

## In Confidence

Office of the Minister for Land Information

Cabinet Economic Policy Committee

## Public Works Act 1981 Review

### Proposal

- 1 This paper seeks agreement to amend the Public Works Act 1981 (PWA) to make the acquisitions of land for public works easier, faster and fairer.

### Relation to government priorities

- 2 The proposals in this paper will make it easier to deliver infrastructure projects that grow the economy.

### Executive Summary

- 3 The PWA is a critical enabler of infrastructure delivery. It provides powers to acquire land for public works and sets out processes to ensure the rights of landowners are considered and fair compensation for acquired land.
- 4 The PWA needs modernising to support Government's commitment to delivering infrastructure projects.
- 5 In June 2024, Cabinet initiated a review of the PWA, supported by an Expert Advisory Panel, focused on improving the efficiency, effectiveness and clarity of land acquisition, objection and compensation functions [CAB-24-MIN-023.01].
- 6 I propose a suite of targeted amendments to create an improved PWA system for both infrastructure delivery agencies and landowners. These changes will support faster and more efficient delivery of public infrastructure and balance the taking of land for the public good with private property rights.
- 7 Subject to Cabinet agreement of the proposals in this paper, I will return to Cabinet seeking further decisions in March 2025.

### Background

#### *The PWA helps deliver public infrastructure but needs modernising*

- 8 The PWA is a critical enabler of infrastructure by providing powers to acquire land for public works such as roads, schools, water services and flood mitigation. Its processes ensure the rights of private landowners are considered and that compensation is provided where land, or an interest in land, is taken.
- 9 The PWA has not been significantly reformed since 1988 and has not kept pace with the range and nature of entities involved and projects delivered.

*Cabinet initiated a targeted review of the PWA, supported by an Expert Panel*

- 10 In June 2024, Cabinet agreed to initiate a review of the PWA to facilitate Government delivery of public infrastructure while retaining the principles of the PWA, through targeted amendments focused on improving efficiency, effectiveness, and clarity of land acquisition, objection and compensation functions [CAB-24-MIN-023.01].
- 11 Cabinet directed Land Information New Zealand (LINZ) to appoint an Expert Advisory Panel (the Panel) to provide independent and specialist advice to support the review [CAB-24-MIN-023.01]. The Panel included members experienced in the PWA and land law, landowner advocacy, local government and issues unique to Māori land.

### **Proposed amendments**

*The review identified key shifts needed across the PWA system to enable public works to be delivered efficiently and effectively*

- 12 Building on the Panel's advice, I propose a package of targeted amendments focussed on acquisitions, objections and compensation processes that:
  - allow flexibility and align with modern infrastructure delivery;
  - promote acquisition by agreement, which is faster, more efficient and less impactful on landowners,
  - enable disputes to be resolved efficiently and effectively; and
  - ensure landowners are incentivised, better able to participate and are appropriately compensated.
- 13 These changes will support faster and more efficient delivery of public infrastructure, while maintaining public confidence in the PWA system.

### **Part One – Acquisitions and Objections**

*Updating acquisition processes to deliver infrastructure*

- 14 PWA procedures can be out-of-step with the realities of project delivery. This leads to duplication, slower acquisition timeframes and unnecessary costs.
- 15 The review identified five significant barriers to delivery of infrastructure within the acquisition system:

#### *Acquisitions*

- Delivery of public works has devolved to a range of entities over time, but acquisition powers have not.
- Notice processes are inefficient and do not align with modern practice.
- An ability to acquire land acquisition for joint projects is restricted.
- Relocation of existing private third-party infrastructure requires a separate, avoidable acquisition process.

#### *Objections*

- The process for landowners to object to compulsory acquisition is inefficient, causing unnecessary delay.

16 My proposals will remove these barriers to create faster more joined-up processes, encourage early agreement and reduce resource requirements.

