Regulatory Impact Statement: Accelerating Critical Infrastructure Delivery

Coversheet

Purpose of Document	
Decision sought:	Analysis to inform Cabinet decisions on policy changes to develop an accelerated land acquisition process to facilitate the delivery of critical infrastructure.
Advising agencies:	Toitū Te Whenua Land Information New Zealand; Ministry of Transport
Proposing Ministers:	Minister for Land Information; Minister of Transport
Date finalised:	30 October 2024

Problem Definition

New Zealand has an infrastructure deficit. There is a growing demand to develop critical infrastructure, including transportation networks, at a faster pace to support economic growth and productivity.

The Public Works Act 1981 (PWA) is a critical mechanism for acquiring and managing land to support public infrastructure projects. Delays in the acquisition of land may risk the timely initiation and completion of critical infrastructure projects, result in significant project escalation costs, and delay the public benefits of these projects from being realised.

Executive Summary

The PWA provides powers for the Crown or a local authority to acquire land compulsorily or by agreement for delivering public works, such as roads, schools, defence works, justice facilities and water services. It sets out the process that must be followed to ensure the rights of private landowners are considered and compensation is paid where land or an interest in land is taken.

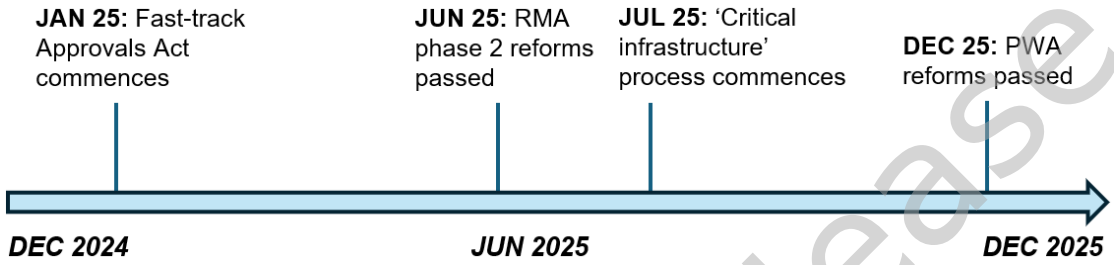
Processes to acquire land under the PWA can be lengthy if there are objections, judicial reviews, or appeals to be resolved. There is an opportunity reduce the risk of delays caused by objections under the PWA to facilitate the timely delivery of critical infrastructure projects, increase certainty, and enable the public benefits of these projects to be realised earlier.

The public policy objective is to streamline the land acquisition process for critical infrastructure projects to support project delivery timeframes and meet New Zealand's urgent infrastructure needs. In the context of this RIS, '**critical infrastructure'** means projects listed in Schedule 2 of the Fast-track Approvals Act (once enacted) where the PWA applies, and Roads of National Significance as set out in the *Government Policy Statement on land transport 2024-34*.

The Government is separately reviewing the PWA with a focus on removing barriers to facilitate the delivery of public infrastructure [CAB-24-MIN-0203.01 refers], with legislative amendments scheduled to come into force in December 2025. In addition, the Government

is also progressing the Fast-track Approvals Bill to enable a fast-track consenting process for infrastructure and development projects that are considered to have significant regional or national benefits, scheduled to come into force by in early 2025. The second phase of potential Resource Management Act 1991 (RMA) reforms is also scheduled to be passed in mid-2025.

The proposed options in this RIS would be made in addition to these wider system changes, and would deliver more immediate amendments to the PWA in advance of the wider review. A high-level timeline is outlined below, illustrating where the proposal sits within wider reforms across government (based on current indicative timeframes and subject to House processes):



Government intervention is required as existing objections processes may result in significant project delays and associated costs for the delivery of critical infrastructure. While objections to the Environment Court are not common, the increased timeframes and escalating costs that can be caused can have a significant impact on the effective and efficient delivery of projects. Larger and more expensive critical infrastructure projects face greater risk as cost increases compound over time, and at a much larger scale. There is a need to make these changes separately, and in advance of the wider amendments to the PWA, to respond swiftly to New Zealand's critical infrastructure needs.

Ministers have directed officials to undertake policy work to enable a faster land acquisition process that supports critical infrastructure delivery through amendments to the PWA. Ministers agreed that, under this process, the right to object the Environment Court to the taking of land under section 23 of the PWA should be removed [BRF 25-081 / OC241066 refers]. The options assessed in this RIS have been developed in this context.

The issue in this RIS: establish the appropriate process under the PWA to minimise the potential for delays caused by landowner objections to the Environment Court, to avoid project cost escalation caused by PWA-related delays and to support the delivery of critical infrastructure projects. We have assessed the following options:

- **Option One – Status quo:** landowners have the ability to object to the Environment Court to the taking of land for all PWA projects on the specific grounds set out in section 24(7) of the PWA (appeals on point of law only). Judicial review is also available.
- **Option Two:** Remove the right for landowners to object to the Environment Court for projects within scope. Judicial review remains available for these projects [*preferred option*].
- **Option Three:** Remove the role of the Environment Court as the body for hearing objections, with objections heard by a different body. Judicial review remains available.

The preferred option is **Option Two**, as this would provide the greatest possibility of achieving the policy objective, provide project certainty for developers, and align with related decision-making processes. This was a finely balanced decision.

Officials estimate that approximately 33 projects may be eligible for the accelerated process (based on the scope agreed by Ministers and indicative list of fast-track projects). All other projects that involve public works would be subject to the status quo PWA process.

The preferred option will directly impact the ability of a small number of landowners to object under the PWA to the taking of their land by compulsion. There will still be the ability to seek a judicial review. The fundamental trade-off with this option is how the potential for decreased project cost escalation, and the possible public benefits that may be realised, are balanced against the direct impacts on the rights of private landowners.

A statutory review period for this legislation would also provide an appropriate safeguard on the power to ensure that it is available only as long as necessary to achieve the policy objective, while considering the impacts on certain groups.

While officials have not sought views from the public, there is likely to be strong public interest in the options as they impact private property rights. In particular, potential changes to landowners' ability to object to the taking of land for projects that are within scope are likely to be controversial.

Limitations and Constraints on Analysis

Ministers directed officials to prepare this analysis under urgent timeframes, with the intention of presenting options to Cabinet in October 2024. This has limited the depth at which options have been developed and analysed. Previous decisions and direction from Ministers have also narrowed the scope of options considered. This analysis has also been developed on the assumption that the Fast-track Approvals Bill and reforms to the Resource Management Act 1991 will be successful in their current form.

