
IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 123/2024

BETWEEN

TONY JAMES SOFUS PASCOE AND DEBBIE
ANN PASCOE

Appellants

AND

MINISTER FOR LAND INFORMATION

Respondent

RESPONDENT'S SYNOPSIS OF SUBMISSIONS

3 October 2025



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COUNSEL FOR THE RESPONDENT CERTIFIES THAT, TO THE BEST OF THEIR KNOWLEDGE,
THESE SUBMISSIONS CONTAIN NO SUPPRESSED INFORMATION AND ARE SUITABLE FOR PUBLICATION.

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Approved question

1. The approved question is whether the Court of Appeal was correct to find negotiations prior to the compulsory acquisition of land for essential works, under s 18 of the Public Works Act 1981 (**PWA**), may be undertaken by an accredited contractor rather than by the respondent personally (or an official of Toitū Te Whenua | Land Information New Zealand (**LINZ**) with delegated authority by the respondent).

Summary of Argument

2. The answer to the approved question is “Yes”. In sum:
 - 2.1 the day-to-day conduct of negotiations are a preliminary or supporting operational task conducted by accredited contractors (described as accredited suppliers) within the accredited supplier scheme and constrained by the context of the PWA;
 - 2.2 there is nothing in the language or the scheme of the PWA which supports the argument the conduct of day-to-day negotiations must be conducted by the respondent or a delegate; and
 - 2.3 the conduct of day-to-day negotiations by an accredited supplier involves no purported exercise of a statutory power or function as decision-making power and ultimate responsibility for good faith negotiations remains with the respondent (and his delegate).
3. In this case, the respondent performed the duty to make every endeavour to negotiate with the appellants in good faith by providing the appellants the opportunity to negotiate directly with his knowledgeable and authorised representative, maintaining oversight of the process through his delegate, and through his decision-making under s 23 of the PWA. The purpose of the statutory requirement was fulfilled. The Environment Court and High Court found the acquisition process was undertaken in accordance with the relevant statutory powers and in good faith and even-handedly. Any prejudice suffered by the appellants (which the respondent does not accept exists) has been superseded by subsequent decision-making.

4. In the event the Court considers the question of relief the respondent asks it to refuse relief. The invalidation of the s 23 Notice is not in the public interest as it would have the effect of adding substantially to an already significant delay in the construction of necessary public infrastructure.

Background

Factual Background¹

5. The appellants oppose the proposed acquisition of freehold and leasehold interests in their land under the PWA. Those interests are required by the Crown for the construction of the Te Ara o Te Ata | Mt Messenger Bypass Project (**Project**). The Project is a government work involving the construction of a 5.2km bypass east of State Highway 3's current alignment between Taranaki and Waikato. The New Zealand Transport Agency | Waka Kotahi (**NZTA**) is the Crown agency responsible for the Project's construction.
6. The appellants have unsuccessfully pursued a number of proceedings, including an objection to the Environment Court² and several applications for review of the compulsory acquisition process.³ The present application for review (CIV-2021-443-48) was filed a short time after the appellants' objection to the proposed acquisition was filed with the Environment Court.⁴ In the course of case-managing the application for review, Ellis J directed

¹ A chronology is annexed to these submissions.

² *Pascoe v Minister for Land Information* [2024] NZEnvC 101 [Objection decision] **[[CABOA TAB 21]]**; *Pascoe v Minister for Land Information* [2025] NZHC 1782 [Objection appeal] **[[CABOA TAB 20]]**; and *Pascoe v Minister for Land Information* [2025] NZSC 114 **[[RBOA TAB 19]]**.

³ They were also involved in litigation relating to the resource consents and notice of requirement granted in respect of the Project under the Resource Management Act 1991. See for example: *Director-General of Conversation v Taranaki Regional Council* [2019] NZEnvC 203; and *Poutama Kaitiaki Charitable Trust v Taranaki Regional Council* [2020] NZHC 3159.

⁴ An amended statement of claim was filed on 12 June 2023, adding three causes of action **[[101.0128]]**. To date, all nine causes of action have been heard at first instance. The first, second, and sixth form the basis of this matter. The seventh was determined by Isaac J on 10 October 2023 and has not been appealed (*Pascoe v Minister for Land Information* [2023] NZHC 2844). The remainder (being the third, fourth, fifth, eighth, and ninth) were dismissed by McQueen J on 2 July 2025 and have been appealed to both the Court of Appeal (*Pascoe v Minister for Land Information* [2025] NZHC 1783 **[[RBOA TAB 18]]**); and *Pascoe v Minister for Land Information* CA482/2025. An application for leave to appeal to this Court by way of a 'leapfrog' was abandoned (*Pascoe v Minister for Land Information* SC 82/2025).

three legal questions be heard in advance of the remaining causes of action (**Preliminary Questions**).⁵

7. The Preliminary Questions as phrased by Ellis J were:

7.1 Is s 18(1)(d) of the PWA complied with if the relevant negotiations with the landowner are undertaken by an entity accredited by LINZ as a Crown Property Accredited Supplier (such as The Property Group (**TPG**)) rather than the respondent or his delegate, provided it is the respondent or his delegate who exercises the ultimate power to enter into an agreement to acquire or proceed to take the land? (**First Preliminary Question**).

7.2 If not, does that affect the legality of the s 23 notice issued by the respondent? (**Second Preliminary Question**).

7.3 Is the respondent permitted to exclude cls 4, 5, 6, 10, 11 and 12 of Part 2 of Schedule 3 and cl 13 of Part 3 of Schedule 3 of the Property Law Act 2007 from the proposed lease (including in accordance with ss 217 and 279(2) of the Property Law Act and Part 2 of the PWA)? (**the Third Preliminary Question**).

8. Grice J determined the First and Third Preliminary Questions in favour of the respondent.⁶ The Court of Appeal dismissed an appeal by the appellants, as well as an application to adduce further evidence, and then an application for recall.⁷ This Court then granted leave on the question set out at [1].⁸

⁵ These correspond to the first, second, and sixth causes of action.

⁶ *Pascoe v Minister for Land Information* [2022] NZHC 3173 [High Court decision] **[[05.0001]]**. It was not necessary to consider the Second Preliminary Question as it was contingent on an adverse conclusion in relation to the First Preliminary Question.

⁷ *Pascoe v Minister for Land Information* [2024] NZC 557 at [73] [Decision under appeal] **[[05.0030]]**; and *Pascoe v Minister for Land Information* [2025] NZCA 96 [Recall decision] **[[05.0191]]**. Counsel note the Court of Appeal appointed counsel assisting to make submissions on the Preliminary Questions and other issues not addressed by Grice J. See *Pascoe v Minister for Land Information* CA87/2023, 30 May 2024 (Minute of Cooper P) **[[101.0206]]**; and *Pascoe v Minister for Land Information* CA87/2023, 31 May 2024 (Minute of Cooper P) **[[101.0208]]**.

⁸ *Pascoe v Minister for Land Information* [2025] NZSC 54. [Leave decision] **[[05.0196]]**.

Decision under appeal

First Preliminary Question

9. The Court of Appeal concluded s 18(1)(d) of the PWA is complied with if negotiations with a landowner are undertaken by an accredited supplier, provided the respondent (or his delegate) retains ultimate responsibility for the negotiation.⁹ The Court considered:

9.1 Where land is to be acquired by the Crown for a government work, the respondent and the acquiring agency are both acting for the benefit of the Crown.¹⁰ It makes “good practical sense” for an acquiring agency to be closely involved in negotiations given their knowledge of what is required.¹¹ No conflict of interest arises merely because a negotiator is retained by an acquiring agency or LINZ.¹²

9.2 As only the respondent (or his delegate) can enter into a negotiated agreement under s 17, and only the respondent can make decisions under s 23 to take land, the respondent retains responsibility for negotiations.¹³ This allocation of responsibility recognises the significance of a decision to take land, ensures democratic accountability, and reflects a landowner’s rights and interests are only affected when an agreement in principle is ratified or a s 23 notice issued.¹⁴

9.3 It is commonplace for an agreement to be negotiated on behalf of a principal by an authorised and knowledgeable representative without authority to enter an agreement.¹⁵ It was not inconsistent with the PWA for the respondent to negotiate with a landowner

⁹ Decision under appeal, at [104], [119], and [123]. **[[05.0057]], [[05.0062], [[05.0063]].**

¹⁰ At [91]. **[[05.0054]].**

¹¹ At [97]. **[[05.0055]].**

¹² At [98]. **[[05.0056]].**

¹³ At [95]. **[[05.0055]].**

¹⁴ At [96] and [114]. **[[05.0054]], [[05.0060]].**

¹⁵ At [100]. **[[05.0056]].**

through an authorised and knowledgeable representative.¹⁶ Nothing in the text of the PWA or broader statutory context suggested otherwise, and an authorised and knowledgeable representative would be better placed to undertake negotiations.¹⁷

9.4 The person undertaking negotiations need not have delegated decision-making power. Negotiation towards an agreement conducted under the oversight of the respondent (or his delegate), without authority to approve entry into the agreement, is a form of preliminary or incidental work which the respondent can choose to undertake in a range of ways.¹⁸ The same can be said of all the s 18 functions,¹⁹ none of which require the application of the *Carltona* principle, as the persons performing the relevant function are not doing so as the alter ego of the respondent, nor making any decision or exercising any statutory power.²⁰

9.5 Whether engaging someone to perform a task amounts to a delegation of a statutory function depends on the nature of the task, having regard to public law principles and specific statutory context.²¹ Where a task does not involve the exercise of any statutory power, the respondent (or delegate) can engage any appropriate person to carry it out.²² Where a public sector agency or officer engages a private sector supplier of administrative or supporting services for the purpose of carrying out its functions, they are not delegating the function, but rather performing it.²³

9.6 There is nothing in the language of s 18(1)(d) supporting an argument the work involved in conducting negotiations cannot be

¹⁶ At [100]–[101]. [[05.0056]].