<b>Acquisition and Objection Proposals</b>	
<b>Part 1A - Acquisitions</b>	
<b>Access – Devolving powers for acquisition by agreement to create efficiencies whilst maintaining appropriate checks</b>	
<b>A</b>	Amend the PWA's delegation powers to better enable delegation to agencies. Retain decision-making by the Minister for Land Information for compulsory acquisition by the Crown to ensure an appropriate check on powers. <i>(Refers to Cabinet Recommendation 4)</i>
<b>B</b>	When the PWA has been amended, delegate powers for acquisition by agreement to the New Zealand Transport Agency (NZTA) as the highest PWA user for land to be acquired by the Crown for NZTA works, and which has in-house PWA resourcing. <i>(Rec 5)</i>
<b>C</b>	Provide delegation for acquisition by agreement for other frequent Crown users that have in-house PWA resourcing and knowledge to create efficiencies. <i>(Rec 6)</i>
<b>D</b>	Provide for joint decision-making by the Minister for Land Information and relevant Māori portfolio Minister for compulsory acquisition of protected Māori land by the Crown. <i>(10)</i>
<b>E</b>	Enable Transpower to initiate and undertake PWA processes without reliance on Ministerial approval under section 186 of the Resource Management Act 1991 (RMA). Transpower would remain able to acquire land outside PWA before then, but its subsequent negotiations and activities would be subject to full standard PWA requirements. Land would vest in Transpower. Compulsory acquisition decisions would remain with the Minister for Land Information. Greater access to the PWA supports Transpower to upgrade and build infrastructure necessary for achieving the Government's goal of doubling the supply of renewable energy. <i>(Rec 11)</i>
<b>F</b>	Ensure the PWA is working effectively (particularly in light of proposals A, B, C and E) by providing LINZ with additional tools to monitor, audit and gather information with a risk-based, light-touch approach. <i>(Recs 12, 13)</i> <i>To report back on regulatory tools.</i>
<b>Streamlining the acquisition process</b>	
<b>G</b>	Remove the Notice of Desire to Acquire Land and replace the notice with minimum requirements before a section 23 Notice of Intention can be issued, including retaining the requirement for at least three months of good faith negotiations. <i>(Recs 7, 8)</i> <i>To report back on minimum requirements.</i>
<b>H</b>	Reduce requirements for the survey of land at the stage of issuing a section 23 Notice of Intention to compulsorily take land. <i>(Rec 9)</i>
<b>Enabling a joint approach to project delivery - facilitating building of large-scale, modern infrastructure</b>	
<b>I</b>	Allow for the Minister to authorise combined public works between entities that have public works powers so that one entity can acquire land on behalf of others, and the land may then be transferred between those entities. <i>(Rec 14)</i>
<b>J</b>	Enable the Crown and local authorities to acquire land where that land is necessary to relocate or reinstate third-party infrastructure, which is affected by a public work. <i>(Rec 15)</i>
<b>K</b>	LINZ to improve and clarify operational settings for land transfers, (e.g. standards, guidelines and funding options) to support agencies working together to maximise the potential of Crown-owned land for future works. <i>(Rec 16)</i>
<b>1B – Objections</b>	

**Enabling disputes to be resolved efficiently, and maintain confidence in the system**

- |          |  |
|----------|--|
| <b>L</b> | Refine what the Environment Court considers when a landowner objects to compulsory acquisition. This will reduce overlap with RMA designations and focus the inquiry on individual property interests, rather than project or route-level matters. Introduce procedural improvements to support efficiency. (Rec 18) |
|----------|--|

**Part Two – Compensation**

*Updating the compensation regime will encourage early agreement to acquire land*

- 17 Fair compensation settings are essential to a well-functioning public works system. A principle of the PWA is that landowners are entitled to full compensation for their land to ensure their financial position is no worse than before any public work acquisition takes place.
- 18 In addition, efficient delivery of infrastructure is supported by early and upfront acquisition of land by agreement with the landowner. The PWA's compensation regime is currently inadequate in incentivising early agreement.
- 19 I propose updating compensation payments to provide clarity for landowner entitlements, provide greater incentives through increased payments, encourage faster resolution and improve fairness, equity and consistency. These amendments will support faster acquisitions.

**Compensation Proposals**

**Updating existing payments and incentivising early agreement**

- |          |   |
|----------|---|
| <b>M</b> | Introduce a statutory incentive payment in the PWA that is paid if agreement is reached prior to the issuing of a section 23 notice (notice of intention to compulsorily acquire land). (Rec 21, 22)<br><i>To report back with a basis for the calculation of incentive payments.</i>   |
| <b>N</b> | Increase existing additional compensation payments for home-loss and land-loss and remove the incentive and discretionary sub-payments (replaced by proposal M) within the home-loss payment to improve equity and clarity. (Recs 20, 22)<br><i>To report back with the compensation payment calculation for home-loss and land-loss.</i> |

