

Reference: 20190299



TE TAI ŌHANGA  
THE TREASURY

5 July 2019

s9(2)(a)

Dear s9(2)(a)

Thank you for your Official Information Act request, received on 23 May 2019. You requested the following:

<i>Document Date</i>	<i>Title</i>
25 March 2019	<i>Aide Memoire T2019/663: Commercial Performance State of Play as at 14 March 2019</i>
25 March 2019	<i>Treasury Report T2019/844: Briefing for Cabinet Business Committee, 25 March 2019</i>
27 March 2019	<i>Infrastructure Commission, Te Waihanga – Final Cabinet paper and bill</i>
29 March 2019	<i>Aide Memoire T2019/930: Update on Housing New Zealand Bond Issue</i>

### Information Being Released

Please find enclosed the following documents:

<b>Item</b>	<b>Date</b>	<b>Document Description</b>	<b>Decision</b>
1.	25 March 2019	Aide Memoire T2019/663: Commercial Performance State of Play as at 14 March 2019	Release in part
2.	25 March 2019	Treasury Report T2019/844: Briefing for Cabinet Business Committee, 25 March 2019	Release in part
3.	27 March 2019	Treasury Report: Infrastructure Commission, Te Waihanga – Final Cabinet paper and bill Attachment: publicly available	Release in part

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PO Box 3724  
Wellington 6140  
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tel. +64-4-472-2733

<https://treasury.govt.nz>

4.	29 March 2019	Aide Memoire T2019/930: Update on Housing New Zealand Bond Issue	Release in part
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Please note that the financial implications relating to the 2020 Cannabis Referendum (document 2 refers) are not the final cost estimates considered by Cabinet.

I have decided to release the documents listed above, subject to information being withheld under one or more of the following sections of the Official Information Act, as applicable:

- advice still under consideration, section 9(2)(f)(iv) – to maintain the current constitutional conventions protecting the confidentiality of advice tendered by Ministers and officials,
- names and contact details of junior officials and certain sensitive advice, under section 9(2)(g)(i) – to maintain the effective conduct of public affairs through the free and frank expression of opinions,
- commercially sensitive information, under section 9(2)(b)(ii) – to protect the commercial position of the person who supplied the information, or who is the subject of the information, and
- direct dial phone numbers of officials, under section 9(2)(k) – to prevent the disclosure of information for improper gain or improper advantage.

Direct dial phone numbers of officials have been redacted under section 9(2)(k) in order to reduce the possibility of staff being exposed to phishing and other scams. This is because information released under the OIA may end up in the public domain, for example, on websites including Treasury's website.

### Information Publicly Available

The following information is also covered by your request and is publicly available on the Treasury and Legislation websites:

Item	Document Description	Website
5.	Cabinet Paper: New Zealand Infrastructure Commission/Te Waihanga Bill 2019: Approval for Introduction	<a href="https://treasury.govt.nz/sites/default/files/2019-06/leg-19-sub-0033-4093661.pdf">https://treasury.govt.nz/sites/default/files/2019-06/leg-19-sub-0033-4093661.pdf</a>

6	DRAFT New Zealand Infrastructure Commission Te Waihanga Bill	<a href="http://www.legislation.govt.nz/bill/government/2019/0130/latest/LMS155571.html">http://www.legislation.govt.nz/bill/government/2019/0130/latest/LMS155571.html</a>
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Therefore I am refusing the request for this information under section 18(d) of the Official Information Act:

- that the information requested is or soon will be publicly available.

This reply addresses the information you requested. You have the right to ask the Ombudsman to investigate and review my decision.

Yours sincerely

David Hammond  
**Team Leader Ministerial Advisory**

# TOIA 20190299 Information for Release

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1.	<a href="#"><u>Aide Memoire Commercial Performance State of Play as at 14 March 2019</u></a>	1
2.	<a href="#"><u>Treasury Report Briefing for Cabinet Business Committee, 25 March 2019</u></a>	5
3.	<a href="#"><u>Treasury Report New Zealand Infrastructure Commission Te Waihanganga Final Cabinet paper</u></a>	11
4.	<a href="#"><u>Aide Memoire Update on Housing New Zealand Bond Issue</u></a>	20

COMMERCIAL-IN-CONFIDENCE

**Commercial Performance State of Play as at 14 March 2019**

To: Minister for State Owned Enterprises (Rt Hon Winston Peters)  
Minister of Finance (Hon Grant Robertson)

cc: Associate Minister of Finance (Hon David Parker)  
Associate Minister for State Owned Enterprises (Hon Shane Jones)

This report provides an update on current issues in relation to State Owned Enterprises, Airports, Air New Zealand and Mixed Ownership Model companies within your portfolio. As suggested by the Minister of Finance's office we have added a box for you to tick if you would like more information on a topic.

