

Review of the Public Works Act

Local Government New Zealand's *Draft* Response to the Public Discussion Paper

(December 2000)

Draft for sector response
March 2001

EXECUTIVE SUMMARY

The local government sector welcomes the intent of the review of the Public Works Act to address clearly documented problems affecting a wide range of parties.

The local government sector believes that:

- the Act is working reasonably well, except for the offer back provisions
- local government needs the ability to compulsorily acquire land to meet communities' present and future needs. It is a tool that should remain available to local authorities
- the section 40 offer back provisions need revision
- the acquisition provisions are sound.

The principles that guide local government's response to the discussion paper include:

1. Local government should have powers of compulsory acquisition.
2. Activities of local government that are 'reasonably necessary' and 'in the public interest' should be considered to be public works.
3. Offer back obligations should be strictly defined to be: only to favour the original vendor; only apply to compulsorily acquired land or where land was acquired by agreement where a 'notice of intention to compulsorily acquire' the land was issued prior to final settlement; only for land explicitly declared surplus by the local authority within 20 years from the date of acquisition.
4. Communities must have confidence and trust that acquiring authorities will act with integrity and transparency regarding use of their compulsory acquisition powers.
5. Communities' views on special significance of land should be taken into account by the acquiring body.
6. Legislative change should only be considered where: necessity for change is clear; the level of risk to achieving outcomes is significant; the support for change is broad; and the costs of moving to the new arrangements is justified.

Local government would be concerned if the premise of reducing fiscal risk to the Crown is to absolve the Crown from fulfilling reasonable duties as landowner and land manager of significant portions of land throughout New Zealand, or from fully interacting with local authorities in terms of statutory requirements for managing the environment eg through the Resource Management Act, the Building Act or the Local Government Act.

Nga Matakokiri Maori, the Maori standing committee reporting to the National Council of *Local Government New Zealand* has reviewed this draft submission and believes that:

- There should be special circumstances for Maori land.
- No Maori land should be compulsorily acquired.
- When the original purpose for which the land acquired has changed, it should be offered back to the original owners.
- If the Crown has use of Maori land, then the Crown should compensate Maori for that occupation and use.

1. PREAMBLE

1.1 Introduction

Local Government New Zealand welcomes the review of the Public Works Act.

The stated aims of the review, as published in the “Review of the Public Works Act: Issues and Options, Public Discussion Paper, December 2000” (the discussion paper) include:

- reducing fiscal risk to the Crown
- efficiency gains
- address Treaty of Waitangi issues raised by the Waitangi Tribunal
- reflecting changes in social and economic environment relating to the acquisition of land for public works.

The discussion paper states that the overall aim of the review is to produce legislation that is “clear, workable and sufficiently flexible to be able to meet current and future requirements for public works”. The local government sector therefore supports the principle aims of the review.

Local government would be concerned if the premise of reducing fiscal risk to the Crown is to absolve the Crown from fulfilling reasonable duties as landowner and land manager of significant portions of land throughout New Zealand, or from fully interacting with local authorities in terms of statutory requirements for managing the environment eg through the Resource Management Act, the Building Act or the Local Government Act.

1.2 Process for preparing submission

The views expressed in this submission have been recorded after a process of consultation with local authorities. Every local authority was invited to respond to a document containing preliminary views on the discussion paper released by Land Information New Zealand in December 2000. *Local Government New Zealand* has been assisted in preparing this submission by a group of local government experts, skilled in dealing with Public Works Act issues.

We have sought the views of Nga Matakokiri Maori, the Maori elected members standing committee of the National Council of *Local Government New Zealand*, regarding this draft submission.

The views of Nga Matakokiri Maori are contained in section 1.4 below.

1.3 Structure of submission

Before commenting on particular details of the discussion paper, we believe that it is important to identify some key principles underpinning local government's approach to Public Works Act matters. These principles are detailed in section 2. More detailed comments on the questions and issues raised in the discussion paper are contained in sections 3, 4 and 5, which follow the chapter layout provided.

Section 6 contains our concluding comments.

Annex 1 *attached* contains a quick reference to the questions listed in the submission form attached to the discussion paper. The comments made in this section should be read in conjunction with sections 2 to 5 of the main submission.

We have prepared this submission solely from local government's perspective and have not considered matters from the Crown's perspective, other than what may be reasonable or equitable in general terms.

1.4 Nga Matakokiri Maori

Under the present Act, Maori land is treated in much the same ways as general land for both compulsory acquisitions and disposals. The exception is where involvement of the Maori Land Court determines the representative who can act for Maori land held in multiple ownership.

The discussion paper summarises the recommendations of the Waitangi Tribunal regarding the Treaty of Waitangi and the Public Works Act, as outlined in table 7.2 (page 60) and seeks feedback.

Nga Matakokiri Maori have provided some general comments regarding the Public Works Act, as opposed to responding to each of the Waitangi Tribunal's recommendations.

The issues detailed below have been raised by Nga Matakokiri Maori, as stated in the minutes to their March 2001 meeting.

Nga Matakokiri Maori believes that:

- *The definition of what is a "public work" should be narrowed to protect Maori land.*
- *No Maori land should be compulsorily acquired by either the Crown or local authorities, unless it is by agreed negotiated agreement, and is consistent with the Te Ture Whenua Act.*

Regarding land already taken:

- *When the original purpose for which the land acquired has changed, it should be offered back to the original owners.*
- *If the Crown has use of Maori land, then the Crown should compensate Maori for that use.*

- *Maori should not have to pay market value to have land returned, but there could be partnership options with the Crown or local government eg shares.*
- *Offer back requirements should be expanded to include tangata whenua.*

In general, Nga Matakokiri Maori were concerned that the process used by LINZ with the Maori consultative group leading up to the development of the discussion paper had not worked well.

