

Reference: 20210548

1 February 2022



Dear [REDACTED]

Thank you for your Official Information Act (OIA) request, received on 16 November 2021. You requested the following:

Questions:

- 1. I understand Treasury was consulted on and opposed his appointment. Can you confirm this?*
- 2. I understand Treasury started considering Miller's appointment six months before it was announced he would chair KiwiRail. Can you confirm this?*
- 3. I understand Sir Brian Roche interviewed Miller and recommended against his appointment. Can you confirm this?*

Please also provide the following:

- When was Treasury first made aware ministers were considering Greg Miller as the next possible KiwiRail board chair?*
- Any briefings Treasury provided to ministers on the topic of Miller being made/considered as KiwiRail board chair.*
- Any internal correspondence held by Treasury involving Gael Webster and/or Mark Darnell where either Webster or Darnell recommend against Miller being made chair.*
- Any correspondence between Treasury officials and Sir Brian Roche concerning Roche's interview with Miller for the KiwiRail board chair position.*
- Any internal Treasury correspondence referring to Roche's position on Miller's suitability as board chair.*
- Does Treasury understand that NZ First and Labour's 2017 coalition agreement allowed for NZ First to put forward/choose the KiwiRail board chair?*

An extension was granted for this request on 6 December 2021 until 1 February 2022.

With respect to the information to be released, I am advising you that I have accepted your OIA request prior to delivering the documents concerned, as is allowed for under section 15(1)(b) of the OIA.

The information subject to release is currently being administratively processed and will be sent to you no later than 9 February 2022.

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

<https://treasury.govt.nz>

Answers to Specific Questions

Please note that Ministers did not agree to appoint an Executive Chair. The appointment was only for the role as Chair of the KiwiRail Board.

	Question	Answer
1.	<i>I understand Treasury was consulted on and opposed his appointment. Can you confirm this?</i>	The Treasury was requested by shareholding Ministers to set up a panel and conduct an interview of Mr Greg Miller for Chair of the KiwiRail Board. While the panel, which included Treasury officials, did not support his appointment, the Treasury's written advice to Ministers did not refer to the Panel's assessment or view of his suitability.
2.	<i>I understand Treasury started considering Miller's appointment six months before it was announced he would chair KiwiRail. Can you confirm this?</i>	To the best of our knowledge the Treasury was made aware of consideration of the appointment of Mr Greg Miller as Chair of the KiwiRail Board in April 2018. His appointment was announced by Ministers on 8 August 2018. His appointment commenced on 1 November 2018.
3.	<i>I understand Sir Brian Roche interviewed Miller and recommended against his appointment. Can you confirm this?</i>	An interview panel comprising Sir Brian Roche, and Treasury officials Jon Grayson and Gael Webster, interviewed Mr Miller on 14 May 2018. The panel did not support his appointment as a Chair. Sir Brian expressed his views verbally directly to the Minister of Finance. The Treasury is not aware of any record of that conversation.
4.	<i>When was Treasury first made aware ministers were considering Greg Miller as the next possible KiwiRail board chair?</i>	To the best of our knowledge the Treasury was made aware of consideration of the appointment of Mr Greg Miller as Chair of the KiwiRail Board in April 2018.
5.	<i>Does Treasury understand that NZ First and Labour's 2017 coalition agreement allowed for NZ First to put forward/choose the KiwiRail board chair?</i>	The Treasury is aware of Cabinet Office Circular 17(10), that provided practical guidance for Ministers and departments on implementing the 2017 coalition agreement between Labour and New Zealand First, and the confidence and supply agreement between Labour and the Green Party. Clause 38 of this guidance advises that Ministers should seek nominations from other parties for significant government appointments.

Information to be released

The following documents fall within the scope of your request:

Item	Date	Document Description	Decision
1.	9 April 2018	Email - Re: File note re meeting with Minister Jones re KiwiRail governance	Released in part
2.	10 April 2018	Email - Re: File note re meeting with Minister Jones re KiwiRail governance	Released in part
3.	10 April 2018	Email - FW: File note re meeting with Minister Jones re KiwiRail governance	Released in part
4.	3 May 2018	Email - FW: 18.04 KiwiRail Chair interview panel.DOCX	Released in part
5.	3 May 2018	Email attachment - KiwiRail – Potential Candidates for Chair on Interview Panel	Released in part
6.	8 May 2018	Email - KiwiRail- Trevor	Released in part
7.	9 May 2018	Email - RE: KR Chair appointment process	Released in part
8.	15 May 2018	Email - FW: A thought from Brian Roche	Released in part
9.	17 May 2018	Email - RE: KiwiRail panel comments	Released in part
10.	17 May 2018	Email attachment – KiwiRail Chair [draft advice]	Released in part
11.	17 May 2018	Email - Treasury Report: KiwiRail Holdings Ltd and New Zealand Railways Corporation: Update after Due Diligence	Released in part
12.	17 May 2018	Email attachment – T2018/1337: KiwiRail Holdings Ltd and New Zealand Railways Corporation: Update after Due Diligence and Documentation to Confirm Appointment [draft advice]	Released in part
13.	18 May 2018	Email - RE: KiwiRail panel comments	Released in part
14.	18 May 2018	Email attachment - KiwiRail Chair [draft advice]	Released in part
15.	18 May 2018	Email - RE: Gabs catching up with Hon Jones on Monday	Released in part
16.	21 May 2018	Email - Re: KiwiRail panel comments	Released in part
17.	22 May 2018	Email – RE: Treasury Report KiwiRail Holdings Ltd and New Zealand Railways Corporation Update after Due Diligence v2	Released in part
18.	23 May 2018	Email - 3962476_version 2 Treasury Report_ KiwiRail Holdings Ltd and New Zealand Railways Corporation_ Update after Due Diligence.DOC	Released in part
19.	23 May 2018	Email attachment - 3962476_version 2 Treasury Report_ KiwiRail Holdings Ltd and New Zealand Railways Corporation_ Update after Due Diligence [draft advice]	Released in part
20.	23 May 2018	Email - 3962476_version 2 Treasury Report_ KiwiRail Holdings Ltd and New Zealand Railways Corporation_ Update after Due Diligence.DOC (2)	Released in part
21.	23 May 2018	Email attachment - 3962476_version 2 Treasury Report_ KiwiRail Holdings Ltd and New Zealand Railways Corporation_ Update after Due Diligence [draft advice]	Released in part
22.	24 May 2018	Email - FW: 3957960_Treasury Report_ KiwiRail Holdings Ltd and New Zealand Railways Corporation_ Update after Due Diligence.DOC	Released in part
23.	24 May 2018	Email attachment - 3957960_Treasury Report_ KiwiRail Holdings Ltd and New Zealand Railways Corporation_ Update after Due Diligence [draft advice]	Released in part
24.	25 May 2018	Email - Fwd: KiwiRail	Released in part