¹⁷ At [101]–[102]. [[05.0056]].

¹⁸ At [104]. [[05.0057]].

¹⁹ At [105]–[106]. [[05.0057]].

²⁰ At [107]. [[05.0058]].

²¹ At [108]. [[05.0058]].

²² At [109]. [[05.0059]].

²³ At [110]. [[05.0059]].

allocated to an authorised and knowledgeable representative who does not hold formal delegations from the respondent.²⁴ Nor is a landowner entitled to specify the person with whom they wish to negotiate.²⁵ A refusal to negotiate with an accredited supplier is a refusal to negotiate with the respondent.²⁶

Second Preliminary Question

10. The Court declined to express a view on the Second Preliminary Question, given it agreed with the High Court it did not arise.²⁷ The Court noted the respondent “accepted that if s 18(1)(d) had not been complied with, that would affect the legality of the s 23 notice,” but not the arguments made by the respondent as to the consequences of the legality of the s 23 Notice being affected.²⁸

Third Preliminary Question

11. The Court agreed with the High Court that the respondent is permitted to exclude the relevant provisions of the Property Law Act from leasehold interests acquired under pt 2 of the PWA.²⁹ Leave was not granted in respect of the Third Preliminary Question.

The PWA

12. The PWA facilitates the acquisition of private interests in land for works of public importance. It has a dual purpose: protecting the rights of landowners, but only insofar as necessary to enable public works to be undertaken.³⁰ The powers in pt 2 of the PWA must be strictly construed, exercised in good faith and even-handedly, supported by a clear

²⁴ At [120]. **[[05.0062]]**.

²⁵ At [121]. **[[05.0062]]**.

²⁶ At [121]. **[[05.0062]]**.

²⁷ At [127]. **[[05.0064]]**.

²⁸ At [126]. **[[05.0063]]**.

²⁹ At [129]–[131]. **[[05.0064]]**.

³⁰ Legislative schemes for compulsory acquisition across common-law jurisdictions seek to strike an appropriate balance between those two purposes. See for example Peter Salmon *The Compulsory Acquisition of Land in New Zealand* (Butterworths, Wellington, 1982) at 4; Gary Newton and Christopher Conolly *Land Acquisition* (7th ed, LexisNexis Butterworths, Australia, 2017) at [1.11]; Richard Honey (ed) *The Law of Compulsory Purchase* (4th ed, Bloomsbury Professional, London, 2022) at [351].

justification.³¹ Landowners are entitled to compensation for any land acquired, disputes in relation to which are determined by the Land Valuation Tribunal.³²

13. To commence the compulsory acquisition process, s 18 of the PWA requires the Minister to:

13.1 Serve a notice of desire to acquire land on every person having a registered interest in the relevant land,³³ and lodge the notice with the Registrar-General of Land to be registered against the title.³⁴

13.2 Invite the owner to sell the land, and, following a valuation carried out by a registered valuer, advise the owner of the estimated amount of compensation to which they would be entitled.³⁵

13.3 Make every endeavour to negotiate in good faith with the owner in an attempt to reach an agreement for the acquisition of the land.³⁶

14. If agreement is reached, the land will be acquired under s 17. However, if after a period of three months agreement is not reached or the owner either fails to respond to an invitation to negotiate or refuses to negotiate, the Minister may (within one year of the notice of desire being served) proceed to compulsorily acquire the land.³⁷

15. To compulsorily acquire land, the Minister must (in accordance with s 23):

15.1 Cause a survey to be made and a plan to be prepared and lodged with the Chief Surveyor, showing the land required and the names of the landowner(s).³⁸

³¹ *Dromgool v Minister for Land Information* [2022] NZSC 157, [2022] 1 NZLR 716 at [52]–[53] per O'Regan J **[[CABOA TAB 15]]**; citing *Deane v Attorney-General* [1997] 2 NZLR 180 (HC) at 191 **[[CABOA TAB 14]]**; and *Simpsons Motor Sales (London) Ltd v Hendon Corp* [1963] Ch 57 (CA) at 83 per Upjohn LJ.

³² Public Works Act 1981, pt 5. **[[RBOA TAB 3]]**.

³³ Section 18(1)(a). **[[RBOA TAB 3]]**.

³⁴ Section 18(1)(b). **[[RBOA TAB 3]]**.

³⁵ Section 18(1)(c). **[[RBOA TAB 3]]**.

³⁶ Section 18(1)(d). **[[RBOA TAB 3]]**.

³⁷ Section 18(2). **[[RBOA TAB 3]]**.

³⁸ Section 23(1)(a). **[[RBOA TAB 3]]**.

- 15.2 Cause a notice to be published in the Gazette and twice publicly notified, which describes the land, the purpose for which the land will be used, the reasons why compulsory acquisition is considered reasonably necessary, and the period in which objections can be made.³⁹
- 15.3 Serve a notice of intention to take the land on all persons with a registered interest.⁴⁰
16. Every person having an estate or interest in land intended to be taken may object to the Environment Court.⁴¹ The Environment Court's role is set out in s 24(7):
- 16.1 Under s 24(7)(b) it reviews the adequacy of consideration given to alternatives and satisfies itself the consideration has been adequate.⁴² It is not required to select the alternative it thinks best or make a merits assessment.⁴³ It is a "check on the proper process".⁴⁴ Further, it may, in its discretion, allow a taking to proceed even where the assessment of alternatives has been inadequate, including where there has been no assessment of alternatives.⁴⁵
- 16.2 Under s 24(7)(d) it substantively considers a proposed acquisition, forming its own opinion as to whether it is fair, sound, and reasonably necessary for achieving the respondent's objectives. The term "fair" may mean a "sense of equitable" or "free from irregularities", "sound" connotes "solid and substantial", and a

³⁹ Section 23(1)(b). **[[RBOA TAB 3]]**.

⁴⁰ Section 23(1)(c). **[[RBOA TAB 3]]**.

⁴¹ Sections 23(3) and 24(10). **[[RBOA TAB 3]]**.

⁴² *Dromgool v Minister for Land Information* [2022] NZSC 157, [2022] 1 NZLR 716 at [79] per O'Regan J. **[[CABOA TAB 15]]**.

⁴³ At [80] **[[CABOA TAB 15]]**; and *Waitakere City Council v Brunel* [2007] NZRMA 235 (HC) at [30]. **[[RBOA TAB 26]]**.

⁴⁴ At [89]–[90] per O'Regan J **[[CABOA TAB 15]]** and at [184] per Winkelmann CJ. See also *Seaton v Minister for Land Information* [2013] NZSC 42, [2013] 3 NZLR 157 at [16] per Elias CJ. **[[RBOA TAB 23]]**.

⁴⁵ At [84] per O'Regan J. **[[CABOA TAB 15]]**. See *Re Hatton* ENC Auckland A25/98, 24 March 1998 at [54]–[55] **[[RBOA TAB 22]]**; and *Waitakere City Council v Brunel* [2007] NZRMA 235 (HC) at [24]. **[[RBOA TAB 26]]**. See also Public Works Act 1981, s 24(7)(c). **[[RBOA TAB 3]]**.

taking can be “reasonably necessary” despite alternative land being available.⁴⁶ Compliance with s 18 of the PWA is encapsulated within the fairness assessment.⁴⁷

17. Where no objection is made, or the objection is disallowed by the Environment Court, and the Minister is of the opinion the land should be taken, the land may be taken by way of proclamation.⁴⁸ Appeals from the Environment Court are to the High Court on questions of law.⁴⁹ Appeals from the High Court are to either the Court of Appeal or Supreme Court, and require leave.⁵⁰

Key features of the accredited supplier scheme

18. Accredited suppliers (companies or individuals) and nominated persons (persons employed or engaged by an accredited supplier) carry out operational tasks which support the respondent (or his delegate) to discharge statutory functions.⁵¹ The respondent (or his delegate) retains responsibility for discharging statutory functions,⁵² with the duty to make every endeavour to negotiate in good faith under s 18(1)(d) being:⁵³

- 18.1 delegated by the respondent to the LINZ Chief Executive pursuant to s 28 of the State Sector Act 1988;⁵⁴ and

⁴⁶ *Waitakere City Council v Brunel* [2007] NZRMA 235 (HC) at [48] to [50]. **[[RBOA TAB 26]]**.

⁴⁷ *Shaw v Hamilton City Council* [2021] NZEnvC 175 at [128]–[129]. **[[RBOA TAB 24]]**.

⁴⁸ Public Works Act 1981, s 26(1). **[[RBOA TAB 3]]**.

⁴⁹ Resource Management Act 1991, s 299. **[[RBOA TAB 6]]**.

⁵⁰ A second appeal is brought under s 308(1) of the Resource Management Act 1991, which applies subpt 8 of pt 6 of the Criminal Procedure Act 2011 to a decision of the High Court under s 299 of the RMA, as if the decision appealed had been made under s 300 of the CPA. Under s 304(b) of the Criminal Procedure Act 2011, a party may seek leave to appeal to either the Court of Appeal or the Supreme Court, if the second appeal is against a determination of the High Court.

⁵¹ Affidavit of Craig Harris, 8 July 2022, at [35]. **[[201.0022]]**. See also the LINZ *Guideline for the acquisition of land under the Public Works Act 1981*, which defines an accredited supplier as “a private sector service provider accredited by LINZ to undertake certain actions in the acquisition and disposal of land by the Crown under the Public Works Act 1981” **[[301.0214]]**.

⁵² See for example Affidavit of Craig Harris, 8 July 2022, at [32.2], [41], [57], and [68]. **[[201.0011]]**.

⁵³ Affidavit of Craig Harris, 8 July 2022, at [21] **[[201.0018]]**. Counsel note for completeness that while the State Sector Act 1988 has subsequently been repealed by the Public Service Act 2020, delegations made pursuant to ss 28 and 41 of the State Sector Act 1988 continue in force until modified in accordance with the delegation provisions in the Public Service Act 2020, see sch 1, cl 7 of the Public Service Act 2020.

