TE MANATŪ WAKA
MINISTRY OF TRANSPORT

OC210608

9 September 2021

[redacted] Withheld to protect personal privacy

Tēnā koe [redacted] Withheld to protect personal privacy

I refer to your request dated 22 July 2021, pursuant to the Official Information Act 1982 (the Act), seeking copies of the following briefing papers provided/copied to the Minister of Transport during March 2021. Please note while numbered in sequence, this list also includes their number from the list you provided for ease of reference.

1. *3 - Wood - MoT - 1/03/21 - Cabinet Paper to increase the infringement fee for using a mobile phone while driving*
2. *5 - Wood - MoT - 1/03/21 - Meeting with Jeremy Ward from East by West Ferries*
3. *7 - Wood - MoT - 1/03/21 - Meeting with Business NZ Energy Council*
4. *17 - Wood - Waka Kotahi - 2/03/21 - [PMO for Input] Traffic Volume in Auckland*
5. *24 - Wood - Waka Kotahi - 3/03/21 - [PMO for Input] Traffic Volume in Auckland*
6. *25 - Wood - Waka Kotahi - 3/03/21 - Timeline for Living Wage for bus drivers*
7. *27 - Wood CC: Robertson - MoT - 4/03/21 - New Zealand Upgrade Programme February 2021 update*
8. *31 - Wood Roberston - Mot/Treasury - 4/03/21 - City Rail Link Limited's approval sought for amendment to Foreign Currency Accounts and Derivatives Protocol*
9. *33 - Wood - Waka Kotahi - 4/03/21 - Whistle-blower allegations – HVSC*
10. *37 - Wood - Waka Kotahi - 5/03/21 - Official NZ Road Code language*
11. *40 – Wood – MoT – 6/03/21 - Developing the governance model for the indicative business case of the City Centre to Māngere light rail project*
12. *44 - Woods Wood - MHUD - 8/03/21 - Auckland housing and urban growth joint work programme: governance group*
13. *60 - Wood - MoT - 11/03/21 - Progressing 'Let's Get Wellington Moving'*
14. *61 - Wood - MoT - 11/03/21 - North Shore Airport - Application for Airport Authority Status*
15. *62 - Wood - Waka Kotahi - 11/03/21 - ATAP funding*
16. *63 - Wood - Waka Kotahi - 11/03/21 - Roading cost implications of Kiwirail moving the interislander ferry terminal*
17. *64 - Wood - MoT - 12/03/21 - Meeting with Simon Upton the Parliamentary Commissioner for the Environment on 16 March 2021*
18. *66 - Wood - MoT - 12/03/21 - Progressing the City Centre to Māngere Project through a public service delivery approach*
19. *67 - Nash Allan CC: Wood - MBIE/DoC - 12/03/21 - Milford Opportunities Project - 16 March Meeting and next steps*
20. *68 - Wood - Waka Kotahi - 12/03/21 - Milford Opportunities Project – Transport Plan/Master Plan*
21. *77 - Wood - Waka Kotahi - 16/03/21 - Meeting with Dunedin City Council*

22. *86 - Wood - Waka Kotahi - 18/03/21 - Meeting on coastal shipping with Waka Kotahi*
23. *90 - Wood Robertson - MoT, Treasury - 19/03/21 - Proposed changes to Waka Kotahi short-term borrowing facility*
24. *103 - Wood - MoT - 25/03/21 - Official Information Act request from [redacted] Re - Auckland Light Rail System Options + Trackless Trams + Super Capacitor LRTrams*
25. *127 - Wood - Waka Kotahi - 30/03/21 - Wage Floor (Living Wage) For Bus Drivers*
26. *132 – Wood – Waka Kotahi – 31/03/21 - Driver licensing in Rangitata – follow up questions*

On 18 August 2021 we extended the time period for responding to your request, as consultations necessary to make a decision on the request were such that a proper response to the request could not reasonably be made within the original time limit.
We have now completed the necessary consultations and our response is detailed below.

Twenty-six documents fall within the scope of your request, of which 14 have been transferred to other agencies.

The Ministry has proactively released documents related to the New Zealand Upgrade Programme and the Auckland Light Rail Project so your requests for these documents have been refused under Section 18(d) of the Act. You can access them and other related material via the links below.

New Zealand Upgrade Programme
www.nzta.govt.nz/planning-and-investment/nz-upgrade/changes-to-the-new-zealand-upgrade-programme/

Auckland Light Rail project (City Centre to Māngere)
www.transport.govt.nz/area-of-interest/auckland/auckland-light-rail-project/

Table 1 attached outlines how each of the 26 documents you have requested have been treated under the Act, including eight that we enclose (along with attachments) and four that we are withholding or refusing in full.

You will see that certain information has been withheld under the following sections:

- Section 9(2)(a), to protect the privacy of natural persons
- Section 9(2)(b)(ii), to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information
- Section 9(2)(ba)(ii) protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely otherwise to damage the public interest
- Section 9(2)(f)(iv), to maintain the constitutional convention for the time being which protects the confidentiality of advice tendered by Ministers of the Crown and officials
- Section 9(2)(g)(i), to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any department or organisation in the course of their duty
- Section 9(2)(i), to enable a Minister of the Crown or any public service agency or organisation holding the information to carry out, without prejudice or disadvantage, commercial activities
- Section 18(d), as the information requested is or will soon be publicly available

Regarding the information that has been withheld under section 9 of the Act, I am satisfied that the public interest in releasing the withheld information does not outweigh the reasons for withholding it at this time.

I draw your attention to the additional notes in the table below for Documents 3 and 8, which have also been noted in the copies of the documents we are releasing to you.

You have the right under Section 28(3) of the Act to make a complaint about the withholding and refusal of information to the Ombudsman, who can be contacted at: info@ombudsman.parliament.nz

The Ministry publishes our Official Information Act responses and the information contained in our reply to you may be published on the Ministry website. Before publishing we will remove any personal or identifiable information.

Nāku noa, nā

[redacted] Withheld to protect personal privacy

Hilary Penman
Manager, Ministerial Services

Table 1

OIA Doc #	Document	Description of information withheld
1	OC210148 Cabinet paper to increase the infringement fee for using a mobile phone while driving	Some information withheld under Section 9(2)(a). For your interest, the final Cabinet Paper is publicly available at: **www.transport.govt.nz/assets/Uploads/Cabinet/Increasing-the-Infringement-Fee-for-Using-a-Mobile-Phone-While-Driving-Cabinet-paper.pdf**
2	OC210122 Meeting with Jeremy Ward from East by West Ferries	Some information withheld under Sections 9(2)(a) and 9(2)(i).
3	OC210102 Meeting with BusinessNZ Energy Council	Some information withheld under Section 9(2)(a). Please note the additional text within this document correcting an incomplete paragraph and an error as outlined below. Paragraph number 3 is an incomplete drafting error by the Ministry of Transport. The correct paragraph should include: *"Any additional interventions should follow only where there is a clearly articulated positive net benefit. The market must be allowed to operate freely to have the capacity to find and implement the most cost-effective solutions. The Government should create an outcome-based regulatory environment that enables the private sector to innovate and forge a market-led path to 2050. The prospect of increasing complexity suggests caution in designing policy frameworks. More transparency is required. To address this increased complexity, for some time now, the BEC has collaborated with businesses, academia, and government on a continuous basis to further develop and improve the New Zealand Energy Scenarios – TIMES-NZ 2.0."* Furthermore, the sentence below is noted in the same paragraph as a drafting error by the Ministry and is not correct: *"The BEC Chair, Hon David Caygill, recently chaired a review of the Emissions Trading Scheme."*
4	[PMO for Input] Traffic Volume in Auckland	Transferred to Waka Kotahi, 2 August 2021.

OIA Doc #	Document	Description of information withheld
5	[PMO for Input] Traffic Volume in Auckland	Transferred to Waka Kotahi, 2 August 2021.
6	Timeline for Living Wage for bus drivers	Transferred to Waka Kotahi, 2 August 2021.
7	OC210094 New Zealand Upgrade Programme February 2021 update	Withheld in full under Section 18(d). This document was part of the NZUP proactive release and can be found online at: www.nzta.govt.nz/assets/Roads-and-Rail/20-011/oc210094-nz-upgrade-programme-february-2021-update-20210304.pdf
8	OC210096/ T2021/431 City Rail Link Limited - Approval sought for amendment to Foreign Currency Accounts and Derivatives Protocol	Some information withheld under Sections 9(2)(a) and 9(2)(b)(ii). Please note the additional text within this document as the information is inaccurate due to being out of date: *Please note the figure of $80.7m in this paragraph is out of date and no longer accurate. CRLL are now holding less than $80.7m (as contracts have settled).*
9	Whistle-blower allegations - HVSC	Transferred to Waka Kotahi, 2 August 2021.
10	Official NZ Road Code language	Transferred to Waka Kotahi, 2 August 2021.
11	OC210167 Developing the governance model for the indicative business case of the City Centre to Māngere light rail project	Withheld in full under Section 18(d). This document has been proactively released on the Auckland Light Rail project page of our website at: www.transport.govt.nz//assets/Uploads/8_REDACTED_OC210167_Developing_the_governance_model_for_the_indicative_business_case_of_the_City_Centre_to_Mangere_light_rail_pro.pdf
12	Auckland housing and urban growth joint work programme: governance group	Transferred to Ministry for Housing and Urban Development, 2 August 2021.
13	OC210173 Progressing 'Let's Get Wellington Moving'	Some information withheld under Sections 9(2)(a) and 9(2)(ba)(ii).
14	OC210040	Withheld in full under Section 9(2)(f)(iv).

OIA Doc #	Document	Description of information withheld
	North Shore Airport - Application for Airport Authority Status	
15	ATAP funding	Transferred to Waka Kotahi, 2 August 2021.
16	Roading cost implications of Kiwirail moving the interislander ferry terminal	Transferred to Waka Kotahi, 2 August 2021.
17	OC210195 Meeting with Simon Upton, Parliamentary Commissioner for the Environment, on 16 March 2021	Some information withheld under Sections 9(2)(a), 9(2)(f)(iv) and 9(2)(g)(i).
18	OC210076 Progressing the City Centre to Māngere Project through a public service delivery approach	Withheld in full under Section 18(d). This document has been proactively released on the Auckland Light Rail project page of our website at: **www.transport.govt.nz//assets/Uploads/9_REDACTED_OC210076-Progressing-the-City-Centre-to-Mangere-project-through-a-public-service-delivery-approach-Cabinet-Paper-Briefing_C.pdf** The paper relates to a Cabinet Paper, which can also be found online at: **www.transport.govt.nz/assets/Uploads/Cabinet/ProgressingCityCentretoMangerePublicServiceDelivery.pdf**
19	Milford Opportunities Project - 16 March Meeting and next steps	Transferred to Ministry of Business, Innovation and Employment, 4 August 2021.
20	Milford Opportunities Project – Transport Plan/Master Plan	Transferred to Waka Kotahi, 2 August 2021.
21	Meeting with Dunedin City Council	Transferred to Waka Kotahi, 2 August 2021.
22	Meeting on coastal shipping with Waka Kotahi	Transferred to Waka Kotahi, 2 August 2021.
23	OC210081/T2021/678 Proposed changes to Waka Kotahi short-term borrowing facility	Some information withheld under Section 9(2)(a).

OIA Doc #	Document	Description of information withheld
24	OC210176 Official Information Act request from [redacted] Re - Auckland Light Rail System Options + Trackless Trams + Super Capacitor LRTrams	Some information withheld under Section 9(2)(a).
25	Wage Floor (Living Wage) For Bus Drivers	Transferred to Waka Kotahi, 2 August 2021.
26	Driver licensing in Rangitata – follow up questions	Transferred to Waka Kotahi, 2 August 2021.

Ministry of Transport
TE MANATŪ WAKA

BRIEFING

1 March 2021

OC210148

Hon Michael Wood
Minister of Transport

Action required by:
Thursday, 4 March 2021

CABINET PAPER TO INCREASE THE INFRINGEMENT FEE FOR USING A MOBILE PHONE WHILE DRIVING

Purpose

Seeks your agreement to lodge the Cabinet paper on raising cellphone penalties (and associated amendment regulations) for Cabinet consideration.

This briefing attaches:

- the revised Cabinet paper – a clean and tracked changes version (***Appendix 1 & 2***)
- the advice sheet recommending the Governor-General make the regulations (***Appendix 3***)
- a copy of the Amendment Regulations (***Appendix 4***)
- talking points and back pocket Q&As for Cabinet (***Appendix 5***).

Key points

- You undertook Ministerial consultation on a draft Cabinet paper proposing to adjust the infringement fee for using a mobile phone while driving from $80 to $150 to align with other moving vehicle offences. Concurrent to this, the Ministry of Transport undertook departmental consultation with key government agencies.

- The Cabinet paper asks the Cabinet Economic Development Committee to agree to the increase in the infringement fee and to authorise the submission of the regulations implementing this to the Executive Council.

- Feedback received was broadly positive. Only minor changes were suggested and these have been incorporated in the revised Cabinet paper.

- If you are happy with the Cabinet paper, we recommend that your office lodge the paper and advice sheet with the Cabinet Office on 4 March 2021, for Cabinet Economic Development Committee consideration on 10 March 2021. Note that the Parliamentary Counsel Office will lodge the final Amendment Regulations with the Cabinet Office separately.

- If agreed by Cabinet, the change will be made by Order in Council on 15 March 2021 and come into force on 16 April 2021 through notification in the *New Zealand Gazette*.

- We have included talking points and back pocket Q&As to assist you at Cabinet. Further communications collateral (including a press release and public-facing Q&As) will follow shortly.

Recommendations

We recommend you:

1	**sign** the advice sheet recommending that Her Excellency sign the Land Transport (Offences and Penalties) Amendment Regulations 2021	Yes / No
2	**lodge** the attached Cabinet paper, advice sheet and Amendment Regulations with the Cabinet Office by 4 March 2021, to be considered at the Cabinet Economic Development Committee on 10 March 2021.	Yes / No

Withheld under Section 9(2)(a) of the Official Information Act 1982

[redacted]

Helen White
Manager, Mobility & Safety

26 / 02/ 2021

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
Helen White, Manager, Mobility & Safety	[redacted]	✓
Jane Godfrey, Senior Adviser, Domain Strategy, Economics & Evaluation	[redacted]	
Lucy Nie, Principal Adviser, Mobility & Safety	[redacted]	

Withheld under section 9(2)(a) of the Official Information Act 1982

Appendices

Appendix 1: Cabinet paper – Increasing the infringement fee for using a mobile phone while driving (clean)

Appendix 2: Cabinet paper – Increasing the infringement fee for using a mobile phone while driving (tracked changes)

Appendix 3: Advice sheet recommending the Governor-General make the regulations

Appendix 4: Amendment Regulations to increase the infringement fee for using a mobile phone while driving

Appendix 5: Talking points for Cabinet committee meeting

In confidence

Office of the Minister of Transport

Cabinet Economic Development Committee

INCREASING THE INFRINGEMENT FEE FOR USING A MOBILE PHONE WHILE DRIVING

Proposal

1 This paper:

1.1 seeks agreement to adjust the infringement fee for using a mobile phone while driving from $80 to $150 to align with other moving vehicle offences

1.2 asks the Committee to authorise the submission to Executive Council of the Land Transport (Offences and Penalties) Amendment Regulations 2021.

Relation to government priorities

2 This is an operational adjustment that requires Cabinet approval. It also contributes to the Government's commitments on road safety.

Distracted driving due to mobile phone use is a contributing factor in road crashes

3 Between 2015 and 2019, there were 22 road deaths in New Zealand and 73 serious injuries where driver attention was diverted by a mobile phone (noting that these numbers are likely to be under-reported).

4 Using a mobile phone while driving has a higher risk of distraction and a greater negative effect on driving behaviour than activities such as conversing with a passenger. This is because passengers are aware of the traffic situation and moderate their conversation accordingly.

5 In 2020, Police issued 39,090 infringement notices for using a mobile phone while driving.

The current fee for using a mobile phone while driving is $80, which is out of step with other moving vehicle offences (set at $150)

6 Schedule 1 of the Land Transport (Offences and Penalties) Regulations 1999 specifies the level of infringement fee payable for each offence. This includes a range of road safety related offences including using a mobile phone while driving.

7 The current infringement fee payable by a driver who commits the offence of using a mobile phone while driving a vehicle is $80.

8 The current fee for using a mobile phone while driving was set in 2009 when the offence was created. The amount reflected a cautious approach to the introduction of a new offence.

9 The current fee is an anomaly in the current penalties system. No other individual infringement fee is set at $80. While the fees for most parking offences are set at $40-60, the fee for the majority of moving vehicle offences is $150 (including driving too close, failing to give way, failing to stop, and failing to drive within lane).

10 Using a mobile phone while driving carries 20 demerit points. This is the same number of points that applies to several other moving vehicle offences that carry a $150 infringement fee (including driving too close, failing to keep left, and failing to allow impeded traffic to pass). I am not at this time proposing changing the number of demerit points associated with using a mobile phone while driving.

There is an opportunity to align the fee with public expectations

11 There is support from stakeholders and the general public to increase the current penalties for mobile phone use while driving. This issue is frequently raised in Ministerial correspondence.

12 Similarly, a key theme from consultation on *Road to Zero* (the national road safety strategy) in 2019 was the need for greater enforcement, especially around impaired driving and mobile phone use. Many submitters called for a substantial increase in penalties to deter the use of mobile phones while driving.

I am seeking Cabinet agreement to adjust the fee to align with other related penalties

13 Increasing the infringement fee is an operational adjustment. Raising the fee alone will not necessarily deter mobile phone use while driving. However, a change to $150 would provide a clear signal to drivers and better represent the seriousness of the offence.

