

State and Public Sector Land management in New Zealand - an outline of the background and administration processes

Trevor KNOWLES, New Zealand

Keywords: New Zealand, Land Information New Zealand (LINZ), Public Works Act (PWA), Local Government Act, Torrens System, Landonline, Documented Decision Making process, delegations, audit, working papers, admin law.

ABSTRACT

In New Zealand both the State and Regional/Local Authorities buy, hold and sell land for the public good. The main authority for dealing with land for Crown (Her Majesty the Queen) needs is the Public Works Act 1981 (PWA). It superseded the Public Works Act 1928 and has been mooted for review recently but this is not a current action. The Act deals amongst other things with acquisition and disposal processes. The Act is enabling insofar as it provides for a process and actions to be taken in terms of acquiring land, managing and disposal of surplus land. The main authority for Regional and Local Authority actions is the Local Government Act 1974 and 2002 The PWA can also be used.

This paper briefly sets out:

The background to the Land Transfer System (Torrens System) in New Zealand from the mid 1800s to present day electronic titles and e-lodgement (Landonline).

The history of the Government Departments that have administered the Public Works Act and Land Act 1948

The nature of the works or actions authorised under each act

Recent systems and processes around making statutory decision under the PWA including working papers, administrative law checklist and Documented Decision Making Process (DDMP)

The DDMP leads to quality and consistent decisions on land acquisition, management and disposal actions and ensures transparency of decision making. Decisions and processes can also be audited independently and findings acted upon.

The combination of empowering legislation, delegations correctly exercised and decisions open to scrutiny audit or judicial review ensures a balanced mechanism for community versus individual rights in land matters.

For many years decision making on land acquisition and disposals by Crown Agencies has been centralised in Land Information New Zealand (LINZ) and its predecessor organisations. A review of the Public Works Act in particular may see that devolved to Chief Executives/delegates of asset owning/using organisations and an enhanced audit regime put in place.

State and Public Sector Land management in New Zealand - an outline of the background and administration processes

Trevor KNOWLES, New Zealand

SUMMARY

In New Zealand both the numerous State and Regional/Local Authorities buy, hold and sell land for the “public good”. Once acquired land and used for a purpose land can become subject to many Acts managed by a variety of organisations each charged with a different function. The main authority for dealing with land from an administrative point of view for Crown (Her Majesty the Queen) needs is the Public Works Act 1981 (PWA). It superseded the Public Works Act 1928 and has been mooted for review recently but this is not a current action. The Act deals amongst other things with acquisition and disposal processes. The Act is “enabling” insofar as it provides for a process and actions to be taken in terms of acquiring land, managing and disposal of surplus land. The main authority for Regional and Local Authority actions is the Local Government Act 1974 and 2002 and in certain circumstances the PWA can also be used.

For many years decision making on land acquisition and disposals by Crown Agencies has been centralised in Land Information New Zealand (LINZ) and its predecessor organisations. A review of the Public Works Act in particular may see that devolved to Chief Executives/delegates of asset owning/using departments and an enhanced audit regime put in place.

Once acquired for the purpose it is needed land and buildings are held by the asset owning Department and used for that purpose for however long they are needed. Property managers within those organisations or on site or contracted service provider experts manage the asset on daily basis. If the asset becomes surplus it is then able to be used by another Department for another public work or it is perhaps offered back to the former owners or used in a treaty settlement. It can then be sold on the open market.

Various State and Regional Authorities combine responsibilities across land so that different layers or areas of interest overlap. No one organisation or Act has responsibility for everything on an area of land. Even one arm of the Crown or Local Government can be impacted upon in terms of what can be done on land or cannot be done by other government agencies. An example would be land held by Transit New Zealand for motorway will be subject to Resource Management Act and controls on pests and noxious plants.

LAND TRANSFER SYSTEM AND LANDONLINE

Land use, administration and management are inevitable key factors in the growth and development of any country and New Zealand was and is no exception. At the base of this is a solid system for land registration and ownership.

From its colonisation in 1840 the deeds system provided a very necessary security of tenure for the early settlers in the difficulties which emerged from the sales of Crown land, the settlement of land claims with the Maoris, and the sudden influx of new settlers. The act of registration did not, of course, perfect the title, but it did provide a system of notice of interests against the land. The development of a survey and survey control system from the 1870s onwards led into adoption of the Torrens System by the 1920s, described as “conveyancing by means of a register and a map”.

