

The Treasury

A New Independent Infrastructure Body – Background Papers

Release Document

October 2018

<https://treasury.govt.nz/publications/information-release/infrastructure-background-papers>

This document has been proactively released. Redactions made to the document have been made consistent with provisions of the Official Information Act 1982.

Key to Redaction Codes

Certain information in this document has been withheld under one or more of the following sections of the Official Information Act, as applicable:

- [1] 9(2)(f)(iv) - maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials
- [2] 9(2)(g)(i) - to maintain the effective conduct of public affairs through the free and frank expression of opinions
- [3] 9(2)(k) - prevent the disclosure or use of official information for improper gain or improper advantage

Where information has been withheld, a numbered reference to the applicable section of the Official Information Act has been made, as listed above.

Treasury Report: Infrastructure Institutional Settings Review

Date:	13 July 2018	Report No:	T2018/1908
		File Number:	SH-11-5-16

Action Sought

	Action Sought	Deadline
Minister of Finance (Hon Grant Robertson)	Note the contents of this Report	None
Minister for Infrastructure (Hon Shane Jones)	Note the contents of this Report Refer to the Ministers of Housing, Transport & Urban Development, Health, Local Government, Education, State Services and Associate Finance (Hon James Shaw).	Friday 20 July

Contact for Telephone Discussion (if required)

Name	Position	Telephone	1st Contact
Morgan Dryburgh	Senior Analyst, National Infrastructure Unit	[3]	N/A (mob) ✓
David Taylor	Manager, National Infrastructure Unit	[3]	N/A (mob)

Actions for the Minister's Office Staff (if required)

Note any feedback on the quality of the report

Enclosure: YES

Treasury Report: Infrastructure Institutional Settings Review

Executive Summary

1. On 26 June 2018, ministers expressed their support for the following components of the Infrastructure Commission proposal:
 - a Providing agencies and councils with transaction support that relates to the delivery of major infrastructure projects.
 - b Acting as ‘one window to government’ for investors, linking investors to procuring entities, informing investors on regulatory and market settings and promoting the pipeline.
2. Ministers also accepted the need to enhance the existing infrastructure strategy and policy functions. However, there was uncertainty about whether strategy and policy functions should be independent.
3. Ministers asked for further advice from Treasury on options for the infrastructure strategy and planning functions as recommended in the draft Cabinet paper.
4. [1]
5. The benefits to ministers of this are:
 - a raising issues or specific projects as topics for public discussion before they become the subject of political debate
 - b giving ministers another source of expert advice to help make investment decisions
 - c it provides the ability for ministers to raise infrastructure ideas to the strategy and planning function, to test if they were valuable and to help build the case for them, and
 - d better engagement with local government on infrastructure strategy and planning.
6. For New Zealand infrastructure planning and delivery more broadly, benefits include:
 - a It should help ensure New Zealand invests in the infrastructure it needs at the right times and in the right places
 - b Providing a more consistent and predictable infrastructure regulatory environment and stability in the infrastructure investment pipeline through time.
 - c Increased market confidence and credibility, as the market sees the potential for a pipeline that endures beyond political cycles, this in turn helps infrastructure delivery and value for money
 - d A degree of independence will give the entity credibility, helping it deliver better infrastructure outcomes.
7. This Report also recommends that the strategy and planning functions sit alongside the transaction and project delivery support functions of the Infrastructure Commission.

8. [1]

9. The benefits of retaining all infrastructure functions within the same entity include:

- a The planning function works well when it learns lessons from the delivery function, and vice versa.
- b An infrastructure entity that provides an overall value proposition from a delivery agency's perspective will achieve better engagement with its strategy and planning functions.
- c Joined up strategy and delivery allows infrastructure projects to be sequenced appropriately allowing market capacity to be optimised through time, consequently reducing "boom and bust" cycles.
- d From a resource perspective, locating the strategy and planning functions within a standalone entity would mean it is better able to attract the skills and capability necessary to deliver the particular nature of these infrastructure functions.
- e Having dedicated, highly skilled infrastructure practitioners available would in turn provide credibility to the infrastructure entity as a whole, particularly to the market.

