

In Confidence

Office of the Minister of Transport
Chair, Cabinet Legislation Committee

LAND TRANSPORT (RAIL) LEGISLATION BILL: APPROVAL FOR INTRODUCTION

Proposal

1. I propose that the Cabinet Legislation Committee (LEG) approve the introduction of the Land Transport (Rail) Legislation Bill (Rail Bill).

Executive Summary

2. The policy objective of the Rail Bill is to implement a new planning and funding framework for the heavy rail track network (rail network) owned by KiwiRail. This new framework involves bringing planning and funding of the rail network under the land transport planning and funding regime set by the Land Transport Management Act 2003 (LTMA). The LTMA currently deals with the planning and funding of public transport, state highways and local roads.
3. The new rail planning and funding framework will see a statutory rail network investment programme over which Ministers will have decision-making rights on funding rail network investments from the National Land Transport Fund (NLTF). Changes will also ensure track users can contribute to the costs of the rail network in a fair and transparent way.
4. The Rail Bill gives effect to Cabinet Economic Development Committee (DEV) decisions outlined at paragraphs 15 and 16 below that were confirmed by Cabinet on 2 September 2019 [CAB-19-MIN-0439 refers].
5. I seek additional policy approval for minor amendments to the LTMA and LTA to enable fees and charges established by regulation made under Part 11 of the LTA to be treated as land transport revenue and paid into the National Land Transport Fund.
6. I seek approval for this matter to be included in the Rail Bill.
7. I propose that the Rail Bill replace the Land Transport Management Amendment Bill that has a priority of category 4 (to be referred to a select committee in the year) currently on the 2019 Legislation Programme.
8. Therefore, I seek LEG approval for the Rail Bill to be given a priority of category 4 (to be referred to select committee in the year) on the 2019 Legislation Programme.

Policy

9. The policy objective of the Rail Bill is to implement a new planning and funding framework for the rail network.
10. The existing planning and funding framework for the rail network creates uncertainty for the rail business as a result of annual budget processes, and separates road and rail network

investment decisions. This has resulted in a short-term focus, rather than a long-term strategic planning focus for the rail network, an inability to consider road and rail investment together, and the absence of an integrated and co-ordinated land transport investment programme.

11. On 22 May 2019, DEV noted the findings of the Future of Rail review¹ which recommended a new planning and funding framework for rail, which will see investments in road and rail infrastructure being taken on a more mode neutral basis and funding for the rail network channelled through the NLTF [DEV-19-MIN-0123 refers].
12. The Rail Bill proposes a new planning and funding framework for the heavy rail track network (rail network) owned by KiwiRail. This new framework will bring planning and funding of the rail network under the land transport planning and funding regime set up in the LTMA. The LTMA currently deals with the planning and funding of public transport, state highways and local roads.
13. The new rail planning and funding framework will see a statutory Rail Network Investment Programme (RNIP) established, which the Minister of Transport will need to approve, in consultation with KiwiRail's shareholding Ministers. The Minister of Transport will also need to approve NLTF funding for rail network investments within the RNIP. The New Zealand Transport Agency (NZTA) will provide advice to the Minister of Transport on how the RNIP fits with the overall land transport investment programme under the LTMA as part of the Minister of Transport's approval processes. KiwiRail will be responsible for the delivery of rail activities funded from the NLTF.
14. The Rail Bill will replace the Land Transport Management Amendment Bill that has a priority of category 4 (to be referred to a select committee in the year) currently on the 2019 Legislation Programme. The Rail Bill will include minor amendments to the LTA.

Policy approval

15. On 28 August 2019, DEV agreed amongst other things, to the following policy decisions relating to the implementation of the new planning and funding framework for rail [DEV-19-MIN-0225 refers]:
 - 15.1. **agreed** to implement a new rail planning and funding framework, which will give responsible Ministers decision-making rights on funding rail network investments and channel funding from the NLTF to the rail network
 - 15.2. **agreed** that the NLTF and land transport revenue be used to directly fund KiwiRail's rail activities
 - 15.3. **agreed** to include rail activities in the Government Policy Statement on Land Transport
 - 15.4. **agreed** that, every three financial years, KiwiRail must prepare a three-year programme of rail activities, to be called the Rail Network Investment Programme, for which it seeks funding from the NLTF

¹ The Future of Rail review is governed by a Terms of Reference and a Steering Group. The Steering Group includes the Ministry of Transport, the New Zealand Transport Agency, the Treasury, KiwiRail, the Rail and Maritime Trade Union of New Zealand, Auckland Transport, Greater Wellington Regional Council, and two independent members (a former long serving CEO of Freightways Ltd and a former long serving CEO of the New Zealand Transport Agency).

