

Further information on Ministerial functions under Public Works Act, Crown Pastoral Leases Act, Overseas Investment Act, New Zealand Geographic Board Act

Minister's Function under the Public Works Act 1981

Key Messages

1. The Public Works Act 1981 (PWA) sets out how the Crown or local authorities¹ acquire land for a public work,² how a landowner is compensated, and how this land is disposed of when it is no longer required.
2. As Minister for Land Information you must make statutory decisions regarding the compulsory acquisition of land for Crown agencies under the PWA. This involves signing notices to the landowner and, if necessary, recommending the Governor-General takes land by proclamation.

Ministerial powers and responsibilities

3. Under the PWA you are responsible for acquisition of land by the Crown. Local authorities can use the PWA for negotiated voluntary acquisition of land. If compulsory acquisition is necessary, the local authority may request that you recommend that the Governor-General takes the land by proclamation.
4. Most of your powers as Minister are currently delegated to officials in LINZ³, including making decisions on negotiated agreements. However, some decisions relating to compulsory acquisition of land cannot be delegated and must be made by you as Minister. The volume of decisions is affected by the timing of government's infrastructure projects, but could be approximately 150 to 200 per year.

Public Works Act acquisition process

5. The acquisition of land under the PWA involves a number of steps, depending on whether an agreement to sell is successfully negotiated with a land owner. An example of the process is provided in Figure 1 over the page. The land acquisition process takes approximately two years, however appeals to the Environment Court or higher Courts will affect the timeframe.
 - 5.1. First, the Crown agency that needs the land endeavours to negotiate with owners to reach an agreement. If an agreement is reached, LINZ signs the agreement on your behalf and the process does not continue any further.

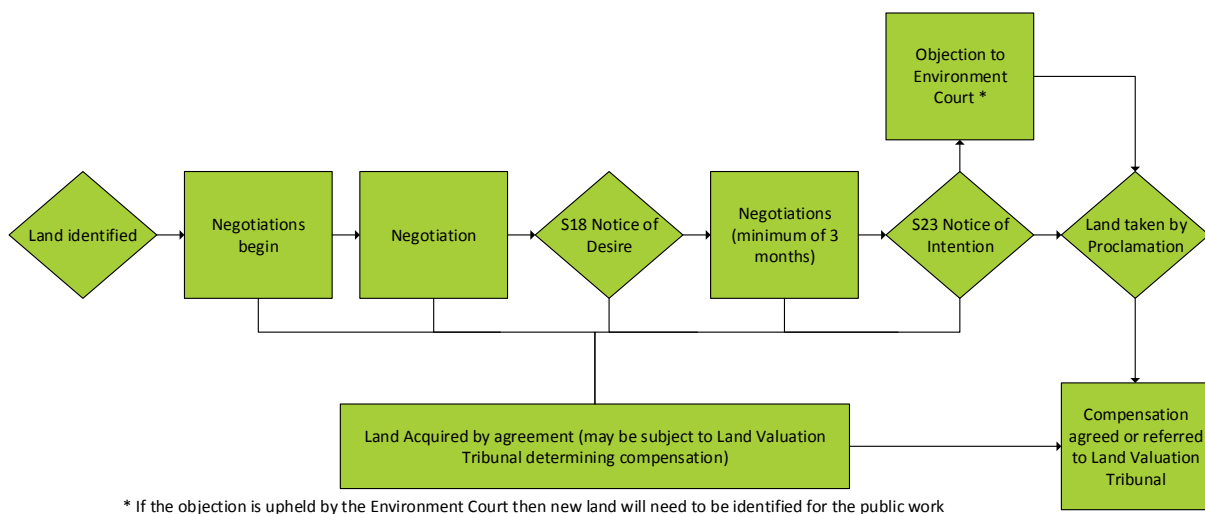
¹ Under the PWA, a 'local authority' includes regional and territorial councils, the NZ Fire Service Commission, airport authorities, universities and other entities.