Benefit cost assessments for the 33 public works projects within scope were not available and there was a lack of quantifiable data regarding the public nature benefits of projects. It has not been possible to assess whether there would be net benefits to society from accelerated delivery. The main justification for acceleration is therefore related to reducing delay costs caused by PWA-related objections, rather than early delivery of net benefits.

No reliable data was available on the timing impacts of Environment Court proceedings or judicial review in the High Court. These impacts are significantly influenced by the willingness of the parties to settle, and whether there is an intention on the part of the applicant to use litigation as a delay tactic. This has constrained the analysis in relation to timeframe impacts of court processes.

Officials were directed to undertake limited consultation due to the sensitivity of potential policy changes, including implications for private property rights. No public consultation has occurred on these proposals so far. Officials undertook targeted consultation with key infrastructure agencies (including NZ Transport Agency Waka Kotahi, Ministry for the Environment, the Treasury, and Te Waihanga New Zealand Infrastructure Commission) to inform the development of these options.

We note that the proposals will go through a Select Committee process and the public will have an opportunity to submit their views at that stage, while acknowledging that this opportunity is limited and late in the policy development process.

Changes to the Cabinet paper have been made to include premium payments to landowners in legislation and clarifying the process to allow for natural justice for affected landowners. These changes will be considered in supplementary analysis.

Responsible Manager(s) (completed by relevant manager)	
Amanda Moran *Head of Strategy, Policy and Ministerials* **Toitū Te Whenua Land Information New Zealand**  *30 October 2024*	*Ruth Fairhall* *Deputy Chief Executive Policy Group* **Ministry of Transport**  *30 October 2024*

Quality Assurance (completed by QA panel)	
Reviewing Agency:	Toitū Te Whenua Land Information New Zealand; Ministry of Transport; Ministry for Regulation.
Panel Assessment & Comment:	The RIS has been reviewed by a quality assurance panel with members from LINZ, MOT and the Ministry for Regulation. The Panel considers that it 'partially meets' the Quality Assurance criteria for the purpose of informing Cabinet decisions. The Panel notes that the RIS is complete and follows clear logic. The objectives, evidence, and options available are well set out. The basis for selecting the preferred option is clearly set out, noting that the final decision was finely balanced. Key assumptions and constraints affecting the analysis are disclosed. These include limitations in the evidence base, inter-dependencies with other legislative reforms, past decisions, and the timeframes set by Ministers. Consultation to the degree required to meet the quality assurance criteria has not been able to be undertaken due to the timeframes set by Ministers. Consultation would have enabled stronger options analysis as greater levels of information would have been available for consideration. The Cabinet paper includes proposals relating to premium payments and a process allowing for landowners to respond to the proposed taking of their land. However, these proposals have not been analysed in the RIS and therefore Cabinet's impact analysis requirements have not been met. The Ministry for Regulation and LINZ have agreed that supplementary analysis will be prepared and provided to delegated Ministers when they make further policy decisions.

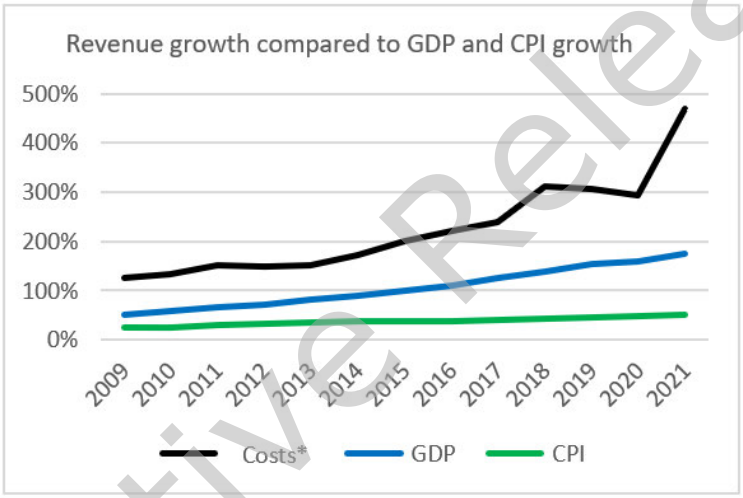
Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

Overall context

1. Critical infrastructure development is a top priority for the Government, as infrastructure investment can drive significant improvements in economic growth, productivity, resilience, and public well-being. A strong infrastructure network enhances not only the reliability of essential services but also health and safety outcomes for communities. The Government's focus includes substantial investment in large-scale projects, many of which are increasingly vulnerable to rapid cost escalations.

2. Transport projects, in particular, are seeing costs rise at rates that outpace both general inflation (CPI) and growth in GDP, as shown below.



** Revenue is being used as a proxy for costs in relation to National Land Transport Fund and Crown funding for transport projects*

3. These rising costs create a widening gap between the public's ability to pay and the financial demands of project completion. Any delay in the delivery of these projects, particularly due to Public Works Act (PWA) processes, result in inflated costs and diminished returns on investment.

4. Avoiding unnecessary delays is therefore essential to maximise the public value of these infrastructure initiatives. Each delay not only adds to the overall cost but also pushes the realisation of public benefits further into the future. As projects grow in scale and complexity, the risk of significant cost escalation without corresponding increases in benefits becomes more pronounced. In short, the longer these projects are delayed, the less value they offer relative to their rising costs.

5. Accelerating project timelines through streamlined processes and efficient decision-making can ensure that the public enjoys the benefits of these investments sooner and at a lower financial burden. This is particularly crucial for large-scale, high-cost projects, where delays magnify costs and erode the projected return on investment. By minimising bottlenecks and ensuring faster project approvals, the Government can reduce the overall economic impact, avoid compounding inflationary pressures, and deliver critical infrastructure when it is most needed.

6. We have faced the problem of having a lack of quantified data regarding the nature of public benefits of these eligible projects. This has been a key constraint on our analysis.

7. A second constraint has been the inability to separate out the delays caused by different processes – that is, it is hard to see where it is the PWA solely that causes the delay, or whether the delay has been caused by an RMA process of some other legislative process.

8. Many public works can't be built without affecting private landowners. The PWA is a critical mechanism for acquiring land to support public infrastructure projects. Most of the land that is acquired under the PWA is done so by negotiation with landowners. LINZ data indicates that in the last 25 years, the Crown has acquired over 7,500 interests in land (both freehold and lesser interests such as easements) under the PWA, over 95 percent of which were by agreement.

