

# BRF 25-145 Public Works Act Review briefing six: Policy decisions on additional acquisition matters

**Ki / To:** Hon Chris Penk, Minister for Land Information      **Rā / Date:** 4 November 2024


## Ngā mahi matua kia mahia/key actions required

Minita/Minister	Key action required:	Deadline
Hon Chris Penk, Minister for Land Information	<b>Indicate on Appendix 1</b> your preferred option for acquisition processes and procedures	11 November 2024

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

Ingoa/Name	Tūnga/Position	Nama waea/ Contact number	Whakapā tuatahi/first contact
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## Ngā kōrero a te Minita/Minister's comments



## Pūtake/Purpose

This briefing seeks your decisions on acquisition processes and procedures under the Public Works Act 1981 (PWA). A summary of policy decisions, trade-offs and considerations is at **Appendix 1**.

## Pānui whāinga/Key messages

- 1 Toitū Te Whenua Land Information New Zealand (LINZ) is undertaking a targeted review of the Public Works Act 1981 (PWA), building on the advice received from the Expert Advisory Panel (the Panel).
- 2 LINZ previously advised that changes to acquisition processes (for example, notices and survey requirements) could be progressed in the second Cabinet paper, planned for March 2025 [BRF 25-116]. LINZ considers that decisions relating to acquisition notices could be made in Cabinet paper 1, to provide an overall picture of the changes and efficiencies the PWA reforms will provide.
- 3 Acquisition processes are guided by multiple requirements, including that a minimum three months' good faith negotiations occur before a compulsory acquisition process may begin. Most negotiations result in successful agreement to the land's acquisition [BRF 24-116].
- 4 PWA users and the Panel have not challenged the need to negotiate before compulsory acquisition but have reported procedural difficulties causing delay. Much of this relates to the issuing of a notice under Section 18 PWA to formally start a three-month negotiation period. Reported issues include this notice's formality, that previous negotiations and interactions are discounted, and having to seek and await LINZ approval under current settings to issue this notice.
- 5 The land acquisition process requires effective, timely communication with landowners to provide information about the process and their rights. This supports landowners to engage in the negotiation process, understand the impact on their property rights and reach agreement.
- 6 LINZ recommends that the Section 18 notice requirement is removed, and that at least three-months of good faith negotiations are required before a Section 23 notice of intention to compulsorily acquire land can be issued.
- 7 Options are available for setting out the requirements of good faith negotiations:
  - **Option 1a: (LINZ preferred option) Set out minimum requirements for good faith negotiations.** Section 18 is removed. A Section 23 notice can be issued at least three months after the negotiation commencement date, during which a period of endeavours to negotiate in good faith which meets minimum requirements set by legislation has occurred.
  - **Option 1b: The Act is silent on minimum requirements for good faith negotiations.** Section 18 is removed. A Section 23 notice can be issued after a minimum three-month period of endeavours to negotiate in good faith has occurred. It is up to users to evidence that good faith negotiations have been undertaken. This option provides flexibility to users but reduces certainty for landowners.



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**Toitū Te Whenua Land Information New**  
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Rā/Date:



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

Rā/Date: 4.11.2024.

## Tāpiritanga/Attachments

- 1 **Appendix 1:** Acquisition processes and procedures options summary

Proactive Release

## 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 Toitū Te Whenua Land Information New Zealand (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]. Analysis has been informed by the Panel's findings.
3. This briefing is sixth in a series of briefings reporting back and seeking your decisions on the review. LINZ indicated in BRF 25-116 that it would provide you with further advice ahead of the second Cabinet paper, planned for March 2025. LINZ now considers that decisions on acquisition notices could be made in the first Cabinet paper, planned for December 2024, so that the efficiencies of the overall PWA review package are clearer in that paper.

## Acquisition processes and notices

4. The PWA sets out the following stages for compulsory acquisition, subject to statutory timeframes:
  - a notice of desire is issued (a Section 18 Notice)
  - at least three months later, a notice of intention to take land compulsorily can be issued (a Section 23 Notice)<sup>1</sup>
  - after a period to allow for objections, the land can be acquired by Proclamation of the Governor-General on the recommendation of the Minister for Land Information or a request from a Local Authority (under Section 26).

