

Establishment Reports for the New Zealand Upgrade Programme

Reason for this briefing	To provide advice on the Establishment Reports for the New Zealand Upgrade Programme and a draft Cabinet paper seeking a delegation of decision making to the Minister of Finance and Minister of Transport.
Action required	Consider the draft Cabinet paper and inform Ministry of Transport and Treasury officials of any changes you would like to make. Direct the Ministry of Transport and the Treasury to work with Waka Kotahi NZ Transport Agency and KiwiRail to update their Establishment Reports prior to their public release. Sign the attached letters to the Waka Kotahi NZ Transport Agency and KiwiRail Boards.
Deadline	Monday, 11 May 2020.
Reason for deadline	To ensure any revisions to the draft Cabinet paper can be made before cross party consultation begins and a final draft is provided to you for lodging with Cabinet Office on 21 May 2020.

Contact for telephone discussion (if required)

To protect the privacy of individuals

Name	Position	Telephone	First contact
Helen White	Manager, Investment, Ministry of Transport	[REDACTED]	✓
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MINISTER'S COMMENTS:

Date:	Thursday, 7 May 2020	Briefing number:	OC200307 T2020/1159
Attention:	Hon Grant Robertson (Minister of Finance) Hon Phil Twyford (Minister of Transport)	Security level:	In-confidence

Minister of Transport's office actions

- Noted
 Seen
 Approved

 Needs change
 Referred to

 Withdrawn
 Not seen by Minister
 Overtaken by events

Purpose of report

1. In early April 2020, Waka Kotahi NZ Transport Agency (Waka Kotahi) and KiwiRail sent the Minister of Finance and Minister of Transport (Joint Ministers) the Establishment Reports for the New Zealand Upgrade Programme (the Programme). The purpose of this briefing is to:
 - 1.1. provide you with a draft Cabinet paper seeking a delegation of decision making rights to Joint Ministers for the transport aspects of the Programme
 - 1.2. provide you with advice on the key risks, issues and uncertainties across the Programme that will be monitored by the New Zealand Upgrade Programme Oversight Group (the Oversight Group)
 - 1.3. direct the Ministry of Transport (the Ministry) and the Treasury to work with Waka Kotahi and KiwiRail to update their Establishment Reports.

Work is progressing to implement the Joint Minister's decisions on oversight and assurance

2. You have recently confirmed your preferred decision making arrangements and oversight and assurance structure for the Programme (OC200199 refers). The Ministry and the Treasury are now progressing these decisions to
 - 2.1. commence procurement to identify a preferred supplier to support the establishment of the Oversight Group
 - 2.2. draft a Cabinet paper seeking delegation to Joint Ministers for the transport aspects of the Programme.
3. While the Oversight Group is being established, the Ministry has engaged two external independent consultants as an interim measure to provide general comments and observations on the Establishment Reports. Their feedback is embedded in our advice.

A draft Cabinet paper has been prepared for you to commence cross party consultation

4. In preparing the attached draft Cabinet paper, we have consulted with Waka Kotahi and KiwiRail. We have informed the Department of Prime Minister and Cabinet.
5. Both Waka Kotahi and KiwiRail have expressed their concerns that there will be significant delays in progressing the projects if there is no certainty over the decision making rights for the transport aspects of the Programme.
6. KiwiRail has informed Ministry and Treasury officials that it is looking to award contracts for the Papakura to Pukekohe electrification project in May 2020 and has expressed concern that the current timeframe for confirming decision making rights would require delaying work on this project.
7. While a formal delegation is being sought from Cabinet, we recommend you provide assurance to KiwiRail that the Government is committed to the delivery of the Programme, including the Papakura to Pukekohe project, and that the funding required to achieve this has been appropriated.
8. We have included text that gives effect to this in the attached letter to the KiwiRail Board. KiwiRail has indicated that this will provide its Board with sufficient assurance to proceed with awarding contracts in May 2020.

9. This approach is only applied to the Papakura to Pukekohe project as the project is already underway and requires a decision in May 2020.
10. Officials consider the risk of this to be low as the detailed business case is already complete and was previously approved by the Waka Kotahi Board. However, KiwiRail have indicated that any delay to this decision will have a material impact on the delivery of the project as all bidders have already agreed to an accelerated programme and expect the contract to be awarded in May 2020.
11. The other urgent decisions required in the Programme include the negotiation of existing contracts, commencing or varying the tender process for construction, appointment of professional services consultants and the streamlining of business case development.
12. Officials will prepare advice to Joint Ministers on these decisions alongside the Cabinet paper process. This is to ensure Joint Ministers are able to take immediate decisions on any further delegations to the agencies once a Cabinet decision is made.

