

In Confidence

Office of the Minister for Land Information,
Chair, Cabinet Economic Development Committee.

The Public Works Act and the Resource Management Act fast-track process

Proposal

1. I seek Cabinet's endorsement of the proposed approach to better align timeframes between the Public Works Act 1981 (PWA) acquisition process and the Resource Management Act 1991 (RMA) fast-track process. This paper outlines operational changes already underway.
2. I provide a scope of possible legislative changes, together with an initial risk and opportunity lens. These would be part of a second report for 22 June, if required.

Executive Summary

3. The COVID-19 Recovery (Fast-Track Consenting) Bill 2020 is intended to assist economic recovery from the effects of COVID-19 by temporarily speeding up consenting/designations for development projects that can commence rapidly. Some projects will also require acquisition of land under the PWA.
4. PWA processes (negotiation, compulsory acquisition (if necessary), and objections) do not align with the proposed RMA fast-track process. Negotiation often happens before an RMA consent and can take months. Compulsory acquisition and objection processes can take 7-14 months – significantly longer than the new RMA Fast Track process. All PWA timeframes depend heavily on the behaviour of individual landowners, as any single landowner reserves the right to pursue actions appropriate to him/her/them.
5. Acquiring authorities¹ such as Waka Kotahi New Zealand Transport Agency (NZTA) and KiwiRail want to align the two regimes as much as possible, without compromising the underlying principles in the PWA. The current flexibility in the PWA allows for improved operational alignment without legislative change.

¹ Acquiring authority is the term used to describe an entity that wishes to acquire land for a public work. This can include Crown agencies asking that the Minister acquire land on their behalf for government works, or a local authority (as defined in the PWA, which includes councils, universities, airport authorities etc) acquiring works for local works.

6. The PWA and RMA operate with different purposes and safeguards. The PWA primarily relates to the acquisition and disposal of land for public works (such works typically include infrastructure), whereas the RMA purpose relates to sustainable management of natural and physical resources (which includes infrastructure).
7. The compulsory acquisition powers under the PWA must balance the provision of public works with the rights of individual landowners. It contains important checks and balances on the government's exercise of its power in the processes of negotiation, decision-making, and where warranted, compulsory acquisition.
8. In proposing any timing changes to the PWA, it is critical to retain the fundamental principles behind the PWA: the ability to deliver public works, landowners maintaining access to justice, ensuring fair compensation for land – while also recognising the obligations of the Crown to uphold the principles of the Treaty of Waitangi.
9. Negotiations with affected landowners can be time consuming. But, significant operational improvements to the PWA regime can be quickly progressed without requiring legislative change. Targeted changes to early parts of the PWA process will speed up negotiations with affected landowners by improving communication and information provision. Time savings will be larger for projects in earlier stages, compared to more projects where negotiations have already occurred. The changes should reduce PWA timeframes by 3 to 6 months.
10. Similarly, objections can delay projects while the case is heard in the Environment Court. If a parcel of land is being contested, a project may not be able to proceed. According to data from the Ministry of Justice, it has taken 5.1 months on average to resolve an objection, since 2015.
11. There are also targeted legislative changes to the PWA that could deliver better alignment with the fast-track consenting process. There would need to be reasonable certainty of benefits and their materiality (e.g. 6 months' time saving) before legislative changes are made. A decision to make legislative changes also needs to weigh up the expected frequency of their application to fast track projects, the cost of making them, and the implications for the values and rights of individual landowners. Any changes should not compromise current PWA principles.
12. Changing the law to align the timing regimes of the PWA with the fast-track consenting process, as infrastructure agencies are requesting, requires more policy work to avoid unintended consequences. If Cabinet wishes to proceed, then I propose a second report back to Cabinet by 22 June setting out any policy and statutory changes that are required. These changes would have an

equivalent sunset clause to the proposed COVID-19 Recovery (Fast-Track Consenting) Bill.

13. This paper responds to a joint report back from Cabinet on 28 April 2020 directed at the Ministers of/for Māori-Crown Relations Te Arawhiti, Transport, Housing, Building and Construction, and Local Government, and Associate Minister of Finance Hon David Parker, the Minister for Land Information. This paper reflects their direct input, although, as the Minister responsible for the legislation in question, I have been responsible for submitting it to Cabinet.

Background

14. Cabinet agreed on 28 April 2020 to the Minister for the Environment's proposed COVID-19 Recovery (Fast-Track Consenting) Bill 2020 [CAB-20-MIN-0182 refers]. This will create time-limited powers to fast-track resource consenting and designation processes for specified development and infrastructure projects in order to support New Zealand's economic recovery.
15. Requiring authorities believe the current Public Works Act 1981 (PWA) processes could slow down projects approved for the RMA fast-track in cases where significant acquisitions are required. Accordingly they seek to shorten the timeframes for essential infrastructure projects to acquire land.
16. The Ministry for the Environment advises that the RMA changes are expected to reduce the time for a decision on a consent/designation application down to 1-3 months. In addition to the time negotiating with landowners, PWA compulsory acquisition process can take 7-14 months² - one objection can hold up a public work while it is resolved. Acquiring authorities believe it is important to find similar time savings in the PWA processes or risk losing the timing benefits of the RMA fast-track process for projects that also require private land.
17. Operational improvements are the first step I can take to improve timing alignment. This is underway already, and many of the changes I have asked LINZ to put in place reflect best practice already in use by some agencies and acquiring authorities (such as NZTA). By setting the expectation that these operational improvements apply more widely than the Crown, working closely with affected parties such as the local government sector, the PWA regime will better incentivise landowners to settle. This will in turn improve timing alignment.
18. More work is required to provide robust legislative options for the PWA, to ensure any changes do not compromise current principles. For this purpose, I

² This timing is based on the three months negotiations between the Notice of Desire and Notice of Intention, and then another month during which a landowner may lodge an objection. If no objection is lodged, then acquiring the land by Proclamation takes 2 months. If an objection is lodged, then this can take 6-12 months to resolve (based on data from Ministry of Justice).

propose a second paper, if required, on potential legislative changes. This timing would also allow the final form of the RMA fast-track process to be considered, including clearer information about what projects within that process may need to acquire land through the PWA.

