

Between

TONY JAMES SOFUS PASCOE and DEBBIE  
ANN PASCOE  
3072 Mōkau Road  
Mt Messenger  
R D 48  
Urenui 4378

Appellants

And

MINISTER FOR LAND INFORMATION  
Land Information New Zealand  
155 The Terrace  
Wellington 6011

Respondent

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**SUBMISSIONS OF THE APPELLANTS TONY AND DEBBIE PASCOE**

28 August 2025

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This document is filed by:

Tony and Debbie Pascoe  
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THE APPELLANTS CERTIFY THAT, TO THE BEST OF THEIR KNOWLEDGE, THESE SUBMISSIONS CONTAIN  
NO SUPPRESSED INFORMATION AND ARE SUITABLE FOR PUBLICATION.

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May it please the Court:

### Summary

1. This Appeal concerns the law providing and protecting every citizen's rights to the land which is their home and providing and restricting the draconian power to take from citizens, against their will by use of force, the land which is their home. The foundational law is the constitutional and human rights law. That foundational law is stated in documents including the Magna Carta 1297, which remains at the heart of our Statute Book, and by Lord Denning MR at 198 of *Prest v Secretary of State for Wales* (1982) 81 LGR 193 as follows:<sup>1</sup>

“I regard it as a principle of our constitutional law that no citizen is to be deprived of his land by any public authority against his will, unless it is expressly authorised by Parliament and the public interest decisively so demands ... If there is any reasonable doubt on the matter, the balance must be resolved in favour of the citizen.”

2. The land in the Mangapēpeke Valley affected by the s 18 notice<sup>2</sup> is our home, our tūrangawaewae, our farm hub, our wetlands, our forest, our ancestral land. We rely on this land for our spiritual wellbeing, our water source, cultural take and mahinga kai, and our ability to make a living. It is our life.
3. This Appeal is focussed on the law provided by s 18(1)(d) and s 4C of the Public Works Act 1981 ('PWA'). That law can only be stated as the result of the correct interpretation of s 18(1)(d) and s 4C of the PWA. The Appeal, the approved question<sup>3</sup>, can only be answered once that interpretation, that law, has been determined.
4. When s 18(1)(d) and the inextricably interrelated provisions of s 4C of the PWA are interpreted, as required by the rule of law, it is clear that the

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<sup>1</sup> *Prest v Secretary of State for Wales* (1982) 81 LGR 193 page 3 of 16 [A25]

<sup>2</sup> S 18 PWA notice dated 15 July 2020 served 31 August 2020 Land Requirement Plan Ref 52169 [Tab 79 at 302.0547]; Signed s 23 Minister briefing paper BF 21-412 dated 12 July 2021 Main LRP revision K [Tab 92 at 302.0792]

<sup>3</sup> Judgement of the Court 19 May 2025 at B [Tab 11 at 05.0196]

powers/duties/functions provided by s 18(1)(d) of the PWA can only be exercised or performed by the specific person(s) expressly authorised by the PWA.

5. The PWA has at all times relevant to this Appeal expressly authorised that: Only the Minister for Land Information ('the Minister') personally or a delegate lawfully appointed pursuant to s 4C of the PWA can exercise/perform the powers/duties/functions provided by s 18(1)(d) of the PWA.
6. That law provided by s 18(1)(d) and s 4C of the PWA is a critical part of the protections, the safeguards, which the PWA provides (affirming and upholding constitutional and human rights law) to every citizen - being a critical part of the law providing and restricting the use of the draconian power to take a citizen's land, and above all land which is their home, against their will by use of force.

## **Facts**

7. A fulsome summary of facts is included in our chronology to these submissions. The background is also briefly summarised at [1]-[28] of *Pascoes v Deputy Registrar* [2024] NZHC 2537 [5 September 2024]<sup>4</sup> and under the heading "REASONS" at [1]-[65] of *Director-General of Conservation & Ors v TRC & Ors* [2018] NZEnvC 203 [19 December 2019]<sup>5</sup> and is detailed in the statement of claim dated 8 September 2021 including at [3] to [47]<sup>6</sup> and in the reply to statement of defence dated 10 June 2022.<sup>7</sup>

## **Law**

8. This Appeal is concerned with the law provided by s 18(1)(d) and s 4C of the PWA. That law can only be stated as the result of the correct interpretation of s 18(1)(d)

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<sup>4</sup> *Pascoes v Deputy Registrar* [2024] NZHC 2537 [5 September 2024] [A22]

<sup>5</sup> *Director-General of Conservation & Ors v TRC & Ors* [2018] NZEnvC 203 [19 December 2019] [A17]

<sup>6</sup> Statement of claim dated 8 September 2021 [Tab 16 at 101.0001]; NB. Tony has affirmed the truth of the statements in the statement of claim in his affidavit dated 10 June 2022 at [1] which can therefore be relied on as evidence [Tab 33 at 201.0002]

<sup>7</sup> Reply to statement of defence dated 10 June 2022 [Tab 18 at 101.0042]; NB. Tony has affirmed the truth of the statements in the reply to statement of defence in his affidavit dated 10 June 2022 at [1] which can therefore be relied on as evidence [Tab 33 at 201.0002]

and s 4C of the PWA. The Appeal, the approved question, can only be answered once that interpretation, that law, has been determined.<sup>8</sup>

9. The correct interpretation of the PWA, including s 18(1)(d) and s 4C of the PWA can only be determined in accordance with the rule of law by stating and applying the law – beginning (as the critical first step) with the foundational, constitutional and human rights law providing and protecting every citizens’ rights to the land that is their home.
10. That constitutional and human rights law is stated in numerous documents including the Magna Carta 1297<sup>9</sup>, the Universal Declaration of Human Rights<sup>10</sup>, the International Covenant on Civil and Political Rights<sup>11</sup>, the New Zealand Bill of Rights Act 1990<sup>12</sup>, in court judgments including the Judgment of Justice Chase in *Calder v Bull*<sup>13</sup> and in *Prest v Secretary of State for Wales* (1982) 81 LGR 193<sup>14</sup> and the Judgment of Grant Hammond J in *Deane v Attorney-General*<sup>15</sup> and the Judgment of Helen Winkelmann CJ in *Dromgool v Minister for Land Information*<sup>16</sup> and in the writings of (then) Chief Justice Sian Elias in ““Hard Look” and the

