needs to be clear on enforcement issues and needs to codify what steps can be taken to ensure that compliance with statutory obligations occurs.

### Ensuring private provider compliance

*How can the Crown or local authority ensure private providers comply with ongoing statutory requirements when the requirements were (or might continue to be) a Crown or local authority responsibility?*

A private provider's actions might effectively determine that land is no longer required. However, the 1981 Act does not currently allow the Crown or local authority to invoke or enforce the Act's disposal provisions. Some legislation requires a caveat to be registered against the certificate of title at the time land is transferred to a private provider. This provides some security that a former owner's rights are not overlooked. A similar regime might apply for all such transactions.

### Overseas legislation

In Australia, the UK and Canada, there is no special provision to enforce acquisition and disposal processes. Statutory discretion is scrutinised through judicial review or other court action or public law processes such as ombudsman investigations.

The Australian Commonwealth Lands Acquisition Act 1989, section 122 (2) provides that land held by the Commonwealth may be transferred to another body or organisation for a public purpose, to be held in trust to carry out that public purpose. Once the purpose is complete, the land is returned to the Commonwealth.

### Some options to consider

Table 5.4.6 Compliance/enforcement issues

Option	Pro	Con
Require a caveat to be registered against the certificate of title at the time of transfer to a private provider.	Provides security that a former owner's rights are not overlooked.	An encumbrance on the title can affect the agency from operating in a commercial environment unless the caveat is drafted appropriately.
Pass on the responsibility to comply with statutory requirements to private providers when land is transferred.	Passes statutory responsibility and liability for non-compliance to the provider that controls the land.	<ul style="list-style-type: none"> <li>Competing objectives may cause a conflict of interest.</li> <li>On moral grounds it may not be appropriate to require a private organisation to take on Crown or local authority obligations especially where the Crown or local authority was involved in the original acquisition.</li> </ul>
Require that public works land under the control of a private provider be cleared by a Crown or local authority agency before it can be disposed of.	<ul style="list-style-type: none"> <li>Ensures no conflict of interest in objectives.</li> <li>Retains obligation with Crown or local authority.</li> </ul>	<ul style="list-style-type: none"> <li>Added cost to the Crown or local authority to ensure compliance.</li> <li>Does not pass responsibility to the private provider who controls the land.</li> </ul>
Ensure the Crown retains any statutory obligations even though land is acquired on behalf of – or is now owned by – a requiring authority or private provider.	<ul style="list-style-type: none"> <li>Ensures accountability rests with the authority that took the land from a private landowner.</li> <li>Ensures decision-making consistency.</li> </ul>	Needs administrative process to ensure compliance and the ability to enforce compliance.
Transfer land to requiring authority in trust, so that when it is no longer required for the work it returns to the Crown.	Ensures accountability rests with the authority that took the land from a private landowner.	

Table 5.4.6 Compliance/enforcement issues (continued)

Option	Pro	Con
Codify Crown enforcement role where a requiring authority is responsible for ongoing statutory requirements.	Ensures a level playing field and consistency of actions.	

### 5.4.7 General disposal issues

#### Financial return on disposal

*Should the highest financial return to the Crown/local authority be a priority in any disposal?*

The 1981 Act mostly requires an open and public process to be followed when disposing of surplus land. This ensures the market is tested and the best possible return for land disposal is obtained. The exception is where a disposal by private treaty is followed. Private treaty was introduced to enable a sale of land, once it had cleared offer back requirements, to existing tenants or leaseholders. Under a private treaty scenario there is no public exposure to a sale. Potentially the land may be sold for less than its true worth.

#### Overseas legislation

The disposal regime in overseas countries canvassed (where it exists) is less regimented than in New Zealand. In the United Kingdom it is governed by non-statutory rules. A great deal of emphasis is placed on maximising return to the holding authority and to protecting "the public purse". This issue is so paramount in a number of areas that the requirement to achieve the highest return will override any offer back requirements.

#### Resource consent considerations

*Should a Crown disposal follow normal resource consent requirements?*

When disposing of any surplus land held for a public work the Crown is bound to comply with the requirements of the Resource Management Act where subdivision is needed to effect the disposal. This means the Crown must spend considerable public money to provide services and facilities to meet district plan requirements. It may be more appropriate for any future land developers to provide these services once the Crown has effected disposal.

#### Overseas legislation

None of the overseas legislation contained provision to "fast track" a disposal or the ability to circumvent the normal consent requirements on subdivision.

