


OC240853

23 August 2024



Tēnā koe 

I refer to your email dated 22 July 2024, requesting the following under the Official Information Act 1982 (the Act):

- *“Options for Electric Vehicle Charging CoInvestment Model*
- *Draft GPS 2024 and Cabinet Paper: Summary of Departmental, Ministerial, and Coalition Consultation*
- *Chatham Islands Livestock Vessel Financial Recommendations*
- *ERP2 Cabinet paper and Discussion Document Briefing*
- *Aide Memoire: Exemptions - Fast Forward to 2025*
- *Cook Strait Resilience Phase Two Report: Options Assessment*
- *Lower North Island Rail Integrated Mobility Programme Funding Package*
- *Three-Monthly Catch Up with Key Road Transport Industry Bodies*
- *Background Information for Fast-track Joint Ministers’ Meeting*
- *Land Transport (Drug Driving) Amendment Bill*
- *Aide Memoire: MV Aratere Grounding - Bullet Points for Picton 1400 22 June”*

On 13 August 2024, we advised you of an extension to the time period for responding to your request. The extension was due to consultations necessary to make a decision on your request being such that a proper response could not reasonably be made within the original time limit. We have now completed the necessary consultations.

Of the 11 briefings you requested, five are released with some information withheld or refused, two are withheld and four are refused.

The document schedule attached as Annex 1 outlines how the documents you requested have been treated under the Act. Certain information and full documents are withheld under the following sections of the Act:

- | | |
|-------------|--|
| 9(2)(a) | to protect the privacy of natural persons |
| 9(2)(b)(ii) | to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information |
| 9(2)(f)(iv) | to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials |

- 9(2)(g)(i) to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any public service agency or organisation in the course of their duty
- 9(2)(h) to maintain legal professional privilege
- 18(d) the information requested is or will soon be publicly available

With regard to the information that has been withheld under section 9 of the Act, I am satisfied that the reasons for withholding the information at this time are not outweighed by public interest considerations that would make it desirable to make the information available.

You have the right to seek an investigation and review of this response by the Ombudsman, in accordance with section 28(3) of the Act. The relevant details can be found on the Ombudsman's website www.ombudsman.parliament.nz

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

Nāku noa, nā



Hilary Penman
Manager, Accountability and Correspondence

Annex 1: Document Schedule

Doc #	Reference number	Title of Document	Decision on request
1	OC240520	Options for Electric Vehicle Charging Co-Investment Model	Withheld in full under section 9(2)(f)(iv). This paper will be considered for proactive release once the final decisions are made by Cabinet later in the year.
2	OC240569	Draft GPS 2024 and Cabinet Paper: Summary of Departmental, Ministerial, and Coalition Consultation	Refused under section 18(d). Once published, it will be available here: https://www.transport.govt.nz/about-us/what-we-do/proactive-releases/SearchForm
3	OC240621	Background Information to Use at Cabinet Economic Policy Committee to Accompany the Cabinet Paper Titled Chatham Islands Livestock Vessel Financial Recommendations	Released with some information withheld under section 9(2)(b)(ii).
4	OC240681	ERP2 Cabinet Paper And Discussion Document Briefing	Refused under section 18(d). Once published, it will be available here: https://www.transport.govt.nz/about-us/what-we-do/proactive-releases/SearchForm
5	OC240648	Aide Memoire: Exemptions - Fast Forward To 2025	Released with some information withheld under sections 9(2)(a), 9(2)(b)(ii) and 9(2)(f)(iv).
6	OC240547	Cook Strait Resilience Phase Two Report: Options Assessment	Refused under section 18(d). Once published, it will be available here: https://www.transport.govt.nz/about-us/what-we-do/proactive-releases/SearchForm
7	OC240505	Lower North Island Rail Integrated Mobility Programme Funding Package	Released with some information withheld under sections 9(2)(a) and 9(2)(b)(ii). Annex 2 is refused under section 18(d) as its publicly available. It can be found at this link: https://www.gw.govt.nz/assets/Documents/2024/08/Response-to-Minister-of-Transport-7-June-2024-Redacted.pdf
8	OC240612	Three-Monthly Catch Up with Key Road Transport Industry Bodies	Released with some information withheld under sections 9(2)(a), 9(2)(f)(iv) and 9(2)(g)(i).

Doc #	Reference number	Title of Document	Decision on request
9	OC240665	Background Information for Fast-Track Joint Ministers' Meeting	Withheld in full under section 9(2)(f)(iv). The paper is currently being considered by the Environment Select Committee.
10	OC240519	Land Transport (Drug Driving) Amendment Bill	Released with some information withheld under sections 9(2)(a), 9(2)(f)(iv) and 9(2)(h). Annex 4 is refused under section 18(d) as its publicly available. It can be found at this link: https://disclosure.legislation.govt.nz/bill/government/2024/69/
11	OC240695	Aide Memoire: MV Aratere Grounding - Bullet Points for Picton 1400 22 June	Refused under section 18(d). Once published, it will be available here: https://www.transport.govt.nz/about-us/what-we-do/proactive-releases/SearchForm

Te Tuhinga | Memorandum

To Hon Simeon Brown

From Bryan Field

Date 11 June 2024

For your Information

Background information to use at Cabinet Economic Policy Committee to accompany the Cabinet paper titled Chatham Islands Livestock Vessel Financial Recommendations

Purpose

1. This aide memoire provides background information to use at Cabinet Economic Policy Committee (ECO) to accompany the Cabinet paper titled Chatham Islands Livestock Vessel Financial Recommendations.

Background

2. This Cabinet paper addresses an immediate animal welfare issue arising from shipping outages to the Chatham Islands (the Islands) causing a backlog of livestock that cannot be fed over winter on the Islands.
3. It seeks to re-prioritise funding from department underspends to provide for the charter of a livestock vessel to remove surplus animals rather than undertaking a significant culling operation.
4. It also seeks to transfer funding to provide support over the winter months and purchase essential supplies for the livestock.

There is an excess of livestock on the Islands due to shipping outages

5. There are approximately 42 working farms on the Islands, including Pitt Island, of which around 15 are mainly or solely farming operations. These farms rely on shipping services to transport stock to the mainland for processing, as the abattoir on the Islands closed in the 1990s.
6. Farming production has been limited by the shipping capacity of the *Southern Tiare*, which can carry only 1,200 sheep and 130 cattle per voyage. In addition, the vessel has undergone several unexpected repairs in the last year resulting in two major outages. This has led to a backlog of animals to be moved off of the Islands.
7. The *Southern Tiare* is currently undergoing its annual survey and hull repairs. It has been in dry-dock since late March 2024, and is not expected to be back in service until early July 2024. This service outage has exacerbated the livestock issues on the Island, and will reach

crisis point over winter 2024 when feed supplies will not be sufficient to maintain the current stock levels.

8. Ministry for Primary Industries (MPI) officials estimate 28,000 sheep and 7,000 cattle require shipping to the mainland. Without urgent intervention to remove enough of these animals, they will need to be culled progressively between June 2024 and October 2024 as the value of older animals will diminish and farmers will not have sufficient feed after the lambing season. The return of the *Southern Tiare* to service after its repairs will not be sufficient to move enough animals to prevent a significant cull.
9. Farmers will also require winter feed for the livestock on the Islands until they can be moved as current feed supplies are too low to meet required levels for the number of stock over the winter months.

Chartering a livestock vessel as a short-term mitigation

10. In April 2024 Cabinet agreed to transfer \$1 million from Vote Internal Affairs to Vote Transport within the Transport Connectivity with Isolated Communities non-departmental appropriation to cover the estimated costs of a charter vessel [CBC-24-MIN-0025 refers].
11. Since then, officials from the Ministry of Transport (MoT) and MPI have worked to find a suitable livestock vessel able to berth at the Islands' Waitangi Wharf as well as meet Maritime New Zealand and animal welfare requirements.

12. s 9(2)(b)(ii)

13.

14.