⁵⁴ See **[[301.0112]]** at **[[301.0114]]**.

- 18.2 sub-delegated, with the respondent's approval, to the LINZ Deputy Chief Executive⁵⁵ and LINZ employees with specified roles, pursuant to s 41 of the State Sector Act 1998.⁵⁶
19. There are no delegation instruments to accredited suppliers for the day-to-day conduct of s 18(1)(d) negotiations and nor have there ever been, because the day-to-day conduct of negotiations does not involve the performance of a statutory power or function. However, sub-delegations to LINZ officials to issue s 18 notices and make every endeavour to negotiate in good faith with landowners have been in place at all relevant times and were lawfully made under the State Sector Act 1988.⁵⁷
20. LINZ designs and administers the accredited supplier scheme, including the preparation of standards and guidelines, and reviews work produced by accredited suppliers. Two LINZ teams have oversight at system-wide and individual supplier levels.⁵⁸ In practise, a Crown acquiring agency (in this case NZTA) contracts with an accredited supplier (in this case TPG) for the provision of services to support the acquisition of land required for a Government work (in this case the Project).⁵⁹ The three actors (TPG, NZTA, and LINZ including the respondent) work together on behalf of the Crown, within the system established and administered by LINZ.
21. The approval process for accrediting external providers is an important check on systems and expertise. This process is described in detail in LINZ's *Procedures for Becoming a LINZ Crown Property Accredited Supplier*.⁶⁰ The scope of an accredited supplier's practise is limited to the operational activities for which they are accredited. They must comply with standards

⁵⁵ See [[301.0122]] at [[301.0123]].

⁵⁶ See [[301.0136]] at [[301.0138]].

⁵⁷ Those sub-delegations are those referred to in paragraph [18.2]. The appellants in their submissions state that delegation of the Minister's powers and functions under the PWA should be made under s 4C of the PWA. However, delegation of the Minister's powers and functions under the PWA can be made under s 4C of the PWA or (now) under the Public Service Act 2020.

⁵⁸ Affidavit of Craig Harris, 8 July 2022, at [9]–[14] [[201.0011]]; and Affidavit of Trevor Knowles, 8 July 2022, at [10]–[11]. [[201.0036]].

⁵⁹ Affidavit of Craig Harris, 8 July 2022, at [10]–[11]. [[201.0011]].

⁶⁰ Affidavit of Craig Harris, 8 July 2022, at [36] [[201.0011]]; and LINZ's *Procedures for Becoming a LINZ Crown Property Accredited Supplier*. [[301.0327]].

set by LINZ, including the provision of required information and documentation.⁶¹

22. The engagement of accredited suppliers by Crown acquiring agencies is constrained by virtue of the accreditation system⁶² and does not create a conflict of interest. Rather, the involvement of the Crown acquiring agency is necessary given its intimate knowledge of and fiscal responsibility for a public work. This is particularly so because LINZ itself is not responsible for or capable of the construction of public works.⁶³

Application to adduce further evidence

23. Counsel assisting seeks to adduce further evidence on appeal, in the form of the terms of engagement between NZTA and TPG for property services provided by TPG, described as the “Acquisition Services Agreement”. The respondent ultimately abides the Court's decision. But notes, for the assistance of the Court:

23.1 Evidence is not fresh if it could with reasonable diligence have been produced at trial.⁶⁴ While the appellants are unrepresented, and counsel assisting was not appointed in the High Court, the “Acquisition Services Agreement” could still have been produced with reasonable diligence.⁶⁵

23.2 The “Acquisition Services Agreement” was not produced at trial because it is not relevant or cogent. The question of whether the accredited supplier scheme is sufficient to meet the respondent’s obligations under s 18(1)(d) has never been part of this

⁶¹ Refer *Guideline for the acquisition of land under the Public Works Act 1981* [[301.0204]]; *Standard for the acquisition of land under the Public Works Act 1981* [[301.0290]]; and *Conditions of Crown Property Accreditation – Crown Property Regulatory* [[301.0362]].

⁶² Refer *Standard for the acquisition of land under the Public Works Act 1981* [[301.0290]].

⁶³ The process by which LINZ and its predecessors were divested of this expertise is addressed below.

⁶⁴ *Aotearoa International Ltd v Paper Reclaim Ltd* [2006] NZSC 59, [2007] 2 NZLR 1 at [6]; citing *Rae v International Insurance Brokers (Nelson Marlborough) Ltd* [1998] 3 NZLR 190 at 192 (CA)

⁶⁵ Counsel note also the admission of further evidence on appeal under r 40(1) of the Supreme Court Rules is limited to “further evidence on questions of fact” by oral examination, affidavit, or deposition. Not only is the approved question a question of law – but the “Acquisition Services Agreement” has not been produced in a form which is amenable to admission under r 40(1).

proceeding.⁶⁶ The First Preliminary Question before the High Court (and the approved question on this appeal) remains a narrow legal issue concerned with whether the day-to-day conduct of negotiations must be undertaken by the Minister or his delegate.

Legal argument

Conduct of day-to-day negotiations may be undertaken by an accredited supplier

What is required by s 18(1)(d)?

24. The obligation to attempt to reach agreement with a landowner in good faith prior to the exercise of compulsory acquisition powers is a novel aspect of New Zealand's statutory scheme.⁶⁷ It was first introduced in 1981 and has not been substantively amended. There was no equivalent in the Public Works Act 1928, under which the acquisition process commenced with the steps now contained in s 23 of the PWA.
25. The insertion of a mandatory negotiation requirement into the PWA was part of a package of reforms intended to give greater consideration to the rights of landowners.⁶⁸ Parliament's preference was for negotiated agreements. However, s 18 is silent on what is required to "make every endeavour to negotiate in good faith", other than "an attempt to reach an agreement" should be made.⁶⁹
26. Considering the text of s 18(1)(d) in light of purpose and context, the requirement negotiations be in "good faith" speaks to the quality of the

⁶⁶ Decision under appeal, at [116] and [122]. **[[05.0063]]**.

⁶⁷ Nor is such a requirement a common feature of compulsory acquisition schemes in other jurisdictions. See however, Land Acquisition (Just Terms Compensation) Act 1991 (NSW), s 10A; and Land Acquisition Act 1969 (SA), s 19. Generally, compulsory acquisition schemes in other jurisdictions do not create an obligation to attempt to agree. See for example, Land Acquisition Act 1989 (Cth), s 40; and Compulsory Purchase Act 1965 (UK), s 3.

⁶⁸ (10 July 1981) 438 NZPD 1478. **[[RBOA TAB 36]]**. However, counsel note the primary mechanism adopted to allow for greater consideration of landowners' rights in the 1981 Act as enacted was the distinction between an 'essential work' and a 'public work', rather than the negotiations requirement ((10 July 1981) 438 NZPD 1480). Powers of compulsory acquisition were only available for 'essential works' as defined by the Act. This distinction was removed by the Public Works Amendment Act (No 2) 1987, sch 1, on the basis it led to considerable difficulty in the construction of non-essential public works which required specific land which a landowner was unwilling to sell (see (24 September 1986) 474 NZPD 4590). **[[RBOA TAB 37]]**.

⁶⁹ Counsel note LINZ's *Guideline for the acquisition of land under the Public Works Act* states: "While there is no clear statement as to what constitutes good faith, the Crown acquiring agency should ensure that it acts in an honest, fair and open manner with the owner, including: (a) acting honestly during any dealing, (b) having regard to the owner's legitimate interest, (c) meeting and regularly communicating with the owner and responding to the owner's inquiries, and (d) acting professionally towards the owner". **[[301.0231]]**.

attempts to reach agreement. Section 18(1)(d) creates an obligation on the conduct of the respondent to act “reasonably in the public interest” and “with due regard to the interests of the person being dispossessed”.⁷⁰ The respondent must act honestly, being cognisant of the inherently coercive nature of the acquisition process, and the fact a landowner is not a “willing seller in any true sense”.⁷¹

27. Ultimately, whether “every endeavour to negotiate in good faith” has been made is a factual question depending on the conduct of the respondent and those authorised to negotiate on his behalf. The respondent assesses whether that standard has been met when making decisions under s 23 of the PWA. The appropriate forum for such a determination when the respondent’s decision-making is challenged is the Environment Court, being the decision-maker designated by Parliament to assess the fairness of a proposed acquisition.⁷²

Context

28. In a contractual context, a duty to act in good faith incorporates a duty to act “honestly, whether or not it is done negligently”, and is “closely associated with notions of fairness, honesty, and reasonableness”.⁷³ It requires a person to “try to agree”, and that:⁷⁴

... the parties must honestly try to reach agreement. They remain able to pursue their own interests within what is subjectively honest, rather than what is objectively reasonable.

29. The courts have held a subjective analysis of “good faith” is preferable in a contractual context because: “the concept of a duty to carry on negotiations in good faith is inherently repugnant to the adversarial position of the parties

⁷⁰ *Simpsons Motor Sales (London) Ltd v Hendon Corp* [1963] Ch 57 (CA) at 83 per Upjohn LJ **[[RBOA TAB 32]]**; referred to in *Dromgool v Minister for Land Information* [2022] NZSC 157, [2022] 1 NZLR 716 at [52]–[53] per O’Regan J. **[[CABOA TAB 15]]**.

⁷¹ *Pryor v Minister for Land Information* [2015] NZHC 3117 at [9]. **[[CABOA TAB 22]]**.

⁷² Parliament’s use of an indeterminate subjective qualifier such as “good faith” can be a deliberate choice to provide the courts with a wide discretion in deciding cases on the facts. See Ross Carter *Burrows and Carter Statute Law In New Zealand* (6th ed, LexisNexis, Wellington, 2021) at 254–255.

