

BRF 25-116 Appendix 1: PWA options summary

Policy issues and context		Options	Panel support	Key trade off	Cabinet-mandated criteria			
					Effective	Efficient	Clarity	Feasible
Focus Area 1: Acquisition								
Decision making by the Crown	Crown access – acquisition by agreement The Public Works Act 1981 (PWA) gives powers to acquire land (including by agreement and by compulsion) to the Minister for Land Information (the Minister), and local authorities. Having to rely on the Minister may reduce Crown agencies’ autonomy and may contribute to project delays. Acquisition by agreement: For Crown transactions, acquisition by agreement occurs for approximately 94% of acquired land. Acquisition by agreement is relatively low-risk.	1. Retain LINZ as check on acquisition by agreement: In line with status quo, LINZ would continue to assess applications for acquisition by agreement, among other statutory decisions.		Less autonomy for agencies, however it provides with the system with greater oversight and consistency in decisions.	0	0	0	0
	2. All Crown agencies have autonomy in decision making for lesser powers, with the Minister delegating land acquisition functions by agreement to Crown users, to make decisions themselves.		Increased autonomy, however all agencies may not have the expertise and experience in the system. There is a key risk agencies will require LINZ expertise anyway, resulting in double handling. If the Minister is delegating powers outside of LINZ they will still retain ultimate responsibility for decisions made which could expose them/LINZ to risk to achieving the objective of increasing autonomy.	+	0	+	+	
	3. The highest Crown user (NZTA) has autonomy for lesser-powers by delegation: NZTA has in-house capability in PWA practice and has the scale and expertise to be able set up processes needed for this function by delegation from the Minister. The mechanism will allow other agencies if they become high users to apply.	✓	Efficiencies in autonomy could be realised as the user has large scale experience in acquisitions, although it could take time to build and strengthen the internal PWA statutory function. It would mean less LINZ oversight of these transactions, however, they are lower risk and oversight can be found through other regulatory tools. If the Minister is delegating powers outside of LINZ they will still retain ultimate responsibility for decisions made which could expose them/LINZ to risk to achieving the objective of increasing autonomy.	+	++	0	+	
	Crown access - compulsory acquisition: Only approximately 6% of acquisitions are by compulsion and the powers to take land by this are higher-risk, among the strongest available to government, constitutionally significant, and in tension with the strong status afforded by property rights. A compulsory acquisition process formally begins when the Minister or a local authority issues a section 23 Notice of Intention to Take Land. The Minister cannot delegate a decision to issue this notice and must do this themselves. We considered whether this power should be delegated to a Crown agency itself, e.g. any board or its Chief Executive. However, there is a need to ensure public accountability in the use of compulsory powers, and this aligns with international jurisdictions where compulsory acquisitions require Ministerial sign off. We also considered whether to move Ministerial sign off to the later proclamation stage, however, this would simply delay the process of checking whether due process was followed.	1. Minister for Land Information retains powers of compulsory acquisition, meaning LINZ undertakes the checks on the powers, and provides advice to the Minister to consider	✓	This ensures LINZ and the MLI retains oversight of the PWA operations of compulsory acquisition, providing a greater independent check on the higher risk compulsory acquisition. LINZ has the expertise on the process, which is what is being tested through this check.	0	0	0	0
	2. The responsible Minister has compulsory acquisition powers, meaning the responsible agency provides the check in the system and advises their Minister.		Potentially less efficient, as the agency will need to set itself up to provide the advice and most do not acquire regularly enough to be able to do this, and in practice would seek advice from LINZ.	0	-	-	0	
	3. The responsible Minister for the highest user (NZTA) has decision making power for compulsory acquisition	✓	This may create efficiencies as the agency knows its own projects, however it will require a duplication of effort across the public sector with MoT providing advice to the Minister for Transport, with LINZ also providing the service for other agencies. The check is generally on process under the PWA, which will require time for agencies to come up to speed on.	0	+	-	-	
	Regulatory tools: If decision-making is devolved to responsible portfolio ministers and agencies under delegation, LINZ needs to consider how this impacts its ability to act as an effective regulatory steward. Currently, LINZ receives the information required for regulatory oversight through its active and supporting decision-making role (i.e., deciding on Crown agency PWA by agreement under delegation and advising on compulsory acquisition). If this role is decreased, LINZ will require new tools and methods so it can monitor the health of the regulatory system and identify and respond to any emerging risks, trends or issues, this is particularly true for local authorities, which LINZ has very little oversight of in general because they do not need approval for PWA actions.	1. Provide LINZ with regulatory tools in the PWA for collecting information, auditing and reporting (to enable LINZ to monitor the health of the regulatory system, evaluate whether proper process is being followed consistently and lawfully, and report on the performance of the system, including to monitor and evaluate the impacts of amendments made from the current review on efficient infrastructure delivery)	✓	LINZ would keep any functions light touch, recognising that regulated parties within the PWA system are mainly other government agencies. However, this function will require funding to establish and implement. Whereas currently LINZ sees all Crown PWA decisions, without this oversight our ability to monitor the system will be diminished. Regulatory stewardship is included in the Government Expectations for Good Regulatory Practice, and is one of the five principles specified in the Public Service Act 2020, that includes proactively promoting stewardship “of... the legislation administered by agencies”. It is important for ensuring the health, relevance and effectiveness of regulatory systems. This function helps inform whether the right policy settings are in place to support efficient acquisitions and infrastructure delivery.	++	0	+	++