Item	Date	Document Description	Decision
25.	30 May 2018	Email - RE: KiwiRail	Released in part
26.	5 June 2018	Email - RE: Kiwirail matters	Released in part
27.	7 June 2018	Email - RE: KiwiRail	Released in part
28.	13 June 2018	T2018/1624:KiwiRail Holdings Ltd and New Zealand Railways Corporation: Update after Due Diligence and Documentation to Confirm Appointments [final advice]	Released in part
29.	23 July 2018	T2018/2057 KiwiRail Holdings Ltd: APH Documentation to Confirm Chair Appointment [final advice]	Released in part
30.	23 July 2018	18.07 KHL NZRC Memorandum APH appt Miller [final advice]	Released in full
31.	23 July 2018	18.07 KHL Cab51 Report [final advice]	Released in part
32.	23 July 2018	18.05 KHL CAB50 Greg Miller appt [final advice]	Released in part
33.	23 July 2018	18.05 NZRC CAB50 Greg Miller appt [final advice]	Released in part
34.	23 July 2018	18.07 KHL NZRC Cab100 Cabinet Submission Form Miller appt [final advice]	Released in full

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

- personal contact details of officials, under section 9(2)(a) – to protect the privacy of natural persons, including that of deceased natural persons,
- confidential advice under section 9(2)(ba)(i) – to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied
- 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,
- names and contact details of officials, under section 9(2)(g)(ii) – to maintain the effective conduct of public affairs through protecting Ministers, members of government organisations, officers and employees from improper pressure or harassment, and
- direct dial phone numbers of officials, under section 9(2)(k) – to prevent the disclosure of information for improper gain or improper advantage.

We have redacted the direct dial phone numbers of officials 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 own website

Information publicly available

There have been two previous replies to OIA requests that are relevant to your request and the information is publicly available on the Treasury website:

Item	Date	Document Description	Website Address
1.	16 March 2019	Response to official information request KiwiRail Chief Executive (OIA-20190509)	https://www.treasury.govt.nz/publications/oia-response/kiwirail-chief-executive-oia-20190509
2.	28 August 2019	Response to official information request Appointment of new Chair at KiwiRail (OIA-20180313)	https://www.treasury.govt.nz/publications/oia-response/appointment-new-chair-kiwirail-oia-20180313

Accordingly, I have refused this part of the request as it relates to documents included in the replies listed in the above table under section 18(d) of the OIA:

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

Some relevant information has been removed from documents listed in the above table and should continue to be withheld under the OIA, on the grounds described in the documents.

Information to be withheld

There is one additional document covered by your request that I have decided to withhold in full under the following section of the OIA:

- Legally privileged information, under section 9(2)(h) – to maintain legal professional privilege.

Item	Date	Document Description
1.	28 June 2018	T2018/1825: KiwiRail Holdings Ltd: Legal Advice on Proposed Options for Engagement of Chair in Other Services

In making my decision, I have considered the public interest considerations in section 9(1) of the OIA.

Please note that this letter (with your personal details removed) and enclosed documents may be published on the Treasury website.

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

Yours sincerely

Gael Webster
Manager Governance and Appointments

OIA 20210548

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33.	<u>18.05 NZRC CAB50 Greg Miller appt [final advice]</u>	87
34.	<u>18.07 KHL NZRC Cab100 Cabinet Submission Form Miller appt [final advice]</u>	89

From: Jon Grayson [TSY] <Jon.Grayson@treasury.govt.nz>
Sent: Monday, 9 April 2018 10:01 pm
To: Mark Donnell [TSY] <Mark.Donnell@treasury.govt.nz>
Cc: Chris Gregory [TSY] <Chris.Gregory@treasury.govt.nz>; Gael Webster [TSY] <Gael.Webster@treasury.govt.nz>; Craig Weise [TSY] <Craig.Weise@treasury.govt.nz>
Subject: Re: File note re meeting with Minister Jones re KiwiRail governance

Thanks for this briefing Mark.

I agree this will be very difficult. I have been thinking about this since Chris rang earlier. If this is the Government's decision (noting that we don't have instructions from the shareholding ministers) the question is how might it best work.

An executive chairman role might work if it is part time and for a defined period with a specific task; eg to facilitate a re-organisation of KiwiRail's structure and governance - think of it as Chairman with a consulting gig to effect a specific shareholder intervention. In that case the CEO might be able to continue the day to day operations without there being a conflict of roles. What do you think? Perhaps we could recommend something along these lines to effect the Government's objectives?

JDG

Sent from my iPhone

On 9/04/2018, at 8:07 PM, Mark Donnell [TSY] <Mark.Donnell@treasury.govt.nz> wrote:

I met with Minister Jones this afternoon, ostensibly to talk about KiwiRail out of scope

The meeting covered two broad areas.

But the central part of the meeting was a conversation regarding KiwiRail's governance. The key points covered were:

- Ministers would like to replace Trevor Janes, the current Chair, with Greg Miller (currently Group General Manager of Toll New Zealand, and the man who sold KiwiRail back to the Crown in 2008),
- They see Greg Miller as an Executive Chairman, rather than just being a Chair,
- Although Minister Jones indicated Greg Miller might serve only 2 days a week with KiwiRail,
- They see Greg Miller as having rail expertise, which they believe the current board lack (although I note the KiwiRail executive have considerable rail expertise),
- Greg Miller has already met with Ministers Peters, Robertson, Twyford and Jones.
- s9(2)(a)
- They would like to take a paper to the APH Committee meeting on 2 May to confirm Greg Miller's appointment,
- Apparently as soon as he is confirmed Greg Miller intends to resign his position as Group General Manager of Toll NZ,
- Greg Miller will also play a prominent role in the Upper North Island Freight & Port Study,
- The Labour Party would also like to appoint someone to the KiwiRail board (Neil/Noel Coombs/Coombes?) but this is likely to be held off until Guy Royal's term ends in Oct/Nov.

They would like Treasury's assistance with preparing the paper for the APH Committee. I indicated that Treasury would likely set out its own views on the Chair appointment and that a Treasury paper might not serve their purpose. But I agreed to coordinate a meeting between myself, Gael, Jane and Daniel to talk about the contents of a paper for APH. I expect a Treasury paper will set out Treasury's own view. out of scope

out of scope

To be clear, I see appointing Greg Miller as Chair of KiwiRail as very likely to be highly destabilising to KiwiRail. I have strong reservations about how it will be perceived by the rest of the board, by the executive, by the unions, by the staff, and by the customers. I have strong reservations that within one year several key staff will leave, and that key relationships (unions, key customers) will be more combative.

I also have very strong reservations about an Executive Chair appointment. I think governance and management need to be kept separate. I am concerned that Ministers will see a KiwiRail Executive Chair as a precedent that could be applied across the rest of the Crown's commercial portfolio.

