

In Confidence

Office of the Minister for State Owned Enterprises
Office of the Minister of Finance
Office of the Minister of Transport
Office of the Minister for Regional Economic Development

Chair
Cabinet Economic Development Committee

THE FUTURE OF RAIL: NEW PLANNING AND FUNDING FRAMEWORK FOR HEAVY RAIL IN NEW ZEALAND

Proposal

1. We recommend the Committee:
 - 1.1. note that the Government’s commitment to a reliable and resilient rail system means the Crown will need to make ongoing and increasing funding contributions to rail compared to historical levels, to achieve the public benefits we are seeking
 - 1.2. approve a new planning and funding framework for heavy rail (rail) in New Zealand that includes rail network (“below rail”) planning in the Land Transport Management Act 2003 (LTMA), and channels funding to below rail through the National Land Transport Fund (NLTF)

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[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

- 1.5. agree to authorise the Minister of Transport to issue drafting instructions to Parliamentary Counsel Office, to give effect to the new planning and funding framework for rail by amending the LTMA.

Executive summary

2. This Committee considered the findings of the Future of Rail review [DEV-19-MIN-0123 refers] on 22 May 2019. The Committee noted that rail contributes to national and regional economic growth, reduces emissions and congestion, reduces road deaths and injuries, facilitates wider social benefits, and provides resilience and connection between communities.

3. While the Government is committed to rail and its wide-ranging benefits, the Future of Rail review found that realising these benefits is hampered by:
 - 3.1. The current state of the rail network, which is in a state of managed decline due to long-term under-investment
 - 3.2. Short-term planning and funding arrangements for the rail network through the annual Budget process, which creates uncertainty for the rail business
 - 3.3. A lack of integration between road and rail network investments, which has been a long-standing concern in New Zealand. Road and rail investments take place within different decision-making frameworks, which makes it difficult to achieve sensible trade-offs between and across these investments.
4. The Committee agreed in principle to the Resilient and Reliable investment scenario, subject to a report back on further details of the planning and funding framework.
5. The Committee also noted an immediate package of rail investments to support a resilient and reliable rail network would be provided through the Budget 2019. A total of \$1.042 billion for 2019/20 and 2020/21 has been agreed as the first instalment for rail investments across the next decade [CAB-19-MIN-0174.41 refers]. This amount includes \$741 million to support a resilient and reliable rail system, with further funding requests to support rail expected in subsequent Budgets.

Purpose of this paper

6. This paper discusses future funding requirements for below rail infrastructure, including the need for continuing Crown contributions to take the rail network out of a state of managed decline, and build a reliable and resilient rail network to achieve the Government's objectives. The paper also makes detailed recommendations for a new planning and funding framework for below rail to allow amending legislation to be drafted.
7. Below rail includes tracks, bridges, tunnels, overhead electrical infrastructure, train signal systems, maintenance machinery and equipment. Above rail generally refers to KiwiRail's commercial services, such as its freight, tourist and ferry services and associated locomotives, wagons and ferries and other assets for commercial purposes.

Crown funding for rail

8. This paper asks the Committee to note the Crown will need to continue to provide a substantial contribution to the ongoing costs of the rail system to support the Government's commitment to a reliable and resilient rail network. Crown funding will continue to be required over the next decade to achieve the Government's objectives and to provide a platform for KiwiRail to grow as a commercial entity. [REDACTED]

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[REDACTED] Crown funding is also likely to need to increase from historical levels, which put rail into a state of managed decline.

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12. The Minister of Transport intends to release a draft of GPS 2021 at the end of this year or early in the new year. [Redacted]

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Future planning and funding framework under the LTMA

15. Rail is currently provided by KiwiRail as a State-Owned Enterprise, with any additional government funding for rail provided through the Crown annual budget processes. The road network is planned and funded under the LTMA. This means road and rail network investment decisions are not well integrated.

16. Rail network infrastructure can be planned and funded under the LTMA. However, previous governments have chosen not to, and there are also technical impediments within the LTMA to funding the rail network, which prevents KiwiRail receiving funding directly.

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17. Under the recommendations in this paper, rail network planning and funding would be brought clearly under the LTMA, in a way that reflects the unique nature of rail and its current state, and recognises the public benefits of the rail network for New Zealand. The LTMA needs to be amended to put these recommendations into effect. Therefore, we are seeking agreement to instruct Parliamentary Counsel Office to prepare draft amending legislation.

Details of future planning framework for rail

New Zealand Rail Plan

18. The Ministry of Transport is developing the New Zealand Rail Plan (the Rail Plan), which will be agreed and published by Joint Rail Ministers (Minister for State Owned Enterprises, Minister of Finance, Minister of Transport, and the Minister for Regional Economic Development). The Rail Plan has a 10-year horizon and sets out a range of matters, including the Government's longer-term strategic vision and a programme of indicative investments for rail. The Rail Plan would be a companion document to the Government Policy Statement on land transport (GPS). We are seeking the Committee's agreement to delegate the approval and publishing of the Rail Plan to Joint Rail Ministers. Release is currently anticipated for September 2019.