9. If a property cannot be acquired by agreement, the Crown or a local authority can acquire land by compulsion. People with an estate or interest in land can object to the taking of their land if the Crown commences a compulsory acquisition process (under section 23(3) of the PWA). Landowner objections to compulsory acquisition of their land are heard by the Environment Court.[1] The PWA sets out the specific matters the Environment Court may consider, which are directed at testing whether all alternatives for the project have been considered, and confirming that it is "fair, sound and reasonably necessary" to take the land. Any recommendations of the Environment Court are binding on the Minister or local authority. The general right of judicial review of the decision in the High Court is also available.

10. Timeframes for acquiring land vary according to the negotiation circumstances. The PWA requires a minimum of three months of good-faith negotiations after a first 'notice of desire' to acquire land is issued. If agreement cannot be reached, the land can then be compulsorily acquired.

11. Where a landowner objects, the process to resolve objections and appeals can be lengthy and create uncertainty for all parties. While this is uncommon, a single objection is sufficient to delay a project and can have a significant impact, especially if the objection is made to the Environment Court. This is a particular problem for linear infrastructure such as transport networks, which require acquisition of a large number of properties.

12. Environment Court cases can vary depending on the complexity of the issues, the number of parties involved, and the preparation of evidence, and a typical case could take several months to reach a conclusion. Once a hearing begins, the Court usually provides a written decision within three months. However, the overall process, including pre-hearing procedures like mediation and evidence preparation, can extend the timeline. This creates delays, extra costs, and uncertainty for projects.

13. While relatively few cases are subject to objection, the increased timeframes and escalating costs that can be caused by an objection to the Environment Court can be a significant barrier for agencies and entities to deliver projects effectively and efficiently. Delays caused by objections not only create direct legal costs, but also extend

[1] The Environment Court considers, amongst other things, whether it would be fair, sound and reasonably necessary for achieving objectives of the Crown or local authority for land to be taken (s24(7) of the PWA).

construction timelines and force projects to incur wider additional costs, such as escalating prices of materials, plant, and labour.

14. Larger and more expensive critical infrastructure projects face greater risk as construction cost increases compound over time, and at a much larger scale. For example, the Mt Messenger Bypass project in Taranaki experienced cost increases of $37 million in the 2023-24 construction period as legal objections prevented contractors from being able to access critical areas of the site. 60% of the original $280 million project budget was spent without any actual road construction being completed due to escalating costs due to delays.

15. Case studies prepared by NZTA outlining the impact PWA objections, RMA consents and LTMA funding considerations can have on land acquisition timeframes are attached at **Appendix 1.** These illustrate the potential time savings if the PWA, RMA and LTMA processes are all optimised. Based on these case studies, NZTA estimate that the removal of objections, in combination with planning consent and funding considerations may reduce project construction timeframes by 3-5 years. These case studies are delays caused by the result of three different processes and do not demonstrate the time savings of any PWA amendments. NZTA has been unable to advise of the time delay caused by the PWA alone.

16. [redacted]

Previous decisions

17. The options set out in this RIS are framed in the context of the Government's previous decisions in relation to this policy issue, as well as direction from Ministers.

18. In June 2024, Cabinet agreed to initiate a review of the PWA to facilitate the Government's delivery of public infrastructure [CAB-24-MIN-0203.01 refers]. Cabinet also directed officials to consider whether tabled amendments on reducing the time taken to acquire land under the PWA [redacted]

19. In July 2024, Cabinet directed officials to consider any process or other improvements for corridor specific legislation,[2] including using premiums to incentivise the sale and purchase of land and amending legislation to only allow appeal rights on valuations where the route has been designated to speed up land acquisition [CBC-24-MIN-0073 refers].

20. In August 2024, Ministers Brown and Penk directed officials to undertake policy work to enable a faster land acquisition process that supports critical infrastructure delivery through amendments to the PWA [BRF-25-043 refers]. Ministers also agreed that, under this process:

    a. the right to object the Environment Court to the taking of land under section 23 of the PWA should be removed for projects in scope, but that the ability for the Land Valuation Tribunal to determine compensation remains,

[2] In the infrastructure context, 'corridor' refers to a linear area for project development (eg, roads, railways, pipes).

b. amendments will only apply to agencies that can currently use the PWA to acquire land,

c. amendments should not apply to the taking of Māori land or land within the common marine and coastal area, and

d. the specified projects that would be eligible to access the accelerated process (outlined under 'scale of the problem' section below).

Development of the status quo

21. The Government is making wider changes to enable infrastructure development. The review of the PWA is ongoing, with amendments scheduled to come into force in December 2025. The Fast-track Approvals Bill, currently before Parliament (scheduled to come into force in early 2025), will create a fast-track consenting process for projects that are considered to have significant regional or national benefit. An eligible project will be considered by an expert panel for a maximum of six months. If a landowner objects to the taking of their land for a project approved by the panel, they can object to the Environment Court using a modified process under the PWA as set out in Schedule 11 of the Bill.[3]

22. If the ability to object to the Environment Court (status quo) is unchanged, critical infrastructure projects that may be subject to a fast-track consenting process may experience delays due to the owner objecting to the compulsory acquisition of their land. This may disrupt delivery timeframes for projects that have been identified as a priority for the Government and potentially limit the effectiveness of the fast-track process.

23. It is possible that legislative amendments could be made through the ongoing review of the PWA. However, this analysis does not aim to pre-empt the outcome of that review (which will consider a wider range of issues relating to acquisition and compensation). Additionally, the timeframes for legislative amendments through the PWA review could potentially delay the initiation of projects, and create uncertainty for developers, if amendments relating to land acquisition are made at a later date.

24. We have identified non-legislative options that could help reduce timeframes to reach agreement and prevent delays. These include providing operational policy guidance on offering premium payments to landowners to incentivise early agreement, and negotiating for land acquisition at the same time as obtaining a designation.[4] These can occur now via operational changes under the PWA and do not require legislative change.

25. The Resource Management Act 1991 (RMA) is also currently under review. Notably, the second phase of potential RMA reforms will aim to improve the efficiency and effectiveness of the system, with legislation scheduled to be passed in mid-2025. While the details or extent of these reforms are not yet known, amendments to the RMA may affect the feasibility or implementation of these options.

