

The Treasury

Establishing a New Independent Infrastructure Body Cabinet Paper Information Release

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Chair
Cabinet Economic Development Committee

Establishing a New Independent Infrastructure Body

Proposal

1. This paper seeks agreement to establish a new independent infrastructure body as an Autonomous Crown entity.

The independent infrastructure body will carry out two broad groups of functions: strategy and planning, and procurement and delivery support.

Executive Summary

2. New Zealand is facing a major infrastructure deficit, which, if not addressed, will impact our economic future and our social and environmental wellbeing.
3. Recognising the step-change required to improve the way we plan and deliver infrastructure in New Zealand, Cabinet agreed in principle in August 2018 to establish a new independent infrastructure entity. I then asked officials at the Treasury to undertake further work and consultation with the infrastructure sector, which has informed my recommendations.

Purpose

4. I recommend that the purpose of the infrastructure body is:

To promote infrastructure that improves the wellbeing of all New Zealanders, by:

4.1 *developing a broad consensus on long-term strategy*

4.2 *enabling coordination of infrastructure planning, and*

4.3 *providing advice and best practice support to infrastructure initiatives.*

I expect that the exact wording of the infrastructure body's purpose statement will be refined through the legislative drafting process.

Functions

5. To achieve our objectives, I have proposed that the infrastructure body have eight functions, which can be split into two main groups:

Strategy and planning functions

5.1 This group of functions is centred on the development of a long-term infrastructure strategy.

The development of a long-term infrastructure strategy is supported by the following four functions:

- 5.2 Assessing the condition of New Zealand's current infrastructure;
- 5.3 Identifying New Zealand's priority infrastructure needs;
- 5.4 Identifying barriers to good infrastructure outcomes; and
- 5.5 Publishing a long-term capital intentions plan.

Procurement and delivery support functions

- 5.6 Acting as a 'shop front' for the market and publishing a pipeline of infrastructure projects;
- 5.7 Producing best practice guidance on infrastructure procurement and delivery; and
- 5.8 Supporting infrastructure project procurement and delivery.

This paper outlines these functions and my recommendations on how each of these functions should be executed.

How the infrastructure body fits within government

- 6. The infrastructure body's functions are advisory only, which provides two major benefits. These include:
 - 6.1 There will no changes to decision-making powers or accountability settings for Ministers or departments.
 - 6.2 In general, there will be no duplication across different parts of government.

There will be three limited instances of duplication between the infrastructure body's activities and activities currently undertaken by other agencies. This paper provides recommendations on how each of these duplications can be easily mitigated.

Form of the infrastructure body

- 7 I recommend that the new independent infrastructure body be established as an Autonomous Crown entity. This form will provide an appropriate degree of independence, while allowing Ministers and the Government to have control over the Government's policy direction.
- 8 A level of independence will benefit the proposed strategy and planning functions by helping to ensure the infrastructure body's advice is robust and influential, while also being, and being seen as, impartial. An ACE will also be best placed to perform the project delivery support functions as a "centre of excellence" that also assists local government with infrastructure procurement.

Further detailed policy decisions

- 9. In order to allow drafting of legislation to occur in a timely manner, I am seeking delegated authority for myself, the Minister of Finance, the Minister of State Services, and the Minister of Transport and Housing and Urban Development to make subsequent policy decisions on further matters relating to the infrastructure body.

Background

10. Infrastructure refers to the fixed, long-lived structures that facilitate the production of goods and services, and underpin many aspects of our quality of life. Infrastructure includes buildings and physical networks, principally transport, water, energy, social assets and digital infrastructure such as mobile and broadband infrastructure.
11. We need our infrastructure system settings and frameworks to encourage good quality, efficient infrastructure. Good infrastructure is vital to improving the wellbeing and living standards of all New Zealanders, and delivering a stronger, more diverse, and productive economy.

Our current institutional settings are not achieving the infrastructure outcomes we want

12. On 7 August 2018, I brought a paper to the Cabinet Government Administration and Expenditure Review Committee outlining the poor incentive structures that characterise our infrastructure system. These poor incentive structures result in ad-hoc and short-term investment decisions that are often focused on the asset solution, rather than the outcome sought. In part, this is because planning and funding decisions are not linked to an overarching vision and strategy.
13. Reinforcing this is a lack of coordination in planning and delivery within and across central and local government, as well as the private sector. This lack of coordination means that evidence does not always inform decisions. This is exacerbated by information and data gaps. There are also inconsistencies in the approaches that central and local government take to the planning, marketing, procurement and delivery of infrastructure.
14. The cumulative effect of these weaknesses is a lack of visibility and certainty in the infrastructure pipeline, which is inhibiting investment in New Zealand and its labour force.