Ministers to approve Rail Network Investment Plan under the LTMA

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19. Under our proposals, the Minister of Transport (after consultation with the Shareholding Ministers), would approve a statutory three-year infrastructure investment programme for rail (Rail Network Investment Programme – RNIP) prepared under the LTMA. The RNIP will include proposed investment in the rail network, including capital projects, maintenance and operations. The RNIP will outline the funding required for rail from the NLTF, as well as funding coming from other sources, [REDACTED]. This change will require amendments to the LTMA.
20. The NZ Transport Agency, after assessing the RNIP's consistency with the LTMA's purpose and the transport directions set out in the GPS, will provide recommendations to the Minister of Transport on whether the RNIP, and funding for the rail activities under it, should be approved. The Minister will need to consider the NZTA's recommendation but will not be bound by it. The NZTA's recommendation role will help to ensure that road and rail investment decisions are brought closer together but, at the same time, retain Ministerial decision-making over the rail network. Proposed rail projects in Auckland and Wellington where there are urban passenger networks, and potentially inter-regional commuter rail services, such as between Hamilton and Auckland, will also be considered in regional land transport planning processes, although these processes will not prevent rail projects being included in the final RNIP.
21. This approach is known as the partial integration option. One of its main characteristics, compared to a fully integrated framework, is that decisions on funding rail investments are made by the Ministers, rather than the NZ Transport Agency.

22. There are reasons to support Ministers exercising control over the funding of the rail network at this time, including:
 - 22.1. Retaining Ministerial sign-off for the NLTF-funded RNIP allows a comprehensive consideration, alongside other investment that KiwiRail may seek from the Government
 - 22.2. Ministers have specific goals about the restoration of rail. There is uncertainty in leaving decision-making on this expenditure to the NZ Transport Agency's Board, as the Board's funding decisions are statutorily-independent.
23. The new framework will respect the roles of shareholding Ministers, rail Ministers and the respective Boards of KiwiRail and NZ Transport Agency and support the safe and effective operation of the railway to enable both commercial and wider benefits.
24. There are a range of detailed implementation matters that need to be worked through to establish this new planning framework. The implementation process will ensure the lessons learned from the funding currently being provided from the NLTF for rail activities (through the Transitional Rail activity class) are taken on board so that approval and assessment processes under the new planning and funding system are quick, flexible, and tailored to rail.
25. Partial integration will provide longer-term planning and more certain funding for KiwiRail's network infrastructure. This aligns with the funding cycle for road and moves away from funding rail through annual budget cycles.
26. Combined, these changes are significant and necessary to make rail sustainable and able to contribute fully to the delivery of the transport and wider outcomes the Government seeks.

Background

27. KiwiRail is an integrated rail business. The assets KiwiRail uses to deliver rail infrastructure and services to its customers and stakeholders comprise:
 - 27.1. above rail assets, which include freight, tourist and ferry services and associated locomotives, wagons and ferries (taken as a whole, these are deployed for commercial purposes, but within KiwiRail's overall service portfolio, there are a mix of commercial and non-commercial services)
 - 27.2. below rail assets, being the rail network, which includes tracks, bridges, tunnels, overhead electrical infrastructure, train signal systems, and maintenance machinery and equipment.
28. In practice, the way the assets are deployed to deliver rail services often necessitates integration of above and below rail, as the assets do not always fit neatly into the above rail and below rail categories. Even so, it remains a useful way to differentiate the two main parts of KiwiRail's operations, and is an accepted international convention for describing rail. These categories will be refined through the implementation process for the Future of Rail review.

KiwiRail is a State-Owned Enterprise (SOE)

29. In addition to the wider benefits that rail provides for New Zealand, KiwiRail also has a primary commercial imperative. As an SOE, KiwiRail is expected to operate as a successful business and be as profitable and efficient as comparable businesses.
30. However, the age and condition of below rail infrastructure and rolling stock has meant that the full potential of commercial returns has not been able to be realised. As the rail network has not generated sufficient cashflows to cover the full cost of required investment in the full national rail network, this has resulted in the impairment of assets, meaning that KiwiRail has reported an overall net deficit in recent years.
31. Despite these challenges, the continued commercial disciplines and focus of KiwiRail are necessary to support efficiency in asset management, and to drive commercial returns from the provision of freight, property and tourism operations.
32. Shareholding Ministers continue to expect KiwiRail to operate in accordance with the requirements of the State-Owned Enterprises Act 1986. The letter of expectations for KiwiRail for 2019/20 supports this continued focus on business profitability and reiterates the Minister for State Owned Enterprises' overarching objective for KiwiRail to operate as a successful business.

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A new planning and funding framework for the rail network

34. This paper outlines a proposed new planning and funding framework for the rail network (below rail) only. The planning and funding of KiwiRail's commercial operations and above rail assets will remain with KiwiRail. KiwiRail's Board will continue to manage those assets outside the framework to generate revenue and engage with its shareholding Ministers (the Minister for State Owned Enterprises and the Minister of Finance) to request capital injections when required.
35. 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.
36. In practice, rail capital investment largely takes place through annual Budgets, recognising that KiwiRail is an SOE. While the services that use roads are commercial, such as road freight transport, investment decisions for the road network are made within the statutory planning and funding framework of the LTMA.
37. This has resulted in a short-term focus, rather than a long-term strategic planning focus for the rail network, an inability to trade-off road and rail investment, and the absence of an integrated and coordinated land transport investment programme. For example, making choices between new rail lines, such as the third main line from Wiri to Westfield, and an equivalent road investment.

38. This has been a long standing concern in New Zealand. For example, in 2012, the Productivity Commission (as part of its inquiry into international freight services) recommended the Government take steps to improve the coordination of its decision-making for investment in road and rail.

