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## **Report 01.240**

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Report to the Policy and Finance Committee  
from Peter O'Brien, O'Brien Property Consultancy Ltd

### **Review of the Public Works Act 1981**

#### **1. Purpose**

To seek Committee support of a submission to Local Government New Zealand on the review of the Public Works Act.

#### **2. Background**

The Public Works Act 1981 is a cornerstone Act for all Local Authorities in New Zealand as it dictates the process of acquisition and disposal of all land for the purpose of a public work. In general the Public Works Act 1981 functions well and requires little amendment.

In December 2000 Land Information New Zealand (LINZ) announced a review of the Public Works Act and released an issues and options discussion paper.

In response officers formed a working group to consider the issues raised with a view to submitting a Council response. Local Government New Zealand (LGNZ) also formed a working group to draft a response on behalf of the local government sector. The LGNZ draft response was circulated late March 2001, (see copy attached as **Attachment 1**). The officers working group has correlated Council's draft response with that of LGNZ and finds, in general, a great deal of commonality. The principal area of departure is in relation to section 40, disposal of land.

#### **3. Proposed Action**

As noted above, LGNZ has already prepared a draft response to LINZ on behalf of the sector. Officers consider that adding Council's weight to the LGNZ submission is likely to be a more effective way of representing Council's views than via a separate submission.

Therefore, it is proposed that the Council submit a response to LGNZ, (see the draft Council response attached as Attachment 2) highlighting the areas of the LGNZ submission that are supported and those that should be amended.

However, depending on the content of the final LGNZ response to LINZ, the Council could also still provide its own independent response to LINZ based on views expressed in this report.

#### **4. The Main Issues Raised**

For the most part officers are recommending that the Council support the LGNZ position, which in most cases is lending support to the status quo. However, in relation to issue 4.5 in particular (disposal of Public Works land), change to the LGNZ position is recommended.

The Government has already decided that the new Act shall include Local Authorities' right to acquire land for a public work, whether by agreement or compulsion. It is proposed that this decision be applauded and supported.

##### **4.1 What is a public work and who should have access to the Public Works Act 1981 (PWA)?**

The status quo is supported. (i.e. there should be no specified essential works.) Acquisition of land by agreement or compulsion under the PWA should apply to all activities local authorities are authorised to undertake in the public interest and which are reasonably necessary for communities. There is no known evidence of improper, excessive or needless use of the compulsory provisions of the Act and therefore such provisions should be retained.

##### **4.2 Acquisition and Compensation**

The status quo is supported as provision already exists to acquire interests which are less than freehold. In my view it must not be prescribed as mandatory that the least interest be acquired. Likewise, partnerships can give rise to needless complications and can create a large ongoing cost to administer.

Where land is acquired by negotiation, the method of acquisition and compensation should not be set in legislation, rather it should establish an open market transaction.

##### **4.3 Compulsory Acquisition**

The status quo is supported. As stated above, compulsory acquisition of land should not be limited to works specifically defined.

Network utility operators, through becoming a requiring authority under the Resource Management Act, should continue to be able to use the compulsory acquisition provisions of the PWA. Where competing requiring authorities request the Minister to use the compulsory provisions of the Act, the Minister should assess the applications on a case by case basis, without prescription. Where the Crown has compulsorily acquired land on behalf of the requiring authority the Crown should be able to either

grant a lease on a commercial basis, transfer ownership or make the land available to private providers on any other basis.

#### 4.4 **Compensation**

The status quo is supported. Landowners whose land has not been acquired should not be entitled to compensation for injurious affection through the operation of a public work. It would not be feasible to administer claims from such a wide and undefined group or community. Similarly it is not feasible to seek betterment from such a wide community.

Landowners who incur costs as a result of being approached for the acquisition of their land, but where no acquisition occurs, should remain able to have their actual and reasonable costs reimbursed. Solatium should only be paid to landowners whose residence was acquired and the level of solatium should be set by an annual Crown guideline.

#### 4.5 **Disposal of Public Works Land**

This is the section of the Act which does require alteration. It has been severely altered by case law and has been the subject of considerable litigation. There is a general consensus, among those who must work under this section, that change is necessary but there is division on the extent of that change.

LGNZ is seeking radical change. It is proposed that this Council does not support the radical stance proposed by LGNZ.

The LGNZ stance is:

- that only land compulsorily acquired need be offered back
- the offer need only be made to the former owner and should no longer include the former owner's successor
- that the offer back need only be made if the property was acquired 20 years or less before it is declared surplus.

