



Guideline for the acquisition of land under the Public Works Act 1981

LINZG15703

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Terms and definitions

General

For the purposes of this guideline, the following terms and definitions apply.

Term/abbreviation	Definition
accredited supplier	a private sector service provider accredited by LINZ to undertake certain actions in the acquisition and disposal of land by the Crown under the Public Works Act 1981
acquisition agreement	an agreement to acquire land under s 17 of the PWA
acquisition standard	LINZS15005: Standard for acquisition of land under the Public Works Act 1981
computer register	as defined in s 4 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 and created by the Registrar-General of Land under ss 7 to 14 of that Act
Crown acquiring agency	a Crown agency asking the Minister to acquire or take land under the PWA, and includes a Crown property accredited supplier contracted by an Crown acquiring agency
Crown land	as defined in s 2 of the Land Act 1948
delegate	the person authorised to make a decision acting under statutory delegation
DP	deposited plan
<i>Gazette</i>	New Zealand Gazette
GST	Goods and Services Tax
guideline	Guideline to the standard for the acquisition of land under the Public Works Act 1981: LINZG15703
land	as defined in s 2 of the PWA
Land Valuation Tribunal	as defined in s 59 of the PWA
LINZ	Land Information New Zealand
local authority	as defined in s 2 of the PWA
MACAA	Marine and Coastal Area (Takutai Moana) Act 2011
MHWS	mean high water springs
Minister	Minister for Land Information
network utility operator	as defined in s 166 of the Resource Management Act 1991

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Terms and definitions, continued

owner	includes any authorised representative of the owner
PWA	Public Works Act 1981
RMA	Resource Management Act 1991
registered valuer	a valuer registered under the Valuers Act 1948
RGL	Registrar-General of Land
SO plan	survey office plan

Foreword

Introduction

The Public Works Act 1981 (PWA) sets out the procedures for the acquisition of land for government and local works. It ensures that both land owners and acquiring agencies are treated fairly by the process of land acquisition.

Purpose of guideline

The purpose of this guideline is to complement *LINZS15005 Standard for acquisition of land under the Public Works Act 1981* by expanding on the content and providing guidance about the acquisition process to meet the requirements of the acquisition standard.

Scope

This document provides guidance for the acquisition of land under the PWA, including:

- (a) compulsory acquisition,
- (b) assessment of compensation, and
- (c) legislation of acquisitions.

It also includes guidance on specific roading actions that may occur under the PWA.

Intended use of guideline

- (a) This guideline is intended to assist Crown acquiring agencies, including an accredited supplier providing services to the Crown acquiring agency, when applying the acquisition provisions of the PWA.
 - (b) The guideline may also be used by local authorities or network utility operators as a best practice guide, when undertaking PWA related activities.
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References

The following documents are necessary for the application of this guideline.

- Cadastral Survey Act 2002
 - Conservation Act 1987
 - Crown Minerals Act 1991
 - Government Roding Powers Act 1989
 - Land Information New Zealand, Crown Property Regulatory Group. 2005. *LINZS15005: Standard for acquisition of land under the Public Works Act 1981*. LINZ: Wellington.
 - LINZ Land Information New Zealand, Crown Property Regulatory Group. 2012., *LINZS15002 Standard for Stopping or Resumption of Road, Crown Property,*. LINZ: , Wellington.
 - Local Government Act 2002
 - Public Works Act 1981
 - Residential Tenancies Act 1986
 - Resource Management Act 1991
 - Te Ture Whenua Māori Act 1993
 - Unit Titles Act 2010
 - Waikato Raupatu Claims Settlement Act 1995
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Superseded documents

This guideline supersedes - Land Information New Zealand. Crown Property Group. 2005. *LINZS2001 Guidelines to the Standard for the Acquisition of land under the Public Works Act 1981*. LINZ: Wellington.

General Provisions

1 General requirements

Acquisition standard

Refer to paragraph 3.

Role of LINZ

While the actual operational work of land acquisition, including the negotiation of settlements, is no longer carried out by Land Information New Zealand (LINZ), a LINZ delegate exercises the acquisition powers of the Minister. It is the LINZ delegate's duty to ensure that the affected party is both fairly and fully compensated for any loss, to the full extent provided for in the PWA.

Record keeping

- (a) The Crown acquiring agency should request a new file from LINZ for each property to be acquired, before commencing any negotiations for acquisition.
 - (b) The Crown acquiring agency should ensure that:
 - (i) copies of all documentation relating to the acquisition, including records of all negotiations with the owner, are retained on this LINZ file, and
 - (ii) the LINZ file is returned to LINZ as soon as reasonably practical after the acquisition process has been completed.
 - (c) As the Minister is responsible for all acquisitions under the PWA, LINZ is required to retain a complete record of the acquisition for audit and Official Information Act 1982 purposes. LINZ will hold a separate file to contain all reports and documents submitted to LINZ for statutory approval.
-

Service of notices (s 4)

- (a) The Crown acquiring agency should retain a record of the date of service of any notice under the PWA for evidential purposes.
 - (b) The requirements of s 4 of the PWA apply to the service of all notices issued under the Act, including notices of desire and notices of intention. In particular, where possible, the Crown acquiring agency should not address notices to a post office box, as this will not meet good service requirements.
-

2 Use of PWA by network utility operators

Acquisition standard

Refer to paragraph 3.6 and Appendix A.

Acquisitions by network utility operators

- (a) Where a network utility operator reaches agreement with an owner to acquire land for a project, such agreement is a commercial transaction outside the PWA.
 - (b) If an agreement with the owner is unable to be reached, the network utility operator may apply to the Minister under s 186 of the Resource Management Act 1991 (RMA).
-

Role of Minister and LINZ

- (a) When considering an application under s 186 of the RMA, the Minister has the discretion to undertake the acquisition of land on behalf of a network utility operator. This decision is not delegated to LINZ.
 - (b) The Minister's decision is about whether the Minister will undertake the process to acquire or take the land under Part 2 of the PWA on the network utility operator's behalf, not whether the operator can use the PWA itself.
 - (c) If the Minister agrees to commence the acquisition process, LINZ will undertake the acquisition under the PWA, not the network utility operator.
 - (d) The network utility operator is required by s 186(6) of the RMA to meet the Minister's costs in acquiring the land.
 - (e) If the land is acquired or taken it will vest in the network utility operator rather than the Crown.
-

Nature of application

- (a) The network utility operator should ensure that the project timeframe includes the time necessary:
 - (i) for the Minister to assess an application and, if approved,
 - (ii) for LINZ to attempt to negotiate an acquisition and any subsequent compulsory acquisition process.
 - (b) Each property to be acquired should be subject to a separate application to the Minister. This is to ensure that the Minister's decision is made on a case-by-case, and not a project basis.
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Use of PWA by network utility operators, continued

Negotiations after s 186 lodged

- (a) The network utility operator should not continue or initiate any further negotiations with the owner after it has lodged an application under s 186 with the Minister.
 - (b) The network utility operator should advise LINZ immediately if an owner seeks to negotiate an agreement with the network utility operator, either while the Minister is considering an application or after any PWA process has commenced.
-

Transfer of Crown or local authority land

- (a) Section 186(4) of the RMA enables land held by the Crown or a local authority to be set apart for a project under either s 50 or s 52 of the PWA. In such cases the land will vest in the network utility operator. While this involves a change of ownership, s 40 of the PWA does not apply to the transaction. However, s 40 will apply to the land after that.
 - (b) The network utility operator will need to submit a case to the Minister under s 186(4) requesting that the land held by the Crown or local authority is set apart for the project.
-

Application of s 40 PWA to land

Any land acquired by the Minister or set apart from the Crown or local authority will be subject to s 40 once it is vested in the network utility operator. In such cases, any decisions made under s 40 will have to be made by the chief executive of LINZ (see s 186(7) of the RMA).

3 Special acquisition situations

Acquisition standard

Refer to paragraph 4.

Property on open market

- (a) The Crown acquiring agency may acquire land by voluntary agreement outside the PWA if:
 - (i) the Crown acquiring agency has separate legislative authority for the acquisition (that is, has the legal power to purchase land), and
 - (ii) the land required is freely available or advertised for sale on the open market, and
 - (iii) the purpose for which the land is to be acquired is not site specific (and so the owner is under no compulsion to sell the land).
 - (b) Whether the land is site specific should be considered in all the above circumstances.
 - (c) Importantly, even if land is acquired on the open market by authority separate to the PWA, if its purpose constitutes a government work it still becomes 'held for a public work' in terms of the PWA. The land therefore becomes subject to the statutory requirements of the PWA unless specified otherwise. In particular, this means that the land is subject to the disposal provisions once it is no longer required, including the requirements of s 40 of the PWA.
-

Acquiring land in a unit title development

- (a) Land in a unit title development can be acquired under the PWA.
 - (b) The Crown acquiring agency should ensure that s 15 of the Unit Titles Act 2010 is complied with when an acquisition by Proclamation occurs for unit title land. Section 15 allows the Registrar-General of Land (RGL) to give effect to taking land under the PWA whether the land is common property, is in a unit, or is a mixture of both.
 - (c) For any transfer of land in a unit title development, the Unit Titles Act 2010 requires a new unit plan or an amendment to a unit plan to be deposited. If the body corporate requests this in writing, the Crown acquiring agency shall, at its expense, prepare the new unit plan or amendment to a unit plan.
 - (d) See also *LINZG20720: Interim guideline for Unit Titles Act 2010*.
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Special acquisition situations, continued

Partial acquisitions

Where only part of a computer register is being acquired, the Crown acquiring agency should ensure that:

- (a) the land to be acquired is fenced off from the balance of the owner's land (either on a permanent or temporary basis) at no cost to the owner (see s 33 of the PWA),
- (b) the land to be acquired is surveyed from the balance of the owner's land,
- (c) all legalisation actions are completed, and
- (d) where the construction of the public work is likely to disturb part of the balance of the owner's land, the affected land should be reinstated by topsoiling and regrassing to an agreed standard.

See [21. Clauses for inclusion in acquisition agreements](#) for clauses that should be included in any acquisition agreement for a partial acquisition.