[3] Currently under the Bill, the Environment Court may accept any determination of Ministers about consideration of alternative sites etc in relation to the notice of requirement.

[4] A designation is a permission provided under the RMA which authorises land use for a public work or a project that is undertaken by a requiring authority. A designation is included in a district plan. Designations will generally lapse after 5 years if they are not given effect to. But if the requiring authority has given effect to the designation, it persists indefinitely.

What is the policy problem or opportunity?

26. The overarching policy problem is that the right for landowners to object to the compulsory acquisition of their land, and the objection process itself, can lead to significant delays and cost overruns. While objections are relatively uncommon, a single objection to the Environment Court can have significant impacts on project timeframes and budgets due to the potential for cost escalations caused by delays (eg, land, materials, labour). This process can also create uncertainty for developers and agencies/entities using the PWA, impacting infrastructure planning and investment.

27. There is an opportunity to create an accelerated process under the PWA for critical infrastructure projects, with the aim of reducing project timeframes and the potential for delays and cost escalations by removing the ability for landowners to object to the taking of the land. This would also enable the public benefits of these projects to be realised earlier at lower cost.

Scale of the problem

The options will be limited to critical infrastructure projects

28. The options aim to address New Zealand's urgent critical infrastructure needs. Projects would need to meet a high threshold to be subject to the accelerated land acquisition process. Ministers have agreed that the projects within scope will be:

    a. projects listed in Schedule 2 of the Fast-track Approvals Act, and

    b. Roads of National Significance as identified in the Government Policy Statement on land transport 2024-34 (that are not included in Schedule 2 above).

29. All other projects that involve public works would be subject to the status quo PWA process.

30. The options would only apply to public works, carried out by agencies or entities that can currently use the PWA to acquire land,[5] and will not apply to the taking of protected Māori land or the land in the common marine and coastal area (as agreed by Ministers).

31. Based on this scope, officials estimate that approximately 33 projects may be eligible for inclusion in the accelerated PWA process. This is based on the project applicants that submitted they may need to use the PWA under the fast-track process, as well the 17 Roads of Significance projects.[6] We note this is based on the current draft Schedule 2 project list that was publicly released in October, and that the final project list may be subject to change.

32. Depending on final project decisions, NZ Transport Agency Waka Kotahi (NZTA) estimate that it will need to acquire approximately 500 properties for Roads of National Significance that are due to commence construction in the next three years.

33. Considering the counterfactual, the accelerated process may be implemented up to approximately six months earlier than amendments that may otherwise be made through

[5] The Crown or a local authority (as defined in section 2 of the PWA and network utility operators who are requiring authorities under section 186 of RMA.

[6] The total number may be subject to minor change as the Government Policy Statement on land transport states that 'further Roads of National Significance may be added over time'.

the wider review of the PWA but this assumes that consenting and funding constraints can also be concurrently be addressed.

The proportion of land acquired by compulsion is low

34. While the process to acquire land under the PWA can be lengthy where there is an objection, most land for public works is acquired by agreement.[7] As a result, landowner objections are uncommon. Only 12 objections to compulsory land acquisition by the Crown were made in the last five and a half years, and not all of these resulted in the full objection being completed (as an owner may have withdrawn their objection if they subsequently reached agreement with the Crown).

35. While the volume of objections may be low, the potential impact on project costs and delivery timeframes, and wider public benefits that would be forgone due to delays caused by objections can be significant.[8] Larger projects face greater risk, both in terms of total dollar value of any one-off percentage cost increases, as well the cumulative impact over time.

36. Delivery agencies have advised that a single or small number of landowner objections can have a significant impact on project delivery timeframes, particularly where the acquisition of particular parcels of land are critical to a project (for example, linear transport projects). Case studies outlining the combined impact of objections, planning processes and funding constraints on project timeframes are attached at **Appendix 1** for reference. These case studies do not distinguish PWA time delays from other delays caused by the RMA and other processes. The PWA time delays cannot easily be isolated from the others.

Constitutional issues

37. There are legal and reputational risks associated with these options. Proposals relating to compulsory acquisition powers raise significant constitutional and legal issues, particularly in relation to the natural justice rights of landowners. There has been an ability to object to a compulsory land acquisition in New Zealand since at least 1894, and the protection of private property rights is deeply embedded in New Zealand law and society.

[redacted]

[7] The Crown has acquired over 7,500 interests in land under the PWA in the last 25 years, over 95 percent of which were by agreement.

[8] A notable recent example is the Mount Messenger bypass project, which was subject to significant delays due objection processes.

[9] Examples include the Canterbury Earthquake Recovery Act 2011, and the Greater Christchurch Regeneration Act 2016.

[redacted]

39. We note that landowners would retain the right to judicially review the process used to acquire land. In a judicial review proceeding, the High Court considers matters similar to those considered by the Environment Court in an objection hearing, although the focus of an Environment Court objection is limited to the specific grounds in s 24(7) of the PWA. [redacted]

40. The ability to claim compensation in the Land Valuation Tribunal would also remain. The Land Valuation Tribunal process does not affect acquisition timeframes, as it takes place after acquisition.

Engagement with iwi/Māori

41. We have not engaged with iwi/Māori on the options considered in this RIS (as part of the broader direction to limit public consultation on this policy issue).

42. Māori land,[11] and land that is part of the common marine and coastal area, will be excluded from the accelerated acquisition process for critical infrastructure and would need to follow the current process under the PWA (as agreed by Ministers).

43. Māori have a distinct and special connection to the land and may be disproportionately impacted by the proposed options in comparison to other landowners. Matters relating to compulsory acquisition are of particular significance to Māori, which has been recognised by Te Ture Whenua Māori Act 1993. We note that previous reviews of the PWA have reflected a considerable interest in enhancing the protection of the property rights of Māori landowners.[12]

Impacted groups

44. In addition to the impacts on iwi/ Māori noted above, private landowners are the primary impacted group as the right of a property owner to object to the taking of land is removed for certain projects. Having land taken for a public work can also be challenging and stressful for landowners.

45. Tenants and lessees who have an estate or interest in a property will also be impacted by these proposals.

What objectives are sought in relation to the policy problem?

46. The public policy objective is to streamline the land acquisition process for critical infrastructure projects to support project delivery timeframes and meet New Zealand's urgent infrastructure needs. The following outcomes are also sought:

    a. delays and associated costs in acquiring land for public works are reduced,

    b. new processes work alongside the Fast-track Approvals Act (once enacted), and

[11] Defined as protected Māori land under the PWA, which has the same meaning as section 11 of the Infrastructure Funding and Financing Act 2020.