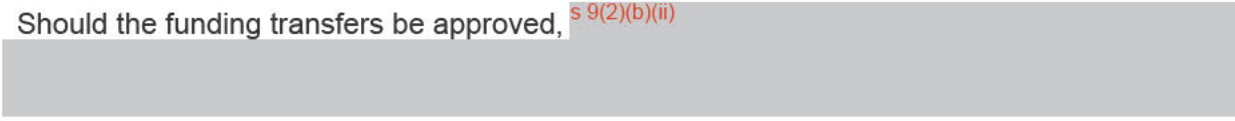
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Key proposals in the Cabinet paper

15. The Cabinet paper seeks agreement to address immediate animal welfare issues arising from shipping outages to the Chatham Islands by way of:
 - An in-principle agreement to transfer expected underspends of \$0.750 million each within Vote Transport and Vote Agriculture, Biosecurity, Fisheries and Food Safety;
 - An agreement to transfer funding of \$0.750 million in 2024/25 from the Transport - Policy advice, ministerial servicing, governance, and other functions appropriation to the Transport Connectivity with Isolated Communities appropriation within Vote Transport to provide funding to s 9(2)(b)(ii)
 - An agreement to an increase in funding of \$0.750 million to Transport Connectivity with Isolated Communities appropriation within Vote Transport in 2024/25 to be funded from the expected 2023/24 underspends in Vote Agriculture, Biosecurity, Fisheries and Food Safety;

- An in-principle agreement to transfer up to \$1 million of funding from 2023/24 to 2024/25 in Vote Agriculture, Biosecurity, Fisheries and Food Safety for the response and recovery support package to help the Chatham Islands farming community for supplies and other support.

Next steps

16. Should the funding transfers be approved, ^{s 9(2)(b)(ii)}

17. MPI will continue working with farmers on the Chatham Islands to assess the condition of the animals, as well as coordinate the supply of extra feed and support to the farming community.



Bryan Field
Kaitohutohu Mātāmua | Manager
Programme Monitoring & Investment Management

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21 June 2024

Hon Simeon Brown

Minister of Transport

AIDE MEMOIRE: EXEMPTIONS – FAST FORWARD TO 2025

To: Hon Simeon Brown, Minister of Transport

From: Siobhan Routledge, Acting Deputy Chief Executive – Policy Group
Tom Forster, Manager, Aviation and Maritime

Date: 21 June 2024

OC Number: OC240648

Purpose

- 1 This note responds to your question about how an application from s 9(2)(b)(ii) for exemptions would be dealt with under the new Civil Aviation Act 2023 (new Act) as opposed to the current Civil Aviation Act 1990.
- 2 It explains what will change under the new Act. However, because making decisions about exemptions is one of the Director of Civil Aviation's (the Director's) statutory independent roles, we are not able to predict whether the Director would make different decisions about specific exemption applications under the new legislation.

Key points

- 3 The factors the Director must consider when making decisions about exemptions will change under the new Act.
- 4 While safety and security remain paramount as the Director *must be satisfied* that the exemption would be consistent with the Act's main purpose: "a safe and secure civil aviation system", decision-making is subject to the new additional purposes of the new Act, which may affect the outcome, depending on the facts and type of decision.
- 5 After 5 April 2025, it may be possible for s 9(2)(b)(ii) to apply for an independent review of a Director decision affecting them. Specified decisions will be reviewable by the new independent review function. This could include exemption decisions, subject to scope decisions yet to be made by Cabinet.

How will the Director of Civil Aviation consider an exemption application?

- 6 The new Act comes into force on 5 April 2025. Once the new Act is in place, the Civil Aviation Authority (CAA) will follow updated internal policies and procedures about exemptions. Many of the processes and considerations under the new Act are similar to, or the same as, they were under the old Act (for example, a continuing focus on safety and security).
- 7 The new Act¹ requires the Director to assess whether:
- a) the extent of the exemption is no broader than is reasonably necessary to address the matters that gave rise to the proposed exemption²
 - b) the exemption is consistent with the main purpose of the Act
 - c) it is appropriate to grant the exemption after considering:
 - i. the additional purposes of the Act
 - ii. consistency with relevant international standards (if any)
 - iii. any other matter that the Director considers appropriate in the circumstances.
- 8 Safety and security remain paramount as the Director *must be satisfied* that the exemption would be consistent with the Act's main purpose: "a safe and secure civil aviation system".
- 9 The additional purposes of the Act are new and require the Director to *consider* a wider range of issues than before in making a decision on an exemption application.
- 10 The Act's additional purposes are:
- a) to maintain, enhance, and promote a transport system that contributes to environmental sustainability, economic prosperity, inclusive access, healthy and safe people, and resilience and security
 - b) to promote innovation, effectiveness, and efficiency in civil aviation
 - c) to ensure that New Zealand's obligations under international civil aviation conventions, agreements, and understandings are implemented
 - d) to preserve New Zealand's national security and national interests
 - e) to take into account the adverse effects of civil aviation on the interests of people, property, and the environment.
- 11 The new Act clarifies that the CAA has the option to grant a class exemption. The CAA could consider doing this in response to an individual exemption application, if

¹ See section 322 of the Act.

² This requirement is a common feature of exemption provisions in legislation. For example, similar provisions are found in the Land Transport Act 1998, Health and Safety at Work Act 2015, Overseas Investment Act 2005, Food Safety Law Reform Act 2018, Deposit Takers Act 2023, and Grocery Industry Competition Act 2023.

the individual application highlighted a situation that affected a wider group of people than just the applicant. We are unclear if the situation giving rise to ^{s 9(2)(b)(ii)} exemption application also affects others.

- 12 After considering all the required matters, including the Act's additional purposes, the Director will decide whether to grant the exemption. In granting an exemption the Director may apply terms and conditions as they think fit.
- 13 The Director will notify the applicant of their decision.

What happens if the Director rejects the application?

- 14 If the Director rejects an application for an exemption, and the applicant is dissatisfied, they could either use the new Independent Review function, if exemptions are in scope (see the discussion in the following sections) or apply to the High Court for a judicial review of the decision.
- 15 Unlike other transport Acts, neither the Civil Aviation Act 1990 nor the new Act has the option of appealing an exemption decision to the District Court. The Acts specify the types of decisions that may be appealed. This includes decisions about aviation documents but exemptions are not an "aviation document" under the law.
- 16 The applicant may seek a judicial review of the Director's decision. A judicial review is limited to examining procedural justice (i.e. whether the decision was made in accordance with the law and is within the range of reasonable decisions possible), rather than the technical merits of an exemption request.

What would an independent review look like?

- 17 After 5 April 2025, it may be possible for ^{s 9(2)(b)(ii)} to apply for an independent review of a Director decision affecting them, subject to decisions yet to be made by Cabinet about the scope of decisions covered by the new independent review function.
- 18 The key features of the independent review process are:
 - 18.1 ^{s 9(2)(b)(ii)} would apply within 20 working days of the date they were notified of the Director's decision
 - 18.2 the reviewer (selected from a panel of reviewers appointed by you as Minister of Transport) would, as soon as practicable, review the decision. In doing so, the reviewer:
 - a) may draw on advice and expertise of other suitably qualified and experienced people
 - b) may require the applicant, Director, or any other person to give evidence
 - c) must receive and consider all relevant evidence and have regard to the Act's purposes.
 - 18.3 the reviewer would report their recommendations to the applicant and the Director as soon as practicable

18.4 the Director does not have to agree with the reviewer’s recommendations, but must respond to them. Within 10 days of receiving the reviewer’s report, the Director must:

- a) make a final decision about whether to accept any or all of the recommendations
- b) notify the applicant about their final decision and the reasons for it.

19 You are responsible for appointing the reviewer(s) and the Ministry will support you to do this.

Which decisions will be reviewable?

20 The Civil Aviation Act 2023 requires that regulations specify which decisions can be reviewed by the independent review function. The Ministry has provided you with a briefing, a draft Cabinet paper and a draft consultation document about setting the scope of reviewable decisions, for your feedback (OC240305 refers).

21 s 9(2)(f)(iv)

22 s 9(2)(f)(iv)

Contacts

Name	Telephone	First contact
Siobhan Routledge, Acting DCE – Policy Group	s 9(2)(a)	
Tom Forster, Manager – Aviation and Maritime		✓
Natalie Howell, Senior Adviser – Aviation and Maritime		



Document 7

12 June 2024

OC240505

Hon Simeon Brown
Minister of Transport

Action required by:
Friday, 21 June 2024

cc Hon Nicola Willis

Minister of Finance

LOWER NORTH ISLAND RAIL INTEGRATED MOBILITY PROGRAMME FUNDING PACKAGE

Purpose

This briefing seeks:

- your approval, along with that of the Minister of Finance, to drawdown the tagged operating contingency of \$455.4 million for the Lower North Island Rail Integrated Mobility Programme (Programme)
- your approval of the attached Programme funding agreement.