Regards,

Mark

From: Gael Webster [TSY] <Gael.Webster@treasury.govt.nz>
Sent: Tuesday, 10 April 2018 8:48 am
To: Chris Gregory [TSY] <Chris.Gregory@treasury.govt.nz>
Cc: Mark Donnell [TSY] <Mark.Donnell@treasury.govt.nz>; Jon Grayson [TSY] <Jon.Grayson@treasury.govt.nz>
Subject: Re: File note re meeting with Minister Jones re KiwiRail governance

Hi mark

Obviously I share these concerns. I also wonder if the shareholding minister has the legal right to appoint an 'executive' chair.

I'm tied up in Auckland today and tomorrow but happy to take call.

APH papers can be lodged within that time frame but not sure where consultation with coalition partners fits in. I would like to be involved in discussion with Trevor (and we need to consider discussion / communication with whole board and exec).

Gael

Sent from my iPhone

On 9/04/2018, at 9:37 PM, Chris Gregory [TSY] <Chris.Gregory@treasury.govt.nz> wrote:

Thanks Mark. I share the concerns that you have raised. Let's agree an approach to this in the morning.

Regards

Sent with BlackBerry Work
(www.blackberry.com)

From: Mark Donnell [TSY] <Mark.Donnell@treasury.govt.nz>
Date: Monday, 09 Apr 2018, 8:07 PM
To: Jon Grayson [TSY] <Jon.Grayson@treasury.govt.nz>, Chris Gregory [TSY] <Chris.Gregory@treasury.govt.nz>, Gael Webster [TSY] <Gael.Webster@treasury.govt.nz>
Subject: File note re meeting with Minister Jones re KiwiRail governance

I met with Minister Jones this afternoon, ostensibly to talk about KiwiRail removed - out of scope

The meeting covered two broad areas. removed - out of scope

But the central part of the meeting was a conversation regarding KiwiRail's governance. The key points covered were:

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- They see Greg Miller as having rail expertise, which they believe the current board lack (although I note the KiwiRail executive have considerable rail expertise),
- Greg Miller has already met with Ministers Peters, Robertson, Twyford and Jones.
- s9(2)(a)
- They would like to take a paper to the APH Committee meeting on 2 May to confirm Greg Miller's appointment,
- Apparently as soon as he is confirmed Greg Miller intends to resign his position as Group General Manager of Toll NZ,
- Greg Miller will also play a prominent role in the Upper North Island Freight & Port Study,
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They would like Treasury's assistance with preparing the paper for the APH Committee. I indicated that Treasury would likely set out its own views on the Chair appointment and that a Treasury paper might not serve their purpose. But I agreed to coordinate a meeting between myself, Gael, Jane and Daniel to talk about the contents of a paper for APH. I expect a Treasury paper will set out Treasury's own view. out of scope

out of scope

To be clear, I see appointing Greg Miller as Chair of KiwiRail as very likely to be highly destabilising to KiwiRail. I have strong reservations about how it will be perceived by the rest of the board, by the executive, by the unions, by the staff, and by the customers. I have strong reservations that within one year several key staff will leave, and that key relationships (unions, key customers) will be more combative.

I also have very strong reservations about an Executive Chair appointment. I think governance and management need to be kept separate. I am concerned that Ministers will see a KiwiRail Executive Chair as a precedent that could be applied across the rest of the Crown's commercial portfolio.


Regards,

Mark

From: Mark Donnell [TSY] <Mark.Donnell@treasury.govt.nz>
Sent: Tuesday, 10 April 2018 11:07 am
To: Jon Grayson [TSY] <Jon.Grayson@treasury.govt.nz>; Chris Gregory [TSY] <Chris.Gregory@treasury.govt.nz>; Gael Webster [TSY] <Gael.Webster@treasury.govt.nz>
Subject: FW: File note re meeting with Minister Jones re KiwiRail governance
Importance: High

FYI,

out of scope



I still recommend that any Treasury advice on this KiwiRail board appointment should express concerns about the use of Executive Chairs.

Regards,

Mark

From: Mark Donnell [TSY]
Sent: Monday, 9 April 2018 8:07 p.m.
To: Jon Grayson (Jon.Grayson@treasury.govt.nz) <Jon.Grayson@treasury.govt.nz>; Chris Gregory (Chris.Gregory@treasury.govt.nz) <Chris.Gregory@treasury.govt.nz>; Gael Webster [TSY] <Gael.Webster@treasury.govt.nz>
Subject: File note re meeting with Minister Jones re KiwiRail governance
Importance: High

I met with Minister Jones this afternoon, ostensibly to talk about KiwiRail removed - out of scope

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Regards,

Mark

From: Gael Webster [TSY]
Sent: Thursday, 3 May 2018 3:55 PM
To: Fiona Ross [TSY] <Fiona.Ross@treasury.govt.nz>
Cc: Udayan Mukherjee [TSY] <Udayan.Mukherjee@treasury.govt.nz>; Caroline Wahid [TSY] <Caroline.Wahid@treasury.govt.nz>
Subject: FW: 18.04 KiwiRail Chair interview panel.DOCX

Hi Fiona

Talking notes for – Minister Jones re: KiwiRail Chair

- Ministers (we understand Jones, Twyford , Peters and Robertson) wish to replace the Chair of KiwiRail (Trevor Janes) with Greg Miller.
- Mr Millar is currently the Managing Director of the Toll Group NZ, a significant competitor to and customer of KiwiRail.
- The Toll Group owned KiwiRail's rail and ferry operations prior to 2008.
- Mr Janes term as Chair of KiwiRail is not due to expire until 20 September 2019.
- The MoF has directed the following process is to be followed on this matter:
 - Minister Twyford is to call the current Chair (Mr Janes) by Friday, 11 May to inform him of Ministers' decision to replace him
 - Mr Millar is to be interviewed by a panel comprising an independent chair, the Acting Head of the Treasury Appointments team (Gael), and another Treasury representative (we recommend Jon Grayson, the Dep Sec for Commercial Operations)
 - A list of recommended independent chairs for the panel was sent to the MoF on 16 April. s9(2)(a)
 [REDACTED] This list was then forwarded by MoF's office to the Minister of SOEs who confirmed Sir Brian Roche was suitable
 - Treasury is to approach Sir Brian Roche to undertake this role on the interview panel after Minister Twyford has talked to Mr Janes
 - Adrienne Reid from MoF's office is to advise the Treasury when this meeting is occurring /has occurred so that the Treasury can immediately contact Sir Brian Roche to arrange the interview.

out of scope
 [REDACTED]

Attached to this note is:

- Material provided by the Treasury to MoF's office for distribution to Minister Twyford (Mr Janes CV, further info from Treasury database, briefing note)
- A bio for KiwiRail's current board
- An overview of KiwiRail

Adrienne is happy to talk to Fiona regarding the MoF's instructions on this matter.

Please let me know if you require further information.

