

- 6 As well as producing an LTIB that delivers on the requirements under the Act, the intention is to provide an evidence base which could be used to develop an AV regulatory work programme and Roadmap. The final draft LTIB has been endorsed by the Senior Leadership Team at the Ministry of Transport.

Engagement has been integral in the development of our LTIB

- 7 We also have dedicated substantial time to engaging with representatives and organisations on the content and focus for the LTIB. We have engaged with a range of different stakeholders including Age Concern, representatives from the disability sector, local government including regional and city councils, academics, Business NZ and other government agencies.
- 8 Notably, one stakeholder group that we struggled to engage with (despite concerted efforts), was Māori. Given the existing commitments for Māori pertaining to the current Resource Management Act and Three Waters Reforms, coupled with the low immediate importance of this topic area and its time horizon, engagement was difficult. To ensure we have covered the impact on Māori we have focussed on reflecting existing literature in the paper, and targeted Māori commentators through the Ministry's Te Ao Māori Knowledge Hub.

We will release the final draft LTIB document for public consultation in May

- 9 The Public Service Act 2020 requires agencies to consult with the public twice before the final LTIB is tabled with the House of Representatives by 30 June 2022.
- 10 The second public consultation process will focus on the content of the LTIB and how well we have incorporated the initial feedback received. This serves as an opportunity for stakeholders to comment on the final draft of the LTIB before it goes to Select Committee.
- 11 The final draft of the LTIB will be sent directly to the stakeholders we have engaged with, as well as posted on different channels for wider engagement including the Ministry and Public Services Commission websites, through the Transport Knowledge Hubs and on social media (Facebook, LinkedIn).
- 12 The consultation period will be three weeks from 6 May to 27 May 2022. We do not perceive any risks with the release of the final draft LTIB and will respond to any feedback accordingly.

You will table the final LTIB in the House of Representatives where it will be subject to a select committee review

- 13 Once we have incorporated the feedback from the second public consultation, we will provide you with the final version of the LTIB. The deadline for tabling the final version of the LTIB is 30 June 2022. You should expect the final LTIB in the week of 27 June. At this stage there is nothing for you to do until the consultation process is completed.
- 14 Once the LTIB is tabled it is likely to be referred to the Transport and Infrastructure Select Committee (Select Committee). We will brief you and provide any supporting documentation if you are required to present the LTIB to them.

ANNEX 1 – LTIB requirements

The LTIB is a statutory requirement to be led by chief executives

- 1 The Public Service Act 2020 (Schedule 6, clauses 8 and 9) introduced a requirement for agencies to develop a Long-term Insights Briefing (LTIB) at least once every three years.
- 2 LTIBs are designed to be led by chief executives, who:
 - are asked to produce a briefing in time for it to be presented to Parliament by 30 June 2022.
 - are required to select the subject matter for the Briefing. They must do this by considering those trends, risks and opportunities that are particularly relevant to their department's functions.
 - can select the time horizon that is the most appropriate for the area under investigation.
 - must consider the consultation feedback when finalising the subject matter for the LTIB (before it is drafted) and then the content of the LTIB. This means genuinely considering matters raised during consultation. However, the final decision rests with chief executives and there may be good reasons not to adopt an approach suggested during consultation.
 - also need to appropriately consider Māori and Treaty interests as part of their thinking on the LTIBs.
- 3 The Public Service Act requires LTIBs to be produced independently of Ministers. This means that we will be keeping you informed of progress on a 'no surprises' basis, but we will not be asking you to approve the briefing and we are unable to seek your input on the content.

ANNEX 2 – Survey for public consultation

Survey purpose

We appreciate your interest in Te Manatū Waka's Long-term Insights Briefing (LTIB) on the impact of automated vehicles operating on New Zealand roads.

The Ministry chose to investigate the impact of automated vehicles as they present significant challenges and opportunities for the transport system over the next 10-15 years. The impacts will be wide-reaching and will affect different groups in New Zealand society.

The LTIB provides the opportunity to understand these potential impacts in more depth, and in a New Zealand specific context. Your views will help shape how we further this work and how it is presented at Select Committee. As such, we are keen to hear your thoughts on the content we have included in the briefing.

The following questions have been structured around the key themes discussed in the briefing. There are eight questions in total. It should not take more than 15 minutes to complete the survey questions. There is also an opportunity to comment on anything else you would like to at the end of the survey questions.

The consultation period closes **5pm Friday 27 May**.

Please note that the questions are not compulsory to answer, please type NA if you do not have any comments on a given question. Before you begin, could you please indicate who you are responding on behalf of:

- Myself (as an individual)
 - A New Zealand business
 - An industry organisation or advocacy group
 - A local government agency
 - A central government agency
 - Academia
 - Other, please specify
-

Survey questions**Question one: Safety**

Safety is the primary consideration for regulators when considering the impact of AVs. The LTIB attempts to emphasise the importance of safety when thinking about the potential impact of AVs. It does this by raising the concerns that New Zealanders, the transport sector, and regulators might have, and identifying what to consider when responding to those concerns.

1. *What, if anything, is missing from the LTIB discussion on **safety** and AVs? Please write N/A if you do not wish to comment*

Question two: Equity

We know that the introduction of AVs on New Zealand roads will affect different groups in society differently. The LTIB attempts to clarify where some of these equity challenges might lie and outline how equity could be impacted through the introduction of AVs.

2. *What, if anything, is missing from the LTIB discussion on **equity** and AVs? Please write N/A if you do not wish to comment*

Question three: Regulation

For AVs to operate on New Zealand roads, existing regulations might need to be amended, or new ones created. The LTIB attempts to outline what areas regulation should focus on and where changes to regulatory settings might be required.

3. *What, if anything, is missing from the LTIB discussion on **regulation** and AVs? Please write N/A if you do not wish to comment*

Question four: Compliance systems and processes

The introduction of AVs into the New Zealand vehicle fleet will inevitably result in some changes to existing vehicle standards, compliance systems and process. The LTIB attempts to identify those areas across the transport sector where change may be required and what this change may need to look like.

4. *What, if anything, is missing from the LTIB discussion on **compliance systems and processes** and AVs? Please write N/A if you do not wish to comment*

Question five: Vehicle software

A reliance on vehicle software in AVs to undertake the driving task introduces some risks to the transport system. The LTIB attempts to highlight the potential cyber-security, privacy, and software update risks, and identify what might need to be done to manage them.

5. *What, if anything, is missing from the LTIB discussion on **vehicle software risks** and AVs? Please write N/A if you do not wish to comment*
-

Question six: Economic disruption

AVs have the potential to disrupt jobs and professions, but also to improve business efficiency and reduce costs for consumers. The LTIB attempts to outline the areas where AVs might have these impacts and the implications for industry and Government as a result.

6. *What, if anything, is missing from the LTIB discussion on **economic disruption** and AVs? Please write N/A if you do not wish to comment*
-

Question seven: Infrastructure

For AVs to be safely introduced across New Zealand, there will need to be investment in supporting infrastructure (both digital and physical) in at least some parts of the country. The LTIB attempts to raise this as an area that needs further consideration.

7. *What, if anything, is missing from the LTIB discussion on **infrastructure** and AVs? Please write N/A if you do not wish to comment*
-

Question eight: Transport outcomes

The transport outcomes framework has been used to help assess the impact AVs operating on New Zealand roads could have. The LTIB has attempted to consider each of the five outcomes and drawn insights around what this could mean for future policy development for each.

8. *What, if anything, is missing from the LTIB discussion on the impact of AVs on New Zealand's **transport outcomes**? Please write N/A if you do not wish to comment*
-

*If you have further comments on the Long-term Insights Briefing on the **impact of automated vehicles operating on Aotearoa New Zealand roads**, please include them below. Please write N/A if you do not wish to comment*

4 May 2022

OC220352OC220352

Hon Michael Wood
Minister of Transport

MEETING WITH THE MARITIME NEW ZEALAND CHAIR AND CHIEF EXECUTIVE – 10 MAY 2022

Snapshot

You are meeting with the Maritime NZ (MNZ) Chair and Chief Executive on 10 May 2022. To support you in your meeting, the Ministry of Transport has provided comments and suggested talking points on the proposed agenda items.

Time and date	3.30pm – 4.00pm, 10 May 2022
Venue	EW4.1, Parliament, Microsoft Teams
Attendees	Jo Brosnahan, MNZ Chair Kirstie Hewlett, MNZ Chief Executive and Director
Officials attending	Allan Prangnell, Deputy Chief Executive, System Performance & Governance Chris Jones, Acting Manager, Governance Johnny Crawford, Senior Adviser, Governance
Agenda	1. MNZ Chair introduction (paragraph 1) 2. Te Korowai o Kaitiakitanga (paragraphs 2 - 4) 3. Port health and safety update (paragraphs 5 - 6) 4. Statement of Performance Expectations, Budget outcomes, and Letter of Expectations (paragraphs 7 - 14)

Contacts

Name	Telephone	First contact
Allan Prangnell, Deputy Chief Executive, System Performance & Governance	s 9(2)(a)	
Chris Jones, Acting Manager, Governance		✓
Johnny Crawford, Senior Adviser, Governance		

Meeting with the Maritime New Zealand Chair and Chief Executive – 10 May 2022

Key points

- You are meeting with Jo Brosnahan (Chair) and Kirstie Hewlett (Chief Executive and Director) of MNZ on 10 May 2022. At your last meeting with MNZ on 21 February 2022, you discussed the following agenda items:
 - Te Korowai o Kaitiakitanga update
 - MNZ's early thinking on the funding review
 - Recreational craft safety
 - Expectations around upcoming board appointments.
- This is the second of your regular meetings with the MNZ Chair and Chief Executive this calendar year. MNZ is planning to provide its meeting advice to you later this week.
- The meeting is an opportunity for you to discuss the impacts of Budget 2022 outcomes and the ongoing pandemic on MNZ's activities for 2021/22, expectations for 2022/23 and the wider maritime sector. Suggested talking points are provided for your consideration in blue boxes.

s 9(2)(f)(iv)



Agenda Items

Item one: MNZ Chair introduction

- 1 The Ministry understands that the Chair would like to provide an update to you. The Ministry does not have any specific information or advice on this update but offers the following questions for your consideration.

Suggested talking points for MNZ Chair Introduction

- You may wish to ask what the Board considers its most significant concerns and strategic risks - specifically noting the potential of these risks to impact delivery of MNZ's core functions - and what steps are being taken to mitigate these risks.
- Potential risks include:
 - Some ministerial expectations may be compromised given resource constraints
 - Impacts of COVID-19 on staff and the wider maritime industry in 2022/23.

Item two: Te Korowai o Kaitiakitanga

- 2 MNZ launched Te Korowai o Kaitiakitanga (Te Korowai) in the first quarter of 2021/22. This work programme focuses on improving regulatory front-line performance by identifying gaps and opportunities in relation to capacity, capability, processes, systems, culture and practice.
- 3 MNZ has completed Phase One of Te Korowai. s 9(2)(f)(iv)
[Redacted text]
- 4 At your previous meeting with the Chair, MNZ advised that it expected to be able to brief you on next steps at the next meeting. These steps involve turning the outputs from Phase One into a regulatory strategy and four-year prioritised programme. Although the specifics of the strategy will be influenced by the outcome of the Budget process, the Ministry still expects MNZ to progress the future phases of Te Korowai.