10. [1][2]

The most successful infrastructure entities overseas achieve a balance between maintaining the support of ministers and the confidence of the market.

- 11. This means that we would aim to ensure the Commission would carry out its public functions in a way that does not put it into direct conflict with ministers. For example, when carrying out the function of producing priority lists, the Commission could present investment needs prioritised into groupings of high, medium or low priority projects.
- 12. There is also a difference between a public voice and independence. The level of independence given to the Infrastructure Commission – the degree of ministerial control or oversight – will be determined by its organisational form. We are recommending that Ministers do not make decisions about organisational form at this stage, but receive further advice on options for this in early 2019.
- 13. The proposals put forward in this Report are reflective of the views of the National Infrastructure Advisory Board (NIAB), and market participants who we engaged with during the Review:
 - a NIAB is supportive of the recommendation in this Report. In particular, NIAB sees value in a standalone Infrastructure Commission with a public voice that can publicly produce priority lists and make recommendations to ministers on improving the market and regulatory settings in order to get better infrastructure outcomes.
 - b Market stakeholders agreed that an agreed long-term vision, preferably with cross-party agreement, and a credible pipeline are critical to getting the right outcomes in project delivery, and provide the market with the confidence to gear-up to meet the pipeline. Stakeholders also saw merit in a centralised project delivery function that can support agencies and councils.

Recommended Action

We recommend that you:

- a **note** that Treasury considers a standalone Infrastructure Commission with the mandate to speak publicly on infrastructure issues is the best option to improve New Zealand's infrastructure outcomes

Noted

- b **note** that Treasury considers it best to combine the strategy and planning functions with the project delivery functions in the Infrastructure Commission

Noted

- c **refer** to the Ministers of Housing, Transport & Urban Development, Health, Local Government, Education, State Services and Associate Finance (Hon James Shaw).

Refer/not referred.

David Taylor
Manager, National Infrastructure Unit

Hon Shane Jones
Minister for Infrastructure

Treasury Report: Infrastructure Institutional Settings Review

Purpose of Report

14. On 26 June 2018, you and Ministers Robertson, Twyford, Clark and Genter requested advice on options for improving the strategy and policy functions for infrastructure. In particular, Ministers requested further advice on the merits of having an infrastructure strategy and policy function carried out “independently” of Government.
15. This work is part of the Infrastructure Institutional Settings Review, and accompanies Treasury’s recommendation in the Infrastructure Institutional Settings Cabinet paper to establish an Infrastructure Commission.

