

## Ministry of Transport: Aide Memoire

**To:** Hon Phil Twyford (Minister of Transport)

**From:** Helen White, Manager, Investment [REDACTED]

**Date:** 1 May 2020 To protect the privacy of individuals

**Subject:** Ministerial letter to Waka Kotahi NZ Transport Agency on the New Zealand Upgrade Programme

**OC Number:** OC200345

### Purpose of this aide memoire

1. To provide you with a response to the letter from Nicole Rosie of 28 April 2020 seeking approval to advance five Waka Kotahi NZ Transport Agency (Waka Kotahi) led projects in the New Zealand Upgrade Programme (the Programme).

### Waka Kotahi is ready to progress to the next stage for five projects in the Programme

2. Waka Kotahi is looking to progress the projects in the Programme as quickly as possible, and as such is seeking approval to progress to procurement for those that are ready. The letter seeks approval from you to progress.

### The projects in the Programme currently require Cabinet approval for ongoing decision making

3. In November 2019, Cabinet authorised the Budget Ministers to take decisions on the final details of the Programme, along with decisions on any associated operating funding that may be needed (CAB-MIN-0572 refers). The Budget Ministers then delegated decisions on the allocation of Crown funding for transport projects to the Minister of Finance and the Minister of Transport (Joint Ministers).
4. These delegations only relate to the initial decisions for the projects announced on 29 January 2020. Further Cabinet decisions are required to determine the delegation of ongoing decision making on the Programme investments, otherwise the Cabinet Circular CO(19)(6) requirements will apply.
5. Under this Circular, Cabinet holds decision-making authority (unless it decides to delegate) for Crown funded projects with a Whole of Life Cost greater than \$15 million. The initial Cabinet approval for the Programme did not enable delegation of decision making to Joint Ministers or to the transport agencies Boards.

### The Ministry is seeking a delegation of decision making rights in early June 2020

6. In April 2020, Joint Ministers directed the Ministry of Transport (the Ministry) and the Treasury to prepare a Cabinet paper seeking a delegation to Joint Ministers and agencies as appropriate (OC200199 refers).

7. The Ministry plans for this paper to go to Cabinet in early June 2020, and if agreed, we will advise you on further delegations of decision making rights to the respective transport entity Boards where business cases are complete or the risk of cost escalation is low.

**The Ministry is establishing oversight arrangements similar to what was undertaken on the Kaikōura Rebuild Programme**

8. You have previously directed the Ministry to establish appropriate oversight arrangements similar to what was undertaken on the Kaikōura Rebuild Programme to ensure Ministers are confident of programme delivery on behalf of Cabinet.
9. The New Zealand Upgrade Programme Oversight Group (the Oversight Group) is similar to what was established on the Kaikōura Rebuild Programme. It will not be a decision making body. It will be tasked with providing high level strategic oversight and regular reporting to ensure Joint Ministers are receiving integrated and independent advice on the delivery of the Programme. It will also be responsible for drawing any significant risks or concerns across the Programme to the attention of Ministers.

**The oversight and assurance arrangements are being progressed to reflect the different nature and accountability for the use of this Crown funding**

10. Crown funding and associated oversight arrangements are different to the standard process of funding land transport projects through the National Land Transport Fund (NLTF). Under the Land Transport Management Act (LTMA) 2003, responsibility and accountability of project selection and delivery through the National Land Transport Programme sits with the Waka Kotahi Board.
11. The Programme is funded exclusively by the Crown who has entered into a purchasing arrangement with Waka Kotahi and KiwiRail to deliver specified transport projects and the expected outcomes of the Programme. Relative to the arrangements under the LTMA, Ministers have a more direct responsibility for overseeing the use of funding directly provided by the Crown.

**The proposed response to Waka Kotahi reflects the considerations in this memo**

12. The draft response looks to inform Waka Kotahi that while you are seeking to see timely project development, you are unable to take decisions at this time. It outlines that you will seek Cabinet approval for delegation to support delivery, subject to oversight arrangements being implemented.

Nicole Rosie  
Chief Executive  
Waka Kotahi NZ Transport Agency  
Private Bag 6995  
**WELLINGTON**

Dear Nicole

Thank you for your letter of 28 April 2020 seeking approval to advance five Waka Kotahi NZ Transport Agency (Waka Kotahi) led projects in the New Zealand Upgrade Programme (the Programme).

I appreciate and support Waka Kotahi's desire to accelerate and optimise the Programme for delivery. However, the Minister of Finance and I are currently unable to approve project decisions as implementation of investments through the Programme currently sit with Cabinet as required by Cabinet Circular CO(19)(6). Under this Circular, Cabinet holds decision-making authority (unless it decides to delegate) for crown funded projects with a whole of life cost greater than \$15 million. The initial Cabinet approval for the Programme did not enable delegation of decision making to Joint Ministers or the transport agencies.

Although transport projects within the Programme have a significantly greater value, in April 2020 we directed the Ministry of Transport (the Ministry) and the Treasury to prepare a Cabinet paper seeking delegation to Joint Ministers and agencies as appropriate. We expect to take this paper to Cabinet in early June 2020 and if agreed, intend to further delegate decision making rights to the respective transport entity Boards where business cases are complete or the risk of cost escalation is low.

While this approach will accelerate delivery timeframes, we also need to establish appropriate oversight arrangements to ensure we are confident of programme delivery on behalf of Cabinet. To give effect to this, I have directed the Ministry to work with the Treasury to establish an oversight and assurance arrangement similar to what was undertaken on the Kaikōura Rebuild Programme.

Ministry officials have reassured me that the New Zealand Upgrade Programme Oversight Group (the Oversight Group) is similar to what was established on the Kaikōura Rebuild Programme. It will not be a decision making body. It will be tasked with providing high level strategic oversight and regular reporting to ensure Joint Ministers are receiving integrated and independent advice on the delivery of the Programme. It will also be responsible for drawing any significant risks or concerns across the Programme to the attention of Ministers.

You will acknowledge that this funding and oversight approach is different from the standard process of funding land transport projects through the National Land Transport Fund (NLTF). Under the Land Transport Management Act (LTMA) 2003, responsibility and accountability of project selection and delivery through the National Land Transport Programme sits with the Waka Kotahi Board.

Under the Programme, the Crown is entering into a purchasing arrangement with Waka Kotahi and KiwiRail to deliver specified transport projects and the expected outcomes. Relative to the arrangements under the LTMA, Ministers have a more direct responsibility for overseeing the use of funding directly provided by the Crown. The oversight and assurance arrangements being progressed reflect the different nature and accountability for the use of this Crown funding.

I understand that you require timely decisions before you can advance these projects and have asked officials to look for opportunities to expedite the Cabinet paper and associated process.

Yours sincerely

Hon Phil Twyford  
**Minister of Transport**

**Copy:** Hon Grant Robertson  
**Minister of Finance**

Peter Mersi  
**Chief Executive, Ministry of Transport**

Sir Brian Roche  
**Chair, Waka Kotahi NZ Transport Agency Board**

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