Impact Summary: New Planning and Funding Framework for Rail in New Zealand

Section 1: General information

Purpose
Rail in New Zealand Rail plays a significant role in New Zealand's transport system and offers congestion, safety and emissions benefits over other modes, as well as providing a lower cost option for freight services. An Ernst & Young (EY) report into the Value of Rail estimated rail's value to the New Zealand economy at $1.5 billion each year.[1] KiwiRail is an integrated network and services business. Its business involves the following main segments: • above rail assets, which include freight, tourist and ferry services and associated locomotives, wagons and ferries • below rail assets, being the rail network, which includes tracks, bridges, tunnels, overhead electrical infrastructure, train signal systems, and maintenance machinery and equipment • management of 17,800 hectares of land on behalf of the New Zealand Railways Corporation (NZRC). KiwiRail's assets[2] comprise: • 3,500 kilometres of track • 1,364 bridges • 243 locomotives • 4,605 wagons • 98 tunnels • three Interislander ferries (two owned and one leased) • 3,400 staff • assets with a replacement value of $17.9 billion.

[1] The EY assessment (2016) used an economic methodology, and determined that most of the benefits accrue in the 'Golden Triangle'. It did not include regional economic opportunities, opportunity costs (e.g. not needing to invest in road due to rail), land value uplift, or intangible elements such as social inclusion.

[2] KiwiRail Annual Integrated Report 2018

Using these assets, KiwiRail moves around 18 million tonnes of freight per annum (around 16 percent of New Zealand's total freight task (tonne-kms)) and enables 32 million commuter journeys.

Passenger rail plays a key role in transporting people in New Zealand's largest cities. The metro passenger services are a key part of the transport systems in Auckland and Wellington (where these metro networks carry around 85,000 passengers per day), and provide significant co-benefits in congestion reduction and city-shaping. These services are projected to grow by around 27.5 percent by 2022.[3]

Rail also plays an important role in the tourism industry, linking the North and South Islands, and providing high-end experiences for tourists. While rail tourism is currently a smaller segment of KiwiRail's business, it continues to grow at approximately 10 percent per year, bringing in $104 million in the 2017/18 financial year (an increase of 10 percent on the prior period).

The Cook Strait ferries provide essential services for freight and passengers crossing the Cook Strait, connecting the rail network and State Highway 1 between the North and South Islands.

The Government's intentions for rail

When the Government took office in September 2017, it signalled a new vision for rail to give it a greater role within a mode-neutral system.[4] This vision has culminated in a number of initiatives, including:

- a direction in the Government Policy Statement on land transport (GPS) to support funding for rail infrastructure
- funding support for regional rail through the Provincial Growth Fund (PGF).

The Government also signalled its intention to invest in rail for its wider benefits, including to defray externalities (such as congestion, safety, and economic disadvantages arising from distance) or to anchor growth.

The Crown will continue to make a contribution to the ongoing costs of the rail system to support the Government's commitment to a reliable and resilient national rail network. Crown funding will still be required to achieve the Government's objectives and to provide a platform for KiwiRail to grow as a commercial entity.

[3] https://www.transport.govt.nz/resources/transport-dashboard/3-public-transport/pt005-public-transport-boardings-by-mode/

[4] Mode-neutrality means considering all transport modes when planning, regulating and funding transport, and basing decisions on delivering positive social, economic, and environmental outcomes. Mode-neutrality involves two important aspects: i) Making sure all modes and options are considered and evaluated to find the best system solution; and ii) Making users and decision-makers more aware of the benefits and costs of transport choices to incentivise robust decision-making and smart travel choices.

The Future of Rail Review

The Ministry of Transport (the Ministry) has led a significant review of heavy rail[5] in New Zealand to support the Government's vision for rail, called the Future of Rail Review. Heavy rail refers to the rail network and services (freight, tourism and commuter) operating on track and supporting infrastructure owned and operated by KiwiRail.

KiwiRail is the most significant entity in the rail sector. KiwiRail provides the rail network ("below rail"), as well as freight, passenger and interisland ferry services ('above rail'). The Crown owns KiwiRail as a state-owned enterprise (SOE). There are other rail operators that use KiwiRail's network. These operators tend to be smaller scale operators, although there are large operators providing commuter rail services in the Auckland and Wellington metro areas.

The Review reports to a group of Ministers (joint Rail Ministers): Rt Hon Winston Peters – Minister of State Owned Enterprises, Hon Grant Robertson – Minister of Finance, Hon Phil Twyford – Minister of Transport, and Hon Shane Jones – Minister for Regional Development.

The Review's Steering Group includes senior officials from the Ministry, the Treasury, the New Zealand Transport Agency (NZTA), and KiwiRail.

There are also two independent members and a representative from the Rail and Maritime Transport Union. Auckland Transport (AT) and Greater Wellington Regional Council (GWRC) have also given their views.

The Future of Rail Review has three main streams:

1. confirming investment levels needed to support a sustainable rail system and confirming rail's purpose
2. establishing a new planning and funding framework for rail
3. [redacted]

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The Review delivered advice to Ministers throughout 2018. The advice has included:

- a purpose statement for rail:

  Rail enables access and mobility, transporting people and goods to where they need to go, supporting productivity and business growth, reducing emissions, congestion and road deaths, and strengthening social and cultural connections between communities

[5] Light rail is outside the scope of the Review and this paper. "Heavy rail" is referred to as "rail" throughout the rest of this Impact Statement.

- establishing the New Zealand Rail Plan with a 10-year horizon (the Rail Plan) to set out a range of matters including:
    - the Government's longer-term strategic vision for rail
    - the planning and funding framework for rail
    - a 10-year programme of indicative investments for rail and benefits of that investment
    - roles and responsibilities of the entities involved
    - funding sources and principles for rail
- developing a new planning and funding framework for rail, which includes funding rail from:
    - the National Land Transport Fund (NLTF) for the rail network delivering transport benefits
    - the Crown for the rail network delivering wider benefits; for example, regional economic development
    - the Crown, KiwiRail revenue and financing for commercial rail services and assets, including rolling stock (locomotives and wagons) and ferries
- agreeing an indicative programme of investment and funding of rail that would:
    - renew rail network infrastructure, rolling stock and ferries
    - enable KiwiRail's commercial business units to operate as such.

Recent Cabinet decisions

On 22 May 2019, the Cabinet Economic Development Committee noted:

- the Future of Rail Review recommended a new planning and funding framework for rail, which will see investments in road and rail being taken on a more mode-neutral basis
- a paper will be submitted to Cabinet in June 2019 outlining the implementation arrangements of the new planning and funding framework for rail [DEV-MIN-0123 refers].