[12] LINZ undertook a significant review of the PWA between 1988-2003, however this this did not result in legislative amendments.

c. public trust and confidence in the acquisition process is maintained.

47. The proposed options also aim to support the commitment expressed in the Speech from the Throne relating to the Government's priority to:

    a. implement a fast-track one-stop-shop established for the consenting and permitting process for regional and national projects of significance,

    b. invest in better transport infrastructure including progressing new Roads of National Significance, and

    c. to lift New Zealand's productivity and economic growth.

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

48. We have used the following unweighted criteria to assess the options against our objectives:

Reduced timeframes	The option is effective at reducing the timeframe for land to be acquired, if the need for compulsory acquisitions arises.
Alignment with related decision-making	The option supports wider decision-making processes that aim to facilitate the delivery of critical infrastructure (in particular, the fast-track consenting process and RMA).
Maintenance of public confidence	The option does not significantly diminish public trust and confidence in the land acquisition process under the PWA.
Feasibility	The option can be easily implemented to achieve the policy objective.

What scope will options be considered within?

49. The scope of options identified in this RIS will be considered within the previous policy decisions by Cabinet and direction from Ministers (outlined in section 1 above). Other operational improvements, such as the use of premium payments to incentivise landowners to reach agreement early, will be identified and implemented separately, outside of legislative amendments.

50. Operationally, premium payments can already be offered to landowners to incentivise the sale of land (ie, legislative change is not required). LINZ (alongside NZTA and Ministry of Transport) is developing new guidance for agencies which will outline how premium payments may be applied.

Experience in comparable jurisdictions

Right and ability for landowners to object

51. Most comparable jurisdictions allow landowners some ability to object to the taking of their land. However, this can vary significantly depending on the nature and urgency of the project.

52. Some comparable jurisdictions don't allow objections if the land is needed urgently. The Australian Commonwealth legislation[13] states that where there is an urgent necessity for the acquisition, and it would be contrary to the public interest for objections to be allowed, the Minister may remove this right (although this is used very rarely). In Alberta, where the Lieutenant Governor in Council is satisfied that the land is urgently required, they may direct that an acquisition proceed without inquiry. In British Columbia, objections are not allowed for land that is being acquired for a linear development (ie, roads, railways, power transmission lines).

53. In New South Wales and Victoria, there is no right to object to the taking of land under their land acquisition regimes. However, there is a right for the landowner to be heard at the project planning stage (similar to the designation process under the Resource Management Act 1991). In Singapore, a landowner can only object if they disagree with technical aspects of how the land has been identified in an acquisition plan (for example, the extent to which they own the defined area or the area of land being taken).

Hearing of objections and appeals

54. New Zealand is unique compared to other jurisdictions where objections are heard through a court process (with the ability to appeal to a higher court). Historically, landowners could object to a compulsory acquisition by writing to the Minister or local authority exercising the power. In 1981, this moved to a judicial process through the Planning Tribunal (now the Environment Court) to avoid the Executive being a judge in its own cause.

55. Many comparable jurisdictions have their objections heard by a Minister or other body. In the United Kingdom, objections are considered by hearing or written submissions to the Minister, who then appoint an independent inspector to act on their behalf. In Ontario, objections are heard by a Tribunal but depending on the project, there may be specific legislation that limits hearings and replaces the Tribunal with a Ministerial process.

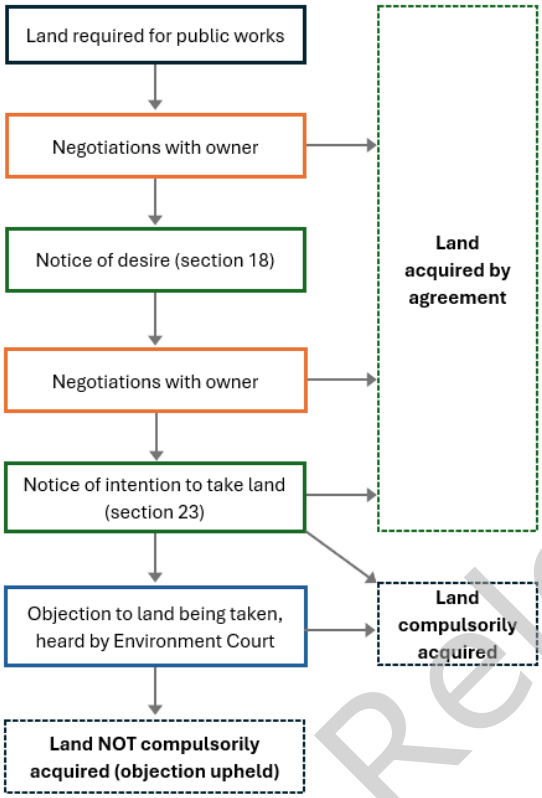
56. Some jurisdictions retain the ability to appeal to a court after an alternative body has considered an objection. Under the Australian Commonwealth legislation, the affected party may appeal the Minister's decision to a Tribunal for review. The Tribunals decision is non-binding, and this right can be removed within their Pre-Acquisition Declarations.

Current objection process under the PWA

57. The proposed options would make amendments to the PWA to remove the right to object to the Environment Court at the section 23 stage (ie, when a notice of intention to take has been issued, but before the land has been taken). The existing process that the options will be considered within is outlined below:

[13] Section 24 of the Lands Acquisitions Act 1989.

Diagram 1: Status quo PWA acquisition process



Options considered

58. This section outlines the options that were considered. These are:

- **Option One – Status quo:** Landowners have the ability to object to the Environment Court to the taking of land for all PWA projects.
- **Option Two:** Remove the right for landowners to object to the Environment Court for projects within scope.
- **Option Three:** Remove the role of the Environment Court as the body for hearing objections, with objections heard by a different body.

Option One – Status Quo

59. The status quo (landowners have the ability to object to the Environment Court[14] to the taking of land for all projects) would not address the policy objective and would not support the Government's wider infrastructure commitments. This process is outlined in diagram 1 above for reference.