Cabinet agreed that we need a step-change in how we plan and deliver infrastructure

15. In August 2018, I proposed establishing a new independent infrastructure body to address these challenges, as the status quo is not achieving the infrastructure outcomes that New Zealand needs.
16. In recognition of the need for a step-change in the institutional arrangements around infrastructure, Cabinet agreed in principle to establish a new independent infrastructure entity, and asked for further advice on:
 - 16.1 options for institutional form, powers, and funding for the infrastructure entity;
 - 16.2 how the infrastructure entity's role will fit with the wider infrastructure system;
 - 16.3 arrangements for ensuring the infrastructure entity can effectively perform its role while recognising the ultimate responsibility of governments to make decisions on infrastructure;
 - 16.4 accountability mechanisms for the Minister for Infrastructure and the Government to retain control over the Government's policy direction and prioritisation; and

- 16.5 the overall purpose and objectives of the entity to ensure it is properly directed toward considering the broader public good benefits of infrastructure investment.
17. I asked officials at the Treasury to carry out this work, and to report back to the Ministers of Finance, State Services, Transport and Housing and Urban Development and me with their advice. That work has informed my recommendations in this paper.

Establishing a new independent infrastructure body will provide benefits for Ministers

18. The benefits to ministers of establishing a new independent infrastructure body are:
- 18.1 raising issues or specific projects as topics for public discussion before they become the subject of political debate;
 - 18.2 giving ministers another source of expert advice to help make investment decisions;
 - 18.3 providing for the ability of 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
 - 18.4 better engagement with local government on infrastructure strategy and planning.

These recommendations have been informed by comprehensive engagement with the infrastructure sector

19. In October 2018, the Treasury consulted with the public, infrastructure asset owners, and interested stakeholders on the proposed functions of the independent infrastructure body. Nearly 130 submissions were received and there were no submissions opposing the establishment of the infrastructure body. Broadly, submissions noted the current failures in how we plan and deliver infrastructure, and viewed the body's establishment as the opportunity to bring about the step-change necessary for New Zealand.
20. The Treasury and the National Infrastructure Advisory Board held consultation sessions in Auckland, Wellington, Christchurch and Sydney to supplement the feedback received through submissions. These sessions were well attended by local government, financiers, construction firms, professional services firms and other interested parties. The Treasury also held a number of one-on-one meetings with capital-intensive government agencies, councils and strategic partners. A session dedicated to the initiative followed each of the Prime Minister's addresses in October 2018 to the Hugo Group of senior business executives in Wellington and Auckland, and the Treasury has briefed the Chair of the Prime Minister's Business Advisory Council.
21. Respondents acknowledged that, in order to be successful, the infrastructure body must have a degree of independence from ministers to ensure its advice is viewed as credible and impartial, but it must also collaborate with ministers in order to be influential. In order to achieve this, the body needs to be transparent in its advice and recommendations to the government.
22. Furthermore, the majority of respondents suggested that ensuring the body has the right governance structure as well as the resources and mana to attract the right people will be critical to its ongoing success.

23. An Expert Review Panel, comprised of senior infrastructure individuals, supported the Treasury throughout the consultation process¹.

Key elements for achieving a step-change in the infrastructure system

24. I recommend that the infrastructure body be advisory only. This means that funding and decision-making rights for infrastructure remain with ministers, and the ability of the infrastructure body to achieve a step-change is dependent on decision-makers acting on its advice.
25. I consider that the following four criteria are all essential for the infrastructure body to deliver while remaining advisory:
- 25.1 **Well resourced, with the right people:** the infrastructure body needs to have enough people with the appropriate experience and skills, to ensure that the infrastructure body's advice is comprehensive and of a high quality.
 - 25.2 **A well-respected public voice:** the infrastructure body's process of developing and providing advice needs to be transparent, and its ability to speak independently needs to be guaranteed. This will lead to credibility, as well as the likelihood of achieving consensus.
 - 25.3 **Credibility with the private sector:** the delivery of public infrastructure occurs with the use of the private sector. The sector needs to have confidence in the infrastructure body's advice to engage with the infrastructure body.
 - 25.4 **Integration across the entire infrastructure system:** the infrastructure body needs to be able to work with the range of decision-makers and asset owners across central government, local government, communities and the private sector to provide holistic advice on New Zealand's infrastructure systems.
26. Each of these criteria are necessary, but none are sufficient alone as they work together to support and reinforce each other. This is why simply increasing the level of resourcing within the status quo would not achieve the outcomes that we are seeking. My recommendations for functions and form in this paper aim to achieve all four of these criteria.