**Maureena van der Lem**  
**Manager, Commercial Performance**

**1. New and notable issues**

More info?	Entity / Issue	Update
<input type="checkbox"/>	KiwiRail (Gael Webster Maureena van der Lem)	s9(2)(f)(iv) We will be providing advice on this issue and other issues recently raised by the KiwiRail Chair and Deputy Chair, by the end of March 2019.
<input type="checkbox"/>	KiwiRail (Mark Donnell)	s9(2)(b)(ii)
<input type="checkbox"/>	Ethiopian Airways crash (Juston Anderson)	On 10 March an Ethiopian Airlines Boeing 737 MAX aircraft crashed, killing all 157 on board. Ethiopian Airlines is reported to be a well-run airline with good safety standards and a modern fleet, although it has grown rapidly over the last decade. The 737 MAX is a new aircraft that has only been operating since January 2016. This is the 737 MAX's second crash in five months, and under similar circumstances: a near-new aircraft, with the pilots reporting a fault a few minutes after takeoff and requesting to return to the departure airport, followed by a high-speed crash with the aircraft completely destroyed and no chance of survivors. To put this in context, there will have been well over 50,000 flights by 737 MAX aircraft in the five months since the earlier crash. There are 350 of the aircraft in operation worldwide with a further 4,700 on order. A large number of regulatory authorities, starting with China and now including the European Union, NZ and Australia, have suspended 737 MAX flights in their airspace while they assess the situation. Notably, the US Federal Aviation Administration has not yet done the same, stating "to date we have not been provided data to draw any conclusions or take any actions". There are no direct implications for Air NZ which does not operate the 737 MAX and has no plans to order it. The only airline operating the type in our region is Fiji Airways, which flies it to Auckland. Virgin Australia has

COMMERCIAL-IN-CONFIDENCE

Commercial Performance State of Play as at 14 March 2019

More info?	Entity / Issue	Update
		ordered 40 of the aircraft with deliveries due to start later this year.
<input type="checkbox"/>	Airways Napier Tower (Maruta Kanepa)	<p>Airways has had problems staffing Air Traffic Controllers (ATCs) in Napier Tower / Hawke's Bay airport in the last half year, which has caused the airport to be in contingency over extended periods of time.</p> <p>Airways has seconded four staff from other locations to support operations at Napier tower – three ATCs and one additional staff member to perform unit and administrative support – until the roster is able to be filled with permanent staff.</p> <p>Seconded staff members are sourced from units that will not be operationally disadvantaged by their short-term reallocation. Each ATC secondee is required to be trained and receive a location specific validation for each tower or other ATC unit they work in.</p> <p>At present two of the seconded ATCs are undergoing training for Napier and Airways expects them to validate by the end of March, at this time they can be included in the roster as sole charge. <sup>s9(2)(b)(ii)</sup></p> <p><sup>s9(2)(b)(ii)</sup></p> <p>Napier control tower is currently providing a full service and there is no planned implementation of contingency procedures during March.</p> <p><sup>s9(2)(g)(i)</sup></p>
<input type="checkbox"/>	Airways subsidiary Airshare Ltd (Maruta Kanepa)	<p>Airways has incorporated a new entity "Airshare Ltd" on 16 November 2018 to deliver unmanned aerial vehicle (UAV) and UAV air traffic management services. Airshare has previously been a drone user hub and its long term purpose is the development of an unmanned aerial vehicle air traffic management (UTM) system for New Zealand.</p> <p>With 11,000 users logging more than 600 flights each week, drone user hub AirShare has experienced significant growth over the past four years. This new structure will allow AirShare to develop a commercially viable service that safely integrates drones into the wider air traffic network, alongside our existing customers. Airways considers the incorporation of AirShare a positive and exciting opportunity to test the market viability for UTM products and services.</p> <p>While Airways has a statutory role in the management of controlled airspace today, the opportunity exists to extend a UAV Management offering to the broader community of UAV users that is emerging in controlled and uncontrolled airspace. Airways' vision is to create a world-leading UAV industry that is safe and commercially viable. Airways role in this vision is to work with aviation stakeholders to develop a safe, transparent and efficient UAV management system for New Zealand.</p>
<input type="checkbox"/>	Airways Wellington office relocation (Maruta Kanepa)	<p>Airways has decided to relocate 24 corporate positions from Wellington to Auckland in order to place functional teams together. Total positions to be relocated to different locations are 34. <sup>s9(2)(b)(ii)</sup></p> <p><sup>s9(2)(b)(ii)</sup></p>

## COMMERCIAL-IN-CONFIDENCE

## Commercial Performance State of Play as at 14 March 2019

More info?	Entity / Issue	Update
		<p>s9(2)(b)(ii)</p> <p>[Redacted]</p> <p>The decision to relocate the corporate positions is fiscally neutral over a three-year period with realignment costs being offset by savings in rent. Relocation will take place over three year period and will be finalized by end of April 2020. s9(2)(b)(ii)</p> <p>[Redacted]</p>
<input type="checkbox"/>	Dunedin International Airport ( <i>Maruta Kanepa</i> )	<p>Dunedin International Airport announced that Jetstar will suspend its three weekly return flights between Wellington and Dunedin with the final service on Wednesday 29 May 2019. Jetstar representative informed the airport that the route has not performed as they had hoped and passengers with bookings beyond 29 May will be offered alternative services via Auckland or a full refund.</p> <p>Jetstar's Auckland – Dunedin schedule of eight return services a week is unchanged.</p> <p>Dunedin Airport CEO, Richard Roberts, said he was disappointed with the news that Jetstar will no longer be flying Dunedin to Wellington but understands the airlines position. He said that “The Wellington route is a particularly difficult one to sustain and the airport appreciates that the airline needs to look at what routes make economic sense”.</p>
<input type="checkbox"/>	NZ Post ( <i>Catalina De Mendoza</i> )	<p>Treasury is meeting with NZ Post, MPI and Customs to consider responses to rising inwards parcel and packet volumes due to growth in eCommerce. Universal Postal Union (UPU) obligations limit the ability to recover MPI and Custom's inspection costs from mail items, but MPI and Custom's appropriations for parcel and packet inspections are not keeping pace with the rising volumes. Advice from Customs and MPI to Biosecurity and Communications Ministers on inspection services is expected in April, 2019. Added to this NZ Post's International Mail Centre at Auckland Airport is at capacity and is likely to need replacement in the next 1-2 years.</p>