### **Acquisition processes and procedures may be overly inflexible, onerous, and fail to reflect modern practice and needs**

5. Section 18(1) outlines the procedures that must be met before compulsorily acquiring land under the PWA:
  - Serving a notice of desire on a landowner indicates to the landowner that a user is intending to purchase their land
  - The notice is registered against the land title by the Registrar-General of Land so any current owner or purchaser is aware of a user's desire to acquire the land
  - An owner must be invited to sell their land and, following a valuation, advised of the estimated amount of compensation they would be entitled to under the PWA

<sup>1</sup> The Section 18 and Section 23 notice requirements originally only applied to "essential works", as defined in the PWA. Land for other works could only be acquired by negotiated agreement. The "essential works" concept was repealed in 1987, so the two-notice requirements now apply to all acquisitions.

- Every endeavour to negotiate in good faith with the owner over the invitation to sell must be made in an attempt to reach an agreement for the acquisition of the land.
6. If, after a period of three months, agreement cannot be reached or the landowner refuses to negotiate, the Minister for Land Information or Local Authority may proceed to compulsory acquisition of the land by issuing a notice of intention under Section 23, to which an owner may object.
  7. New Zealand is the only jurisdiction that requires a two-notice system. The requirement under Section 18 to first notify a landowner that land may be taken compulsorily is unique to New Zealand. LINZ has considered comparable overseas jurisdictions and most require a notice resembling a Section 23 notice for the purposes of compulsory acquisition, but no statutory notice before this.
  8. PWA users and the Panel have not challenged the need to negotiate before compulsory acquisition, but have reported procedural difficulties causing delay. In practice and over time, users have found the issuing of a Section 18 notice to initiate negotiations to be heavy-handed, formal and lacking context for landowners, negatively impacting relationships and negotiations with landowners.
  9. Stakeholders have told the Panel and LINZ that they have found it is often more beneficial to reach out to landowners to begin negotiating about land requirements far ahead of land acquisition proceedings. Ninety-five percent of the Crown's acquisitions take place by agreement.
  10. As a result of changing practice, Section 18 notices tend to be issued after a period of negotiations if acquisition by agreement cannot be reached.
  11. Further, the Minister of Land Information needs to issue the statutory notice, and this function is delegated to LINZ. Users say this slows down the process.
  12. The regime may be more efficient if there was more flexibility in the timing of negotiations and issuing of information for users and landowners ahead of compulsory acquisition. This flexibility needs to be balanced against the need for certainty by landowners to ensure a fair process.

### **The Panel supported a one-notice system, with minimum requirements for good faith negotiations**

13. The Panel's preferred approach was that only one statutory notice is required (the Section 23 notice of intention), provided that good faith negotiations have taken place before the power to issue a notice can be exercised, and processes take account of the complexities of Māori land.
14. Because a Section 18 notice requires at least three months of good faith negotiations after issue of the notice and requires a landowner to be provided with a land valuation, the Panel's view was that if it is removed the PWA will need to require a minimum period of good faith negotiations of at least three months before a Section 23 notice can be issued.
15. The Panel considered that it may be appropriate to specify what constitutes "good faith" negotiations in the PWA, or in standards or a code. This would set out requirements or include



examples of what might be considered as evidence that good faith negotiations have occurred.

16. For example, good faith negotiations might include a minimum negotiation period, an initial letter to landowners outlining the process, an offer based on valuation, or taking into account non-monetary matters of concern to landowners such as cultural considerations.
17. The Panel considered that notice and process requirements should better accommodate the features of Māori land tenure. The tenure system for Māori land under Te Ture Whenua Māori Act 1993 (TTWMA) has significant restrictions on the transfer of ownership. Most Māori land has multiple owners and there are various statutory management structures and other methods for owners to use to make decisions about their land (including non-legal arrangements such as verbal agreements).<sup>2</sup>
18. The Panel noted that this makes the PWA process challenging both for Māori landowners and acquiring authorities, with the minimum three-month timeframe between Section 18 and Section 23 notices often not enough time to enable Māori landowners to access the required information and advice, convene hui and form a consensus opinion.
19. The Panel considered that the review provides an opportunity to continue to improve practice in negotiating with owners of Māori land. The Panel suggested that this could include widespread adoption of practices such as early engagement, upfront payments for legal advice to enable Māori landowners to engage more effectively and acquiring authority support and resourcing in arranging hui.