Multiple interests in land

Where interests in the land other than the owner's freehold interest are to be acquired, the Crown acquiring agency should:

- (a) negotiate separately with the owner of the freehold and owners of the other interests being acquired, and
 - (b) obtain a separate valuation and other compensation advice for each of the interests being acquired.
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Special acquisition situations, continued

Dealing with severances

- (a) Small severed areas resulting from an acquisition should not be given separate computer registers. They should remain in the computer register of the balance of the land or be exchanged for, and amalgamated into, the computer register for other land.
 - (b) However, where an owner requires the Crown to purchase severed land (s 34), the Crown acquiring agency should negotiate with an adjoining owner and if possible ensure that:
 - (i) the severance is amalgamated with the land of an adjoining owner in an existing computer register, subject to an amalgamation condition imposed pursuant to ss 42(6), 107(9A), or 117(2),(3),(4), or (6) of the PWA, or
 - (ii) a separate computer register is raised for the severance.
 - (c) See [36. Dealing with severed land \(section 119\)](#) for information on severed land as a result of road realignment (s 119 of the PWA).
-

Third parties affected by public work

- (a) Where the acquisition of land means a third party's land is affected, then the acquisition powers under the PWA do not extend to the Minister acquiring replacement land for that third party. For example, the Crown can not acquire an easement over an owner's land to replace an easement it has acquired from a third party.
 - (b) Where an affected third party seeks to relocate their interest to an owner's land any agreement is between the third party and the owner only. The Minister has no role under the PWA in such situations.
-

Deceased owners

- (a) Where the owner of the land:
 - (i) cannot be found,
 - (ii) has no power to sell the land,
 - (iii) is under a legal disability, or
 - (iv) is deceased without any legal administrator,the Minister may proceed to take the land without the prior negotiation of s 18.
- (b) In cases where the Crown acquiring agency has served notice of desire by public notice under s 4(1)(d) of the PWA, the Crown acquiring agency should allow a period of 3 months from the date of the public notice before proceeding to take the land.

**Land that
includes marine
and coastal area**

- (a) Private title may include land below the Mean High Water Springs (MHWS) mark. When the Minister acquires such land, it becomes subject to the Marine and Coastal Area (Takutai Moana) Act 2011 (MACAA). As a result, that part of the land below MHWS ceases to be owned by the Crown and becomes part of the common marine and coastal area (see s 11 of the MACAA).
 - (b) In such cases the RGL may require that a new title be created to reflect the removal of the land below MHWS.
 - (c) Where the Crown acquiring agency needs to use that part of the land below MHWS for the public work, such use would need to be dealt with as a deemed accommodated activity under MACAA.
-

Acquisition of Māori land

4 Acquisition of Māori land

Acquisition standard

Refer to paragraph 4.2.

Land in multiple Māori ownership

Where land in multiple Māori ownership is required for a public work, the Crown acquiring agency should be able to demonstrate to LINZ that:

- (a) the land has not been selected merely because of its Māori land status and that it may be undeveloped,
- (b) the land has been selected because its physical and geographic characteristics fit the needs of the work,
- (c) all other practical alternatives to taking Māori land have been considered, even if not ideal, and are not reasonably acceptable (for example, impractical or unreasonably expensive),
- (d) documented consultation with the appropriate Māori owners or authority has taken place and their interests have been considered,
- (e) any sites of significance (wāhi tapu) have been identified and proposals to protect them have been made (if possible),
- (f) leasing the land from the owners (rather than acquiring the freehold) has been genuinely considered and has not been accepted because leasing would be impractical or unreasonably expensive,
- (g) no more land than is necessary is to be taken for the public work, subject to the agreement of the owner(s) to acquire a larger area to avoid leaving severances,
- (h) the overall impact on the Māori community from which the land is to be taken has been considered,
- (i) where practical the acquisition of the land will be formally completed before the public work commences, and
- (j) the Crown acquiring agency will pay the current market value for the land as soon as practical after agreement is reached.

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Acquisition of Māori land, continued

Case law

Reference *McGuire v Hastings District Council* (PC 43/2000) where the Privy Council suggested that if an alternative route not affecting Māori land were available, that should be preferred. The Privy Council commented on the relationship between Te Ture Whenua Māori Act 1993 and the RMA (and by inference the PWA).

Appointment of agent

The special provisions for acquisition of Māori land in s 18(5) and (6) of the PWA should be noted. Under the PWA, Māori freehold land that is beneficially owned by more than four persons may be acquired by agreement with an agent appointed by the Māori Land Court.

Negotiations with owners

- (a) Where the Crown acquiring agency intends to negotiate directly with the owners of Māori land (rather than proceed through an agent appointed by the Māori Land Court under s 18(5) of the PWA), it should obtain a list of owners for the land to be acquired from the Māori Land Court.
 - (b) Generally Māori land is jointly owned by individual Māori, family (whānau), or extended family (hapū). Sometimes Māori land is also owned by trusts or incorporations. Any negotiations should be with the appropriate people.
 - (c) A list of Māori authorities appropriate in each locality can be obtained from the Ministry of Māori Development (Te Puni Kokiri).
 - (d) Where there is uncertainty about the ownership, proceeding through the Māori Land Court provides more protection for the Crown.
-

Acquiring easements over Māori land

- (a) Under s 315 of Te Ture Whenua Māori Act 1993, the Māori Land Court may, at its discretion, create easements over Māori land, and specify the compensation and other conditions that will apply.
 - (b) Under s 315(3) where the easement is being created to provide access to other land, the Crown acquiring agency will need to comply with the succeeding provisions of Part 14 of Te Ture Whenua Māori Act 1993. This includes obtaining the required consents under s 317.
-

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Acquisition of Māori land, continued

Roadways over Māori freehold land

- (a) The Māori Land Court may lay roadways over Māori freehold land under s 316 of Te Ture Whenua Māori Act 1993. The Court will also specify the compensation to be paid to the owners for the roadway.
 - (b) Before making an application to the Māori Land Court, the Crown acquiring agency should ensure that:
 - (i) where the roadway is over Māori freehold land,
 - (A) it has provided sufficient notice to the owners of that Māori freehold land,
 - (B) it has encouraged the owners to discuss and consider the application,
 - (C) there is a demonstrated degree of support from the owners for the proposal, and
 - (ii) it has obtained all other consents required under s 317 of Te Ture Whenua Māori Act 1993.
 - (c) The laying out of a roadway confers the same rights as if it were a public road. However, the laying out does not affect the ownership of the land in the roadway (ie the land remains part of the Māori freehold land).
-

Natural materials

5 Ascertaining ownership of natural materials

Acquisition standard

Refer to paragraph 4.1.

When mineral ownership needs to be identified

The Crown acquiring agency should investigate and ascertain the ownership of natural materials where:

- (a) the natural materials are required for, or in connection with, the public work, or
 - (b) it is proposed to have a 'borrow' area on land that is not directly affected by the public work, but where natural material is required for the construction of the work on other land, or
 - (c) the acquisition is in an area where mining is known to have taken place, or where minerals have previously been recognised as having significant value. It is more likely that mineral ownership has been alienated from the land in these situations.
-

Ownership of minerals

- (a) It should not be necessary to ascertain the ownership of minerals, provided there will be no detrimental effect on the construction or operation of the public work if a mineral estate is not acquired. Where only the surface is to be used or slightly 'rearranged' with minor earthworks, the minerals may not be an issue.
 - (b) Under the Public Works Act 1928, natural materials not required for the proper and effectual construction, support and maintenance of the public work, were not acquired unless specifically noted in the acquisition instrument. Since 1982, natural materials remaining or held in computer registers are deemed to have been acquired under the PWA unless specifically excluded, that is, by a separate mineral Title, or unless previously excluded under a prior PWA acquisition, or subsequently reserved to the Crown under a prior disposal.
-

6 Acquisition of natural material

Agreement to acquire natural materials

- (a) While s 27 of the PWA empowers the taking of natural material on land for a public work, the Crown acquiring agency should first attempt to negotiate an agreement with the owner.
 - (b) Where an owner consents to entry and taking of natural material, the Crown acquiring agency should protect the Crown's interest. This means an agreement under s 17 of the PWA acquiring an interest in the land, such as a lease or *profit à prendre*, which includes provision for payment or claiming compensation.
 - (c) A compensation certificate protects this agreement.
-

Taking natural materials without consent

If entry is required for the extraction of natural material against the owner's wishes, the Crown acquiring agency should apply to LINZ for approval to exercise the statutory powers of s 27 of the PWA. Compensation is to be assessed under s 60(1)(c) of the PWA.

Crown-owned minerals

Where ownership of any minerals required is with the Crown, or the minerals are on Crown-owned land, then access to the minerals is governed by the Crown Minerals Act 1991.

Initial advice and negotiations

7 Initial letter to owner

Acquisition standard

Refer to paragraph 5.

Legislation

Sections 4 and 17-18 of the PWA.

Service of initial advice letter

When sending the initial advice letter to the owner, the Crown acquiring agency should apply the provisions of s 4 of the PWA as if the letter was a notice under the PWA. This will ensure that best endeavours are made to contact the owner ahead of the acquisition.

8 Negotiations

Acquisition standard

Refer to paragraph 5.

Meeting with owner

While some owners may wish to conduct negotiations through a third party such as a lawyer, the Crown acquiring agency should, where possible, meet with the owner directly at the start of the negotiations.

Property inspection

The Crown acquiring agency should, where the owner agrees, inspect the land as early as possible in the negotiation process, after the initial advice letter is provided to the owner.

Documentation

Where practical, the Crown acquiring agency should obtain 'before' and 'after' photographs to provide a clear record of the full effect of the work. This should include any improvements carried out by the Crown acquiring agency, for example, evidence pertaining to the condition to the land, where relevant, valuation reports, geotechnical reports.

Good faith dealings with owners

While there is no clear statement as to what constitutes good faith, the Crown acquiring agency should ensure that it acts in an honest, fair and open manner with the owner, including:

- (a) acting honestly during any dealing,
 - (b) having regard to the owner's legitimate interests,
 - (c) meeting and regularly communicating with the owner and responding to the owner's inquiries, and
 - (d) acting professionally towards the owner.
-

Record of verbal discussions

Where the Crown acquiring agency meets, or communicates by telephone with the owner, the Crown acquiring agency should provide the owner with a written record of those discussions.

Entry and occupation

9 Occupation of or entry onto land

Acquisition standard

Refer to paragraph 6.

Legislation

Sections 17(1) and 110-111 of the PWA, and the Cadastral Survey Act 2002.

