

Guide for Landowners

What to expect when your land is acquired under the Public Works Act 1981

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Disclaimer

This guide is not a statutory document and does not replace any statute law, common law or Toitū Te Whenua Land Information New Zealand (LINZ) standard.

Introduction

Many public works can't be built without affecting private landowners. The Public Works Act 1981 (PWA) gives the Crown power to acquire land from private landowners for public works. Public works may include works such as roads, schools, police stations and railways.

The PWA sets out a process that must be followed to make sure the rights of private landowners are protected, and the Crown can ensure public works go ahead.

This guide provides high level information about Public Works Act processes and the impact on landowners.

The Minister for Land Information and the Government department Toitū Te Whenua are responsible for administering the PWA. The Minister has delegated many of their functions and powers to Toitū Te Whenua.

Being involved in the acquisition of land for public works can be challenging and stressful for landowners. If your land is being acquired under the PWA, we recommend that you consult a lawyer who will be able to advise you on the process. Under the PWA you are entitled to have your reasonable legal and valuation costs paid by the Crown. We also recommend sharing this guide with your family, whānau or other trusted advisors.

The information that follows is intended as a general guide on the acquisition of land by the Crown. Local authorities also have access to the land acquisition powers in the PWA, but this guide only covers acquisition of land by the Crown.

Terms and definitions

Definitions of legal terms used in this guide are listed here:

Term	Definition
Acquire or acquisition	Purchase of land by agreement for a public work by the Crown
Accredited supplier	A private contractor approved by Toitū Te Whenua and engaged by an acquiring agency to acquire land for the purpose of a public work. The supplier will be the main contact with most landowners in negotiating land acquisitions under the PWA
Acquiring agency	A Crown agency that is acquiring land, for example, Waka Kotahi New Zealand Transport Agency
Acquisition agreement	A written agreement under the PWA for the sale, grant of easement or lease or other interest, of land to the Crown
Compensation certificate	A certificate that the Crown may register on a landowner's title to protect its interest after a landowner has signed an acquisition agreement for all or part their land
Compulsory acquisition	The right of the Crown to acquire privately owned land without agreement
The Crown	Her Majesty the Queen in right of New Zealand acting through the Minister for Land Information
Easement	A right over land for a particular use without affecting ownership of the land
Land	Includes land, property and premises, buildings or substantial structures that might be on the land. It also includes a right or interest in land such as an easement or a lease
Lease	A letting of land by one person to another for a term usually of years and at rent to be paid
Minister	Minister for Land Information
Proclamation	A statutory document, signed by the Governor-General under the Seal of New Zealand, which once published in the

	<i>New Zealand Gazette</i> , transfers ownership of the land to the Crown for a public work
Public work	A work carried out by Government for any public purpose
PWA	The Public Works Act 1981
Registered valuer	A person registered as a valuer under the Valuers Act 1948
Toitū Te Whenua	Toitū Te Whenua - Land Information New Zealand
Whenua Māori	Māori freehold land

Acquisition of land

The parties involved in a land acquisition

Who	Their role
The Landowner	The landowner of the property needed for Public Works.
The Crown	<p>The Minister for Land Information exercises the powers of the Crown and is responsible for Crown purchases under the PWA.</p> <p>The Minister's powers, except some related to compulsory acquisition, are delegated to our officials.</p> <p>The Governor General also plays a role if land is needed via the compulsory acquisition process.</p>
Toitū Te Whenua Land Information New Zealand (LINZ)	<p>We are the Government department that administers the PWA.</p> <p>We acts under delegation from the Minister in making decisions and signing PWA agreements and other documents.</p> <p>LINZ sets standards under the PWA for how acquiring agencies and accredited suppliers must work.</p>

All acquisition agreements must be signed by LINZ. In this document we call this approval and acceptance.

Accredited supplier

Private sector contractors accredited by LINZ for property work under the PWA.

The accredited supplier is engaged by the acquiring agency to negotiate the acquisition of land for public works on their behalf.