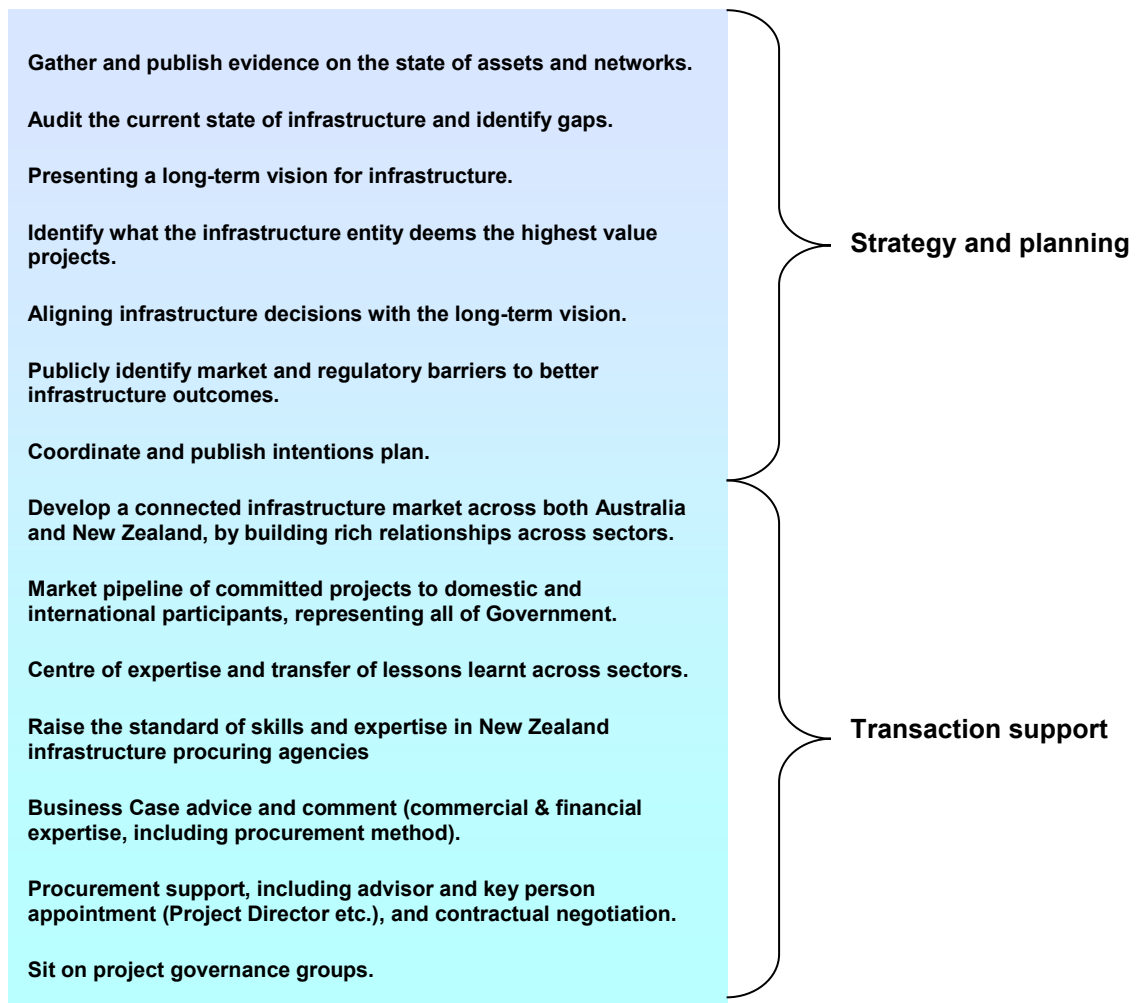
Context

16. The draft Cabinet paper, which Ministers discussed on 26 June, proposed three options to strengthen infrastructure investment, [1]
17. You will recall that ministers were supportive of the following components of the Infrastructure Commission proposal:
 - a Providing agencies and councils with transaction support that relates to the delivery of major infrastructure projects.
 - b Acting as ‘one window to government’ for investors, linking investors to procuring entities, informing investors on regulatory and market settings and promoting the pipeline.
18. Ministers also accepted the need for enhancing the existing infrastructure strategy and policy functions. [1]
19. Ministers asked for further advice from Treasury on options for the infrastructure strategy and planning functions as recommended in the Cabinet paper.
20. This report provides a more detailed description of the infrastructure strategy and planning functions that were described in the Cabinet paper alongside our considerations for the proposed independence of this function.

Infrastructure strategy and planning

21. Figure 1 below shows the continuum of functions within the infrastructure system. Figure 1 divides the infrastructure functions into the ‘strategy and planning’ and ‘infrastructure transaction support’ functions. Further description of the detail of the strategy and planning functions is included in Appendix 1.

Figure 1: Proposed functions for the Infrastructure Commission



22. These strategy and planning functions, to some degree, are currently delivered by the National Infrastructure Unit (NIU), located within the Treasury. However, the NIU currently does not serve a function that is present in many overseas jurisdictions - providing a public voice on infrastructure issues.