Scope of analysis in this Impact Summary

The analysis in this Impact Summary concerns the planning and funding framework for rail, in particular, for the rail network. Rail is currently planned and funded under the State-Owned Enterprises Act 1986 (SOE Act) as KiwiRail is a SOE.

The analysis considers whether rail should be planned and funded under the Land Transport Management Act 2003 (LTMA). The LTMA establishes the planning and funding framework for land transport infrastructure and public transport services.

The rail network can be planned and funded under the LTMA. However, previous governments have chosen not to. This practice may be based on the perception associated with using funding gathered from road users being used to support its competition - a step beyond the current situation where road user funds are used to support Metro rail services to 'free up capacity' on the road network.

There are also some technical and operational issues regarding KiwiRail becoming an approved organisation and receiving funding through existing LTMA processes. Maintaining the rail network, while minimising disruption to freight and commuters, and keeping everyone safe, requires a level of in-house specialist skill and expertise. However, the LTMA requires almost all delivery to be outsourced and this aspect would need to be changed to accommodate rail practice.

In addition, requiring KiwiRail, as the provider of a national strategic network, to be involved in individual regional planning processes would be an unnecessary increase in resources and cost.

The Ministry of Transport is solely responsible for this Regulatory Impact Analysis

The Ministry is solely responsible for the analysis and advice set out in this Regulatory Impact Analysis (RIA), except as otherwise explicitly indicated. This analysis and advice have been produced for the purpose of informing policy decisions to be taken by Cabinet on a proposed amendment to the LTMA.

Key Limitations or Constraints on Analysis

Costs

The extra costs of implementing the proposed planning regime are estimated to be low (in the range of $1 million to $2 million per annum)[6]. However, final costs can only be confirmed during the transition to the new framework. In addition, there will be some redistribution of costs between the Treasury, which will remain responsible for monitoring KiwiRail's commercial operations from a shareholder perspective, and the NZTA, which will have a role in monitoring investment in the rail network.

Benefits

While longer-term planning, funding certainty, and more integrated road and rail network funding decisions are likely to yield benefits over time, they are difficult to estimate. This estimate may, for example, depend on the specific investment decisions taken in the future.

[redacted]

Responsible Manager (signature and date):
Erin Wynne Director, Rail Transformation Strategy and Investment Ministry of Transport 21 August 2019

Section 2: Problem definition and objectives

2.1 What is the policy problem or opportunity?

Rail in a state of managed decline with short-term planning and funding

Rail is constrained by operational and resilience issues, access to supply chains, and infrastructure quality. This means only part of the freight task is truly contestable between modes.

Rail needs to operate reliably and with long-term funding certainty to compete with other modes, enabling long-term relationships with its customers. It needs infrastructure and assets that meet the requirements of its customers. The ongoing gradual decline of its infrastructure and assets adversely affects its market share. Rail has been experiencing a decline in its share of the freight market over the past 3-5 years and, in the South Island, is unlikely to recover following the Kaikoura earthquake in 2016.

A number of current policy settings prevent rail from meeting its potential. The key issue is the way that rail is funded, planned and integrated into the transport system.

There has not been enough investment in the rail network to maintain levels of service. One of the reasons for this under-investment is that the network does not generate sufficient revenue from its users to cover its full network costs, especially network renewals for the entire national network. Rail network infrastructure has operated at a deferred level of service over the past eight years, which has resulted in the deterioration of the rail network (track and supporting assets) and an inability to address legacy issues in a timely manner, such as replacement of timber bridge components.

The historical under-investment in rail has left the rail network in a state of 'managed decline'. For example:

- there is a backlog of sleeper renewals (one million main-line sleepers out of six million are beyond their preferred maximum age)
- the automatic signalling system on the Midland Line (South Island) is beyond its preferred maximum age, which affects its reliability and makes it expensive to maintain
- thirty percent of KiwiRail's rail bridges are timber, and tend to be very old, with speed restrictions used to mitigate poor condition.

'Managed decline' hampers future commercial above rail operations and prevents rail from contributing to wider government goals, such as reducing emissions.

The majority of government funding provided to KiwiRail is through the annual budget process, with the Treasury acting as the main monitoring agency for advising relevant Ministers on funding.

This arrangement reflects the SOE model that is in place for the rail network. Under this arrangement, the Crown faces the same decisions each year on the level of financial commitment required for rail. This process is inefficient, and results in KiwiRail only having funding certainty for a one- or two-year window. This leads to a short-term approach, higher costs in the longer term, and contributes to the current model of 'managed decline' for rail.

This short-term approach to funding reduces investment efficiency for a long-term network asset. Further, KiwiRail's current lack of overall profitability makes it difficult to monitor KiwiRail within its commercial monitoring regime, which also does not take account of the wider public benefits of the national rail network.

In Budget 2019, Cabinet agreed to a first instalment of funding to maintain and renew the network to allow KiwiRail's commercial activities to grow and the wider benefits of rail to be realised.

Road and rail investment decisions not well aligned

Road and rail network decisions are not well integrated. Decision-making for road and rail takes place in different investment frameworks:

- Rail network investment decisions are made on a commercial basis, with planning and funding for the rail network taking place under the SOE Act.
- Road network investment decisions are subject to social cost benefit analysis and multi-criteria analysis, with planning and funding for the road network taking place under the LTMA.
- Further, the NZTA, which makes road network investment decisions, does not have responsibility for allocating rail network funding, meaning that road investments can be favoured even where a rail project may be a better investment if it were assessed under the NZTA's criteria.

The lack of coordination between road and rail network investments has been a long-standing concern in New Zealand. This has limited the ability to look at rail and other modes together, when considering investment options, based on a consistent set of transport objectives.

The LTMA framework is permissive and can enable rail network funding. However, successive governments have chosen not to directly provide rail network funding to KiwiRail through the NLTF.

Investment in the rail network has been made from KiwiRail revenue, shareholder capital injections and direct Crown appropriations.

KiwiRail has indirectly received rail network funding from the NLTF, through regional councils and their investment in commuter rail services.[7]

In its recent 2018 report on transitioning to a low-emissions economy, the Productivity Commission noted:

"*New Zealand's current transport investment system is biased towards investment in roading. An efficient transition to a low-emissions transport future requires an investment system that is:*

- *better integrated across modes;*
- *more flexible, with greater competition for funding across different transport modes and activities, and greater autonomy for councils;*

[7] Regional councils are charged by KiwiRail for the network costs incurred by metro passenger services in their regions.

- *mode-neutral, by removing distortions and biases that favour particular modes or activities, and fully accounting for the social, economic and environmental costs and benefits.*[8]*"*

[8] NZ Productivity Commission, Low-emissions Economy (2018), p 382.

2.2 Who is affected and how?

Table 1 sets out the organisations affected by the problem described in Section 2.

