

## Supreme Court clarifies who can carry out “good faith negotiations” under the Public Works Act

### Pascoe v Minister for Land Information [2025] NZSC 195

**The Supreme Court has provided important guidance on who may lawfully conduct “good faith negotiations” on behalf of the Minister for Land Information before land can be compulsorily acquired under the Public Works Act 1981 (PWA), and the consequences where those negotiations are not properly authorised.**

Before compulsorily acquiring land under the PWA, the Minister must first serve a “notice of desire” to acquire land on the owner, and then negotiate with the owner in good faith to try and agree the acquisition of the land (and compensation for it). Negotiations must continue for at least 3 months following the notice of desire before a “notice of intention” can be served triggering the taking of land. Often those negotiations are carried out or assisted by accredited private contractors, in this case The Property Group (TPG).

The owners in Pascoe declined to engage with TPG, insisting on dealing with the Minister or Toitū Te Whenua | Land Information New Zealand (LINZ) officials. A notice of intention to acquire their land for a transport project was served when negotiations were unsuccessful. The question in this case was whether the mandatory negotiations were undertaken by TPG rather than the Minister or their properly authorised delegate. The Minister accepted there had been no formal delegation of the negotiation function to TPG, however the Minister argued that the negotiation was actually carried out by LINZ officials, and LINZ relied on TPG to carry out much of the “legwork” or day-to-day conduct of negotiations.

#### Who can negotiate?

Unsurprisingly, the Court confirmed that negotiations for acquisition of land required by s 18 PWA do *not* have to be undertaken personally by the Minister. They may be carried out by:

- a properly delegated official within LINZ, or
- an accredited contractor, provided that contractor holds a valid delegation to perform the negotiation function.

#### What went wrong in Pascoe?

In this case, negotiations were conducted by TPG as an accredited private contractor engaged by the New Zealand Transport Agency. While outsourcing in principle was not unlawful, the Supreme Court found that no formal delegation of the negotiation function had been made to TPG in accordance with the statutory requirements.

As a result the Pascoes' refusal to negotiate with TPG did not amount to a refusal to negotiate with the Minister for the purposes of s 18(2) PWA, potentially meaning the notice to acquire their land was not valid.

#### Practical implications

The decision has immediate and practical consequences for public-sector land acquisitions, at least those where negotiations may have been in progress when the decision was issued:

- Given the lack of formal delegation of negotiating powers (at least previously), negotiations to acquire land for public works may need to recommence where they have been undertaken by parties lacking proper delegated authority. This may reset the clock on the mandatory 3-month good faith negotiation period.
- In some cases, this may require withdrawal (and later reissue) of notices of intention to

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acquire land issued under s 23 PWA, to ensure that subsequent taking of land is lawful.

- Acquiring authorities will need to review delegation arrangements to ensure that those leading negotiations are correctly authorised.

### Want to know more?

If you have any questions, please contact our specialist [Local Government team](#).