⁷³ Contract and Commercial Law Act 2017, s 119(2) **[[RBOA TAB 1]]**; and *Bobux Marketing Ltd v Raynor Marketing Ltd* [2002] 1 NZLR 506 (CA) at [41] per Thomas J. **[[RBOA TAB 8]]**.

⁷⁴ *Wellington City Council v Body Corporate 51702 (Wellington)* [2002] 3 NZLR 486 (CA) at [17]. **[[CABOA TAB 25]]**.

when involved in negotiations”.⁷⁵ Negotiations occurring under s 18(1)(d) are effectively contractual negotiations for the sale and purchase of land, meaning there is a degree of congruence between PWA negotiations and ordinary contractual negotiations.

30. Against this, s 18(1)(d) must be considered in context:

30.1 “[A] statutory duty imposed by Parliament is in a different category”, as the “problematic element” of subjectivity is significantly reduced.⁷⁶ However, despite the objective overlay that might be provided by the source of the duty being a statutory provision, the PWA does not contain any guidance of what is required (unlike for example, s 4(1) of the Employment Relations Act 2000).

30.2 The necessary conduct to satisfy the “make every endeavour to negotiate in good faith” requirement must be measured against what the PWA provides can occur if negotiations do not occur at all notwithstanding attempts having been made.⁷⁷ While the provisions of the PWA must be strictly construed – its scheme and dual purpose warrant an interpretation in which reasonable limits are placed on the respondent’s obligations, thereby balancing public and private interests.

30.3 As recognised by counsel assisting, the starting point for negotiations is a valuation as per s 18(1)(c), accompanied by an invitation to sell the land to the Crown. However, compensation is not the only aspect. Negotiations may also involve a reassessment of the area of land required, whether it is the minimum area

⁷⁵ *Walford v Miles* [1992] 2 AC 128 (HL(E)) at 138 per Lord Ackner; cited in *Porter v Gullivers Travel Group Ltd* [2007] NZCA 345 at [31]. **[[RBOA TAB 20]]**.

⁷⁶ *Wellington City Council v Body Corporate 51702 (Wellington)* [2002] 3 NZLR 486 (CA) at [36]–[37]. **[[CABOA TAB 25]]**.

⁷⁷ Specifically, s 18(2) provides the respondent can move to take land if after three months, a landowner fails to respond to an invitation to negotiate or refuses to negotiate. The private interests of a landowner are balanced against the public interest by limiting the obligatory negotiation period to three months.

reasonably necessary,⁷⁸ whether there is alternative land, the fairness of a proposed acquisition, and how other land might be affected. These are matters that may also be raised in an objection to the Environment Court.⁷⁹

31. Contextually, these matters constrain the course of negotiations. While negotiations are a “path-dependent process”, counsel assisting are incorrect in their characterisation of s 18(1)(d) negotiations as a fully discretionary process, requiring the day-to-day personal involvement of the respondent or his delegates. This is particularly so when considering compensation. Persons who own land acquired under the PWA receive the compensation they are entitled to – regardless of who is undertaking the day-to-day task of negotiations.
32. Where land is affected by the exercise of power under the PWA, the owner of the land is entitled to “full compensation”.⁸⁰ “Full compensation” means such sum of money as will place the dispossessed owner in an equivalent position.⁸¹ This is a constraining factor. No allowance is to be made for the fact that the taking is compulsory.⁸² Rather, compensation is assessed on a willing seller to a willing buyer assumption.⁸³ Market value is a “totally objective construct with hypothetical parties”, with ambiguity resolved in favour of the landowner.⁸⁴ These compensation principles guide and ultimately constrain the bounds of negotiations between the Crown and a landowner, protecting the landowner as a result.

⁷⁸ By way of example, in the present case, the land requirement area was reduced in May 2021 to lessen the impact on the appellants’ land – see Objection decision, at [82] **[[CABOA TAB 21]]**.

⁷⁹ As was the case here – see Objection decision, at [63] **[[CABOA TAB 21]]**.

⁸⁰ Public Works Act 1981, s 60(1). **[[RBOA TAB 3]]**.

⁸¹ *Green & McCahill Holdings Ltd v Auckland Council* [2013] NZHC 507 at [54] and [55] **[[RBOA TAB 13]]**; citing *Russell v Minister of Lands* (1898) 17 NZLR 241 (SC) at 253; and Peter Salmon *The Compulsory Acquisition of Land in New Zealand* (Butterworths, Wellington, 1982) at [11.1].

⁸² *Squire Speedy Land Compensation* (New Zealand Institute of Valuers, Wellington, 1985) at 6 and 40. **[[RBOA TAB 34]]**. This is evident from the principle of ‘betterment’ which requires deduction from the compensation owing to a landowner if the value of their land is increased from the presence of the public work.

⁸³ *Green & McCahill Holdings Ltd v Auckland Council* [2013] NZHC 507 at [58] **[[RBOA TAB 13]]**; and *Flath v Minister for Land Information* [2024] NZHC 36, [2024] 2 NZLR 325 at [63]. **[[RBOA TAB 12]]**.

⁸⁴ *Pryor v Minister for Land Information* [2015] NZHC 3117 at [13] **[[CABOA TAB 22]]**; citing *Tawharanui Farm Ltd v Auckland Regional Authority* [1976] 2 NZLR 230 (SC) at 234.

33. Against that backdrop, the respondent submits s 18(1)(d) does not oblige the respondent or his delegate to conduct day-to-day negotiations personally. The inquiry into what is required should not be over-refined or undertaken in disregard of the practicalities.⁸⁵ As identified by the Court of Appeal, there is nothing in the language or the scheme of the PWA which supports the argument day-to-day negotiations must be conducted by the respondent or a delegate.⁸⁶ Nor is the task so inherently discretionary in nature that formal delegation is required.
34. The respondent does not agree with counsel assisting that the linguistic distinctions in the sub-paragraphs of s 18(1) are supportive of the appellants' position. There are several s 18(1) tasks of a supportive nature, which can be carried out by suitably authorised persons without statutory authority, despite the provision not explicitly stating so.⁸⁷ The fact that Parliament intended someone other than the respondent or his delegate undertake a number of pre-acquisition tasks without explicitly stating as much supports the respondent's position.

Allocation of responsibility for day-to-day negotiation over time

35. At enactment, the Ministry of Works and Development (**the MWD**) under the control of the respondent, was responsible for the administration of the PWA.⁸⁸ The MWD's functions included "the efficient execution of Government works", and the "acquisition or leasing of land and buildings for Government works".⁸⁹ The day-to-day conduct of negotiations with landowners have always been undertaken by a separate group of qualified persons with the requisite expertise, without authority to reach agreement or direct compulsory acquisition.
36. Contrary to what the appellants argue, the prohibition contained in the original s 14(1)(b) of the PWA on the delegation of the respondent's powers

⁸⁵ *Re Solicitor-General's Reference (No 1 of 2016)* [2017] NZSC 58, [2018] 1 NZLR 147 at [30]. **[[CABOA TAB 23]]**.

⁸⁶ Decision under appeal, at [120]. **[[05.0062]]**.

⁸⁷ Decision under appeal, at [105]. **[[05.0057]]**.

⁸⁸ Public Works Act 1981, s 5(2) (at enactment). **[[RBOA TAB 2]]**.

⁸⁹ Public Works Act 1981, ss 6(2)(a) and 6(2)(f) (at enactment). **[[RBOA TAB 2]]**.

of direction in relation to negotiations for “Government subsidised works” does not indicate the respondent was intended to personally participate in negotiations or be prohibited from delegation – just that where the Crown (as opposed to local government) had fiscal responsibility for a project, it should also be responsible for the conduct of negotiations.⁹⁰

37. In practice, between 1982 and 1988, negotiations were undertaken at an operational level by property officers employed by the MWD.⁹¹ Property officers would report to the respondent on the outcome of negotiations.⁹² They did not have the authority to agree to acquire land or direct compulsory acquisition.⁹³
38. Section 6 of the PWA, relating to the functions of the MWD, was repealed and replaced in 1987, so as to enable the MWD to act in a competitively neutral manner, opening up state sector work to wider competition.⁹⁴ The “acquisition or leasing of land and buildings for Government works” was no longer an explicit or exclusive function of the MWD. It rather had the functions “...necessary for the due and proper administration of [the PWA]”,⁹⁵ and the ability to provide services on a commercial basis.⁹⁶ To retain Crown oversight, the respondent was explicitly prohibited from delegating the power to issue notices under ss 18 and 23.⁹⁷
39. During the significant reorganisation of the public sector in the 1980s, the MWD was abolished.⁹⁸ The provisions of the PWA relating to the MWD’s and the respondent’s functions were entirely repealed. Particularly, ss 6 and 7 of the PWA were not replaced by an equivalent specifying the functions of the

⁹⁰ Public Works Act 1981, ss 6 and 14 (at enactment) **[[RBOA TAB 2]]**.

⁹¹ Affidavit of Craig Harris, 8 July 2022, at [16]. **[[201.0016]]**.

⁹² Affidavit of Craig Harris, 8 July 2022, at [16]. **[[201.0016]]**.

⁹³ Affidavit of Craig Harris, 8 July 2022, at [16]. **[[201.0016]]**.

⁹⁴ (24 September 1986) 474 NZPD 4590–4591.

⁹⁵ Public Works Amendment Act (No 2) 1987, s 3. **[[RBOA TAB 4]]**.

⁹⁶ Public Works Amendment Act (No 2) 1987, s 6(3). **[[RBOA TAB 4]]**.

⁹⁷ Public Works Amendment Act (No 2) 1987, s 6. **[[RBOA TAB 4]]**.

⁹⁸ See Public Works Amendment Act 1988. **[[RBOA TAB 5]]**.

MWD's replacement, the Department of Survey and Land Information (**the DOSLI**), nor were the respondent's functions specified.