Suggested talking points for Te Korowai o Kaitiakitanga

- You may wish to acknowledge MNZ's work on Te Korowai to date.
- You may wish to ask about next steps with Te Korowai, and specifically:
 - What is the expected impact (if any) on the Te Korowai work programme given Budget 2022 decisions?
 - Are you able to share any detail on Phase Two of Te Korowai and the multi-year programme of work?

- What risks, issues or insights have been identified following completion of Phase One?

Item three: Port health and safety update

- 5 In your capacity as Workplace Relations and Safety Minister, you recently announced an assessment of New Zealand's 13 major international commercial ports. The assessment is being carried out by MNZ and WorkSafe, following two worker fatalities at ports last month; and is happening alongside investigations by the Transport Accident Investigation Commission.
- 6 This meeting is taking place before the expected completion of the assessment. As such, MNZ is not expected to be able to share any findings.

Suggested talking points for Port Health and Safety

- You may want to ask MNZ about progress on the assessment and the expected completion date.

Item four: Statement of Performance Expectations, Budget outcomes and Letter of Expectations

- 7 MNZ provided you with its draft 2022/23 Statement of Performance Expectations (SPE) on 29 April 2022. The Ministry has provided initial comments and feedback to MNZ, and we note that you have also provided comments on the draft. We expect this feedback to be factored into the final SPE before its completion by 30 June 2022.
- 8 We note that this SPE was drafted prior to MNZ being advised of Budget 2022 decisions and has not yet been updated to reflect these. MNZ has indicated that it will update the financial statements by June 2022 following Budget 2022 announcements. The Ministry will provide further advice based on these revised statements.

s 9(2)(f)(iv)

- 10 The Ministry is largely comfortable that the SPE addresses expectations you raised in your Letter of Expectations (LoE) for 2022/23 as matters that MNZ should address regardless of Budget outcomes. We do not anticipate this to change once it has been updated.

s 9(2)(g)(i)

- 12 The Ministry will provide you with specific advice in its omnibus SPE briefing due shortly.

s 9(2)(f)(iv)

Suggested talking points for Statement of Performance Expectations, Budget outcomes and Letter of Expectations

- You may wish to reiterate your expectations of MNZ in 2022/23 (with reference to your Letter of Expectations and Government priorities), and to ask:

s 9(2)(f)(iv)

- You can also use the meeting as an opportunity to gain assurance that MNZ intends to complete its funding review by 30 June 2024

Annex 1: Maritime NZ Budget Outcomes

Budget bid	Objective	Outcome
Ongoing Crown Support for Maritime New Zealand Core Functions	Extend Crown funding to support Maritime NZ to deliver core regulatory functions, meet statutory obligations, and maintain viability as a going concern.	Partially successful , funding for 2022/23 secured but <u>not</u> 2023/24
s 9(2)(f)(iv)		
Implementation of MARPOL Annex VI to Reduce Pollution from Ships	Implement Annex VI of the International Maritime Organisation MARPOL convention in New Zealand, ahead of funding reviews.	Successful
Maritime New Zealand Meeting its Obligations Under the Health and Safety at Work Act 2015	Meeting its statutory obligations as the designated maritime regulator under the Health and Safety at Work Act 2015.	Successful

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OFFICIAL INFORMATION ACT 1982

9 May 2022

OC2202692

Hon Grant Robertson
Minister of Finance

Action required by:
Monday, 30 May 2022

Hon Michael Wood
Minister of Transport

CITY RAIL LINK LIMITED - CONFIRMATION OF DIRECTOR FEES FOR 2022/23

Purpose

Seek your approval to maintain City Rail Link Limited (CRL) director fees at current levels for the 2022/23 financial year.

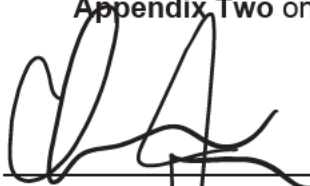
Key points

- As set out under the Crown Company Director Fees Methodology, director fees need to be approved annually by CRL Shareholders, the Minister of Finance, the Minister of Transport and Auckland Council:
"Responsible Ministers will, with effect from 1 July of each year, confirm the level of fees approved for the year,"
- At present, the total fees approved for CRL are \$343,000 per annum. This is broken down into a fee of \$98,000 for the Chair and \$49,000 per annum for each of the five directors.
- Officials from each of the shareholding agencies – the Ministry of Transport (the Ministry), Treasury and Auckland Council - have reviewed the proposed fees, and recommend the allocations remain the same in 2022/23.
- The Ministry notes that an appointments' process is underway for three positions: the Chair and two members. It is expected that appointments to these positions will be made in 2022/23.
- The Ministry of Transport has informed Sir Brian Roche, Chair of CRL, of its recommendation and he agrees with the proposed approach.
- We recommend that you sign the special resolution attached at **Appendix One** to approve a total of \$343,000 in directors' fees for CRL. Auckland Council has already agreed to the directors' fees for 2022/23 and has signed the special resolution.
- We recommend that you confirm directors' fees for 2022/23 through the letter to the CRL Chair attached at **Appendix Two**.

Recommendations

We recommend you:

	Minister of Finance	Minister of Transport
1 agree to total ordinary director fees for CRLI of \$343,000 in 2022/23, based on having five directors and a Chair on the Board	Yes / No	Yes / No
2 sign the attached special resolution to approve CRLI directors' fees for 2022/23, at Appendix One	Yes / No	Yes / No
3 sign the attached letter to the CRLI Chair, Sir Brian Roche, at Appendix Two	Yes / No	N.A.
<i>Minister of Finance only</i>		
4 authorise the Minister of Transport to sign the draft letter in Appendix Two on behalf of Shareholding Ministers	Yes / No	N.A.



Chris Jones
Acting Manager, Governance

09 / 05 / 2022

Hon Grant Robertson
Minister of Finance

..... / /

Hon Michael Wood
Minister of Finance

..... / /

Minister's office to complete:

☐ Approved

☐ Declined

☐ Seen by Minister

☐ Not seen by Minister

☐ Overtaken by events

Comments

Contacts

Name	Telephone	First contact
Allan Prangnell, Deputy Chief Executive - System Performance & Governance	s 9(2)(a)	
Chris Jones, Acting Manager, Governance		✓
Alex Beedell, Senior Advisor, Governance		

CITY RAIL LINK LIMITED

Special resolution approving directors' annual fees effective 1 July 2022

The Shareholders of City Rail Link Limited resolved as a special resolution in writing in accordance with section 122 of the Companies Act 1993:

To approve directors' fees of \$343,000 per annum based on an ordinary unit rate of \$49,000 per annum per director, with the Chair receiving twice the ordinary unit rate.

These fees are effective until next reviewed.

Dated:

Signed:

Minister of Transport

Minister of Finance

Auckland Council

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OFFICIAL INFORMATION ACT 1982

Appendix Two

Sir Brian Roche
Chair, City Rail Link Limited

s 9(2)(a)

Dear Brian

Board Fees 2022/23

The purpose of this letter is to inform you of the approval by shareholding Ministers and Auckland Council of directors' fees for City Rail Link Limited (CRL) for 2022/23. This approval is based on the current director fee rates set under the Crown Company Director Fees Methodology.

The level approved is \$343,000, based on there being five directors on the Board and a Chair. The ordinary fees are based on a unit rate for directors of \$49,000 per annum.

CRL Board Fees – 2022/23

Ordinary fees	Amount
Chair	\$98,000
Directors (x5)	\$245,000
Total fees	\$343,000

Notwithstanding the method of calculation of these fees, it remains the Board's prerogative to determine the allocation of 'ordinary fees' to individual directors. For the avoidance of doubt, it is expected that fees for any vacant Board positions will be excluded from any allocation of the pool of director fees. If a Board member and/or your successor is appointed after 1 July 2022, we expect that the fee allocation for them is prorated.

All fees, and any other payment or reimbursement to directors, should be paid in accordance with the *Directors' Fees, Payments and Related Policies* annexed to the Owner's Expectations Manual (available on the Treasury website).

Yours sincerely

Hon Michael Wood
Minister of Transport
on behalf of shareholding Ministers

cc Hon Grant Robertson, Minister of Finance
Jim Stabback, Chief Executive, Auckland Council
Dr Sean Sweeney, Chief Executive, City Rail Link Limited
Bryn Gandy, Acting Chief Executive, Ministry of Transport

12 May 2022

OC220338

Hon Michael Wood

Action required by:

Minister of Transport

Friday, 20 May 2022

REVIEW OF CROWN ENTITIES' DRAFT STATEMENTS OF PERFORMANCE EXPECTATIONS FOR 2022/23

Purpose

This briefing provides advice on transport Crown entity draft 2022/23 Statements of Performance Expectations (SPEs) for your consideration.

Key points

- You received draft SPEs for the four transport Crown entities you are responsible for, on 29 April 2022.
- You are required to provide comments (if any) on these draft SPEs no later than 15 working days after receipt (i.e., by 20 May 2022).
- The Ministry of Transport (the Ministry) has reviewed the draft SPEs to ensure they meet statutory requirements, particularly the Crown Entities Act 2004, and other requirements including good practice guidance published by the Treasury and central agencies. Please refer to **Appendix One** for a summary of the Ministry's analysis and key comments on each Crown entity SPE.
- The Ministry has drafted some proposed feedback on each entity's draft SPE for your consideration – these letters are attached in **Appendix Two**.
- Crown entities must consider your comments before finalising the 2022/23 SPE by 30 June 2022. SPEs must then be published on the internet as soon as practicable.
- You have flexibility as to when you table final SPEs in the House of Representatives. Section 149L of the Crown Entities Act 2004 allows responsible Ministers to table final SPEs upon receipt, or at the same time as the entity's Annual Report for the previous financial year (thereby providing Parliament with a backward- and forward-looking view of the entity).

Recommendations

It is recommended that you:

- **Agree** to sign the attached letters to each Crown entity (subject to any changes you wish to make), which provide feedback on the draft SPEs. Yes / No



Chris Jones
Acting Manager Governance

12 / 05 / 2022

Hon Michael Wood
Minister of Transport

..... / /

Minister's office to complete:

☐ Approved

☐ Declined

☐ Seen by Minister

☐ Not seen by Minister

☐ Overtaken by events

Comments

Contacts

Name	Telephone	First contact
Allan Prangnell, Deputy Chief Executive, System Performance and Governance	s 9(2)(a)	
Chris Jones, Acting Manager, Governance	s 9(2)(a)	✓
Brett Thomson, Principal Adviser, Governance	s 9(2)(a)	

REVIEW OF CROWN ENTITIES' DRAFT STATEMENTS OF PERFORMANCE EXPECTATIONS FOR 2022/23

The Statement of Performance Expectations (SPE) provides an important opportunity for you to influence an entity's priorities

1. You have received draft SPEs for the following transport Crown entities you are responsible for:
 - Waka Kotahi NZ Transport Agency (Waka Kotahi)
 - Civil Aviation Authority (CAA)
 - Maritime New Zealand (MNZ)
 - Transport Accident Investigation Commission (TAIC).
2. You have also received a draft SPE and Statement of Intent from City Rail Link Ltd – you will receive a separate briefing on these.
3. The purpose of an SPE is to allow you - as responsible Minister - to participate in the process of setting annual performance expectations; to enable the House of Representatives to be informed of those expectations; and to provide a basis against which to assess actual performance (refer to Section 149B of the Crown Entities Act 2004). Crown entities must prepare a new SPE every year.
4. Your recent letter of expectations to each Crown entity board provides important context and input to the draft 2022/23 SPE. Other relevant context for all transport Crown entities includes the Transport Outcomes Framework and the Government Policy Statement on Transport.