Table 1: Main affected organisations

Categories	Organisations	Current role
Rail Owners and Funders	KiwiRail	Rail network owner, which is responsible for: • planning, delivering and managing the rail network. • delivering commercial freight and tourism services, which use the rail network, including interisland ferry services.
	The Treasury	Central government agency responsible for: • monitoring the Crown's ownership interest in KiwiRail and providing commercial advice to KiwiRail's shareholding Ministers, which include any funding requests • providing economic and financial policy advice to the Government.
	NZTA	Crown agency responsible for: • determining which activities are funded from the NLTF through assembling the National Land Transport Programme and individual funding decisions • regulating rail safety.
	Auckland Transport/Greater Wellington Regional Council (metro commuter services)	Local government agencies responsible for planning, co-funding, delivering and managing public transport services in the Auckland and Wellington regions, including metro rail passenger services.
	Transdev (metro commuter services)	Private company responsible for operating and maintaining passenger rail services in Auckland and Wellington under contract with AT and the GWRC.
Freight customers	Freight	Utilise KiwiRail and road freight services.
	Ports	
Road users		Utilise roads and fund the NLTF.

2.3 Are there any constraints on the scope for decision-making?

Joint Rail Ministers have a preferred option for the Future of Rail planning and funding framework. [redacted]

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Section 3.1 of this Impact Summary discusses this preferred option, along with other options.

Section 3: Options identification

3.1 What options have been considered?

Policy objective

The Government's vision for rail is:

> *Rail enables access and mobility, transporting people and goods to where they need to go, supporting productivity and business growth, reducing emissions, congestion and road deaths, and strengthening social and cultural connections between communities.*

The overriding policy objective is that rail's core infrastructure is strong and stable so that it can deliver the Government's vision for rail by supporting the effective, sustainable and safe operation of the railway and meeting the needs of rail customers and users.

Assessment criteria

Options were considered against the following criteria:

1. Rail infrastructure investment decisions become more integrated with road investment decisions
2. Rail infrastructure funding is placed on a firmer footing, with funding decisions being made in the context of a long-term planning horizon
3. Decision-making rights are clearly and properly allocated
4. There is increased transparency around rail network funding, corresponding investments, and the outcomes sought for decision makers, users and the public
5. A competitive rail services market is supported
6. Cost is minimised, including administrative costs
7. The ease of implementation.

Options considered

The rail network needs strong stable core infrastructure and catch-up investment to ensure that it can continue to meet the needs of its customers and users, and to support mode shift and the delivery of the wider benefits the Government seeks. This will also provide the platform for KiwiRail to grow as a commercial entity.

This growth can be achieved by better integrating rail into the LTMA. Four options were considered, including the status quo. These are described below:

Option 1: Status Quo – Planning decisions would continue to be made based on cooperation and informal relationships. KiwiRail's funding would be provided from commercial revenue, Crown appropriations through the budget process, PGF and the NLTF. There would be no changes to current reporting and monitoring arrangements.

Option 2: Soft Integration (non-regulatory approach) – This would involve making more funds available for the rail network through the LTMA / GPS framework (the framework), making KiwiRail an Approved Organisation and encouraging KiwiRail to apply for funding from the NLTF on a case-by-case basis. KiwiRail could also be given non-commercial objectives to incentivise it to take account of the wider public benefits of the rail network.

There would need to be a minor legislative change to the LTMA to enable KiwiRail to receive funding from the NLTF for those activities it delivers using its own workforce. The current LTMA requires delivery of works, other than minor or ancillary works, to be outsourced. There are several operational and safety reasons supporting delivery of some activities by KiwiRail in-house.

KiwiRail already has procurement policies and processes in place, consistent with the government procurement requirements. Under all of the options considered, the Ministry recommends that KiwiRail confirm and make publicly available its procurement process after consultation with the NZTA.

Soft integration involves placing more weight on non-statutory arrangements to encourage complementary road and rail network decision-making and seeking multi-year funding appropriations to provide longer-term funding certainty. For example, the Government could issue a rail plan to provide direction and guidance to the rail sector. However, this approach would not result in sufficient certainty for rail planning and funding.

Option 3: Partial Integration (preferred option agreed by joint Rail Ministers) – The third option considered was partial integration into the LTMA framework. Under this option, rail network planning and funding would be specifically included in the LTMA planning and funding framework, but the Minister of Transport would retain decision-making rights over the quantum of funding and the programme of activities funded. KiwiRail would put together a statutory rail network investment programme (Rail Network Investment Programme), informed by the NZ Rail Plan. The Minister of Transport would accept or reject the Rail Network Investment Programme, or seek more information on it, after considering the NZTA's recommendations.

Other land transport investment decisions, such as road investment decisions, would still fall under the NZTA Board. Under this option, Ministers would continue to exercise oversight of rail network investment decisions from the NLTF while rail is put on a sounder basis, and because rail is likely to remain under financial pressure for the medium term.

This is comparable with how New Zealand Police road safety activities are planned and funded through the NLTF. One difference, however, is that these road safety activities do not usually involve capital projects.

Option 4: Full integration - The fourth option considered was full integration into the LTMA planning and funding framework. Full integration would see rail network planning and funding treated in the same way as road network funding.