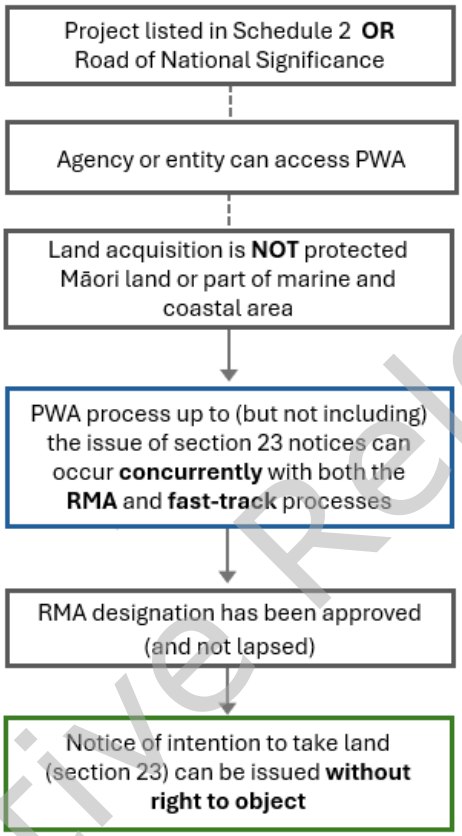
60. This RIS assumes that the status quo would also include the successful passage of the Fast-track Approvals Act and reforms to the RMA, as well as updated guidance issued by LINZ in relation to offering premium payments to landowners.

[14] Schedule 11 of the Fast-track Approvals Bill modifies the process under the PWA to take or deal with land. While a landowner can still object to the Environment Court, the Court may accept any determination of Ministers about consideration of alternative sites.

Option Two – Remove the right for landowners to object to the Environment Court for projects within scope.

61. Option Two would give effect to the direction from Ministers (to remove the right to object the Environment Court to the taking of land) by removing the right for landowners to object for projects within scope. An overview of how this process would work is outlined in the diagram below:

Diagram 2: Option Two accelerated land acquisition process



62. Option Two allows for negotiation under the PWA land acquisition process and RMA designation for land to occur concurrently (as is presently the case),[15] while removing the right of the landowner to object to the taking of land when they are notified that it will be taken at the section 23 stage. Under this concurrent process:

    a. Schedule 2 projects in the Fast-track Approvals Act (once enacted) would be referred to an expert panel for decisions on consents and designations. At that point, the project applicant could choose to either:

        i. opt-in to the accelerated process (ie, exclude objections), or

        ii. continue to use the fast-track Schedule 11 process if there are objections.

    b. Roads of National Significance projects will be able to prepare the Notice of Requirement at the same time that they undertake the PWA land acquisition process (such as negotiations, investigations, valuations, offers) with landowners.

[15] A designation is a permission provided under the RMA which authorises land use for a public work or a project that is undertaken by a requiring authority. A designation is included in a district plan. Designations will generally lapse after 5 years if they are not given effect to. But if the requiring authority has given effect to the designation, it persists indefinitely.

c. Once designation is gained, both Schedule 2 listed projects using the accelerated process and Roads of National Significance projects can proceed to the section 23 stage (with no ability for objections).

[redacted]

64. [redacted]

65. While landowners would not have the right to object to the compulsory acquisition of their land, they will still have the right to be involved in the consent process (and can object to the project at that stage). Objections during the consent process are often easier for agencies to address, as this occurs earlier during development when there is more flexibility to reconsider aspects of the project. The ability to have compensation claims heard by the Land Valuation Tribunal (after land acquisition has occurred) would remain, where a property owner is not opposed to the project itself, merely the levels of compensation.

66. To provide flexibility (depending on the nature of the project) and autonomy to agencies, we recommend that there is an 'opt-out' provision to provide the ability for agencies to use the standard PWA process rather than an accelerated option. There may be genuine grounds or circumstances where an agency may not wish to use the accelerated process (for example, an agency may see more prospect of swift resolution using the mediation processes available through the Environment Court).

Option Three - Remove the role of the Environment Court as the body for hearing objections, with objections heard by a different body

67. Option Three would give effect to the direction from Ministers by removing the role of the Environment Court as the body for hearing objections. Landowners would have the ability to have their objection heard by a different body outside of the court process (similar to arrangements in the UK and Ontario).

68. This option assumes that the court process, rather than the right for landowners to object, has a significant impact on project timeframes. A well-resourced, purpose-built entity could resolve objections more quickly than the Environment Court. [redacted]

69. This option aims to provide for a balanced approach where landowners would have an opportunity to raise concerns and exercise their property rights through a forum that may

not result in significant delays. This approach may also provide a more accessible avenue for landowners without having to navigate a costly court process.

70. This option would follow the same process outlined in diagram 1 (status quo process) with the role of the Environment Court replaced after a notice of intention to take land (section 23) has been issued. A new process would need to be developed, and decisions made on an appropriate body to hear objections (for example, an independent inspector such as the Ombudsman, or administrative committee). This would require additional funding and time to be established,[16] and would likely not align with the required timeframes for the proposal to be implemented in mid-2025.

71. The options are analysed using the following key:

Key for qualitative judgements:	
++	much better than doing nothing/the status quo/counterfactual
+	better than doing nothing/the status quo/counterfactual
+ / -	a mixture of positive and negative effects
0	about the same as doing nothing/the status quo/counterfactual
-	worse than doing nothing/the status quo/counterfactual
- -	much worse than doing nothing/the status quo/counterfactual

[16] Detailed costings on establishing a new process were not possible within the timeframes of this analysis.

How do the options compare to the status quo/counterfactual?

	Option One – Status quo	Option Two – Remove objections	Option 3 – Objections outside court
Reduced timeframes	0	0 Agencies and entities may be able to acquire land more quickly. [redacted]	+ May result in reduced timeframes if objections are dealt with faster than Environment Court process (and body is properly resourced). Alternative process may be less costly to landowners, which could potentially increase the likelihood of objections as cost may be less of a barrier.
Alignment with decision-making	0	+ + Would work in tandem with fast-track process (once enacted) and integrate decision-making.	- Would result in multiple objection processes operating at the same time for PWA land acquisition, as the Environment Court would continue to apply for projects outside of the accelerated process. However, would remove some duplication with RMA process as Environment Court would not be potentially considering same information.
Public confidence	0	- - Likely to be contentious and attract public scrutiny due to impact on private landowner rights. May raise equity concerns if landowner rights are treated differently based on the project type. [redacted]	0 Allows for an avenue for landowners to raise concerns and exercise rights to natural justice. May create uncertainty for the public as outcome would not set a precedent through case law. May potentially increase the risk of appeals if people want to be heard in court.
Feasibility	0	+ / - Ease of implementation without having to create alternative objection processes. Definition of projects within scope will need to be made clear to reduce uncertainty. [redacted]	- Creating new objection pathway may be difficult to implement within timeframes (with legislation to be enacted in mid-2025). New procedures and training would be required. Not likely to be financially feasible

			as additional resource would be required to establish a separate process.
Overall assessment	0	0 Preferred option – likely to have the greatest impact on achieving the policy objective of reducing timeframes, [redacted]	- Not recommended – may have some impact on reducing timeframes but uncertain whether option would make a substantive difference from status quo.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