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<sup>8</sup> “Helen McQueen J’s Judgment in Tony Pascoe and Debbie Pascoe v Minister for Land Information [2025] NZHC 1782 is a miscarriage of justice resulting in destruction of lives.” Opinion: James Burns 21 July 2025 at [154] [A38] <https://jamesrburns.substack.com/p/helen-mcqueen-js-judgment-in-tony>

<sup>9</sup> Magna Carta 1297 [A5] <https://www.legislation.govt.nz/act/imperial/1297/0029/latest/DLM10926.html#DLM10929>

<sup>10</sup> Universal Declaration of Human Rights – United Nations [A51] <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

<sup>11</sup> International Covenant on Civil and Political Rights – United Nations Human Rights Instrument [A39] <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

<sup>12</sup> New Zealand Bill of Rights Act 1990 [A6] <https://www.legislation.govt.nz/act/public/1990/0109/latest/DLM224792.html?src=qs>

<sup>13</sup> *Calder v. Bull*, 3 Dall. 386, 388 (1798) [A14] <https://tile.loc.gov/storage-services/service/ll/usrep/usrep003/usrep003386/usrep003386.pdf>

<sup>14</sup> *Prest v Secretary of State for Wales* (1982) 81 LGR 193 [A25]

<sup>15</sup> *Deane v Attorney-General* HC Hamilton CP65/94 [1996] and *Horton v Attorney-General* HC Hamilton CP71/95 [1996] 96/1740 [16 December 1996] including at pages 15-16 and 20-22 [A15] <https://www.nzlii.org/nz/cases/NZHC/1996/1147.pdf>

<sup>16</sup> *Shane Dromgool and Ors v Minister for Land Information* [2022] NZSC 157 [22 December 2022] [A27] <http://www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZSC/2022/157.html?query=dromgool>

Judicial Function” [1996] WkoLawRw 13<sup>17</sup> and “Administrative Law for “Living People”” 16 May 2008<sup>18</sup> and in Mr Burns’ Opinions dated 10 January 2025<sup>19</sup>, 4 March 2025<sup>20</sup>, 5 June 2025<sup>21</sup>, 21 July 2025<sup>22</sup> including paragraphs 141-142 and 154, 18 August 2025<sup>23</sup>.

11. Constitutional and human rights law provides and protects every citizen's rights to the land which their home by (amongst other things) providing that Government can only exercise the draconian power to take a citizen's land which is their home by force if and then strictly to the extent and in the manner, including by the specific persons, expressly authorised by Parliament.
12. The PWA including s 18 and s 4C, must be interpreted as required by the legislation Act 2019 including in particular section 10 of that Act.<sup>24</sup>
13. The first steps in interpreting s 18 and s 4C, having stated constitutional and human rights law, is to state the text and the purpose of the PWA.

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<sup>17</sup> “Hard Look” and the Judicial Function [1996] WkoLawRw 13 by the Rt Hon Dame Sian Elias, Chief Justice of New Zealand [A37] <https://www.nzlii.org/nz/journals/WkoLawRw/1996/13.html>

<sup>18</sup> Administrative Law for “Living People” A paper in honour of Sir David Williams delivered 16 May 2008 the Rt Hon Dame Sian Elias, Chief Justice of New Zealand [A33] <https://www.courtsofnz.govt.nz/assets/speechpapers/sir-david-williams-lecture.pdf>

<sup>19</sup> “Government abuse of the draconian power to take land by force: Are you next?” Opinion: James R Burns 10 January 2025 [A36] <https://jamesrburns.substack.com/p/government-abuse-of-the-draconian>

<sup>20</sup> “The rule of law requires the law, including court judgments, to be known.” Opinion: James Burns 4 March 2025 [A50] <https://jamesrburns.substack.com/p/the-rule-of-law-requires-the-law>

<sup>21</sup> Submission on Public Works (Critical Infrastructure) Amendment Bill (Government Bill 149-1) 5 June 2025 – Mr Burns [A48] <https://jamesrburns.substack.com/p/government-action-which-breaches>

<sup>22</sup> “Helen McQueen J’s Judgment in Tony Pascoe and *Debbie Pascoe v Minister for Land Information* [2025] NZHC 1782 is a miscarriage of justice resulting in destruction of lives.” Opinion: James Burns 21 July 2025 [A38] <https://jamesrburns.substack.com/p/helen-mcqueen-js-judgment-in-tony>

<sup>23</sup> “New Zealand Government's violation of citizens' rights to the land which is their home”. Opinion: James Burns 18 August 2025 [A41] <https://jamesrburns.substack.com/p/new-zealand-governments-violation>; “Land and Human Rights - Standards and Applications” United Nation' Office of the High Commissioner for Human Rights' [A40] [https://www.ohchr.org/sites/default/files/Documents/Publications/Land\\_HR-StandardsApplications.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/Land_HR-StandardsApplications.pdf)

<sup>24</sup> Legislation Act 2019 at s 10 [A4] <https://www.legislation.govt.nz/act/public/2019/0058/latest/DLM7298125.html?src=gs>

14. As the purpose of the PWA underpins the PWA that purpose, like the constitutional and human rights law, is foundational and is properly stated first.

15. **The purpose of the PWA upholds and advances constitutional law and the rule of law:** The PWA does not expressly state the purpose of the PWA but it is clear from the law (including constitutional law and the Legislation Act 2019) that the purpose of the PWA is:<sup>25</sup>

15.1. To affirm that every person's rights to their land, and above all land which is a human being's home, are part of and protected by constitutional law and the rule of law and, in particular, to affirm that no person is to be deprived of their land against their will unless that deprivation meets the requirements of constitutional law and the rule of law.

15.2. Always informed by constitutional law and the rule of law: To, on strict terms and subject always to strictly independent and vigilant judicial scrutiny, provide Government with the draconian power to take a person's land from them against their will where that taking meets the strict requirements of constitutional law and the rule of law including that the particular person's sacrifice to the Public Good is demonstrably justified and that sacrifice is recognised and honoured and rewarded in accordance with constitutional law and the rule of law.