Future funding of rail

Sources of revenue for rail

39. The distinctions between the above rail and below rail components of KiwiRail's operations necessitate different approaches to funding those components. The Future of Rail review recommended funding rail investment from appropriate sources:

39.1. Crown funding for a capital programme to revitalise the rail asset from its current state

39.2. Crown funding for other purposes (i.e. for wider non-transport purposes, such as regional economic development benefits)

39.3. shareholder equity injections for other commercial investments

39.4. shareholder equity injections, KiwiRail revenue, and other commercial financing options where appropriate [REDACTED]

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40. The Future of Rail review recommended funding for rail network maintenance and renewal come through the NLTF as part of an integrated land transport system, and for rail improvements where there are clear transport benefits. The review recommended a Track User Charge (TUC) that contributes to the NLTF. A TUC would ensure that rail users contribute towards rail maintenance and renewals in a fair and transparent way. [REDACTED]

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[REDACTED]

[REDACTED]

42. Rail historically received on average about \$210 million in equity support from the Crown each year. This has been insufficient to keep the network at a reasonable minimum standard for freight and passenger demand. This has left the rail system in a state of 'managed decline'.

43. This Committee considered the findings of the Future of Rail review [DEV-19-MIN-0123 refers] on 22 May 2019. The Committee noted that rail contributes to national and regional economic growth, reduces emissions and congestion, reduces road

deaths and injuries, facilitates wider social benefits, and provides resilience and connection between communities.

- 44. To achieve rail's wider benefits and provide a platform for KiwiRail to grow as a commercial entity, substantial increases in investment in rail are required. This Committee previously agreed in principle to the Resilient and Reliable investment scenario, subject to a report back on further details of the planning and funding framework.

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Rail planning under the LTMA

56. The LTMA emphasises national benefits over commercial returns and provides for arm's length decision making. Under the LTMA, the NZ Transport Agency assembles road network, public transport and safety activities into the NLTP.
57. The NLTP is a three-year plan, and includes a 10-year financial statement. The NLTP is based on Regional Land Transport Plans (RLTPs) that are prepared in each region. Activities in the NLTP are funded or co-funded from the NLTF. The NLTF includes FED and RUC on diesel and heavy vehicles.
58. The GPS is a key strategic document that allows the Minister of Transport to set a 10-year strategic direction for land transport. Through the GPS, the Minister of Transport establishes priorities for the NLTF and how much of the NLTF should flow to particular classes of activities, such as state highway maintenance or walking and cycling. In putting together the NLTP, the NZ Transport Agency must make sure the programme as a whole contributes to the purpose of the LTMA and gives effect to the GPS.
59. Rail network infrastructure can be planned and funded under the LTMA, however, previous governments have chosen not to. There are also technical impediments within the LTMA to funding the rail network, such as KiwiRail not being able to receive funding directly as an Approved Organisation because of the way it delivers

construction and maintenance activities. Bringing rail network investment further into the LTMA framework would:

- 59.1. improve the co-ordination between road and rail network investment decisions
- 59.2. improve the transparency of government capital expenditure decisions on the rail network
- 59.3. see network investments in road and rail being made on a more mode-neutral basis – road and rail projects would be assessed on a similar national benefits basis, with the best project chosen
- 59.4. facilitate a medium to long-term approach to investment
- 59.5. recognise and support KiwiRail's commercial objectives and the wider benefits of the rail network.

Implementing a new planning and funding framework for rail

60. We have considered the following options to bring rail network planning and funding further into the LTMA framework:
 - 60.1. Status quo
 - 60.2. Soft integration (enhanced status quo)
 - 60.3. Partial integration (preferred option)
 - 60.4. Full integration.

Soft integration into the LTMA

61. Soft integration would involve making more funds available for rail infrastructure investment through the LTMA framework, encouraging KiwiRail to apply for funding. The NZ Transport Agency would decide which activities were funded. KiwiRail could also be given non-commercial objectives to enable it to take into account wider public benefits, and be funded to deliver these benefits (in addition to the delivery of its commercial objectives).
62. To an extent, this approach is already being taken in GPS 2018, where a transitional activity class for passenger rail infrastructure was included (although bids must be made via councils as KiwiRail cannot bid directly). This approach could be extended but it would continue a piecemeal approach to rail investment. It would not align rail investment with the investment in other land transport modes, nor would it provide KiwiRail with the level of funding certainty it requires for the rail network as a whole.