## 2. Upcoming Reports/Cabinet Papers

Company	Report No.	Subject	Date
KiwiRail	T2019/647	KiwiRail - FY18/19 Equity Tranche 3 And MNL Funding	15 March
Commercial-in-confidence	TBD	Project ABBA	end of March
TVNZ	T2019/540	Public Broadcasting Observations	March/April

## COMMERCIAL-IN-CONFIDENCE

## Commercial Performance State of Play as at 14 March 2019

## 3. Official Information Act (OIA) Requests under Action

Company	Request	Dates: Rec'd/due	Minister/Dept
N/A	List of documents for Minister of SOEs (1 Dec 2018 – 31 Jan 2019)	<b>Due with Minister:</b> 25 March	Minister for State Owned Enterprises (Treasury contact: Ian Stewart)

## Annex: Entities covered by this SOP

Entities	Shareholding Ministers
<b>State Owned Enterprises</b>	
Airways	Minister of Finance <i>delegated to Associate MoF (Parker)</i>
AsureQuality	
Electricity Corporation of New Zealand	Minister for State Owned Enterprises <i>delegated to Associate MfSOEs (except KiwiRail, NZ Railways Corporation and Orillion*)</i>
KiwiRail	
Kordia	
New Zealand Railways Corp	
<b>Mixed Ownership Model Companies</b>	
Air New Zealand	Minister of Finance
Genesis Energy	Minister of Finance and Minister for State Owned Enterprises <i>Delegation to Associate MfSOEs</i>
Mercury NZ	
Meridian Energy	
<b>Airports</b>	
Christchurch International Airport	Minister of Finance and Minister for State Owned Enterprises
Dunedin International Airport	
Hawkes Bay Airport	

\* Responsible Ministers for Orillion are the Associate Minister of Finance and the Minister for Biosecurity



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**Treasury Report: Briefing for Cabinet Business Committee, 25 March 2019**

<b>Date:</b>	22 March 2019	<b>Report No:</b>	T2019/844
		<b>File Number:</b>	MS-5-3-CBC

**Action Sought**

	<b>Action Sought</b>	<b>Deadline</b>
Minister of Finance (Hon Grant Robertson)	<b>Read</b> prior to the Cabinet Business Committee Meeting	1:00 pm, Monday 25 March 2019
Associate Minister of Finance (Hon Dr David Clark)	<b>Read</b> prior to the Cabinet Business Committee Meeting	1:00 pm, Monday 25 March 2019
Associate Minister of Finance (Hon David Parker)	<b>Read</b> prior to the Cabinet Business Committee Meeting	1:00 pm, Monday 25 March 2019
Associate Minister of Finance (Hon Shane Jones)	<b>Read</b> prior to the Cabinet Business Committee Meeting	1:00 pm, Monday 25 March 2019
Associate Minister of Finance (Hon James Shaw)	<b>Read</b> prior to the Cabinet Business Committee Meeting	1:00 pm, Monday 25 March 2019

**Contact for Telephone Discussion (if required)**

<b>Name</b>	<b>Position</b>	<b>Telephone</b>		<b>1st Contact</b>
Hannah Overton	Analyst, Office of the Executive	s9(2)(k) (wk)	s9(2)(a) (mob)	✓
Nicky Lynch	Team Leader, Office of the Executive	s9(2)(k) (wk)	s9(2)(a) (mob)	

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

**Return** the signed report to Treasury.

Note any feedback on the quality of the report

**Enclosure:** No

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**Treasury Report: Briefing for Cabinet Business Committee, 25 March 2019**

The Treasury is aware of five items on the Cabinet Business Committee agenda for 25 March 2019. The table below provides Treasury comment and recommendations on these items, and identifies any relevant fiscal impacts.

