

BRF 25-198 Appendix 1: PWA options summary for regulatory tools

Policy issues and context	Options	Key trade off	Cabinet-mandated criteria				Indicate your preferred approach
			Effective	Efficient	Clarity	Feasible	
Maintaining system integrity and consistency through LINZ standards (paragraphs 6-9 in the briefing) LINZ issues standards and guidelines for how Crown agencies should carry out PWA actions (e.g. submitting statutory notices). These standards are not secondary legislation. All PWA acquisition actions and decisions by the Crown are made by, or under, the authority of the Minister for Land Information, and LINZ assesses actions against the standards to check they have been complied with. Standards are needed to satisfy the Minister (or LINZ officials acting under the Minister's delegation) that proper process has been followed by Crown agencies, and sufficient evidence and other information has been provided to support a statutory decision on the PWA action. Local authorities may use the standards and guidelines as guidance. LINZ sought advice from the Legislation Design and Advisory Committee (LDAC) on whether the standards would be appropriate for secondary legislation. It advised that LINZ standards and guidelines would be inappropriate as secondary legislation due to the lack of enforcement options (for other government agencies)	<ul style="list-style-type: none"> Option 1a: (LINZ preferred option) Amend the PWA to recognise LINZ's role in issuing standards and guidance: LDAC advised the PWA could provide an explicit function that LINZ sets guidance for PWA users to support them to comply with the PWA. 	<ul style="list-style-type: none"> Acknowledges the existence of standards and guidelines in the system but maintains its current legal status, retains LINZ as the issuing entity and retains the current flexibility of the regime. Similar example in s175 of the Building Act 2004. 	+	0	++	+	<input checked="" type="checkbox"/>
	<ul style="list-style-type: none"> Option 1b: standards are made secondary legislation: secondary legislation would be used to set out the detailed operational, information and evidence requirements that are currently set out in standards. The PWA would need to detail the matters that can be delegated to secondary legislation. 	<ul style="list-style-type: none"> LDAC advised against standards as secondary legislation, as it is generally preferable for regulation within the Crown to be achieved administratively rather than by legislation and unclear what the penalty for a breach of secondary legislation would be. The standards are not necessarily fit for setting rules for compliance, as they are more operational. Could increase compliance costs for local government, but this could be outweighed by the benefits of greater compliance across the system. 	-	-	+	-	<input type="checkbox"/>
Improving system level information (paragraphs 14-19 in the briefing) Under the Public Service Act 2020, LINZ has a responsibility to act as a steward of the legislation it administers. LINZ is expected to be able to provide advice on the performance of the PWA and any emerging risks, trends or issues. There are existing gaps in the information LINZ holds to perform its stewardship role. These gaps have been illustrated through the PWA Review (the Review) process, for which limited data is available. Information gaps may increase once changes from the Review are enacted, for example the delegation of decision-making to NZTA. This is evident in the very limited information available on acquisition by local authorities, which make their own acquisition by agreement decisions.	<ul style="list-style-type: none"> Option 2a: (LINZ preferred option) Introduce a regulation-making power that sets out information that PWA users must routinely provide to LINZ: this option would require PWA users to provide data to LINZ on, for example, compensation paid including incentives, project details, information on disputes and objections, and data on Māori land. PWA users (agencies, local authorities and Network Utility Operators) would be required to report information (set out in regulations) to LINZ in a format (set out in regulations). The regulations would be designed in consultation with PWA users. This would ensure that there is aggregate and centralised information for how often, why and by which agencies the PWA is being used (and how long the acquisition process takes). 	<ul style="list-style-type: none"> Resource to develop process and collate information versus the benefits of this information existing (LINZ has a system view of emerging risks and trends and can use the information to make improvements). Compared to option 2b, this option would provide greater certainty to PWA users on the frequency, format and content of requirements. Information collection would be less fragmented, providing a system-wide view of insights and trends. The requirements will apply to local authorities and there will be an associated compliance cost, which officials have not been able to test. Regulations development will involve consultation with local authorities. 	+	+	++	+	<input checked="" type="checkbox"/>