Design features

Purpose of the infrastructure body

27. I recommend that the purpose of the infrastructure body is:
- To promote infrastructure that improves the wellbeing of all New Zealanders, by:*
- 27.1 *developing a broad consensus on long-term strategy;*
 - 27.2 *enabling coordination of infrastructure planning; and*
 - 27.3 *providing advice and best practice support to infrastructure initiatives.*

¹ The members of the Expert Review Panel are: Simon Allen, Chair, Crown Infrastructure Partners; Jim Betts, Chief Executive, Infrastructure New South Wales; Jenny Chetwynd, Strategy, Policy and Planning General Manager, NZ Transport Agency; Fiona Mules, National Infrastructure Advisory Board; John Rae, Chair, National Infrastructure Advisory Board; and Sarah Sinclair, Partner, Minter Ellison Rudd Watts Lawyers and Board Member Infrastructure New Zealand.

I expect that the exact wording of the infrastructure body’s purpose statement will be refined through the legislative drafting process

Functions of the infrastructure body

28. I propose that the infrastructure body carry out eight functions, which can be divided into two broad groups:

- 28.1 Strategy and planning, and
- 28.2 Procurement and delivery support.

These functions are set out in the tables below with a brief description of each function.

Strategy and Planning Functions	
Purpose: To provide impartial, expert advice to inform infrastructure decision-making	
Key function	
I recommend that this function is prescribed through legislation setting out the process to be followed in the development of the strategy.	
Function	Description
<ul style="list-style-type: none"> • Development of a long-term infrastructure strategy 	<ul style="list-style-type: none"> • The long-term infrastructure strategy will be a document that sets out a framework for New Zealand’s infrastructure needs. It will not just be focused on projects, it will also suggest changes to institutional and policy settings that will enhance infrastructure outcomes. • This will involve identifying any current or expected infrastructure gaps, and developing a response to these opportunities. This response could include infrastructure scenarios or pathways. • In developing the strategy, I expect the infrastructure body will take account of long-term trends that will affect infrastructure, including climate change, new technologies, and demographic change.
Supporting functions	
These functions provide inputs that support the development of the long-term strategy. I recommend that legislation specifies these as functions of the infrastructure body, but does not prescribe processes for delivering them.	
Function	Description
<ul style="list-style-type: none"> • Assessing the condition of New Zealand’s current infrastructure and its ability to deliver on 	<ul style="list-style-type: none"> • The infrastructure body will work with infrastructure owners to gather information and build a picture of the current state of New Zealand’s infrastructure. This will highlight any gaps, and provide an evidence base for the infrastructure body’s role in developing a strategy for future infrastructure.

community expectations	
<ul style="list-style-type: none"> Identifying New Zealand's priority infrastructure needs 	<ul style="list-style-type: none"> In developing the long-term strategy, the infrastructure body will develop a view on priority future infrastructure investments that fit within the strategy, over and above those that have already been committed to by decision-makers. This function will be supported by building assessment against the strategy into the decision-making process for infrastructure initiatives. It is important to note that this function will be advisory only, and the ultimate decisions on infrastructure prioritisation will remain with ministers.
<ul style="list-style-type: none"> Identifying barriers to good infrastructure outcomes 	<ul style="list-style-type: none"> In the development of the strategy, the infrastructure body will likely identify key areas where there are gaps or barriers to achieving optimal infrastructure outcomes. This function will allow the infrastructure body to conduct in-depth studies of particular topics or sectors, develop solutions and seek new or novel approaches to deal with infrastructure challenge. The infrastructure body would then publish their analysis, to inform public discussion and debate about any barriers identified.
<ul style="list-style-type: none"> Publishing a long-term capital intentions plan 	<ul style="list-style-type: none"> The infrastructure body will draw on central and local government long-term plans, and private sector data, to present a picture of investment intentions over a 10-year horizon.

