



## Regulatory Impact Statement Addendum: Review of the Public Works Act 1981

<b>Decision sought</b>	<i>This analysis has been produced for the purpose of informing additional Cabinet decisions on amendments to the Public Works Act 1981, following a targeted review of the Act agreed by Cabinet in June 2024 and initial Cabinet decisions on amendments in December 2024.</i>
<b>Agency responsible</b>	<i>Toitū Te Whenua Land Information New Zealand</i>
<b>Proposing Ministers</b>	<i>Minister for Land Information</i>
<b>Date finalised</b>	<i>24 February 2025</i>

### Briefly describe the Minister's regulatory proposals

On 16 December 2024, Cabinet agreed to targeted legislative changes in the Public Works Act 1981 (PWA) across acquisitions, compensation and objections. The paper was accompanied by the Regulatory Impact Statement: *Review of the Public Works Act 1981*, finalised on 28 November 2024 (the Primary RIS). The Minister for Land Information (the Minister) was invited to report back to Cabinet seeking further decisions, including detailed design of certain options [CAB-24-MIN-0504].

This addendum supplements the analysis on proposals from the Primary RIS and provides analysis of the additional policy issues that the Minister was invited to report back on in December. A package of multiple options is proposed for consideration by Cabinet across the following areas:

- **PART A – Acquisition:** includes ensuring minimum requirements ahead of compulsory acquisition, improving acquisition procedures and lengthening negotiation timeframes for certain Māori freehold land.
- **PART B – Compensation:** includes incentive, home-loss and land-loss payments to encourage early agreement for land acquisitions and eligibility for incentive payments for Māori freehold land.
- **PART C – Emergency provisions:** includes options for the design and elements of an emergency regime that supports emergency responses through an amended PWA process.
- **Part D – Regulatory Tools:** includes options for providing additional regulatory tools to maintain system integrity and stewardship of the PWA system.

## Summary: Problem definition and options

### What is the policy problem?

As referred to in the Primary RIS, New Zealand is experiencing a long-running infrastructure deficit. While not the only driver, a contributor is that the PWA processes for the acquisition of land for public works can add unnecessary delays, costs, and uncertainty for infrastructure projects.

The status quo does not provide sufficient settings to support the Government's commitment to deliver public infrastructure. Intervention is required to ensure that the mechanisms to acquire land under the PWA are more efficient, effective, and clear.

Toitū Te Whenua Land Information New Zealand (LINZ) has identified that establishing bespoke emergency legislation for accelerating land acquisition following an emergency is time-consuming and can delay recovery efforts.

### What is the policy objective?

The key overarching objectives, as agreed by Cabinet, are to make amendments that facilitate the Government's delivery of public infrastructure, while retaining the principles of the PWA, focused on improving efficiency, effectiveness and clarity. Proposals aim to maintain natural justice and uphold property rights, as well as the Crown's Treaty Settlement obligations.

Indicators of success include, but are not limited to, faster acquisitions, greater uptake of acquisitions by agreement and fewer objections. These indicators will be monitored as part of LINZ's regulatory function to monitor the PWA system.

### What policy options have been considered?

A list of LINZ's preferred options is provided below. Further detail on alternative options is provided under each part of this Regulatory Impact Statement Addendum (RIS addendum).

#### *Acquisitions*

- **A1:** Notice of desire is removed.
- **A1(i):** Minimum requirements to be met by users ahead of compulsory acquisition via the issue of a notice of intention.
- **A2:** Lengthening minimum negotiation timeframes for certain Māori freehold land.

#### *Compensation*

- **B1c:** Incentive payment of 10% of land value.
- **B2a:** Discretion to provide the value of the incentive payment in cases where Māori freehold land is acquired or taken after a notice of intention is issued.
- **B3b:** Minimum incentive payment of \$5000.
- **B4b:** Maximum incentive payment of \$100,000.
- **B6a:** Extend eligibility for the home-loss payments to each principal place of residence on a parcel of land where it is a principal place of residence of an owner of the land.

#### *Emergency provisions*

- **C1a:** An emergency regime sits under the PWA but is dormant until activated by Order in Council.
- **C1c:** Regime limited to restoration of existing public works, or the functions that they serve, and would cover works for network utility operators.
- **C1d:** Regime excludes protected Māori land.

- **C2a:** Retaining a simplified requirement to attempt to reach acquisition by agreement.
- **C2b:** Removing the right to object to the taking of land to the Environment Court but allow submissions.
- **C2e:** All landowners entitled to value of incentive payments, even where land acquired compulsorily.
- **C2f:** Owners of protected Māori land also entitled to value of incentive payments.
- **C2g:** Simplified Notice of Intention and Proclamation processes.

#### *Regulatory tools*

- **D1:** Acknowledging LINZ's role as responsible for setting standards and guidelines in legislation.
- **D4:** Require users to routinely provide LINZ with information.
- **D5:** Routine reporting by LINZ on PWA system performance.

#### **What consultation has been undertaken?**

An Expert Advisory Panel (the Panel) was established in 2024 to provide independent, specialist advice to the LINZ Chief Executive and to engage with critical stakeholders on potential reforms to the PWA. Further targeted consultation was undertaken with key agencies in the development of proposals, who have generally agreed with the direction and intent of the preferred options. The select committee process provides an opportunity for the public to share their views on the proposals and to seek information on the financial implications for local authorities the.

#### **Is the preferred option in the Cabinet paper the same as preferred option in the RIS?**

Yes, LINZ's preferred options in this RIS addendum align with the Minister's proposals in the Cabinet paper.

## **Summary: Minister's preferred option in the Cabinet paper**

### **Costs (Core information)**

**Outline the key monetised and non-monetised costs, where those costs fall (e.g. what people or organisations, or environments), and the nature of those impacts (e.g. direct or indirect)**

The proposals create higher direct costs for users of the PWA, as they will need to pay additional compensation of up to 10 percent of land value to incentivise agreement when acquiring land. The total cost has not been quantified due to the lack of data. There is significant variation between projects in the value of land interests required, even for the same type of public work. Factors include the scale and location of the public work, the existing use of the land and the type of land interest required for the public work. However, costs are expected to be offset by reduced legal costs and avoided delays in infrastructure delivery.

The proposals will also create increased costs for LINZ, Crown Users and Local Authorities due to the funding and resources required to implement, update or maintain requirements under these proposals. For example, to establish or maintain new systems and processes. In some cases, there will also be ongoing costs, such as Crown users to ensure compliance with new requirements, and LINZ in terms of additional regulatory tools and responsibilities.

Costs are expected to be mitigated by the overall time savings of earlier more efficient acquisition by agreement.

## Benefits (Core information)

**Outline the key monetised and non-monetised benefits, where those benefits fall (e.g. what people or organisations, or environments), and the nature of those impacts (e.g. direct or indirect)**

The package of preferred proposals will increase confidence in the PWA system by improving clarity, information and understanding of the system as a whole. Proposals will encourage earlier agreement of acquisitions, creating better outcomes for both landowners and Crown users. In the case of land acquired in an emergency, proposals will also facilitate quicker restoration of infrastructure to support recovery. Proposed amendments will better reflect the complexities of acquiring Māori freehold land and better accommodate the unique features of the Māori land tenure system.

## Balance of benefits and costs (Core information)

**Does the RIS indicate that the benefits of the Minister's preferred option are likely to outweigh the costs?**

With the information available, LINZ considers that the increased costs to implement the preferred proposals will be outweighed by the benefits of improvements to the PWA system. Increased efficiencies and effectiveness realised by these additional amendments will create better outcomes for those who use, or are affected by, the PWA and will support delivery of infrastructure for the benefit of the wider public. However, due to limited consultation, data, and some unknowns, such as the effectiveness of the proposed incentive payments, LINZ is only able to anticipate impacts and success of proposals with a medium level of certainty.

## Implementation

**How will the proposal be implemented, who will implement it, and what are the risks?**

Most of the proposals will be given effect through amendments to the PWA, with a Bill expected to be passed by the end of 2025. New requirements will apply as soon as possible to support the Government's infrastructure goals. Transitional provisions are required to address acquisitions already underway on commencement date.

LINZ will engage with affected groups to ensure the system changes are well socialised and understood. This will be crucial given limited consultation during the development of proposals.

LINZ will be responsible for administering the legislation and, with additional regulatory tools, will ensure system wide insights can be drawn to identify and address any issues in the system. These tools will help to mitigate many of the risks associated with the changes proposed in this RIS addendum.

## Limitations and Constraints on Analysis

Please refer to the section "Limitations and Constraints on Analysis" in the Primary RIS.

The Review has been targeted based on the scope set by Cabinet [CAB-24-MIN-0203.01]. A more fundamental review of the PWA would have required a longer period of analysis and more consultation, which would have delayed legislative amendments.

This addendum assumes incentive payments will be significant in encouraging landowners to opt for early agreement to property acquisition. There is a high level of uncertainty about what level of payment will be most effective to influence landowner behaviour.



I have read the Regulatory Impact Statement and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.



Date: 27/02/2025

**Amanda Moran**  
**Head of Strategy, Policy and Ministerials**  
**Toitū Te Whenua, Land Information New Zealand**

### Quality Assurance Statement

**Reviewing Agency:** Land Information New Zealand and the Ministry for the Environment

**QA rating:** Partially meets

**Panel Comment:**

This Regulatory Impact Statement (RIS) Addendum has been reviewed by a panel of representatives from Toitū Te Whenua Land Information New Zealand and the Ministry for the Environment.

The Panel considers that the RIS Addendum is clear, concise and convincing and reflects the nature of this targeted review of the Public Works Act. The Panel acknowledges the limitations in relation to consultation and is of the view that the RIS Addendum partially meets this criteria. The Panel notes that LINZ expects the public to have the opportunity to submit their views on any proposed changes through the Select Committee process. The RIS Addendum has been given a 'partially meets' rating against the quality assurance criteria.

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## Introduction

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### ***Cabinet directed a targeted review of the Public Works Act 1981 and agreed to an initial package of amendments to the Act***

1. On 10 June 2024, Cabinet agreed to initiate a review of the Public Works Act 1981 (PWA) to facilitate the Government's delivery of public infrastructure while retaining the principles of the PWA, through targeted amendments focused on improving efficiency, effectiveness and clarity [CAB-24-MIN-023.01].
2. Cabinet directed Toitū Te Whenua Land Information New Zealand (LINZ) to establish an Expert Advisory Panel (the Panel) to provide independent, specialist advice to the LINZ Chief Executive and to engage with critical stakeholders on potential reforms to the PWA.
3. On 16 December 2024, Cabinet agreed to targeted legislative changes in the PWA across acquisitions, compensation and objections [CAB-24-MIN-0504]. Cabinet also noted that the Minister for Land Information (the Minister) would report back on further decisions related to the Review, including detailed design of some of the options presented in the December Cabinet paper.
4. The December Cabinet paper was accompanied by the Regulatory Impact Statement: *Review of the Public Works Act 1981 Review*, finalised on 28 November 2024 [CAB-24-MIN-0504]. For the purposes of this document, this document will be referred to as the "Primary RIS".
5. Further information on the background of the Public Works Act 1981 Review (the Review) can be found in the Primary RIS.

### ***Additional policy decisions under the PWA Review are now being sought***

6. This addendum supplements the analysis on proposals from the Primary RIS, which accompanied the December Cabinet paper. This addendum provides analysis of additional policy issues that the Minister was invited to report back on in December [CAB-24-MIN-0504].
7. This RIS addendum sets out options and analysis for the following additional issues:

#### **PART A: ACQUISITIONS**

- **Issue A: Acquisition procedures ahead of compulsory acquisition** – Includes removal of the notice of desire, minimum requirements ahead of compulsory acquisition, public notification and lengthening minimum negotiation timeframes for certain Māori freehold land.