**Section 18 conveys information to landowners and provides certainty but these considerations can be achieved without a statutory notice made by a Minister**

20. LINZ agrees with the Panel and stakeholders that the Section 18 notice process is inefficient. The formality of a statutory notice requires resource to compile, issue and seek approval from the Minister for Land Information. This level of resource is better suited to the significance of a Section 23, where compulsory acquisition is proceeding.
21. Section 18(1) sets out the following requirements, which LINZ considers can be achieved without a statutory notice made by a Minister:

*Requiring a statutory minimum three-month period before compulsory acquisition*

- This provides procedural clarity. If a minimum period was not specified in the legislation, the courts may interpret good faith negotiations as requiring a longer period.

*Identifying a clear starting point for the minimum period of negotiation*

- This provides clarity for landowners and protects users of the PWA from legal challenge. However, users have told LINZ and the Panel that negotiations are often iterative and engagement with landowners take place in stages throughout the acquisition period.

<sup>2</sup> Te Arawhiti advises that Māori freehold land can have anything from one owner to more than 14,000 owners per parcel. The average is 105 owners per parcel.


*Advising owners of the estimated amount of compensation the landowner is entitled to under the PWA at the initiation of the minimum period of negotiations, and the compensation is based on a valuation.*

- LINZ considers that providing landowners with an assessment of compensation is a critical requirement of good faith negotiation. This requirement ensures the minimum period is not counted from the landowner's first encounter with a user (unless an assessment is provided at that point).

*Giving landowners explicit written notice that compulsory acquisition may be contemplated if agreement cannot be reached.<sup>3</sup>*

- The service of a Section 18 notice often encourages landowners who haven't yet reached agreement to do so.

### **LINZ recommends that good faith negotiations continues to be supported by guidance**

22. LINZ issues standards and guidelines for how Crown agencies should carry out PWA actions, for example, that an opening letter is provided to landowners so that they are informed of the PWA process and their rights. Local authorities may use the standards and guidelines as guidance. These standards do not have status as primary or secondary legislation.
23. LINZ recommends that guidance continues to be issued by LINZ to support the acquisition process to satisfy decision-makers that proper process has been followed by Crown agencies, and sufficient evidence and other information has been provided to support a decision.
24. LINZ considered setting out minimum requirements for good faith negotiations in secondary legislation, but considers that a lighter-touch approach is more appropriate for powers being exercised by Ministers, their agencies, and local authority decision-makers.  

25. LINZ will provide you with further advice on the use of standards and guidance ahead of the second Cabinet paper, planned for March 2025.

### **Options for acquisition process and good faith negotiations**

26. LINZ recommends that:
  - the Section 18(1) notice is removed.
  - at least three months of good faith negotiations are required before a Section 23 notice can be issued.
27. The land acquisition process requires effective, timely communication with landowners to provide information about the process and their rights. This supports landowners to engage in the negotiation process, understand the impact on their property rights and reach agreement. Options are available for setting out the requirements of good faith negotiations.

<sup>3</sup> In the case of acquisition of Māori freehold land of more than four owners where there is no management entity, notice that acquisition is taking place must be served on the registrar of the Māori Land Court to bring the notice to the attention of a judge and to notify every owner whose address is known to the court.

28. **Option 1a: (LINZ preferred option) Set out minimum requirements for good faith negotiations.** The Section 18(1) notice is removed. A Section 23 notice can be issued at least three months after the negotiation commencement date, during which a period of endeavours to negotiate in good faith which meets minimum requirements set by legislation have occurred.
29. LINZ would work with agencies and engage with Local Authorities to consider options for considerations around good faith negotiations that must be met before compulsory acquisition is available. LINZ would provide you with further advice on the minimum requirements to be set by legislation ahead of the second Cabinet paper, planned for March 2025. This option would maintain clarity, transparency and certainty for users and landowners while streamlining acquisition procedures
30. Under option 1a, minimum requirements could include:
- the provision of an opening letter (currently an obligation in LINZ standards) to inform landowners of their rights and obligations under the PWA.
  - a requirement to invite the owner to sell the land and provide an estimate of compensation following a valuation carried out by a registered valuer (currently in section 18(1)(c) but would be removed under Option 1b below) which will set the negotiation commencement date.
  - specific considerations for whenua Māori (suggested by the Panel, as above).
31. Option 1a would maintain clarity, transparency and certainty for users and landowners, while streamlining acquisition procedures.
32. Most agencies LINZ consulted support Option 1a as they consider that the acquisition process must remain clear and transparent for landowners and users, and that landowners are informed of the impact on their property rights at each stage while streamlining acquisition proceedings.
33. **Option 1b: The Act is silent on minimum requirements for good faith negotiations.** Section 18 is removed. A Section 23 notice can be issued after a minimum period of endeavours to negotiate in good faith has occurred. It is up to users to evidence that good faith negotiations have been undertaken.
34. Option 1b would provide more flexibility for users to use best judgement and system expertise to evidence that good faith negotiations have taken place. However, Option 1b reduces certainty and transparency for users, landowners and decision-makers and would increase the risk of legal challenge due to reduced legislative clarity, which may delay project timeframes.
35. The New Zealand Transport Agency (NZTA) and Kiwirail support option 1b. The options have not been tested with Local Authorities, so it is not known whether Local Authorities would support less certainty and accept a higher risk of legal challenge under option 1b.
36. Both options would remove the requirement for a statutory notice and would remove involvement from the Minister for Land Information and LINZ, which would save time. LINZ