A public voice for infrastructure strategy and planning

23. Within this report ‘public voice’ refers to the ability to interact with the market, coalesce industry views, speak publicly on infrastructure issues, and make formal recommendations to ministers. Necessarily a public voice requires a degree of independence from Ministers, although there are options as to the degree of this independence. Notably, in the context that we are proposing it, this does not mean taking away decision rights from ministers.
24. Through our analysis we compared the status quo, which is currently delivered by the NIU, against the creation of an entity with the mandate to speak publicly on infrastructure issues. There are clear benefits over the status quo that would come from giving the infrastructure strategy and planning function the ability to exercise a public voice.

Benefits for ministers

25. A strategy and planning function with an public voice would carry out the following tasks that would benefit ministers and assist in strengthening the infrastructure system:

- a The strategy and planning function could raise infrastructure issues or specific projects as topics for public discussion before they become the subject of political debate, building public consensus, garnering industry support and removing barriers to good infrastructure projects being supported.
 - b The function would provide ministers with another source of expert advice to help make informed investment decisions. This is most effective when carried out by an entity with some degree of distance from ministers, with the ability to publicly speak on infrastructure issues and investment needs.
 - c Ministers would also be able to raise infrastructure ideas to the strategy and planning function, to test if they were valuable and to help build the case for them. Ministers could also use this function to test the public appetite for controversial infrastructure projects.
 - d The strategy and planning functions could use their public voice to interact with, and provide public comment on, the activities of local government and the market. This would allow ministers to pay attention to other actors in the infrastructure system who contribute to the success of projects achieving their outcomes.
26. In Australia, all infrastructure bodies all carry a degree of independence and the ability to speak publicly. Because of this, ministers often see them as being 'honest brokers' within the system. This is because infrastructure bodies' guaranteed funding arrangements facilitate advice to ministers that is seen to be genuinely free, frank and independent and – unlike line agencies - uncoloured by the need to secure annual budgetary allocations.

Benefits for New Zealand Inc infrastructure planning and delivery

27. There are also significant benefits to be gained by New Zealand as a whole by giving the infrastructure strategy and planning functions a public voice, such as:
- a It should help ensure New Zealand invests in the infrastructure it needs at the right times and in the right places. This ensures New Zealand secures the outcomes it seeks from infrastructure over time.
 - b Increased market confidence and credibility. The market considers that changing political priorities can drive market uncertainty. This makes it challenging for the market to commit to the long-term pipeline in the face of perceived uncertainty. By having a standalone entity assessing and making recommendations to ministers on the highest value projects, it would give the market more confidence that the pipeline would endure beyond electoral cycles. This in turn benefits public sector entities and the government through improving the market's ability to deliver public projects and efficient cost.
 - c Providing more consistent and predictable infrastructure regulatory changes and stability in the infrastructure investment pipeline through time, as the issues that are raised publicly become accepted by ministers.
28. Because of these benefits, we consider that the infrastructure strategy and planning function should be given a formal mandate to publicly give advice and make recommendations to ministers on infrastructure strategy and planning matters.

How the independent functions may be operationalised

29. There are options for ministers in the design of how the strategy and planning function exercises its public voice to achieve these benefits. Successful examples that we examined in overseas jurisdictions demonstrated that a balance between obtaining the

support of ministers and the confidence of the market is critical to the effectiveness of the strategy and planning function.