### Some options to consider

Table 5.4.7 General disposal issues

Option	Pro	Con
Reinforce the requirement that any disposal is open and contestable and ensures the best possible return to the holding authority.	<ul style="list-style-type: none"> <li>The opportunity for fraudulent activity is reduced.</li> <li>The community can be assured that the Crown or local authority is obtaining the best possible return for their asset.</li> </ul>	Situations may occur where it is desirable to sell land without going to the market.
Retain ability to dispose of land without going to the market in certain circumstances.	Provides flexibility to sell land without public exposure where this is considered appropriate.	<ul style="list-style-type: none"> <li>Increases risk of outside interference in the disposal process.</li> <li>Opportunity for fraudulent activity increased.</li> </ul>

Table 5.4.7 General disposal issues (continued)

Option	Pro	Con
Clarify requirements for the Crown to act as a developer when attempting to dispose of surplus land and reinforce the requirement for compliance by the Crown.	Ensures the Crown does not dispose of land that is substandard to the local authority requirements.	<ul style="list-style-type: none"> <li>• Can be expensive for Crown to meet local authority requirements.</li> <li>• Crown acts as de facto land developer.</li> </ul>
Exempt Public Works Act land from complying with current resource consent requirements.	<ul style="list-style-type: none"> <li>• Facilitates disposal of surplus land back into the public domain.</li> <li>• Reduces cost to the Crown of effecting disposals.</li> <li>• Ensures early availability of surplus land to the public.</li> </ul>	<ul style="list-style-type: none"> <li>• Future developers may incur high costs to bring services/facilities up to local authority requirements.</li> <li>• Land may be sold at a lower value to account for a lack of services.</li> </ul>

#### 5.4.8 Disposal of land offering a low return

##### Fast track process for disposal

*Should the disposal regime better enable the Crown or a local authority to dispose of land that has a low financial return?*

When disposing of land, the cost of complying with current legislative or Cabinet-directed processes often outweighs the return to the Crown or local authority. This inhibits land disposal and may result in agencies holding on to land when it is not necessarily required for public work. There may need to be a “fast track” process to dispose of land in this category that encourages agencies to quit the land in a timely manner.

##### Overseas legislation

None of the overseas countries contained provision to “fast track” a disposal.

##### Balancing former owners' rights

*If a more enabling regime is implemented to dispose of land offering a low return, how can this be balanced against the rights and expectations of those parties that may expect to receive an offer of the land?*

The perception of “value” needs to be considered. Should an enabling regime be implemented for land offering a low return? While the land may have a low monetary value as far as the land holding agency is concerned, this needs to be balanced against any values which other parties may claim are intrinsic to the land (e.g. former owner, Maori claimants). While it may be difficult to codify such values, any disposal regime will need to consider these factors prior to entering any “fast track” system.

##### An option to consider

Table 5.4.8 Disposal of land offering a low return

Issue/option	Pro	Con
Promote a more enabling regime to assist in the efficient disposal of land where disposal costs outweigh return.	<ul style="list-style-type: none"> <li>• Would provide an incentive to dispose of land where there is little return to the Crown or local authority.</li> <li>• Increases the availability of land to the public.</li> </ul>	<ul style="list-style-type: none"> <li>• Potential to impinge on the rights of former owners/ Maori claimants.</li> <li>• Values, which other parties may claim are intrinsic to the land, may be ignored.</li> </ul>

#### 5.4.9 Transfer for another public work

##### Using land for another purpose

*Should land be able to be used for a public work different to the one for which it was originally acquired?* Currently, where land is not required for the public work for which it was acquired or is held, the Crown

or a local authority can transfer the land for any other required public work. The rationale behind these transfers is that it is more efficient to use land already in Crown or local authority ownership than to go out and acquire additional property from the public. Sometimes the Crown or local authority may need to refine the purpose for which it acquired land. These sorts of transfers do not trigger any of the 1981 Act's other disposal provisions as the land is not surplus if it is required for another public work. Consequently, the obligation to offer land back to a former owner is deferred until when the land is no longer required for the new public work (or any subsequent works).

A possible downside of transfers is that the proposed new land use is not subjected to the same scrutiny that might happen when land was acquired from a private individual. The Crown or local authority does not have to put its case before the Environment Court where affected parties can object to the land being taken. However, there is still the ability for the public to object through the resource consent and designation processes.

##### Crown land and public reserves

The 1981 Act also allows Crown land held under the Land Act 1948 and public reserve to be used for a public work. In these cases the land may not currently be held for a public work. Where land is set apart using this part of the Act there is no requirement to comply with the Act's acquisition provisions.

##### Overseas legislation

The Australian disposal legislation provides for any interest in land vested in the Commonwealth to be transferred to another Commonwealth authority without further consideration of the disposal provisions. Land may also vest in trustees upon trust to carry out the public purpose.

The disposal rules in the United Kingdom provide for transfers to another government department without considering other disposal requirements. Land may also be transferred to a local authority or other body with compulsory purchase powers in very exceptional circumstances without taking account of other disposal requirements.

##### Transfer from Crown to local authority and vice versa

*Should the Crown be able to transfer a public work to a local authority and vice versa? If so, under what circumstances?*

The Minister of Lands has the discretion to transfer land from the Crown to a local authority for another public work. Similarly, a local authority can transfer land to the Crown or another local authority for another public work. To ensure robustness of the process it may be preferable to codify the circumstances under which the Minister/local authority will entertain a proposal. It may be useful to open the process up to allow more public scrutiny of this type of transfer. Another option may be to completely remove the ability to transfer land from the Crown to a local authority. While this would ensure that the Crown's obligations to former owners and Treaty settlements are met, it may increase the total number of acquisitions, as local authorities would have to acquire land from the public to undertake the work.