² Examples of public works are: state highways, hospitals, schools, prisons, police stations, reserves and defence facilities.

³ Powers that cannot be delegated to officials include Section 23 signing Notice of Intention and recommending the Governor-General takes land by Proclamation. Currently powers to carry out negotiations, signing Section 18 Notices of Desire to Acquire Land, and responding to objections lodged to the Environment Court or higher Court are delegated to LINZ officials.

- 5.2. If an agreement is not reached with the land owner, then the Crown agency may request that LINZ signs a Notice of Desire to Acquire Land. This notice formally invites the owner to sell. The Crown agency must endeavour to further negotiate in good faith to reach an agreement, for no less than three months from the date of service of the notice.
- 5.3. If agreement is not reached, the PWA's powers of compulsory acquisition are used. The Crown agency may make recommendations to you and request that you sign a Notice of Intention to Take Land. The owner can object to the taking of the land before the Environment Court.
- 5.4. If there is no objection, or if the Environment Court does not uphold any objection, you may be asked to **recommend that the Governor-General takes the land by Proclamation.**⁴

Figure 1: Public Works Act acquisition process



6. Importantly, agreement can be negotiated at any time in the above process, up until when the Governor-General signs a Proclamation. The most common issue that prevents agreement is differences over the value of the land being acquired. Usually, compulsory acquisition occurs where agreement is considered unlikely to be reached within the timeframes necessary to secure the land.
7. The Chief Executive of LINZ is responsible for disposing of Crown-owned land. If Crown-owned land is not needed for another public work, the first obligation is to offer the land back to the former owner or their successors, unless a valid exception applies. For the Crown, disposal of public works land is also subject to obligations under Treaty settlements.

⁴ After land has been taken by Proclamation the relevant parties will need to agree on compensation payable. If an agreement on compensation is not reached, then either party can make a claim to the Land Valuation Tribunal.

Minister's function in Tenure Review

Key Messages

1. Statutory responsibility for the tenure review process lies with the Commissioner of Crown Lands (the Commissioner). The objects of tenure review are stated in section 24 of the Crown Pastoral Land Act 1998 (CPLA).⁵ These objects form the statutory basis for the decision of the Commissioner.
2. Any substantive proposals that require the expenditure of Crown funds will come to you, as Minister for Land Information, to approve the funding.

Background to The Commissioner of Crown Lands and tenure review

3. The Commissioner of Crown Lands is a statutory officer located within LINZ. The Commissioner exercises rights of ownership over, and has statutory responsibility for, Crown land held under the Land Act 1948 and the CPLA. As a statutory officer, the Commissioner exercises their powers independently of the Minister for Land Information or the Chief Executive of LINZ.
4. The Crown owns about 1.4 million hectares of land in the South Island high country which is leased for pastoral farming purposes. Tenure review is a voluntary process usually initiated by the lessee. Either party can withdraw during the review before an outcome is reached. The process involves four stages, including consultation with the Director-General of Conservation,⁶ public submission and iwi consultation, and can take years to complete.
5. Tenure review allows the freeholding of land to the lessee, with conditions. It creates new opportunities for recreation and access to the high country as land may be restored to full Crown ownership as conservation estate.
6. Tenure review requires an exchange of payments, reflecting the current market values of the pastoral lease (to be purchased by the Crown) and of the land proposed to be freeholded (to be purchased by the lessee). These values are unlikely to be equal, so money is paid by one of the parties to make up the difference.
7. Of the 303 Crown pastoral leases, tenure review has been completed for 137 leases, with another five being purchased by the Crown. There are currently 32 reviews in progress.

Ministerial responsibility in tenure review

8. As Minister for Land Information, LINZ must seek your approval for the funding of a tenure review's substantive proposals. As part of this process, you consult with the Minister of Conservation on the substantive proposal outcomes and funding before making a decision.