14 I consider this proposal low-risk. There might be implications for some people who struggle to pay the higher fine, particularly if this results in unpaid fines being referred to Courts for collection, although this proportion is likely to be small.

15 Making this change will create a consistent baseline for further work to be undertaken as part of a wider review of key road safety penalties. This work was committed to under the *Road to Zero* initial action plan and is expected to commence later in the year. Any proposed changes resulting from this review will be publicly consulted on.

Timing and the 28-day Rule

16 The Amendment Regulations will come into force on 16 April 2021, 28 days following their notification in the *New Zealand Gazette*. No waiver of the 28-day rule is sought.

Financial Implications

17 There are no additional financial implications to this proposal for the Crown. Fee revenue collected from traffic infringements goes into the Government's Consolidated Fund.

Legislative Implications

18 Implementation of the increased infringement fee will be through the Amendment Regulations. No further legislative changes are required.

Compliance

19 The Amendment Regulations comply with:

19.1 the principles of the Treaty of Waitangi

19.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993

19.3 the principles and guidelines set out in the Privacy Act 2020

19.4 relevant international standards and obligations

19.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

20 There are no grounds for the Regulations Review Committee to draw the Regulations to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

21 The Land Transport (Offences and Penalties) Amendment Regulations 2021 have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

22 The Regulatory Impact Analysis Team at the Treasury has determined that the regulatory proposal to adjust the fee for using a mobile phone while driving to align with other moving vehicle offences is exempt from the requirement to provide a Regulatory Impact Statement. This is on the basis that it is a technical adjustment that is expected to have no or minor impacts on businesses, individuals or not-for-profit entities.

Climate Implications

23 There are no climate implications from this proposal.

Population Implications

24 This amendment will only affect those using a mobile phone when driving (which is already an offence). However, there might be implications for some people who may struggle to pay the higher fine and/or if this results in unpaid fines being referred to Courts for collection.

25 To partially mitigate this, road policing staff routinely employ a graduated response model for traffic infringements and offer compliance solutions, particularly where better safety outcomes can be supported. Where the infringement relates to a critical safety matter such as distracted driving, Police can offer alternative resolutions.

26 There is a potential risk that Māori could be disproportionately affected by inequitable enforcement practices. Increasing the penalty does not increase the risk of

inequitable enforcement, however, low socio-economic and vulnerable communities will be more impacted by an increase in fines compared to those on higher incomes.

27 Improving road safety outcomes for Māori is now an integral component of the Operational Outcomes Framework for road policing. The development of the Operational Outcomes Framework to recognise and act on the Crown's obligations in partnership with Iwi Māori is guided by both Te Huringa o Te Tai and Te Ara Kotahi, the existing organisational Māori strategies for Police and Waka Kotahi respectively.

Consultation

28 Waka Kotahi, the Treasury, NZ Police, the Ministry of Justice, Te Puni Kōkiri, the Ministry of Social Development, Office for Disability Issues, the Ministry for Women, the Ministry of Business, Innovation and Employment Workplace Relations and Safety Portfolio team, Department of Internal Affairs, Ministry of Education, Ministry of Primary Industries, ACC, Worksafe and Parliamentary Counsel Office were all consulted on the proposal. The Department of Prime Minister and Cabinet was informed.

29 Agencies consulted did not raise any concerns with the proposal. Police noted that demerit points should also be considered in the wider review of key road safety penalties commencing this year.

30 While this specific proposal has not been publicly consulted on, there is support from stakeholders and the general public for increasing the current penalties for mobile phone use while driving. Waka Kotahi's 2020 *Public Attitudes to Road Safety* survey found 80 percent of respondents supported much higher fines for using a mobile phone while driving.

Communications

31 The Amendment Regulations will be notified in the *New Zealand Gazette*. Waka Kotahi NZ Transport Agency will communicate this adjusted fee to the public and incorporate this change into their national road safety communications campaign.

Proactive Release

32 Subject to the requirements of the *Official Information Act 1982*, I intend to proactively release this paper and associated papers within 30 days of the Cabinet Economic Development Committee decision.

Recommendations

The Minister for Transport recommends that the Committee:

1 **note** that the current infringement fee for using a mobile phone while driving is $80 and was set in 2009 at the time the offence was created

2 **note** that the current fee is an anomaly in the current penalties system and no other infringement fees are set at $80; the fee for most moving vehicle offences is $150

3 **agree** to increase the infringement fee for using a mobile phone while driving to $150 to align with other related penalties

4 **note** that driving while using a mobile phone carries 20 demerit points which is the same number of points that applies to several other moving vehicle offences that carry a $150 infringement fee

5 **note** that no changes are proposed at this time to the number of demerit points associated with using a mobile phone while driving

6 **note** that to give effect to recommendation 3 above, an amendment to Schedule 1 of the Land Transport (Offences and Penalties) Regulations 1999 is required

7 **agree** to amend Schedule 1 of the Land Transport (Offences and Penalties) Regulations 1999 to give effect to recommendation 3

8 **note** that the Land Transport (Offences and Penalties) Amendment Regulations 2021 will give effect to recommendation 3

9 **authorise** the submission of the Land Transport (Offences and Penalties) Amendment Regulations 2021 to the Executive Council

10 **note** that the Land Transport (Offences and Penalties) Amendment Regulations 2021 will come into force on 16 April 2021

11 **note** that the Land Transport (Offences and Penalties) Amendment Regulations 2021 will be communicated directly to the NZ Police

12 **note** that I intend to issue a press release outlining the increase to the infringement fee for using a mobile phone while driving and that Waka Kotahi will incorporate the change in their communications campaigns on road safety

13 **note** that I intend to proactively release this paper and associated papers within 30 days of the Cabinet Economic Development Committee decision.

Authorised for lodgement

Hon Michael Wood

Minister of Transport

In confidence

Office of the Minister of Transport

Cabinet Economic Development Committee

INCREASING THE INFRINGEMENT FEE FOR USING A MOBILE PHONE WHILE DRIVING

Proposal

1 This paper:

1.1 seeks ~~Cabinet~~ agreement to adjust the infringement fee for using a mobile phone while driving from $80 to $150 to align with other moving vehicle offences

1.2 ~~recommends that the Cabinet Economic Development~~asks the Committee to authorise the submission to Executive Council of the Land Transport (Offences and Penalties) Amendment Regulations 2021.

Relation to government priorities

2 This is an operational adjustment that requires Cabinet approval. It also contributes to the Government's commitments on road safety.

Distracted driving due to mobile phone use is a contributing factor in road crashes

3 Between 2015 and 2019, there were 22 road deaths in New Zealand and 73 serious injuries where driver attention was diverted by a mobile phone (noting that these numbers are likely to be under-reported).

~~3~~4 Using a mobile phone while driving has a higher risk of distraction and a greater negative effect on driving behaviour than activities such as conversing with a passenger. This is because passengers are aware of the traffic situation and moderate their conversation accordingly.

~~4~~5 In 2020, Police issued 39,090 infringement notices ~~issued~~ for using a mobile phone while driving.

The current fee for using a mobile phone while driving is $80, which is out of step with other moving vehicle offences (set at $150)

~~5~~6 Schedule 1 of the Land Transport (Offences and Penalties) Regulations 1999 specifies the level of infringement fee~~s~~ payable for ~~particular~~ each offence~~s~~. This includes a range of road safety related offences including using a mobile phone while driving.

~~6~~7 The current infringement fee payable by a driver who commits the offence of using a mobile phone while driving a vehicle is $80.

~~7~~8 The current fee for using a mobile phone while driving was set in 2009 when the offence was created. The amount reflected a cautious approach to the introduction of a new offence.

~~8~~9 The current fee is an anomaly in the current penalties system. No other individual infringement fee is ~~are~~ set at $80. While the fees for most parking offences are set at $40-60, the fee for the majority of moving vehicle offences is $150 (including driving too close, failing to give way, failing to stop, and failing to drive within lane).

~~9~~10 Using a mobile phone while driving carries 20 demerit points. This is the same number of points that applies to several other moving vehicle offences that carry a $150 infringement fee (including driving too close, failing to keep left, and failing to allow impeded~~ing~~ traffic to pass). I am not at this time proposing changing the number of demerit points associated with using a mobile phone while driving.

There is an opportunity to align the fee with public expectations~~.~~

~~10~~11 There is support from stakeholders and the general public to increase the current penalties for mobile phone use while driving. This issue is frequently raised in Ministerial correspondence.

~~11~~12 Similarly, a key theme from consultation on *Road to Zero* (the national road safety strategy) in 2019 was the need for greater enforcement, especially around impaired driving and mobile phone use. Many submitters called for a substantial increase in penalties to deter the use of mobile phones while driving.

I am seeking Cabinet agreement to adjust the fee to align with other related penalties~~.~~

~~12~~13 Increasing the infringement fee is an operational adjustment. Raising the fee alone will not necessarily deter mobile phone use while driving. However, a change to $150 would provide a clear signal to drivers and better represent the seriousness of the offence.

14 I consider this proposal low-risk. ~~I do not foresee any significant risks or significant flow-on impacts to the justice pipeline, as this change is not linked to an increase in enforcement activity.~~ There might be implications for some people who ~~may~~ struggle to pay the higher fine, particularly if this results in unpaid fines being referred to Courts for collection, although this proportion is likely to be small.

~~13~~15 Making this change will create a consistent baseline for further work to be undertaken as part of a wider review of key road safety penalties. This work was committed to under the *Road to Zero* initial action plan and is expected to commence later in the year. Any proposed changes resulting from this review will be publicly consulted on.

Timing and the 28-day Rule

~~14~~16 The Amendment Regulations will come into force on 16 April 2021, 28 days following their notification in the *New Zealand Gazette*. No waiver of the 28-day rule is sought.

Financial Implications

~~15~~

17 There are no additional financial implications to this proposal for the Crown. Fee revenue collected from traffic infringements goes into the Government's Consolidated Fund.

Legislative Implications

~~16~~18 Implementation of the increased infringement fee will be through the Amendment Regulations. No further legislative changes are required.

Compliance

~~17~~19 The Amendment Regulations compl~~ies~~y with:

~~17.1~~19.1 the principles of the Treaty of Waitangi

~~17.2~~19.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993

~~17.3~~19.3 the principles and guidelines set out in the Privacy Act ~~1993~~2020

~~17.4~~19.4 relevant international standards and obligations

~~17.5~~19.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

~~18~~20 There are no grounds for the Regulations Review Committee to draw the Regulations to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

~~19~~21 The Land Transport (Offences and Penalties) Amendment Regulations 2021 have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

~~20~~22 The Regulatory Impact ~~Assessment~~ Analysis Team at the Treasury has determined that the regulatory proposal to adjust the fee for using a mobile phone while driving to align with other moving vehicle offences is exempt from the requirement to provide a Regulatory Impact Statement. This is on the basis that it is a technical adjustment that is expected to have no or minor impacts on businesses, individuals or not-for-profit entities.

Climate Implications

~~21~~23 There are no climate implications from this proposal.

Population Implications

~~22~~24 ~~Changes to enforcement are not being proposed and so this regulation~~This amendment will only affect those using a mobile phone when driving (which is already an offence). However, there might be implications for some people who may struggle to pay the higher fine and/or if this results in unpaid fines being referred to Courts for collection.

25 To partially mitigate this, road policing staff routinely employ a graduated response model for traffic infringements and offer compliance solutions, particularly where better safety outcomes can be supported. Where the infringement relates to a critical safety matter such as distracted driving, Police can offer alternative resolutions.

26 There is ~~also~~ a potential risk that Māori could be disproportionately affected by inequitable enforcement practices. Increasing the penalty does not increase the risk of inequitable enforcement, however, low socio-economic and vulnerable communities will be more impacted by an increase in fines compared to ~~individuals~~those on higher incomes.

27 Improving road safety outcomes for Mā~~a~~ori is now an integral component of the Operational Outcomes Framework for road policing. The development of the Operational Outcomes Framework to recognise and act on the Crown's obligations in partnership with Iwi Māori is guided by both Te Huringa o Te Tai and Te Ara Kotahi, the existing organisational Māori strategies for Police and Waka Kotahi respectively ~~To partially mitigate some of the potential harms to Māori, the NZ Police is currently undertaking a programme of work to manage the potential for unconscious bias in police practices~~.

Consultation

28 Waka Kotahi, the Treasury, NZ Police, the Ministry of Justice, Te Puni Kōkiri, the Ministry of Social Development, Office for Disability Issues, the Ministry for Women, the Ministry of Business, Innovation and Employment ~~health and safety policy team~~Workplace Relations and Safety Portfolio team, Department of Internal Affairs, Ministry of Education, Ministry of Primary Industries, ACC, Worksafe and Parliamentary Counsel Office were all consulted on the proposal. The Department of Prime Minister and Cabinet was~~ere~~ informed.

~~23~~29 ~~[Insert summary of feedback following consultation]~~Agencies consulted did not raise any concerns with the proposal. Police noted that demerit points should also be considered in the wider review of key road safety penalties commencing this year.

~~24~~30 While this specific proposal has not been publicly consulted on, there is support from stakeholders and the general public for increasing the current penalties for mobile phone use while driving. Waka Kotahi's 2020 *Public Attitudes to Road Safety* survey found 80 percent~~%~~ of respondents supported much higher fines for using a mobile phone while driving.

Communications

~~25~~31 The Amendment Regulations will be notified in the *New Zealand Gazette*. Waka Kotahi NZ Transport Agency will communicate this adjusted fee to the public~~,~~ and incorporate this change into their national road safety communications campaign.

Proactive Release

~~26~~32 Subject to the requirements of the *Official Information Act 1982*, I intend to proactively release this paper and associated papers within 30 days of the Cabinet Economic Development Committee decision.

Recommendations

The Minister for Transport recommends that the Committee:

1 **note** that the current infringement fee for using a mobile phone while driving is $80 and was set in 2009 at the time the offence was created

2 **note** that the current fee is an anomaly in the current penalties system and no other infringement fees are set at $80; the fee for most moving vehicle offences is $150

3 **agree** to increase the infringement fee for using a mobile phone while driving to $150 to align with other related penalties

4 **note** that driving while using a mobile phone carries 20 demerit points which is the same number of points that applies to several other moving vehicle offences that carry a $150 infringement fee

5 **note** that no changes are proposed at this time to the number of demerit points associated with using a mobile phone while driving

6 **note** that to give effect to recommendation 3 above, an amendment to Schedule 1 of the Land Transport (Offences and Penalties) Regulations 1999 is required

7 **agree** to amend Schedule 1 of the Land Transport (Offences and Penalties) Regulations 1999 to give effect to recommendation 3

8 **note** that the Land Transport (Offences and Penalties) Amendment Regulations 2021 will give effect to recommendation 3

9 **authorise** the submission of the Land Transport (Offences and Penalties) Amendment Regulations 2021 to the Executive Council

10 **note** that the Land Transport (Offences and Penalties) Amendment Regulations 2021 will come into force on 16 April 2021

11 **note** that the Land Transport (Offences and Penalties) Amendment Regulations 2021 will be communicated directly to the NZ Police

12 **note** that I intend to issue a press release outlining the increase to the infringement fee for using a mobile phone while driving and that Waka Kotahi will incorporate the change in their communications campaigns on road safety

13 **note** that I intend to proactively release this paper and associated papers within 30 days of the Cabinet Economic Development Committee decision.

Authorised for lodgement

Hon Michael Wood

Minister of Transport

In Executive Council

Her Excellency the Governor-General is recommended to sign the attached Order in Council making Land Transport (Offences and Penalties) Amendment Regulations 2021

Hon Michael Wood
Minister of Transport

Approved in Council

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____

____
Clerk of the Executive Council

PCO 23384/1.3
Drafted by Amy Orr

IN CONFIDENCE

Land Transport (Offences and Penalties) Amendment Regulations 2021

Governor-General

Order in Council

At Wellington this day of 2021

Present:
in Council

These regulations are made under section 167 of the Land Transport Act 1998 on the advice and with the consent of the Executive Council.

Contents

Regulations

1 Title

These regulations are the Land Transport (Offences and Penalties) Amendment Regulations 2021.

2 Commencement

These regulations come into force on 16 April 2021.

3 Principal regulations

These regulations amend the Land Transport (Offences and Penalties) Regulations 1999 (the **principal regulations**).

4 Schedule 1 amended

In Schedule 1, item relating to Land Transport (Road User) Rule 2004 (61001), Driver uses mobile phone while driving a vehicle, replace “80” with “150”.

Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations take effect on 16 April 2021. They amend the Land Transport (Offences and Penalties) Amendment Regulations 1999.

The amendment increases the infringement fee for using a mobile phone while driving a vehicle. This infringement fee was set in 2009, when using a phone while driving became both an offence and an infringement offence. The infringement fee is increased from $80 to $150.

The maximum penalty for the offence of using a phone remains the same ($1,000). The demerit points also remain the same (20).

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*:
These regulations are administered by the Ministry of Transport..

Talking Points for Cabinet

Cabinet Committee:	Cabinet Economic Development Committee
Date:	10 March 2021
Paper Title:	Increasing the infringement fee for using a mobile phone while driving
Portfolio:	Transport

Talking Points

Key points

- The current penalty for mobile phone use while driving is an anomaly and out of step with other related penalties as well as the public's expectations.
- There is a strong rationale for making a simple adjustment to the regulations from $80 to $150 as a matter of priority. This is an operational adjustment that requires Cabinet approval.
- This change would also contribute to the Government's commitments on road safety.

Current situation

- The current fee of $80 was set in 2009 when the offence was created. It reflects a cautious approach to the introduction of a new offence.
- The current fee is an anomaly. No other infringement fees are set at $80.
- The fee for the majority of comparable moving vehicle offences is higher (at $150). This includes fees for driving too close, failing to give way, failing to stop, and failing to drive within lane.
- Using a mobile phone while driving also carries 20 demerit points. This is the same number of demerit points as for other moving vehicle offences that carry a $150 infringement fee.

