

BRF 25-200 PWA Review – Further compensation matters

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 further decisions on compensation under the Public Works Act 1981.

Toitū Te Whenua Land Information New Zealand Whakapā/contacts

Ingoa/Name	Nama waea/ Contact number	Whakapā tuatahi/first contact
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Ngā kōrero a te Minita/Minister's comments

Key messages

- Cabinet has invited you to report back with detailed proposals for compensation settings around incentive payments, home-loss and land-loss payments, and eligibility for these.
- Fair compensation is essential to a well-functioning public works system. Proposals will provide for greater clarity, fairness, equity and consistency. While they will support quicker acquisition, this paper acknowledges increased upfront costs and risks.

- LINZ recommends that you report back to Cabinet with the following proposals:
 - an incentive payment at five, eight, or 10 percent of land value, payable if agreement is reached before a section 23 notice of intention is issued
 - having minimum and maximum levels to this incentive payment
 - that PWA decision-makers have discretion to allow the value of incentive payments to be paid for Māori freehold land acquired after a s23 notice, due to the constraints on reaching agreement for this form of land tenure
 - updating the home-loss payment from \$35,000 to \$50,000
 - increasing the land-loss payment from a minimum of \$250 and maximum of \$25,000, to a minimum of \$350 and maximum of \$35,000
 - a technical definition to support Cabinet's decision to extend home-loss payments to all separately owned dwellings on Māori freehold land
 - for general land, extending home-loss payments to each principal place of residence, where it is resided by an owner of the land
 - other technical matters to promote clarity for how home-loss and land-loss payments are applicable across types of land tenure.

REGS / LG? →

Tohutohu/Recommendations

Toitū Te Whenua Land Information New Zealand 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: 30.1.2025

Te Horopaki/Background

1. Fair compensation settings are essential to a well-functioning land acquisition system. A fundamental principle of the Public Works Act 1981 (PWA) is that landowners are entitled to full compensation for their land and are no worse off following PWA action.
2. In October 2024, you made decisions on the approach to be taken to PWA compensation [BRF 25-118 refers], confirmed by Cabinet in December 2024 [ECO-24-MIN-0306 refers]. Cabinet also invited you to report back with proposals on the following:
 - a. the level and parameters of incentive payments
 - b. updating the value of home-loss and land-loss payment
 - c. extending the eligibility of home-loss payments.
3. This briefing sits alongside advice on premium compensation entitlements for changes to the PWA for critical infrastructure projects [BRF 25-201 refers].

Options and discussions

Decisions on incentives should balance effectiveness and affordability

4. You agreed to change the structure of the current PWA incentive payment in section 72A to make it more effective [BRF 25-118 refers]. This includes:
 - a. Moving to a percentage of land value to ensure the amount provides an effective proportionate incentive, instead of a set \$10,000 amount. ✓
 - b. Moving to a stage-based approach by providing an incentive payment to be paid if agreement is reached prior to the issue of a section 23 notice of intention to take land, instead of six-months from when negotiations commence. This is intended to encourage upfront engagement and negotiations on compensation. ✓
 - c. Extending eligibility for the incentive payment to all owners of land interests from which acquisition agreements are sought, not just those who have their principal place of residence acquired. ✓
 - d. Removing the discretionary \$5000 and separating the incentive payment from the home-loss and land-loss to ensure all payments have a clear purpose. ✓
5. The incentive payment would be calculated on the value of the land interest being acquired, including injurious affection (land value).
6. In deciding on the amount of the incentive payment, LINZ recommends considering:
 - a. the effectiveness of the incentive payment in achieving early agreement
 - b. the suitability of the incentive payment across the full range of public works
 - c. affordability for acquiring agencies, including local government
 - d. value for money.

7. LINZ recommends that you choose to set the level of incentive payment at either five, eight or 10 percent of the agreed land value. These options ensure that entitlements for land acquired under the accelerated process for critical infrastructure are higher. You have agreed that for land acquired for critical infrastructure projects there will be a 15 percent incentive payment [BRF 25-180 refers]. Higher incentives are appropriate for critical infrastructure as the tighter controls on acquisition timeframes have a better ability to offset increased upfront costs through the benefits of earlier delivery. Whereas under the standard PWA process, there remains a risk that a project is delayed by a single objection to the Environment Court, even when all other land needed has been acquired.
8. LINZ also recommends that you set minimum and maximum levels for incentive payments. Minimum payments seek to ensure the effectiveness of the incentive for the lowest-value acquisitions. Maximum payments ensure greater alignment with the PWA principle of full compensation to leave landowners no better or worse off and provide a means to manage overall affordability.
9. LINZ recommends that you choose a minimum level of either \$1,000, \$5,000 or \$10,000. Administrative costs associated with a section 23 notice include surveying, public notices, preparation of documentation to support decision-making, developing and serving the notice, and reimbursement of an owner's legal expenses. LINZ's conservative estimates are that administrative savings will offset the costs of a \$1,000 or \$5,000 minimum and, in many cases, at \$10,000 minimum.
10. LINZ recommends a maximum level of either \$80,000, \$100,000 or \$150,000. The impact of the cap on landowner entitlements at different percentage levels is outlined in **Appendix 2**.
11. The PWA provides a mechanism to adjust the value of additional compensation entitlements by Order in Council. LINZ recommends amending this section to require the Minister to have regard to the affordability and effectiveness of the incentive payment. This will mean the incentive payment can be updated every five years, based on this assessment. This mitigates the risk of setting the level of payments too high or low. Acquiring agencies retain the ability to use operational policy to provide compensation above the minimum entitlements of the PWA.
12. LINZ has provided some worked examples to illustrate the implications of different incentive payment settings for different types of public works (**Appendix 2**). The examples are a sample of different types of acquisitions. The examples show that setting a maximum level can help to manage the overall cost for higher valued acquisitions. However, the impact on cost varies depending on the number of land interests to be acquired. **Appendix 2** also shows that for the examples, the impact of the cost of the incentive payment on total project costs varies from less than 0.01 to 2.2 percent.

