

BRF 25-197 Public Works Act review: Acquisition processes and transitional provisions

Ki / To:	Hon Chris Penk Minister for Land Information	Rā / Date:	28 January 2025
Priority Level	Priority: Medium	Action required by	30 January 2025

Purpose

To seek decisions on proposals for acquisition processes and transitional provisions under the Public Works Act 1981.

Toitū Te Whenua Land Information New Zealand Whakapā/contacts

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

THANKS.

Key messages

- On Monday 16 December 2024, Cabinet agreed to a suite of targeted legislative changes to the Public Works Act 1981 (PWA). Cabinet invited you to report back on certain detailed design choices and other matters dependent on initial policy decisions [CAB-24-MIN-0504 refers].

- Cabinet noted your intention to remove the requirement to serve a section 18 Notice of Desire and invited you to report back to seek decisions on minimum requirements before a section 23 Notice of Intention to take land could be issued to start compulsory acquisition processes [ECO-24-MIN-306 refers]
- Toitū Te Whenua Land Information New Zealand (LINZ) proposes to remove the section 18 Notice of Desire and create requirements that PWA users must meet before a compulsory acquisition may begin. Requirements would mean that PWA users must:
 - provide written summary of key information to landowners and persons with registered interests in land during early stages of engagement;
 - as per existing settings, provide an invitation to sell, including an estimate of compensation based on a valuation; and then
 - endeavour to negotiate in good faith for at least three months, and six months for certain Māori freehold land.
- LINZ further proposes to update the PWA's publication requirements and to create transitional provisions to support timely and effective implementation.
- This briefing also sets out the next steps for Cabinet decisions in March 2025.

Tohutohu/Recommendations

Toitū Te Whenua Land Information New Zealand Recommends that you:		
1.	Note that officials are available to discuss this briefing's proposals at your meeting with officials on Thursday 30 January 2025	Noted
2.	Indicate on Appendix 1 your decisions on this briefing's proposals	Indicated



Stacey Newlands
Leader - Strategy, Policy and Ministerials
Toitū Te Whenua Land Information New Zealand
 Rā/Date: 28 January 2025



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

Rā/Date: 29 JAN 2025

Te Horopaki/Background

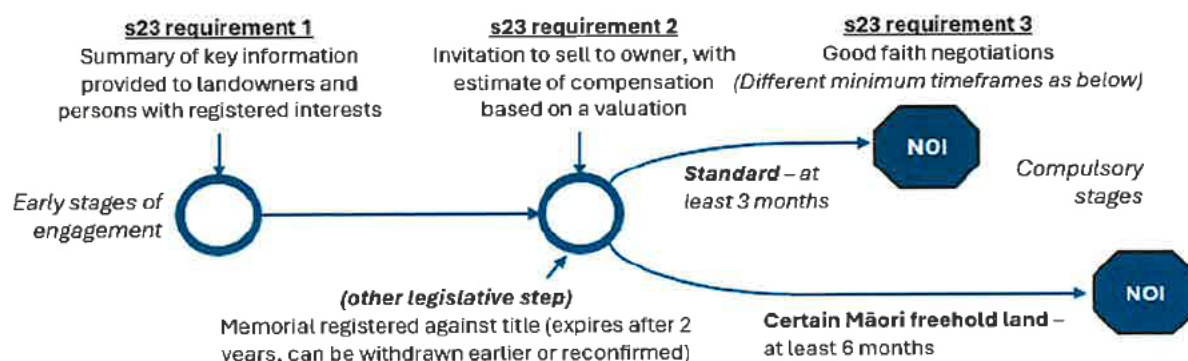
1. On Monday 16 December 2024, Cabinet agreed to an initial suite of targeted legislative changes to the Public Works Act 1981 (PWA) [CAB-24-MIN-0504 refers].
2. Cabinet noted your intention to remove the requirement to serve a section 18 Notice of Desire (section 18 notice) and invited you to report back to seek decisions on minimum requirements before a section 23 Notice of Intention (section 23 notice) could be issued to start a compulsory acquisition process [ECO-24-MIN-306 refers]. Cabinet noted that the PWA would still require users to endeavour to negotiate in good faith for at least three months. Further background on this proposal can be found in LINZ's previous advice to you [BRF 25-145 refers].