A focused and well articulated SPE can improve alignment, performance, and resource utilisation around key priorities

5. The Ministry provided feedback on earlier drafts of each SPE, primarily focused on improving the clarity of each entity's performance story. Please refer to **Appendix One** for a summary of the Ministry's analysis and key comments on each entity's SPE.
6. Developing a high-quality performance measurement framework is resource intensive and requires commitment. The Ministry will work with each entity over the coming year to improve performance frameworks and measures included within SPEs, Statements of Intent and Estimates of Appropriations.

Transport agencies face a common set of short-term challenges

7. COVID-19 has contributed to cost pressures, labour shortages, and supply constraints. While these market conditions will continue to prevail in 2022/23, the opening of New Zealand's borders from the end of July will help to offset the financial impact on transport Crown entities.

8. Transport Crown entities also face increasing complexity, due in part to climate change commitments, increased public scrutiny and stakeholder expectations. As a result, Crown entities are seeking to improve the quality of their systems, processes, and services. However, a tight labour market will make it more challenging to attract and retain key talent, and therefore improve productivity and/or service levels.
9. Budget 2022 decisions have a direct impact on the priorities and operations of Crown entities. The Crown entities will need to reflect any new initiative approved for funding, along with the outcomes and priorities in the SPE. The Ministry will work with each Crown entity to ensure Budget 2022 decisions are appropriately reflected.


Next steps

10. Crown entities must consider your comments (if any) on the draft SPE and provide final documents to you by 30 June 2022. You are then required to table the SPE in the House of Representatives.

Attachments

- Summary comments on draft 2022/23 SPEs (refer to **Appendix One**).
- Draft letters to each Crown entity, providing comments on draft 2022/23 SPEs (refer to **Appendix Two**).

Appendix One: Summary Comments on Draft 2022/23 SPEs

	<p style="text-align: center;">Review Statement of Performance Expectations 2022/23</p>
<p>Strategic Context</p>	
<p>Waka Kotahi NZ Transport Agency (Waka Kotahi) faces challenging operating conditions. The COVID-19 environment has led to cost escalations, labour shortages, and one-off payments to suppliers leading to delays in some projects and pressure on funding. The 2022/23 financial year will remain challenging, from a financial and project delivery perspective.</p> <p>The 2021 Government Policy Statement Amendment and Emissions Reduction Plan will have a profound impact on Waka Kotahi's strategic context, particularly in terms of how it prioritises resources to deliver aligned outcomes. Waka Kotahi faces increasing complexity around delivering a broader portfolio of transport solutions to support an increasing focus on public transport, cycling, and walking. It is growing its capability and capacity to cope with the increasing complexity – however, this will take time.</p> <p>Waka Kotahi is facing challenges to its financial sustainability and delivering to an increased level of expectations. There are several workstreams which will support advice to you in 2022/23, including the regulatory funding and fees review and the Land Transport Revenue Review.</p> <p>A new Chair is expected to be appointed early in 2022/23. It will be important for the Board and entity to manage the growth in its capability and capacity while delivering key projects on time and within budget.</p> <p>In 2022/23 Waka Kotahi continues to focus on achieving its system outcomes, including improving safety, environmentally sustainable, effectively, and efficiently moving people and freight, and meeting current and future needs.</p>	
<p>Expectations</p>	
<p>The Waka Kotahi draft SPE responds to your Letter of Expectations, particularly in relation to new areas such as the Emissions Reduction Plan (ERP) and new initiatives related to the Climate Emergency Response Fund.</p> <p>Waka Kotahi has disclosed 16 significant capital projects aligned to the NLTP and NZ Upgrade Programme, which it expects to progress in 2022/23. It has over 200 projects in total at various stages of completion that are regionally and nationally important.</p> <p>Waka Kotahi has highlighted (via the <i>Estimates</i> process) key fiscal, productivity, materials, workforce, and digital challenges that stem from a complex post-COVID-19 operating environment. The Board is monitoring these challenges closely. However, it is unclear what impact these will have on delivery in 2022/23 and progress against your expectations. The draft SPE could better articulate both the risks as they relate to the 2022/23 performance year, and the trade-offs and consequences if risks materialise and impact performance. The Ministry recommends that Waka Kotahi include a separate section that outlines risks and challenges to delivering its draft SPE in 2022/23.</p> <p>In addition to articulating risks, the Ministry sees the need for greater transparency of 2022/23 activities that are part of Waka Kotahi's 'core' business including state highway maintenance, safety infrastructure development and operational improvements. Communicating these activities would build greater alignment to your Letter of Expectations, especially around working with stakeholders to improve the delivery of Road</p>	

to Zero; enabling access for active communities; support for state highway maintenance; and positioning the regulatory function successfully to respond to an evolving transport system.

Performance

The Waka Kotahi draft SPE contains a significant number of performance measures, reflective of the breadth of their role and impact they have on the land transport system. The draft SPE also includes a lot of operational content. The quality of content - including performance measures and financial information - varies, making it difficult for users to understand, and to hold Waka Kotahi to account for its performance.

The Ministry recommends encouraging Waka Kotahi to focus its draft SPE to better articulate in a concise manner its priorities and core business, as well as the uniqueness of its operating environment in 2022/23, supported by a set of relevant performance measures. This would help focus Waka Kotahi's resources, build alignment, and help users of draft SPE better understand its performance in 2022/23.

Comments on system outcome measures

Some of the targets within the system outcome measures are set using a straight-line methodology or have been set at the lower level of performance. Waka Kotahi has advised that some of these measures are waiting on specific data within the Emissions Reduction Plan to ensure alignment with Government expectations.

There is a lack of clarity between the system outcome measures and alignment to core Waka Kotahi delivery activities. The Ministry recommends greater consistency between funding and output measures through to system outcomes. For example, there is limited narrative on how legislative functions - such as state highway maintenance - are contributing to outcomes.

Comments on output class measures

Given the importance of Waka Kotahi's independent regulatory functions, the Ministry would expect to see a range of measures articulating its performance and priorities. The Ministry understands Waka Kotahi is undertaking a review of its regulatory performance framework and performance measurement, expecting these to be updated after the review is complete.

The Ministry has advised Waka Kotahi that it will seek to work collaboratively on measures for the 2023/24 SPE in key output classes, including Public Transport Infrastructure, Investment Management and Road to Zero. The Ministry is seeking a clearer narrative of delivery through the investment lifecycle.

As part of the Section 9(2)(b) funding approval you requested a new performance measure for Road User Charge non-compliance. Waka Kotahi has advised that it is collecting data for this measure and will be included within the next SPE but will report to you regularly within the quarterly performance report.

Financial Performance

Waka Kotahi is forecasting a deficit in 2022/23 of \$26.3 million and a cashflow that maintains its cash and cash equivalents at \$50.0 million at year end.

National Land Transport Fund (NLTf)

Waka Kotahi's financial forecast reflects the impact of revenue pressure on the NLTf. Revenue is expected to be approximately \$600.0 million lower than when investment targets for the 2021-24 NLTP were set, adding to financial sustainability pressures. In addition, cost escalations and supply constraints are expected to contribute to project

delays. The \$2 billion loan and short-term borrowing facilities will mitigate some of the impacts, but Waka Kotahi are “paying more to achieve less” than what was originally expected and using the debt facilities will increase pressure in out-years.

The Ministry and Waka Kotahi are preparing further advice on financial pressures to provide insight into the impact on delivery of its SPE for 2022/23.

Waka Kotahi operational expenditure

Waka Kotahi's operational expenditure continues to increase, from a forecast spend of \$452.6 million in 2021/22 to \$475.7 million in 2022/23. This comes after consecutive years of increases in agency expenditure from \$346 million in 2018/19. Waka Kotahi and the Ministry are currently undertaking a review to understand the drivers of this growth.

Regulatory funding

The regulatory function will continue to be supported by Crown loans in 2022/23, while the consultation and decision-making phases of the fees and funding review progresses. Current appropriated loan funding is considered adequate at this stage, assuming no significant delays with the review.

A key milestone for Waka Kotahi and the Ministry will be providing you with a draft Cabinet paper for consideration to support the sustainability of the regulatory function.

New Zealand Upgrade Programme (NZUP)

As NZUP matures, the delivery agencies are encouraged to include ‘earned value’ reporting in its monthly reports for all projects, which integrates schedule, costs, and scope to measure project performance in an objective manner. It is also indicated that it would be useful to schedule a planned whole of NZUP level discussion between agencies and Joint Ministers. These discussions could enable early consideration and indication of direction, possible changes in priorities and potential trade-offs.

Budget 2022

Waka Kotahi needs to reflect Budget 2022 decisions (including those in relation to the Climate Emergency Response Fund) in its final SPE.

Key Risks

There are several emerging reputation risks that will require careful attention in 2022/23. This is because Waka Kotahi is operating in a complex, resource constrained environment where expectations are evolving (for example, in the decarbonisation space with the finalisation of the ERP) at the same time as the agency is facing delivery challenges with growing cost pressures and a tight labour market.

Waka Kotahi is facing an increasing number of judicial reviews and is reporting social licence issues, particularly in the speed management area, indicating that stakeholder expectations are becoming increasingly complex to manage.

The SPE could articulate how Waka Kotahi intends to balance conflicting stakeholder expectations with a challenging delivery environment. There is a risk that Waka Kotahi will struggle to deliver on commitments made (both within this SPE and expectations set through the NLTP), which may further exacerbate its social licence to operate and delivery issues.

The Ministry is engaging Waka Kotahi on funding and cost escalation challenges and will meet you to discuss the impacts of these pressures and what trade-offs may be needed in June 2022.



Review Statement of Performance Expectations 2022/23

Strategic Context

The Civil Aviation Authority's (the Authority's) financial viability has been significantly impacted by international and domestic travel restrictions. Although the reconnecting New Zealanders strategy offers opportunities for financial growth in 2022/23, it will take time to understand demand for international travel and establish an operating model that is financially sustainable and meets the needs of users in the system.

The Authority has reduced its costs where feasible, but demand for regulatory activity remains and it is facing additional costs and expectations. Until such time as the aviation sector stabilises and/or funding settings are revised through the current funding review, the Authority will be reliant on Crown funds to support delivery of its operations. This constrains the Authority's ability to address current capability and resourcing requirements, impacting the delivery of "non-discretionary" workstreams¹ to the expected time and/or standard.

In response to the Authority's operational context, the draft SPE is largely unchanged from its 2021/22 SPE. However, the Authority's priority areas for 2022/23 (and some measures) have been updated in response to your expectations. The Ministry expects that significant changes will be made to future SPEs once the Authority has greater certainty of the operating environment across the aviation system, and the resulting impacts to its regulatory function.

In 2022/23, the Authority will continue to support recovery in the aviation sector, and support participants to ensure that safety and security in the system are maintained.

Expectations

In general, the draft SPE responds well to your expectations, and the Government priority to accelerate recovery (i.e., develop new markets / invest in new skills and new technology). In particular, the Ministry notes the Authority's commitment to:

- work with the Ministry on the Civil Aviation Bill
- embed the gains from the Te Kāhano culture change programme
- undertake a funding review
- work with other government departments to ensure the appropriate and safe development and use of new technologies in the aviation system
- develop reduction plans, and report on its emissions and reduction plans in its 2022/23 Annual Report.

s 9(2)(f)(iv), s 9(2)(g)(i)

¹ "Non-discretionary" workstreams include Implementation of the Civil Aviation Bill; completing the funding review; completing ICAO audits; responding to Climate change commitments; and reducing the Part 102 backlog.

