



Simpson Grierson

Acquisition of Land under the Public Works Act 1981

Michael Wood, Nick Wilson
and Donna Hurley



OPEN MARKET TRANSACTIONS

PARTIAL ACQUISITIONS

ACQUISITION OF LAND IN UNIT
TITLE DEVELOPMENTS

THIRD PARTY RIGHTS –
COMPENSATION WHEN NO
LAND TAKEN

THIRD PARTIES AFFECTED



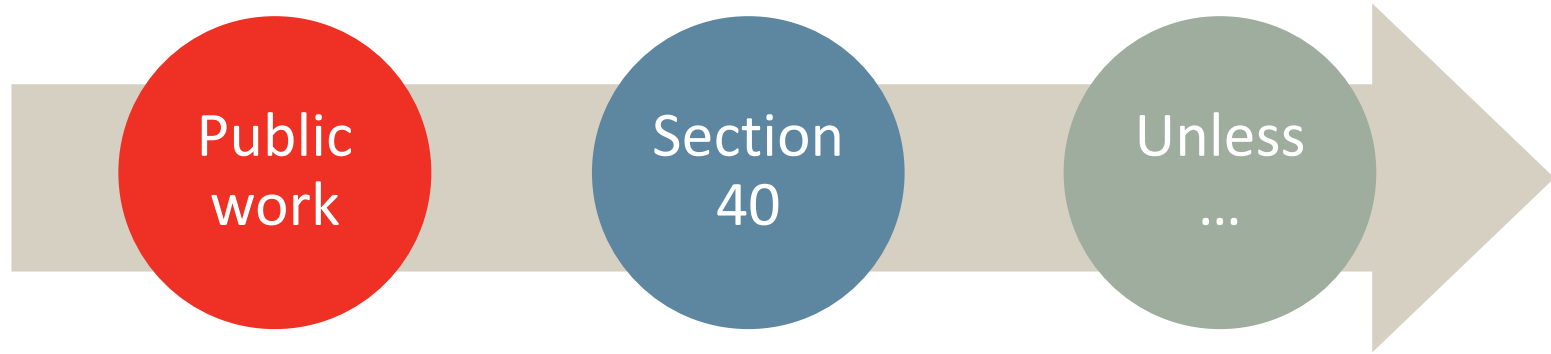
DECEASED OWNERS

MULTIPLE INTERESTS IN LAND

DEALING WITH SEVERANCES

MAORI LAND AND PUBLIC
WORKS ACQUISITIONS

LAND INCLUDING MARINE &
COASTAL AREA



An open market transaction can be for the purposes of a public work

Requirement to offer back land held for a public work to former owner (or their successors in title) when become surplus

Unless impractical, unreasonable or unfair or has been a significant change in the character of the land