There are some key risks and uncertainties across the Programme that will require the ongoing attention of the Oversight Group

13. In early April 2020, Waka Kotahi and KiwiRail provided their Establishment Reports. These reports form a shared understanding between the agencies and the Joint Ministers of what the Programme will deliver, and the agreed base line for monitoring and reporting throughout the implementation of the Programme.
14. In the Establishment Reports, the agencies provided information on the cost and scope of the projects, the key project timeframes and the potential risks or challenges in the successful delivery of the projects. This was consistent with what was requested in your letters to the Waka Kotahi and KiwiRail Boards in January 2020.
15. We consider there are some key risks, opportunities and challenges across the Programme that will require the ongoing attention of the Oversight Group:

Key issue	Ministry and Treasury advice
Cost management and escalation	<p>The Establishment Reports remain tentative in a number of areas about cost certainty for projects. The costs that are provided by Waka Kotahi and KiwiRail are based on relevant business cases, where available, or the agencies' estimated costs for each individual project. However, there is limited information on identifying the amount of contingency, for both individual projects and across the programme, and how the contingency will be managed.</p> <p>While Waka Kotahi has identified cost pressures such as property acquisition, future operations and maintenance costs, and revocation costs for certain projects, the Oversight Group will need to investigate the scale of this uncertainty and risk in further detail. This will require ongoing monitoring by the Oversight Group.</p>
Procurement strategy	<p>The agencies have noted they will utilise different procurement models depending on the nature of the projects in the Programme.</p> <p>The Oversight Group will need to ensure the Joint Minister's requirements and their expected outcomes for the Programme are set out clearly in the contractual arrangements with the agencies, with a clear link to the procurement approach.</p>
Programme and project assurance and governance	<p>The Oversight Group will utilise existing reporting and assurance that is already in place within the agencies, and Waka Kotahi and KiwiRail will operate governance across the specific projects that they have responsibility for.</p> <p>While Waka Kotahi has noted in its Establishment Report that it will be engaging on Gateway reviews, it has provided limited information in their Establishment Reports on how they will be providing assurance on the projects that they are responsible for, including the use of independent quality assurance.</p> <p>The Oversight Group will need to ensure the agencies' own delivery governance is aligned with its programme level oversight so it is able to provide Joint Ministers with an independent and integrated view on delivery and risks across the Programme.</p>
Innovation	<p>The Programme will be the largest single Crown contribution to transport projects in recent years. We consider that there is a significant opportunity for the agencies to consider where innovation could be adopted in the Programme's projects.</p> <p>Innovation could include the use of digital infrastructure (i.e., Intelligent Transport Systems), or the application of innovative partnership models, delivery and programme methodology, and engagement and community participation arrangements to achieve desired outcomes without compromising delivery. We note that Waka Kotahi's Step Change programme is an example of this, where it is used to drive innovation in Health and Safety, Delivery Efficiency and Social and Sustainable Outcomes.</p> <p>This will be one of the key aspects of the Programme that will be considered in further detail by the Oversight Group when it is established.</p>
Programme outcomes	<p>The Establishment Reports are heavily focused on outputs. However, outcomes and benefit realisation will be one of the key areas in which the Oversight Group will be required to focus on in terms of monitoring.</p> <p>While Waka Kotahi has made some efforts to ensure projects are scoped to deliver on wider government outcomes, such as working with developers and Kāinga Ora to align the design of the Drury rail stations to support future developments and enable enhanced land use and transport outcomes, the Oversight Group will need to provide greater clarity on the outcomes that are expected for the Programme.</p> <p>This includes opportunities such as social impacts, urban growth and housing supply, leverage as a result of local government or private sector investment, and environmental objectives. One of the most significant opportunities for the Programme will be the post COVID-19 economic stimulus that it provides, which would require the agencies to carefully identify where the rapid mobilisation of projects is appropriate, such as for projects that are already underway (e.g., Wiri to Quay Park Corridor Improvements and the Papakura to Pukekohe electrification).</p> <p>It will be critical that Waka Kotahi and KiwiRail work closely with other agencies and key stakeholders such as Kāinga Ora and local councils to ensure that the government outcomes for the Programme can be achieved.</p>

16. These issues are typical of what Waka Kotahi and KiwiRail are required to manage as part of the delivery of their capital programmes, and some issues will relate more closely to Waka Kotahi than to KiwiRail as a result of their different roles and responsibilities within the Programme.
17. However, because there is a small contingency that has been factored in across the Programme, we consider the key issues above will have the potential to add significant costs and delays if they are not appropriately managed.
18. The Oversight Group will provide Joint Ministers with additional assurance around the management of risks and uncertainties across the Programme.

We have identified a number of policy issues that will require further consideration

19. In addition to the key issues above, the Ministry and the Treasury have also identified a number of specific policy issues relating to the agencies' Establishment Reports that will require further consideration.

The impacts of COVID-19 should be reflected in the Establishment Reports where possible

20. The impacts of COVID-19 pose a significant threat to the successful implementation of the Programme. Before the Establishment Reports were released, the Ministry and Treasury had advised the transport agencies that the Establishment Reports should factor in any changes to project estimates as a result of COVID-19.
21. While the Establishment Reports acknowledged that COVID-19 would impact the delivery of the Programme, they noted its effects were not yet understood and that the estimates of cost and timeframes in the Establishment Reports should be considered as indicative only.
22. New guidance for what COVID-19 Alert Level 3 has now been issued and New Zealand moved to Alert Level 3 on Tuesday 28 April 2020. This helps support planning of activities in the Programme as the restrictions on construction ease at this level.
23. Although the Ministry and the Treasury acknowledge that there is still a level of uncertainty on the expected timeframes for each COVID-19 Alert Level, we recommend Waka Kotahi and KiwiRail update the Establishment Reports in order to provide at least a preliminary assessment of COVID-19 effects on the expected delivery of projects in the Programme.