#### **PART B: COMPENSATION**

- **Issue B1: Incentivising early agreement to the acquisition of land** – Includes options for the percentage paid as an incentive if an agreement is reached prior to issuing a notice of intention, eligibility for Māori freehold land and the minimum and maximum for incentive payments.
- **Issue B2: Making home-loss payments and land-loss payments fit for purpose** – Includes options to update the value of home-loss and land-loss payments, extending eligibility for home-loss payments to situations where multiple dwellings are acquired on a single parcel of land.



## PART C: EMERGENCY PROVISIONS

- **Issue C: Emergency provisions** – Includes options for an emergency regime land acquisition process that supports emergency recovery through an amended PWA process that can be activated following an emergency.

## PART D: REGULATORY TOOLS

- **Issue D: Regulatory tools** – Includes options for the role of LINZ standards, improving system level information and building transparency and accountability.

### ***Considering additional options for improving the PWA***

#### *Consultation undertaken*

8. An Expert Advisory Panel was established in 2024 to provide independent, specialist advice to the LINZ Chief Executive and to engage with critical stakeholders on potential reforms to the PWA. Further targeted consultation was undertaken with key agencies and stakeholders in the development of the proposals in this RIS addendum. Given time constraints, consultation has been limited. There will be an opportunity for the public to be consulted during the Select Committee process. The Panel's advice also informed proposals.

#### *Scope that options have been considered within*

9. The scope of the Review was set by Cabinet when directing the undertaking of the Review in June 2024 (as referenced in the background part of this RIS addendum). Cabinet agreed to:
  - retain the principles of the PWA
  - targeted amendments focused on improving efficiency, effectiveness and clarity
  - focus on key issues in the PWA's land acquisition and compensation functions
  - proposals maintaining the fundamental principles of the PWA, including natural justice and property rights, and that the Crown's Treaty of Waitangi settlement obligations are upheld.
10. Certain proposals have been further limited in scope by Cabinet decisions in December [ECO-24-MIN-0306]. Where applicable, this is specified in the context of the proposals throughout the RIS addendum.

#### *Acknowledging the context and complexities of Māori land*

11. Paragraphs 196 to 199 of the Primary RIS identifies Iwi/Māori interests in relation to objections, which is also applicable to options in this RIS addendum. These interests have resulted in protected Māori land being generally excluded from the PWA Review and the emergency regime for accelerated acquisition processes in this RIS addendum. Incentive payments (including in the emergency regime) are an exception to this, where the exclusion would raise New Zealand Bill of Rights (NZ BORA) inconsistency issues. The value of incentive payments is proposed to be applied to protected Māori Land.
12. The definition of protected Māori land would align with the existing definition under section 11 of the Infrastructure Funding and Financing Act 2020, as also used in the work to accelerate PWA processes for critical infrastructure.

#### *Criteria used to compare options to the status quo*

13. Options have been measured against the same criteria as set out in the Primary RIS (refer to paragraphs 12-19 for further information). The following set of criteria has been applied to every option discussed in this addendum.
14. For the purposes of this RIS addendum (particularly compensation proposals), affordability has been considered and measured against the 'Feasibility' criterion.

<b>Efficiency</b>	The option is effective at improving process efficiency and removing unnecessary duplication.
<b>Effectiveness</b>	The option ensures that the legislation is workable, fit for purpose and realises the Crown's ability to undertake public works.
<b>Clarity</b>	The option provides transparency for those using and affected by PWA processes.
<b>Feasibility</b>	The option can be easily implemented (including affordability) to achieve the policy objective.

15. As in the Primary RIS, the options throughout this RIS addendum have been analysed using the following key.

<b>Key for qualitative judgement</b>	
<b>++</b>	Much better than doing nothing/the status quo/counterfactual
<b>+</b>	Better than doing nothing/the status quo/counterfactual
<b>+/-</b>	A mixture of positive and negative effects
<b>0</b>	About the same as doing nothing /the status quo/counterfactual
<b>-</b>	Worse than doing nothing/the status quo/counterfactual
<b>--</b>	Much worse than doing nothing/the status quo/counterfactual

16. The marginal benefits and costs tables were determined based on the following criteria:  
*Impact*

- **Low:** Proposal expected to have **little** cost or benefit impacts for the affected user compared to the status quo.
- **Medium:** Proposal expected to have **some** cost or benefit impacts for the affected user compared to the status quo.
- **High:** Proposal expected to have **significant** cost or benefit impacts for the affected user based on the status quo.

*Evidence certainty*

- **Low:** Level of confidence in impact rating is **weak** based on the evidence and information available.
- **Medium:** Level of confidence in impact rating is **medium** based on the evidence and information available.
- **High:** Level of confidence in impact rating is **strong** based on the evidence and information available.

**Minister's preferred options**

17. LINZ's preferred options, as set out in this RIS addendum, align with the Minister's proposals in the Cabinet paper.

## Part A: Acquisitions

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### Acquisition procedures ahead of compulsory acquisition

#### Section 1(A): Diagnosing the policy problem

**What is the context behind the policy problem and how is the status quo expected to develop?**

18. The Primary RIS (Part A, pages 12 to 37) considered who should have access to acquisition powers under the PWA, and how those powers should be enabled.
19. In December 2024, Cabinet noted that the Minister would report back to Cabinet with decisions relating to acquisition procedures and processes. Cabinet noted that the Minister intended, in-principle, to remove the section 18 notice (notice of desire) to create efficiencies, subject to minimum good faith negotiation requirements that must be met ahead of proceeding to compulsory acquisition [CAB-24-MIN-0504].
20. This RIS addendum follows on from the primary RIS to discuss the acquisition processes and procedures that guide acquisition powers and to outline options for their most efficient and effective use.

*The PWA sets out stages for compulsory acquisition*

21. The PWA sets out processes for compulsory acquisition, including a notice of desire and a section 23 notice (notice of intention) to acquire land. A high-level overview of how these notices fit in the process is at paragraph 17 of the primary RIS.
22. A notice of desire outlines the procedures that must be met before proceeding to compulsorily acquire land under the PWA:
  - Serving a notice of desire on every person having a registered interest in the land that indicates that a user desires to acquire their land
  - A notice is registered against the record of title by the Registrar-General of Land so any current owner or purchaser is aware of a user's desire to acquire the land
  - An owner must be invited to sell their land and, following a valuation, be advised of the estimated amount of compensation that they would be entitled to under the PWA
  - Every endeavour to negotiate in good faith with the owner must be made in an attempt to reach an agreement for the acquisition of the land
  - If after a period of three months, agreement cannot be reached or the landowner refuses to negotiate or respond, the Minister or local authority may proceed to the compulsory acquisition of the land by issuing a notice of intention, to which an owner may object.

*Acquisition processes and procedures are inflexible and fail to reflect modern practice and needs*

23. During the Review, PWA users and the Panel described procedural difficulties when acquiring land, causing delay. Over time, users found that issuing a notice of desire to landowners to initiate negotiations was heavy-handed, overly formal and lacking context. Users stated that the issuing of notices of desire could sometimes have a negative impact on relationships and negotiations with landowners. Stakeholders told the Panel and LINZ that they found that it is often more beneficial to reach out to landowners to begin negotiating about land requirements far ahead of initiating formal land acquisition procedures.

24. A notice of desire expires after one year from it being issued. Users viewed that this expiry creates an unnecessary, inflexible, and arbitrary pressure point – disadvantaging landowners and users.
25. New Zealand is the only jurisdiction that requires two notices before compulsory acquisition. For Crown users, the Minister issues the notice of desire and this function is delegated to LINZ. Crown users say this slows down the process.
26. As Māori freehold land often has many owners, Te Ture Whenua Māori Act 1993 (TTWMA) sets out procedural steps for how this form of tenure is governed. This includes assembling owners or the land management entity, a threshold of at least 75% of owners agreeing and confirmation of decisions by the Māori Land Court. These restrictions on the transfer of ownership make the PWA process challenging both for Māori landowners and acquiring authorities.
27. Left unaddressed, acquisition of land will not meet the needs and speed required to deliver infrastructure in line with Government's expectations and may potentially damage relationships between PWA users and owners, including those who own Māori freehold land.

### **What is the policy problem or opportunity?**

*A notice of desire conveys information to landowners and provides procedural certainty, but these considerations can be achieved without a statutory notice*

28. Removing the notice of desire and setting minimum requirements ahead of compulsory acquisition will streamline and safeguard acquisition procedures.
29. The notice of desire process is inefficient. The formality of statutory notice requires resource to prepare and issue, and for Crown users, approval needs to be sought from the Minister (delegated to LINZ) to issue the notice. It is possible to create efficiencies by reducing the procedural processes and formality around the commencement of negotiations through to issuing a notice of intention.
30. The Panel supported a one-notice system with minimum requirements ahead of compulsory acquisition, such as retaining endeavours to negotiate in good faith for a period of three months.
31. The Panel also considered that it may be appropriate to specify what constitutes negotiations in 'good faith' such as the setting of minimum requirements ahead of compulsory acquisition. Minimum standards protect landowners by providing procedural transparency and clarity. Minimum standards promote good practice from users.

*Extending timeframe for negotiation of Māori freehold land supports effective participation in PWA processes*

32. The minimum three-month timeframe between a notice of desire and notice of intention is often not enough time to enable multiply-owned Māori land owners to follow the processes required under the TTWMA.
33. Lengthening the minimum period of time to six months for the negotiation of Māori freehold land would better accommodate various management structures and support Māori landowners to make decisions about their land.

### **What objectives are sought in relation to the policy problem?**

34. The policy objective is to streamline acquisition processes, and to improve communication clarity, transparency around processes, rights and entitlements (including relevant persons being informed), and flexibility and certainty for users and landowners.

35. Another objective is to better accommodate for processes relating to Māori freehold landowners.

## Section 2(A): Assessing options to address the policy problem

### What options are being considered?

36. This section outlines the options that were considered. If the notice of desire is removed (Option A1), it is important that landowners continue to receive explicit written notice that compulsory acquisition may be contemplated if agreement cannot be reached. Options A1(i) and A1(ii) provide alternative requirements to the notice of desire that maintain its benefits and are contingent on A1 progressing. However, Options A1(i) and A1(ii) are not mutually exclusive. Option A2 can be progressed with, or without, any combination of the other options.

PART A: Acquisitions	
<b>Statutory notice at section 18 (notice of desire)</b>	<b>A1 – Notice of desire is removed.</b>
<b>Procedures ahead of a notice of intention</b> (Contingent on A1 progressing)	<b>A1(i) – Minimum requirements to be met by users ahead of compulsory acquisition via the issue of a notice of intention.</b>
	<b>A1(ii) – The PWA is silent on minimum requirements for good faith negotiations.</b>
<b>Māori freehold land</b>	<b>A2 – Lengthening minimum negotiations timeframes for certain Māori freehold land.</b>

### **Statutory notice at section 18 (notice of desire)**

#### **Option A1 – Notice of desire is removed**

37. This option would remove the statutory requirement for the issuing of a notice of desire ahead of compulsory acquisition.
38. Removing the requirement to issue statutory notice reduces formality for landowners and users and reduces administrative burden at the beginning stages of acquisition processes. As LINZ involvement will no longer be required to issue a notice identifying the land that may be taken through a PWA process, this option should increase efficiency and reduce double-handling for Crown users of the PWA.

### **Procedures ahead of a notice of intention**

#### **Option A1(i) – Minimum requirements to be met by users ahead of compulsory acquisition via the issue of a notice of intention**

39. This option would require minimum standards to be met ahead of compulsory acquisition, including all of the proposed requirements as follows:
- **Written summaries of key information must be provided during early stages of engagement** - Information must be provided to landowners and people with registered interests in the land, such as the area of land being acquired, the proposed form of the tenure and the purpose for this, PWA processes, and rights and entitlements under these. The information provided to landowners and people with registered interest may be different, owing to the varying nature of their interests and rights under the PWA. This requirement would sit at a high level in the PWA, supported by standards and guidance.