Comments	Fiscal implications	Treasury Recommendation
<p><b>2020 Cannabis Referendum: Legislative Process and Overarching Policy Settings for the Regulatory Model</b> Treasury contact: Shereen Capper</p>		
<p>This paper reports back on the potential legislative process for the binding referendum on the legalisation of recreational cannabis. It seeks agreement to the content of the question used for the referendum.</p>		
<p>The paper would benefit from providing more detailed analysis to support Ministers' decision making, particularly to help clarify the process for future decisions.</p> <p>A Quality Assurance Panel with representatives from the Ministry of Health and the Treasury Regulatory Quality team reviewed the Regulatory Impact Analysis and considers it partially meets the Quality Assurance criteria.</p> <p>Even with subsequent planning and analysis, we think it is likely there will be much uncertainty around the impacts of the regulatory model. There will be benefits from ongoing review of regulatory settings once the regime is established.</p>	<p>The following financial implications for the options are set out in the paper, although they are not recorded in the recommendations:</p> <ul style="list-style-type: none"> <li>s9(2)(g)(i) [redacted] section 18(d) will soon be publicly available</li> <li>Option 1: \$1 million less than Option 4.</li> <li>Option 2 or 3: \$4 million or \$5 million more than Option 4.</li> </ul> <p>The recommendations are not clear that decisions on the options are subject to Budget 2019 funding decisions.</p> <p>It is also not clear how the costs would be met, if the funding were not agreed through Budget 2019. For example, whether the Ministries of Justice and Health, and the Electoral Commission would meet these costs from baselines.</p>	<p><b>Partially support</b></p> <p><b>Request</b> the recommendations in the paper make the relative costs of the options clear.</p> <p><b>Table</b> an additional recommendation at Cabinet, noting that the options are subject to Budget 2019 funding (see Annex One).</p>
<p><b>Planning for the Delivery of the 2020 General Election</b> Treasury contact: Shereen Capper</p>		
<p>The paper seeks agreement to enable electors to enrol on election day and other related electoral changes for the 2020 General Election.</p>		
<p>s9(2)(f)(iv)</p>		

**BUDGET SENSITIVE**

Comments	Fiscal implications	Treasury Recommendation
	s9(2)(f)(iv)	
<p><b>New Zealand Emissions Trading Scheme: Introduction of Averaging Accounting</b> Treasury contact: Hamish Slack</p>		
<p>This paper proposes to change the method of accounting for forestry sequestration in the Emissions Trading Scheme (ETS), to an approach known as “averaging”.</p>		
<p>There are two options in the paper:</p> <ul style="list-style-type: none"> <li>allow averaging for new forests (planted after 31 December 2018), and defer a decision on existing forests; or,</li> <li>allow averaging for both new and existing forests.</li> </ul> <p>This issue is being put forward now because forestry planting occurs in winter. If the ETS treatment for new forests is changed now there is likely to be a boost in tree planting in 2019; a delay will mean any boost in planting is unlikely.</p> <p>Only a decision on new forests is required now in order to get this planting boost. Accordingly, we consider that a decision on existing forests should be deferred.</p> <p>There are other technical decisions that will be required in order to implement averaging, which will be taken to Cabinet later this year. A decision on existing forests could be made as part of that package. This would also allow the decision on existing forests to be supported by a Regulatory Impact Assessment that has been through the Quality Assurance process.</p>	<p>The fiscal impact depends on the option chosen.</p> <p>If averaging is allowed for new forests but a decision on existing forests is deferred: the fiscal cost is \$5.889 million over the forecast period, to be charged against the between-Budget contingency.</p> <p>s9(2)(f)(iv)</p>	<p><b>Support</b></p> <p>Recommendation 2 presents an option (agree to recommendation 2.1, or to both 2.2 and 2.3). <b>We recommend you support recommendations 2.2 and 2.3.</b> The effect of this is that averaging will be allowed for new forests only; the decision for existing forests will be deferred.</p>
<p>s9(2)(g)(i) <b>Emerging Fund: Support for Rainbow Communities</b> Treasury contact: s9(2)(g)(i)</p>		
<p>This paper seeks agreement to commit \$1.070 million to seed funding for a Rainbow Wellbeing Legacy fund and a one-off contribution to the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) World Conference in Wellington, funded from the s9(2)(g)(i) Emerging Priorities Fund.</p>		
<p>The paper aligns with the Prime Minister’s priorities.</p>	<p>The paper seeks \$0.060 million in 2018/19 and \$1.010 million in 2019/20, for a total of \$1.070 million, with a corresponding impact</p>	<p><b>Support</b></p>

**BUDGET SENSITIVE**

Comments	Fiscal implications	Treasury Recommendation
	<p>on the operating balance and net debt. This will be charged against the s9(2)(g)(i) Emerging Priorities Fund. Funding is a one-off contribution with little risk of ongoing commitments.</p>	
<p><b>Governance Arrangements for DHBs</b> Treasury contact: Hew Norris</p>		
<p>This paper proposes governance changes for Waikato DHB, being the potential replacement of the Board with a Commissioner. The paper also discusses the appointment of two Deputy Commissioners to support the Commissioner who is already in place at Southern DHB. Legislative change is proposed to extend the term of Waikato DHB's proposed Commissioner (without this change a Commissioner appointed now would only remain in place at Waikato DHB until the next Board election in October this year).</p>		
<p>We support these proposed governance changes as part of a strategy to assist DHB sustainability. s9(2)(f)(iv)</p>	<p>The fiscal implications of this paper are minimal and additional funding is not sought.</p>	<p><b>Support</b></p>

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**Recommended Action**

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We recommend that you read this report prior to the Cabinet Business Committee meeting on 25 March 2019.

Nicky Lynch  
**Team Leader, Office of the Executive**

Hon Grant Robertson  
**Minister of Finance**

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**Annex One: 2020 Cannabis Referendum: Legislative Process and Overarching Policy Settings for the Regulatory Model - Suggested additional recommendation**

**note** that the options identified in recommendation 4 are subject to Budget 2019 funding decisions and may have to be reconsidered or funded within baselines, depending on final decisions on the Budget 2019 package.