##### Protection of Maori interests

*How can Maori interests be protected where it is proposed to transfer land from the Crown to a local authority for a local work?*

Where land transfers from the Crown to a local authority, the statutory obligations relating to offer back are not invoked until the land becomes surplus to local authority requirements. Therefore, the interests of former owners are protected where land transfers from the Crown to a local authority for another public work.

The Crown has established mechanisms to protect Maori interests where surplus public works land has been cleared through the offer back process. These mechanisms ensure that where land may be acquired for treaty settlements or is a site of significance to a particular iwi, it is identified and steps taken to protect that interest. However, this mechanism does not apply to land owned by local authorities or to proposed transfers to local authorities for another public work.

This means the Crown's obligations under the Treaty of Waitangi may be overlooked, as land that transfers to a local authority is no longer available for use in any future Treaty settlements. As an interim measure, pending the outcome of this review, when exercising discretion to transfer land to a local authority, the Minister of Lands now takes into account Maori interests.

## Advertising availability of land to other agencies

When land is no longer required for a public work, should other Crown agencies/local authorities be formally advised the land is available so that any use those agencies may have for the land is taken into account?

Historically, other government agencies were notified that land was surplus before open market disposal. This meant that the agencies could advise any interest they might have to use the land for another public work. The practice ceased with the demise of the Ministry of Works and Development. Reinstating this process could be useful to ensure land does not leave the public estate without considering other public uses. The downside is the Crown now has a number of other obligations when disposing of land. For example, Treaty of Waitangi settlements often place an obligation on the Crown to offer surplus land first to claimants (after former owners' rights have been considered). Advertising surplus land as being available for other agencies might be construed as a contemporary Treaty breach as the land, if taken up by another agency, will not be available for settlement purposes.

### Some options to consider

Table 5.4.9 Transfer for another public work

Option	Pro	Con
Require land to be returned to former owners (or sold on the open market) when the use for which it was originally acquired has ceased.	Will ensure future public work requirements are subject to full public scrutiny.	Will increase cost and time delays associated with using existing public work land for another public purpose.
Continue to allow for transfers for other public works without testing how robust the new requirement is.	Will allow for efficient Crown or local authority use of public works land without increasing costs and with the least disruption to the general public.	May result in increased opposition to these transfers from former owners and Maori claimants.
Provide criteria for transferring land from the Crown to a local authority.	Would provide certainty to all interested parties.	<ul style="list-style-type: none"> <li>Reduces flexibility to take account of unique circumstances.</li> <li>May increase the number of purchases of private land by local authorities.</li> </ul>
Only transfer land to a local authority where Maori interests relating to Treaty settlements and sites of significance can be adequately protected.	Will ensure the Crown meets its obligations under the Treaty of Waitangi.	<ul style="list-style-type: none"> <li>May result in less Crown public work land being available to local authorities.</li> <li>May increase the number of purchases of private land by local authorities.</li> </ul>
Ensure other agencies' needs for surplus public works land are considered prior to open market disposal.	Would ensure the efficient use of publicly-owned land with the least disruption to the general public.	Crown obligations to former owners and Maori claimants will be delayed.

# Other issues

## 6.1 Treaty of Waitangi provisions

The Public Works Act 1981 (the 1981 Act) and earlier legislation does not have a specific reference to the Treaty of Waitangi, so the Crown's Treaty obligations in this area of law have remained moral ones. Specific references to the Treaty began to appear in legislation in the mid 1980s, partly as a result of greater recognition of the Treaty's significance.

Our understanding of the scope of the legal obligations on the Crown, which flow from the Treaty of Waitangi, is still evolving. Including specific references to the Treaty in the Public Works Act would thus require text clearly indicating Parliament's intentions, for the certainty of both Maori and those who administer the Act. A key balance is between the Crown's right to govern and Maori rights to their land and to rangatiratanga. Any consequential provisions to treat owners differently from owners of general land would require careful scrutiny.

Another question relates to the impact of any references to the Treaty on all those on whom the Act confers powers, such as local authorities. Should any body exercising powers under the Act have the same obligations as the Crown in relation to Maori land, when they are exercising those powers? If that is Parliament's intention, it might be best for Parliament to provide guidance on that specific point in the legislation.

Further discussion relating to this issue is contained in Chapter 7 which highlights issues of particular interest to Maori.