- **Landowners must receive an invitation to sell** – The existing requirement would be retained and would include an estimate of compensation based on a valuation. The invitation would act as the formal starting point for the period of subsequent endeavours to negotiate in good faith. Unlike a notice of desire, it would not expire after one year.
  - **Endeavours to negotiate in good faith with landowners must take place for a minimum period of three months** - This option retains an element of the current notice of desire requirement (which will be removed) that users must endeavour to negotiate in good faith with landowners for at least three months before proceeding to compulsory acquisition.
40. The requirement to provide written summaries of key information during early stages of engagement supports transparency of process and fairness toward landowners, ensuring that they are able to be engaged in procedures while understanding their rights, duties and obligations. The requirement is also a mechanism which notifies landowners that acquisition procedures are underway. For entities that can negotiate outside the PWA, like Transpower, this would provide a clear indication for landowners of when negotiations are no longer purely commercial.
41. Retaining the requirement that landowners must receive an invitation to sell acts as a clear trigger point for the start of negotiations by providing landowners with something to consider, even with the removal of the notice of desire. LINZ considers that providing landowners with an assessment of compensation is a critical requirement of good faith negotiation. Providing an estimate of compensation (based on a valuation) in the invitation also provides transparency and fairness to protect against unfair offers during negotiations (i.e. offering too low). It supports the fundamental principle of the PWA that landowners are entitled to full compensation.
42. Retaining the three-month minimum period for negotiations encourages acquisition by agreement, which supports better outcomes for landowners, while reducing complications from legal challenges during compulsory takings. This requirement also provides procedural clarity. If a minimum period was not specified in the legislation, the period that constitutes good faith negotiation could be interpreted differently.

#### **Option A1(ii) – The PWA is silent on minimum requirements for good faith negotiations**

43. Under this option, following the removal of a notice of desire, a notice of intention can be issued after a minimum period of endeavours to negotiate in good faith. It is up to users to evidence that good faith negotiations have taken place.
44. LINZ would provide non-statutory guidance on best practice for good faith negotiations under this option and option A2.
45. This option would provide flexibility for users to use best judgement and system expertise to evidence that good faith negotiations have taken place. However, this option would reduce certainty and transparency for users, landowners and decision-makers and would likely reduce legislative clarity, which if challenged could delay and extend project timeframes. It is not known whether certainty under option A1(i) or flexibility under option A1(ii) would offer greater efficiency.



***Māori freehold land***

**Option A2: Lengthening minimum negotiations timeframes for certain Māori freehold land.**

46. This option would require good faith negotiations be six months for Māori freehold land with more than four beneficial owners or which is held by a Māori incorporation (as defined in section 4 of TTWMA) with more than four shareholders, to recognise that additional time is needed to reach agreement.
47. Although this option extends the timeframe for acquisitions, current practice often results in negotiations lengthening beyond the three-month timeframe, meaning this change would not depart greatly from the status quo. Users have told LINZ that current practice is to avoid compulsory acquisition wherever possible, and so to prolong negotiations where necessary to support reaching agreement.

Issue A: Acquisition procedures ahead of compulsory acquisition

How do the options compare to the status quo/counterfactual?

Table 1: Options analysis for Issue A (acquisition procedures ahead of compulsory acquisition)

Option assessment criteria	Status quo/counterfactual	Statutory notice at section 18 (notice of desire)	Procedures ahead of a notice of intention (Contingent on A1 progressing)		Māori freehold land
	<i>A formal statutory notice must be issued ahead of compulsory acquisition which starts the clock on negotiations</i>	A1 – Notice of desire is removed	Option A1(i) – Minimum requirements to be met by users ahead of compulsory acquisition via the issue of a notice of intention	A1(ii) – The PWA is silent on minimum requirements for good faith negotiations	A2 – Lengthening minimum negotiations timeframes for certain Māori freehold land
Effectiveness	0	++	++	+	+
Efficiency	0	++	0	+	0
Clarity	0	+/-	++	-	+
Feasibility	0	0	+	--	+
Overall assessment	0	+4	+5	-1	+3

**What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?**

48. LINZ's preferred options to be progressed are:
- **Option A1:** Notice of desire is removed.
  - **Option A1(i):** Set out minimum procedural requirements for good faith negotiation.
  - **Option A2:** Lengthening minimum negotiation timeframes for certain Māori freehold land.
49. The preferred options streamline acquisition procedures, reducing the procedural processes and formality around the commencement of negotiations leading to a notice of intention. Clarification will be provided in the legislation that before issuing the notice of intention or section 26 Proclamation, the Minister or local authority must consider matters aligning with what the Environment Court currently considers as part of an objection process. This reflects current practice, and the same requirements will apply to the accelerated process to support critical infrastructure. This will clarify the decision making at each stage of acquisition and reduce legal risk.
50. The preferred options also protect landowners by ensuring they are informed of PWA procedures, as well as their rights, obligations and entitlements under the PWA. The enhanced flexibility in acquisition procedures provided by these options is anticipated to support effective acquisition procedures.

**What are the marginal costs and benefits of the preferred option in the Cabinet paper?**

Affected groups	Comment	Impact	Evidence Certainty
<b>Additional costs of the preferred option compared to taking no action</b>			
Crown users (e.g., NZTA)	Users may require time and resource support to shift to new, more autonomous system. Consultation with users indicated the need for transition requirements.	Medium	Medium
LINZ (as regulator)	LINZ will have reduced day-to-day visibility as regulator over procedures ahead of compulsory acquisition. Within baselines, LINZ will need to develop and issue new guidance and standards to support users. Certainty based on LINZ's internal assessment of cost.	Medium	High
Others (e.g., wider govt, consumers, etc.)	There could be increased complexity or reduced clarity as landowners, advisors and the judiciary adjust to procedures. Local authorities may require support to adjust to new processes.	Low	Low

	Evidence certainty is constrained by the inability to consult ahead of legislative proposals.		
<b>Non-monetised costs</b>		Medium	Medium
<b>Additional benefits of the preferred option compared to taking no action</b>			
Crown users (e.g., NZTA)	<p>Crown users are expected to experience decreased procedural demands to proceed to compulsory acquisition and improved efficiency and effectiveness.</p> <p>Consultation with users indicated transition expectations.</p>	High	High
LINZ (as regulator)	<p>Reduced resource needs to support change to acquisition procedures as LINZ will no longer be issuing notices of desire.</p> <p>Certainty based on LINZ's internal assessment of impact of proposals.</p>	Medium	Medium
Others (e.g., wider govt, consumers, etc.)	<p>Procedural clarity for landowners should improve under the preferred option. Benefits to local authorities under the preferred option are unclear.</p> <p>Evidence certainty is constrained by the inability to consult ahead of legislative proposals.</p>	Low	Low
<b>Non-monetised benefits</b>		Medium	Medium

## Part B: Compensation

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### Issue B1: Incentivising early agreement to the acquisition of land

#### Section 1(B1): Diagnosing the policy problem

**What is the context behind the policy problem and how is the status quo expected to develop?**

51. Please refer to paragraphs 122 to 127 of the Primary RIS. This outlines how, under the status quo, additional payments (beyond statutory entitlements) can be offered to landowners to incentivise agreement to the acquisition of land.
52. The PWA's current incentive payment of \$10,000 for landowners whose principal place of residence is acquired by agreement within six months after the negotiation start date is inadequate in incentivising early agreement for the acquisition of land. Cabinet has agreed as part of the accelerated process for critical infrastructure that an incentive payment of 15 percent of land value be paid to all landowners who agree to acquisition before a notice of intention is served. The incentive payment for critical infrastructure will have a minimum payment of \$5,000 and maximum payment of \$150,000.
53. The acquisition of Māori freehold land can take significant time due to the complexities of multiple ownership and the processes under TTWMA. The status quo is expected to develop so that the minimum period of good faith negotiations before a notice of intention can be issued be six months for Māori freehold land, rather than the three months for general land (Option A2). However, even with these changes, it is expected to be challenging for owners of Māori freehold land to access the incentive payment due to the constraints on alienation of land under TTWMA. Changes to the eligibility and value of the incentive payment would increase the potential disparity between the compensation that owners of Māori freehold land are able to access compared to owners of general land.
54. As part of the PWA Review, it is proposed that the existing ability of the Minister to recommend adjustments to additional compensation entitlements by Order in Council (OiC) every five years would include the power to adjust incentive payment percentages and limits. The considerations in exercising this power are proposed to be extended to explicitly include affordability considerations. The current mechanism retains the ability to consult on any adjustments to understand potential implications.

**What is the policy problem or opportunity?**

55. Please refer to paragraphs 128 to 134 of the Primary RIS. Existing compensation is inadequate in incentivising early agreement and appropriately recognising disruption. This inadequacy can slow down the acquisition process and be unfair to landowners.
56. There is an opportunity to provide meaningful incentives for landowners who reach early agreement to the acquisition of their land and reduce both the timeframes for acquiring agencies to secure land and the likelihood of downstream delays caused by objections or difficulties in obtaining possession.
57. There is also an opportunity to mitigate the risk that changes to the settings for incentive payments increase the potential for disparity in access to compensation for owners of Māori freehold land.

## What objectives are sought in relation to the policy problem?

58. The objectives in relation to these policy problems are:
- to increase the uptake of acquisition by agreement before the issuing of a notice of intention, to reduce the timeframes and administrative burden for acquiring land
  - to incentivise early agreement while managing overall affordability of compensation
  - to align incentives with the principle of the PWA that landowners receive full compensation and are not better or worse off from PWA action
  - to enable fairer and more equitable access to compensation for owners of Māori freehold land.

## Section 2(B1): Assessing options to address the policy problem

### What scope will options be considered within?

59. Cabinet invited the Minister to report back on introducing a statutory incentive payment that is paid if agreement is reached prior to issuing a notice of intention. Options were developed within the scope of the preferred Option B2 set out in the primary RIS – Introduce a statutory incentive payment that is a percentage of land value and is paid where agreement is reached prior to a notice of intention (see paragraphs 140 and 141 of the Primary RIS).

### What options are being considered?

60. This section outlines the options that were considered. Options for B1, B3 and B4 are intended to work as a package. The options under B2 could be progressed with any combination of options for B1, B3 and B4. However, each set of options *within* B1, B2, B3 and B4 are mutually exclusive.

Part B– Compensation	
Issue B1: Incentivising early agreement to the acquisition of land	
<b>Percentage value increase for incentive</b> (mutually exclusive)	<b>B1a:</b> Incentive payment of <b>5 percent</b> land value.
	<b>B1b:</b> Incentive payment of <b>8 percent</b> of land value.
	<b>B1c:</b> Incentive payment of <b>10 percent</b> of land value.
<b>Eligibility for Māori freehold land</b> (mutually exclusive)	<b>B2a:</b> Discretion to provide the value of the incentive payment in cases where Māori freehold land is acquired or taken after a notice of intention is issued.
	<b>B2b:</b> Provide incentive payments for the acquisition of Māori freehold land that is acquired or taken after a notice of intention is issued.
<b>Minimum incentive payment</b> (mutually exclusive)	<b>B3a:</b> Minimum incentive payment of <b>\$1000</b> .
	<b>B3b:</b> Minimum incentive payment of <b>\$5000</b> .
	<b>B3c:</b> Minimum incentive payment of <b>\$10,000</b> .



Part B– Compensation	
Issue B1: Incentivising early agreement to the acquisition of land	
Maximum incentive payment (mutually exclusive)	B4a: Maximum incentive payment of <b>\$80,000.</b>
	B4b: Maximum incentive payment of <b>\$100,000.</b>
	B4c: Maximum incentive payment of <b>\$150,000.</b>

### **Percentage value of incentive**

#### **B1a: Incentive payment of 5 percent of land value**

61. As a percentage, this option would be four times the existing incentive payment for a median priced residential property.

#### **B1b: Incentive payment of 8 percent of land value**

62. As a percentage, this option would be over six times the existing incentive payment for a median priced residential property. This option aligns with the long-term (30 year+) average annual growth in the rural and residential property markets.

#### **B1c: Incentive payment of 10percent of land value**

63. As a percentage, this option will be eight times the existing incentive payment for a median priced residential property.