**Updating the timing of compensation to support earlier acquisition of land**

- |          |   |
|----------|---|
| <b>O</b> | Expressly provide for advance compensation agreements within the PWA to promote up-front agreement and improve consistency and transparency. (Rec 23)   |
| <b>P</b> | Where land is compulsorily acquired, require the acquiring agency to pay the compensation assessed by that agency, as at the date the land vests in the acquiring agency, with any disputed amount to be resolved later. This will allow for landowners to receive payment earlier and reduce contingent liability for acquiring agencies. (Rec 24) |

**Modernising compensation for Māori landowners to improve consistency and equity**

- |          |  |
|----------|--|
| <b>Q</b> | Require that when Māori freehold land is acquired or taken for a public work, it must be valued as if it were general land, as it is currently valued as less, to ensure equity and align with current practice. (Rec 25)  |
| <b>R</b> | Extend the home-loss payment, which applies once per parcel of land, to apply to all separately owned dwellings on Māori land to ensure equity and consistency. (Rec 26,27)<br><i>To report back on whether payment should apply to multiple dwellings in other instances.</i> |

**Faster resolution of compensation disputes**

- |          |   |
|----------|---|
| <b>S</b> | Require that parties must have attempted to resolve the compensation dispute through an alternative dispute resolution process provided by an impartial third-party prior to a Land Valuation Tribunal (LVT) hearing, to the satisfaction of the LVT. This will encourage faster dispute resolution while maintaining landowner relationships. (Rec 28) |
|----------|---|

*Proposals sit alongside a wider programme of work to amend the PWA*

- 20 Objection and compensation proposals sit alongside and work in tandem with the amendments to the PWA for the Fast-Track Approvals Bill (FTAB) and critical infrastructure delivery to streamline PWA processes. The FTAB aims to accelerate decision-making for nationally and regionally significant projects. Critical infrastructure delivery will replace the right of landowners to object to the Environment Court with an alternative process and legislate for premium payments for eligible projects in the accelerated process [ECO-24-MIN-0249 refers].

*Upholding Treaty of Waitangi settlement obligations and fundamental principles of the PWA*

- 21 In line with Cabinet agreement, proposals have been developed to ensure the fundamental principles of the PWA, including natural justice and property rights, and the Crown's Treaty settlement obligations, are upheld [CAB-24-MIN-0203].

**Risks**

- 22 The Review revealed issues with disposal provisions (when land is no longer required for a public work), which were out of scope of the Review. In addition, the proposals do not fully address misalignments with Māori land tenure and ownership under Te Ture Whenua Māori Act 1993.
- 23 Targeted engagement with key PWA agencies and stakeholders was undertaken by the Panel. While public views on proposals are unknown, there will be an opportunity to submit views during the Select Committee process.

**Timeline and next steps**

- 24 Subject to Cabinet agreement, I intend to return to Cabinet in March 2025 with details of the proposals where indicated in this paper and technical issues.

**Cost-of-living Implications**

- 25 This paper does not have any direct implications for the cost-of-living.

**Financial Implications**

- 26 The review of the PWA has been resourced through existing baseline funding. I propose to report back to Cabinet in March 2025 on financial implications, including whether the existing cost recovery settings are appropriate. Proposals with direct financial implications such as incentive payments and regulatory tools are due to be considered by Cabinet in March 2025.

## Legislative Implications

- 27 A Public Works Act Amendment Bill is included in the Legislation Programme with a Category 7 priority (policy development to continue in or beyond 2024) under the Cabinet Office Circular (23) 04.

## Impact Analysis

### Regulatory Impact Statement

- 28 A Regulatory Impact Statement (RIS) has been completed and is attached at Appendix 1. The RIS has been reviewed by a quality assurance panel, which has been given a 'partially meets' rating against the quality assurance criteria.

### Climate Implications of Policy Assessment

- 29 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this policy proposal as the impacts on emissions are indirect.

## Human Rights

- 30 The proposals include refining the grounds and considerations in making an objection to the Environment Court. This does not limit the right to the observance of the principles of natural justice.

## Use of External Resources

- 31 An Expert Advisory Panel of five members was appointed by the LINZ Chief Executive for a short period to provide independent, specialist advice.
- 32 Due to temporary resourcing needs, LINZ drew on the equivalent of up to one full time contracting resource. LINZ's approach to contractors and consultants is being managed and these costs are being reduced across the organisation.