Introduction to the Public Works Act: purpose, process, checks and balances

PWA purpose and principles

19. The PWA provides the Crown with the statutory authority to acquire land for a public work. Its basic principles are that no person shall be deprived of land by the Crown unless it is necessary for a public work and that fair compensation will be provided³, along with an ability to object to the taking of land.
20. Decisions to take land reside with either the Minister for Land Information or relevant local government authority, but Proclamations to take land must be issued by the Governor-General.
21. Compulsory acquisition can only be used after attempting to negotiate voluntary purchase. Market value must be paid for the land.
22. PWA acquisition powers are able to be used by central government, local authorities, and network utility operators, as defined in the PWA.⁴

The importance of PWA checks and balances

23. The policy underpinning the PWA seeks to balance:
 - a) Enabling land acquisition for public good / public work (not private good)
 - b) Maintaining landowners' access to justice, in line with our system of judicial checks on exercise of executive power
 - c) Ensuring no land is taken without fair compensation, and
 - d) Increasingly, the Crown's obligations under the Treaty of Waitangi.
24. This framework provides a basis for understanding the impact of interventions, both operational and/or legislative, as part of proposals to better align the timing of the PWA regime with the RMA fast-track process.

³ The principles behind compensation include ensuring that an owner is no worse or better off from the acquisition of their land.

⁴ There is also ability for network utility operators, which are requiring authorities, to also have access to the PWA powers, through the Minister for Land Information, under section 186 of the RMA.

Proposed approach

25. This paper identifies operational initiatives that will speed up the PWA acquisition process and do not require legislative change. These changes are already underway, and LINZ is working closely across government to ensure new guidelines are tested with agencies (the Crown), acquiring authorities (such as local authorities) and any third parties.
26. I seek agreement to a proposed scope for investigating any legislative change, if required, to align PWA timing/process with the RMA fast track. This paper outlines a framework for thinking about any such changes.
27. If required, a second paper would be tabled on June 22 with any further policy interventions requiring legislative changes, developed with Ministerial colleagues, for Cabinet approval. Any legislative amendments would be introduced to the House at the earliest possible time, but separate to the COVID-19 Recovery (Fast-Track Consenting) Bill.

Framework for understanding the PWA

28. The PWA process begins when land is identified as being necessary, or likely to be necessary, for a proposed public work. The process then follows three phases: negotiation, decision-making⁵, and objections:
 - a) **Negotiations with landowners** can occur from the moment land is identified as required. A Notice of Desire is part of the negotiation process, although it foreshadows the compulsory acquisition process.

The negotiations process enables land to be acquired by agreement with the landowner, rather than compulsorily acquired. Currently, this process takes between 9-12 months. Since the start of 2015, approximately 700 ‘interests’ in properties were acquired in this informal negotiation stage (excluding local authorities).

A Notice of Desire (section 18 PWA) foreshadows the compulsory acquisition process. Approximately 35% of landowners are engaged in this process, and of those, the majority are able to agree settlement terms. Since the start of 2015, 305 Notices of Desire have been issued (excluding from local authorities)
 - b) **Decision-making points** - Notice of Intention to Take land (section 23 PWA)⁶ and issuing of a Proclamation to acquire land – if there is no objection) involve the compulsory acquisition of land.

⁵ For the purpose of this paper, ‘decision’ to compulsorily acquire is the Notice of Intention to take land. A Notice of Desire is part-way between the negotiation phase and the decision-making phase.

⁶ Currently must be at least three months after a Notice of Desire under s18 PWA.

Currently, around 10% of total acquisitions are taken by Proclamation (compulsory acquisition). Since the start of 2015, 201 Notices of Intention have been issued (excluding from local authorities), and 145 Proclamations (including from local authorities).

- c) **Objections** - Landowners retain the right to object to the taking of their land if they make an objection after a Notice of Intention to Take has been served (but before a Proclamation).

Objections can be time-consuming. They are heard by the Environment Court, which must consider whether it is fair, sound and reasonably necessary to take the land for the public work.

Since 2015, there have been 27 rulings by the Environment Court on objections where the Minister for Land Information was defendant – this excludes objections against a local authority acquisition. Resolving these objections took an average time of 5.1 months. The majority were resolved by Court mediation, or were withdrawn before a decision was required. Only 3 required a written court decision, which took an average of 9 months to resolve.

PWA compensation

- 29. The PWA compensation regime is based on the principle that no one should be better or worse from the acquisition. It involves the acquiring agency and landowner negotiating to agree on a market value to be paid for the property (subject to negotiations and valuations). Additional compensation is available – such as up to \$50,000 if a landowner's home is purchased (within an agreed time), and payments for reasonable costs such valuation and legal fees and relocation costs.
- 30. Disagreements over the level of compensation can be resolved after a compulsory acquisition by recourse to the Land Valuation Tribunal. This does not slow down the progress of a public work on the land.