Key points

- In Budget 2023, the previous Government established a tagged operating contingency of \$455.4 million for the Programme. Alongside the tagged contingency funding, the New Zealand Transport Agency (NZTA) has agreed to contribute a further \$347.5 million from the National Land Transport Fund. Greater Wellington Regional Council (GWRC), and Horizons Regional Council (Horizons) will fund the remaining \$71 million.
- There are steps that you and the Minister of Finance must undertake to release the tagged contingency and to establish a Vote Transport multi-year appropriation. The funding agreement can not be signed until this has occurred.
- We have developed a funding agreement that sets out the terms by which the Government and NZTA will provide funding to GWRC and KiwiRail for the purposes of delivering the Programme.
- We have updated the funding agreement to reflect your expectations the Programme has a strong value for money focus. The Parties involved in the Programme have agreed in-principle to the updated funding agreement. GWRC has also signalled that we will be able to review the Request for Proposal to ensure that it meets your additional value for money and train technology expectations.

Recommendations

We recommend you:

Minister of Transport Minister of Finance

Funding Agreement

- 1 **note** the Parties involved in the Lower North Island Rail Integrated Mobility Programme (Greater Wellington Regional Council, Horizons Regional Council, Ministry of Transport, the New Zealand Transport Agency and KiwiRail) have agreed in-principle to the funding agreement, pending your approval as the Minister of Transport;
- 2 **approve** the funding agreement for the Lower North Island Rail Integrated Mobility Programme subject to the Minister of Finance's approval of the recommendations below to draw down the contingency; Yes / No

Tagged contingency

- 3 **forward** this briefing to the Minister of Finance seeking her agreement to the recommendations below; Yes / No
- 4 **note** that in Budget 2023, Cabinet established a tagged operating contingency of \$455.4 million for the Lower North Island Rail Integrated Mobility Programme (Programme), that is contingent on Greater Wellington Regional Council and Horizons Regional Council demonstrating their ability to pay their local share of the Programme and other associated metropolitan rail costs, and contingent on a process established to manage potential cost overruns;
- 5 **note** that Greater Wellington Regional Council and Horizons Regional Council have demonstrated their ability to pay their respective local shares through reflecting their contributions in their 2024-2034 Long Term Plans;
- 6 **note** that the Funding Agreement specifies the process for releasing funding to Councils and the processes for managing cost overruns;
- 7 **agree** that the conditions of the tagged contingency noted in recommendation 4 above have been met, the contingency to be drawn down; Yes / No Yes / No
- 8 **agree** to draw down the tagged operating contingency for the Programme into Vote Transport; Yes / No Yes / No
- 9 **note** that in Budget 2023 Cabinet agreed that, when drawing down the tagged contingency noted in recommendation 4 above, the Minister of Transport and Minister of Finance may establish new appropriations as necessary;
- 10 **agree** to establish the following new multi-year appropriation in Vote Transport, to run from 2024/25 to 2028/29; Yes / No Yes / No

Vote	Appropriations Minister	Title	Appropriations Administrator	Type	Scope
Transport	Minister of Transport	Lower North Island Rail Passenger Rail Network Improvements - Local Council Grant MYA	Ministry of Transport	Non-Departmental other expense	The appropriation is limited to expenditure on the lower North Island passenger rail network for activities carried out by the Greater Wellington Regional Council and Horizons Regional Council.

- 11 **approve** the following changes to appropriations to give effect to recommendation 7 above with the corresponding impact on the operating balance and net core Crown debt; Yes / No Yes / No

Vote Transport Minister of Transport	\$m (increase/(decrease))	
	2024/25 -2027/28	2028/29
Non-Departmental Output Expense: Rail - Maintenance and Renewal of the Rail Network (2024-27) (MYA).	§ 9(2)(b)(ii)	
Non-Departmental Output Expense: Lower North Island Rail Passenger Rail Network Improvements – Local Council Grant MYA		
Total Operating		

- 12 **agree** that the expenses incurred in recommendation 8 above be charged against the tagged operating contingency described in recommendation 4 above; Yes / No Yes / No
- 13 **note** that, following the adjustment detailed in recommendation 8 the tagged operating contingency described in recommendation 4 above will be exhausted and therefore closed;
- 14 **note** that the indicative spending profile for the new multi-year appropriation described in recommendation 8 above is as follows:

Indicative annual spending profile	\$m (increase/(decrease))				
	2024/25	2025/26	2026/27	2027/28	2028/29
Rail - Maintenance and Renewal of the Rail Network (2024-27) MYA	§ 9(2)(b)(ii)				
Lower North Island Rail Passenger Rail Network Improvements – Local Council Grant MYA					

- 15 **agree** that the proposed change to appropriations above be included in the 2024/25 Supplementary Estimates and that, in the interim, the increase be met from Imprest Supply. Yes / No Yes / No
- 16 **note** that the Chief Executive of the Ministry of Transport will sign the funding agreement for the Lower North Island Rail Integrated Mobility Programme under delegated authority once all of the recommendations above have been approved.

 Hon Nicola Willis
Minister of Finance

..... / /



 David Wood
Deputy Chief Executive, Investment and Monitoring

..... / /

 Hon Simeon Brown
Minister of Transport

..... / /

Minister's office to complete:

Approved

Declined

Seen by Minister

Not seen by Minister

Overtaken by events

Comments

Contacts

Name	Telephone	First contact
David Wood, Deputy Chief Executive, Investment and Monitoring	s 9(2)(a)	✓
Bev Driscoll, Manager, Rail		
Alex Voutratzis, Principal Adviser, Rail		

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LOWER NORTH ISLAND RAIL INTEGRATED MOBILITY PROGRAMME FUNDING PACKAGE

Background: seeking further assurance from the Programme

Engagement with officials

- 1 You have sought further assurance from the Ministry of Transport (Ministry) and Greater Wellington Regional Council (GWRC) about the value for money of the train technology associated with the Lower North Island Rail Integrated Mobility Programme (the Programme).
- 2 You have also sought to make changes to the Request for Proposal (RFP) process for the new trains, and to strengthen the role the Ministry will have in the process.
- 3 We have previously provided you advice on these issues and other policy considerations [OC240523, OC240505, and OC240137 refers].

Meeting with the Chair of Greater Wellington Regional Council and subsequent communications

- 4 On 9 May 2024, you met with the Chair of GWRC, Daran Ponter [OC240446 refers]. The meeting enabled you to seek assurances on the proposed RFP process from GWRC and Horizons.

5 s 9(2)(b)(ii)

- 6 The meeting also provided you an opportunity to stress test the patronage forecasts on both the Manawatū and Wairarapa Lines, and by extension the farebox recovery on these services (particularly on the Manawatū Line). Chair Ponter emphasised his support for the patronage forecasts in the Detailed Business Case (DBC) that provide the basis for the proposed increase in service levels.

- 7 On 10 May, Chair Ponter wrote to you, seeking to address your concerns about the s 9(2)(b)(ii).

- 8 On 31 May 2024, you responded in writing to Chair Ponter, advising that before you sign the funding agreement, you need written assurance from GWRC that it:

8.1 s 9(2)(b)(ii)

8.2

8.3 s 9(2)(b)(ii)

9 Chair Ponter wrote to you again on 7 June 2024, and noted his commitment to confirm that in his view, the Programme delivers on the points outlined in 8.1-8.3. The Chair, as requested by you, also outlined the expected travel time savings of:

9.1 a 15-minute saving on the Wairarapa line (giving an 89 min total journey time)

9.2 no travel time savings on the Manawatū line – but noting the increased service levels.

10 A copy of Chair Ponter's 7 June letter is attached as Annex 2.

Updating the funding agreement

11 We have made changes to the funding agreement (see Annex 1) to hold GWRC to account on the undertakings provided in Chair Ponter's letters. We have designed these changes to:

11.1 s 9(2)(b)(ii)

11.2 ensure GWRC will prepare a Programme benefit realisation evaluation report within three years of the new services commencing

11.3 s 9(2)(b)(ii)

Strengthening the role of the Ministry in the RFP process

12 Your 31 May letter to Chair Ponter, set out your directive that GWRC can only release the RFP once there is mutual agreement between the Ministry, Horizons and GWRC on its content.

13 We are meeting with GWRC to review the RFP on Thursday, 20 June. As part of this review process, we will utilise the procurement expertise of NZTA to assist us. We are conscious of the RFP timeframes and the need for GWRC to go to market within the next two months.

Ensuring ongoing value for money

14 We note your concerns about whether the proposed increase in the level of service that the DBC outlines will eventuate. We share your concerns, particularly in relation to the Manawatū Line, and whether there is robust justification for the proposed fivefold increase in services a week [OC240446 refers].

15 To partly address these concerns, we have amended the funding agreement to ensure that the Programme benefit realisation evaluation report includes a demand and utilisation analysis for each line [clause 8.6 refers]. This will validate the value for money from the Programme and inform future changes to levels of service, within

three years of the new trains commencing services to the public. GWRC will lead the development of this report.