16. The text of s 18(1)(d)<sup>26</sup> and s 4C<sup>27</sup> of the PWA is referred to here as if set out in full.

17. The correct interpretation of s 18(1)(d) and s 4C of the PWA is clear from the text of those provisions.

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<sup>25</sup> Submission on Public Works (Critical Infrastructure) Amendment Bill (Government Bill 149-1) 5 June 2025 – Mr Burns at [47] [A48] <https://jamesrburns.substack.com/p/government-action-which-breaches>

<sup>26</sup> Public Works Act 1981 s 18(1)(d) [A8] <https://www.legislation.govt.nz/act/public/1981/0035/latest/DLM45778.html>

<sup>27</sup> Public Works Act 1981 s 4C [A8] <https://www.legislation.govt.nz/act/public/1981/0035/latest/DLM45778.html>

18. The text of s 18(1)(d) and s 4C of the PWA, for the purpose of this Appeal, is clear: the purpose and effect of that text is to expressly require and authorise “the Minister” personally, or a delegate lawfully appointed pursuant to s 4C, to perform/exercise the power/duties/function provided by s 18(1)(d).
19. Parliament's enactment of the text of s 18(1)(d) "... the Minister ... shall ... make every endeavour ..." imposes the highest level of duty and the highest level of restriction on any exercise of the draconian power to take land by force, highlights Parliament's knowledge, and affirmation, of the constitutional and human rights law providing and protecting every citizen's rights to the land which is their home.
20. The correct interpretation of s 18(1)(d) and s 4C of the PWA, which is clear from the text of those provisions, is clear when that text is considered in light of the purpose of the PWA (stated above).
21. The correct interpretation of s 18(1)(d) and s 4C of the PWA is clear when that text is considered in its context in the Act. Critically important context includes the text of s 4B of the PWA, we refer to the text of s 4B as if set out here in full.<sup>28</sup> Parliament decided to enact the text of s 4B, and because Parliament decided **not** to enact, in s 4B or in any other section of the PWA, text expressly stating that any power/duty/function to “negotiate” provided by the PWA may be performed or exercised (in stark contrast to the text of s 4B) “on the Crown’s behalf by any Minister of the Crown, **or by any person or office holder authorised by a Minister of the Crown in that behalf**, either generally or in respect of any specified contract or instrument or of any specified class or classes of contract or instruments. [bolding added] ...”
22. The correct interpretation of s 18(1)(d) and s 4C of the PWA is clear when the legislative history of the text of those provisions is considered.

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<sup>28</sup> Public Works Act 1981 s 4B [A8]; “Helen McQueen J’s Judgment in Tony Pascoe and *Debbie Pascoe v Minister for Land Information* [2025] NZHC 1782 is a miscarriage of justice resulting in destruction of lives.” Opinion: James Burns 21 July 2025 at [163]-[165] [A38]  
<https://jamesrburns.substack.com/p/helen-mcqueen-js-judgment-in-tony>



23. S 4A, s 4B and s 4C of the PWA were not part of the PWA as originally enacted in 1981.<sup>29</sup> S 4A, s 4B and s 4C were enacted at the same time in a bundle. Parliament originally enacted s 4C in a particular form including s 4C(2)(a) and (b)<sup>30</sup> which deliberately restricted the Ministers powers. Originally the Minister could not delegate the power/duty/function to issue notices under s 18 and s 23 of the PWA. S 4C was amended on 19 April 2017 to reduce the restrictions on the Minister by allowing him to delegate the power/duty/function to issue a s 18 notice.<sup>31</sup>

24. S 18(1)(d) was part of the PWA as originally enacted in 1981.<sup>32</sup> The critical importance of s 18(1)(d) of the PWA as a key protection of landowners rights and as a key restriction of the Minister's powers is highlighted by the fact that section has (except for the replacement of the word "essential" in the text of s 18(1) with the word "public" and replacement of "Make" with "make" in s 18(1)(d)) never been amended in any way.

25. The PWA originally enacted in 1981 was in a different form and included 6 and 14<sup>33</sup> which were later replaced by 4A, 4B and C.

26. The expressly enacted text of s 6 and s 14 (which are inextricably interrelated with and must be read together with s 18 of the PWA as originally enacted) includes:

**"6. Functions of Ministry--**(1) The Ministry shall have and undertake all such functions as are necessary for the due and proper administration of this Act and the other Acts administered by it.

(2) Without limiting the generality of subsection (1) of this section and notwithstanding anything in any other Act, the Ministry shall have the following functions:

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<sup>29</sup> Public Works Act 1981 as originally enacted [A9]  
[https://www.nzlii.org/nz/legis/hist\\_act/pwa19811981n35186.pdf](https://www.nzlii.org/nz/legis/hist_act/pwa19811981n35186.pdf)

<sup>30</sup> S 4C as enacted Public Works Amendment Act 1988 [A10] [Public Works Amendment Act 1988 \(1988 No 43\)](https://www.nzlii.org/nz/legis/hist_act/pwa19881988n35186.pdf)

<sup>31</sup> Public Works Act 1981 s 4C [A8]  
<https://www.legislation.govt.nz/act/public/1981/0035/latest/DLM45778.html>

<sup>32</sup> Public Works Act 1981 as originally enacted s 18(1)(d) [A9]  
[https://www.nzlii.org/nz/legis/hist\\_act/pwa19811981n35186.pdf](https://www.nzlii.org/nz/legis/hist_act/pwa19811981n35186.pdf)

<sup>33</sup> Public Works Act 1981 as originally enacted s 6 and s 14 [A9]  
[https://www.nzlii.org/nz/legis/hist\\_act/pwa19811981n35186.pdf](https://www.nzlii.org/nz/legis/hist_act/pwa19811981n35186.pdf)

...