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**Treasury Report:** New Zealand Infrastructure Commission, Te Waihangā - Final Cabinet paper

<b>Date:</b>	27 March 2019	<b>Report No:</b>	T2019/881
		<b>File Number:</b>	SH-11-5-16-1-6-2

**Action Sought**

	Action Sought	Deadline
Minister of Finance (Hon Grant Robertson)	<b>Note</b> the contents of this Report	<b>None</b>
Minister for Infrastructure (Hon Shane Jones)	<b>Note</b> the contents of this Report  <b>Refer</b> this report to the Minister of State Services, the Minister of Transport and Housing and Urban Development, and the Minister for Climate Change  <b>Sign</b> the attached Cabinet paper	<b>27 March 2019</b>  <b>10am, 28 March 2019</b>

**Contact for Telephone Discussion** (if required)

Name	Position	Telephone	1st Contact
Morgan Dryburgh	Senior Analyst, National Infrastructure Unit	s9(2)(k) (wk)	s9(2)(a) (mob) ✓
David Taylor	Manager, National Infrastructure Unit	s9(2)(k) (wk)	N/A (mob)

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

**Return** the signed report to Treasury.

**Refer** this report to the Minister of State Services, the Minister of Transport and Housing and Urban Development, and the Minister for Climate Change.

**Lodge the Cabinet paper with the Cabinet office by 10am, Thursday 28 March 2019**

Note any feedback on the quality of the report

**Enclosure:** Yes

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**Treasury Report: New Zealand Infrastructure Commission, Te Waihanga - Final Cabinet paper**

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**Executive Summary**

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***Purpose and content***

1. This report provides a finalised Cabinet paper to introduce at the Cabinet Legislation Committee on 2 April 2019. It also provides a draft copy of the New Zealand Infrastructure Commission/Te Waihanga Bill, which is subject to final checking. A final copy will be submitted to the Cabinet Legislation Committee by the Parliamentary Counsel Office.
2. The Cabinet paper seeks Cabinet's approval for the introduction of the Bill, and notes that the content of the Bill is primarily consistent with decisions made by Cabinet on the functions and form of the New Zealand Infrastructure Commission, Te Waihanga, (the Commission) [DEV-19-MIN-0021 refers], and subsequent policy decisions made by authorised Ministers, for the purposes of the drafting of the Bill.

***Feedback from agency consultation on information gathering power***

3. The information gathering provisions in the Bill provide for the Commission to request information that is necessary or desirable for it to perform its functions.
4. During consultation concerns were raised about the breadth of agencies that the information gathering power would apply to. In response to these concerns, the Bill now provides that the Commission can only make formal requests from:
  - a public service departments, except the Government Communications Security Bureau and the New Zealand Security Intelligence Service
  - b departmental agencies
  - c statutory entities (and not other Crown entities, such as school boards of trustees), and
  - d the New Zealand Defence Force (which is a non-public service department).
5. The Bill allows agencies to withhold information if necessary to maintain legal professional privilege, or if the supply of the information would limit the ability for an agency to act judicially or to carry out its statutorily independent functions. Following agency feedback, the Bill now also provides that information cannot be obtained by the Commission if the following applies:
  - a the supply of the information would be likely to result in the matters set out in section 6(a) or (b) of the Official Information Act 1982,
  - b it is held by the Government Statistician that was collected under the Statistics Act, or is revenue information under the Tax Administration Act 1994 that the Commissioner of Inland Revenue is required to keep confidential.
6. Given that some information provided may be commercially confidential or sensitive, the Bill now provides that the Commission must not publish or disclose information obtained under the information gathering power unless one of the following applies:



**IN-CONFIDENCE**

- a the information is already publically available, or available to the public under an enactment (such as the Official Information Act)
  - b the information is in statistical or summary form
  - c the publication or disclosure is with the consent of the person to whom the information relates or to whom the information is confidential, or
  - d the publication or disclosure is required by law.
7. The Commission will be subject to the Official Information Act (OIA) and people may request it release information obtained using its information gathering power. We would expect the Commission to consult with agencies that have provided the information and/or the people who are the subject of the information, or transfer requests to an agency to which the request is more closely connected. Under the OIA, the Commission can also withhold information that is subject to an obligation of confidence, or where disclosure would be likely to prejudice the supply of similar information in the future (and subject to any overriding public interest considerations in favour of release).
8. The Green Party expressed the view that the Bill should expressly require the Commission to consider climate change mitigation and adaptation in the prioritisation of infrastructure. To address this, clause 11 was included in the Bill, requiring that when advising on infrastructure needs and priorities, the Commission must have regard to the long-term trends that impact on or are impacted by infrastructure, including climate change. This is also discussed in the Cabinet paper, and includes a specific recommendation for Cabinet to agree.
9. The decision to provide the Commission with the power to gather information was made by authorised Ministers. The State Services Commission has indicated that this decision should be considered separately through a Cabinet policy committee, however we note this is not feasible if you wish to maintain the target date for the Bill to be introduced to the House, Monday 8 April 2019. If you consider that the information gathering power should be decided upon by full Cabinet, we recommend that the Cabinet Legislation Committee refers the paper *New Zealand Infrastructure Commission/Te Waihanga Bill: Approval for Introduction* to Cabinet for consideration on Monday 8 April 2019.