The system was developed in South Australia and forms the backbone of New Zealand land registration. The first Land Registry Act in New Zealand was passed in 1860 with amendments in 1861 and 1862, but the system achieved little popularity and only a few registrations were recorded in the Auckland district. The Land Transfer Act of 1870 represented the introduction of the true Torrens system into this country, and the provisions of the Act of 1870 are basically in operation today. The few amendments which have emerged over the years have generally been of an amelioratory nature and have only changed the mechanics of the Act in accordance with modern practices without departing from its basic principles.#1

Between 1924 and the 1950s New Zealand became the pioneer in the field of compulsory registration of titles, a step which had been vigorously campaigned for in England and other older countries. The work was to be completed in five years, but it was not till the 1950s that the task was finally accomplished. The difficulty of issuing guaranteed certificates of title from the deeds system, which carried no like seal of authenticity, was overcome by the ingenious device of issuing titles which were stated to be limited as to titles or limited as to parcels, as the case might be.

The Torrens system was adopted in New Zealand by the Land Transfer Act 1870. The present Act is the Land Transfer Act 1952 ("the LTA"). It is noted that Samoa, a Pacific island neighbour of New Zealand is currently looking at introducing the Torrens System to public and freehold land ownership.

Almost all land in New Zealand has been brought under the LTA except mainly for Maori land held by the indigenous peoples of New Zealand. Land is administered through the Maori Land Court. Prior to 1954 it was called the Native Land Court. The initial role of the Native Land Court was to define the land rights of Maori people under Maori custom and to translate those rights or customary titles into land titles recognisable under European law.

Traditional Maori land rights involved communal ownership of land. The hapu (sub tribe) or iwi (tribe) had to prove their traditional rights to land on the basis of occupation, conquest, or ancestry. The gifting of land was also taken into account. Occupation was symbolised by the term "ahi kaa" meaning "to keep the home fires burning". This meant that the hapu had to establish their genealogical connections as well as their physical and emotional ties to a piece of land. All this information was recorded in the Court's minute books.

The latest developments to the land registration system have occurred in the last 10 years with Landonline, a system operated by Land Information New Zealand (LINZ) that enables survey and title transactions to be processed electronically. Using Landonline conveyancers and surveyors are able to access information and lodge most of their transactions with LINZ electronically. The practitioners using Landonline consider there are significant benefits from lodging transactions electronically as opposed to lodging them on paper because they are able to streamline their office processes and provide a higher quality service to their customers (people who subdivide, and buy and sell property).

All certificates of title and survey plans are now maintained in electronic format in Landonline.

Remote access to survey and titles information in Landonline became progressively available to subscribers via the internet (*e-search*) between 2000 and 2002. Previously, when these records were maintained as paper records, conveyancers and surveyors requested records from LINZ by fax, or visited a LINZ office. Now LINZ's records can be accessed in a matter of minutes through Landonline. The benefits of the *e-search* functionality are significant. Since *e-search* was introduced the number of searches has more than doubled, with 99% of all searches being undertaken electronically.

In early 2003, Landonline was enhanced to enable conveyancers to lodge routine land title transactions¹ in electronic form from remote locations (*e-dealings*). These transactions, which relate to approximately 60% (by volume) of all land title transactions lodged with LINZ, are automatically processed in real time *without* manual intervention from LINZ staff. The remaining 40% of land title transactions which relate to the registration of other interests in land (such as caveats, and easements) are still lodged on paper. LINZ staff must enter these into Landonline so they can be processed electronically

The Electronic Transactions Act 2002 and the Cadastral Survey Act 2002 (which enabled survey and title records to be collected and maintained in electronic form) provide for electronic lodgement to become mandatory by Order in Council. By making electronic lodgement mandatory, New Zealanders are able to reap the economic benefits made possible through the Government's investment in, and commitment to, information and communications technology (ICT). Making Landonline mandatory is consistent with the Government's e-Government and Digital Strategies, and its Growth and Innovation Framework #2 . A significant number of dealings are now mandatory and others will follow in early 2009.

A solid, indefeasible land registration system is a foundation block for land management of private and State assets.

STATE AND TERRITORIAL LOCAL AUTHORITY LAND MANAGEMENT

In New Zealand both the numerous State and Regional/Local Authorities buy, hold and sell land for the “public good”.

Departments of State were historically established along functional lines to provide services to the public by the Crown, for example, the Ministry of Education, Ministry of Justice/Courts/Corrections, Police, Department of Conservation (DOC). Historically, the Ministry of Works purchased land for these public works. Since the early 1990s this responsibility passed to LINZ and its predecessor departments.