## 6.2 Roothing issues

### 6.2.1 Introduction

Part VIII of the 1981 Act sets out the procedure to acquire land for roads, realign roads, and administrative matters associated with these actions. This is an alternative to the acquisition procedures in Part II, or "setting land apart" for road in Part III. The Part VIII procedure is frequently used to record changes on titles which occurred following a road widening or realignment. However, Part VIII can be used to create or stop (close) a substantial piece of road. Transit New Zealand uses this part of the 1981 Act to create and realign State Highways. Local authorities use Part VIII to realign roads where it is not considered appropriate to use the road stopping provisions contained in the Local Government Act. However, the Minister of Lands must sign all Gazette notices relating to Part VIII for both central and local government agencies. Consequently, Land Information New Zealand and the Ministry of Transport play a part in administering this part of the 1981 Act.

Before land can be declared road, people who have a registered interest in the land, such as owners or mortgagees, must consent in writing. For a road "stopping", it is also usual for the adjoining owner to consent. The notice can then provide for stopped road to vest in exchange for land declared to be road. The Crown or local authority can take small areas severed by the road. These usually vest in another person with adjoining land.

When the Ministry of Works and Development was abolished in 1988, the administration of other Parts of the 1981 Act dealing with roads, limited access roads, motorways and access ways and service lanes was transferred to the Ministry of Transport.

### 6.2.2 Issues

#### Definition of road

Should the definitions of road be consistent between the Transit NZ Act, Local Government Act, Public Works Act and Transport Act?

Four separate Acts define what constitutes a road. This potentially causes some confusion, especially regarding motorways, which are deemed to be roads in some Acts, but not in others. Consistent definitions would be desirable.

## Location of roading provisions

*Would the roading provisions sit best in the Transit New Zealand and Local Government Acts?*

One view is that Part VIII administration could be left to local authorities or Transit New Zealand themselves regarding roads they control. These provisions could then be transferred to the relevant Acts and removed from an amended Public Works Act.

The main argument for powers and functions remaining in an amended Public Works Act is that a government department third party can check that consents are complete and correct.

### Some options to consider

Table 6.2.3 Roading issues

Option	Pro	Con
Ensure consistency of road definitions between Transit NZ, Local Government, Transport Acts, and the 1981 Act.	Would provide consistency and lessen confusion.	
Move roading provisions to the Transit NZ Act and Local Government Act.	<ul style="list-style-type: none"> <li>Move responsibility to the agencies that are dealing with roads.</li> <li>More opportunity for public comment through the Local Government Act.</li> </ul>	No opportunity for a central agency to check that consents are complete and correct.

## 6.3 Opportunity for improved administrative processes

### 6.3.1 Introduction

There are certain provisions in the 1981 Act that, while amending them to make administration of the Act easier in today's environment, may not directly affect the operation of the Act from the public perspective. These issues are discussed here to enable you to comment or provide input if you wish.

### 6.3.2 Issues

#### Land holding/title provisions

*Where land is held under the Public Works Act, should the Land Transfer Act title remain on the register? Should road retain its "appellation" and have a certificate of title to allow easements and rights to be registered?*

Since the first Public Works Act 1876, it has been necessary for a Proclamation signed by the Governor-General to give effect to a Crown land purchase. Even when acquiring by agreement was introduced this was still the case. The Public Works Amendment Act 1962 gave the Minister of Works the power to sign a "declaration" that the land was acquired for a public work after being satisfied that the Crown or the local authority had made "sufficient" agreement with the owner. The proclamation or declaration is registered with the Land Registry. However, once land was taken by proclamation or declaration, the certificate of title was cancelled.

Section 17 of the 1981 Act for the first time authorises using a memorandum of transfer under the Land Transfer Act. This means the land continues to be held in a certificate of title against which memorials including easements and covenants can be registered. However, section 17 is limited to acquisition by agreement.

Section 17 could be widened to include all land acquired or held under the 1981 Act, to give land holding agencies the flexibility needed to operate in today's environment.

#### Responsibility for exercising powers

*Should the Minister responsible for an acquiring authority be able to acquire or dispose of authority assets without having to go through a central control? Should one Minister have sole control for recommending to the Governor-General that land be acquired compulsorily?*

Until the Ministry of Works and Development was abolished in 1988, it and the Minister of Works were responsible for developing all Crown public works. Chief executives of government departments now are responsible under the Public Finance Act 1989 and the State Sector Act 1988. However, only the Minister of Lands, as successor to the Minister of Works, can acquire land using the 1981 Act. The Chief Executive of LINZ, as successor to the MWD, can dispose of land for a Crown agency using the 1981 Act. (The notable exception is the New Zealand Railways Corporation which can exercise certain powers of acquisition and disposal under the 1981 Act by virtue of section 30 of the New Zealand Railways Corporation Act 1981.)

Current 1981 Act requirements do ensure consistency. However, as chief executives are now responsible under the Public Finance Act 1989 and the State Sector Act 1988, there is a case for transferring authority to responsible Ministers or Chief Executives. Local authority chief executives are currently responsible for acquisitions by agreement and disposals under the Public Works Act.

In the case of compulsory acquisitions, the need for consistency and a central control may be greater than for acquisition by negotiation or disposal. How should a revised Public Works Act deal with non-Crown agencies that may use the Act? This raises enforcement issues, as discussed previously in Chapter 5.4.6 of this paper.