Initial interventions: Operational changes to improve negotiation process

- 31. The majority of land acquisitions are settled in the negotiation phase. There are few statutory timeframes for negotiations. In early development stages of a project (while RMA consent applications are being prepared), acquiring authorities often spend 12 months or more negotiating with landowners.
- 32. Operational changes at the front end of the PWA process will better support landowners and give the acquiring agency a wider range of tools to progress negotiations. This will increase the likelihood of acquisition by agreement, and speed up the PWA negotiation process.

33. The speed at which fast-track projects may move, in order to provide stimulus and employment during the post-COVID economic recovery, could mean even less time for landowners to prepare for negotiations. Operational improvements could be particularly important for supporting landowners in this situation. However, any compression of negotiation timeframes also risks an increase in the number of contested acquisitions, putting more pressure on the later objection phase of the acquisition process.
34. I have identified a range of operational changes that will improve the early stages of the acquisition process. I have directed LINZ to scope and develop these changes to ensure that they are useable by agencies (the Crown), acquiring authorities (such as local authorities) and any third parties. Appendix 2 provides more detailed comments on the operational improvements.

Improvements to negotiation process – currently in development/underway

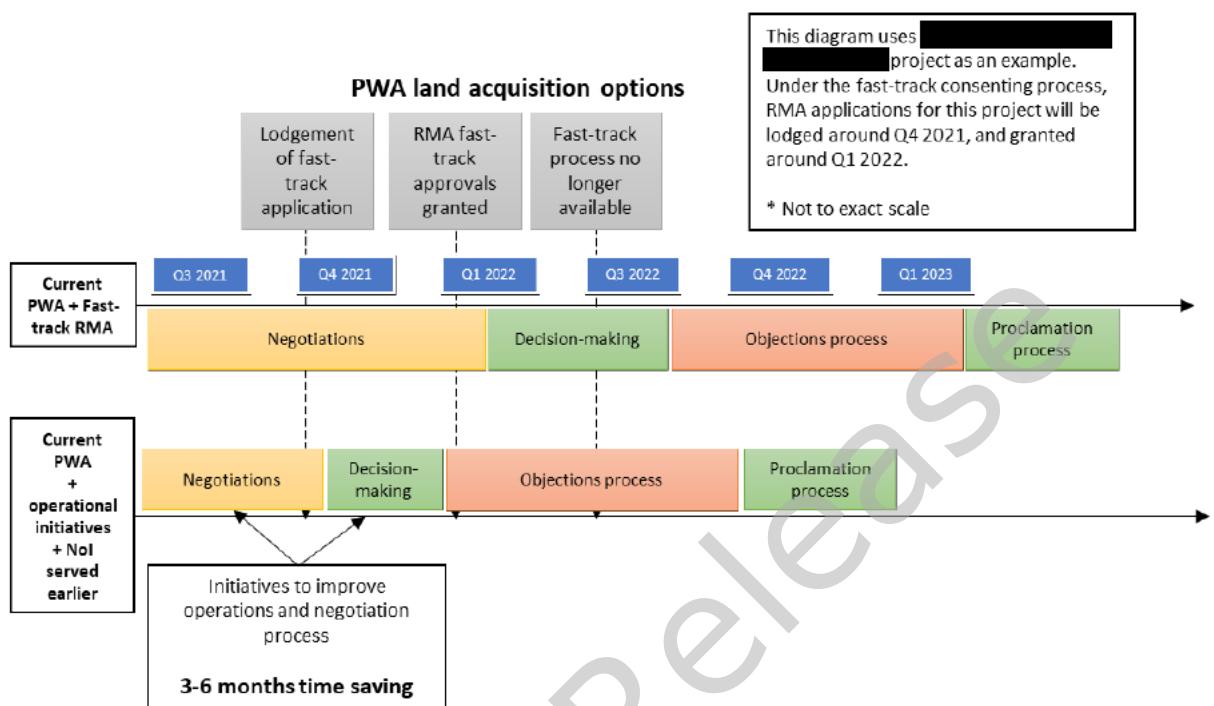
35. Operational changes that improve practice (primarily negotiation stage):
 - a) Investigate opportunities for further early community engagement and information provision across all parties using the PWA,⁷
 - b) Improving information provided to owners in the earliest stages of negotiations to ensure they understand what is happening,
 - c) Enabling more frequent use of mediation in acquisition disputes early in the process (would be funded by acquiring agency),
 - d) Pre-approving the payment of owners' legal, valuation, and other costs to a threshold to remove financial barriers to owners gaining good advice and timely support,
 - e) Providing access to counselling and support services to all affected landowners,
 - f) Greater use of templates and standard forms across all aspects of the process to speed up processing times and lift quality,
 - g) Enhancing industry capability and capacity among the accredited suppliers who undertake PWA negotiations to support agencies acquiring land.
36. Acquiring authorities such as NZTA and Kiwirail are already planning most of these changes. While these changes cannot direct local government practices

⁷ NZTA have guidance on community consultation that results in engagement directly with landowners as soon as a project has a shortlist of routes to engage on. There is opportunity to investigate consistency of engagement practices across acquiring authorities.

under the PWA, guidance could be used as an example for local authorities to follow.

37. The approximate time savings of these combined changes is likely to be 3-6 months for most projects, depending on what stage of the PWA process a project is at. Where negotiations are already underway (i.e. projects that are closer to works beginning) there is less scope to save time by improving negotiation practices. However, greater time saving is possible for projects still in early stages of development, for some of these projects the time saving could be closer to 6-12 months.
38. The benefits of these changes are primarily focused on reducing the impact PWA acquisition on landowners, rather than saving significant time. The total impact of these changes is uncertain; to a large extent they depend on the behaviour of individual landowners. The 3-6 months time savings estimate reflects that negotiations can be drawn-out by a few landowners who hold-out even if the majority of landowners have settled, so even though some cases may experience 12 months time saving, the average is likely to be between 3-6 months time saving.
39. Figure 1 below illustrates the approximate reduction in time against the RMA fast-track process of these operational changes.