Powers of entry to land

- (a) Persons may only enter land:
 - (i) when authorised by the Minister under s 110 or s 111 of the PWA, or
 - (ii) in the case of entry to take natural materials, under s 27 of the PWA (see paragraph 6), or
 - (iii) by agreement with the owner.
 - (b) Entry onto land outside the above may constitute trespass.
-

Comparison of s 110 and s 111 entry powers

- (a) Entry authorised by the Minister under s 110 of the PWA is limited to surveys made under the Cadastral Survey Act 2002. Entry can occur without owner consent, but subject to reasonable notice to the owner or occupier.
 - (b) Entry authorised by the Minister under s 111 of the PWA can be for any other survey, or investigation purpose. Entry is subject to 10 working days' notice to the owner or occupier. The owner or occupier may consent, or may object to the proposed entry to the District Court.
-

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Occupation of or entry onto land, continued

Negotiation of entry or occupation

- (a) The Crown acquiring agency may negotiate entry on to, or occupation of, land for the activities contemplated in ss 110 and 111, or for any other purpose associated with the public work.
 - (b) The intended use of the land to be occupied and the duration of that use/occupation are key factors when considering what form of occupation may be required (i.e. whether a lease or a licence may be appropriate).
 - (c) Licences may be appropriate for short-term, temporary situations or one-off, low impact activities.
 - (d) A lease would be more appropriate in situations where:
 - (i) the Crown acquiring agency requires exclusive occupation of the land, or
 - (ii) the use is invasive (e.g. substantial earthworks are to occur or the land will be damaged by the occupation), or
 - (iii) the use will be continual for more than three months, or
 - (iv) the occupation is required to continue if the ownership of the land changes (i.e. a licence is personal to the owner that granted it and ceases to have effect if land ownership changes).
-

Evidence of authority and identity

- (a) In order to ensure that entry to land under ss 27, 110, or 111 meets the requirements of the PWA, the Crown acquiring agency should ensure that any person entering the land has:
 - (i) a copy of the authorisation from the Minister,
 - (ii) any documentation to prove that they are covered by that authorisation (such as a written appointment of a contractor, or a letter of authority from a contractor's principal), and
 - (iii) a form of personal identification containing a photograph, such as a driver's licence.
 - (b) All of the above documentation is to be produced if requested.
-

Valuation and Compensation

10 Overview

Acquisition standard

Refer to paragraph 7.

Legislation

Sections 60-80 of the PWA.

Contents

This section contains the following topics.

Topic	See page
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Valuation of land	31
Injurious affection to land	34
Damage to land	35
Other forms of compensation	36
Granting of land as compensation	42
Betterment	44
Special suitability of land	45

11 Assessment of compensation

Types of compensation

- (a) Under Part 5 of the PWA the following categories of compensation are provided for:
 - (i) Value of land acquired/taken (see ss 60(1)(a) and 62(1)).
 - (ii) Injurious affection to land (see ss 60(1)(b), 63, and 64).
 - (iii) Damage to land (see s 60(1)(c)).
 - (iv) Other forms of compensation, including:
 - (A) equivalent reinstatement (s 65),
 - (B) disturbance payments (s 66),
 - (C) compensation for loss on repayment of mortgage (s 67),
 - (D) compensation for business loss (s 68),
 - (E) additional compensation (ss 72, 72A to 72D inclusive),
 - (F) assistance to purchase dwelling (s 73),
 - (G) assistance to purchase farm, commercial or industrial property (s 74),
 - (H) compensation for tenants of residential and business premises (s 75), and
 - (I) refund of expenses where acquisition of land is abandoned (s 76).
 - (b) In some cases, the PWA allows for the grants of easements in lieu of compensation or land exchange as alternatives to outright purchase (see ss 103 to 107, ss 117 and 119).
-

Additional advice

In addition to a valuation from a registered valuer, the Crown acquiring agency may need to seek advice from other suitably qualified persons on the amounts of compensation that may be claimable by the owner (see 7.1(b) of the acquisition standard). This could include advice on assessment of goodwill by a chartered accountant or loss of farm production by a rural valuer/farm management consultant.

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Assessment of compensation, continued

Conflict of interest

When obtaining a valuation or assessment, the Crown acquiring agency should only use a person who has not acted, and will not act in another capacity in connection with the land to be acquired.

Benefit of doubt

Where there is reasonable, justifiable, or genuine doubt in assessing the amount of compensation, the Crown acquiring agency should give the owner the benefit of that doubt.

Determination of loss

The owner should have lost land, suffered injurious affection, or damage resulting from a public work.

GST

Goods and Services Tax (GST) applies to compensation in respect of the acquisition of land where the land forms part of the vendor's taxable activity. The vendor shall furnish the Crown with a valid tax invoice under the Goods and Services Tax Act 1985 and comply with any GST disclosure requirements. Any portion of the compensation that does not relate to supply taking place may not be subject to GST. A ruling from the Inland Revenue Department should be sought where doubt exists on the need to pay GST.

12 Valuation of land

Scope of valuation

- (a) The primary purpose of a valuation is to establish:
 - (i) the current market value of the land to be acquired, or
 - (ii) in cases of partial acquisition, the reduced value of the owner's remaining land and any injurious affection to this balance land, and
 - (iii) any other heads of compensation that may be claimable by the owner under the PWA that are directly based on the value of the land.
 - (b) The Crown acquiring agency should obtain a valuation as soon as possible after it sends the initial advice letter to the owner.
-

Valuer selection process

When selecting and instructing a valuer for compensation advice, the Crown acquiring agency should consider the valuer's:

- (a) level of experience in the specific valuation to be undertaken,
 - (b) recognised local knowledge and understanding of regional trends in the market place,
 - (c) familiarity with the overall desires of the acquiring authority,
 - (d) demonstrated history of professional skills and integrity,
 - (e) reputation in valuing property under the PWA,
 - (f) history in the valuation industry of not providing questionable 'advocate' compensation assessments,
 - (g) public indemnity insurance held,
 - (h) membership of professional associations,
 - (i) familiarity with the current Australian and New Zealand Valuation and Property Standards,
 - (j) disclosure of any conflicts of interest,
 - (k) provision of quality, full reports with clear methodologies and substantial evidence to support valuation assessments,
 - (l) appropriate quality systems in place,
 - (m) use of a peer review process prior to release, and
 - (n) ability and willingness to provide constructive assistance to resolve differences after the provision of the initial valuation.
-

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Valuation of land, continued

Requirements for granting of land under Part 6

Special cases under Part 6 of the PWA should be dealt with as required by agreements for compensation. This is in order to achieve, where possible, an equality of exchange in the granting of any land or interest in lieu of compensation.

Information supplied by the valuer

The Crown acquiring agency should ensure that the valuation for the Crown includes:

- (a) the current market value of the interest to be acquired (freehold, lessee or easement holder's interest as appropriate),
 - (b) the value of any chattels likely to be included in the sale, where applicable. A separate chattels list should be provided,
 - (c) a specific date of the valuation,
 - (d) the capital value, apportioning land value, and value of improvements (for balance sheet and depreciation purposes). The value of buildings (and any other depreciable assets) is to be specified if different from the value of improvements.
 - (e) the Local Authority Valuation including the date and roll number,
 - (f) where only part of the property is to be acquired, the reduction in value and the value of any injurious affection to the balance of the property (for example, from utilisation, noise, loss of privacy, vibration),
 - (g) the value of any dwelling/s and curtilage for GST purposes,
 - (h) the actual rental paid where a property is tenanted or leased and the assessed current market rental (if there is a significant difference between them),
 - (i) comparable sales used in determining the value,
 - (j) photos which give a general view of the land affected and the condition of the interior and exterior of any substantial improvements,
 - (k) advice on any special features of the land which particularly influence its value/saleability (for example, contamination, foundation problems, outstanding maintenance items),
 - (l) advice on whether any betterment arises to the owner of the land being acquired,
 - (m) a copy of the relevant computer register, and
 - (n) clear advice on the treatment of GST.
-

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Valuation of land, continued

Owner's valuation

The Crown acquiring agency should ask the owner to supply a copy of any valuation they have obtained.

Notes:

- (a) The current practice is for the Crown acquiring agency's valuer and owner's valuer to meet to discuss the valuations and resolve any technical issues between the two.
 - (b) It is also important to note that the Crown acquiring agency's valuer and owner's valuer are providing professional advice on the value of the land to be acquired. They should not be involved in any negotiations on payments to an owner. That is a matter for direct negotiation between the Crown acquiring agency and the owner, who are both informed by the valuation assessments.
-

Currency of valuation

Before submitting a report to LINZ for approval that includes a valuation, the Crown acquiring agency should consider whether that valuation is still current, taking into account the market for the land.

13 Injurious affection to land

Injurious affection

Injurious affection under this heading is damage or injury causing a permanent effect on the value of the land (including its improvements).

Assessment to exclude land acquired

The Crown acquiring agency should assess compensation that may be claimable by the owner for injurious affection by reference to the effect of the whole work on the land to be held by the owner after the acquisition. This does not include any land acquired from the owner.

Where land is taken

- (a) The Crown acquiring agency should interpret injurious affection where land is taken as a permanent reduction in the value of the owner's remaining land (including its improvements) caused by:
 - (i) the operation of the work, or
 - (ii) depreciation arising from being severed from other land with which it was previously held.
 - (b) The Crown acquiring agency should ensure that the total payments negotiated to be paid for both the land acquired and the injurious affection for the land remaining with the owner does not exceed the current market value of the owner's original landholding.
-

Where no land is taken

- (a) Section 63 of the PWA provides a limited right of compensation for injurious affection to any person's land, even where no land owned by that person has been taken. The Crown acquiring agency should note that:
 - (i) the injurious affection should be substantial,
 - (ii) the injurious affection should be the result of the construction of the public work and not through its operation or maintenance, and
 - (iii) there exists a right of action in common law by the owner for injurious affection.
 - (b) The Crown acquiring agency should note that compensation is not claimable under s 63 of the PWA due to changes of traffic flows arising out of the opening of any new road or motorway, or the widening, upgrading, or deviation of an existing road.
-

14 Damage to land

Assessment of damage

- (a) The Crown acquiring agency should note that claims for damage compensation under s 60(1)(c) of the PWA should:
 - (i) be limited to physical damage to any land arising from, and caused by, the construction and not the operation of a work,
 - (ii) be of a one-off nature capable of remedy, and
 - (iii) be mutually exclusive of injurious affection.
 - (b) Damage may include claims under the tort of nuisance where damage is caused to any land or improvements.
-

15 Other forms of compensation

Reinstatement where no general demand exists (s 65)

- (a) The exercise of equivalent reinstatement considers the Crown acquiring other land and meeting the costs of erecting new structures on that land.
- (b) Following preliminary approval (see paragraph 7.5 of the acquisition standard), the Crown acquiring agency should ensure that the acquisition agreement specifies details of the cost of reinstatement, including:
 - (i) details of the proposed reinstatement, specifying:
 - (A) location (address),
 - (B) placement on site of reinstated building(s),
 - (C) site works including foundations,
 - (D) design and construction,
 - (E) reasonable fees for engagement of architect, engineer, quantity surveyor, etc,
 - (F) equivalent functionality, unless otherwise agreed,
 - (G) materials,
 - (H) quality of fittings and finish, and
 - (I) estimated costings;
 - (ii) a clause requiring the claimant to conduct the work and build the replacement structure agreed.
- (c) The Crown acquiring agency should note that:
 - (i) any reinstated building should be of reasonably equivalent utility to that affected by the work.
 - (ii) the words 'equivalent reinstatement in some other place' suggests that reinstatement occurs in a different place to the land being acquired.