<p>Procurement and Delivery Support Functions</p> <p>Purpose: Support and promote best practice infrastructure delivery by lifting the quality of infrastructure procurement and delivery</p>	
Function	Description
<ul style="list-style-type: none"> Acting as a 'shop front' for the market and publishing a pipeline of infrastructure projects 	<ul style="list-style-type: none"> The infrastructure body will act as a central 'shop front' for the infrastructure sector and a first point of contact on future infrastructure projects for all interested parties. This will allow the infrastructure body to identify opportunities to strengthen the local infrastructure sector and remove barriers to entry for new parties. The infrastructure body will also draw together information and data from across the public sector to present a collated and uniform pipeline of committed infrastructure projects, similar to the current ANZIP pipeline. This will cover a shorter period of time than the capital intentions plan, and enable the sector to plan with more certainty, which is likely to lead to a more competitive supply market. The infrastructure body will also focus on the development of human capital for infrastructure projects including through supporting agencies to build and retain appropriate infrastructure procurement capability.

<ul style="list-style-type: none"> Producing best practice guidance on infrastructure procurement and delivery 	<ul style="list-style-type: none"> The infrastructure body's infrastructure procurement policy team will contribute to the development of infrastructure procurement policy and guidance including the development of consistent approaches to, and promotion of transparency in, infrastructure procurement practices and processes. The infrastructure body will also facilitate the standardisation of project documentation (such as advisor RFPs and Invitations for Expressions of Interest) and infrastructure procurement processes (such as the use of interactive meetings during the RFP stage). In addition, the infrastructure body will take a lead role (in collaboration with other agencies and the market) in developing consistent risk allocation principles as well as providing guidance on the management and monitoring of contracts by agencies.
<ul style="list-style-type: none"> Supporting infrastructure project procurement and delivery 	<ul style="list-style-type: none"> The infrastructure body will support agencies through the preparation of business cases for infrastructure projects. To assist ministers in their consideration of a project's business case, the infrastructure body will provide its own comment on the business case, including recommendations on the appropriate infrastructure procurement model and strategy and the proposed level of ongoing ITU support to be provided. All decision-making rights will remain with ministers on the procurement approach for a specific infrastructure project, and the level of support to be provided by the infrastructure body. Once ministers have agreed a preferred procurement approach, the infrastructure body will continue to support agencies through the project delivery phase. This may include support on project governance, embedded commercial and procurement expertise, or support through the appointment process for key advisors and project personnel (such as project directors).

29. The relationship between the infrastructure body and ministers is different for the two groups of functions. The strategy and planning functions exist to provide impartial, expert advice that may, at times, challenge ministers in order to influence decision-making towards optimal infrastructure outcomes. The procurement and delivery support functions are focused on supporting governments to deliver the projects once decisions have been made.
30. I have considered the possibility of locating the two groups of functions within separate organisations, as occurs in some overseas jurisdictions. However, I believe that there are significant benefits to be gained by keeping both groups of functions connected within the same organisation, at least in the infrastructure body's early stages.
31. To examine whether these two groups of functions should remain within the same organisation in the long term, I recommend that the Treasury conduct a review of the infrastructure body's functions and form five years after its establishment.

Process for developing the strategy

32. I recommend that the infrastructure body is responsible for developing and publishing the strategy through this process.
 - 32.1 The infrastructure body develops its strategy at least every five years, covering a 30-year period.

In developing the strategy, the infrastructure body will work with central government, local government, the private sector, and the New Zealand public, to build a consensus on a long-term vision that is best for New Zealand.
 - 32.2 The draft strategy is provided to the responsible Minister, who has the opportunity to conduct relevant ministerial consultation and provide comments on the draft.
 - 32.3 The infrastructure body has regard to the Minister's comments and publishes final version of the strategy.
 - 32.4 The final version is tabled in Parliament.
 - 32.5 Government responds to the strategy and decides which recommendations to adopt into the Government's infrastructure strategy.
33. This allocation of responsibilities facilitates a collaborative relationship between the infrastructure body, ministers, asset owners and stakeholders. The process for how the infrastructure body develops *its* strategy, which may or may not be adopted by ministers, leaves the ultimate responsibility for developing *the Government's* long-term strategy with ministers.

Supporting strategy and planning functions

34. I recommend that the supporting strategy and planning functions are carried out by the infrastructure body independent of ministers. This means that the infrastructure body will determine its own framework and procedures for the performance of these functions. In doing so however, the infrastructure body would operate on a 'no surprises' basis with ministers, consistent with existing expectations for state sector entities.
35. The one exception to the independence of the infrastructure body in carrying out these functions is that I recommend both the infrastructure body and ministers have the ability to commission work to identify barriers to good infrastructure outcomes.
36. I think that this arrangement of functions, where the development of the strategy follows a defined path including clear requirements to consult with ministers, while the supporting functions are carried out at arms length from ministers, gives the strategy and planning functions the ability to be collaborative with ministers and to develop its advice independently, which will support it to build credibility with the market.