Performance

The draft SPE is written at a high level, focusing on activities that the Authority is certain will proceed while it is experiencing resourcing and financial constraints. As such, there are no measures relating to the Government's climate change commitments, and content around this activity is limited.

Overall, the Ministry is comfortable with the draft SPE, on the basis that the Ministry and the Authority collaborate on the development, and continued refinement, of performance measures for the 2023/24 SPE once the Authority's reporting team is adequately resourced.

Financial Performance

The Authority continues to operate under its pre-COVID-19 funding model, which sustained 89 percent of the CAA's funding and 99 percent of Avsec funding through charges, fees, and levies. Until such time that the aviation sector stabilises and/or funding settings are revised through the upcoming funding review, the Authority will be reliant on Crown funds to support delivery of its operations.

Cabinet has approved a \$109.3 million appropriation to protect the Authority's core functions in 2022/23, effectively purchasing core services from the Authority that are no longer able to be cost recovered from third parties because of COVID-19.

The Ministry is largely comfortable with the draft SPE's financial statements but notes the figures (and content) will be finalised in June 2022 to reflect Budget outcomes, and the updated Border Executive Board international passenger forecast - which will inform forecast revenue from third party sources in 2022/23.

The Ministry and the Authority will work together to finalise the financial sections in the draft SPE before the document is published at the end of the financial year.

Key Risks

Key financial and non-financial performance risks for the Authority in 2022/23 include:

- Ongoing resourcing and financial constraints which will impact the Authority's ability to effectively deliver its core functions and/or your expectations and Government priorities
- Staff recruitment and retention which has the potential to impact delivery of BAU and 'non-discretionary' workstreams to the standard and schedule expected

- s 9(2)(g)(i)

- s 9(2)(g)(i)



Review Statement of Performance Expectations 2022/23

Strategic Context

Maritime New Zealand (MNZ) will continue to rely on Crown funding until the sector rebounds to pre-COVID activity levels and/or funding settings are revised through the upcoming funding review. This constrains MNZ's ability to address current capability and resourcing requirements which are impacting delivery of its regulatory, compliance and response functions.

Despite the pandemic and decline in revenue, MNZ's regulatory activity has remained largely unchanged, and, in some areas, activity has grown. In the short- to medium-term there is opportunity for financial growth. With the borders reopening to cruise ships from 31 July 2022, levy revenues are likely to increase in 2022/23. However, it is not yet clear how the cruise ship sector will respond to the borders reopening.

Following the release of its strategic framework in 2021/22, MNZ continues to focus on leading and supporting the maritime community to ensure the seas and waterways are safe, secure, and clean. MNZ's core roles as the national maritime regulator continue to be regulation, compliance, and response.

MNZ will continue to support recovery in the maritime sector through 2022/23 and remains committed to the Government's Budget Policy Statement priorities of 'Continuing to keep New Zealand safe from COVID-19' and 'Accelerating the recovery and rebuild from the impacts of COVID-19'.

Expectations

The Ministry is broadly comfortable with the draft SPE which responds to MNZ's strategic objectives and is aligned with your expectations, the Transport Outcomes Framework, the Government's objectives, and the transport sector's objectives. In particular, the Ministry notes MNZ's commitment to:

- enhancing maritime safety
- improving environmental outcomes
- accelerating the recovery and rebuild from the impacts of COVID-19 while keeping New Zealanders safe.

s 9(2)(f)(iv)

Performance

Overall, the Ministry is comfortable with the draft SPE and performance measures. Changes to existing performance measures (from the 2021/22 SPE) are minor and largely immaterial, but we note that MNZ has acknowledged and provided a response to the PBE FRS 48 Service Performance Reporting standard and outlined steps it has taken to align with the new standards.

In the coming year, the Ministry will work collaboratively with MNZ to improve its performance story, and support the refinement of its existing measures to provide a clearer assessment of the entity's performance when delivering its core functions

Financial Performance

Maritime New Zealand (MNZ)'s financial viability has been impacted by international and domestic travel restrictions. Prior to this, MNZ sustained 87 percent of its funding through charges, fees, and levies. As the sector stabilises, with maritime borders opening on 31 July 2022, and funding settings are revised through the upcoming funding review, MNZ will be reliant on Crown funds to support delivery of its core operations.

Cabinet has approved a \$23 million appropriation to protect MNZ's core functions in 2022/23, effectively purchasing core services from the entity that are no longer able to be cost recovered from third parties as a result of COVID-19. It also approved implementation of MARPOL to reduce pollution from ships, and increased MNZ's Working Safer Levy annual allowance.

The draft SPE's financial statements will be finalised in June 2022 to reflect Budget outcomes, and the BEB international passenger forecast. The Ministry has relayed the following concerns to MNZ, which we expect to be addressed in the final SPE:

- s 9(2)(g)(i)

-

-

The Ministry and MNZ will work together to finalise the financial sections in the draft SPE before the document is published at the end of the financial year, s 9(2)(g)(i)

The Ministry will provide any further feedback to you as necessary.

Key Risks

Key financial and non-financial performance risks for MNZ in 2022/23 include:

- Ongoing resourcing, and financial constraints have the potential to impact the MNZ's ability to effectively deliver its core functions
- s 9(2)(g)(i)
- COVID-19 is expected to continue to impact staff and the wider maritime industry in 2022/23 which has the potential to add to the strain on MNZ's work programme

- s 9(2)(g)(i)

To mitigate these risks, the Ministry will work with MNZ to clarify the entity's funding situation beyond 2022/23. This will enable it to prioritise its regulatory reform work and assess the trade-offs required to effectively deliver its core functions and Te Korowai o Kaitiakitanga in the medium-term. The Ministry will continue to support MNZ as it undertakes the funding review.

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Transport Accident
Investigation
Commission

Review Statement of Performance Expectations 2022/23

Strategic Context

Key areas of focus for TAIC in 2022/23 include working to meet output expectations for completing inquiries, while also delivering key business improvements such as staff training and their Knowledge Transfer System Project.

TAIC has communicated within its draft SPE that the upcoming year will be a challenge as business improvements and additional business activities will stretch resources, particularly for a small organisation. These include:

- implementing the Knowledge Transfer System: the first half of 2022/23 will have a strong focus on training staff to use TAIC's new case management system.
- increased staff training and development: TAIC currently has a low proportion of investigators who are considered fully effective (i.e. with two-to-three years experience). COVID-19 has also limited access to many necessary overseas training programmes for development. There will be a strong focus on improving staff capability now that borders are reopened in 2022/23.
- additional maritime investigations: TAIC's maritime team is impacted by having an investigator seconded to assist the Cook Islands Government with an investigation and the additional inquiries into the accidents at Lyttleton Port and Ports of Auckland.
- implementing new public service standards and practices: while TAIC does not need to implement all new public service standards as an Independent Crown Entity, they generally look to do so because they consider it is best practice. Implementing these standards can have high staff overhead costs for small organisations.

Expectations

Despite these additional responsibilities, TAIC expects to deliver against largely the same reporting targets as previous years. Its priorities are aligned to your Letter of Expectations for 2022/23, a sound continued delivery of core businesses and the Knowledge Transfer System.

In addition to the SPE process, TAIC is also exploring how it can guarantee further resilience within its investigative functions given the impacts staffing changes can have on performance targets. The Ministry continues to work with TAIC on the proposals raised at your last meeting.

Performance

TAIC's 2022/23 SPE outlines the overall place it wants the organisation to be by 30 June 2025, and the progress towards that goal by 30 June 2023. Some of the key initiatives include:

- an external agency peer review of two to three inquiries: this was signalled by the Chief Commissioner as a measure of ensuring quality assurance across their report findings
- fully implementing a risk-based approach to the criteria for opening inquiries and having formal memoranda of understanding (MOUs) regarding occurrence data

identification: the notifications process is an area that the Ministry has signalled it is interested to explore further in the longer-term as a monitoring programme; however, we are yet to engage with TAIC on this matter

- implementing a major accident plan, including supporting documents and MOUs: this is an expectation you have signalled as part of your Letter of Expectations
- continued work on staff training, and how further resilience in staffing capability can be obtained: the Ministry is happy to support TAIC on this. Staffing capability is a regular conversation in your meetings with the Chief Commissioner and Chief Executive.

The Ministry is comfortable with the actions that TAIC is taking towards meeting its strategic intentions, and we have noted our support to them in areas relating to staffing capability and performance.

Financial Performance

TAIC is forecasting a budget deficit of \$0.190 million for the 2022/23 year (2021/22 forecasted to be a deficit of \$0.462 million). This follows previous years where it has operated with a budget surplus due to fewer staffing costs (personnel costs and training costs). ^{s 9(2)(g)(i)}

A key driver of the budget deficit in 2022/23 is an upcoming change in office premises (from 80 The Terrace to 10 Brandon Street) and an overlap in rental tenancy agreements. The rental costs for 10 Brandon Street are lower than the current premises.

There is also a \$400,000 lease incentive included in the lease Budget on completion of fitout work by TAIC. This will be recognised as a liability when received in August 2022 and will be released over the life of the lease

The average cost² of closed domestic inquiries has increased from \$350,000-\$400,000 to \$400,000-\$450,000. TAIC's funding increase took effect from 1 July 2021 and its previous SPE estimated the likely impact on the average cost of an investigation.

In terms of personnel costs, TAIC is assuming a 3% salary increase for staff following Collective Employment Agreement negotiations. TAIC has assumed that investigation staff will be at similar levels, with TAIC also assuming that consultants will be engaged to provide specialist services where required.

The Ministry is comfortable with the rationale outlined by TAIC for the financial position. The Ministry notes that as a small organisation that is almost exclusively Crown-funded, cost pressures can have a significant impact on service levels. The Ministry is working with TAIC on options for improving wider organisational resilience.

Key Risks

Resourcing will remain a key risk for TAIC into the 2022/23 financial year. As noted in previous advice, TAIC's outputs on average are at the lower end of its performance targets. As a small organisation with a highly specialised workforce, it is vulnerable to dips in performance with either low staffing capability or a high volume of work. TAIC is conscious of this risk and is looking for options to improve performance and resiliency, and the Ministry is supporting it through this process.

²The average cost of an inquiry includes both the direct costs of the investigation, as well as indirect costs across the whole-of-life of an investigation (including general staff time and overheads)

Appendix Two: Draft letters to Crown entities providing comment on SPEs for 2022/23

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Sir Brian Roche
Chair
Waka Kotahi NZ Transport Agency
s 9(2)(a)

Dear Sir Brian

Statement of Performance Expectations for 2022/23

Thank you for submitting the Waka Kotahi NZ Transport Agency's (Waka Kotahi) draft 2022/23 Statement of Performance Expectations (SPE) for my review.

I appreciate the time and effort that has gone into preparing this document and acknowledge the strategic challenges facing Waka Kotahi. The past few years have added more complexity to the operating environment with supply chain constraints, a tight labour market and considerable revenue reduction. I also acknowledge the substantial expectations that Waka Kotahi is working towards, from both the Government and the public.

Ministerial feedback

I have some specific feedback on the draft SPE, including:

- Acknowledging the challenging operating context that Waka Kotahi faces over the coming year and beyond, it may be beneficial for the SPE to better articulate the risks as they relate to 2022/23, and the potential trade-offs and consequences, if risks materialise and impact delivery.
- The system outcome measures provide good alignment to key priorities including decarbonisation, safety, and public transport. However, I would like Waka Kotahi to consider developing system outcome measures which better reflect core legislative functions, to help the public understand Waka Kotahi's broader contribution to system outcomes.
- Consistent with the Letter of Expectations, I would like Waka Kotahi to continuously improve the performance story of key areas, including Road to Zero, value for money and regulation, from funding through to delivery.
- Waka Kotahi's regulatory function requires a greater level of transparency, given the importance and materiality of this independent function. As such I would like Waka Kotahi to increasingly communicate both the financial and performance elements of the regulatory function in a manner that provides greater levels of visibility to the public.

