

BRF 25-116 Briefing one - Public Works Act Review: Overview and policy decisions on access to Public Works Act 1981 powers

Ki / To: Hon Chris Penk, Minister for Land Information

Rā / Date: 10 October 2024

Ngā mahi matua kia mahia/key actions required

Minita/Minister	Key action required: Agree/note/forward	Deadline when this action should be completed by
Hon Chris Penk, Minister for Land Information	Indicate your preferred options for key acquisition policy decisions to inform legislative reform of the Public Works Act 1981 following a targeted review	21 October 2024

Toitū Te Whenua Land Information New Zealand Whakapā/contacts

Ingoa/Name	Tūnga/Position	Nama waea/ Contact number	Whakapā tuatahi/first contact
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Ngā kōrero a te Minita/Minister's comments

Pūtake/Purpose

This briefing is the first in a series of three briefings reporting back on a targeted review of the Public Works Act 1981 (PWA) to facilitate the Government's delivery of public infrastructure. This briefing seeks your decisions on key policy issues relating to acquisitions under the PWA. Briefings two and three will provide you with further advice relating to objections and compensation, Network Utility Operators' (NUOs) ability to access PWA powers, and whenua Māori.

A detailed analysis of policy decisions, trade-offs and considerations are at **Appendix one**.

Pānui whāinga/Key messages

- 1 On 10 June 2024, Cabinet agreed to review the PWA. Toitū Te Whenua Land Information New Zealand (LINZ) established an Expert Advisory Panel (the Panel) to provide advice ahead of any reforms.
- 2 LINZ has completed a targeted review of the PWA. The Panel has provided advice on the review, that was provided to you on 3 October 2024 [BRF 25-110 refers]. LINZ has considered the Panel's findings and has incorporated its analysis into its policy recommendations. This is the first of three briefings, reporting back on the targeted review, and is focussed on acquisition issues. You will receive advice on other PWA review matters in due course.
- 3 Three acquisition issues have been identified by LINZ as creating the most significant barriers to infrastructure delivery for agencies:
 - Issue 1: delivery of public works has devolved to a range of users over time but land acquisition powers have not.
 - Issue 2: access to powers that enable collaborative delivery is restricted and difficult to obtain.
 - Issue 3: relocation of existing third-party infrastructure requires a separate acquisition process.
- 4 Options for targeted amendments are included in the body of this briefing. This paper seeks your decisions on a package of options for improving the efficiency, effectiveness, and clarity of the PWA's land acquisition processes and procedures with a specific focus on land acquisition powers, joints works and transfers.
- 5 Targeted changes will enable faster delivery of public works, while maintaining fairness, transparency and accountability:

Issue 1: delivery of public works has devolved to a range of users over time, but land acquisition powers have not

 - Delegation of lesser (non-compulsory) powers to users will achieve significant efficiencies.
 - Compulsory acquisition remaining with a minister of the Crown will provide appropriate transparency and accountability.

- LINZ's role will shift away from day-to-day decision-making towards a focus on regulatory stewardship which will require new tools and methods to monitor and respond to emerging risks, trends or issues.

Issue 2: access to powers that enable collaborative delivery are restricted and difficult to obtain

- Targeted amendments will facilitate joined-up approaches to infrastructure delivery.

Issue 3: relocation of existing third-party infrastructure requires a separate acquisition process

- Enabling the relocation of existing private third-party infrastructure would remove additional complexity and duplication.

- 6 In addition, tightening the operational settings around the transfer of land between agencies could promote better use of Crown land for public works.
- 7 Key policy decisions to amend the PWA must be made now to inform detailed policy analysis and regulatory impact assessments ahead of Cabinet decisions. You are to report back to Cabinet on reforms in December 2024, with an additional Cabinet paper in March 2025.
- 8 LINZ will come back with further options to create more flexible acquisition procedures to create additional efficiencies for infrastructure delivery.

Tohutohu/Recommendations

Toitū Te Whenua Land Information New Zealand recommends that you:

Indicate your preferred options to key policy decisions to inform legislative reform of the PWA following a targeted review:

1. Options for Crown users' access to acquisition by agreement (lesser powers)

- a) Retain LINZ as check on acquisition by agreement (status quo)
☐ Agree ☐ Disagree
- b) All Crown agencies have autonomy for acquisition by agreement (lesser powers) via MLI
☐ Agree ☐ Disagree
- c) **(LINZ preferred option)** The highest Crown user (NZTA) has autonomy for acquisition by agreement (lesser powers)
☐ Agree ☐ Disagree

2. Options for Crown users' access to compulsory acquisition powers

- a) **(LINZ preferred option)** Status quo: Minister for Land Information retains powers of compulsory acquisition
☐ Agree ☐ Disagree
- b) The responsible Minister has compulsory acquisition powers

☐ Agree☐ Disagree

- c) The responsible Minister for the highest Crown user (NZTA) has decision making power for compulsory acquisition

☐ Agree☐ Disagree

3. Options to facilitate joined-up approaches to infrastructure delivery

- a) **(LINZ preferred option)** Lower the threshold for collaborative work to reduce duplication of efforts

☐ Agree☐ Disagree

- b) Mirror the Urban Development Act 2020 to enable joint public works to users and wider partners e.g., private providers or Māori/iwi

☐ Agree☐ Disagree

4. Option to enable the relocation of existing third-party infrastructure

- a) **(LINZ preferred option)** Allow the Crown to acquire any land for either direct or indirect purposes

☐ Agree☐ Disagree

5. Options to respond to the transfer of land for public works

- a) **(LINZ preferred option)** Non legislative options such as Cabinet direction to address concerns around funding, and updates to LINZ standards and guidelines.