Procurement and delivery support functions

37. I recommend that, overall, the procurement and delivery support functions are carried out by the infrastructure body independently from ministers, but on a 'no surprises basis'. Ministers will retain their existing decision-making rights in relation to central government infrastructure projects, including whether to agree to the level of ongoing procurement and delivery support proposed by the infrastructure body in the business case for a project.

38. I expect the infrastructure body to have visibility over all significant infrastructure projects from an early stage². The role of the infrastructure body will be to identify which of these projects they will be involved in³, then support agencies and local government to procure and deliver infrastructure projects and supplement, rather than replace, existing capability.

How the infrastructure body fits within government

39. The infrastructure body's functions are advisory only. This approach has two major benefits that ensure the infrastructure body's role fits within the wider infrastructure system:
 - 39.1 There will be no changes to decision-making powers or accountability settings for ministers or departments. This maintains the fundamental accountability model established under the State Sector Act 1988 and the Crown Entities Act 2004.
 - 39.2 In general, there will be no duplication across different parts of government. There are three limited instances of potential duplication; I have made recommendations to address these below.
40. The infrastructure body's strategy and planning functions will be focused on the national infrastructure strategy at a "macro" level. This will inform, and be informed by, sectoral and local analysis undertaken by responsible agencies and local government including cross-sectoral spatial planning, relevant national land use strategies and long-term planning.
41. For example, in the Transport sector, this approach would mean that NZTA would continue to develop the National Land Transport Programme (NLTP) based on policy direction from the Minister issued via a Government Policy Statement (GPS). The NLTP would then inform the development of the infrastructure body's long-term strategy for infrastructure that is developed at a national level across all sectors. The infrastructure body's strategy would then inform subsequent transport GPS documents, to the extent that the infrastructure body's recommendations are adopted by ministers.
42. The infrastructure body will draw information from other parts of central and local government to inform its supporting strategy and planning functions. For example, the long-term capital intentions plan produced by the infrastructure body will also draw on central and local government long-term plans, as well as private sector data, to present a national level picture of investment intentions. Under the Urban Growth Agenda, work is being undertaken to strengthen the framework for regional and inter-regional spatial planning in New Zealand, focussing on responses to population growth and change. The spatial planning framework developed could provide a mechanism for the infrastructure body to engage with a range of actors including local and central government and infrastructure providers to build consensus and agreement around priority infrastructure needs and barriers to the achievement of outcomes via infrastructure. The proposed Housing and Urban Development Authority and KiwiBuild will be important stakeholders in this work.
43. This approach would also be robust to any future changes to planning and delivery functions in the health or education systems, or local government. For example,

² Significant infrastructure projects means projects with a whole-of-life cost over \$50 million.

³ The infrastructure body will determine its level of involvement based on the risk level and size of the project, as well as the capability of the delivery agency, including any reviews of agency capability such as the Treasury's Investor Confidence Rating (ICR).

more centralised planning and development of health infrastructure within the Ministry of Health could simplify engagement with the sector on major investments, by providing a single point of contact for the infrastructure body. This would also improve the consistency of health sector information used by the infrastructure body and provide a focal point for capability building in the sector.

44. While this approach will generally avoid duplication and will see ministers and agencies retaining responsibility for their sectors, it means that the infrastructure body is dependent on the data and strategic plans generated by agencies. This will naturally mean that the infrastructure body has to develop constructive working relationships with agencies. However, constructive relationships may not be sufficient where data is poor, and the infrastructure body may need to seek Ministers' help to improve data within their agencies.
45. In this context, Cabinet agreed in September this year that the quality of long-term investment information used to inform the investment pipeline needs improvement, while also noting that long-term planning is not as good as it should be to inform investment decisions [GOV-18-MIN-0066 refers]. The Treasury will be reporting back to Cabinet on a data strategy, strategic planning and asset management in March 2019 with recommendations to improve performance across these functions.
46. There are three limited instances of duplication that arise from my recommendations for the infrastructure body. These are all easily manageable however:
 - 46.1 The Treasury's National Infrastructure Unit (NIU) is currently responsible for some of the strategy and planning functions that the infrastructure body would perform. Once the infrastructure body is established these functions within the NIU will be disestablished, but the Treasury will continue to provide second opinion advice on infrastructure issues (e.g. for Vote Transport).
 - 46.2 The National Infrastructure Advisory Board (NIAB) is appointed by the Minister for Infrastructure and advises ministers on infrastructure issues. Ahead of the infrastructure body being established, I intend to disestablish NIAB.
 - 46.3 The Ministry for Business, Innovation and Employment (MBIE) provides functional leadership on procurement (SEC min (12) 10/2 refers) and is responsible for the procurement policy framework, covering both infrastructure and non-infrastructure projects. MBIE will retain functional leadership for procurement generally, and the infrastructure body will provide best practice advice on infrastructure procurement in line with MBIE's procurement policy framework and the Government Rules of Sourcing.