72. [redacted] While the assessment of the options gives the same overall number for Option one (status quo) and Option two, on balance we consider Option Two would provide the greater benefit in achieving the policy objective if implemented in conjunction with measures to accelerate planning processes and secure necessary funding. However, action on the PWA alone, and not looking at other sources of time delay, may not guarantee substantial time savings. Option Two has the potential to provide greater certainty around project timing and costs for developers, and potentially increase the attractiveness for investing in and delivering critical infrastructure projects in New Zealand.

73. The fundamental trade-off with this option is how the potential for decreased project cost escalation, and the possible public benefits that may be realised, are balanced against the direct impacts on the rights of private landowners. This RIS acknowledges the potentially significant constitutional and legal implications, and that the removal of objection rights to the compulsory acquisition of private land is normally reserved as a short-term measure where urgency is required. On balance, this is considered to be justified given the very small number of landowners that would be impacted (noting that generally most land is acquired by agreement under the status quo), and the project cost escalation that would be avoided if the changes are successful in reducing the time it takes to construct critical infrastructure.

74. The limited scope of projects that would be eligible for the accelerated process, and the review period recommended by officials (outlined in Section 3 below) would mitigate the potential impacts on landowners and ensure that limits on natural justice relating to property rights are not enduring.

75. [redacted]

76. It is not clear whether having an objection hearing heard by an alternative body (**Option Three**) would result in a meaningful reduction in timeframes. It is based on the assumption that hearing processes under an alternative body would be heard sooner and be more inquisitorial and less adversarial than the Environment Court, with the potential for better outcomes for all parties, delivered sooner. However, alternative bodies (particularly for the expected small number of cases that would be heard related to compulsory acquisition under the PWA) tend to be expensive to establish and administer, and create additional complexity for the parties involved. In effect, the case may be heard sooner, but take longer to reach at outcome to result in no net reduction in time while causing an increase in costs. Such an option may also result in the Executive becoming a judge in its own cause, as had been the case under previous regimes.

77. In practice, this option may be more difficult and time-consuming to navigate as it would involve bespoke bodies that would be expensive to set up for each project. Setting up alternative bodies to hear objections may introduce greater complexity and higher costs

into the process. The Environment Court already has the necessary expertise, infrastructure, and procedural framework in place to manage objections related to land acquisition and public works. Establishing a new or alternative adjudicative body would involve significant start-up costs, including staffing, training, and creating the necessary support systems. New bodies may lack institutional knowledge and expertise, potentially leading to less efficient decision-making. The duplication of functions could also increase administrative overheads and legal costs for both the government and objectors. Ultimately, Option Three may still delay a critical infrastructure project and therefore not achieve the policy objective.

What are the marginal costs and benefits of the option?

78. The marginal costs and benefits of the preferred option are difficult to monetise. Extended land acquisition processes can result in significant legal and other resourcing costs (as seen with projects such as the Mt Messenger bypass), however this will vary significantly depending on the nature of the project and the parties involved. There will also be differences based on the region where the project is delivered, number of landowners, materials used, and other price escalations that may arise due to delays caused by objections (for example increases in the cost of land or labour).

79. This analysis is based on that assumption that the critical infrastructure projects within scope of the accelerated process will have a detailed business case undertaken by the relevant agency that would assess the specific costs and benefits for the project (including timeframe impacts). The marginal costs and benefits, and overall justification for specific projects would be assessed through that process.

80. The overall value of reduced project delivery times can be considerable, and completing critical infrastructure projects in a timely fashion will mean earlier realisation of the public benefits those projects can deliver.[17] Outside of direct project savings, wider public benefits include improved health and safety, productivity, and increased wellbeing due to lower costs of travel and trade.

81. A 2022 report into the impact of the Waikato Expressway indicated the annual economic benefit that would be foregone from a one-year delay in the completion of the project is equal to $334 million,[18] considering the downstream impacts across different sectors of the economy and productivity improvements to business and households. That analysis suggested that the foregone benefits for the Expressway provide an indicative figure to estimate the costs associated with delays in decision-making for a reasonable infrastructure project.

[17] CEA (2018). The Economic Benefits and Impacts of Expanded Infrastructure Investment. *The Council of Economic Advisers.*

[18] Principal Economics (2022). Great Decisions are Timely: Benefits from more Efficient Infrastructure Decision-Making. *Report to Infrastructure New Zealand.*

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Landowners	Reduced objection rights will remove one avenue for landowners to test the decision-making of the government in the land acquisition process. Landowners will need to apply to the High Court for review of acquisition decisions, which would be at significant cost.[19]	Medium	High
Government agencies (as regulators)	There are no obvious implementation barriers or additional costs. [redacted]	Low	Medium – High – [redacted]
Project developers	No additional costs identified for project developers than currently faced under status quo.	Low	Medium
Other – wider public	Removal of objections may impact public confidence in land acquisition system.	Medium	Medium
Non-monetised costs		Medium	Medium – High
Additional benefits of the preferred option compared to taking no action			
Landowners	-	-	-
Government agencies (as regulators)	Removing landowner objection rights could reduce costs and delays (unless the decision is judicially reviewed).	Medium - High	Medium – demonstrated by case studies.
Project developers	The preferred option will provide more certainty for developers and potentially increase the attractiveness of the New Zealand infrastructure sector to providers (for example, overseas construction firms with particular skills and expertise).	Medium - High	Medium – High – feedback from developers and industry is that certainty is critical factor for planning and investment.[20]
Other – wider public	Benefits from critical infrastructure would be realised earlier,	High	Medium – [redacted]

[20] New Zealand Infrastructure Commission (2022). *Rautaki Hanganga o Aotearoa 2022 - 2052 New Zealand Infrastructure Strategy*. Wellington: New Zealand Infrastructure Commission / Te Waihanga.

	including improved health and safety, productivity and wellbeing.		[redacted]
Non-monetised benefits		Medium - High	Medium – High

Section 3: Delivering an option

How will the new arrangements be implemented?