☐ Agree☐ Disagree

- b) Legislative changes to address timing considerations for the transfer of land

☐ Agree☐ Disagree

6. **Agree** that LINZ investigate how LINZ could be established as a monitoring agency and be provided with regulatory tools in the PWA through these reforms.

☐ Agree☐ Disagree

Stacey Newlands

Leader, Strategy, Policy and Design
Toitū Te Whenua Land Information New
Zealand

Rā/Date: 10/10/24

Hon Chris Penk

Te Minita mō Toitū Te Whenua/
Minister for Land Information

Rā/Date:

Inserted Note

At the Minister's meeting with LINZ officials on Wednesday 16 October 2024 Hon Chris Penk confirmed the following:

Decisions on options:

Acquisition by agreement option 3

Compulsory acquisition option 1

Regulatory tools option 1

Joint projects option 1

Third party work option 1

Transfer of land option 1

Tāpiritanga/Attachments

- 1 Appendix one – Detailed options packages
- 2 Appendix two – Issues to be covered in Cabinet paper two

Te Horopaki/Background

The Public Works Act 1981 (PWA) is a key mechanism that enables the development of public infrastructure projects

- 1 The PWA provides powers to acquire land for delivering public works, such as roads, schools, and water services. It sets out a process that must be followed to ensure the rights of private landowners are considered and protected, including the payment of compensation for any land acquired.
- 2 Its operation is based on four key principles:
 - the Crown and local authorities can acquire or take interests in land needed for a public work (with access for network utility operators (NUOs) such as Transpower provided for through the Resource Management Act 1991)
 - that legislative procedures are fair and transparent for all parties, ensuring good faith negotiation and full compensation to leave landowners no better or worse off following PWA action
 - there is an independent and binding judicial check on the Crown's powers to take interests in land
 - where land is no longer required for a public work, the Crown and local authorities must offer the land back to former owners unless exemptions apply.
- 3 The PWA has not been substantially amended since 1988.

Reform of the PWA is a priority for the government

- 4 On 10 June 2024, Cabinet agreed to initiate a review of the 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]. The review is focused on acquisition and compensation functions. You are to report back to Cabinet in December 2024 to seek agreement to policy decisions on a targeted amendment bill.
- 5 As the PWA contains significant powers, Cabinet directed Toitū Te Whenua Land Information New Zealand (LINZ) to establish an Expert Advisory Panel (the Panel) for two months to provide independent and specialist advice to the LINZ Chief Executive, and to engage with stakeholders ahead of reforms. Panel members are experienced in the operation of the PWA and land law, along with accredited suppliers, landowner advocacy, local government and issues unique to Māori land. LINZ provided you with the final Panel Advice Paper on 3 October 2024 [BRF 25-110 refers].
- 6 In addition, on 29 July 2024 you and the Minister of Transport directed LINZ and the Ministry of Transport to begin parallel policy work to develop a faster land acquisition process to facilitate critical infrastructure delivery of specified projects. The aim of this work is to deliver a more immediate PWA amendment bill, for passage by mid-2025. There are some overlapping considerations in the two streams of work, and LINZ will coordinate briefings to support aligned decision-making.

- 7 Key policy decisions are needed to inform detailed policy analysis and regulatory impact assessments ahead of Cabinet decisions. You are to report back to Cabinet on reforms in December 2024, with an additional Cabinet paper in March 2025.
- 8 This briefing is the first of **three** that reports back to you on the review of the PWA and seeks your decisions on policy areas. This briefing discusses the review's findings and seeks your decisions on policy options relating to acquisitions, namely PWA powers, joint works and transfers.
- 9 Briefings two and three will provide you with further advice relating to objections and compensation, Network Utility Operators' (NUOs)¹ ability to access PWA powers, and whenua Māori. These briefings will be provided to your office in due course.

Tūranga/Current status

LINZ has completed its review of the PWA as directed by Cabinet

- 10 In line with Cabinet agreement, LINZ has completed a targeted review of the PWA.
- 11 The review has been informed by previous system assessments of the PWA, consultation with agencies and the work of the Panel, which analysed acquisition and compensation issues and undertook targeted engagement with stakeholders.
- 12 LINZ's review found similar issues as the Panel. LINZ generally agrees with the majority of the Panel's advice, with some divergence when assessing the options against the purpose of the Act, and operational and regulatory realities.
- 13 The criteria that have shaped the review are narrowly focused to ensure that any subsequent changes to the PWA are high-value and can be made in a timely manner:
 - Efficiency – improving process efficiency and removing unnecessary duplication
 - Effectiveness – legislation is workable, fit for purpose and realises the Crown's ability to undertake public works
 - Clarity – providing transparency for those using and affected by PWA processes
 - Feasibility – the ability to make and implement changes to the Act.

Ngā tirohanga me ngā kōwhiringa o Toitū Te Whenua/Toitū Te Whenua LINZ views and options

LINZ has found that current PWA settings are inefficient, and sometimes ineffective

- 14 LINZ's review of the PWA has found that the Act is outdated and out of step with current public works delivery needs. In brief, the review found issues in three key areas:

Acquisitions

- Who has access to PWA powers and the mechanisms for accessing those powers is outdated. The Act has not kept pace with how public works are delivered, meaning

¹ Defined in Section 166 of the Resource Management Act 1991

that those who undertake the majority of public works must rely on LINZ approving the acquisition of land on their behalf.

- Statutory procedures for taking land can be resource intensive, and are inflexible and out of step with the realities of project delivery, leading to rework and slower acquisition timeframes.
- LINZ's ability to uphold its regulatory responsibilities and ensure good regulatory stewardship is difficult in the PWA's current form.