The Programme provides an opportunity to explore legislative changes with Ministry officials

24. In its Establishment Report, Waka Kotahi proposes to complete tolling assessments for four projects. These are: Penlink; Tauranga Northern Link; SH2 Ōmokoroa to Te Puna; and Ōtaki to north of Levin.
25. Under the Land Transport Management Act 2003, the Minister of Transport has decision making powers over road tolling. Tolling has typically been used to bring forward projects that would otherwise be unable to be funded. As the Crown funding has already been appropriated for the projects in the Programme, the basis for the consideration of tolling in Waka Kotahi's Establishment Report is unclear to officials.
26. The Establishment Report also envisages changes to tolling legislation. It is unclear whether changes to the tolling legislation would aid timely project delivery or deliver on what Waka Kotahi intends to achieve with tolling.
27. There is currently no substantive policy work or legislative bids relating to tolling, and the Ministry understands that Waka Kotahi may be interested in tolling for broader or more diverse purposes such as to manage demand on new roads.

28. The investigation of tolling and legislative changes has the potential to challenge and further complicate the delivery of the projects in the Programme. For example, for:
- 28.1. Penlink – the Establishment Report mention that tolling may pose stakeholder challenges. Prior to being included in the Programme, much of the public comment has focused on the road being a four-lane road and tolled. Penlink is proposed to be a two-lane road in the Establishment Report.
 - 28.2. The Tauranga Northern Link – there may also be stakeholder challenges as the Tauranga region already has two of the three existing toll roads in New Zealand.
29. We recommend Ministry officials work with Waka Kotahi to better understand its interests in tolling, and for Waka Kotahi’s Establishment Report to be updated to:
- 29.1. reflect the delivery of projects under the current arrangements (without any changes to existing tolling legislation)
 - 29.2. consider where the Programme can provide opportunities to explore legislative changes with Ministry officials.

Proactively released by the
Ministry of Transport
and Treasury

Waka Kotahi have requested ministerial support in the delivery of their programme

30. In a cover letter that accompanied the Establishment Report, Waka Kotahi raised the issues below where they consider they may require additional support from Ministers:

Support required	Description	Ministry and Treasury advice
Property acquisition	Waka Kotahi has indicated it requires (by the end of May 2020) the Minister for Land Information and Land Information New Zealand to support compulsory acquisition under the Public Works Act (PWA) where Resource Management Act (RMA) approvals are not yet confirmed. Waka Kotahi has proposed that the alternative approach of waiting for RMA approvals would add 12 to 24 months to the delivery timeframes of projects.	Waka Kotahi did not identify any specific projects that required assistance with PWA or RMA processes. The Ministry and Treasury will work with Waka Kotahi to understand which of the projects could require assistance with compulsory acquisition. It is worth noting that as a result of COVID-19, the Ministry for the Environment is leading the development of urgent legislation to enable fast tracking of the consenting process for specified infrastructure and development projects. Although the scope of this work is still in development, it is Waka Kotahi's view that the proposed legislation in its current form may be of benefit to Waka Kotahi's projects.
Decision making and delays to project timeframes	The project timeframes in the Establishment Report are contingent on decision making being delegated to the Waka Kotahi Board. Waka Kotahi has indicated that any additional decision making steps such as business case approvals or procurement would result in delays to these timeframes.	As outlined earlier in this paper, the Ministry and the Treasury have prepared a Cabinet paper seeking delegation of decision making powers for the transport aspects of the Programme to Joint Ministers. Officials and the Oversight Group will advise you on any further delegations in parallel to a Cabinet decision.
Roles for the delivery of the Drury rail stations	Waka Kotahi has indicated its preference to lead and be funded for the planning phase (design and consenting) of the Drury rail stations. Under this approach, Waka Kotahi has indicated that KiwiRail would be the Requiring Authority for rail designations and Auckland Transport the operator.	Ministers have made the decision for KiwiRail to be responsible for delivering the Drury rail stations, working closely with Auckland Transport and Waka Kotahi in the planning phase. Ministers have also agreed to transfer ownership of the rail stations to Auckland Transport after its construction is complete. The Ministry and Treasury will work with the transport agencies and Auckland Transport to reflect this approach in the Establishment Reports.
Legislative and national policy changes	Waka Kotahi has indicated that it will require some legislative and national policy changes in order to achieve the Government's objectives for the programme. This includes enhancing enforcement powers for Waka Kotahi of special vehicle lanes and amendments and/or process improvements to the Public Works Act 1981, Reserves Act 1977 and Wildlife Act 1953.	There is limited explanation of what specific changes are required and the impacts these changes will have on the delivery of the programme in the Establishment Report. Waka Kotahi has indicated that it will provide advice to Ministers on the required changes in separate correspondence. The Ministry and Treasury will work with Waka Kotahi in preparing this advice.