Government departments have bought and sold land assets “through” LINZ who exercise statutory delegations. They then use the land for whatever period of time is needed for their core delivery function. This is expanded on further along in this paper. Land is often managed, sometimes very carefully for specific purposes and always within and subject to various pieces of legislation. Public scrutiny of actions and use helps to keep the system fair and equitable.

Over time, various Departments of State have been restructured or aggregated or split out into new departments based on function and service delivery. Various State assets have also been privatised to State owned enterprises with links back to the state preserved through statute with Boards reporting back to Ministers or Crown shareholdings. Appendix 1 shows the transition of the two main Departments of State responsible for land buying selling and management since the mid 1800s to the late 1900s. In the early 1900s Lands and Survey managed some 4.5m hectares of land. Reserves were being created by then as were National Parks. Farms were being developed for returning servicemen and this continued until well after WW II.

The current administration of land by central government is on functional lines.

DOC is the largest Crown landholder, holding approximately 8 million hectares of land. This includes national parks, reserves and conservation areas. DOC holds land as part of its mandate to conserve the natural and historic heritage of New Zealand. Its management is governed primarily by the Conservation Act 1987, National Parks Act 1980 and Reserves Act 1977.

The second largest landholder is the Commissioner of Crown Lands, a statutory officer within LINZ, who is responsible for managing ‘Crown land’ under the Land Act 1948. This is land held in the name of Her Majesty the Queen, but which is not required for any public purpose. The Commissioner administers some 2 million hectares, or 11% of New Zealand’s land area.

The majority of this land is pastoral land in the South Island high country, which is leased out on perpetually renewable leases. The government is currently undertaking a voluntary process, known as tenure review whereby, land with 'significant inherent values' to be

protected through a range of measures including protective covenants or restoring the land to full Crown ownership under DOC administration. At the same time, the lessee is able to gain freehold title of their lease land (except in those cases where all the land is proposed for conservation).

Land held for public works

The third main landholding is for land which is required by the Crown for public works, such as roads, schools, prisons and hospitals. The day-to-day administration of this land rests with the government agency undertaking the public work. However, the chief executive of LINZ is responsible for ensuring that the acquisition or disposal of any such land complies with the Public Works Act.

In New Zealand there is also a layer of Regional and Local Government providing services to their communities. There are 12 Regional Councils and 73 Local Councils (either city or district). Councils generally acquire land under the Public Works Act and can use certain parts of it to regularise usage. However land can also be acquired under the Local Government Act. In some cases they then set apart the land for a specific purpose using the Public Works Act.

Regional Councils by definition cover a wider geographic area than City or district Councils and tend to serve a community of interests who are already part of a City or District. Responsibilities generally revolve around functions or services that are better discharged across a wider geographic area..eg Water supply where one catchment might serve a number of cities or districts, transport planning where trains travel across boundaries or provision or flood protection. Functions also generally encompass environmental areas eg water and air quality, noxious pests plants.

Land can be transferred between Crown and Regional and Local Government by virtue of s52 Public Works Act when one public works act use is finished or it is agreed part of the land is needed....eg part of a school may be needed for a state highway or a local road.

Given that all three sectors have ultimately an accountability to elected members of Parliament or Council and to the communities they serve, be they tax or ratepayers there is a degree of openness and scrutiny available. This is an important point and a useful control mechanism. It tends to lead to greater transparency and minimises the chances of corruption of the system or individuals working in the system. This scrutiny can occur through elected representative channels, media or access to information under the Official Information Act or the Local Government Official Information and Meetings Act. Representations can be made to Ministers of the Crown or elected Council officials.

ENVIRONMENTAL INITIATIVES AND IMPACTS INCLUDING CLIMATE CHANGE

Since 1991, our environmental laws have contained a number of common themes. Chief among these is the principle of sustainability, which is now the umbrella principle for management of natural and physical resources, indigenous forests, and fisheries.

The Resource Management Act 1991 is the cornerstone of New Zealand's environmental legislation. It sets out how we manage our environment, including air, water, soil, biodiversity, the coastal environment, noise, subdivision and land use planning in general. #3

Environmental legislation and standards impacts on what can be done on land and by whom and applies equally to the Crown as private owners.