**IN-CONFIDENCE**

**Recommended Action**

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We recommend that you:

- a **note** the contents of this report
- b **note** that the attached Cabinet paper seeks approval to introduce the New Zealand Infrastructure Commission/Te Waihangā Bill
- c **sign** the attached Cabinet paper.

*Signed/not signed*  
Minister for Infrastructure

David Taylor  
**Manager, National Infrastructure Unit**

Hon Shane Jones  
**Minister for Infrastructure**

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**Treasury Report: New Zealand Infrastructure Commission, Te Waihangā - Final Cabinet paper**

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**Purpose of Report**

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10. This report provides you with a finalised Cabinet paper to introduce for consideration at the Cabinet Legislation Committee on 2 April 2019. It also provides you with a draft copy of the New Zealand Infrastructure Commission/Te Waihangā Bill, which is subject to final checking. A final copy will be submitted to the Cabinet Legislation Committee by the Parliamentary Counsel Office.
11. This report also provides you with an update on the results of agency and Ministerial consultation on the Bill and Cabinet paper, and responds to questions raised during consultation.

**Content of the Cabinet paper**

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12. As noted in T2019/503, the Cabinet paper seeks Cabinet's approval for the introduction of the Bill, and notes that the content of the Bill is consistent with:
  - a Decisions made by Cabinet on the functions and form of the New Zealand Infrastructure Commission, Te Waihangā, (the Commission) [DEV-19-MIN-0021 refers], with minor points of difference arising through the legislative drafting process.
  - b Subsequent policy decisions made by authorised Ministers, for the purposes of the drafting of the Bill.
13. The paper also indicates those particular areas where the drafting in the Bill differs from the decisions made by Cabinet, and provides an explanation for why this is the case.
14. Following consultation, the paper has been updated to provide further information on particular aspects of the Bill that drew interest during agency consultation, particularly the Commission's information gathering power.

**Feedback from agency consultation on the information gathering power**

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15. The information gathering provisions in the Bill provide for the Commission to request information that is necessary or desirable for it to perform its functions.

***Agencies the information gathering power apply to***

16. The Bill previously provided for the Commission to be able to make formal requests for information from public service departments, departmental agencies, Crown entities and the New Zealand Defence Force (which is a non-public service department). The Commission cannot request "personal information", which helps to protect the privacy of natural persons.
17. In response to concerns raised during consultation about the breadth of agencies that the information gathering power would apply to, the Bill now provides that the Commission can only make formal requests from:

## IN-CONFIDENCE

- a public service departments, except the Government Communications Security Bureau and the New Zealand Security Intelligence Service (which were excluded to best deal with national security concerns as they relate to those agencies)
  - b departmental agencies
  - c statutory entities (rather than all Crown entities, as previously proposed), and
  - d the New Zealand Defence Force (which is a non-public service department).
18. This now excludes Crown entity companies, Crown entity subsidiaries, school boards of trustees, and tertiary education institutions, which were previously captured by the information gathering power in the Bill.

### ***Reasons agencies can withhold information***

19. The Bill requires agencies to supply the requested information to the Commission, unless withholding the information is necessary to maintain legal professional privilege, or the supply of the information would limit the ability for an agency to act judicially or to carry out its statutorily independent functions.
20. Following feedback from agencies, the Bill now also provides that information cannot be obtained by the Commission if the following applies:
- a the supply of the information would be likely to result in the matters set out in section 6(a) or (b) of the Official Information Act 1982, and
  - b it is held by the Government Statistician and collected under the Statistics Act, or is revenue information under the Tax Administration Act 1994 that the Commissioner of Inland Revenue is required to keep confidential.
21. Some agencies were concerned that the Commission's ability to set a timeframe for the provision of information could result in a significant imposition on agencies, depending on the amount of information requested, and asked for the Bill to include the ability to extend the timeframe for, or decline a request, as it is possible for agencies do for requests made under the OIA that require 'substantial collation and research'.
22. Clause 23(3) in the Bill states that any date specified by the Commission in a request for information must be reasonable. We believe this addresses agency concerns around the potential for significant imposition, as in determining a date that is 'reasonable', we expect the Commission would discuss an information request with the agency. As part of this, agencies would be able to express any difficulties they are likely to face in collating the information, and this would factor into what a reasonable date is.
23. As well as requesting the ability to extend or decline a request, some agencies suggested that they would like the ability to charge the Commission for the information they provide to it. While the OIA provides for agencies to charge requesters for information, charging for information sharing between agencies in the State sector would be an unusual approach, which we do not recommend.

### ***Limits on the release of the information***

24. Some of the information provided may be commercially confidential or sensitive. The State Services Commission raised concerns that public trust and business confidence could be damaged if the confidentiality of information is not maintained, as a breach of the restrictions or misuse of the information by the Commission could have serious consequences to the reputation of the agencies and the portfolio Minister that passed on the information.

