

## **In Confidence**

Office of the Minister for Land Information

Cabinet Economic Policy Committee

## **Public Works Act 1981 Review – further policy decisions**

### **Proposal**

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

### **Relation to government priorities**

- 2 The proposals in this paper support *Going for Growth* by removing roadblocks to delivering more quality public infrastructure.

### **Executive Summary**

- 3 In December 2024, Cabinet agreed to amend the PWA to support infrastructure delivery [CAB-24-MIN-0504 refers]. Amendments focus on improving the efficiency, effectiveness and clarity of acquisition, compensation, and objection processes in the PWA. Cabinet also invited the Minister for Land Information (the Minister) to report back on introducing a statutory incentive payment, changes to home-loss and land-loss payments, removing and replacing section 18 notices of desire, and regulatory tools.
- 4 I am reporting back with proposals to encourage early agreement through additional compensation settings, modernise and streamline acquisition processes, and to provide Land Information New Zealand (LINZ) with light-touch regulatory tools.
- 5 I have also identified an opportunity to create an emergency recovery land acquisition regime to support the timely restoration of public works, rather than relying on bespoke, lengthy legislative solutions following emergencies.

### **Background**

- 6 The PWA is a critical part of infrastructure delivery as it provides the process for land acquisition for public works. It has not been significantly reformed since 1988.
- 7 In December 2024, Cabinet agreed to amend the PWA to facilitate Government delivery of public infrastructure while retaining the principles of the PWA [CAB-24-MIN-0504 refers]. These amendments followed a Cabinet mandated review of the PWA, supported by an Expert Advisory Panel [CAB-24-MIN-023.01 refers]. Cabinet also made decisions to accelerate critical infrastructure delivery under the PWA on 24 February 2025, which are being progressed separately [CAB-25-MIN-0036 refers].
- 8 I am now reporting back with further policy decisions on the PWA Review. My proposed changes will make it easier to deliver key public works, including roads, schools, water, and electricity services.

## **An effective compensation regime will encourage early agreement to land acquisition**

- 9 **I propose to set incentive payments at 10 percent of land value to encourage early agreement.** Incentivising landowners to agree early enables PWA users<sup>1</sup> to deliver infrastructure sooner. Setting the payment at 10 percent of land value,<sup>2</sup> with a minimum of \$5,000 and a maximum of \$100,000, balances effectiveness with affordability. Existing conditions on additional compensation in the PWA will apply to incentive payments, where relevant, to ensure that the purpose of the payments is met.
- 10 For Māori freehold land,<sup>3</sup> the Minister or local authority would have discretion to apply the incentive payments beyond the serving of a notice of intention (where taken by agreement or compulsorily). Due to the way that Māori freehold land is owned, and the requirements under the Te Ture Whenua Maori Act 1993 (TTWMA), it may not be feasible to reach the required level of support amongst beneficial owners to agree to acquisition in a timely way. Accordingly, compulsory acquisition may, on balance, be preferable to owners because it will take less time, and no objection is anticipated in any event.
- 11 **I propose making changes to increase and future proof the home-loss and land-loss payments.** My approach better recognises the inconvenience and disruption caused by acquisition, by increasing the value of home-loss and land-loss payments. These are paid in addition to the land value for the property and any incentive payment received. I propose:
- 11.1 increasing the home-loss payment from \$35,000 to \$50,000;
- 11.2 maintaining the land-loss payment at 10 percent of land value and increasing limits to a minimum of \$350 and maximum of \$35,000.<sup>4</sup>
- 12 **I also propose to extend home-loss payment eligibility to allow multiple payments to be made where there is more than one home on a property.** For example, this will enable multiple payments for a farm held in trust with multiple beneficial owners living on the land. I also intend to clarify how additional compensation is allocated for unit title ownership, so that each dwelling that is a principal place of residence can receive a home-loss payment.
- 13 **I propose to allow the percentage and minimums and maximums of additional compensation payments to be adjusted through Order in Council.** This ensures payments remain relevant and effective. The PWA already includes a power to adjust the value of additional compensation entitlement payments<sup>5</sup> through Order in Council, on the recommendation of the Minister. I propose to amend the existing controls in the PWA to add affordability (for the Crown or PWA user) to the matters that the Minister must consider when recommending adjustments.

<sup>1</sup> Those with land acquisition needs, including Crown agencies, local authorities, and network utility operators.

<sup>2</sup> Land value is the value of the interest or area of land being acquired, based on the market value for the land (including any improvements) as defined in section 62 of the PWA.

<sup>3</sup> A subset of Protected Māori land as defined in Te Ture Whenua Māori Act 1993.

<sup>4</sup> Currently, it is a minimum of \$250 and a maximum of \$25,000.

<sup>5</sup> Including additional compensation payments for home-loss and land-loss.

## Updates to acquisition processes will unlock capacity for infrastructure delivery

- 14 **I propose changes to acquisition processes** that better reflect PWA users' experience and support engagement with landowners.<sup>6</sup> I propose removing the requirement to issue a notice of desire (that formally commences PWA acquisition) and replacing it with minimum requirements that must be satisfied before a notice of intention (for compulsory acquisition) can be issued:
- 14.1 landowners have received information on the nature and purpose of the acquisition, PWA process, rights, and entitlements, and an invitation to sell;
  - 14.2 the Minister or local authority must make every endeavour to negotiate in good faith and ensure that a period of three months has passed (as is currently the case), or for Māori freehold land, a period of six months has passed to better reflect the complexities of acquiring Māori freehold land under TTWMA.
- 15 **I propose replacing the requirement to register notices of desire with a simpler requirement** for a notice to be lodged on a property's title that summarises the Minister or local authority's interest in the land under the PWA.
- 16 **I propose modernising how communities are informed of land acquisitions to enable digital notification, including service of notice provisions.** The requirement to notify notices of intention would change from twice to once. These changes will ensure that the public is informed using modern and affordable communications.
- 17 **I propose updates to the test for compulsory acquisitions.** The PWA does not have an explicit test for deciding to issue a notice of intention to take land. I propose to expressly require the decision-maker<sup>7</sup> (before issuing a notice of intention or recommending/requesting Proclamation) to consider whether the acquisition would be fair, sound and reasonably necessary to achieve their objectives. This is consistent with what the Environment Court is required to consider when hearing an objection under the PWA and is in alignment with recent decisions on critical infrastructure [CAB-25-MIN-0036 refers]. Cabinet agreed in December to refine the matters the Environment Court must consider when hearing an objection [CAB-24-MIN-0504 refers]. These refinements should not limit the decision-maker's considerations to the same extent.

## The PWA should support infrastructure restoration following emergencies

- 18 **I propose introducing new emergency provisions that enable the PWA to support recovery.** My proposed approach aligns with Government infrastructure and emergency management priorities. To date, bespoke legislation has been required to accelerate land acquisition following emergencies, requiring rushed lawmaking.<sup>8</sup>
- 19 Building on this experience, I propose that an emergency recovery land acquisition regime can be activated by Order in Council following a declared state of emergency or transition period.<sup>9</sup> The regime will reduce negotiation requirements, simplify acquisition processes, provide for objection rights through a submission process to the

<sup>6</sup> Entitlements to compensation under the PWA are not impacted by these proposals.

<sup>7</sup> The Minister or local authority.

<sup>8</sup> Examples include Severe Weather Emergency Recovery Legislation Act 2023, Hurunui/Kaikōura Earthquakes Recovery Act 2016, and Canterbury Earthquake Recovery Act 2011.

<sup>9</sup> Declared state of emergency and transition period have the same meaning as under the Civil Defence Emergency Management Act 2002.

Minister (rather than the Environment Court), exclude protected Māori land,<sup>10</sup> and extend the entitlement to the value of incentive payments, regardless of acquisition type.

- 20 **My approach will enable the government to respond to emergencies, while providing appropriate safeguards.** This will ensure the powers are only used when they are required to mitigate significant negative impacts to populations affected by emergencies. Care will be taken to minimise the impacts of the powers on property rights by ensuring these powers are no broader than reasonably necessary (including geographically broader in application), to enable or support short to medium-term recovery from an emergency. Other safeguards include activation within two years of a declaration of a state of emergency, an ability to revoke the Order in Council, and emergency provisions must only be used to restore existing public works.
- 21 Some standard processes will still apply, for example disputes about compensation may still be resolved through the Land Valuation Tribunal. Bespoke legislation may still be required for some emergencies for example, to enable new public works.

#### **Light-touch regulatory tools will support the PWA to enable infrastructure delivery into the future**

- 22 **I propose amendments to the PWA to recognise LINZ's role in issuing standards and guidance.** My proposed approach will allow PWA users to focus on infrastructure delivery, without needing to develop their own processes and guidance for how to meet PWA requirements. This will support a successful transition to the new requirements.
- 23 **I propose amendments to the PWA to improve how information is collected, shared, and reported.** My proposed approach will enable better monitoring of the PWA by requiring PWA users to provide LINZ with information on their use of the PWA, with the details set out in regulations (e.g., compensation paid, effectiveness of incentives, information on disputes and objections, and data on Māori land). I propose that the PWA recognises LINZ's responsibility for reporting on PWA performance to improve transparency and enable landowners to meaningfully engage with the system.

#### **Transitional provisions should support the Government's infrastructure goals**

- 24 Transitional provisions are required to address acquisitions already underway when the new legislation commences. The provisions will address acquisitions underway where a notice of desire has been issued (that formally commenced acquisitions) and savings provisions will address acquisitions where a notice of intention has been issued for compulsory acquisitions. The new compensation entitlements will apply to all acquisitions that occur after the legislation comes into force.

#### **Risks**

- 25 Risks relating to potential impacts on provisions for the disposal of land under the PWA (which are out of scope of the Review) apply to this paper. There are also risks due to the limited opportunity to engage with local authorities and the public (including those with an interest in Māori land) who may be impacted by these proposals. The

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<sup>10</sup> Protected Māori land is defined in the PWA and includes Māori freehold and other categories of land, including land returned through Treaty settlements.

select committee process will provide these groups with an opportunity to share their views on the proposals.

### **Implementation**

26 Implementation will require updates to LINZ's suite of standards and guidance.

### **Previously noted implications**

27 Cost-of-living, climate, and population implications are noted as part of my previous paper and are unchanged [CAB-24-MIN-0504 refers].

### **Financial Implications**

28 The proposed incentive payments will increase upfront costs for PWA users, who are likely to use a greater proportion of their compensation budgets earlier in the acquisition process. Based on data on land acquired by the Minister between 1 January 2023 and 25 November 2024, the impact of the proposal would have been up to an additional \$12 million (around 4% of total compensation paid in that period). However, costs are expected to be offset by reduced legal costs and fewer delays. The select committee process provides an opportunity to seek information on the financial implications for local authorities.

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### **Legislative Implications**

30 The proposals in this paper will be implemented through a Public Works Amendment Bill, which is Category 3 (a priority to be passed by the end of 2025). Regulations will be required to deliver the detail of the information collection proposals.

### **Regulatory Impact Statement**

31 An addendum to the Regulatory Impact Statement (RIS) for original policy proposals is attached at Appendix One. It has been determined by a quality assurance panel that the RIS addendum 'partially meets' quality assurance criteria, noting the limitations on consultation during the targeted PWA Review process.

### **Human Rights**

32 The proposals in this paper are not inconsistent with the New Zealand Bill of Rights Act 1990 (BORA) and the Human Rights Act 1993. Information proposals will not override the Privacy Act 2020.

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## Use of External Resources

- 34 An Expert Advisory Panel of five members was appointed by the LINZ Chief Executive to provide independent, specialist advice.

## Consultation

- 35 LINZ consulted with: Department of Conservation, Department of Internal Affairs, Department of Corrections, KiwiRail, Ministry of Business, Innovation and Employment, Ministry for Culture and Heritage, Ministry of Education, Ministry for the Environment, Ministry of Health, Ministry of Housing and Urban Development, Ministry of Justice, Ministry for Primary Industries, Ministry for Regulation, Ministry of Transport, National Emergency Management Agency, New Zealand Defence Force, New Zealand Infrastructure Commission/Te Waihanga, New Zealand Transport Agency, Te Arawhiti, Te Puni Kōkiri, Treasury, Transpower, and Te Whatu Ora. Department of the Prime Minister and Cabinet has been informed.

## Communications

- 36 I will announce policy decisions once Cabinet decisions have been made. This Cabinet paper and associated minute will be proactively released on LINZ's website, subject to any necessary redactions.

## Recommendations

The Minister for Land Information recommends that the Committee:

- 1 **note** that in December 2024, Cabinet agreed to progress amendments to the PWA to support the efficient and effective delivery of infrastructure projects [CAB-24-MIN-0504 refers];
- 2 **note** that Cabinet invited the Minister for Land Information to report back on introducing a statutory incentive payment, increases to home-loss and land-loss payments, removing and replacing section 18 notices of desire, and regulatory tools;

### *Introducing effective, equitable and fair compensation settings*

- 3 **note** that Cabinet invited the Minister for Land Information to report back on the compensation payments that are available in addition to the value of the land, replacing existing incentive and discretionary payments from section 72A(1)(b) and (c) of the PWA, including proposals to:
  - 3.1 introduce statutory incentive payments if agreement is reached prior to issuing a notice of intention;
  - 3.2 increase additional compensation payments for home-loss (section 72A) and land-loss (section 72C);
  - 3.3 extend home-loss payment eligibility where there are multiple dwellings;

- 4 **agree** that the incentive payment will be paid to the owner(s) who enters into an agreement, set at 10 percent of land value, with a minimum of \$5,000 and a maximum of \$100,000, where agreement is reached before a notice of intention is served;
- 5 **agree** that existing conditions on additional compensation payments in the PWA will apply, where relevant, to ensure that the purpose of incentive payments is met;
- 6 **agree** that the Minister for Land Information or local authority will have discretion, after a notice of intention is served, to pay the incentive payment where the land is Māori freehold land, whether acquired by agreement or by Proclamation, where for reasons relating to the nature of the landholding it is not practical to acquire the land before a notice of intention is served;
- 7 **agree** that the discretion in recommendation 6 be applied to incentive payments for landowners of Māori freehold land whose land is acquired for critical infrastructure projects, to be enacted with the accelerated process for critical infrastructure [CAB-25-MIN-0036 refers];
- 8 **agree** that the percentage and the compensation limits of the proposal in recommendation 4 may be increased and decreased, on the recommendation of the Minister for Land Information to the Governor General by Order in Council;
- 9 **agree** to expand the range of matters that the Minister for Land Information must consider in recommending adjustments to the percentage and limits of additional compensation entitlements by Order in Council, to include affordability to the Crown, Crown entities, local authorities, and network utility operators;
- 10 **agree** to increase existing additional compensation payments to recognise the inconvenience and disruption caused by the loss of a dwelling used as a principal place of residence from \$35,000 to \$50,000;
- 11 **note** that in December 2024, Cabinet agreed 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 arrangements in relation to each dwelling [CAB-24-MIN-0504 refers];
- 12 **agree** that for all land not covered by recommendation 11, to extend eligibility for payments for loss of a principal place of residence, so that where there are two or more owners of the land, each owner that has a separate principal place of residence on the land will be eligible for a home-loss payment (recommendation 10), provided there will be only one entitlement per dwelling;
- 13 **agree** to clarify that when properties with separate dwellings are owned under unit title ownership, each dwelling acquired that is a principal place of residence, qualifies for a home-loss payment. The body corporate is only eligible for a land-loss payment if no home-loss payment has been made for the development;
- 14 **agree** to maintain additional compensation payments for loss of land at 10 percent of land value, and increase limits to a minimum of \$350 and a maximum of \$35,000;

***Modernising and streamlining acquisition processes***

- 15 **note** that Cabinet invited the Minister for Land Information to report back on proposals to remove section 18 notices of desire and replace these with minimum requirements that must be met before a notice of intention can be issued;
- 16 **agree** to remove the requirement for the Minister for Land Information or local authority to serve a section 18 notice of desire to acquire the land on every person having a registered interest in the land;
- 17 **agree** that, before issuing a notice of intention to take land, the Minister for Land Information or local authority must be satisfied that:
- 17.1 before the invitation to sell, persons with registered interests in land have been provided with information relating to the nature and purpose of the requirement for the land, PWA processes, and their rights and entitlements under the PWA;
  - 17.2 the owner has received an invitation to sell, which provides information about estimated compensation or betterment liability based on valuation (existing requirement);
  - 17.3 after receipt of an invitation to sell, the Minister or local authority has made every endeavour to negotiate in good faith with landowners for a minimum period of three months (existing requirement); or
  - 17.4 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, the Minister or local authority has made every endeavour to negotiate in good faith for a minimum period of six months;
- 18 **agree** to require that the Minister for Land Information or local authority notify, and the Registrar-General of Land lodge, a notice on the affected record of title that summarises their interest in the land when they provide an invitation to sell;
- 19 **agree** to modernise the definition of ‘public notification’ and service of notice provisions including to enable digital notifications;
- 20 **agree** that public notification requirements for notices of intention be reduced so that PWA users are only required to publicly notify once;
- 21 **agree** to expressly require that the Minister for Land Information or local authorities considers matters aligning with what the Environment Court considers (in an objection under the current section 24(7)) before issuing a notice of intention to take land or making a recommendation/request under section 26 of the PWA, and apply the same requirements for the accelerated process for critical infrastructure [CAB-25-MIN-0036 refers];

***Enabling timely recovery from emergencies***

- 22 **note** that there is an opportunity to use the PWA to support the restoration of public works following emergencies to enable recovery;
- 23 **agree** to create an emergency recovery land acquisition regime to support the timely restoration of public works or the functions that they serve;



- 24 **agree** that the emergency regime should minimise unnecessary impacts on property rights to the extent possible while supporting effective emergency recovery;
- 25 **agree** that the emergency recovery land acquisition regime will be activated by an Order in Council made by the Governor General on the recommendation of the Minister for Land Information, which:
- 25.1 defines the public works and areas for which the emergency regime could be used, and the timeframe in which it is active;
  - 25.2 may only be activated during or within two years following the declaration of a state of emergency or the notice of a transition period under the Civil Defence Emergency Management Act 2002;
  - 25.3 may only be issued for the purposes of supporting emergency recovery and must be no broader (including geographically broader in application) than reasonably necessary to address the matters that gave rise to the Order in Council;
  - 25.4 must be limited to restoring an existing public work, or the functions it served, including works for network utility operators that are requiring authorities under the authority of the Minister for Land Information acting on their behalf, without needing to apply under section 186 of the Resource Management Act 1991;
- 26 **agree** that the emergency recovery land acquisition regime will not apply to protected Māori land, as defined in section 11 of the Infrastructure Funding and Financing Act 2020;
- 27 **agree** that the emergency recovery land acquisition regime will modify the standard PWA requirements by:
- 27.1 shortening the required negotiation period to one month of reasonable endeavours to reach acquisition by agreement;
  - 27.2 amending the requirements for issuing a notice of intention and recommending/requesting a Proclamation to take land, including setting out simplified land depiction requirements, public notification, and service requirements, to recognise emergency circumstances;
  - 27.3 providing that the Minister for Land Information or local authority may issue a notice of intention or request or recommend a Proclamation when they consider it reasonably necessary to support the purpose of the Order in Council;
  - 27.4 removing the right to object to the Environment Court and replacing it with a right to make submissions within a timeframe specified by the Order in Council of at least ten working days from service of the notice of intention, to the Minister or local authority, who must have regard to any submissions before recommending or requesting a Proclamation;
  - 27.5 requiring a payment to landowners, equivalent in value to the proposal in recommendation 4 (incentive payment), even if land is acquired or taken after a

notice of intention has been issued, in recognition of the recovery purpose of acquisition;

- 27.6 for protected Māori land, requiring payments as in recommendation 27.5, if land is acquired or taken after a notice of intention has been issued under standard PWA processes for a public work in an area covered by an Order in Council issued through the emergency recovery land acquisition regime;

***Providing LINZ with light touch regulatory tools***

- 28 **note** that Cabinet invited the Minister for Land Information to report back on light touch regulatory tools, and seek any Cabinet decisions if required;
- 29 **agree** that the PWA will recognise the Chief Executive of LINZ's responsibility for producing standards and guidance to support PWA users to comply with the PWA;
- 30 **agree** to introduce a regulation-making power that allows regulations to be made, to prescribe or authorise the provision of information to the Chief Executive of LINZ, to support the monitoring of the PWA system;
- 31 **agree** that the PWA will recognise the Chief Executive of LINZ's responsibility to report on PWA use and performance, including on trends and data informed by the proposal in recommendation 30, to the Minister for Land Information, and make this publicly available;

***Ensuring transition into the new requirements is swift and effective***

- 32 **agree** to provide transitional provisions for any acquisition process underway where a notice of desire has been served but a notice of intention has not, so that the new process applies;
- 33 **agree** to provide saving provisions for any acquisition process underway where a notice of intention has been served so that it continues under current provisions (including any objections);
- 34 **agree** that new compensation entitlements will apply to all acquisitions where the agreement is entered into or the Proclamation is issued after coming into force (regardless of when the process commenced);

**Next steps**

- 35 **authorise** the Minister for Land Information to issue drafting instructions to the Parliamentary Counsel Office to give effect to the policy decisions in this paper;
- 36 **agree** that the Minister for Land Information can take further decisions on minor and technical matters in line with policy decisions agreed by Cabinet.

Authorised for lodgement

Hon Chris Penk

Minister for Land Information