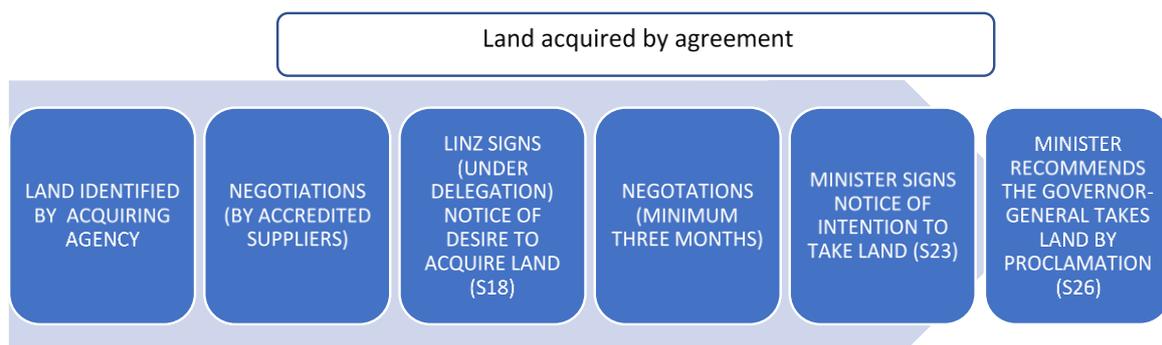
The accredited supplier must report to LINZ on negotiation outcomes and seek any decisions under the PWA.

Acquiring agency

The agency carrying out the public work and acquiring the necessary land.

The acquiring agency is responsible for the public work and funds any compensation payable to you. Acquiring agencies include government departments and organisations like Waka Kotahi NZ Transport Agency.

The general acquisition process



Types of land that are needed for public work

Acquiring agencies may acquire various rights or interests in land, such as easements or leases, or may purchase the land itself.

Subject to an easement

If an acquiring agency needs to use part of your land for utility services such as drainage, water supply or electricity supply it will usually require a right of easement. This gives the acquiring agency the right to use the land for a limited purpose without needing to own it.

An agreement to grant the easement will be negotiated with you. It will include terms such as the area of your land affected by the easement, amount of compensation to be paid, access arrangements for maintenance or operations, and any other conditions you and the acquiring agency might require.

After you have signed the agreement, it will be submitted to LINZ for approval and acceptance. The easement will then be registered against the title to your land, showing that your land is subject to it. The registration of the easement may not happen immediately, and a compensation certificate may be registered in the meantime on your title.

Leasing your land

If the public work requires the exclusive use of your land, but the Crown does not need to own your land, the acquiring agency may negotiate a lease with you. The lease agreement will include the lease term, the rent payable, any rent review periods and any agreed rights of renewal, and other conditions detailing the use of the land.

The lease agreement will also deal with what happens to any improvements on the land at the end of the lease term. The lease agreement is submitted to LINZ for approval and acceptance and if the Crown requires it, it may be registered against the title to your land to show that it is subject to a lease.

Purchasing your land

The Crown may want to buy your land if it requires your land for an ongoing public work or if, significant changes to the land are likely due to a public work. The acquiring agency will engage an accredited supplier to negotiate with you to reach agreement to buy your

land. If agreement is reached, the memorandum of agreement is submitted to LINZ for approval and acceptance. A compensation certificate may then be registered on your title to protect the Crown's interest in the property, particularly where the Crown is only buying part of the property.

Acquisition of severed land

Because of part of your land being acquired for a public work, another part of your land may be cut off from other land you own. It may be more costly for you to retain the land or that land is less useful to you. You may require the Crown to purchase what is called "severed land".

If you have agreed to part of your land being acquired, a compensation certificate to protect the Crown's interest in the land may be registered on your record of title to show that the land is subject to an agreement with the Crown.

Interest in whenua Māori

The Crown recognises the special significance of Māori freehold land. However, there may be situations where it is necessary to acquire Māori freehold land or an interest in Māori freehold land for a public work.