Proposals

Removing a section 18 notice and creating requirements before a compulsory acquisition can begin will streamline and safeguard acquisition procedures

3. LINZ recommends progressing the proposal to removing a section 18 notice. Stakeholders told the Expert Advisory Panel that the issuing of section 18 notices creates procedural difficulties and delay. The removal of the section 18 notice is intended to create efficiencies by reducing the procedural processes and formality around the commencement of negotiations leading to a section 23 notice.
4. LINZ recommends that most other requirements in section 18 are retained as pre-requisites before a section 23 notice can be issued, including the requirement to provide an invitation to sell. Crown acquiring agencies will be able to issue the invitation to sell, rather than LINZ signing a formal notice under delegation from the Minister.
5. The right to compensation under the PWA is not impacted by these proposals.
6. A summary of proposals is outlined below.

Summary of proposed process



Requiring landowners and other parties to be provided with relevant information in early stages of engagement supports transparency (Requirement 1)

7. It is important that landowners and people with interests in land are given fair and transparent indication that land may be taken, and are provided with key information about the interest in their land, PWA processes to follow, and their entitlements.
8. LINZ proposes that users of the PWA¹ must provide summaries in writing of the following matters to landowners and people with registered interest in land², during early stages of engagement:
 - a. the nature of a PWA user's requirement for their land, and for what purpose
 - b. PWA processes, and a person's right and entitlements.
9. To ensure flexibility, LINZ proposes that this statutory requirement would exist at a high-level, with standards and guidelines providing supporting detail. People with lesser interests in land might require different information than landowners, recognising their different statuses under PWA procedures.

Retaining good faith negotiations following an invitation to sell promotes better overall outcomes (Requirements 2 and 3)

10. LINZ recommends retaining an invitation to sell (as currently included in a section 18 notice) as a requirement (Requirement 2). The invitation to sell is a clear starting point for negotiations leading to compulsory acquisition and which will put owners on notice that the minimum period of negotiations is commencing before a section 23 notice can be issued. The invitation to sell would still include an estimate of compensation based on a valuation, to indicate compensation entitlements.
11. Unlike a section 18 notice, it is not proposed that this invitation to sell would expire after one year. PWA users have noted concerns with this expiry as it creates an unnecessary, inflexible, and arbitrary pressure point – disadvantaging landowners and users.
12. Consistent with Cabinet expectations, LINZ recommends retaining the current requirement for PWA users to endeavour to negotiate in good faith for at least three months (Requirement 3) before issuing a section 23 notice. Negotiations are fundamental to the PWA, with most acquisitions being by agreement, and can result in better outcomes for landowners. 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.

¹ For example, the Minister for Land Information and local authorities.

² This proposal includes that LINZ Standards be updated to reflect that where unregistered interests in land are known, those persons should receive information on PWA processes also.

Extending timeframe for negotiation of Māori freehold land ensures good faith requirements are met

13. The minimum three-month timeframe for endeavouring to negotiate is often not enough time to allow multiple owners of Māori freehold land to convene and reach agreement, or to navigate processes required by law and culture/tikanga that do not apply to other landowners.
14. LINZ proposes that you extend the minimum timeframe for endeavours to negotiate to six months for Māori freehold land that has more than four beneficial owners or which is held by a Māori incorporation (as defined in section 4 of the Te Ture Whenua Māori Act 1993) with more than four shareholders. This approach was supported by the Expert Advisory Panel.

Other procedural matters

15. LINZ proposes to retain other acquisition processes and provisions included under section 18, as these perform useful functions, including:
 - a. allowing a PWA user to proceed to a compulsory taking after three months if an owner fails to respond to an invitation to sell, refuses to negotiate, or agreement has not been reached;
 - b. a mechanism in section 18(5) and 18(6) 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, allowing a pathway to acquire this land when its ownership is complex;
 - c. allowing acquisition to occur in the situations set out in section 18(7), which includes where an owner cannot be found, or where they do not oppose the acquisition but have no legal power to sell.
16. LINZ also suggests that minor technical changes are made to section 18(6) to clarify the cross-references to orders in the Te Ture Whenua Māori Act 1993.

