



## Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

18 DECEMBER 2025

### MEDIA RELEASE

#### TONY JAMES SOFUS PASCOE AND ANOTHER v MINISTER FOR LAND INFORMATION

(SC 123/2024) [2025] NZSC 195

### PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest: [www.courtsofnz.govt.nz](http://www.courtsofnz.govt.nz).

### What this judgment is about

Private land that is required for a government work may be compulsorily acquired by the Minister for Land Information under the Public Works Act 1981. The Minister must first make every endeavour to negotiate in good faith with the landowner to try reach agreement. The question in this case is whether the landowners refused to negotiate with officials exercising the Minister's delegated authority, so empowering the Minister to take their land.

### Background

Tony and Debbie Pascoe own a farm in the Mangapepeke Valley in northern Taranaki. State Highway 3 crosses Mt Messenger to the south of the farm. The New Zealand Transport Agency | Waka Kotahi (NZTA) is building a bypass which will take the highway around Mt Messenger and through the Pascoes' land.

NZTA appointed The Property Group Ltd (TPG) to negotiate with a number of landowners for the acquisition of the necessary land. TPG is a privately owned company and an accredited supplier, meaning generally that it has been accredited by Toitū Te Whenua | Land Information New Zealand (LINZ) to undertake certain work in connection with the acquisition and disposal of land for public works.

Under delegated authority, LINZ gave the Pascoes notice under section 18 of the Public Works Act of the Minister's desire to acquire the land. That section relevantly requires the Minister to make every endeavour to negotiate in good faith with the landowner to try reach agreement.

TPG then approached the Pascoes to seek their agreement, but they declined to engage with TPG. They insisted on negotiating with the Minister or with LINZ officials.

After the minimum three-month period for attempted negotiations, the Minister continued with the compulsory acquisition process by issuing a notice of intention to take the land under section 23 of the Act. The Pascoes sought judicial review of that decision. The Environment Court has since found that the taking of the Pascoes' land was fair, sound and reasonably necessary.

### **The issues**

This appeal concerns preliminary questions of law arising from the Pascoes' application for judicial review. The Pascoes were unsuccessful on those issues in the High Court and Court of Appeal.

On 19 May 2025, the Supreme Court granted the Pascoes leave to appeal from the decision of the Court of Appeal on the preliminary questions of law. The approved question was whether the Court of Appeal was correct to find that negotiations prior to the compulsory acquisition of land for essential works, under section 18 of the Act, may be undertaken by an accredited contractor rather than the Minister personally or the Minister's delegate within LINZ.

Counsel were asked to focus on whether the negotiations function may be exercised by an accredited contractor, and if so whether the negotiations function needs to be formally delegated. A third aspect of the approved question was whether the outsourcing of the negotiations function in this case was consistent with the Minister's statutory duty to "make every endeavour to negotiate in good faith".

### **Submissions**

The Pascoes maintained that the Minister never negotiated with them and so never acquired the right to proceed to take the land in the first place. That being so, they said, everything that has happened in the interim must be set aside and the Minister must come to the negotiating table. They maintained that they were and remain willing to negotiate with the Minister or his LINZ delegates but the offers made have been incomplete and inadequate.

The Minister responded that his function of negotiating with the Pascoes was not delegated to TPG but was exercised by LINZ officials, who relied on TPG to do much of the "legwork" or day-to-day conduct of negotiations. He maintained that the Pascoes could not insist on dealing directly with LINZ, and his delegates told them that they must deal with TPG. That being so, the Minister acquired the right to issue a notice of intention to take the land when they refused to deal with TPG. He added that the notice of intention does not preclude renewed negotiations.

The Court appointed counsel to assist, who supported the core of the Pascoes' arguments and submitted that what happened here amounted to complete delegation by LINZ of the negotiations function outside the Public Service without following the necessary statutory processes. Accordingly, counsel submitted that the section 23 notice was invalid.