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Other forms of compensation, continued

Relocation of business (s 68)

- (a) Where land is acquired with a business on that land, and the business is to be relocated, the owner of the business is entitled to compensation for business loss resulting from the relocation.
 - (b) The Crown acquiring agency should ensure that:
 - (i) sufficient time has passed since relocation before this business loss is assessed, in order to allow the business loss to be quantified, and
 - (ii) the evidence of business loss is supported by full financial statements for the business, prepared by a chartered accountant.
-

Goodwill for business (s 68)

- (a) Where land is acquired with a business on the land and the business will not be relocated (i.e. the business will cease to operate), the owner of the business is entitled to compensation for the loss of goodwill.
 - (b) The Crown acquiring agency should ensure that:
 - (i) the valuation of the goodwill is undertaken by a chartered accountant and is based on the financial statements for the business, and
 - (ii) the report to the Minister includes advice on whether any assurance or undertaking from the owner providing a restraint of trade is appropriate.
-

Notified dwelling (ss 72, 72A)

- The Crown acquiring agency should note the following when assessing payment of additional compensation under ss 72 and 72A of the PWA:
- (a) additional compensation is only payable to a person who is eligible under ss 72(1)-72(3) of the PWA,
 - (b) in cases of multiple ownership, only parties that use the property for their principal place of residence are eligible. Only one allowance is payable, divided between the eligible parties, and
 - (c) lessees with leases that have less than five years remaining are paid on a proportionate basis subject to any right of renewal (see s 72(5) and (7) of the PWA).
-

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Other forms of compensation, continued

Tenants of residential and business premises (s 75)

The Crown acquiring agency should ensure that payment under s 75 of the PWA for tenants of residential and business premises is only made following relocation.

Where acquisition is abandoned (s 76)

- (a) When advising an owner that a proposed acquisition will not continue, the Crown acquiring agency should also advise the owner that they can apply under s 76 of the PWA to claim for costs incurred before the expiry of six months from the date:
 - (i) on which the notification was cancelled or withdrawn, or
 - (ii) the Proclamation or declaration was revoked, or
 - (iii) the owner was advised that negotiations would be discontinued.
 - (b) The Crown acquiring agency should attempt to reach one full and final settlement with the owner for all of the costs incurred by the owner in relation to the acquisition.
-

Amount of compensation to be paid under s 72 (s 72A)

- (a) Under s 72A of the PWA where a notified dwelling is taken or acquired for the notified public work and the dwelling is used as the land owner's principal place of residence, the owner of the land must, subject to meeting the requirements of s 72(1), be paid compensation of \$35,000.
 - (b) Under s 72A(1)(b) \$10,000 must be paid to the owner if a sale and purchase agreement of the land is executed by the Minister within 6 months of the negotiation start date and the agreement specifies a date for vacant possession. In s 72A(2) "negotiation start date" means the earlier of the date on which:
 - (i) the notifying authority notifies the owner of land in writing that it intends to acquire the land under section 17¹: or
 - (ii) the notifying authority serves notice in relation to land in accordance with section 18(1)(a).
-

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¹ For example, this could be the initial letter given to the landowner under Section 5 of LINZ's Standard for acquisition of land under the Public Works Act 1981 LINZS15005.

Other forms of compensation, continued

- (c) Compensation must not be paid to an owner unless vacant possession is given by the owner where the land is acquired under agreement that specifies a vacant possession date. Where there is no agreement for sale and the land is taken by Proclamation, compensation must not be paid unless vacant possession is given within 1 month after notice requiring vacant possession has been served on the person from whom the land is taken.
- (d) Section 72A(c) provides for a payment of \$5,000 at the Minister's discretion to be paid to the owner where the personal circumstances of the owner or the circumstances concerning the owner's residence warrant such a payment.
- (e) Compensation under s 72(1) must not exceed \$50,000 in total regardless of the number of owners of the land or the nature of their interests.

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15A Transitional provisions

Negotiations began before enactment

Schedule 1AA of the PWA provides for transitional provisions so that negotiation start date includes dates occurring before the commencement date.

<i>Negotiation start date</i>	<i>Is \$10,000 additional compensation payable?</i>
Prior to 19 October 2016	Yes, if an agreement is executed by 18 June 2017 and if no s 18(1)(a) notice of desire is served between 19 April 2017 and 18 June 2017
From 19 October 2016 to 19 December 2016	Yes, if an agreement is executed by 18 June 2017
From 20 December 2016 onwards	Yes, if an agreement is executed within 6 months of the negotiation start date

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15B Notified land

Sections 72B, 72C and 72D

Additional compensation is provided where land taken or acquired does not include the owner's home, at the rate of 10% of the value of the land is taken, from a minimum of \$250 to a maximum of \$25,000.

- (a) Compensation paid to the owner of the land must equal 10% of the land value or be an amount of \$250 if 10% of the total land value is equal to or less than \$250 or be \$25,000 if 10% of the total land value is equal to or more than \$25,000.
 - (b) Compensation must not be paid to an owner unless vacant possession is given by the owner where the land is acquired under agreement that specifies a vacant possession date. Where there is no agreement for sale and the land is taken by Proclamation compensation must not be paid unless vacant possession is given within 1 month after notice requiring vacant possession has been served on the person from whom the land is taken.
 - (c) Compensation for acquiring land must not be paid to an owner if that person is paid compensation for the loss of their home on that land under s 72(1).
 - (d) Compensation must not exceed \$25,000 in total regardless of the number of owners of the land or the nature of their interests and must be paid only to qualifying owners as defined in s 72B of the PWA.
-

16 Granting of land as compensation

Granting of Easements, etc in lieu of compensation (s 103)

- (a) The Crown acquiring agency may consider a grant of any of the interests specified in s 103 of the PWA in lieu of compensation, if appropriate.
 - (b) The Crown acquiring agency should commission a valuation to assess the value of the proposed interest as compensation in part or full.
 - (c) The Crown acquiring agency should ensure that any agreement recognises that the grant of the interest is either in satisfaction or part satisfaction (as the case may be) of any compensation that might otherwise be claimed.
-

Granting of land where equivalent land not readily available (s 105)

- (a) Section 105 of the PWA applies in very limited circumstances because of the requirement that land equivalent to the land taken or acquired is not readily available. Section 105 usually applies where the property is of a specialized nature, has a location sensitive commercial undertaking on it, and there is nothing on the market available as a satisfactory replacement. Owners of residential property should usually be able to find a suitable replacement residence on the market.
 - (b) To qualify for an exchange under s 105 of the PWA, the land to be acquired must have been personally used by the owner (s 105(1)(b)). The word 'personally' in s 105(1)(b) is not limited to use by a natural person. Land can in some circumstances be used by the owner 'personally' where the owner is a limited liability company. However, holding land as an investment cannot normally be described as using it personally. In addition, s 105(1)(b) does not include a landowner whose only direct involvement, apart from ownership, is as landlord.
 - (c) Section 40 of the PWA does not apply to land disposed of by way of exchange under s 105 of the PWA. Part IVA of the Conservation Act 1987, reserving marginal strips from the disposition of land of the Crown, will apply.
 - (d) In other circumstances, s 106 of the PWA will need to be used for exchanges of land if all of the criteria in s 105 cannot be satisfied.
-

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Granting of land as compensation, continued

Granting of land in other cases (s 106)

- (a) While s 106 of the PWA is also a land-for-land provision, it is of much wider application than s 105 of the PWA. Section 106 can be used to grant compensation for injurious affection where no land is taken, or where damage is caused to land. Crown land or land held for a public work may be granted in lieu of compensation under s 106 of the PWA.
 - (b) The basic principles of compensation apply to any grant under s 106 of the PWA.
 - (c) Monetary adjustments should be made where differences in value arise. Such adjustments are to be assessed by a before and after valuation. However, the valuation in these cases will value the claimant's land before the grant of the Crown land or land held for a public work and after the grant of such land.
 - (d) Where the section refers to Crown land or other land held for any public work, which is no longer required for any work or purpose incidental to it, the PWA requires the consent of the Minister having control over the land to be vested.
 - (e) Land held for a public work granted under s 106 of the PWA is first subject to the provisions of s 40 of the PWA. This is because s 40 only excludes land exchanged under s 105 of the PWA, not s 106.
-

Granting of lease or licence as compensation (s 107A)

- (a) Where the interest of a lessee or licensee is taken or acquired, and the lessee or licensee is entitled to compensation under s 105 of the PWA, the Crown acquiring agency may grant a lease or licence to that party over any Crown owned land under s 107A of the PWA.
 - (b) Monetary adjustments should be made where differences in value arise. Such adjustments are to be assessed by before and after valuations. However, where land is being added to a lease or licence, the valuation will value the claimant's interest in the land as lessee or licensee before the grant of the lease or licence as compensation and after the grant of such land.
-

Application of marginal strips to exchange land

In all cases of granting land by the Crown as compensation, Part IVA of the Conservation Act 1987 reserving marginal strips will apply to the land being granted.

17 Betterment

Legislation

Sections 18(1)(c) and 62(1)(e) of the PWA.

Definition

- (a) 'Betterment' is defined as any increase in the value of all of the owner's interest in land (including buildings thereon) arising from the execution of a public work or improvements arising from a public work. This can be either as a direct result of a particular action on the owner's property or indirectly because of some action off-site.
 - (b) Under the PWA, betterment cannot be charged where there would be no compensation claimable or where the compensation claimable is less than the betterment accruing to the land. However, it can be set off against compensation up to the point where it equals compensation claimable. This means that, in some cases, an owner will have the benefit of a better road or an improved view as the result of works carried out, with a consequent increase in the value of their land. This is to the owner's benefit if it happens to be greater than the owner's loss in terms of the PWA.
 - (c) Conversely, an owner should bear the loss if a work nearby causes the value to fall (unless injurious affection can be proved). This could occur where a highway is diverted but the loss is caused by the operation of the highway rather than any actual construction activity.
-

Assessment of betterment

- (a) If a valuer considers that betterment to the owner does arise, the Crown acquiring agency should recommend an amount to LINZ that should be deducted from the proposed compensation (up to, but not exceeding, the point where betterment equals compensation payable).
 - (b) The onus of proving the quantum of betterment lies with the Crown acquiring agency.
 - (c) Betterment is the opposite of injurious affection, and in some cases both matters should be considered together.
-

18 Special suitability of land

Special suitability

Situations may arise where land has some particular feature that the owner contends has a 'special value' to the Crown acquiring agency. If this is the case, additional compensation would be claimable that is not reflected in the market value of the land.