PWA allows for part of an existing title to be acquired

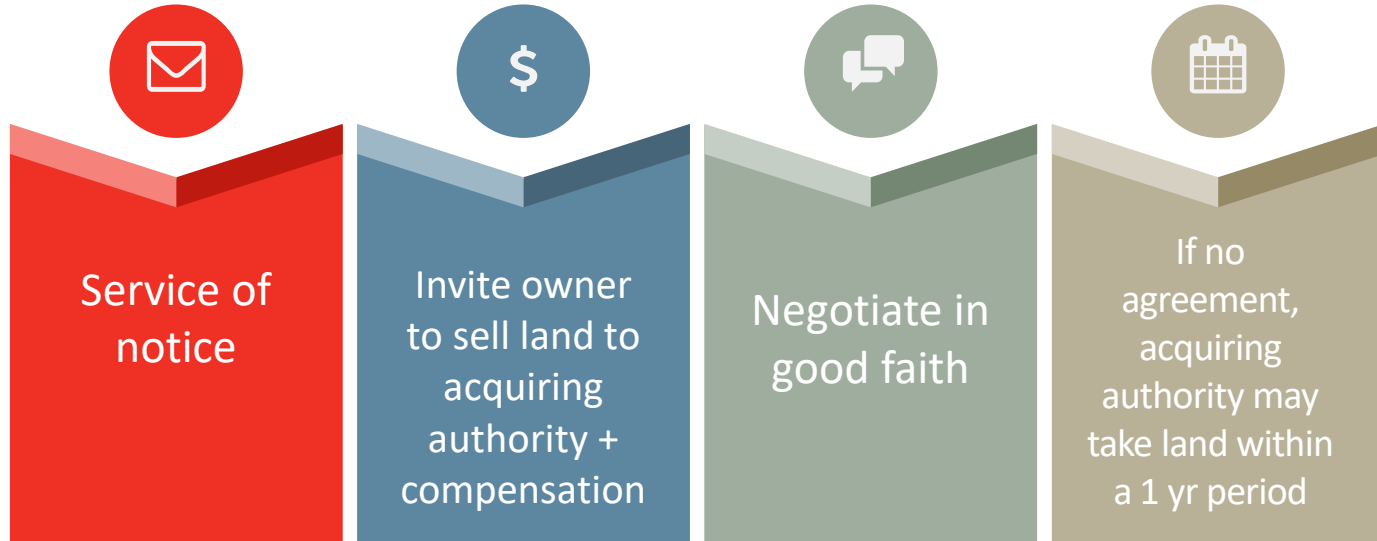


Subdivision consent under the RMA is not required

Subdivision consent under the RMA is not required if the “subdivision” is effected by an acquisition, taking, transfer or disposal of part of an allotment under the PWA without subdivision consent

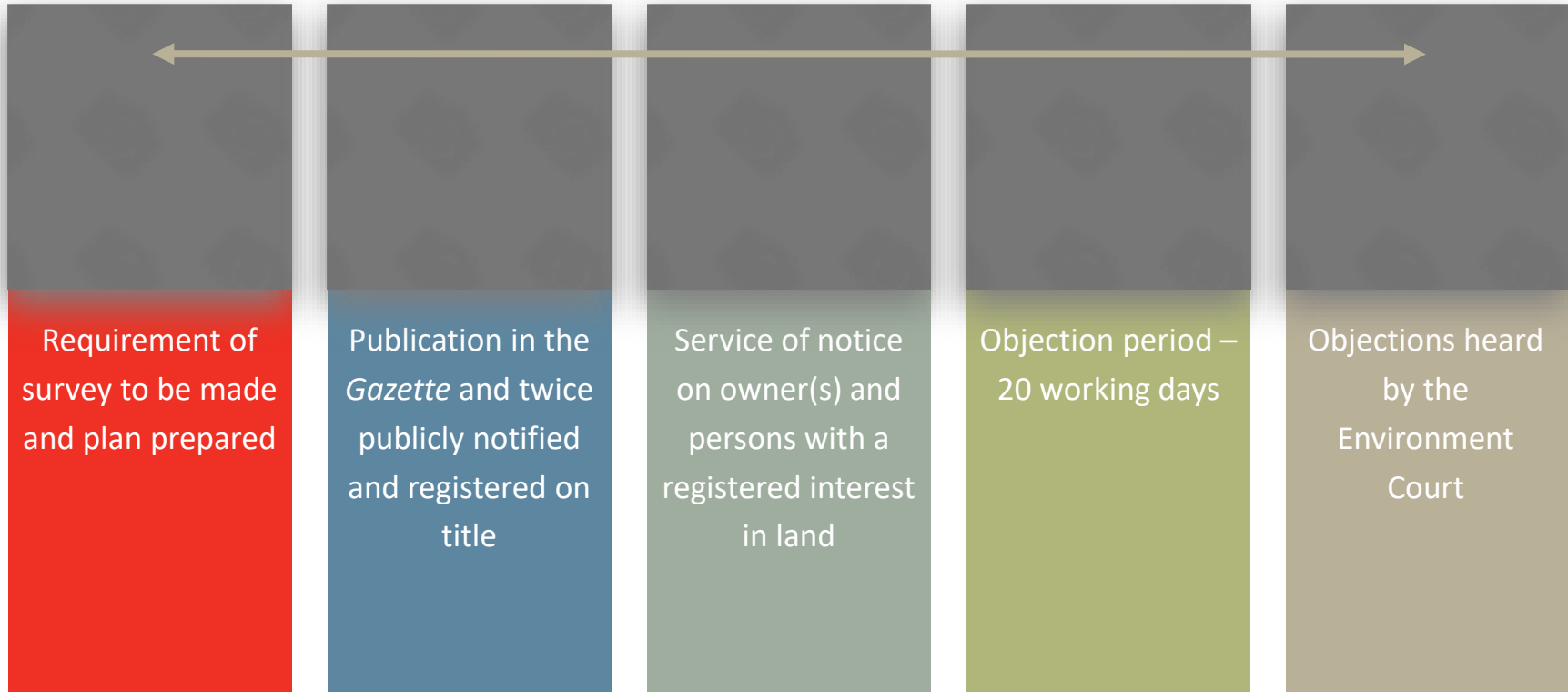
(section 11 RMA)

Section 18 - prior negotiations required for acquiring land.