2. PRINCIPLE ISSUES

The principles detailed below describe local government's approach to the Public Works Act. These positions are the basis for comment on the discussion paper.

2.1 Compulsory acquisition

We are aware of the importance of the review of the operating principles being discussed through the Local Government Act Review, being led by the Department of Internal Affairs. This includes a review of local government's roles, responsibilities and the key tools that local government has to provide for communities.

The local government sector should have powers of compulsory acquisition as a mechanism to assist local government meet the needs of present and future generations.

Such a power, subject to due process, is consistent with the direction of the current review of the Local Government Act. At this stage, the proposed overriding purpose of local government is "to enable local decision-making by and on behalf of citizens in their local communities to promote their social, economic and environmental wellbeing in the present and for the future."

2.2 Defining public works

In general terms the principle that local government advocates is if a community decides that it wants the local authority to undertake an activity, then this activity should be deemed to be a public work.

The test of whether something is a public work would therefore be threefold:

- that a local community had determined that the local authority should undertake the activity
- that the work is 'reasonably necessary' for the local authority to undertake
- that the work is 'in the public interest'.

2.3 Offer back

Should only apply to compulsorily acquired land

The principle should be that only where land has been taken through duress should it be offered back. Therefore, a local authority should only have to offer back land that has been compulsory acquired or where a notice of intention to acquire has ever been issued under the Act. Acquisitions that have been negotiated in the open market should not be subject to offer back requirements under the Act.

This principle assumes that in negotiated settlements, the vendor enters into the transaction willingly and is adequately compensated.

Offer back to original vendor

Offer back should be only to the original vendor, not successors in title. The original vendor would include natural persons or companies in existence or other legal entities. The obligation to offer back would cease on the death of the former owner or the expiration of 20 years from the date of the acquisition (see statutory time limit below).

An exception to this may be in dealing with Maori land in multiple ownership.

There should be a statutory time limit

A time limit of 20 years should apply, from the date of the compulsory acquisition, after which if the land is declared surplus and a decision is made to ‘dispose’ of the land, offer back is not required.

Exemptions

The existing exemptions of section 40(4) should still apply. An exception may be where the land holds significant community, cultural or environmental values.

Declaration that land is ‘surplus’

We believe that for land to be considered surplus a local authority should have to explicitly state that the land is not required for other local authority purposes.

Therefore we propose that land should only be considered ‘surplus’ if a council resolves to ‘dispose’ of land. The date from which valuation of the land for offer back purposes would therefore be the date of the local authority’s resolution to dispose of the land – the Local Government Act guides council processes and how decisions of the local authority are made.

There should be a time limit within which a council must offer the land back to the original owner eg three months from the resolution to ‘dispose’ of the land. The valuation would guide a council’s negotiations with the original vendor and not bind the council to that specific figure.

2.4 Reasonableness and fairness

Communities must have confidence and trust that the Crown, local authorities and private providers will act with integrity and transparency regarding the acquisition of land to meet their needs now and in the future.

There are various checks and balances in existing statutes that ensure that this is the case. Entities involved in compulsory acquisition must be conscious of the public interest in their actions —and that their actions are reasonable in the circumstances.

2.5 Communities

Decisions made by local authorities regarding public works are validated by public participation at the local level —through democratic community procedures as required through the Local Government Act (which are presently under review, as mentioned in 2.1 above).

Where a community believes that land (and this could be applied to *any* land) has a specific significance this should be recognised and taken into account by the

compulsory acquirer eg ecological, spiritual, cultural, historical or as identified through district planning.

This principle has already been recognised through the Resource Management Act and would be covered through a resource consent or designation process promoted by a local authority, the Crown or a private provider.

2.6 Legislative change

We would like to offer the following principles to assist in determining the merits of proposals for legislative change leading from the discussion paper.

Legislative change is the preferred option, when:

- The necessity for that legislative change is clear – that is, the issue of concern is clearly documented and understood and the suggested legislative solution demonstrably resolves the identified issue. (Only where there is significant evidence of severe problems should changes to the legislation be pursued).
- The level of risk posed by the issue of concern, to the achievement of desired outcomes, is significant. (Risk assessment of changes should include accurate assessment of risks and costs to both Crown *and* non Crown parties).
- The constituency of support for the change is broadly based – that is, the interests of *all* parties will be served by the change, whether they be private landowners, local authorities, industry, lawyers, or the community. (The support for pursuance of change should not solely be from Crown agencies).
- The cost of moving from the current law to the new arrangements is justified.

We would like to see that these criteria are satisfied before any recommendations are made for legislative amendment.

2.7 Retrospective application

Several major amendments to public works legislation since the 1930s have created an often confusing array of different ‘rules’ for the parties involved eg rules that apply to disposal processes and local government obligations.

Ideally, any amendments resulting from this review process, particularly regarding offer back provisions should apply retrospectively and repeal all previous requirements. However, as a minimum, this review process should result in amendments to the Act that more clearly define administrative rules such as those affecting offer back eg the circumstances of how land is declared surplus; and, from which date valuations for offer back purposes should be made. This will make it clear for landowners (and their advisers) local authorities and the Crown, what processes and requirements are necessary for dealing with land that was previously compulsorily acquired.

There may need to be a transitional period for landowners, the Crown and local authorities to review their portfolios and revise operational procedures.

3. WHAT IS A PUBLIC WORK AND WHO SHOULD HAVE ACCESS TO THE PUBLIC WORKS ACT?

3.1 General

Local government believes that it should have the ability to compulsorily acquire land for works 'reasonably necessary' and 'in the public interest' to be able to fulfil and service the needs of present and future communities.