If the Crown requires Māori freehold land for a public work, the acquiring agency and its accredited suppliers will arrange a meeting with the owners to discuss the circumstances and requirements for the public work.

The acquiring agency will negotiate with all owners (or their agents or representatives) on the terms of the acquisition of the type of land to be acquired. These terms will include the area to be acquired, the amount of compensation to be paid and any other conditions that the owners or the acquiring agency may require for the operation of the public work.

The agreement to acquire your land is sent to LINZ for approval and acceptance. Under the Te Ture Whenua Maori Act 1993, the agreement to acquire land requires an application to the Māori Land Court to note the owners' title and if required, confirm the transfer to the Crown. Once granted by the Court, the transfer is registered against the title to the Māori freehold land and the Crown becomes the owner.

Easements, licences, and lease agreements may also apply to Māori freehold land.

Accessing land to survey or carry out work

Under the PWA, the Crown has powers to enter onto land for survey or other investigation purposes (such as taking soil samples). This can be for carrying out a public work or investigating a proposed public work.

An accredited supplier will always contact you to ask if you agree before accessing the land, or before bringing equipment onto your land.

If you agree, an accredited supplier will give you reasonable notice before they enter your land. If it is proposed to use equipment and carry out an investigation on your land, and you do not agree, you may make an objection to your nearest District Court.

Licences to occupy land

If an acquiring agency needs to occupy any part of your land before commencing construction of the public work, an accredited supplier will negotiate an agreement, as a licence to occupy the land, with you. The licence will set out the work involved and any conditions of entry.

The licence to occupy is signed by you and then by LINZ before any authorised party can access your land and occupy it. Once the licence is signed, the accredited supplier will give you reasonable notice before any authorised party of the acquiring agency enters onto your land.

Designation of land under the Resource Management Act 1991

In undertaking a public work, an acquiring agency may also need to seek a designation or 'spot zoning' of land under the local district plan. This is done through the Resource Management Act 1991 (RMA).

The RMA and the PWA are two separate statutory procedures, but both procedures often need to be worked through at the same time. The acquiring agency may discuss both processes with you at the same time.

If your land has been subject to a designation or requirement for a public work under the local district plan, then the RMA in certain cases allows you to request that the acquiring agency purchase your land, or consider leasing your land, in advance of it being needed.

If you consider that you have a case for the Crown to purchase your land because of the requirement or designation, please contact the accredited supplier or the acquiring agency to discuss the process. The accredited supplier will be able to assist you in this process. If the acquiring agency does not agree to purchase in advance, you may apply to the Environment Court for an order for the Minister to acquire your land under the PWA.

For more information about the RMA and the designation process, see the Ministry for the Environment website www.mfe.govt.nz.

Agreeing to land acquisition

Following valuation advice and negotiation, if you are willing to sell your land to the Crown, the accredited supplier will prepare an agreement to sell including the sale and purchase price and any other relevant terms and conditions. The following steps are required to reach agreement.

To determine the value of the land, the accredited supplier on behalf of the acquiring agency, will arrange for an independent valuation of your land from a registered valuer. We will give you the copy of the independent current market valuation of your land to consider.

We recommend you arrange own current market valuation from a registered valuer. The acquiring agency will pay for the costs associated with this valuation.

When you engage a registered valuer, you must instruct the valuer that the valuation is required for "compensation purposes under the PWA". You should make the valuation report available to the accredited supplier to assist with negotiations.

These two valuations will form the basis for negotiation and agreement on the sale and purchase of your land to the Crown.

Getting your costs paid

You are entitled to have your valuation and legal advice costs paid, where these relate to the acquisition of your land. The accredited supplier will be able to advise you on what is required to have these costs paid.

You may also be able to have the costs of other professional advice, such as negotiation services paid for. You should first discuss this with the accredited supplier, who may need to ask LINZ before any additional advice costs can be accepted.

Please see page 15 below, for further information about compensation, including valuation costs.