(p) **As directed by the Minister--**

(i) **The provision of information, advice, guidance, and other assistance to any person, body, or authority on proposals for existing activities or projects, or for the development of proposals for new activities or projects:**

(ii) **The carrying out of negotiations for the acquisition of land for Government-subsidised works and activities, the acquisition of title to such land, obtaining planning consents, and the settlement of claims for compensation arising out of the acquisition of land for such works or activities:**

..." [Bolding added]

**"14. Delegation of Minister's powers--** (1) The Minister may from time to time, by writing under his hand, delegate to the Commissioner of Works or any Assistant Commissioner of Works or District Commissioner of Works any of the powers conferred on the Minister by this Act, **except--**

(a) The powers of direction in connection with projects and undertakings of national significance conferred on the Minister by section 6 (2) (a) of this Act; and

(b) **The powers conferred upon him by sections 6 (2) (0) and (p) of this Act.**

..." [Bolding added]

27. S 18(1)(d) and s 14(1)(b) and s 6(2)(p) of the PWA (as those sections were first enacted as part of the PWA) were enacted by Parliament, just as s 18(1)(d) and s 4C of the PWA were enacted by Parliament, to achieve the purpose of the PWA - to affirm and provide and protect every citizen's fundamental rights to their land and, specifically, to enact protections and safeguards and restrictions governing any exercise of the draconian power to take land by use of force. It is important because it makes clear that Parliament understood when it enacted the PWA and made the amendments to the PWA that this concerns fundamental rights, and the serious consequences.

28. The specific protections and safeguards and restrictions Parliament enacted by enacting s 18(1)(d) and s 14(1)(b) and s 6(2)(p) of the PWA, and current sections 18(1)(d) and s 4C of the PWA, include the protections and safeguards and restrictions Parliament provided by **strictly requiring** that the power and duty provided by s 18(1)(d) of the PWA can **only** be exercised/performed by the **specific person(s) expressly authorised by the PWA**. The PWA has at all times relevant to this Appeal expressly authorised that: Only the Minister personally (see s 4C(2) PWA) or a delegate lawfully appointed pursuant to s 4C of the PWA

is authorised by Parliament to exercise the power or perform the duty provided by s 18(1)(d) of the PWA.

29. The correct interpretation of section 18(1)(d), and section 4C, of the Public Works Act 1981, establishes that the duty and power provided by section 18(1)(d) of that Act is a power which must be exercised and a duty which must be performed, strictly, by the Minister personally or by a delegate lawfully appointed pursuant to section 4C of the Public Works Act 1981.<sup>34</sup>
30. That law, enacted by Parliament for the purpose of protecting the fundamental rights of every citizen to their land (and above all the land which is their home), is expressly stated in s 18(1)(d) and s 4C of the PWA. The PWA does not expressly authorise any other person (other than the Minister personally or a delegate lawfully appointed pursuant to section 4C) to perform that duty or exercise that power which means it is unlawful, including being in breach of the PWA and constitutional and human rights law, for any other person, such as what Government appears to call an 'Accredited Supplier' or an 'accredited contractor', to perform that duty or exercise that power.
31. Other critically important "context" includes the text (and above all the text "endeavour") of s 40 of the PWA<sup>35</sup> - including as interpreted and applied by the Court of Appeal in *Aztek Limited and Anor v Attorney-General* [2020] NZCA 249.<sup>36</sup>
32. The reasons that s 18 and s 4C of the PWA must be interpreted in the "context" of s 40 of the PWA include that section 40 is the only section of the PWA, other than s 18(1)(d), in which Parliament has decided to use the word "endeavour" - although the use is fundamentally different including in particular as part of a fundamentally different set of text being that quoted in part below.

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<sup>34</sup> "Helen McQueen J's Judgment in *Tony Pascoe and Debbie Pascoe v Minister for Land Information* [2025] NZHC 1782 is a miscarriage of justice resulting in destruction of lives." Opinion: James Burns 21 July 2025 interpretative steps/actions stated individually and collectively at paragraphs [154.1]-[154.6] [A38] <https://jamesrburns.substack.com/p/helen-mcqueen-js-judgment-in-tony>

<sup>35</sup> Public Works Act 1981 s 40 [A8]  
<https://www.legislation.govt.nz/act/public/1981/0035/latest/DLM45778.html>

<sup>36</sup> *Aztek Limited v The Attorney-General* [2020] NZCA 249 [24 June 2020] [A13]

33. The interpretation and application of the text “... **shall endeavour** to sell the land in accordance with subsection (2), if that subsection is applicable to that land” [Bolding added] in *Aztek Limited and Anor v Attorney-General* [2020] NZCA 249 is directly relevant authority to this Appeal including because: The Court's approach to the word "endeavour", including the Court's findings as to the nature and extent of the duty/power imposed by the words “... **shall endeavour** to sell the land in accordance with subsection (2), if that subsection is applicable to that land” [Bolding added], are directly relevant to the, vastly higher duty expressly imposed on the Minister by the words of s 18(1)(d) of the PWA including in particular the text "shall ... **make every endeavour** to ..." [Bolding added]. That duty to "make **every** endeavour" is of the very highest order - far above merely the duty/power to "endeavour".<sup>37</sup>
34. The Judgment of the Court of Appeal (and High Court), which is the subject of this Appeal, breaches the law referred to above.
35. The actions and omissions by the persons acting as or for the Executive Branch (including, most importantly, the Minister for Land Information but also the New Zealand Transport Agency and The Property Group Limited) breach the law referred to above.
36. The actions and omissions by the persons acting as or for the Executive Branch (including, most importantly, the Minister for Land Information but also the New Zealand Transport Agency and The Property Group Limited) bring to mind, and in those actions' and omissions' core characteristics, mirror the actions and omissions of the Executive Branch (including, most importantly, the Minister for Land Information but also the New Zealand Transport Agency and The Property Group Limited) held by the courts to be illegal, to breach the law and rule of law, in other Judgments.

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<sup>37</sup> We refer to “The rule of law requires the law, including court judgments, to be known.” Opinion: James Burns 4 March 2025 as if set out in full. [A50] <https://jamesrburns.substack.com/p/the-rule-of-law-requires-the-law>

37. One such Judgment is *Seaton*.<sup>38</sup>

38. Another such Judgment is *Hall*.<sup>39</sup>

39. Another such Judgment is *Thistlehurst Dairy Limited* including the statements recorded at paragraph [148].<sup>40</sup>

“That evidence is of concern. Mr McPhail is the Ministerial delegate. He is expected to bring an independent mind to his considerations. His role is not to defer to Waka Kotahi, rather, it is to make the informed and authoritative decision spoken of earlier. It is of concern that his mindset was such that even if he had been properly informed about the state of negotiations, he would have made the same decision. That indicates a closing of the mind to the role he had to undertake and an unnecessary deference to the Waka Kotahi agenda.”