Compensation

- The PWA's compensation regime is limited in its ability to incentivise early landowner agreements to an acquisition by the Crown.

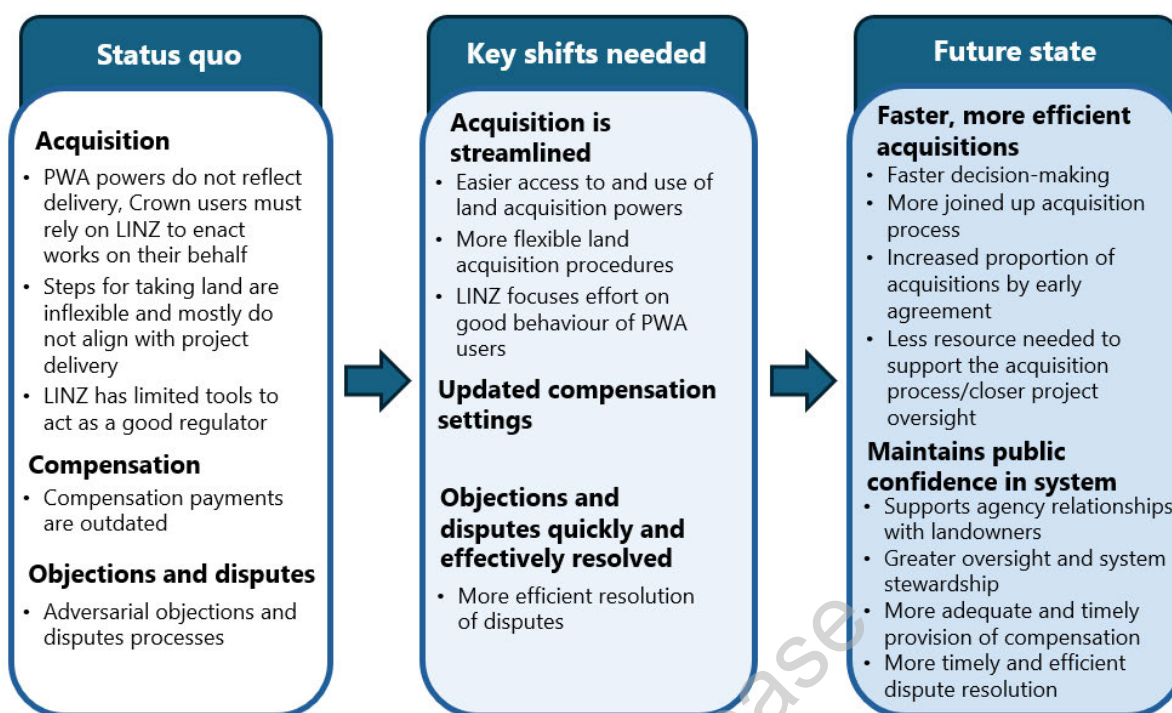
Objections and disputes

- The process for objecting to a taking of land, when combined with the designation process under the RMA, is inefficient.
- Resolving disputes over the value of compensation can be adversarial, overly formal, time-consuming, and leaves owners without payment for a significant period.

15 LINZ also found that modernising some language and provisions in the Act would ensure it is fit for purpose where it is possible and appropriate to do so.

LINZ has identified the key shift needed to create a more responsive land acquisition system

- 16 Amendments should be high value while maintaining the fundamental balance between the Crown's ability to take land for public good and private property rights.
- 17 To achieve a more efficient, effective and clear system for users and landowners, LINZ recommends that the Government prioritises legislative amendments that:
- create time-savings upfront during negotiations
 - allow flexibility
 - promote acquisition by agreement and accessibility for key infrastructure delivery agencies
 - ensure landowners are engaged, better able to participate and appropriately compensated.

Diagram 1. Shifts needed to support system change.

- 18 LINZ analysis, advice from the Panel, and stakeholders agree that key shifts would deliver system change. Diagram 1. provides a visual representation of these shifts and the impact of those shifts on the PWA system.
- 19 LINZ expects that these shifts will create a responsive land acquisition system that will more readily enable public works to be delivered within reasonable project timeframes. The resources used in the current public works system would be refocused to guide good behaviour and best practice.
- 20 Similarly, LINZ anticipates that shifts in the way the PWA works for landowners may improve landowner experience of the system and encourage faster upfront agreements through enhanced and updated compensation processes and amounts, and more engaged and responsive disputes resolution.

LINZ has identified some issues beyond the scope of this review, and where LINZ does not currently recommend action

- 21 As part of the review, stakeholders raised a range of additional issues which fall outside the review's objective of facilitating faster delivery of public infrastructure. Many of these issues have also been identified by the Panel. For example:
- modernisation of the PWA (i.e. a thorough review to remove redundant clauses and update definitions)
 - provide for better protections for, and recognise the differences in, Māori land tenure
 - create better alignment with parallel land use and land rights legislation (such as the Unit Titles Act 2010 and the RMA)
- 22 LINZ has tested these issues and does not recommend they are progressed at this time.

- 23 The Panel's advice paper suggested that further consideration should be given to aligning the PWA with the needs of climate adaptation and managed retreat. This targeted review is not well placed to respond to those issues due to complexity and uncertainty as to what adaptation and managed retreat would look like and require. These issues could be in tension with the PWA's fundamental design, for example, in terms of the feasibility of providing full compensation for land acquired for managed retreat. LINZ will assist the Ministry for the Environment as relevant in their ongoing work programme on adaptation.
- 24 The Panel recommends that offer back and disposal provisions are addressed in any future review. This was viewed by the Panel and stakeholders as needing urgent attention. LINZ agrees with the Panel that the provisions are out of scope, and more time and engagement would be needed to develop proposals.
- 25 The risks of not progressing these additional issues as part of this package are that they further embed unhelpfully complex legislation, do not resolve outstanding and contentious issues, and continue a disjointed legislative environment. Conversely, the risk of progressing these changes is that they are unlikely to be addressed inside the review's timeframe and would divert resources from the above, high impact focus areas.

