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Pippa Player  
Local Government New Zealand  
Facsimile 04 470 0001  
Wellington

Dear Pippa

Re: Review of the Public Works Act

In large part the Wellington Regional Council (the Council) supports the thrust of the draft Local Government New Zealand (LGNZ) submission on the review of the Public Works Act. However, some areas of the LGNZ submission are not agreed to and the Council asks that the below matters be given consideration prior to finalising the submission. We have focussed our review on the questions and comments contained in Annex 1 of the submission.

1. For the purpose of emphasis, the Council recommends that each heading of the annex have the words "Retain the Status Quo" added.
2. Chapter 3 – Definition of a Public Work (3.) suggest adding "There is no known evidence of improper, excessive or needless use of the compulsory provisions of the Act."
3. Chapter 3 – Definition of a Public Work (6.) The Council supports the statement "No" being ticked as this supports and emphasises the comments and selection under Chapter 3 (2.)
4. Chapter 4 – Acquisition by Agreement (1.) The Council requests that additional qualification be inserted expressing "Whilst provision exists already to acquire an interest in land which is less than freehold, it must not be prescribed that the least interest must always be acquired. To limit acquisitions to limited interests is undesirable. Partnerships can be successful but must be avoided where they will give rise to needless complications and substantial ongoing costs to administer."
5. Chapter 4 - Private providers (1.) The Council suggests commencing the comments with the words "This is not a Public Works Act issue."
6. Chapter 4 -Private providers (3.) (a) The Council suggests adding to the comments "Each case should be viewed relative to its own merits. This is not a matter for prescription."
7. Chapter 4 - Compensation (1.) The Council supports the statement "No" being ticked. The Council suggests commencing the comments with the words "All public works influence the wider community. It is not feasible to administer claims from such a wide group, nor is it feasible to seek betterment from such a group."
8. Chapter 4 - Compensation (2.) The Council supports the statement "Yes" being ticked but with the rider that it be limited to reimbursement of actual and reasonable costs incurred resulting directly from a Crown or Local Authority request that they be incurred.
9. Chapter 4 - Compensation (3.) (b) The Council proposes that "Annual guidelines be issued by the Crown" for the purpose and benefit of uniformity.

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10. Chapter 5 – Offer back of land to former owners The Council suggests adding to the heading “Do Not Retain the Status Quo.”
11. Chapter 5 – Offer back of land to former owners (1.) (a) The Council supports the statement “No” being ticked as it is aware that some owners do sell their land because the owners believe the compulsory provisions of the Public Works Act can be exercised if they do not sell voluntarily. There can therefore be an implied compulsion.
12. Chapter 5 - Offer back of land to former owners (1.) (h) The Council supports the statement “No” being ticked. The Council is aware of several properties, that it owns, being very important to the children (successor) of the person from whom it was acquired. Those successors have expressed a strong desire to have the land returned to them.
13. Chapter 5 – Offer back of land to former owners (1.) (k) The Council supports the statement “No” being ticked but with the rider that the successor be confirmed as the singular and not the plural ad infinitum.
14. Chapter 5 –Offer back of land to former owners (1.) (l) The Council supports the statement “Yes” being ticked. In the comments block it is recommended that a clear statement be introduced into the Act which clarifies the offer back process. The Council suggests “Where land acquired comprised a whole title, the land should be offered back to the person from whom it was acquired or their successor in probate AND where land acquired comprised part of a title, the land should be offered back to the person from whom it was acquired or their successor in title. Failing uptake of the offer, disposal on the open market should occur.”
15. Chapter 5 - Offer back of land to former owners (1.) (m) The Council supports the statement “Yes” but to be consistent with 12, 13 & 14 above recommends that the limitation is to the life span of the person from whom it was acquired or to the life span of their immediate successor.
16. Chapter 5 – Offer back of land to former owners (1.) (n) The Council supports the statement “Yes” being ticked. This will support case law, ensure that contradictory case law does not arise and provide for a simple procedure to be adopted which will potentially save enormous administration time and cost in future years.
17. Chapter 5 – Offer back of land to former owners (1.) (q) The Council supports the statement “No” being ticked. This will ensure consistency with the Local Authority use of Section 50 of the Public Works Act 1981.
18. Chapter 5 - Offer Back Administration (1.) The Council recommends a stronger stance being adopted in the comments block. “There needs to be recognition that land is acquired at its current market value at the time of acquisition. For fairness and equity the reciprocal should apply at time of disposal. First, the land is only surplus to requirements when a resolution to that effect is passed. Second, the value of the land to be disposed of must always (unless nominated exceptions apply) be the current market value at the time of disposal.
19. Chapter 5 - Offer Back Administration (2.) The Council recommends the addition to the comments block of “While offer back should always be at the current market value of the property at the time of disposal, in the event of a substantiated case,