Regards
Gael

Gael Webster | Acting Head of Governance and Appointments | **The Treasury**

s9(2)(k)

s9(2)(g)(ii)

| Gael.Webster@treasury.govt.nz

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The information in this email is confidential to the Treasury, intended only for the addressee(s), and may also be legally privileged. If you are not an intended addressee:

- a. please immediately delete this email and notify the Treasury by return email or telephone (64 4 472 2733);
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4 attachments removed - out of scope

KiwiRail – Potential Candidates for Chair on Interview Panel

The following is a list of possible independent chairs to participate in the interview panel for the proposed new KiwiRail Chair. The Panel will comprise the independent Chair and representatives from Treasury. None of the candidates have been approached to ascertain availability or willingness to undertake the role. Any such approach will need to be made in strictest confidence.

There may be conflicts regarding Sir Brian Roche (City Rail Link) s9(2)(a)

s9(2)(a)



Sir Brian Roche:

Chair City Rail Link (current), Chair Major Events Investment Panel (current), Chair Rugby NZ2011 Ltd, CEO NZ Post.

s9(2)(a)



page 2 withheld - s9(2)(a)

From: Gael Webster [TSY]
Sent: Tuesday, 8 May 2018 5:40 pm
To: Jon Grayson [TSY] <Jon.Grayson@treasury.govt.nz>; Chris Gregory [TSY] <Chris.Gregory@treasury.govt.nz>
Cc: Mark Donnell [TSY] <Mark.Donnell@treasury.govt.nz>
Subject: KiwiRail- Trevor

Hi Chris/Jon

I've spoken to Trevor who was told by Tywford yesterday (after their KR meeting) that he will be replaced as Chair.

s9(2)(a)

out of scope

I will speak with Sir Brian Roche tomorrow re interviewing Greg Millar.
Please let me know if you would like to be part of that conversation.

Regards
Gael

Gael Webster | Acting Head of Governance and Appointments | **The Treasury**

Tel: s9(2)(k) s9(2)(g)(ii) | Gael.Webster@treasury.govt.nz

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- b. any use, dissemination or copying of this email is strictly prohibited and may be unlawful.

From: Gael Webster [TSY]
Sent: Wednesday, 9 May 2018 6:00 pm
To: Daniel White <Daniel.White@parliament.govt.nz>
Subject: RE: KR Chair appointment process

Hi Daniel

FYI

List of action points for KR chair appointment process.

- TSY approach Sir Brian Roche **in confidence** to request he participate in an interview Panel as independent chair and seek available dates/times (We are waiting for him to return our call)
- TSY to approach Mr Millar to seek available dates/times and then TSY schedules interview date asap (We are waiting for Mr Millar to return our call)
- TSY conducts interview
- Mr Miller completes declaration form and provides referees. TSY conducts reference checks. TSY writes report to Ministers (including APH documentation. (Allow a few days to a week for report and APH documentation to be provided to Ministers)
- Ministers consider report, confirm agreement to appoint, consult with coalition partners (1 week)
- TSY requests 'CV Check' to undertake background checks on Mr Millar
- Minister's office lodges APH documentation on the Thursday before APH (APH is on 16 May, 23 May 13 June, 20 June)
- Cabinet considers appointment the Monday following APH
- Minister signs and sends appointment letter, letter signed and returned by Mr Millar.
- Appointment complete subject to Background Checks.

I note occasionally Cabinet is given the power to act and to consider the appointment which bypasses APH.

Regards

Gael Webster | Acting Head of Governance and Appointments | **The Treasury**

Tel: s9(2)(k) s9(2)(g)(ii) | Gael.Webster@treasury.govt.nz

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From: Gael Webster [TSY]
Sent: Tuesday, 15 May 2018 9:39 am
To: Jon Grayson [TSY] <Jon.Grayson@treasury.govt.nz>
Cc: Chris Gregory [TSY] <Chris.Gregory@treasury.govt.nz>
Subject: FW: A thought from Brian Roche

Jon

FYi – see Sir Brian's comments below.

I've briefed Chris Gregory on what occurred and we discussed where to from here re: report/advice.

Chris will try to organise a meeting with us to coordinate our approach.

I'm in interviews a large part of the day, free after 4.00pm

Gael

Gael Webster | Acting Head of Governance and Appointments | **The Treasury**

Tel: s9(2)(k) s9(2)(g)(ii) | Gael.Webster@treasury.govt.nz

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From: Paula Dobson [TSY]
Sent: Tuesday, 15 May 2018 9:28 AM
To: Gael Webster [TSY] <Gael.Webster@treasury.govt.nz>
Subject: FW: A thought from Brian Roche

From: Brian Roche [[mailto:s9\(2\)\(a\)](mailto:s9(2)(a)@treasury.govt.nz)]
Sent: Tuesday, 15 May 2018 9:27 a.m.
To: Paula Dobson [TSY] <Paula.Dobson@treasury.govt.nz>
Cc: Jon Grayson [TSY] <Jon.Grayson@treasury.govt.nz>
Subject: A thought

Hi

Can you pass this onto Gael (I don't have her email)

Gael/Jon

Just thinking s9(2)(ba)(i)

s9(2)(ba)(i)

Cheers

Brian

Sent from my iPhone

On 11/05/2018, at 2:04 PM, Paula Dobson [TSY] <Paula.Dobson@treasury.govt.nz> wrote:

Good afternoon

Further to your conversation with Gael Webster please find confirmation of the due diligence interview for the KiwiRail Chair.

When: Monday 14 May @ 6.00pm

Where: Treasury, Level 5, 5.6

Attached please find Gregory Miller's CV and the interview questions sheet.

Regards

Paula

Paula Dobson | Commercial Operations
The Treasury - Kaitohutohu Kaupapa Rawa

Paula.Dobson@treasury.govt.nz

1 The Terrace, Wellington, 6011

PO Box 3724, Wellington

Tel: s9(2)(k)

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From: Jon Grayson [TSY] <Jon.Grayson@treasury.govt.nz>
Sent: Thursday, 17 May 2018 5:58 pm
To: Gael Webster [TSY] <Gael.Webster@treasury.govt.nz>
Cc: Chris Gregory [TSY] <Chris.Gregory@treasury.govt.nz>; Mark Donnell [TSY] <Mark.Donnell@treasury.govt.nz>
Subject: RE: KiwiRail panel comments

Gael

My comments are shown in the attached marked up document. To clarify – I assume this is the panel's report which would attach to the Treasury TR which would canvass the implications per our discussion this morning?

Jon Grayson | Deputy Secretary Financial & Commercial

The Treasury - Kaitohutohu Kaupapa Rawa

Tel: s9(2)(k) | Mobile: s9(2)(g)(ii) | jon.grayson@treasury.govt.nz

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To: s9(2)(a)
Cc: Jon Grayson [TSY] <Jon.Grayson@treasury.govt.nz>
Subject: KiwiRail panel comments

Hi Sir Brian

Many thanks for your participation in the panel.

Please find below what I have drafted regarding the candidates suitability.

I would appreciate your candid comments.

We are currently drafting a report which addresses the executive chair or consultancy type roles. The panels assessment forms the front part of that report.