- 16 If patronage growth is low, GWRC will have the option to redeploy the new trains to the wider Wellington metro network. This option reinforces your key priority that the Programme must deliver value for money.
- 17 The new clause, outlined in paragraph 15 above, is in addition to existing clause 6.4a that requires a cost and scope review by the Parties of the Programme (the Ministry, NZTA, KiwiRail, GWRC and Horizons) prior to the signing of the RFP. s 9(2)(b)(ii)

s 9(2)(b)(ii)

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s 9(2)(b)(ii)

Releasing the tagged contingency

- 25 Budget 2023 established the process where the Minister of Transport and the Minister of Finance can draw down the tagged contingency, subject to their joint satisfaction that:
- 25.1 GWRC and Horizons can demonstrate their ability to pay their local share of the Programme and other associated metropolitan rail costs
 - 25.2 there is a process established to manage potential cost overruns.
- 26 Both GWRC and Horizons identified through their draft 2024-2034 Long-term Plans that the Programme is a high priority. Through this signalling, we believe that both councils have demonstrated their ability to pay their local share of the Programme and other associated rail costs.
- 27 Clauses 6.4 a-c of the funding agreement sets out clear processes and expectations to rescope the Programme in the event of cost overruns. This approach is to ensure every effort is made to mitigate any call for additional Crown funding over and above the tagged contingency. The Ministry will also be active participants in the LNIRIM Governance Group and will push for any potential cost overruns to be effectively managed by rescoping the Programme.
- 28 The Treasury is satisfied that the conditions of the drawdown have been met.

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ANNEX 1- FUNDING AGREEMENT

ANNEX 2 JUNE 7, 2024, LETTER FROM CHAIR PONTER

Annex 1 is withheld under section 9(2)(b)(ii)

Annex 2 is refused under section 18(d) as it is available online: <https://www.gw.govt.nz/assets/Documents/2024/08/Response-to-Minister-of-Transport-7-June-2024-Redacted.pdf>

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19 June 2024

OC240612

Hon Simeon Brown
Minister of Transport

THREE-MONTHLY CATCH UP WITH KEY ROAD TRANSPORT INDUSTRY BODIES

Snapshot

This meeting is your three-monthly catch up with key road transport industry bodies. The group has provided an agenda that covers a range of different topics, including the legislative programme, industry training, speed settings, immigration settings, the Clean Vehicle Standard, universal road user charges, Land Transport Rule changes, and the delivery of Roads of National and Regional Significance.

Time and date	3.30pm – 4.30pm, 20 June 2024
Venue	EW 5.1
Attendees	Simon Douglas, New Zealand Automobile Association (AA) Lee Marshall, Motor Trade Association (MTA) Greig Epps, Imported Motor Vehicle Association (VIA) Aimee Wiley, Motor Industry Association (MIA) Stewart Gibb, Collision Repair Association (CRA) Dom Kalasih, Ia Ara Aotearoa Transporting New Zealand Justin Tighe-Umbers, National Road Carriers Association David Boyce, New Zealand Trucking Association
Officials attending	Marian Willberg, Manager Freight and Supply Chain
Agenda	An agenda is provided in the Key Points.
Talking points	Background and talking points are provided in Annex 1.

Contacts

Name	Telephone	First contact
Siobhan Routledge, Acting Deputy Chief Executive	s 9(2)(a)	
Marian Willberg, Manager Freight and Supply Chain		✓




THREE-MONTHLY CATCH UP WITH ROAD TRANSPORT INDUSTRY BODIES

Key points

- You are due to have your three-monthly catch up with road transport industry bodies on 20 June 2024. You met with this group on 28 March 2024.
- The group has provided an agenda ahead of this meeting that covers a range of different topics, as follows:
 - What does the legislative programme look like?
 - Set up sector leadership group to consult on legislation, including new technologies and the second emissions reduction plan (ERP2)
 - Discussion about the future of the sector industry training organisation MITO
 - Discussion on the Green Party Consumer Bill and the unintended consequences
 - Discussion on the review of Speed Settings. Heads up on the anomaly between Motorways and Expressways
 - Immigration settings and the potential to damage New Zealand's productivity
 - Clean Vehicle Standard update
 - Update on universal road user charges (RUC), including non roading infrastructure in the Government Policy Statement on land transport (GPS)
 - Request for ministerial support for industry consultation at the beginning of the policy cycle
 - The Minister's view and update on matters directly in his control, particularly Land Transport Rule changes (Vehicle Dimension and Mass (VDAM) and Driver Licencing)
 - The Minister's views on how quickly we are able to move to delivery of Roads of National Significance (RoNS) and Roads of Regional Significance (RoRS)
 - Update on thinking and action on alternative road revenue generation.
- We have provided background information and suggested talking points on each of these topics in the order suggested by the agenda in Annex 1.

Biographies

<p>Simon Douglas, New Zealand Automobile Association (AA)</p> <p>Simon is Chief Policy & Advocacy Officer at AA. He has worked at AA for over 12 years.</p> <p>AA is one of the largest member organisations in New Zealand, representing around 1.8 million members.</p>	
<p>Lee Marshall, Motor Trade Association (MTA)</p> <p>Lee Marshall has been Chief Executive of the MTA since April 2023. He previously held management roles in the car rental industry.</p> <p>The MTA represents over 4,000 businesses working primarily in the following areas: general repair, service station, parts and accessories, new vehicle dealer, used vehicle dealer, collision repair and vehicle recovery.</p>	
<p>Greig Epps, Imported Motor Vehicle Association (VIA)</p> <p>Greig is Chief Executive Officer at VIA. He previously held roles at the Insurance Council of New Zealand and the MTA.</p> <p>VIA represents businesses involved in importing, preparing, wholesaling and retailing most used vehicles that are imported into New Zealand from Japan, Singapore and other source markets.</p>	
<p>Aimee Wiley, Motor Industry Association (MIA)</p> <p>Aimee has been Chief Executive Officer at MIA since April 2023. Previously, she was programme director, Low Emission Vehicles (Clean Car Discount and Clean Car Standard) for the New Zealand Transport Agency (Waka Kotahi)</p> <p>The MIA represents vehicle manufacturers operating in New Zealand through their local official distribution companies.</p> <p>The MIA represents 14 heavy vehicle (truck and bus) distributors comprising 19 different marques, covering most of the new heavy vehicle market and manufacturers of ZEHVs.</p>	
<p>Stewart Gibb, Collision Repair Association (CRA)</p> <p>Stewart has been General Manager at CRA since February 2023. He previously held roles at Shell and Z Energy.</p> <p>CRA represents around 500 members including qualified panel beaters, auto refinish painters and other car collision repair tradesman and allied businesses.</p>	

<p>Dom Kalasih, Ia Ara Aotearoa Transporting New Zealand</p> <p>Dom Kalasih is the interim Chief Executive of Ia Ara Aotearoa (he was previously General Manager). Dom has held roles at NZ Transport Agency, the Ministry of Transport and Z Energy.</p> <p>Ia Ara Aotearoa is a national industry association representing 1,200 individual members who operate a combined fleet of 14,000 vehicles.</p>	
<p>Justin Tighe-Umbers, National Road Carriers Association (NRC)</p> <p>Justin has been Chief Executive of NRC since August 2022. Prior to joining NRC he was Executive Director at the Board of Airline Representatives NZ.</p> <p>NRC represents 1,500 supply chain company members, who collectively operate over 16,000 trucks throughout New Zealand.</p>	
<p>David Boyce, New Zealand Trucking Association</p> <p>David is the CEO of the New Zealand Trucking Association – he became the founding president in 1988.</p> <p>The New Zealand Trucking Association’s membership encompasses a wide range of businesses associated with the trucking industry. It offers its members advice, advocacy and discount schemes.</p>	

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Annex 1: Background and talking points by agenda item

THREE-MONTHLY CATCH UP WITH ROAD TRANSPORT INDUSTRY BODIES

The group has asked what the legislative programme looks like

- 1 The Ministry is working with you on how to progress your legislative priorities.

s 9(2)(f)(iv)

Talking points

- I'm currently considering my legislative priorities and the timing of Bills over our term.
- As stated in the draft GPS a number of my priorities will need legislative change to implement such as tolling and time of use charging.
- I will have more to say on this in the next few months as I take items through Cabinet.

