

Regulatory Reform Guide: Public Works Act 1981

Reform of the Public Works Act 1981

The Government's 'Going for Growth' programme needs infrastructure projects to proceed at an accelerated pace. The Government has publicly stated that infrastructure projects are currently delayed, citing complex and drawn-out processes for acquiring the necessary land as a key barrier.

Over the past month, Hon Chris Penk, the Minister for Land Information New Zealand, has announced a number of changes to (but not a full overhaul of) the *Public Works Act 1981* (the "PWA"). The changes will be implemented in (at least) two stages: the *Public Works (Critical Infrastructure) Bill* (the "CI Bill") will be released for public consultation in May 2025, and another amendment bill will be introduced to the House shortly thereafter (with public consultation to follow).

Some of the proposed reforms carry significant public implications, notably the trade-off between new compensation rights with weaker appeal options in the case of "critical infrastructure" acquisitions (being those projects listed in Sch 2 of the *Fast Track Approvals Act 2024*, and certain roads of national significance). Others are less controversial but more selective, raising the question of why certain gaps have been addressed while others remain. In the table that follows we consider if the Government has struck the Goldilocks balance to support its 'Going for Growth' programme, or if the changes go too far – or perhaps not far enough.

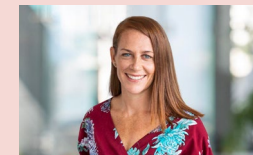
If you would like to talk in more detail about the reform, or have any questions about the land acquisition regime (including any projects you are involved in or acquisitions you are facing), please get in touch with one of our experts:



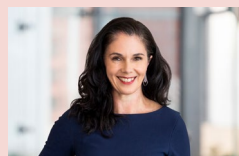
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CI Bill


 Landowners whose land is taken for 'critical infrastructure' projects can get upfront payments of up to \$242,000 per deal, made up of:

- An incentive of 15% of the value of the land (capped at \$150,000 for land valued at \$1 million or higher) for landowners who agree to sell their land before a notice of intention is issued; and
- A recognition payment of 5% (capped at \$92,000 for land valued at \$1.84 million or higher), in recognition of the sacrifice the landowners are making in participating in the accelerated process.



The changes are targeted at agreements being reached during the window before a 'notice of intention' is issued. But will landowners be able to obtain an independent valuation and conduct a fair negotiation process in the time available? If not, can "advance agreements" (an agreement to sell the land, with the difference in value being progressed to the Land Valuation Tribunal separately) continue to be used effectively?

Limiting the new payments to only "critical infrastructure" projects may create a fragmented and inconsistent system. For example, it is unclear if these new incentives will be in addition to or replace the existing solatium payments under the PWA (which will continue to apply in other cases).


 Under the CI Bill, landowners who object to their land being taken (rather than its value) will need to appeal to the Minister or local authority, instead of the Environment Court as they could under the PWA.



The intended purpose of the change is to speed up objections to avoid lengthy Court processes and expedite project delivery. But it will disadvantage landowners by removing the Environment Court's independent review, instead requiring objections to be decided by the same authority that approved the acquisition, creating a power imbalance.

However, the rights for landowners to challenge the value of their land to be paid remains (except potentially where the new incentive payments are received), as does the right to seek judicial review of the authority's decision to acquire the land where the landowner claims the land acquiring authority's decision is 'unreasonable'.

Subsequent amendment bill

 It is proposed that government agencies like NZ Transport Agency Waka Kotahi (as well as Transpower, an SOE), will be empowered to enter into acquisition agreements with landowners (as opposed to only the Minister for Land Information New Zealand or local authorities).

Government agencies will be able to collaborate to acquire land for connected public projects, instead of buying separate pieces of land on their own.


Both government agencies and local authorities will also be able to buy land to relocate existing infrastructure like powerlines or pipes, that are in the way of new public work projects.



The proposed changes will logically make it so that the people who negotiate land deals are the same ones who can finalise them. Under the PWA landowners might negotiate with one group, but a different authority may sign the final agreement and acquire the land.

It is unclear whether government agencies and local authorities will also be able to collaborate with each other to acquire land for connected public projects.


The amendment bill is not set to change the types of projects land can be acquired for (it will still be restricted to 'public works'), the definition of 'public work', or the requirement that the land must be offered back to the previous land owner if it is no longer needed for a public project.

 Currently, if a landowner wants to dispute the compensation amount for their land, they must file a claim with the Land Valuation Tribunal, which can slow down the acquisition process. Under the reform, parties must first try to resolve compensation disputes through alternative methods like mediation before going to the Land Valuation Tribunal.




In theory, this offers the opportunity for a quick resolution, but in practice it might actually delay things if the parties aren't motivated to settle.

Landowners will still face problems when their losses don't fit into specific compensation categories in the PWA, or when multiple parties, like landowners and tenants, have different interests in the same property.

 Currently, the Environment Court, when reviewing objections to land being taken, focuses on how the acquiring authority made its decision. The reform will clarify what the Environment Court can consider, with a 'renewed focus' on property rights (except in the case of land taken for 'critical infrastructure' projects).



This change may reduce the overlap between the current rights to object to the Environment Court under the PWA, and the Notice of Requirement application for a Designation to authorise the public works project under the *Resource Management Act 1991*.

 The reform will fix a discrepancy in the current PWA which results in Māori freehold land being undervalued (compared to other land types).



While this change is helpful, the reform will not introduce a requirement to obtain landowner consent for acquiring Māori freehold land under the PWA. However Minister Penk wants to adjust the PWA's processes to better acknowledge the communal nature of Māori land ownership so that compensation can be given for all separately owned dwellings on the land.