

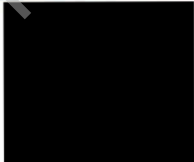
# BRF 25-117 Briefing Two: Public Works Act Review: Policy decisions on objections

**Ki / To:** Hon Chris Penk, Minister for Land Information      **Rā / Date:** 22 October 2024

## Ngā mahi matua kia mahia/key actions required

Minita/Minister	Key action required: Agree/note/forward	Deadline when this action should be completed by
Hon Chris Penk, Minister for Land Information	<b>Indicate</b> your preferred options for Public Works Act 1981 objections	24 October 2024

## Toitū Te Whenua Land Information New Zealand Whakapā/contacts

Ingoa/Name	Tūnga/Position	Nama waea/ Contact number	Whakapā tuatahi/first contact
Amanda Moran	Head of Strategy, Policy and Ministerials		<input type="checkbox"/>
Stacey Newlands	Leader, Strategy, Policy and Ministerials		<input checked="" type="checkbox"/>

## Ngā kōrero a te Minita/Minister's comments

## Pūtake/Purpose

Toitū Te Whenua Land Information New Zealand (LINZ) is seeking policy decisions from you on objections to the compulsory acquisition of land.

## Pānui whāinga/Key messages

1. LINZ is undertaking a targeted review of the Public Works Act 1981 (PWA). You were provided with the advice paper of the Expert Advisory Panel (the Panel) [BRF 25-110 refers] and an overview of the PWA review's key findings and options relating to acquisitions [BRF 25-116 refers].
2. LINZ is now seeking your preferred approach to options to make the landowner objection process to compulsory acquisition more efficient. These options sit alongside the proposals relating to acquisitions and compensation, which form a package that will improve the PWA's efficiency, effectiveness, and clarity.
3. Any amendments to the land acquisition objections process arising from the PWA review will sit alongside the proposal to remove objections for critical infrastructure projects that you and the Minister of Transport are taking to Cabinet in early November.
4. A key concern with the current objections process is the potential for duplication with the Resource Management Act 1991 (RMA) designation process. Specifically, there is potential for duplication in the evidence presented about the consideration of alternative sites, routes or methods.
5. LINZ's preferred option is to limit the broad consideration of whether there has been adequate consideration of alternative sites, routes or methods under the objection process of the PWA where the land is subject to a RMA designation. This limitation would be similar to the model used in the Fast-track Approvals Bill. The objection grounds would focus on the need for the particular interest in the land being acquired. Further procedural changes would be made to improve efficiency.
6. This option will reduce the overlap between the RMA and PWA and increase the efficiency of PWA objection proceedings. Landowner access to natural justice would be preserved, without need for change to the RMA.
7. The Panel suggested addressing this concern by amending the RMA designation process to include the PWA objections test for the taking of land. This option would involve significant changes to both the RMA and project delivery models. These changes pose a risk that any efficiency gains from removing the standalone PWA objections process would be outweighed by the extra time needed to consider land acquisition decisions as part of the designation process. The agencies consulted on a draft of this briefing did not support this option.
8. The Panel also noted the potential merits of changing PWA objections to be heard by a ministerial appointee, rather than the Environment Court. The potential time savings of this option were favoured by some delivery agencies. LINZ's preferred option is that the Environment Court continues to hear objections.

## Tohutohu/Recommendations

**Toitū Te Whenua Land Information New Zealand recommends that you:**

**Indicate** on **Appendix 1** (PWA objections options summary) your preferred options for Public Works Act 1981 objections.



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Stacey Newlands

**Toitū Te Whenua Land Information New Zealand**

Rā/Date: 22/10/2024



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Hon Chris Penk

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

Rā/Date: 24.10.2024

## Tāpiritanga/Attachments

**Appendix 1:** PWA objections options summary

## Te Horopaki/Background

1. On 10 June 2024, Cabinet agreed to initiate a review of the PWA to facilitate the Government's delivery of public infrastructure while retaining the principles of the PWA, through targeted amendments focused on improving efficiency, effectiveness and clarity [CAB-24-MIN-023.01].
2. Cabinet directed LINZ to establish an Expert Advisory Panel (the Panel) to provide independent, specialist advice to the LINZ Chief Executive and to engage with critical stakeholders on potential reforms to the PWA. The Panel's advice paper to LINZ was provided to you on 3 October 2024 [BRF 25-110 refers]. Our analysis has been informed by the Panel's findings.
3. On 10 October 2024, you received the first briefing reporting back on the outcome of the review [BRF 25-116 refers]. The first briefing outlined key shifts that will deliver system change and sought decisions relating to land acquisitions under the PWA. This second briefing focuses on policy proposals to support more efficient resolution of objections to compulsory acquisitions. The proposals together form a package which will improve the PWA's efficiency, effectiveness, and clarity.
4. In November, you and the Minister of Transport are taking proposals to Cabinet relating to specific projects where a designation under the RMA has been obtained. If agreed, the proposals will replace the right of landowners to object to their land being acquired with a right to submit their views to the Minister for Land Information prior to the compulsory acquisition of their land. This will address the problem of potential delays to critical infrastructure from objections.