#### **Discussion of Options B1a, b and c**

64. All options are a substantial increase on the status quo and are expected to be more effective in encouraging early acquisition by agreement. The analysis assumes that increasing the percentage of land value offered as an incentive will increase effectiveness in encouraging acquisition by agreement.
65. All options are also expected to increase efficiency by reducing the administrative costs and process requirements of issuing notices of intention and other compulsory acquisition steps.
66. All options involve a trade-off between the likelihood of incentivising early agreement and value for money and affordability. This trade-off increases as the percentage of land value offered as an incentive increases. The potential for benefits of early acquisition and avoided construction delays to offset the upfront costs of incentive payments will be lesser for smaller, less complex public works.

### **Eligibility for Māori freehold land**

#### **B2a - Discretion to provide the value of the incentive payment in cases where Māori freehold land is acquired or taken after a notice of intention is issued**

67. This option would give decision-makers (the Minister and local authorities) the discretion to provide the incentive payment in cases where Māori freehold land is acquired or taken after a notice of intention is issued. This enables flexibility to respond to the complexities of acquiring Māori freehold land.

## **B2b - Provide incentive payments for the acquisition of Māori freehold land that is acquired or taken after a notice of intention is issued**

68. This option would entitle owners of Māori freehold land to receive the incentive payment where the land is acquired or taken after a notice of intention is issued. This avoids disadvantaging the owners of Māori freehold land because of the constraints in TTWMA on agreeing to the alienation of land, [REDACTED]. However, this option may not be consistent with the objective of encouraging early agreement and could result in landowners who are taking objection proceedings receiving the incentive payment.

### ***Minimum incentive payment***

#### **B3a: Minimum incentive payment of \$1000**

69. This option would set the minimum incentive payment value for what someone may receive at \$1000.

#### **B3b: Minimum incentive payment of \$5000**

70. This option would set the minimum incentive payment value for what someone may receive at \$5,000. This is the minimum incentive payment agreed for critical infrastructure projects.

#### **B3c: Minimum incentive payment of \$10,000**

71. This option would set the minimum incentive payment value for what someone may receive at \$10,000, the same level of the current incentive available for the acquisition of a landowner's principal place of residence.

### **Discussion of Options B3a, b, and c**

72. All options involve a trade-off between the likelihood of incentivising early agreement and disproportionate compensation compared to the value of the land acquired. All options involve a tension with the principle that landowners are provided with full compensation, so they are no better or worse off from PWA action. This tension increases with the increase in the minimum value.
73. There are direct administrative costs associated with issuing a notice of intention. These include surveys, public notice, preparation of documentation and advice to support decision-making, and reimbursement of landowner costs for legal and professional advice on the notice.
74. LINZ and acquiring agencies do not currently record information in a way that the direct costs of issuing a notice of intention can be collated and analysed. Conservative estimates suggest that the upfront costs of options B3a (\$1,000) and B3b (\$5,000) would be offset by avoided direction costs of a notice of intention. Option B3c (\$10,000) may exceed avoided costs of issuing a notice of intention for some acquisitions.
75. Option B3b (\$5,000) would achieve consistency with the approach for critical infrastructure projects.

### ***Maximum incentive payment***

#### **B4a: Maximum incentive payment of \$80,000**

76. This option would set the maximum incentive payment someone may receive at \$80,000.

**B4b: Maximum incentive payment of \$100,000**

77. This option would set the maximum incentive payment someone may receive at \$100,000.

**B4c: Maximum incentive payment of \$150,000**

78. This option would set the maximum incentive payment someone may receive at \$150,000. This is the maximum incentive payment for critical infrastructure projects.

**Discussion of Options B4a, b, and c**

79. All options provide an effective tool for managing the overall cost of the incentive payment. There are high levels of uncertainty around what level of payment would most effectively incentivise early agreement. The analysis assumes the higher the payment, the more effective it is. With all options, there is a risk that the maximum is set too high or too low. All options involve a tension with the principle that landowners are no better or worse off from PWA action. This tension increases with the increase in maximum value of the incentive payment.
80. Options B4a and B4b are below the maximum incentive payment agreed for critical infrastructure projects and would be consistent with the intention of premium payments for critical infrastructure.

## Issue B1: Incentivising early agreement to the acquisition of land

How do the options compare to the status quo/counterfactual?

Table 2: Options analysis for Issue B1 (Percentage of land value & eligibility for Māori freehold land for incentive payment)

Option assessment criteria	Status Quo / Counterfactual	Percentage (mutually exclusive)			Eligibility for Māori freehold land (mutually exclusive)	
	<i>Incentive payment is a lump sum of \$10,000. Eligibility for the current incentive payment on the same basis for Māori freehold land as general land</i>	B1a: 5 percent of land value	B1b: 8 percent of land value	B1c: 10 percent of land value	B2a: Discretion to provide the value of the incentive payment in cases where Māori freehold land is acquired or taken after a notice of intention is issued	B2b: Provide incentive payments for the acquisition of Māori freehold land that is acquired or taken after a notice of intention is issued
Effectiveness	0	+	+	++	+	+
Efficiency	0	+	+	+	0	0
Clarity	0	0	0	0	0	0
Feasibility	0	-	-	-	0	0
Overall assessment	0	+1	+1	+2	+1	+1

Table 3: Options analysis for Issue B1 (Minimum and maximum payment)

Option assessment criteria	Status Quo / Counterfactual	Minimum payment (mutually exclusive)			Maximum payment (mutually exclusive)		
	<i>Incentive payment is a lump sum of \$10,000</i>	B3a: Minimum incentive payment of \$1000	B3b: Minimum incentive payment of \$5000	B3c: Minimum incentive payment of \$10,000	B4a: Maximum incentive payment of \$80,000	B4b: Maximum incentive payment of \$100,000	B4c: Maximum incentive payment of \$150,000
Effectiveness	0	+	+	++	+	+	++
Efficiency	0	+	+	+	+	+	+
Clarity	0	0	0	0	0	0	0
Feasibility	0	0	0	-	0	0	-
Overall assessment	0	+2	+2	+2	+2	+2	+2

**What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?**

81. LINZ's preferred options to be progressed are:
- **Option B1c:** Incentive payment of 10% of land value.
  - **Option B2a:** Discretion to provide the value of the incentive payment in cases where Māori freehold land is acquired or taken after a notice of intention is issued.
  - **Option B3b:** Minimum incentive payment of \$5000.
  - **Options B4b:** Maximum incentive payment of \$100,000.
82. The preferred options are expected to be the most effective in incentivising early agreement, while managing value for money and affordability. The preferred options are consistent with the principle of PWA compensation that landowners are no better or worse off from PWA action. LINZ's preferred suite of options is an improvement over the status quo and forms a consistent package with the approach for the accelerated process for critical infrastructure.
83. The accelerated process for critical infrastructure will also introduce incentive payments for early agreement. The percentage level for critical infrastructure includes a premium payment that recognises the regional and national significance of the projects included. Table 4 below shows how the preferred options form a consistent package.
84. At 10% (PWA) and 15% (critical infrastructure), respective maximum incentive payments of \$100,000 and \$150,000 result in a consistent land value at which the maximum payment cap applies (\$1,000,000).

**Table 4: Incentive payment under PWA and Accelerated process for critical infrastructure**

	Percentage of land value	Minimum payment	Maximum payment	Land value at which maximum payment applies
<b>PWA process</b>	10%	\$5,000	\$100,000	\$1,000,000
<b>Accelerated process for critical infrastructure</b>	15%	\$5,000	\$150,000	\$1,000,000

85. The preferred options prevent barriers to owners of Māori freehold land accessing compensation in a way that is consistent with the overall policy intent of fair and equitable compensation and achieving faster acquisition.
86. Limited consultation means that there is a high level of uncertainty regarding affordability of the preferred options. The select committee process will provide an opportunity to gain a better understanding of value for money and affordability for local authorities. While the preferred options substantially increase the eligibility and amount of the incentive payment, there is a high level of uncertainty around how effective they will be in changing behaviour. New regulatory tools (see Part D - Regulatory tools) will enable monitoring and evaluation of the preferred options. Additionally, the Minister's ability to recommend adjustments to additional compensation by OiC will include the power to recommend changes to the percentage and limits for incentive payments.

**What are the marginal costs and benefits of the preferred option in the Cabinet paper?**

Affected groups	Comment.	Impact	Evidence Certainty
<b>Additional costs of the preferred option compared to taking no action</b>			
Crown users (e.g., NZTA)	Expected to create increase in costs. However, this is dependent on the number of acquisitions and the uptake of incentives, which is unknown.  Impact can vary dependent on the type of public work it is.	Low-Medium	Low-Medium
LINZ (as regulator)	-	Low	Medium-High
Others (e.g., wider govt, consumers, etc.) <i>For fiscal costs, both increased costs and loss of revenue could be relevant</i>	Expected to create an increase in costs for local authorities. Similar to Crown users, this is dependent on the number of acquisitions, uptake and type of public work.  Due to very limited consultation with local authorities, the level of impact is uncertain.	Low-Medium	Low
<b>Non-monetised costs</b>		Low-Medium	Medium
<b>Additional benefits of the preferred option compared to taking no action</b>			
Crown users (e.g., NZTA)	Expected to create faster acquisitions and reduced potential for delay to projects.  The level of uptake is uncertain.	Medium	Low-Medium
LINZ (as regulator)	Potential to require less resources if fewer notices of intention are required.	Low	Medium



Others (e.g., wider govt, consumers, etc.)	Expected to create faster acquisitions and reduced potential for delay to projects for local authorities.  Due to very limited consultation with local authorities, the level of impact is uncertain.	Medium	Low
<b>Non-monetised benefits</b>		Medium	Low-Medium

## Issue B2: Making home-loss payments and land-loss payments fit for purpose

### Section 1(B2): Diagnosing the policy problem

**What is the context behind the policy problem and how is the status quo expected to develop?**

87. Please refer to Issue B1, paragraphs 122 to 134, of the Primary RIS. Further to the inadequacy of compensation, home-loss and land-loss no longer appropriately reflect inconvenience cause to landowners.
88. Home-loss and land-loss payments aim to compensate landowners for the inconvenience and intangible loss of having their land acquired or taken under the PWA. These payments were last updated in 2017. The home-loss payment is currently set at \$35,000 and the land-loss payment at 10 percent of the value of the land, with a minimum payment of \$250 and a maximum payment of \$25,000. Cabinet has agreed to increase the current additional compensation payments for the loss of a dwelling used as a principal place of residence under section 72A and loss of land under section 72C.
89. Currently, only one home-loss payment is available per parcel of land, regardless of the number of principal dwellings on it. This means that where there are multiple landowners, each with separately owned principal dwellings on a property, one home-loss payment must be shared between all owners. Cabinet has asked the Minister to report back with options on whether payment should apply where there are multiple dwellings, regardless of the nature including any further decisions if required.
90. As part of the Review, a minor change is also proposed to clarify how home-loss and land-loss payments are allocated between unit title holders and unit title body corporates for acquisitions involving unit titles.
91. The Government has also committed to amendments to the Building Act 2004 and the Resource Management Act 1991 (RMA) to make it easier to build granny flats. Changes to home-loss and land-loss payments, including changes for land with multiple dwellings, may be impacted by this change. However, the level of impact will depend on the increase in granny flats, where they are located (noting rural areas have been more likely to be acquired for public works in the past) and which options under the Review are progressed.

**What is the policy problem or opportunity?**

- 92. Existing home-loss and land-loss payments have not kept up with inflation and require updating to maintain their value.
- 93. While there is provision in the PWA to change the values for land loss and home-loss payments using an OiC process, there is an opportunity to update them as part of the Review process.
- 94. There is an opportunity to improve the fairness of eligibility for home-loss payments in situations where multiple dwellings are acquired on a single parcel of land.

**What objectives are sought in relation to the policy problem?**

- 95. As per paragraph 135 of the primary RIS, the overarching objective is to ensure that the process for determining compensation can be undertaken in a timely way to facilitate the faster delivery of infrastructure. The outcome of this policy is to ensure owners of land receive appropriate compensation for the inconvenience and intangible loss of having their land acquired or taken.