LINZ has investigated options to improve efficiency and effectiveness of the acquisition process

- 26 Three acquisition issues have been identified by LINZ as creating the most significant barriers to infrastructure delivery for agencies:
- Issue 1: delivery of public works has devolved to a range of users over time, but land acquisition powers have not
 - Issue 2: access to powers that enable collaborative delivery are restricted and difficult to obtain
 - Issue 3: relocation of existing third-party infrastructure requires a separate acquisition process
- 27 LINZ has identified packages of high-level options to address each issue. These are assessed by LINZ, with support from the Panel, and informed by internal agency consultation and targeted external stakeholder engagement. Options are not always mutually exclusive of one-another, and decisions in one area may affect another.
- 28 Following discussion of each issue, a summary table sets out the available options, including the LINZ preferred option (highlighted in grey), and seeks agreement on your preferred approach.
- 29 A detailed options assessment, including full multi-criteria analysis is attached at **Appendix One**. This includes a discussion of trade-offs and considerations.

Issue 1: Delivery of public works has devolved to a range of users over time, but land acquisition powers have not

- 30 The PWA gives powers to acquire land (including by compulsion) to the Minister for Land Information (on behalf of Crown agencies) and to local authorities.^{2 3}
- 31 The Minister's decision-making role for Crown PWA actions reflects that when the PWA was introduced, the Minister of Works (whose PWA powers the Minister for Land Information has inherited) was responsible for acquiring and delivering most of the Crown's public works. Since then, functions for works have been devolved to responsible agencies including funding compensation payable to landowners and managing, constructing, maintaining and operating the public work. LINZ has retained decision-making powers and responsibility for regulating the system for Crown agencies through standards, guidelines and requiring the use of accredited suppliers.
- 32 Most Crown providers of public works depend on the Minister for Land Information (and LINZ delegates) for all land acquisition decisions. This reduces their autonomy, involves multiple information exchanges between the acquiring agency and LINZ, and may contribute to project delays. For Crown transactions, acquisition by agreement occurs for approximately 94 percent of acquired land.
- 33 Network Utility Operators (NUOs) usually negotiate outside the PWA to seek agreement, but if they fail to reach agreement, they can access the PWA through the RMA. NUOs must apply to the Minister for Land Information to undertake the standard PWA land acquisition process on their behalf. In practice, LINZ itself engages accredited suppliers to manage/oversee negotiations processes in these cases.
- 34 Approximately 6 percent of all acquisitions are by compulsion. The PWA's powers to take land are among the strongest available to government, and in tension with the strong status afforded by property rights. Given this, Ministerial approval is needed to ensure public accountability when compulsory powers are used. In the case of local authorities, the Local Government Act 2002 similarly has strong accountability protections for the use of PWA powers by territorial and regional councils. Where there is any ambiguity about how compulsory acquisition powers are defined, the courts are likely to interpret the law in favour of an affected landowner.
- 35 LINZ has explored options for adjusting user access to PWA powers that would streamline PWA processes and improve user experience. Devolving powers to an acquiring agency so that land acquisition decisions were no longer entirely reliant on the Minister for Land Information and delegates would increase autonomy for public works users, reduce information sharing duplication between LINZ and users, and could contribute to project

² Local authorities for PWA purposes have been defined as broader than just regional and territorial councils, and include universities, school boards, wananga and Fire and Emergency New Zealand. Many of these entities have been added over time or evolved from earlier entities that were accountable to elected boards.

³ Some bespoke legislation provides additional entities with access to PWA powers, such as The New Zealand Railways Corporation under its own legislation, and Kāinga Ora via the Urban Development Act.

efficiency gains. There is a risk that if users are provided more autonomy, this could be seen by the public as less independent and impartial than the current system.

Acquisition by agreement (lesser powers i.e. non-compulsory)

- 36 Delegation of acquisition by agreement (lesser powers) to users will achieve significant efficiencies.
- 37 The Panel's position, in line with stakeholder views, is that it is inefficient for Crown users that frequently acquire land by agreement to have to rely on the Minister for Land Information and LINZ to exercise PWA powers on their behalf. The New Zealand Transport Agency Waka Kotahi (NZTA) is by far the biggest Crown agency user of the PWA generating 60.97 percent of PWA jobs overall in 2013-2022 through LINZ⁴ and 93.38 percent of all acquisitions.
- 38 In the Panel's view, responsibility for acquisition by agreement (lesser powers) could sit with the minister responsible for the acquiring agency, with delegation available to the agency itself, supported by LINZ as regulator. The Panel said this would only be appropriate for high volume Crown users of the PWA with the in-house resourcing and knowledge to set up adequate processes and operating procedures.
- 39 As such, this delegated power may only be needed immediately for NZTA and efficiencies could expect to be realised because fewer information exchanges between the acquiring agency and LINZ would be needed. For agencies that use the PWA less frequently it may be more efficient for LINZ to retain its role.
- 40 LINZ agrees with the Panel's assessment of access to, and use of PWA powers for high volume Crown users of the PWA. Currently, this is assessed to be NZTA but may apply to other high impact users if they express interest in being included for consideration. Acquisition by agreement and other powers identified by LINZ as lesser powers, such as advanced compensation agreements, generally rely on agreement of, or notice to landowners where users are exercising powers. LINZ will confirm with you the full list of powers identified as lesser powers as part of the Bill drafting process.