In the long term, local government does not know precisely what land needs there will be to supply key facilities such as for roads, water, waste water, sewerage or power and telecommunications and other community needs. In addition, local government cannot predict technological change or the rate at which technology innovation will alter land use needs for the services that communities wish to have provided.

Compulsory acquisition is an essential part of local government's toolkit. Local authorities need flexibility in the long term, and an inclusive definition of what a public work can be.

Local government is bound by many processes to ensure that there is public support for the way resources are allocated and facilities are provided for communities. These include:

- draft annual planning/annual planning processes
- funding policies
- long term financial strategies
- asset management plans
- strategic planning processes.

In addition, case law and planning practices influenced by the courts have required that resource consents and/or designations under the Resource Management Act are secured before compulsory powers are activated. These processes are based on several fundamental public law principles safeguarding public participation and local democracy.

We believe that there are several tiers of checks and balance in place to ensure against abuse of compulsory powers. Gauging of public opinion regarding proposed actions of councils is very important. For example, through Resource Management Act processes, the public is heard through written and oral submissions. In addition, the public has opportunities to participate in and address councils at public fora and on other invited occasions such as during council or community board meetings.

4. ACQUISITION AND COMPENSATION

In our view, significant change to the acquisition and compensation provisions of the Act is not required.

4.1 Considering alternatives

The Act requires the consideration of alternatives to compulsory acquiring a freehold interest. In practice compulsory acquisition is seen as a ‘last resort’ and is infrequently used.

Local government, because of statutory requirements for financial transparency, public participation and resource management, would always consider alternative options.

We do not see that there is a problem that needs to be addressed through this review. Current practice demonstrates that there are few issues to resolve. Therefore we strongly support the existing provisions of the Act.

4.2 Negotiated agreements

We do not support the addition of provisions that would bring control over the outcomes of negotiated agreements. Open market negotiations should be just that — open. Anything else would defeat the purpose of providing the option to negotiate an agreement.

The key principle should be the reasonableness of the agreement and it should rely on existing contract law principles to protect both parties. Additional provisions to dictate the outcome of ‘open market’ negotiations would defeat the purpose of providing the option to negotiate an agreement.

The key principle should be the reasonableness of the agreement and it should rely on existing contract law principles that have been established through case law to protect both parties.

4.3 Land status

We support that status or significance to ‘communities’ should be taken into account when compulsory acquiring land. The principle should apply to *all* land and has been established through other statutes.

Under the Resource Management Act, local authorities would need to be satisfied that the significance of the land has been considered. We are not convinced that a new or separate provision is needed in the Act

4.4 Lineal development

In practice the Environment Court is only involved where there is an objection to a proposal. It is appropriate that the Environment Court consider the context of the overall nature of the development.

We are not aware that this issue is a major one. Most lineal developments go through a designation or resource consent process under the Resource Management Act before

proceeding to compulsory acquisition. It is very project and property specific. However, where there is involvement with more than one property, it makes sense that if there is an objection to either the Resource Management Act or Public Works Act processes then the case should be considered at the same time as other objections.

However, the rights of individuals who object to proposals for compulsory acquisition should not be curtailed. Objection rights under section 24 of the Act once receipt of a notice of intention to take land under section 23 is received should not be extinguished, even if the Environment Court has already considered a resource consent application for the proposal.

The Resource Management Act processes establish the environmental parameters for such network proposals and do not convey on the applicant (ie the local authority, the Crown or private provider) a right to proceed until such time as formal entry rights to the land have been secured. For example, the proposal may meet environmental and resource management consideration, but the proposal could still be unreasonable or the alternatives may not have been sufficiently explored.

4.5 Private providers

We strongly support the Act's present provisions regarding private providers. We believe that private providers should not be able to use compulsory acquisition powers independently of either the Crown or a local authority.

The responsibility for authorising private providers as 'requiring authorities' under the Resource Management Act should continue to be split between the Crown and local authorities.

For those activities for which local government has a clear role, responsibility and involvement, local government should continue to work in partnership with private providers to achieve the provision of facilities and services to local communities (including Local Authority Trading Enterprises and other local authority entities).

Private providers on a national basis should continue to work through the Crown. Local government would continue to have input on a regional and district basis through Resource Management Act processes.

4.6 Competing needs of private providers

In practice this does not seem to be a big issue for local authorities as most utility operators use road corridors and their rights are embodied in statutes such as the Telecommunications Act and the Electricity Act. Where it does become an issue is over sensitive areas eg Maori land or environmentally sensitive areas.

We believe that private providers need to be bound by some principles surrounding sensitivity to the use, natural/cultural values and status of the land and sensitivity towards other users of the land.

4.7 Compensation

Local government strongly supports the continuation of the existing compensation provisions under sections 63 to 76.

We would not like to see the injurious affection provisions widened from those of section 63. The two tests that should continue to apply are:

- injurious affection has to relate to the land
- there has to be a substantial impact.

There still remains the common law ability to raise issues through the courts. We believe that the existing provisions are adequate. There is no need for additional provisions.

5 Disposal of Public Works Land

5.1 General

Section 2 above describes the key principles which should apply to obligations to offer back land to former owners. The principles cover:

- what circumstances offer back should apply
- who to offer surplus land to
- what constitutes surplus land
- statutory time limits
- the exemptions that should apply.

Annex 1 *attached* contains detailed comments on offer back and disposal administration.

5.2 Key area for review

Local government believes that the disposal provisions of the Act is the main area that need substantial review and amendment.

