

BRF 25-199 Appendix 1: PWA options summary for a potential emergency recovery land acquisition regime

	Policy issues and context	Options / decisions	Key trade off / discussion	Cabinet-mandated criteria				Indicate your agreement
				Effective	Efficient	Clarity	Feasible	
Decision	Creation of an emergency regime Damage to public works from emergencies can be highly disruptive. Quicker restoration during recovery stages of an emergency can mitigate effects to communities, but sometimes requires acquiring new land. In previous emergencies, bespoke legislation and Orders-in-Council (OICs) have accelerated land acquisition processes, largely in the same or similar ways to LINZ's proposed emergency regime. It takes time to develop a bespoke response and when done under urgency it can lack robustness.	Option 1: Create an emergency recovery land acquisition regime (emergency regime) <ul style="list-style-type: none"> Would accelerate PWA processes to support timely restoration of damaged infrastructure during recovery phases of an emergency. An emergency regime would address common barriers to recovery. Significant emergencies may still require bespoke legislation. 	<ul style="list-style-type: none"> An emergency regime introduced in the PWA reforms could lessen the need for bespoke legislation for future emergencies, could be activated quicker than bespoke legislation, and offers a more robust legislative process (e.g. the reform bill's select committee process). Legislating for an emergency regime could add to the complexity of PWA reforms. 	++	++	++	0	YES / NO
	Emergency regime design If you agree to create an emergency regime, decisions are needed on the design of the regime. PWA powers are significant for their impact on property rights, and ordinary PWA processes recognise and provide for this. Timely emergency recovery may justify accelerating these processes, but requires careful design to ensure that these powers are used appropriately. This must be balanced against the need for a workable regime. Following previous emergencies, legislation enabled the Executive to create OICs to override primary legislation. PWA processes have been changed this way.	Option 2a: An emergency regime sits in the PWA, but is dormant until activated by OIC <ul style="list-style-type: none"> An OIC would define the public works and areas for which the emergency regime could be used, and the timeframe in which it is active. An OIC could only be introduced within 2 years of declared states of emergencies or transition periods under the Civil Defence Emergency Management Act 2002, for the purposes of emergency recovery 	<ul style="list-style-type: none"> Standing provisions (i.e. that do not require activation by an OIC) are not appropriate, as not all damaged public works in all areas will require or justify the use of an accelerated PWA process. A decision-making point provides a check on powers, and tailors their use to each emergency. Tying the emergency regime to the declared states of emergency and transition periods, and requiring an OIC to be issued within a given timeframe of an emergency and only to support emergency recovery, protects against misuse. 	++	+	++	+	<input checked="" type="checkbox"/>
Design		Option 2b: Creating a power to make OICs that could override normal PWA processes <ul style="list-style-type: none"> Similar approach in previous emergencies, just with an OIC-making power already existing in the PWA. An OIC would set define accelerated land acquisition processes. Similar parameters would be in place as option 2a. 	<ul style="list-style-type: none"> LINZ does not recommend this approach. It would be less efficient than option 2a and may not be much quicker than the status quo, as policy work to define and then draft accelerated processes would have to occur after an emergency, rather than already having occurred prior. This approach would be a Henry VIII clause and has constitutional sensitivity; further safeguards may be required. It has less transparency than option 2a. There is added flexibility to this compared with option 2a, but as there is only one standard PWA process, with known pressure points, flexibility is of lesser importance. 	+	+	0	0	<input type="checkbox"/>
		Option 3: The regime would be limited to restoration of existing public works, or the functions that they serve, and would cover works for network utility operators <ul style="list-style-type: none"> The process could not apply to deliver fundamentally new works, but offers some flexibility about how restoration goes about (e.g. realigning roads, upgrading alternative services elsewhere). An OIC could apply to all public works, and could allow the Minister for Land Information to undertake an accelerated land acquisition process for damaged works of network utility operators (NUOs) on their behalf, without the need to apply under the Resource Management Act 1991 (RMA). 	<ul style="list-style-type: none"> Restoring existing damaged works supports recovery, but new works should follow ordinary PWA processes. In significant emergencies, where there may a greater emphasis on regeneration activities (rather than restoration), it is likely that there will be bespoke legislation which can make further amendments to PWA processes to support those activities. Previous emergency regimes have focused on central and local government works, however it is possible that NUO works may be damaged and may require new land to restore. NUO works may also be critical to recovery for a community. Bypassing the need to apply under the RMA to be included on an OIC will save time and is appropriate, given that the OIC mechanism offers a similar Ministerial check as under the RMA. 	++	++	+	+	YES / NO
		Option 4: The regime would exclude protected Māori land <ul style="list-style-type: none"> If protected Māori land were needed, it could still be acquired under ordinary PWA process. 	<ul style="list-style-type: none"> This proposal aligns with the approach taken for changes to the PWA for critical infrastructure projects. Given it is not prevalent, there may only be limited circumstances where Māori land is required to restore damaged infrastructure, but in these situations, this proposal could risk delay. 	+	0	+	++	YES / NO