**IN-CONFIDENCE**

25. To address concerns around the use of information provided to the Commission using these powers, the Bill provides that the Commission must not publish or disclose any information obtained under the information gathering power unless one of the following applies:
- a the information is already publically available, or available to the public under an enactment (such as the Official Information Act)
  - b the information is in statistical or summary form
  - c the publication or disclosure is with the consent of the person to whom the information relates or to whom the information is confidential, or
  - d the publication or disclosure is required by law.
26. There is always a risk that agencies may mishandle information with resulting damage to public confidence. This risk exists in many places across the State sector that hold sensitive information. The Commission, like other agencies, would be expected to have the people and processes to ensure compliance with the limitations on handling information set out in the Bill.
27. During consultation, some agencies suggested that it would be useful if the Bill provided for the Commission to be able to disclose the information it gathers to other State sector agencies without needing to seek the consent of the party that supplied it.
28. We do not believe that such a provision is necessary for departments to gather information from other departments. Departments and Ministers do not face the same difficulties that the Commission, as a Crown entity, would face without these information gathering provisions. Additionally, providing for information to be shared without placing further restrictions on the use of that information would introduce further risks around the use of confidential or sensitive information that the Bill aims to prevent.

***Interaction with the OIA***

29. A number of agencies asked how the Official Information Act (OIA) would apply to information gathered from agencies by the Commission.
30. The Commission will be subject to the OIA and so people may request that it release information it has obtained using its information gathering power. The Commission can withhold under the OIA information that is subject to an obligation of confidence, or where disclosure would be likely to prejudice the supply of similar information in the future (and subject to any overriding public interest considerations in favour of release).
31. In responding to official information requests, we would expect the Commission to consult with those agencies that have provided information to it and/or the people who are the subject of the information, or transfer the request if the information requested is more closely connected with the functions of another agency, for example if the request is for raw data provided to the Commission by an agency.
32. This is the same framework that applies to a range of agencies that have powers to gather information and are also subject to the OIA. Regulators and others have demonstrated that they deal with OIA requests responsibly and consult with the person from whom they gathered the information or who is the subject of the information.

**Other changes to the Bill**

33. Further scrutiny and review of the Bill by officials has also led to minor changes to the expressions of the Commission's main function in clause 9 and additional function in

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clause 10(a). In particular, the Commission must develop broad public agreement on its overall approach under the main function, and on its long-term strategy report. Officials consider the new drafting is clearer and better gives effect to the policy.

34. During cross-party consultation on the Bill, the Green Party expressed the view that the Bill should expressly require the Commission to consider climate change mitigation and adaptation in the prioritisation of infrastructure.
35. To address this, clause 11 was included in the Bill, requiring that when advising on current and future infrastructure needs, or the priorities for infrastructure, the Commission:
- a must provide advice with the objective of achieving infrastructure, and services that result from the infrastructure, that improve the well-being of New Zealanders, and
  - b must have regard to long-term trends that impact on, or are impacted by, infrastructure, including (but not limited to)—
    - i changes to demographics
    - ii the emergence and availability of new technology, and
    - iii matters relating to the mitigation of effects of climate change (including through reducing emissions of greenhouse gases) and adapting to the effects of climate change, and
  - c may have regard to any other matters the Commission considers relevant.
36. This new clause is also discussed in the Cabinet paper, and has a specific recommendation for Cabinet to agree.

**Other areas of interest during consultation**

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37. A number of agencies questioned why the Bill does not include a definition of infrastructure.
38. During the drafting of the Bill, we considered this matter, and concluded that the risk of including a definition of infrastructure is that it would narrow the Commission's scope of focus and work. Other legislation that defines infrastructure, such as the Resource Management Act, lists specific types of infrastructure that fall within that definition.
39. The Commission should be enabled to work laterally and innovatively, particularly in carrying out its strategy and planning functions. Infrastructure is likely to evolve over time, including from new technologies that change what infrastructure looks like. Not specifically defining infrastructure in the legislation provides flexibility for the Commission over time, and prevents the Commission becoming overly concerned with interpreting legislative language when considering its work programme.
40. We also think there is very low risk of the Commission misunderstanding what infrastructure is and focussing on the wrong assets. The description of infrastructure used in Government documents is also included in the Explanatory Note to the Bill to assist with a general understanding of the term.
41. The approach taken in the Bill mirrors the approach taken in the legislation of all of the Australian state infrastructure bodies, whose establishing legislation does not define infrastructure.



## IN-CONFIDENCE

### Process matters

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#### **Consultation**

42. Some agencies raised concerns with the scope of consultation on the information gathering power included in the Bill, as not every agency that will come within the scope of the powers was provided an opportunity to comment on the provisions.
43. We believe that, given the tight timeframes we are working within, we have adequately consulted with the agencies most likely to be significantly impacted by the information gathering power in the Bill. The Bill deliberately defines who the Commission may gather information from by class of agency, rather than naming individual organisations, to provide flexibility through changes to state sector organisations, and not require amendment every time a new statutory entity or department is created. However, this approach means it is highly likely that many statutory entities covered by the provisions will never receive an information request from the Commission.
44. The challenges likely to be faced by agencies in terms of the type of information that should be withheld, and concerns around the publication of information provided to the Commission, are common across the agencies we consulted with. There are provisions in the Bill that set out the reasons for withholding information from the Commission and restrictions on dissemination of any information received. We believe that these provisions are sufficiently general and should provide reassurance to any agencies that were not consulted but who are covered by the provisions and may receive an information request from the Commission in the future.