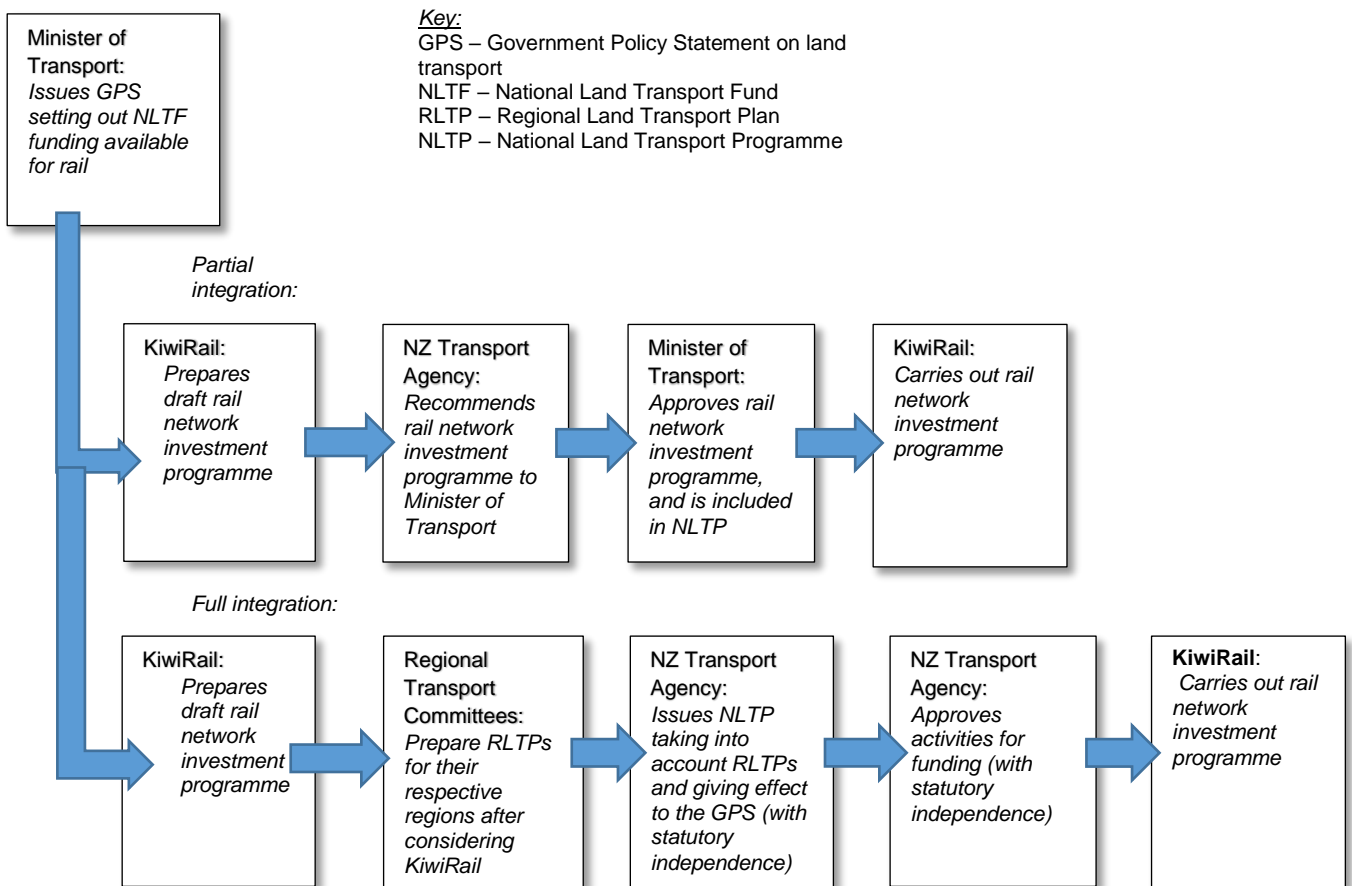
Partial and full integration into the LTMA

63. Moving further along the spectrum, rail infrastructure could be more fully included in the LTMA framework. Maintenance and renewal of rail network infrastructure, as well as new infrastructure with national transport benefits, could be funded through the

NLTF, and formally included in the LTMA’s land transport planning processes. Funding above rail services with transport benefits (in addition to metro rail services currently funded) would also be a possibility.

64. The two possible approaches to bringing rail further into the LTMA framework differ by the extent to which decision-making on investments is made by Ministers or the NZ Transport Agency’s Board. The two options of partial or full integration are described in Diagram 1 below.

Diagram 1: Integration options (partial and full)



65. Partial integration would see KiwiRail put together an RNIP, informed by the Rail Plan. This option would see the Minister of Transport, in consultation with rail shareholding Ministers, retain control over the rail network activities that would be funded. However, the NZ Transport Agency would provide advice to the Minister of Transport on whether the RNIP is consistent with the LTMA and the GPS. This would encourage better alignment between road and rail and investment. This would require the LTMA to be amended and to enable KiwiRail to deliver certain activities where they are consistent with an approved procurement policy.
66. Full integration would see KiwiRail put together a proposed RNIP and submitting it into the NLTP through the RLTP process. The NZ Transport Agency would determine which activities from that programme would be included in the NLTP. As part of this process, proposed rail activities would need to come up through regional planning processes before they could progress through to funding.

67. While full integration would allow the Minister of Transport to retain control over the quantum of funding through the GPS, the NZ Transport Agency would make decisions on which activities would be funded. This option would also require amendments to the LTMA. It may also pose challenges to the role of the KiwiRail Board in providing safe, effective and sustainable railway operations.
68. Under both the partial and full integration options, funding for freight and tourist operations, rolling stock (locomotives and wagons), and the ferries would continue to be funded through a combination of retained earnings and shareholder injections. Decision-making associated with KiwiRail's commercial operations and assets would remain with the KiwiRail Board, who will engage with its shareholding Ministers to request equity injections when required. Shareholder injections must go through the Budget process.

Partial integration preferred

69. We prefer partial integration because it balances the need for Ministers to retain decision-making rights for funding investment in the rail network with bringing rail into the LTMA's land transport planning and funding system to better align rail and road network decision-making.
70. There are reasons for Ministers to continue to exercise control over funding of rail network investments, including:
 - 70.1. KiwiRail's rail business will continue to have a number of sources of funding from the Government. Ministers will need to make decisions over capital injections into the above rail parts of KiwiRail's business through the Budget process. Ministers may also still need to consider Crown contributions to the NLTF for the rail network and may also want projects funded, which do not have direct transport benefits. These projects may require Crown or alternative funding, such as from the PGF. Therefore, retaining Ministerial sign-off for the NLTF-funded rail network programme allows a comprehensive consideration of below rail projects and their funding sources - both NLTF and Crown - with Ministers able to take decisions in an integrated manner.
 - 70.2. Ministers have specific goals about the restoration of rail and a commitment to a resilient and reliable rail network. There is uncertainty in leaving decision-making on this funding to the NZ Transport Agency Board, as the Board's funding decisions are statutorily-independent.
71. Partial integration will:
 - 71.1. improve coordination between road and rail network planning and investment
 - 71.2. improve transparency of government capital expenditure in these networks
 - 71.3. allow investments in road and rail to be made on a more mode-neutral basis and support value for money
 - 71.4. allow national benefits of rail to be captured

- 71.5. provide long-term funding for KiwiRail
- 71.6. preserve KiwiRail's commercial functions and allow it to focus on its commercial markets and customers
- 71.7. allow the Transport Ministers to align funding of the rail network with the KiwiRail shareholder Ministers' funding of above rail assets, such as rolling stock and ferries.