Figure 1: Timing of PWA process with operational changes against current PWA process, with reference to RMA fast-track



40. Individually, each of the changes has some cost involved. Further work to understand the increase in volumes of acquisitions due to the RMA fast-track and resource implications for LINZ is underway.
41. Some of the operational changes proposed could become permanent changes, once they have been tested under these temporary circumstances. The existing intention was to pilot the proposed operation changes through NZTA's NZ Upgrade Programme with the hope all or most would become permanent for all PWA acquisitions by NZTA and thereafter others.
42. LINZ will seek to implement initial improvements within a two-year time frame, in alignment with the temporary RMA regime. This would establish any adjustments (e.g. service or cost) needed, prior to any decision to make some/all of these operational changes permanent.

Proposed improvements to objections process

43. There are also operational improvements that can be made to the decision-making stage of the PWA framework, particularly regarding the timing of objections through the Environment Court.
44. I note that there is flexibility in the PWA that allows for a compulsory acquisition decision (and any objection to that decision) to be made at any stage of the RMA processes.

45. LINZ has received data from the Ministry for Justice (MOJ) on the Environment Court's processing of PWA objections since 2015. Analysis indicates that out of 55 objections, the average time from the filing of an objection to resolution⁸ is 4.4 months for cases against the Minister for Land Information, and 5.8 months for cases against local government. Only 3 out of 27 cases against the Minister for Land Information required a Judge's decision after a hearing, and these took an average of 9 months. The slowest case against the Minister for Land Information took 12 months to resolve.
46. In recent years, the Environment Court have made a number of improvements to its processes – indicated by their time to resolve objections since 2015. These already apply to the resolution of PWA objections. They include a case-management system with a priority track (to be used as needed), and a successful 'alternative dispute resolution' method using Environment Commissioners to provide resolution of some cases without a hearing before a Judge.
47. LINZ, alongside MOJ, are searching for ways to consistently speed up the Environment Court's processing of objections. Initial areas of investigation include:
 - 47.1. increasing the capacity of the Environment Court;
 - 47.2. and/or other ways to support prioritisation for PWA-related cases brought to the Environment Court
48. Any of these changes would require close cooperation with the Ministry of Justice and the Environment Court, while respecting the Environment Court's jurisdiction.

Considering legislative changes could be a next step

49. The first set of immediate operational changes I am already making could increase the speed of the voluntary negotiation stage by an average of 3-6 months, and up to 12 months in best case scenarios. The additional time savings to the Environment Court's processes – over and above the current average times – are yet to be evaluated.
50. However, some of these improvements are uncertain (due to individual landowner behaviour) and, as Figure 1 illustrates, will not be enough to fully align timing of the PWA regime with the RMA fast-track as acquiring authorities are seeking.

⁸ Resolution can be by Environment Court mediation, objections being withdrawn, the Notice of Intention being withdrawn, or a decision following a hearing.

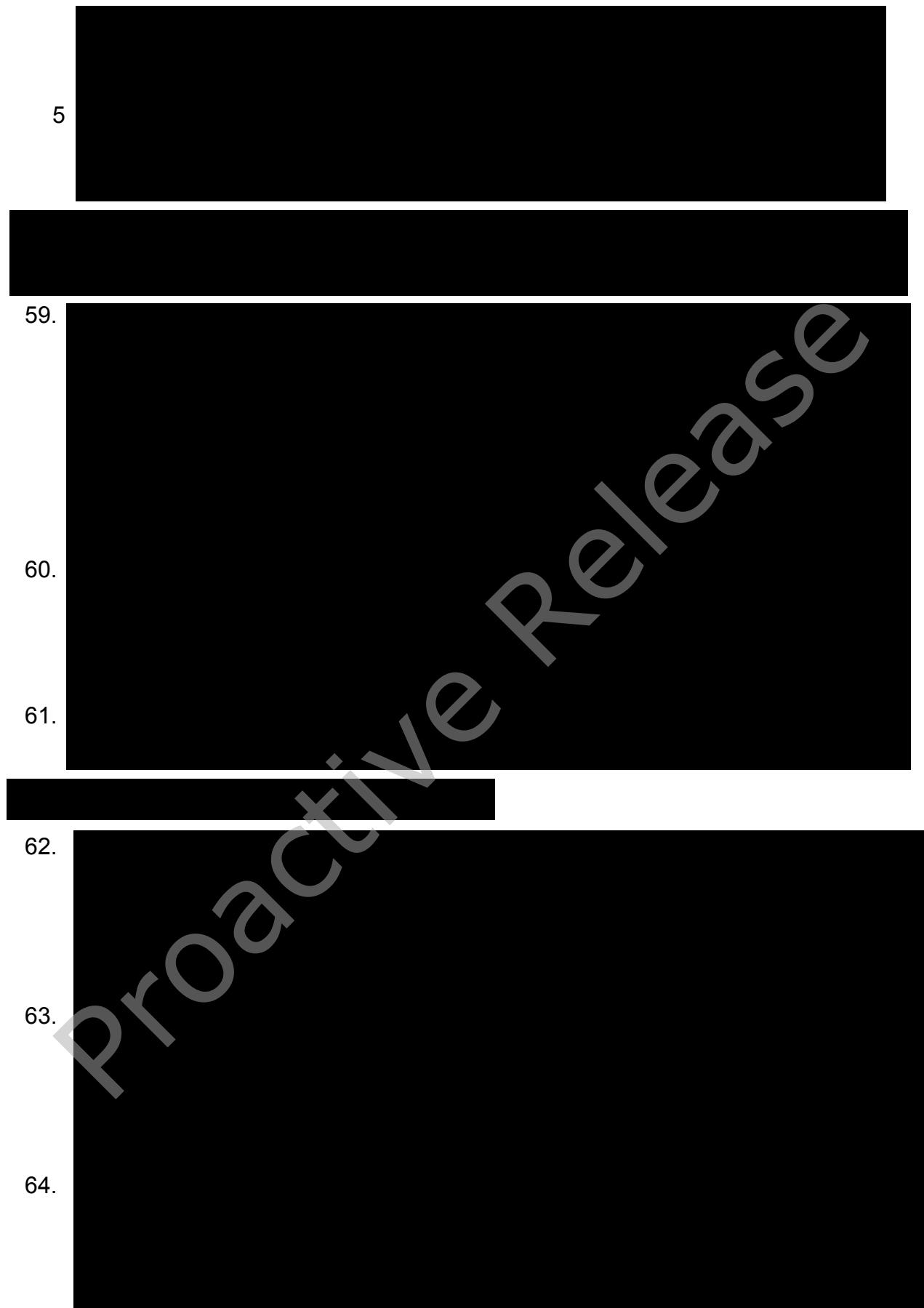
51. Infrastructure agencies are particularly concerned about the delays in land acquisition if compulsory acquisition processes cannot be commenced until all RMA approvals are confirmed. They recommend time-bound legislative changes to the PWA to speed up the acquisition of land, and improve statutory alignment between the PWA and the RMA fast-track consenting changes.
52. I do not intend to include any PWA legislative changes in the COVID-19 Recovery (Fast-Track Consenting) Bill, due to the significant differences in principles and processes between the RMA and the PWA. Any legislative changes to the PWA would proceed through a standalone amendment Bill.
53. If Cabinet wishes to pursue legislative amendment, I propose a scope here for two preferred types of changes. Both would further align timing of the PWA with the RMA fast-track, whilst retaining the current framework of the PWA.