Several cases considered by the High Court, the Court of Appeal and the Privy Council have provided direction regarding the offer back provisions of the Act. These have led to much confusion and uncertainty for local authorities throughout New Zealand. Local government would like to see resulting from this review a revision of the key principles underlying the offer back provisions.

5.3 Local authorities free to dispose of land

Only where a piece of land becomes surplus to a local authority's requirements and a local authority makes an explicit decision to dispose of the land should the offer back process be triggered. Then, only if the land was compulsorily acquired by the local authority should offer back to the original vendor be required.

For land acquired by negotiation on the open market, local authorities should have the discretion to dispose of the asset in accordance with good public body practice —as controlled by the Local Government Act and financial requirements.

As described in Section 2 above, local government is subject to many checks and balances regarding operations, finances, strategy development and decision-making.

Public works legislation should be predominantly focussed on land that is compulsorily required and preserving the rights of parties to compulsory acquisitions in fair, reasonable and equitable ways.

6. Conclusions

Local government welcomes the review of several aspects of the Public Works Act and supports the overall intent of the review to produce legislation that is “clear, workable and sufficiently flexible to be able to meet current and future requirements for public works.”

We are mindful of significant areas of Government policy and legislative review regarding the Local Government Act, transport and water – that will guide the roles, responsibilities and tools available to local government to provide for the present and future needs of communities.

Careful consideration is required of any proposals to amend the Public Works Act in light of these reviews and significant coordination between all reviews is required.

Local government believes that:

- the Act is working reasonably well, except for the offer back provisions
- local government needs the ability to compulsorily acquire land to meet communities’ present and future needs. It is a tool that should remain available to local authorities
- the section 40 offer back provisions need revision
- the acquisition provisions are sound.

We look forward to working with the Government to progress aspects of the review.

Local Government New Zealand

March 2001

Annex 1

This format for this section has been adapted from the submission form attached to the LINZ discussion document.

Chapter 3 What is a Public Work and who should have access to the Public Works Act?			
Definition of a public work			
1. Should the government provide a mechanism for building essential services that the private sector can provide?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Neither <input type="checkbox"/>
Comments In principle we agree that local government should have a mechanism for compulsory acquisition.			
2. Should public works be specifically defined to be essential or in the "public interest"?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Neither <input type="checkbox"/>
Comments Public works should not be specifically defined as essential works. The definition has to be inclusive and apply to activities undertaken by local government that are 'in the public interest' and 'reasonably necessary' for communities.			
3. Should the ability of the Crown or local authority to compulsorily acquire land be limited to such specifically defined works?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Neither <input type="checkbox"/>
Comments See above and principles in Section 2 and Section 3 comments.			
4. Is it best to continue to enable the Crown or local authorities to use the Public Works Act to acquire land for any activity they are authorised to undertake	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Neither <input type="checkbox"/>
Comments Local government needs the ability to use the Act to compulsorily acquire land to meet the present and future needs of communities. There are appropriate checks and balances in place to ensure against abuse of compulsory powers.			
5. Is the emphasis better placed on who benefits from the work ie "the public good" rather than on who has the power to do the work?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Neither <input checked="" type="checkbox"/>
Comments See also principles in Section 2 and comments in Section 3 above. In effect both emphasis on powers and on public interest are required when compulsory acquisition powers are used. We need to have a system for determining who can use the Act. If public interest was the <i>sole</i> criteria for determining who can use the Act there would inevitably be numerous disputes regarding activities that do not have a public works flavour, but could be said to be in the public interest eg charitable organisations.			
6. Is it appropriate to allow market forces to dictate the acquisition/construction of those works that are outside a specific definition?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Neither <input checked="" type="checkbox"/>
Comments We do not support a specific definition of "public works". See principles in Section 2 and Section 3 comments above.			

Chapter 4 Acquisition and Compensation			
Acquisition by Agreement			
1. Is a negotiated purchase of leasehold, strata, other less than freehold interest, or entering into joint ventures with the landowner, a realistic alternative to purchase of the freehold for a public work?	Yes	No	Neither
	<input checked="" type="checkbox"/>		
<p>Comments</p> <p>We believe that the current process under the Act is fair and equitable and recognises the need to consider alternatives to freehold interests.</p> <p>We strongly support the status quo. No further provisions are required.</p>			
2. Where there is a negotiated agreement to acquire land: should the method of acquisition and compensation be:	Yes	No	Neither
a. Set in legislation; or		<input checked="" type="checkbox"/>	
<p>Comments</p> <p>See also Section 4 comments above.</p> <p>Open market negotiations should be just that 'open'. Additional provisions to dictate the outcome of 'open market' negotiations would defeat the purpose of providing the option to negotiate an agreement.</p> <p>The key principle should be the reasonableness of the agreement and it should rely on existing contract law principles to protect both parties.</p> <p>There have been very few compulsory takings over recent years. This indicates that there appears few real problems in an acquiring authority's ability to operate outside the scope of the Act and limited justification for legislative amendment.</p>			
b. An open market transaction?	Yes	No	Neither
	<input checked="" type="checkbox"/>		
<p>Comments</p> <p>See above and Section 4 comments.</p>			
Compulsory Acquisition			
1. Should the compulsory acquisition of land be limited to works specifically defined in legislation, and work that is outside that definition require a specific Act of Parliament?	Yes	No	Neither
		<input checked="" type="checkbox"/>	
<p>Comments</p> <p>See principle comments in Section 2 above.</p> <p>We support an enabling definition of public work. A local authority should be able to compulsorily acquire land for works that are 'reasonably necessary' and 'in the public interest'.</p>			