## Objections have an important role in providing access to natural justice and protection of property rights, but the current process can cause delays

5. Landowners have the right to object to the Environment Court to the compulsory acquisition of their land under the PWA. The objections process precedes the Minister for Land Information's final decision to recommend taking of the interest in land (or the local authority's decision to request taking), and therefore helps to ensure the PWA process provides for landowners' rights to natural justice in respect of these decisions that affect their property rights.
6. Outside of the criminal justice system, compulsory acquisition of private land is one of the more significant powers available to the State affecting the interests of private individuals. The right to object is a check on these powers and supports robustness and consistency in decision-making. The right to object contributes to the legitimacy and integrity of the public works system. Confidence in the public works system enables 94% of the land sought by the Crown for public works to be acquired by agreement.
7. Objections in some form have been a feature of public works legislation since at least 1894. Since 1981, these objections have been heard by the Environment Court or its predecessors.
8. Landowners can object to the taking of their land, though objections may be withdrawn before an Environment Court determination is made. LINZ has identified only five cases (three local



authority and two Crown cases) since 2018 where the Court issued a decision report on an objection.

9. While the number of objections is low, a single objection may delay a project. Resolving objections can add at least a year to an acquisition process, resulting in significant additional costs and delays.
10. The Panel highlighted inefficiencies in the objection process caused by the duplication of evidence considered in PWA objection proceedings and the RMA designation process. LINZ notes that while the tests under the RMA and PWA are different, the evidence presented may be very similar. Delivery agencies told the Panel they strongly supported removing or reducing the scope for consideration of alternative sites, routes or methods under the PWA for projects with an RMA designation. The Panel also noted objectors can use the objections process to leverage compensation concerns, which are resolved through the compensation claim process to the Land Valuation Tribunal.
11. The Panel saw potential merit in considering replacement of the court-based objection process with a **Canadian-style ministerial inquiry process**. However, the Panel considered that this option would be outside the scope of the PWA in not providing a process for a binding judicial check on decision-making.
12. Building on the Panel's suggestions, LINZ developed three options for reducing delay from objections and the potential for duplication with other processes.
  - a. Option 1A: **(LINZ preferred option)** Refine the grounds for objections and make procedural improvements
  - b. Option 1B: Integrate the PWA objection test with the RMA designation process
  - c. Option 1C: Remove right to object.
13. If you agree to option 1A or 1B above, two options for who should hear objections are available.
  - a. Option 2A: **(LINZ preferred option)** Retain the Environment Court as the body hearing PWA objections
  - b. Option 2B: LINZ to investigate a different body for hearing PWA objections.
14. A summary of the options is provided in **Appendix 1**.

## Option 1A: Refine the grounds for objections and make procedural improvements

15. LINZ's preferred option is to narrow the grounds for objections and make procedural improvements that reduce potential for more speculative objections. This option directly addresses the Panel's key **concern of duplication with RMA designation process and is consistent with the model used in the Fast-track Approvals Bill (FTAB)**.
16. **Section 24(7) of the PWA (Objection to be heard by Environment Court) provides:**
  - (7) *The Environment Court shall—*
    - (a) *ascertain the objectives of the Minister or local authority, as the case may require:*

*(b) enquire into the adequacy of the consideration given to alternative sites, routes, or other methods of achieving those objectives:*

*(c) in its discretion, send the matter back to the Minister or local authority for further consideration in the light of any directions given by the court:*

*(d) decide 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:*

*(e) prepare a written report on the objection and on the court's findings:*

*(f) submit its report and findings to the Minister or local authority, as the case may require.*

17. LINZ recommends that where an RMA designation has been made, the Court must not consider whether consideration has been given to alternative sites, routes, or other methods. This change would be similar to the model in FTAB, where the adequacy of consideration given to alternatives is decided in the designation process. The FTAB approach makes a procedural change to the matters the Court is required to take into account. Option 1A builds on this to make a substantive change to the test itself, providing greater certainty. Where no designation has been made, the Court will continue to enquire into the adequacy of consideration given to alternatives.