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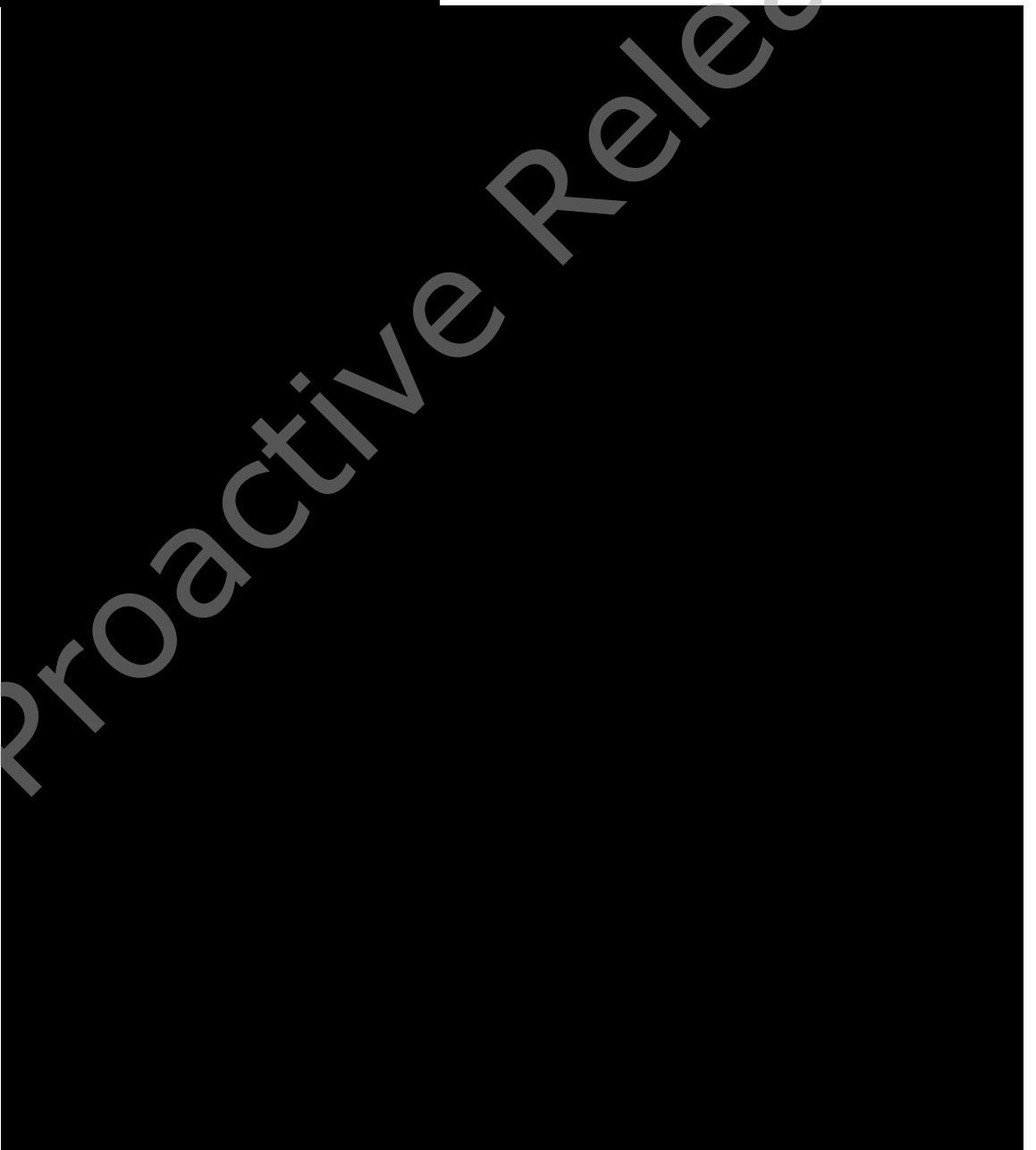
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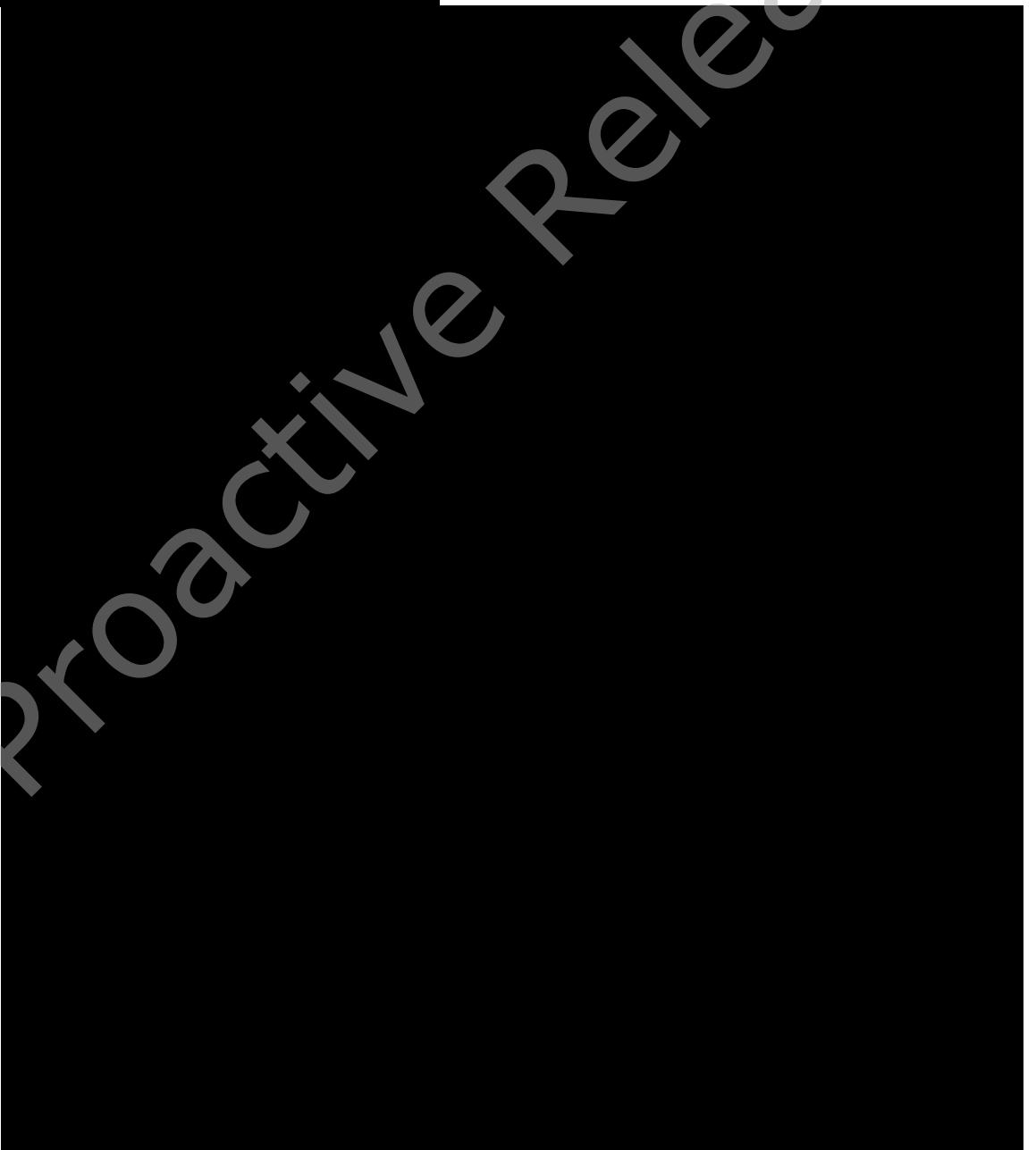