Next steps

31. The Ministry and Treasury have provided a draft Cabinet paper that seeks delegation of decision making to Joint Ministers for the transport aspects of the Programme. We intend to provide parallel advice to Joint Ministers on where further delegations of decision making could be delegated to the transport entities. This advice will cover decisions required for:
 - 31.1. Papakura to Pukekohe
 - 31.2. Wiri to Quay Park
 - 31.3. Northern Pathway
 - 31.4. SH58 Improvements (Stage 2)
 - 31.5. Tauranga Northern Link (and SH2 Te Puna to Omokoroa)
 - 31.6. Penlink
 - 31.7. SH1 Papakura to Drury South Improvements
32. Once a Cabinet decision is made, the Ministry and the Treasury intends to provide the agencies with further clarity on the decision making arrangements and the oversight and assurance structure for the Programme by 5 June 2020.
33. We recommend that you direct the Ministry and the Treasury to work with Waka Kotahi and KiwiRail to update their Establishment Reports by 30 June 2020 to:
 - 33.1. provide a further assessment of the effects of COVID-19 on their delivery programmes
 - 33.2. reflect the delivery of projects under the current arrangements (without any changes to existing legislation) noting the explicit benefit if a legislative change is made
 - 33.3. consider where the Programme can provide opportunities to explore legislative changes (such as tolling) with Ministry officials
 - 33.4. reflect recent decisions made by the Joint Ministers on the ownership outcomes for delivering the Drury rail stations
34. Waka Kotahi has indicated that it plans to publicly release its Establishment Report ten days after Joint Ministers have approved its report. The Ministry and the Treasury consider the Establishment Reports to still be in draft form and recommend delaying its public release until after Joint Ministers have approved the updated reports.
35. The Oversight Group will provide Joint Ministers with further advice on the management of risks and uncertainties across the Programme in the coming months.

Recommendations

36. The recommendations are that you:

- (a) **note** that Waka Kotahi NZ Transport Agency (Waka Kotahi) and KiwiRail have provided their Establishment Reports for the New Zealand Upgrade Programme
- (b) **note** that the New Zealand Upgrade Programme Oversight Group will provide you with additional assurance on the management of the risks and uncertainties across the New Zealand Upgrade Programme that are not captured in the Establishment Reports
- (c) **direct** the Ministry of Transport and the Treasury to work with Waka Kotahi and KiwiRail to update their Establishment Reports prior to any proposed public release to: Yes/No
- provide a further assessment on the effects of COVID-19 on their delivery programmes
 - reflect the delivery of projects under the current arrangements (without any changes to existing legislation)
 - consider where the New Zealand Upgrade Programme can provide opportunities to explore legislative changes (such as tolling) with Ministry of Transport officials
 - reflect recent Ministerial decisions made on the ownership outcomes for delivering the Drury rail stations.
- (d) **agree** the draft Cabinet paper seeking delegation of decision making to Joint Ministers (and further sub-delegations to agencies) is circulated for cross-party consultation Yes/No
- (e) **sign** the attached letters to the Waka Kotahi and KiwiRail Boards to give effect to the decision in recommendation (c).

Helen White
**Manager, Investment
Ministry of Transport**

David Taylor
**Manager, National Infrastructure Unit
The Treasury**

MINISTERS' SIGNATURES:

Hon Phil Twyford
Minister of Transport

Hon Grant Robertson
Minister of Finance

DATE:

DATE:

In Confidence

Office of the Minister of Finance
Office of the Minister of Transport

Chair, Cabinet Economic Development Committee

The New Zealand Upgrade Programme – delegations for transport projects

Proposal

1. This paper seeks agreement to delegate detailed decision making on the delivery of the transport aspects of the New Zealand Upgrade Programme (the Programme) to the Minister of Finance and Minister of Transport (the Joint Ministers).

Executive summary

2. On 29 January 2020, we announced that the Government would invest \$12 billion in capital in order to future proof and grow our economy. This included \$6.8 billion of Crown investment in transport infrastructure across New Zealand.
3. Under the Programme, the Crown is entering into a purchasing arrangement with Waka Kotahi NZ Transport Agency (Waka Kotahi) and KiwiRail to deliver specified transport projects and expected outcomes. Relative to the arrangements under the Land Transport Management Act 2003, Ministers have a more direct responsibility for overseeing the use of funding directly provided by the Crown.
4. In order to maintain delivery momentum across the transport aspects of the Programme, there are five Waka Kotahi projects and two KiwiRail projects that require decisions.
5. However, absent any further delegations by Cabinet, the requirements of Cabinet Circular CO(19)(6) regarding investment management in the state sector apply to the transport aspects of the Programme.
6. We consider that the existing approach for decision making would be an inefficient use of Cabinet's time and would create unnecessary delays in the delivery of the transport aspects of the Programme.
7. We recommend that Cabinet authorise the Minister of Finance and Minister of Transport, acting jointly, to take all future decisions on the transport aspects of the Programme that Cabinet would otherwise be expected to make under Cabinet Office Circular CO(19)(6).
8. Subject to Cabinet agreement, we expect to further delegate decision making rights to the respective entity Boards for some projects where business cases have been approved and the risk of cost escalation is low.

9. This approach provides a balance between retaining an appropriate level of Ministerial oversight over the Programme and enables work on the Programme to continue at pace where the level of risk to the Crown is low.