Form of the infrastructure body

I recommend that the infrastructure body be established as an Autonomous Crown entity

47. I recommend establishing the infrastructure body as an Autonomous Crown entity (ACE). Two key features of an ACE are:
 - 47.1 An ACE must have regard to government policy that relates to the entity's functions and objectives, but is not bound by government policy.
 - 47.2 The responsible minister may dismiss board members, but only for justifiable reasons.

48. An ACE is the best institutional form for the infrastructure body because it provides benefits to both groups of functions. A level of independence will benefit the proposed strategy and planning functions by helping to ensure the infrastructure body's advice is robust and influential, while also being, and being seen as, impartial. An ACE will also be best placed to perform the project delivery support functions as a "centre of excellence" that also assists local government with infrastructure procurement.
49. I recommend that the infrastructure body is governed by a board of directors with between five and seven members. This is because a board will enhance decision-making by bringing a range of perspectives to bear on key judgements. A board will also build credibility with market participants because private sector experts can be included on the board, and because a multi-member board naturally facilitates engagement with a wider set of stakeholders.
50. To ensure a smooth transition once the infrastructure body is established, I intend to commence the appointment process for the Chair and board of the infrastructure body as soon as this paper is agreed, with the objective of appointing members as an establishment board well ahead of the formal establishment of the infrastructure body.

This will provide the appropriate degree of independence

51. The infrastructure body needs effective relationships with ministers, government agencies, local government (as infrastructure owners), private sector infrastructure owners and other participants in the infrastructure sector. These relationships are interdependent, so the infrastructure body's relationship with ministers will be critical for determining its overall effectiveness.
52. A degree of independence will enhance the infrastructure body's credibility with private sector infrastructure owners, market participants and local government, which will enable effective engagement. Consistent with this, the consultation process run by the Treasury found strong support for a degree of independence.
53. Because the decisions as to which projects are funded, and which of those are supported by the infrastructure body, will remain with ministers, I do not consider that operational independence from ministers is inappropriate for these functions as the project delivery support functions would not be making any strategic decisions.

While ensuring that ministers and government have appropriate control over the Government's policy direction

54. When agreeing in principle to establish the infrastructure body, Cabinet noted that any arrangements needed to ensure that ministers and government retain control over the Government's policy direction and prioritisation [GOV-18-MIN-0054 refers]. An infrastructure body that is advisory in nature achieves this by ensuring that prioritisation decisions remain the responsibility of portfolio ministers and Cabinet.
55. As a Crown entity, the infrastructure body would also be subject to robust accountability arrangements. The Crown Entities Act 2004 gives the responsible Minister the power to set the infrastructure body's strategic direction through the Statement of Intent, as well as the power to appoint and dismiss board members and control funding. The letter of expectations process also supports ministerial oversight. The responsible Minister would also have regular meetings with the Chair of the Board, to communicate the Government's policy expectations.

56. Finally, a Crown entity's performance is monitored. The responsible Minister can influence infrastructure body's performance metrics through the Statement of Performance Expectations and the Statement of Intent, which the infrastructure body would report against in its Annual Report. These metrics could assess performance of the entity, and the effect it has on the infrastructure system as a whole.
57. I recommend appointing the Treasury as the monitoring department given its wide perspective on the economy.

Further detailed policy decisions

58. To enable the drafting of legislation and the establishment of the infrastructure body, there are a series of further detailed policy decisions that will need to be made. Including:
 - 58.1 How and when the Government will respond to the long-term strategy produced by the infrastructure body;
 - 58.2 The ability of the infrastructure body to access government statistics;
 - 58.3 How human capital may be transferred from the Treasury into the infrastructure entity;
 - 58.4 Mechanisms for funding the procurement and delivery support functions for specific projects, over and above baseline funding;
 - 58.5 How and on what terms the infrastructure body will be involved in the business case development for, and procurement and delivery of, infrastructure projects
 - 58.6 Mechanisms to ensure that the infrastructure body compliments and does not duplicate activities undertaken by other agencies; and
 - 58.7 The name of the infrastructure body.
59. In order to allow for the drafting of legislation to occur in a timely manner, I seek delegated authority for myself, the Minister of Finance, the Minister of State Services, and the Minister of Transport and Housing and Urban Development to make subsequent policy decisions on these and other related details.