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Proactive Release

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Exclusion of Māori land from PWA fast-track

73. I propose that Māori land¹⁰ be excluded from any fast-tracked PWA compulsory acquisition powers. Nothing in the COVID-19 Recovery (Fast Track Consenting) Bill affects how the PWA applies to Māori land. Any further policy work on the PWA provides an opportunity to ensure Māori land is excluded from the fast-tracked acquisition powers.
74. Including Māori land in a proposal to speed up the PWA would risk undermining the Māori-Crown relationship. This could create new Treaty grievances and undermine the work on Māori Land policy development in other areas e.g. Urban Development legislation¹¹. The exemption does not stop the voluntary sale and purchase of Māori land, or the application of existing PWA acquisition processes (non-fast-tracked).
75. Māori land is usually in multiple ownership and it would be unreasonable to require owners to respond in compressed timeframes (involved in fast-track processes). Te Arawhiti note that acquiring multiply-owned Māori land may also involve the Māori Land Court and processes under Te Ture Whenua Māori Act 1993. There is no scope to shorten these processes.

¹⁰ The exact definition of Māori land that will be used is yet to be determined. Te Puni Kōkiri, Te Arawhiti and the iwi policy technicians have recommended officials consider the definition in the Urban Development Bill.

¹¹ The Urban Development Bill treats Māori land in two ways: some types of Māori land is entirely protected from development, while other types can be developed with agreement. It also protects other types of land in which Māori have an interest.