2. Should a particular land status, significance or use be taken into account when compulsory acquiring land?	Yes	No	Neither
	<input checked="" type="checkbox"/>		
<p>Comments</p> <p>We support that status or significance to 'communities' should be taken into account when compulsory acquiring land. The principle should apply to <i>all</i> land and has been established through other statutes.</p> <p>Under the Resource Management Act, local authorities would need to be satisfied that the significance of the land has been considered eg matters identified as being of national importance under the RMA and the provisions of the Te Ture Whenua Maori Act regarding status of land. However, we are not convinced that a new or separate provision is needed in the Act.</p>			
Private Providers			
1. Should parties need to go to the Environment Court for every acquisition that relates to a lineal development?	Yes	No	Neither
			<input checked="" type="checkbox"/>
<p>Comments</p> <p>The Environment Court should only be involved where there is an objection to a proposal. It is appropriate that the Environment Court consider the context of the overall nature of the development.</p> <p>See Section 4 comments.</p>			
2. Would you like to see the continued use of compulsory acquisition by network utility operators (through becoming a requiring authority under the Resource Management Act)?	Yes	No	Neither
	<input checked="" type="checkbox"/>		
<p>Comments</p> <p>For those activities for which local government has a clear role, responsibility and involvement, local government should continue to work in partnership with private providers to achieve the provision of facilities and services to local communities (including Local Authority Trading Enterprises and other local authority entities).</p> <p>Private providers on a national basis should continue to work through the Crown. Local government would continue to have input on a regional and district basis through Resource Management Act and Local Government Act processes, which provide adequate checks and balances.</p> <p>In principle, we would like to see continued use of compulsory acquisition powers by network utility operators. For local government the check mechanism is that network utility operators have to be subject to the Resource Management Act and for local government-provided services (either through a LATE or other entity), the local authority would have some say in how the compulsory acquisition would be handled.</p>			
3. If yes, where competing requiring authorities want the Minister to use the compulsory provisions of the Act:	Yes	No	Neither
a. The selection process should be codified; and/or			
<p>Comments</p> <p>This is a wider issue than just the Act. It involves formal long term planning and development, which for communities involves predominantly the Local Government Act and the Resource Management Act</p> <p>From local government's perspective, most network utilities use the road corridor, and their rights are embodied in the Telecommunications Act and Electricity Act.</p> <p>See above and Section 4 comments.</p>			

b. They should be required to share a common area of land?	Yes	No	Neither
<p>Comments</p> <p>See above and Section 4 comments.</p>			
3. Where the Crown compulsorily acquires the freehold on behalf of the requiring authority, it should:	Yes	No	Neither
a. Lease the land to the requiring authority on a commercial basis for the duration of the work; or	✓		
<p>Comments</p> <p>We accept the principle of the Crown or a local authority acquiring land on behalf of 'requiring' authorities. It is up to the Crown (or local authority as the case may be) to determine the arrangement with the requiring authority, but the other provisions of the act eg section 40 offer back, must be satisfied.</p>			
b. Transfer freehold ownership of land to the requiring authority;	Yes	No	Neither
	✓		
<p>Comments</p> <p>We agree that this in principle conditional upon a caveat or memorial being placed on the title alerting third parties to the obligations of the transferee or 'requiring authority' (whichever the Crown or the local authority chooses) eg regarding disposal.</p>			
c. Should all existing network developments (e.g. power/pipe lines) be made available to private providers?	Yes	No	Neither
	✓		
<p>Comments</p> <p>In principle we agree. However, each case should be determined on its merits by either the Crown, in the case of national network-type providers or a local authority for those activities within their jurisdiction.</p>			
Compensation			
1. Are landowners entitled to compensation for injurious affection through the operation of the public work if their land has not been acquired?	Yes	No	Neither
			✓
<p>Comments:</p> <p>In principle we do not support providing for compensation for injurious affection where land has not been acquired. This may subject local authorities to lengthy and unnecessary claims. However, we strongly support the status quo. Compensation can be paid under the existing provisions of section 63 of the Act plus further defined by case law.</p>			
2. Are landowners entitled to compensation for costs incurred because they have been approached for the acquisition of their land for a public work, or have been advised that their land is or may be required for a public work, if the land was not acquired?	Yes	No	Neither
			✓
<p>Comments:</p> <p>As above and see Section 4 comments.</p> <p>The existing provisions of section 76 of the Act already covers this issue. We strongly support the status quo.</p>			

3. Should the solatium payment be:	Yes	No	Neither
a. Widened to include those who did not have a residence purchased;		✓	
<p>Comments</p> <p>The provisions relate to occupied land only.</p> <p>If the provision was widened it would dramatically increase the number of claims and the overall cost of purchases. It would be very difficult to devise a set of fair criteria that could be used to establish rights to the payment under a widened provision, unless <i>all</i> vendors are entitled to claim.</p> <p>We strongly support the status quo.</p>			
b. Increased to keep pace with inflation	Yes	No	Neither
	✓		
<p>Comments</p> <p>Payments need to be increased to keep pace with inflation or some other form of indexing should be used.</p>			
c. Widened to provide for flexible negotiations with landowners, and for compensation for the intrinsic value to the land owner who has an attachment to the land?	Yes	No	Neither
		✓	
<p>Comments</p> <p>See above. We do not believe that widening for these reasons is necessary.</p>			