**Section 2(B2): Assessing options to address the policy problem****What scope will the options be considered within?**

- 96. The Minister proposed to increase the current additional compensation payments for the loss of a dwelling used as a principal place of residence under section 72A and loss of land under section 72C of the Public Works Act. Cabinet noted this intention and invited the Minister to report back with further detail on proposals. Options were developed within the scope of the preferred Option B5 set out in the primary RIS: Increase existing payments for home-loss and land-loss (see paragraphs 148 to 151 of the Primary RIS).
- 97. Cabinet invited the Minister to report back with options on whether multiple home-loss payments should apply where there are multiple dwellings on land other than Māori freehold land.
- 98. In developing options, LINZ analysis was framed by the considerations listed in section 72E of the PWA.<sup>1</sup> LINZ considers that the Consumer Price Index (CPI), rather than land and house sale prices, provides the most appropriate basis on which to update these payments, given the payment recognises the inconvenience and intangible loss of the landowner's principal place of residence.

**What options are being considered?**

- 99. The table below outlines the options that were considered. A combination of options for home-loss and land-loss, and land with multiple dwellings can be progressed as part of a package. However, options within each grouping are mutually exclusive (i.e. B5a and B5b, B6a and B6b). Each option is described in more detail below the table.

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<sup>1</sup> Section 72E enables the Minister to adjust the value of additional compensation entitlements by OiC. Matters the Minister must have regard to include: the purpose of the compensation; national average land and house sale prices; the Consumer Price Index; and similar compensation paid in other jurisdictions.

<b>Part B: Compensation</b>	
<b>Issue B2: Making home-loss payments and land-loss payments fit for purpose</b>	
<b>Home loss and land loss payments</b> (mutually exclusive)	<b>B5a:</b> Increase home-loss payment to \$45,000 and the land loss payment to minimum of \$320 and maximum of \$32,000.
	<b>B5b:</b> Increase the home-loss payment to \$50,000 and the land loss-payment to a minimum of \$350 and maximum of \$35,000.
<b>Land with multiple dwellings</b> (mutually exclusive)	<b>B6a:</b> Extend eligibility for the home-loss payments to each principal place of residence on a parcel of land where it is a principal place of residence of an owner of the land.
	<b>B6b:</b> Extend eligibility for the home-loss payments to include informal arrangements where there is separate ownership of a principal place of residence, without requiring the owner of the dwelling to be an owner of the land.

**Option B5a: Increase home-loss payment to \$45,000 and the land loss payment to minimum of \$320 and maximum of \$32,000**

100. Under this option, the home-loss payment would be increased by 28 percent to \$45,000 for a principal place of residence based on changes in the CPI for the period between June 2017 and June 2024. If the land does not contain the landowner's principal place of residence, the landowner would be eligible for a payment of 10 percent of the land value (same as the current situation), or \$320 minimum if 10 percent of the total land value is less than \$320, and up to \$32,000 (maximum) if 10 percent of the land value is equal or more than \$32,000.
101. While this option updates the payments using the latest CPI data as at June 2024, the amendments to the PWA are not expected to be enacted until the end of 2025. Therefore, the payment will be out of date by the PWA amendments are enacted and, as the payments are only able to be updated once every five years, the payments would be even further out of date by the next time they were due to be updated. This option will also result in increased costs for acquiring agencies.

**Option B5b: Increase the home-loss payment to \$50,000 and the land-loss payment to a minimum of \$350 and maximum of \$35,000**

102. Under this option, the home-loss payment would be increased by 43 percent to \$50,000 for a principal place of residence based on changes in the CPI between June 2017 and June 2024 and forecasts of the CPI to June 2028 made by the Reserve Bank.<sup>2</sup> If the land does not contain the landowner's principal place of residence, the landowner would be eligible for a payment of 10 percent of the land value, or \$350 minimum if 10 percent of the total land value is less than \$350, and up to \$35,000 (maximum) if 10 percent of the land value is equal to or more than \$35,000.
103. This option provides some futureproofing when compared with Option B5a, and mitigates the risk that it will take longer than five years for the payment to be updated by LINZ. However, this option will also increase costs to acquiring agencies.

<sup>2</sup> Uses the Reserve Bank Monetary Policy Statement forecasts for the CPI that were released in November 2024.

**B6a: Extend eligibility for the home-loss payment to each principal place of residence on a parcel of land where it is a principal place of residence of an owner of the land**

104. Under this option, a person would receive a home-loss payment if they are an owner of the land and have a principal place of residence on the land. There would be no limit on how many home-loss payments could be received for any given piece of land. For example, if two couples buy land together and build two separate homes on that land, each used as a principal place of residence, two home-loss payments would be paid.
105. Although this option would result in increased cost to infrastructure providers, this would be mitigated by limiting the requirements for the person with the principal place of residence to also own the land, and due to the rarity of multiple dwellings being acquired on one parcel of land. It also reduces the potential for difficulties in reaching agreement on fair compensation where multiple principal places of residences need to be acquired on a single parcel of land. It may also provide futureproofing, as buying land as a group for separate dwellings is likely to become more frequent. This option is consistent with the principle that compensation in the PWA is based on ownership of interests in land.

**B6b: Extend eligibility for the home-loss payment where there is separate ownership of a principal place of residence, without requiring the owner of the dwelling to be an owner of the land**

106. This option would enable home-loss payments to be paid to persons who live on the land being acquired and who can prove they own a separate dwelling. Ownership of the land would not be required for eligibility. For example, if children own a property and a granny flat is built on the property for their parents, and the parents had an ownership interest in the property that is registered on the title, both the children and the parents in this scenario would be eligible for separate payments.
107. This option provides flexibility to cover a range of situations. However, it does create uncertainty around when it applies and could result in more delays due to disputes. It also has the potential to increase costs for infrastructure providers, mitigated in part by the rarity of multiple dwellings being acquired on one parcel of land. There is also an implementation risk around lack of certainty in determining separate ownership. This option is inconsistent with the principle that compensation in the PWA is based on ownership of interests in land.

## Issue B2: Making home-loss payments and land-loss payments fit for purpose

How do the options compare to the status quo/counterfactual?

Table 5: Options analysis for Issue B2

Option assessment criteria	Status quo/counterfactual	Home loss and land loss payments (mutually exclusive)		Land with multiple dwellings (mutually exclusive)	
	<ul style="list-style-type: none"> <li>Home-loss payment is set at \$35,000 and is available per parcel of land (regardless of the number of dwellings).</li> <li>Land-loss payment is set at 10 percent of the value of the land with a minimum of \$250 and a maximum of \$25,000.</li> </ul>	B5a: Increase home-loss payment to \$45,000 and the land loss payment to minimum of \$320 and maximum of \$32,000	B5b: Increase home-loss payment to \$50,000 and the land-loss payment to a minimum of \$350 and maximum of \$35,000	B6a: Extend eligibility for the home-loss payment to each principal place of residence on a parcel of land where it is a principal place of residence of an owner of the land	B6b: Extend eligibility for the home-loss payment where there is separate ownership of a principal place of residence, without requiring the owner of the dwelling to be an owner of the land
Effectiveness	0	+	++	+	+
Efficiency	0	0	0	0	-
Clarity	0	0	0	0	-
Feasibility	0	-	-	0	-
Overall assessment	0	0	1+	1+	-2

**What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?**

108. LINZ's preferred options to be progressed as a package are:

- **B5b:** Increase the home-loss payment to \$50,000 and the land-loss payment to a minimum of \$350 and maximum of \$35,000.
- **B6a:** Extend home-loss payments to land with multiple owners with separate dwellings on all types of land.

109. Increases to land-loss and home-loss payments mean that the risk of them becoming out of date is lower. The extension of the eligibility for the home-loss payment also increases the fairness for landowners on land with multiple owners and may help to promote agreement. Due to limited data, the scale of cost implications is uncertain. However, additional regulatory tools (outlined under Part D) will assist LINZ to monitor and manage the impacts.

110. Option B5a is cheaper as it is likely that fewer owners would be eligible for payments. Option B6b provides flexibility to cover a wider range of situations. However, these benefits are outweighed by the uncertainty created around when it applies, and the subsequent increased potential for more disputes.

**What are the marginal costs and benefits of the preferred option in the Cabinet paper?**

Affected groups	Comment.	Impact	Evidence Certainty
<b>Additional costs of the preferred option compared to taking no action</b>			
Crown users (e.g., NZTA)	Increased cost due to higher home-loss and land-loss payments and eligibility being extended.	Medium	Medium
LINZ (as regulator)	Additional resource and cost to provide updated guidance on compensation entitlements and processes.	Low	High
Others (e.g., wider govt, consumers, etc.)	Increased cost due to higher payments and wider eligibility for payments.	Medium	Medium
<b>Non-monetised costs</b>	-	Medium	Medium
<b>Additional benefits of the preferred option compared to taking no action</b>			
Crown users (e.g., NZTA)	The real value of the home-loss and land-loss payments is maintained.	Medium	Medium
LINZ (as regulator)	-	Low	High
Others (e.g., wider govt, consumers, etc.)	Landowners benefit from the real value of the land-loss and home-loss payments being maintained.	Medium	Medium



	<p>Expected to reduce objections and reduce the potential for delays to projects for local authorities.</p> <p>Due to very limited consultation with local authorities, the level of impact is uncertain.</p> <p>The public have not been consulted on these proposals, but LINZ has drawn from previous analysis.</p>		
Non-monetised benefits		Medium	Medium

## Part C: Emergency Provisions

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### Section 1(C): Diagnosing the policy problem

#### What is the context behind the policy problem and how is the status quo expected to develop?

111. Damage to infrastructure in emergencies can be highly disruptive and a source of distress to affected communities. The Civil Defence and Emergency Management Act 2002 (CDEM) includes powers to enable the immediate response to restore critical infrastructure (lifeline utilities) following a natural disaster. However, the immediate response will often only provide temporary restoration of the infrastructure to address the most immediate needs. For lasting and effective restoration, new land may be required as the original land may no longer be suitable for the work, especially with the objective of improving the resilience of New Zealand's infrastructure.
112. The PWA does not contain an urgent process to acquire land following an emergency. Following some previous emergencies, legislation and OiCs have been introduced to support timely emergency recovery by accelerating standard regulatory processes, including under the PWA. Some overseas jurisdictions allow the suspension of normal land acquisition processes for urgent matters of public interest.<sup>3</sup>
113. New Zealand has the second-highest global exposure to natural hazards.<sup>4</sup> Climate change means that there is a growing risk of events like Cyclone Gabrielle that have previously required bespoke legislation to accelerate PWA processes.
114. The Government is currently reviewing the CDEM and responding to the Government Inquiry into the North Island Severe Weather Events of early 2023. Phase 2 of the RMA reforms intends to improve the emergency provisions of the RMA.

#### What is the policy problem or opportunity?

115. LINZ considers that the current Review is also an opportunity to amend the PWA to better support the recovery from natural disasters, and reduce the need and time required to stand up accelerated PWA processes after an emergency. Speeding up recovery mechanisms in other legislation, such as the RMA, will not achieve the on the ground outcome needed if there are delays to land acquisition, due to there being no corresponding updates to the PWA.
116. Developing an emergency regime through the current Review also allows for more fulsome consultation on the proposed emergency provisions through select committee. Reactive legislation after an emergency usually requires a shortened consultation process and very limited testing of what is proposed. Additionally, the time it takes to prepare and give effect to bespoke legislation can delay recovery. Having the emergency powers ready to simply 'switch on' can support timely and efficient recovery efforts.

#### What objectives are sought in relation to the policy problem?

117. The objective is to provide for accelerated land acquisition following an emergency to enable the timely restoration of public works in support of recovery efforts.
118. Safeguards should be provided to ensure that any use of the emergency powers is appropriate for the scale of the emergency and required recovery efforts. Any emergency provisions in the PWA should not duplicate powers available in other legislation.

