

BRF 25-198 PWA review – regulatory tools

Ki / To:	Hon Chris Penk Minister for Land Information	Rā / Date:	28 January 2025
Priority Level	Priority: High	Action required by	30 January 2025

Purpose

This briefing seeks your decisions on options to provide Land Information New Zealand (LINZ) with regulatory tools to improve Public Works Act 1981 (PWA) system stewardship.

Toitū Te Whenua Land Information New Zealand Whakapā/contacts

Ingoa/Name	Nama waea/ Contact number	Whakapā tuatahi/first contact
Stacey Newlands, Leader - Strategy, Policy and Ministerials		<input checked="" type="checkbox"/>
Kirsten MacKenzie, Advisor - Strategy, Policy and Ministerials		<input type="checkbox"/>

Ngā kōrero a te Minita/Minister's comments

NOTES THANKS.
CAN WE PLEASE DISCUSS WHETHER REQUIREMENTS IN ACT/
REGULATIONS.

Key messages

- LINZ is seeking your direction on proposals to provide LINZ with regulatory tools to maintain consistency of PWA decisions and improve how information is collected and shared in the PWA system.
- LINZ considers that there are existing gaps in the PWA system, which could widen after changes from the Review are enacted:
 - There is a risk that decision-making will become inconsistent and create perceived or actual non-compliance with the PWA.

- LINZ lacks some information it needs to act as an effective steward of the PWA and ensure the system is fit for purpose.
- The PWA is not well understood by the public, and information sharing could improve public confidence in the system.
- LINZ proposes you agree to a light-touch, evidence-based approach to resolve system-wide stewardship issues. This includes:
 - Amending the PWA to recognise LINZ's role in issuing standards and guidance. This will provide greater clarity in the system and promote consistent decision making.
 - Introducing a regulation-making power that sets out information that PWA users must routinely provide to LINZ. This information will ensure that LINZ can effectively monitor system health and respond to emerging risks or issues.
 - Introducing a requirement in the PWA for LINZ to conduct reporting on PWA system use and performance. Using the new information collected, LINZ will provide insights on PWA use to improve transparency and public trust.

Tohutohu/Recommendations

Toitū Te Whenua Land Information New Zealand (LINZ) recommends that you:		
1.	Me mātai/Note that officials are available to discuss the proposals in this briefing at your meeting with officials on Thursday 30 January 2025	Noted
2.	Indicate on Appendix 1 your decisions on the proposals in this briefing	Indicated



Stacey Newlands
Leader - Strategy, Policy and Ministerials
Toitū Te Whenua Land Information New Zealand
 Rā/Date: 28 January 2025



Hon Chris Penk
Te Minita mō Toitū Te Whenua
Minister for Land Information

Rā/Date: 29.1.2025.

Te Horopaki/Background

1. On 16 December 2024, Cabinet agreed to progress changes to the Public Works Act 1981 (PWA) to improve efficiency, effectiveness and clarity [CAB-24-MIN-0504 refers]. Cabinet noted that you would report back on certain detailed design choices or other matters that were dependent on the December decisions.
2. This briefing is the second in a series of four providing background and options for those subsequent decisions. It covers options to provide LINZ with regulatory tools to strengthen PWA system stewardship, relating to recommendations 13 and 14 agreed as part of Cabinet's decisions in December [ECO-24-MIN-0306 refers].
3. Additional regulatory tools are important for maintaining consistency of decisions after acquisitions by agreement are delegated to the New Zealand Transport Agency (NZTA) (and potentially others in future) and Transpower is granted more direct access to powers under the PWA. Tools are also needed to improve how information is collected and shared to build greater transparency and public confidence in the PWA system.

Tools should not be burdensome or intervene in infrastructure delivery

4. Regulatory tools were considered by the Expert Advisory Panel (the Panel) during its review of the PWA.

Expert Advisory Panel's finding
<ul style="list-style-type: none"> • LINZ will need suitable regulatory tools to ensure consistency within the PWA system. • LINZ should be responsible for setting standards that Crown agencies and local authorities follow.

5. Neither the Panel nor LINZ consider that a significantly increased regulatory role for LINZ is justified or necessary to provide checks and consistency in the PWA system. Heavy-handed regulation with a high compliance cost, such as audits, offences and penalties, are disproportionate to the risks, particularly given that LINZ would be regulating and enforcing the requirements of other government agencies and local councils. Tools should not outweigh the efficiency benefits gained through the review.

Maintaining system integrity and consistency through LINZ standards

6. LINZ issues standards and guidelines for how Crown agencies should carry out PWA actions. These standards are not secondary legislation. For acquisition actions, standards are used to satisfy the Minister (or LINZ officials acting under delegation) that proper process has been followed by Crown agencies, to support a statutory decision on the PWA action. Consistency in decision-making and compliance ensures that private property rights are appropriately balanced and protected in the PWA. Standards also help lower litigation risk in the PWA system.

7. During policy development, LINZ sought input from the Legislation Design and Advisory Committee (LDAC) on the role and status of standards in the revised PWA system. LINZ agrees with advice from LDAC that LINZ standards and guidelines would be inappropriate as secondary legislation due to the lack of enforcement options (for other government agencies) [REDACTED]
8. The Panel recognised the value of LINZ standards and best practice guidelines, and that these can provide consistency and mitigate risk of legal challenge. The Panel stated that local authorities should follow the standards.
9. LINZ recommends amending the PWA to provide LINZ with the responsibility for issuing standards and guidance. This would clarify the intended audience and what they are intended to cover (similar to the approach taken for guidance for councils and building professionals under the Building Act 2004).¹ Standards would maintain their current status (i.e., not secondary legislation) and retain the flexibility benefits of having LINZ as the issuing entity.