Rail planning under partial integration

The new planning framework for rail

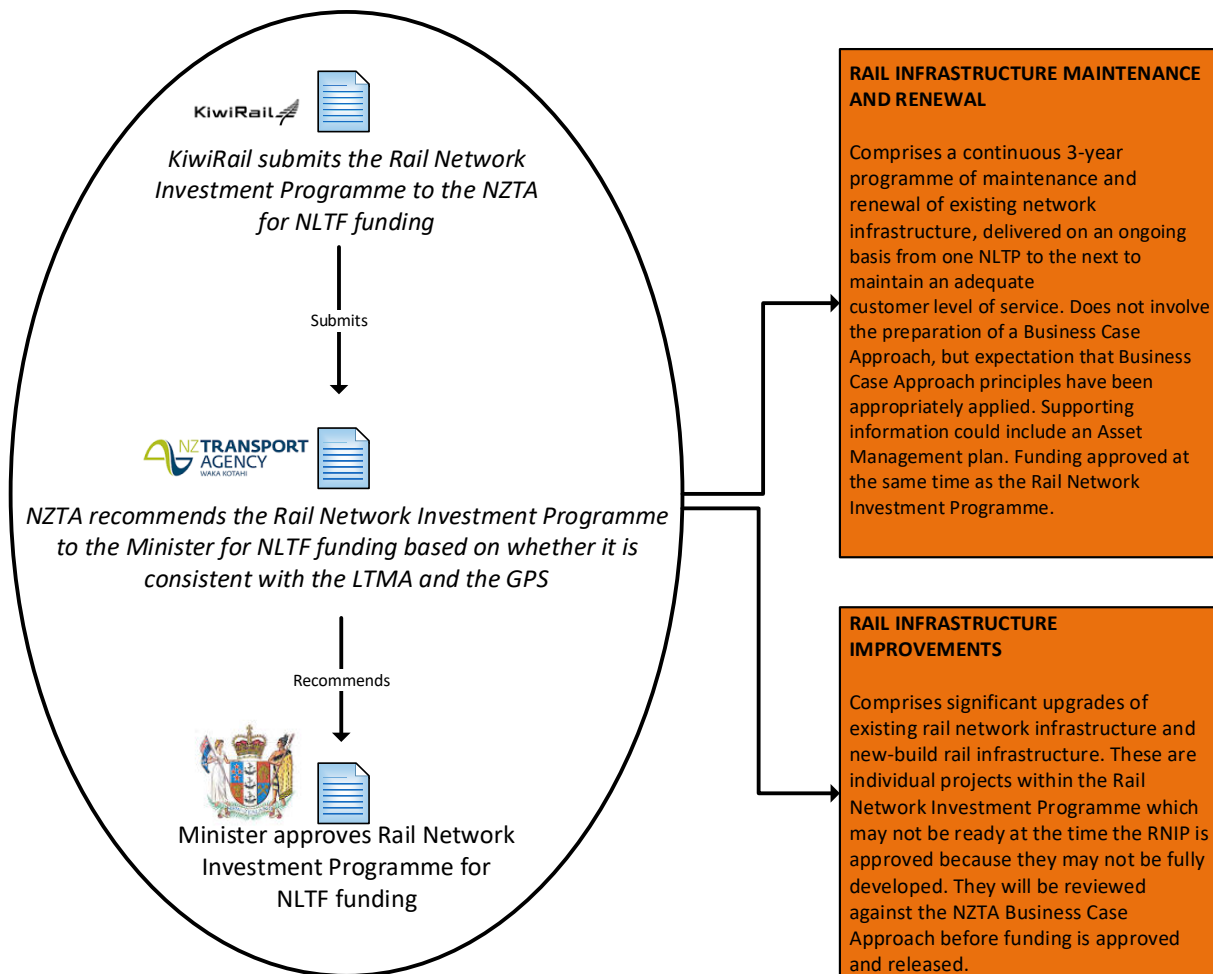
The Rail Plan

- 72. As part of the overall rail planning process, the Ministry of Transport is developing the Rail Plan, which will be agreed and published by Joint Rail Ministers. KiwiRail, the NZ Transport Agency, the Treasury, Auckland Transport and Greater Wellington Regional Council will input into the Plan. This is a non-statutory document. The process around approving and publishing the Rail Plan is discussed further under the next steps section of this paper below.

Planning and funding rail under the amended LTMA

- 73. In summary, the statutory planning process under the LTMA will include the following steps:
 - 73.1. KiwiRail will develop a draft three-year infrastructure investment programme for network maintenance, renewals and improvements, to be called the RNIP. It will outline what funding is required from the NLTF over the 3-year period, as well as funding that will come from other sources, such as track users and the Crown. The RNIP will also include a 10-year financial outlook. Once complete, KiwiRail will provide the programme to the NZ Transport Agency to consider.
 - 73.2. The NZ Transport Agency will provide a recommendation to the Minister of Transport on whether the RNIP should be funded. After considering the Agency's recommendation, the Ministers would make a decision on whether to approve or decline the RNIP in consultation with KiwiRail shareholding Ministers. The Minister would establish a clear date for the recommendation to be made.
 - 73.3. Following the adoption of the RNIP, NLTF funding will be transferred to KiwiRail to deliver the activities in the RNIP.
 - 73.4. The RNIP planning process will be repeated every three years in line with the LTMA planning cycles.
- 74. The NLTF will contribute to both the capital and operational costs in respect of infrastructure investment and activities included in the RNIP.
- 75. The process described in paragraph 73 above is outlined in Diagram 2 below.