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- relating to the circumstances of the original acquisition, discretion should be retained for disposal at a sum other than the current market value. This is retention of the status quo. In those circumstances, the Local authority is to be exempt to the requirement to pay gift duty.”
20. Chapter 5 -Compliance Issues (1.) (c) The Council supports the statement “Yes” being ticked. In addition the comments block should contain “The cost to administer disposal remains the full responsibility of the private provider which has had the use of the land.”
  21. Chapter 5 - Compliance Issues (2.) The Council recommends that the comments should include “The Crown should retain the responsibility to administer and undertake the work to comply with the statutory requirements but the cost of that work should be met by the private provider which has had the use of the land.”
  22. Chapter 5 - Disposal Administration (1.) The Council supports the statement “Yes” being ticked.
  23. Chapter 5 - Disposal Administration (2.) The Council supports the statement “Yes” being ticked. In addition the Council suggests inclusion in the comments of “But reserve discretion to have regard to the circumstances of the original acquisition.” The Council is also concerned at the instances, mainly under crown disposals, of back to back transactions providing immediate profit to the former owner who has had no intention of retaining the land for their own use. To combat this, the Council recommends inclusion of a clause that provides for “At time of disposal, the former owner to make payment at the assessed current market value of the land, such assessment to be undertaken by a registered public valuer. The disposing authority reserves the right, within a period of 2 years from the date of the disposal, to lodge a claim for additional consideration if market evidence, subsequently available, supports a revised assessment. The revised assessment to be effective as at the date of the disposal.”
  24. Chapter 5 - Transfer for another Public Work (1.) The Council suggests adding to the comments block “It is not acceptable to contemplate having to go to the former owner to offer the land back only to then acquire the land again for another Public Work. In the perfect world, the former owner would acquire the land back at its current market value and the land would then be acquired by the acquiring authority at its current market value. In essence the only thing to be incurred will be wasted time and expense. At worst, the market value for offer back will be less than the market value to acquire for the new work. This would be an unacceptable cost to tax and rate payers.”
  25. Chapter 5 - Transfer for another Public Work (2) The Council suggests inclusion under comments of “Section 50 of the Public Works Act 1981 must be clarified to provide for the transfer of land from one Local Authority to another Local Authority for the same or another Public Work. It must also be clarified that the present reference to Section 40 within Section 50 is there to ensure that the Section 40 obligations are not negated and do carry over to the new owner.”
  26. Chapter 6 – Roading provisions (1.) The Council supports the statement “Yes” being ticked. The Council urges that a strong submission be made to define all land acquired for Road, Highway or Motorway, to be all classed as Road for the purpose of the ability of the Local Authority to place services within the corridor. At present Local Authorities only have rights in respect of Roads and none in respect

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of Highways and Motorways. This, at times, proves to be inconvenient and expensive to find alternative solutions.

27. Chapter 6 – Roading provisions (2.) The Council supports correlating clauses within the Public Works Act, the Local Government Act and the Transport Act.

The Council assumes that, resulting from the receipt of responses from all Local Authorities, a further revised draft submission will be circulated. If, in the preparation of that draft, LGNZ wishes to discuss the contents of this submission, we would be happy to meet and expand on the position outlined in this letter. Contact, if required, should in the first instance be made with Peter O'Brien of O'Brien Property Consultancy Limited, phone 04 801 8951.

It is the intention of the Council to support the submission of LGNZ wherever possible but to submit in isolation of LGNZ on those issues the Council holds a contrary opinion on.

We look forward to receipt of the amended draft of the LGNZ submission, if indeed that is your intention.

Yours sincerely

GREG SCHOLLUM  
Chief Financial Officer