76. This policy would need to be re-considered if additional compensation were made available to land subject to fast-track processes, in order to ensure equity for Māori land owners.
77. Based on initial engagement with agencies and iwi policy technicians there is broad support to exclude Māori land from any PWA fast-track process. Further detail on the treatment of Māori land would be part of any second report back to Cabinet.

Further engagement is underway

Engagement with Iwi policy technicians

78. Initial engagement on the PWA proposals has occurred with iwi policy technicians, also engaged by Ministry for the Environment for the COVID-19 Recovery (Fast-Track Consenting) Bill. It is the National Iwi Chairs Forum's position that Māori land should not be included in fast-track projects, unless the owners agree.
79. Engagement with iwi technicians partly mitigates Treaty risks but falls short of normal standards of engagement (largely due to timeframes). Since iwi technicians represent the National Iwi Chairs Forum, they do not speak for wider Maori interests.
80. With the time available, I propose to undertake the fullest Māori engagement possible on the PWA proposals with our Te Tiriti partners, including whānau, hapū, iwi and Māori entities. LINZ officials are being supported by Te Arawhiti and Te Puni Kōkiri to advance this.

Engagement with Local Government

81. Engagement on operational and potential legislative change is critical to ensure that the proposals are workable for local authorities.
82. I propose achieving this in collaboration with the Department of Internal Affairs and engaging with local government authorities, including the COVID-19 Local Government Response Unit.

Engagement with the Justice Sector

83. Any changes, either operational or legislative, to the objections timing and process will be worked through closely with the Ministry of Justice and the Environment Court.

Engagement with key portfolios

84. I seek approval to engage further with joint Ministers on any legislative proposals, to include (but not limited to) the Minister of Transport, and the Minister of Local Government.

Consultation

85. The following agencies have been consulted: Ministry for the Environment, Waka Kotahi (New Zealand Transport Agency), Kiwirail, Ministry of Transport, Te Arawhiti, Te Puni Kōkiri, Ministry of Housing and Urban Development, Department of Internal Affairs, the Treasury, the Ministry of Justice and the Environment Court, the Infrastructure Commission and Department of Conservation.

Financial Implications

86. Any operational changes to the PWA that are made to align with the COVID-19 Recovery (Fast-track Consenting) Bill may have financial implications. Possible fiscal implications for LINZ and other agencies are still being considered.
87. Without a confirmed list of known projects, it is difficult to ascertain how many works will trigger the PWA, and the financial impacts of this. Some operational improvements that are already underway within LINZ can be worn from within baselines, but flow on costs to acquiring authorities will have to be worked through.

Legislative Implications

88. This paper has no legislative implications.

Impact Analysis

89. A Regulatory Impact Assessment will be completed with any second report back, if policy changes are sought. Treasury has issued guidance for a streamlined RIA process under COVID-response, which may be appropriate for this work.

Human rights, gender implications and disability perspective

90. A Bill of Rights Act assessment has yet to be done and potential impacts on human rights have yet to be assessed. BORA analysis would be needed to understand the potential impacts on landholder property rights and access to justice.
91. There are no known gender or disability implications associated with this paper.

Publicity

92. No public announcement is planned.

Proactive Release

93. The paper will be proactively released as soon as practicable following Cabinet decisions on any subsequent paper.

Recommendations

In consultation with Ministers of/for Māori-Crown Relations Te Arawhiti, Transport, Housing, Building and Construction, and Local Government, and Associate Minister of Finance Hon David Parker, the Minister for Land Information recommends that the Committee:

1. **note** that acquiring authorities have identified timing challenges between the RMA fast-track and the PWA regime,
2. **note** that operational improvements to the PWA processes for acquiring private land can be implemented immediately while retaining existing PWA checks and balances,
3. **note** that the PWA is a complex regime, balancing the need for public works with the rights of landowners,
4. **agrees** that operational changes, as outlined in paragraphs 31-48 and appendix 2, are sufficient to improve the timing alignment between the PWA regime and the RMA fast-track Bill, and that no further legislative change is required,

or

agrees to

- a) the proposed scope (track 1 and track 2 changes) for developing legislative changes to the PWA

and / or

- b) the proposed scope (transport agency proposal) for developing legislative changes to the PWA

5. **agree** that officials will work with the iwi policy technicians, local government and the courts on any legislative changes to the PWA,

6. **note** that officials will undertake the fullest Māori engagement possible on the PWA proposals with our Te Tiriti partners, including whānau, hapū, iwi and Māori entities in the time available,
7. **agree** that Māori land is excluded from any legislative changes aimed at streamlining the PWA land acquisition processes
8. **invite** Ministers of/for Land Information, Transport, Local Government to report back on any proposed PWA legislative changes, should this be required on 22 June.

Authorised for lodgement

Hon Eugenie Sage
Minister for Land Information

Appendix 1: PWA Acquisition Process, with potential time saving impact

Operational changes to align with RMA fast-track

Negotiation and Objection stages

Improving information to owners by the agency/department providing information and pre-approving funding for owners to seek legal and valuation advice.

More frequent use of mediation in valuation disputes using third-party mediation to identify and resolve valuation disputes quickly.

Provide access to counselling and support services to care for the wellbeing of affected landowners.

Faster resolution of objections by increasing the use of Environment Court mediators and/or seeking prioritisation of PWA objections - noting that scheduling is a judicial function.

**3-6 months time reduction
Can be made immediately**

Key decision for Ministers

Do operational changes save sufficient time to support the RMA fast-track?

If legislative changes are desired, what is the appropriate trade-off between speedy resolution of objections and landowners' access to justice?