- 15.5. **agreed** that the Minister of Transport approve the Rail Network Investment Programme after consulting with KiwiRail's shareholding Ministers (the Minister of Finance and the Minister for State Owned Enterprises)
- 15.6. **agreed** that the Minister can only approve or decline the Rail Network Investment Programme after considering the recommendation of the NZTA
- 15.7. **agreed** that the NZTA recommendation include:
 - 15.7.1. whether the Rail Network Investment Programme is consistent with the purpose of the Land Transport Management Act 2003 and with the Government Policy Statement on Land Transport
 - 15.7.2. whether it is satisfied that the Programme includes:
 - 15.7.2.1. the funding contribution for rail activities from the NLTF
 - 15.7.2.2. a programme of rail activities that are proposed to be funded or partially funded from the NLTF
 - 15.7.2.3. the revenue to be received by KiwiRail from other operators applicable to these activities
 - 15.7.2.4. a long-term financial forecast that contains a forecast of anticipated revenue and expenditure on any rail activities for the following 10 years
 - 15.7.2.5. any other information that the Minister may require
- 15.8. **agreed** that, once the Rail Network Investment Programme is approved, the Minister of Transport, in consultation with the KiwiRail shareholding Ministers, can approve or decline the payment for any activities, or combinations of activities, included in the Rail Network Investment Programme after considering the recommendation of NZTA
- 15.9. **agreed** that the NZTA recommendation include:
 - 15.9.1. whether the activities are consistent with the purpose of the LTMA and the Government Policy Statement on Land Transport
 - 15.9.2. an assessment of the activities based on its usual funding approval approach, amended as necessary for rail
- 15.10. **agreed** that the Minister of Transport notify KiwiRail, the NZTA and shareholding Ministers of any funding approval
- 15.11. **agreed** that the Rail Network Investment Programme can be varied during its term on the same basis as approving the programme

- 15.12. **agreed** that delivery of rail activities funded from the NLTF be the responsibility of KiwiRail, and be subject to procurement policies that are consistent with all-of-government procurement practices
 - 15.13. **agreed** that KiwiRail must approve, after consultation with the NZTA, the procurement policies outlined above, and publish those policies
 - 15.14. **agreed** that proposed rail activities in the Auckland and Wellington regions that are significant be included in the Regional Land Transport Plans for those regions
 - 15.15. **agreed** that KiwiRail be included in the Regional Transport Committee for the Auckland and Wellington regions as a non-voting member, and that the Minister of Transport have the discretion to include KiwiRail in other Regional Transport Committees as a non-voting member on a case by case basis
 - 15.16. **agreed** that the exclusion of a rail activity from a Regional Land Transport Plan does not preclude that activity being included in the Rail Network Investment Programme and funded from the NLTF
 - 15.17. **agreed** that minor amendments to section 9(2)(b) of the LTMA be made to clarify that activities to protect the land transport revenue base and maintain the integrity of the revenue system include both revenue and investment driven activities, to better reflect the nature of activities currently undertaken by the Ministry of Transport, and to support the successful implementation of the Future of Rail change programme
16. The decisions of DEV above were confirmed by Cabinet on 2 September 2019 [CAB-19-MIN-0439 refers]. The Rail Bill implements Cabinet's decisions.

Additional policy approval required

17. Cabinet has agreed in principle, subject to a further report covering the principles for a track user charge, that a track user charge be used to ensure rail users also contribute towards rail maintenance and renewals in a fair and transparent way [DEV-19-MIN-0225 refers].

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18. Minor amendments are required in advance of any future Cabinet decisions, to ensure regulations establishing fees and charges under Part 11 of the LTA can specify those fees and charges that are to be treated as land transport revenue and paid into the NLTF.

19. I seek approval for the Rail Bill to amend the LTA to give effect to paragraph 18.

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Need for legislation

- 26. The Rail Bill is required to give effect to the policy decisions outlined above because they require changes to primary legislation.

Impact Analysis

- 27. A Regulatory Impact Assessment (RIA) was prepared by the Ministry of Transport and submitted at the same time the approvals for the Rail Bill were sought: RIA dated 21 August 2019 [DEV-19-SUB-0225 refers].
- 28. A cross-agency Quality Assurance Panel with representatives from the Treasury and the Ministry of Transport reviewed the RIA and considered that it partially met the Quality Assurance criteria.

29. The panel found that the RIA is clear and concise, and sets out a clearly defined problem. It identifies as possible options the status quo, a non-regulatory option and regulatory options. While the Future of Rail review informed the development of options, there has been limited stakeholder engagement on the proposed new planning and funding framework for rail. In light of this gap, the panel could not confirm that the regulatory impact analysis fully meets the Quality Assurance criteria. The select committee process will provide opportunity for further stakeholder engagement on the proposed framework.