Proposal to increase the fee to bring it in line with fees for similar offences

- There is an opportunity to better align the infringement fee with fees for other comparable offences. This change would give a clear signal to drivers and better represent the seriousness of the offence.

- There is strong support from stakeholders and the general public to increase the fee. Waka Kotahi's 2020 *Public Attitudes to Road Safety* survey found 80% of respondents supported much higher fines for using a mobile phone while driving. This issue has also been frequently raised in Ministerial correspondence.

- I consider this proposal low-risk. There might be implications for some people who may struggle to pay the higher fine, although this proportion is likely to be small. There are no additional financial implications to this proposal for the Crown.

Next steps

- If approved, the Amendment Regulations will be notified in the *New Zealand Gazette* and come into force 28 days later.

- I intend to issue a press release outlining the increase to the infringement fee for using a mobile phone while driving and that Waka Kotahi will incorporate the change in their communications campaigns on road safety

- Waka Kotahi NZ Transport Agency will communicate this adjusted fee to the public, and incorporate this change into their national road safety communications campaign.

- Subject to the requirements of the Official Information Act 1982, I intend to proactively release this paper and the associated Cabinet minute within 30 days of the Cabinet Economic Development Committee decision.

Additional Q&As

How many people will this change affect?

- The change will only affect those using a mobile phone while driving (which is already an offence). In 2020 there were 39,090 infringement notices issued for using a mobile phone while driving.

- The proposed change only affects the infringement fee level.

Where does the money go?

- As for other traffic infringements, money collected goes into the Government's Consolidated Fund.

How much are equivalent fees overseas?

- Penalties for using a mobile phone while driving vary, but many other jurisdictions have much higher instant fines for equivalent conduct.

- For example, in the United Kingdom the fine is £200 while in some states in Australia (Western Australia, Queensland) it is now AU$1000, although Australia generally has much higher instant fines than New Zealand.

Was the public consulted?

- The specific proposal has not been publicly consulted on. However, there is strong support from stakeholders and the general public for increasing the current penalties for mobile phone use while driving.

- A key theme from consultation on Road to Zero (the national road safety strategy) in 2019 was the need for greater enforcement, especially around impaired driving and mobile phone use, with many submitters called for a substantial increase in penalties for mobile phone use to deter their use while driving.

- This issue has also been frequently raised in correspondence to Ministers since the current fee was introduced.

How much of an issue is mobile phone use while driving? How widespread is this problem?

- Waka Kotahi's 2020 *Public Attitudes to Road Safety* survey found 16% of people – including 25% of those aged 20 to 39 years – had made a handheld phone call while driving in the last month.

- The same survey found 23% of people had sent or received a text while driving in the last month – this was a decrease from 38% when the survey was last conducted in 2016.

What's the risk of using a mobile phone while driving?

- Distracted driving due to mobile device use is a contributing factor in road crashes.

- Between 2015 and 2019, there were 22 road deaths in New Zealand and 73 serious injuries where driver attention was diverted by a mobile phone. It is likely that this number is under-reported.

- A meta-analysis concluded that handheld mobile phone use has a negative impact on road safety, resulting in increased numbers of crashes and near misses, and increased crash injury severities.

- International evidence shows that the distraction caused by mobile phones can impair performance in a number of ways, including longer reaction times (notably braking reaction time, but also reaction to traffic signals), impaired ability to keep in the correct lane, shorter following distances, and an overall reduction in awareness of the driving situation.

- There is also a higher risk of distraction and a greater negative effect on driving behaviour for those using a mobile phone compared to other activities (e.g. conversing with a passenger). Although both scenarios have distraction potential, studies have shown that reaction times are slower among drivers talking on a phone than among those talking to a passenger. This is because passengers are aware of the traffic situation and moderate their conversation accordingly.

Will raising the fee deter the behaviour?

- Raising the fee alone will not necessarily deter mobile phone use while driving.

- However, aligning it with other offences sends a strong signal to drivers about the seriousness of the offence relative to other safety-related driving offences.

- This message will also be reinforced through Waka Kotahi NZ Transport Agency's national road safety campaigns, which will contribute to the deterrence effect.

Is $150 enough? Why aren't you proposing a higher fee?

- Raising the fee to $150 ensures alignment with other similar offences and creates a consistent baseline.

- I have asked my officials to complete a systematic review of road safety penalties in 2021 as committed to under the Road to Zero initial action plan.

- The review will ensure that penalties act as an effective deterrent and align with the risk of harm from the offence. This may lead to additional increases in the fee for using a mobile phone while driving.

What about people who can't afford the increased fine?

- There might be implications for some people who may struggle to pay the higher fine and/or if this results in unpaid fines being referred to Courts for collection.

- However, using a mobile phone while driving is different from other offences such as driving without a valid Warrant of Fitness and/or Registration or Drivers Licence where the cost of maintaining and/or registering a vehicle, or paying for the relevant licensing test/renewal, may be a contributing factor.

Are you proposing changes to the demerit points?

- I am not proposing any changes to the number of demerit points associated with this offence (currently 20 demerit points) at this time.

- However, the systematic review of road safety penalties shortly commencing could consider changes to both relevant fees and associated demerit points.

Document 2

Ministry of Transport
TE MANATŪ WAKA

MEETING BRIEFING

1 March 2021

OC210122

Hon Michael Wood
Minister of Transport

MEETING WITH JEREMY WARD FROM EAST BY WEST FERRIES

Snapshot

To support your meeting with Jeremy Ward from East by West Ferries. East by West Ferries are a commuter and tourism ferry operator in Wellington. The Wellington Electric Boat Building company are currently building the first electric ferry in the Southern Hemisphere for East by West Ferries.

Time and date	**9:15am – 9:45am, 3 March 2021**
Venue	**ZOOM**
Attendees	Jeremy Ward, Managing Director, East by West Ferries
Officials attending	Ewan Delany, Manager, Environment, Emissions & Adaptation Michelle Palmer, Graduate Advisor, Environment, Emissions & Adaptation
Agenda	N/A
Talking points	N/A

Contacts

Name	Telephone	First contact
Ewan Delany, Manager, Environment, Emissions & Adaptation	[redacted]	✓
Michelle Palmer, Graduate Advisor, Environment, Emissions & Adaptation	[redacted]	

Withheld under Section 9(2)(a) of the Official Information Act 1982

MEETING WITH JEREMY WARD FROM EAST BY WEST FERRIES

Key points

- Jeremy Ward is currently the Managing Director of East by West Ferries, which is based in Wellington.
- East by West Ferries was set up by Jeremy Ward over 30 years ago as both a commuter and tourist operation. East by West Ferries operate between Queens Wharf, Matiu/Somes Island, Days Bay, Eastbourne, and Seatoun.
- East by West Ferries is currently progressing its electric ferry boat build. East by West Ferries is aiming to have the electric ferry in service in April 2021. The ferry will be the first fully electric passenger ferry in the Southern Hemisphere.
- Jeremy Ward commissioned the electric ferry to be built locally in Wellington in 2018. This led to the establishment of a new building company – Wellington Electric Boat Building company limited (WEBB).
- East by West Ferries have invited you to come and view the ferry under final construction at Seaview Marina in Lower Hutt. The visit would take around 20 minutes.
- Jeremy Ward will likely want to discuss the current electric ferry boat build and his vision for East by West Ferries, including a new public transport ferry service operating between Wellington's Queens Wharf and the Miramar Peninsula, with a connecting electric shuttle bus to Wellington Airport.
- Jeremy also wishes to discuss extending the funding of public transport bus electrification to ferries.

East by West Ferries is a commuter and tourist operation running in Wellington

1 East by West Ferries operate between Queens Wharf, Matiu/Somes Island, Days Bay, Eastbourne and Seatoun, and is available to both tourists and commuters.

2 East by West Ferries currently operate two passenger ferries. To date, the service has carried over 4.5 million passengers and completed close to 150,000 trips across the harbour.

3 The average price for a return ferry ticket (e.g. Queens Wharf to Days Bay) is $24.

4 The existing ferry service is part of Wellington's Public Transport Network (Metlink) and East by West Ferries is contracted to Greater Wellington Regional Council (GWRC) to provide services. East by West Ferries has been working towards a third ferry and is currently working with GWRC to negotiate a long term contract for future public ferry services on Wellington Harbour. You may like to ask Jeremy Ward the status of the proposal.

WEBB is currently progressing the East by West electric ferry boat build

5 WEBB is on track to build the Southern Hemisphere's first fully electric passenger ferry.[1] This $4 million electric ferry is intended to operate on the Queen's Wharf to Days Bay route at speeds up to 20 knots, and has a charging time of 15 minutes. The ferry was due to begin service by mid-2020, but has been delayed due to COVID-19. East by West Ferries now expects the service to be in by April.

6 The electric ferry would also allow East by West Ferries to start a planned service between the Wellington Central Business District and Miramar, which would also service the Wellington Airport by an electric shuttle bus. Combined with East by West Ferries proposed electric shuttle bus from the Miramar Wharf, this will see a public transport journey from central Wellington to the airport door guaranteed in under 20 minutes, and to Miramar in 7-8 minutes, including peak traffic hours. To unlock the project, East by West Ferries state that support is needed to upgrade the disused Miramar Wharf.

7 In a proposal to the government's infrastructure fund, the company has asked for $25 million to develop the Miramar Peninsula and introduce two new electric ferries. [redacted] You may like to ask Jeremy Ward the status of the proposal.

Withheld under Section 9(2)(i) of the Official Information Act 1982

8 [redacted]

Withheld under Section 9(2)(i) of the Official Information Act 1982

Emission reductions from electric ferries

9 Significant carbon dioxide reductions are expected from electric ferries when compared to similar sized diesel vessels, as well as decreases in noise pollution. Fossil fuel vessels typically have a 29 year life, highlighting the importance of investing in carbon neutral vessels should the need to replace the existing fleet arise.

10 Emissions reductions depend on vessel size, design, and trip length, and will vary depending on the route and technology used. When comparing diesel with electric, Auckland Transport has estimated that the operational emissions of electric vessels is roughly seven percent of that of diesel vessels.

Funding for electric ferries

11 At present, there are higher capital costs associated with electric ferries compared to diesel ferries. Nevertheless while electric ferries have higher upfront costs, they deliver long-term operating cost savings and emissions reductions.

12 At present there is no existing Government funding stream that specifically targets ferry electrification. However, the proposed additional Budget 2021 funding and

[1] It has a 135 passenger carrying capacity compared to East by West's 99 passenger capacity for its existing two ferries.

redesign for the Low Emissions Vehicle Contestable fund would enable the fund to support low emissions marine vessels.

13 Two previous electric ferry projects (Black Cat, East by West) were funded through EECA's Technology Demonstration programme. This was a one-off dedicated funding round for maritime applications.

14 East by West Ferries wish to discuss extending the funding of public transport bus electrification to ferries. This is outside the scope of current work and the Labour manifesto commitment.

15 As you requested, you will receive a briefing this week on potential funding options for electric ferries.

Annex 1: Biography and Talking Points

Biography – Jeremy Ward

Jeremy Ward is currently the Managing Director of East by West Ferries, which is based in Wellington. Jeremy established the commuter and tourist operation over 30 years ago.

Jeremy has background in research and development in tourism and transport related businesses, including interisland ferry services, cable cars, and trams.

Jeremy is a committee member of the New Zealand Marine Transport Association, which represents over one hundred marine transport operators throughout New Zealand.

Possible Questions

- When could the ferry visit in Seaview Marina in Lower Hutt take place?
- What is the status of East by West Ferries' $25 million proposal for two new electric ferries?
- What is the status of East by West Ferries long term contract for future public ferry services on Wellington Harbour with GWRC?
- What kind of support is needed to unlock a new public transport ferry service operating between Wellington's Queens Wharf and the Miramar Peninsula, with a connecting electric shuttle bus to Wellington Airport?
- What role does East by West Ferries think biofuels or hydrogen could play in its future ferry fleet?

Ministry of Transport
TE MANATŪ WAKA

MEETING BRIEFING

1 March 2021

OC210102

Hon Michael Wood
Minister of Transport

Meeting with BusinessNZ Energy Council

Snapshot

To support your meeting with Tina Schirr, the Executive Director of Energy and Innovation at BusinessNZ Energy Council, to discuss opportunities and priorities for transitioning to clean fuels in the transport sector.

Time and date	**12:30pm – 1:00pm, 3 March 2021**
Venue	**Your Office (EW4.1R) (either in person or via Zoom)**
Attendees	Tina Schirr, Executive Director, BusinessNZ Energy Council
Officials attending	Ewan Delany, Manager, Environment, Emissions & Adaptation
Agenda	N/A
Talking points	N/A

Withheld under Section 9(2)(a) of the Official Information Act 1982

Contacts

Name	Telephone	First contact
Ewan Delany, Manager, Environment, Emissions & Adaptation	[redacted]	✓
Michelle Palmer, Graduate Advisor, Environment, Emissions & Adaptation	[redacted]	

Meeting with BusinessNZ Energy Council

Key points

- Tina Schirr is the Executive Director of the BusinessNZ Energy Council (BEC). She is responsible for the development of policy on matters relating to energy, transport and innovation.

- The BEC is a group of New Zealand energy sector organizations (including energy-sector business, government and research organizations) who take a leading role in creating a sustainable, affordable, and secure energy future.

- We anticipate that Tina Schirr would like to discuss:

  - How transitioning to clean fuels will play a key role in moving New Zealand's economy to net zero carbon by 2050.

  - How the transition to a low carbon energy future can be more successful.

  - The need for a long-term whole-of-energy strategy to decarbonise transport.

  - The importance of continued investigation of electrification, biofuels and hydrogen as key aspects to New Zealand's future transport system.

- We anticipate Tina Schirr will also seek discussion around the Climate Change Commissions (CCC) draft advice, which she is familiar with.

- The BEC's draft submission on the CCC draft advice supports the general direction of the CCC advice in relation to transport.

Background

1 The BEC is a group of New Zealand energy sector organizations (including energy-sector business, government and research organizations) who take a leading role in creating a sustainable, affordable, and secure energy future. The Ministry of Transport is a member of the BEC, and the BEC is the New Zealand member committee of the World Energy Council.

2 The BEC provided a Briefing to the Incoming Minister (BIM) to your office on 16 November 2020. The BEC recommended that:

2.1 we need a long-term whole-of-energy strategy to decarbonise transport, as well as other sectors; and

2.2 we need to continue investigation of electrification, biofuels and hydrogen as key aspects to New Zealand's future transport system. It also states that supporting and investing in the right infrastructure will be essential to encourage this transition.

3 In the BIM the BEC also states that the New Zealand Emission Trading Scheme is a primary mechanism for combating climate change but that a supportive policy

Please note this paragraph number 3 is an incomplete drafting error by the Ministry of Transport.
The correct paragraph should include:

"Any additional interventions should follow only where there is a clearly articulated positive net benefit. The market must be allowed to operate freely to have the capacity to find and implement the most cost-effective solutions. The Government should create an outcome-based regulatory environment that enables the private sector to innovate and forge a market-led path to 2050. The prospect of increasing complexity suggests caution in designing policy frameworks. More transparency is required. To address this increased complexity, for some time now, the BEC has collaborated with businesses, academia, and government on a continuous basis to further develop and improve the New Zealand Energy Scenarios – TIMES-NZ 2.0."

environment is also needed to accelerate the development of zero carbon energy sources. The BEC Chair, Hon David Caygill, recently chaired a review of the Emissions Trading Scheme. This underlined sentence is a drafting error by the Ministry of Transport and is not correct.

The BEC's draft submission on the CCC draft advice supports the general direction of the CCC advice in relation to transport

4 The following paragraphs 5 – 7 lay out the key points of the BEC's submission on the CCC draft advice regarding transport. These key points have been grouped by the CCC draft advice Objectives.

5 CCC Objective 1 *(Develop an integrated national transport network to reduce travel by private vehicles and increase walking, cycling, low emissions public and shared transport)*

5.1 The BEC thinks that first and last kilometre solutions should be low emissions, and organised by commercial providers and councils so that they fit local circumstances.

5.2 The BEC supports the CCC recommendation that mobility outcomes should be improved but the CCC advice doesn't emphasise the importance of the transformational change required. The BEC believes that personal vehicle driving, especially single occupancy, needs to be dis-incentivised.

6 CCC Objective 2 *(Accelerate light electric vehicles uptake)*

6.1 The BEC thinks the CCC advice relies overly on a single technology (electric vehicles) for decarbonising light vehicles, for which the assumptions on possible import and take-up rates through to 2030 are unrealistic.

6.2 As New Zealand is a small and remote market, the BEC question whether bulk procurement of EVs is feasible at the levels and within the timeframe proposed by the CCC. It believes this question needs to be dealt in partnership with the private sector.

7 CCC Objective 3 *(Increase the use of low carbon fuels for trains, ships, heavy trucks and planes)*

7.1 The BEC believes that biofuels have a role to play in helping the transport sector decarbonise, especially where alternative options are not available in the short and medium terms, e.g. rail, marine and aviation. Therefore the BEC recommends that a time-critical necessary action for the government is to first research the biofuel opportunity in New Zealand and undertake a feasibility study on producing biofuels in commercial quantities. Despite this the BEC states that hydrogen and electrification still play an important role as low carbon fuels.

7.2 The BEC supports the CCC's recommendation on introducing low-carbon fuel standards as a technology-neutral policy, and it thinks this should be a time-critical necessary action.

Current work underway in the transport and energy space

8 Relevant government work underway in the transport energy space includes:

8.1 The Clean Car (Import) Standard – which will help to shift vehicle imports towards low-emissions models and support upscaling domestic electric vehicle supply.