40. While the respondent remained responsible for the exercise of compulsory acquisition powers, these amendments created a lacuna for the allocation of operational responsibilities to enable the exercise of those powers. DOSLI officers nevertheless undertook day-to-day negotiations in the same manner as MWD property officers. They would seek all statutory decisions and approvals from the respondent or their delegate.⁹⁹
41. During the second wave of state sector reorganisation in the 1990s, the DOSLI was restructured into two entities. First, LINZ was established to deliver core functions such as statutory decision-making, regulatory matters, and policy. Second, a state-owned enterprise, 'Terralink', was established to conduct property services on a commercial basis,¹⁰⁰ intentionally divesting operational matters from the public service.¹⁰¹ It was at this time an accreditation system was developed, to mirror warrants provided to internal LINZ staff.¹⁰² Accredited suppliers undertook day-to-day negotiations with landowners, the power to agree or enter into a contract for the acquisition of land or to issue a notice of desire rested with the warranted officer, and the power under s 23 with the respondent.¹⁰³
42. On 1 July 1998, LINZ was restructured into an operational arm and a regulatory arm by Cabinet agreement.¹⁰⁴ From this point onwards, operational PWA functions were entirely outsourced, initially to Terralink, and then to other accredited suppliers. LINZ retained responsibility for decision-making, but Crown agencies no longer came to LINZ for the

⁹⁹ Affidavit of Craig Harris, 8 July 2022, at [18]. **[[201.0017]]**.

¹⁰⁰ Affidavit of Craig Harris, 8 July 2022, at [20]. **[[201.0017]]**.

¹⁰¹ Terralink was incorporated in 1996 under the State Owned Enterprises Act 1986. The Terralink NZ Limited (Transfer of Employees) Act 1996 was passed to enable DOSLI to transfer its employees to Terralink. Terralink applied for accredited supplier status on 27 January 1997, which was granted on 24 April 1997 (including accreditation for s 18(1)(d) negotiations). See Affidavit of Craig Harris, 8 July 2022, at [49]. **[[201.0028]]**.

¹⁰² Affidavit of Craig Harris, 8 July 2022, at [22]–[25]. **[[201.0018]]**.

¹⁰³ Affidavit of Craig Harris, 8 July 2022, at [25]. **[[201.0019]]**.

¹⁰⁴ Affidavit of Craig Harris, 8 July 2022, at [31]. **[[201.0021]]**. This decision was in part based on a 1997 report from Ernst & Young to commissioned assess LINZ's structure and management as a result of the Dreux litigation.

acquisition or disposal of land on their behalf. Instead, they would engage their own service provider to negotiate an acquisition and report to LINZ for statutory decision-making.¹⁰⁵

43. TPG was incorporated in 1999 for the purpose of purchasing Terralink and employing its staff.¹⁰⁶ As a state-owned enterprise is not part of the Crown, there is ultimately little difference between Terralink and TPG as separate corporate bodies. In both cases, accredited suppliers remain within the Crown's sphere of authority. An accredited supplier could be described as a 'limited purpose agent' of the respondent, although how this relationship is described makes little difference.¹⁰⁷ Nothing in the text, purpose, or scheme of the PWA prohibits the manner in which responsibilities have been allocated.
44. As observed by this Court in *Seaton* and *Dromgool*, s 186 of the RMA addresses a lacuna by enabling access to powers of compulsory acquisition in relation to utilities created by privatisation in the late 1980s.¹⁰⁸ While the Project in this case is a Government work (meaning s 186 of the RMA is not relevant)¹⁰⁹ the accredited supplier scheme fills a lacuna in a similar manner. It is the modern system of day-to-day negotiation following the divestment of operational expertise from LINZ's predecessor agencies. This system has operated since the mid-1990s, without a question of the need for formal delegation arising. It ensures day-to-day negotiations are undertaken by persons with specialised knowledge (of the relevant work) and expertise in

¹⁰⁵ Affidavit of Craig Harris, 8 July 2022, at [32]. **[[201.0021]]**.

¹⁰⁶ Affidavit of Craig Harris, 8 July 2022, at [49]. **[[201.0028]]**.

¹⁰⁷ In the late 1990s, the term 'accredited agent' was used. However, this was changed to 'accredited supplier' to reflect the fact such persons provide services and information to statutory decision-makers, and do not have an agency relationship which extends to binding the Crown. Affidavit of Craig Harris, 8 July 2022, at fn 12. **[[201.0028]]**.

¹⁰⁸ *Seaton v Minister for Land Information* [2013] NZSC 42, [2013] 3 NZLR 157 at [76]–[77] per McGrath and William Young JJ **[[RBOA TAB 23]]**; and at [59]–[62] per Chambers and Glazebrook JJ; and *Dromgool v Minister for Land Information* [2022] NZSC 157, [2022] 1 NZLR 716 at [18] and [22] per O'Regan J. **[[CABOA TAB 15]]**.

¹⁰⁹ Decision under appeal, at [35] **[[05.0041]]**; and Public Works Act 1981, s 2 (definition of 'government work'). The Project is a "government work", that is to be constructed, undertaken, established, managed, operated, or maintained by or under the control of the Crown. The land acquired by the respondent for the Project will vest in the Crown in accordance with s 44 of the Government Roadway Powers Act 1989. See also Affidavit of Craig Harris, 8 July 2022, at [1], [10], and fn 4. **[[201.0011]]**.

property negotiations, capabilities that Parliament would not expect the Minister or his delegate to have.

Conduct of day-to-day negotiations need not be formally delegated

The law of delegation

45. In New Zealand, common law principles of delegation sit alongside legislative schemes for the delegation of statutory powers and have not been ousted by them.¹¹⁰ The starting principle is *delegatus non potest delegare* – meaning a person to whom something has been delegated cannot delegate further. This principle is best described as a rule of statutory interpretation,¹¹¹ being “merely the pencil with which the court is able to draw the line between authorised and un-authorised delegation”.¹¹²
46. The common law has long recognised that (a): it would be administratively impractical for a statutory decision-maker or delegate to be required to undertake all tasks precedent to the exercise of a statutory power personally; and (b) in the case of Ministers, they are ultimately responsible to Parliament for actions taken in their name.
47. *Carltona* is one aspect of common law delegation, forming an underlying basis for the operation of Cabinet-led parliamentary democracy. Under the *Carltona* principle, departmental officials are the alter ego of their Minister, and as such are able to perform ministerial functions in the absence of, or despite, a delegation.¹¹³ Their acts and decisions are legally and constitutionally the Minister’s acts and decisions.
48. Another aspect is the principle no delegation or sub-delegation occurs where a decision-maker relies on advice/information gathered or prepared

¹¹⁰ *Solicitor-General’s Reference (No 1 of 2016)* [2017] NZSC 58, [2018] 1 NZLR 147 at [19]. **[[CABOA TAB 23]]**; and *Bounty Oil & Gas NL v Attorney-General* [2010] NZAR 120 (HC) at [27]. **[[RBOA TAB 10]]**.

¹¹¹ See *Borrowdale v Director-General of Health* [2022] 2 NZLR 356, [2021] NZCA 520 at [171] **[[RBOA TAB 9]]**; and *R v Adams* [2020] UKSC 19, [2020] 1 WLR 2077. See also Colin Aikman “Subdelegation of the Legislative Power” (1960) 3 VUWLR 69.

¹¹² See P.H Thorp “The Key to the Application of the Maxim “Delegatus Non Potest Delegare” Auckland University Law Review” 85 at 86 <<https://www.nzlii.org/nz/journals/AukULawRw/1972/5.pdf>>. **[[RBOA TAB 35]]**.

¹¹³ Phillip Joseph *Joseph on Constitutional and Administrative Law* (5th ed, Thomson Reuters, Wellington, 2021) at [23.3.6(4)(b)]; and *Carltona Ltd v Commissioner of Works* [1943] 2 All ER 560 **[[CABOA TAB 13]]**.

by others, provided they personally turn their mind to all relevant considerations and exercise their own judgment.¹¹⁴

49. Further, as correctly put by the Court of Appeal, no delegation or sub-delegation occurs where the task to be undertaken is of a preliminary or supporting nature and does not involve the exercise of a statutory power.¹¹⁵ In order for a question of lawfulness to arise there must first have been a purported exercise of a statutory power or function by a person other than in whom it is vested.

The present case

50. As correctly found by the Court of Appeal – no delegation is required to enable accredited suppliers to conduct day-to-day negotiations as the task to be undertaken is of a preliminary or supporting nature and does not involve the exercise of a statutory power. The respondent does not rely on *Carltona* because an accredited supplier is not the respondent's alter ego. Nor is an accredited supplier subject to a relationship in the ordinary nature of agency.¹¹⁶
51. Accredited suppliers are not statutory decision-makers and cannot bind the respondent. This is not a case in which a statutory power or function has been exercised by a third party without a formal delegation,¹¹⁷ nor one in which the nature of the task requires a delegation. No statutory power or function is exercised or is purported to be exercised by an accredited supplier when conducting day-to-day negotiations with a landowner.
52. Rather, the respondent discharges his statutory duty to negotiate in good faith by establishing and administering the accredited supplier scheme, with his delegate's thorough review acting as quality assurance;¹¹⁸ and subject to

¹¹⁴ See *Bushell v Secretary of State for the Environment* [1981] AC 75 (HL); *CREEDNZ Inc v Governor-General* [1981] 1 NZLR 172 (CA); and *Air Nelson Ltd v Minister of Transport* [2008] NZCA 26, [2008] NZAR 139 at [48] **[[CABOA TAB 12]]**.

¹¹⁵ Decision under appeal, at [104]. **[[05.0057]]**.

¹¹⁶ Counsel assisting agree *Carltona* is not relevant, and that whether a delegation of a function has occurred depends on the extent of control retained by an officer holder, and the nature of the relevant task. See counsel assisting submissions at [33].