Situations where it may be sought

- (a) The land potential is an item to be included in the valuation of land. It is not an additional special suitability item over and above the market value of the land.
 - (b) Where the special value arises from the adaptability of the land for a statutory purpose, or where there is no market apart from the particular needs of the Crown acquiring agency, the compensation claimable under s 62(1)(d) of the PWA cannot include any such increase in value of the land.
-

Application to natural minerals

The special suitability of natural material acquired under s 27 of the PWA is not taken into account where it is acquired under statutory powers or where there is no market apart from the needs of the Crown acquiring agency.

Payment of owner's costs

19 Identifying costs to be incurred

Acquisition standard

Refer to paragraph 7.6.

Legislation

Sections 17, 62, and 66 of the PWA.

Scope of disturbance under s 66

- (a) Section 66 of the PWA provides for an entitlement for an owner to recover costs for disturbance from the acquisition or taking of their land. This provision can apply in a number of situations, including:
- (i) where only part of a property is acquired, use of the land is affected, and improvements on it must be relocated, or
 - (ii) the professional costs incurred by the owner in moving from the land to be acquired, and in securing replacement land; for example, the costs of getting a valuation of the land to be acquired and finding a replacement property are reimbursable to the owner.
- (b) The Crown acquiring agency should note that:
- (i) in practice, where the Crown has agreed to pay costs, it has not been necessary for the owner to pay any invoice before seeking reimbursement from the Crown,
 - (ii) loss should be of a temporary, non-recurring nature, which the owner could not have avoided by taking all reasonable steps to minimise losses arising from the public work,
 - (iii) a claim to recover compensation for disturbance to land under s 66 of the PWA is not affected by a claim for compensation for the land assessed under s 62 of the PWA,
 - (iv) the owner's professional costs incurred (or to be incurred) must be directly referable to negotiations for the owner's land, and are subject to a test of 'reasonableness' (that is, the claim is not extravagant or unnecessary), and
 - (v) compensation for disturbance under s 66 of the PWA is not limited to those particular losses provided. The owner is entitled to recover any losses due to the disturbance caused by the acquisition or taking of the land and that are not too remote.

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Identifying costs to be incurred, continued

Advice at outset of negotiations

- (a) The aim of the initial advice letter in paragraph 5 of the acquisition standard is to ensure that the owner is clearly advised how to deal with any costs incurred by them during the acquisition.
 - (b) This includes advising the owner:
 - (i) that invoices must be regularly submitted,
 - (ii) the timing of payment,
 - (iii) that the amount of the costs agreed to be paid are subject to approval by LINZ who will approve costs that are reasonably and properly incurred, and
 - (iv) if the claim or part of the claim is rejected as unreasonable, the owner will be liable for those costs or they can claim compensation under s 66 of the PWA.
-

Determining valuation and legal allowances

The initial advice letter requires the Crown acquiring agency to identify a maximum reasonable amount payable for the owner to obtain a valuation, and an allowance for the owner's legal and conveyancing costs. LINZ will advise the Crown acquiring agency of what amount should be entered into the initial advice letter.

Regular invoicing

Where a professional service is provided to the owner over a period of time (for example, legal advice or negotiation services), the Crown acquiring agency should request that the owner's service provider submits invoices at regular periods. It is preferable this occurs on a monthly basis but does not exceed three months.

Payment of costs before agreement under s 17

Where the owner wishes to obtain a professional service not covered by the initial advice letter under paragraph 5 of the acquisition standard, prior to agreeing to the sale of their land, the quoted costs of that service should first be discussed with and agreed to by LINZ.

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Identifying costs to be incurred, continued

Payment of costs incurred after agreement under s 17

- (a) Where an agreement is reached with the owner under s 17 of the PWA, the Crown acquiring agency should ensure that the acquisition agreement specifies a process for how the owner can be reimbursed for any costs that will be incurred after the agreement has been signed. For example, moving costs or valuation and legal fees costs with finding replacement land.
 - (b) There are a number of options for how this could be addressed in the acquisition agreement, including:
 - (i) requiring as pre-approval, the owner to provide quotes to the Crown acquiring agency and receive the agency's approval before the owner commissions the service,
 - (ii) payment of a set amount specified in the agreement as full and final settlement for all future costs,
 - (iii) payment, on presentation of invoices, of costs up to an agreed amount,
 - (iv) payment as reimbursement, on presentation of invoices, after the owner has paid the invoice, or
 - (v) agreement that the owner will make a claim to the Land Valuation Tribunal under s 80 of the PWA for all future costs.
 - (c) The Crown acquiring agency should ensure that whatever is agreed:
 - (i) the process detailed in the acquisition agreement is clear,
 - (ii) it provides certainty to both parties, and
 - (iii) it will enable resolution of all future costs.
-

Costs incurred during compulsory acquisition

If land is taken by Proclamation under s 26 of the PWA, the owner can claim for disturbance costs (along with other compensation) by making a formal claim to the Land Valuation Tribunal under s 80 of the PWA.

Dealing with owner's time

The owner is not entitled to disturbance costs for their time in representing their personal interests in the acquisition or taking of their land.

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Identifying costs to be incurred, continued

Payment of employee's time

Where an employee of the owner has spent time providing services to a professional in relation to acquiring or taking of the owner's land, the owner may be able to claim for the employee's costs subject to:

- (a) the employee's costs and time being actual and reasonable;
 - (b) the employee's position being filled during the period the services are provided;
 - (c) the employee's position being technical or specialised; and
 - (d) the employee's costs not being too remote and being the direct consequence of the public work.
-

Acquisition agreements

20 Overview

Acquisition standard

Refer to paragraph 8.3.

Legislation

Section 17 of the PWA.

Nature of acquisition agreement

- (a) The Minister is authorised by s 17 of the PWA to enter into an agreement to purchase land. That authority is expressed very widely and is not limited in any way to the terms and conditions upon which the land may be acquired.
 - (b) Negotiations will be involved regarding the sums to be paid for the land acquired and any other sums to be paid. This may extend to agreeing a mechanism for determining those sums to be paid; for example, an agreement may set out a process for dispute resolution, such as reference to an arbitrator.
 - (c) Once an acquisition agreement is executed by LINZ, the Crown acquiring agency will be responsible for ensuring that the terms and conditions of the agreement are complied with.
-

21 Clauses for inclusion in acquisition agreements

Introduction

The Crown acquiring agency should ensure that the acquisition agreement addresses all matters relevant to the acquisition, including:

- (a) entry by the Crown acquiring agency before settlement,
- (b) sums payable for the purchase of land or otherwise,
- (c) non-monetary undertakings,
- (d) interest payable,
- (e) treatment of GST,
- (f) partial acquisitions,
- (g) severances,
- (h) existing tenancies,
- (i) owner occupation of land after acquisition,
- (j) owner's obligations and indemnities,
- (k) other statutory matters,
- (l) dispute resolution, and
- (m) where payments or other matters are still to be determined:
 - (i) how they will be determined, or
 - (ii) that the owner will claim compensation under Part 5 of the PWA.

Entry by Crown acquiring agency before settlement

Where the acquisition agreement provides for entry to the land ahead of settlement for any purpose, the agreement should:

- (a) specify that the owner agrees to such entry occurring, and
- (b) require the Crown acquiring agency to provide the owner with adequate notice of entry, if required by the owner.

continued on next page

Clauses for inclusion in acquisition agreements, continued

Future determination of any sums payable

If the Crown acquiring agency proposes an agreement that does not provide for full and final settlement of sums payable (that is, proposes a process for determining any further sums payable or for compensation to be claimed under Part 5 of the PWA), the Crown acquiring agency should ensure that:

- (a) acquisition of the required interest by the Crown has been achieved by the agreement, and
 - (b) the circumstances of the owner and the Crown acquiring agency have been assessed against the risk of overpayment. This is advised to LINZ as part of the report and conclusion on the agreement under paragraph 8.3 of the acquisition standard.
-

Non-monetary undertakings

- (a) The Crown acquiring agency should ensure that the acquisition agreement details all non-monetary undertakings relating to the owner's land.
 - (b) The agreement should distinguish between:
 - (i) improvements reasonably required in connection with the work (for example, the reconstruction of access destroyed by the work, or reinstatement of a building relocated or demolished because of the work), and
 - (ii) non-monetary undertakings being effected to conclude an agreement, but outside the scope of an owner's entitlement to claim compensation under Parts 5 and 6 of the PWA.
 - (c) The Crown acquiring agency should ensure that all non-monetary undertakings are identified and explained in any report and conclusion submitted to LINZ.
-

Interest payable

The Crown acquiring agency should ensure that the acquisition agreement specifies:

- (a) an allowance for interest on the purchase price that has accrued since the specified date, and
 - (b) where late settlement is due to the Crown's action, the penalty interest that will be payable by the Crown.
-

continued on next page

Clauses for inclusion in acquisition agreements, continued

Treatment of GST

The acquisition agreement should specify that GST is only payable if the owner produces a valid tax invoice prepared in accordance with s 24 of the Goods and Services Tax Act 1985.

The agreement should incorporate and comply with any GST disclosure requirements.

Partial acquisitions

Where only part of a computer register is being acquired, the acquisition agreement should specify the:

- (a) arrangements for fencing of the land, including the materials to be used and the location where the fence is to be erected,
 - (b) requirement on the Crown to survey the land and complete all legalisation actions,
 - (c) method of payment for any difference between the area of land identified in the acquisition agreement and the final area required as defined by survey. Where necessary, the clause should include provision for the payment of interest on the amount of compensation from the date of the agreement, and
 - (d) reinstatement actions that the Crown acquiring agency will undertake where the construction of the public work is likely to disturb part of the balance of the owner's land.
-

Severances

Where the acquisition results in an exchange or severance of land, the acquisition agreement should state that:

- (a) the Crown may vest in the owner such stopped road or severance by way of equality of exchange, and
 - (b) the owner consents to the area of land being vested and amalgamated in the owner's title, subject to all existing encumbrances and memorials on that title.
-

continued on next page

Clauses for inclusion in acquisition agreements, continued

Existing tenancies

Where there is an existing tenancy, the acquisition agreement should include a clause identifying:

- (a) whether the tenancy will continue after acquisition; and
 - (b) the terms and conditions of that tenancy, including:
 - (i) the date the tenancy will continue to, and
 - (ii) the rental to be paid to the Crown acquiring agency.
-

Owner occupation of land after acquisition

Where it is agreed that the owner can remain in occupation of the land after acquisition, the acquisition agreement should specify:

- (a) that the basis of the occupation is to be on a month-to-month term unless otherwise specified, and
- (b) the rent to be paid to the acquiring authority.

