

# Departmental Disclosure Statement

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| Public Works (Critical Infrastructure) Amendment Bill |
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by Land Information New Zealand (LINZ).

LINZ certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

30 April 2025.

**Contents**

Part One: General Policy Statement.....3

Part Two: Background Material and Policy Information .....4

Part Three: Testing of Legislative Content.....6

Part Four: Significant Legislative Features .....8

## Part One: General Policy Statement

The policy objective of the Public Works (Critical Infrastructure) Amendment Bill (the Bill), is to streamline the land acquisition process under the Public Works Act 1981 (PWA) for critical infrastructure projects listed in a schedule to the Bill. These are public works listed in Schedule 2 of the Fast-track Approvals Act 2024, and Roads of National Significance (RoNS) identified in the Government Policy Statement on land transport 2024, which are not listed in Schedule 2 of the Fast-track Approvals Act.

The Bill will enable the delivery of these critical infrastructure projects by using an accelerated process which provides for

- an **Objection process** which replaces the right to object to the Environment Court with a natural justice process allowing for written submissions to the decision-maker to streamline the objection process;
- a **Legal test** – which expressly requires the decision maker to consider the same matters that the Environment Court would consider (an objection under s 24(7) of the PWA) before issuing a section 23 Notice of Intention to take land or making a recommendation/request under section 26 of the PWA;
- **Premium payments to incentivise agreement** – which provides for an incentive payment available to landowners with whom an agreement is reached before a Section 23 Notice of Intention is issued and a recognition payment available to all landowners who have land acquired or taken using the accelerated process;
- **Exclusions** – protected Māori land will be excluded from the accelerated process. However, landowners of protected Māori land whose land is acquired for critical infrastructure projects through the standard PWA process will be eligible for the incentive and recognition payments;
- **Transitional arrangements** – the process will apply to land acquisitions for critical infrastructure projects where a section 18 notice of desire has been served and negotiations have started before the enactment of this Amendment Bill;
- an **Opt-out clause** – agencies responsible for critical infrastructure projects can opt-out of the accelerated process and use the standard PWA process
- a **Statutory review period** – the process will be reviewed three years after enactment to ensure the amendments are still fit for purpose.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

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| <b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>  | <b>YES</b> |
| <ul style="list-style-type: none"><li>CEA (2018). The Economic Benefits and Impacts of Expanded Infrastructure Investment. <i>The Council of Economic Advisers</i>. <a href="https://trumpwhitehouse.archives.gov/wp-content/uploads/2018/03/The-Economic-Benefits-and-Impacts-of-Expanded-Infrastructure-Investment.pdf">https://trumpwhitehouse.archives.gov/wp-content/uploads/2018/03/The-Economic-Benefits-and-Impacts-of-Expanded-Infrastructure-Investment.pdf</a></li><li>Principal Economics (2022). Great Decisions are Timely: Benefits from more Efficient Infrastructure Decision-Making. <i>Report to Infrastructure New Zealand</i>. <a href="https://infrastructure.org.nz/wp-content/uploads/2022/10/Cost-of-delay-in-infrastructure-decisions-Principal-Economics-report-Oct-2022.pdf">https://infrastructure.org.nz/wp-content/uploads/2022/10/Cost-of-delay-in-infrastructure-decisions-Principal-Economics-report-Oct-2022.pdf</a></li></ul> |            |

### Relevant international treaties

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| <b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b> | <b>NO</b> |
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### Regulatory impact analysis

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| <b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>   | <b>YES</b> |
| LINZ and the Ministry of Transport were the authoring agencies of a regulatory impact statement, <a href="#">available here</a> , and an addendum to this regulatory impact statement <a href="#">available here</a> . |            |

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| <b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b> | <b>NO</b> |
| The RIS and the addendum did not meet the threshold for RIA Team assessment. The two documents were reviewed by a quality assurance panel.        |           |

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| <b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b> | <b>NO</b> |
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### Extent of impact analysis available

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| <b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b> | <b>NO</b> |
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| <b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>  |            |
| <b>(a) the size of the potential costs and benefits?</b>   | <b>YES</b> |
| <b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>  | <b>NO</b>  |
| One of the Cabinet Papers contains costings for a sample of Roads of National Significance projects. The Cabinet Paper has been proactively released and is <a href="#">available here</a> . |            |

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| <b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b> |           |
| <b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>                  | <b>NO</b> |
| <b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>                          | <b>NO</b> |

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

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| <b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b> |
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| The Universal Declaration of Human Rights states that everyone has right to own property and that no one shall be arbitrarily deprived of their property. Under the proposed process, compulsory acquisition of land can only be used for a legitimate public purpose, with the process for taking being fair and transparent and adhering to principles of natural justice. |
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### Consistency with the government's Treaty of Waitangi obligations

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| <b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b> |
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| The Cabinet Papers were reviewed by Te Tari Whakatau and Crown Law (on behalf of the Attorney-General through Ministerial consultation). Te Tari Whakatau advised that they supported the exclusion of protected Māori land from the Bill as without the exclusion there would be significant Treaty of Waitangi risks. Officials from LINZ and Crown Law met to confirm that the Bill can be implemented in a way that is consistent with the principles of the Treaty of Waitangi. |
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### Consistency with the New Zealand Bill of Rights Act 1990