New Zealand's agricultural, horticultural and tourist industries rely heavily on the quality of our soils and native forests. New Zealanders also value the quality of these resources for recreational activities and a high standard of living. However increasing pressure is being put on these resources:

- Two-thirds of our land is hilly or mountainous and much of it is geologically young rock that erodes easily.
- Our soils, which mainly evolved under forests, tend to be thin and acidic.
- Indigenous forests, which once covered 85 percent of the land area, are now confined to mountain areas and some low-lying parts of the West Coast, Southland and Northland.
- Pests and weeds also present significant problems in indigenous forests and on agricultural land.

In 1996 the Government launched the [Sustainable Land Management Strategy](#). The major emphasis of the SLMS is on providing information and support in a form that will encourage land users to change unsustainable land use practices.

In parallel with this, the Government is developing, improving and supporting existing systems such as environmental indicators for land, research, new policy tools, market incentives and regulations. Various and numerous Government Departments and Territorial Authorities are charged with implementing these initiatives and strategies.

New Zealand is a small trading nation with a strong land management sector as its base. Climate change is going to affect New Zealand's environment and economy. We will all have to adjust to these changes.

While New Zealand's greenhouse gas emissions in a global context are small (0.2 percent of the world's greenhouse gas emissions), on a per-person basis our level of emissions ranks us

12th in the world. Almost 50 percent of New Zealand's greenhouse gas emissions are made up of methane and nitrous oxide, the two gases most closely associated with farming.

Climate change can be fully addressed only through meaningful [international action](#). If New Zealand is to influence international action and protect its own economic, trade and environmental interests, it needs to be seen to be doing its share in responding to climate change.

Climate change presents considerable challenges to all land owners, and particularly [Māori](#). Taking action to adapt to climate change is vital for our economy and environment.

- [Global warming and climate change](#)
- [The international response to climate change](#)
- [Climate change - a New Zealand perspective](#)
- [Māori and climate change](#)

In September 2007, the government released a comprehensive statement on climate change which sets targets for reducing New Zealand greenhouse gas emissions.

The announcements included details of a range of initiatives across all sectors, including a proposed New Zealand Emissions Trading Scheme and a Plan of Action for Sustainable Land Management and Climate Change. The forestry sector will be the first sector to be involved in the Emissions Trading Scheme (ETS). #4

In addition to the ETS, the Government, after consultation with key stakeholders, has developed wider Sustainable Land Management and Climate Change Plan of Action.

Much of the New Zealand economy is based on agriculture and forestry, with nearly half New Zealand's land area is used for primary production. These sectors are vulnerable to changes in the world's climate, both environmentally and economically.

In early 2007, the Government consulted with the land-based sectors on its intention to develop and implement climate change policies through a single sustainable land management and climate change Plan of Action, to be created and implemented jointly with the sectors. This partnership was strongly endorsed by stakeholders, particularly sector and industry leaders.

The Government will continue to develop key elements of this Plan of Action in partnership with industry sectors, local government and Māori.

The Plan of Action will cover adaptation to climate change, mitigation of climate change additional to the ETS and business opportunities arising from climate change. Research, technology transfer and communications will also be covered.

The Government is investing more than \$175 million over five years in a range of programmes.

CURRENT FRAMEWORK PROCESS FOR LAND ACQUISITION AND DISPOSAL.

Before 1988, responsibility for the Crown's acquisition and disposal processes rested with the Ministry of Works and Development. The Ministry planned, purchased land for, and built public works around New Zealand. It also disposed of land when it was no longer required. In 1989 the Ministry was abolished with some components (such as engineering functions) being privatised and sold. The responsibility for acquiring and disposing of land for public works passed through a number of departments before it became part of LINZ when it was created in 1996.

Since a restructuring in 1998, LINZ staff members no longer negotiate the acquisition of land from landowners on behalf of those agencies who need the land for public works. Instead, LINZ set up an accreditation regime for private sector companies and individuals (many of whom were former government employees). LINZ assesses whether those people wishing to be accredited are competent to provide property related services under various categories of accreditation including acquisition and determining the level of compensation payable. These Accredited Suppliers then submit their work to the Clearances team within LINZ who make statutory decisions under delegation on a range of "decision types". These decision types were linked to actions under the PWA and various documents which needed execution.

Crown agencies (such as Transit NZ for the state highway network, the Ministry of Education for schools) that need various acquisition and disposal actions carried out contract with Accredited Suppliers. Accredited Suppliers must comply with LINZ's standards before LINZ's Clearances team will sign any document giving effect to an acquisition or disposal of land under the PWA. Appendix 2 sets out this interrelationship. An advantage of a system like this is it gives separation of responsibilities and accountabilities. A disadvantage is that Chief Executives of acquiring or selling Departments do not actually get to make decisions about the assets they need or have in terms of the compensation for acquisition or sale process. They do however sign off as to the financial approval prior to acquisition. Clearly they also have input and responsibility once they own it so they then become the land administrator.