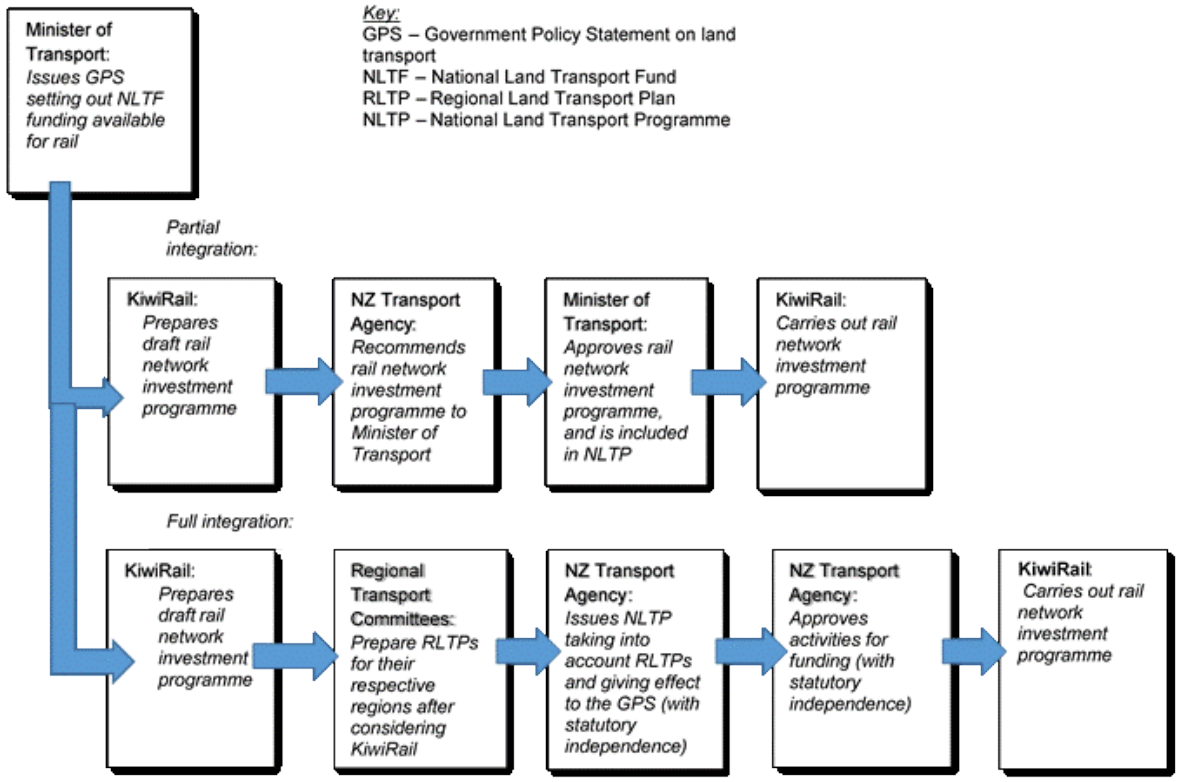
KiwiRail would develop a proposed set of rail network activities that would need to be included in a Regional Land Transport Plan (RLTP) before they could be considered for funding. RLTPs provide a way for regions to determine which land transport activities they want to move forward and to prioritise these activities. RLTPs are assembled by Regional Transport Committees, which include the local authorities in a region as well as the NZTA. This would give local government a role in choosing rail projects.

The NZTA would then determine, under statutory independence, which rail network activities from each RLTP would be included in the NLTP. Once included in the NLTP, the NZTA would then need to make a separate decision on which of these activities were funded by applying the relevant statutory criteria.

The Minister of Transport would retain control over the quantum of funding through the GPS.

Figure 1 illustrates the two options that involve amending the LTMA planning and funding framework.

Figure 1: LTMA road/rail integration options



Multi criteria assessment

The assessment of each of the options is summarised in Table 2 below. The multi criteria analysis assesses each of the options against the assessment criteria discussed in this section.

Table 2: Multi criteria analysis - options to incorporate rail in the land transport planning and funding system

Key for costs:	Negligible	Low (*$2m or less p.a.)*	Medium (*$2-4 million p.a.)*	High (*$4m or more p.a.)*
Key for other criteria:	X – doesn't meet	√ - partially meets	√√ - fully meets	

Status quo (Option 1)	**Road and rail decisions are better integrated**	**Rail infrastructure is planned over the medium to long-term and has greater funding certainty**	**Decision-making rights and responsibilities are clearly allocated**	**Transparency and accountability is increased**	**A competitive rail services market is encouraged**	**Cost**	**Ease of implementation**
Key characteristics - • Planning based on cooperation and informal relationships. • KiwiRail funding provided from commercial revenue, Crown appropriations, PGF and the NLTF. • No changes to current reporting and monitoring arrangements.	• Road/rail decision-making remains separate (aside from urban passenger rail) – The LTMA for road and the SOE Act for rail.	• Ongoing funding subject to annual budget process (although multiyear appropriations could provide some certainty for KiwiRail).	• KiwiRail retains final decision-making rights on commercial projects and infrastructure projects • As shareholders, Ministers retain decision-making rights for any equity investments into KiwiRail	• Transparency and accounting arrangements remain unchanged	• Current arrangements unchanged.	Low	No change
Assessment against criteria	X	X	X	X	√	√√	√√
Soft integration (Option 2)	**Road and rail decisions are better integrated**	**Rail infrastructure is planned over the medium to long-term and has greater funding certainty**	**Decision-making rights and responsibilities are clearly allocated**	**Transparency and accountability is increased**	**A competitive rail services market is encouraged**	**Cost**	**Ease of implementation**
Key characteristics - • Existing mechanisms, such as the GPS and Ministerial expectations' letters used to encourage better planning through more cooperation and the use of informal relationships. • The proposed non-statutory 10-year New Zealand Rail Plan used to provide direction and guide longer term planning. • KiwiRail funding provided from commercial revenue, Crown appropriations, PGF and the NLTF. [redacted] Confidential [redacted]	• Road/rail decision-making remains separate (aside from urban passenger rail) – The LTMA for road and SOE Act for rail.	• Ongoing funding subject to annual budget process (although multiyear appropriations could provide some certainty for KiwiRail).	• KiwiRail retains final decision-making rights on commercial projects and infrastructure projects. • NZTA has decision-making rights over any requests for funding for services and infrastructure from the NLTF. • As shareholders, Ministers retain decision-making rights for any equity investments in KiwiRail.	• Somewhat improves transparency of funding flows. • Accountabilities improved, but effective monitoring likely to remain difficult because the current monitoring arrangements will continue. For example, there will be no statutory network investment programme with transparent funding.	• Increased transparency may help potential new entrants to decide whether they should provide new rail services.	Low	• KiwiRail may need to change reporting arrangements, such as applying an accounting separation between its network functions and other functions.
Assessment against criteria	X	X	√	X	√	√√	√