Paul Young & Associates Ltd v Minister for Land Information [2016] NZEnvC142.

Section 23: notice of intention when land is required to be taken back



Section 24(7) PWA: Environment Court is to:

01

Ascertain the objectives of the Minister or local authority

02

Enquire into the adequacy of the consideration given to alternative sites, routes, or other methods of achieving those objectives

03

Decide whether, in its opinion, it would be fair, sound, and reasonably necessary for achieving the objectives of the Minister of local authority ... for the land of the objector to be taken

Crown or local authority will be required to prove the above

IF:

- There are no objections/any objections have been withdrawn or disallowed by the Environment Court
- Request may be made to the Governor-General for the land to be taken by Proclamation
- The land vests in the Crown or the local authority 14 days after publication of the Proclamation in the *Gazette*



Survey plan
prepared



Signed by Chief
Surveyor

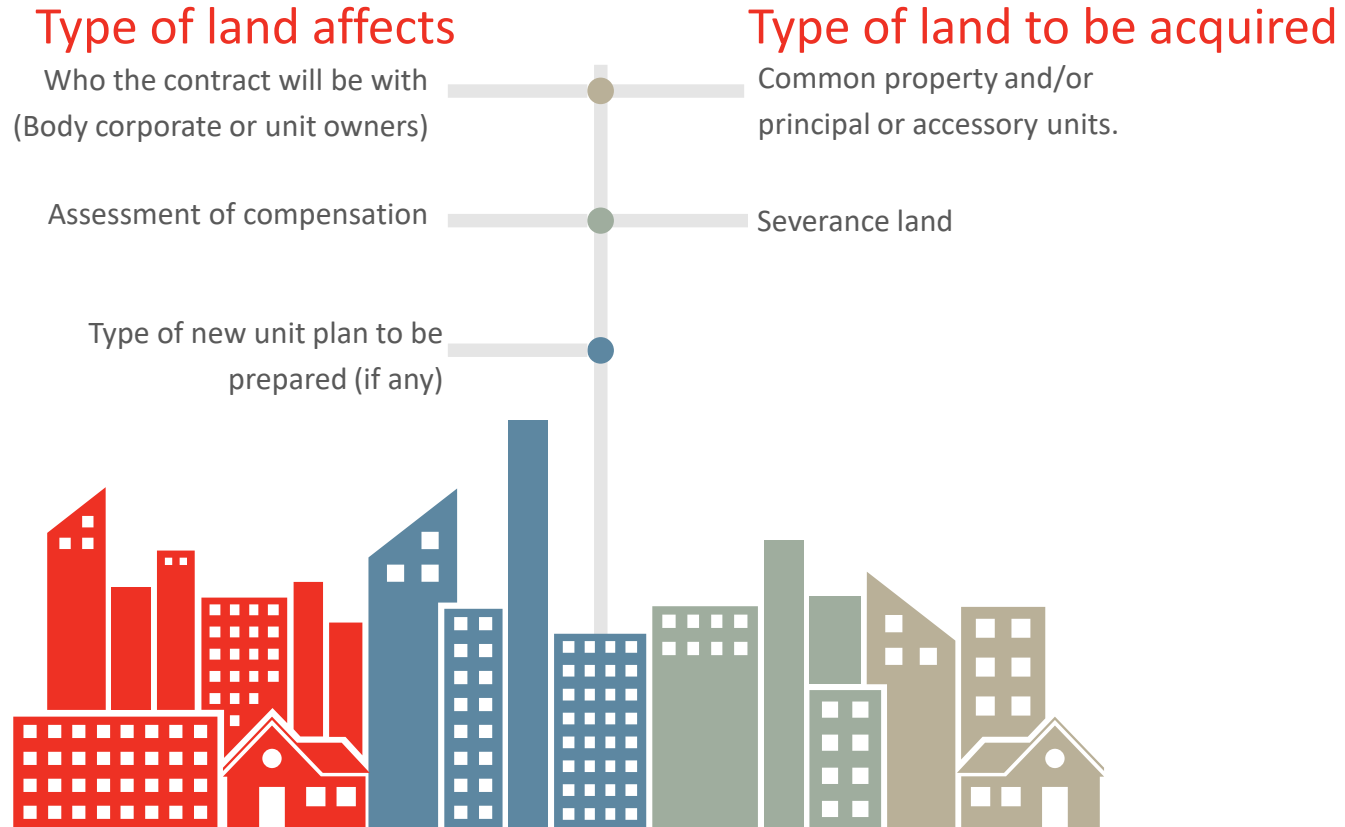


Duplicate print
of title plan



Proclamation

Acquisition of land in unit title developments



Restriction

Nothing in the Act restricts the
PWA



Body Corporate

Consent/a resolution of a body corporate is not required if the land is acquired by proclamation under the PWA.