40. Another Judgment is *Dilworth* including the statements recorded at paragraph [80].<sup>41</sup>

“[80] It is necessary to interpolate here that it seems tolerably clear (from both the documentary record and from the oral evidence at the hearing) that care was taken to avoid NZTA being seen to be considering the possibility of a s 40 offer back. For example, in the context of an email exchange on 3 December 2010, it was made clear that potential development of the land should be considered prior to any discussion about disposal. More particularly, Mr Scofield, wrote:<sup>28</sup> [Footnote 28 states “Between 2004 and November 2011, Mr Scofield was contracted by Transit and then NZTA to manage the disposal of surplus Crown land in Auckland, Northland and, until 2009, the Bay of Plenty and Waikato.”]

“The land disposal scenario is not something that you should ever discuss with anyone because of the legal implication and no plan that you produce should ever make any reference to land disposal. Please ensure that I am invited to any meeting where land tenure / disposal might be discussed with

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<sup>38</sup> *Seaton v Minister for Land Information* SC 44/2012 [29 April 2013] [A26] [https://www.justice.govt.nz/jdo\\_documents/workspace\\_SpacesStore\\_23fb8ecb\\_adaa\\_45f2\\_bcde\\_9cca870d4794.pdf](https://www.justice.govt.nz/jdo_documents/workspace_SpacesStore_23fb8ecb_adaa_45f2_bcde_9cca870d4794.pdf)

<sup>39</sup> *Hall v Attorney-General* HC AK CIV-2006-404-003321 [21 December 2012] [A20] [https://www.justice.govt.nz/jdo\\_documents/workspace\\_SpacesStore\\_0771f1c1\\_0649\\_472d\\_b824\\_09bac759f9fd.pdf](https://www.justice.govt.nz/jdo_documents/workspace_SpacesStore_0771f1c1_0649_472d_b824_09bac759f9fd.pdf)

<sup>40</sup> *Thistlehurst Dairy Limited v Minister for Land Information* [2022] NZDC 8240 [30 May 2022] including at [148] [A29] <https://nzlii.org/nz/cases/NZDC/2022/8240.html>

<sup>41</sup> *Dilworth Trust Board v The Attorney-General* [2017] NZHC 2987 [4 December 2017] at [80] [A16] [https://www.justice.govt.nz/jdo\\_documents/workspace\\_SpacesStore\\_3bffb164\\_2ebf\\_4ce6\\_b56b\\_bb6938352cae.pdf](https://www.justice.govt.nz/jdo_documents/workspace_SpacesStore_3bffb164_2ebf_4ce6_b56b_bb6938352cae.pdf)

a third party because anything that is said could be used by a former owner to force the Crown to offer the land back at a price which is considerably less than market value.”

41. Every citizen has the fundamental constitutional and human right to the protection of the law, the protection of the rule of law, against the grave and ever-present risk that the persons acting as or for Government may breach the rights every citizen has, and the corollary duties Government has, in relation to any purported exercise of the draconian power to take the land, and above all land which is their home, against their will by use of force.
42. Every citizen's primary defence against any breach by the Executive Branch of that citizen's rights to the land which is their home, their rights to their life and security, is: A truly independent Judicial branch which upholds the rule of law including as stated by Lord Justice Watkins at 211-212 of *Prest v Secretary of State for Wales* (1982) 81 LGR 193:<sup>42</sup>

“The taking of a person's land against his will is a serious invasion of his proprietary rights. The use of statutory authority for the destruction of those rights requires to be most carefully scrutinised. The courts must be vigilant to see to it that that authority is not abused. It must not be used unless it is clear that the Secretary of State has allowed those rights to be violated by a decision based upon the right legal principles, adequate evidence and proper consideration of the factor which sways his mind into confirmation of the order sought.”

### **The decision of the Court of Appeal**

43. This appeal is on a simple question:

“[W]hether the Court of Appeal was correct to find that negotiations prior to the compulsory acquisition of land for essential works, under s 18 of the Public Works Act 1981, may be undertaken by an accredited contractor rather than by the Respondent personally (or an official of Toitū Te Whenua | Land Information New Zealand with delegated authority by the Respondent).”

44. The question arises because:

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<sup>42</sup> *Prest v Secretary of State for Wales* (1982) 81 LGR 193 page 11 of 16 [A25]

44.1. After four years of unsuccessful negotiations with NZTA and their accredited contractor, when we were told that the Minister wanted to take our land, we did not want to continue to negotiate with the accredited contractor working for NZTA: we asked to deal with the Minister or one of the Minister's delegates.

44.2. There are two reasons for that:

44.2.1. The first is that, as said in *Prest*, the taking away of our land can only be justified by a decisive public interest. It is for the Minister, on behalf of that public interest, to seek an agreed outcome. The requirements under the Public Works Act 1981 ('PWA') impose strong duties to ensure that. The wording of s 18(1)(d):

**"Prior negotiations required for acquisition of land for essential works**

Where any land is required for any public work the Minister or local authority, as the case may be, shall, before proceeding to take the land under this Act— ...

(d) make every endeavour to negotiate in good faith with the owner in an attempt to reach an agreement for the acquisition of the land."

is unique: there is no other New Zealand law that imposes an express duty to "make every endeavour to negotiate in good faith". The reason for those duties is the fundamental right stated in *Prest* and, supporting that, the international human right to protection when land is sought for public purposes.<sup>43</sup>

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<sup>43</sup> See, for example, article 17 of the 1948 Universal Declaration of Human Rights [A51]:

"(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property."

discussed in the United Nations Food and Agriculture Organisation publication *Compulsory acquisition of land and compensation* (2008), [2.10] [A34]:

"A balanced approach to compulsory acquisition requires a respect for the human rights of owners and occupants of the land to be acquired. Various international laws reflect the concern for protection of land rights and the payment of compensation when people are displaced."

44.2.2. The second reason is that, as the Court of Appeal accepted about other parts of the PWA, that duty upon the Minister engages democratic accountability and we know that a Minister is able to take a much wider, more considered and more flexible view than an NZTA contractor. Our land – and the protection of all land – matters and the Minister’s duty is to see, respect and respond to that. That is not true of an NZTA contractor.