30. Experience from Australia has shown that the more effective infrastructure bodies operate on a 'no surprises approach' with ministers, working closely on the development of priority lists and infrastructure strategies while maintaining their status as standalone entities.
31. The strategy and planning function would need to achieve this balance when exercising its voice. For example, when carrying out the function of producing priority lists, the Commission could present investment needs prioritised into groupings of high, medium or low priority projects. Presenting the prioritised projects in this way would present ministers with a useful tool to help them in making budgetary allocation decisions against projects, and provide the market with confidence in a pipeline of infrastructure projects, but not attempt to reduce their decision rights in any way.
32. Infrastructure New South Wales (INSW) provides ministers with draft state infrastructure strategies months before they are released publicly, so that ministers can provide input to the recommendations and have the option to develop their response in advance. We envisage that, if given a public voice, the infrastructure strategy and planning function would work closely with ministers in this way.
33. It is also important to note that the infrastructure strategy and planning functions described in this section would not detract from, or replace, any existing decision-making responsibilities of either ministers or agencies. The strategy and planning function, in carrying out its role, would work with agencies and councils to assist in their infrastructure planning responsibilities, and would still leave ministers and councillors responsible for making infrastructure decisions that lie within their portfolios.

The importance of joined-up infrastructure functions

34. [1]
35. [1] that it would encourage agency and local government uptake of the services provided, would allow for better engagement with the private sector and would ensure the right skills and capabilities could be applied to infrastructure delivery over time.
36. There are significant benefits to be gained through keeping this function connected to the strategy and planning functions.
37. Particular benefits of retaining all infrastructure functions within the same entity include:
 - a The planning function works well when it learns lessons from the delivery function, and vice versa. For example, delivery intelligence informs investment needs or problem identification and planning insights can help inform industry engagement. From an external perspective, industry feedback gained through project delivery is likely to inform future strategy, policy and planning matters.
 - b An infrastructure entity that provides an overall value proposition from a delivery agency's perspective will achieve better engagement with its strategy and planning functions. For example, if an infrastructure-intensive agency, such as education, sees an infrastructure entity using its delivery support function to support particular education projects from a whole-of-New Zealand perspective,

the Ministry of Education may be more likely to engage with the infrastructure entity on planning and delivery.

- c Joined up strategy and delivery allows infrastructure projects to be sequenced appropriately allowing market capacity to be optimised through time reducing “boom and bust” cycles.
- d From a resource perspective, locating the strategy and planning functions within a standalone entity would mean it is better able to attract the skills and capability necessary to deliver the particular nature of these infrastructure functions. It would also reduce the risk of competing priorities eroding the resources applied to the function which might be present in an agency with a broader function such as Treasury.
- e Having dedicated, highly skilled infrastructure practitioners available would in turn provide credibility to the infrastructure entity as a whole, increasing the perception within the market, central government and local government that the Commission provides a valuable infrastructure function.

Recommendation

- 38. We considered the case for the strategy and planning function to have a public voice, the case for the transaction support function to be carried out within a standalone entity, and the benefits of co-locating infrastructure functions within the same organisation. [1]

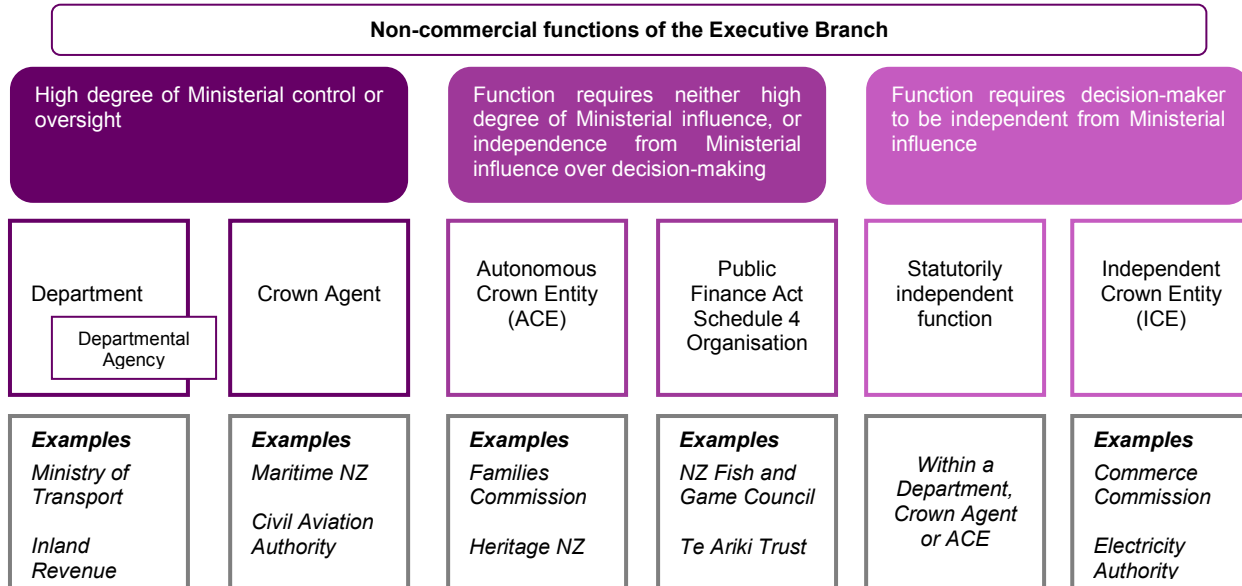
- 39. This is the basis for our recommended option in the Cabinet paper. The diagram below shows a simplified version of the logic presented in this report.