Diagram 2: Rail Network Investment Programme process



76. Appendix 1 contains a diagram of the new planning and funding framework for rail under partial integration.

Metro rail services

77. In Auckland and Wellington, the largest users of the rail network are metro rail services, which are the responsibility of Auckland Transport (AT) and Greater Wellington Regional Council (GWRC). These organisations consider that it is important that the RNIP be closely coordinated with the transport planning processes in their regions.
78. In practice, KiwiRail has close relationships with AT and GWRC and existing mechanisms to manage the respective relationships. In both regions, there is an access agreement which specifies the responsibilities, rights and obligations of each party. The agreements are performance-based, and designed to ensure KiwiRail delivers what AT and GWRC require and pay for through an access charge.
79. To reinforce current arrangements, we recommend that proposed rail network investments in Auckland and Wellington regions be included in their RLTPs, and that KiwiRail be made a non-voting member of the relevant Regional Transport

Committees. Exclusion of a rail activity from an RLTP does not preclude that activity being included in the RNIP and funded from the NLTF.

80. The main reason not to include KiwiRail in other Regional Transport Committees is that the first priority is on investment in resilience and reliability, and serving on more than a limited number of Regional Transport Committees could create capacity constraints for KiwiRail. However, as metro rail could become important in other regions in the future, we propose that the Minister of Transport have the discretion to add KiwiRail as a non-voting member to other Regional Transport Committees on a case by case basis. This will also be an important consideration for inter-regional commuter rail services in other regions, such as Hamilton to Auckland and Wellington to Palmerston North.

Funding approval process

81. The RNIP will include a number of continuous sub-programmes, such as maintenance, that would be expected to be approved for funding at the same time the RNIP is approved. The RNIP will also include a number of improvement projects at various stages of development.
82. In practice, this would mean that the NZ Transport Agency would recommend funding for the continuous sub-programmes at the time the RNIP is approved.
83. Some of these improvements may be significant [REDACTED] [REDACTED] Significant improvement projects would be assessed on a case by case basis by the NZTA, which would recommend Ministers approve funding as the activities became ready for funding.
84. This approach will provide a check that these proposed activities remain consistent with the GPS and follow a robust process before being funded by the NLTF, which includes demonstrating value for money.

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Procurement

85. Most activities funded from the NLTF are subject to procurement processes to obtain the best value for money. However, the LTMA's procurement regime means that organisations receiving funding from the NLTF cannot provide outputs themselves. Councils, for example, contract out road maintenance to third parties.
86. However, KiwiRail delivers a significant amount of work on the rail network through its own workforce. KiwiRail already has procurement policies and processes in place for this work, consistent with all of government procurement requirements.
87. Recognising this, we recommend that the legislative changes recognise that KiwiRail has its own procurement regime. This would require KiwiRail to confirm its procurement processes following consultation with the NZ Transport Agency. The processes should be published for transparency.

Implementation of the new rail planning framework

88. The LTMA will need to be amended to put this new planning and funding framework in place. We do not expect this legislation to be overly complex but the amendment process will take around 12 months. We, therefore, recommend that the new planning framework start from 1 July 2021, which would coincide with GPS 2021 coming into effect.

89. We expect the new legislation would be enacted around July 2020. [REDACTED]

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90. We acknowledge that there are a range of detailed implementation matters that need to be worked through. It is important that lessons learned from the funding currently being provided from the NLTF for rail activities (through the Transitional Rail activity class) are taken on board to ensure that approval processes under the new system are quick and flexible, and tailored to rail. Successful implementation will require commitment to a full transition and implementation plan with regular stage gates. This will occur as part of the implementation process to ensure that the new framework supports the Government's objectives and the continued provision of the safe and efficient operation of the railway.

91. The Ministry of Transport will take a system lead role in the implementation process and is developing an implementation plan to govern the change programme and manage its successful delivery. The Ministry of Transport will report to the Minister of Transport on a regular basis, including about mitigations in place to manage any delivery risks identified, and ensure the Government's objectives are achieved.

92. The changes outlined in this paper affect a number of transport agencies. All of the agencies involved (NZ Transport Agency, KiwiRail, the Ministry of Transport, Auckland Transport and Greater Wellington Regional Council) will need to build capability to perform the roles needed to support the implementation and performance monitoring, including delivery of this framework. However, it is not intended to duplicate resources or add unnecessary costs. Central government agencies will continue to engage with AT and GWRC to reach agreement on the detail of how the new planning and funding framework will be implemented for the Auckland and Wellington regions.

Supporting the Ministry of Transport role to undertake both revenue and investment driven activities to ensure the sustainability and integrity of the NLTF

93. The integration of rail funding is likely to place additional pressures on the NLTF and this needs to be considered alongside other land transport investment. To maintain the integrity and sustainability of the land transport revenue system, the Ministry has shifted its focus on both revenue and investment driven activities, and is taking a system-wide view of both future investment needs and the alternative revenue options available to address those pressures.

94. Activities carried out by the Ministry to protect the land transport revenue base and maintain the integrity of the revenue system are funded through a mechanism provided under Section 9(2)(b) of the LTMA 2003. I am proposing minor amendments to Section 9(2)(b) to clarify that the Ministry undertakes both revenue and investment driven activities to ensure the sustainability and integrity of the NLTF. This will support the successful implementation of the change programme proposed in this Cabinet paper.

Risks

95. This paper outlines a major step-up in investment for KiwiRail while, at the same time, the wider infrastructure supplier sector is already being asked to deliver a range of large projects across New Zealand.

