

BRF 25-199 PWA Review – accelerated emergency recovery land acquisition regime

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

To advise you and seek decisions on an opportunity to create an accelerated land acquisition regime to support the timely restoration of public works damaged in emergencies.

Toitū Te Whenua Land Information New Zealand contacts

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

Ngā kōrero a te Minita/Minister's comments

EXCERPT IDEA -

CAN WE PLEASE DISCUSS • PROPOSED EXCLUSION OF MĀORI LANDS.

• INCENTIVE PAYMENTS.

Key messages

- Damage to public works from emergencies is highly disruptive and sometimes new land needs to be acquired to support its restoration. In previous emergencies, legislation has been passed to accelerate land acquisition, which takes time to draft and enact.
- Toitū Te Whenua Land Information New Zealand (LINZ) proposes introducing an accelerated emergency recovery land acquisition regime as part of your Public Works Act 1981 (PWA) reforms, to support timely emergency recovery. Drawing from previous emergencies, key proposals for the regime are:
 - it would be dormant until activated by an Order in Council (OiC), defining the public works and areas for which it may be used
 - it could only be activated following declared states of emergencies or transition periods under the Civil Defence Emergency Management Act 2002
 - its scope would be limited to restoring existing public works or their functions
 - protected Māori land would be excluded from the regime.
- Proposals for this regime's accelerated land acquisition process would:
 - simplify negotiations and the process for having land taken by Proclamation
 - remove the ability to object to the taking of land to the Environment Court
 - pay incentive payments even during compulsory acquisition.
- Accelerating ordinary PWA processes is significant owing to their impact on property rights. LINZ considers this is justified to support timely emergency recovery, with the above proposals acting to safeguard the use of these powers.
- Officials are available for discussion. You may wish to discuss these proposals with the Minister for Emergency Management and Recovery and the Minister for Infrastructure.

Tohutohu/Recommendations

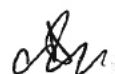
Toitū Te Whenua Land Information New Zealand (LINZ) recommends that you:		
1.	Me mātai/Note that officials are available to discuss this briefing's proposals at your meeting with officials on Thursday 30 January 2025	Noted
2.	Indicate on Appendix 1 your decisions on this briefing's proposals	Indicated



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

Restoring infrastructure damaged in emergencies may require land acquisition

1. Damage to infrastructure in emergencies can be highly disruptive and a source of distress to affected communities. To restore infrastructure, new land may be required as the original land may no longer be suitable for the work.
2. The Public Works Act 1981 (PWA) does not contain an urgent process following emergencies. In previous emergencies, legislation and Orders in Council (OiCs) have been introduced to support recovery efforts by accelerating standard regulatory processes, including under the PWA. Some overseas jurisdictions allow the suspension of normal land acquisition processes for urgent matters of public interest.¹
3. In a 2018 Lloyd's report on underinsurance in 43 countries, New Zealand has the second-highest global exposure to natural hazards.² Climate change means that there is a growing risk of events like Cyclone Gabrielle that have previously required bespoke legislation to accelerate PWA processes.

Table 1: Emergencies where PWA processes were streamlined for restoring infrastructure

Event	Summary of key legislative changes
1. Canterbury Earthquakes (2010, 2011)	<p>Canterbury Earthquake Recovery Act 2011 (CERA): Included a modified PWA process, also an OiC-making mechanism (not used for PWA purposes). The PWA process did not require negotiations before a compulsory taking and there was no right to object.</p> <p>Greater Christchurch Regeneration Act 2016: Replaced the CERA to focus on longer-term regeneration; included a modified PWA process. This process resembled the process under CERA, further required reasonable endeavours to reach acquisition by agreement before a compulsory taking.</p>
2. Kaikōura earthquake (2016)	<p>Hurunui/Kaikōura Earthquakes Recovery Act 2016: Included an OiC-making power. A modified PWA process was introduced by an OiC, available for purposes of restoring the coastal route (SH1 and Main North Line railway). No obligation to negotiate and no right to object to a compulsory taking. Limited private land required under this OiC, as most required land already belonged to the Crown.</p>
3. North Island Severe Weather Events (NISWE, 2023)	<p>Severe Weather Emergency Recovery Legislation Act 2023 (SWERLA): Included an OiC-making power. PWA processes introduced through two OiCs: one for KiwiRail to allow realignment within 500m of certain sections of rail in Awatoto and Esk Valley, and one for NZTA to acquire temporary land interests within 50m of damaged roads. Both OiCs excluded protected Māori land, required three-months good faith negotiations, and removed the right to object.</p>

¹ For example, the land acquisition regimes of Alberta, New South Wales, and federal Australia.