Background

10. On 29 January 2020, we announced that the Government would invest \$12 billion in capital in order to future proof and grow our economy. This included \$6.8 billion of Crown investment in transport infrastructure across New Zealand.
11. The \$6.8 billion capital investment that is being made for the transport aspects of the Programme reflects the Government's commitment to addressing our nation's infrastructure deficit and provides a vital economic stimulus to firms and households in response to the impacts of COVID-19.
12. Our delivery partners for the transport infrastructure, Waka Kotahi and KiwiRail, are now moving at pace to prepare detailed designs and complete business cases so that construction on the projects in the Programme can commence.
13. This is particularly important in light of the unexpected and significant impact that COVID-19 has had on the economy as the Programme will now play a key role in New Zealand's economic recovery from COVID-19.
14. This paper seeks to confirm the decision making arrangements for the transport aspects of the Programme.

The Programme is different from the usual process for land transport investment

15. The Crown investment in the Programme is different from the standard process of funding land transport projects through the National Land Transport Fund (NLTF). This is because, under the Land Transport Management Act (LTMA) 2003, the responsibility and accountability of project selection and delivery through the National Land Transport Programme sits with the Waka Kotahi Board.
16. Under the Programme, the Crown is entering into a purchasing arrangement with Waka Kotahi and KiwiRail to deliver specified transport projects and 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 decisions for the transport aspects of the Programme currently requires Cabinet approval

17. In November 2019, Cabinet authorised Budget Ministers to take decisions on the final details of the Programme, including allocating funding between portfolios as well as any associated operating funding that was required [CAB-19-MIN-0572 refers].
18. Subsequently, Budget Ministers agreed to allocate \$6.8 billion of Crown capital investment for transport projects, with further decisions on the detailed list of projects for announcement delegated to the Minister of Finance and Minister of Transport. However, these delegations only relate to decisions taken prior to the announcement of the Programme on 29 January 2020.

19. Absent any further delegations by Cabinet, the requirements of Cabinet Circular CO(19)(6) regarding investment management in the state sector apply to the transport aspects of the Programme.
20. Under this Circular, Cabinet maintains the decision rights for approval of business cases, the endorsement of procurement strategies, and any other decisions that may need to be made at key milestones in the development and delivery of the transport projects.
21. This approach would require Waka Kotahi and KiwiRail to seek Cabinet approval at regular intervals in order to progress with the transport projects in the Programme.
22. There are 23 transport projects within the Programme that are valued at greater than \$15 million with multiple decisions required. These decisions include the approval of scope and design and business cases, and decisions to proceed with procurement.
23. We consider that the existing approach for decision making would be an inefficient use of Cabinet's time and would create unnecessary delays in the delivery of the transport aspects of the Programme.

Decisions are now required for five Waka Kotahi projects and two KiwiRail projects

24. Since 29 January 2020, Waka Kotahi and KiwiRail have been progressing the initial works for the projects in the Programme, consistent with the Ministerial direction to complete the work as soon as possible.

25. There are five Waka Kotahi projects and two KiwiRail projects that require decisions:

Delivery agency	Project	Status and decision required
KiwiRail	Papakura to Pukekohe	Expected to award construction contract in mid-May 2020
	Wiri to Quay Park	Civil design contract has been awarded
Waka Kotahi	Northern Pathway	In progress
	SH58 Improvements (Stage 2)	Commencing direct negotiation with contractor delivering Stage 1
	Tauranga Northern Link (and SH2 Te Puna to Omokoroa)	Commencing ROI for all three contracts
	Penlink	
	SH1 Papakura to Drury South Improvements	

We recommend that Cabinet authorises Joint Ministers to take all future decisions on the transport aspects of the Programme

26. We have identified two options for how decisions on the transport aspects of the Programme could be handled:

Option	Advantages	Disadvantages
<p>Cabinet retains all decision making in accordance with Cabinet Circular CO(19)(6)</p> <p><i>(Status quo)</i></p>	<p>Cabinet retains full responsibility for Crown investments.</p>	<p>Given that Cabinet has already endorsed the Programme, the Cabinet approval process will create unnecessary delays in project delivery and is an inefficient use of Cabinet's time.</p>
<p>Cabinet delegates decisions to Joint Ministers, with the option of potentially delegating some decisions to the transport entity Boards</p> <p><i>(Our preferred option)</i></p>	<p>Ministerial oversight and responsibility is retained at an appropriate level, and we will have a more direct ability to intervene in projects if required.</p> <p>This option provides a balance between ensuring Ministers retain some control and that projects are delivering the intended outcomes while reducing some additional approval processes.</p>	<p>This process required under this option may create delays in project delivery when compared to the usual NLTf approval process where responsibility for decision making sits with the transport entity Boards.</p>
<p>All decisions are delegated to the transport entity Boards</p>	<p>This approach would allow project delivery to progress in accordance with the usual NLTf process.</p>	<p>This option does not provide an appropriate level of Ministerial oversight over the Programme and is inconsistent with our intention to have a whole of programme approach to monitor the use of funding, the delivery of projects and the management of risks.</p>

27. We recommend that Cabinet authorise the Minister of Finance and Minister of Transport, acting jointly, to take all future decisions on the transport aspects of the Programme that Cabinet would otherwise be expected to make under Cabinet Office Circular CO(19)(6).