The group has called for a sector leadership group to be stood up to consult on legislation

Talking points

- Setting up a group to consult on legislation would depend on its common interests.
- For example, I understand the Road Transport Policy Group has been set up to start exploring a range of changes to some Land Transport Rules.
- As part of the Ministry for the Environment's engagement on ERP2, I understand that there will be a series of webinars, including one specifically focused on the transport sector. While officials are encouraging formal submissions to ensure views are captured accurately, Transport officials will also be available for meetings with key stakeholders.
- That said, I am interested in this group's suggestions for how a sector leadership group might operate and what the benefits of such a model might be.

The group wishes to discuss the future of the sector industry training organisation MITO

- 2 You attended a meeting on 22 May 2024 with Minister Simmonds and other Ministers to discuss advice on consultation options for implementing the commitment to disestablish Te Pūkenga. The Ministry provided your office advice to support you in these discussions (OC250545 refers).

- 3 Following this meeting, your office also received the draft cabinet paper from Minister Simmonds office on the consultation options for Vocational Education and Training reforms for comment. The Ministry provided your office with feedback on the paper by email on 11 June 2024.
- 4 MITO (previously the Motor Industry Training Organisation) provides training and support on-job learning for people working in the automotive, commercial road transport, extractives, gas and logistics industries. As per the draft cabinet paper, MITO has been proposed as the potential Industry Training Board responsible for Transport and Industries.
- 5 Feedback on this and other proposals will be sought through consultation if approved by Cabinet, with approval being sought early July.
- 6 As this is still under active consideration by Cabinet it is advised that you do not share this at this meeting, but you may wish to use this as an opportunity to hear any concerns the industry bodies may have with the future of MITO.

Talking points

- As you will know, the disestablishment of Te Pūkenga is being led by the Minister for Tertiary Education and Skills, Hon Penny Simmonds. I encourage you to engage with her office if you have not already.
- I understand you may have some concerns on the future of MITO as part of any system changes and I am interested to hear your thoughts. From your perspective, what opportunities or concerns are there for the future of MITO?

The group has raised the Green Party Consumer Bill and potential unintended consequences

- 7 In April 2024, the Consumer Guarantees (Right to Repair) Amendment Bill, a member's bill created by Green Party co-leader Marama Davidson, was drawn from the ballot and introduced to the House. The purpose of this Bill is to extend the lifetime of goods, in order to keep resources in circulation and out of landfills.
- 8 This group has flagged that there are unintended consequences to this Bill, if enacted. We have suggested you ask what these are – we expect that it may be additional costs to businesses.

Talking points

- I understand that you have signalled the potential for there to be unintended consequences from this Bill, if enacted. I am interested to understand more about what these are.

The group wishes to discuss the review of speed settings

- 9 The draft Land Transport Rule Setting of Speed Limits 2024 is out for public consultation. Consultation opened on 13 June 2024 and closes on 11 July 2024.

Submissions can be emailed to the Ministry of Transport or an online survey can be filled out on the Ministry's website.

- 10 The draft Rule proposes a more balanced approach to setting speed limits to ensure economic impacts and the views of local communities and road users are considered alongside safety.
- 11 The key changes through the Rule are:
 - 11.1 Road controlling authorities (RCAs) are required to undertake cost-benefit analysis on proposed speed limit changes.
 - 11.2 Roads outside school gates will need variable speed limits during pick-up and drop-off times by 31 December 2027.
 - 11.3 The consultation requirements are strengthened and includes a requirement for RCAs to use reasonable efforts to consult specified groups, including persons that use the road for which a speed limit change is proposed.
 - 11.4 Speed limit ranges for different types of roads are included the draft Rule, rather than NZ Transport Agency (NZTA) guidance.
 - 11.5 Making it easier to set speed limits of 110km/h on certain expressways.
 - 11.6 Requiring speed limit reductions on certain types of roads to reverse by 1 July 2025.
- 12 The intent behind having expressways as a category is to make it easier to set speed limits of 110km/h on roads that are built and maintained for that speed limit.
- 13 Feedback is also sought on enabling speed limits of up to 120 km/h on roads that are built and maintained, and will be managed, to safety accommodate that speed.
- 14 You may wish to encourage stakeholders to make a submission.

Talking points

- The intent behind having expressways as a category is to make it easier to set speed limits of 110km/h on roads that are built and maintained for that speed limit. What do you think of this proposal?
- I am also interested in any feedback on enabling speed limits of up to 120 km/h on roads that are built and maintained, and will be managed, to safety accommodate that speed.

The group has flagged immigration settings and their potential to damage New Zealand's productivity

- 15 We have taken this to mean that the group may raise concerns regarding the changes to the Accredited Employer Worker Visa (AEWVs) and the impacts this may have on truck and bus drivers.

- 16 As part of changes to AEWVs, new truck and bus driver applicants will no longer be eligible for the pathway to residency. The group may raise concerns about the lack of consultation before changes were made to the AEWV.
- 17 The Ministry of Business, Innovation and Employment (MBIE) considered broader consultation was not possible. This was partly because public consultation could have resulted in a sharp increase in applications under current policy settings, and partly due to time constraints.
- 18 There is some evidence that the driver shortage when the residency pathway was first established has now been reduced or resolved, but this is not certain. Structurally, however, the trucking industry has an aging workforce and increased training of New Zealanders to fill demand may not have been as effective as sought by the Transport Sector Agreement.
- 19 If raised, you could ask what progress the industry is making in addressing skills shortages over the longer term and refer more detailed questions regarding immigration settings to the Minister of Immigration and MBIE.
- 20 You may also wish to ask the group what other challenges to New Zealand productivity may arise due to immigration settings.

Talking points

- How do you see immigration settings contributing to New Zealand productivity?
- I understand that skills shortages are an ongoing concern for your sectors and that immigration and training settings are tools to address these shortages. What is industry doing to address skills shortages in the long term and what do you see as Government's role in supporting this?

The group has requested an update on the Clean Vehicle Standard

- 21 The cabinet paper, climate implications of policy assessment (CIPA) and regulatory impact statement to progress your decisions on the review of the Clean Car Standard's targets are being amended to reflect updated estimates of the Standard's emissions abatement potential. The intention is that these document will be finalised and lodged to enable consideration by the Cabinet Economic Policy Committee on 3 July 2024.
- 22 The Land Transport (Clean Vehicle Standard) Amendment Bill has been introduced and awaits passage through the House. The Bill creates two empowering provisions for regulations to be made. The first is to enable regulations for the cost-recovery of the administration costs of the Standard. The second is to enable the Standard's targets for 2025–2027 to be set by regulation.

Talking points

- I will shortly be bringing proposals to reset the Clean Car Standard's targets to Cabinet. I am grateful for the engagement of the MIA, VIA, MTA and AA in the review of the Standard that informed these proposals.

- On 30 May I introduced the Land Transport (Clean Vehicle Standard) Amendment Bill into the House. This Bill is important because it will enable the Standard's targets for 2025–2027 to be reset by regulation, rather than through an amendment to the Land Transport Act. This will streamline implementation of Cabinet decisions on the targets. This is critical to ensure that any changes to targets can be made quickly to provide certainty for the vehicle industry.
- The Bill also enables regulations for the cost-recovery of the administration costs of the Standard. As you know from my letter of 31 May, I welcome input from the vehicle industry and the AA on the design of any cost-recovery mechanism. I intend to consult on the design of the cost recovery mechanism.

Update on universal RUC, including non roading infrastructure in the GPS

Talking points – universal RUC

- Improving the land transport system and reforming the revenue system are priorities for this government and relate to specific commitments in the coalition agreements.
- I will be taking a paper to Cabinet later this month outlining my aspirations for transport funding and seeking approval to an action plan that will reform how we pay for roads and roading infrastructure. Moving the fleet to RUC is a key part of the plan.
- RUC will be a fairer system for all motorists. Motorists paying at the pump are currently charged different amounts for travelling the same distance depending on the fuel efficiency of their vehicles. With RUC, road users will pay directly for their actual road usage.
- We have already taken the first step by moving electric vehicles into the RUC system.
- Moving all vehicles to RUC is a huge task for the Government and the 3.5 million vehicle owners who currently pay excise at the pump. This work cannot be rushed and needs careful planning so I have asked officials to explore transition options.
- I am interested in market-led solutions that will make it easier for motorists to comply with and navigate the RUC system.

s 9(2)(g)(i)

Talking point – non roading infrastructure in the GPS

- Rail investment remains within the GPS but this will no longer be cross subsidised with revenue from road users. Investment in rail is outlined in the draft GPS, and additional funding for the rail network has been secured through Budget 2024 for this purpose. Through Budget and GPS 2024 rail will be receiving \$3 billion of funding over the next four years.