Chapter 5 Disposal of Public Works Land			
Offer Back of land to former owners			
1. Should the current offer back provision remain unaltered?:	Yes	No	Neither
	<input checked="" type="checkbox"/>		
<p>Comments</p> <p>The offer back provisions are needed. However they need substantial amendment.</p> <p>Refer principles in Section 2 and Section 5 comments above.</p>			
Or: a. Should the requirement to consider offer back to land be limited to land compulsorily acquired?	Yes	No	Neither
	<input checked="" type="checkbox"/>		
<p>Comments</p> <p>Refer principles in Section 2 and Section 5 comments above.</p> <p>We agree that the obligation to consider offer back should be limited to land compulsorily acquired.</p>			
Or b. Should all former owners be notified at the time of disposal so that they can participate in any public offering of the land?	Yes	No	Neither
		<input checked="" type="checkbox"/>	
<p>Comments</p> <p>This would be a significant administration issue for local authorities. The principle party that should benefit is the original vendor, which would be covered by the offer back process.</p> <p>Under the Local Government Act, local authorities have specific requirements to inform the public when:</p> <ul style="list-style-type: none"> • considering whether to dispose of assets • assets are available for sale. 			
Or c. Should land that has not been used for a public work within a specified timeframe following acquisition be returned to the former owner automatically the current offer back provision remain unaltered?	Yes	No	Neither
		<input checked="" type="checkbox"/>	
<p>Comments</p> <p>We strongly disagree. Some projects require acquisition well in advance of any construction works or preparation of the land.</p> <p>Many factors may affect the timeframe for development of the land for the public work eg lead-in times for roading or water services can be lengthy. Sometimes plans have to change as more technical information, financial commitment of communities and environmental planning requirements alter.</p> <p>Having to use the land within a statutory time period would unduly hinder local government's ability to respond to community needs.</p> <p>Acquisition of land by a local authority is not considered lightly. Many public checks and balances exist before the decisions to acquire land are made. In the case of using compulsory acquisition powers, there are further checks and balances, because often the use of such powers are more costly for communities and are seen as a last resort.</p>			

Or d. Should land be offered to former owners when the use for which it was originally acquired has ceased?	Yes	No	Neither
		<input checked="" type="checkbox"/>	
<p>Comments</p> <p>Refer principles Section 2 and Section 5 above.</p> <p>This would unduly hinder local authorities from having flexibility to respond to needs of communities over time.</p> <p>Only where a piece of land surplus to a local authority's requirements and a local authority has made an explicit decision to dispose of the land should the offer back process be triggered.</p>			
Or e. Should land be offered back in all cases except where it is impracticable to do so?	Yes	No	Neither
		<input checked="" type="checkbox"/>	
<p>Comments</p> <p>Refer principles Section 2 and Section 5 above.</p> <p>Often it is unreasonable to offer back land or the exception is relevant because land sometimes is not capable of meeting minimum lot size as described in a district plan.</p> <p>Local government would not want to see a proliferation of substandard allotments that are not capable of meeting standards for access, services, safety or other similar requirements. Local government would not want to see subdivision requirements that are agreed with a local community through sound democratic processes through the Resource Management and Local Government Acts be undermined.</p>			
Or f. Should significant change in character be removed as grounds for an exemption to offer back?	Yes	No	Neither
		<input checked="" type="checkbox"/>	
<p>Comments</p>			
Or g. Should significant change in character as grounds for exemption be retained but require consultation with the former owner prior to making a decision?	Yes	No	Neither
		<input checked="" type="checkbox"/>	
<p>Comments</p>			
Or h. Should the offer back obligation be to the former owner only?	Yes	No	Neither
	<input checked="" type="checkbox"/>		
<p>Comments</p> <p>Refer principles Section 2 and Section 5 comments above.</p> <p>Local government strongly supports limiting offer back to the former owner only – but only where land has been compulsorily acquired.</p>			
Or i. Should it be widened to offer back to present day successors in probate or present day successors in genealogy?	Yes	No	Neither
		<input checked="" type="checkbox"/>	
<p>Comments</p> <p>Refer principles Section 2 and Section 5 comments above.</p> <p>This would be unduly onerous for local authorities.</p>			

Or j. Should the current offer back provision be widened to provide in legislation for an offer to be taken up by a nominee instead of a former owner?	Yes	No	Neither
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments</p> <p>Refer principles Section 2 and Section 5 comments above.</p> <p>Former owners are already free to enter into “back to back” contracts. If the provision were widened it may make it more difficult for local authorities to be certain that offer back obligations have been satisfied.</p>			
Or k. Should the requirement to consider offering to successors in title to the former owner be removed?	Yes	No	Neither
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Comments</p> <p>Refer principles Section 2 and Section 5 comments above.</p>			
Or l. Should the authority for decision-maker to decide between successor in probate and successor in title be reinforced and the current offer back provision remain unaltered?	Yes	No	Neither
	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Comments</p> <p>Refer principles Section 2 and Section 5 comments above.</p> <p>The current provisions need to be altered. The purpose of the offer back right is to reunite former owners with land that was forcibly taken by an acquiring authority. It does not follow that all successors in title should retain the same right.</p>			
Or m. Should the time period following acquisition for the offer of surplus land back to former owners be limited?	Yes	No	Neither
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Comments</p> <p>Refer principles Section 2 and Section 5 comments above.</p> <p>We strongly support the establishment of a time period for the offer of surplus land back to former owners — in the case of compulsorily acquired land only. We suggest a period of 20 years. Within this time, if a local authority resolves to dispose of the land, then it becomes surplus and at this point the offer back obligation would be triggered. After 20 years, or on the death of the original owner (or wind up of a company) the obligation would cease.</p>			
Or n. Should the land owner be asked at the time land is acquired if they want the land to be offered back to them when it is no longer required current offer back provision remain unaltered?	Yes	No	Neither
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments</p> <p>Refer principles Section 2 and Section 5 comments above.</p> <p>A vendor can at present waive rights to offer back. The courts recognise waivers (Brothers Inn vs Glusing).</p> <p>If only land compulsorily acquired were to be offered back (and within 20 years), it is not really necessary to include a specific provision for the vendor to consider waiving their offer back rights.</p> <p>A land owner/vendor should not be under any obligation to consider waiving rights to offer back in a compulsory acquisition.</p>			