LINZ expects incentive payments to be effective, but there are risks

13. All options assume that the higher the level of incentive payment the more effective it will be at incentivising early agreement. LINZ expects the following benefits from this:
- a. reduced administrative costs to LINZ and acquiring agencies in fewer section 23 notices;
 - b. reduced administrative costs to LINZ and acquiring agencies due to fewer post-section 23 processes, including objections;
 - c. reduced cost escalation for works from property acquisition delays;
 - d. increased benefits from commencing construction of public works earlier.
14. However, there is high uncertainty around the expected level of uptake of incentive payments, and some owners are unlikely to choose agreement, no matter the level of incentive payment offered. There is also a risk that the incentive payment is paid to owners who would have opted for early agreement without an incentive payment.
15. There has been limited consultation with local government. Local government are high users of public works powers. The implications for local government of broadening eligibility for, and raising the level of, incentive payments, including affordability, are not fully understood. The Select Committee process will provide an opportunity to consider feedback from local authorities.

LINZ proposes a modification for Māori freehold land

16. The acquisition of Māori freehold land can take significant time due to the complexities of multiple ownership and the processes under Te Ture Whenua Māori Act 1993.¹ Changes to the eligibility and value of the incentive payment would increase the potential disparity between the compensation owners of Māori freehold land are able to access compared to owners of general land.²
17. To mitigate this risk, LINZ recommends giving decision-makers³ the discretion to provide the incentive payment in cases where Māori freehold land is acquired or taken after a section 23 notice is issued, where there is no other reasonably practicable option (e.g. where a trust administering Māori freehold land requests that land is compulsorily acquired due to administrative complexity of obtaining agreement).

¹ Under section 146 of Te Ture Whenua Māori Act, no-one has legal capacity to alienate any interest in Māori freehold land, unless in accordance with the Act. Compliance includes assembling owners or the land management entity (if one exists), a threshold of at least 75% of owners agreeing, offering the land first to the preferred classes of alienees who have a statutory first right of refusal for alienation, and confirmation of decisions by the Māori Land Court.

² BRF 25-197 Acquisition processes and transitional provisions recommends that the minimum period for negotiations for certain freehold Māori land is extended from 3 months to 6 months, but a risk remains that agreement cannot be reached.

³ The relevant local authority or the Minister for Land Information (or the Minister for Rail, if the acquisition is for New Zealand Railways Corporation).

Home-loss and land-loss payments require updating to maintain their value

18. You agreed to increase the existing home-loss and land-loss payments, as they have not been updated since 2017 [BRF 25-118 refers]. The home-loss payment is currently set at \$35,000 and the land-loss payment at 10 percent of the value of the land, with a minimum payment of \$250 and a maximum payment of \$25,000.
19. The home-loss payment recognises the inconvenience and intangible loss of the landowner's principal place of residence. Currently only one home-loss payment can be paid for each parcel of land being acquired.
20. LINZ analysis has been framed by the considerations listed in section 72E of the PWA.⁴ LINZ considers that the Consumer Price Index (CPI), rather than land and house sale prices, should be used to update these payments, given their purpose. LINZ has developed two options on this basis:
 - a. Option 1: Increase the home-loss payment to \$45,000 and the land-loss payment to a minimum of \$320 and maximum of \$32,000. This adjustment is based on the change in the CPI between June 2017 and June 2024.
 - b. Option 2: Increase the home-loss payment to \$50,000 and the land-loss payment to a minimum of \$350 and maximum of \$35,000. This adjustment is based on the change in CPI between June 2017 and June 2024 and forecasts of the CPI to June 2028 made by the Reserve Bank⁵.
21. LINZ's preferred option is Option 2. PWA review amendments are expected to be enacted by the end of 2025. The value of the payments can be updated by Order in Council, but only once every five years. Option 2 provides some futureproofing for the payments and mitigation of the risk that the value of the payment erodes over time.