Partial integration (Option 3)	**Road and rail decisions are better integrated**	**Rail infrastructure is planned over the medium to long-term and has greater funding certainty**	**Decision-making rights and responsibilities are clearly allocated**	**Transparency and accountability is increased**	**A competitive rail services market is encouraged**	**Cost**	**Ease of implementation**
Key characteristics: • The proposed non-statutory 10-year New Zealand Rail Plan used to provide direction and guide longer term planning. • Rail infrastructure funded through the NLTF, with the Minister of Transport determining the amount of funding into rail infrastructure through the GPS. • KiwiRail develops a Rail Network Investment Programme for the Minister of Transport's approval consisting of rail network activities. • The NZTA advises the Minister of Transport on the Rail Network Investment Programme. • KiwiRail's freight, tourist and ferry services funded from commercial revenue, Crown appropriations, and the PGF. • KiwiRail pays a TUC (or similar) to contribute to the costs of the rail network [redacted]	• The requirement for KiwiRail to provide a recommendation on KiwiRail's statutory programme of rail investments would ensure that broader land transport investment decision-making is taken into account. • The Minister of Transport would be able to make trade-offs through the GPS between the size of the rail activity class(es) and other land transport activity classes, such as road and public transport. • Easier to take account of road user benefits being received from rail. Confidential	• There would be more certain planning and funding for rail because Ministers would approve a 3-year rail network investment programme in line with LTMA planning cycles. • A Crown appropriation may still be required to support rail network investment through the NLTF. If so, any ongoing Crown funding would be subject to annual budget processes (although multiyear appropriations could provide some certainty). Even so, the need for a 3-year rail network investment programme (with a 10-year financial forecast) would make longer-term funding issues transparent.	• KiwiRail makes decisions where its activities can be funded from its commercial revenues (expected to be largely in relation to above track services). • Shareholding Ministers make decisions where required to support commercial / ownership matters. • Minister of Transport makes decision on the rail network investment programme, including the proposed funding sources, after considering a recommendation from the NZTA. • Ministers can take a comprehensive view of rail network investment decisions and their funding sources, and have control over what rail investments are funded from the NLTF • The Minister of Transport sets the GPS. • As shareholders, Ministers retain decision-making rights for any equity investments into KiwiRail.	• Would allow a clear distinction to be made between the funding of rail network assets and KiwiRail's commercial operations, improving transparency of funding flows. • Trade-offs between road and rail are more transparent. • Accountabilities and monitoring would be improved because there will be a statutory rail network investment programme, and network activities will be more clearly differentiated from KiwiRail's above rail business.	• Increased transparency may help potential new entrants to decide whether they should provide new rail services.	Low	• The LTMA would need to be amended to allow a Rail Network Investment Programme, to be approved by the Minister of Transport and funded through the NLTF and around procurement arrangements that would otherwise be problematic for KiwiRail. • There would be some transaction costs involved with putting rail activities through the LTMA framework, but the overall estimate is low. • KiwiRail would need to increase capability and resource to participate in the LTMA framework, including enhancing its network planning role. • NZTA would need to increase capability to analyse rail investments. • KiwiRail may need to change reporting arrangements, such as applying an accounting separation between its network functions and other functions.
Assessment against criteria	√	√√	√√	√√	√	√√	√

Full integration (Option 4)	**Road and rail decisions are better integrated**	**Rail infrastructure is planned over the medium to long-term and has greater funding certainty**	**Decision-making rights and responsibilities are clearly allocated**	**Transparency and accountability is increased**	**A competitive rail services market is encouraged**	**Cost**	**Ease of implementation**
Key characteristics: • The proposed non-statutory 10-year New Zealand Rail Plan would be used to provide direction and guide longer term planning. • Rail infrastructure funded through the NLTF, with the Minister of Transport determining the amount of funding into rail infrastructure through the GPS. • KiwiRail develops a draft set of rail network activities, which would be included in regional planning processes (RLTPs) and the NZTA's NLTP. • KiwiRail's commercial services funded from commercial revenue, Crown appropriations, and the PGF. • KiwiRail pays a TUC (or similar) to contribute to the costs of the rail network. • [redacted] Confidential	• An integrated programme of rail investments would be developed by KiwiRail, which the NZTA would prioritise against other investments coming through RLTPs • The Minister of Transport would be able to make trade-offs through the GPS between the size of the rail activity class(es) and other land transport activity classes, such as road and public transport. • Easier to take account of road user benefits being received from rail	• Rail network investments and road investments would be considered together through the NLTP process. As a result, a component of rail planning and funding would take place using the longer-term planning cycles set out in the LTMA. • A Crown appropriation may still be required to support rail network investment through the NLTF. If so, any ongoing Crown funding would be subject to annual budget processes (although multiyear appropriations could provide some certainty). Even so, the need to include rail in the 3-year NLTP (with a 10-year financial forecast) would make longer-term funding issues more transparent.	• KiwiRail maintains decision-making rights over commercial services but seeks funding from the NLTF for infrastructure as it determines. • The NZTA holds decision–making rights over what infrastructure investments are funded, subject to the Minister of Transport's guidance in the GPS. • The Government determines ongoing funding contributions, which may include equity injections into KiwiRail • It would be more difficult for Ministers to take a comprehensive view of rail network investment decisions and their funding sources because of the NZTA's role.	• Under this approach, there would not be an integrated rail network investment programme, and KiwiRail would only apply for NLTF funding as it determined. While transparency would be higher than option 1 or 2, the distinction between the funding of rail network assets and KiwiRail's commercial operations may be less transparent than Option 3. • Trade-offs between road and rail investments (at least those funded through the NLTF) would be more transparent. • Accountabilities and monitoring are likely to be better than the status quo.	• Increased transparency may help potential new entrants to decide whether they should provide new rail services.	• Medium	• Minor amendment would likely be required to the LTMA, especially around procurement arrangements that would otherwise be problematic for KiwiRail. • Legislation may be required to set up a TUC and allow it to be included in the NLTF. • There would be additional transaction costs involved with putting rail activities through the LTMA framework, especially through regional planning processes – the costs are likely to be higher than partial integration, but still in the low range. • KiwiRail would need to increase capability to participate in the LTMA framework, including enhancing its network planning role. It may find this operationally difficult. • NZTA would need to increase capability to analyse rail investments. • KiwiRail may need to change reporting arrangements, such as applying an accounting separation between its network functions and other functions.
Assessment against criteria	√√	√	√	√	√	√	√

3.2 Which of these options is the proposed approach?

Better integrating rail network investment into the LTMA framework would:

- improve the co-ordination between road and rail network investment decisions
- improve the transparency of government capital expenditure decisions on the rail network
- 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
- facilitate a medium to long-term approach to investment.

To address these outcomes, the Ministry recommends Option 3, partial integration. The options assessment shows that Option 3 is the preferable approach, although Option 4 has favourable attributes. Option 3 balances integrating rail into the land transport planning and funding system with the need for Ministers to remain involved in rail decisions while the rail network is brought back to a resilient and reliable standard.

The Ministry believes that there are several reasons to support Option 3. These reasons include:

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- [redacted]

Free and frank advice

- [redacted]
- KiwiRail may find it operationally difficult to participate in a planning system which involves participation in regional planning processes throughout the country (although KiwiRail is likely to participate in Auckland and Wellington to reflect the large metro rail component in those regions).
- KiwiRail is a SOE, and it is not common for commercial entities to receive funding direct from the NLTF given their commercial accountabilities. Public agencies provide state highways, local roads and public transport services. Further, KiwiRail is an integrated business, which will have a number of non-commercial and commercial aspects to manage with the broader purpose Ministers want for rail.

Pursuing Option 3 would not preclude a future move to Option 4 (full integration).

