

BRF 25-118 Appendix 1: PWA options summary tables

Policy issues and context	Options	Panel support	Analysis and key trade offs	Cabinet-mandated criteria				Indicate your preferred options
				Effective	Efficient	Clarity	Feasible	
Incentivising agreement	<p>The efficient delivery of infrastructure is supported by early and upfront acquisition of land by agreement with landowners. There is one incentive payment in the PWA available to landowners where the land being acquired contains their home and agreement is reached within six months (\$10,000).</p> <p>Stakeholders have expressed this is failing to incentivise early agreement, due to the timing and prescribed amount of payment.</p> <p>The trade-off for incentive payments is earlier agreement, resulting in less delays for projects. This is balanced against an increased compensation cost for delivery agencies and assumes that additional compensation will incentivise agreement, which will not always be the case.</p> <p>Across any options which link incentives to land value there is a trade-off between effectiveness of the incentive, and fairness between those with lower and higher valued land.</p> <p>For all the proposed options, a date of vacant possession should also be required in the agreement, in line with the existing approach.</p>		<p>Not bound by stage in the acquisition process, therefore may not incentivise agreement and could encourage landowners to 'hold out' for a better deal. However, strict timeframes in statute can unfairly prejudice landowners when the timeframe is exceeded through no fault of the landowner.</p> <p>Not binding on acquiring authorities to include an additional incentive payment.</p> <p>Less certainty as to landowners' entitlements in comparison to payments in statute and may result in unjustified inconsistencies.</p> <p>Greater risk of judicial review (and delays stemming from this) if guidance is used rather than legislation.</p> <p>Could potentially increase negotiating time with landowners, as guidance can be deviated from more easily than legislation. However, this allows the process to evolve and provides flexibility for acquiring authorities to negotiate additional incentives, more greatly accounting for different circumstances.</p>	+	++	-	0	<input type="checkbox"/>
	<p>2. (LINZ preferred option) Introduce a statutory incentive payment in the PWA that is a percentage of land value and paid if agreement is reached prior to issuing a section 23 notice.</p>	CP	<p>Provides the most clarity, consistency and transparency to landowners and acquiring authorities, as well as reducing time spent negotiating. Is most likely to generate early agreement.</p> <p>Isn't linked to a prescribed time period but actively encourages early agreement as agreement must be reached prior to a section 23 notice – section 18 notices require a minimum of three months negotiations before a section 23 is issued and expire after 12 months. This allows greater flexibility than the status quo (six months), which can unfairly prejudice landowners, while also being clearly linked to a stage in the acquisition process.</p> <p>Provides a clear distinction between the incentive payment and home-loss payment, and removes the incentive and discretionary payments from the home-loss payment (refer option 1 for home-loss and land-loss below).</p> <p>May introduce a ground of challenge to a section 23 notice, if the acquiring authority does not give sufficient prior notice.</p> <p>There are no other examples internationally of statutory incentive payments from other jurisdictions that LINZ identified. However, there is already an existing incentive payment in the PWA that could operate more effectively.</p>	+	++	+	+	<input checked="" type="checkbox"/>
	<p>3. Clarify acquisitions by agreement (section 17 of the PWA) to state the minimum requirement to compensation is the entitlements in Part 5 of the PWA (as per option 1) and introduce a staggered incentive payment for acquisitions by agreement (similar approach as per option 2).</p>	✓	<p>Risks the 'staggered incentive payment' becoming part of the 'floor' of compensation entitlements, as acquiring authorities would also be able to offer above this payment to reach agreement. This negates the benefit of introducing a separate incentive payment.</p> <p>A staggered payment also may cause more disputes, as the incentive is banded by land value. This may also be disproportionate to landowners whose land value is close to the cusps of the bands.</p>	+	+	-	0	<input type="checkbox"/>
Home-loss and land-loss payments	<p>1. (LINZ preferred option) Increase existing payments for home-loss and land-loss.</p>	✓ CP	<p>This recognises that for home-loss the payment landowners should receive for inconvenience is the same, regardless of the value of the land. It also separates the incentive and discretionary nature of calculating payments from this payment, providing greater clarity as to landowner's entitlements and allows a clear distinction between an incentive payment and home-loss payment.</p> <p>In increasing the payment for home-loss, the payment for when a landowner's principal place of residence is not acquired should also be updated (which is currently 10 percent of land value minimum \$250 to \$25,000).</p> <p>As these were last updated in 2017, the payment amounts are due to be updated. There is a mechanism in the PWA to update the figures.</p>	+	++	++	++	<input checked="" type="checkbox"/>
	<p>2. Change home loss payment to a percentage of the value of land acquired, and update minimum and maximum amount for additional compensation.</p>		<p>This means landowners with higher value land will receive a higher proportion of costs, raising equity issues.</p> <p>There are examples of overseas jurisdictions providing a percentage payment for home-loss. However, the existing payment is intended to recognise the inconvenience, intangible costs, and emotional value of losing your home, and is not related to the land's value. This could potentially discount the extent of loss experienced by landowners for lower value properties and could create a windfall for landowners with high value property.</p>	+	0	0	+	<input type="checkbox"/>