8.2 Hīkina te Kohupara – which will inform development of transport emissions reduction policies under the Emissions Reduction Plan (ERP). ERP policies will target progress towards meeting the five-yearly emissions budgets as set out under the Zero Carbon Act.

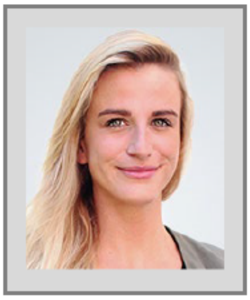
8.3 The biofuels mandate – the Government has agreed in principle to implement a biofuels mandate. The Ministry and MBIE are leading the development of a biofuels mandate proposal and undertaking analysis of the potential impacts of a biofuels mandate. The Minister of Energy and Resources and the Minister of Transport are expected to report back to Cabinet on the proposal in April 2021.

8.4 The 2020 Green Freight strategic working paper – examines the potential role alternative green fuels (electricity, green hydrogen and biofuels) could play in reducing emissions from heavy freight vehicles and informs future work.

8.5 A range of work programmes on electric vehicle charging infrastructure (e.g. EECA has also recently consulted on a Publicly Available Specification for electric vehicle chargers for residential use).

Annex 1: Biography and Talking Points

Biographies



Tina Schirr, Executive Director Energy and Innovation, BusinessNZ Energy Council

Tina is responsible for the development of policy on matters relating to transport, energy and innovation at the BEC. Prior to this she has worked as the Senior Policy Advisor for Energy and Innovation at the BEC. Tina has also worked in the energy space in Germany.

Discussion points

- What does the BEC's vision for a long-term whole-of-energy strategy to decarbonise transport look like?
- What does the BEC see as the key opportunities for New Zealand as we transition to a low carbon energy and transport future?
- What does the BEC think of the CCC's suggestion of bulk procurement of electric vehicles?
- Do you have any good overseas examples of recent policies aiming to increase the use of low carbon fuels for trains, ships, heavy trucks and planes?

Ministry of Transport
TE MANATŪ WAKA

TE TAI ŌHANGA
THE TREASURY

4 March 2021 OC210096

T2021/431

Hon Michael Wood
Minister of Transport

Action required by:
Monday, 8 March 2021

Hon Grant Robertson
Minister of Finance

CITY RAIL LINK LIMITED – APPROVAL SOUGHT FOR AMENDMENT TO FOREIGN CURRENCY ACCOUNTS AND DERIVATIVES PROTOCOL

Purpose

This report seeks Ministerial approval to an amendment to the City Rail Link Ltd (CRLL) Foreign Currency Accounts and Derivatives Protocol (the Protocol) to allow CRLL to hold foreign currency accounts and enter into foreign exchange derivatives worth up to a total value of NZ$200 million (an increase from the current limit of NZ$100 million).

Key points

- Foreign currency accounts are required to allow CRLL to buy euros (EUR) and Australian dollars (AUD) to make payments for invoices in those currencies. Hedging is required for foreign currency exposures for both EUR and AUD. For example, the foreign currency contract payments for the tunnel boring machine [redacted] need to be hedged to help reduce cost exposure for the project resulting from movements in the foreign exchange market. The current limit was approved by Ministers in June 2020 (OC200398 and T2020/1684 refers).

Withheld under section 9(2)(b)(ii) of the Official Information Act 1982

- Following the integration of the C5 and C7 contracts into the Link Alliance contract, CRLL is seeking an increase of NZ$100 million to the maximum limit for holding foreign currency accounts and entering into foreign exchange derivatives, taking the maximum limit to NZ$200 million in value. The increase is based on the Link Alliance now estimating their whole of project foreign exchange requirements.

- For the avoidance of doubt, the Protocol has been amended to make clear that the limit applies cumulatively to these transactions over time up until 31 December 2024, after which no foreign currency transactions are approved under this Protocol.

- The other conditions of the Protocol remain unchanged (apart from the minor removal of the clause related to sourcing derivatives from the Treasury), and there are no unreasonable risks to the increased limit. Indeed, it provides opportunity for CRLL to benefit from the stronger NZ dollar to lock in more favourable foreign exchange rates than before.
- Auckland Council officials have been consulted and are also comfortable with the limit being increased to NZ$200 million.

Recommendations

We recommend that you:

1 **note** that to approve CRLL to hold foreign currency and enter into derivatives worth up to NZD$200 million, the Minister of Finance needs to approve the holding of foreign currency under section 158(6) of the Crown Entities Act 2004 (the Act) and the Minister of Finance and Minister of Transport would jointly need to approve the use of derivatives under section 160(1)(b) of the Act

2 **agree** that CRLL may hold foreign currency in accordance with section 158(6) of the Act, which when combined with the value of foreign currency derivatives entered into approved under section 160(1)(b) of the Act, may be worth up to a limit of NZD$200 million in value

Yes / No
Minister of Finance

3 **agree** that CRLL may enter into derivatives for foreign currency hedging purposes in accordance with section 160(1)(b) of the Act, which when combined with held foreign currency approved under section 158(6), may be worth up to a limit of NZD$200 million in value

Yes / No
Minister of Finance

Yes/ No
Minister of Transport

4 **note** that, for the avoidance of doubt, further clarification has been added to the Protocol to make explicit that this limit applies cumulatively to these transactions over time up until 31 December 2024 after which no foreign currency transactions are approved under this Protocol

5 **note** that the Protocol also has a minor amendment to remove the requirement for CRLL to ensure all derivatives are sourced from the Treasury (where possible) as CRLL has successfully sourced competitively priced derivatives from the banking sector – the Treasury is comfortable with this amendment

6 **agree** that the Ministry of Transport notify the Foreign Currency Accounts and Derivatives Protocol in the *Gazette* on your behalf

Yes / No
Minister of Finance

7 **sign** the attached letter to the Chair of CRLL (**Attachment 1**)

Yes / No
Minister of Transport

[redacted]

[redacted]

Withheld under section 9(2)(a) of the Official Information Act 1982

David Taylor	Robert Anderson
Manager, National Infrastructure Unit	**Manager, Governance**
The Treasury	**Ministry of Transport**
03 / 03 / 2021	03 / 03 / 2021

Hon Grant Robertson	Hon Michael Wood
Minister of Finance	**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
Sarah Allen, Principal Adviser (acting), Governance, Ministry of Transport	[redacted]	✓
Robert Anderson, Manager, Governance, Ministry of Transport	[redacted]	

Withheld under section 9(2)(a) of the Official Information Act 1982

David Taylor, Manager, National Infrastructure Unit, The Treasury	[redacted]	

Withheld under section 9(2)(a) of the Official Information Act 1982

CITY RAIL LINK LIMITED – APPROVAL SOUGHT FOR AMENDMENT TO FOREIGN CURRENCY ACCOUNTS AND DERIVATIVES PROTOCOL

CRLL require an increased limit based on their new whole-of-project foreign currency requirements

Ministers previously provided approval for CRLL to hold foreign currency accounts and derivatives worth up to NZ$100 million

1 The current CRLL Foreign Currency Accounts and Derivatives Protocol (the Protocol) allows CRLL to hold foreign currency in accounts and also permits CRLL to enter into foreign exchange derivatives for hedging purposes. This allows CRLL to buy euros (EUR) and Australian dollars (AUD) to make payments for invoices in those currencies. Hedging is required for foreign currency exposures for both EUR and AUD. Taking such action helps reduce cost exposure for the project resulting from movements in the foreign exchange market.

2 CRLL are currently able to hold foreign currency accounts and enter into foreign currency derivatives worth up to NZ$100 million. The current limit was approved by Ministers in June 2020 (OC200398 and T2020/1684 refers).

Following advice from the Link Alliance, CRLL is seeking an increased limit

3 CRLL are now seeking an increase of a further NZ$100 million, based on the Link Alliance now estimating their whole-of-project foreign currency requirements following the integration of the C5 and C7 contracts into the Link Alliance contract. The only material change to the Protocol is in clause 5, where the limit has been changed from NZ$100 million to $200 million.

4 Clause 5 has also been amended to make clear that the limit applies cumulatively to these transactions over time up until 31 December 2024 after which no foreign currency transactions are approved under this Protocol. This is how the Protocol has been understood by all parties, but the Protocol has now been amended for the avoidance of doubt.

5 As at 31 December 2020, CRLL were holding NZ$80.7 million of foreign currency and derivatives. The CRLL Board has considered and approved the request for an increased limit of NZ$200 million, and CRLL are now seeking approval from you for this increased limit. Please note the figure of $80.7m in this paragraph is out of date and no longer accurate. CRLL are now holding less than $80.7m (as contracts have settled).

There is also one further minor change

6 CRLL requested that the clause stating "CRLL must endeavour to ensure that all derivatives are sourced from the Treasury, where it has the capacity to provide such derivatives" be removed. CRLL has successfully sourced competitively priced

derivatives from the banking sector and CRLL remains in communication with the Treasury regarding whether such services are necessary. The Treasury Capital Markets team has confirmed they are comfortable with this minor amendment.

7 The amended Protocol is attached for your consideration (see **Attachment 2**).

The process to amend the Protocol is outlined below

8 The necessary Ministerial approvals needed to change the Protocol are:

- for foreign currency derivatives – the Minister of Finance and the Minister of Transport under section 160(1)(b) of the Crown Entities Act 2004 (this approval is required as these activities are otherwise prohibited under the Act given CRLL's restrictions as defined in Schedule 4A of the Public Finance Act 1989)
- for foreign currency accounts – the Minister of Finance under section 158(6) of the Crown Entities Act 2004 (this approval is required as otherwise foreign currency accounts cannot be used).

9 The process to give effect to these approvals under the Crown Entities Act 2004 involves:

- the Minister of Finance and the Minister of Transport agreeing to the amendments to the Protocol, according to the required approvals above, in this report;
- the Minister of Transport communicating this in writing to the CRLL Chair (as per the attached draft letter); and
- the Minister of Finance notifying the approval of the use of derivatives in the *Gazette*, as per section 160(3) of the Crown Entities Act 2004.

There are no unreasonable risks associated with this change

10 The use of foreign currency accounts and derivatives by CRLL is appropriate for a project of CRL's scale, and is necessary to effectively manage foreign exchange risk associated with foreign currency payments for services to do with the project.

11 The other conditions of the Protocol remain largely unchanged. Monthly reporting provided to Sponsors by CRLL allows Sponsors to monitor the use of these facilities and how CRLL is managing its exposure to foreign exchange risk.

12 The increased limit provides opportunities for CRLL to benefit from the stronger New Zealand dollar to lock in more favourable foreign exchange rates than before.

Consultation with Auckland Council

13 Auckland Council officials have been consulted and are comfortable with the limit being increased from NZ$100 million to NZ$200 million.

Next steps

14 The Protocol will come into effect on the date this briefing is signed by both Ministers.

15 Following this, the Ministry of Transport will arrange for the new approval to be publicly notified by Gazette notice.

ATTACHMENT 1

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

Withheld under Section 9(2)(a) of the Official Information Act 1982

Dear Sir Brian

Amendment to the Foreign Currency Accounts and Derivatives Protocol

I am writing to advise you that, pursuant to sections 158(6) and 160(1)(b) of the Crown Entities Act 2004, the Minister of Finance and I have approved an amendment to the City Rail Link Limited (CRLL) Foreign Currency Accounts and Derivatives Protocol (attached).

The updated Protocol is now in effect and will be publicised in the *Gazette*.

The maximum limit of the value of foreign currency and foreign currency derivatives entered into by CRLL has been increased from NZ$100 million to $200 million in order to allow CRLL to effectively manage the delivery of the Auckland City Rail Link project. For the avoidance of doubt, there is also additional wording to make clear that the limit applies cumulatively to these transactions over time up until 31 December 2024 after which no foreign currency transactions are approved under this Protocol.

At the request of CRLL, the clause concerning all derivatives being sourced from the Treasury, where it has the capacity to provide such derivatives, has been removed. All other conditions in the Protocol remain unchanged.

I trust that this facility will assist CRLL to effectively mitigate foreign exchange risks for the City Rail Link project.

Yours sincerely

Hon Michael Wood
Minister of Transport

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

ATTACHMENT 2: PROPOSED AMENDED FOREIGN CURRENCY ACCOUNTS AND DERIVATIVES PROTOCOL

City Rail Link Limited – Foreign Currency Accounts and Derivatives Protocol

Coverage

1. This Protocol sets out the joint approval of the Minister of Finance and the Minister Responsible for City Rail Link Limited ("Joint Ministers") under section 160 of the Crown Entities Act 2004 (the "Act"), for City Rail Link Limited ("CRLL") to enter into derivatives (as defined in the Act), as well as the approval of the Minister of Finance under section 158(6) for CRLL to use foreign currency accounts.

2. The use of foreign currency accounts and entry into derivatives by CRLL must be made in accordance with this Protocol and all relevant law.

Policies and Procedures

3. CRLL is responsible for managing its foreign currency accounts and derivatives and must have board/committee approved treasury policies and procedures in place for this purpose, including policies and procedures for derivatives.

Process

4. CRLL may hold foreign currency accounts and may also enter into foreign exchange derivatives (derivatives) to hedge foreign currency risk in contracts with international suppliers and to assist the Link Alliance in purchasing equipment from overseas.

5. CRLL may hold foreign currency accounts and enter into foreign currency derivatives worth up to a maximum combined value of NZ$200 million. This limit applies cumulatively to these transactions over time up until 31 December 2024 after which no foreign currency transactions are approved under this Protocol. All foreign currency exposures must be actively managed.

6. Any derivatives that are not sourced from the Treasury may be sourced from another entity providing that it has a minimum long-term credit rating of 'A' or above from Standard & Poor's and/or Moody's Investor Service. In addition, CRLL must have a risk management policy that includes following elements:

   - identification, measurement, management and reporting of risk exposures,
   - segregation of duties and the management of operational risks,
   - restrictions around credit risk and approved instruments/counterparties.

Monitoring

7. Foreign currency accounts and derivative transactions in accordance with this Protocol are subject to monthly reporting by CRLL to the Sponsors of the City Rail Link project, including (but not limited to):

   a. The extent to which it is using foreign currency accounts and derivatives facilities.

b. A commentary on its exposure to foreign exchange risk associated with these facilities and how it is managing that risk.

8. CRLL will also include the treatment of derivatives in their upcoming Annual Reports.

Review

9. This Protocol may be reviewed annually at the same time as the draft Statement of Performance Expectations, or as circumstances require.

Disputes

10. If a dispute arises between CRLL and the Treasury or the Ministry of Transport over the operation of this Protocol, either party will notify the other of the dispute. Both parties will attempt to resolve the dispute within 15 working days of notice and must meet within five working days of the notice. If the dispute cannot be resolved within 15 working days of the notice, the parties will prepare a submission to Joint Ministers for a decision.

Amendments

11. This Protocol can be amended at any time by Joint Ministers on written notice to CRLL, in accordance with the Act. Joint Ministers will consult with CRLL prior to making any changes.

Term

12. This Protocol will take effect on [insert date briefing signed by both Ministers] and, subject to clause 11, will continue in force until it is terminated or replaced by written notice by Joint Ministers. Joint Ministers will take CRLL's requirements into account in replacing this Protocol.

Document 13

BRIEFING

11 March 2021

OC210173

Hon Michael Wood
Minister of Transport

Action required by:
Tuesday, 16 March 2021

PROGRESSING 'LET'S GET WELLINGTON MOVING'

Purpose

To advise and recommend how you may wish to influence, and provide direction on, 'Let's Get Wellington Moving' (LGWM) over the short- and long- term.

Key points

- You asked the LGWM partners to develop a plan to remedy the issues raised by the independent 'health check'. In response, the LGWM Board has proposed simplifying the governance structures, appointing an independent Chair and delineating short- and longer- term projects to facilitate progress.

- The success of the LGWM's proposed governance and delivery changes requires clear roles, responsibilities and decision rights to be established. We expect Waka Kotahi, on behalf of the LGWM partners, to keep you updated on this and how it is addressing delivery risks.

- The LGWM partners have signalled to you that the indicative LGWM package, which Cabinet endorsed in 2019, is expected to cost substantially more than originally estimated (early indications are of around [redacted] more). Withheld under Section 9(2)(ba)(ii) of the Official Information Act 1982

- We recommend that you meet with LGWM partners to discuss prioritising the outcomes sought by the LGWM programme and the viable funding envelope. We expect you may wish to influence, and provide direction on, the outcomes to be prioritised under LGWM to ensure that it aligns with GPS 2021 Government commitments. We are able to assist you with this.

- We can assist you to seek assurances from LGWM partners on the management of financial constraints. You may wish to ask Waka Kotahi to update you on any significant trade-offs it foresees in managing funding pressures within the National Land Transport Fund to accommodate LGWM in the 2021 – 2024 National Land Transport Programme (NLTP) and how it intends to manage this. The NLTP is due to be finalised in August 2021.

- If the LGWM programme scope and/or available funding envelope changes substantially from that endorsed by Cabinet in 2019, you may wish to report to your Cabinet colleagues on a revised LGWM package.

Recommendations

We recommend you:

1 **discuss** the advice provided in this briefing with officials at your earliest convenience — Yes / No

[redacted] Withheld under Section 9(2)(a) of the Official Information Act 1982

Marian Willberg
Manager, Demand Management and Revenue

..11/03/2021..

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
Marian Willberg, Manager, Demand Management and Revenue	[redacted]	✓
Charlotte Vannisselroy, Senior Adviser, Demand Management and Revenue	[redacted]	

Withheld under Section 9(2)(a) of the Official Information Act 1982

Cabinet has endorsed $3.8 billion for LGWM and it is a commitment in the Government Policy Statement on Land Transport 2021

1 As you are aware, LGWM is a joint initiative between Wellington City Council, Greater Wellington Regional Council, and Waka Kotahi. Its aim is to future-proof the city's transport network to get ahead of growing demand.