Note that the Residential Tenancies Act 1986 applies to any residential tenancy provided for in an acquisition agreement.

Owner's obligations and indemnity

- (a) The acquisition agreement should identify any owner obligations that must be met either before or after settlement; for example, maintenance of buildings and improvements situated on the land until settlement.
 - (b) Where there is a third party involved in the transaction (for example, the owner provides access to the land to a third party), the acquisition agreement should include an indemnity from the owner to the Crown.
-

Other statutory matters

The Crown acquiring agency should ensure that any other statutory matters relevant to the acquisition are detailed in the acquisition agreement; for example, crossing places under the Government Roadway Powers Act 1989.

Dispute resolution

The acquisition agreement should set out a process for dispute resolution, appropriate to the value and risk associated with the transaction.

continued on next page

Clauses for inclusion in acquisition agreements, continued

Signature Block For acquisition agreements, the following signature block should be included for execution by the Minister or their delegate:

Signed by:

Signature of Authorised Officer

Name of Authorised Officer

For and on behalf of Her Majesty the Queen and acting pursuant to delegated authority from the Chief Executive of Land Information New Zealand pursuant to Section 41 of the State Sector Act 1988

- Witnessing and initialling of agreements**
- (a) There is no requirement for agreements to be witnessed.
 - (b) The Crown acquiring agency should ensure that the owner initials each page of the agreement to avoid any doubt as to the agreed terms and conditions.
-

Compulsory acquisition

22 Overview

Acquisition standard Refer to Paragraphs 10-12.

Legislation Sections 18-26 of the PWA.

Contents This section contains the following topics:

Topic	See page
Compulsory acquisition timeframes and information	57
Notice of desire (section 18)	59
Notice of intention (section 23)	61
Proclamation (section 26)	64
Submission to the Minister	65

23 Compulsory acquisition timeframes and information

Timeframes

The following timeframes apply in the compulsory acquisition process:

- (a) For a notice of desire:
 - (i) once an invitation to sell under s 18(1)(c) has been given to the owner, the Crown acquiring agency is required to try to negotiate in good faith with the owner for at least **3 months** before proceedings to take the land can commence,
 - (ii) the notice of desire expires at the end of a **1 year** period beginning on the day after the notice of desire is served on the owner, unless proceedings to take the land have commenced (by the Minister signing a notice of intention under s 23),
- (b) For a notice of intention:
 - (i) the notice ceases to have effect **1 year** after it is published in the *Gazette*, unless:
 - (A) a Proclamation taking the land is published in the *Gazette*,
 - (B) the Minister confirms to the owner by notice that the intention is still to take the land. This further period expires **2 years** after the notice of confirmation is served on the owner, or
 - (C) there is an inquiry by the Environment Court or an Ombudsman, or an application for a judicial review.
 - (ii) where (b)(i)(C) applies, the notice remains valid for **3 months** after the date of the Environment Court's report, the date on which the Environment Court received written notice of the withdrawal of the objection, or the date of the completion of any inquiry by an Ombudsman, or the judicial decision, whichever is applicable,
- (c) For a Proclamation:
 - (i) the Proclamation must be gazetted and publicly notified within 1 month of its making, and
 - (ii) the land subject to the Proclamation will vest in the Crown 14 days after it is published in the *Gazette*.

continued on next page

Compulsory acquisition timeframes and information, continued

**Availability of
Minister and
Governor-
General**

- (a) The Crown acquiring agency should factor in the availability of the Minister and/or Governor-General to execute compulsory acquisition documents in to the compulsory acquisition timeframes.
- (b) Parliament’s sitting schedule can serve as a guide to the Minister’s availability.
- (c) In the absence of the Governor-General, the Proclamation may also require an amendment to provide for the Administrator of Government to sign on the Governor-General’s behalf.

**Provision of
electronic
documents**

All notices for execution by the Minister, Proclamations, and draft ministerial briefings required by the standard should be submitted to LINZ in electronic format.

24 Notice of desire (section 18)

Timing of notice of desire

- (a) Where circumstances require that the Crown acquiring agency secures ownership of land in a timely manner, the agency should consider seeking a notice of desire at the outset of the acquisition process. This can take place before any negotiations occur with the owner.
 - (b) In such cases, the Crown acquiring agency will need to provide advice to LINZ detailing the reasons why a notice of desire is needed at that time.
-

Packaging notices for a project

- (a) The Crown acquiring agency may submit s 18 notices for the same public works project in batches after prior agreement of LINZ. These batches should not exceed 10 separate properties.
 - (b) However, notices of intention under s 23 and Proclamations under s 26 of the PWA will have to be submitted for each individual compulsory acquisition of land.
-

Chronology of negotiations

When submitting a report and conclusion to LINZ for a notice of desire or notice of intention, the chronology should:

- (a) detail all interactions between the Crown acquiring agency and the owner, or their representatives since negotiations on the acquisition of the land commenced,
 - (b) cover all forms of interaction (e.g. email, telephone contact, letters, meetings), and
 - (c) identify all of the issues raised during the negotiations that may have contributed to an agreement not being reached, detailing the views of both the Crown acquiring agency and the owner on each issue.
-

continued on next page

Notice of desire (section 18), continued

Example notice of desire

Notice of desire to acquire Land

Notice is hereby given, pursuant to section 18(1)(a) of the Public Works Act 1981, that the Minister for Land Information desires to acquire the land described below for the *[Insert Project Name]*.

Land at *[street address or other readily identifiable description of the place where the land is situated]*.

Land required for *[Insert purpose, eg roading]* purposes:

[Insert the area required, land description, computer register reference and identify whether land requirement is subject to survey]

A copy of this notice of desire to acquire the land is being registered against the above computer freehold register.

Any person requiring further information in respect of this advice should contact *[insert name and contact details of contact person]*.

Dated at *[Insert location]* this ____ day of _____ .

Minister for Land Information

(LINZ CPC/xxxx/xxxxx)

Service of notice of desire

The Crown acquiring agency should ensure that the service and registration of the s 18 notice occurs as close together as possible, within the timeframe specified in the standard. See ss 18(1)(a) and (b) of the PWA.

Withdrawal of notice of desire

After the Minister withdraws the notice of desire under s 18(3) of the PWA, the Crown acquiring agency should:

- (a) advise in writing, the owner and any other person on whom the notice was served, that the notice has been withdrawn, and
- (b) give notice to the RGL seeking the withdrawal of the notice registered against the computer register to the land.

See s 18(3), (4) of the PWA.

25 Notice of intention (section 23)

Timeframes

- (a) Under s 18(2) of the PWA, a period of three months must pass following an invitation by the Crown acquiring agency to the owner to sell land, before a notice of intention can be sought.
 - (b) The PWA requires that a notice of desire be served and registered before a notice of intention can be sought.
 - (c) There is a timeframe of one year from the date of service of a notice of desire in which the Crown acquiring agency can seek a notice of intention. However, this does not apply for situations specified in s 18(7) of the PWA.
-

Survey of land for notice of intention

- (a) Before seeking a notice of intention, the Crown acquiring agency should, where required, arrange a survey of the land required and a cadastral survey dataset (CSD) showing the land and the names of the owners as far as they can be ascertained (see ss 23(1)(a) and 32 of the PWA).
 - (b) Where it is necessary to have a CSD approved by LINZ (to support a Proclamation action), the CSD should:
 - (i) show the name of the owner as far as can be ascertained,
 - (ii) identify the title boundaries of the land to be acquired, and any other potential legal requirement that may affect the interest to be acquired. For example, cases of accretion or determining the boundaries of a 'limited as to parcels' title may require the owner's interests to be accurately defined.
 - (iii) state the LINZ file reference for the acquisition.
-

Format of notice of intention

- (a) As required by s 23(1)(c) of the PWA, the notice of intention to be served on the owner of the land and all persons with a registered interest in the land shall be in the form set out in Schedule 1 of the PWA.
 - (b) An example for the format of a notice of intention for publication in the *Gazette* is provided in [Example notice of intention for gazette \(s 23\(1\)\(b\)\)](#)
-

continued on next page

Notice of intention (section 23), continued

Example notice of intention for gazette (s 23(1)(b))

Notice of intention to take land [Insert general locality] for [Insert purpose]

Notice is hereby given that the Minister for Land Information, under the provisions of section 23 of the Public Works Act 1981, proposes to take land described in the Schedule hereto ('the land').

The land is required for [Insert purpose, eg roading] purposes. It is intended to use the land for [Insert purpose, eg part of a road system]. The intended taking is considered reasonably necessary for [Insert reason, eg 'the safe and convenient use of the road']. Also explain why there are no other suitable or better alternative sites, routes, or other methods of achieving the objectives. If applicable, also state that the land use is in accordance with the designation under the district plan].

The owners of the land and those persons with a registered interest in it have been served with notice of [Insert name of acquiring authority, eg 'the Crown's'] intention to take the land and advised of their right to object.

Note, where the owner cannot be located the owner's/owners' name shall appear in the notice.

Any other person having the right to object may send a written objection to the Registrar, Environment Court, Tribunals Division, Ministry of Justice, Private Bag, Postal Centre, Wellington, within 20 working days after the date of publication of this notice.

If any objection is made in accordance with this notice a public hearing will be held. The objector will have a right to appear and be heard personally unless the objector otherwise requires. Each objector will be informed of the time and place of the hearing.

Any person requiring further information in respect of this advice should contact:

[insert name and contact details of contact person]

SCHEDULE

[Insert the computer register, legal description, street address or other readily identifiable description of the place where the land is situated]

Dated at [Insert location] this ____ day of _____ .

Minister for Land Information

(LINZ CPC/xxxx/xxxxx)

continued on next page

Notice of intention (section 23), continued

Time limit for notice of intention

The notice of intention ceases to have effect within one year after the date of publication in the *Gazette*, unless the circumstances set out in s 23(4) of the PWA apply.

Withdrawal of notice of intention

After the Minister has withdrawn the notice of intention, the Crown acquiring agency should:

- (a) advise, in writing, the owner and any other person on whom the notice was served that the notice has been withdrawn, and
 - (b) give notice to the RGL seeking the withdrawal of the notice registered against the computer register to the land.²
-

² (See s 23(8) of the PWA).