Happy to discuss by phone if easier .

Jon I also seek your comments but thought it easier to get Sir Brian's first.

I will circulate the final version to you both for approval.

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3. Mr Miller presented as a very confident and experienced CEO and Executive Chair who was focussed, energetic and driven. He described himself as both pragmatic and innovative, a cultural leader and systems architect who leads from the front and sets high standards. The panel considered Mr Miller deeply knowledgeable and experienced in all aspects of the supply chain across rail, road, sea and air freight with significant knowledge of rail operations and logistics. He would bring to the board highly valuable freight industry experience both in NZ and internationally and rail experience, which skills are not well covered on the board at present.
4. Mr Millers governance experience has been from his role at Toll, as Chairman of subsidiary companies; Toll Group NZ Ltd, Toll Networks Ltd, and Toll Finance Ltd. These boards comprise around four staff members so are more operationally focussed compared to boards within the SOE governance framework. He also has experience as Chairman and director of smaller entities in which he has an interest. Overall the panel viewed Mr Miller as a talented director with much to offer but more suited to a director role than a chair role within the current SOE governance framework.
5. The panel considered that Mr Miller ^{s9(2)(g)(i)} [REDACTED] He presented his vision of what KiwiRail could become as an integral part of NZ transportation and he wants significant transformation of KiwiRail. He understands that this is the shareholders expectation. He expects to work hands on 3-4 days per week in the first year of his tenure to study what KiwiRail and NZRC need to do to transform its operations to a customer facing efficient freight/rail/passenger/tourist business. Mr Miller would then intend working one day a week.
6. The key concern of the panel is that it was interviewing Mr Miller for the chair role while in fact he wants a different role, namely Executive Chair. This raises the question of what executive role Mr Miller would be contracted to undertake and where this executive role would fit within the organisational structure of KiwiRail and whether such an arrangement has shareholder approval.
7. The Panel considered that there needs to be a clear strategy document of what shareholders want out of KiwiRail to ensure the candidates' expectations matched the shareholders expectation and that the shareholder is sufficiently agile to keep up with his aspirations. Furthermore the panel considered that Mr Millers ambitions would likely cost significant additional capital expenditure by KiwiRail.
8. The panel notes that the candidate is required to give three month's notice to Toll.

Gael Webster | Acting Head of Governance and Appointments | **The Treasury**

Tel: + ^{s9(2)(k)} [REDACTED] | ^{s9(2)(g)(ii)} [REDACTED] Gael.Webster@treasury.govt.nz

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4. Mr Miller's governance experience ~~has been~~ derives from his role at Toll, as Chairman of subsidiary companies; Toll Group NZ Ltd, Toll Networks Ltd, and Toll Finance Ltd. These boards comprise around four ~~staff members~~ Toll executives so and are more operationally focussed compared to boards within the SOE governance framework. He also has experience as Chairman and director of smaller entities in which he has an interest. Overall the panel viewed Mr Miller as a talented ~~director-logistics executive~~ with much to offer a company in this industry, but our assessment is that this would not be in more suited to a director role than a chair role within the current SOE governance framework.
5. The panel considered that Mr Miller ~~s9(2)(g)(i)~~
 He presented his vision of what KiwiRail could become as an integral part of NZ transportation and he wants significant transformation of KiwiRail. He understands that this is the shareholders expectation. He expects to work hands on 3-4 days per week in the first year of his tenure to study what KiwiRail and NZRC need to do to transform its operations to a customer facing efficient freight/rail/passenger/tourist business. Mr Miller would then intend working one day a week.
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8. The panel notes that the candidate is required to give three month's notice to Toll, s9(2)(a)

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From: Gael Webster [TSY]
Sent: Thursday, 17 May 2018 5:37 pm
To: Mark Donnell [TSY] <Mark.Donnell@treasury.govt.nz>; Chris Gregory [TSY] <Chris.Gregory@treasury.govt.nz>
Subject: Treasury Report: KiwiRail Holdings Ltd and New Zealand Railways Corporation: Update after Due Diligence

[Treasury Report: KiwiRail Holdings Ltd and New Zealand Railways Corporation: Update after Due Diligence \(Treasury:3957960v1\)](#) [Add to worklist](#)

Work in progress...

Gael Webster | Acting Head of Governance and Appointments | **The Treasury**

Tel: s9(2)(k) | s9(2)(g)(ii) Gael.Webster@treasury.govt.nz

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Treasury Report: KiwiRail Holdings Ltd and New Zealand Railways Corporation: Update after Due Diligence and Documentation to Confirm Appointment

Date:	[] May 2018	Report No:	T2018/1337
		File Number:	CM-0-2-3-2018

Action Sought

	Action Sought	Deadline
Minister for State Owned Enterprises (Rt Hon Winston Peters)	Agree recommendations	[] June 2018
Minister of Finance (Hon Grant Robertson)	Agree recommendations	[] June 2018
Minister for Transport (Hon Phil Twyford)	Agree recommendation	None
Associate Minister of Finance (Hon Shane Jones)	For your information	None

Contact for Telephone Discussion (if required)

Name	Position	Telephone		1st Contact
Gael Webster	Acting Head, Governance and Appointments	s9(2)(k)	s9(2)(g)(ii)	✓
Jon Grayson	Director, Financial and Commercial Operations			

Actions for the Ministers' Office Staff (if required)

Return the signed report to the Treasury.

Note any feedback on the quality of the report

Enclosure: Yes (attached)

Treasury Report: KiwiRail Holdings Ltd and New Zealand Railways Corporation: Update after Due Diligence and Documentation to Confirm Appointment

Executive Summary

The Minister of Finance instructed the Treasury to convene a panel to interview Greg Miller for the Chair of KiwiRail Holdings Ltd (KiwiRail). Mr Miller is currently the Managing Director of Toll New Zealand, a significant customer of KiwiRail.

As instructed we have undertaken due diligence on the proposed candidate Greg Miller. Mr Miller was interviewed on 14 May 2018 by a panel comprising Sir Brian Roche and Treasury representatives Gael Webster and Jon Grayson.

The panel consider that Mr Miller has deep experience across all aspects of the supply chain and significant operational knowledge of rail in New Zealand, with governance experience from his role at Toll New Zealand. However, this experience appears to be on boards that are more operationally focussed compared to boards within the State Owned Enterprise (SOE) governance framework.

The panel considered that while Mr Miller would have much to offer in an executive role he is not suited to the Chair role. Furthermore, if Mr Miller were to be the Chair of KiwiRail then there would need to be clear alignment with the Ministers' expectations for the transformation strategy that Mr Miller advocates.

The panel's key concern is Mr Miller's expectation that the role would be a Managing Director/Executive Chair role at KiwiRail (i.e. a combination of the Chair and Chief Executive roles). This expectation is not consistent with the role of Chair of KiwiRail that Mr Miller was being interviewed for.

The Treasury does not support the appointment of executive chairs to SOEs. The Treasury considers there are important governance disciplines and protections that are best served by separating governance from executive management.

