

Compulsory Land Acquisition Delegations

Recommendations

It is recommended that the Board:

- i. Receive this report;
- ii. Grant delegated authority to the Chief Executive to exercise all legislative and non-legislative functions, powers and duties relating to the initiation of compulsory land acquisition under the Public Works Act 1981 by AC on behalf of Auckland Transport necessary to advance Auckland Transport's capital works programme; and
- iii. All instances of the exercise of the power to request Auckland Council to initiate compulsory purchase are reported to the Board in the Chief Executive's Board report in the month following the exercise.

Executive summary

AT's approach to land acquisition for transport projects is shaped by the statutory framework within which AT works and the need to supply project delivery in a timely and cost effective manner.

The current capital works programme (2012/13) requires the acquisition of 93 properties at an estimated cost of \$17.5m. These projects have construction start dates from late 2013 to 2015. Acquisition needs to be completed before tender for construction commences. A further 206 properties (\$44m) have been identified in the 2013/2014 programme (refer Attachment 1).

The window within which acquisitions must be achieved before the scheduled project start dates is limited. The inability to conclude agreements with owners within that window creates a risk to the delivery of the capital programme.

When a landowner is unwilling to sell land required for a transport project, AT is unable to exercise compulsory acquisition powers under the Public Works Act (PWA) in its own name and must action this process through AC.

The estimated timeframe for completion of a compulsory acquisition from the first step in the statutory process (the service of the section 18 Notice) to completion of the land take if the matter proceeds to the Environment Court is two years and in some cases longer.

AT has developed a land acquisition process in conjunction with AC and AC Property Limited (ACPL) which works within the statutory framework and supports project delivery requirements. (Summarised in Attachment 2).

The approach enables acquisition to be structured around timeframes that support project delivery whilst at the same time ensuring that the landowner has a reasonable opportunity to engage in "good faith" negotiations undertaken by ACPL on behalf of AT.

The service of section 18 and 23 notices by AC on the landowner (and those with interests in the property) enables AT to set a timeframe within which negotiations must be concluded

and a structured process for advancing the acquisition where the landowner will not

engage or conclude an agreement.

To date authority to commence the statutory process through notification to AC has been sought from the Board. This step adds approximately six to eight weeks processing time (for approval of the issue of a request to AC to serve each section 18 or section 23 notice).

AC has delegated authority to the AC Property Group Manager and Chief Executive to initiate the issue of section 18 and 23 notices respectively.

This report proposes a similar delegation to the Chief Executive. This will reduce processing times.

Alignment with strategy

AT has a significant land acquisition programme essential for the successful delivery of the capital works programme including major projects such as the AMETI, CRL and significant local projects such as Albany Highway and Te Atatu. The grant of the delegation sought in this report will assist in the timely delivery of the land required for the capital programme by reducing the processing time for approvals related to compulsory acquisition actions.

Background

The Board received a report on the land acquisition protocols agreed with AC and ACPL at its meeting on 24 August 2011 and endorsed the approach to the initiation of compulsory land acquisition outlined in the report. The key features are:

- ACPL (on behalf of AT) will first initiate “good faith negotiations” with the landowner.
- Where all reasonable steps have been taken to reach agreement with the landowner and ACPL (on behalf of AT) has been unable within a reasonable time, having regard to the project start date, to conclude an agreement to purchase property, Board approval is sought to take the first step in initiating compulsory purchase proceedings under the PWA, the issue of a section 18 Notice.
- The section 18 Notice signals the desire to acquire the owner’s land and is an invitation to sell the property at the valuation advised in the notice.
- ACPL (on behalf of AT) will continue to negotiate in good faith to reach agreement for the acquisition of the land.
- If agreement has not been reached within three months of service of the section 18 Notice and provided ACPL can demonstrate it has engaged in “good faith” negotiations with the landowner, Board approval is sought to request Auckland Council to take the next step in compulsory purchase under the PWA, the service of a section 23 Notice.
- The section 23 Notice gives formal notification that, unless the landowner makes an objection to the Environment Court, AC intends to take the land for a public work.
- If no objections are made, or objections are withdrawn, or the Environment Court decision supports the acquisition, the land can be taken by proclamation.

Issues and options

Current processes for initiating compulsory land purchase require Board approvals which add six to eight weeks to the process for issuing each statutory notice.

Delegated authority as requested in this report will reduce the processing time by six to eight weeks.