45. The Court of Appeal accepted that compulsory purchases are matters for the Minister: the Court said that the PWA requires “democratic accountability” for those decisions, recognising “the significance of a decision to take land”.<sup>44</sup> But, and despite the clear words:

“... the Minister ... shall ... make every endeavour to negotiate in good faith ...”

and despite the safeguard provided by that obligation to negotiate, the Court of Appeal compared it to, for instance, “administrative tasks” such as the serving and lodging of the formal notice or to the work of lawyers, geotechnical engineers, builders or security guards, which could be done by a contractor.<sup>45</sup> The Court said that the s 18(1)(d) duty to negotiate was “something that does not require specific statutory authority”.<sup>46</sup> But that, we say, is a mistake: the Minister has a grave statutory duty to protect both the public interest and the interests of the affected individuals and it is for the Minister to, himself or through one of his delegates, to exercise and perform the s 18(1)(d) statutory power/duty/function.

46. In particular, the Court of Appeal said that there was “nothing in the language” of s 18(1)(d) to require the Minister or delegate to act and that there was no “public law principle of general application that would require the Minister or authorised representative” to act. But that is not correct either:

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<sup>44</sup> Court of Appeal [96]. [Tab 3 at 05.0055]

<sup>45</sup> Court of Appeal, [105]-[106] & [109]. [Tab 3 at 05.0057-05.0059]

<sup>46</sup> Court of Appeal, [109]. [Tab 3 at 05.0059]



46.1. As we have set out, the terms of the duty imposed by s 18(1)(d) and the safeguard role of the Minister are unique; and

46.2. The relevant public law principle is that the Court must consider “the nature of the duty and the character of the person”.<sup>47</sup>

47. The Court of Appeal also had four specific reasons to allow the use of contractors:

47.1. First, it said that the use of an NZTA-engaged contractor does not matter – there was no conflict of interest – because “the Minister ... and NZTA ... are both acting for the benefit of the Crown”.<sup>48</sup> But that is not correct: the reason for the duty on the Minister is not to pursue only the Crown’s benefit but to safeguard our, and other citizens’, interests.

47.2. The Court next said that because the failure (or refusal) of negotiations does expose us to the exercise of compulsory powers, “the Minister ... must retain ultimate responsibility for undertaking good faith negotiations”<sup>49</sup> and, later, that the Minister:<sup>50</sup>

“... can make every endeavour to negotiate in good faith with a landowner in an attempt to reach an agreement for the acquisition of the land by appointing (personally, or through a delegate) an appropriately skilled and knowledgeable person to undertake those negotiations on the Minister’s behalf, provided that the Minister (or delegate) retains ultimate responsibility for the negotiation. ... Negotiation towards an agreement conducted under the oversight of the Minister ... is a form of preliminary or incidental work which the Minister can choose to undertake in a range of ways ...”

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<sup>47</sup> *Vine v National Dock Labour Board* [1957] AC 488, 512. [A30]

<sup>48</sup> Court of Appeal, [91]. [Tab 3 at 05.0054]

<sup>49</sup> Court of Appeal [114]. [Tab 3 at 05.0060]

<sup>50</sup> Court of Appeal, [118]. [Tab 3 at 05.0062]

As the Court of Appeal had already said, the role of the NZTA contractor was only as follows:<sup>51</sup>

“If negotiations conducted by an accredited supplier are unsuccessful and the accredited supplier recommends that a s 23 notice be issued, the LINZ Clearances Team reviews the chronology of negotiations and the report and accompanying information provided by the accredited supplier, and may request further information. The LINZ team provides a briefing note to the Minister advising whether in LINZ’s view a good faith negotiation has been carried out, and whether a s 23 notice should be issued. It is then for the Minister to decide whether to issue a s 23 notice.

that is, the Minister’s advisers receive and review a report about the steps taken and the failure to reach agreement: the Court later said LINZ had “control over the manner in which the negotiations are conducted”,<sup>52</sup> we say that is not correct. It is also not correct to say, as the Court of Appeal did, that:

47.2.1. The Minister or delegate “appointed” TPG;

47.2.2. TPG negotiated “on the Minister’s behalf”; or

47.2.3. The Minister retained “ultimate responsibility for the negotiation”.

47.3. The Court of Appeal also said that an NZTA contractor “will often be better placed” than officials, for example because they have “knowledge of the purpose of the acquisition” and referred to the “commonplace” that negotiations are conducted by representatives. But what might be appropriate in a private negotiation or what might have appeared to the Court of Appeal to be a more expert negotiator does not satisfy s 18(1)(d): to the contrary, if the NZTA contractor is better informed than the officials then

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<sup>51</sup> Court of Appeal, [48](b). The Court went on to comment that ([49]): **[Tab 3 at 05.0045]**

“No further detail of these arrangements is necessary because the question before us is not whether the systems for ensuring the quality of the work of accredited supplier are adequate.

<sup>52</sup> Court of Appeal, [119]. **[Tab 3 at 05.0062]**

it cannot be said that the NZTA contractor is acting on the Minister's or the officials' behalf.

47.4. Next, the Court accepted that:<sup>53</sup>

“There is force in Ms Gepp's submission that negotiations are a fluid and path-dependent process, and that the way in which a person conducts negotiations may foreclose options along the way. But that does not mean that only the Minister or delegate can undertake negotiations. Rather, it suggests that there may be certain matters which are so fundamental to the shape of the negotiation that they should be referred back to the relevant decision-maker along the way. Or, at the least, they should be expressly identified in any final report to the decision-maker as material decisions made in the course of the negotiation process that may have shaped the ultimate outcome (successful or unsuccessful).”

but that does not authorise the use of an NZTA contractor.

#### **Application of the law**

48. When s 18(1)(d) and the inextricably interrelated provisions of s 4C of the PWA are interpreted, as required by the rule of law, it is clear that the powers/duties/functions provided by s 18(1)(d) of the PWA can only be exercised or performed by the specific person(s) expressly authorised by the PWA.

49. The PWA has at all times relevant to this Appeal expressly authorised that: Only the Minister for Land Information ('the Minister') personally or a delegate lawfully appointed pursuant to s 4C of the PWA can exercise/perform the powers/duties/functions provided by s 18(1)(d) of the PWA.