Acquisition agreement

Once negotiations have been completed, compensation and any other issues have been agreed, the accredited supplier will prepare an agreement for the acquisition of your land (or other interest in your land, if relevant) by the Crown.

The acquisition agreement will include the compensation to be paid, and any other commitments made by you or the Crown.

We recommend you get independent legal and professional advice on the acquisition agreement prior to signing it. This will ensure the acquisition agreement sets out everything that you have negotiated with the accredited supplier.

Once all the terms and conditions have been agreed and you have signed the acquisition agreement it must be sent for approval and acceptance to LINZ.

The acquisition agreement only becomes a binding contract once LINZ signs it. Payment of the compensation is usually made on the settlement date.

Following settlement, the land will be transferred to the Crown. If the Crown is only purchasing part of your land the transfer may not happen immediately, and a compensation certificate may be registered against the title to protect the Crown's interest in the property.

If you agree to sell your land, but you cannot agree the sale price with the Crown, you can ask that the amount of compensation be decided by a court called the Land Valuation Tribunal. The Land Valuation Tribunal operates under the Land Valuation Proceedings Act 1948. The Tribunal is made up of three members – a District Court judge and two other members; one or both members must be a registered valuer.

If agreement for sale can't be reached

The acquiring agency will always negotiate with you in good faith with a view to finding mutual agreement on compensation and any other terms and conditions. If agreement cannot be reached for the acquisition of your land, under the PWA the Crown has the power to acquire privately owned land without agreement. This is called "compulsory acquisition."

If you don't want to negotiate and/or can't agree the terms of the agreement, then the PWA procedure for compulsory acquisition of land may be commenced. Even if your land is acquired using the compulsory acquisition process you will still receive compensation.

As part of the formal acquisition process the acquiring agency may ask the Minister for Land Information to sign a notice identifying the land sought and setting out the Crown's wish to acquire your land. This is called a notice of desire which records the Crown's interest in your land and is registered on the record of title to the land.

If, after a minimum of three months of good faith negotiation with you, agreement cannot be reached, the acquiring agency may ask the Minister to sign a notice of intention to take land that confirms the Crown's proposal to compulsorily acquire your land. This notice will be served on you and everyone with a registered interest in the land and is also registered on the record of title to the land.

In this case we strongly recommend you seek legal advice if you have not before done so.

Depending on your reasons for not agreeing to an acquisition, there are options available to you:

- If you object to the Crown's proposal to compulsorily acquire your land, you can take a case to the Environment Court objecting to the Crown taking your land. If you withdraw your objection or your objection is not allowed by the Court, the acquiring agency can continue with the compulsory acquisition process.

or

- If you and the acquiring agency cannot agree on the compensation to be paid; you can advise the Crown that you wish to have the Land Valuation Tribunal decide the amount.

You can only object to the Environment Court about the Crown's proposal to compulsorily acquire your land - not the amount of compensation to be paid for your land. Any dispute about amount of the compensation may be determined by the Land Valuation Tribunal.

The accredited supplier will continue to negotiate with you in good faith to reach an agreement, up until the time your land is compulsorily acquired by Proclamation.

The accredited supplier will also continue to negotiate with you in an attempt to reach an agreement on the amount of compensation following your land being compulsorily acquired by Proclamation.

At any time while the compulsory acquisition process is underway, you can enter into an acquisition agreement with the Crown.

Compensation

Compensation and entitlements

A principle of the PWA is that you are entitled to full compensation for your land to ensure that your financial position is no better or worse than before any public work acquisition took place. Part 5 of the PWA and the table on page 15 set out the types of compensation you may be entitled to.

The fact that land is being acquired for a public work does not affect the land's value or the amount of compensation to be paid. The value of your land will be based on the amount the land would be expected to be sold for if sold on the open market by a willing seller to a willing buyer on a specified date. The value does not include the potential public work that will be done to the land.

The Crown valuation of your land will be assessed by an independent registered valuer. We recommend you get your own independent professional valuation advice, and the Crown will pay the reasonable costs of this advice.