28. Subject to Cabinet agreement, we note that we expect to further delegate decision making rights to the respective entity Boards for projects where business cases have been approved and the risk of cost escalation is low.

29. This approach provides a balance between retaining an appropriate level of Ministerial oversight over the Programme and enables work on the Programme to continue at pace on projects where the level of risk to the Crown is low.

Financial Implications

18. There are no financial implications arising directly from this paper.

Legislative Implications

19. There are no legislative implications arising from this paper. .

Impact Analysis

16. Impact analysis requirements do not apply to the proposals in this paper.

Climate Implications of Policy Assessment

17. As substantive policy decisions have already been made on the transport aspects of the Programme, a Climate Implications of Policy Assessment is not required.

Population Implications

18. There are no population implications arising from this paper.

Human Rights

19. The proposals in this paper are not inconsistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

20. This paper was prepared by the Treasury and the Ministry of Transport. Waka Kotahi and KiwiRail were both consulted on this Cabinet paper. The Department of the Prime Minister and Cabinet was informed.

Communications

21. No announcements will be made regarding the proposals in this paper.

Proactive Release

22. This paper will be proactively released within 30 business days of decisions being confirmed by Cabinet.

Recommendations

We recommend that the Committee:

1. **note** that in 29 January 2020, the Government announced that it would invest \$12 billion in capital through the New Zealand Upgrade Programme (the Programme) in order to future proof our economy
2. **note** that the Programme reflects the Government's balanced transport policy with \$6.8 billion of Crown capital investment in road, rail, public transport and walking and cycling infrastructure across New Zealand
3. **note** that on 4 November 2019, Cabinet authorised Budget Ministers to take decisions on the final details of what was then known as the capital investment package [CAB-19-MIN-0572 refers]
4. **note** that, subsequent to the decision referred to in paragraph 3, Budget Ministers agreed to further delegate decisions on the detailed list of transport projects for announcement to the Minister of Finance and Minister of Transport
5. **note** that the delegations referred to in paragraphs 3 and 4 only relate to decisions taken prior to the announcement of the Programme on 29 January 2020
6. **note** that, absent any further delegations being provided, the requirements of Cabinet Circular CO(19)(6) regarding investment management in the state sector apply to the transport aspects of the Programme which includes Cabinet maintaining all investment decision making rights
7. **note** that the current framework is inefficient and would slow down the delivery of the Programme as it requires Waka Kotahi NZ Transport Agency and KiwiRail to seek Cabinet approval at regular intervals in order to progress the Programme
8. **delegate** to the Minister of Finance and Minister of Transport the authority to take all future decisions on the transport aspects of the Programme that Cabinet would otherwise be expected to make under Cabinet Office Circular CO(19)(6)
9. **agree** that the Minister of Finance and Minister of Transport be delegated authority to make further delegations for decision making to the respective entity Board
10. **note** that for projects where business cases have been completed and have been approved, the Minister of Finance and Minister of Transport will further delegate the responsibility for decision making to the respective entity Board.

Authorised for lodgement

Hon Grant Robertson
Minister of Finance

Hon Phil Twyford
Minister of Transport

Proactively released by the
Ministry of Transport
and Treasury

Sir Brian Roche
Chair
Waka Kotahi NZ Transport Agency Board
Private Bag 6995
WELLINGTON

Dear Sir Brian

Thank you for your involvement in delivering the New Zealand Upgrade Programme and for submitting Waka Kotahi NZ Transport Agency's (Waka Kotahi's) Establishment Report for Ministers consideration on 6 April 2020.

This letter sets out the expectations for programme level governance, oversight and assurance over the implementation of the New Zealand Upgrade Programme (the Programme). It also provides our requirements for finalisation of the Establishment Report.

Oversight and assurance arrangements for the New Zealand Upgrade Programme

As this is the Crown's largest infrastructure investment, the governance, monitoring and assurance framework will be tailored to ensure Ministers have sufficient oversight and confidence in the delivery of the programme.

Both the Minister of Finance and I have agreed governance, monitoring and assurance arrangements to support the delivery of the Programme. As part of these arrangements, the New Zealand Upgrade Programme Oversight Group (the Oversight Group) will be established with responsibility for providing assurance (for the Crown as purchaser) in respect of delivery of the transport funded aspects of the Programme. Any large Crown-funded projects should expect a high level of scrutiny, both from Ministers and from the public at large. I see this assurance regime as a standard Government requirement, which has been right-sized for the Programme.

The Oversight Group will include officials from the Ministry of Transport (the Ministry), the Treasury, the Infrastructure Commission, and up to two external members that bring deep infrastructure delivery, governance and assurance expertise to the programme. Secretariat support for the Oversight Group will be provided by the Ministry.

The role of the Oversight Group is to provide Ministers with rigorous independent and integrated advice on delivery performance and key risks across the transport aspects of the Programme. This does not change the Board's responsibilities, and I expect that the Board will apply the highest levels of scrutiny of delivery performance and report to the Oversight Group regularly.