2 LGWM is one of four specific Government Commitments in the Government Policy Statement on Land Transport 2021 (GPS 2021), alongside the Auckland Transport Alignment Project, Road to Zero, and the New Zealand Rail Plan. GPS 2021 states that the Government expects Waka Kotahi to support these commitments through their inclusion in forthcoming National Land Transport Programmes, in accordance with the Government's 'investment expectations'.

3 As noted in GPS 2021, the Government expects Waka Kotahi to spend $3.8 billion from the National Land Transport Fund (NLTF) over 30 years on LGWM. This expectation reflects the LGWM indicative package that Cabinet endorsed in May 2019, and assumes the NLTF will fund 60 percent of the indicative package, with local government funding the remaining 40 percent. It also assumes that NLTF revenue (petrol excise duty and road user charges) will increase broadly in line with inflation. When Cabinet endorsed LGWM in 2019, the total estimated cost of the indicative package was $6.4 billion.

4 The Government has not committed Crown funding to LGWM. However, there is an expectation that the Minister of Transport will report back to Cabinet on financing options for the rapid transit component of the programme which is intended to be financed over 50 years with a principal outlay of about $1.4 billion (or about $900m over 30 years excluding interest costs).

The Crown does not own the project risks of LGWM

5 Crown funding has not been committed to the LGWM programme. This arrangement contrasts to the transport component of the New Zealand Upgrade Programme (NZUP), where the Crown has purchased projects that Waka Kotahi and KiwiRail are tasked with delivering. Under NZUP, the Crown is the funder and programme owner. Accordingly, the Ministry and Treasury provide oversight and assurance to the Crown on the delivery of the NZUP.

6 Unlike NZUP, Crown monitoring against agreed deliverables does not apply to LGWM, given that project risks are not owned by the Crown. This is because the three parties proposing to commit funding to LGWM – Waka Kotahi, Wellington City Council, and Greater Wellington Regional Council – are independently responsible for determining how and where their respective revenue is allocated.

7 Nonetheless, the indicative LGWM package is a Government Commitment as signalled in GPS 2021. Waka Kotahi is responsible for giving effect to the GPS. You have a role in overseeing that these Government priorities are being met.

LGWM governance changes have been signalled

8 As you are aware, an independent Health Check of the LGWM programme identified problems with the programme's governance, systems, and culture creating a risk of non-delivery. At your request, the LGWM partners met with you on Tuesday 2 March 2021 to provide and discuss its plan to remedy the issues outlined in the Health Check report to restore confidence that it can deliver the programme in a timely fashion. To address the report's findings, the LGWM partners propose to make key changes to the governance and delivery of the programme in the coming months, including:

- the appointment of an independent chair to work alongside the tripartite Board
- changes in reporting lines that flatten the governance structure
- splitting accountability for deliverables of the programme into short- and long-term priorities, with a new programme director responsible for delivering a proposed three-year programme focussed on projects that improve walking and cycling options and enable faster, more reliable bus services.

9 In our view, the LGWM Board's proposed governance changes and the delineation of 'short'- and 'longer'- term deliverables sound sensible. However, we lack clarity on the decision rights and roles and responsibilities under the new proposed structure to form a view on whether the structural and governance changes are likely to substantially mitigate the risk of non-delivery. In particular, the role of the independent chair requires clarification. The independent chair could be valuable in driving difficult conversations but the independent chair does not have any decision rights over funding and therefore cannot be responsible for the delivery of LGWM.

Next steps on monitoring LGWM governance changes

10 We understand the LGWM partners may be providing you with more information on the proposed governance and delivery structure in the coming weeks. To provide you with confidence about the revised LGWM governance and delivery structure, we expect such an update to cover:

- how the appointment of an independent chair is expected to sharpen the governance framework and manage the relationship between local council Board members and the elected representatives of their respective councils
- the roles, responsibilities and decision rights of the various participants involved in delivering LGWM (Board members, team members, and elected representatives)
- planned actions to address under-resourcing and staff shortages and positive changes to the culture and cohesion of the team.

11 We will continue to engage directly with Waka Kotahi and the LGWM programme office on these matters, to inform our advice to you and to ensure our advice takes into account the views of the LGWM partnership, where appropriate.

The LGWM indicative package is expected to cost more than initially envisaged

12 The LGWM Board has signalled to you that it expects the LGWM indicative package that Cabinet endorsed to incur costs that exceed the funding envelope, based on its updated business case modelling.

13 Based on the high-level slide pack provided to you by the LGWM partners, we understand that the indicative LGWM package is expected to cost at least [redacted] more than originally estimated. Most of the cost increases are attributable to the proposed [redacted] The proposal to provide rapid transit from the railway station to Newtown through to Wellington Airport ('Mass Rapid Transit') remains the most expensive part of the package, comprising about [redacted] of the package. As noted, Mass Rapid Transit carries expectations of Crown financing that is yet to be determined.

Withheld under Section 9(2)(ba)(ii) of the Official Information Act 1982

We recommend you meet with LGWM partners to discuss outcomes and available funding

14 In the coming months, we recommend that you meet with LGWM partners to discuss a way forward to address the cost escalations outlined in paragraph 13. Initially, we would propose the discussion to focus on:

- prioritising the outcomes sought by the LGWM programme. Key outcomes to be balanced include: urban intensification and growth opportunities, carbon neutrality (which can be given effect to through prioritising projects that reduce car reliance), resilience and safety, and urban amenity benefits; and

- the viable funding envelope and LGWM partners' willingness and ability to contribute funding.

15 We suggest that you ask the LGWM partners to report back to you with a viable funding envelope based on funding commitments from the three partners for your feedback.

16 We expect you may wish to influence, and provide direction on, the outcomes to be prioritised by LGWM to ensure it aligns with GPS 2021 Government Commitments. We can assist you with this in advance of any meeting you may have with LGWM partners. We can also assist you to seek assurances from LGWM partners on the relevant financial constraints facing LGWM, including from Waka Kotahi in the context of competing NLTF pressures.

17 You may wish to include the mayor of Wellington City Council, the Chair of Greater Wellington Regional Council and the Waka Kotahi Chair as part of your meeting to discuss funding constraints and outcomes of LGWM. LGWM documentation states that the partnership Board is ultimately accountable for the programme.[1] However, the LGWM Governance reference group members (ie, the elected representatives of the local councils and the Waka Kotahi Chair) are ultimately responsible for funding decisions and will have a broad range of competing funding priorities.

[1] See About us » Let's Get Wellington Moving (lgwm.nz). The members of the LGWM Partnership Board are: Barbara McKerrow, Wellington City Ccouncil Chief Executive; Greg Campbell, Greater Wellington Regional Council Chief Executive; Brett Gliddon, Waka Kotahi.

18 In addition, elected representatives of local councils likely have a low appetite to increase local rates, particularly for additional expenditure considered non-essential or 'discretionary'. We understand that Wellington City Council's 2021 draft Long Term Plan signals potential local rate increases of between 14 and 17 percent (or even higher if less debt is taken on). We are unclear on the extent to which these proposed rate increases provides for Wellington City Council's contribution to LGWM.

19 We understand that LGWM is interested in exploring other revenue raising options and has undertaken work on parking pricing, to potentially contribute to the local share.

20 Because of these dynamics, lines of accountability for the delivery of LGWM become blurred. We think the proposed independent Chair may usefully help drive difficult conversations needed to break through this dynamic. Establishing clear lines of accountability through the terms of reference would also assist.

21 If the LGWM programme scope and/or available funding envelope changes substantially from that endorsed by Cabinet in 2019, you may wish to seek endorsement from your Cabinet colleagues on a revised LGWM package.

22 In particular, the Cabinet endorsed LGWM indicative package assumed that the Wellington region would receive its expected population share of NLTF revenue for the next 30 years (estimated at 10.5 percent of the NLTF).[2] The Cabinet paper acknowledged that because Waka Kotahi does not usually allocate NLTF funding to regions simply based on population share, doing so risks creating a precedent for other regions and could force funding trade-offs for other regions and cities. These risks are heightened by current indications of greater cost pressures within the indicative LGWM package, and across the NLTF.

23 You may also want to make an in-cycle amendment to the GPS 2021 to reflect progress on LGWM and any revisions made to the indicative package.

24 The LGWM partners may request Crown funding or financing support. We can support and advise you on this, including on financing options for the Mass Rapid Transit component, which carries an expectation of a Cabinet report back. Any decision to provide Crown financing support needs to be sequenced after the programme's funding envelope and outcomes have been agreed.

Waka Kotahi to provide you with regular updates on LGWM progress

25 We understand that you have asked Waka Kotahi to meet with you on a monthly basis to discuss LGWM, particularly the proposed governance changes, and for fortnightly updates to be provided to your office on LGWM progress. The frequency of this reporting sounds sensible and consistent with your Letter of Expectations. You asked Waka Kotahi to work with council partners to ensure there is effective governance in place to drive delivery of LGWM and to regularly report to you on the programme.

[2] This 10.5 percent allocation to the Wellington Region includes expectations of non-LGWM expenditure.

26 You have asked Waka Kotahi for regular reporting. We recommend that you ask Waka Kotahi to focus its reporting on two matters, given its dual role as LGWM partner and as the entity accountable for the prudent management of the NLTF.

- **On behalf of the LGWM Board, we expect Waka Kotahi to update you on LGWM**. This includes progress, financial or implementation risks, how these risks are being addressed, and how the LGWM partners are remedying the Health Check report's issues.

- **Independent of the LGWM Board, we expect Waka Kotahi to update you on its ability to fund LGWM from the NLTF** into the foreseeable future and the impacts on other GPS 2021 priorities. You may wish to ask Waka Kotahi to update you on any significant trade-offs or constraints it foresees in managing funding pressures within the NLTF to accommodate LGWM in the 2021 – 2024 NLTP, which is due to be finalised in August 2021. For example, there are likely to be constraints on the NLTF revenue that can be apportioned to the Wellington region compared to other regions.

27 Please advise us if you would like the Ministry to take a more active role in monitoring Waka Kotahi's management of its dual responsibilities spanning the LGWM delivery and NLTF management.

Next Steps

28 Officials are available to meet with you to discuss how we can best support you on LGWM and discuss this briefing at your earliest convenience.

Ministry of Transport
TE MANATŪ WAKA

MEETING BRIEFING

12 March 2021 | OC210195

Hon Michael Wood
Minister of Transport

MEETING WITH SIMON UPTON, PARLIAMENTARY COMMISSIONER FOR THE ENVIRONMENT, ON 16 MARCH 2021

Snapshot

To support your meeting with Simon Upton, the Parliamentary Commissioner (PCE) for the Environment, to discuss environmental issues in the transport space. In particular the PCE will likely want to discuss his recent report *'Not 100% - but four steps closer to sustainable tourism'*.

Time and date	**5:30pm – 6:00pm, 16 March 2021**
Venue	**Your Office (EW4.1)**
Attendees	Simon Upton, Parliamentary Commissioner for the Environment (PCE)
Officials attending	Ewan Delany, Manager, Environment, Emissions & Adaptation
Agenda	N/A
Talking points	Potential questions for Simon are attached in Annex 1

Contacts

Name	Telephone	First contact
Ewan Delany, Manager, Environment, Emissions & Adaptation	[redacted]	✓
Michelle Palmer, Graduate Advisor, Environment, Emissions & Adaptation		

Withheld under Section 9(2)(a) of the Official Information Act 1982

MEETING WITH SIMON UPTON, PARLIAMENTARY COMMISSIONER FOR THE ENVIRONMENT, ON 16 MARCH 2021

Key points

- Simon Upton was sworn in as Parliamentary Commissioner for the Environment (PCE), for a five year term in 2017.
- The PCE provided you with a Briefing to the Incoming Minister (BIM) on 27 January 2021. At the time the BIM was sent to your office the PCE had the following transport-related investigations underway:
    - Mitigating the environmental impacts of tourism.
    - A review of attempts by government agencies to integrate wellbeing analysis into budgetary decisions and the extent to which this take the environment into account.
    - An investigation of the potential for a landscape approach to climate policy that would enable rural communities to manage multiple environmental pressures in an integrated way.
- In February the PCE released a new report on policies to address some of the pressing environmental challenges faced by tourism. Of particular interest to the Ministry of Transport (the Ministry) is that the PCE recommends:
    - Introducing a departure tax that reflects the environmental cost of flying internationally from New Zealand.
    - Strengthening the existing standard for self-contained freedom camping, improving oversight of the certifying process and require rental car agencies to play a greater role in collecting freedom camping infringement fees and fines.
- The Ministry is engaging with the PCE on matters of the report that have a transport component.
- We anticipate the PCE will want to discuss the policy proposals from the report with you. The PCE is also likely to want to discuss broader environmental issues associated with transport, such air pollution, and placemaking and urban development.

In January 2021 the PCE provided you with a BIM

1 The key points of the BIM include that: high quality information about the state of the environment is essential; the Government needs to plan ahead and focus on adaptation to climate change; and new environmental objectives in resource management reform need to be clear and enforceable.

2 The PCE generally has three to four ongoing investigations. At the time the BIM was sent to your office the PCE had the following transport-related investigations underway:

2.1 Mitigating the environmental impacts of tourism. More detail about this is discussed later in this briefing.

2.2 A review of attempts by government agencies to integrate wellbeing analysis into budgetary decisions and the extent to which this take the environment into account.

2.3 An investigation of the potential for a landscape approach to climate policy that would enable rural communities to manage multiple environmental pressures in an integrated way.

3 In all reviews the PCE looks to see how Te Ao Māori can provide insights.

In February the PCE released a new report on policies to address some of the pressing environmental challenges faced by tourism

4 *'Not 100% - but four steps closer to sustainable tourism'* is the second tourism report of the PCE to be publically released. The report looks to start a national discussion on the drive towards more sustainable tourism, by considering issues such as carbon emissions, waste disposal, maintaining the tranquillity of the nature environment, and biosecurity. As such the report will not make formal recommendations, but simply suggestions for further consideration. The PCE report is a follow-up to the 2019 report "*Pristine, Popular… Imperilled?*".

5 The PCE sets out four policy proposals to address some of the vital environmental challenges faced by tourism. These are:

5.1 Introduce a departure tax that reflects the environmental cost of flying internationally from New Zealand, and use the revenue to support the development of low-emissions aviation technologies and provide a source of climate finance for Pacific Island nations.

5.2 Make any future central government funding for tourism infrastructure conditional on environmental criteria and aligned with mana whenua and the local community's vision for tourism development.

5.3 Clarify and, where necessary, strengthen the tools the Department of Conservation can use to address the loss of wildness and natural quiet at some of New Zealand's most spectacular natural attractions. This includes tightening up rules around commercial activity on conservation lands and waters.

5.4 Strengthen the existing standard for self-contained freedom camping, improve oversight of the certifying process and require rental car agencies to play a greater role in collecting freedom camping infringement fees and fines.

6 The PCE notes that these policy proposals are not the perfect solution but together they may make a difference, and that the transition will require changes to business models and individual tourist behaviour.

The Ministry's views on the new PCE report

A departure tax that reflects the environmental cost of flying internationally from New Zealand

7 Analysis on the introduction of a departure tax that reflects the environmental cost of flying internationally from New Zealand would be required to determine the impacts on the tourism industry itself and to aviation operators. This work will fall under the Ministry for Business, Innovation and Employment (MBIE).

8 A departure tax in the short to medium term would take place in a context where the international aviation industry is still recovering from the impacts of COVID-19. The public health measures that government has required airlines to put in place over the past year have added significant costs. At the same time, immigration restrictions and limited MIQ capacity mean that discretionary travel is essentially zero. The number of flights into and out of New Zealand is only a small fraction of what it was a year ago [redacted]. Any proposal to impose additional costs on airlines and their passengers would need to factor in the risks this could hinder the rebuilding of connectivity that is vital to New Zealand's social and economic wellbeing.

Withheld under Section 9(2)(g)(i) of the Official Information Act 1982

9 We would also need to consider how such a departure tax would work alongside the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) programme. As you know, in 2013 the International Civil Aviation Organization (ICAO) agreed on a global goal to achieve carbon neutral growth in the international aviation sector from 2020. In 2016, it agreed to introduce CORSIA, a global market-based measure for reducing and offsetting carbon emissions in the international aviation sector. In September 2016, the Government that agreed New Zealand would participate in CORSIA when it commenced on 1 January 2021. However, other countries which are also participating in CORSIA, such as France, have imposed a similar tax.

The PCE Report in relation to freedom camping

10 The PCE Report in relation to freedom camping sets out the following suggestions:

10.1 that the self-contained vehicle standard (SCVS) be strengthened to include permanently plumbed toilets,

10.2 that Waka Kotahi (or MBIE) takes a central oversight role over the SCVS and administers a central register of self-contained vehicles, and

10.3 that freedom camping penalties (under the Freedom Camping Act 2011, the Act) are increased and enforced to represent a serious deterrent for undesirable behaviours.

11 The outcomes that the PCE is seeking in relation to freedom camping are similar to those that that the Minister of Tourism is seeking to achieve through the freedom camping initiatives he is intending to consult on. The Minister of Tourism is intending to take a consultation draft consultation document to Cabinet on 24 March 2021. You met with the Minister of Tourism and other Ministers to discuss the content on 1 March 2021.

12 [redacted]

13 [redacted]

14 [redacted]

There are multiple programmes of work seeking to address broader transport and environment issues

The Ministry is closely involved in the Urban Growth Agenda and the Resource Management Act (RMA) reform

15 The transport system has a major influence on shaping urban form and vice versa. There are compelling reasons for us to support more quality, mixed use, compact urban environments to avoid/reduce emissions and make it easier and safer for people to access jobs, education, and amenities nearby instead of relying on a car. Quality compact cities also protect more of our highly productive soils and areas with high biodiversity values.