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| <b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b> | <b>YES</b> |
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| Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or report, will be accessible on the Ministry's website at <a href="https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/the-bill-of-rights-act/compliance-reports">https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/the-bill-of-rights-act/compliance-reports</a> |
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### Offences, penalties and court jurisdictions

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| <b>3.4. Does this Bill create, amend, or remove:</b> |  |
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| <b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b> | <b>NO</b> |
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| <b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b> | <b>YES</b> |
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| Part 2A of the Bill – Objections to the Environment Court have been removed and replaced with a natural justice process whereby the applicant can object to the decision-maker (the Minister or local authority). The right of judicial review remains. |
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| <b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b> | <b>YES</b> |
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| The Ministry of Justice was consulted on the policy Cabinet Papers and an amendment was made to the second Cabinet Paper to address some of the feedback provided. |
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## Privacy issues

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| <b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b> | <b>NO</b> |
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## External consultation

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| <b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>   | <b>YES</b> |
| <p>The New Zealand Infrastructure Commission Te Waihanga was consulted on both policy Cabinet papers that gave rise to the Bill. While the Infrastructure Commission was generally supportive of the policy direction of the Bill, they were not convinced that the amendment Bill needed to be implemented prior to amendments that will be made as part of the wider PWA review.</p> <p>NZTA was consulted during the development of the policy to get information on current acquisition practices and on how time delays can affect infrastructure delivery. NZTA also provided land acquisition data for a sample of three Roads of National Significance projects, which was used by LINZ to provide an indication of the cost impact of the premium payments on projects covered by the Bill. NZTA was consulted on a draft of the Bill.</p> |            |

## Other testing of proposals

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| <b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>   | <b>YES</b> |
| <p>NZTA, the key user of the proposed policy, was consulted to get information on current acquisition practices and how time delays can affect infrastructure delivery. Data provided was used to assess the effect of the various premium payment options.</p> |            |

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

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| <b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>  | <b>YES</b> |
| The PWA already contains provisions that enable the acquisition and in some cases the compulsory taking of land for public works. This amendment replaces the existing objection process to the Environment Court with a simpler, faster natural justice process. |            |

### Charges in the nature of a tax

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| <b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b> | <b>NO</b> |
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### Retrospective effect

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| <b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>   | <b>YES</b> |
| The Bill enables the payment of premium payments to landowners who are already partway through the acquisition process for projects covered by the Bill at the time the Bill is enacted. This enables landowners to access the additional compensation payable under the Bill that they would not have been otherwise able to access. If landowners do not agree to the acquisition of their land, the right to object to the Environment Court is replaced with the right to object to the decision-maker. |            |

### Strict liability or reversal of the usual burden of proof for offences

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| <b>4.4. Does this Bill:</b>  |           |
| <b>(a) create or amend a strict or absolute liability offence?</b>   | <b>NO</b> |
| <b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b> | <b>NO</b> |

### Civil or criminal immunity

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| <b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b> | <b>NO</b> |
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### Significant decision-making powers

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| <b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>   | <b>YES</b> |
| Part 2A of the Bill provides that landowners, and every person having an estate or interest in land, have the right to make a submission and to view any material provided by the acquiring agency and have the right to respond to that. The test and process to be used by the decision-maker is set out in Part 2A of the Bill. |            |



## Powers to make delegated legislation

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| <b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>  | <b>YES</b> |
| <p>There are two powers of this nature in the Bill.</p> <p><b>1</b> There is an Order in Council power in clause 39AAN, which allows the description and approximate geographical location of critical infrastructure projects in Schedule 2A of the Bill to be modified by Order in Council on the recommendation of the Minister for Land Information.</p> <p>This is to give clarity about the application of the new critical infrastructure provisions where the extent or exact location of the project needs to be modified as a result of ongoing project improvements. It is considered preferable to enact precise descriptions of the projects and allow modification, rather than enacting broader and more flexible descriptions. This is because of the need to be very clear about the application of modified provisions for the taking of land.</p> <p>The scope of the Order in Council power is limited to the modification of descriptions and the approximate geographical locations of projects where overall scope of the project will remain the same, taking into account the purpose of the project and the location, scale and nature of the works. The new power specifically prevents new projects from being added.</p> <p><b>2</b> The Order in Council power in clause 39AAM enables the recognition and/or incentive payments (percentage or amount) to be amended. This is consistent with the existing section 72E of the PWA.</p> <p>The Minister can only recommend the making of an Order in Council if they are of the opinion that it is necessary or desirable, having regard to the purposes and affordability of the compensation, the matters in section 72E(2)(b) to (e) (national average of land and house prices, the Consumer Price Index, the level of solatium or similar compensation payable in comparable overseas jurisdictions) of the PWA, and feedback in response to consultation. The provision cannot be used more than once every 5 years.</p> |            |

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| <b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b> | <b>NO</b> |
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## Any other unusual provisions or features

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| <b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b> | <b>NO</b> |
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