I understand that Waka Kotahi have proposed their internal governance and monitoring approach for the Programme. I support this approach as it will provide assurance to the Board on the delivery of projects in the Programme, and will be an important source of information for the Oversight Group.

It is intended that the Oversight Group will utilise, where possible, existing information produced by Waka Kotahi to assess delivery and performance across the respective projects each agency is leading as part of the Programme. The Oversight Group will be resourced to undertake any additional assurance that may be required so the group is able to provide Ministers with confidence over the delivery of projects and the programme as a whole.

The Oversight Group is not a decision making body. At present, decision making authority sits with Cabinet, but we have work underway to seek delegation to Joint Ministers and agencies as appropriate. Advice from the Oversight Group will be used by Ministers to inform decision making where it is needed.

I ask that Waka Kotahi support the Ministry and the Treasury to establish the Oversight Group and the governance, oversight and assurance framework for the Programme. As part of this process, Waka Kotahi should make the necessary information available to support the Oversight Group to fulfil its oversight and assurance responsibilities, and I ask that Waka Kotahi is responsive to requests for information it receives from the Oversight Group. I expect Waka Kotahi to also respond in a timely way to any feedback provided by the Oversight Group.

Delivery mechanism for the Drury rail stations

The Drury rail stations are a critical component of the Drury work programme and its construction, alongside the Papakura to Pukekohe electrification project, will provide a significant opportunity for urban development in the area.

As you will be aware, Joint Ministers have agreed that the project be led by KiwiRail with its ownership transferred to Auckland Transport upon the completion of the project. Waka Kotahi will continue to have an ongoing role in supporting decisions in the planning, procurement and construction stages of the project through its Supporting Growth Alliance with Auckland Transport.

I understand there are still some details that will require further consideration. I expect Waka Kotahi will work closely with Auckland Transport, KiwiRail, the Ministry and the Treasury to deliver on the outcomes that are expected for the project and to reflect this approach in the Establishment Reports.

Matters raised by Waka Kotahi

I acknowledge the matters raised in your letter of 6 April 2020. We appreciate your advice on the delegation of decision making rights, the ongoing funding required to progress Waka Kotahi projects, and the proposed policy changes to support the delivery of the Programme.

In April 2020, I directed the Ministry to work with the Treasury to expedite the preparation of a Cabinet paper seeking delegation of decisions for the transport aspects of the Programme to Joint Ministers and agencies as appropriate. I understand a draft of this paper has been shared with Waka Kotahi staff for comment.

We now expect to take this paper to Cabinet by 5 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.

I have also instructed officials to move promptly to confirm the nature of funding for Waka Kotahi projects. This will finalise funding arrangements for the projects that are already underway or are expected to commence within the next six months so that Waka Kotahi can continue with delivery while a longer-term funding arrangement is confirmed.

As for the other matters you have raised, I have instructed officials to work with Waka Kotahi to reflect and finalise any necessary changes in the updated Establishment Reports.

Update of the Establishment Report

I understand the importance of having an agreed base for monitoring and reporting that is consistent with our current arrangements. I am also supportive of allowing sufficient time to consider the rapidly changing events in the Programme.

It would be helpful if you could provide me with an updated Establishment Report by 30 June 2020 that reflects:

- recent decisions made by the Minister of Finance and I on the delivery mechanism for the Drury rail stations
- a preliminary assessment of COVID-19 effects on expected delivery and potential cost impacts
- the delivery of projects under current arrangements, without any changes to existing legislation
- opportunities to explore proposed legislative changes (such as tolling legislation) with Ministry officials
- recent decisions made by the Minister of Finance and I on the decision making and the oversight and assurance arrangements for the programme (further guidance on this will be provided by the Ministry and the Treasury before 5 June 2020).

I look forward to seeing the revised reports. Please share these directly with my office and with Ministry and Treasury officials at the same time.

Thanks again for your involvement in this infrastructure investment programme. I am confident that Waka Kotahi will be able to deliver the programme, consistent with the expectations set out above, and I look forward to receiving your updated Establishment Report.

Yours sincerely

Hon Phil Twyford
Minister of Transport

Copy: Hon Grant Robertson
Minister of Finance

Nicole Rosie
Chief Executive, Waka Kotahi NZ Transport Agency

Peter Mersi
Chief Executive, Ministry of Transport

Proactively released by the
Ministry of Transport
and Treasury

Brian Corban
Chair
KiwiRail
PO Box 593
WELLINGTON 6140

Dear Brian

Thank you for your involvement in delivering the New Zealand Upgrade Programme and for submitting KiwiRail's Establishment Reports for Ministers consideration on 9 April 2020.

This letter sets out the expectations for programme level governance, oversight and assurance over the implementation of the New Zealand Upgrade Programme (the Programme). It also provides our requirements for finalisation of the Establishment Report.

Oversight and assurance arrangements for the New Zealand Upgrade Programme

As this is the Crown's largest infrastructure investment the governance, monitoring and assurance framework will be tailored to ensure Ministers have sufficient oversight and confidence in the delivery of the programme

We have agreed governance, monitoring and assurance arrangements to support the delivery of the Programme. As part of these arrangements, an Oversight Group will be established with responsibility for providing assurance (for the Crown as purchaser) in respect of delivery of the transport funded aspects of the Programme. Any large Crown-funded projects should expect a high level of scrutiny, both from Ministers and from the public at large. We see this assurance regime as a standard Government requirement, which has been right-sized for the Programme.