Progressing partial integration will:

- improve co-ordination between national network planning and funding while Ministers can exercise control over rail infrastructure investments (through setting the overall funding for rail and approving a programme of rail investments)
- improve transparency of government capital expenditure in these networks
- allow investments in road and rail to be made on a more mode-neutral basis
- support value for money – i.e. road or rail projects would be assessed on a similar basis with the best project chosen regardless of mode
- allow national benefits of rail to be captured
- establish a mechanism to provide KiwiRail with longer-term funding, which is essential to its business
- provide greater certainty for KiwiRail
- preserve KiwiRail's commerciality to focus on markets and customers.

Closer integration with road investment decisions is achieved because the NZTA will need to assess the proposed Rail Network Investment Programme and significant activities that are included. This will provide the NZTA Board with a formal opportunity to advise approving Ministers on how the proposed Rail Network Investment Programme sits within the wider land transport investment programme being delivered from the NLTF.

This option will address the problems identified by further allowing national benefits of rail to be captured and providing greater certainty for KiwiRail. Close alignment between road and rail infrastructure planning will be possible while Ministers are able to exercise control over rail infrastructure investments (through setting the overall funding for rail and approving a programme of rail investments).

Figures 2 and 3 provide a detailed overview of Option 3 and the process each agency will be accountable for in developing a Rail Network Investment Programme, contributing to both rail infrastructure maintenance, and renewals and improvements.

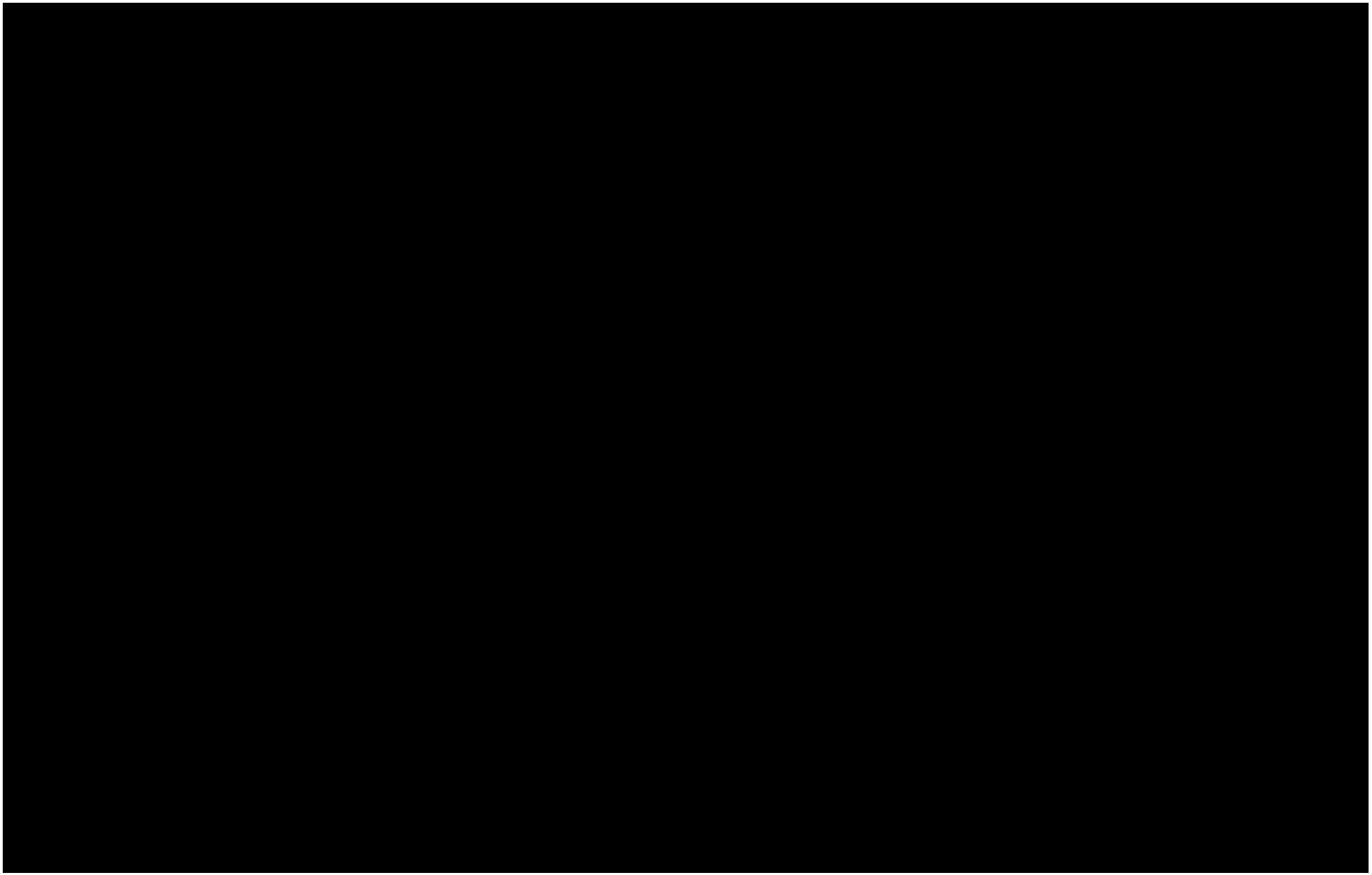
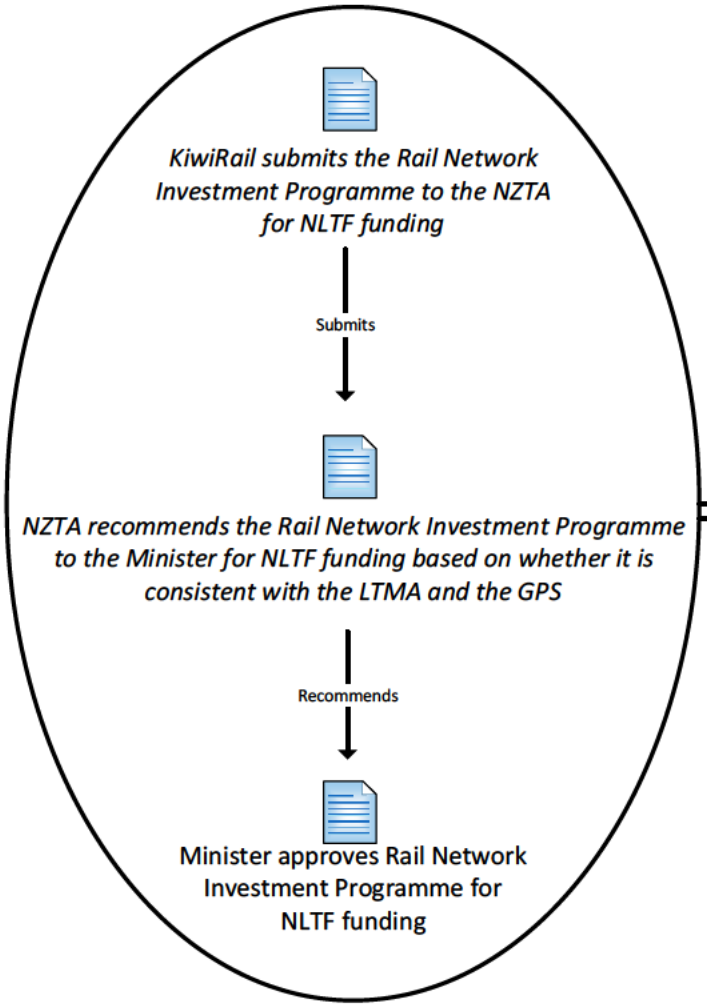