Proprietary Release

Appendix 2: Draft detailed operational enhancements

Option	Detail	Impact on landowners	Increase speed of negotiations	Increased likelihood of agreement	Resourcing impact
Improve information to owners	LINZ is currently reviewing the information it provides to owners on acquisition. This can be enhanced by further explaining compensation terms, and the processes that would apply. Additional information can be prepared on fast-tracked projects to be made available as early as possible.	++ Providing more information to landowners earlier better equips them to engage in the process.	++ Those landowners who are likely to agree to a negotiated settlement will do so faster if they are better equipped.	+	0 Relatively easy to achieve within current resourcing
Enable more frequent use of mediation in valuation disputes	Where there is dispute over valuations obtained by the Crown and landowners, mediation could be undertaken before referring the matter to the Land Valuation Tribunal (the Tribunal can be time consuming and costly for both parties). This option involves utilising third-party mediation more often, to identify and attempt to resolve valuation disputes to facilitate speedy and non-adversarial resolution if compensation is not agreed. This would be funded by the acquiring agency, any outcome submitted to the Minister (LINZ) for approval, have Crown Law oversight, and can be provided for in LINZ's standards and guidance.	++ Giving landowners access to a funded mediation service removes financial barriers that may hinder them from trying to seek the compensation they want	++ Those landowners who are likely to agree to a negotiated settlement will do so faster if they can access mediation to reach an agreed level of compensation faster.	+	- LINZ will need to work with acquiring agencies to each contribute some funding to a mediation service.

Option	Detail	Impact on landowners	Increase speed of negotiations	Increased likelihood of agreement	Resourcing impact
Pre-approve the payment of owners' legal and valuation costs	The PWA provides for an owner to recover the reasonable fees from obtaining legal, valuation and other advice or support. Often these invoices need to be paid before a final agreement is reached. However, approval to pay these fees can take time, which can create stress for owners. This option would involve LINZ providing agreement at the start of a project for an acquiring agency to pay up to a specified level without needing to seek a formal decision on each invoice. LINZ approval would only be required for invoices above the approved quantum.	++ Enabling landowners to get the information they want earlier better equips them to engage in the process.	++ Those landowners who are likely to agree to a negotiated settlement will do so faster if they are better equipped.	+ Supports landowners to engage and reach a negotiated agreement.	T.B.C. Would need to check that there is sufficient funding for the scale of proposed projects.
Provide access to counselling and support services	This would see NZTA providing easier access to, and funding counselling and support services for landowners affected by PWA acquisitions in the fast-tracked projects. LINZ would support this initiative.	+++ Supporting landowners who are affected by PWA acquisitions has positive impacts on wellbeing.	+	0 This may support landowners to engage in negotiation when they may not otherwise be able to.	- LINZ will need to work with acquiring agencies to each contribute some funding to enable access to the necessary support services.

Option	Detail	Impact on landowners	Increase speed of negotiations	Increased likelihood of agreement	Resourcing impact
Enhance industry capability and capacity	LINZ maintains a pool of accredited suppliers who have experience in PWA negotiations to support agencies undertaking acquisition, through discussions with suppliers and agencies to ensure that they have the capability to undertake an enhanced programme of land acquisition where required. This would also include looking at ways to expand the pool of accredited suppliers, if necessary.	+ Ensures landowners are not affected by delays in negotiations due to PWA system capability.	++ An adequate pool of accredited suppliers will enable negotiations to proceed at the speed desired by acquiring agencies.	0 Does not provide incentives for landowners who are inclined to object to reach a negotiated agreement.	0 Some administrative cost on LINZ that should be able to be met through baselines.



Cabinet Economic Development Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

The Public Works Act and the Resource Management Act Fast-Track Process

Portfolio Land Information

On 3 June 2020, the Cabinet Economic Development Committee (DEV):

- 1 **noted** that acquiring authorities have identified timing challenges between the Resource Management Act 1991 (RMA) fast-track and the Public Works Act 1981 (PWA) regime;
- 2 **noted** that operational improvements to the PWA processes for acquiring private land can be implemented immediately while retaining existing PWA checks and balances;
- 3 **noted** that the PWA is a complex regime, balancing the need for public works with the rights of landowners;
- 4 **agreed** to the operational changes, as outlined in paragraphs 31-48 and Appendix 2 of the paper under DEV-20-SUB-0098, to improve the timing alignment between the PWA regime and the RMA fast-track Bill;
- 5 **agreed** that further work be undertaken on options for legislative changes to the PWA;
- 6 **directed** officials to work with the iwi policy technicians, local government and the courts on any legislative changes to the PWA that may be required;
- 7 **noted** that officials will undertake the fullest Māori engagement possible on the PWA proposals with Te Tiriti partners, including whānau, hapū, iwi and Māori entities, in the time available;
- 8 **agreed** that Māori land be excluded from any legislative changes aimed at streamlining the PWA land acquisition processes;
- 9 **invited** the Minister for Land Information, in consultation with the Minister of Transport, Minister of Local Government, Minister for Māori Development, and Minister for Infrastructure, to report back to DEV on the proposed PWA legislative changes, on 24 June 2020.

Janine Harvey
Committee Secretary

Present: (see over)

Present:

Hon Kelvin Davis
Hon Grant Robertson (Chair)
Hon Phil Twyford
Hon David Parker
Hon Nanaia Mahuta
Hon Stuart Nash
Hon Iain Lees-Galloway
Hon Jenny Salesa
Hon Damien O'Connor
Hon Kris Faafoi
Hon Shane Jones
Hon Willie Jackson
Hon James Shaw
Hon Eugenie Sage

Officials present from:

Office of the Prime Minister
Officials Committee for DEV

Proactive Release