[1]

Organisational form of the Infrastructure Commission

40. When this report discusses the public voice, and necessary degree of independence, of the infrastructure strategy and planning functions, it is referring to independence as a function, as in, the ability to interact with the market and make publications, rather than independence in the machinery of government sense. When considering the machinery of government, the level of independence given to the Infrastructure Commission – the degree of ministerial control or oversight – will be determined by its organisational form.
41. The draft Institutional Settings Review Cabinet paper suggests that an Establishment Unit be set up to work through detailed proposals for how the Infrastructure Commission should best be structured, including working with the State Services Commission (SSC) to arrive at the most appropriate organisational form.
42. For this reason, the Cabinet paper does not go as far as recommending a specific organisational form.
43. Figure 3 below shows the range of non-commercial organisational forms that can be considered when making machinery of government changes. In choosing the appropriate organisational form, there is a trade-off between the degree of ministerial control or oversight and the credibility of the independent advice provided.
44. At one end of the spectrum, government departments are subject to the highest degree of ministerial oversight, with a close ministerial relationship as the default. While at the other end, independent Crown entities provide decision-makers with the most independence from ministerial influence, to maintain absolute public confidence in the independence of their functions.

Figure 3: Options for organisational form



Adapted from 'Machinery of government supplementary guidance: Main organisational design choices', SSC

45. Alongside consideration of the appropriate organisational form of the Commission, the operational detail of how the Commission would carry out infrastructure functions, is something that the Establishment Unit is expected to work through, and present options to Ministers in a further Cabinet paper in February 2019.

Views of the National Infrastructure Advisory Board and other stakeholders

46. Consisting of members from the private sector and outside central government, the National Infrastructure Advisory Board (NIAB) was established to advise the National Infrastructure Unit and the Minister for Infrastructure. NIAB is chaired by John Rae.
47. The Board is supportive of the recommendation in this Report. In particular, the Board sees value in a [1]
48. Market stakeholders agreed that an agreed long-term vision, preferably with cross-party agreement, and a credible pipeline are critical to getting the right outcomes in project delivery, and provide the market with the confidence to gear-up to meet the pipeline. Stakeholders also saw merit in a centralised project delivery function that can support agencies and councils.

Next Steps

49. We recommend that you forward this report to Ministers Twyford, Clark, Mahuta, Hipkins and Shaw to discuss these matters further. This will address the request made by Ministers at the 26 June 2018 meeting for further advice on the infrastructure strategy and planning functions.

Appendix 1 – Description of proposed strategy and policy functions

This section breaks down the strategy and policy functions that would be undertaken by the Infrastructure Commission.

Gather and publish evidence on the state of assets and networks

The Infrastructure Commission could work with agencies, councils and the market to get an overall picture of the state of our infrastructure assets, including a general overview of their age, resilience and whether they are able to deliver a level of service that matches future demographic changes. This would also involve a description of any gaps in our infrastructure network.