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<p>Joint projects: The Act does not provide for one acquiring authority to act on behalf of another, or others, when acquiring land from a single landowner for multiple public works with interrelated or parallel objectives.</p> <p>The current provision causes delays, inefficiencies, costs and creates unnecessary duplication and fragmentation. It could result in multiple acquisitions (each by a different agency) from the same landowner for the specific interest required by that acquiring authority.</p> <p>The Crown and local authorities can combine to deliver a public work provided for by s 224 of the PWA if the work meets the test of being of both national and local significance. Section 224 has only been triggered 5 times due to the high bar.</p>	<p>1. Lower the threshold for collaborative work by providing that section 224 would enable any combination of Crown or local authorities to carry out a joint work.</p>	✓	<p>The importance of clear and shared system objectives for the taking of land will become apparent, particularly should a landowner object to the taking. The provision is relatively untested, and this will open it up. Options that enable greater movement of land between authorities to undertake joint work may be perceived as circumventing offer back responsibilities, however offer back will still apply at the end of the life of the work.</p>	++	+	+	+
	<p>2. Provision mirroring the Urban Development Act 2020 (UDA) regarding Kainga Ora acquisition powers Special powers for the acquisition of land for specified works initiated, facilitated or undertaken by PWA users (the Crown or local authorities and/or NUOs depending on recognition). Land vests in fee simple to the lead user. Land may be transferred (including to a developer) to undertake the specified work despite sections 40-42 of the Public Works Act.</p>		<p>This provision/definition provides and accounts for urban renewal and regeneration, and enables transfer of land to Māori to undertake works. Also allows for transfer to private providers where they are best suited to undertake the works, with clearly spelled out transfer and disposals requirements including right of Crown resumption through ‘development agreements’.</p> <p>The comprehensive review of the PWA in the 2000s discussed Māori interests in their whenua which detailed grievances where offer back had been breached. These grievances could likely be replicated with an extension of PWA powers to private persons, especially where land is to be vested in them.</p> <p>If mirrored, the UDA provides significant protections for Māori including early direct engagement and the ability for interested Māori entities to participate in development.</p>	+	+	-	0
<p>Acquisition for indirect or third-party purposes: A 2013 court decision provides that when an acquiring authority’s works affect a third party’s infrastructure, that acquiring entity cannot use PWA powers to acquire land for relocating that third party’s works. The third party must acquire the land. This has led to difficulties and inefficiencies, and may create additional time and costs for landowners.</p>	<p>1. Allow acquiring entities to acquire any land for either direct or indirect purposes or for the purposes of relocating affected third party infrastructure, if that third party is an NUO and can apply under section 186 of the RMA.</p>	✓	<p>This limitation aligns with the ability to relocate existing works under the UDA and provides efficiencies, and one point of contact for the landowner, however, it also limits the rights of a landowner to negotiate and object to the to the taking of their land with those who are responsible for the taking (which the Supreme Court considered very important in <i>Seaton</i>). It is possible that although landowners will be affected by the inability to negotiate with multiple parties, this approach could be simpler for landowners as they do not need to undertake negotiations with multiple parties.</p>	++	+	+	+
<p>Transfer of land: The obligation to offer back land taken for a public work under the PWA is deferred until the land is no longer required for further works. For example, land not needed after completion of an NZTA roading project may be identified for housing provided by the Ministry of Housing and Urban Development.</p> <p>The courts have determined that there is only a limited time for the requirement that land is needed for another public work under sections 50 or 52 to be confirmed before offer back obligations apply. In practice, it takes a significant amount of time to arrange, confirm, and undertake a transfer of the land.</p> <p>Stakeholders have said that the lack of flexibility to transfer land is an impediment to strategic acquisition, and an ability to take time to consider whether transfer is appropriate would maximise Crown land holdings for future public works purposes.</p>	<p>1. Non legislative options such as Cabinet direction to address concerns around funding, and updates to LINZ standards and guidelines.</p>	N/A	<p>These non-legislative issues will support with clarity of process for the transfer of land, and provide guidance. However, it will not address any timeframe issues, which have been determined by the court.</p>	+	+	0	+
	<p>2. Legislative changes to address timing considerations for the transfer of land</p>	N/A	<p>The transfer of land for alternate public works use is contentious, particularly for Māori land. The comprehensive review of the disposals and transfers system in the 2000s PWA review discussed Māori interests. The discussion was informed by public submissions of tangata whenua, stakeholder engagement through national hui and the work of Te Roopu Arataki, a Māori expert advisory panel appointed by LINZ to consider implications for Māori of the review.</p> <p>The review identified that Māori consider the change of use of land from an existing public work to another public work to be inequitable, potentially denying return of the land at the earliest opportunity. In addition, as land was initially taken on the grounds of a prescribed purpose, and it is on this purpose that the Environment Court may consider objections, there is no right for public objection to change of land use.</p> <p>Any legislative changes that affect disposals will be out of scope of the review, and require significant time, resource and consideration.</p>	+	+	+	--