⁵ The objects of tenure review, as stated in section 24 of the CPLA are:

- to promote ecologically sustainable management of the land;
- to protect significant inherent values on the land, preferably by full Crown ownership and control, or through the creation of protective mechanisms (such as covenants or easements);
- subject to the ecologically sustainability test, to free land capable of economic use from the land-use restrictions of leasehold;
- subject to above, to secure public access and enjoyment of the land; and
- subject to the above, to make easier the freehold disposal of the land.

⁶ Department of Conservation advises the Commissioner as to what inherent values are present on the land, what should be protected, and public access and recreation issues.

Minister's function under the Overseas Investment Act 2005

Key Messages

1. The Overseas Investment Act 2005 (the Act) ensures quality investments in New Zealand's valued assets bring benefits to the country. It does this by setting the criteria for overseas persons investing in certain New Zealand land, high value businesses or fishing quota, and the power to impose conditions on those investments.
2. The Overseas Investment Office (OIO) administers functions under the Act and has a statutory function to consider applications for consent, advise Ministers how applications should be decided, and enforce breaches of the Act.
3. As Minister for Land Information, you, along with the Minister of Finance, have a statutory function in deciding sensitive land applications by overseas persons.
 - 3.1. Land is sensitive if it includes or adjoins a particular type and size of land. For example, much agricultural land is sensitive as it is more than 5 hectares of non-urban land. Also, larger sections adjoining reserves or Department of Conservation land (over 0.4 hectares) can be sensitive. Most residential and commercial property is not sensitive.
 - 3.2. Overseas persons are generally not New Zealand citizens or are people who do not ordinarily live in New Zealand. Companies, trusts and joint ventures, with more than 25 per cent overseas ownership or control are also overseas persons.
4. The Act states what you must consider when deciding whether to grant consent to an overseas investment transaction. You will receive advice from the OIO about each application you decide.
5. You may delegate any of your powers or functions under the Act or regulations. Currently all significant business asset decisions and some land decisions are delegated to the Chief Executive of LINZ or OIO officials.

Ministerial powers and responsibilities

6. You will be required to make decisions on significant or contentious sensitive land applications under the Act. Making a decision on an overseas investment application is a statutory function under the Act and has a framework that must be followed. To grant consent to an overseas investment application you must be sure the application meets all the necessary criteria. A summary of those criteria is:
 - 6.1. Applicants must have demonstrated business experience and acumen, financial commitment to the investment, and that they are of good character;
 - 6.2. The investment is likely to **benefit New Zealand**, or if the sensitive land includes more than 5 hectares of non-urban land, that the **benefit is substantial and identifiable**; and
 - 6.2.1. If the sensitive land includes farm land, that the property has been advertised on the open market to give New Zealanders a chance to buy it.
 - 6.3. **The benefits to New Zealand** are shown through one or more of the 21 benefit factors in the Act. Most of the benefit factors are analysed against what will happen without the overseas person's investment (the counterfactual) to ensure that only net benefits are counted. The benefits fall into three broad categories:
 - 6.3.1. Economic factors (e.g. additional jobs, increased exports, or further investment for development purposes);

6.3.2. Environmental factors (e.g. protection of indigenous fauna or flora, or providing walking access); and

6.3.3. Miscellaneous factors (e.g. the investment will give effect to a significant government strategy or policy).

7. When you are required to make a decision, the OIO will advise you on the particular details of the application. This includes advice on the relevant benefit factors and weighting of those factors in your decision. The Act does not specify a timeframe in which you must make a decision.⁷
8. You may grant consents unconditionally or subject to conditions as you think appropriate. The OIO will provide you with suggested conditions of consent. Consents may also be granted retrospectively, where there has been an inadvertent breach of the Act, and conditions of consent may be varied with the agreement of the consent holder.