Figure 3: Overview of Rail Network Investment Programme process and its contribution to rail infrastructure



RAIL INFRASTRUCTURE MAINTENANCE AND RENEWAL

Comprises a continuous 3-year programme of maintenance and renewal of existing network infrastructure, delivered on an ongoing basis from one NLTP to the next to maintain an adequate customer level of service. Does not involve the preparation of a Business Case Approach, but expectation that Business Case Approach principles have been appropriately applied. Supporting information could include an Asset Management plan. Funding approved at the same time as the Rail Network Investment Programme.

RAIL INFRASTRUCTURE IMPROVEMENTS

Comprises significant upgrades of existing rail network infrastructure and new-build rail infrastructure. These are individual projects within the Rail Network Investment Programme which may not be ready at the time the RNIP is approved because they may not be fully developed. They will be reviewed against the NZTA Business Case Approach before funding is approved and released.

Section 4: Impact Analysis (Proposed approach)

4.2 What other impacts is this approach likely to have?

User contribution to the cost of rail infrastructure

Funding rail from the NLTF would stretch the current hypothecated funding arrangements for NLTF revenue. NLTF revenue is drawn from charges, levies and fees paid by road users. From an equity perspective, road users are likely to raise concerns about the existing NLTF revenue further subsidising rail if they do not perceive any benefit from the expenditure.

Rail users should contribute to the NLTF or, at least, their contribution to the costs (or lack thereof) should be made transparent. This is important for two reasons:

- fairness - it is based on the principle that the users of infrastructure that is funded from the NLTF contribute to it.
- transparency – it would allow TUC to be set at a rate based on a set of principles outlining the policy reasons for that rate being set, and the ability of rail users to contribute to the costs of the national rail network.

Future of Rail includes a workstream that is looking at what the user contribution should be.

Confidential

[redacted]

Affected organisations

Confidential

[redacted]

Other organisations

Table 3 shows organisations that would be affected by the proposed change. This table is drawn from Table 1 but includes a new column with the implications of the proposed change.

Table 3: Affected organisations with implications

Categories	Organisations	Current role	Implications of proposed change
Rail Owners and Funders	KiwiRail	Rail network owner, which is responsible for: • planning, delivering and managing the rail network • delivering commercial freight and tourism services, which use the rail network, including interisland ferry services.	Will have some operational implications for KiwiRail because it will need to work with the NZTA on its network investment plans. Implication for KiwiRail is multiple funding sources so need to ensure new framework supports the safe and efficient operation of the railway and the lessons from Transitional Rail are learnt.
	The Treasury	Central government agency responsible for: • monitoring the Crown's ownership interest in KiwiRail and providing commercial advice to KiwiRail's shareholding Ministers, which include any funding request • providing economic and financial policy advice to the Government.	Treasury's role relating to rail network investment .will change as the NZTA takes over the primary responsibility.
	NZTA	Crown agency responsible for: • determining which activities are funded from the NLTF through assembling the National Land Transport Programme and individual funding decisions • regulating rail safety.	NZTA will have a new role in reviewing and making recommendations that the proposed rail network investment that will be funded from the NLTF is consistent with the purpose of the LTMA and the GPS. New expertise and some additional capacity will be needed for this new role.
	Auckland Transport/Greater Wellington Regional Council (metro commuter services)	Owner and operator of public transport services including rail. Rail network costs, funding sources and levels, customer experience.	Minimal – current arrangements will be largely unchanged.
	Transdev (metro commuter services)	Private company operating and maintaining passenger rail services in Auckland and Wellington under contract with AT and the GWRC.	Minimal – current arrangements will be largely unchanged.

Categories	Organisations	Current role	Implications of proposed change
Other rail customers/track users	Freight	Users.	Users will see improvements over time in the quality of the rail network and, therefore, receive more choices for the movement of freight. They will have more opportunity to input into network investment decisions.
	Ports	Users.	
Road users		Users.	May have concerns about funding rail from the NLTF but the impact will depend on funding decisions made by central government in the context of the GPS and how well the benefits to road users are explained.

Section 5: Stakeholder views

5.1 What do stakeholders think about the problem and the proposed solution?

Engagement through the Future of Rail Review

The Ministry has worked closely with KiwiRail, the NZTA and the Treasury on the Future of Rail Review. These organisations have been consulted on this Impact Statement and their comments included, where appropriate.

The Future of Rail Review has also been governed by a Steering Group comprising the Ministry, the NZTA, the Treasury, KiwiRail, the Rail and Maritime Transport Union of New Zealand and two independent members (a former long serving CEO of Freightways Ltd and a former long serving CEO of the NZTA).

Supporting the Steering Group is a working group of officials consisting of the Ministry, the NZTA, the Treasury and KiwiRail. This has ensured that the views of these parties have been incorporated in the development of the options outlined in this Impact Statement.

Auckland Transport, Auckland Council and the Greater Wellington Regional Council has been engaged in the Future of Rail Review of rail, through regular workshops. As a result of this engagement, changes were made to the proposed framework so that rail network investments in Auckland and Wellington are included in the development of the Regional Land Transport Plans for those areas. This will help to incentivise integrated planning in these areas between the local government operators of metro rail services and KiwiRail.

This approach to the Future of Rail Review has ensured that a range of external views have informed the development of the proposed planning and funding framework.

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.

The Department of the Prime Minister and Cabinet has been informed.

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.

Opportunities for further external engagement

As noted above, the Future of Rail Review process has deliberately made allowance for external views through its governance structures and processes. Nonetheless, there has been limited public engagement on the proposed new planning and funding framework for rail.

However, there will be several future opportunities, both for stakeholders and the public.

First, there will be an engagement process as part of the development of the New Zealand Rail Plan. The New Zealand Rail Plan will include a discussion of the new planning and funding framework and the new roles and responsibilities that will result from implementing it. The New Zealand Rail Plan will be released later this year.

Second, there will be engagement as part of the development of GPS 2021. This engagement is mandated by the LTMA. A draft of GPS 2021 is expected to be released late this year or early in the new year.