Compulsory acquisition

- 41 Retaining the role of a minister of the Crown for compulsory acquisitions will provide appropriate transparency and accountability.
- 42 The Panel considers that unlike lesser powers, a minister (and in the case of whenua Māori, ministers) should retain compulsory land acquisition powers i.e. for issuing a Section 23 Notice of Intention to take land. This is despite some stakeholders who said that they would prefer to exercise PWA powers to acquire land by agreement, and to compulsorily acquire land, and for ministerial oversight to be only at the point of proclamation.
- 43 Given the constitutional significance of compulsory acquisition powers, retaining ministerial decision-making will provide political accountability for the decision to compulsorily acquire land separately from the agency responsible for project delivery.

⁴ LINZ internal tracking data 2013-2022 which tracks decisions and jobs generated through LINZ by all users.

- 44 LINZ agrees with the Panel that this power best sits with a minister of the Crown, and that where there is significant experience in the relevant agency, the portfolio minister could perform this role appropriately under the delegation of the Minister for Land Information.

Options

- 45 Devolving decision-making powers for non-compulsory acquisitions to NZTA (and potentially to other agencies, should an obvious need arise) would need to be balanced against retaining ministerial accountability for decision making about compulsory acquisition, and providing regulatory oversight and clear direction in primary and secondary legislation to ensure consistency of practice across PWA users. This would be especially important if PWA powers were devolved to a wider range of agencies.
- 46 Devolving powers would need the approval of users' responsible ministers (i.e. the Minister of Transport should approve the delegation of any powers to NZTA). Ministers will need to consider whether users (agencies/entities/departments) have appropriate resources to take over work currently conducted by LINZ. LINZ will need to thoroughly investigate these issues with affected users and their ministers.

Options for Crown users' access to lesser-powers			
Policy issue	Panel support	Key trade off	Indicate your preferred option
1. Retain LINZ as check on acquisition by agreement: Status quo		Less autonomy for agencies, however it provides the system with greater oversight and consistency in decisions.	
2. All Crown agencies have autonomy for acquisition by agreement (lesser-powers) via delegation by the Minister for Land Information (MLI)		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.	
3. (LINZ preferred option) The highest Crown user (NZTA) has autonomy for acquisition by agreement (lesser-powers) by delegation from the MLI. The delegation mechanism (on application) will allow other agencies if they become high users to apply.	✓	NZTA has in-house capability in PWA practice and could scale up and develop expertise in 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 would be realised due to the experience of the user.	

Options for Crown users' access to compulsory acquisition powers			
Policy issue	Panel support	Key trade off	Indicate your preferred option
1. (LINZ preferred option) Status quo: Minister for Land Information retains powers of compulsory acquisition: LINZ undertakes the checks on the powers	✓	This ensures LINZ and the Minister for Land Information (MLI) retains oversight of the PWA operations of compulsory acquisition, providing a greater independent check on the higher risk compulsory acquisition as MLI is not responsible for the project.	
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.	
3. The responsible Minister for the highest Crown user (NZTA) has decision making power for compulsory acquisition i.e. Section 23 decisions	✓	This may create efficiencies as the agency knows its own projects, although the Minister being responsible for the works may create greater risk of challenges to decisions. It would create a duplication of effort across the public sector with MoT providing advice compulsory acquisition to the Minister for Transport, with LINZ also providing the advice to MLI for other agencies. The agency would assume responsibility and risk for the decision and any challenges. It could also create consistency issues if different Ministers are making decisions.	

More direct access to PWA powers for NUOs

- 47 The Government has committed to reducing an infrastructure deficit, doubling the amount of renewable energy generation, and ensuring the resilience of the energy system.
- 48 Meeting these commitments will require improvements and additions to national grid infrastructure managed by Transpower, including new transmission lines which rely on land interests such as easements. Transpower's access to the PWA is through its status as a NUO under the RMA.
- 49 Transpower have indicated a strong preference for more direct access to PWA powers to meet this objective. Currently, Transpower generally attempts to acquire land interests through commercial negotiations. If negotiations fail, it can apply to the Minister for Land Information under section 186 of the RMA to use PWA powers for the acquisition, and the full PWA process must then be undertaken.
- 50 The Panel considered more direct access to PWA powers for Transpower, noting that further advice on NUO access to PWA powers was constrained by the limited opportunity it had to engage with NUOs. The Panel also was not aware of whether there is a general desire for greater access to PWA powers for NUOs outside of Transpower.

- 51 LINZ has not finalised a view on more direct access to PWA powers for Transpower and will report back to you on this issue in a subsequent briefing.