Or o. Should the relationship between long term leases/restrictive covenants/strata rights and former owner's rights be set in law?:	Yes	No	Neither
		✓	
<p>Comments</p> <p>We do not think it entirely necessary for the Act to be made explicit to recognise acquiring authorities' rights to encumber land or reserve rights, once land has been acquired.</p> <p>For example, the nature of the public work and the development of the land and operational arrangements will dictate how a local authority would deal with the land.</p>			
Or p. Should the criteria for which land might be offered back at less than current market value be set in law?	Yes	No	Neither
		✓	
<p>Comments</p> <p>Current market value is what a purchaser actually pays for a piece of land. A current market valuation is an estimate of what a willing purchaser would be prepared to pay for a piece of land in a open market. It merely indicates value.</p> <p>A local authority should be able to agree a price that is reasonable, fair and equitable to both parties at the time of the transaction. Again, there are several tiers of checks and balances under the Local Government act that binds local authorities in their asset dealings.</p>			
Or q. Should land acquired under a Public Works Act, but later declared to be Crown Land and held under the Land Act 1948, be subject to offer back to the former owner?	Yes	No	Neither
<p>Comments</p>			
Offer Back Administration			
1. Does the point at which the disposal of an interest in land will invoke an offer back need to be clarified?	Yes	No	Neither
	✓		
<p>Comments</p> <p>Refer principles Section 2 and Section 5 comments above.</p> <p>The problems created by the recent appeal case (Attorney General v Horton) need to be addressed.</p> <p>We strongly support a definition of surplus that would be the point at which a local authority 'resolves' to dispose of a piece of land.</p>			
2. Should there be a discretion to offer land back to the former owner at less than current market value?	Yes	No	Neither
	✓		
<p>Comments</p> <p>See above.</p> <p>Local authorities must be able to negotiate the sale of property and not be bound by inflexible and unrealistic determination of 'current market value'.</p>			
3. If so, should there be criteria set in legislation for offer back at less than current market value?	Yes	No	Neither
		✓	
<p>Comments</p> <p>See above.</p>			

4. Do titles need to be caveated/memorialised to protect former owners' interests?	Yes	No	Neither
	✓		
<p>Comments</p> <p>See comments regarding transfer of freehold land acquired on behalf of private providers above and compliance issues below.</p> <p>There are advantages if titles are noted with who has the obligation to offer land back to the former owner. We are unsure that presently section 40 of the Act creates a caveatable interest on behalf of the original owner. However, a memorial to the effect that the land was compulsorily acquired from 'x' would be sufficient to give notice to protect third parties and subsequent owners about the history of the land.</p> <p>It would also help local authorities in their investigations over time.</p> <p>Consideration would need to be given to whether a new provision to this effect would be retrospectively applied. This would be significantly onerous and costly on local communities, but a transitional arrangement to consider memorials on those land title that were compulsorily acquired and have not already been declared surplus, may be a good practical step.</p>			
5. Should land be offered back to family, whanau/hapu members where former owners decline (or are unable to) take up a repurchase offer?	Yes	No	Neither
		✓	
<p>Comments</p> <p>Refer principles Section 2 and Section 5 comments above.</p> <p>Former owners can already enter into "back to back" contracts. Further provisions to address this issue are not required.</p>			
Offer Back of Maori Land			
1. Where former Maori land is subject to offer back, should the land be returned to former owners:	Yes	No	Neither
a. In the same status as it was prior to the acquisition for the public work;			✓
<p>Comments</p> <p>The land should be offered back as either general land or Maori land depending on the former owner's preference.</p>			
Or b. In the way the offeree chooses?	Yes	No	Neither
	✓		
<p>Comments</p>			
2. Should there continue to be a separate offer back process for former Maori land?	Yes	No	Neither
		✓	
<p>Comments</p> <p>We believe that the same principles of the offer back process should be the same for both offer back to Maori and non-Maori former owners. From this then slightly different processes may be necessary to recognise the differing decision-making methods and powers of multiple owners.</p> <p>There may need to be a reference to the Maori Land Court or to the Maori Trustee to cope with multiple owner situations. In addition, timeframes for various aspects may need to be reviewed to see if additional time is required for certain circumstances eg involving response, notification and objection processes to reflect the circumstances of the landowners.</p>			

Compliance Issues			
1. Should the Crown retain any statutory obligations when land is transferred to a private provider by:	Yes	No	Neither
a. Registering a caveat against the certificate of title to land at the time of transfer?	✓		
<p>Comments</p> <p>Refer principles Section 2 above.</p> <p>The Crown should ensure that the obligations of the Act are satisfied – either by itself or by the transferee of the land. This could be by caveat , memorial or encumbrance.</p> <p>On transfer of the land to a third party, the District Land Registrar would need to be satisfied that the Act's requirements are satisfied – such an authorisation could be given by a certificate from the acquiring authority.</p>			
Or b. Codifying the Crown enforcement role for the disposal requirement?	Yes	No	Neither
	✓		
<p>Comments</p> <p>Refer above.</p> <p>A mechanism is required to ensure the Crown/local authority carries out the requirements set out in the Act.</p>			
Or c. Transferring land to a private provider in trust, so that when it is no longer required for the work it returns to the Crown?	Yes	No	Neither
		✓	
<p>Comments</p>			
2. Or should the responsibility for complying with ongoing statutory requirements pass absolutely to the private provider?	Yes	No	Neither
		✓	
<p>Comments</p> <p>Certification is required in some form that the provisions of section 40 have been satisfied. Is should be at the discretion of the Crown or the local authority whether it is they or a transferee of the land for public works purposes who is bound to undertake the offer back and disposal processes.</p>			
Disposal Administration			
1. Should the disposal process be open and contestable?	Yes	No	Neither
<p>Comments</p>			
2. Should the disposal process ensure the best return to the land holding agency?	Yes	No	Neither
<p>Comments</p>			
3. Do agencies need to retain the ability to dispose of land without going to the market in certain circumstances?	Yes	No	Neither
	✓		
<p>Comments</p> <p>The existing provisions of section 42 of the Act allowing local authorities to offer it to an adjoining owner are supported. However, there should not be an obligation to offer the land to an adjoining owner before offering to the open market.</p>			