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98. As part of Budget 2019, \$1 million of operating funding has been provided to the Ministry of Transport over two years to ensure the successful implementation of the Future of Rail change programme across agencies.

99. This is a complex project with a number of work streams with a significant amount of detailed work in the transition phase, and there are tight timeframes to complete each section. Officials have been instructed to ensure that the affected parties are working together in the development of this project to ensure that any risks are managed and timeframes are kept.

Next steps

█ [REDACTED]

█ [REDACTED]

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█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

New Zealand Rail Plan

101. We also recommend that Cabinet delegate the approval of the Rail Plan to Joint Rail Ministers. We currently anticipate that the Rail Plan will be released in September 2019. This timetable provides the time to develop the Plan to take into account Budget 2019 decisions, and engage with key stakeholders including Auckland Transport and the Greater Wellington Regional Council.

Consultation

Government stakeholders

102. KiwiRail, the NZ Transport Agency and the Treasury, who are all involved in the Future of Rail review, led by the Ministry of Transport, have informed the advice contained in this paper.
103. The State Services Commission, the Ministry for Business, Innovation and Employment, the Ministry for Culture & Heritage, the Ministry for Primary Industries, the New Zealand Police, WorkSafe New Zealand and Fire and Emergency New Zealand have been consulted. Their comments have been included where relevant.
104. The Department of the Prime Minister and Cabinet has been informed.
105. 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 findings in this paper.

External stakeholders

106. There has been limited external stakeholder engagement on the Future of Rail review and proposed new planning and funding framework for rail. Further engagement will occur following the publication of the first Rail Plan and future Government Policy Statements on land transport.
107. Feedback received on the draft GPS 2018, which provided funding for rail infrastructure through the Transitional Rail activity class, included support from a number of stakeholders. Although passenger rail was supported, there was some concern at the lack of support for freight rail.
108. There was also support for funding rail from the NLTF, with some submissions noting that rail had not received sufficient funding in the past. There was a desire, especially from local government, for a transparent long-term funding process for rail.
109. Some interest groups and private sector organisations did, however, have significant concerns about rail being funded from the NLTF. There was concern that allowing access to the NLTF would give rail a competitive advantage against other transport providers in the commercial market. Some transport users were concerned that they contribute to the NLTF while rail users do not. This is expected to be considered in the next Cabinet paper, which will consider the contribution of track users.

Financial implications

110. There are some operational costs to implement the new planning and funding framework, which will be met through the operational funding provided through Budget 2019.
111. The Ministry of Transport, the NZ Transport Agency, KiwiRail and the Treasury will need to build capability to perform the roles needed to support the new framework, including monitoring of rail delivery and performance.
112. As highlighted in the paper this Committee considered on 22 May 2019 [DEV-19-MIN-0123 refers], the Whole-of-Government Financial Statements currently report the commuter rail network as an asset generating public benefits, while the freight rail network is reported as a cash-generating asset only.
113. In KiwiRail's financial statements, both commuter and freight rail network assets are currently treated as cash-generating. A potential financial implication of the proposed new planning and funding framework, which commits to the wider public benefits of rail, may imply that the rail network would be reported in the Whole-of-Government Financial Statements as an asset generating public benefits - on the same basis as the state highway. [REDACTED]
114. Integrating rail decision-making processes with other transport modes, such as the state highway network, means that, similar accounting will be required at the whole-of-government level. As reported previously, this would see a \$5.1 billion increase in asset value, with an approximately \$300 million increase in annual depreciation expense, offset by annual capital expenditure no longer being written off.

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Human rights, gender and disability implications

115. There are no human rights, gender or disability issues or implications associated with this paper.

Legislative implications

116. An amendment to the LTMA will be required. It is intended that the legislation will be in force by 1 July 2020. To meet this timeframe, the Bill will need to be Introduced into the House by the end of 2019. If the progress of the Bill is delayed beyond this point, there is a risk that it will not be in force by July 2020. [REDACTED]

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117. It is also possible minor consequential amendments will be required to other legislation.

118. The Land Transport Management Amendment Bill is on the 2019 Legislation Programme with a category of 4 (to be referred to a select committee in the year) [CAB-19-MIN-0049 refers].

Regulatory Impact Analysis

119. A cross-agency Quality Assurance Panel with representatives from the Treasury and the Ministry of Transport has reviewed the Regulatory Impact Assessment (RIA) titled “*New Planning and Funding Framework for Rail in New Zealand*”, produced by the Ministry of Transport and dated August 2019. The panel considers that the RIA **partially meets** the Quality Assurance criteria.
120. 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 cannot confirm that the RIA meets the consulted criteria.

Publicity

121. I intend to publicise the decisions in this paper along with the release of the Rail Plan. The Rail Plan is due to be released in September 2019.

Proactive Release

122. This paper will be proactively released in accordance with the proactive release policy agreed by Cabinet although I will look to release it at the same time as the release of the Rail Plan, which should be within the 30-day period. There may be commercially sensitive material to withhold, subject to the results of the due diligence process to be undertaken before release.