While KiwiRail's company constitution allows for appointment of a Managing Director (which an Executive Chair would be), this may only occur if the KiwiRail Board has first recommended the appointment to the Shareholders.

The Ministry of Transport is undertaking a review of rail (The Future of Rail including KiwiRail) which includes an assessment of the appropriate structure for KiwiRail. The Treasury recommends that (i) the scope of the review is adjusted to include making recommendations for the governance of KiwiRail, and (ii) governance arrangements for KiwiRail, including appointment of a new Chair, are revisited late in 2018 with the benefit of the recommendations of the Ministry of Transport's review.

Meanwhile the pending resignation of Mr Trevor Janes will leave KiwiRail without a Chair. At the same time the departure of Dame Paula Rebstock after nine years' service leaves the Board without a Deputy Chair. The Treasury recommends Ministers appoint Mike Pohio as acting Chair in the interim.

Recommended Action

We recommend that you:

- a **note** the findings of the panel that undertook an interview of Mr Greg Miller for the role of chair of KiwiRail Holdings Ltd (KiwiRail):
 - Mr Miller has deep experience across all aspects of the supply chain and significant operational knowledge of rail in New Zealand,
 - Mr Miller has limited experience in governance roles in non-operationally focussed boards,
 - Mr Miller's expectation is that the role would be a Managing Director/Executive Chair role at KiwiRail,
 - The panel does not support Mr Miller being appointed as Chair of KiwiRail
- b **note** that the Treasury does not support the role of executive Chairs in State Owned Enterprises (SOEs) or Crown entities
- c **note** that KiwiRail's company constitution requires the KiwiRail board to recommend any appointment of a Managing Director or Executive Chair
- d **agree** that the terms of reference for Ministry of Transport's Review of Rail be adjusted to include making recommendations for the governance of KiwiRail

Agree/disagree
Minister for State Owned Enterprises

Agree/disagree
Minister of Finance

Agree/disagree
Minister of Transport

- e **agree** that the governance arrangements for KiwiRail, including appointment of a new Chair, are revisited late in 2018 with the benefit of the recommendations of the Ministry of Transport's review.

Agree/disagree
Minister for State Owned Enterprises

Agree/disagree
Minister of Finance

- f **agree** to Mike Pohio becoming acting Chair of KiwiRail when the resignation of Trevor Janes is given effect and until a new Chair is appointed.

Agree/disagree
Minister for State Owned Enterprises

Agree/disagree
Minister of Finance

Jon Grayson
Director, Financial and Commercial Operations

Rt Hon Winston Peters
Minister for State Owned Enterprises

Hon Grant Robertson
Minister of Transport

Hon Phil Twyford
Minister of Transport

DRAFT

Treasury Report: Treasury Report: KiwiRail Holdings Ltd and New Zealand Railways Corporation: Update after Due Diligence and Documentation to Confirm Appointment

Purpose of Report

1. Ministers' wish to replace the Chair of KiwiRail Holdings Ltd (KiwiRail). The KiwiRail Chair is also currently the Chair of the New Zealand Railways Corporation (NZRC). As the chair of NZRC is largely a compliance role, this report is focussed on the appointment of a Chair for KiwiRail.
2. The Minister of Finance instructed the Treasury to convene a panel to interview Mr Greg Miller for the role of Chair of KiwiRail. The purpose of this report is to advise on the interview panel's views on the suitability of Mr Miller to be Chair of the boards of KiwiRail and NZRC.

Background

3. KiwiRail is a State-Owned Enterprise (SOE) that owns and operates the rail network, rail freight and tourism operations, and the Interislander ferry operations in New Zealand. The company employs 3,400 staff (76% of whom are union members), carries 16% of the New Zealand's freight task and operates the network that allows 32 million commuter rail trips each year.
4. The Crown has provided over \$4 billion of funding to KiwiRail over the last 10 years and expects to maintain that, or a higher, level of funding to KiwiRail for the foreseeable future.

KiwiRail Board

5. The Shareholding Ministers agreed to retire Deputy Chair Dame Paula Rebstock at the end of her term on 30 April 2018, reducing the board back to eight members. The board had extended to nine members as a temporary measure due to the extra workload arising from the Kaikoura earthquakes.
6. The current board composition is as follows:

Table 1. KiwiRail Board membership and skills as at 18 May 2018

Board Member	Appointed	Term ends	Skills
Trevor Janes (Chair)	30 Sept 2016	29 Sept 2019	Senior governance, business, accountancy, commercial, finance
John Dennehy	1 May 2017	31 Oct 2019	Commercial, investment banking and infrastructure financing including rail, asset management
Paul Harper	1 May 2016	30 April 2019	Maritime, shipping, logistics, supply chain, procurement, senior executive experience
John Leuchars	1 July 2010	30 April 2019	Civil engineer, professional director, international engineering consulting

Bob Major	1 May 2017	31 Oct 2019	Commercial, senior executive experience in large corporate, international, customer relationships, large scale organisational change
Sue McCormack	22 May 2017	31 Oct 2019	Legal, Insurance, Property
Mike Pohio	1 May 2016	30 April 2019	Governance, accountancy, finance, networking industry, CEO Tainui
Guy Royal	1 Nov 2012	31 Oct 2018	Commercial lawyer, cultural business investment, international

Ministers' Instructions

7. The Minister of Transport met with Mr Janes on 8 May 2018 and informed him of Ministers' intentions to replace him as Chair of KiwiRail. Mr Janes is considering his position and is expected to resign by 30 June 2018.
8. The Minister of Finance instructed the Treasury to convene a panel to interview Mr Miller for the role of Chair of KiwiRail. Mr Miller was interviewed on 14 May 2018 by a panel led by Sir Brian Roche. Ministers selected Sir Brian Roche as a suitable independent chair to carry out this task. Assisting Sir Brian Roche were Treasury representatives Gael Webster (Acting Head, Governance and Appointments) and Jon Grayson (Deputy Secretary, Commercial and Financial Operations).
9. The Panel was asked to provide advice on the suitability of the candidate for the role of the Chair of KiwiRail (and NZRC if the current approach to dual chairs is maintained).