In New Zealand decision making on land transactions has always been centralised. In the past few years there has been an idea mooted to transfer that decision making function to the various Chief Executives of the Crown agencies but as yet a review of the PWA has not progressed.

An interesting feature of the PWA is that once land acquired either by negotiation or compulsory action at anytime in the past is no longer needed for public work then it is to be offered back to the former owner or their immediate successor at current market value. The Act provides for certain exemptions. The application of those exemptions is one of the most litigious areas in Crown property dealings over the last 20 years with numerous court cases.

Having this level of scrutiny on the State and Territorial Local Authorities..as it applies equally to both...helps to protect against inappropriate use of land and adds a healthy tension to the activities of the state and Councils. It is in essence a check and balance on the needs of the State against the needs of a private citizen.

Work flows to Clearances from Accredited Suppliers in a report summarising the chronology of “hands on” time spent negotiating on the transaction. That may have taken a few years to accumulate given the complex nature of some acquisition work or months in terms of disposals. Included in the report is all the information deemed necessary for the decision maker to assure it is correct, make a preliminary finding and then make a statutory decision. This Documented Decision Making Process (DDMP) is considered later in this paper. Decisions are final and are only reviewable if it is considered that a mistake of fact or law has been made.

STANDARDS

LINZ sets standards to ensure compliance with the PWA and various other property related Acts. The latest acquisition standard was revised by a committee representing parties directly affected by the acquisition of land and was published following public consultation. Standards set out what is required by LINZ decision-makers for a statutory decision and what information must be retained on file by accredited suppliers for auditing / monitoring purposes. A separate Guidelines document provides guidance on the “how” to accredited suppliers might be completed so they are acceptable to LINZ and what other information may need to be kept to support decision makers.

LINZ is currently reviewing its standards for the disposal of public works land.

LINZ’s DECISION MAKING PROCESS- THE DOCUMENTED DECISION MAKING PROCESS (DDMP) and CLEARANCES DECISION TRACKER (CDT)

Approximately 3 years ago LINZ recognised that it needed to ensure robust and consistent decisions were being made. That isn’t to say that for the preceding 7 years that correct decisions had not been (as evidenced favourably by very little litigation action) but that a gap in the process was identified with obvious risks. LINZ developed the Documented Decision-Making Process (DDMP) (Appendix 3) which is a simplified documented set of steps to take information received and work it through the steps of a consistent and comprehensive risk based “quality assurance”, “preliminary findings” to the making of a “decision”. For major decisions around high risk areas it includes peer review at the preliminary findings stage. Working papers are gradually being developed around the process, one being in place for the last 2 years on offer back decisions. A recent review of the acquisition standard will lead to working papers on that process being developed in early to mid 2008.

Working papers also link to a checklist to ensure that all administrative law requirements are met.

The four main decision process in the DDMP actions are “Identify options”, “Evaluate options”, “Formulate a view” and “Finalise Decision”. Under those actions are steps of “Quality assurance”, “Preliminary findings” and “Finalise decision”. Clearances makes approximately 2500 statutory decisions each year with associated document execution and every decision goes through the steps. Clearly some decisions are easier than others and carry less risk so the process from a time perspective is short...say 30 minutes but others are more complex taking hours over a period of time.

Decision making is an important part of Land Administration in its widest and narrowest contexts. Our experience is that having and using a process that documents why you are thinking of making a decision and the reasons for making it, having done quality assurance and formulating preliminary findings adds significant value. Robustness of decision making is achieved as is consistent and clear decisions. Management can be assured that delegated staff have used a process to arrive at what is expected to be a sustainable decision capable of withstanding scrutiny through the courts of law. It is based around administrative law principles.

Allied to the DDMP was the recent introduction of an electronic system (Clearances Decision Tracker) which tracks the progress and status of all decisions received and made by Clearances. This system now records the last 10 years of decisions. We can also capture a large amount of information for current transactions. The information recorded will vary from decision type to decision type.

A series of reports can be run including workload reporting, overall time taken to make decisions, time spent making decisions, review of preliminary findings for self improvement.