¹¹⁷ Compare *Just One Life Ltd v Queenstown Lakes District Council* [2004] 3 NZLR 226 (CA). **[[RBOA TAB 15]]**.

¹¹⁸ Affidavit of Trevor Knowles, 8 July 2022, at [33]–[46]. **[[201.0047]]**. In the present case Mr Knowles reviewed

his own decision-making under s 23. An acquisition does not proceed unless the respondent decides it is appropriate to do so. In maintaining oversight, and ultimately being the decision-maker, the respondent does not delegate the statutory duty to negotiate in good faith, but, with the operational assistance of the accredited supplier, *performs it*. The essence of negotiations remains between the respondent and a landowner.¹¹⁹

53. This case is analogous to *New London College Ltd, McInnes, Thompson, Borrowdale, and Reckless*, in which decision-makers were entitled to rely on their oversight of systems set up to undertake preliminary, supporting, or incidental work to assist them to perform statutory powers.¹²⁰ The conduct of day-to-day negotiations involves such tasks. It is for the Minister to decide in respect of preliminary or supporting tasks how “to get [the] job done”.¹²¹ The fact in this case the relevant support is provided by a commercial entity external to the public sector makes no difference, as recognised by counsel assisting.¹²²

Public Service Act 2020

54. The State Sector Act 1988 (repealed) and the Public Service Act 2020 provide for the delegation of functions or powers by a public service chief executive. Under both s 41 of the State Sector Act and sch 6 of the Public Service Act, there are additional requirements which apply where a function or power is to be delegated outside the public service:

the material provided by TPG (as well as all material held on file by LINZ). Further information was provided to the appellants directly from LINZ, including a draft of the briefing to the respondent recommending the s 23 Notice be issued, so the appellants could comment upon it. Mr Knowles and other LINZ officials also met with the appellants and corresponded with them directly.

¹¹⁹ Counsel assisting argue in reliance on *Morrison v Shire of Morwell* [1948] VLR 73 **[[CABOA TAB 17]]** that the respondent has ‘denuded’ himself of a statutory power of a character such that it is intended to be exercised or carried out personally. The facts of *Morrison* do not support that argument as the Court in that case held the relevant council had not denuded itself of its statutory power and duty to manage and control the relevant town hall. Likewise, in the present case the respondent has not denuded himself of the obligation to negotiate in good faith with a landowner in an attempt to reach an agreement.

¹²⁰ *R (New London College Ltd) v Secretary of State for the Home Department* [2013] UKSC 51, [2013] 1 WLR 2358 **[[RBOA TAB 30]]**; *McInnes v Minister of Transport* HC Wellington CP240/99, 3 July 2000 **[[RBOA TAB 16]]**; *R v Thompson* [1990] 2 NZLR 16 (CA); *Borrowdale v Director-General of Health* [2021] NZCA 520, [2022] 2 NZLR 356 **[[RBOA TAB 9]]**; *R (on the application of Reckless) v Kent Police Authority* [2010] EWCA Civ 1277 **[[RBOA TAB 31]]**.

¹²¹ *McInnes v Minister of Transport* HC Wellington CP240/99, 3 July 2000 at [84] **[[RBOA TAB 16]]**.

¹²² Counsel assisting submissions at [33].

- 54.1 A public service chief executive must obtain the appropriate Minister's prior written approval and satisfy themselves any potential conflicts of interest will be avoided or managed.¹²³
- 54.2 Sections 41(2E) and 41(2F) of the State Sector Act specified a delegate outside the public service was subject to both the Official Information Act 1982 and Ombudsmen Act 1975, whereas sch 6 of the Public Service Act does not. However, compliance with those Acts is nevertheless likely to be included within the requirement for a delegate outside the public service to comply with "all relevant statutory obligations".¹²⁴
55. Counsel assisting note these provisions and say they demonstrate the importance of distinguishing between contracting a service provider to undertake non-statutory tasks and contracting a service provider to undertake a critical part of a statutory function.¹²⁵ Counsel assisting make this point while still accepting the Court of Appeal's finding that a person who is allocated an administrative task may be an external private sector provider without a formal delegation.¹²⁶
56. The respondent does not consider the provisions of the State Sector Act or Public Service Act assist the Court to determine the approved question. The respondent's position is the conduct of day-to-day negotiation does not need to be formally delegated as the Minister or his delegate retains ultimate responsibility for the conduct of negotiations. Accordingly, Public Service Act safeguards in relation to delegation outside of the public sector are not necessary nor applicable in this case. At best, those provisions indicate a concern for increased supervision over the engagement of private sector providers.

¹²³ State Sector Act 1988, s 41(2A) **[[CABOA TAB 7]]**; and Public Service Act 2020, sch 6, cl 2(5) **[[CABOA TAB 5]]**.

¹²⁴ Public Service Act 2020, sch 6, cl 2(9)(a)). **[[CABOA TAB 5]]**.

¹²⁵ Counsel assisting submissions at [70].

¹²⁶ Counsel assisting submissions at [33] and [70].

57. The manner in which the accredited supplier scheme is designed and administered by LINZ provides sufficient supervision to be consistent with those concerns. The oversight of the activities of accredited suppliers, and the prerequisites which must be established for accreditation go beyond the requirements of either the State Sector Act or the Public Service Act:

57.1 LINZ's dedicated regulatory team oversees the administration of the accredited supplier scheme and have detailed standards and guidelines for this purpose which are formally reviewed at regular intervals.¹²⁷

57.2 The thorough accreditation process is designed to ensure accredited suppliers have the necessary expertise and experience,¹²⁸ and operates as a "check on the entity's systems and procedures" at a substantive level.¹²⁹ Mr Craig Harris describes the accreditation process at [37] to [45] of his evidence.¹³⁰

57.3 Accredited suppliers must comply with the detailed standards and guidelines set by LINZ on how their work should be conducted and delivered.¹³¹ Notably, the LINZ Standard for the acquisition of land provides for the management of conflicts of interest,¹³² as do the conditions which apply to accreditation status.¹³³ Compliance with the Official Information Act is also addressed.¹³⁴

The accredited supplier scheme is sufficient to meet the respondent's obligations under s 18(1)(d)

58. While noting the question of whether the accredited supplier scheme is sufficient to meet the respondent's obligations under s 18(1)(d) has never

¹²⁷ Affidavit of Craig Harris, 8 July 2022, at [14]. **[[201.0015]]**.

¹²⁸ Affidavit of Craig Harris, 8 July 2022, at [34]. **[[201.0022]]**.

¹²⁹ Affidavit of Craig Harris, 8 July 2022, at [36]. **[[201.0023]]**.

¹³⁰ **[[201.0023]]**.

¹³¹ Affidavit of Craig Harris, 8 July 2022, at [32.3]. **[[201.0022]]**.

¹³² LINZ Standard for the acquisition of land under the Public Works Act 1981 at [3.3]. **[[301.0297]]**.

¹³³ LINZ Conditions of Crown Property Accreditation at [10]. **[[301.0372]]**.

¹³⁴ LINZ Conditions of Crown Property Accreditation at [16.1]. **[[301.0374]]**; LINZ Standard for the acquisition of land under the Public Works Act 1981 at [3.5.2]. **[[301.0298]]**; and LINZ Guideline for the acquisition of land under the Public Works Act 1981 at [1]. **[[301.0218]]**.

been part of this proceeding, and is not an issue before this Court, the respondent makes the following arguments to respond to the arguments of counsel assisting.¹³⁵

Terms of engagement

59. Counsel assisting are incorrect in alleging the “good faith” standard is unable to be met because of either the fact of TPG’s engagement by NZTA, or the terms of that engagement. With respect, the terms of engagement between NZTA and TPG do not go to the issue of whether accredited suppliers require a delegation – nor show the accredited supplier scheme fails to deliver on the promise of good faith negotiations. Subject to whether the Court grants leave to admit the “Acquisition Services Agreement”, the respondent says further:

59.1 NZTA’s statutory obligation to seek “value for money” does not misalign NZTA and LINZ’s interests in the context of a negotiation. As recognised by the Court of Appeal (and broadly accepted by counsel assisting), in respect of a Government work, NZTA and LINZ work together collectively for the benefit of the Crown.¹³⁶ Seeking “value for money” may mean “more being spent on compensation to reduce the quantum spent on settling disputes” just as “efficient and effective financial management” may mean the same. The “Acquisition Services Agreement” itself includes a much broader definition of “value for money” than simply ‘the cheapest deal for NZTA when purchasing properties’, taking into account the need to ensure public funds are spent efficiently and effectively.¹³⁷

59.2 The implication accredited suppliers might be constrained in what may be offered during a negotiation as a result of the terms of

¹³⁵ The appellants accept in their written submissions at [62] that “the third question relates to what happened in [the appellants’] particular case”. By definition therefore, it is not within the scope of their appeal, which since the High Court’s decision, has only ever involved distinct questions of law.

¹³⁶ Counsel note the definition of “Crown” in the “Acquisition Services Agreement” at cl 1.2.1.13 is: “[His] Majesty the [King] as owner of land which is vest or set aside for a public work and, where the context permits, includes Waka Kotahi acting for and on behalf of the Crown under either the PWA or the RMA”. **[[302.0836]]**. The definition of “NZTA” at c; 1.2.1.35 also includes the Crown “where context permits”. **[[302.0838]]**.

¹³⁷ “Acquisition Services Agreement”, cl 2.2.1. **[[302.0845]]**.

engagement with NZTA is unsustainable. As set out above, a landowner who is subject to the exercise of compulsory acquisition powers has a *statutory entitlement* to full compensation. NZTA's generalised obligation to obtain "value for money" cannot override that statutory entitlement. The parameters of compensation payable under pt 5 of the PWA are set regardless of who is conducting the day-to-day negotiations.¹³⁸ The corollary of the principle of equivalence is the Crown receives 'value for money', which not an improper ulterior purpose, but a natural expression of the PWA's compensation scheme.