## Consultation

- 33 LINZ consulted with: Ministry for Housing and Urban Development, Department of Conservation, Ministry for Culture and Heritage, Ministry for the Environment, Ministry of Justice, New Zealand Infrastructure Commission Te Waihanga, Ministry of Transport, Ministry for Primary Industries, Department of Internal Affairs, The Treasury, Te Arawhiti, Te Puni Kōkiri, Ministry for Business, Innovation and Employment and the Ministry of Health. The following users of the PWA were consulted: New Zealand Transport Agency, Department of Corrections, Ministry of Education, New Zealand Defence Force, Transpower, KiwiRail and Health New Zealand Te Whatu Ora. The Department of Prime Minister and Cabinet was informed.
- 34 The Treasury does not support the proposal to enable Transpower to initiate and undertake PWA processes without Ministerial approval (proposal E). As a State-Owned Enterprise, Transpower has a primary objective of operating as a successful business; and its directors have a legal duty to act in the best

interests of Transpower, not the Crown. Without direct PWA access, Transpower would continue to access compulsory acquisition powers with my approval under the RMA. MBIE supports proposal E, to enable Transpower to support increased renewable energy supply.

## Communications

35 Following Cabinet agreement, I intend to announce policy decisions.

## Proactive Release

36 Consistent with Cabinet Office Circular (23) 4, I propose to release this paper proactively, subject to due diligence requirements and redactions as appropriate under the Official Information Act 1982.

## Recommendations

The Minister for Land Information recommends that the Cabinet Economic Policy Committee:

## Background

1. **Note** that a review of the Public Works Act 1981 (PWA) was undertaken to facilitate the Government's delivery of public infrastructure while retaining the principles of the PWA, through targeted amendments to acquisition and compensation functions with the criteria of improving efficiency, effectiveness and clarity [CAB-MIN-0203.01];
2. **Note** that, in line with Cabinet decisions, proposals have been developed to ensure the fundamental principles of the PWA, including natural justice and property rights, and the Crown's Treaty settlement obligations are upheld [CAB-MIN-0203.01];

## Part 1A - Acquisitions

3. **Note** that updating acquisition processes will create an improved PWA system to support faster and more efficient delivery of public infrastructure;
4. **Agree** for clarity to amend section 4C of the PWA in line with the Public Services Act 2020, subject to retaining the requirement that the Minister for Land Information must not delegate the power to issue a notice of intention to take land under section 23(1);
5. **Note** when section 4C is amended, the Minister for Land Information will authorise the Chief Executive of Land Information New Zealand to sub-delegate responsibility for acquisition by agreement to the New Zealand Transport Authority where the Crown is acquiring land for an New Zealand Transport Agency project;
6. **Note** the Minister for Land Information may additionally authorise sub-delegation to other frequent Crown users of the PWA where in-house PWA resourcing and knowledge is sufficient to create efficiencies;

7. **Note** the Minister for Land Information proposes to remove the requirement to serve a section 18 Notice of Desire to take land, and to replace the notice with minimum requirements before a section 23 Notice of Intention can be issued, including retaining the requirement for at least three months of good faith negotiations;
8. **Invite** the Minister for Land Information to report back to Cabinet seeking agreement to the removal of the section 18 Notice and with the minimum requirements before a section 23 Notice of Intention can be issued when options have been developed;
9. **Agree** to reduce requirements for the survey of land at the stage of issuing a section 23 notice of intention to compulsorily acquire land;
10. **Agree** that for section 23 notices under the PWA to compulsorily acquire protected Māori land, to joint decision-making between the Minister for Land Information and:
  - 10.1 the Minister for Māori Crown Relations for land specified in s11(1)(e), (f), or (i) of the 'protected Māori land' definition in the Infrastructure Funding and Financing Act 2020, or
  - 10.2 the Minister for Māori Development for other land specified in s11(1) of the 'protected Māori land' definition in the Infrastructure Funding and Financing Act 2020;
11. **Agree** to amend the PWA to provide, in relation to Transpower (being a State-Owned Enterprise):
  - 11.1 For activities for which Transpower may currently apply to access the PWA, Transpower may initiate PWA negotiations without seeking prior approval under section 186 of the RMA;
  - 11.2 Any steps Transpower takes after initiating PWA negotiations are subject to all requirements of the PWA regime (for example compensation entitlements and disposal obligations), but land acquired by agreement will vest in Transpower;
  - 11.3 Where Transpower has initiated PWA negotiations and has not acquired the land by agreement, the Minister may proceed to take the land as if the land was required to be taken for public work (i.e. under section 23 and section 26 of the PWA);
  - 11.4 Where the Minister recommends the taking of land following a PWA process initiated by Transpower, the land will vest in Transpower, not the Crown;
12. **Note** that as a result of devolved and streamlined decision-making and changes to PWA user access, the Minister for Land Information intends to propose that LINZ has additional regulatory tools to monitor, audit and gather information with a risk-based, light-touch approach;