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<sup>3</sup> For example, the land acquisition regimes of Alberta, New South Wales, and federal Australia.

<sup>4</sup> Lloyds, 2018, *A world at risk*. <https://www.lloyds.com/worldatrisk>

119. Compensation is still required for any land acquired. However, given the urgency of the work to support recovery efforts, any disputes around compensation should not delay the acquisition of the land.

## Section 2(C): Assessing options to address the policy problem

### What options are being considered?

120. The table below outlines the options that were considered. A combination of options can be progressed as part of a package. However, options C1a and C1b, C2b and C2c and C2d and C2e are mutually exclusive from each other. Option C2f is an extension of C2e (based on assumption C2e is progressed), but is not necessarily mutually exclusive. Each option is described in more detail below the table.

<b>PART C: Emergency Provisions</b>	
<b>Emergency regime design</b>	<b>C1a:</b> An emergency regime sits under the PWA, but is dormant until activated by OiC.
	<b>C1b:</b> Creating a power to make OiCs that could override normal PWA processes.
	<b>C1c:</b> Regime limited to restoration of existing public works, or the functions that they serve, and would cover works for network utility operators.
	<b>C1d:</b> Regime excludes protected Māori land.
<b>Land acquisition processes (under an emergency regime)</b>	<b>C2a:</b> Retaining a simplified requirement to attempt to reach acquisition by agreement.
	<b>C2b:</b> Removing the right to object to the taking of land to the Environment Court, but allow for submissions to decision-makers.
	<b>C2c:</b> Remove the right to object to the taking of land to the Environment Court.
	<b>C2d:</b> Landowners are not entitled to the value of land incentive payments if land is acquired compulsorily.
	<b>C2e:</b> All landowners entitled to value of incentive payments, even where land acquired compulsorily.
	<b>C2f:</b> Owners of protected Māori land also entitled to value of incentive payments.
	<b>C2g:</b> Simplified Notice of Intention and Proclamation processes.

### **Emergency regime design**

#### **C1a: An emergency regime sits in the PWA, but is dormant until activated by OiC**

121. This option would mean that the design of an emergency regime would be set out in the PWA. Powers would remain dormant until activated by an OiC (or OiCs) that define the specific public works and areas over which the emergency regime could apply, and a timeframe in which it could be used. An OiC could be revoked before the end of the specified timeframe in line with powers under the Legislation Act 2019.

122. An OiC would be made by the Governor-General on the recommendation of the Minister. The Minister could only recommend an OiC during or following a declared national or local state of emergency, or notice of transition period, under the CDEM. The OiC could only be for the purposes of supporting emergency recovery, and an OiC could not be broader (including geographically broader in application) than is reasonably necessary to address the matters that gave rise to it.

### **C1b: Creating a power to make OiCs to override normal PWA processes**

123. An alternative to C1a, this option would mean that an emergency regime would not be set out in the PWA. Instead, the PWA would include an ability to make OiCs that override standard PWA provisions, which sets out accelerated PWA processes in those OiCs. This would be more constitutionally sensitive than Option C1a, by giving the Executive a broader power to decide how to override standard legal requirements set by Parliament. It could also be slower to activate than option C1a, because policy work would be required after an event to define accelerated processes, rather than processes already being set and ready to activate in legislation.
124. Similar approaches were used to respond rapidly and stand up emergency regimes, for example two OiCs following the 2023 North Island Severe Weather Events that included modified PWA processes.<sup>5</sup> As with option C1a, OiCs would be made by the Governor-General on the Minister's recommendation, only for the purposes of emergency recovery, following declared states of emergencies or transition periods, and be no broader than reasonably necessary.
125. This option differs from the status quo by removing the requirement to create bespoke legislation to enable the OiC to be developed; as this power will already exist in the PWA. This option is similar to the approach proposed in phase 2 of the RMA reforms.

### **Discussion of Options C1a and C1b**

126. Not all public works and in all affected locations will justify the use of emergency powers. Requiring a decision to activate emergency powers and to define the details of their use in an OiC offers a safeguard to ensure accelerated processes are employed appropriately.
127. An OiC that activates a pre-made emergency regime (Option C1a) could be stood up much quicker than one which sets out the regime (Option C1b) and therefore requires the policy work to design before using.
128. Having an emergency regime set out in the PWA (Option C1a) offers greater transparency about what changes are made to PWA processes than option C1b. It also better enables more fulsome consultation and engagement on these processes (i.e. during select committee), compared with accelerating PWA processes through secondary legislation under truncated policy work, with reduced or no Parliamentary and public oversight.
129. There is constitutional sensitivity around allowing the Executive to override standard legislative processes set by Parliament (option C1b).
130. Option C1b offers slightly greater flexibility than option C1a, in that accelerated PWA processes could be tailored to the specific emergency in question. However, same or similar changes to the PWA were made following recent emergencies, and the need for different processes is not expected to be great.

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<sup>5</sup> Enabled through the Severe Weather Emergency Recovery Legislation Act 2023.

### **C1c: Regime limited to restoration of existing public works, or the functions that they serve, and would cover works for network utility operators**

131. Under either design approach (C1a and C1b), the emergency regime is proposed to apply to the full range of public works to which the PWA normally provides land acquisition powers. This includes the Crown, local authorities, and network utility operators (NUOs) that are requiring authorities under the RMA.
132. For NUOs, it is proposed that the Minister would use their authority to acquire land on their behalf (as standardly required), but that NUOs would not have to apply under section 186 the RMA. The Minister's decision to recommend the inclusion of an NUO's works in an OiC ensures government accountability and oversight over an NUO's access to these powers, similar to a standard RMA application.
133. Including the full range of public works (and NUO works) ensures flexibility, as it is difficult to anticipate what kinds of works may benefit from these powers given emergencies can vary in nature. There is some risk in that not all these works may justify the use of accelerated processes. However, the OiC process mitigates this risk by requiring a decision about the works to include, subject to safeguards (Options C1a and C1b).
134. Recent emergency events have required some realignment of infrastructure to ensure that it the restoration of the infrastructure is resilient and justifies the large investment required. The proposed emergency regime aims to provide for the restoration of the function that the public work serves, recognising that it may not be in exactly the same location or same alignment.

### **C1d: Regime excludes protected Māori land**

135. As noted in the beginning of this RIS addendum (paragraphs 11 to 12), protected Māori land (as defined in section 11 of the Infrastructure Funding and Financing Act 2020) will be excluded from this regime. This mirrors the approaches following the 2023 North Island Severe Weather Events and a separate programme of work for accelerating PWA processes for critical infrastructure.
136. This option recognises the historic and contemporary sensitivities associated with the Crown's acquisition of Māori land, the tensions of this with the Treaty of Waitangi, and that including this land would create practical and legislative challenges. There may be situations where protected Māori land may be required for restoring public works, and where using standard processes may create delay. The risk of this may be low, noting the limited prevalence of protected Māori land.

### ***Land acquisitions processes (under an emergency regime)***

#### **C2a: Retaining a simplified requirement to attempt to reach acquisition by agreement**

137. Under this option, users of the PWA must make a reasonable attempt to reach acquisition by agreement for one month before any compulsory acquisition process may begin. This mirrors the approach taken under the Greater Christchurch Regeneration Act 2016 and is a lesser standard than the status quo (making every endeavour to negotiate in good faith for three months).
138. Negotiations support engagement with landowners, can result in better outcomes for them, and have practical value to PWA users in revealing useful information about the land and its suitability for the public work. This option does add time to the acquisition process. However, design and investigative work is needed before works can be delivered and would occur in parallel to negotiations, limiting the risk of this option causing delay.

139. Other minor technical changes will be reviewed to ensure that the emergency regime reflects the proposed changes to the acquisition processes in this Review.

**C2b: Removing the right to object to the taking of land to the Environment Court but allowing submissions**

140. As in some previous emergencies, the right to object to the Environment Court for the taking of land would be removed. Under this option, a notice of intention that starts a compulsory acquisition process would inform landowners of their right to make a submission to the notice of intention decision-maker (e.g. the Minister or the local authority in question). The timeframe for making submissions would be set by the OiC but must be at least 10 working days. The notice of intention decision-maker would need to have regard to those submissions before a Proclamation could be requested or recommended to give effect to a compulsory taking.
141. A similar approach, without a minimum timeframe, was included following the 2023 North Island Severe Weather events.

**C2c: Remove the right to object to the taking of land to the Environment Court**

142. As in option C2b, there would be no right to object to the Environment Court. However, there would be no substituted natural justice process for making submissions.

**Discussion of Options C2b and C2c**

143. The right to object recognises the significance of the PWA's compulsory acquisition powers for property rights. However, LINZ considers the need to support timely emergency recovery outweighs this owing to the potentially significant delays and uncertainty that objections can raise to project delivery.
144. Substituting an alternative natural justice process requires a minimum timeframe in which submissions can be made. Without a statutory natural justice process, there is a risk of uncertainty in how the courts interpret and apply natural justice rights.
145. A written submission process for objections is being included in the PWA for critical infrastructure projects. LINZ considers that the proposed 60-day natural justice process for critical infrastructure is too long in the context of emergency recovery. LINZ therefore prefers option C2b as an alternative, and considers that the minimum of 10 working days balances a need to provide time for landowners to prepare a submission with the need to enable the timely commencement of recovery activities.
146. [REDACTED]

**C2d: Landowners are not entitled to the value of land incentive payments if land is acquired compulsorily**

147. The Review includes proposals to augment incentive payments to better encourage early agreements (Part B, issue B1). These incentive payments will be paid if agreement is reached before the notice of intention is served. Under this option, an incentive payment would apply under the emergency regime as it is proposed for standard acquisitions under Part B – i.e. the incentive would be available to the landowner if agreement is reached before a notice of intention is served to start a compulsory acquisition process, but not after.



### **C2e: All landowners entitled to value of incentive payments, even where land acquired compulsorily**

148. This option extends who would be entitled to the value of the proposed incentive payments under standard PWA processes (as per any amendments progressed under Part B). All landowners would be entitled to receive the incentive payment, even if a notice of intention has been issued to commence compulsory processes. A rationale for this is outlined in the discussion of options C2d, C2e and C2f below.

### **C2f: Owners of protected Māori land also entitled to value of incentive payments**

149. This option extends (but is not mutually exclusive from) option C2e and assumes that protected Māori land could only be acquired under standard processes, and not under the emergency regime (Option C1d). Where protected Māori land is required for a public work in an area of land that is covered by an OiC, owners of this land would also be entitled to the value of the proposed incentive payment even if this land were acquired compulsorily under standard PWA processes.

### **Discussion of Options C2d, C2e, and C2f**

150. Negotiations under the proposed emergency regime could be minimal. This means that compulsory acquisition is likely to occur more frequently than under normal processes and in more situations where landowners would otherwise agree to land being taken (and so be entitled to receiving incentive payments).
151. Entitling landowners to the value of incentive payments, even when their land is acquired compulsorily (Option C2e), recognises this reduced ability to negotiate and promotes fairness. However, in effect, the incentive payment would cease to incentivise agreement by being available in compulsory acquisitions.
152. These payments ceasing to act as incentives is not expected to impact on project delivery times, noting that compulsory acquisition can occur quickly following negotiations and without the right of objection. However, removing the incentive value of this payment may be more significant if protected Māori land is involved, given that six months of negotiations is proposed to be required under standard processes before compulsory acquisition could occur (Option A2), and there would be a right to object to this.
153. However, issues of discrimination may arise if owners of general land were entitled to the value of incentive payments if their land were acquired compulsorily under the emergency regime, but owners of protected Māori land were not similarly entitled under standard processes.

### **C2g: Simplified notice of intention and proclamation processes**

154. This option is not mutually exclusive from others. The requirements for issuing a NOI to start a compulsory acquisition process, and recommending/requesting a proclamation to give effect to this, would be changed to:
- Simplify requirements for how land is depicted, public notification, and service requirements.
  - Create a simplified test for these steps, compared with the test proposed for ordinary acquisitions (paragraph 49 above); that the Minister and local authorities must consider these steps reasonably necessary to support the purpose of the OiC.