Panel Assessment

10. Greg Miller of Auckland is currently the Managing Director/Chief Executive of Toll New Zealand a position he has held since 2008. His career started with a cadetship in Transport operations with the Mainfreight Group to eventually being Global Development Manager. In 2000 he moved to Tranz Link Distribution as Group General Manager and also Managing Director of Tranz Link International.
11. Mr Miller had various senior roles in Tranz Rail (which at the time owned what is now KiwiRail) and Tranzlink, and was Toll Tranzlink Director and Group General Manager from 2003-2008. He led a restructure across the company until the Government buyback of the rail assets in 2008, and chaired the Toll Tranzlink NZ: Fonterra Strategy Committee during this period.
12. s9(2)(a) Mr Miller also has a three month notice period with Toll New Zealand.
13. Mr Miller presented as a confident and experienced Managing Director/CEO who was focussed, energetic and driven. He described himself as both pragmatic and innovative, a cultural leader and systems architect who leads from the front and sets high standards. The panel considered Mr Miller very knowledgeable and experienced in all aspects of the supply chain across rail, road, sea and air freight with significant knowledge of rail operations and logistics. He would bring to the board freight industry experience both in NZ and internationally and rail experience, which skills are not well covered on the board at present.
14. Mr Miller's governance experience derives from his role at Toll, as chairman of subsidiary companies; Toll Group NZ Ltd, Toll Networks Ltd, and Toll Finance Ltd. However, these boards appear to be more operationally focussed compared to boards

within the SOE governance framework. He also has experience as chairman and director of smaller entities in which he has an interest, has Iwi (Waikato Tainui) governance experience, and has entrepreneurial interests in technology /start-up companies.

15. Overall the panel considered that Mr Miller ^{s9(2)(g)(i)}
16. Mr Miller's ambition for rail is significantly different from the strategy that has been operating in recent years. He signalled an intention for significant transformation and change and considers that this is also the shareholders' expectation. Mr Miller's ambitions would likely require significant additional capital investment in KiwiRail and Ministers would need to be confident the required funding was available as to date transformational ambitions have largely been constrained by budget limits. The panel viewed Mr Miller as a talented logistics executive with much to offer a company in this industry, but our assessment is that he would be more suited to an executive role rather than to the Chair role within the current SOE governance framework.
17. Mr Miller was clear that he was not interested in the Chair role but rather that his interest was in an Executive Chair role. He expects to work in the business 3-4 days per week in the first year of his tenure to study what KiwiRail (and NZRC) would need to transform its operations to a customer-facing efficient freight/rail/passenger/tourist business. Mr Miller would then intend working one day a week.
18. The Treasury does not support the appointment of Executive Chairs or Managing Directors for SOEs. The Treasury considers there are important governance disciplines and protections that are best served by separating governance from executive management. This is reflected in the Owners Expectation Manual.
19. The company constitution of KiwiRail does allow for a Managing Director for time-limited duties. However, the company constitution sets out that this appointment would be at the election of the KiwiRail board (rather than the shareholder) and that the board determine the role, responsibilities and remuneration of the Managing Director and then seek approval and confirmation of that appointment from Shareholding Ministers.

Acting Chair

20. The pending departure of Mr Janes and the recent retirement of Dame Paula Rebstock will leave KiwiRail with no Chair or Deputy Chair.
21. At the same time the Ministry of Transport is conducting a review of rail which will, among other issues, consider the structure of KiwiRail and NZRC. The Treasury expect this review will recommend changes to KiwiRail and NZRC that would flow through to changes to the boards of those entities. Given the timing of the review (recommendations expected by the end of October 2018) the Treasury recommends (i) the terms of reference of the review be adjusted to include making recommendations for the governance of KiwiRail, and (ii) holding off on any appointment of a new Chair of KiwiRail until after those recommendations are known.
22. In the interim the Treasury recommends Shareholding Ministers appoint Mr Mike Pohio as acting Chair of KiwiRail and of NZRC. Mr Pohio has been on the board of KiwiRail since 1 May 2016 and whilst not the longest serving member the Treasury consider him most suited to the task. Mr Pohio was previously on the board of Transpower and is currently on the board of NIWA, the University of Waikato and Panuku Development Auckland. He was previously CEO of Tainui Holdings Ltd and has a background in accountancy. His CV is attached as Annex I

23. If Shareholding Ministers agree then the Treasury will provide a letter to confirm Mr Pohio as acting Chair.

Next Steps

24. The next steps for this matter are:
- Ministers to provide their feedback on the issues raised by the Treasury
 - The Treasury to follow up with Mr Janes on the timing of his resignation from the Chair of KiwiRail
 - Ministers to agree to Mike Pohio becoming acting chair until alternative arrangements are put in place

Attached Documents

25. Attached to this report:
Annex I: CV for Mike Pohio

DRAFT

From: Gael Webster [TSY]
Sent: Friday, 18 May 2018 10:32 am
To: Brian Roche <s9(2)(a)>; Jon Grayson [TSY] <Jon.Grayson@treasury.govt.nz>
Subject: RE: KiwiRail panel comments

Good morning

Thank you both for your comments/markups (Jon's in red) which I've tried to incorporate (my changes in blue). If you turn off mark ups you read without them.

Please review this version and signal you are happy with it or make any further comment/change.

Thanks
Gael

Gael Webster | Acting Head of Governance and Appointments | **The Treasury**
Tel: s9(2)(k) s9(2)(g)(ii) | Gael.Webster@treasury.govt.nz

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From: Brian Roche <s9(2)(a)>
Sent: Thursday, 17 May 2018 10:03 PM
To: Gael Webster [TSY] <Gael.Webster@treasury.govt.nz>
Cc: Jon Grayson [TSY] <Jon.Grayson@treasury.govt.nz>
Subject: Re: KiwiRail panel comments


Thanks Gael

You have made a lot of order out of a pretty random 90 minutes - well done!

My only comments would be around:

s9(2)(ba)(i)

s9(2)(ba)(i)



Hope that all makes sense.

Cheers

Brian

On 17/05/2018, at 11:28 AM, Gael Webster [TSY] <Gael.Webster@treasury.govt.nz> wrote:

Hi Sir Brian

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as Chairman and director of smaller entities in which he has an interest. Overall the panel viewed Mr Miller as a talented director with much to offer but more suited to a director role than a chair role within the current SOE governance framework.

5. The panel considered that Mr Miller s9(2)(g)(i) [REDACTED]
[REDACTED] He presented his vision of what KiwiRail could become as an integral part of NZ transportation and he wants significant transformation of KiwiRail. He understands that this is the shareholders expectation. He expects to work hands on 3-4 days per week in the first year of his tenure to study what KiwiRail and NZRC need to do to transform its operations to a customer facing efficient freight/rail/passenger/tourist business. Mr Miller would then intend working one day a week.
6. The key concern of the panel is that it was interviewing Mr Miller for the chair role while in fact he wants a different role, namely Executive Chair. This raises the question of what executive role Mr Miller would be contracted to undertake and where this executive role would fit within the organisational structure of KiwiRail and whether such an arrangement has shareholder approval.
7. The Panel considered that there needs to be a clear strategy document of what shareholders want out of KiwiRail to ensure the candidates' expectations matched the shareholders expectation and that the shareholder is sufficiently agile to keep up with his aspirations. Furthermore the panel considered that Mr Millers ambitions would likely cost significant additional capital expenditure by KiwiRail.
8. The panel notes that the candidate is required to give three month's notice to Toll.