16 The Ministry is involved in the following:

16.1 The National Policy Statement on Urban Development, which aims to develop more housing and encourage urban intensification.

16.2 The Urban Growth Agenda, which is a programme of work across government to improve housing affordability, while also improving access, reducing emissions, and enabling quality built environments that avoid unnecessary sprawl. This programme includes a strong focus on encouraging future urban growth in areas close to city/metro centres, and in places that are, or could be, served by frequent public transport services.

16.3 The Resource Management Review. The reforms to the resource management system offer a major opportunity to strengthen spatial planning and deliver better transport outcomes.

Other key broader environmental issues associated with transport include air pollution, impact of micro-plastics and waste

Air Pollution

17 Most air pollution in New Zealand comes from transport and home wood burners. Diesel vehicles, particularly heavy diesel vehicles, emit significantly more harmful pollutants, such as nitrous oxides (NOx) and particulate matter (PM10 and PM2.5). Although petrol vehicles do emit harmful pollutants, the focus for air pollution is on diesel vehicles.

18 On 12 March 2021 we sent you a briefing asking to restart the work to implement Euro 6, a significantly more stringent emissions standard than our current Euro 5 emissions standard. Euro 6 is the first emissions standard to measurably reduce harmful emissions in the real world, as Euro 5 did not deliver the gains in air quality that were expected.

19 New Zealand continues to import new vehicles today that were banned from sale in Europe six years ago for new vehicles, and 11 years ago for used imports. China and India have already implemented Euro 6 standards.

20 The updated Health and Air Pollution in New Zealand report is due to be released this May, which will paint a more updated picture of air pollution in New Zealand. It is likely this report will focus on the significant role of transport in air pollution. The last report in 2012 found the social costs of air pollution, including premature death, to be estimated at 4.28 billion, attributing 40 percent of that harm to transport. The updated estimates are likely to be much higher (worse).

Waste

21 The Ministry for the Environment is leading work to move New Zealand to a more productive, sustainable, low emissions economy, where the linear 'throw-away culture' (take-make-dispose) is replaced with circular economy (make-use-return). The Ministry for the Environment is working to design a scheme that will increase our recovery and re-use of six priority products, including e-waste such as lithium ion batteries and tyres, for regulated product stewardship under the Waste Minimisation Act. The Ministry has been engaged with some of this work.

Micro-Plastics

22 The Ministry is currently not looking into the impact of micro-plastics caused by vehicles (mainly tyres). It is however another argument for encouraging mode shifts to less harmful transport modes.

The Ministry has shared some Budget information with the PCE

23 Under an agreement of confidentiality and cooperation between CE Peter Mersi and the PCE, the Ministry has provided information about all new spending initiatives from Budget 2019 and Budget 2020. This has included bid templates and, where it exists, wellbeing analyses, intervention logics, and CBA information. This is to support PCE's work reviewing how agencies account for environmental values in budget proposals (see para 2.2).

Annex 1: Biography and Talking Points

Biographies

Simon Upton, Parliamentary Commissioner for the Environment (PCE)

Simon Upton was sworn in as PCE for a five year term in 2017.

He was a Member of Parliament between 1981 and 2000, and held a variety of ministerial portfolios including environment, research, biosecurity, health and state services between 1990 and 1999.

Following this Mr Upton moved to Paris to chair the Round Table on Sustainable Development at the Organisation for Economic Co-operation and Development (OECD). In 2010 he returned to the OECD full time as Environment Director, a post he held for seven years until returning to take up the role of PCE.

Talking Points

- What areas of transport emissions mitigation or climate adaptation deserve more scrutiny?
- How do you think the transport system will need to change to deliver sustainable tourism?
- What key opportunities do you see to improve environmental outcomes – other than emissions reductions – through transport policy?
- What transport system risks can you see in the transition to a zero carbon future?
- How will your work on emissions complement that of the Climate Change Commission?

Document 23

Ministry of Transport
TE MANATŪ WAKA

TE TAI ŌHANGA
THE TREASURY

BRIEFING
OC210081
T2021/678

19 March 2021

Hon Michael Wood
Minister of Transport

Action required by:
Wednesday, 31 March 2021

Hon Grant Robertson
Minister of Finance

PROPOSED CHANGES TO WAKA KOTAHI SHORT-TERM BORROWING FACILITY

Purpose

Seek your agreement to proposed changes to Waka Kotahi NZ Transport Agency's (Waka Kotahi) short-term borrowing facility (the Facility) with the Crown, and approval to lodge a Cabinet paper seeking approval to amend the relevant appropriation to implement the proposed changes to the Facility.

Key points

- Waka Kotahi has access to a $250 million short-term borrowing facility (the Facility) to enable it to manage short-term variations between hypothecated inflows and outflows of the National Land Transport Fund (NLTF). The current Facility consists of:
    - $175 million variable cash flow component for managing variable cash-flow cycles, repayable at least once per financial year (formerly known as the seasonal cash flow component)
    - $75 million shock component to manage any expenditure and revenue shocks, repayable within three years from drawdown.
- Following advice from officials, joint Ministers of Transport and Finance agreed in January 2021 to review the Facility (OC210010/T2021/134 refers).
- Following the review, we support increasing the size of the Facility from $250 million to $500 million, specifically:
    - increasing the size of the variable cash flow component from $175 million to $250 million
    - increasing the size of the shock component from $75 million to $250 million
    - extending the repayment period of the shock component from three to four years.

- If Ministers support the proposed changes above, we have prepared a draft Cabinet paper to seek Cabinet's agreement to appropriation changes in order to implement the agreed changes to the Facility.

- We also propose implementing a three-yearly review cycle, to coincide with the three-yearly National Land Transport Programme development process, to ensure the Facility remains fit-for-purpose and is operating as intended.

- The Ministry of Transport and Waka Kotahi (working together with the Treasury) have committed to establishing a memorandum of understanding around the proper use of the Facility.

Recommendations

We recommend you:

1 **note** the Ministers of Transport and Finance have agreed to review Waka Kotahi NZ Transport Agency's (Waka Kotahi) short-term borrowing facility (the Facility) (OC210010; T2021/134 refers)

2 **note** that officials recommend increasing the size of the Facility from $250 million to $500 million, and the repayment period of the shock component from three years to four years.

3 **note** that approval from the Ministers of Finance and Transport is required, pursuant to section 160(1) and 162 of the Crown Entities Act 2004, for Waka Kotahi to borrow or amend the terms of borrowing

4 **agree** to Waka Kotahi increasing increase the size of the Facility from $250 million to $500 million, effective from 1 July 2021, made up of:

- an increase from $175 million to $250 million for the variable cash flow component (formerly known as the seasonal cash flow component) — Yes / No
- an increase from $75 million to $250 million for the shock component — Yes / No

5 **agree** to Waka Kotahi extending the repayment period for the shock component from three years to four years, effective from 1 July 2021 — Yes / No

6 **approve** Waka Kotahi entering an agreement with the Crown through an amendment to the Facility on the terms set out in recommendations 4 and 5 above — Yes / No

7 **note** that if recommendation 6 above is approved by Ministers, Treasury officials will attend to the requirement in section 160(3) of the Crown Entities Act for the Minister of Finance to notify the approval in the Gazette

8 **note** that under section 65L of the Public Finance Act 1989, the Minister of Finance may, on behalf of the Crown, give a loan if it appears to the Minister to be necessary or expedient in the public interest to do so

9 **note** that in the circumstances, Treasury officials consider that increasing the size of the Facility on the terms set out in this briefing be expedient in the public interest for the purposes of managing cash flow variations in the National Land Transport Fund

10 **agree** that it is expedient in the public interest for the Crown to provide a loan facility of up to $500 million for the purposes of managing cash flow variations in the National Land Transport Fund **(MINISTER OF FINANCE ONLY)** Yes / No

11 **agree** pursuant to section 65L of the Public Finance Act 1989, to the provision of a Crown loan of up to $500 million to Waka Kotahi **(MINISTER OF FINANCE ONLY)** Yes / No

12 **note** that Cabinet approval is needed for changes to appropriation to implement the proposed changes to the Facility

13 **agree** to the Minister of Transport lodging the attached Cabinet paper for consideration of the Economic Development Committee on 7 April 2021 Yes / No

14 **note** that, after Cabinet's consideration of the paper, officials will provide the Minister of Finance with an updated loan instrument for signing that gives effect to the changes to the Facility described in recommendations 4 and 5 Yes / No

15 **note** the Ministry of Transport and Waka Kotahi NZ Transport Agency will work on establishing a memorandum of understanding on the proper use of the Facility to support effective and efficient operation

16 **agree** to officials implementing a three-yearly review cycle to ensure the Facility remains fit-for-purpose Yes / No

Hon Grant Robertson
Minister of Finance

21 / 03 / 2021

Hon Michael Wood
Minister of Transport

..... / ...... / ......

[redacted]

Withheld under Section 9(2)(a) of the Official Information Act 1982

David Taylor
Manager, National Infrastructure Unit
The Treasury

19 / 3 / 2021

[redacted]

Tim Herbert
Manager, Investment
Ministry of Transport

19 / 3 / 2021

Minister's office to complete: ☐ Approved ☐ Declined

☐ Seen by Minister ☐ Not seen by Minister

☐ Overtaken by events

Comments

Contacts

Name	Telephone	First contact
Tim Herbert, Manager, Investment, Ministry of Transport	[redacted]	
Jonathan Luo, Senior Advisor, Investment, Ministry of Transport		✓
David Taylor, Manager, National Infrastructure Unit, The Treasury		
Lauren Holloway, Analyst, National Infrastructure Unit, The Treasury		✓

Withheld under Section 9(2)(a) of the Official Information Act 1982

PROPOSED CHANGES TO WAKA KOTAHI SHORT-TERM BORROWING FACILITY

Waka Kotahi has access to a short-term borrowing facility

1 In 2010, Cabinet agreed to establish a $250 million borrowing facility (the Facility) to provide for Waka Kotahi NZ Transport Agency (Waka Kotahi) to manage cash-flow variations between expected revenue inflows and expenditure outflows in the National Land Transport Fund (NLTF) (EGI Min (10) 29/18 refers). At the time of establishment, the Facility was made up of two components:

1.1 $150 million variable cash flow component for managing the regular variable cash-flow cycles of the NLTF, where borrowing is repayable annually, at a later stage of the cash flow cycle (formerly known as the seasonal cash flow component)

1.2 $100 million shock component to manage unexpected and unavoidable cash flow variations, repayable within the timeframe for which the expenditure was originally planned.

2 The Facility was reviewed in 2014, which resulted in a number of changes to the operation of the Facility (the size of the overall Facility remained at $250 million), namely:

2.1 increasing the variable cash flow component from $150 million to $175 million, with the component having to be repaid at least once per financial year

2.2 reducing the shocks component from $100 million to $75 million and extending the scope to cover any expenditure and revenue shocks, repayable within three years from drawdown.

Ministers have agreed to review the Facility

3 As outlined in our previous advice, given the change in operating environment since the 2014 review, we recommended initiating a review of the Facility to ensure it remains fit-for-purpose. The Ministers of Finance and Transport agreed to the recommendation (OC210010/T2021/134 refers).

4 This briefing lays out our recommended changes to the Facility following the review, and recommends you make certain decisions to implement those changes. Should you wish to discuss the proposals with Cabinet ahead of making formal decisions, officials will amend the draft Cabinet paper to refer to the recommendations in this paper as “intended decisions” as opposed to decisions already made.

Waka Kotahi prepared a business case to support the review

5 In consultation with the Ministry and the Treasury, Waka Kotahi prepared a business case for making changes to the Facility. Waka Kotahi identified a number of issues with the existing Facility, including seven options, with Waka Kotahi’s preferred option entailing:

5.1 increasing the size of the variable cash flow component from $175 million to $300 million, which will future-proof the component for the next decade till 2031

5.2 increasing the size of the shock component from $75 million to $200 million, and extending the repayment period from three to six years.

The need for the Facility

Variable cash flow component:

6 Under the 'pay as you go' (PayGo) approach, the level of investment should match the level of revenue received. However, due to factors such as poor forecasting and claims behaviour (resulting from optimism bias), actual expenditure tends to be below forecast revenue. The variable cash flow component allows Waka Kotahi to take into account expenditure variations to 'over-programme' the National Land Transport Programme (NLTP), and provides it with a sufficient buffer to cover expenditure especially during the peak months at the end of the financial year.

7 Without this, Waka Kotahi would need to take a more conservative approach in programming to ensure it has sufficient funds available to cover expenditure at the end of the year (even though it knows it is unlikely for all planned expenditure to eventuate). This can lead to inefficiencies as Waka Kotahi may be reluctant to approve funding for projects, even if funds were likely to be available and could lead to it accumulating a large cash surplus over time.

Shock component:

8 Waka Kotahi is subject to revenue and expenditure shocks, which are outside of its direct control (e.g. lower NLTF revenue due to economic downturn, severe weather events). Without the shock component, Waka Kotahi must maintain a constant cash buffer, which reduces the overall efficiency of the NLTF. A short-term borrowing facility removes the need for this buffer, and is viable as long as there is sufficient time for Waka Kotahi to allow for the repayment of the borrowing in its future programming.

Principles guiding our analysis

9 Efficiency – Short-term borrowing, utilised within the PayGo environment removes the need for Waka Kotahi to hold on to large cash buffers. This improves the efficiency of the NLTF, as it ensures a greater level of delivery of priority projects within the NLTP.

10 Flexibility and timely decision-making – The Facility provides the Waka Kotahi Board with flexibility, recognising its statutorily independent functions and that it deals with a degree of fluctuation in revenue and expenditure. Making the Facility available means that the Waka Kotahi Board can act independently without requiring Ministerial approval for day-to-day business decisions

11 Scale – The scale of borrowing should not place an undue burden on either the NLTF or Waka Kotahi's ability to manage repayments, in a manner that impacts on the delivery of the NLTP.

We support changes to the Facility but recommend an alternative to Waka Kotahi's preferred option

Increasing the variable cash flow component from $175 million to $250 million

12 We consider Waka Kotahi has made a strong case for increasing the size of the variable cash flow component:

12.1 At its inception, the variable cash flow component ($150 million) represented around 5.5 percent of the NLTF. Since that time, the size of NLTF has increased by approximately 50 percent. While the variable cash flow component was increased by $25 million following the 2014 review, this now only represents 4 percent of the NLTF. The 2014 review noted that *"it is reasonable to expect that as the size of the National Land Transport Programme increases, the variable cash flow fluctuations will also increase…"*

12.2 A substantial proportion of variation in expenditure can be attributed to Approved Organisations' (AOs) claims (i.e. local transport projects outside of Waka Kotahi's control). While AOs must forecast the timing and size of their claims against the NLTF, the quality and timeliness of these forecasts vary substantially. For example, in 2019/20, claims in the final six weeks of the year for local road improvements made up 30 percent of the annual total. Over the next 10-year period, the proportion of AO and KiwiRail projects is expected to increase, and is likely to result in higher degrees of fluctuation especially during the peak months (see **Figure 1**).

Figure 1: Percentage of NLTF co-invested with AOs

13 While we recognise the challenge Waka Kotahi faces with regards to uncertainties around AOs' claims, we consider that solely increasing the variable cash flow component to address this issue would create perverse incentives to not address the underlying issue.

14 Waka Kotahi has advised that it is currently undertaking a number of initiatives that specifically target poor AO behaviours. For example, Waka Kotahi has identified an opportunity through its forthcoming Investment Claims and Obligations Policy, where it will emphasise AOs' obligations to provide accurate forecasts and to make claims in a timely and consistent manner, including introducing penalties where appropriate.

15 We do not support the scale of increase proposed by Waka Kotahi. Instead, we propose increasing the size of the variable cash flow component to $250 million, and that a review be undertaken in 2024 (following the completion of NLTP 2021-24) to ensure the Facility remains fit-for-purpose. This would bring the size of the variable cash flow component in parity with the size of the NLTF, and aligns with expected expenditure fluctuations in future years. In addition, we anticipate that the work Waka Kotahi is undertaking to improve AOs' behaviours should contribute to reducing fluctuations in the short-to-medium term.

Increasing the shock component from $75 million to $250 million

16 We consider that Waka Kotahi has made a strong case for increasing the size of the shock component:

16.1 The size of the shock component has not kept-up relative to the size of the NLTF (see **Figure 2**). At its inception, the shock component made up almost 4 percent of the NLTF, but this has dropped to about 2.5 percent (NLTF revenue has increased from around $2.5 billion to almost $4 billion over this period).