- I encourage the Board to consider the accessibility and readability of the SPE, as the draft includes a lot of operational content. Please consider focusing your SPE on articulating - in a concise manner - Waka Kotahi's priorities and core business, as well as the uniqueness of its operating environment in the year ahead, supported by a set of relevant performance measures. This would help Parliament and the New Zealand public to better understand Waka Kotahi's performance in 2022/23.
- Given recent Budget 2022 decisions and existing Crown funding, there is a significant amount of funding appropriated to Waka Kotahi. As such, I would like you to work with the Ministry to ensure the intent and outcomes relating to initiatives (particularly relating to the Climate Emergency Response Fund) are reflected in your final SPE.

I recognise the financial pressures facing Waka Kotahi and the risk that this may adversely impact the delivery of activities in 2022/23. I appreciate that work is underway with the Ministry to develop an understanding of funding and cost escalation pressures and that we will discuss these at our next meeting.

I acknowledge 2022/23 will be a significant year for Waka Kotahi, and look forward to our continued engagements and work to improve transport outcomes for New Zealanders.

Yours sincerely

Hon Michael Wood
Minister of Transport

Copy to: Nicole Rosie, Chief Executive, Waka Kotahi NZ Transport Agency
Bryn Gandy, Acting Chief Executive, Ministry of Transport

Janice Fredric
Chair
Civil Aviation Authority
s 9(2)(a)

Dear Janice

Statement of Performance Expectations for 2022/23

Thank you for submitting the Civil Aviation Authority's (the Authority's) draft 2022/23 Statement of Performance Expectations (SPE) for my review.

I appreciate the time and effort that has gone into preparing this document and acknowledge the strategic challenges facing the Authority. This includes ongoing resourcing and financial constraints which have the potential to impact the Authority's service levels.

The draft SPE responds well to my expectations (as set out in the 2022/23 Letter of Expectations), and the Government's priority to accelerate recovery by developing new markets and/or investing in new skills and new technology.

Ministerial feedback

I have some specific feedback on the draft SPE, including:

- I would like to see the Authority develop performance measures that articulate how it is contributing to the Government's climate change commitments. I encourage you to work with the Ministry over the coming year to develop relevant measures that communicate the Authority's contribution.
- The SPE's financial forecasts will be updated in June 2022 to reflect Budget 2022 outcomes, and the Border Executive Board international passenger forecast which is currently under development. I expect you to work closely with officials prior to finalising these financial forecasts.

I note that difficulties recruiting and retaining key staff may place pressure on the Authority's ability to deliver activities as outlined in the 2022/23 SPE. It is important that the Authority continues to notify the Ministry (on my behalf) of any barriers to the delivery of its core functions on a 'no surprises' basis.

s 9(2)(f)(iv)

IN CONFIDENCE

I look forward to our continued engagements and work to improve transport outcomes for New Zealanders.

Yours sincerely

Hon Michael Wood
Minister of Transport

Copy to: Keith Manch, Chief Executive, Civil Aviation Authority
Bryn Gandy, Acting Chief Executive, Ministry of Transport

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IN CONFIDENCE

Jo Brosnahan
Chair
Maritime New Zealand
s 9(2)(a)

Dear Jo

Statement of Performance Expectations for 2022/23

Thank you for submitting the Maritime New Zealand (MNZ) draft Statement of Performance Expectations (SPE) for 2022/23 for my review.

I appreciate the time and effort that has gone into preparing this document and the challenges involved in updating financial forecasts between Budget 2022 decisions being communicated to you and the draft SPE statutory deadline of 30 April 2022, particularly as you prepare for the reopening of maritime borders.

The draft SPE responds well to my expectations (as set out in the 2022/23 Letter of Expectations), and the Government's priorities such as *Accelerating the recovery and rebuild from the impacts of COVID-19*.

Ministerial feedback

I have some specific feedback on the draft SPE, including:

- I understand that the SPE's financial statements will be updated in June 2022 to reflect Budget 2022 outcomes and you are working with the Ministry on clarifying your mutual understanding of aspects of these statements such as the liquidity facility. I expect you to work closely with Ministry officials as you finalise your SPE.
- Effective performance measures are important for both internal and public accountability. I encourage MNZ to engage with the Ministry on continuous improvements for performance measures. I acknowledge that these can take time to develop but would like the 2023/24 SPE to include some performance measures that more accurately reflect MNZ's progress with important pieces of work like the implementation of the regulatory framework.
- As mentioned in the email sent by my office on 4 May 2022, it is important that you prioritise the measure "The number of National Response Team field oil spill response exercises conducted annually" in particular so that operational readiness is maintained.

s 9(2)(f)(iv)

s 9(2)(f)(iv)

I look forward to our continued engagements and work to improve transport outcomes for New Zealanders.

Yours sincerely

Hon Michael Wood
Minister of Transport

Copy to: Kirstie Hewlett, Chief Executive, Maritime New Zealand
Bryn Gandy, Acting Chief Executive, Ministry of Transport

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IN CONFIDENCE

Jane Meares
Chief Commissioner
Transport Accident Investigation Commission
s 9(2)(a)

Dear Jane

Statement of Performance Expectations for 2022/23

Thank you for submitting the Transport Accident Investigation Commission's draft 2022/23 Statement of Performance Expectations (SPE) for my review.

I appreciate the time and effort that has gone into preparing this document and acknowledge the upcoming challenges faced by the Commission over the year ahead. I appreciate your ongoing and proactive engagement on these matters during our regular meetings.

In terms of specific comments for the 2022/23 SPE, my Office has already informed the Commission that I have no comments to make. I understand the Ministry of Transport has also emailed the Commission separately on some minor matters within the document.

I look forward to continuing to work with you to improve transport outcomes for New Zealanders.

Yours sincerely,

Hon Michael Wood
Minister of Transport

Copy to: Martin Sawyers, Chief Executive, Transport Accident Investigation Commission
Bryn Gandy, Acting Chief Executive, Ministry of Transport

IN CONFIDENCE

12 May 2022

BRIEFING

OC220330

Hon Michael Wood
Minister of Transport

Action required by:
Friday, 20 May 2022

Hon Grant Robertson
Minister of Finance

CITY RAIL LINK LIMITED STATEMENT OF PERFORMANCE EXPECTATIONS 2022/23 AND STATEMENT OF INTENT 2022-25

Purpose

In this report we provide advice on City Rail Link Limited's (CRL's) draft Statement of Performance Expectations (SPE) 2022/23 and Statement of Intent (SOI) 2022-25. We have also provided – for your consideration – a letter providing comments on both documents.

Key points

- As shareholders in CRL, you have an important role to play in setting expectations for the entity and influencing their public accountability documents, including the SPE and SOI.
- CRL provided you with a copy of its draft SPE and SOI on 30 April 2022. You have 15 working days to provide feedback on both documents from this date, i.e. by 20 May 2022. CRL must take any feedback into account before finalising their SPE and SOI prior to 1 July 2022.
- Overall, we are satisfied that the content of the SPE and SOI align with shareholders' expectations for CRL, but suggest some potential improvements for CRL's consideration in the draft letter to the Chair (see **paragraph 27**).
- Although we are comfortable that the content of the SOI is appropriate, the period covered is shorter than the minimum period required by s139(2) of the Crown Entities Act 2004. We have suggested draft wording in the letter to the Chair to address this issue.
- The Ministry of Transport and the Treasury have consulted with Auckland Council on the proposed feedback included within the attached letter to the CRL Chair. They are comfortable with its content.

IN CONFIDENCE

Recommendations

We recommend you:

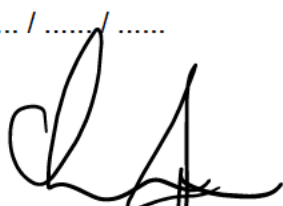
1. **agree** to the Minister of Transport signing the attached letter to the Chair, which provides feedback on the draft SPE and SOI.

Yes / No
Minister of Finance

Yes/ No
Minister of Transport

Hon Grant Robertson
Minister of Finance

..... / /



Hon Michael Wood
Minister of Transport

..... / /

Chris Jones
**Acting Manager Governance
Ministry of Transport**

12 / 05/ 2022

Minister's office to complete:

☐ Approved

☐ Declined

☐ Seen by Minister

☐ Not seen by Minister

☐ Overtaken by events

Comments:

Contacts

Name	Telephone	First contact
Jenny Smith, Senior Adviser, Governance, Ministry of Transport	s 9(2)(a)	✓
Chris Jones, Manager (Acting), Governance, Ministry of Transport	s 9(2)(a)	

CITY RAIL LINK LIMITED STATEMENT OF PERFORMANCE EXPECTATIONS 2022/23 AND STATEMENT OF INTENT 2022-25

The Statement of Performance Expectations (SPE) and Statement of Intent (SOI) provide an important opportunity for you to influence an entity's short- to medium-term priorities

CRLL provided its draft SPE and SOI on 30 April 2022 for your review

- 1 An SPE is a statutory planning and accountability document governed by the Crown Entities Act 2004 (the Act).
- 2 The purpose of an SPE is to:
 - enable you to participate in the process of setting annual performance expectations
 - enable the House of Representatives to be informed of those expectations
 - provide a base against which actual performance can be assessed.
- 3 SOIs have a similar purpose, but outline strategic intentions and medium-term undertakings. The SPE operates within those intentions and includes reporting towards those intentions. SOIs must cover a minimum of four years, and be refreshed either at least every three years or at your direction. As CRLL's current SOI was published in June 2019 it is required to publish an updated SOI prior to 1 July 2022.
- 4 CRLL provided you with drafts of both documents on 30 April 2022 (**Appendix One and Two**). The Act requires you to provide comments on these documents within 15 working days of receipt; i.e. by 20 May 2022. The entity must take this feedback into account before finalising the SPE and SOI before 1 July 2022.

CRLL's draft SPE and SOI should be viewed as part of the wider accountability framework for the CRL project

- 5 CRLL is a single objective company with performance accountability for the project managed through a separate Project Delivery Agreement (PDA). The combination of the PDA and the SPE provides a comprehensive accountability framework for CRLL and the City Rail Link (CRL) project.
- 6 CRLL's SOI must reflect both the Government's overarching objectives and priorities for the transport sector, as well as the strategic objectives of Auckland Council.
- 7 Your Letter of Expectations (LoE) to the CRLL Chair (dated 2 May 2022) sets out expectations for the Board of CRLL for the 2022/23 year. A copy of this letter is attached as **Appendix Three**.
- 8 CRLL's LoE is different from the other agencies within the transport sector, as the PDA already provides a clear set of expectations around what the company is to deliver. Therefore, the LoE largely focuses on the ways CRLL gives effect to the PDA. The draft SPE and SOI incorporate expectations from the LoE that go beyond what is already covered in the PDA (including performance measures for health and safety and for community and stakeholder engagement).

Strategic Alignment

CRL's draft SOI covers a period of three years. This period aligns with the original target completion date for the project, but falls short of the minimum period required by the Crown Entities Act 2004.