The group has made a request for ministerial support for industry consultation at the beginning of the policy cycle

- 23 We suggest you make the point to this group that industry consultation (and at what stage of the policy cycle it occurs) often depends on what is being consulted on and if there are any sensitivities.
- 24 For example, broader consultation was not considered possible for the changes to the AEWV due to the potential operational impacts (a potential sharp increase in applications) and time constraints.

Talking points

- Decisions around industry consultation and at what stage of the policy cycle it should occur often depend on what is being consulted on.
- That said, ministers and officials should always be seeking to understand the views of industry, using meetings such as this to build that perspective.

The group has asked for your view and update on Land Transport Rule changes

- 25 Industry has raised concerns about several Land Transport Rules (Rules), seeking a review of the Rules to streamline them and remove barriers to industry. An example of changes sought from both industry and manufacturers include an update to the Land Transport Rule: Vehicle Dimensions and Mass (VDAM) 2016 as the current rule limits the uptake of battery electric trucks.
- 26 To start exploring a range of changes to some Rules, the Road Transport Policy Group has been set up. The group is led by officials from NZTA and includes the Ministry and representation from Ia Ara Transporting NZ, National Road Carriers Association and the NZ Trucking Association. Your office has received a briefing on the group from NZTA (BRI-3021 refers).
- 27 The Road Transport Policy Group is focussing on Rules that impact the freight sector and currently four legislative changes have been identified as a priority for the industry representatives in the group, these are:
- 27.1 The Land Transport Rule: Vehicle Dimensions and Mass 2016
- 27.2 The Transport Services Licensing regime under the Land Transport Act 1998
- 27.3 Land Transport Rule: Worktime and Logbooks 2007, and
- 27.4 The Land Transport (Driver Licensing) Rule 1999.
- 28 The Road Transport Policy Group is taking a focussed approach to discussing the Rules and is looking into operational changes where possible in the first instance, and assisting in gathering evidence to support potential legislative change once operational avenues are exhausted. Any changes to the Rules would need to be considered against wider policy priorities and work programmes.

Talking points

- We will need to make sure that our policies and rules enable the industry to innovate and invest in new technologies.
- I understand that discussions are already underway with officials on how we can address regulatory barriers to the Land Transport Rules through operational changes in the first instance and that some of you are involved in these. I encourage you to continue these discussions with officials.

The group has asked for your views on how quickly RoNS and RoRS can be delivered

- 29 The GPS is currently being finalised and will be released before 1 July 2024. The GPS will outline the current programme of RoNS and RoRS projects, and more RoNS and RoRS may be added over time.

Talking points

- I have provided NZTA with additional funding through Budget 2024 to accelerate delivery of the Roads of National Significance (RoNS). Expected dates for phases of RoNS will be outlined in the State Highway Investment Proposal and confirmed in the National Land Transport Programme which I expect to be published in September following release of the final Government Policy Statement on land transport 2024.
- The Roads of Regional Significance (RoRS) are largely funded through direct Crown funding, with NZTA having delegated decision rights around project scope and delivery. Some of the RoRS are already in construction, with others still in design. I'm expecting an accelerated delivery of the projects that aren't in construction.
- In the GPS 2024 I have also outlined my expectation to the NZTA that it considers all relevant delivery models in progressing any project, including models where the NZTA may not be the delivery entity, to enable projects to be delivered as quickly as possible. This expectation applies to the Roads of National Significance and Roads of Regional Significance.

Update on thinking and action on alternative road revenue generation

Talking points – value capture

- Improvements to transport infrastructure can significantly impact land values and it is fair that this revenue is recycled back into the transport system.
- Some of the transport projects we have committed to will unlock large amounts of housing, and value capture tools will help ensure that the property owners benefiting from that investment contribute.
- Officials across departments are working together on the role of value capture in transport funding. While the Ministry of Housing and Urban Development is taking the lead, there will be opportunities to improve how value capture can fund transport infrastructure, and the Ministry of Transport will support this work.

Talking points – public-private partnerships (PPP)

- PPPs have potential to improve efficiency of delivery, as well as optimising finance approaches for infrastructure delivery.
- My officials will engage with the Infrastructure Commission, leading this work, in ensuring that we consider how we can improve the framework for the use of PPPs to work alongside the transport revenue system changes.

Talking points – tolling reform

- I have kicked off work to review tolling settings. The GPS indicates all new roads will be tolled where it is possible and cost effective. Revenue is tight, so tolling has a role in supplementing existing revenue streams.
- I want to explore reforms to improve the viability of tolling within the LTMA framework and will have more to say about the scope of this work soon.

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26 June 2024

OC240519

Hon Simeon Brown
Minister of Transport

Action required by:
 Monday, 1 July 2024

LAND TRANSPORT (DRUG DRIVING) AMENDMENT BILL

Purpose

Seek your agreement to commence departmental, ministerial, and cross-party consultation on the following attached documents:

- the draft Land Transport (Drug Driving) Amendment Bill (the Bill); and
- the draft Cabinet Legislation Committee paper (LEG paper).

Seek your agreement to release the Bill to four agencies outside of the core Crown for the purpose of consultation.

Seek your agreement to one policy matter that you will need to seek Cabinet Legislation Committee (LEG) approval for inclusion in the Bill.

Seek your agreement to several minor matters for inclusion in the Bill.

Key points

- The Parliamentary Counsel Office (PCO) has drafted the attached Bill to give effect to previous Cabinet approvals regarding changes to the roadside oral fluid testing regime [DEV-23-MIN-0077].
- You will need to seek LEG approval on 25 July 2024 for the Bill's introduction to enable it to be passed by the end of the year. We must undertake departmental, ministerial, and cross-party consultation on the Bill and LEG paper before the Bill is considered by the Committee.
- You have directed us to allow one week for consultation. We seek your approval to commence departmental consultation (from Monday 1 – Tuesday 9 July 2024). Following this, we will incorporate any feedback as appropriate and provide you with the revised Bill and LEG paper (along with other associated materials) on 15 July 2024 for lodging on 18 July 2024.
- We intend to consult with the following agencies: Accident Compensation Corporation, New Zealand Police (the Police), New Zealand Transport Agency, Ministry of Health, Ministry of Justice, Crown Law Office, The Treasury, WorkSafe New Zealand, Office of the Privacy Commissioner, Te Puni Kōkiri, and the Department of Prime Minister and Cabinet.

- As some of these agencies are not part of the core Crown, we require your agreement to release the Bill, and any subsequent versions, to them for the purpose of consultation. The Ministry's Chief Legal Adviser has approved the Bill's release to the relevant agencies (Annex 1).
- Your Office will coordinate the ministerial and cross-party consultation.

Matters requiring your agreement and LEG approval/confirmation for inclusion in the Bill

- Through the drafting process, we have identified one further policy matter which requires your agreement to seek LEG approval for inclusion in the Bill: setting the maximum penalty (\$1,000) for the new infringement offence of refusing to undertake an oral fluid test.
- We have identified some minor matters that are consequential to the original Cabinet approvals and require your decision and agreement to seek Cabinet confirmation for inclusion in the Bill.
- You will need to specifically consult with the Ministers of Justice and Police on these minor matters [DEV-23-MIN-0077].

Police implementation

- Attached for your reference is the most recent iteration of the Police's 12-month implementation plan for the roadside oral fluid testing regime (Annex 2).

Recommendations

We recommend you:

- | | | |
|---|---|----------|
| 1 | <p>agree to commence departmental, ministerial, and cross-party consultation (1-9 July 2024) on:</p> <ul style="list-style-type: none"> • the draft Land Transport (Drug Driving) Amendment Bill 2024 (the Bill); and • the draft Cabinet Legislation Committee paper. | Yes / No |
| 2 | <p>agree to the release of the Bill to the Office of the Privacy Commissioner, the New Zealand Transport Agency, the Accident Compensation Corporation, and WorkSafe New Zealand for the purpose of consultation.</p> | Yes / No |
| 3 | <p>note the Ministry's Chief Legal Adviser has agreed to the release of the Bill to the agencies in recommendation 2 (Annex 1).</p> | |

New policy issue for LEG approval

- | | | |
|---|---|----------|
| 4 | <p>agree to seek LEG approval for inclusion in the Bill a maximum penalty of \$1,000 for the new infringement offence for drivers refusing to take oral fluid tests, to align with existing offences provided for under the Land Transport Act 1998.</p> | Yes / No |
|---|---|----------|

Minor changes to policy for LEG confirmation

- 5 **agree**, for inclusion in the Bill, to amend existing offences and penalties for drivers that fail to accompany an officer or to remain in place when being processed under the roadside oral fluid screening regime. Yes / No
- 6 **agree** to clarify in the Bill that the current prohibition on using positive oral fluid test results as evidence of an offence against the Misuse of Drugs Act covers both oral fluid screening test and oral fluid laboratory test results. Yes / No
- 7 **agree**, for inclusion in the Bill, to provide for a review of the provisions of the Bill and align/combine that with the review required of the Land Transport (Drug Driving) Amendment Act 2022. Yes / No
- 8 **agree** to consult the Minister of Justice and Minister of Police on recommendations 5-7 above. A letter is attached for this purpose (Annex 3). Yes / No
- 9 **note** we will provide you with the final package of materials on 15 July 2024 for lodging with the Cabinet Office on 18 July 2024.