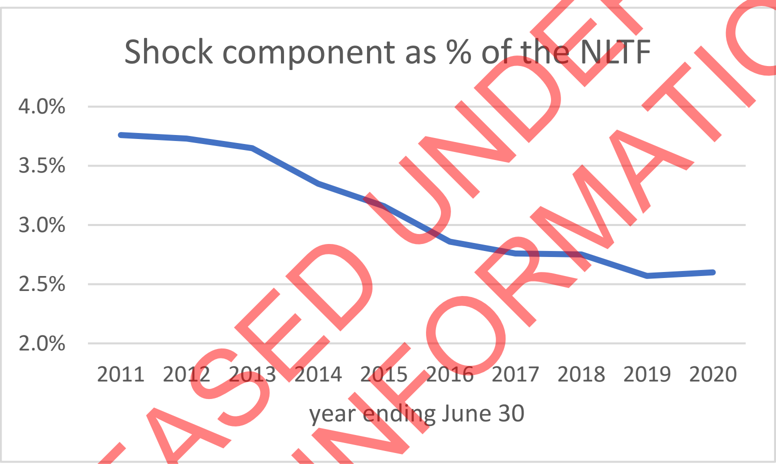


Figure 2: shock component as a percentage of the NLTF

16.2 The NLTP is experiencing increased emergency repairs costs as a result of increased severe weather incidents. While Waka Kotahi sets aside a contingency for emergency repairs (approximately $130 million per annum), the increasing number, and severity of weather incidents has meant that the contingency is often not sufficient, and Waka Kotahi is required to draw funds from other activities. For example, in 2018, a handful of weather events resulted in a repair bill of $140 million:

Event	Date	Region	$m
Thames Coast Storm Event	5/01/2018	Waikato	$ 19.2
West Coast Cyclone Fehi February 2018	1/02/2018	West Coast	$ 35.5
Region 10 SH60 Takaka Hill	20/02/2018	Tasman	$ 20.6
Canterbury Cyclone Gita Feb 2018	20/02/2018	Canterbury	$ 18.1
Emergency Works 2018 (February-Gita)	21/02/2018	Tasman	$ 11.6
Queens Birthday Weather Event	3/06/2018	Gisborne	$ 26.5
West Coast, Otira & Westland	8/11/2018	West Coast	$ 10.0

16.3 Waka Kotahi is having to take on more risk, with higher insurance deductibles and exclusions given the "harder" insurance market that now applies, this also increases the risk of financial shocks in the event of local events.

17 We consider that the shock component should be increased to $250 million, and that it be reviewed in 2024 to ensure it remains fit-for-purpose. COVID-19 has had a significant impact on Waka Kotahi's cash reserves and has required Waka Kotahi to fully draw down on its existing shock facility. Increasing the shock component to $250 million, in combination with an extension to repayment (discussed below) will allow Waka Kotahi to address shocks (e.g. extreme weather events, revenue loss) without severely impacting on the delivery of the NLTP.

We also support increasing the repayment period from three to four years

18 Waka Kotahi identified that the existing repayment period (three years) does not provide it with sufficient flexibility to ensure that delivery of the NLTP is not materially impacted, as repayments can be required within the same three-year NLTP period. To address this issue, Waka Kotahi proposed increasing the repayment period to six years.

19 We recognise that the existing repayment period may not be entirely consistent with the purpose of the shock component – addressing short-term fluctuation so that delivery of NLTP is not impacted. However, we do not support increasing the repayment period to six years as this does not align with the 'short-term' nature of the Facility, and could potentially stretch repayments over three NLTPs.

20 Instead, we propose increasing the repayment period from three to four years, which seeks to balance the need for the continuous delivery of the NLTP, and the shock component's purpose of managing short-term fluctuations.

We propose that the other key terms and conditions in the Facility remain

21 Crown loans to Waka Kotahi are generally made under the Master Facility Agreement, dated 25 June 2014, which sets out the terms and conditions of the facilities under which loans can be advanced.

22 We propose that the Facility continues to be subject to market terms and repaid within the forecast period as under the Master Facility Agreement.

23 Repayment terms and applicable interest rates are confirmed at each Drawdown Request (clauses 5 and 6 refer). Payments by the Crown are agreed in writing between the Crown and Waka Kotahi and are then advanced to Waka Kotahi on the Drawdown Date by NZ Debt Management Office.

24 The Crown may cancel the Master Facility Agreement at any time by giving Waka Kotahi 90 days written notice (clause 14.2 refers).

Approval from joint Ministers is required under the Crown Entities Act 2004 for Waka Kotahi to borrow

25 Approval by joint Ministers under the Crown Entities Act 2004 for Waka Kotahi to borrow is the first statutory step to implementing the recommended changes to the Facility.

26 Section 162 of the Crown Entities Act states that a Crown entity must not borrow from any person, or amend the terms of any borrowing, other than as provided in section 160.

27 Section 160(1)(b) states that approval can be given jointly by Waka Kotahi's responsible Minister (i.e. Minister of Transport) and the Minister of Finance.

28 As such, we recommend that you give approval to Waka Kotahi to borrow from the Crown for the purposes, and on the terms, outlined above.

The Minister of Finance has powers under section 65L of the Public Finance Act 1989 to give a loan on behalf of the Crown

29 Section 65L of the Public Finance Act 1989 (the Act) empowers the Minister of Finance, as the Minister responsible for the administration of the Act, to lend money to a person, organisation or government if it appears to you to be 'necessary or expedient in the public interest' to do so, and to give such a loan on any terms and conditions that the Minister of Finance thinks fit.

30 Any lending under section 65L must be made from a capital expenditure appropriation, or other authority, approved by Parliament for the purpose (section 65P of the Act). A non-departmental capital expenditure appropriation already exists within Vote Transport to manage lending through the Facility, with the attached Cabinet paper proposing to amend this appropriation in line with the recommendations in this briefing.

Officials' assessment shows that increasing the amount lent to Waka Kotahi through the Facility is 'necessary or expedient in the public interest'

31 It is a matter for the Minister of Finance to decide whether it appears to be necessary or expedient in the public interest to provide additional lending to Waka Kotahi through the Facility.

32 The following paragraphs set out factors that officials consider are relevant to that assessment. The Minister of Finance may decide to ignore these factors, or take into account other relevant factors, and may give such weight to the factors referred to below as deemed fit. The Minister of Finance should make an independent decision and is not bound to accept the assessment below. However, this decision must be based on reasonable grounds.

33 Treasury officials consider that in the circumstances, increasing the size of the Facility from $250 million to $500 million satisfies the "public interest test" in section 65L of the Act.

Public interest

34 In the context of the Act, the public interest should be viewed in a New Zealand context, that is, in the interest of the New Zealand public.

35 As noted above, short-term borrowing within the PayGo environment removes the need for Waka Kotahi to hold on to a large cash buffer in anticipation of variable expenditure or revenue or expenditure shocks. This means that, when Waka Kotahi experience variance in cash flow, or unexpected shocks to revenue or expenditure beyond its control, it can respond promptly.

36 The size of the existing variable cash flow component no longer reflects the potential cash flow variations that can be expected at the end of the financial year. Increasing the size of the variable cash flow component will ensure that Waka Kotahi has sufficient flexibility to respond to these.

37 The existing repayment period for the shock facility does not provide Waka Kotahi with sufficient flexibility to plan its repayment without impacting on the delivery of the most current NLTP. Increasing the repayment period from three years to four years will support Waka Kotahi to address short-term shocks so that delivery of the NLTP is not impacted.

38 In addition, the size of both components has not kept-up relative to the size of the NLTF, as the NLTF has increased by approximately 50 percent since 2010 when the Facility was first established.

39 It is also cheaper for Waka Kotahi to borrow from the Crown, rather than the market, reducing the marginal cost to the public of financing costs. This improves the efficiency of the NLTF and enables increased investment in and delivery of lower priority transport projects within the NLTP which provide a benefit to New Zealand.

Necessary or expedient

40 Officials consider that an increase in the size of the Facility is expedient in the public interest.

41 Increasing the Facility would bring the size of both components in parity with the overall size of the NLTF and will align with the size of expected expenditure fluctuations in future years.

42 Increasing the size of the shock component will also support Waka Kotahi to respond to emergency repair costs as a result of increased severe weather incidents due to climate change.

43 We note also the significant impact that COVID-19 has had on Waka Kotahi’s cash reserves, requiring Waka Kotahi to fully draw down on its existing shock facility and limiting its ability to respond to non-COVID-related shocks.

Risks and mitigations

44 Ministers have recently received a joint Ministry of Transport and Waka Kotahi briefing on funding pressures on delivering the NLTP 2021-24 (OC210079 refers). The proposed changes in this paper are not intended to address those funding

pressures identified (i.e. separate actions are still needed), but are instead aimed at improving the day to day operation of the Facility as part of 'business-as-usual' processes.

45 An increase from $250 million to $500 million represents a significant increase. One of officials' major concerns in supporting this proposed change, is to ensure short-term borrowing for the purposes of managing cash flow, does not turn into structural borrowing that Waka Kotahi will struggle to repay without severely impacting on the underlying investment programme.

46 The Ministry and Waka Kotahi (working with Treasury) have committed to establishing a memorandum of understanding (MoU) around the proper use of the Facility, and to implement a three-yearly review cycle of the Facility (discussed below). These measures, alongside regular monitoring and reporting will help to mitigate most of the risk.

47 Due to COVID-19, Waka Kotahi has had to draw down on the existing $75 million shock component, which needs to be repaid in 2023. Therefore, while the shock component is increasing to $250 million, the actual allowance for shocks in the short-term is only $175 million.

Benefits

48 As noted above, there are a range of benefits in providing increased borrowing to Waka Kotahi by increasing the size of the Facility. Borrowing to manage cash flow and shocks allows Waka Kotahi to spend all available funding delivering the NLTP, rather than holding onto a buffer.

49 It also enables the Waka Kotahi Board to make business decisions of suitable scale within its statutorily independent functions without the need to seek financial assistance from Cabinet, in the case of limited availability of cash to respond to cash flow variance or to revenue or expenditure shocks beyond its control

50 Increasing the repayment period of the shock component from three to four years gives Waka Kotahi the flexibility to make repayments within the next NLTP, therefore ensuring that the delivery of Government priorities in the current NLTP is not impaired by a revenue or expenditure shock.

No viable alternatives to a loan

51 Borrowing to manage cash flow is preferable to Waka Kotahi retaining a cash buffer or requesting a capital injection from the Crown, as it better upholds the integrity of the PayGo model and reduces the fiscal burden on the Crown.

52 As noted above, it is cheaper for Waka Kotahi to borrow from the Crown, rather than the market, reducing the marginal cost to the public of financing costs.

Assessment of risks and benefits against the public interest threshold

53 In light of the above, officials consider that:

53.1 It is expedient in the public interest for Waka Kotahi's existing Facility with the Crown to be increased from $250 million to $500 million;

53.2 the benefits of the proposed loan appear to outweigh those risks when mitigations are taken into account; and

53.3 there are no viable alternatives to a loan when it comes to supporting Waka Kotahi to manage its cash flow.

54 Accordingly, Treasury officials are of the view that the loan is expedient in the public interest. Treasury therefore recommends that the Minister of Finance should agree to the Facility being increased from $250 million to $500 million.

We are proposing to implement a three-yearly review cycle

55 As indicated earlier, we are proposing to implement a three-yearly review cycle to ensure the Facility remains fit-for-purpose. This review process will align with the three-yearly NLTP development process, with the next review due to be completed before the start of NLTP 2024-27 on 1 July 2024.

56 As part of the review, we will advise Ministers on the use and performance of the Facility over the most recent NLTP period, and any additional changes that would be required to support the delivery of the next incoming NLTP. Proposed changes are not limited to increases to the Facility and could entail a reduction in the size of the Facility if officials consider that there is merit in doing so.

We agree that the scope of the Facility should be better defined (no approval from Ministers is required)

57 In its business case, Waka Kotahi indicated that inconsistent interpretation around the proper use of the Facility has hindered its effective use. For example, the Ministry and Treasury have previously disagreed with Waka Kotahi's attempted use of the Facility where a significant project brought forward its completion date, which meant that costs were due earlier (this was not deemed as an unexpected expenditure shock as this was within the Board's control). This resulted in Waka Kotahi having to defer other projects rather than slowing down the significant project

58 We agree with Waka Kotahi that access conditions to the Facility could be better clarified and have committed to working with Waka Kotahi (in collaboration with Treasury) on developing a MoU on the proper use of the Facility.

59 The MoU will be guided by the following principles:

59.1 The variable cash flow component should generally be used to cover expenditure during peak months, which is then repaid over the remainder of the financial year

59.2 Expenditure and revenue shocks should generally be outside of Waka Kotahi's direct control.

60 This work is still ongoing and no decisions are required from Ministers. We will update Ministers as the MoU continues to be developed (e.g. through the weekly reports).

Financial implications

61 Any changes to the size of the Facility would be fiscally neutral to the Crown, with no impact on allowances, so as long as the Facility continues to be subject to market terms and repaid within the forecast period. However, increases to the Facility would increase net core Crown debt over the forecast period by the commensurate amount.

62 As such, the draft Cabinet paper seeks agreement to provide an additional $250 million for the Facility. While the overall impact is fiscally neutral, there may be impacts on net core Crown debt on an annual basis due to the timing of repayments.

Next steps

63 While Cabinet itself has no decision-making powers in regards to approving borrowing for Crown entities, should you agree to the recommendations in this report, Cabinet agreement is required for the appropriation changes to give effect to the increase in size of the Facility. The attached Cabinet paper therefore seeks Cabinet's agreement to:

63.1 provide an additional $250 million for the Facility and associated changes to appropriations, with no impact of allowances so as long as the Facility continues to be subject to market terms and repaid within the forecast period; and

63.2 amend the scope of the appropriation "NLTF Borrowing Facility for Short-Term Advances" appropriation be amended, with effect from 1 July 2021, to include a reference to the shock component and to remove the reference to the borrowing limit, which is better managed through the loan facility agreement.

64 Should Ministers wish to discuss the proposed extension with Cabinet ahead of taking formal decisions, officials will amend the draft Cabinet paper to refer to the recommendations in this paper as "intended decisions" as opposed to decisions already made. After Cabinet has considered the proposals and provided the requisite financial authorisation, Ministers can then return to this paper and undertake the formal statutory decision-making process (noting that such decisions are strictly matters for Ministers to decide).

65 If Ministers support the proposed changes above, we recommend that the Minister of Transport lodge the attached Cabinet paper with Cabinet Office by Thursday 1 April, for consideration by the Economic Development Committee on Wednesday 7 April. This will ensure financial decisions can be taken prior to the implementation of Budget moratorium and that changes can be reflected in the Budget 2021 Estimates.

66 If Cabinet agrees to the appropriation changes, officials will provide the Minister of Finance with an updated facility agreement to reflect the changes.

Consultation

67 This joint report was prepared in collaboration with Waka Kotahi.

In Confidence

Office of the Minister of Transport

Chair, Cabinet Economic Development Committee

Proposed changes to Waka Kotahi short-term borrowing facility

Proposal

1 This paper seeks Cabinet's agreement to appropriation changes to increase the borrowing limit of Waka Kotahi NZ Transport Agency's (Waka Kotahi) short-term borrowing facility from $250 million to $500 million, with effect from 1 July 2021. This will enable Waka Kotahi to better manage cash flow variations between the hypothecated revenue inflows and expenditure outflows in the National Land Transport Fund (NLTF).

Relation to government priorities

2 This proposal does not relate to specific government priorities and is an operational adjustment that requires Cabinet approval.

Executive Summary

3 Waka Kotahi currently has access to a $250 million short-term borrowing facility (the Facility) to enable it to manage short-term variations between hypothecated inflows and outflows in the NLTF. The Facility consists of a $175 million variable cash flow component (formerly known as the seasonal cash flow component), and a $75 million shock component to manage any expenditure and revenue shocks beyond its direct control.

4 Following a review of the Facility, the Minister of Finance and I support increasing the size of the Facility from $250 million to $500 million, specifically:

- 4.1 increasing the size of the variable cash flow component from $175 million to $250 million
- 4.2 increasing the size of the shock component from $75 million to $250 million
- 4.3 extending the repayment period of the shock component from three to four years

5 The proposed changes are fiscally neutral to the Crown and will have no impact on allowances, as long as the Facility continues to be subject to market terms and repaid within the forecast period. However, increases to the size of the Facility would increase net core Crown debt over the forecast period by the commensurate amount.

6 The Minister of Finance and I have also agreed to implement a three-yearly review cycle, to coincide with the three-yearly National Land Transport Programme development process, to ensure the Facility remains fit-for-purpose and is operating as intended.

7 The Ministry of Transport and Waka Kotahi (working together with the Treasury) have committed to establishing a memorandum of understanding around the use of the Facility, which will be guided by the following principles:

7.1 the variable cash flow component should generally be used to cover expenditure during peak months, which is then repaid over the remainder of the financial year

7.2 expenditure and revenue shocks should generally be outside of Waka Kotahi's direct control.

Background

8 In 2010, Cabinet agreed to establish the $250 million Facility to provide for Waka Kotahi to manage cash-flow variations between revenue inflows and expenditure outflows in the NLTF (EGI Min (10) 29/18 refers). At that time, the Facility was made up of two components:

8.1 $150 million variable cash flow component for managing the regular variable cash-flow cycles in the NLTF, where borrowing is repayable annually, at a later stage of the cash flow cycle (formerly known as the seasonal cash flow component)

8.2 $100 million shock component to manage unexpected and unavoidable cash flow variations, repayable within the timeframe for which the expenditure was originally planned.

9 The Facility was reviewed in 2014 and remained at $250 million but included a number of changes:

9.1 Increasing the variable cash flow component from $150 million to $175 million, while maintaining the same repayment requirements

9.2 Reducing the shocks component from $100 million to $75 million but extending the scope to cover both expenditure and revenue shocks, repayable within three years from drawdown.

10 In January 2021, the Minister of Finance and I agreed to the Ministry of Transport, working with the Treasury and Waka Kotahi, leading a review of the Facility. The proposed changes in this paper are the results of that review.

Purpose of the Facility

11 Prior to the establishment of the Facility, Waka Kotahi was required to carry a cash buffer to absorb any potential negative cash flow variations, especially during the peak construction months. The Facility provides Waka Kotahi with more flexibility in programming and enables better management of NLTF revenue through the different components:

11.1 <u>Variable cash flow component</u>: Under the 'pay as you go' (PayGo) approach, the level of investment should match the level of revenue received each year. However, due to factors such as poor forecasting and claims behaviour (resulting from optimism bias), actual expenditure tends to fall below forecast revenue. The variable cash flow component allows Waka Kotahi to take into account expenditure variations to 'over-programme' the National Land Transport Programme (NLTP), and provides it with a sufficient buffer to cover expenditure during the peak months at the end of the financial year.