- 9 CRL's draft SOI sets out the company's strategic objectives for the period 1 July 2022 to 30 June 2025 (**Appendix Two**). The focus of the draft SOI is the completion of the CRL project which is expected to be achieved during the SOI period (with target completion dates to be updated following analysis of COVID-19 delays).
- 10 Section 139(2) of the Act specifies that each SOI must cover a minimum period of four years. CRL have chosen a three-year period as it aligns with the expected completion date of the CRL project. Following the completion of the project and final asset transfers CRL's current functions will cease and the future of the company will be subject to Shareholders' decisions.
- 11 s 9(2)(g)(i) No formal plans have yet been made to wind-up the company. Although you are able (under s139B(3) of the Act) to grant CRL an exemption from the requirements of s139 "if a Crown entity is likely to be disestablished or, in the case of a Crown entity company, removed from the register under the Companies Act 1993", we are of the view that there is not enough certainty around the future of CRL to satisfy this requirement.
- 12 CRL is not able to provide meaningful information about its strategic intentions post the completion of the project. For this reason, extending the SOI's end date to 30 June 2026 is unlikely to provide Shareholders or Parliament with any additional information about CRL.
- 13 We have included text in the draft reply letter (**Appendix 3**) reminding CRL of the requirements of the Act and encouraging them to consider extending the end date of their draft SOI. If they do not wish to do so, the letter suggests that they acknowledge the requirements of s139(2) within their SOI and explain why they have chosen a shorter period.

CRL's strategic context has changed since its last SOI was released, and the draft SOI reflects those shifts

- 14 Although CRL's overall objectives remain the same as the previous SOI, the content and many of the measures have been updated to reflect changes to CRL's strategic context. The main changes are:
 - **Changes to recognise completed procurement:** Recognition of the integration of the C5 and C7 contracts into the C3 contract (Project Alliance Agreement).
 - **COVID-19:** Disclosure of the uncertainty of the impact of COVID-19 on the CRL project. The impact of this uncertainty on contract end dates as well as costs are specifically discussed.
 - **Oversite Development:** The draft SOI reflects the change in CRL's role from leading work on development opportunities to supporting Eke Panuku and

Kāinga Ora in their work to develop the programme business case. CRLL has introduced new measures for areas that it remains accountable for (consent obligations and below ground infrastructure).

- **Health and Safety:** Commentary and measures have been updated to reflect CRLL's increasing maturity in this area. Changes to health and safety measures being made for the first time in 2022/23 are discussed in **paragraph 18** below.
- **Communication and Engagement:** Further detail has been added to reflect CRLL's close relationships with KiwiRail, Auckland Transport, and Mana Whenua.

- 15 Overall, we are comfortable that the draft SOI adequately reflects your expectations for CRLL as well as the current operating context. Auckland Council has not raised any concerns about the incorporation of their own strategic objectives.

Delivery expectations and performance

The draft 2022/23 SPE is structured in the same way as the previous year's SPE, and many of the performance measures remain similar

- 16 CRLL's draft SPE for 2022/23 is attached for your reference at **Appendix One**. The SPE sets out the key milestones expected to be achieved over 2022/23 as well as establishing performance targets over five key strategic areas. The draft SPE provides short-term performance targets aligned with the medium/long-term strategic objectives and contract completion dates contained in the draft SOI.
- 17 CRLL has incorporated the new service performance reporting standard – PBE FRS 48 *Service Performance Reporting* – in its draft SPE. This reporting standard establishes principles and requirements for service performance information for Public Benefit Entities (including Government entities). Although this standard focusses on year-end reporting, entities have been advised to consider the requirements when preparing SPEs and Estimates information. CRLL has chosen to include a foreword on pages 9-10 of its draft SPE disclosing key judgements, assumptions and contextual information relating to service performance information.
- 18 The strategic performance areas, with observations of changes from the 2020/21 SPE, include:

- **Health and safety:** Consistent with Sponsors' expectations that health and safety remains a top priority, CRLL has added an additional performance measure – achieving a Health and Safety Performance Index (HSPI) score of 80 or more over a 12-month period. This indicator is calculated based on a number of lag and leading indicators, and a score of 80 is regarded as a stretch target for the NZ construction industry. [s 9\(2\)\(ba\)\(ii\)](#)

CRLL has retained its metric requiring an externally validated assessment of the CRL HSE Management System using the Risk Management Maturity Model, but is now aiming to achieve Level 3, and Level 4 in six or more areas (the 2021/22 target was for two or more areas).

Consistent with previous years, CRLL is setting its Total Recordable Injury Frequency Rate (TRIFR) target as “at or below seven injuries per million hours worked”. While the TRIFR target has been determined within the context of the New Zealand construction environment, we recommend you encourage CRLL to continue to strive for a lower TRIFR (even if the performance measure target remains). This message is consistent with your previous comments to CRLL about the target TRIFR rate.

- **Project delivery:** These targets are updated annually to reflect the key milestones expected to be achieved in the upcoming year.
- **Funding envelope:** SPE targets in this area remain largely unchanged – the target relating to CRLL’s approved appropriation has been adjusted to allow for a 10% under-spend, which is more consistent with the nature of appropriations and CRLL’s current environment. Although CRLL is still expected to manage within the existing funding envelope for this financial year, uncertainty remains about the impact of COVID-19 on overall cost and schedule. CRLL is currently undertaking a comprehensive review of schedule and cost, including settlement of the Link Alliance COVID-19 claim, and will update Sponsors late in 2022.
- **Sustainability and social outcomes:** There have been some minor adjustments to these targets, reflecting updates to the progress of each contract or completion of contracts. CRLL has performed well in this area to date, and we have no concerns around the nature of these targets.
- **Community and stakeholder engagement:** CRLL has added a new measure relating to the Targeted Hardship Fund (THF) and is aiming to produce a Mana Whenua partnership case study. The THF measure focuses on the timeliness of the processing of applications which we consider to be an important dimension of the THF. We consider the targets in this area to be consistent with the expectations contained in your LoE.

- 19 Oversight development has not been included as a strategic performance area and there are no specific targets for this in 2022/23. CRLL does however note (on page 8 of the draft SPE) its support for the development work being led by Kāinga Ora and Eke Panuku. The draft SOI includes performance targets in the area, and we expect to see these appear in future SPEs as the development work progresses.

Financial performance

CRLL is forecasting expenditure within its current financial envelope for 2022/23, however significant uncertainty remains about the impact of COVID-19.

- 20 CRLL is budgeting a deficit of \$125 million for 2022/23, compared to a forecast deficit of \$395 million in 2021/22. Being in a deficit position is normal for CRLL (with Shareholders’ contributions being recorded as contributed capital rather than revenue) and results can vary significantly from year to year as the contracts progress and assets are vested upon completion to their ultimate owners.
- 21 The SPE shows total contributions from Shareholders as \$1,028 million (Crown share \$514 million) for the 2022/23 year, which is consistent with the funding appropriated for the delivery of the project.

22 CRLL is also forecasting THF revenue and expenditure of \$6 million for 2022/23. CRLL is working with its auditors to ensure THF revenue and expenditure is appropriately disclosed, and changes will be made to the draft SPE to reflect this feedback.

23 s 9(2)(j), s 9(2)(ba)(ii)

Risks

24 Key financial and non-financial performance risks for CRLL during 2022/23 include:

- uncertainty as a result of COVID-19, both in terms of costs and schedule
- supply chain disruption (constraints, delays and extra costs with shipping)
- a shortage of skilled staff and labour due to a tight construction market, thereby impacting skilled and general labour availability and cost
- higher than expected construction cost inflation
- s 9(2)(g)(i)
- s 9(2)(g)(i)
- unexpected discovery of geographic constraints and unfavourable ground conditions.

25 The CRL project is managed in a manner consistent with other large infrastructure projects. A risk register is therefore managed by CRLL and is under constant review. Sponsors receive monthly reporting from CRLL on both project delivery and financial performance. The anticipated final cost of the contracts and project overall are risk-adjusted every month. This information is also reviewed by the independent Sponsors' Assurance Manager and advice is provided to Sponsors based on those reviews.

Consultation

26 We have consulted with Treasury on this briefing; and both Treasury and Auckland Council have been consulted on the contents of the feedback letter to CRLL (**Appendix Four**). Treasury and Auckland Council are comfortable with contents of the letter and Treasury is comfortable with the contents of this briefing.

Comments to the Chair

27 Based on our review of the draft SPE, and in consultation with Auckland Council, we suggest the following themes are reflected in the response to the Chair (**Appendix Four**):

- re-emphasise the importance of the CRL project and the need for CRLL to maintain high levels of transparency and accountability

IN CONFIDENCE

- thank CRLL for their hard work in refreshing the SOI and providing a draft SPE by the due date
- note the importance of health and safety to Shareholders, s 9(2)(ba)(i)
[REDACTED]
[REDACTED] Inform CRLL that you welcome the addition of the HSPI to CRLL's suite of health and safety measures and encourage CRLL to achieve the targets it has set for itself
- note the incorporation of oversight development measures in the draft SOI and encourage CRLL to include these in future SPEs in line with the progress of the development work
- remind CRLL of the requirement for an SOI to cover a minimum of four years and encourage them to either extend the period covered or to reference the requirements in their final SOI and explain why a shorter period is appropriate.

Next Steps

- 28 Please review the attached letter providing feedback at **Appendix Four**, alongside CRLL's draft SPE and SOI, and provide Shareholders' feedback to CRLL before 20 May 2022. CRLL must consider your comments before finalising its SPE and SOI.
- 29 CRLL is required to publish the final SPE and SOI as soon as practicable, but no later than 1 July 2022.
- 30 Final versions will be provided to your offices upon completion. The Minister of Transport will be required to table these documents in the House of Representatives (either upon receipt, or when CRLL's 2021/22 Annual Report is tabled in late October/early November 2022).

Appendices:

- Appendix One: CRLL's draft Statement of Performance Expectations 2022/23
- Appendix Two: CRLL's draft Statement of Intent 2022-25
- Appendix Three: CRLL's Letter of Expectations 2022/23
- Appendix Four: Letter to Chair of CRLL on the draft Statement of Performance Expectations 2022/23 and Statement of Intent 2022-25

Note: Appendices One and Two are refused under Section 18(d). Final versions of these documents are available online at: www.cityraillink.co.nz/publications

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Appendix 3

Sir Brian Roche
Chair
City Rail Link Limited
PO Box 105777
AUCKLAND 1141

s 9(2)(a)

Dear Sir Brian

Letter of Expectations 2022/23 for City Rail Link Limited

I am writing on behalf of the shareholders to set out our expectations for City Rail Link Limited (CRL). While this letter is primarily to assist you in preparing your Statement of Performance Expectations, it also outlines other expectations for your consideration.

Core expectations of shareholders, as Sponsors of the City Rail Link (CRL) project, are expressed through the Project Delivery Agreement between Sponsors and CRL. Our overriding expectation is that CRL will continue to mitigate the risks to the CRL budget and timeframes where possible, to support Sponsors in realising the benefits arising from this significant piece of infrastructure within the Auckland network. As you develop your accountability documents for the year ahead, and the way in which you give effect to your role, we would like you to consider the following expectations for CRL.

Management of risks, costs and schedule

We thank CRL for continuing to keep Sponsors well-informed on achievement of interim milestones and forecast project costs as new information comes to hand. The impacts of COVID-19 on the delivery of infrastructure projects are significant and extend beyond delays from lockdowns into impacts of border closures on workforce availability and global shipping issues on materials cost and availability. We note that CRL is undertaking a comprehensive review of both project costs and the delivery schedule during 2022, and that CRL will provide an update on this in late 2022. This will be of significant interest to the Sponsors.