LINZ's role

- 52 Under the options preferred above, LINZ's role will shift from day-to-day decision-making towards a focus on regulatory stewardship.
- 53 If decision-making is devolved to responsible portfolio ministers and agencies under delegation, LINZ will need to consider how this impacts its ability to act as an effective regulatory steward. Reduced visibility of day-to-day PWA transactions means LINZ will be less able to proactively respond to PWA system issues through operational and policy changes.
- 54 LINZ performs two roles in the PWA regulatory system. It (1) exercises statutory powers as the decision maker and (2) is responsible for regulatory stewardship of the Act.
- 55 LINZ's main function is to exercise the Minister for Land Information's acquisition powers under delegation up to the point of compulsory acquisition, including determining the amount of compensation payable. It does not perform many other monitoring and enforcement activities for those responsible for PWA actions. 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, except when seeking a proclamation for compulsory acquisitions. This is despite LINZ being the system regulator. In other systems regulators might collect information and data or perform compliance checks to ensure the system is healthy and fit for purpose. For example, the Ministry for the Environment has a responsibility to monitor the effectiveness of the RMA system.
- 56 The Panel took the position that LINZ's oversight role in a devolved decision-making model would be as the setter of standards and best practice guidelines that Crown agencies and local authorities follow. These ensure consistency and mitigate the risk of legal challenge.
- 57 LINZ considers that it should be established as a monitoring agency and that it requires access to new tools to strengthen its role as administrator and regulator of the PWA, if direct involvement in decision-making is decreased. This will help mitigate risks that PWA powers are being accessed inappropriately or unlawfully, and ensure LINZ can respond to keep the regulatory system healthy and fit for purpose to maintain public trust and confidence.
- 58 LINZ will require new tools and methods to monitor and respond to emerging risks, trends or issues. LINZ will take a risk-based, evidence driven approach to the use of regulatory tools. The design of the tools will be flexible and responsive, enabling them to be used as needed, with the default being a light-touch regulatory approach recognising that the main users of the PWA are other Crown agencies. The tools are not intended to increase regulatory burden to the extent that any efficiency gains achieved through devolved decision-making are outweighed. LINZ views that the following tools are required:
- information - power to require and report on information
 - audit – ability to audit entities accessing PWA powers
 - enforcement – ability to increase regulatory burden, report and investigate if necessary

- 59 LINZ is also considering the role of existing PWA standards that set out the process and information requirements for Crown agencies to enable decision-making. LINZ is considering whether making these a more formal set of requirements, via secondary legislation, may be appropriate to provide clarity and consistency, while balancing the flexibility of the current approach. We will continue to update you on this matter as policy development progresses.
- 60 Having this visibility would enable LINZ to proactively respond to issues and enable LINZ to dedicate greater focus to continuous improvement and to educating and supporting system participants. These functions would help ensure the right settings are in place to support efficient acquisitions and infrastructure delivery.
- 61 Subject to your agreement, LINZ will investigate how it could be established as a monitoring agency and be provided with regulatory tools in the PWA through these reforms.
- 62 LINZ's existing role is funded through cost-recovery on applications. To undertake the proposed regulatory stewardship role, LINZ will require funding based on a revised funding model. LINZ will provide further advice on funding requirements.

Issue 2: Targeted amendments will facilitate joined-up approaches to infrastructure delivery

- 63 The PWA is predicated on a single acquiring authority undertaking public works however over time the number of delivery bodies of public works has grown, in part due to changes to the structure of the State sector over time. Current settings allow acquiring authorities to take land (either by agreement or compulsion) for the purposes of any public work. However, the ability to acquire that land is tested against the acquiring agency's objectives for undertaking the specified work.
- 64 While the Act does allow authorities to change ownership (including to NUOs⁵) for another public work use⁶, it 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. As such, the PWA doesn't effectively enable acquisitions which may relate to multiple concurrent, integrated or collaborative public works.
- 65 Acquiring authorities must often work alongside each other for interconnected public works, such as the development of a motorway with connections to local roads and other transportation hubs. However, infrastructure agencies have raised concerns that the current settings in the Act do not appropriately provide for and recognise the modern multi-agency, multi-public works integrated programme environment.
- 66 The Crown and local authorities can combine to deliver a public work under section 224 of the PWA if the work meets the test of being of both national and local significance. This section sets out how joint works can be contracted and funded between the Crown and local authorities, so goes beyond land matters. It has only been triggered five times since the Act was written.

⁵ (section 186(4) of the RMA)

⁶ (under section 50, 52 of the PWA)

- 67 Infrastructure agencies view the status quo causes delays, inefficiencies, costs and creates unnecessary duplication and fragmentation and risks confusion for the landowner.
- 68 The Panel considered the issue of joint works and heard from stakeholders who raised practicality issues around the inability to undertake works in a modern and integrated way. The Panel also heard from some stakeholders such as local authorities who considered that the PWA could provide a vehicle for enabling enhanced public spaces through urban renewal and regeneration (as Kāinga Ora is enabled to undertake through the Urban Development Act), enabling partnerships with private providers and/or Māori/iwi to achieve combined objectives.
- 69 The Panel views that an amendment to the Act via the existing Section 224 (reserved for combined works between the Crown and local authorities) to provide for integrated works between users would modernise the legislation and meet the review's objectives of efficiency, effectiveness and clarity. The Panel did not consider that the PWA should provide for wider uses such as private partnerships at this time, as this would be complex and require greater interest from stakeholders and more thorough investigation of trade-offs and impacts.
- 70 LINZ investigation of this issue found in favour of the Panel's view: that a targeted amendment of the current settings that allow for joint works would meet the needs of stakeholders and remove barriers to a more collaborative approach to public works. A collaborative approach reduces duplication of efforts across public works reducing costs, and creating efficiency through economies of scale.

Options

- 71 Any ability to undertake works in a more integrated way must have clear and shared system objectives for the taking of land that can be tested, particularly should a landowner object to the taking. As the ability to acquire land is tested against the acquiring agency's objectives for undertaking the specified work, shared objectives must be clear and hold up to scrutiny if the taking is tested by the Environment Court. If not, the taking could not proceed. A requirement to seek ministerial approval for joined-up works should mitigate this risk as the users' objectives can be tested at this stage.
- 72 There is a risk that enabling more joined-up works through the ability to acquire and exchange land on behalf other users could be viewed as circumventing offer back provisions. However, it is proposed that exchange of land while combined works are underway would take place via current mechanisms that enable the transfer of land for public works (sections 50 and 52). Offer back obligations would continue to apply at the end of the life of the work.

