

BRF 25-197 Appendix 1: Public Works Act 1981 (PWA) options summary for acquisitions

Policy issues and context	Options (not mutually exclusive – LINZ recommends all)	Key trade off / discussion	Cabinet-mandated criteria				Indicate your agreement
			Effective	Efficient	Clarity	Feasible	
Requirements before a section 23 Notice of Intention Cabinet invited you to report back with proposals to remove a section 18 Notice of Desire (section 18 notice) and replace it with minimum requirements that must be met before a section 23 Notice of Intention (section 23 notice) could be made. Cabinet noted this would retain a requirement for at least three months good faith negotiation. The design of an acquisition process should balance efficiency and flexibility with adequate protections for property rights and ensuring that landowners and people with interests in land are appropriately informed.	Option 1a: PWA users must provide written summaries of key information during early stages of engagement <ul style="list-style-type: none"> This information would relate to the nature of a user's interest in their land (e.g., the area they are interested in and the form of tenure) and the purposes for this, PWA processes, and rights and entitlements under these. Information would be provided to landowners and people with registered interests in the land. As these people experience PWA processes differently, in practice the information that they receive may be different. 	<ul style="list-style-type: none"> Because PWA processes could lead to an eventual compulsory taking, it is important that people are informed of the processes to follow and their rights. This supports the "good faith" component of negotiations. This proposal resembles an existing requirement under LINZ <i>Standard for the acquisition of land under the Public Works Act 1981</i> to provide an initial letter to owners. That requirement only applies to Crown users. LINZ proposes to keep this requirement at a high-level in the PWA, supported by standards and guidance. This offers flexibility. For entities that can negotiate outside the PWA, like Transpower, this would provide a clear indication for landowners of when negotiations are no longer purely commercial. 	++	0	++	+	YES/NO
	Option 1b: Retain the requirement to provide an invitation to sell <ul style="list-style-type: none"> The existing requirement in section 18 requires a user to provide an invitation to sell following a valuation carried out by a registered valuer. This would be the formal starting point for the period of good faith negotiations before a section 18 notice can be issued. Unlike a section 18 notice, the invitation to sell will not expire. 	<ul style="list-style-type: none"> The invitation to sell is issued by the user, not the Minister, so Crown users will not need to seek LINZ's approval to provide the invitation to sell. The invitation to sell ensures that the period of good faith negotiations is counted from when an offer has been provided. The removal of an expiry period ensures that negotiations can remain flexible according to individual circumstances of negotiations. 	0	0	0	0	YES/NO
	Option 1ba: Maintain an expiry period (of one year) for an invitation to sell <ul style="list-style-type: none"> Currently, a section 18 notice is only valid for a period of one year, after which point, users must proceed to issue a section 23 notice or must reissue a section 18 notice. As an invitation to sell formally starts the clock on negotiations, it may be appropriate to set an expiry period for the invitation. 	<ul style="list-style-type: none"> A timeframe on the validity of a section 18 notice ensures that the momentum of PWA processes are maintained, and landowners are informed of the status of their land. However, PWA users have noted concerns with this expiry as it creates an unnecessary, inflexible, and arbitrary pressure point – disadvantaging landowners and users. 	0	-	0	0	YES/NO
Māori freehold land The Te Ture Whenua Māori Act 1993 sets procedural steps that make it difficult for owners of Māori land to confirm agreement to an acquisition quickly. Steps include: <ul style="list-style-type: none"> assembling owners or the land management entity (if one exists); a threshold of at least 75 percent of owners agreeing; confirmation of decisions by the Māori Land Court 	Option 1c: Lengthen minimum negotiation timeframes for certain Māori freehold land <ul style="list-style-type: none"> LINZ proposes that this be six months for Māori freehold land with more than four beneficial owners or which is held by a Māori incorporation (as defined in section 4 of Te Ture Whenua Māori Act 1993) with more than four shareholders. 	<ul style="list-style-type: none"> Because of the processes that must be followed for owners of Māori freehold land to reach agreement to an acquisition, three months is not adequate time to convene, access required information, and form consensuses. In practice, users of the PWA avoid the compulsory acquisition of Māori freehold land wherever possible and will negotiate extensively. The period for endeavouring to negotiate is a minimum and not a maximum. The Minister or a local authority has discretion on when to issue the section 23 notice and may decline to do so if they consider that more time for negotiations is appropriate. The proposal reflects the Expert Advisory Panel's advice. 	+	0	+	+	YES/NO