### 6.3.3 Some options to consider

Table 6.3 Opportunity for improved administrative process

Option	Pro	Con
Provide for land, including road, acquired or held under the Public Works Act, to be held in certificate of title.	Would enable land, including road, to continue to be held in a certificate of title, against which memorials including easements and covenants can be registered.	
Remove central control for acquisition and disposal of public works land.	<ul style="list-style-type: none"> <li>Chief executives of government departments would be able to act on their responsibility under the Public Finance Act 1989 and the State Sector Act 1988.</li> <li>Would provide parity with the way local authorities operate.</li> </ul>	<ul style="list-style-type: none"> <li>Current centralised control ensures consistency and efficiency.</li> <li>For compulsory acquisition, which Minister will assume responsibility for requiring authorities?</li> </ul>

# Summary of issues of particular interest to Maori

## 7.1 Introduction

For Maori, public works legislation has meant both losses and gains. The loss of considerable tracts of land acquired for public works was deeply felt. Many claims involving public works have been lodged with the Waitangi Tribunal. However, Maori, with the rest of the population, have also benefited from the many public works that have built the country's infrastructure, hospitals, schools and other amenities.

This review of the Public Works Act 1981 (the 1981 Act) is not the forum to resolve Treaty and other public works grievances. However, some issues underlying these grievances can usefully inform the review so as to avoid the difficulties of current and previous legislation. Concerns regarding the impact of public works legislation on Maori land are integral to the review of the 1981 Act. Consequently, these concerns form part of relevant paragraphs of preceding chapters. It is particularly important that Maori concerns about public works legislation are addressed as part of the comprehensive and rigorous approach the Government has directed be adopted in this review.

Most Maori concerns about particular aspects of public works legislation are set out in the preceding chapters dealing with the nature, extent and exercise of public works powers: acquisition and compensation; disposal and administrative matters. However, where these concerns are not exclusive to Maori, they will not necessarily have been identified as such. This chapter brings together in one place the key concerns of Maori that we have been able to ascertain and refers to chapters in the discussion paper where the concerns are considered in greater detail.

## 7.2 Waitangi Tribunal considerations

Public works Treaty grievances are not referred to elsewhere in the discussion paper. This chapter begins with an overview of what the Waitangi Tribunal has said about the issues and its recommendations for legislative amendment.

The Waitangi Tribunal has enquired into a number of claims, which have involved public works legislation. These include the Ngai Tahu, Te Maunga, and Turangi claims. The Tribunal has said the Crown breached the Treaty of Waitangi when it took certain Maori lands for public works. These breaches occurred because the Crown failed to apply Treaty principles and, in some cases, failed to correctly administer public works legislation requirements.

The Ngai Tahu, Te Maunga and Turangi reports made fourteen recommendations. Each report included a recommendation that the 1981 Act should be amended to curtail or eliminate the exercise of powers that potentially breach Treaty of Waitangi principles. The fourteen recommendations have been grouped into four categories in Table 7.2.

Table 7.2 Waitangi Tribunal recommendations

<p><b>The Treaty of Waitangi &amp; the Public Works Act</b></p>	<ul style="list-style-type: none"> <li>All people exercising functions and powers under the Public Works Act should act in a manner consistent with the Treaty of Waitangi.</li> </ul>
<p><b>Acquisition</b></p>	<ul style="list-style-type: none"> <li>The Crown or a local authority should not seek to acquire Maori land without first ensuring that no other suitable land is available as an alternative.</li> <li>If the Crown or local authority wishes to acquire Maori land for a public work it should first give the owners adequate notice and, by full consultation, seek to obtain informed consent at an agreed price.</li> <li>If the owners are unwilling to agree, the power of compulsory acquisition for a public work or purpose should be exercised only in exceptional circumstances and as a last resort in the national interest.</li> <li>If the Crown or local authority does seek to acquire the use of Maori land for a public work, it could do so by acquiring a lease, licence, or easement, as appropriate, on terms agreed upon with the Maori owners or, failing agreement, by appropriate arbitration.</li> <li>The Crown and local authorities be expressly authorised to acquire a lease, licence, or easement over, or enter into a joint-venture arrangement in respect of Maori land required for public purposes, instead of acquiring the freehold title of such land.</li> <li>Should there be exceptional circumstances where the acquisition of the freehold by the Crown or a local authority is considered to be essential, Maori should have the right to have the question determined by an appropriate person or body independent of the Crown or local authority, as the case may be.</li> </ul>
<p><b>Offer back &amp; disposals (including disposals at less than current market value)</b></p>	<ul style="list-style-type: none"> <li>The offer back provisions should be amended to require the Crown or local authority, as the case may be:             <ul style="list-style-type: none"> <li>to offer to return surplus land to Maori ownership at the earliest possible opportunity with the least cost and inconvenience to the former Maori owners; and in determining the price at which the land is offered back to the former Maori owners, the Crown or local authority is to:                 <ul style="list-style-type: none"> <li>share with such owners the increased value in the land arising from the use and development of their land;</li> <li>have regard to the means of such former Maori owners;</li> <li>have regard to the circumstances surrounding the compulsory acquisition to such land; and</li> <li>have regard to the special circumstances of multiple Maori owners and to seek accommodation in such circumstances.</li> </ul> </li> </ul> </li> <li>The offer back provisions should be amended to require the Crown or local authority, as the case may be, to consult with former Maori owners or their successors before deciding not to offer back surplus land to such owners.</li> <li>The Public Works Act 1981 should be amended to permit the Crown or local authority, as the case may be, to offer back land to the wider hapu or tribal group to which former Maori owners belong, if such owners are unable or unwilling to purchase surplus land offered to them by the Crown or local authority.</li> </ul>