Paul O'Connell
**Deputy Chief Executive, Sector
 Strategy Group**
 26 / 06 / 2024

Hon Simeon Brown
Minister of Transport
 / /

- Minister's office to complete:**
- Approved
 - Declined
 - Seen by Minister
 - Not seen by Minister
 - Overtaken by events

Comments

Contacts

Name	Telephone	First contact
Paul O'Connell, Deputy Chief Executive, Sector Strategy Group	s 9(2)(a)	
Jo Gould, Principal Adviser, Safety		✓

LAND TRANSPORT (DRUG DRIVING) AMENDMENT BILL

Commencing consultation on the draft Land Transport (Drug Driving) Amendment Bill (the Bill)

- 1 The Parliamentary Counsel Office (PCO) has drafted a Bill to give effect to a new random roadside oral fluid testing regime. We seek your agreement to consult on the Bill and the draft Cabinet Legislation Committee paper (LEG paper) from 1-9 July 2024. The draft departmental disclosure statement (Annex 4) will also be provided as part of the consultation package for reference.

Seeking approval to release the Bill for consultation

- 2 We intend to consult with the following agencies: Accident Compensation Corporation (ACC), New Zealand Police (the Police), New Zealand Transport Agency (NZTA), Ministry of Health, Ministry of Justice, Crown Law Office, The Treasury, WorkSafe New Zealand (WorkSafe), Office of the Privacy Commissioner (OPC), Te Puni Kōkiri, and the Department of Prime Minister and Cabinet. These stakeholders were previously consulted on the policy.

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- 6 The Ministry's Chief Legal Adviser has agreed to the release of the Bill (Annex 1).

New policy matter for LEG approval

- 7 Through the drafting process, we identified one further policy matter that requires your agreement to seek LEG approval for inclusion in the Bill.
- 8 The previous Cabinet agreed to create an infringement offence of a driver who refuses to undertake an oral fluid test, liable to an infringement fee of \$400 and 75

demerit points. The driver would also be prohibited from driving for 12 hours to address any road safety risk.

- 9 These amounts were set to align with the maximum penalty available for a driver who provides an oral fluid sample and is subsequently found to have 2 or more qualifying drugs in their oral fluid, avoiding any incentive for drivers who know they have consumed these drugs to refuse to cooperate with the test. That maximum penalty, under section 57A(3), also specifies a maximum penalty on conviction. This maximum penalty would be available to a judge if the driver unsuccessfully challenges the infringement notice in court.
- 10 The previous Cabinet did not set a maximum penalty where drivers elect to go to court to challenge an infringement notice for this new offence. To align with existing offences provided for in the Act, we recommend that a maximum penalty on conviction for those offences be set at \$1,000.
- 11 We will confirm with the Ministry of Justice's Offences and Penalties Team during consultation that this does not raise any concerns.

Minor changes and clarifications to the policy for your agreement

- 12 In May 2023, Cabinet authorised the Associate Minister of Transport to make decisions, in consultation with the Ministers of Justice and Police, in relation to any minor, technical, procedural, transitional or consequential matters that arise during the drafting of the legislative amendments.¹
- 13 We have identified several minor matters that are consequential to the original Cabinet approvals and to which we seek your agreement for inclusion in the Bill. Consistent with the original Cabinet approvals, we recommend you consult with the Ministers of Justice and Police on these matters. We have provided a draft letter for you to send to your colleagues on these amendments (Annex 3).
- 14 If you agree, you will need to seek LEG confirmation of your decision for inclusion of these changes in the Bill.
- 15 These matters are as follows:

Clause/New Section in the Bill	Amendment required	Reason for amendment
Clause 10 – s59(3)	Amend the existing offences and penalties for drivers who fail or refuse to accompany an officer, or who fail or refuse to remain in place when being processed	Cabinet agreed to create an infringement offence for a driver who refuses to undertake an oral fluid test. Refusing the oral fluid test requirements at any point in the

¹ The policy approvals for the legislative amendments stem from the previous Cabinet. It authorised the Associate Minister of Transport (who acts with delegation from the Minister of Transport - so in effect Cabinet also authorised the Minister of Transport). Our understanding is that the current Cabinet noted this authority continued to exist by noting that you issued drafting instructions to the PCO [CAB-24-MIN-0167]. It is the Minister of Transport that continues to hold this authority.

	under the roadside oral fluid testing regime.	<p>process should attract the same penalty as refusing an oral fluid test outright (an infringement offence).</p> <p>To align with the new infringement offence for drivers that refuse to undertake an oral fluid test, we recommend that the Bill also makes changes to the existing offences and penalties for drivers that initially cooperate but then refuse to accompany an officer or to remain in place. Having this as an infringement offence will provide consistency within the Land Transport Act 1998 (the Act).</p>
Clause 24 – 73A(2)	Confirm that the results of a laboratory test of oral fluid cannot be used as evidence in a prosecution against the Misuse of Drugs Act 1975.	<p>Cabinet agreed to amend the Act to include the necessary enforcement and evidential provisions to implement the new oral fluid screening regime, aligned with the existing provisions in the Act where possible.</p> <p>Under the Act, drug testing in the land transport context cannot feed into offences under other drug-related legislation. The Act currently provides that neither a positive result of an oral fluid test or the result of a blood specimen may be used as evidence of a controlled drug in a prosecution for an offence under the Misuse of Drugs Act 1975.</p> <p>The Bill now draws a distinction between the results of screening tests, and the results of laboratory testing. Therefore, it is appropriate to confirm that neither results can be used for prosecution under the Misuse of Drugs Act.</p> <p>Consistent with the Cabinet approval, and the existing policy approach, we recommend the Bill amends section 73A(2) of the Act to confirm that the results of the new oral fluid test by an approved laboratory cannot be used as evidence in a prosecution against the Misuse of Drugs Act 1975.</p>
Repeals Part 6 of Schedule 1	Provide for a review of the provisions of this Bill and	The Land Transport (Drug Driving) Amendment Act 2022 provides for a

and inserts New Part 9 of Schedule 2	align/combine with the review required of the Land Transport (Drug Driving) Amendment Act 2022.	<p>review of its provisions after 3 years (i.e., after March 2025). Parliament intended that there be a review of the amendments.</p> <p>Given this Bill is amending some of the provisions introduced by the Land Transport (Drug Driving) Amendment Act 2022, it is appropriate that the Bill also provides for a review of amendments made by it. This review should be no earlier than 3 years after the commencement of this Bill and should be combined with a review of amendments made by the Land Transport (Drug Driving) Amendment Act 2022 as they should be considered alongside each other.</p> <p>We consider that a review may go some way to allay concerns about potential negative impacts of the regime (e.g., the number of false positive results).</p> <p>The draft Bill includes provision for this legislative review. There is an option to remove this review, which would require policy approval at Cabinet Legislation Committee.</p>
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- 16 This is a complex Bill and drafting will need to continue during and after the consultation period, and potentially after LEG approval for introduction. We have included a recommendation in the LEG paper that the PCO be permitted to continue to make minor and technical changes to the Bill prior to introduction.

Matters further clarified in the Bill (not requiring specific approvals)

- 17 We have clarified two matters in the Bill to ensure they meet the original Cabinet approvals [DEV-23-MIN-0077]:
- 17.1 Cabinet agreed to replace the current oral fluid testing regime in the Act with a new screening regime in which laboratory testing of oral fluid samples is required before infringement notices are issued. The Cabinet paper detailed that laboratory testing of an oral fluid sample is triggered after one positive oral fluid screening test, regardless of the outcome of the second screening test. As an operational matter, the Bill will enable the Police to determine which oral fluid sample is to be sent for laboratory testing (e.g., a sample from the first or second testing device, or from a third, separate sample). This will be a matter for the Police to confirm through the device procurement process.
- 17.2 Cabinet also agreed to create an infringement offence for a driver who refuses to undertake an oral fluid test. However, it is not the policy intention that this

capture drivers who cannot physically provide enough oral fluid for an oral fluid test (e.g., for medical reasons). To give effect to this Cabinet decision, the Bill makes a distinction between drivers who intentionally fail or refuse to undergo an oral fluid screening test and drivers who are unable to carry out a test. In the event of the latter, the Bill maintains the current requirement in the Act that a blood specimen would be required instead (refusal of which is an offence under current section 60(1)).