59.3 The respondent does not agree it is inevitable features of the "Acquisition Services Agreement", in particular Key Performance Indicators, will influence TPG's approach to negotiations with landowners. These matters are ordinary incidents of a contract for service provision. Crown acquiring agencies naturally need to adopt a strategic approach to land acquisition so as to deliver construction on time and within budgeted cost. In any event, the "Acquisition Services Agreement" provides accredited suppliers must comply with the PWA and LINZ's Standards and Guidelines.¹³⁹

The present case

60. Counsel assisting are critical of the process adopted by Mr Knowles in determining whether to advise the respondent the requirements of s 18(1)(d) had been met.¹⁴⁰ They say Mr Knowles passively reviewed a report and advised the respondent the requirements of s 18(1)(d) had been met, and that this is not negotiation. This is a simplification of the systems put in

¹³⁸ *Pryor v Minister for Land Information* [2015] NZHC 3117 at [62]. **[[CABOA TAB 22]]**.

¹³⁹ "Acquisition Services Agreement" Appendix 1, cl 2(c). **[[302.0884]]**. Notably, the *Guideline for the acquisition of land under the Public Works Act 1981* provides "Where there is reasonable, justifiable, or genuine doubt in assessing the amount of compensation, the Crown acquiring agency should give the owner the benefit of that doubt". See **[[301.0236]]**. Likewise, accredited suppliers may not make any representation they have authority to bind NZTA or the Crown and may only make recommendations to NZTA and the Crown for consideration – see "Acquisition Services Agreement", cl 6.3.4.2. **[[302.0876]]**.

¹⁴⁰ Counsel assisting submissions, at [16], [24], [47], [56], and [89].

place by the respondent to ensure oversight of negotiations and quality assurance, and is directly contrary to Mr Knowles' evidence.¹⁴¹

The status of the s 23 Notice

Issue does not arise

61. The respondent says the answer to the approved question is “Yes”, and therefore it is not necessary for this Court to consider the status of the s 23 Notice.¹⁴² The respondent nevertheless makes the following arguments in the event this Court finds the Court of Appeal was wrong. The respondent does not accept if the answer to the approved question is “No”, the s 23 Notice is affected in the sense it should be invalidated.

Section 23 Notice remains valid

62. Failure to comply with a statutory requirement does not automatically vitiate all following steps.¹⁴³ A decision is operative until set aside.¹⁴⁴ The focus should instead be on what the consequence of non-compliance should be. Considerations include statutory context, seriousness of the non-compliance, whether prejudice has occurred or is likely to occur, and whether Parliament intended non-compliance would result in invalidity.¹⁴⁵ If the purpose of the statutory requirement was fulfilled in any event, there is no error of law.¹⁴⁶

Nature of the error and statutory context

63. The requirement to make every endeavour to negotiate with the appellants in good faith has been complied with. The appellants had the opportunity to enter negotiations with the respondent's authorised and knowledgeable representative, Mr Billing, over a period of three months, who made

¹⁴¹ Affidavit of Trevor Knowles, 8 July 2022, at [36]–[45]. **[[201.0047]]**. See also for further detail *Pascoe v Minister for Land Information* [2025] NZHC 1783 at [30]–[33]. **[[RBOA TAB 18]]**.

¹⁴² Compare Decision under appeal, at [127] **[[05.0064]]**; and High Court decision, at [46] **[[05.0017]]**. Neither the appellants nor counsel assisting substantively engaged with these matters in their written submissions.

¹⁴³ *Tannadyce Investments Ltd v Commissioner of Inland Revenue* [2011] NZSC 158, [2012] 2 NZLR 153 at [74] per Blanchard, Tipping and Gault JJ; and *A J Burr Ltd v Blenheim Borough Council* [1980] 2 NZLR 1 (CA) at 4–6 per Cooke J; cited in *Campbell v Superintendent of Wellington Prison* [2007] NZAR 52 (CA) at [28]–[33] **[[RBOA TAB 11]]**.

¹⁴⁴ *Hill v Wellington Transport District Licensing Authority* [1984] 2 NZLR 314 (CA) at 319. **[[RBOA TAB 14]]**.

¹⁴⁵ *Wang v Minister of Internal Affairs* [1998] 1 NZLR 309 (HC) at 318. **[[RBOA TAB 27]]**.

¹⁴⁶ *Waikanae Christian Holiday Park Inc v New Zealand Historic Places Trust Maori Heritage Council* [2015] NZCA 23, [2015] NZAR 302 at [55]–[56]. **[[RBOA TAB 25]]**.

numerous attempts to engage with them.¹⁴⁷ Mr Billing honestly tried to discuss purchase options with the appellants.¹⁴⁸ They declined to engage or communicate with him over the three-month period ending on 1 December 2020.¹⁴⁹

64. It was on that basis the Environment Court considered the acquisition process was undertaken in accordance with the relevant statutory powers and in good faith and even-handedly.¹⁵⁰ It considered the proposed acquisition is supported by a clear justification, as the land sought to be acquired was the most viable and feasible for the construction of the Project.¹⁵¹ Here, the underlying requirement was satisfied, and an error as to the formal authorisation of the person seeking to enter into negotiations should not invalidate the respondent's decision-making,¹⁵² or, as below, the Environment Court's approval of that decision-making.

Error superseded by subsequent decision-making

65. The Environment Court objection process (described above at [16]) is an important element of the statutory scheme. It involves an independent review of the respondent's decision to take land. The Environment Court dismissed the appellants' objection, finding: (a) adequate consideration was given to effects and costs of all shortlist route options, including revised options;¹⁵³ and (b) the proposed taking of the appellants' land is fair, sound, and reasonably necessary.¹⁵⁴
66. The High Court dismissed the appellants' appeal of the Environment Court decision, which was brought under s 299 of the Resource Management Act 1991.¹⁵⁵ This Court then declined the appellants' application for leave to

¹⁴⁷ Environment Court decision, at [84] and [90]. **[[CABOA TAB 21]]**.

¹⁴⁸ Environment Court decision, at [94]. **[[CABOA TAB 21]]**.

¹⁴⁹ Environment Court decision, at [87]. **[[CABOA TAB 21]]**.

¹⁵⁰ Environment Court decision, at [95]. **[[CABOA TAB 21]]**.

¹⁵¹ Environment Court decision, at [95]. **[[CABOA TAB 21]]**.

¹⁵² The respondent's decision-making documents, including the signed s 23 notices, are at **[[302.0783]]**, **[[302.0795]]**, **[[302.0806]]**, **[[302.0817]]**, **[[302.0821]]**.

¹⁵³ Environment Court decision, at [52]. **[[CABOA TAB 21]]**.

¹⁵⁴ At [63]. **[[CABOA TAB 21]]**.

¹⁵⁵ Objection appeal, at [4]. **[[CABOA TAB 20]]**.

appeal the High Court's decision by way of a 'leapfrog' appeal.¹⁵⁶ The appellants have since sought an extension of time to apply for leave to appeal to the Court of Appeal.

67. Any defect arising from a failure to delegate to accredited suppliers for the purpose of day-to-day negotiations has been superseded by subsequent decisions in the statutory process which confirmed the substantive fairness and lawfulness of the proposed acquisition. Particularly, the Environment Court and High Court have determined there was compliance with the obligation inherent in s 18(1)(d).

Relief

Issue does not arise

68. The respondent says the answer to the approved question is "Yes", and therefore it is not necessary for this Court to consider relief. The respondent nevertheless makes the following arguments in the event this Court finds the Court of Appeal was wrong and does not accept the arguments made above. If necessary, the respondent seeks this Court determine the issue of relief rather than remit the matter to the High Court.

The Court should exercise its discretion to refuse relief

69. In this case, the appellants have already had "substantial justice", through access to an independent review of the respondent's decision to compulsorily acquire their land.¹⁵⁷ Their objection was dismissed by the Environment Court and upheld on appeal. Their review proceedings to date have likewise been unsuccessful. To the extent there was an error in the decision to issue the s 23 Notice arising from a failure to delegate to accredited suppliers (which the respondent does not accept), there is no continuing prejudice to the appellants and relief should not be granted.

¹⁵⁶ *Pascoe v Minister for Land Information* [2025] NZSC 114. **[[RBOA TAB 19]]**.

¹⁵⁷ A court may refuse relief on a successful application for review if any irregularity has been 'cured' by way of an appeal which has taken place prior. Whether an appeal or its equivalent has this effect depends on the circumstances, and an assessment of whether a party has already had "substantial justice". If there is no continuing prejudice from the first instance error, it is difficult to say there has been a failure of overall justice. See *Calvin v Carr* [1980] AC 574 (PC). **[[RBOA TAB 28]]**; and *Nicholls v Registrar of the Court of Appeal* [1998] 2 NZLR 385 (CA) at 436–437 per Tipping J. **[[RBOA TAB 17]]**.

70. The invalidation of the s 23 Notice is not in the public interest. It would cause prejudice to the respondent and NZTA by way of substantial delay to the completion of necessary public infrastructure. The granting of relief would have significant fiscal implications. In July 2021, the cost of delay to the Project was estimated to be between \$6 million to \$10 million per annum.¹⁵⁸ Counsel are instructed these figures have increased significantly in the intervening period. This decisively outweighs any prejudice suffered by the appellants and would be disproportionate in light of the nature and gravity of the error.

Conclusion

71. The appeal should be dismissed. The respondent seeks costs.

3 October 2025

R L Roff | E S Harris
Counsel for the respondent

TO: The Registrar of the Supreme Court of New Zealand.

AND TO: The appellants and counsel assisting.

¹⁵⁸ See Ministerial Briefing: BRF21-412 Briefing on Notice of Intention to Take Land and Leasehold Estate in Land for the Functioning indirectly of a road: TJS & DA Pascoe dated 12 July 2021 at page 2 **[[302.0783]]**.