An alternative approach is to seek Board approval outside of the Board meeting cycle by email either to the whole Board or by delegated authority to the members comprising the Capital Review Committee.

Next Steps

Subject to Board approval:

- Management will communicate the changes internally and make changes to any documentation;
- The Chief Executive will approve the initiation of compulsory purchase for land required for AT projects through requesting AC to issue section 18 and section 23 Notices to owners where appropriate, and
- All instances of the exercise of the power to request AC to initiate compulsory purchase will be reported to the Board in the Chief Executive's Board report in the month following the exercise.

Attachments

Number	Description
1	Number of Properties that need to be acquired in 2013/2014
2	Protocol for compulsory acquisition of land

Document Ownership

Prepared by	Deb Godinet Manager Property & Planning	
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Approved for Submission	David Warburton Chief Executive	

Number of Properties that need to be acquired in 2013/2014*

Profile analysis of Properties still to be acquired in 2013 and 2014							
	Properties for 2013		Properties for 2014		Total Properties		Properties Required By
	Number	Total Amount	Number	Total Amount	Number	Total Amount	
AMETI	23	11,691,000	58	26,262,300	81	37,953,300	June 2015
Dominion	8	128,522	10	772,220	18	900,742	July 2014
Te Atatu	18	2,381,000	60	2,544,000	78	4,925,000	July 2014
Albany	3	697,756	1	39,815	4	737,571	October 2013
NORSGA	7	218,000	16	3,937,900	23	4,155,900	From October 2013
Rest of Projects	34	2,401,359	61	10,658,756	95	13,060,115	Various
	93	17,517,637	206	44,214,991	299	61,732,628	

*Note: CRL property acquisition programme reported separately.

Acquisition Process

AT has developed a land acquisition process in conjunction with AC and Auckland Council Property Limited which reflects the statutory framework created by the Local Government (AC) Act 2009, and supports project delivery requirements.

The process is underpinned by the “good faith” negotiation principle.

When an owner is unwilling to sell land required for a transport project, AT can work through AC to acquire the land through the exercise of compulsory acquisition powers under the Public Works Act 1981 (PWA). The approach to land acquisition is summarised below:

- Auckland Council Property Limited (on behalf of Auckland Transport) takes all reasonable steps to reach a sale and purchase agreement with the landowner.
- Where AC Property Limited has not concluded an agreement within a reasonable time Board approval is sought to take the first step in initiating compulsory purchase proceedings under the PWA, a formal notification to AC to issue a section 18 Notice of Desire.
- The section 18 Notice signals the desire to acquire the owner’s land and is an invitation to sell the property at the independent valuation advised in the notice. The owners have the right to obtain their valuation from a registered valuer. This step will set a formal timeframe of a minimum of three months of engagement in good faith negotiations from the date of service to conclude negotiations. If agreement is not reached then Board approval is sought to notify AC to issue a Notice of Intention under section 23 PWA.
- The section 23 Notice of Intention must be served within one year after service on the owners of the Notice of Desire (s18 (2) PWA).
- If Board approval is obtained the notices are issued by AC under delegated authority by the Council Manager Property (Section 18) and the Chief Executive (Section 23) on receipt of a notice from AT to serve the notice.
- AC Property Limited continues to negotiate in good faith with the owner for the acquisition of the land.
- The landowners have the right to object to the Environment Court on matters of procedure only. Objections must be made to the Environment Court within twenty working days after service of notice.
- The Notice of Intention must be publicly advertised in the NZ Herald (twice) and the NZ Gazette. The Notice of Intention is also registered on the affected property’s Certificate of Title and the mortgagee notified.

- If no objections are received by the Environment Court at the expiration of twenty working days after the advertisement of the public notices, AT will request the AC Chief Executive to submit a request to the Governor General to take the land by Proclamation under section 26 PWA.
- A Proclamation is a request to the Governor General to take the land for the proposed public works signed by the Chief Executive of the local authority. A statutory declaration by the Chief Executive may be accepted by the Governor General without making further enquiry.
- The land will vest 14 days after the proclamation is published in the NZ Gazette and after a further 14 days AT can commence construction.
- If objections are made to the Environment Court then a decision may be expected within a six to twelve month period.

The section 18 and 23 notices enable AT to set a timeframe within which negotiations must be concluded and a structured process for advancing the acquisition where the owner will not engage or conclude an agreement.