Consultation

60. The Ministry of Business, Innovation and Employment, Defence Force, Ministry of Education, Ministry of Health, Department of Corrections, Ministry of Transport, New Zealand Transport Agency, Ministry of Housing and Urban Development, Statistics New Zealand, Department of Internal Affairs, Ministry for the Environment, the Department of Prime Minister and Cabinet and the State Services Commission have been consulted on this paper.
61. The Minister of State Services supports the machinery of government proposals recommended in this paper.

State Services Commission comment

62. The establishment of the Infrastructure Body does not remove the need to build capability and increase coordination within the public sector. Agencies will retain their accountabilities for delivering projects, and therefore need to be responsible for organising in a collaborative way and building the appropriate capability. SSC

considers that future work could consider establishing a public sector chief executive group, utilising provisions in the planned State Sector Act reforms. A chief executive group can be tasked with providing their insights on the independent strategy from an “all of Government” perspective along with collective leadership on the workforce capability that is required across the system.

Financial Implications

[1]

Human Rights

65. There are no inconsistencies between the proposals contained in this paper and the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

Legislative Implications

66. As a Crown entity, the infrastructure body will require legislation. I have submitted a bid into the 2019 legislative process for this purpose.
67. Cabinet previously agreed that the infrastructure body will be operational by 1 October 2019. To meet this challenging deadline, I have requested that the legislation establishing the infrastructure body be assigned priority 2 – to be passed in 2019.
68. To enable the legislation to be introduced to the House as soon as possible, in December 2018 I sought and was granted the permission of the Attorney-General to issue drafting instructions to the Parliamentary Counsel Office (PCO). The Treasury subsequently issued drafting instructions to PCO, and I expect to bring draft legislation to the Government Legislation Committee on 2 April 2019.

Regulatory Impact Analysis

69. The Regulatory Quality Team at the Treasury has determined that the regulatory decisions sought in this paper are exempt from the requirement to provide a Regulatory Impact Assessment as they have no or minor impacts on businesses, individuals or not for profit entities.
70. While the establishment of the infrastructure body is not likely to have a direct impact on businesses, individuals or not for profit entities, the proposals are intended to achieve objectives that benefit the public by improving the way we plan and deliver infrastructure in New Zealand. The release of this Cabinet paper will help inform the public about the expected impacts of the proposals.

Publicity

71. I intend to announce the decision to establish the independent infrastructure body as an Autonomous Crown entity, with the functions recommended in this paper,

once Cabinet has made a decision. I propose that this Cabinet paper is released as part of those announcements.

72. At this time, the Treasury will also release their summary of the submissions received during the public consultation process, and publish copies of the submissions on the Treasury website.

Recommendations

73. I recommend that the Cabinet Economic Development Committee:
- 1 **Note** that our current infrastructure institutional settings are not achieving the infrastructure outcomes that New Zealand needs.
 - 2 **Note** that as a result of this, Cabinet agreed in principle to establish a new independent infrastructure body (GOV-18-MIN-0054 refers).
 - 3 **Note** that to achieve a step-change in our infrastructure institutional arrangements, the infrastructure body will need to achieve all four of the following criteria:
 - 3.1 Well resourced, with the right people
 - 3.2 A well respected public voice
 - 3.3 Credibility with the private sector, and
 - 3.4 Integration across the entire infrastructure system.
 - 4 **Agree** to establish an independent infrastructure body for New Zealand.
 - 5 **Note** that my recommendations on the form and functions of the infrastructure body reflect the feedback of public consultation undertaken by the Treasury, which received nearly 130 submissions.
 - 6 **Agree**, subject to amendment through the legislative drafting process, the purpose of the infrastructure body should be to promote infrastructure that improves the wellbeing of all New Zealanders, by:
 - 6.1 developing a broad consensus on long-term strategy
 - 6.2 enabling coordination of infrastructure planning, and
 - 6.3 providing advice and best practice support to infrastructure initiatives.
 - 7 **Agree** that the infrastructure body has the following five strategy and planning functions and the following three procurement and delivery functions:
 - 7.1 Strategy and planning functions include:
 - 7.1.1 assess the condition of New Zealand's current infrastructure
 - 7.1.2 develop a long-term infrastructure strategy
 - 7.1.3 identify New Zealand's priority infrastructure needs and its ability to deliver on community expectations
 - 7.1.4 identify barriers to good infrastructure outcomes, and
 - 7.1.5 publish a long-term capital intentions plan.
 - 7.2 Procurement and delivery support functions include:
 - 7.2.1 act as a 'shop-front' for the market and publish a pipeline of infrastructure projects