## Supreme Court decision

By a majority comprising Winkelmann CJ, Glazebrook and Miller JJ, the Supreme Court has allowed the Pascoes' appeal to the extent set out in the orders of the Court.

The Court unanimously agreed that the Minister's negotiations function may be subdelegated to an accredited supplier, or to an official within NZTA. Certain statutory requirements would have to be met. The Court also agreed that nothing precludes the Minister or their delegate from engaging a person who is not themselves a delegate to help them perform the negotiations function (at [72]–[73], [94] and [113]).

The majority found, however, that LINZ officials in this case delegated the negotiations function outside the Public Service without following the necessary statutory processes. That was for two main reasons (at [96]).

First, the majority emphasised the distinctive nature of the Minister's statutory duty to make every endeavour to negotiate in good faith. Negotiating is not a subsidiary or supporting function. The Act expresses an unmistakable preference that land be acquired for public works by agreement with owners. It is sensitive to loss of owners' autonomy vis-à-vis their land. Compulsory acquisition is possible only when negotiations have failed. The Act also envisages that negotiation may crystallise both the land requirement and the owners' entitlement to compensation (at [26]–[28] and [93]).

Second, although LINZ delegates remained responsible both for ensuring that negotiations happened and for the outcome, the evidence suggested that LINZ officials would play no role in the negotiations, had the Pascoes done as LINZ directed and negotiated with TPG. In particular, the evidence of a meeting between LINZ officials and the Pascoes suggested that LINZ intended that NZTA was TPG's principal, responsible for the matters that would be the subject of negotiations, that LINZ officials had not supervised that process, and that they meant to play no part in it (at [91] and [97]).

It followed that the Pascoes did not refuse to negotiate with the Minister by refusing to negotiate with TPG. TPG was representing NZTA with respect to negotiations, and neither NZTA nor TPG held the necessary delegated authority (at [98]).

The majority considered that the appropriate relief was to remit the proceeding to the High Court. The majority observed that it need not follow that the section 23 notice will be set aside. That is a matter for the High Court to decide in light of further information. In the meantime, the Minister will have an opportunity to invite the Pascoes to negotiate with a duly authorised delegate (at [99]–[103]).

### *Dissent*

Ellen France and Kós JJ would have dismissed the appeal. They took the view that the negotiations function may properly be performed by a person other than the relevant statutory decision-maker, as an administrative or supporting function, provided the decision-maker retains control over the conduct of the negotiations and responsibility for deciding whether to enter into a contract (and on what terms) (at [116]).

Ellen France and Kós JJ also considered that the better analysis of the evidence was that no valid negotiation has yet occurred. Both parties were operating under fundamental legal misconceptions. Nor could it be said with sufficient certainty at this point that *had* the Pascoes dealt with TPG, LINZ would not yet have played a substantive part in negotiations. For these reasons, and because the judicial review proceeding remains on foot in the Court of Appeal, Ellen France and Kós JJ concluded it was necessary only to answer the approved question in the affirmative (at [117]–[119]).

## **Result**

The Court's orders are as follows:

- A The application of counsel assisting the Court for leave to adduce further evidence is granted.
- B The Court answers the question for which leave was granted in the following way: the negotiations function under s 18(1)(d) of the Public Works Act 1981 may be performed by an accredited contractor, rather than the Minister personally or the Minister's delegate within Toitū Te Whenua | Land Information New Zealand (LINZ), provided the accredited contractor holds delegated authority to perform that function.
- C The Court finds that LINZ officials delegated the negotiations function outside the Public Service in this case but did not follow the necessary statutory processes. The appellants did not refuse to negotiate, for purposes of s 18(2), by refusing to deal with the accredited contractor.
- D The appeal is allowed accordingly. The proceeding is remitted to the High Court to determine what relief, if any, is appropriate.
- E The respondent must pay the appellants one set of costs of \$3,000 plus usual disbursements.

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