CRL in an alliance environment

We note that a number of milestones have been achieved recently by the Link Alliance, including the connecting of the Aotea site through to the end of the existing C2 tunnel in early December 2021, and the breakthrough of the Tunnel Boring Machine at Aotea Station later that month. We ask that you pass on our thanks to the Link Alliance for continuing to deliver significant progress under what have been very challenging circumstances this year.

In order to have assurance around project performance and objectives, Sponsors will rely heavily on CRL participating in the Alliance in a way that ensures that the Sponsors' interests, including those of Auckland Transport and KiwiRail, are protected throughout the course of the project.

s 9(2)(b)(ii), s 9(2)(ba)(i)

Supporting the assurance framework

Sponsors are appreciative of the regular reporting we receive, with these reports being an important contributor to the overall assurance framework for the project. Over the coming year, it will be particularly important for CRLL to continue to work closely, and transparently, with our officials and the Sponsors' Assurance Manager.

We request that the latest Link Alliance Programme Schedule is provided to the Sponsors' Assurance Manager by early May 2022 (noting any caveats at that point if not finalised) to enable the Sponsors' Assurance Manager to undertake their reviews for Sponsors in a timely way during 2022.

Strong relationships with KiwiRail and Auckland Transport

We note that CRLL, KiwiRail and Auckland Transport have worked collaboratively through the many challenges COVID-19 has presented to the CRL project, with the recent Christmas 'Block of Line' works being an example of a huge amount of co-operation and planning between the parties to successfully complete key works. We expect CRLL to continue to work collaboratively with Auckland Transport and KiwiRail. Maintaining these healthy relationships will ensure that the project meets end-user requirements, supports CRL day one readiness, and enables the delivery of the expected benefits of the CRL project.

Health and Safety

Sponsors have a particularly strong interest in the safety of the people associated with the CRL project. While we note that the recordable injury rate continues to track below the target set in your 2021/22 Statement of Performance Expectations, we expect CRLL and the Link Alliance to continue to focus on the ongoing risks as the underground and station construction works progress and seek to make continuous health and safety improvements as the project progresses and the risk profile changes.

Strong community engagement and working collaboratively to mitigate impacts on communities

It is important that CRLL and the Link Alliance continue to work constructively with local businesses, residents, and stakeholders, and seek to proactively ensure that disruption is minimised wherever possible. Sponsors appreciate the hard work that has gone into the establishment of the Targeted Hardship Fund (THF) to provide targeted assistance to small businesses that experience major and sustained disruption and genuine hardship relating to the C3 construction activity. We particularly note the expedient processing of early applications as part of the THF Advance Interim Payment scheme to provide urgent support to local businesses. We expect the dialogue with impacted businesses to continue and that THF applications will continue to be processed in a timely manner and in line with Sponsors' high-level guidelines for the THF.

Supporting the wider development opportunities associated with the CRL project

Although the Joint Board Committee (Eke Panuku and Kāinga Ora) are leading the development of the advice for the Maungawhau and Karangahape sites, we thank CRLL for its ongoing role in contributing to that advice. Once the Programme Business Case has been finalised by the Joint Board Committee, please work with our officials to provide your expertise to help ensure Sponsors can make informed decisions within the context of the governance arrangements for CRLL.

Supporting the Auckland Light Rail project

We have appreciated CRLL's engagement with the Auckland Light Rail project to date. We expect this engagement to continue in order to support integration between the two projects and the sharing of lessons learned from the delivery of CRL.

Reliance upon a fully engaged and effective Board

Given the complexity of the relationships across the CRL project, Shareholders, as Sponsors, continue to rely heavily on the CRL Board being fully engaged in order for the project to deliver its intended benefits. We would like to take this opportunity to thank the CRL Board and all staff members for their hard work in continuing to progress this vital infrastructure project in Auckland and wish you well for the year ahead.

Yours sincerely

Hon Michael Wood

Minister of Transport

Copy to: Hon Grant Robertson, Minister of Finance
Hon Phil Goff, Mayor of Auckland
Bill Cashmore, Deputy Mayor of Auckland

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Appendix 4

Sir Brian Roche
Chair
City Rail Link Limited

s 9(2)(a)

Dear Sir Brian

Draft Statement of Performance Expectations for 2022/23 and draft Statement of Intent for 2022-25

Thank you for providing City Rail Link Limited's (CRL) draft 2022/23 Statement of Performance Expectations (SPE) and Statement of Intent for 2022-25 (SOI). We appreciate the time and effort that has gone into preparing these documents.

Sponsors have high expectations for the City Rail Link (CRL) project, both in how construction is managed and also in enabling future benefits of the investment to be realised once operational. CRL's SPE and SOI, while only a part of overall assurance, provide important public transparency and accountability around the performance of the CRL project. In this regard, it is important that these documents continue to incorporate a comprehensive range of performance measures and targets providing a clear basis against which performance can be assessed – both over the medium term as well as the next financial year.

In accordance with the Crown Entities Act 2004 (the Act), we wish to provide the following comments on your draft documents on behalf of Shareholders.

We appreciate that both documents have retained a similar format to previous published versions, with slight changes being made to both to reflect the progress of the projects and shifts in CRL's strategic context and operating environment. We consider the coverage and set of measures and targets to be comprehensive and reflective of our expectations, but provide the following comments for your consideration:

- **Health and safety:** This is an area of critical importance to Shareholders. We are pleased with the addition of the Health and Safety Performance Index (HSPI) and commitment to continuous improvement shown by increasing ambition in your Risk Management Maturity Model indicator. We encourage CRL to continue to strive for a TRIFR and HSPI that are lower than targeted.
- **Funding envelope and financial performance:** The targets in this area are set at a high level. We expect that CRL will continue to seek opportunities for organisational efficiencies. We acknowledge the significant uncertainty that

CRL is facing due to the impacts of COVID-19 and look forward to receiving updated cost and schedule information in late 2022.

- **Oversite development:** We appreciate the addition of targets in this area in the draft SOI and encourage you to incorporate them into future SPEs as the development work progresses.
- **SOI period:** We note that the period covered by your draft SOI is shorter than the minimum period required under s139(2) of the Act. Whilst we acknowledge your unique circumstances – being a single objective company charged with delivering a project that is intended to be complete within the next three years – we encourage you to consider extending your draft SOI out to 30 June 2026. If the period is not extended, we ask that your final SOI references the fact it does not comply with s139(2) of the Act and provides a short explanation as to why a shorter period is appropriate.

Please take account of these comments and engage with officials to deliver further drafts for consideration by Shareholders before the final documents are due (by 30 June 2022).

Yours sincerely

Hon Michael Wood

Minister of Transport

cc Hon Grant Robertson, Minister of Finance
Hon Phil Goff, Mayor of Auckland
Bill Cashmore, Deputy Mayor of Auckland



5 May 2022

OC220345

Hon Michael Wood

Action required by:

Minister of Transport

Friday, 6 May 2022

INDEPENDENT REVIEWS OF CIVIL AVIATION REGULATORY DECISIONS

Purpose

Seek decisions from you on the optimal scope for independent reviews of civil aviation regulatory decisions.

Key points

- The Civil Aviation Bill is in the final stages of being considered by the Transport and Infrastructure Committee. It includes a new insertion, discussed with you and agreed by the Committee, to enable reviews of the Director of Civil Aviation's (the Director) regulatory decisions. This is a significant new feature aimed at providing an additional tool/'back stop' to existing mechanisms in the regulatory system.
- The Ministry (in consultation with the Civil Aviation Authority (CAA)) is in the process of confirming the final policy design details for the review mechanism before the window for amendments at this stage of the legislative process has closed. During the development of this, it has become clear that it is necessary to confirm key policy design choices and overall policy intent that set the scope for the review mechanism, specifically whether:
 - decision-making processes or substantive decisions should be captured within the scope of the review.
 - the review process is available to only those already in the system (e.g., existing pilots) or all who interact with the system (e.g., prospective pilots).
 - decisions about 'things' (e.g., aircraft) are intended to be captured, or only decisions relating to people (e.g., placing conditions on a pilot's license), or both.
 - the intent is for reviews of decisions about the setting of standards to be captured, or whether the review relates only to the application of the standards once set by you or the Director under certain circumstances.
 - the threshold for initiating a review is set at an appropriate level.
- Following our recent discussion with you, we seek your urgent consideration of these matters so we may confirm the approach with the Committee and the Parliamentary Counsel Office (PCO).

Recommendations

We recommend you:

Design choice 1: Should the review be limited to a review of a decision-making process or the substantive decision?

- 1 **agree** the reviews are to focus on whether decisions followed a lawful decision-making process Yes / No

Design choice 2: Should there be a threshold to meet in terms of what should be reviewed?

- 2 **agree** the Bill should create the review function, but that the detail as to the threshold and scope for what can be reviewed be approved by the Minister of Transport through an alternative mechanism after the Bill has been enacted Yes / No

Design choice 3: Should the review cover people and things?

- 3 **agree** the review scope extends to things, such as aircraft, insofar as they affect a person's ability to operate within the civil aviation system Yes / No

Design choice 4: Should the review be focused on setting standards, or applying standards?

- 4 **agree** the review should not extend to the setting of standards across the aviation system, it only applies to the application of those standards Yes / No



Tom Forster
Manager, Economic Regulation
 5 / May / 2022

Hon Michael Wood
Minister of Transport
 / /

Minister's office to complete:

- ☐ Approved
 ☐ Declined
☐ Seen by Minister
 ☐ Not seen by Minister
☐ Overtaken by events

Comments

Contacts

Name	Telephone	First contact
Tom Forster, Manager Economic Regulation	s 9(2)(a)	✓
Eve Tucker, Senior Adviser Economic Regulation	s 9(2)(a)	

INDEPENDENT REVIEWS OF CIVIL AVIATION REGULATORY DECISIONS

The Civil Aviation Bill will introduce a new regulatory review function

- 1 The Civil Aviation Bill now allows for an independent review of decisions made by the Director of Civil Aviation. Following discussion on this with you on 2 May 2022, you requested further advice and information on key policy design choices for the new feature to support consideration of whether the review should:
 - 1.1 be on a decision-making process or the substantive decisions made by the Director
 - 1.2 extend to people (or organisations or products) looking to enter the system or be limited to those already captured within the system
 - 1.3 be confined to decisions relating directly to people or include decisions that affect 'things' (such as aircraft that people are seeking to operate),
 - 1.4 exclude decisions about setting standards or to the application of standards, and
 - 1.5 otherwise include limitations or thresholds regarding access to the review system.
- 2 The Committee accepted the recommendations of the Ministry's Departmental report, including in relation to these provisions, in March 2022. A copy of the relevant recommendations is attached as Annex 1.
- 3 It has become clear that it is necessary to confirm key policy design choices and overall policy intent that set the scope for the review mechanism. We are now looking to confirm the final design elements and seek your view on these.
- 4 In addition, further information about international models has become available since we met with you on Monday, as the United Kingdom Department for Transport (UK DfT) published information about its new independent review panel on 3 May 2022. We consider some elements of the model may be beneficial in the New Zealand context.
- 5 The Bill is currently before the Transport and Infrastructure Select Committee (the Committee), and the Revision-Tracked version of the independent review provisions is to be considered on 19 May 2022. We must instruct the Parliamentary Counsel Office no later than Monday, 9 May 2022. We note that what is being proposed in the Bill is relatively unique in the New Zealand regulatory environment. Many of the issues seeking to be addressed through this proposal are likely to apply equally to other regulators, and we note that potential wider implications for other regulators in setting this precedent, particularly those in the transport sector.