155. This resembles changes to PWA processes following previous emergencies and recognises how emergencies create on-the-ground challenges, making standard requirements slow or impossible to meet in the near term. For example, changes to land or safety issues can prevent a full survey plan from being conducted, newspapers might not be circulating as usual and attempts to serve notices on landowners (who may be displaced) could be challenged. There is a risk of landowners being less informed.
156. It is also necessary to specify the test for notices of intention to be issued or a Proclamation recommended/requested. LINZ's proposed test is simplified compared with ordinary tests to balance this need to assess whether it is necessary to take the land against the workability of the emergency regime. Decisions will need to be made more quickly and with less information following an emergency than following a standard process.
- [REDACTED]

## Issue C: Emergency provisions

How do the preferred options compare to the status quo/counterfactual?

Table 6: Options analysis for Issue C (emergency regime)

Option assessment criteria	Status quo/counterfactual	Emergency regime			
	No emergency regime for acquisition of land under the PWA	C1a: An emergency regime sits under the PWA, but is dormant until activated by OiC	C1b: Creating a power to make OiCs that could override normal PWA processes	C1c: Regime limited to restoration of existing public works, or the functions that they serve, and would cover works for network utility operators	C1d: Regime excludes protected Māori land
		(Mutually exclusive)			
Effectiveness	0	++	+	++	+
Efficiency	0	+	+	++	0
Clarity	0	++	0	+	+
Feasibility	0	+	0	+	++
Overall assessment	0	6+	2+	6+	4+

Table 7: Options analysis for Issue C (land acquisition processes under an emergency regime)

Option assessment criteria	Status quo/counterfactual	Land acquisition processes (under an emergency regime)						
	No processes for acquisition of land under the PWA	C2a: Retaining a simplified requirement to attempt to reach acquisition by agreement	C2b: Removing the right to object to the taking of land to the Environment Court but allow submissions	C2c: Remove the right to object to the taking of land to the Environment Court	C2d: Landowners are not entitled to the value of land incentive payments if land is acquired compulsorily	C2e: All landowners entitled to value of incentive payments, even where land acquired compulsorily	C2f: Owners of protected Māori land also entitled to value of incentive payments	C2g – Simplified notice of intention and proclamation processes
			(mutually exclusive)		(mutually exclusive)		(extends from C2e but not mutually exclusive)	
Effectiveness	0	++	++	0	-	0	0	++
Efficiency	0	+	++	++	0	0	0	+
Clarity	0	+	+	0	+	+	+	0
Feasibility	0	+	+	+/-	+	+	+	+
Overall assessment	0	5+	6+	2+	1+	2+	2+	4+

**What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?**

157. LINZ's preferred options to be progressed are:

*Emergency regime design*

- **C1a:** An emergency regime sits in the PWA, but is dormant until activated by OiC.
- **C1c:** Regime limited to restoration of existing public works, or the functions that they serve, and would cover works for network utility operators.
- **C1d:** Regime excludes protected Māori land.

*Land acquisitions processes under an emergency regime*

- **C2a:** Retaining a simplified requirement to attempt to reach acquisition by agreement.
- **C2b:** Removing the right to object to the taking of land to the Environment Court, but allowing submissions to decision-makers.
- **C2e:** All landowners entitled to value of incentive payments, even where land acquired compulsorily.
- **C2f:** Owners of protected Māori land also entitled to value of incentive payments.
- **C2g:** Simplified notice of intention and proclamation processes.

158. The preferred options will work together as an emergency regime that can be activated to support recovery following emergencies. The preferred options balance the need to support timely recovery from emergencies by restoring affected infrastructure, while providing appropriate recognition and opportunities for involvement for landowners where practically viable. Preferred options in respect of protected Māori land appropriately recognise the sensitivities of land acquisition processes to this land, despite potential occasions where having to rely on standard PWA processes may results in delays.

159. The preferred approach may offer less flexibility by setting processes in place before an emergency, however flexibility is less important for the PWA compared to other regulatory regimes given its single land acquisition process. The same, or similar changes, were made to PWA processes in response to some previous emergencies.

## What are the marginal costs and benefits of the preferred options in the Cabinet paper?

160. The analysis of the marginal costs and benefits was completed on the basis that the new approach will require bespoke legislation to be developed following emergencies. This reflects recent experiences; although not all natural disasters require a bespoke legislation approach to amend the PWA.
161. The amount of damage from each natural disaster varies, making it extremely difficult to provide monetised impacts in the identification of the costs and benefits. There is a legal requirement to restore lifeline utilities under the CDEM and the emergency regime may assist network utility operators to comply with this requirement.
162. The proposed emergency regime is removing the requirement for NUOs to apply under the RMA for the Minister to use PWA powers on their behalf. The costs and benefits for NUOs will be similar to other Crown users. The identification of lifeline utilities in the CDEM is function based (e.g. provides a road network or distributes electricity) and does not differentiate between Crown users and other users.

Affected groups	Comment	Impact	Evidence Certainty
<b>Additional costs of the preferred option compared to taking no action</b>			
Crown users (e.g., NZTA)	There are additional costs in the short-term for delivering premium payments, these are expected to be offset through faster acquisition.	Low	Medium
LINZ (as regulator)	There will be some cost through the preparation of the OiC but this is expected to be less than all other options including the status quo as it will be less resource intensive. A written submission process is being introduced through the critical infrastructure amendments and these resources are expected to be made available if necessary to support recovery efforts.	Low	Medium
Others (e.g., wider govt, consumers, etc.)	The shorter acquisition process could place additional stress on landowners at a traumatic time.	Medium	Low
<b>Non-monetised costs</b>		Low	Medium
<b>Additional benefits of the preferred option compared to taking no action</b>			
Crown users (e.g., NZTA)	A quicker and less costly process is available to support the faster restoration of infrastructure following a natural disaster.	Medium – High	High

LINZ (as regulator)	Can remove the need to develop bespoke legislation to amend acquisition processes after a natural disaster (this has savings for wider Government as well).  Evidence certainty is based on the similarities from previous events, but acknowledging each natural disaster can be different.	Medium	Medium
Others (eg, wider govt, consumers, etc.)	Simpler and less costly objection process will be provided that avoids costly court processes. Landowners object through a submission to the decision-maker. Landowners will also receive additional compensation through the incentive payment.	Medium	Low
<b>Non-monetised benefits</b>	Benefits from infrastructure being restored quicker after a natural disaster event; improved health and safety, productivity and wellbeing. The exact benefits will vary between the different natural disaster events.	Medium – High	Low



## Part D: Regulatory tools

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### Section 1(D): Diagnosing the policy problem

**What is the context behind the policy problem and how is the status quo expected to develop?**

163. Please refer to Issue A1 (paragraphs 19 to 27) and A5 (paragraphs 51 to 54) of the Primary RIS. Cabinet has agreed to delegate decision-making to the New Zealand Transport Authority (NZTA) (and potentially additional agencies in future) to make their own acquisitions by agreement [CAB-24-MIN-0504 refers]. This could impact consistency of decision-making and presents a risk of perceived or actual non-compliance with the PWA. Cabinet noted that LINZ should have sufficient regulatory tools to mitigate this risk and invited the Minister to report back with options.
164. A responsibility for agencies to provide stewardship of the legislation they administer is set out in the Public Service Act 2020. Stewardship is the governance, monitoring, and care of a regulatory system to ensure the regulatory system is high-performing and fit for purpose, to achieve the intended goals and deliver value for system users and the public. In 2019, LINZ's Crown Estate Management Regulatory System Assessment (the Regulatory System Assessment) found that LINZ has only limited data on system performance and noted that LINZ should improve its monitoring role. It also found that there is low awareness of how it works, and that LINZ should look for ways to improve the transparency of PWA processes to give the public confidence in the system.

**What is the policy problem or opportunity?**

165. LINZ issues standards and guidelines to support consistency and proper practice in the PWA system. Standards are not legislative but support statutory decision-making by the Minister (or LINZ officials acting under delegation) on PWA actions. LINZ's role in setting standards could be better recognised in the system to provide clarity around the intended purpose and audience of standards.
166. Inconsistent approaches to acquisition decision-making could impact landowner rights and reduce trust in the PWA system. There are gaps in the information that LINZ needs to act as an effective steward of the PWA and to ensure the system is fit for purpose, such as very limited information being available on local authorities. Gaps have been illustrated through the current review process, where limited data is available, for example on compensation settings effectiveness, Māori land, data on objections and disputes, and other acquisition process details.

**What objectives are sought in relation to the policy problem?**

167. Regulatory and stewardship tools are intended to be light-touch, evidence-based, and not outweigh the efficiency benefits gained through other changes enacted through the Review. The following objectives are sought:
  - to maintain consistency of decisions after changes are enacted from the Review
  - to improve how information is collected and shared to build transparency and public confidence in the PWA system.

## Section 2(D): Assessing options to address the policy problem

### What options are being considered?

168. Multiple options can be progressed as a package, but D3 and D4 (LINZ standards), and D5 and D6 (transparency and accountability) are mutually exclusive. Options D1 and D2 are not mutually exclusive. However, if D2 were progressed, there would be little need or benefit in progressing D1 as processes would already be outlined in legislation.

Part D: Regulatory tools	
Role of LINZ standards	D1 - Acknowledging LINZ's role as responsible for setting standards and guidelines in legislation.
	D2 - Standards are made as legislative instruments.
Improving system level information (mutually exclusive)	D3 – Enable LINZ to direct agencies to provide information.
	D4 – Require users to routinely provide LINZ with information.
Transparency and accountability (mutually exclusive)	D5 – Routine reporting by LINZ on PWA system performance.
	D6 – Require PWA users to conduct their own reporting.

### Considering the role of LINZ standards

#### D1: Acknowledge LINZ's role in legislation as setter of standards and guidelines

169. This option would amend the PWA to explicitly provide for the function of LINZ as responsible for setting guidance for agencies and powers to evaluate and monitor the performance of the system. This would support successful transition to the new requirements by clearly setting out the intended purpose and audience of standards.
170. This would require careful legislative design in consideration of unintended consequences to ensure that these provisions do not limit LINZ's existing role as responsible for providing standards and guidelines. For example, setting out the information and evidence that must be provided to support LINZ in making statutory decisions on Crown PWA acquisitions by agreement.

#### D2: Standards are made legislative instruments

171. Under this option, secondary legislation would be used to set out the detailed operational, information and evidence requirements currently set out in standards. The PWA would need to detail the matters that can be delegated to secondary legislation, and standard process (Cabinet decisions, consultation, publication, notification etc) would need to be followed to make or change the regulations.
172. LINZ does not consider standards as appropriate for secondary legislation. Standards play an important operational role in the system, which is key to satisfy the Minister and LINZ that proper process has been followed. Making these standards secondary legislation would decrease the flexibility that standards offer. Standards outlined in secondary legislation may increase litigation risk in the system, particularly because LINZ has few enforcement options available if other Crown agencies are found to be non-compliant.

173. Current outcomes for not meeting conditions are that the Minister may refuse to sign off the acquisition. However, under this option, alternative consequences for non-compliance would need to be considered, such as offences and penalties. This would not be feasible or appropriate for intra-government regulation.

### ***Improving system level Information***

#### **D3: Require users to routinely provide LINZ with information**

174. This option would require users to routinely provide data to LINZ. The requirement could be triggered either when a particular action is taken, or at a particular interval (e.g. quarterly). This would provide information on how often, why and by which agencies the PWA is being used (and how long the acquisition process takes). The detailed requirements (form, manner and content) would be detailed in regulations.
175. The requirements will apply to local authorities and there will be an associated compliance cost, which LINZ has not been able to test, due to limited consultation during the Review. There will be a potential cost to all PWA users to develop systems and processes to collect, store and provide information to LINZ, if they are not already collecting and storing this information. Consistent processes and systems would be challenging to establish, and associated costs difficult to forecast, due to the unpredictable and inconsistent provision of information. Regulations development will involve meaningful and thorough consultation with local authorities and other PWA users.