Compliance

30. The Rail Bill complies with each of the following:
- 30.1. principles of the Treaty of Waitangi
 - 30.2. rights and freedoms contained in the Human Rights Act 1993
 - 30.3. disclosure statement requirements (disclosure statement has been prepared and is attached to the paper)
 - 30.4. principles and guidelines set out in the Privacy Act 1993
 - 30.5. relevant international standards and obligations
 - 30.6. Legislation Guidelines (2018 edition).
31. The Ministry of Justice is undertaking an assessment of whether the Rail Bill is consistent with the New Zealand Bill of Rights Act 1990 and will provide advice to the Attorney-General.

Consultation

32. KiwiRail, NZTA and the Treasury, who are all involved in the Future of Rail review, led by the Ministry of Transport, have informed the legislative proposals contained in this paper.
33. The State Services Commission, the Ministry for Business, Innovation and Employment, the Ministry for Culture and Heritage, the Ministry for Primary Industries, the New Zealand Police, WorkSafe New Zealand and Fire and Emergency New Zealand have been consulted on the policy for the Rail Bill.
34. The Rail and Maritime Transport Union of New Zealand, Auckland Transport, Auckland Council and the Greater Wellington Regional Council have also been engaged in the Future of Rail review, which has informed the legislative proposals in this paper.
35. The Department of the Prime Minister and Cabinet has been informed.

Binding on the Crown

36. The Rail Bill amends the LTMA and the LTA, which binds the Crown.

37. The Rail Bill will not create any new agencies and will not amend the existing coverage of the Ombudsman Act 1975, the Official Information Act 1982, or the Local Government Official Information and Meetings Act 1987.

Allocation of decision making powers

38. The Rail Bill does not involve the allocation of decision making powers between the executive, the courts and tribunals.

Associated regulations

39. There are no associated regulations to accompany the Rail Bill.

Other instruments

40. Not applicable.

Definition of Minister/department

41. The Rail Bill contains a definition of “shareholding Ministers” which will mean KiwiRail’s shareholding Ministers.

Commencement of legislation

42. The Rail Bill is expected to come into force on 1 July 2020.

Parliamentary stages

43. The Rail Bill pulls together previous Cabinet decisions to progress primary legislative changes related to rail. It will replace the Land Transport Management Amendment Bill that has a priority of category 4 (to be referred to select committee in the year) currently on the 2019 Legislation Programme.
44. I intend to introduce the Rail Bill in December 2019 with the intention that it is passed, if possible, before 1 July 2020.
45. To achieve this timeline, I will seek the House of Representative’s approval for the Rail Bill to be considered by the Transport and Infrastructure Select Committee, and be reported back in a period less than the usual 6 months.

Proactive Release

46. This paper will be proactively released on the Ministry of Transport’s website following the Rail Bill’s introduction into the House of Representative’s, with any redactions in line with the Official Information Act 1982.

Recommendations

47. I recommend that LEG:

1. **note** that on 28 August 2019, the Cabinet Economic Development Committee agreed to a number of policy decisions relating to the implementation of the new planning and funding framework for rail [DEV-19-MIN-0225 refers]
2. **note** that Cabinet has agreed in principle, subject to a further report covering the principles for a track user charge, that a track user charge be used to ensure rail users also contribute towards rail maintenance and renewals in a fair and transparent way [DEV-19-MIN-0225 refers]

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4. **note** that minor amendments to the Land Transport Management Act 2003 (LTMA) and the Land Transport Act 1998 (LTA) are necessary to enable fees and charges established by regulation made under Part 11 of the LTA to be treated as land transport revenue
5. **agree** to minor amendments to the LTMA and LTA to enable fees and charges established by regulation made under Part 11 of the LTA to be treated as land transport revenue and paid into the National Land Transport Fund
6. **note** that the Land Transport (Rail) Legislation Bill 2019 (Rail Bill) gives effect to recommendations 1 and 5
7. **note** my intention for the Rail Bill to replace the Land Transport Management Amendment Bill that has a priority of category 4 (to be referred to select committee in the year) currently on the 2019 Legislation Programme
8. **agree** that the Rail Bill be given a priority of category 4 (to be referred to select committee in the year) on the 2019 Legislation Programme
9. **approve** the Rail Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives
10. **agree** that the Rail Bill be introduced in December 2019
11. **agree** that the government propose that the Rail Bill be:
 - 11.1. referred to the Transport and Infrastructure Select Committee for consideration
 - 11.2. enacted before 1 July 2020.

Hon Phil Twyford
Minister of Transport

Authorised for lodgement