50. That law provided by s 18(1)(d) and s 4C of the PWA is a critical part of the protections, the safeguards, which the PWA provides (affirming and upholding constitutional and human rights law) to every citizen - being a critical part of the law providing and restricting the use of the draconian power to take a citizen's land, and above all land which is their home, against their will by use of force.

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<sup>53</sup> Court of Appeal, [117]. [Tab 3 at 05.0061]

51. We are concerned that the "three questions" suggesting the focus of argument on the appeal and above all the third "question" risk wrongly presupposing and/or assuming matters which are to be determined by the Appeal.
52. The "negotiation function" wording and statutory meaning in the questions is interesting because LINZ expressly prohibit TPG from exercising any statutory functions.<sup>54</sup>
53. The "negotiation function" is the entire s 18(1)(d) statutory function. The Minister's s 18(1)(d) statutory function (powers and duties) to *"make every endeavour to negotiate in good faith with the owner in an attempt to reach an agreement for the acquisition of the land"*. What does the "negotiation function" (i.e. the entire s 18(1)(d) statutory function) encompass? An acquisition strategy? Proactively providing information? Proactively initiating agreed terms of negotiations (including preapproval of funding (rates/scopes/estimates) for negotiators, legal advisors, consultants, administrative support.<sup>55</sup> Proactively making (signed) offers to the landowner from the Minister/delegate?
54. Grice J called the "negotiation function" [i.e. the entire s 18(1)(d) statutory function]" matters which they [The Minister] are required by statute to carry out" and an "operational requirement" and "legwork" instead of a "statutory function."
55. Any action which involves the making of any decision, whatsoever, pursuant to section 18(1)(d) PWA must be an action (whether being an action in exercise/performance of a "function" and/or "power" and or "duty") taken by the Minister personally or a delegate lawfully appointed pursuant to section 4C PWA.

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<sup>54</sup> LINZ Procedures for Becoming a LINZ Crown Property Accredited Supplier – Crown Property Regulatory 3.8 Implications of Accreditation [Tab 59 at 301.0336-301.0337]:

"Accreditation does not create a relationship of partnership, principal and agent, employee and employer or a joint venture between the Accredited Supplier and LINZ. The Accredited Supplier ... is not permitted to hold itself out to any third party that it is entitled to exercise any statutory function.

The Accredited Supplier is not an agent or employee of LINZ. LINZ does not accept any responsibility for work undertaken by Accredited Suppliers."

<sup>55</sup> For example, see Terms of Negotiations on behalf of the Crown 18 August 1997 at 7(i) [A49]

56. What practical difference would it make if one of the Minister's LINZ delegates turned up? The Minister and his delegate have the power to offer and negotiate for example land exchange, equivalent reinstatement, a home and farm hub, and therefore the opportunity and ability to reach agreement. The Minister's LINZ delegates have powers that TPG doesn't have, the Minister's LINZ delegates can offer and negotiate outcomes that TPG can't. TPG can't do anything that NZTA haven't authorised them to do.<sup>56</sup> The Minister's LINZ delegate can exercise their own power of discretion, such as an acquisition strategy that is different from the Requiring Authorities acquisition strategy, that includes for example offering a land exchange and/or equivalent reinstatement and/or a replacement home and farm hub elsewhere on our property in exchange for the 'required' land. Consider and negotiate an alternative site offered by the landowner, even if the Requiring Authority are inexcusable obdurate in pursuing its preferred alternative.

57. *May the negotiation function be exercised by an accredited contractor?*

58. No. S 18(1)(d) of the PWA is **not** complied with if the Respondent's s 18(1)(d) statutory function (powers and duties) to "*make every endeavour to negotiate in good faith with the owner in an attempt to reach an agreement for the acquisition of the land*" is undertaken by a Requiring Authority (including an accredited contractor contracted to the Requiring Authority) rather than by the Respondent personally (or an officer of the Respondent's department with delegated authority in writing from the Respondent).

59. Any actions taken by the Requiring Authority (including an accredited contractor contracted by the Requiring Authority) to exercise or perform the Respondent's s 18(1)(d) statutory function (powers and duties) are ultra vires or the exercise of an unlawful delegation.

60. *Does the negotiation function need to be formally delegated if it is to be exercised by an accredited contractor?*

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<sup>56</sup> See Variation and Extension Agreement- Property Acquisition Services Agreement Contract No PROP 16 01 Waka Kotahi New Zealand Transport Agency - The Property Group. [Tab 98 at 302.0827]

61. *Was the outsourcing of the negotiation function consistent with the respondent's statutory duty to "make every endeavour to negotiate in good faith"?*
62. The third question relates to what happened in Pascoe's particular case, eg. given that Pascoes expressly requested that the Minister/delegate **not** outsource the "negotiating function", that the Minister/delegate exercise the s 18(1)(d) function personally, could they refuse that request despite s 18(1)(d)?<sup>57</sup>
63. The COA Judgment applied the Pascoes request to negotiate with the Respondent/delegate to s 18(2) but did not apply the Respondent/delegate's decline to negotiate to s 18(1)(d).<sup>58</sup>
64. The Court of Appeal was not correct to find that negotiations prior to the compulsory acquisition of land for essential works, under s 18 of the Public Works

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<sup>57</sup> The HC Judgment makes various statements concerning the relevant facts – including in paragraphs [14] and [23]-[24] of the HC Judgment. [Tab 1 at 05.0004-05.0005 and 05.0009] Those statements refer (amongst other things) to requests made by us (as the relevant land owner(s)) to the Minister – requesting the Minister to lawfully appoint a person or persons as the Minister's delegate(s), pursuant to the PWA, and requesting such lawfully appointed delegate(s) perform the Minister's duties (and exercise any power the Minister has) pursuant to s 18(1)(d) PWA ('Land Owner's Requests'). On the basis those requests were made, and on the basis the Minister (or their lawfully appointed delegate) refused to agree to the request(s) (refer HC Judgment including at [14]): that refusal fundamentally breached the Minister's duties as provided by s 18(1)(d) PWA.