#### **D4: Enable LINZ to direct agencies to provide information**

176. This option would provide LINZ with the power to request information from PWA users on an ad hoc basis, within a specified timeframe, for the purpose of informing LINZ's monitoring and evaluation functions, or in response to a particular issue.
177. PWA users would require additional dedicated resource to complete requests, but impact will vary depending on the level of record-keeping already undertaken. However, the system will benefit from centralised information. For example, there may be an opportunity for higher performing agencies to educate lower performing agencies to lift the standard. The requirements will apply to local authorities and there will be an associated compliance cost, which LINZ has not been able to test, due to limited consultation during the Review. The benefits afforded by the consistency of this option means greater clarity for costs and development of systems and processes when compared to Option D3.

### ***Transparency and accountability***

#### **D5: Routine reporting by LINZ on PWA system performance**

178. This option would require LINZ to publish reports on the PWA system performance, insights, emerging trends, as well as providing indicators of PWA performance. The report would be informed through information collected as part of Options D3 and D4 as well as input from landowners on acquisition processes.
179. This option increases transparency of PWA processes and provides the public with greater system level information about the PWA.
180. If reported data shows compensation trends are higher later in the acquisition process (i.e. that holding out during negotiations increases compensation), this could create a risk that the information made available through reporting could be used by others to delay acquisitions intentionally. However, this information would inform LINZ's monitoring and evaluation function and could be used to advise ministers if compensation settings are not effective.

**D6: Require PWA users to conduct their own reporting**

181. This option would require PWA users to conduct and publish (for example on their own website) their own reporting on their use of the PWA instead of centralised reporting.
182. This option provides for flexibility as each agency would be conducting their own reporting. However, it could also result in fragmented approaches that inhibit the ability to draw system wide insights.
183. There is a risk that information could be used to delay acquisitions if reported data shows compensation trends higher later in the acquisition process. However, this information would inform LINZ's monitoring and evaluation function and could be used to advise ministers if compensation settings are not effective. However, this advice may be less coordinated than under the previous option because information would not be centrally available or aggregated.

Proactive Release

Issue D: Regulatory tools

How do the options compare to the status quo/counterfactual?

Table 8: Options analysis for Issue D (Regulatory tools)

Option assessment criteria	Status Quo / Counterfactual	Role of LINZ Standards		Improving system level information (mutually exclusive)		Transparency and accountability (mutually exclusive)	
	<i>Current status and recognition of standards, no formal requirements in PWA to collect or share information</i>	D1 - Acknowledging LINZ's role as responsible for setting standards and guidelines in legislation	D2 - Standards are made as legislative instruments	D3 – Enable LINZ to direct agencies to provide information	D4 – Require users to routinely provide LINZ with information	D5 – Routine reporting by LINZ on PWA system performance	D6 – Require PWA users to conduct their own reporting
Effectiveness	0	+	-	+	+	+	+
Efficiency	0	0	-	+	+	0/+	0
Clarity	0	++	+	+	++	++	0
Feasibility	0	+	-	+	+	+	0
Overall assessment	0	+4	-2	+4	+5	+4 & ½	+1

**What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?**

184. LINZ's preferred package of options are:

- **Option D1:** Acknowledging LINZ's role as responsible for setting standards and guidelines in legislation.
- **Option D4:** Require users to routinely provide LINZ with information.
- **Option D5:** Routine reporting by LINZ on PWA system performance.

185. The preferred options will help ensure consistency and promote stewardship in the system, taking a light-touch and evidence-based approach to regulating the PWA system. These options will support infrastructure delivery by enabling LINZ to identify, monitor and respond to issues in the system into the future. Other options (D2) may appear to improve the clarity and robustness in the system or (D3 and D6) to increase flexibility, but in practice would place higher compliance cost onto PWA users and may outweigh the efficiency benefits gained through the Review.

**What are the marginal costs and benefits of the preferred option in the Cabinet paper?**

Affected groups	Comment.	Impact	Evidence Certainty.
<b>Additional costs of the preferred option compared to taking no action</b>			
Crown users (e.g., NZTA)	Increased costs due to additional resource and funding required to implement new systems, processes and standards for providing information to LINZ.  LINZ engaged Crown users on these proposals throughout policy development, however, did not request detailed information on funding impacts.	Low-medium	Medium
LINZ (as regulator)	Additional resource and cost required for tools to collect and analyse information provided by PWA users.  Additional resource and funding required to create and update new standards.  LINZ has considered and modelled the resourcing and funding implications for its PWA functions.	Medium	High
Others (e.g., wider govt, consumers, etc.) <i>For fiscal costs, both increased costs and loss of revenue could be relevant</i>	Increased compliance cost for Local Authorities due to additional requirement for information collection.  LINZ has not been able to test the specific impacts on local authorities due to limited	Low-Medium	Low



	consultation throughout the Review.		
<b>Non-monetised costs</b>		Medium	Medium
<b>Additional benefits of the preferred option compared to taking no action</b>			
Crown users (e.g., NZTA)	Increased confidence that LINZ can identify and respond to PWA system issues as they arise, such as barriers to efficiency.  LINZ engaged Crown users on these proposals throughout policy development and has heard support for regulatory tools and benefits of improved system stewardship.	Medium	Medium-High
LINZ (as regulator)	Will benefit from obtaining the information needed to act as an effective steward of the system.  Changes to standards enable LINZ to be satisfied that decision-making is consistent.  LINZ considers that these proposals will improve its ability to regulate the system.	Medium	High
Others (eg, wider govt, consumers, etc.)	Landowners benefit from improvements to information, and its accessibility, on PWA works.  The public have not been consulted on these proposals, but LINZ has drawn from previous analysis and users' insights into public experiences of the system.	Medium	Medium
<b>Non-monetised benefits</b>		Medium	Medium

## Implementation

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### How will the proposals be implemented?

186. This section should be read in conjunction with Part D of the Primary RIS (pages 66 to 67).
187. As with the first set of options (in the Primary RIS) the additional proposals will be given effect through amendments to the PWA, with a bill expected to be passed by the end of 2025. The changes will need to be implemented by Crown and local authority PWA users, including accredited suppliers.
188. The emergency regime will be available from enactment but will not be implemented until activated through an OiC process.
189. Transitional provisions are required to provide for land acquisition that are underway when any amendments under the Review come into force. Transitional and savings provisions are proposed to provide clarity for acquisitions processes where a notice of intention has been served and how the amended process will apply. Clarity in the legislation should enable momentum to be maintained for acquisitions that are underway prior to enactment. Changes around compensation will have effect from enactment and apply to all acquisition processes underway at enactment.
190. LINZ will be responsible for administering the legislation. LINZ standards and guidelines will need to be updated to reflect updated legislative requirements alongside new regulations regarding information to be collected for reporting purposes. LINZ will engage with affected groups to ensure the system changes are well socialised and understood. LINZ will continue to play an education and advisory role to support the implementation of changes. Due to constraints and limited consultation with affected parties, this engagement will be particularly crucial to ensure the effectiveness of implementation.
191. There is a risk due to local authorities, who are high users of the public works powers, not being consulted during the development of these proposals. The implications for local government of broadening eligibility for and raising the level of incentive payments, including affordability, are not fully understood. Local Government views will be sought generally during the select committee process, but they will also be engaged with on specific elements, such as regulations, which will be developed in consultation with local authorities.
192. LINZ will undertake a review of fees for its PWA functions in 2025, including to address a trend of operating deficits. Any additional functions proposed that are progressed will be considered as part of this wider review.

### How will the proposals be monitored, evaluated, and reviewed?

193. As discussed in Part D of this RIS addendum, proposals include a preferred package of amendments to provide additional regulatory tools for LINZ. These changes will enable LINZ to collect additional data to fill current information gaps as well as tools to monitor and audit. These additional regulatory tools will provide system wide insights on the system so that LINZ can identify and respond to any issues or inefficiencies. This will mitigate some of the risks presented by making changes to the system and allow LINZ to identify if the changes are effective.

Preferred Option/s		Delivery And Implementation
Part A – Acquisition procedures ahead of compulsory acquisition	Before issuing a notice of intention, the Minister must be satisfied that landowners have received key information (relating to the need and purpose for the acquisition of land; PWA process, rights and entitlements, invitations to sell), PWA users have negotiated in good faith for a minimum period of three months, or for Māori freehold land for a minimum period of six months.	LINZ will need to develop and issue updated standards and guidelines for acquisition procedures under the PWA, including forms of information provision, and minimum information standards. Local authorities will need to be supported to understand the shift in procedures. LINZ will no longer have centralised oversight over the day-to-day approval and issuing of notices of desire, which may affect reporting capabilities and workflow systems. LINZ will need to develop and issue updated guidance for landowners that covers the move from a notice of desire, to invitation to sell. The Māori Land Court will need to be notified of the change to negotiation timeframes for Māori freehold land.
Part B – Compensation	Introduce an incentive payment set at 10 percent of land value, with a minimum of \$1,000 and a maximum of \$100,000. Increase home-loss payments to \$50,000, in line with CPI and forecasts of the CPI for an additional four years and set land-loss payments at 10% of land value, with a minimum of \$350 and a maximum of \$35,000. Extend eligibility for the home loss payment to each principal place of residence on a parcel of land where it is a principal place of residence of an owner of the land.	LINZ will need to develop and issue updated guidance for landowners on their compensation entitlements, as well as updating their standards and guidance for acquiring agencies. Acquiring agencies and local authorities will need to update processes, and address this through their funding and procurement processes as relevant.
	<i>Discretion for Māori freehold land</i> Decision-makers have the discretion to provide the value of the incentive payment in cases where Māori freehold land is acquired or taken after a notice of intention is issued.	
Part C – Emergency provisions	Create an accelerated land acquisition emergency regime in the PWA, activated by OiC, and with safeguards attached. The accelerated land acquisition emergency regime will reduce negotiation requirements, simplify acquisition processes, amend objection rights, and extend entitlement to the value of incentive payments regardless of acquisition type.	An emergency regime will be set out in legislation. New policy will need to be developed around how and when the work is initiated to activate the emergency regime. There are criteria around when the emergency regime can be used and they will only be available for a set period of time after an emergency event. An OiC will be required to enable the emergency powers to be used. The development of the OiC will have to carefully consider whether there is a need to use the emergency powers, where they can be used, and what they can be used for. It is expected that existing resources will be diverted, when necessary, to support recovery efforts (as had occurred following previous natural disasters). LINZ will seek feedback from PWA users on the detail of the emergency regime and its appropriateness to support recovery activities; views on this will also be sought during the select committee process. New guidance could be developed to assist to educate potential users on how the emergency regime powers may be accessed and what they enable.
Part D – Regulatory tools	Recognise the responsibility LINZ has for setting standards and guidance to support PWA users to comply with the PWA, providing clarity about intended purpose and audience. Introduce requirements for PWA users to provide information and data on their use of the PWA, supported by detailed requirements in regulations. The Chief Executive will have responsibility for producing performance reports on the PWA system, to show how it is being used and improve transparency.	LINZ will keep PWA users informed as work on regulatory proposals progresses, particularly where this introduces new requirements. LINZ will communicate these proposals to the public as part of broader information and education on the Review process. LINZ will update standards and guidance to reflect the changes from this Review, strengthened by clarifying the purpose and audience of standards. Regulations are required to deliver the detailed requirements for the information provision proposal. LINZ will consult Crown users, local authorities and network utility operators when designing the form, manner and content of proposals. LINZ will also complete the necessary steps for regulations development including Cabinet decisions, regulatory impact analysis, and public consultation. LINZ will need to develop systems and processes (including new or updated technology) to receive, store and assess the information. Users will need to develop systems and processes for collecting, storing and providing information. LINZ will design a reporting process on the PWA system performance using the information gathered by LINZ from other acquiring agencies and local authorities, and make this publicly available.