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<p>There is a risk that, without the creation of new responsibilities and tools, information on the PWA (and how, when and who accesses it) will develop in a fragmented and inaccessible way. This may result in transparency issues and undermine public trust in PWA processes, as well as making it difficult for government to assess whether the system is working.</p> <p>Collating additional information would enable LINZ to inform the development of PWA policy and practice, confirm entities are meeting their obligations, measure the success of PWA reforms, and test common perceptions of actions under the PWA.</p>	<ul style="list-style-type: none"> Option 2b: Introduce a power in the PWA to enable LINZ to direct agencies to provide information: this option would provide LINZ with the power to request information from PWA users (agencies, network utility operators and local authorities) on an ad hoc basis. Similar to s31 of the Public Records Act, PWA users would be required to provide LINZ with the requested information (within a specified timeframe). This tool would support LINZ to access information on aspects of PWA process and powers, as required, to inform its monitoring and evaluation functions or in response to an issue. 	<ul style="list-style-type: none"> PWA users will need to dedicate resource to complete requests, which may be more involved than simply responding to LINZ (i.e., if PWA users are not currently keeping good records of their activities, they will need to develop record management processes, in case there is a request from LINZ). But the system will benefit from centralised information (LINZ could provide ways for lower performing users to learn from high performing agencies etc). Ad hoc requests may be more resource intensive to respond to than routine reporting requirements because requests are less predictable and likely less prescriptive in legislation (i.e., could span the breadth of PWA activities). The requirements will apply to local authorities and there will be an associated compliance cost, which officials have not been able to test. 	+	+	+	+	
<p>Building transparency and accountability (paragraphs 20-22 in the briefing)</p> <p>A 2019 regulatory system assessment of the Crown Estate Management System recommended that LINZ should improve the transparency of system processes to give the public confidence. The Review found that the system is complex, and that there is low awareness of how it works (particularly among private landowners). Making changes to how and what information is shared with the public may help to improve public trust in PWA processes.</p> <p>As the regulator of the PWA system, LINZ does not have many tools available to ensure compliance because the Crown is effectively authorising and regulating itself, and LINZ has very limited oversight of local authorities. Improving the transparency of PWA processes may help to generate accountability to encourage improved performance.</p>	<ul style="list-style-type: none"> Option 3a: (LINZ preferred option) Introduce a requirement in the PWA for LINZ to conduct reporting on PWA system use and performance: this option would require LINZ to publish a report on the PWA system performance, insights, and emerging trends, as well as providing some indicators of PWA user performance. The report could be informed through the notification and information collection options (2a and 2b), as well as direct input from landowners about their experiences and feedback on acquisition process. This option would increase transparency of PWA processes and provide the public with greater system level (i.e., centralised and independent from project) information about the PWA. 	<ul style="list-style-type: none"> Better public access to PWA processes and information (how, when and by who PWA activities occur and how long they take etc) and improvements to PWA processes through best practice sharing versus the resource to pull this together and potential resistance from agencies that do not want performance made public (mitigation – information could be aggregated) This option was preferred by agencies during initial engagements. Similar to the National Monitoring System for the implementation of the RMA by councils, to improve policy and practice at the national and local level Similar approaches are being considered New South Wales. 	+	0/+	++	+	
	<ul style="list-style-type: none"> Option 3b: Introduce a requirement in the PWA for users to conduct their own reporting: instead of centralised reporting, this option would introduce a requirement for agencies to conduct and publish their own report (at a specified frequency) on their PWA use, for example on their website. 	<ul style="list-style-type: none"> This is a more flexible approach that enables agencies to put together their own reporting (which could facilitate engagement with landowners/ members of the public that interact with that agency, rather than with the PWA as a system). However, this would create a fragmented approach that would be difficult to access and draw system-wide insights from. Effectiveness of this option would also depend on the resourcing that agencies have available to dedicate to reporting. This option was not preferred by agencies in during initial engagements. 	+	0	0	0	<input type="checkbox"/>

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<p>Options excluded</p> <p>LINZ considers that light-touch, evidence-based regulation will improve system performance without impacting efficiency benefits gained through the review,</p> <p>We have ruled out heavy-handed regulation that places high compliance costs onto users.</p>	<ul style="list-style-type: none">• Audit• Offences and penalties• Licensing schemes <p>NOT RECOMMENDED</p>	<ul style="list-style-type: none">• These options would not prioritise system stewardship or consistency, and would instead place burden onto PWA users and impact infrastructure delivery	--	--	0	--	<input type="checkbox"/>
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Key:

++ much better than doing nothing/the status quo/counterfactual

+ better than doing nothing/the status quo/counterfactual

0 about the same as doing nothing/the status quo/counterfactual

- worse than doing nothing/the status quo/counterfactual

-- much worse than doing nothing/the status quo/counterfactual

Green shaded is LINZ preferred option

Proactive Release