13. **Invite** the Minister for Land Information to report back on regulatory tools, and seek any Cabinet decisions if required, including funding requirements;
14. **Agree** that where land needs to be acquired for a combined public work which is both central government and local work, the Minister may authorise combined acquisition, meaning that any entity that is authorised to take steps under the Public Works Act may take those steps on behalf of any other entity in the combined acquisition, and the land may then be transferred to the other party to the combined acquisition project;
15. **Agree** to enable the Crown and local authorities to acquire land indirectly required as a result of a public work for the purpose of relocating private entity infrastructure where that infrastructure is affected by a public work;
16. **Note** that LINZ will implement improvements to clarify operational settings for land transfers;

## Part 1B - Objections

17. **Note** the number of objections to Environment Court in relation to the taking of land are low, but carry the potential to create significant delays to infrastructure projects;
18. **Agree** to refine the grounds for an objection and the considerations of the Environment Court when inquiring into an objection so that:
  - 18.1 For projects where a designation under the RMA is in place, remove the requirement that the Environment Court consider whether adequate consideration has been given to alternative sites, routes or other methods of achieving objectives;
  - 18.2 Considerations under section 24(7)(d) are focused on the individual property, by specifying the court may consider the amount and location of land to be acquired and the type of property interest to be acquired;
  - 18.3 When providing a written objection to the Environment Court, objectors must state the grounds for their objection with reference to the matters the Environment Court considers;
  - 18.4 it is specified that compensation matters are excluded from the grounds of objection under section 23 and the matters the Environment Court can consider under section 24 (as they are dealt with by the Land Valuation Tribunal);

## Part 2 - Compensation

19. **Note** that updating compensation provisions to provide flexibility and clarity will make the acquisition process more efficient;
20. **Note** that the Minister for Land Information proposes to increase the current additional compensation payments for the loss of a dwelling used as a principal place of residence under section 72A and loss of land under section 72C and

remove the current incentive and discretionary payments from section 72A(1)(b) and (c);

21. **Note** that the Minister for Land Information proposes to introduce a statutory incentive payment that is paid if agreement is reached prior to issuing a section 23 notice;
22. **Invite** the Minister for Land Information to report back with proposals on matters in recommendations 20 and 21;
23. **Agree** to explicitly provide for advance compensation agreements under the PWA;
24. **Agree**, where land is compulsorily acquired, to require the acquiring agency to pay the compensation assessed, as at the date the land vests in acquiring agency, with any disputed amount to be resolved later;
25. **Agree** to require that Māori freehold land is valued as if it were general land for the purposes of acquisition;
26. **Agree** to extend the additional compensation payment for dwellings used as a principal place of residence to apply to all separately owned dwellings on Māori land, provided there are formal legal arrangements in relation to each dwelling;
27. **Invite** the Minister for Land Information to report back in relation to recommendation 26 with options on whether payment should apply where there are multiple dwellings, regardless of the nature, including any further decisions if required;
28. **Agree** to require that prior to a Land Valuation Tribunal (LVT) hearing, the parties must have attempted to resolve the dispute through an alternative dispute resolution (ADR) process provided by an impartial third-party, to the satisfaction of the LVT, unless leave is granted by the LVT for a party not to have to participate in an ADR;

### Next steps

29. **Agree** for the Minister for Land Information to issue drafting instructions to Parliamentary Counsel Office to give effect to the policy decisions in this paper;
30. **Agree** that the Minister for Land Information can take further decisions on minor and technical matters in line with policy decisions agreed by Cabinet;
31. **Note** that the Minister for Land Information will seek further policy decisions from Cabinet in March 2025.

Authorised for lodgement

Hon Chris Penk

Minister for Land Information

**Appendix One: Regulatory Impact Statement**

Proactive Release