The recommended stance of the Council is:

- The current offer back provisions do need to be changed.
- The offer back provisions should apply to all land acquired, whether by compulsion or not as some people do sell by agreement because they believe that ultimately the compulsory provisions of the PWA can be exercised.
- Land acquired should ultimately be able to be used for any purpose local authorities are authorised to undertake in the public interest and which are reasonably necessary for communities. Local authorities should not be required to offer land back to the former owner when it ceases to be required for the purpose for which it was originally acquired.

- No timeframe should be imposed between the date of purchase of land and when it is used for the purpose for which it was acquired.
- The current exemptions to offer back of land should be retained, being where it is impracticable, unreasonable or unfair or where there has been a significant change in character of the land.
- The offer back should be to the former owner or their successor, where successor is to be singular and not plural ad infinitum.
- Where a whole title was acquired the offer back should be to the former owner or their successor in probate and where a part title was acquired the offer back should be to the former owner or their successor in title. Failing uptake of the offer, disposal on the open market should take place.
- The requirement to offer back should be limited to the life span of the former owner or the life span of their immediate successor.
- At the time of acquisition provision should be made for the owner to have the option to agree to the land not being offered back at the time it is declared surplus.
- The status quo should remain where surplus land is sold at its current market value, but where the local authority has the discretion to sell at a lesser price if it is reasonable to do so. This is usually where the land was gifted in the first instance. In that instance, the Act should cater for the local authority to be exempt from the requirement to pay gift duty.
- Land should only be considered surplus when a resolution to that effect has been passed by the local authority.
- The value of land to be sold should be its current market value at the time of sale, not when it ceased to be used for the purpose for which it was acquired.

#### 4.6 **Compliance Issues**

Land acquired by the Crown for the use of a private provider should be held in trust so that it returns to the Crown when it is no longer required.

The Crown should have the responsibility to undertake the administration of the disposal but at the cost of the private provider which has had the use of the land.

#### 4.7 **Disposal Administration**

The disposal process should be open and contestable and the process should ensure the best return, while having regard to the circumstances of the acquisition.

The Crown, in particular, has experienced several instances of the former owners entering into back to back contracts which provide immediate profit to the former owner at the expense of the Crown. In an attempt to combat this it is proposed to recommend a clause to provide for:

*“At time of disposal, the former owner to make payment at the assessed current market value of the land, such assessment to be undertaken by a registered public valuer. The disposing authority reserves the right, within a period of 2*

*years from date of disposal, to lodge a claim for additional consideration if market evidence, subsequently available, supports the revised assessment. The revised assessment to be effective as at the date of disposal.”*

#### 4.8 **Transfer for Another Public Work**

The status quo is supported as it is important to retain the ability for land to be utilised for any public work, irrespective of the purpose for which it was acquired. It is equally important to retain the ability to be able to transfer ownership to another authority for it to use the land for another public work (as per the current section 50). Note, the section 40 requirement to offer back to the former owner, when it is finally declared surplus to requirements, remains unaltered.

#### 4.9 **Administrative Matters**

All land acquired for Road, Highway or Motorway should be given the same classification as “Road” so that the local authority has the ability to place services within the corridor. At present local authorities only have rights in respect of roads and must make specific application, often to be declined, in respect of Highways and Motorways.

#### 4.10 **Issues of Particular Interest to Maori**

The LINZ public discussion paper, the LGNZ draft response and the Council draft submission to LGNZ have been provided to one of Council’s Maori Policy Advisers for perusal and comment. We are advised that all Maori issues and interests have been adequately catered for and protected. It is therefore expected that the PWA and the attached submissions should not result in any problems for the Council in terms of its relationship with Iwi authorities and the Charter of Understanding.

### 5. **Communications**

There are no significant communications opportunities at this time.

### 6. **Recommendations**

*That the Committee recommend to Council that it:*

- (a) receive the report and note its contents.*
- (b) agree in principle to support the Local Government New Zealand submission to Land Information New Zealand, except for those areas where alternative submissions are to be made.*
- (c) agree to support the specific submission being presented to Local Government New Zealand (as outlined in **Attachment 2**) expressing support for areas of agreement and seeking to achieve variation to the areas.*

- (d) *agree that should any of the Council submissions not be adequately reflected in the final Local Government New Zealand submission to Land Information New Zealand that the Council should present its own submission directly to Land Information New Zealand.*

Prepared by:

A handwritten signature in black ink, appearing to be 'P. O'Brien', is placed over a light green rectangular background.

PETER O'BRIEN  
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Approved by:

GREG SCHOLLUM  
Chief Financial Officer

**Attachment 1:** LGNZ draft sector response

**Attachment 2:** Council representations to LGNZ