LINZ does not propose changes to the accredited supplier regime

10. Accreditation helps ensure consistency and accuracy in work delivered to LINZ and mitigates risk to the Crown.² Local authorities are not required to use accredited suppliers, but some choose to use them.
11. Throughout the review, officials heard that changes could be made to the accredited supplier framework that could improve how the PWA system performs and align with more cohesive legislative design. The Panel had mixed views on the ongoing role and structure of the accreditation regime. During consultation, Te Arawhiti noted its concerns about the performance of accredited suppliers during disposals and management of rights of first refusal (both present challenges for Māori land).
12. LINZ recommends that the accredited supplier regime is not changed as part of this review. LINZ considers that it is not feasible to review the role and status of accredited suppliers only in relation to the acquisition and compensation functions. This is because accredited suppliers also play an important role in supporting disposal functions under the PWA, which Cabinet decided would be out of scope of the review [CAB-24-MIN-0203.01 refers].
13. If you wish to explore options within the accredited supplier regime, officials can provide further advice that could be implemented following the current review.

¹ Section 175 of the Building Act 2004 sets out that the chief executive of MBIE can publish guidance for the purpose of assisting specified persons to comply with the Act. The intended audience includes councils, building owners, persons carrying out building work, and members of the public. The information published under that section is a guide and does not relieve any person from obligations to comply with the Act.

² Accredited suppliers are accredited by LINZ to perform operational activities to support statutory decision-making on PWA matters. Crown agencies are required to use accredited suppliers to carry out certain actions on their behalf (e.g., negotiations with landowners, drafting notices of desire and intention to take, and preparing compensation certificates).

Improving system stewardship and public trust

LINZ has a responsibility to provide stewardship over the legislation it administers

14. 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.
15. The PWA Review highlighted information gaps where it has been difficult to draw some conclusions about how the system is working. For example, LINZ has had to request information from frequent PWA users and manually process this to inform proposals on effectiveness of existing settings. The Panel has also found that there may be some inconsistent acquisition practices across local authorities, but did not have the data to support any conclusive findings.
16. Changes made through the Review, such as proposed delegations to NZTA, may further widen the information gap and make it more difficult for LINZ to fulfil its stewardship role.

Collecting a small amount of additional information will significantly improve system stewardship ...

17. LINZ needs new information collection powers to address existing and future information gaps. The information requirements will be applied to all PWA users, including local authorities and network utility operators. Information may include project data, acquisition timeframes, compensation matters (including the effectiveness of new incentives) and data on disputes and objections.
18. There are two main options for the information requirements. LINZ's preferred option is to introduce a regulation-making power that sets out information that PWA users must routinely provide to LINZ. Appendix 1 compares this option to a power which enables LINZ to direct agencies to provide information as required.
19. The regulation-making process will require consultation with PWA users, regulatory impact assessment, and Cabinet approval. This process will take around 18 months to complete.

... and can increase public trust and confidence

20. The PWA is not well understood by the public and those not frequently working within the system. This makes it difficult for agencies using the PWA to acquire land from private landowners, who first need to build an understanding of the process before they can engage meaningfully in negotiations. There are also many misconceptions about how PWA powers are used, including that compulsory acquisition powers are used more frequently than occurs in practice.
21. LINZ considers that reporting on the PWA system performance is necessary to build wider understanding of the PWA, improve transparency and give the public confidence in the system. This could help landowners and users to navigate and engage with the PWA more effectively.

22. LINZ's preferred option is to introduce a requirement in the PWA for LINZ to report on system performance. Appendix 1 compares this option to requirements for PWA users to conduct their own reporting.

[REDACTED]

23.

[REDACTED]

Whakatūpato/Risks

24. Some of the proposals in this briefing will impact local authorities. However, LINZ has not had the opportunity to engage with local authorities in depth and on specific proposals during the review. Local authorities will have the opportunity to provide feedback at the select committee stage. Officials also intend to conduct thorough engagement with local authorities while designing regulations.

Mātanga kōrero/Consultation

25. The following agencies were consulted on this briefing: Ministry of Housing and Urban Development, Department of Conservation, Department of the Prime Minister and Cabinet, New Zealand Transport Agency, Ministry for the Environment, New Zealand Infrastructure Commission/Te Waihanga, Te Whatu Ora, Ministry of Transport, Ministry for Primary Industries, Department of Internal Affairs, Treasury, Te Arawhiti, Te Puni Kōkiri, Ministry of Business, Innovation and Employment, Transpower, Ministry of Health, Department of Corrections, Ministry of Education, New Zealand Defence Force, KiwiRail, National Emergency Management Agency, Ministry for Culture and Heritage.
26. Agencies were supportive of the proposals in this briefing and agreed that LINZ should have regulatory tools to maintain system stewardship. Some agencies requested continued involvement as the work on information collection regulations progresses, which LINZ agrees is important. LINZ intends to engage the Office of the Privacy Commissioner to ensure regulations uphold privacy requirements.

Tāpiritanga/Attachments

Document number	Name of attachment
1.	PWA options summary for regulatory tools