	<ul style="list-style-type: none"> <li>The Crown should be able to negotiate the return to Maori of any lands compulsorily taken from Maori under the public works legislation and no longer required for any public purpose, at no consideration, or at a negotiated price that may be less than current market value.</li> <li>The quantum of compensation is to be assessed on the basis of a fair return to Maori for the use of the land by the Crown, and the length of time the land has been used for any public purpose.</li> </ul>
<p><b>Proposed widening of Maori Land Court powers</b></p>	<ul style="list-style-type: none"> <li>The Maori Land Court be empowered to impose a charge on the land if any compensation is required to be paid by Maori for lands returned under the above provision.</li> <li>The Maori Land Court should be able to decide, when a negotiated agreement cannot be reached, what compensatory payments may be made by the Crown, or Maori, when such land is returned to Maori.</li> </ul>

With the exception of the Treaty clause, the issues related to Maori land and the Waitangi Tribunal's recommendation are discussed in more detail in various parts of this discussion paper. Many of these recommendations also occur as options throughout the paper.

### 7.3 Treaty of Waitangi provisions

Two sets of rights and duties need to be balanced when acquiring Maori land for public works. On the one hand, the Crown under Article I of the Treaty has the right to govern and as a result has the right to compulsorily acquire land from any citizen for public works provided it pays fair compensation. On the other, the Crown has a duty to Maori under Article II. This duty includes consultation with Maori and, to the fullest extent possible, to protect Maori rights and interests in land, the loss of which would have major adverse social, cultural and economic impacts.

There is now an effort to understand and apply Treaty principles in the context of government business. The Cabinet Office Manual requires Ministers to draw attention to any aspects of new legislation that have implications for, or may be affected by, Treaty principles. Land Information New Zealand follows this direction.

There is no Treaty clause in the 1981 Act. The Act came into force before Treaty of Waitangi clauses became widespread, particularly after the mid-1980s. The clauses reflect greater recognition and awareness of the Treaty.

Given the importance of land to Maori, and the prevalence now of Treaty clauses in legislation relating to land and natural resources, it is appropriate to consider whether a Treaty clause should be included in new public works legislation. Such a clause would provide a general direction sitting over any particular provision in relation to Maori land.

Many Treaty clauses apply to all parties exercising powers under a particular Act. In this case that would mean that the Treaty clause would impose legal obligations on the Crown, local authorities and any third parties that might wish to use the Act to acquire land for public works.

This discussion paper seeks views on:

- whether provisions relating to the Treaty of Waitangi be included in Public Works Act legislation;
- the nature of any such provisions; and
- who would be bound by these provisions.

### 7.4 Acquisition

#### 7.4.1 Who can exercise powers under the Act?

Fundamental concerns relate to definition of a public work and whether parties other than the Crown or local authorities can exercise powers under the Act. These powers affecting private property rights are a primary issue before rules and processes are developed for new legislation. They need to be considered carefully and are discussed in Chapter 3 of this paper.

## 7.4.2 Should acquisition of Maori land be treated differently from acquisition of general land?

Since 1840 the amount of land in Maori ownership has steadily decreased. Some say Maori land is now so rare that it should have “heritage status” and be protected. Current estimates are that only 5% of land in New Zealand is Maori land.

Any further reduction of the Maori estate, by whatever means, is of particular concern to Maori. It is also inconsistent with the intent of Te Ture Whenua Maori Act 1993, which promotes the retention of Maori land and General land owned by Maori in the hands of the owners; and the effective use, management, and development, by or on behalf of the owners, of Maori land and General land owned by Maori (refer to glossary for definitions). These concerns are reflected in the recommendations of the Waitangi Tribunal. This discussion paper seeks feedback on the issues raised by the Waitangi Tribunal recommendations.

### *Overseas legislation*

Canada and Australia both protect customary or aboriginal lands from acquisition for public works.

The Australian Native Title Act 1993 secures the protections for native titleholders that other land owners enjoy. It recognises that aborigines have been progressively dispossessed of their lands largely without compensation. Acquisition can only be valid if every reasonable effort has been made to secure native titleholders’ agreement through a special right to negotiate. Where compulsory acquisition is proposed, the native parties must be consulted about how to best minimise the proposal’s effect. There is a right to object and seek compensation. There is also a right to an independent hearing on the decision. There is no provision for compensation for special or spiritual values. In addition, parties may enter into Indigenous Land Use Agreements that are independently negotiated and can be registered, although they do not extinguish the native title.