The review function forms one part of the wider system of accountability

- 6 The proposed review mechanism will be just one of a number in place to ensure the robustness, effectiveness, and transparency of CAA decisions. As a whole, the regulatory system employs a number of mechanisms/features to achieve this:
- 6.1 the CAA is established as a Crown Entity with sector and technical expertise.
 - 6.2 governance is by a Board with clear accountabilities.
 - 6.3 a Director is appointed for their significant regulatory expertise.
 - 6.4 Te Manatū Waka - Ministry of Transport (the Ministry) fulfils both a monitoring function and a system stewardship role, working constructively with CAA to continuously improve performance.
- 7 Some decisions within the legislative framework require natural justice steps to be taken when the Director is making decisions. For example, for decisions to revoke, the Director is required to advise the document holder/license holder of the intent to revoke (and why), then consider any submissions made that could change the decision. Ultimately, the Director's decisions are made in the public interest for a safe and secure aviation system.
- 8 In addition to the above machinery of government, there are also existing pathways to appeal the Director's decisions in Court (or seek judicial review), and decisions taken on a medical basis may be reviewed by the medical convener.
- 9 We advise that the proposal for a new independent review function be intended to support these other mechanisms and processes. As such it should be designed to encourage transparency, accountability, timeliness, and quality of decision making. However, it should not be intended to replace or duplicate existing mechanisms and should be designed to support good decision-making.
- 10 The primary benefit of the review function for those seeking review, and a further key component of the underlying policy intent, is that it serves as a faster, less costly option compared to seeking consideration by the Court, but is similarly independent of the Director and the CAA. Unlike the Court process, a reviewer would not be able to substitute the Director's decision or determine compensation.

The new function provides an avenue for regulatory decision-making to be reviewed

The current drafting provides a broad scope right of review, with some necessary limitations

- 11 The drafting currently in the Bill provides a right of review for decisions that:
- relate to an individual (for example a decision to revoke a pilot's license), or to a decision taken regarding an aviation "thing" that has an impact on the person (for example to detain an aircraft), and
 - are made within 20 days of the decision being made.
- 12 The current drafting starts from the point that all decisions can be reviewed, apart from a list of specific decisions that cannot be reviewed. This list includes decisions

involving national security, prosecutorial discretion, and payment of charges. The decision to set standards within the civil aviation system, which are provided for by the creation of Civil Aviation Rules made by yourself, or in emergency situations made by the Director, are also specifically excluded.

- 13 In the current drafting the reviewer also retains the ability to refuse an application if the review:
 - does not adequately identify the aspects of the decision that the applicant is applying to have reviewed, or
 - is trivial, frivolous, or vexatious, or
 - is otherwise an abuse of process.
- 14 Overall, the current drafting creates a relatively broad scope for the new review mechanism. While this provides the greatest level of access to the review mechanism, there is a risk that a broad scope and design could result in a significant volume of reviews requested and decisions on relatively minor issues being unpicked, support a culture of regulatory risk aversion and decision-making paralysis, cutting across the objectives of encouraging transparency, accountability, timeliness and quality of decision making. However, we note that the review is not able to alter the decision of the Direction, simply provide advice for the Director to consider.
- 15 Such a broad review process will come with increased costs. Policy analysis has not been undertaken to determine the cost or to determine how the costs will be recovered.
- 16 There are a key set of four design choices, set out below, that ultimately set the scope of the review mechanism.

What is the scope of review in other jurisdictions?

- 17 During policy development, we considered three overseas models: those used in the UK, Canada and Australia. While none of these were deemed fit for purpose for wholesale adoption in the Civil Aviation Bill, we have examined them again to understand what they provide for.

Australia (Federal) – Administrative Appeals Tribunal (AAT)

- 18 The AAT can review decisions that are specified as reviewable. Its remit is not transport specific. The AAT reviews merits of a decision (i.e., they take a fresh look at the relevant facts, law and policy and arrive at their own decision). The AAT may affirm, vary, substitute or remit decisions to the decision-maker for reconsideration.
- 19 In relation to civil aviation, reviewable decisions include:
 - a refusal to grant or issue, or a cancellation, suspension, or variation of, a certificate, permission, permit or licence granted or issued under the Act or the regulations
 - the imposition or variation of a condition, or the cancellation, suspension, or variation of an authorisation, contained in such a certificate, permission, permit or licence, and
 - a decision about reinstating a civil aviation authorisation that has been suspended or cancelled.

Canada – Transportation Appeal Tribunal of Canada (TATC)

- 20 The TATC is a cross-modal, quasi-judicial body, which replaced Canada’s Civil Aviation Tribunal. Appeals are based on merits, on the record of the proceedings. Decisions of the TATC are binding.
- 21 In relation to civil aviation, reviewable decisions include:
- refusal to issue or amend a Canadian aviation document
 - aviation document suspension or cancellation (including where a document is suspended on security grounds)
 - assessment of monetary penalty, and
 - refusal to remove a notation of a suspension or a penalty after two years

UK – Independent review panel

- 22 Officials were previously aware of a new aviation-specific independent review panel being stood up in the UK. New information about this panel, including its terms of reference, was published on 3 May 2022.¹ This panel does not have a legislative basis.
- 23 While the overall model differs from what is best fit in the New Zealand context (the UK legislative framework, machinery of government and options for review are substantively different), the model poses some high-level consideration we advise could be reflected in our independent review process. We explore this further in our analysis of design choices below.

Design choice 1: Should the review be limited to a review of a decision-making process (“procedural justice”), or a substantive decision?

- 24 As discussed above, we have assumed that overall policy objective for the introduction of the review feature and system is to support and provide assurance of good decision making and transparency. We consider the policy objective is not to provide a mechanism for the reviewer to substitute their decision for that of the Director or make a statement that the decision is somehow inconsistent with what they would have decided.
- 25 We think it is important that the review is framed as relating to supporting procedural justice in the decision-making process, and that the reviewer would be required to consider among other things some of the following:
- have the statutory steps been followed, including any applicable natural justice steps and application of the public interest test?
 - have the relevant people been heard?
 - has all relevant information been taken into account?
 - did the decision-maker have an open mind?
 - was a power exercised only for the purposes for which it was provided?
 - is there evidence to support findings with relevant factors being taken into account but not irrelevant ones?

¹ <https://www.gov.uk/government/publications/independent-review-panel-for-cao-personnel-licensing-and-certification-decisions-terms-of-reference>

- did the decision-maker act reasonably, recognising that there may be different ways of reasonably reaching a decision in the public interest?
- was the process impartial and free of actual or perceived bias to the fair-minded and impartial observer?
- were any measures taken rationally connected to the objective and no more than necessary to accomplish it?
- were less intrusive measures appropriately considered?
- was the decision reached in a timely manner proportionate to the complexity of the matter at hand?

26 However, the reviewer would not be permitted to comment generally on the Director's role, how they or Ministers set standards, or whether they would have made a decision other than what the Director has decided (except on the basis of procedural injustice). We consider the reviewer should not in any case look to substitute a decision or make representations about the Director's performance of their statutory role.

Table 1. Relative assessment of design options (decision or decision-making)

	Benefits	Drawbacks	Comment
Option 1: Limit the scope to decisions	Would limit the scope of what can be reviewed.	Officials consider that a focus on substantive decisions is a matter for the Director and for Courts to consider in relation to appeals.	Not recommended by officials.
Option 2: Scope captures whether the decision followed a lawful process	Seeks to align with the new UK model. ² Would provide assurance that proper process and principles of good decision-making have been followed. Captures the full decision-making process and is consistent with administrative law understandings of what good decision making includes.	The reviewer is likely to require expert advice to understand some aspects of a decision and how these need to be treated in the public interest, which may come at a cost.	The overall policy aim of this scope is to identify any procedural injustice or irregularities made by the CAA when arriving at certain decisions. Where there is an irregularity, the reviewer will provide recommendation to the CAA on remedying the case. Where an injustice has not occurred, the reviewer will provide reassurance that proper procedures have been followed.

² However, the UK model does not appear to be set in a legislative framework, but instead adheres to a Terms of Reference and accompanying list of "in scope" decisions, both of which are to be reviewed periodically.

Design choice 2: Should there be a threshold to meet in terms of what should be reviewed?

- 27 New Zealand's civil aviation system is regulated using a life-cycle approach, illustrated in Figure 1. The system is for the most part "closed", meaning people must be approved by the Director to operate within the system. People approved to operate within the system hold aviation documents, and their role in the system is routinely monitored.
- 28 As at 30 June 2021, there were 841 organisations that held an aviation document, and 33,990 individual aviation document holders. The vast majority of these are pilot license holders (29,162 individuals).
- 29 However, the work undertaken by the CAA in this space is complex and is not necessarily linear. Expositions are routinely changed and reviewed as operators change their operations (e.g., introduce new aircraft, move from carrying passengers to freight, introduce new routes) and so the total number of "entry" decisions taken each year cannot be accurately reflected by the number of document holders.
- 30 The Director has an important role to play at each stage of this process. Each decision to grant a document is made up of many smaller decisions relating to standards set by the Minister (sometimes hundreds of rule-level decisions). Furthermore, decision making relating to aircraft or aeronautical products is often phased over a long period of time, with design and concept proposals, and ongoing testing and trialling.
- 31 Overall, the proposed review could be of any one of these individual decisions, which (as previously identified) could result in a significant volume of reviews requested and decisions on relatively minor issues being unpicked.

Figure 1. The life-cycle approach to regulating civil aviation



Source: Civil Aviation Authority of New Zealand

The policy could reflect that a higher threshold is required to access reviews

- 32 The current drafting assumes that any person whose ability to operate within the system is affected by an adverse decision of any kind has opportunity to access the review.
- 33 However, we do not consider that it should be the policy intent for all minor decisions, and those that do not have a material impact on a person, to necessarily fall within the reviewer's remit. You have indicated in discussion with us that your preference is for a design that first and foremost provides access to issues/cases that have a 'material' impact on a person.
- 34 On considering all available options, officials recommend taking a similar approach to the UK, whereby the relevant decisions (reviewable decisions) could be specified via another mechanism other than solely in primary legislation. This approach could be bolstered by a regular review of the list of reviewable decisions to ensure the review mechanism remains fit for purpose and is meeting the needs of those who may need to use it, as is the case in the UK.
- 35 Alternatively, policy criteria to enable the reviewer to make an assessment of whether an issue/case/decision has a 'material' impact and hence should be subject to review, would need to be defined in the Bill.
- 36 We elaborate on these options in Table 2.

Table 2. Relative assessment of design options (who has access to the review function)

	Benefits	Drawbacks	Comment
Option 1: All final decisions taken in relation to all people may be reviewed (unless explicitly excluded in primary legislation)	Achieves maximum policy intent for enabling meaningful access to review of regulatory decisions, including decisions on whether or not someone may enter the system.	The scope of decisions that can be reviewed is very broad and may have unintended consequences for the regulator and for the scale of reviews.	Current drafting reflects this approach; however, officials are concerned this option is too broad.
Option 2: Set policy criteria for what meets a threshold for 'material' impact on a person	Speaks directly to the policy intent of ensuring people directly affected by decisions that have a major impact on their prospects or livelihood have access to review, while others less affected do not.	May not be significantly more effective than the existing objective measures (vexatious, frivolous etc). Exceptionally difficult to give effect to. The materiality of a decision differs on a case-by-case basis. Requires policy criteria to be developed to enable the reviewer to make an assessment of "materiality".	Officials do not recommend this approach.