As well as the value of your land, you may also be entitled to additional compensation that includes any reasonable costs you may incur and other compensation for land damage or business loss. For example, you may be entitled to compensation for permanent loss of value to the land you retained after the public work has been completed (called “injurious affection”).

Additionally, the Crown may acquire other land to be used as compensation for your land that has been acquired for a public work.

What you might be entitled to

The following table provides information on the types and circumstances of different entitlements in addition to the value of the land acquired.

Circumstance	Entitlement
If the land being acquired includes the home you live in and the Crown wants you to give vacant possession of your property	Additional compensation of up to \$50,000. This is made up of: <ul style="list-style-type: none"> • \$35,000 if you give up occupation on the agreed date; and • \$10,000 if an agreement is negotiated and signed within six months from the start of negotiations; and • a further \$5,000 at the Minister’s discretion based on your personal circumstances.
Additional compensation if land acquired does not include your home	Additional compensation at the rate of 10% of the value of the land acquired is payable, from a minimum of \$250 to a maximum of \$25,000 provided you give up occupation of the land on the agreed date.
Household removal costs	You are entitled to claim the cost of moving your household goods. There are some limitations depending on the distance to your new home. You should discuss your moving plans with the accredited supplier before hiring a moving company.
Business and/or residential tenant removal costs	Any business or residential tenants that have to give up occupation are entitled to have their reasonable removal expenses paid by the Crown. You should discuss any business and/or tenant removal costs with the accredited supplier before agreeing to costs.
Business losses	If you have a business on the land being acquired, you may be entitled to have that business relocated. You can also claim for business loss resulting from the business relocation including loss of actual profits and business goodwill and any loss from having to close your business temporarily while moving.

Circumstance	Entitlement
	<p>If your business is not relocated but is still affected by the construction of the public work, you can seek compensation for any loss incurred.</p> <p>If you need to engage an accountant or lawyer to help you prepare your claim for compensation, the reasonable cost you incur for this advice may be reimbursed. We suggest you discuss this with the accredited supplier.</p>
Damage to land	<p>If your land is damaged during the construction of the public work you can seek compensation for that damage, or have your land restored to its previous state.</p>
Disturbance	<p>You can claim compensation for any reasonable expenses and any losses (such as temporary stock fencing) that are a direct result of the acquisition of your land. Some of these payments are referred to in the PWA as "disturbance" to your land.</p> <p>It is important that you keep a detailed record of all communications and detailed records of any expenses you may have incurred and any losses you may have suffered, as these costs may be recoverable as part of your claim for compensation.</p> <p>(note, if your costs are increased by your actions or by your failure to act reasonably - you will not be entitled to compensation for these costs).</p>
Accessibility improvements	<p>If you have permanent improvements on your land that improve accessibility for a person with disabilities and that have not been included in the land valuation, you can be compensated for these costs.</p>
Other professional costs	<p>If you want to get other professional or expert advice, you should discuss this first with the accredited supplier.</p> <p>This will help prevent any later dispute over whether the advice was necessary, or the cost of obtaining the advice was reasonable.</p> <p>Once discussed and agreed, you can submit invoices for other professional or expert advice to the accredited supplier at any time during the acquisition process.</p>

Other assistance

Part 5 of the PWA provides for other types of assistance in addition to compensation. Please discuss your situation with your professional advisors and the accredited supplier if you consider you are entitled to any additional assistance.

If the Crown does not proceed with a proposed acquisition

Occasionally circumstances change, and the acquiring agency may no longer require your land for a public work. If this happens once negotiations with you are already underway, you are entitled to have the reasonable costs and expenses incurred during the negotiation process met by the Crown.

More information

Additional information can be found on the our website:

www.linz.govt.nz

or the Public Works Act 1981 on the Government's legislation website:

<https://www.legislation.govt.nz/act/public/1981/0035/latest/DLM45427.html?src=qs>

You can also email us at customersupport@linz.govt.nz

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