- 7.2.2 produce best practise guidance on infrastructure procurement and delivery, and
 - 7.2.3 support project procurement and delivery.
- 8 **Note** that in developing the long-term strategy, it is expected that the infrastructure body will take account of long-term trends that will affect infrastructure, including climate change, new technologies, and demographic change.
 - 9 **Agree** that the infrastructure body's key function is developing and publishing a 30- year infrastructure strategy as outlined below:
 - 9.1 the infrastructure body develops a strategy at least every 5 years, covering a period of 30 years
 - 9.2 the infrastructure body is the owner of the strategy
 - 9.3 the draft strategy is provided to the Minister, who comments on the draft
 - 9.4 the infrastructure body takes the Minister's comments into account and publishes the infrastructure body's final strategy
 - 9.5 the final version is tabled in Parliament, and
 - 9.6 Government responds to strategy through processes specified in legislation and decides which recommendations to adopt into the Government's infrastructure strategy.
 - 10 **Agree** that the infrastructure body may determine its own procedures and frameworks for the performance of the supporting strategy and planning functions, but operating on a 'no surprises' basis with ministers.
 - 11 **Agree** that both the Minister for Infrastructure and the infrastructure body may commission work to identify barriers to good infrastructure outcomes.
 - 12 **Agree** that the infrastructure body may determine its own procedures and frameworks for the performance of the procurement and delivery support functions, but operating on a 'no surprises' basis with ministers.
 - 13 **Note** that ministers and state sector agencies will retain existing decision-making rights in relation to central government infrastructure projects. This includes agencies' decision rights around the procurement of support services.
 - 14 **Note** that the advisory role of the infrastructure body means that in general there will be no duplication across different parts of government, as the infrastructure body will add an overarching strategic perspective that does not currently exist.
 - 15 **Note** that the infrastructure body will rely on investment system settings and information to perform its functions and that ongoing work to lift the quality of data, strategic planning and asset management will enhance the overall effectiveness of the infrastructure body.
 - 16 **Agree** that the Treasury will review the functions and form of the infrastructure body five years after establishment.
 - 17 **Agree** that the infrastructure body will be established as an Autonomous Crown entity.

- 18 **Agree** that the infrastructure body will be governed by a board of directors comprising between five and seven members.
- 19 **Direct** the Minister for Infrastructure to report back to Cabinet on the appointment of a board designate and chair designate, who will initially operate as an establishment board ahead of the formal establishment of the infrastructure body.
- 20 **Note** that as an ACE, the Crown Entities Act 2004 will apply to the infrastructure body which means:
- 20.1 the Minister has the power to appoint board members
 - 20.2 the Minister has the power to remove board members for justifiable reason
 - 20.3 the infrastructure entity must “have regard to” policy that relates to the entity’s functions and objectives if directed by the Minister
 - 20.4 the Minister has the power to set direction and annual expectations, and
 - 20.5 the infrastructure entity must “give effect to” the whole of Government approach if directed by the Ministers of Finance and State Services.
- 21 **Agree** that the Treasury should be the monitoring agent for the infrastructure body.
- 22 **Note** that I have submitted a bid for the 2019 legislation programme for legislation to establish the infrastructure body.
- 23 [1]
- 24 **Authorise** the Minister for Infrastructure, Minister of Finance, Minister of State Services, and Minister of Transport and Housing and Urban Development to make subsequent policy decisions on related details consistent with the policy proposals discussed in this paper prior to the introduction of legislation, and report back to Cabinet on the decisions taken.
- 25 **Note** that the Treasury has sent drafting instructions for legislation to establish the infrastructure body to the Parliamentary Counsel Office, and I intend to bring legislation to the Cabinet Legislation Committee on 2 April 2019.
- 26 **Note** that I intend to proactively release this Cabinet paper soon after Cabinet has made a decision, and that the Treasury will also publish submissions received during public consultation at this time.

Authorised for lodgement

Hon Shane Jones

Minister for Infrastructure

Date: