

## In Confidence

Office of the Minister of Transport

Office of the Minister for Land Information

Cabinet Economic Policy Committee

## Amendments to the Public Works Act 1981 to support critical infrastructure – approval for replacement to objections process and premium payments

### Proposal

- 1 This paper seeks agreement on the detail of amendments to the Public Works Act 1981 (PWA) relating to a replacement objection process and premium payments to support the delivery of critical infrastructure projects.

### Relation to government priorities

- 2 The proposals support the Coalition Agreement between National and New Zealand First to prioritise critical strategic infrastructure, simplify the planning system, and build a four-lane highway alternative for the Brynderwyn Hills (the Northland Corridor).
- 3 Speeding up the delivery of critical infrastructure is key to New Zealand's economic growth. Better transport drives lower costs for businesses and households and supports the delivery of exports to overseas markets.

### Executive Summary

- 4 On 11 November 2024, Cabinet invited the Minister of Transport and the Minister for Land Information to report back on the detail of a process to replace objections to the Environment Court and premium payments, for an accelerated PWA process for critical infrastructure projects [CAB-24-MIN-0439 refers].
- 5 We propose the following for the accelerated process:
  - 5.1 **Replacement to objections process:** Removing the right to object to the Environment Court after a section 23 notice (Notice of Intention) is issued and creating a replacement to the objection process, allowing written submissions to the decision-maker opposing the acquisition of land.
  - 5.2 **Incentive payments:** An incentive payment of 15 percent of the land value applying to landowners who agree (section 17 acquisition by agreement) prior to the issue of a Notice of Intention, to encourage early agreement.
  - 5.3 **Recognition payments:** A recognition payment of 5 percent of the land value applying to all landowners whose land is acquired under the

## IN CONFIDENCE

accelerated process, to recognise that land is being acquired for critical infrastructure projects. We propose that both the incentive and recognition payments are capped to manage costs and for affordability.

### Background

*PWA land acquisition powers support critical, national and local infrastructure delivery*

- 6 PWA land acquisition processes encourage reaching acquisition by agreement through negotiation. If agreement cannot be reached, the Minister for Land Information (or the Minister for Rail)<sup>1</sup> or the relevant local authority (**the decision-maker**), can commence a compulsory process by issuing a Notice of Intention to take land.
- 7 The accelerated PWA process will allow critical infrastructure to be delivered as quickly as possible. It is intended that amendments will come into force five months before wider PWA review amendments.
- 8 On 16 December 2024, Cabinet agreed to initial decisions for amending the PWA generally following a review [CAB-24-MIN-0504 refers], with further proposals to be considered in March 2025. The proposals from the wider PWA review will align with the structure of payments for critical infrastructure.

### Proposed amendments

*Objections to the Environment Court replaced by written submission to decision-maker*

- 9 Cabinet has agreed to remove the right of landowners, and every other person with any estate or interest in the land intended to be taken (**relevant parties**), to object to the Environment Court after a Notice of Intention is issued, for critical infrastructure projects where a designation is in place [CAB-24-MIN-0439 refers]. We propose that this is replaced with a written submission process in legislation to maintain natural justice rights. Judicial review will remain available.
- 10 The proposed written submissions process, up until the decision-maker receives all the responses, will take approximately 60 working days. This is considerably shorter than the status quo of six to 12 months prior to the Environment Court hearing an objection. However, any judicial review application could then delay the acquisition of land by an estimated six to 12 months.
- 11 The proposed written submission process is as follows:
  - 11.1 the relevant parties have 10 working days to notify an intention to submit to the decision maker<sup>2</sup>, then 20 working days to submit, setting



<sup>1</sup> If the acquisition is for New Zealand Railways Corporation.

<sup>2</sup> If relevant parties do not notify an intention to submit to the decision-maker within 10 working days of a Notice of Intention, the decision-maker can decide whether to move to a section 26 decision.



IN CONFIDENCE

out why land should not be taken (or a different portion or interest should be taken);

- 11.2 the agency or local authority requiring the land must respond within 10 working days with any new material that has not already been provided to the decision-maker;
- 11.3 the relevant parties have a further 10 working days to respond to this;
- 11.4 the submission, agency response, and any further response is provided to the decision-maker for consideration.
- 12 The decision-maker will decide whether to recommend or request compulsory acquisition by proclamation (section 26 decision). The decision-maker will have discretion to extend timeframes if they consider it reasonably necessary.
- 13 Once the Governor-General receives such a recommendation or request, the land may be taken by proclamation.
- 14 
- 15 We propose that the matters currently considered by the Environment Court when hearing an objection in section 24(7) be expressly applied to decisions made by the Minister or local authorities under section 23 and section 26 for the accelerated process. Legislating the test would require the decision-maker to enquire into the same matters as the Environment Court (ascertaining objectives, enquiring into the adequacy of consideration given to alternatives and deciding whether, in the opinion of the Minister or local authority it would be fair, sound and reasonably necessary to take the land). This would provide additional clarity about what the decision-maker would need to consider.  


*Premium payments will consist of incentive and recognition payments*

- 16 We propose landowners be entitled to an incentive payment of 15 percent of the land value, if an agreement to provide vacant possession has been reached before a Notice of Intention to take land is issued. This will incentivise early agreement to avoid delays. We propose that the payment has a minimum value of \$5,000 and a maximum value of \$150,000. This balances the need to provide an effective incentive, while managing affordability.
- 17 We propose landowners also be entitled to a recognition payment of 5 percent of the land value, for land acquired whether by agreement or compulsorily acquired under the accelerated process, to recognise that this land is being acquired for critical infrastructure projects. To provide balance between

## IN CONFIDENCE

recognition and managing affordability, we propose that there be a maximum payment of \$92,000, but no minimum payment.

- 18 The cost of these premium payments will be the responsibility of the acquiring agencies and will add to the total cost of projects, but the net impact is expected to be modest.
- 19 Premium payments would be in addition to existing entitlements such as payment for the value of the land under the PWA. However, landowners would not be entitled to existing payments of \$10,000 and \$5,000 under section 72A(1)(b) and (c), as the proposed incentive payment replaces this.
- 20 The percentages proposed are percentages of the land value as agreed or assessed under the PWA. The PWA allows for adjusting the value of compensation entitlements by Order in Council. We propose that this mechanism also be used to adjust the value of the premium payments. Certain conditions will apply to ensure that the purpose of the premium payments is being met, for example, for vacant possession. These will align where relevant with the current conditions in the PWA.
- 21 We propose that the eligibility for premium payments will apply only to landowners of the land interests from whom agreement to the taking of land is sought. This modifies settings that Cabinet previously agreed to [CAB-24-MIN-0439 refers, recommendation 10].

*Eligibility to receive premium payments be confined to landowners, including owners of protected Māori land*

- 22 On 8 November 2024, Cabinet agreed that the accelerated process would not apply to protected Māori land, in order to preserve the right to object to the Environment Court [CAB-24-MIN-0439 refers]. This would also exclude owners of protected Māori land from receiving premium payments. This may impact on the ability of agencies to deliver critical infrastructure projects quickly and be a breach of the right to be free from discrimination under the New Zealand Bill of Rights Act 1990.
- 23 We recommend that the owners of protected Māori land whose land is acquired for critical infrastructure projects through the standard PWA process be eligible for premium payments under the same settings as the proposed accelerated process.

### Consultation process

- 24 Select Committee will provide the first opportunity for public consultation on these proposed amendments. The powers to take land by compulsion from private landowners are among the strongest available to government, and amendments reducing or modifying the rights of owners to object to this process are expected to attract some interest, even with stronger incentive and compensation measures available.



### Timeline and next steps

- 25 Subject to Cabinet approval, the Minister for Land Information will instruct the Parliamentary Counsel Office to draft additional detail into the Amendment Bill delivering the accelerated process. Enactment is expected in July 2025.

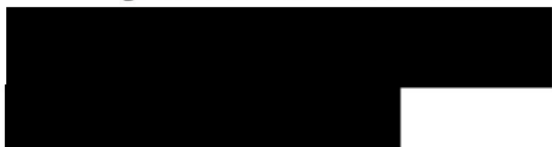
### Previously noted implications

- 26 **Cost-of-living, legislative, climate, and population** implications are as noted in our previous paper and unchanged [CAB-24-MIN-0439 refers].

### Financial Implications

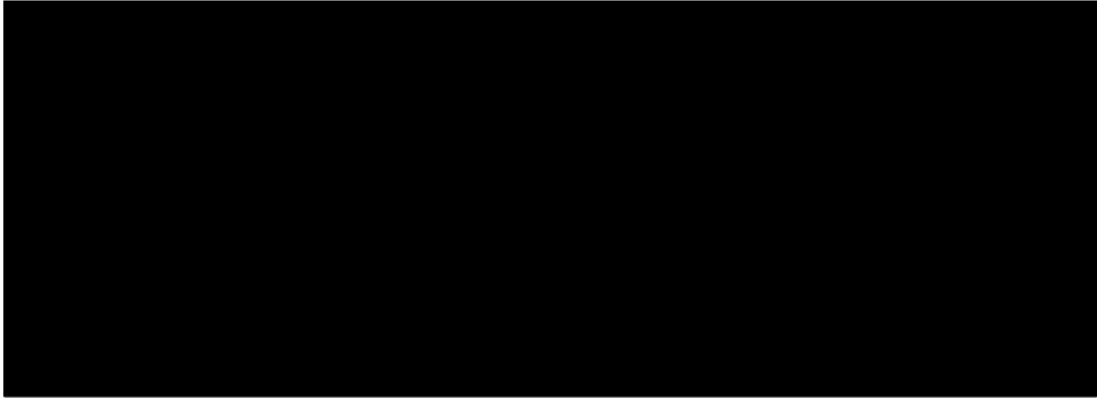
- 27 Data from NZ Transport Agency (NZTA) on the indicative property requirements and total project costs of three Roads of National Significance (RoNS) projects has been used to provide an illustration of the costs of the proposal. The three RoNS projects are not representative of all 33 projects eligible for the accelerated process and cannot be used to estimate the proposal's total financial implications.
- 28 The estimated total cost range for delivery of all three RoNS projects is between \$4.70 billion (lowest combined cost) and \$6.45 billion (highest combined cost). The proposal<sup>3</sup>, if applied to all of the properties required (144), amounts to additional costs during acquisition of approximately \$19.3 million (0.4 percent of total project costs).
- 29 Savings to acquiring agencies in both time and cost are achieved with the shorter process and the removal of objection to the Environment Court. While the replacement process is expected to take 60 working days, this is considerably shorter than the six to 12 months prior to the Environment Court hearing an objection and is not expected to incur the same legal costs associated with court proceedings (right to appeal to higher courts removed).

### Regulatory Impact Statement

- 30 A Regulatory Impact Statement addendum is attached in **Appendix 1**.
- 31 Land Information New Zealand (LINZ) and the Ministry of Transport (MoT) have reviewed the Addendum to the Regulatory Impact Statement produced by LINZ and MoT. The assessors consider that the information and analysis summarised in the Addendum partially meets the quality assurance criteria. The analysis in the Addendum is clear and convincing. However, consultation to the degree required to meet the quality assurance criteria has not been undertaken. Consultation would have enabled stronger options analysis as greater levels of information would have been available.
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<sup>3</sup> 15 percent incentive payment with a minimum payment of \$5,000 and a maximum payment of \$150,000, and a 5 percent recognition payment, with a maximum payment of \$92,000.

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#### Use of External Resources

- 34 Due to temporary resourcing needs, LINZ drew on the equivalent of one full time equivalent contracting resource.

#### Consultation

- 35 LINZ and MoT consulted with the following agencies: NZTA, Ministry for the Environment, Te Arawhiti, Ministry for Primary Industries, Department of Internal Affairs, Ministry of Justice, the Treasury, New Zealand Infrastructure Commission Te Waihanga, Ministry for Housing and Urban Development, and Ministry for Regulation. The Department of the Prime Minister and Cabinet and Parliamentary Counsel Office have been informed.

#### Communications

- 36 We intend to announce these proposals following Cabinet decisions.

#### Proactive Release

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

#### Recommendations

The Minister of Transport and the Minister for Land Information recommend that the Committee:

- 1 **note** that Cabinet has previously agreed to amend the Public Works Act 1981 (PWA) to create an accelerated process for critical infrastructure projects, and invited the Minister of Transport and Minister for Land Information to report back on a natural justice process and premium payment entitlements [CAB-24-MIN-0439 refers];

*Replacement to objections process*



I N C O N F I D E N C E

- 2 **agree** that a new process to ensure that the natural justice right of landowners, and every person having any estate or interest in the land intended to be taken (relevant parties), be provided for in legislation;
- 3 **agree** that following the issue of a section 23 Notice of Intention, relevant parties may notify the decision-maker in writing of an intention to submit to the decision-maker within 10 working days;
- 4 **agree** that if a relevant party does not notify an intention to submit to the decision-maker within 10 working days, the decision-maker may decide whether to recommend or request compulsory acquisition by proclamation (section 26 decision);
- 5 **agree** that if a relevant party notifies an intention to submit, that they will have 20 working days from the time of notification to make a submission;
- 6 **agree** that if a submission is made, the agency seeking to acquire the land may respond within 10 working days with any new material that has not already been provided to the decision-maker, and the relevant party has 10 working days to respond to any new information provided;
- 7 **agree** to the decision-maker having discretion to extend timeframes if they consider it reasonably necessary to do so;
- 8 **agree** the Minister or Local Authority may make a section 26 decision to recommend/request a Proclamation after taking into account the submissions;
- 9 **agree** to expressly require that the Minister or local authorities consider the same matters the Environment Court consider (in an objection under section 24(7)) before issuing a section 23 Notice of Intention to take land or making a recommendation/request under section 26 of the PWA for the accelerated process;

*Premium payment entitlements*

- 10 **note** that Cabinet previously agreed that landowners, and every person having an estate or interest in land, would be entitled to premium payments;
- 11 **agree** that only owners of the land interests from whom agreement to the taking of land is sought be eligible for premium payments;
- 12 **agree** to an incentive payment:
  - 12.1 of 15 percent of land value, agreed or assessed in accordance with the provisions of the PWA, available to landowners where agreement is reached before a section 23 Notice of Intention is issued;
  - 12.2 with a minimum payment of \$5000 and a maximum payment of \$150,000;

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- 13 **agree** that the incentive payment will replace the existing incentive and discretionary payments to landowners under s72A(1)(b) and (c) where their principal place of residence is acquired under the accelerated process;
- 14 **agree** to a recognition payment:
- 14.1 of 5 percent of land value, agreed or assessed in accordance with the provisions of the PWA, available to all landowners who have land acquired or taken under the accelerated process;
- 14.2 with a maximum payment of \$92,000;
- 15 **agree** that the premium payments will be subject to conditions aligned to the ones that currently apply to additional compensation in the PWA;
- 16 **agree** to enable premium payment entitlements to be adjusted by Order in Council on the recommendation of the Minister for Land Information as provided in s72E of the PWA, having regard to their affordability to the Crown, Crown entities, local authorities, and network utility operators;
- 17 **agree** that landowners of protected Māori land whose land is acquired for critical infrastructure projects through the standard PWA process be eligible for the incentive payment (if a section 23 notice is not issued) and the recognition payment;
- 18 **note** that landowners of protected Māori land will retain the right to object to the Environment Court as they are not subject to the accelerated process;
- 19 **authorise** the Minister for Land Information to issue drafting instructions for a bill to give effect to the proposals in this paper;
- 20 **authorise** the Minister of Transport and Minister for Land Information to make decisions on minor or technical matters.

Authorised for lodgement

Hon Chris Bishop

Minister of Transport

Hon Chris Penk

Minister for Land Information



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**Appendix 1: Regulatory Impact Statement Addendum**

Proactive Release

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