² Defined as: expected loss from disaster = probability of natural disaster x cost associated with natural disaster. Lloyd's, 2018, *A world at risk*. <https://www.lloyds.com/worldatrisk>

There are issues with current approaches

4. Standard PWA processes are too slow to support timely recovery, and the following problems limit the effectiveness of legislating and making OiCs after events:
 - a. **Timeliness:** Policy development and legislative processes take time, delaying the use of these provisions. After SWERLA was introduced, the two PWA-related OiCs took force in October 2023, eight months after Cyclone Gabrielle
 - b. **Robustness:** Policy and legislative processes after an emergency usually occur on truncated timeframes, are less robust, and allow less scrutiny and public engagement. There was one day to submit to select committee on SWERLA
 - c. **Resourcing:** Bespoke policy and legislative processes can distract from other work and are a significant burden on government resources (including for local government, during required consultation periods). This is not efficient, particularly as the same or similar PWA processes have been used in each of the three emergencies noted in Table 1 above.

Emergency acquisition regime

5. LINZ recommends introducing an accelerated emergency recovery land acquisition regime (emergency regime) as part of the PWA reforms. This would reduce the need to create legislation and similar PWA modifications following an emergency, saving time, and would better allow an emergency regime to be tested and consulted on.
6. Accelerating ordinary PWA processes is significant owing to their impact on property rights. LINZ considers that this is justified to support timely emergency recovery, with the below proposals in place to act as proper safeguards.
7. The emphasis of this emergency regime will be on short- and medium-term recovery activities for existing public works. Creating new works as part of longer-term regeneration and rebuilding activities is not within the scope of the proposal. Significant emergencies are likely to continue to require their own bespoke legislation, and any modified PWA powers that are needed could be made then.

LINZ recommends a dormant regime, activated by Order in Council after a declared state of emergency or transition period

8. LINZ recommends that the emergency regime is defined in the PWA, but remains dormant until activated by an OiC on your recommendation. An OiC would state:
 - a. the works over which the regime could apply (see below)
 - b. the areas over which it applies
 - c. a timeframe in which it is active.
9. LINZ recommends the regime be activated by OiC, rather than being a standing power, as not all damaged works in all areas will require or justify the use of these powers. A decision to activate these powers provides a check on their use.

10. An alternation option is to provide that OiCs can be made in an emergency to override standard PWA provisions and set out bespoke accelerated processes. LINZ does not recommend this option as it lacks transparency compared with defined dormant provisions. This option would also be slower to activate, because policy work would be required to design a regime after each emergency.
11. LINZ also recommends that the regime could only be activated following a declared state of emergency or transition period under the Civil Defence Emergency Management Act 2002. This mirrors an OiC-making power being progressed in Resource Management Act 1991 reforms. LINZ further recommends that an OiC must be for the purposes of supporting emergency recovery, and that it could only be introduced within 2 years of an emergency.
12. This proposed approach reflects advice that LINZ sought from the Legislation Design and Advisory Committee (LDAC) on the design of emergency powers. The National Emergency Management Agency (NEMA) supports this briefing and its proposals.

The regime's proposed scope would be limited to restoration activities

13. As the rationale for the emergency regime is to support recovery, LINZ recommends that it be limited to supporting the restoration of existing works, or the functions that these serve. Examples could include temporary or permanent realignment of roads, or works to upgrade alternative services. While some flexibility around what it means to "restore" damaged works is desirable, this regime would exclude fundamentally new works or new services.
14. This regime is proposed to apply to the full range of public works for which the PWA normally provides land acquisition powers, including works of the Crown, local authorities, and network utility operators (NUOs). For NUOs, LINZ proposes their works could be included on an OiC, and you as Minister for Land Information New Zealand could acquire land on their behalf, without the need to apply separately under the RMA (as is normally required).

LINZ proposes to exclude protected Māori land from the regime

15. LINZ has briefed you on the historic and modern sensitivities of the PWA in relation to Māori land [BRF 25-133 refers]. In the separate programme of work to accelerate PWA processes for critical infrastructure, Ministers have directed the Ministry of Transport and LINZ to exclude protected Māori land [BRF 25-081]. Protected Māori land was also excluded from the PWA processes set up under the 2023 SWERLA OiCs.
16. LINZ recommends that protected Māori land is also excluded from this emergency regime. It could still be acquired using standard PWA processes.

Proposed emergency land acquisition process

LINZ proposes a simplified negotiation requirement

17. Land acquisition regimes following previous emergencies differed about whether they required negotiations before a compulsory taking. LINZ proposes that there be a simplified requirement to make reasonable attempts to acquire land by agreement.³ LINZ proposes a minimum timeframe for these attempts of one month.
18. As design and investigative work must occur in parallel to land acquisition processes, this proposed requirement for negotiations is not expected to delay project delivery. Negotiations can promote better outcomes for landowners (e.g., around the placement of works within their land), and engaging with them can reveal useful information.
19. LINZ proposes to require that key information be provided to landowners during the initial stages of engagement, the same as is being proposed for the standard PWA acquisition process [BRF 25-197 refers]. It will be important to ensure landowners have information about the accelerated processes for land acquisition.