The Canada Expropriation Act and the Indian Act restrict the purchase of native reserve lands. The Governor in Council may consent to compulsory acquisition. No special provisions were found in respect of compensation for spiritual or other special values relating to aboriginal lands.

## 7.5 Compensation

Chapter 4.4 of this paper deals with general compensation issues. There have been historic claims for failure to fully compensate owners, including Maori owners. However, in more recent times, any failure has been in the way the legislation was administered rather than any fault of the legislation itself.

Since 1905, public works legislation has provided for a land exchange to compensate an owner for land acquired for a public work (see Chapter 4.4). Few transactions of this type have occurred owing to lack of suitable exchange land.

Possibly valuation issues are the most important Maori concerns regarding compensation for land acquired either by agreement or compulsorily. Of particular concern is that the Public Works Act 1981 does not value social, spiritual and cultural associations with the land for the purposes of compensation. On the practical side, there is the question of whether there are adequate ways to value these issues or whether methods need to be developed.

This discussion paper seeks views on:

- whether any such compensation should be restricted to land acquired compulsorily (see Chapter 4.2.1);
- providing for compensation to include social, spiritual and cultural value of land that is acquired (see Chapter 4.4.1); and
- how would these factors be valued?

## 7.6 Disposal

Many aspects of the present disposal regime for Maori land are of as much, if not greater, concern to Maori than the acquisition process. Many non-Maori share some of these concerns regarding general land. The issues are listed below, together with references to the relevant paragraphs in Chapter 5 where they are discussed in further detail:

- automatic offer back when the land acquired is not used for the public work within some specified time (see Chapter 5.4.2);
- mandatory offer back when the acquired land is no longer required for the original purpose (or, another public work) (see Chapter 5.4.2);
- under what conditions should land used for a public work be used or transferred to another entity for the same or another public work? (see Chapter 5.3.4, 5.3.5, 6.4.9);
- the former owner should be consulted before a decision is made to exempt the land from offer back (see Chapter 5.4.2);
- removal of “significant change” as a reason for exempting offer back (see Chapter 5.4.2);
- broadening the definition of successor of former owner to include descendants rather than successor in probate (see Chapter 5.4.3);
- offer to whanau or hapu if the former owner (or successor) of the Maori land is unable or does not wish to repurchase the land when it is offered back (see Chapter 5.4.4);
- how should improvements be dealt with on disposal if a less than freehold interest was originally acquired in the land? (see Chapter 4.2.1);
- should former Maori freehold land be returned as Maori freehold land or should the former owner have the option, as currently, to have it returned as general land? (see Chapter 5.4.5);
- how should land to be offered back be valued? (see Chapter 5.4.4);
- criteria for determining if the purchase price of the offer back should be at some lesser value than current market value and what that price should be (see Chapter 5.4.4);
- should financial assistance be provided to the former owner for repurchase of former Maori land?
- how should the Act deal with absentee land owners when wanting to acquire Maori land?
- what role should the Maori Trustee play? (See Chapter 7.7.2 below).

## 7.6.1 Should section 40 offer back obligations continue and in what form?

As earlier mentioned (see Chapter 5.4.1), few former owners of properties take up offers back of land no longer required for the public work. Should offer back to the former owner remain in view of the cost of operating and implementing the system (including the cost of legal challenges)? Removal or amendment of the procedure would affect former owners of land taken for a public work who might be eligible to receive an offer back under the current Act. This would affect Maori and non-Maori owners of (former) general land or Maori land.

The removal of the offer back obligation would not result in a significant increase in land available for Treaty settlements because so little land that is no longer required for a public work is reunited with the former owner in any event.

Between these two extremes, an “intermediate” position might be that after expiry of a time limit, the land no longer has to be offered back (see Chapter 5.4.3).

Also, there is the broader question of whether former general land and Maori land should be treated in the same way.

## 7.7 Other issues

### 7.7.1 Compliance and enforcement issues

The 1981 Act does not contain any enforcement powers to ensure people comply with the Act. This is also the case in a number of other Acts with similar obligations to the Public Works Act. There are instances where Maori claim that failing to comply with the legislation has led, for example, to the loss of land which should have been offered back to them. Where privatised entities have taken over obligations, more compliance and enforcement issues may arise because of their commercial imperatives (as compared with the Crown or local authority owning land). Often the former owners bear the burden of taking court action.

### 7.7.2 Role of the Maori Trustee and the Maori Land Court

The Maori Trustee has dealt with claims for compensation where Maori land has been taken for public works. In this capacity the Maori Trustee acts as a statutory officer for the Crown regarding Maori land.

The Maori Land Court also is involved in disposing of Maori land and general land owned by Maori.