Next steps to introduce the Bill

- 18 The following table sets out the next steps to the introduction of the Bill. Any delay in any of these steps will likely mean that the Bill will not be enacted by the end of 2024.
- 19 We understand that the Hon Matt Doocey will be acting for you from 31 July – 6 August and will therefore need to do the first reading in the House.

Timeframe	Deliverable
26 June 2024	Draft Bill, draft LEG paper, and draft departmental disclosure statement provided to the Minister.
1 July 2024	Minister approval of documents for departmental, and ministerial and cross-party consultation.
1 July 2024	Draft Bill provided to the Ministry of Justice for Bill of Rights (BORA) vetting.
1 – 9 July 2024	Draft Bill, LEG paper, and disclosure statement provided to agencies, Ministers, and cross-parties for consultation (7 days).
15 July 2024	Revised version of the Bill, LEG paper, and departmental disclosure statement (along with talking points) provided to the Minister.
18 July 2024	LEG paper and associated materials lodged.
18 July 2024	BORA vetting complete (BORA advice provided to the Attorney-General by the Ministry of Justice).
25 July 2024	LEG Committee
29 July 2024	Cabinet
31 July 2024	Bill introduced (the Bill may be introduced on any working day or by 1pm on any sitting day). The PCO requires one day after Cabinet approval to print copies of the Bill for introduction.
Week of 29 July	Materials to Minister Doocey to support first reading.
6 August	First reading (as the intention is to have a 3-month select committee period as opposed to the usual 6-months, this will trigger an unlimited debate in the House).

Police implementation of the oral fluid testing regime

- 20 To date, the Police has informed us that it will require 12 months from enactment to commence the roll-out of roadside oral fluid testing.
- 21 The Police is aware of your expectation that the new regime will be rolled out promptly and is committed to initiating oral fluid testing as soon as possible. However, the Police has noted concerns with progressing procurement and other implementation work ahead of the parameters of the regime being finalised through the Bill process and ahead of securing implementation funding. The Police will

explore opportunities to fast-track delivery, but further analysis is needed to confirm viable options.

22 The Police has provided us with an initial, high-level implementation plan for the oral fluid testing roll-out based on a 12-month implementation period (Annex 2).

23 s 9(2)(f)(iv)



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ANNEX 1

Copy of signed memorandum: 'Sharing draft legislation outside of the core Crown – Land Transport (Drug Driving) Amendment Bill'

Withheld under Section 9(2)(h).

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ANNEX 2

The New Zealand Police's implementation plan for the oral fluid testing regime (June 2024)

Withheld under Section 9(2)(f)(iv).

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ANNEX 3

Letter to the Ministers of Justice and Police to consult on amendments to the Bill

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Hon Simeon Brown

MP for Pakuranga

Minister for Energy
Minister of Local Government
Minister of Transport

Minister for Auckland
Deputy Leader of the House



Minister's Office Reference

Hon Paul Goldsmith
Minister of Justice

Hon Mark Mitchell
Minister of Police

Dear Paul and Mark,

CONSULTING ON CHANGES TO THE DRAFT LAND TRANSPORT (DRUG DRIVING) AMENDMENT BILL

I am committed to seeing the roll-out of roadside oral fluid testing as a tool to better detect and deter drug-impaired driving. Legislation is currently being drafted to enable this testing to be implemented. I am writing to inform and seek your views on several minor matters that require consideration for inclusion in the Land Transport (Drug Driving) Amendment Bill.

I have delegated authority to make decisions, in consultation with the Ministers of Justice and Police, in relation to any minor, technical, procedural, transitional or consequential matters that arise during the drafting of the new oral fluid testing legislation [DEV-23-MIN-0077, CAB-24-MIN-0167].

Through the drafting process, officials have identified some minor matters consistent with the original Cabinet policy approvals that I consider necessary for inclusion in the Bill. I intend to seek Cabinet confirmation of their inclusion. These matters concern:

- amending existing offences and penalties for drivers that fail to accompany an officer or to remain in place when being processed under the oral fluid screening regime;
- clarifying that the results of the oral fluid laboratory test cannot be used as evidence in a prosecution against the Misuse of Drugs Act 1975; and
- providing for a review of the provisions of the Bill and aligning/combining that with the review required of the Land Transport (Drug Driving) Amendment Act 2022.

Information on these matters is attached and I welcome your views on any of the above.

I would be happy to meet with you to discuss these amendments should you wish to do so.

Yours sincerely,

Hon Simeon Brown
Minister of Transport

Attachment 1: Minor changes proposed to the oral fluid testing policy

- 1 On 10 May 2023, the Cabinet Economic Development Committee agreed to replace the current oral fluid testing regime with a new oral fluid screening regime. Under the new regime, oral fluid testing devices can be approved for use as screening devices to screen drivers for impairing drugs, with evidential laboratory testing of oral fluid samples for specified qualifying drugs required before infringement notices are issued [DEV-23-MIN-0077].
- 2 On 13 May 2024, Cabinet noted my intention to proceed with the legislation amendments as previously approved by Cabinet to introduce the new roadside oral fluid screening regime [CAB-24-MIN-0167].
- 3 Several minor matters have been identified through the drafting process that require the Minister of Transport's approval, in consultation with the Ministers of Justice and Police, for inclusion in the new legislation.
- 4 These matters are as follows:

Clause/New Section in the Bill	Amendment required	Reason for amendment
Clause 10 – s59(3)	Amend the existing offences and penalties for drivers who fail or refuse to accompany an officer, or who fail or refuse to remain in place when being processed under the roadside oral fluid testing regime.	<p>The previous Cabinet agreed to create an infringement offence for a driver who refuses to undertake an oral fluid test.</p> <p>Refusing the oral fluid test requirements at any point in the process should attract the same penalty as refusing an oral fluid test outright (an infringement offence).</p> <p>To align with the new infringement offence for drivers that refuse to undertake an oral fluid test, I recommend that the Bill also makes changes to the existing offences and penalties for drivers that initially cooperate but then refuse to accompany an officer or to remain in place. Having this as an infringement offence will provide consistency with the Land Transport Act 1998 (the Act).</p>
Clause 24 – 73A(2)	Confirm that the results of a laboratory test of oral fluid cannot be used as evidence in a prosecution against the Misuse of Drugs Act 1975.	The previous Cabinet agreed to amend the Act to include the necessary enforcement and evidential provisions to implement the new oral fluid screening regime, aligned with the existing provisions in the Act where possible.

		<p>Under the Act, drug testing in the land transport context cannot feed into offences under other drug-related legislation. The Act currently provides that neither a positive result of an oral fluid test or the result of a blood specimen may be used as evidence of a controlled drug in a prosecution for an offence under the Misuse of Drugs Act 1975.</p> <p>The Bill now draws a distinction between the results of screening tests, and the results of laboratory testing. Therefore, it is appropriate to clarify that neither results can be used for prosecution under the Misuse of Drugs Act.</p> <p>Consistent with the Cabinet approval, I recommend the Bill amends section 73A(2) of the Act to confirm that the results of the new oral fluid test by an approved laboratory cannot be used as evidence in a prosecution against the Misuse of Drugs Act 1975.</p>
<p>Repeals Part 6 of Schedule 1 and inserts New Part 9 of Schedule 2</p>	<p>Provide for a review of the provisions of this Bill and align/combine with the review required of the Land Transport (Drug Driving) Amendment Act 2022.</p>	<p>The Land Transport (Drug Driving) Amendment Act 2022 provided for a review of its provisions after 3 years (i.e., after March 2025). Parliament intended that there be a review of the amendments.</p> <p>Given this Bill is amending some of the provisions introduced by the Land Transport (Drug Driving) Amendment Act 2022, it is appropriate that the Bill also provides for a review of amendments made by it. This review should be no earlier than 3 years after the commencement of this Bill and should be combined with a review of amendments made by the Land Transport (Drug Driving) Amendment Act 2022 as they must be considered alongside each other.</p>

ANNEX 4

Departmental Disclosure Statement

Refused under Section 18(d) as the information is publicly available here: <https://disclosure.legislation.govt.nz/bill/government/2024/69/>

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