<sup>58</sup> Court of Appeal, [121]. [Tab 3 at 05.0062-05.0063]; NB. A critical step in interpreting the text of s 18(1)(d) is to state the ordinary meaning of those words, to quote what the primary dictionary, the Oxford English Dictionary (as cited in *McGregor v Mobil Oil New Zealand Limited* (Wellington) [2007] NZERA 379 (2 May 2007) [A52] states is the (relevant) meaning of each of the words of section 18(1)(d) including in particular the words "make" and "every" and "endeavour". As stated in *Deane* (and the other key Judgments): That text must be interpreted as required by constitutional and human rights law. The law makes clear that the text "... make every endeavour ...", for the purposes of s 18(1)(d), means "... make every endeavour ..." (**and not**, for example, "... make every [reasonable] endeavour ...") the text (those words) of s 18(1)(d) must not be read down but must be interpreted to give effect to the purpose of the PWA. The text "... make every endeavour ..." provides (states) **the level/order/standard of the duty/power/function whereas** the text "to negotiate in good faith with the owner in an attempt to reach an agreement for the acquisition of the land" provides (states) **what** the Minister (or local authority) must **do** (the 'actions' which must be taken) **to that ("... make every endeavour ...") level/order/standard**. The text "in good faith" also provides, and reinforces, the level/order/standard of the duty/power/function - being the highest possible level/order/standard. **The expressly enacted text of s 40(1) PWA follows the same 'structure'**: Parliament has, by enacting the text of s 40(1) PWA "... shall endeavour ...", expressly provided the applicable **level/order/standard** of the duty/power/function provided by s 40(1) (being an expressly different and in my opinion far lower level/order/standard to that provided by s 18(1)(d)) - **whereas** the text (of s 40(1)) "... to sell the land in accordance with subsection (2), if that subsection is applicable to that land" provides (states) **what** the Minister (or local authority) must do (the 'actions' which must be taken) **to that ("... shall endeavour ...") level/order/standard**.

Act 1981, may be undertaken by an accredited contractor rather than by the Respondent personally (or an officer of LINZ with delegated authority by the Respondent).<sup>59</sup>

65. We respectfully invite the Court to answer the question put by Ms Gepp KC to the COA in her 3 July 2024 submissions at [3]:<sup>60</sup> *“Given the factual context, in my submission the first question for determination should be preceded by another question: Is s 18(1)(d) of the PWA complied with if the relevant negotiations with the land owner are undertaken by (or directed by or subject to the agreement of) the **requiring authority** rather than the Minister or their delegate?”* [bolding added]. The answer should be no.

#### *The second preliminary question*

66. Her Honour Justice Ellen France asked Ms Gepp KC to address the R20A matters which are effectively **question two** of the three preliminary questions and invited us to address those matters also.<sup>61</sup>

67. Neither of the Courts below had considered it necessary to answer **question two**<sup>62</sup> for the following reasons:

67.1. Her Honour Justice Grice found *“It is common ground that before the Minister can undertake further steps in the process to take the land the provisions set out in s 18(1)(a)-(d) of the Act must be satisfied.”*<sup>63</sup>

67.2. Her Honour Justice Grice found *“It is the requirement to endeavour to negotiate in good faith set out at s 18(1)(d) which is relevant to the first and second preliminary questions. It is common ground that the Minister cannot*

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<sup>59</sup> *Pascoe v Minister for Land Information* [2025] NZSC 54 [19 May 2025] at B [Tab 11 at 05.0196]; R 29(2) of the Supreme Court Rules 2004 (the Rules) provides that the Court may permit or direct another ground to be advanced in argument. [A12]

<sup>60</sup> Memorandum of the Appellants dated 7 February 2025 at [174] [Tab 5 at 05.0160]

<sup>61</sup> Minute of Ellen France J dated 25 June 2025 at [5] [Tab 15 at 05.0207]

<sup>62</sup> Minute of Ellen France J dated 25 June 2025 at [2] footnote 1 [Tab 15 at 05.0206]

<sup>63</sup> *Pascoe v Minister for Land Information* [2022] NZHC 3173 [30 November 2022] at [7] [Tab 1 at 05.0003]

*take the next step to take the land unless the s 18(1) provisions are satisfied. The next step is the issue under s 23 of a notice of intention to take land, which is the subject of the judicial review application.”*<sup>64</sup>

67.3. The learned Court of Appeal found that “*the Minister accepted that if s 18(1)(d) had not been complied with, that would affect the legality of the s 23 notice.*”<sup>65</sup>

68. Her Honour Justice Ellen France advised how and to what extent the Court engages with **question two** will depend, amongst other matters, on the approach taken to the question on which leave was granted.<sup>66</sup>

69. We invite the Court to make a finding that the Minister cannot issue under s 23 a notice of intention to take land **unless** the s 18(1) provisions are satisfied.

70. We invite the Court to make a finding that **if** the s 18(1) provisions are **not** satisfied, but the Minister **does** issue under s 23 a notice of intention to take land, the compulsory acquisition process is fatally flawed. If the Minister has not complied with/does not discharge his duties under s 18(1)(a)-(d) that is a defect that as a matter of law **cannot** be cured.

**Relief sought (and any costs order sought by the appellants)**

71. That the Court make an order quashing the judgement *Pascoe v Minister for Land Information* [2024] NZCA 557 [31 October 2024]; and

72. That the Court make an order quashing the judgement *Pascoe v Minister for Land Information* [2022] NZHC 3173 [30 November 2022]; and

73. That the Court make an order that the s 23 notice dated 2 August 2021 be revoked; and

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<sup>64</sup> *Pascoe v Minister for Land Information* [2022] NZHC 3173 [30 November 2022] at [8] **[Tab 1 at 05.0003]**

<sup>65</sup> *Pascoe v Minister for Land Information* [2024] NZCA 557 [31 October 2024] at [126] **[Tab 3 at 05.0063]**

<sup>66</sup> Minute of Ellen France J dated 25 June 2025 at [5] **[Tab 15 at 05.0206]**



74. The relief sought in our statement of claim; and

75. Costs at the self-represented litigant rate of \$500 per day.

Dated this 28th day of August 2025

**Signature:**

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**Tony James Sofus Pascoe**

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**Debbie Ann Pascoe**

**This document is electronically filed by the applicants in person. The address for service is 3072 Mōkau Road, Mt Messenger, R D 48, Urenui, 4378**

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