This would also involve the Infrastructure Commission publishing regular reports on the state of assets and networks. This evidence base would inform the long-term vision described next.

Presenting a long term vision for infrastructure

The Infrastructure Commission could work with agencies, councils and the market to agree a long-term vision for the delivery of infrastructure. Previous examples include the Thirty Year Infrastructure Plan 2015, which was an agreement between central government, local government and the market that to meet our future infrastructure needs, we would need to:

- increase understanding of the levels of service and future drivers of demand
- strengthen asset management practices, and
- develop more effective decision-making processes, including better governance, regulatory regimes and new ways of engaging with communities.

Aligning infrastructure decisions with the long-term vision for infrastructure

The Infrastructure Commission could publicly highlight the degree to which infrastructure investment decisions are meeting the objectives of the long-term vision. The Infrastructure Commission could also be involved in assessing business cases from agencies who are seeking funding for infrastructure initiatives and provide a comment on how well funding requests align with the long-term view.

Identify what the Infrastructure Commission deems the highest value projects

The Infrastructure Commission could assess various major infrastructure projects against economic, environmental, social, cultural and security measures, and provide a view on the prioritisation of projects. As outlined in para 31, prioritisation could include either ranking projects, or could include broadly categorising projects as being high, medium or low priority.

Coordinate and publish capital intentions plans and pipeline information

This would involve the Infrastructure Commission compiling data from long-term plans and annual reports from central government, local government and the private sector to produce a single capital intentions plan across the entire infrastructure market, looking out approximately 10 years. The Capital Intentions Plan would be published for the market's benefit.

The Infrastructure Commission could also contribute to new or existing pipeline resources, such as the Australia New Zealand Infrastructure Pipeline (ANZIP).

Appendix 2 - Summary of market and local government engagement

Stakeholders	Comments
National Infrastructure Advisory Board	<ul style="list-style-type: none"> • There is value in a public voice that can publicly produce priority lists and make recommendations to ministers on improving the market and regulatory settings in order to get better infrastructure outcomes.
[2] and others at stakeholder event¹	<ul style="list-style-type: none"> • There is a balance to strike with the entity's degree of independence – too far removed and it lacks leverage; too close to the Crown and it could lack credibility. • The right leadership and personnel would be important to making a new infrastructure entity a success. • There is a lack of standardised procurement processes and excessive risk transfer on to bidders. • To have credibility on project delivery support, the entity would require high calibre procurement, financial and project delivery professionals from the public and private sectors.
[2]	<ul style="list-style-type: none"> • To attract private capital, the market needs greater confidence about an agreed long-term pipeline, and also confidence that government procuring entities have the capability to procure effectively. • 'One window to government' for investors would be valuable. This service could help investors understand New Zealand's regulatory system, market conditions, etc.
[2]	<ul style="list-style-type: none"> • There is a need for a long-term strategy to set the direction, which then ensures that high-value infrastructure investment decisions are made and delivered well. • A centre of excellence for infrastructure, including funding and financing tools, procurement models and capability for project delivery support, would be valuable.
[2]	<ul style="list-style-type: none"> • The issue with procurement capability at present is a lack of strategic thinking, not a lack of procurement professionals available to do sourcing and other pro forma procurement activities. • Data to inform infrastructure investment decisions is lacking, particularly across central and local government.
[2]	<ul style="list-style-type: none"> • Australia is not the solution to a lack of market capacity in New Zealand. The Australian market has a huge pipeline of work, is resource constrained and has a higher labour cost base. Also ideas and innovations from the Australian market are easily accessed by New Zealand tier-1 suppliers.
[2]	<ul style="list-style-type: none"> • Getting the planning phase right is critical to ensure that the right infrastructure is procured in the right places at the right time. • There may be opportunities to explore how other existing entities could help address some of the issues we identified, such as the Local Government Funding Agency.

¹ This includes senior figures from: [2]