An instrument would be registered on property titles to indicate interest in land

17. The PWA 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 prospective purchasers, and those with interests in the land, are aware of the possibility of it being acquired.
18. As a section 18 notice will no longer exist, LINZ proposes a similar process where PWA users lodge a notice with the Registrar-General of Land summarising their interest in the land, which would be memorialised on the title. In line with current practice, this would be lodged at the same time as an invitation to sell is provided (Requirement 2 in the above diagram).
19. LINZ proposes that the notice would expire two years after being lodged on the title, or beforehand if requested by a PWA user. A further instrument would need to be

Proactive Release

lodged to remove the notice from the title. PWA users could request to extend it on a year-by-year basis. This ensures that landowners are not burdened with unnecessary instruments on their title. Unlike with section 18 notices, the expiry or renewal of a memorial would not restart the formal period of good faith negotiations.

LINZ proposes to modernise public notification requirements

20. Public notice is sometimes required to be given in the PWA ahead of formal proceedings. The PWA requires public notice by publication in a newspaper circulating in the area it affects, and if there is no newspaper, by a placard placed on the land or works. Stakeholders have told LINZ that the definition of public notice is out of step with modern modes of communication.
21. LINZ proposes to modernise the meaning of “public notice” so that it means:
 - a. publish on an Internet site all the information that is required to be publicly notified; and
 - b. publish a short summary of the notice, along with details of the Internet site where the notice can be accessed, in one or more newspapers circulating in the area likely to be affected by the matter to which the notice relates.
22. Section 23 requires that a section 23 notice is publicly notified twice. LINZ proposes that it need only be notified once.
23. Updating the definition of public notice would impact public notification for other processes in the PWA³. This includes public notification of disposal of land at section 42(2) where notice is given that land surplus to requirements is being offered by public tender or auction. This notice provides a community with notification of the opportunity to purchase. It is possible that there is some resistance to the change in notification.

Dealing with acquisitions underway at enactment

24. The amended acquisition processes are proposed to apply to all land acquisitions that are already underway at enactment, providing that a section 23 notice has not been served. Any changes to valuation processes or compensation will apply from enactment, regardless of when the acquisition process commenced.
25. Transitional and savings provisions are proposed to address situations where a section 18 notice has been served prior to enactment to ensure that momentum can be maintained for any acquisition processes that are in progress at enactment.
26. If the section 23 notice has been served prior to enactment, then the current provisions and acquisition processes will continue to apply.

³ This would include Notices of Intention to take land (s23), Proclamation at s26(2), Disposal in other cases of land not required for public work at 42(2), Notification of investigation of proposed irrigation scheme at s200 and Notification of proposed irrigation scheme at s202(1).

27. For scenarios where a section 18 notice has been served but no section 23 notice has been served at enactment, then the transitional provisions will clarify how the amended acquisition process will apply. The provisions will recognise and provide for the fact that a section 18 notice will no longer apply.
28. Where a section 18 notice has not been served by enactment, any acquisition discussions or negotiations that are underway will follow the new acquisition process.

Mātanga kōrero/Consultation

29. The following agencies were consulted on this briefing: Ministry of Housing and Urban Development, Department of Conservation, Department of Prime Minister and Cabinet, New Zealand Transport Agency, Ministry for the Environment, New Zealand Infrastructure Commission Te Waihangā, Te Whatu Ora, Ministry of Transport, Ministry for Primary Industries, Department of Internal Affairs, Treasury, Te Arawhiti, Te Puni Kōkiri, Ministry of Business, Innovation and Employment, Transpower, Ministry of Health, Department of Corrections, Ministry of Education, New Zealand Defence Force, KiwiRail, National Emergency Management Agency, and Ministry for Culture and Heritage.
30. The proposals for extending timeframes for negotiation for certain Māori freehold land incorporate feedback from Te Arawhiti and Te Puni Kōkiri.

Ngā Tāwhaitanga/Next Steps

31. Following your decisions on briefings BRF 25-197, BRF 25-198, BRF 25-199 and BRF 25-200, LINZ will develop the draft Cabinet paper. A draft timeline is detailed below:

Action to be undertaken	Date
Cabinet paper departmental consultation	Tuesday 4 – 11 February 2025
Cabinet paper to Minister for consideration	Thursday 13 February 2025
Cabinet paper Ministerial consultation	Monday 17 – 24 February 2025
Cabinet paper lodged	Thursday 27 February 2025
Cabinet Economic Policy Committee	Wednesday 5 March 2025
Cabinet	Monday 10 March 2025

Tāpiritanga/Attachments

Document number	Name of attachment
1.	PWA options summary for acquisitions