Registrar

Registrar entitled to do anything necessary to give effect to a proclamation under the PWA



Expense

The authority undertaking the public work must prepare the new unit title plan or its amendment at its own expense



A body corporate:

- Owns common property (s54 UTA)
- May sell part of the common property (s56 UTA)



A transfer of common property involves:

- A new unit plan in substitution (showing effect of transfer)
- A special (designated) resolution (75% majority of those voting on the resolution)



S 216 UTA certificate

(no objection/designated resolution confirmed)



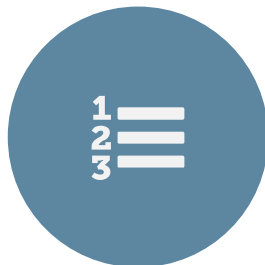
Compensation

Contingent on body corporate providing s 216 certificate

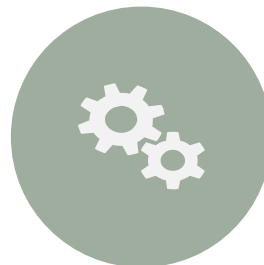


UTA disclosure statements

- Pre-contract disclosure statement
- Additional disclosure statement (only provided on request)
- Pre-settlement disclosure statement



Body Corporate Operational Rules



Ownership Interests v Utility Interests



Substantial injurious affection:

- More than trivial, ephemeral, fleeting



Caused by construction, not operation:

- Construction works
- Effects of operation excluded



Not caused by changes in traffic flows:

- Excludes many effects of road works



Common law right of action :

- Private nuisance, public nuisance
- Case law on nuisance excludes the effects of demolition or building works eg noise, dust, vibration, if works are carried out in a reasonable manner



Deceased without legal administrator:

- S18(7) – no requirement to serve s18 notice or negotiate
- “After reasonable enquiry”
- Out of Caution – if aware of lawyer for estate or spouse, serve offer on them



Service (section 4):

- Twice publish in local newspaper
- Wait three months before taking via proclamation (LINZ guidelines)



Additional interests

- Negotiate and compensate separately
- Section 17 agreement consents

01

Service of notices

- *Metro Sports Facility Case*
- Focus on ownership in usual sense



02

MULTIPLE INTERESTS IN LAND

03

LINZ Guidance

- Holders of lesser interests not “owners” for fee simple acquisitions
- Declarations preferred by LINZ – not transfers



Unregistered Estates

- No notice required
- Compensation payable for surrender or extinguishment



04

Section 119 PWA: May declare severances to be taken if:

01

Would become significantly more costly to retain at same standard; or

02

Significantly less useful to owner, lessee or licensee

03

Written consent of Owner, lessee, or licensee and those with registered interest – i.e. cannot be compulsorily taken (s119(3))

Severances can be vested direct in third party or vested in Council/Crown and then disposed of as if they are stopped road (s119(4))



Section 34 PWA:

- Owner who has had land compulsorily taken, can require Minister or Local Authority to take any other part of its land where, by reason of taking, that part has become significantly:
 - more costly to retain at same standard; or
 - less useful.
- Where dispute, Environment Court to determine



Land can then be dealt with: (s34(3))

- Not held for a public work
- Can be subdivided, developed, provided access to, set apart or disposed of



S185 RMA:

- Similar but more complicated process applying to land subject to designation



Public Works Act 1981

Power to acquire **any**
land



Te Ture Whenua Maori Act 1993

Crown/local
authorities cannot
acquire Maori
reservation or
customary land



Maori freehold land
can be alienated by
agreement but only
in accordance with
TTWMA

Grace v Minister for Land Information (2014)



Successful objection against taking of land under the PWA



Grace made application to Maori Land Court (**MLC**) to have land declared a Maori reservation under s 338



MLC made order recommending land to be set aside as Maori reservation, meaning it could not be compulsorily acquired



Environment Court agreed with MLC – necessary to consider alternative sites, routes and methods for achieving the Minister's objective, and whether it would be fair, sound and reasonably necessary for the land to be taken



MACA Act

- Special status of CMCA
- Incapable of ownership
- Divestment from Crown and local authorities
- Private land ownership continues



CMCA

- MCA excluding:
 - “specified freehold land
 - Conservation parks, national parks and reserves



MACA

- MHWS to outer limit of territorial sea
- Beds of rivers, airspace and water space (but not water)