Recommendations

123. We recommend that the Cabinet Economic Development Committee:

Previous Committee decision

1. **note** that on 22 May 2019 [DEV-19-MIN-0123 refers], this Committee agreed in principle to a resilient and reliable rail system, subject to a report back on a new planning and funding framework for rail

[REDACTED]

[REDACTED]

3. **note** that under the new planning and funding framework, the Crown will need to continue to provide substantial funding for rail activities and it is likely to increase in future years in comparison to historical levels where rail was in a state of managed decline, including providing funding into the National Land Transport Fund

█ [Redacted]

█ [Redacted]

█ [Redacted]

█ [Redacted]

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█ [Redacted]

█ [Redacted]

█ [Redacted]

Contribution from users to the costs of the rail network

8. **agree**, in principle, that a track user charge be used to ensure that rail users also contribute towards rail maintenance and renewals in a fair and transparent way

█ [Redacted]

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█ [Redacted]

New planning and funding framework for rail under the Land Transport Management Act 2003

11. **agree** that a new rail planning and funding framework is needed to:
- 11.1. improve coordination between road and rail network planning and investment
 - 11.2. improve transparency of government capital expenditure in the rail network

- 11.3. allow decision-making and investments in road and rail to be made on a mode-neutral basis
 - 11.4. support value for money in rail network investments
 - 11.5. allow national benefits of rail to be captured
 - 11.6. provide longer-term funding certainty for KiwiRail
 - 11.7. preserve KiwiRail's commercial functions and allow them to focus on its commercial markets and customers
12. **agree** 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 National Land Transport Fund to the rail network
 13. **agree** that the National Land Transport Fund and land transport revenue be used to directly fund KiwiRail's rail activities
 14. **agree** to include rail activities in the Government Policy Statement on land transport

Rail Network Investment Programme

15. **agree** that, every three financial years, KiwiRail must prepare a 3-year programme of rail activities, to be called the Rail Network Investment Programme, for which it seeks funding from the National Land Transport Fund
16. **agree** 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)
17. **agree** that the Minister can only approve or decline the Rail Network Investment Programme after considering the recommendation of the New Zealand Transport Agency
18. **note** the Minister is not bound by the New Zealand Transport Agency's recommendation
19. **agree** that the New Zealand Transport Agency's recommendation includes:
 - 19.1. whether the Rail Network Investment Programme is consistent with the purpose of the Land Transport Management Act and with the Government Policy Statement on land transport; and
 - 19.2. whether it is satisfied that the Programme includes:
 - (i) the funding contribution for rail activities from the National Land Transport Fund
 - (ii) a programme of rail activities that are proposed to be funded or partially funded from the National Land Transport Fund

- (iii) the revenue to be received by KiwiRail from other operators applicable to these activities
- (iv) a long-term financial forecast that contains a forecast of anticipated revenue and expenditure on any rail activities for the following 10 years
- (v) any other information that the Minister may require

20. **note** that, in practice, the Rail Network Investment Programme is likely to include:

- 20.1. a three year rolling maintenance and renewal programme
- 20.2. a set of improvements under a certain value that are approved as a package
- 20.3. a number of significant improvement projects to be assessed and approved on a case by case basis as they become ready for funding

Funding approval for activities in the Rail Network Investment Programme

- 21. **agree** 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 the New Zealand Transport Agency
- 22. **agree** that the New Zealand Transport Agency's recommendation would include:
 - 22.1. whether the activities are consistent with the purpose of the Land Transport Management Act and the Government Policy Statement on land transport
 - 22.2. an assessment of the activities based on its usual funding approval approach, amended as necessary for rail
- 23. **agree** that the Minister of Transport notify KiwiRail, the New Zealand Transport Agency and shareholding Ministers of any funding approval
- 24. **agree** that the Rail Network Investment Programme can be varied during its term on the same basis as approving the Programme

Procurement processes

- 25. **agree** that the delivery of rail activities funded from the National Land Transport Fund will be the responsibility of KiwiRail and will be subject to procurement policies that are consistent with all of government procurement practices
- 26. **agree** that KiwiRail must approve, after consultation with the New Zealand Transport Agency, the procurement policies outlined in recommendation 25 and publish them

Regional Land Transport Plans

- 27. **agree** that proposed rail activities in the Auckland and Wellington regions that are significant be included in the Regional Land Transport Plans for those regions

- 28. **agree** that KiwiRail be included in the Regional Transport Committees for the Auckland and Wellington regions as a non-voting member, and that the Minister of Transport has the discretion to include KiwiRail in other Regional Transport Committees as a non-voting member on a case by case basis
- 29. **agree** that 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 National Land Transport Fund

Amendments to section 9 of the Land Transport Management Act

- 30. **note** that activities carried out by the Ministry of Transport to protect the land transport revenue base and maintain the integrity of the revenue system are funded through a mechanism provided under section 9(2)(b) of the Land Transport Management Act
- 31. **agree** to minor amendments to Section 9(2)(b) of the Land Transport Management Act 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

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

New Zealand Rail Plan

- 33. **note** the New Zealand Rail Plan will be a 10-year strategic document that will provide greater clarity on the Government's intentions for rail
- 34. **agree** that the New Zealand Rail Plan be issued following Budget announcements, currently anticipated for September 2019
- 35. **delegate** the approval and publishing of the New Zealand Rail Plan to Joint Rail Ministers

Land Transport Management Amendment Bill

- 36. **note** that a Land Transport Management Amendment Bill is on the 2019 Legislation Programme with a category of 4 (to be referred to a select committee in the year) [CAB-19-MIN-0049 refers]
- 37. **agree** to amend the Land Transport Management Act to implement the new planning and funding framework for rail

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and free and
frank advice

38. **note** the Bill needs to be in force by July 2020 [REDACTED]
[REDACTED]
[REDACTED]
39. **invite** the Minister of Transport to issue drafting instructions to the Parliamentary Counsel Office to give effect to the decisions on the recommendations above
40. **authorise** the Minister of Transport to make final decisions, consistent with the overall policy intent, on details that arise during the drafting of the Land Transport Management Amendment Bill without reference to Cabinet.

Rt Hon Winston Peters
**Minister for State
Owned Enterprises**

Hon Grant Robertson
Minister of Finance

Hon Phil Twyford
Minister of Transport

Hon Shane Jones
**Minister for Regional
Economic
Development**