26 Proclamation (section 26)

Process to seek a Proclamation

- (a) The same general process that applies to notices of desire and notices of intention applies to Proclamations under s 26 of the PWA, except that the Governor-General is required to execute a Proclamation, on the advice of the Minister.
- (b) The information provided in a draft submission to the Minister on a Proclamation will form the basis of the Minister's advice to the Governor-General. It is important that the Crown acquiring agency provides all information relevant to the taking of the land. The Governor-General requires that requests for Proclamations be supported by a summary of the proposal and a brief explanation of any significant issues relating to the submission.
- (c) Before submitting the Proclamation for approval, the Crown acquiring agency should ensure that the CSD for the land to be taken, if required, is correct and approved by the Surveyor-General.³
- (d) Where the Proclamation is for any local work, only the chief executive of the local authority is authorised by the PWA to execute the notice.

Formal claim for compensation

- (a) Once land has been taken by Proclamation, the Crown acquiring agency can negotiate an agreement for compensation with the owner. However, such an agreement would be entered into by the Minister under s 4B of the PWA and not s 17 (as the land has already been taken).
- (b) Where the land has been taken by Proclamation and no formal claim has been made under Part 5 of the PWA within 18 months of:
 - (i) the taking of the land,
 - (ii) the 'execution of the works' (as defined in s 78(2) of the PWA), or
 - (iii) the exercise of the power out of which a claim has arisen or may arise,

the Crown acquiring agency should write to the owner advising of their rights under s 78 of the PWA, the deadline for which a claim must be lodged, and that under s 79 of the PWA the Minister may initiate proceedings to determine compensation in the absence of a claim from the owner.

³ See s 26(1)(a) of the PWA.

27 Submission to the Minister

Template for briefing paper

- (a) The Crown acquiring agency should ensure that the current LINZ template is used for all draft ministerial briefing papers required by the acquisition standard (that is, for notices of desire, notices of intention and Proclamations). An electronic copy of the current template can be obtained from LINZ.
 - (b) All information that is relevant to an acquisition or taking of land is to be provided in the ministerial briefing paper. This is to ensure that the Minister is can be satisfied that all matters that should be taken into account in making a decision, have been taken into account.
-

Gazette notices

28 Overview

Acquisition standard

Refer to paragraph 14.

Legislation

Sections 20 and 52-57 of the PWA.

Contents

This section contains the following topics:

Topic	See page
Parts of a gazette notice	67
General requirements for gazette	71
Gazette notices for declarations under section 20 of the PWA	72
Gazette notices setting land	73
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29 Parts of a gazette notice

Description of gazette notice

There are six parts to a gazette notice:

- (a) title
 - (b) recital
 - (c) locator
 - (d) schedule
 - (e) execution
 - (f) references
-

Title

- (a) The title is a short description of the action being taken and given effect to in the gazette notice. It should match the action being taken in the recital.
 - (b) Land should be acquired, set apart, or declared for the authorised purpose for which it is to be used.
 - (c) The title should give, if available, the street name and territorial authority.
-

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Parts of a gazette notice, continued

Recital

The recital states the:

- (a) relevant section or sections of the PWA,
- (b) authority of the person who is to sign the gazette notice. The wording of the signing authority is: '...pursuant to a delegation from the Minister for Land Information (insert name), Land Information New Zealand',
- (c) action to be taken with the land and the basis for it, (for example, an agreement with the same wording as the title) and from when it takes effect. This refers to what is being done with the areas of land; for example, acquired for police purposes, declared to be road.
- (d) effective date, which is the date on which the notice takes effect but which cannot be earlier than the date of the *Gazette*. The default date is 14 days after the date of publication in the *Gazette*.

Note that unless otherwise provided in the recital, the effect of a Proclamation against the land specified is that any existing mortgages, charges, claims, estates, or interests of whatever kind are freed and discharged under s 26(3) of the PWA.

Locator

The locator is the heading to the schedule which follows shows the Land District and territorial authority area.

continued on next page

Parts of a gazette notice, continued

Schedule

- (a) The schedule is an extension of the recital. It contains the legal description of the area(s) of land affected by the gazette notice and comprises:
 - (i) the area in square metres (or hectares if more than 9,999 m²),
 - (ii) the appellation of the parcel, and
 - (iii) the computer register in which the land is contained together with any interests that are to be preserved.
- (b) The Crown acquiring agency should note the following:
 - (i) the subject land should be defined on a plan that complies with the Surveyor-General's Rules for Cadastral Survey and has been lodged and approved with LINZ. Failure to refer to an official LINZ plan in the legal description may prevent the notice from being recorded in Landonline,
 - (ii) titles issued under Landonline do not have a land district prefix,
 - (iii) the simplified appellation form should be used for appellations issued since 1999 in the form Lot/Section; DP/SO/ML; survey plan number, and
 - (iv) references to LT plans should be avoided if possible, especially if they have not yet been approved as to survey.
- (c) Generally, separate schedules are used to group the various actions, provided they are located in the same land district and local authority. For example, areas of land for road, areas of road to be stopped.
- (d) The heading of the schedule shows the schedule number. If more than one, it may also include the type of action being taken with those areas of land. For example, Land for Road, Land required for indirect functioning of road.
- (e) Where the land being acquired is subject to an encumbrance, or is held together with an appurtenant right that should be preserved, these should be included either in the recital or with the description in the schedule. The areas are set out in a tabular form, even if there is only one area described.

continued on next page

Parts of a gazette notice, continued

Execution

This shows the place and date where the notice was signed and the name of the person as detailed in the attestation clause.

References

This is the file reference and job number so that the gazette notice can be easily traced back to the originator.

30 General requirements for gazette notices

Incorporating more than one action

A Crown acquiring agency can draft a gazette notice that incorporates and gives effect to actions under more than one section of the PWA, or actions under other Acts. Sometimes it may be appropriate to incorporate a number of actions in one gazette notice to save the time and expense of processing separate notices for related parcels of land.

Publication of gazette notice

- (a) Once the gazette notice has been signed by LINZ, the Crown acquiring agency is responsible for arranging publication of the notice in the Land notices section of the *Gazette*.
- (b) The Crown acquiring agency should confirm the publication day and deadline for notices to be published. These details can be found at www.gazette.govt.nz.
- (c) The Crown acquiring agency is responsible for meeting the requirements of the *Gazette* office for publication. These requirements can be found at www.gazette.govt.nz.

Note: The *Gazette* can be viewed on the Department of Internal Affairs website at www.dia.govt.nz.

Registration of gazette notice

The Crown acquiring agency should register the notice with LINZ within one week of receiving the gazette extract from the Gazette office.

31 Gazette notices for declarations under section 20 of the PWA

Example of notice for declaration under s 20 PWA

Land Acquired for Police Purposes – Dowse Drive, Lower Hutt

Pursuant to section 20 of the Public Works Act 1981, and to a delegation from the Minister for Land Information, *[name]*, Land Information New Zealand, declares that, an agreement to that effect having been entered into, the land described in the Schedule to this notice is hereby acquired for Police purposes and shall vest in the Crown on the date of publication of this notice in the *New Zealand Gazette*.

Wellington Land District – Lower Hutt City

Schedule

Area	Description
654m ²	<i>Lot 11, DP 23456, All Computer Freehold Register WN12A/345, subject to building line restriction created by Transfer 456789.1.</i>

Dated at Wellington this ____ day of _____.

[name], for the Minister for Land Information

(LINZ CPC/xxxx/xxxxx)

32 Gazette notices setting land apart

Example of notice setting apart government work

Land set apart for police purposes - Dundas Street, Wellington

Pursuant to section 52 (1) of the Public Works Act 1981, and to a delegation from the Minister for Land Information, [name], Land Information New Zealand, declares the land described in the Schedule to this notice, to be set apart for police purposes on the date of publication of this notice in the Gazette, and to remain vested in the Crown.

Wellington Land District - Wellington City

Schedule

Area	Description
985 m2	Lot 34, DP 34567. All Gazette Notice A3456578.

Dated at Wellington this..... day of20xx.

[name] for the Minister for Land Information.

(LINZ CPC/20xx/xxxxx)

Requirements setting apart by local authorities

Where a local authority wants the Minister to execute a gazette notice setting apart land, the submission to LINZ should include:

- (a) a written request under s 52(4) of the PWA signed by the chief executive of the local authority, containing particulars of:
 - (i) the land affected,
 - (ii) the work for which the land is held, and
 - (iii) the work for which it is proposed the land be set apart.
- (b) a CSD being a survey office plan (SO) or deposited plan (DP), where only part of the land held for a local work is being set apart.⁴

Timing

Commonly, survey and gazetting may not take place for several years following construction of the works.

33 Matters affecting notices

Advice on the application of Part 4 of the PWA

Part 4 of the PWA covers matters following the gazetting of documents.

- (a) Section 53 states that Proclamations and declarations do not take effect until gazetted. This refers to Proclamations and declarations under the PWA or any former Public Works Act. Proclamations are issued under s 26; declarations are issued under s 20.
- (b) Gazetting other kinds of documents is usually called for under the section that authorises the document. For example, s 114 says that the Minister may 'by notice in the *Gazette*' declare land to be road. Some documents do not require gazetting; for example, certificates granting land to private owners under s 107(7), or compensation certificates.
- (c) The date when a Proclamation or declaration takes effect may be later than the date of the *Gazette*. Section 53 uses the words 'deemed to have taken or to take effect'. The date of taking effect is expressed in the document itself. The date when a gazette notice takes effect is generally the date of publication. A later date can be inserted in some documents; for example, s 114(3), if allowed for in the relevant section of the PWA.
- (d) It should be noted that s 41 of the Land Transfer Act 1952 provides for title to pass under a land transfer document only when it is registered against the title. This means that, if a notice vesting stopped road is gazetted under s 117, the RGL may expect the notice to be made subject to all encumbrances as at the time of registration. For example, if a mortgage is registered between the date of the *Gazette* and the date of registering the extract, an amendment to the gazette notice may be necessary.