82. The accelerated acquisition process will be given effect through amendments to the PWA, with a bill expected to be passed in mid-2025. LINZ will be responsible for administering the legislation.

83. LINZ Standards and Guidelines will need to be updated to reflect legislative requirements. For example, requirements in LINZS15005 Standard for acquisition of land under the PWA currently state that, where a section 23 notice is being applied for, information must be provided including details of the land to be acquired and the public work project.

84. Additional evidence will be required under this regime, including whether the land has been designated and whether the project is eligible. Other documents such as the Landowner's Guide will need to be updated to ensure landowners are informed that land acquisition will occur under this new regime (eg, without the right to object). This will be managed by LINZ's existing quality assurance processes.

There is a risk that land will be taken by compulsion where it could have been acquired by agreement

85. Acquiring agencies and entities may be more incentivised to take land by compulsion if landowners do not have the ability to object. There is a risk that that fewer properties may be acquired by agreement (noting that most land that is acquired under the PWA is done so by negotiation).

86. There is still a legal requirement to negotiate in good faith for a minimum of three months. To mitigate this risk, agencies and entities will continue to negotiate with landowners and aim to acquire land by agreement where possible (even with an accelerated process in place).

[redacted]

There is a risk that securing vacant possession may be more difficult

89. Vacant possession (ie, the property is unoccupied and free of any occupants or their possessions) is critical to facilitating infrastructure development. Challenges in achieving vacant possession can impact the timely acquisition of the land and potentially increase project delivery timeframes. There is a risk that securing vacant possession may be

[redacted]

more difficult if landowners are more disgruntled and the right to object to the Environment Court is removed (noting that judicial review will still be available).

90. This risk may be mitigated by acquiring agencies and entities assisting owners to purchase and relocate to an alternative property (potentially including the use of relocation packages to encourage vacant possession). As outlined above, agencies and entities should also aim to negotiate in good faith to acquire land by agreement where possible.

How will the new arrangements be monitored, evaluated, and reviewed?

The accelerated process will be reviewed after a fixed period

91. In New Zealand, the removal of objection rights to the compulsory acquisition of private land is normally reserved as a short-term measure where urgency is required.

92. Officials recommend including a review clause in the legislation that requires the accelerated process to be reviewed two years after the enactment date to ensure it is still fit for purpose and achieving the policy objective. This will signal that, while speed has been necessary to achieve the policy objective, the process is not intended to erode property rights or due process without further due consideration being undertaken.

93. The review period will ensure that the accelerated process is somewhat consistent with similar processes that have been put in place in response to an emergency or crisis where measures have been time-limited to expire after the recovery or rebuild phase.

94. LINZ, working in partnership with key infrastructure agencies,[22] would monitor the implementation process and provide advice to Ministers at the end of the review period. LINZ has an established function that carries out quality assurance under the PWA as part of its regulatory role. At that time, Ministers will be required to determine whether further legislative changes are required to repeal the accelerated process. Alternatively, amendments made through the wider PWA review could replace the accelerated process if it was no longer necessary (depending on the nature of those changes).

95. Infrastructure planning processes can take a number of years (for example, the Roads of National Significance programme is likely to run for over 10 years). As a transitional measure, officials recommend that the accelerated process could continue for identified projects that are already in the planning process if the legislation is repealed after a review.

[22] Including (but not limited to) the Ministry of Transport, Ministry for the Environment, NZ Transport Agency Waka Kotahi.

Appendix 1: PWA case studies for roading projects (NZ Transport Agency Waka Kotahi)

Existing approach – recent case studies showing differing timelines for NZTA project delivery

Faster: Manawatū Gorge Bypass

Overview

Landowners: 13 – low number with generally supportive landowners and community

Engagement Commenced: 2018

Resolved: 2020

No objections

Reasons for success

- Early landowner engagement and deals completion.
- Emergency project: Community / Landowners understood project drivers and 'the why'. Support received from majority.
- Notices of Intention (NOI) to take land (s23s) served early – brought negotiations to a head.
- Strong relationships with key landowners: KiwiRail, Meridian, and AgResearch.
- Design avoided challenging properties and included practical bespoke solutions like underpasses clauses to suit landowners e.g. landowner able to walk his land.
- Single accredited land acquisition supplier dedicated to the project.
- Regular project team participation in discussions to support PWA process.

Average: Puhoi to Warkworth

Overview

Landowners: 50- medium number with some high complexity (overseas owner and forestry)

Engagement Commenced: 2010 - Land requirement plans issued 2014 (21 properties purchased by then)

Resolved: 2016

One objection to s23 – settled at Environment Court facilitated mediation

Reasons for success

- LINZ signed off NOI at a lower of design detail than has been required more recently.
- Advance agreements and negotiations in parallel with compulsory acquisition process.
- Direct dialogue between NZTA and affected landowners to address any agreement impediments.

Challenges

- Overseas developer (owned 40% of required land) concurrently sought Resource Consent for lifestyle subdivision development. Complications due to native bush and forestry on the land. Ultimately, land obtained by agreement.
- Auckland Unitary Plan decision released late 2016, coinciding with s23 issue.
- Q2II land covenant (note this was prior to the lesser interests advice note from LINZ).

Delayed: Mount Messenger Bypass

Overview

Landowners: 7- very low number with some post treaty settlement land involved.

Engagement Commenced: 2017

Resolved: All by 2021 except one. Ongoing challenges in 2024

Appeals and objections to most, if not all, RMA and PWA decisions

Challenges / reasons for delay

- The P family and supporters (P's) filed appeals / objections to most / all RMA and PWA decisions.
- P appealed RMA consents resulting in extended (years) delays and several hearings. Courts ruled in the Crown's favour. P subsequently appealed PWA process.
- All properties except the P land was acquired using the PWA by 2021 (either willing or compulsory acquisition with LINZ).
- 7+ year ongoing delay to acquire the P property. Still not acquired (2024).
- Key factor was Ministerial decision to halt PWA action (s23) until the iwi agreement between Ngati Tama had been reached.
- Additional factors included protests and unlawful occupation, other litigation activities, and issue of multiple trespass notices against the project team and Crown representatives.