A simplified Notice of Intention and Proclamation process would follow

20. LINZ proposes that, following negotiations, a simplified section 23 Notice of Intention (NOI) would be issued to start compulsory acquisition. The next step would be a simplified process for recommending that the Governor-General take the land by Proclamation. NOI and Proclamation processes have been simplified previously.

LINZ recommends removing the right to object, but allowing for submissions

21. To promote timeliness and certainty, LINZ proposes that an emergency regime removes the right to object to the Environment Court, as has occurred in all emergencies noted in Table 1 above. Rights of judicial review would not be limited.
22. Removing this right to object limits opportunities for natural justice,⁴ which is significant due to the impact of compulsory acquisition powers on property rights. A decision is required around how to give effect to natural justice.
23. Your proposed changes to PWA processes for critical infrastructure projects replaces the right to object with an alternative natural justice process (taking up to 60 working days approximately) of written submissions to PWA decision-makers. A simpler written submission process also existed under the SWERLA OiCs.⁵

³ This is a lower bar than "good faith negotiations", which may be too onerous after emergencies, and mirrors the Greater Christchurch Regeneration Act 2016 (per Table 1).

⁴ While this right varies according to context, a key aspect of it is that those affected by decisions have the opportunity to be heard in relation to those decisions.

⁵ The two OiCs that made changes to PWA processes under SWERLA allowed submissions to the Minister of Land Information. The Minister must have regard to these submissions (received after a section 23 notice is issued) before recommending land be taken by Proclamation.

24. While appropriate for critical infrastructure, a 60-day natural justice process could unduly risk delaying work following an emergency. LINZ recommends that you choose from the following two options:
- Similar to the SWERLA model, a NOI would inform landowners of the right to make written submissions within 10 working days. You would have to have regard to these submissions when recommending the Governor-General takes land by Proclamation
 - Removing the right to object and not substituting a natural justice process.
25. LINZ recommends the first of these options, to balance efficiency with the need to provide for natural justice, while limiting risk. LINZ considers the risk of delay from this option is low, given there will remain time between issuing a NOI and a Proclamation in which submissions could be made. Not substituting a natural justice process risks uncertainty for how the courts may apply natural justice rights, as the law will always assume these to exist unless explicitly extinguished.

LINZ proposes that landowners would continue to be entitled to the value of incentive payments, even following compulsory processes

26. Compensation would be provided under the PWA's standard provisions, as improved by the review [BRF 25-118 and BRF 25-200 refer]. BRF 25-200 includes a proposal for an incentive payment if land is acquired by agreement before a NOI is issued.
27. In addition, LINZ recommends that landowners would be entitled to the value of incentive payments as proposed for the standard PWA process, even where land is acquired compulsorily. LINZ proposes this to promote fairness, recognising that negotiations could be minimal compared with standard negotiations, and that landowners may not always be able to be located or available to negotiate following an emergency. This means that compulsory acquisitions would occur more often in circumstances where landowners would otherwise agree and receive these payments.
28. LINZ also proposes that the value of incentive payments would also be available during the compulsory acquisition of protected Māori land acquired under standard processes for projects listed in an emergency OiC. Failure to allow this may raise an issue of discrimination under the New Zealand Bill of Rights Act 1990.

Mātanga kōrero/Consultation

29. The following agencies were consulted on this briefing: Ministry of Housing and Urban Development, Department of Conservation, Department of Prime Minister and Cabinet (DPMC), New Zealand Transport Agency (NZTA), Ministry for the Environment, New Zealand Infrastructure Commission Te Waihangā, 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, NEMA, and Ministry for Culture and Heritage.

30. NEMA, Te Waihangā, Ministry of Transport, NZTA, the Treasury, and KiwiRail support LINZ's proposed approach to creating an emergency regime. No agency opposes creating an emergency regime or the proposed approach.
31. Te Arawhiti and Te Puni Kōkiri support the exclusion of protected Māori land from the emergency regime, and its owners receiving the value of incentive payments if their land was acquired compulsorily under normal processes. NZTA and DPMC noted that this exclusion may limit the timeliness of restoration in some circumstances.
32. Feedback from the Ministry of Justice and DPMC reflected the importance of natural justice in PWA matters.

Tāpiritanga/Attachments

Document number	Name of attachment
1.	PWA options summary for a potential emergency recovery land acquisition regime