LINZ proposes clarifying the extension of home-loss payment eligibility to all separately owned dwellings on Māori freehold land to aid drafting

22. Cabinet agreed to extend the additional compensation payment for dwellings used as a principal place of residence to apply to all separately owned dwellings on Māori freehold land, provided there are arrangements in relation to each dwelling [ECO-24-MIN-0306 refers].
23. To give effect to Cabinet's decision and aid the drafting of legislation, LINZ is seeking your agreement to technical matters relating to the definition of arrangements. LINZ recommends that arrangements for the purpose of separately owned dwellings on Māori freehold land include:

⁴ Section 72E enables the Minister for Land Information to adjust the value of additional compensation entitlements by Order in Council. Matters the Minister must have regard to include: the purpose of the compensation; national average land and house sale prices; the Consumer Price Index; and similar compensation paid in other jurisdictions.

⁵ Uses the Reserve Bank Monetary Policy Statement forecasts for the CPI that were released in November 2024.

- a. occupation by the legal or equitable owner of the building, or
- b. occupation, with consent of the owner of the land, by someone who is:
 - i. a beneficial owner of the land, or
 - ii. a member of the whanau of a beneficial owner, or
 - iii. entitled to succeed to the ownership of a deceased beneficial owner, or
 - iv. whanaunga⁶ of a beneficial owner if the person is associated in accordance with tikanga Māori with the land, or
 - v. a descendant of a former beneficial owner who is (or if deceased) was a member of the hapū associated with the land⁷

24. This definition seeks to balance clarity and certainty of application, while acknowledging the purpose of Te Ture Whenua Māori Act 1993 and a range of formal and informal arrangements for how Māori freehold land is occupied.

25. Confirmation of the consent of the owner would be the responsibility of the decision-maker. This recognises the authority of the landowner, without the need for any formal arrangements to be in place.

26. The dwelling must be the occupier's principal place of residence and only one home-loss payment will be available per dwelling.

Extensions to eligibility for home-loss payments are needed for equity where general land has multiple owners

27. The acquisition of multiple dwellings on the same parcel of land is rare. Where multiple dwellings are acquired, compensation is provided for the value of all the dwellings and other buildings, however only one home-loss payment can be made.

28. You agreed to further analysis being undertaken on whether eligibility for the home-loss payment should be extended in situations where there are multiple dwellings on general land. LINZ has developed two options:

- a. Option 1: Extend the eligibility for the home-loss payment to each principal place of residence on the parcel of land where it is the principal place of residence of an owner of the land.
- b. Option 2: Extend the eligibility for the home-loss payment for each principal place of residence on the parcel of land where there is separate ownership, without needing the owner of the residence to also be an owner of the land.

29. LINZ prefers Option 1. This is consistent with existing eligibility for compensation under the PWA, which is based on ownership of interests in land. Both options will result in an

⁶ Defined in the Te Ture Whenua Māori Act as a person related by blood.

⁷ This description aligns with people who, because of their whakapapa and unique connection to whenua, may become owners of Māori freehold land ("preferred classes of alienees" under Te Ture Whenua Māori Act 1993).

increase in cost but will improve the fairness of the compensation regime. Option 2 deviates away from ownership of interests in land towards occupation as the basis for compensation. There is a risk that such a shift may broaden expectations of who should be compensated, such as tenants.

LINZ proposes other technical amendments

30. There are some areas where clarification of existing provisions to align with current practice would improve administration of the PWA. LINZ recommends the following:
- a. **Unit titles:** Clarifying that when properties with separate dwellings are owned under unit title ownership, each dwelling that is a principal place of residence qualifies for a home loss payment. The body corporate is only eligible for a land loss payment if a home loss payment has not been made for the property.
 - b. **Cross-lease:** Enabling the acquiring agencies to divest themselves of any interests in the land not needed. Currently, this can only be achieved if the owners of the remaining properties agree.

Other compensation matters

31. The Expert Advisory Panel (the Panel) identified some specific examples of compensation provisions that would benefit from close examination to improve clarity. LINZ has considered the specific examples identified by the Panel (e.g. whether GST applies to injurious affection and what qualifies for disturbance payments). LINZ intends to make operational improvements to address these matters, rather than legislative amendments.

Mātanga kōrero/Consultation

32. The following agencies were consulted on this briefing: Ministry of Housing and Urban Development, Department of Conservation, Department of 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, the 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, and Ministry for Culture and Heritage.
33. KiwiRail would prefer for incentive payments to be timebound, rather than linked to the issuing of a section 23 notice, as they consider this would be more effective in obtaining early agreement. Te Waihanga would prefer an opt-in approach to incentive payments, as some projects are less time sensitive than others and may not justify incentives.

Tāpiritanga/Attachments

Document number	Name of attachment
1.	PWA options summary for further compensation matters
2.	Implications of incentive payments

Proactive Release