The system automatically emails updates out to the accredited supplier who sent in the work as the decision passes through various statuses. LINZ charges for each decision made and the CDT is linked to LINZ’s financial section so invoices can be sent out. Fees were set in 2002 to recover costs from third parties. They have not been updated since

The DDMP is offered up as a useful tool for land administrators and decision makers to use.

- 1.. <http://www.teara.govt.nz/1966/P/PropertyLawOfReal/TheTorrensSystem/en>
- 2 Landonline business case.
- 3..Ministry For the Environment website www.mfe.govt.nz
- 4..Ministry of Agriculture and Fisheries website [www.maf.govt.nz/climate change](http://www.maf.govt.nz/climate%20change)

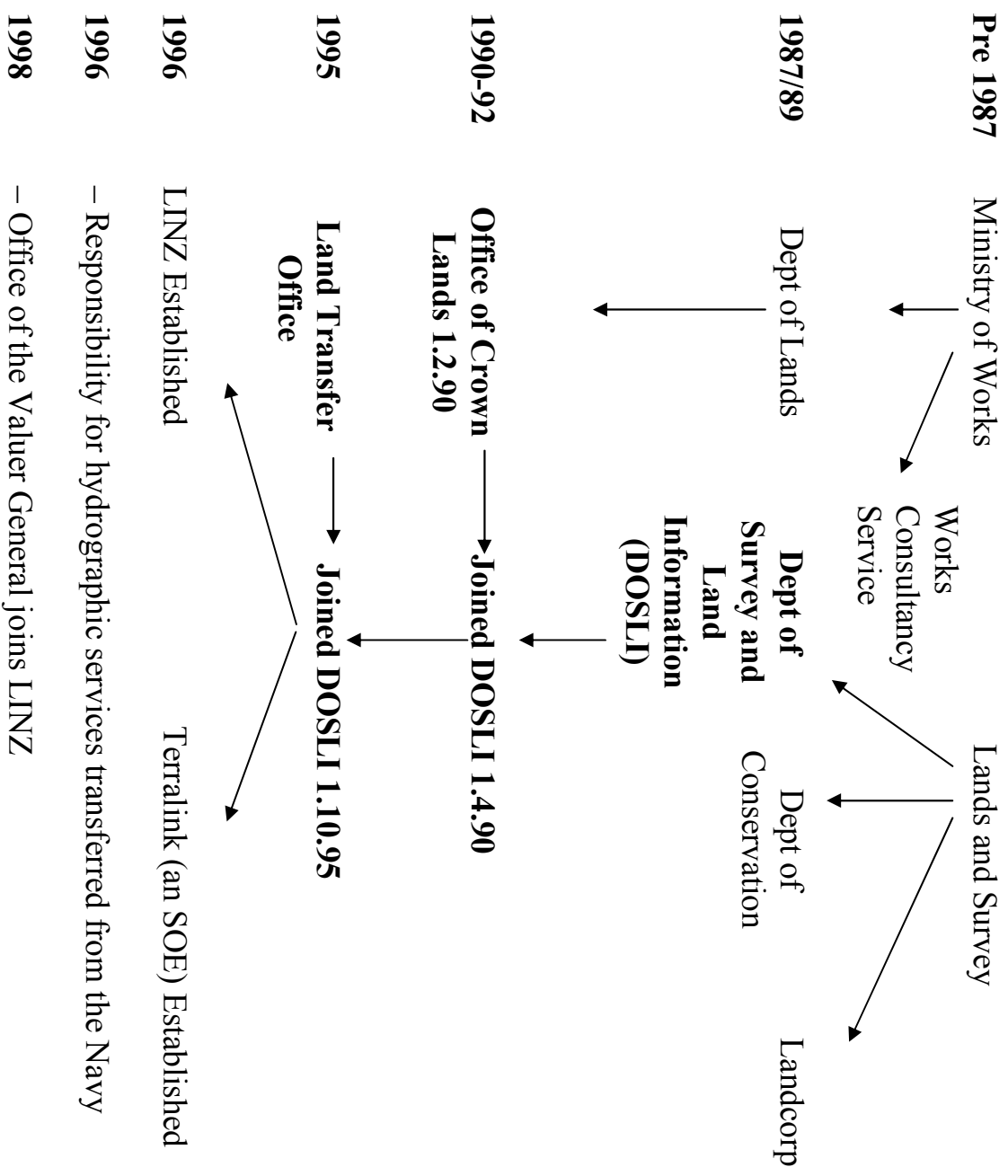
BIOGRAPHICAL NOTES

Since 1977 I have worked for a variety of State and Local Government property organisations namely Lands and Survey, Forest Service, Ministry of Works, Wellington Regional Council, Wellington City Council and Land Information New Zealand. In that time I have worked on