Atc ss
 eense

BRF 25-199 Appendix 1: PWA options summary for a potential emergency recovery land acquisition regime

<p>Processes</p> <p>Land acquisition processes</p> <p>To acquire land quicker, land acquisition regimes following previous emergencies have focused on accelerating and simplifying normal PWA negotiation, objection and proclamation processes. LINZ's proposals draw from these previous regimes.</p>	<p>Option 5: Simplify and shorten the requirement to attempt to reach acquisition by agreement</p> <ul style="list-style-type: none"> Instead of endeavouring to negotiate in good faith for three months, PWA users would have to make a reasonable attempt to reach acquisition by agreement over a period of one month. 	<ul style="list-style-type: none"> Negotiations allow landowners to be engaged in land acquisition and design processes, which can result in better outcomes for them. In practice, this could be through having an influence in where a work is positioned within their land, or requesting that amenities like acoustic fences and driveways be included in the design of the works. This step that must occur before land can be taken, but does not necessarily delay project delivery, given that some design and investigative work must occur in parallel to negotiations before works commence. 	++	+	+	+	YES / NO
	<p>Option 6: Simplify compulsory acquisition procedures</p> <ul style="list-style-type: none"> NOIs and Proclamations would be retained as features of a compulsory acquisition, but (as in previous emergencies) would be simplified for practical purposes. 	<ul style="list-style-type: none"> These changes are expected to be technical and non-significant for landowners, but important for users of the PWA to ensure a well-functioning acquisition process following emergencies. 	+	+	+	+	YES / NO
	<p>Option 7a: Remove the right to object to the taking of land to the Environment Court but allow submissions</p> <ul style="list-style-type: none"> There would be no right to object to the Environment Court, but landowners could submit within 10 working days of a NOI. You would have to give regard to submissions before recommending a Proclamation. 	<ul style="list-style-type: none"> The public interest in supporting timely recovery may justify limiting the right to object, but this limits opportunities for natural justice. Allowing submissions to the Minister for Land Information or local authority, and requiring the decision-maker to have regard to these, allows for a natural justice process without risking project delivery through uncertainty or delay. 	++	++	+	+	<input checked="" type="checkbox"/>
	<p>Option 7b: Remove the right to object to the taking of land to the Environment Court</p> <ul style="list-style-type: none"> As with option 7a, judicial review rights would still exist. 	<ul style="list-style-type: none"> Fewer clear opportunities for natural justice and involvement in decisions affecting property rights. If the emergency provision does not provide for submissions, there is a greater risk of uncertainty for how the courts interpret and apply natural justice rights. Potentially less administrative burden, but not necessarily much quicker than option 7a, since there will be time between a NOI and a proclamation anyway. 	+	++	0	+	<input type="checkbox"/>
	<p>Option 8a: All landowners entitled to value of incentive payments, even where land acquired compulsorily</p> <ul style="list-style-type: none"> Payments would match the value of incentive payments proposed as part of PWA reforms [BRF 25-200 refers]. 	<ul style="list-style-type: none"> This proposal aims to promote fairness, acknowledging that negotiations may be minimal and that agreement might not occur where it could have been reached during a full negotiation process (and so these landowners would not be entitled to incentive payments where they would usually). The availability of the payment would not incentivise agreement, but the impact would be minimal because the period for negotiations is short. 	0	0	+	+	<input checked="" type="checkbox"/>
	<p>Option 8b: Landowners not entitled to the value of incentive payments if land acquired compulsorily</p> <ul style="list-style-type: none"> Incentive payments still apply up until a NOI. 	<ul style="list-style-type: none"> Opportunities to negotiate will be lesser, and more land will be acquired compulsorily, and so fewer people would be entitled to the value of an incentive payment than would be normally. More cost effective, not slower; aligns with standard PWA processes. 	-	0	+	+	<input type="checkbox"/>
	<p>Option 9: Owners of protected Māori land also entitled to value of incentive payments, even where their land is compulsorily acquired (under standard PWA processes)</p> <ul style="list-style-type: none"> This would apply to protected Māori land being acquired under ordinary PWA processes for public works covered by an OIC. Not required or recommended if option 8a is not chosen. 	<ul style="list-style-type: none"> If owners of general land were entitled to the value of incentive payments following a compulsory acquisition process under the emergency regime, but owners of protected Māori land were not under standard processes, there may be an issue of discrimination under the New Zealand Bill of Rights Act 1990. The payment would recognise that compulsory acquisition may be more likely after the standard minimum period of negotiations where the works are needed for an emergency response. The availability of the payment would not incentivise agreement. 	0	0	+	+	YES / NO

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