#### **Cabinet decision-making**

45. The decision to provide the Commission with the power to gather information was not made by Cabinet as part of the decision to establish the Commission, but is the result of further policy recommendations made by authorised Ministers.
46. Cabinet requested that authorised Ministers report back to Cabinet on the further policy decisions they made in relation to the Bill.
47. The State Services Commission has indicated that the decision to include information gathering power in the Bill is larger than the scope of authorisation considered by Cabinet, and should be brought to a Cabinet policy committee for decision, rather than being confirmed by the Cabinet Legislation Committee.
48. Considering the information gathering power separately through the Cabinet Economic Development Committee is not currently feasible if you wish to maintain the target date for the Bill to be introduced to the House, 8 April 2019.
49. An alternative approach, if you consider that the information gathering power should be considered and decided upon by full Cabinet, is to suggest that the Cabinet Legislation Committee refers the paper *New Zealand Infrastructure Commission/Te Waihanganga Bill: Approval for Introduction* paper to Cabinet for consideration and decision on Monday 8 April 2019.

### Next Steps

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50. The Cabinet paper attached to this report should be lodged with the Cabinet Office by 10am, Thursday 28 March 2019.
51. We will also provide a copy of the departmental disclosure statement of the Bill to your Office, which will be lodged with the Cabinet paper.

IN-CONFIDENCE



Reference: T2019/930 DE-1-2

Date: 28 March 2019

To: Minister of Finance  
(Hon Grant Robertson)

Deadline: None

## Update on Housing New Zealand Bond Issue

### Purpose

The purpose of this Aide Memoire is to update you on Housing New Zealand's (HNZ) recent bond issue.

### Deal Summary

On Thursday 29 March 2019, HNZ completed their inaugural "Sustainability Bond" issue. Further details are outlined below:

- This new 7.5 year transaction is HNZ's third public bond offer and they now have four bond lines which can be traded by market participants.
- The latest transaction was issued under HNZ's new "Sustainability Framework" (described below) and was launched, via syndication, on the morning of Wednesday 28 March 2019.
- The transaction was jointly managed by ANZ and BNZ on HNZ's behalf.
- HNZ stated they expected to issue between NZD 300 million to NZD 500 million at margin of between 76-81 basis points over New Zealand Government Bond yields.
- The total amount issued was NZD 500 million and the deal was priced on the afternoon of Thursday 29 March 2019 at a margin of 80 basis points NZGBs, giving a yield of 2.247%.
- The issue yield achieved by Housing New Zealand was consistent with other Housing New Zealand bonds that are publically traded.
- Total demand for the issue has yet to be publically released, however we understand demand for the transaction was broadly comparable to previous HNZ issues.



**IN-CONFIDENCE**

**Housing New Zealand's Sustainable Financing Framework**

The bond has been issued under HNZ's sustainable financing framework. The framework allows HNZ to raise finance through the issue of green bonds, social bonds and sustainability bonds and aims to further embed environmental and social considerations in processes and practices across core HNZ business activities. Sustainalytics, a private company, has been engaged to provide external review and assurance that bonds issued comply with the framework.

This specific bond issue is a sustainability bond. Proceeds raised are earmarked for financing, or refinancing, projects that deliver positive environmental or social outcomes. Included within the definition of social outcomes is the construction of new, or retrofitting of, social housing.

Projects funded by the bonds will be consistent with HNZ's existing Asset Management Strategy, Long Term Investment Plan and HNZ Board approved business cases, in accordance with Cabinet Office Circular CO(15)5 – Investment Management and Asset Performance in the State Services.

This bond is subject to the external borrowing limits in the borrowing protocol approved by you and the Minister of Housing and Urban Development, which currently limits HNZ external borrowing to \$3.05 billion. s9(2)(f)(iv)

s9(2)(f)(iv)

**Sustainability Considerations in the New Zealand Government Bond Portfolio**

The Treasury has responsibility for broader government borrowing through its New Zealand Debt Management function. Sustainable financing, and ESG (Environmental, Social, Governance) considerations have been a growing feature of funding markets over the recent few years and the Treasury has fielded a number of queries from investors, intermediaries and stakeholders on the role of ESG financing within the New Zealand Government Securities (NZGS) portfolio.

We recently provided advice to you and the Associate Minister of Finance/Minister for Climate Change on the potential role of Green Bonds in the core Crown funding portfolio (T2018/3168 refers). Many of the issues discussed in that advice apply to ESG and sustainable financing more generally.

Given the financial markets' focus on ESG issues we consider that it would be useful to more strongly draw the link between NZGS issuance and the broader environmental, social and wellbeing objectives being sought by the Government through its policy priorities.

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At this stage, we consider this could be achieved quickly and efficiently by highlighting to NZGB investors the Government's overall social, environmental and wellbeing objectives in NZGS marketing and information material.<sup>1</sup> This could be achieved, for example, by referencing investors to Wellbeing Budget documents such as the Budget Policy Statement. This approach would not preclude issuance of an environmental or social bond (to finance a specific project(s)) in the future. We will provide further detail and advice to you on this as part of the upcoming BEFU debt programme update.

**Kim Martin**, Head of Funding Strategy & Engagement, Capital Markets, s9(2)(k)  
**Andrew Hagan**, Director, Capital Markets, s9(2)(k)

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<sup>1</sup> E.g., The New Zealand Government Securities Overview and New Zealand Government Securities Funding Strategy publications, borrowing programme updates as part of EFUs, the New Zealand Debt Management website and investor presentations.