Third, because the new planning and funding framework requires legislation, there will be a Select Committee process, where stakeholders and the public will be able to make submissions and be heard by the Committee. This process will allow the proposed framework to be robustly tested.

Other relevant engagement

Productivity Commission

As noted earlier in this Impact Statement, the Productivity Commission has called for better integration of road and rail investment decisions in its 2018 *Low-emissions Economy* report. The Commission's 2012 *International Freight Transport Services Inquiry* report also called for more transparent decision making around major rail infrastructure projects[9].

Development of GPS 2018

Feedback received on the draft GPS 2018, which provided funding for the rail network through the Transitional Rail Activity class, drew support from several stakeholders.

Although passenger rail was supported, there was a concern on the lack of support for freight rail.

> *"We support the inclusion of railways in the GPS and land transport planning framework. We have some concern that the transitional rail category only considers passenger rail, and doesn't support the more efficient use of the network for freight."*

There was also support for funding rail through the NLTF, with some submissions noting that rail had not received enough funding in the past. There was a desire, especially from local government, for a transparent long-term funding process for rail.

[9] NZ Productivity Commission (2012), International Freight Transport Services Inquiry, p 11

Some interest groups and private sector organisations did, however, have significant concerns about the rail network being funded from the NLTF. There was concern that allowing KiwiRail to access the NLTF would give it a competitive advantage against other transport providers in the commercial market. This was a particular concern as other transport providers contribute to the NLTF, whereas KiwiRail currently does not.

> *"If KiwiRail is to receive funding from the NLTF then surely a 'rail user charge', comparable to the mass/distance road user charge should be introduced to maintain the integrity of the NLTF and a semblance of mode neutrality based on true market-driven comparative advantages."*

Confidential [redacted]

Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?

Amendments to the Land Transport Management ActAmendments to the Land Transport Management Act 2003

To put these new arrangements in place, the LTMA will need to be amended. The Ministry does not expect this legislation to be overly complex, but the amendment process will take around 12 months.

The Ministry expects the new legislation to be passed around July 2020. [redacted]

Confidential [redacted]

In summary, amendments to Part 2 *Planning and funding of land transport system* of the LTMA would be required to:

- allow KiwiRail to access funding from the NLTF
- create a 3-year RNIP to be approved by the Minister of Transport, in consultation with KiwiRail's shareholding Ministers
- provide for NZTA to make a recommendation to the Minister of Transport on whether the RNIP is consistent with the purpose of the LTMA and with the GPS before he or she approves the RNIP
- provide an approval regime for the Minister of Transport to approve funding for rail network activities after being assessed by the NZTA
- create a procurement regime for rail network activities funded from the NLTF.

Confidential [redacted]

[redacted]

[redacted]

Budget 2019

Funding via Budget 2019 is necessary to provide KiwiRail with enough capital to cover the costs of the rail network until a new planning and funding framework for rail is implemented (mid 2020).

Through Budget 2019, a total of $1.042 billion has been approved as the first instalment of rail investments across the decade.

This includes $741 million to support a resilient and reliable rail system to:

- restore the track and other supporting infrastructure by addressing legacy maintenance issues across the rail network

- support rehabilitation of rolling stock to replace and upgrade assets and maintenance facilities at the end of their useable life, and
- fund the procurement phase for replacing the current ferries and landside assets that are nearing the end of their useable life.

In addition, $1 million in operating funding was provided through Budget 2019 to implement the Future of Rail Review.

Implementation process

There are a range of detailed implementation matters that need to be worked through. Lessons learned from the funding currently being provided from the NLTF for rail activities (through the Transitional Rail activity class) will be 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.

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 $1 million allocated in Budget 2019 will be used to implement the change in programme over a 24-month period. The Ministry will be responsible for the successful implementation of the Future of Rail changes. 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.

The proposed changes outlined in this Impact Statement 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.

For example, the NZTA will need to build up rail investment expertise and KiwiRail will need to increase its capability and capacity to engage in the LTMA processes. The Ministry in its system lead role will need to ensure that integration of rail into land transport system works. All agencies will need to operate differently as a result, and there is general agreement across agencies to the changed approach. There are still operational issues to be worked through and lessons learnt from the recent experience with Transitional Rail.

The Ministry also expects officials to work closely with Auckland Transport, Auckland Council and Greater Wellington Regional Council on, among other things, the design of the new planning and funding framework and the interface with the existing planning processes for metro rail.

Risks

The new planning and funding framework will be accompanied by 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.

The change involves a significant increase in rail investment through future GPSs, in addition to investment in metro rail and potential investments in light rail. The Budget initiatives approved for rail include only two years of operational funding for the rail network infrastructure, based on the assumption that future investment decisions will be made through the NLTF and LTMA framework.

Confidential [redacted]

The Future of Rail Review is a complex project with several work streams, and there are tight timeframes to complete each section. The Ministry will continue to work closely with affected parties to ensure that any risks are managed and timeframes are kept. As the project moves into the implementation phase, the Ministry will work more closely with Auckland Transport and Greater Wellington Regional Council, as significant users of the Auckland and Wellington rail networks.

As noted previously, there will be an extensive and well-funded implementation process over two years to ensure the successful implementation of the Future of Rail change programme across agencies.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

KiwiRail would be accountable for the planning and delivering of its Rail Network Investment Programme. The NZTA will consider how the suggested programme sits within the wider land transport investment programme being delivered from the NLTF, and will provide advice to the Minister of Transport. After receiving advice from the NZTA, the Minister of Transport would set the quantum of rail funding and decide whether to agree, reject or seek for more information on the Rail Network Investment Programme.

The new arrangements will ensure a broader monitoring system under the GPS and the NLTP. Under the partial integration option, the NZTA's task will be to monitor KiwiRail's investment programme in an ongoing process. This monitoring responsibility would be given by the proposed amendment to the LTMA. The Ministry will monitor the NZTA's performance delivering on the GPS against its expectations.

The Ministry will develop a plan for tracking and monitoring the performance of rail as part of the implementation process.

7.2 When and how will the new arrangements be reviewed?

The new arrangements will be revised in line with the GPS schedule. The GPS is issued by the Minister and reviewed at least every three years. The GPS is the key mechanism for reviewing the integration of rail into the transport system. It sets a 10-year strategic direction to drive improved performance and guides decision-makers about where the Government will focus its resources. By influencing how funding from the NLTP will be invested across transport assets and services, it would reassure its role of monitoring and reviewing KiwiRail's rail programmes.

Also, an initial Rail Plan will be released in September 2019, and an updated Plan in June 2020. The updated Plan will take into account feedback received on the draft GPS (GPS 2021) which is due to be issued in mid-2020. Consultation on the NZ Rail Plan will take place through the draft GPS consultation, providing an opportunity for a comment or review before it guides the planning and funding framework to take effect.