The New Zealand Upgrade Programme Oversight Group (the Oversight Group) will include officials from the Ministry of Transport (the Ministry), the Treasury, the Infrastructure Commission, and up to two external members that bring deep infrastructure delivery, governance and assurance expertise to the programme. Secretariat support for the Oversight Group will be provided by the Ministry.

The role of the Oversight Group is to provide Ministers with rigorous independent and integrated advice on delivery performance and key risks across the transport aspects of the Programme. This does not change the Board's responsibilities, and we expect that the Board will apply the highest levels of scrutiny of delivery performance and report to the Oversight Group regularly.

It is intended that the Oversight Group will utilise, where possible, existing information produced by KiwiRail to assess delivery and performance across the respective

projects each agency is leading as part of the Programme. The Oversight Group will be resourced to undertake any additional assurance that may be required so the group is able to provide Ministers with confidence over the delivery of projects and the programme as a whole.

The Oversight Group is not a decision making body. At present, decision making authority sits with Cabinet, but we have work underway to seek delegation to Joint Ministers and agencies as appropriate. Advice from the Oversight Group will be used by Ministers to inform decision making where it is needed.

We ask that KiwiRail support the Ministry and the Treasury to establish the Oversight Group and the governance, oversight and assurance framework for the Programme. As part of this process, KiwiRail should make the necessary information available to support the Oversight Group to fulfil its oversight and assurance responsibilities, and I ask that KiwiRail is responsive to requests for information it receives from the Oversight Group. We expect KiwiRail to also respond in a timely way to any feedback provided by the Oversight Group.

Delivery mechanism for the Drury rail stations

The Drury rail stations are a critical component of the Drury work programme and its construction, alongside the Papakura to Pukekohe electrification project, will provide a significant opportunity for urban development in the area.

As you will be aware, Joint Ministers have determined that the project be led by KiwiRail with its ownership transferred to Auckland Transport upon the completion of the project. Waka Kotahi will continue to have an ongoing role in supporting decisions in the planning, procurement and construction stages of the project through its Supporting Growth Alliance with Auckland Transport.

We understand there are still some details that will require further consideration. We expect KiwiRail will work closely with Auckland Transport, Waka Kotahi, the Ministry and the Treasury to deliver on the outcomes that are expected for the project and to reflect this approach in the Establishment Reports.

Matters raised by KiwiRail

We acknowledge the matters raised in your letter of 9 April 2020. We appreciate your advice that Wiri to Quay Park and Papakura to Pukekohe are already underway and making progress, and your advice on the funding and management of costs for KiwiRail projects.

In April 2020, we directed the Ministry and the Treasury to expedite the preparation of a Cabinet paper seeking delegation of decisions for the transport aspects of the Programme to Joint Ministers and agencies as appropriate. I understand a draft of this paper has been shared with KiwiRail staff for comment.

We now expect to take this paper to Cabinet by 5 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.

We understand you are in a position to award contracts for the Papakura to Pukekohe electrification project by 15 May 2020. Like you, we do not wish to see this project delayed. We are seeking a formal delegation from Cabinet to enable us to move faster.

In the meantime, please be assured that the funding for the projects has been appropriated and we are committed to the delivery of the Programme.

We have also instructed officials to move promptly to confirm the nature of funding for KiwiRail projects. This will finalise funding arrangements for the projects that are already underway or are expected to commence within the next six months so that KiwiRail can continue with delivery while a longer-term funding arrangement is confirmed.

As for the other matters you have raised, we have instructed officials to work with KiwiRail to reflect and finalise any necessary changes in the updated Establishment Reports.

Update of the Establishment Report

We understand the importance of having an agreed base for monitoring and reporting that is consistent with our current arrangements. We are also supportive of allowing sufficient time to consider the rapidly changing events in the Programme.

It would be helpful if you could provide us with an updated Establishment Report by 30 June 2020 that reflects:

- recent decisions made by Joint Ministers on the delivery mechanism for the Drury rail stations
- a preliminary assessment of COVID-19 effects on expected delivery and potential cost impacts
- recent decisions made by Joint Ministers on the decision making and the oversight and assurance arrangements for the programme (further guidance on this will be provided by the Ministry and the Treasury before 5 June 2020).

I look forward to seeing the revised reports. Please share these directly with my office and with Ministry and Treasury officials at the same time.

Thanks again for your involvement in this infrastructure investment programme. We are confident that KiwiRail will be able to deliver the programme, consistent with the expectations set out above, and we look forward to receiving your updated Establishment Report.

Yours sincerely

Hon Grant Robertson
Minister of Finance

Hon Phil Twyford
Minister of Transport

Copy: Rt Hon Winston Peters
Minister of State Owned Enterprises

Greg Miller
Group Chief Executive Officer, KiwiRail

Peter Mersi
Chief Executive, Ministry of Transport

Proactively released by the
Ministry of Transport
and Treasury