continued on next page

Matters affecting notices, continued

Revocation of gazetted notices

- (a) A gazette notice can be revoked under s 54 of the PWA:
 - (i) in respect of a Proclamation taking land (s 26 of the PWA) or a declaration acquiring land (s 20 of the PWA), and
 - (ii) before the payment of any award of compensation, and
 - (iii) if the land, or part of it, is not required for the purpose for which it was acquired.
- (b) Under s 54(4) of the PWA, a person with an interest in the land can claim compensation for loss or damage suffered as a result of the Proclamation or declaration. In the case of a local work, this is claimed from the local authority (s 54(5)(b) of the PWA).
- (c) Section 54(6) of the PWA enables the revocation procedure to apply to Proclamations or declarations executed under any previous Public Works Acts.
- (d) There is also provision for amending or revoking documents under s 55 of the PWA. Some sections of the PWA have special provision for revocation of individual types of document. The effect of revocation under ss 54 or 55 of the PWA is retrospective to the date when the document was made and any registration is cancelled. The Crown acquiring agency should provide the RGL with provide a copy of the revocation notice.

continued on next page

Matters affecting notices, continued

Amending a notice (s 55)

- (a) Section 55 of the PWA deals with both amending and revoking documents found to contain any error in form or substance (unlike its earlier equivalent, s 330A of the Public Works Act 1928). Sometimes this power is used to revoke a document in part. It is much wider in its application than s 54 of the PWA and in that it can apply:
 - (i) to any document under the PWA; and
 - (ii) to amend:
 - (A) an error in form or substance, or
 - (B) an error in relation to the making or gazetting of the document, or
 - (C) to revoke the document for such errors.
- (b) The use of s 55 of the PWA is restricted to where there is an error. It cannot be used if a document has to be changed for any other reason. The error may be:
 - (i) in form (for example, words missing);
 - (ii) in substance (for example, the wrong land is described);
 - (iii) in relation to its making (for example, a prior step was overlooked such as obtaining a consent); or
 - (iv) in relation to its gazetting (for example, gazetted and vested before the new description is registered under s 117(5)).
- (c) A drafting error in a PWA notice should be amended under the authority of s 55 of the PWA.

continued on next page

Example of amending a notice

Amending a notice realigning road – Evans Bay Parade, Wellington

Pursuant to section 55 of the Public Works Act 1981, and to a delegation from the Minister for Land Information, *[name]*, Land Information New Zealand, hereby amends the notice dated 14 September 2004, realigning a road, published in the *Gazette* of 4 October 2004, No 173, page 3740 by deleting paragraph (c) (ii) and substituting the following:

'(c) (ii) The area described in the Fourth Schedule shall be amalgamated with the land in Computer Freehold Register WN34D/698, subject to memoranda of mortgage 664668.2 and 529994.5. '

Dated this day of20xx.

[name], for the Minister for Land Information

(LINZ CPC/20xx/xxxxx)

Minor misdescriptions in notices s 56

- (a) Section 56 of the PWA states that a minor misdescription does not invalidate documents.
 - (b) Section 56 of the PWA allows the RGL to accept a document with a small error if there is sufficient information to be certain as to which land is affected.
 - (c) Section 56 of the PWA applies only to the description of land or any interest in it and not, for example, to names or occupations of persons mentioned in the document. Unlike s 55 of the PWA, which applies to any document executed under the PWA, s 56 of the PWA only applies to Proclamations, Orders-in-Council, and declarations.
 - (d) Section 57(3) of the PWA allows the RGL to register a Proclamation or declaration despite errors affecting some of the areas. Previously the whole document would be rejected. Section 57(3) of the PWA obliges the RGL to register any Proclamation or declaration 'in respect of the titles to land validly affected'.
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Matters affecting notices, continued

Registration of notice (ss 57 and 58)

- (a) While s 57(1) of the PWA places responsibility on the Minister to 'cause' Proclamations and declarations to be registered, in practice, registration is usually arranged by the parties involved.
 - (b) Registration of a Proclamation or declaration brings the land in the deeds system under the Land Transfer Act 1952 if it was not previously (see s 57(2) of the PWA).
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Legalisation of roads

34 Overview

Legislation Sections 114, 115, and 119 of the PWA.

Land becoming road Land may become road under the PWA by:

- (a) taking the land for road compulsorily,
- (b) acquiring the land for road by agreement,
- (c) setting the land for road apart, or
- (d) declaring the land to be road under Part 8 of the PWA procedures.

How Part 8 of the PWA works

Section	Effect
114	Allows the Minister to declare land to be road and to vest it in the Crown or a local authority, if not already owned by them.
115	Provides for a certificate of consent to declare land to be road.
116	Authorises the Minister to stop roads.
117	Provides for the disposal of stopped roads.
118	Deals with the application of certain Acts to stopped roads adjoining water margins.
119	Deals with severed land. That is where a small piece of land is cut off from other land in the computer register when land is declared road under s 114 of the PWA.
120	Deals with the registration of roading actions.

35 Declaring land to be road (section 114)

Land held for a road

The definition of 'road' in s 43(1)(c) of the Government Roading Powers Act 1989 makes it clear that any land 'taken for a road' has the status of a road by statute. However, land held for a motorway is not legally a motorway, unless it is declared a motorway under s 71 of the Government Roading Powers Act 1989.

Declaring land to be road

It is the responsibility of the Crown acquiring agency or territorial authority seeking legalisation of road under s 114 of the PWA to obtain:

- (a) a CSD, approved by the Surveyor-General. In most cases an SO plan is used. If the SO plan is a copy of a coloured plan the copy should be in colour, a copy of the land parcel layout from Landonline's spatial window, and
 - (b) all the necessary consents required under s 114(2) of the PWA.
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Road legalisation and road stopping

Where the proposal to declare land to be road is part of a larger transaction that includes stopping or exchanging areas of existing road under ss 116 and 117 of the PWA (for example, a road realignment), the Crown acquiring agency or territorial authority needs to comply with the provisions of the *LINZS15002 Standard for Stopping or Resumption of Road*.

Consents required

The requirements for consents protect the interests of persons with an interest in the land. If the owners do not consent, they have objection rights under the PWA to the taking of land and under the Local Government Act 1974 to road stopping.

Note: Section 114 of the PWA is not limited to those situations where no consideration is paid for the consent of the registered interest holder.

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Declaring land to be road (section 114), continued

Consent of local authority

The consent of the territorial authority (see s 114(2)(h) of the PWA) should include:

- (a) either a full description of the land, or a cross-reference to the description on other consents or to an area schedule signed by Surveyor-General and attached to the consent,
 - (b) advice on whether the land is to be road, a service lane, or an access way,
 - (c) advice on whether the land is to vest in the territorial authority or the Crown, and
 - (d) the signature of the principal administration officer. A witness to the signature is desirable (the PWA does not require it). Alternatively, some councils use a resolution under seal.
-

Consents of the owners and mortgages

The written consent of the owner and any mortgagees should:

- (a) include a statement sufficient to define the land proposed to be declared road, and
 - (b) be signed and witnessed.
-

Consents of other persons

Section 114(2)(i) of the PWA requires the consent of 'all other persons who have any registered interest in the land,' (to be declared to be road) 'or any other interest disclosed by a register under the Land Transfer Act 1952 or the Deeds Registration Act 1908'. Although mortgagees account for most of this type of consent, it also extends to and includes lessees of the land to be declared to be road, parties having rights through easements, caveators, and persons with liens, and others.

Land under control of government department

If the land required is under the control of a government department, the Crown acquiring agency should approach that department to obtain the signature of its Minister, including:

- (a) the Department of Conservation, if the land is a public reserve or conservation area, or
 - (b) LINZ's Crown Property Management team, if the land is Crown land under the Land Act 1948.
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Declaring land to be road (section 114), continued

Declaring reserves to be road

Where a territorial authority proposes to declare a reserve subject to a reversionary right to the Crown to be road under s 114 of the PWA, and the land is 'Residual Crown Land' under the Waikato Raupatu Claims Settlement Act 1995, the Act requires that the land be first offered to Waikato-Tainui under a right of first refusal under that Act.

Certificate of consent s 115

- (a) Obtaining a gazette notice under s 114 of the PWA usually takes a number of months because of the time taken to obtain consents and the preparation of the required documentation. During this time the consents that were valid when first obtained, may become invalid through change in the land ownership, mortgages, or other encumbrances.
- (b) The certificate under s 115 of the PWA is similar to a compensation certificate (see s 19 of the PWA). Once a certificate of consent is registered against a title, notice is given that part of the land is to be declared as road. Section 115(4) of the PWA then excuses the Crown acquiring agency from obtaining consents in respect of that land, except from those persons who had a registered interest before the certificate was registered.

Example of gazette notice declaring land to be road

Land declared road – New Street, Wellington
Pursuant to section 114 of the Public Works Act 1981, and to a delegation from the Minister for Land Information, [name], Land Information New Zealand, declares the land described in the Schedule to this notice to be road and which shall vest in the Wellington City Council on the date of publication of this notice in the *Gazette*.

Wellington Land District – Wellington City

Schedule

Area	Description
432 m ²	Lot 12, DP 34567; shown as Section 1 on SO 23456 (part Computer Freehold Register WN99/888).

Dated at Wellington this..... day of20xx.

[name] for the Minister for Land Information.

(LINZ CPC/20xx/xxxxx)

36 Dealing with severed land (section 119)

Severed land s 119

- (a) If as a result of any land being declared road, any adjacent land that is severed from the rest of an owner's property may be taken by the Minister by a notice under s 119(1) of the PWA.
- (b) This can be done only when:
 - (i) the road severing the land in the title was declared road under s 114 of the PWA,
 - (ii) the severed area would become significantly more costly to retain at the same standard as previously, or significantly less useful to the owner, lessee, or licensee (s 119(1) of the PWA), and
 - (iii) consents have been obtained from the owner, lessee, or licensee, and of every other person having a registered estate or interest in the land (s 119(3) of the PWA).
- (c) In such situations, the Crown acquiring agency can:
 - (i) enter into an arrangement to vest the severed land in an adjoining owner (s 119(2)(a) of the PWA). The notice specifies a computer register in which the land is to be incorporated,
 - (ii) vest the land in the territorial authority (s 119(2)(b) of the PWA), or
 - (iii) vest the land in the Crown (s 119(2)(c) of the PWA).
- (d) Under s 119(2) the land will vest free from all reservations, restrictions, trusts, rights, titles, estates, or interests of any kind whatsoever, except as may be otherwise provided for in the notice.

The Crown acquiring agency should ensure that the land becomes subject to any registered encumbrance, lien or interest on the computer register in which the land is incorporated. It is important to bring down mortgages when land is to be amalgamated in one computer register. Otherwise it makes it difficult for a mortgagee to exercise their right of sale over the land in that computer register if this becomes necessary.

- (e) The circumstances in which s 119(1) of the PWA applies are similar to those set out in s 34(1) of the PWA. However, it leaves open the question of whose decision it is to finally determine whether those circumstances apply. In practice, disputes are not likely; the important point is that the owner is required to consent to the taking.