<i>Options to facilitate joined-up approaches to infrastructure delivery</i>			
Policy issue	Panel support	Key trade off	Indicate your preferred option
1. (LINZ preferred option) Lower the threshold for collaborative work to reduce duplication of	✓	The importance of clear and shared system objectives for the taking of land will become apparent. The provision is	

efforts by providing that section 224 would enable any combination of Crown or Local Authorities to carry out a joint work and by removing the requirement to meet a 'national and regional' significance test		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.	
2. Mirror the Urban Development Act to enable joint public works to users and wider partners e.g., private providers or Māori/iwi Land may be transferred (including to a developer) to undertake the specified work despite sections 40-42 of the Public Works Act.		The enablement of transfer and vesting in land to private parties outside of the Crown/local authorities greatly widens access to public works land than is currently tested and is likely to be contentious due to the circumvention of offer back.	

Issue 3: Enabling the relocation of existing private third-party infrastructure would remove additional complexity and duplication

- 73 Relocation of existing private third-party infrastructure requires a separate acquisition process. When a government work affects private third-party infrastructure, the Crown cannot use PWA powers to acquire land for relocating the infrastructure.
- 74 A 2013 Supreme Court decision *Seaton vs Minister for Land Information*⁷ provides that when a government work requires relocation of a NUO's infrastructure onto other private land, the NUO must acquire the land that the infrastructure is to be relocated onto separately. The *Seaton* decision has had significant implications for the delivery of public works where the works require relocation of NUO infrastructure. Before the *Seaton* decision, the Crown had operated on the basis that land could be acquired to relocate NUO infrastructure.
- 75 The *Seaton* decision provided a judgment on proper process, which requires that a NUO to negotiate directly with a landowner for land to relocate the infrastructure, including applying under section 186 of the RMA for the use of compulsory acquisition if necessary. The judgment highlights the inflexibility in the Act to provide for replacement interests where private infrastructure need to be moved to undertake the primary work, which creates additional complexity and duplication, particularly for large linear infrastructure projects such as roading which is likely to cross significant areas of land with existing established and operational infrastructure by third parties.
- 76 The Panel examined the issue of relocation of existing third-party infrastructure and heard from many users who detailed the difficulty and additional complexity in undertaking infrastructure projects since the *Seaton* ruling. NZTA in particular outlined to the Panel and LINZ that roading projects often crossed over existing gas or power routes that must be

⁷ NZSC 42

relocated to enable the completion of the road. In such cases, those providers must separately renegotiate for the removal and reinstatement of the infrastructure before the roading project can advance.

- 77 The Panel strongly recommended that the PWA is amended to enable a user to acquire land needed to relocate and reinstate third party infrastructure affected by a public work, and that the existing model in the Urban Development Act could be applied.
- 78 LINZ agrees with the Panel's recommendation, subject to certain limitations. Examples of such limitations could include allowing acquisition only when:
- that third party would otherwise also be empowered to take land under the PWA or request that of the Minister for Land Information (i.e., not allowing compulsory acquisitions that are not already allowed, e.g. for the purposes of relocating private infrastructure)
 - such relocation is actually necessary, e.g. only in situations where "completing the relocation is essential to the completion of the acquiring entity's works" so that land is not acquired unnecessarily or to circumvent good practice that would otherwise be required of a third party.

Option

- 79 Any option to enable land to be acquired to relocate existing private infrastructure must consider the rights of a landowner to negotiate and object to the taking of their land which is tested against the objective of the user undertaking the work.

Option to enable the relocation of existing third-party infrastructure			
Policy issue	Panel support	Key trade off	Indicate your agreement
1. (LINZ preferred option) Allow the Crown to acquire any land for either direct or indirect purposes or for the purposes of relocating private third party infrastructure, if that third party is an NUO and a requiring authority so can apply under section 186 of the RMA.	✓	This limitation aligns with the ability to relocate existing works under the Urban Development Act 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 taking of their land with those who are responsible for the taking	

Tightening the operational settings around the transfer of land between agencies could promote better use of Crown land for public works

- 80 Under the PWA, land for an existing public work can be transferred for use as another public work. The Courts have determined that there is only a limited time for the requirement of an alternative public works use to be confirmed for transfer before the offer back obligations apply i.e., the land is objectively surplus. Offer back obligations are a measure to ensure users do not compulsorily acquire more land than necessary given the PWA's impact on

private property rights as has happened historically with well documented examples of over-acquisition of whenua Māori.

- 81 Users of the PWA have indicated that the Courts' interpretation of timeframes is challenging. Where interest in alternate use of public works land has been signalled to the holding agency by an interested authority, delays in financial or planning approvals may result in the land holding needing to be disposed of through usual offer back proceedings. This issue creates inefficiencies in the public works system and does not operate effectively to maximise land holdings for public works purposes. While these issues may more likely reflect the nature of government financial rules, it can be noted that the time to obtain approvals is not easily reconciled with the PWA.
- 82 The Panel viewed that the issue of transfers is linked to disposals and so is not in scope of the review. However, the Panel viewed that improved outcomes could be achieved through non-legislative approaches that address how agencies work with each other in the transfer process.
- 83 LINZ recommends that options to address transfers be progressed outside of legislative change. Any options to amend the PWA to address issues in preparing a property for transfer would be geared to create clarity and consistency in the Act. However, by doing so, amendments could increase legislative complexity and compliance burden for users and reduce flexibility for user agencies.
- 84 It is also unlikely that legislative change could be made in isolation from impacts to section 40 offer back requirements, a highly contentious aspect of the PWA regime. Further, the effect of any changes may also add to the likelihood of future judicial challenge in the Courts.