11.2 Shock component: Waka Kotahi is subject to revenue and expenditure shocks that are outside of its direct control (e.g. lower NLTF revenue due to economic downturn and severe weather events). Without the shock component, Waka Kotahi must maintain a constant cash buffer, which reduces the overall efficiency of the NLTF. A short-term borrowing facility removes the need for this buffer and is viable as long as there is sufficient time for Waka Kotahi to allow for repayment in its future programming.

The Minister of Finance and I support change

12 Following advice from officials, the Minister of Finance and I consider that there is a case for change and support the following changes to the Facility:

12.1 Increasing the size of the variable cash flow component from $175 million to $250 million, while maintaining existing repayment requirements

12.2 Increasing the size of the shock component from $75 million to $250 million

12.3 Extending the repayment period of the shock component from three to four year from each drawdown.

13 Approval from the Minister of Finance and the Minister responsible for Waka Kotahi is required, pursuant to section 160(1) and 162 of the Crown Entities Act 2004, for Waka Kotahi to borrow or amend the terms of any borrowing. The Minister of Finance and I have given this approval to Waka Kotahi.

14 Section 65L of the Public Finance Act 1989 provides that the Minister of Finance, on behalf of the Crown, may lend money to a person or organisation if it appears to be necessary or expedient in the public interest to do so, on terms and conditions that the Minister thinks fit.

15 The Minister of Finance has agreed, on behalf of the Crown, to provide the revised $500 million loan to Waka Kotahi and the Minister is satisfied that it is expedient in the public interest to do so, pursuant to section 65L of the Public Finance Act.

The case for change

Variable cash flow component

16 At its inception, the variable cash flow component ($150 million) represented around 5.5 percent of the NLTF. Since that time, the size of the NLTF has increased by approximately 50 percent. While the variable cash flow component was increased by $25 million following the 2014 review, this now only represents 4 percent of the NLTF. The 2014 review noted that “it is reasonable to expect that as the size of the National Land Transport Programme increases, the variable cash flow fluctuations will also increase…”.

17 A substantial proportion of variation in expenditure can be attributed to Approved Organisations’ (AOs) claims (i.e. local transport projects outside of Waka Kotahi’s control). While AOs must forecast the timing and size of their claims against the NLTF, the quality and timeliness of these forecasts vary substantially. For example, I was informed that in 2019/20, claims in the final six weeks of the year for local road improvements made up 30 percent of the annual total. Over the next 10-year period, the proportion of AO and KiwiRail projects is expected to increase, and is likely to result in higher degrees of fluctuation especially during the peak months.

18 In supporting an increase to the variable cash flow component, the Minister of Finance and I have made it clear that we do not consider ongoing increases to the variable cash flow component as an appropriate primary mechanism to address poor AO behaviours. Instead, we expect Waka Kotahi to also progress separate work specifically targeting improvements to AOs' claim behaviour. Waka Kotahi has identified an opportunity through its forthcoming Investment Claims and Obligations Policy, where it will emphasise AOs' obligations to provide accurate forecasts and to make claims in a timely and consistent manner, including introducing penalties where appropriate.

Shock component

19 The size of the shock component has not kept-up relative to the size of the NLTF. At its inception, the shock component made up almost 4 percent of the NLTF, but this has dropped to about 2.5 percent (NLTF revenue has increased from around $2.5 billion to almost $4 billion over this period).

20 In addition, the NLTP is experiencing increased emergency repairs costs as a result of increased severe weather incidents. While Waka Kotahi sets aside a contingency for emergency repairs (approximately $130 million per annum), the increasing number, and severity of weather incidents has meant that the contingency is often not sufficient, and Waka Kotahi is required to draw funds from other investment areas. For example, in 2018, a handful of weather events resulted in a repair bill of $140 million.

21 Increasing the shock component to $250 million, in combination with an extension to repayment (discussed below) will allow Waka Kotahi to address future shocks that are beyond its control (e.g. extreme weather events, revenue loss) without severely impacting the delivery of the NLTP 2021-2024.

22 I would like to note to Cabinet that the increase to the shock component is not meant to cover Waka Kotahi from all forms of shock, and that that large-scale shocks of a similar nature to COVID-19 and the Kaikōura earthquake would likely still require assistance from the Crown (as part of a whole-of-government approach).

Repayment period for the shock component

23 The shock component currently requires Waka Kotahi to repay any borrowing within three years from drawdown. In its business case, Waka Kotahi noted that this does not provide it with sufficient flexibility to ensure delivery of the most current NLTP is not materially impacted, as repayments can be required within the same three-year NLTP period.

24 The Minister of Finance and I agree with Waka Kotahi's assessment and recognise that the existing repayment period may not be entirely consistent with the purpose of the shock component – addressing short-term shocks so that delivery of the NLTP is not materially impacted. Therefore, we support increasing the repayment period from three to four years, which would allow for Waka Kotahi to programme repayments into the next NLTP, while still aligning to the short-term nature of the Facility.

Other initiatives to improve the operation of the Facility

Three-yearly review cycle

25 The Minister of Finance and I have also agreed to officials undertaking a three-yearly review (to coincide with the three-yearly NLTP development cycle) to ensure the Facility remains fit-for-purpose and is operating as intended.

26 The next review will commence in 2024, with changes to come into effect by 1 July 2024 to support the delivery of NLTP 2024-2027.

Memorandum of Understanding around the use of the Facility

27 Officials have advised that inconsistent interpretation on the proper use of the Facility has hindered its effective use. To address this matter, the Ministry and Waka Kotahi (working together with Treasury) have committed to establishing a memorandum of understanding (MoU) around the proper use of the Facility, including clearly defining the scope of each component and setting out appropriate thresholds, above which, an expenditure variation or shock would be determined to have eventuated.

28 The MoU will be guided by the following principles:

28.1 The variable cash flow component should generally be used to cover expenditure during peak months, which is then repaid over the remainder of the financial year.

28.2 Expenditure and revenue shocks should generally be outside of Waka Kotahi's direct control.

Appropriation changes are required to implement proposed changes to the Facility

Scope of appropriation

29 The existing $250 million Facility is provided for through the NLTF Borrowing Facility for Short-Term Advance appropriation. The scope of the appropriation notes that "… the maximum amount of such advances at any one time not exceeding $250 million".

30 I propose that the scope of this appropriation be revised to: "This appropriation is limited to short-term advances to Waka Kotahi NZ Transport Agency to manage cash flow variations between hypothecated revenue inflows and outflows of the National Land Transport Fund, and short-term revenue and expenditure shocks".

31 This removes the reference to the maximum amount of advances at any one time, which should be determined by the loan facility agreement, and reflects the shock component of the Facility.

Size of appropriation

32 While the size of the existing Facility is at $250 million, the maximum limit of the appropriation is set at $500 million. This is because appropriations represent authority to incur expenditure and do not reflect the flow of funds (i.e. does not take into account repayments made). For example, if the $250 million was drawn down from the facility, then $100 million was repaid and $50 million was later redrawn, an appropriation of $300 million would be required to cover the sum of total drawdowns, even though no more than $250 million was borrowed at any one time.

33 Increasing the size of the Facility from $250 million to $500 million would require a corresponding increase to the appropriation limit. Therefore, I propose to increase the appropriation limit from $500 million to $750 million.

Monitoring and reporting

34 Waka Kotahi is required to report quarterly to the Minister of Finance and me on the status of the Facility, including a Board certification that the Facility is being used for its intended purposes and that the terms and conditions are being met. Its report will also include any anticipated difficulties regarding managing within the limitations of the Facility.

Financial Implications

35 Any changes to the overall size of the Facility would be fiscally neutral to the Crown, with no impact on allowances, so as long as the Facility continues to be subject to market terms and repaid within the forecast period. However, increases to the size of the Facility would increase net core Crown debt over the forecast period by the commensurate amount. There may also be impacts on net core Crown debt on an annual basis due to the timing of repayments.

Legislative Implications

36 The proposals contained in this paper do not have any legislative implications.

Impact Analysis

37 Regulatory impact analysis and Climate Implications of Policy Assessment are not required.

Population Implications

38 The proposals contained in this paper do not have any implications for population groups.

Human Rights

39 The proposals contained in this paper do not have any implications for the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

Consultation

40 The Treasury and Waka Kotahi have been consulted in the preparation of this paper. The Department of Prime Minister and Cabinet has been informed.

Communications

41 The Minister of Finance and I are not planning to make an announcement on the proposed changes to the Facility

Proactive Release

42 This paper will be made available on the Ministry of Transport's website within 30 business days of Cabinet's decisions being confirmed, subject to redactions as appropriate under the Official Information Act 1982.

Recommendations

43 The Minister of Transport recommends that the Committee:

1 **note** that Cabinet agreed in 2010 to establish a $250 million borrowing facility (the Facility) to enable Waka Kotahi NZ Transport Agency (Waka Kotahi) to manage cash-flow variations between expected revenue inflows and expenditure outflows in the National Land Transport Fund (NLTF) (EGI Min (10) 29/18 refers)

2 **note** that at its inception, the $250 million Facility consisted of:

2.1 a $150 million variable cash flow component for managing the regular variable cash-flow cycles of the NLTF, where borrowing is repayable annually, at a later stage of the cash flow cycle (formerly known as the seasonal cash flow component)

2.2 a $100 million shock component to manage unexpected and unavoidable cash flow variations, repayable within the timeframe for which the expenditure was originally planned.

3 **note** that the Facility was last reviewed in 2014, where joint Ministers of Transport and Finance agreed to changes to the Facility (the size of the overall Facility remained at $250 million), namely:

3.1 increasing the variable cash flow component from $150 million to $175 million, with the component having to be repaid at least once per financial year

3.2 reducing the shocks component from $100 million to $75 million and extending the scope to cover any expenditure and revenue shocks, repayable within three years from drawdown.

4 **note** that the Facility provides Waka Kotahi with more flexibility in programming and enables better management of NLTF revenue through the different components:

4.1 Variable cash flow component: enables Waka Kotahi to take into account expenditure variations to 'over-programme' the National Land Transport Programme (NLTP), and provides it with a sufficient buffer to cover expenditure during the peak months at the end of the financial year

4.2 Shock component: enables Waka Kotahi to manage short-term revenue and expenditure shocks beyond its direct control without the need to maintain a constant cash buffer

5 **note** that the Ministers of Finance and Transport agreed to review the Facility in early 2021, which resulted in a number of recommended changes

6 **note** that the Ministers of Finance and Transport have jointly agreed that Waka Kotahi can increase the size of the Facility from $250 million to $500 million, effective from 1 July 2021, made up of:

6.1 an increase from $175 million to $250 million for the variable cash flow component

6.2 an increase from $75 million to $250 million for the shock component

7 **note** that the Minister of Finance and Transport have agreed to Waka Kotahi extending the repayment period of the shock facility from three years to four years, effective from 1 July 2021

8 **note** that the Ministers of Finance and Transport expect Waka Kotahi to progress separate work specifically targeting improvements to Approved Organisations' claim behaviour (and other factors to expenditure variations) and that updates are provided through regular reporting

9 **note** that approval from the Ministers of Finance and Transport is required, pursuant to section 160(1) and 162 of the Crown Entities Act 2004, for Waka Kotahi to enter into agreement to borrow or amend the terms of any borrowing

10 **note** that the Ministers of Finance and Transport have given Waka Kotahi approval to enter into an agreement with the Crown through an amendment to the Facility on the terms set out in the recommendations 6 and 7 above

11 **note** that section 65L of the Public Finance Act 1989 provides that the Minister of Finance, on behalf of the Crown, may lend money to a person or organisation if it appears to be necessary or expedient in the public interest to do so, on terms and conditions that the Minister of Finance thinks fit

12 **note** that the Minister of Finance has agreed, on behalf of the Crown, to provide the revised $500 million loan to Waka Kotahi and the Minister is satisfied that it is expedient in the public interest to do so

13 **note** that appropriation changes are required in order to give effect to the changes agreed in recommendation 6

14 **note** that appropriations represent authority to incur expenditure and do not reflect the flow of funds and therefore the total appropriation appears significantly greater than the maximum drawdown limit, and that the limits and conditions of the Facility are not reflected in the appropriation but will be captured in the loan facility agreement

15 **note** that the terms and conditions of the Facility will be determined by the Minister of Finance

16 **agree** to provide an additional $250 million for the Facility, to give effect to the changes agreed in recommendation 6, with no impact on allowances so as long as the Facility continues to be subject to market terms and repaid within the forecast period

17 **note** that, while the overall impact is fiscally neutral, there may be impacts on net core Crown debt on an annual basis due to the timing of repayments

18 **agree** that the scope of the *"NLTF Borrowing Facility for Short-Term Advances"* appropriation be amended, with effect from 1 July 2021, to:

"This appropriation is limited to short-term advances to Waka Kotahi NZ Transport Agency to manage cash flow variations between hypothecated revenue inflows and outflows of the National Land Transport Fund and short-term revenue and expenditure shocks".

19 **approve** the following changes to appropriations:

	Increase / (Decrease) $m				
Vote Transport **Minister of Transport**	**2020/21**	**2021/22**	**2022/23**	**2023/24**	**2024/25 & Outyears**
Non-departmental Capital Expenditure: NLTF Borrowing Facility for Short-Term Advances	-	250	250	250	250

20 **agree** that the proposed changes to appropriations be included in the 2021/22 Estimates

21 **note** that the Ministers of Finance and Transport have agreed to officials implementing a three-yearly review cycle to ensure the Facility remains fit-for-purpose

22 **note** that the Ministry of Transport and Waka Kotahi (working with the Treasury) have committed to establishing a memorandum of understanding on the use of the Facility, which will be guided by the following principles:

22.1 The variable cash flow component should generally be used to cover expenditure during peak months, which is then repaid over the remainder of the financial year

22.2 Expenditure and revenue shocks should generally be outside of Waka Kotahi's direct control.

Authorised for lodgement

Hon Michael Wood
Minister of Transport

Ministry of Transport
TE MANATŪ WAKA

OIA BRIEFING

25 March 2021

OC210176

Hon Michael Wood
Minister of Transport

Action required by:
Thursday, 1 April 2021

OFFICIAL INFORMATION ACT REQUEST FROM [redacted] RE - AUCKLAND LIGHT RAIL SYSTEM OPTIONS + TRACKLESS TRAMS + SUPER CAPACITOR LRTRAMS

Purpose

Seek your agreement to the proposed response to an Official Information Act 1982 request.

Name of Requester	[redacted]
Request	*"1. Has the MOT/AT/NZTA chosen the system or mode for the above [Auckland Light Rail]?* *2. If so, is there a report which compares the options or rules one system either in or out?* *Trackless Trams appear to be a great option for some scenarios or specific lines/routes. Disruption during construction and total system costs are hugely less with Trackless Trams than with other systems. I am particularly interested in the view of Trackless Trams.* [redacted]
Statutory deadline	Thursday, 1 April 2021
Risks	Low risk as no documents fall within the scope of the request

Recommendations

We recommend you:

1 **consider** the proposed response to the request under the Official Information Act 1982

2 **sign** the attached letter to [redacted] Yes / No

Gareth Fairweather
Manager, Placemaking and Urban Development

..... / ...... / ......

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
Gareth Fairweather, Manager, Placemaking & Urban Development	[redacted]	✓
Ben Ormsby, Senior Adviser, Placemaking and Urban Development	[redacted]	

OFFICIAL INFORMATION ACT REQUEST FROM [redacted] RE - AUCKLAND LIGHT RAIL SYSTEM OPTIONS + TRACKLESS TRAMS + SUPER CAPACITOR LRTRAMS

No documents fall within the scope of the request

1 No documents fall within the scope of the request but in order to be helpful to the requester we have prepared a draft letter in response to his questions.

2 The letter notes that no decisions have been made about the mode or route for Auckland Light Rail. It highlights that you expect to make an announcement in the near future and that the chosen technology will be informed by a robust asessment process.

Consultation

3 No consultation was needed with other agencies as no documents are proposed to be released.

OC210176

29 March 2021

[redacted]

Dear [redacted]

Thank you for your email dated 3 March regarding Auckland Light Rail. This is a much needed project to support Auckland's growth. It will do this by improving access to employment, addressing transport congestion by supporting increased use of public transport, and enabling housing development along the corridor, especially in the areas around Mount Roskill and Māngere.

I am very keen to see this project progress and I expect to make an announcement about the next steps in the near future.

You have asked the following specific questions about the project under the Official Information Act:

1. ***Has the MOT/AT/NZTA chosen the system or mode for the above [The Auckland Light Rail project]?***
2. ***If so, is there a report which compares the options or rules one system either in or out?***
3. ***Trackless Trams appear to be a great option for some scenarios or specific lines/routes. Disruption during construction and total system costs are hugely less with Trackless Trams than with other systems. I am particularly interested in the view of Trackless Trams.*** [redacted]

A mode has not yet been chosen for Auckland Light Rail. When I make an announcement about the future of the project I will make further comments on the process for mode selection going forward.

Work done by Auckland Transport and Waka Kotahi prior to the parallel process concluded that the most appropriate mode for the priority City Centre to Māngere corridor was a form of light rail.

The Auckland Transport Alignment Project (ATAP) 2018-2028 endorsed this light rail recommendation. You may wish to contact Auckland Transport or Waka Kotahi in respect of these earlier studies, and you can read more about ATAP on the Ministry of Transport's website here:

www.transport.govt.nz/area-of-interest/auckland/auckland-transport-alignment-project/

With regard to trackless trams, decisions on the technology that is chosen for the project will be informed by a robust assessment process. I cannot comment further on the suitability of this or other rail technology for the project until that is complete.

Once again, thank you for your interest in Auckland Light Rail and I appreciate you taking the time to write to me.

Yours sincerely

Hon Michael Wood
Minister of Transport