The review of the Public Works Act 1981 provides an opportunity for comment on what role, if any, the Maori Trustee and the Maori Land Court should have in acquiring and disposing of Maori land used for public works.

### 7.7.3 Notices – dual language notification

It has been suggested that notifications relating to acquisitions and disposals of Maori land should be in both English and Maori.

# Public consultation programme

Advertisements in major and local newspapers will highlight how to obtain this discussion paper. The document is available in hard copy and through the LINZ website to enable copies to be made, and for submissions to be made and sent electronically.

## 8.1 Maori consultation

In recognition of the Crown's Treaty of Waitangi obligations, a programme of 14 hui is being arranged throughout the country. These will be extensively publicised and will provide Maori with a specific opportunity to discuss the issues raised by the 1981 Act review and to make oral submissions on the review.

## 8.2 Public, interest and specialist group meetings

Public meetings and meetings of interest or specialist groups have not yet been scheduled. Should there be sufficient demand, meetings will be arranged in the main centres, resources permitting. Also, the LINZ Public Works Act Review Team can meet with groups in Wellington.

## 8.3 Making a submission

Submissions can be made by:

- using the submission form on the LINZ website <http://www.pwareview.linz.govt.nz>;
- e-mailing a submission to [pwareview@linz.govt.nz](mailto:pwareview@linz.govt.nz);
- faxing a submission to (04) 498 3519; or
- using the submission form attached and posting your submission to:

Public Works Act Review  
Policy Group  
Land Information New Zealand  
P O Box 5501  
WELLINGTON.

Please note that all submissions are subject to the Official Information Act 1982 and can be released, if requested under that Act. If you have specific reasons for wanting your submission withheld, please set out your reasons in the submission. Land Information New Zealand will consider those reasons when making any assessment for release of submissions if requested under the Official Information Act 1982.

The last day for submissions on the 1981 Act review is 30 March 2001.

If you have any questions on the review or the submission process, or require further copies of the discussion paper, please contact the Review Team on (04) 460 0167 or write to the above address.

## 8.4 What happens to the submissions?

The consultation programme will run between November 2000 and March 2001. Submissions made will be analysed and used to inform the policy options. A summary of submissions will also be prepared and made available to submitters and on LINZ's website – <http://www.linz.govt.nz>

The Cabinet will decide on final policy and necessary legislative changes during the latter half of 2001 after taking account of the outcome of the review and consultation.

A Bill will then be drafted. It is anticipated that the Bill will be introduced to Parliament early in 2002. The usual process is for the Bill then to be referred to a Select Committee. The Select Committee considers the Bill in further detail and calls for public submissions. This provides a further opportunity for public input into the review process.

# Glossary

<b>Customary Maori land</b>	Land held under Te Ture Whenua Maori Act 1993 that is held by Maori in accordance with tikanga Maori
<b>Eminent domain</b>	The right which a state or sovereign power has to the use of property of its citizens for the common welfare
<b>Fee Simple Estate</b>	That interest in land which gives the owner the largest rights of use and enjoyment allowed by the law together with the fullest power of alienation
<b>General land</b>	Land (other than Maori freehold land and General land owned by Maori) that has been alienated from the Crown for a subsisting estate in fee simple
<b>General land owned by Maori</b>	Land held under Te Ture Whenua Maori Act 1993 (other than Maori freehold land) that has been alienated from the Crown for a subsisting estate in fee simple, where the estate is beneficially owned by more than four persons of whom a majority are Maori
<b>Injurious affection</b>	Reduction in the value of land caused by the acquisition for or construction of a public work
<b>Maori land</b>	Maori freehold land; or Customary Maori land
<b>Maori freehold land</b>	Land held under Te Ture Whenua Maori Act 1993, the beneficial ownership of which has been determined by the Maori Land Court by freehold order
<b>Minister of Lands</b>	Minister of the Crown responsible for the administration of the Public Works Act 1981, acting through the Minister for Land Information in accordance with constitutional provisions
<b>Private damage</b>	Personal loss experienced by a land owner
<b>Private provider</b>	Private organisation who has the authority to request the Crown (through the Minister of Lands) to compulsorily acquire land on its behalf as if the land were required for a Government work
<b>Private treaty</b>	A method of disposal whereby surplus public works land may be sold without further public exposure
<b>Public application</b>	A method of disposal whereby the public is invited to make application for the purchase of surplus public works land. Purchase price is specified and applications remain open for a set period of time
<b>Public interest</b>	An interest shared by all members of a given community, both as individuals and as members of sectional groups
<b>Requiring authorities</b>	A Minister of the Crown; or A local authority; or A network utility operator approved as a requiring authority under section 167 of the Resource Management Act 1991
<b>Successor</b>	For the purposes of any offer back, in relation to any person, means the person who would have been entitled to the land under the will or intestacy of that person had he owned the land at the date of his death; and, in any case where part of a person's land was acquired or taken, includes the successor in title of that person

# Selected bibliography

The following references contain some general background on land law, the Public Works Act and related Treaty considerations:

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