18. The Panel stated that the "fair, sound and reasonably necessary" test is satisfactory and well tested by the courts. LINZ recommends retaining the "fair, sound and reasonably necessary" test but introducing specific criteria so that the inquiry is focused on an individual property interest, rather than the project or route-level matters. Relevant considerations to be specified would be:

- the amount and location of land to be acquired within the route approved by the designation
- the type of property interest to be acquired (i.e. freehold, lease etc).

MINISTER, THEN  
J.R. TO TEST  
IF NOT.

19. As well as amending the objection grounds, LINZ proposes that the following changes be made to improve efficiency:

- require objectors to state the grounds for their objection when it is filed
- specify that compensation matters must be excluded from consideration (as compensation claims are dealt with by the Land Valuation Tribunal)
- require mediation before proceeding to an Environment Court hearing.

20. Option 1A would achieve more focused objections proceedings and greater delineation from the RMA designation process and compensation claims processes.

21. If this option proceeds, a consequential amendment could be made to Schedule 11 of FTAB (once enacted) for consistency.

## Option 1B: Integrate the PWA objection test with the RMA designation process

22. The Panel's preferred option for addressing potential duplication in the evidence needed for RMA and PWA objections was to remove objection rights under the PWA for land designated under the RMA, subject to RMA amendments to ensure that:
- the impacts on the individual landowner and their property rights are considered at the designation stage
  - the acquisition is fair, sound and reasonably necessary
  - access to justice is similar to landowner's rights under the PWA (e.g. equivalent support for legal costs as are provided under the PWA), and
  - landowners are notified of the designation process.
23. The Panel recommended the objection process in the PWA would need to be retained on procedural grounds during the acquisition process, and for land acquired for public works where no RMA designation had been made.
24. LINZ supports the intention behind the Panel's suggested approach. Better integration between land use planning and public works acquisitions is needed to facilitate infrastructure delivery. However, Option 1B is unlikely to improve the process's overall efficiency because it would have the effect of front-loading land acquisition into the consenting stage of infrastructure development. Hearing landowners' concerns relating to a property acquisition could complicate and slow down the designation process. Project delivery models would need to align with the new process. Design work would need to be advanced to a level appropriate to inform land acquisition.
25. Option 1B would also have implications for infrastructure planning, investment and construction beyond the PWA. Implementation would require significant change to the RMA. Agencies consulted on a draft of this briefing did not support this option.

## Option 1C: Remove the right to object

26. The Panel did not contemplate removing the PWA's right to object entirely. Its terms of reference specified that proposals would maintain a binding judicial check on decision-making.
27. While the removal of the objection right would not necessarily limit the right to natural justice, LINZ does not recommend removing objection rights from the PWA. Objections are an important check on the use of compulsory acquisition power.
28. Objections support robustness and consistency in decision-making, including across local authorities. Having a right to object contributes to the legitimacy and integrity of the public works system. A high level of confidence in the public works system currently enables most land to be acquired by agreement. Removing objection rights may change acquiring authorities' behaviour, resulting in more use of compulsory acquisition, which has a greater impact on property rights than acquisition by agreement.



29. Replacing objection rights in the critical infrastructure proposal with a right for landowners to submit their views prior to the compulsory acquisition of their land is considered justified, on balance, due to the significant broader public benefits that would be realised through the faster delivery of critical infrastructure projects and the small number of landowners affected.
30. The critical infrastructure proposal relies on an objections process remaining in the PWA. It is an opt-out model. Agencies have the choice to use the FTAB (which uses the PWA) instead of the critical infrastructure model to manage the risks of legal challenge and judicial review arising from the removal of objection rights. The critical infrastructure proposal will also be subject to a statutory review period which will consider whether objections rights should be reinstated.
31. An objections process in the PWA is also needed for protected Māori land. 'Protected Māori land' as defined in the PWA is excluded from the critical infrastructure process. Landowners of protected Māori land affected by a project would, unlike other owners, retain the right to object to the Environment Court if a compulsory acquisition of that land is proposed.
32. If the right to object to a compulsory acquisition is removed from the PWA, LINZ recommends that the ability for owners of protected Māori land to object is retained.
33. Removing PWA objection rights would likely attract considerable interest. While the options have not been tested with the public, LINZ notes that Federated Farmers' submission to the select committee on FTAB said it was pleased that the right to object had not been changed in that Bill.