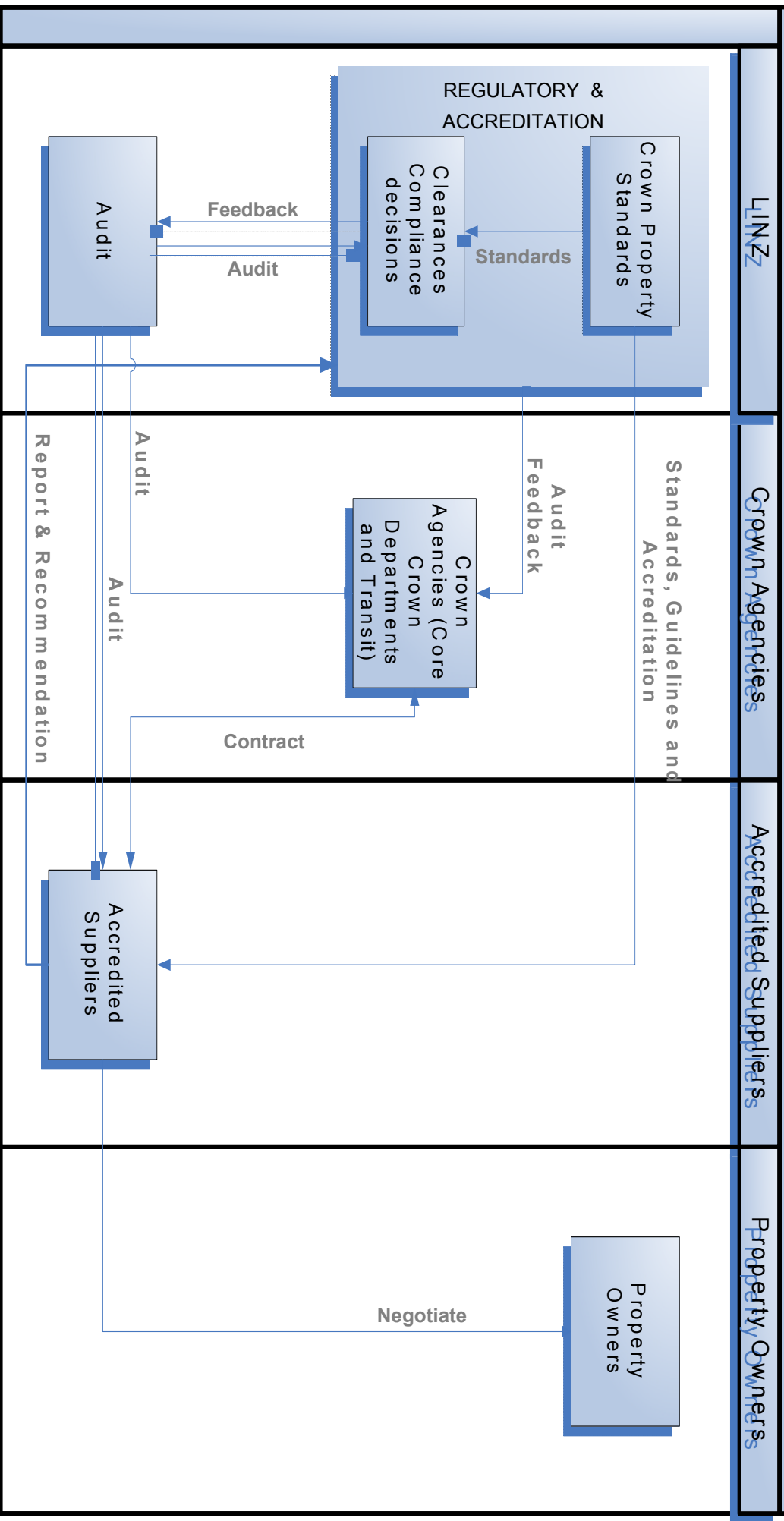
major land acquisition and disposal projects both from a hands on negotiating perspective including 2 major land acquisition projects of 1000 hours plus and from a regulatory perspective. I have driven and assisted in the design of system processes. I presented a paper at FIG 9 Helsinki 2007 on compulsory acquisition.