Delegation of powers and directive letter

9. You may delegate any of your powers or functions under the Act or regulations. Currently all significant business asset decisions and some land decisions are delegated to the Chief Executive of LINZ and certain OIO officials. Generally, Ministers should decide more significant or contentious applications. The delegation parameters are set out in a designation and delegation letter dated 22 April 2009.
10. The Minister of Finance may direct the OIO by a Ministerial directive letter. Currently, the OIO is operating under a directive letter dated 8 December 2010. The Directive Letter sets out the Government's expectations in relation to the overseas investment regime.

⁷ Most transactions will have commercial deadlines, some of which may be statutory (such as timeframes specified by the Takeovers Code).

Minister's function under the New Zealand Geographic Board (Ngā Pou Taunaha o Aotearoa) Act 2008

Key Message

1. The New Zealand Geographic Board Ngā Pou Taunaha o Aotearoa (NZGB) is responsible for naming geographic features. In most instances, the NZGB has the authority to make the final decisions on proposed geographic names. If the NZGB receives a public objection to a naming proposal that it does not uphold, then you, as Minister for Land Information, will be required to make the final decision.

Background to the NZGB

2. The NZGB is an independent statutory body governed by the New Zealand Geographic Board (Ngā Pou Taunaha o Aotearoa) Act 2008 (the Act) and administered by LINZ. The Māori name, Ngā Pou Taunaha o Aotearoa “memorial markers of the landscape”, captures the spiritual elements connecting the ingoa (name) with the whenua (land).
3. The NZGB receives proposals for a range of geographic name categories including official name, alternative name and collected original Māori name. The NZGB has the responsibility to make official geographic names for: undersea features, Crown protected areas, natural features, railways and railway stations, cities, suburbs, and Treaty of Waitangi settlement names. Its naming jurisdiction includes offshore islands, the continental shelf, and the Ross Dependency of Antarctica. The NZGB does not name the country, roads, tracks, buildings, monuments, businesses, or sites of interest.
4. The views of the local community, including iwi, are a vital consideration in the NZGB's process. To best enable this, relevant MPs are informed of proposals that fall within their areas of interest.

Ministerial powers and responsibility

5. The NZGB is required to report to you annually on the performance of its functions and duties and the exercise of its powers.

Appointing the NZGB

6. You are responsible for appointing members to the NZGB when necessary. There are 10 members on the NZGB, who are appointed for three year terms and can be reappointed. You will not be required to make any appointments or re-appointments until late 2019.

Making final decisions on proposed geographic names

7. The NZGB Chairperson and Secretary have some decision making responsibility delegated from the NZGB, which has the authority to make decisions on most proposed geographic names.⁸ However, you are required to make the final decision when the NZGB receives a public objection that it does not uphold. This is most likely to happen with controversial geographic name proposals that can attract heightened public and media interest.

⁸ There are no delegations from you to the NZGB.

8. There are no statutory provisions setting out how to make your decision, and when made your decision is final. You are entitled to take into account whatever information you choose. You will receive the NZGB's report on a proposal with reasons for its decision, its recommendations, and copies of all submissions, both supporting and objecting. You can seek further clarification from the NZGB, ask for further consultation or investigation, and may also wish to discuss the proposal with your colleagues.
9. Controversial geographic name proposals can attract heightened public and media interest. When appropriate, LINZ's Strategic Communications staff will work closely with your office to ensure that relevant information is delivered to the media and the public.

Decisions from other Ministers

10. Some naming proposals may require decisions from other Ministers. For Crown protected area names, the Minister for Conservation may be required to make the final decisions. For Treaty names, the Minister in Charge of Treaty of Waitangi Negotiations makes the final decisions.

Current and upcoming referrals

11. Six geographic name proposals will be refer to you for consideration shortly.
12. There were two geographic name proposals publicly consulted between 22 June 2017 and 22 September 2017. These proposals may require final decisions from you following the NZGB's meeting on 16 October 2017.
13. The NZGB will meet again in April or May 2018, after which further geographic name proposals may be reported to you for final decisions.