34. [REDACTED]

## Option 2: Body that hears PWA objections remains the Environment Court (Option 2A) or LINZ will investigate a Ministerial inquiry body (Option 2B)

35. The Panel saw potential merit in considering replacing the court-based objection process with a Canadian-style inquiry process in which a minister appoints an inquiry officer who can make a non-binding recommendation to the minister. These inquiry processes are designed to be fast.<sup>2</sup> This could be implemented with Option 1A or 1B above, rather than as an alternative. Judicial review would remain available.
36. The Panel considered a Ministerial inquiry option would be out of scope of the targeted PWA review because it does not maintain a binding judicial check on decision-making.

<sup>2</sup> The Canadian federal Expropriation Act requires the inquiry officer to report its recommendations within 30 days of the first day of the inquiry unless extended by the minister. LINZ does not have information on how long the inquiry process takes in practice.



37. LINZ's preferred option is for the Environment Court to continue hearing objections (Option 2A), over moving the objections process to a Ministerial inquiry process, which would require further LINZ investigation (Option 2B).
38. In addition to the Panel's view that a new process is out of scope, the creation of a new process or institution would be a significant change to the system that would not be feasible to deliver within the scope and timing of the targeted PWA review. Feasibility challenges include seeking new funding and designing it to work for local authority takings.
39. The Panel said a Ministerial inquiry process had potential to resolve objections significantly faster and at lower costs to parties than the Environment Court process. The Panel also noted benefits for landowners, who are often left worse off by protracted litigation (including through the financial costs incurred) than if they had not objected. LINZ notes that an objections process with lower barriers to entry may result in more landowners exercising their objection rights.
40. Delivery agencies supported further investigation of this option, as Environment Court waiting times can be two years and are a key contributor to the delays in resolving objections under the PWA. Te Arawhiti opposed this option on natural justice and constitutional grounds.
41. Changing objection rights from the judiciary to an executive body may be controversial for Māori. Before 1981, PWA objections were considered by a decision-maker. The current judicial process was brought in to provide greater independence from the decision-maker.
42. There are various ways a non-judicial objections institution or process could be structured. If you are interested in progressing an option of this nature, LINZ can provide further advice on detailed options and can discuss implications for timeframes.
43. It is likely a new objections process would be tested through judicial review.

44.

## Whakatūpato/Risks

45. All options would introduce a risk of increased litigation as the new legislation is tested.
46. Option 1B would have significant implementation risks, as project delivery models would need to change to meet the new substantive and procedural elements of the RMA designation process.

## Mātanga kōrero/Consultation

47. Ministries for the Environment, Primary Industries, Culture and Heritage, Transport, Housing and Urban Development, Business, Innovation and Employment, Justice, Education, and Health, and Departments of Internal Affairs, Conservation, Corrections, the Treasury, Te Puni Kōkiri, Te Arawhiti, the New Zealand Defence Force, New Zealand Transport Agency, New Zealand

Infrastructure Commission Te Waihanga, Kiwirail, Transpower, and Health New Zealand have been consulted on this briefing.

48. Te Waihanga, Ministry of Justice, Ministry of Primary Industries, Department of Conservation and Te Arawhiti supported Option 1A (LINZ's preferred option). Transpower agreed that Option 1A could be more efficient than the status quo but wanted consideration to be given to Option 1B in the medium term. The Ministry for the Environment supported addressing integration between land use planning and public works systems alongside Phase 3 of RMA Reform, rather than making amendments to the current RMA designation process. KiwiRail and NZTA supported option 2B, and Transpower also considered this option has merit.
49. Option 1C (removing objection rights) has been tested with targeted delivery agencies through the critical infrastructure proposals. Te Waihanga has noted in that project that removing objection rights may not end up accelerating land acquisition for infrastructure if it leads to more recourse to judicial review in the absence of another avenue to voice objections.

## Ngā Tāwhaitanga/Next Steps

50. The December PWA Review Cabinet paper will focus on seeking the key policy decisions needed to enable legislative drafting to begin in January, including decisions on objections.
51. This is the second of a series of briefings LINZ intends to provide to you in October seeking your direction on matters for inclusion in the draft Cabinet paper. LINZ will work with your office to prioritise time with you to discuss these briefings, to deliver to the December timeframe.
52. Due to the complexity of the PWA, we anticipate that further Cabinet decisions will be needed in March 2025 to enable final drafting.

Next steps	Date/deadline
Briefing three – Public Works Act Review: Compensation for land acquisition to your office	24 October
Public Works Act Review Draft Cabinet paper and Regulatory Impact Statement (RIS) to your office	Late October
Updated draft Cabinet paper and RIS to your office	14 November
Ministerial consultation on draft Cabinet paper and Regulatory Impact Statement	14-18 November
Cabinet paper and RIS lodged for Economic Policy Committee (ECO)	5 December
Cabinet paper and RIS considered at ECO	11 December
Cabinet	16 December