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Technical issues, including timing of payments and modernising Māori land provisions	There are a range of options within the PWA's compensation provisions to make the legislation clearer and align with current practice.	1. (LINZ preferred option) Expressly provide for advance compensation agreements within the PWA to align with existing practice – these allow landowners to receive payment, and acquiring authorities to take possession, with full and final agreement on compensation negotiated at a later date.	✓	May remove some flexibility in agreements, but legislating would likely not be prohibitive on form of the agreement. Brings the PWA in line with international jurisdictions (including Queensland, South Australia, British Columbia and Alberta), and with existing practice.	0	0	++	+	<input checked="" type="checkbox"/>
		2. (LINZ preferred option) Require acquiring authorities to pay the compensation assessed as at the date of proclamation – If an owner does not wish to accept that compensation at that time, then it would be paid into a trust account and incur interest until final resolution.	N/A	Could reduce impetus to resolve outstanding amounts but provides further compensation upfront once land is taken by compulsory acquisition. This will ensure that a landowner receives compensation as soon as possible rather than possibly having to wait until the outcome of a Land Valuation Tribunal case before receiving payment, which may also reduce compensation claims.	+	++	+	+	<input checked="" type="checkbox"/>
		(LINZ preferred option) Māori freehold land valuation – require that when Māori freehold land is acquired or taken for a public work, it must be valued as if it were general land.	✓	Māori land is valued less than general land, due to restrictions on land status. Māori landowners therefore can receive less compensation for comparable land. Some acquiring authorities may already pay this amount in practice when acquiring Māori freehold land and this change would make it a requirement for all Māori freehold land acquisitions.	+	+	++	+	<input checked="" type="checkbox"/>
		(LINZ preferred option) Multiple home-loss payments – Extend the home-loss payment to apply to all separately owned dwellings on Māori land, provided there are formal legal arrangements in relation to each dwelling.	✓	More greatly recognises the impact of the PWA process for Māori landowners and achieves the policy intent of the home-loss payment. Does not account for other arrangements not based on Māori land or arrangements based on tikanga.	+	+	++	+	<input checked="" type="checkbox"/>
		If you agree to this option, LINZ seeks your agreement to undertake further analysis on whether the payment should be extended to cover multiple dwellings, regardless of the nature and owner of the land.	✓	Further analysis is required to understand the extent of the issue and any workability implications by extending the payment, however it could account for a variety of scenarios, such as where dwellings have been constructed without formal legal arrangements in place or where land is held based on tikanga rather than formal legal instruments.	+	+	++	+	<input checked="" type="checkbox"/>
Dispute process	<p>When negotiations fail to reach agreement on compensation, objections are heard through the Land Valuation Tribunal (LVT).</p> <p>Alternative dispute resolutions can occur voluntarily. The process for determining compensation through the LVT is slow and costly for landowners and acquiring authorities.</p> <p>There is a need for a more flexible pragmatic option, as a mandatory step before a claim at the LVT.</p> <p>The Land Acquisition Resolution Service (LARS) exists to provide for general mediation system albeit with limited uptake to date. Four cases have been through LARS, and all have reached agreement.</p>	1. (LINZ preferred option) Introduce compulsory alternative dispute resolution that is mediation, expert determination, or both, prior to an LVT claim. The parties have a choice of process and may agree at the outset, or at any stage of the dispute resolution processes, whether to pursue mediation, determination or a combination mediation/determination process. If agreement isn't reached, parties are then able to take the dispute to the LVT.	✓	Could create more delay in the process, however, it's intended to provide a quicker and cheaper intermediate step to resolve outstanding compensation. Potential imbalance that acquiring authorities are bound to enter binding expert determinations without the option for appeals. This option also provides flexibility for different situation and wants of landowners and acquiring authorities in their negotiations on compensation, while minimising claims to the LVT, and providing a quicker and cheaper intermediate step that seeks to resolve outstanding compensation. Provides an opportunity for landowner discussion, while also providing an enhanced detail of discussions. Due to greater expertise may reduce objections and appeals.	++	++	++	+	<input checked="" type="checkbox"/>
		2. Landowners can enter a LARS mediation, if eligible, or other voluntary mediation if available, otherwise any compensation dispute is heard at the LVT (status quo)		LARS only covers projects included in the New Zealand Upgrade Programme for acquisitions by the New Zealand Transport Agency, meaning not all landowners can use the service. The LVT process is slow and costly to both landowners and acquiring authorities.	0	0	0	0	<input type="checkbox"/>