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Memorial on title and other matters	<p>The PWA currently requires users to lodge a section 18 notice with the Registrar-General of Land, so that it can be recorded against a property title. This ensures that any prospective purchasers, or people with interests in land, are aware of the possibility of it being acquired.</p> <p>Other than requiring a section 18 notice, section 18 of the PWA contains useful provisions for supporting effective and efficient acquisition of land, including:</p> <ul style="list-style-type: none"> allowing users to take land when an owner fails to respond to an invitation to sell, refuses to negotiate, or agreement has not been reached (s18(2)); for Māori land, a mechanism for users to apply to the Māori Land Court when the required land is beneficially owned by more than four persons and not vested in a trustee (s18(5) and 18(6)); allowing acquisition to occur where an owner cannot be found, or is represented by the Public Trust (s18(7) and 18(8)). 	<p>Option 2a: Memorial to be lodged on title</p> <ul style="list-style-type: none"> A similar but simplified requirement to currently, this would require users to lodge a notice on a property's title that summarises their interest in the land under the PWA when they provide an invitation to sell A further instrument would need to be lodged to remove the notice from the title after 2 years. The memorial could be reconfirmed on a year-by-year basis. This would not affect or restart the formal period of good faith negotiations. 	<ul style="list-style-type: none"> Registration on the title ensures that prospective purchasers or persons with registered interests in land are aware of a potential compulsory taking. Lodging a simplified memorial, rather than a whole section 18 notice, is beneficial in keeping titles as clean and succinct as possible. Having a memorial expire means protection against unnecessary instruments from clouding a landowner's title and potentially disrupting their dealings in it. 	+	0	0	+	YES/NO
		<p>Option 2b: No instrument is registered on title</p> <ul style="list-style-type: none"> Currently, users are required to notify the Registrar-General of Land when a section 18 notice is issued so that the notice may be registered on a property's title. The section 18 notice summarises user's interest in the land under the PWA. The section 18 notice remains on a property's title until it is formally removed. This option proposes that no instrument is registered on a title ahead of the issuing of a section 23 notice. 	<ul style="list-style-type: none"> Registration on the title ensures that prospective purchasers or persons with registered interests in land are aware of a potential compulsory taking. Removing this requirement of users would leave the property market to manage its own risks regarding property transactions and notification of owners, mortgagers and prospective purchasers. It is possible that this could create issues due to prospective purchasers/new owners not being fully informed regarding a PWA user's interest in land. This would reduce administrative burden for users. 	0	+	-	-	YES/NO
		<p>Option 2c: Retaining ancillary section 18 procedures</p> <ul style="list-style-type: none"> Specifically, the mechanisms in sections 18(2), 18(5), 18(6), 18(7), and 18(8) PWA, as summarised to the left. Make minor technical changes to section 18(6) to clarify the cross-references to orders in Te Ture Whenua Māori Act 1993. 	<ul style="list-style-type: none"> PWA users have noted the usefulness of these provisions in catering for a range of circumstances that might affect or limit the successfulness of negotiations. 	0	0	0	0	YES/NO
Public Notice	<p>Public Notice</p> <p>Currently, public notice is required to perform various steps, and this has an important role for transparency and ensuring that relevant parties are informed. For instance, public notice of a section 23 notice is to ensure that any party with an interest in land (registered or unregistered) is able to be aware of a possible compulsory taking, so they are aware of their right to object and to compensation.</p> <p>The current definition of "public notice" is out-of-date with modern modes of communication and public notification under other regimes. It requires publication in a newspaper circulating the area it relates to, or posting a notice on a placard in a "conspicuous place" if no newspaper exists.</p> <p>Separately, stakeholders have told us that the requirement to "twice publicly notify" section 23 notice in a local newspaper or publication is expensive (can cost hundreds of dollars to run a notification) and can slow down the process of acquisition depending on the frequency of publication.</p>	<p>Option 3a: Modernise the definition of "public notification"</p> <ul style="list-style-type: none"> LINZ proposes that this is at all points where public notice is required and would require uses to: <ul style="list-style-type: none"> Publish on an Internet site, to which the public has free access, a notice that includes all the information that is required to be publicly notified Publish a short summary of the notice, and details of the Internet site where it can be found, in one or more newspapers circulate the entire area likely to be affected by the notice 	<ul style="list-style-type: none"> This will modernise publication under the PWA; reducing administrative hassle, while ensuring landowners are given an opportunity to be appropriately informed. This definition is similar to public notification under the Resource Management Act 1991. The requirement to publish a short summary in newspapers accommodates people who may not have internet access. It is important to ensure the mode of public notification accommodates these people, given the potential significance of a PWA action to their interests in land. 	+	+	0	+	YES/NO
		<p>Option 3b: Require section 23 notices to be publicly notified once, not twice</p>	<ul style="list-style-type: none"> Given a notice will exist for a long time on the internet, there is no longer a need for this notice to be twice publicly notified, including in newspapers. This proposal is minor but will reduce administrative burden and cost for users. 	+	+	0	+	YES/NO

cesses or compensation

++	much better than doing nothing/the status quo/counterfactual
+	better than doing nothing/the status quo/counterfactual
0	about the same as doing nothing/the status quo/counterfactual
-	worse than doing nothing/the status quo/counterfactual
--	much worse than doing nothing/the status quo/counterfactual