Options

- 85 LINZ analysis suggests that it is possible that operational settings are not being maximised to ensure the efficient transfer of public works land. A tightening of operational settings could best ensure that the procedure for transfer of land is fair, balanced against agency priorities, and efficient.

Options to respond to the transfer of land for public works			
Policy issue	Panel support	Key trade off	Indicate your preferred option
1. (LINZ preferred option) Non legislative options such as Cabinet direction to address concerns around funding, and updates to LINZ standards and guidelines.	N/A	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 Courts.	
2. Legislative changes to address timing considerations for the transfer of land	N/A	The transfer of land for alternate public works use is contentious, particularly for Māori land. Any legislative changes that affect disposals will be out of scope of the review, and require significant time, resource and consideration.	

LINZ will come back with further options to create more flexible acquisition procedures

- 86 The Panel and stakeholders raised issues with acquisition procedures such as the issuing of notices, survey requirements and public notification provisions. Stakeholders view many of these settings to be inefficient and no longer fit for purpose.
- 87 LINZ is working with agencies to consider options for streamlining and modernising the steps, notices, and requirements of acquisition, including considerations around good faith negotiations and what must occur before compulsory acquisition is available. LINZ will provide you with further advice ahead of the second Cabinet paper, planned for March 2025.
- 88 Further, in the event of an emergency, the Crown and local authorities sometimes need to urgently acquire land to reinstate damaged public works. There is currently no mechanism for this in the PWA and bespoke legislation has been needed previously to respond to emergencies. A truncated land acquisition process for public works was included in legislation following the 2023 severe weather events, 2016 Kaikōura earthquakes and the 2011 Canterbury earthquakes.
- 89 To support a more proactive response to future emergencies, LINZ is exploring with agencies the provision of a regulation-making power that will enable a truncated PWA process. Further policy work is underway to identify the appropriate scope and trigger for such a power, along with alignment with other relevant regimes such as the RMA. We will provide you further advice on this ahead of the second Cabinet paper.

Hīraunga ahumoni/Financial Implications

- 90 LINZ currently oversees day-to-day acquisitions and decision-making for Crown users, a function which is fees funded. If statutory decision-making is devolved for lower risk transactions, there will be resourcing and funding implications for LINZ as it moves into a regulatory oversight and stewardship role. LINZ will provide further advice on funding requirements and a revised funding model.

Mātanga kōrero/Consultation

- 91 Ministries for the Environment, Primary Industries, Culture and Heritage, Transport, Housing and Urban Development, Business, Innovation and Employment, Justice, Education, and Health, and Departments of Internal Affairs, Conservation, and Corrections, the Treasury, Te Puni Kōkiri, Te Arawhiti, the New Zealand Defence Force, New Zealand Transport Agency, Te Waihanga, Kiwirail, Transpower, and Health New Zealand have been consulted on this briefing.

Ngā Tāwhaitanga/Next Steps and/or angawā/timeframes

- 92 The December 2024 Cabinet paper will focus on seeking the key policy decisions needed to enable legislative drafting to begin in January 2025.

- 93 LINZ intends to provide you with a series of briefings in October seeking your direction on matters for inclusion in the draft Cabinet paper. Subsequent briefings will cover issues relating to objections, compensation, NUO access, and whenua Māori. LINZ will work with your office to prioritise time with you to discuss these briefings, to deliver to the December Cabinet paper timeframes.
- 94 Due to the complexity of the PWA, we anticipate that further Cabinet decisions will be needed in March 2025 to enable final drafting of the amendment bill. Appendix **Two** outlines what will be covered in subsequent Cabinet decisions.

Next step	Date/deadline
<i>Briefing two – Public Works Act Review: Objections to land acquisition to your office</i>	14 October
<i>Briefing three – Public Works Act Review: Compensation for land acquisition and other issues to your office</i>	16 October
Public Works Act Review draft Cabinet paper and Regulatory Impact Statement (RIS) to your office	Late October
Updated draft Cabinet paper and RIS to your office	14 November
Ministerial consultation on draft Cabinet paper and RIS	14-18 November
Cabinet paper and RIS lodged for Economic Policy Committee (ECO)	5 December
Cabinet paper and RIS considered at ECO	11 December
Cabinet	16 December

Appendix one – detailed options analysis

Proactive Release

Appendix two - Issues to be covered in Cabinet paper two

What will be covered in subsequent Cabinet decisions

We recommend seeking decisions on the following matters in Cabinet paper two. These areas either flow on from initial decisions in this and subsequent briefings, or are technical in nature.

We will come back to you in December with advice on these areas.

Area	Summary
Accredited suppliers	Depending on the agreed approach for decision-making, we are proposing to explore the PWA system approach to accredited suppliers. They currently undertake negotiations on behalf of the Crown, however are only recognised through a Cabinet decision.
Acquisition pipeline and notices	The panel recommended that just one statutory notice is required. LINZ is exploring this option and a package of proposals to streamline the acquisition process, including reducing notice requirements, survey requirements and specifying requirements for good faith negotiations will be further developed with agencies.
Compensation amounts	Depending on the agreed approach to incentive and inconvenience payments we will seek decisions on the set amount and appropriate percentage for payments.
Technical compensation issues	A range of technical issues around compensation have been raised by the Panel, e.g. whether GST has been included and providing upfront payments. We will work these through and provide you with advice.
Funding	Depending on the agreed approach for decision-making, LINZ will seek further decisions on funding requirements
Emergency provisions	We are further exploring with other agencies a provision for a regulation making power to support emergency responses through an amended PWA process