CONTACTS

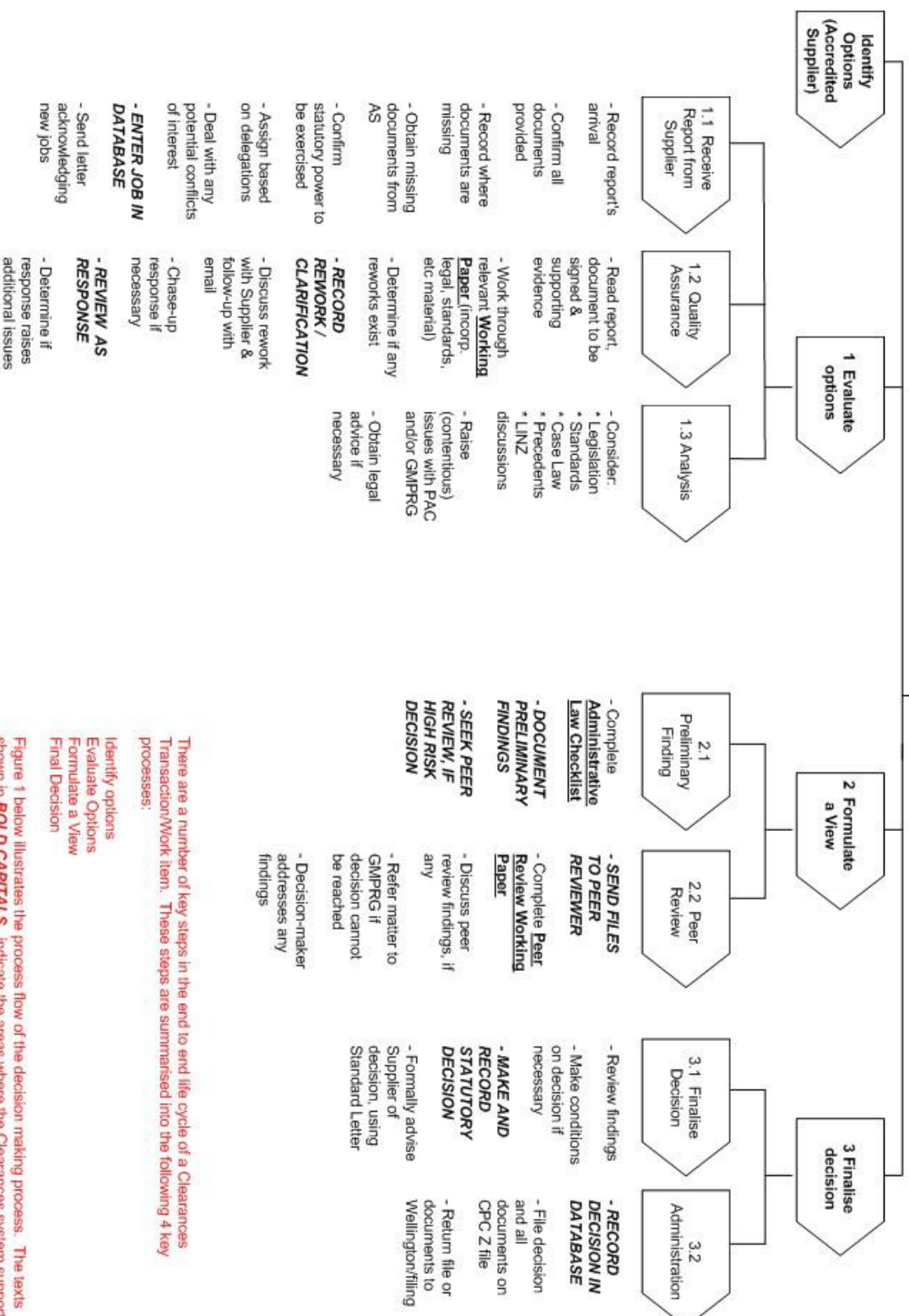
Trevor Knowles
Manager Clearances
LINZ
NEW ZEALAND
Phone 64 (04) 4600584
Fax 64(04)4600194
Email tknowles@linz.govt.nz
<http://www.linz.govt.nz>



Roles and Responsibilities



Documented Decision-Making Process (Manual and Application)



There are a number of key steps in the end to end life cycle of a Clearances Transaction/Work Item. These steps are summarised into the following 4 key processes:

- Identify options
- Evaluate Options
- Formulate a View
- Final Decision

Figure 1 below illustrates the process flow of the decision making process. The texts shown in **BOLD CAPITALS** indicate the areas where the Clearances system support these processes.