Chronology

Date	Event	Case on appeal reference
18 November 2016	TPG reports to LINZ that agreement ‘in principle’ had been reached for a licence to occupy to allow entry to Mr and Mrs Pascoes’ land (the First LTO).	Knowles, [25] [[201.0044]] .
22 November 2016	First LTO approved by LINZ.	Knowles, [25] [[201.0044]] .
30 April 2017	TPG reports to LINZ recommending a second licence to occupy in respect of Mr and Mrs Pascoes’ land (the Second LTO)	Knowles, [26] [[201.0044]] .
4 May 2017	Second LTO approved by LINZ	Knowles, [26] [[201.0044]] .
2 June 2017	Current LINZ <i>Guideline and Standard for the acquisition of land under the Public Works Act 1981</i> published.	Annexed to Harris at [[301.0207]] ; [[301.0290]] .
31 October 2017	Third licence to occupy in respect of Mr and Mrs Pascoe’s land approved by LINZ (the Third LTO)	Knowles, [27] [[201.0045]] .
14 March 2018	First s 18 Notice served on Mr and Mrs Pascoe (the First s 18 Notice)	Knowles, [29] [[201.0045]] .
20 August 2018	TPG submits a report to LINZ recommending that the Minister issue s 23 notices of intention to take.	Knowles, [30] [[201.0046]] .
23 November 2018	Briefing submitted to Minister recommending issuance of s 23 notice. Minister ultimately decides not to sign s 23 notice. (the First s 23 Notice)	Knowles, [30] [[201.0046]] .
14 March 2019	First s 18 Notice lapses.	Knowles, [31] [[201.0046]] .
2 July 2020	TPG reports to LINZ recommending issue of s 18 notice (the Second s 18 Notice) TPG also submits recommendation to LINZ to allow entry to parts of Mr and Mrs Pascoe’s land for surveying purposes under s 110 of the PWA	Knowles, [29] and [32] [[201.0045]] . Knowles, [34] [[201.0047]] .
15 July 2020	LINZ approves the Second s 18 Notice	Knowles, [33] [[201.0046]] .
31 August 2020	Second s 18 Notice and s 110 notice served on Mr and Mrs Pascoe	Knowles, [34] [[201.0047]] .
1 October 2020	LINZ email Mr and Mrs Pascoe providing requested delegation and sub-delegation instruments.	Knowles, [38] [[201.0047]] .
15 March 2021	TPG submits a report to LINZ recommending a s 23 notice for Mr and Mrs Pascoe’s land.	Knowles, [35] [[201.0047]] .
24 March 2021	LINZ provides Mr and Mrs Pascoe with a draft of LINZ briefing to the Minister on s 23 notice and requests comment by 8 April 2021	Knowles, [39] [[201.0048]] .
7 April 2021	LINZ officials attend Hui with Mr and Mrs Pascoe, in which the respective roles and responsibilities of the	Knowles, [40] [[201.0048]] .

Date	Event	Case on appeal reference
	Minister, LINZ and the accredited supplier during acquisition under the PWA are explained.	
22 April 2021	LINZ writes to Mr and Mrs Pascoe inviting comment on the draft s 23 documentation by 27 April 2021.	Knowles, [41] [[201.0049]].
28 April 2021	Open letter to Minister and LINZ from Russell Gibbs, on behalf of Ngā Hapū o Poutama and Mr and Mrs Pascoe.	Knowles, [42] [[201.0049]].
19 May 2021	LINZ writes to Mr and Mrs Pascoe advising them that LINZ intends to submit a draft s 23 notice to the Minister.	Knowles, [43] [[201.0049]].
June 2021	Mr and Mrs Pascoe provided relevant Cabinet papers from 1997.	Knowles, [38] [[201.0047]].
12 July 2021	Briefing recommending issuance of s 23 notice submitted to the Minister	Knowles, [45] [[201.0050]].
16 July 2021	Minister signs: (1) LINZ briefing recommending issuance of s 23 notice in respect of Mr and Mrs Pascoes' land; and (2) s 23 notice.	Knowles, [46] [[201.0050]].
18 July 2021	Section 23 notice of intention to take served on Mr and Mrs Pascoe	Knowles, [46] [[201.0050]].
30 July 2021	LINZ advises Mr and Mrs Pascoe of an error in the s 23 notice of intention to take	Knowles, [47] [[201.0050]].
2 August 2021	Minister signs: (1) briefing recommending issuance of amended s 23 notice, dated 30 July 2021; and (2) amended s 23 notice.	Knowles, [47] [[201.0050]].
4 August 2021	Amended s 23 notice served on Mr and Mrs Pascoe	Knowles, [48] [[201.0050]].
8 September 2021	Statement of Claim in Original JR Proceeding filed in New Plymouth High Court	[[101.0001]].
13 October 2021	Statement of Defence filed by the Minister	[[101.0022]].
10 December 2021	Reply to Statement of Defence filed by Mr and Mrs Pascoe	[[101.0042]].
29 April 2022	Minute of Ellis J directing that the Preliminary Issues be dealt with separately	[[101.0109]].
30 November 2022	Judgment of Grice J on Preliminary Issues	[[05.0001]].
5 January 2023	Mr and Mrs Pascoe file notice of appeal	[[101.0109]].
12 June 2023	Mr and Mrs Pascoe file Amended Statement of Claim in Original JR Proceeding	[[101.0128]].
31 June 2023	Court of Appeal Deputy Registrar decision dispensing with security for costs	[[05.0023]].
30 May 2024	Cooper P issues Minute adjourning appeal and appointing counsel assisting	[[101.0206]].
31 May 2024	Cooper P issues Minute appointing Sally Gepp KC as counsel assisting	[[101.0208]].
3 July 2024	Courtney J issues Minute declining leave for Ms Marie Gibbs to orally address the Court of Appeal	[[101.0209]].
31 October 2024	Court of Appeal issues decision under appeal	[[05.0030]].

Date	Event	Case on appeal reference
28 November 2024	Mr and Mrs Pascoe file application seeking leave to the Supreme Court	[[05.0066]].
31 March 2025	Supreme Court issues Minute declining to determine application for leave prior to determination of application for recall of decision under appeal	[[05.0189]].
4 April 2025	Court of Appeal declines application for recall	[[05.0191]].
19 May 2025	Supreme Court grants leave to appeal	[[05.0196]].
25 June 2025	Ellen France J issues Minute regarding conduct of hearing.	[[05.0206]].

List of authorities to be cited by Respondent

Legislation

72. Contract and Commercial Law Act 2017, s 119
73. Public Works Act 1981 (as enacted), ss 5, 6 and 14
74. Public Works Act 1981
75. Public Works Amendment Act (No 2) 1987, ss 3 and 6
76. Public Works Amendment Act 1988
77. Resource Management Act 1991, ss 296 and 299

Cases

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78. *A J Burr Ltd v Blenheim Borough Council* [1980] 2 NZLR 1 (CA)
79. *Bobux Marketing Ltd v Raynor Marketing Ltd* [2002] 1 NZLR 506 (CA)
80. *Borrowdale v Director-General of Health* [2021] NZCA 520, [2022] 2 NZLR 356
81. *Bounty Oil & Gas NL v Attorney-General* [2010] NZAR 120 (HC)
82. *Campbell v Superintendent of Wellington Prison* [2007] NZAR 52 (CA)
83. *Flath v Minister for Land Information* [2024] NZHC 36, [2024] 2 NZLR 325
84. *Green & McCahill Holdings Ltd v Auckland Council* [2013] NZHC 507
85. *Hill v Wellington Transport District Licensing Authority* [1984] 2 NZLR 314 (CA)
86. *Just One Life Ltd v Queenstown Lakes District Council* [2004] 3 NZLR 226 (CA)
87. *McInnes v Minister of Transport* HC Wellington CP240/99, 3 July 2000
88. *Nicholls v Registrar of the Court of Appeal* [1998] 2 NZLR 385 (CA)
89. *Pascoe v Minister for Land Information* [2025] NZHC 1783
90. *Pascoe v Minister for Land Information* [2025] NZSC 114
91. *Porter v Gullivers Travel Group Ltd* [2007] NZCA 345

92. *R v Thompson* [1990] 2 NZLR 16 (CA)
93. *Re Hatton* ENC Auckland A25/98, 24 March 1998
94. *Seaton v Minister for Land Information* [2013] NZSC 42, [2013] 3 NZLR 157
95. *Shaw v Hamilton City Council* [2021] NZEnvC 175
96. *Waikanae Christian Holiday Park Inc v New Zealand Historic Places Trust Maori Heritage Council* [2015] NZCA 23, [2015] NZAR 302
97. *Waitakere City Council v Brunel* [2007] NZRMA 235 (HC)
98. *Wang v Minister of Internal Affairs* [1998] 1 NZLR 309 (HC)

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99. *Calvin v Carr* [1980] AC 574 (PC)
100. *R v Adams* [2020] UKSC 19, [2020] 1 WLR 2077
101. *R (New London College Ltd) v Secretary of State for the Home Department* [2013] UKSC 51, [2013] 1 WLR 2358
102. *R (on the application of Reckless) v Kent Police Authority* [2010] EWCA Civ 1277
103. *Simpsons Motor Sales (London) Ltd v Hendon Corp* [1963] Ch 57 (CA)

Texts

104. Peter Salmon *The Compulsory Acquisition of Land in New Zealand* (Butterworths, Wellington, 1982) at 4 and [11.1]
105. Squire Speedy *Land Compensation* (New Zealand Institute of Valuers, Wellington, 1985) at 6 and 40

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106. PH Thorp “The Key to the Application of the Maxim” *Delegatus Non Potest Delegare*” (1972) Auckland U L Rev 85 at 86

Hansard Articles

107. (12 December 1980) 436 NZPD 5920
108. (24 September 1986) 474 NZPD 4590