4. Does the Act need to clarify the ability for the Crown to act as a developer when attempting to dispose of surplus land and reinforce the requirement for compliance?	Yes	No	Neither
		✓	
<p>Comments</p> <p>We support the status quo. The Crown or a local authority in preparing land for sale, once it has been declared surplus, is part of a landowner's discretion and choice – and is reflected in the price negotiated and paid for the land.</p> <p>Refer comments about local authority district plan and Local Government Act requirements regarding local subdivision standards above.</p> <p>The Crown, like any landowner must act responsibly as a 'good neighbour' and should not attempt to absolve itself (through legislation) from obligations that other landowners would ordinarily have to satisfy, even though there may be financial implications.</p>			
5. Should surplus public works land be exempt from complying with resource consent requirements when attempting to title the land for disposal?	Yes	No	Neither
		✓	
<p>Comments</p> <p>Local government strongly disagrees with the premise that surplus public works land should be exempt from complying with resource consent requirements.</p> <p>Local government would be concerned if the premise of reducing fiscal risk to the Crown is to absolve the Crown from fulfilling reasonable duties as landowner and land manager of significant portions of land throughout New Zealand, or from fully interacting with local authorities in terms of statutory requirements for managing the environment eg through the Resource Management Act, the Building Act or the Local Government Act.</p> <p>Refer <i>Local Government New Zealand's</i> submissions on clause 6 of the Resource Management Amendment (1999) Bill (refers to sections 11 and 218 Resource Management Act).</p>			
6. Does the Act need to provide a more enabling regime to assist in the efficient disposal of land where disposal costs outweigh return?	Yes	No	Neither
		✓	
<p>Comments</p> <p>See above.</p>			
Transfer for Another Public Work			
1. Is it fair to continue to allow land acquired for one public work to be transferred for another public work without offer back to the former owner?	Yes	No	Neither
	✓		
<p>Comments</p> <p>Refer principles Section 2 above.</p> <p>In considering amendments to the Act, the timeframe over which public works develop must be recognised. Local authorities need the ability to respond to the changing needs of communities in the present and the future. The requirements for land change over time for many reasons.</p> <p>The definition of what constitutes a public work should be enabling. Public works by local authorities should be those that are activities that a local community has agreed to provide; are "reasonably necessary"; and "in the public interest".</p>			

2. Is criteria required for the transfer of land from the Crown to a local authority for another public work?	Yes	No	Neither
		<input checked="" type="checkbox"/>	
Comments			
3. Should Maori interests be protected where land is transferred by the Crown to a local authority for another public work?	Yes	No	Neither
	<input checked="" type="checkbox"/>		
<p>Comments</p> <p>We support the Cabinet policy guideline (16 October 2000) regarding the transfer of Public Works act land held by the Crown to a local authority for a public work.</p> <p>The Crown cannot transfer land to a local authority unless the local authority agrees to the transfer – in doing so the parties would need to identify the process for what happens when the land is no longer required for the local authority public work.</p>			
4. Is a regime required that ensures other agencies needs for surplus public works land are considered or canvassed prior to disposal?	Yes	No	Neither
		<input checked="" type="checkbox"/>	
<p>Comments</p> <p>This is an issue for internal operation by the Crown.</p>			

Chapter 6 Administrative Matters			
Roading Provisions			
1. Is there a need to ensure consistency of road definitions between Transit NZ, Local Government, Transport Acts, and PWA?	Yes	No	Neither
			<input checked="" type="checkbox"/>
<p>Comments</p> <p>There is a general desire by local government to ensure that there is consistency between statutes governing local government operations, including the relationship between the above stated legislation. However, great care is needed and significant discussion over the implications for the wide range of local government activities is needed.</p> <p>Close liaison between agencies leading reviews of the Local Government Act and the Transport Act and local government is needed.</p>			
2. If so, what Act do you consider would be the most appropriate to contain these provisions?	Yes	No	Neither
			<input checked="" type="checkbox"/>
<p>Comments</p>			
Administrative Efficiency			
1. Should we provide for land, including road, acquired or held under the PWA, to be held in certificate of title?	Yes	No	Neither
		<input checked="" type="checkbox"/>	
<p>Comments</p> <p>This is not a practical suggestion. There are often circumstances where it is desirable to define road for title purposes. However, it should not be a mandatory requirement as it would be unreasonable and impractical to achieve.</p>			
2. Is it necessary for the control of acquisition and disposal of public works land to be held with a central position?	Yes	No	Neither
	<input checked="" type="checkbox"/>		
<p>Comments</p> <p>This is a question for the Crown to answer. It is easier for non-Crown organisations to be able to deal with the "Crown" as opposed to many different Crown departments at one time.</p>			