would provide non-statutory guidance on best practice for good faith negotiations under both options. It is not known whether certainty under option 1a or flexibility under option 1b would offer greater efficiency. Detailed analysis of policy decisions, trade-offs and considerations are at **Appendix 1**.

### Option for survey requirements

37. LINZ considers that procedural aspects of the acquisition process could be improved, and this was supported by the Panel. The PWA requires users to undertake a full survey of land before the issuing of a Section 23 notice to identify the boundaries of the land being taken against the whole property. The Panel viewed that this could be adapted so that modern technology such as aerial plans could be appropriate to inform landowners of the extent of the land required, up until proclamation.
38. Delivery agencies have advised that the requirement to undertake a full land survey when issuing a Section 23 notice creates inefficiencies. There are often changes in project design up until proclamation. In addition, large scale linear infrastructure projects can put pressure on the surveying workforce to undertake many full surveys of required land simultaneously, without which compulsory acquisition cannot proceed.
39. LINZ and NZTA have previously worked successfully with the Surveyor-General to create bespoke exemptions from the normal survey requirements for land for large linear transport projects. A full land survey (or similar) would be required at proclamation (Section 26) to enable issue of new titles to the affected land, and give the landowner certainty on the boundaries of the remaining land.
40. Detailed analysis of policy decisions, trade-offs and considerations are at **Appendix 1**.

### Mātanga kōrero/Consultation

41. 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, and Corrections, Prime Minister and Cabinet, the Treasury, Te Puni Kōkiri, Te Arawhiti, the New Zealand Defence Force, New Zealand Transport Agency, New Zealand Infrastructure Commission Te Waihangā, KiwiRail, Transpower, and Health New Zealand were consulted as this briefing was prepared.
42. New Zealand Infrastructure Commission Te Waihangā Ministry for Housing and Urban Development, Ministry for the Environment, Te Arawhiti and the Ministry for Primary Industries supported Option 1a relating to acquisition processes as they consider that the acquisition process should remain clear and transparent for landowners and users, while streamlining acquisition proceedings. Further, there was a concern that good faith negotiations would be hard to evidence without further definition, as proposed by Option 1b, which could lead to uncertainty and judicial review risk.
43. NZTA and Kiwirail support Option 1b. NZTA has expressed a concern around the unenforceability of guidance and the uncertainty this creates. NZTA reiterated a view that what constitutes good faith negotiations is issue-specific and will differ depending on the

circumstance of each acquisition. Kiwirail does not consider that any more prescriptive requirements are necessary.

44. PWA local authority users will be affected by changes to acquisition processes and have not been consulted on this proposal. If you select Option 1b, LINZ will engage with local authorities before reporting back with advice for Cabinet paper 2.
45. Agencies supported the reduction of survey requirements at Section 23, or had no comment on the proposal.

## Ngā Tāwhaitanga/Next Steps

46. A draft Cabinet paper reflecting your decisions on the matters raised in this briefing, along with your other recent decisions on the PWA review, will be provided shortly for your consideration.
47. If you select option 1a, LINZ will work with agencies and engage with Local Authorities to consider options for good faith negotiation requirements to be set in legislation that must be met before compulsory acquisition is available, and provide you with further advice ahead of the second Cabinet paper, planned for March 2025.
48. LINZ will report back to you seeking decisions on additional technical changes to acquisition procedures such as public notification of acquisition ahead of the March 2025 Cabinet paper.

## Appendix 1: Detailed options table: acquisition processes and procedures

Proactive Release