Gael Webster | Acting Head of Governance and Appointments | The Treasury

Tel: s9(2)(k) [REDACTED] s9(2)(g)(ii) [REDACTED] | Gael.Webster@treasury.govt.nz

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1. Greg Miller of Auckland is currently Managing Director/Chief Executive of Toll New Zealand a position he has held since 2008, His career started with a cadetship in Transport operations with Mainfreight Group to eventually being Global Development Manager. In 2000 he moved to Tranz Link Distribution as Group General Manager and also MD of Tranz Link International.
2. Mr Miller had various senior roles in Tranz Rail and Tranzlink, and was Toll Tranzlink Director and Group General Manager from 2003-2008. He led a restructure across the company until its NZ Government buyback in 2008, and chaired the Toll Tranzlink NZ: Fonterra Strategy Committee during this period.
3. Mr Miller presented as a very confident and experienced CEO and Executive Chair who was focussed, energetic and driven. He described himself as both pragmatic and innovative, a cultural leader and systems architect who leads from the front and sets high standards. The panel considered Mr Miller deeply knowledgeable and experienced in all aspects of the supply chain across rail, road, sea and air freight with significant knowledge of rail operations and logistics. He would bring to the board highly valuable freight industry experience both in NZ and internationally and rail experience, which skills are not well covered on the board at present.
4. Mr Miller's governance experience has been derived from his role at Toll, as cChairman of subsidiary companies; Toll Group NZ Ltd, Toll Networks Ltd, and Toll Finance Ltd. These boards comprise around four staff members Toll executives so and are more operationally focussed compared to boards within the SOE governance framework. He also has experience as cChairman and director of smaller entities in which he has an interest, has Iwi (Waikato Tainui) governance experience, and has entrepreneurial interests in technology /start up companies.

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4. Overall the panel considered that Mr Miller s9(2)(g)(i)
I viewed Mr Miller as a talented director-logistics executive with much to offer a company in this industry, but our assessment is that this would not be in more suited to a director role than a chair role within the current SOE governance framework.
5. s9(2)(g)(i)
- 5-6. His ambition for rail is significantly different from the strategy that has been operating in recent years. That signals his intention of significant transformation and change. presented his vision of what KiwiRail could become as an integral part of NZ transportation and he wants significant transformation of KiwiRail. He understands that this is the shareholders expectation. He expects to work hands on 3-4 days per week in the first year of his tenure to study what KiwiRail (and NZRC) need to do to transform its operations to a customer facing efficient freight/rail/passenger/tourist business. Mr Miller would then intend working one day a week.
- 6-7. The key concern of the panel is that it was interviewing Mr Miller for the chair role while in fact he wants a different role, namely eExecutive cChair. This raises the question of what executive role Mr Miller would be contracted to undertake and

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where this executive role would fit within the organisational structure of KiwiRail and whether such an arrangement has shareholder approval.

7.8. The Panel considered that there needs to be a clear strategy document of what shareholders want out of KiwiRail to ensure the candidates' expectations matched the shareholders' expectations and that the shareholder is fully appraised of the likely implications of a very different approach to the governance of KiwiRail, and is sufficiently agile to keep up with his aspirations. Furthermore the panel considered that Mr Miller's ambitions would likely cost significant additional capital expenditure by KiwiRail, the costs and impacts of which need to be worked through.

8.9. The panel notes that the candidate is required to give three month's notice to Toll, s9(2)(a)

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From: Chris Gregory [TSY] <Chris.Gregory@treasury.govt.nz>
Sent: Friday, 18 May 2018 11:53 am
To: Caroline Wahid [TSY] <Caroline.Wahid@treasury.govt.nz>; David Taylor [TSY] <David.Taylor@treasury.govt.nz>; Rob Addison [TSY] <rob.addison@treasury.govt.nz>
Cc: Jon Grayson [TSY] <Jon.Grayson@treasury.govt.nz>; Gael Webster [TSY] <Gael.Webster@treasury.govt.nz>; Mark Donnell [TSY] <Mark.Donnell@treasury.govt.nz>
Subject: RE: Gabs catching up with Hon Jones on Monday

Caroline

An update on matters that Gabs might find useful.

Regards

out of scope




KiwiRail Holdings Ltd (KiwiRail)

- Minister Twyford has advised Trevor Janes of Ministers' decision to remove him as Chair of KiwiRail
- MOF instructed the Tsy to interview Greg Miller for the Chair role at KiwiRail
- Mr Miller is the Managing Director at Toll Group, a large logistics company and a significant customer of KiwiRail
- Any announcement of Mr Miller's potential involvement in KiwiRail could not occur prior to 1 June as Mr Miller has retention and notice arrangements with Toll Group
- Tsy has interviewed Mr Miller for the Chair role. However, Mr Miller has made clear his expectation is to have a Managing Director role (which is significantly different from a Chair role)
- The Tsy does not support a Managing Director role at KiwiRail (for anyone not just Mr Miller) due to (i) the concentration of power in an entity that receives significant Crown funding each year, and (ii) the potential impact to the Board, management and other stakeholders (e.g. unions, key customers)
- If Ministers wish to proceed with a Managing Director role for Mr Miller, there are issues in KiwiRail's Company Constitution and the Companies Act that would need to be resolved. These issues would exist even if Mr Miller was appointed Chair to KiwiRail and entered into a consultancy arrangement with KiwiRail.

- The Tsy is drafting advice setting out alternatives for Ministers to consider early next week

out of scope



From: Brian Roche <s9(2)(a)>
Sent: Monday, 21 May 2018 6:39 PM
To: Gael Webster [TSY]
Cc: Jon Grayson [TSY]
Subject: Re: KiwiRail panel comments

Thanks Gael

Apologies for the delay in getting back to you on this - I'm all fine with it.

Cheers

Brian

On Fri, May 18, 2018 at 10:32 AM, Gael Webster [TSY] <Gael.Webster@treasury.govt.nz> wrote:

Good morning

Thank you both for your comments/markups (Jon's in red) which I've tried to incorporate (my changes in blue). If you turn off mark ups you read without them.

Please review this version and signal you are happy with it or make any further comment/change.

Thanks

Gael

Gael Webster | Acting Head of Governance and Appointments | **The Treasury**

Tel: s9(2)(k) | s9(2)(g)(ii) | Gael.Webster@treasury.govt.nz

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From: Brian Roche <s9(2)(a)>
Sent: Thursday, 17 May 2018 10:03 PM
To: Gael Webster [TSY] <Gael.Webster@treasury.govt.nz>
Cc: Jon Grayson [TSY] <Jon.Grayson@treasury.govt.nz>
Subject: Re: KiwiRail panel comments

Thanks Gael

You have made a lot of order out of a pretty random 90 minutes - well done!

My only comments would be around:

s9(2)(ba)(i)



Hope that all makes sense.

Cheers

Brian

On 17/05/2018, at 11:28 AM, Gael Webster [TSY] <Gael.Webster@treasury.govt.nz> wrote:

Hi Sir Brian

Many thanks for your participation in the panel.

Please find below what I have drafted regarding the candidates suitability.

I would appreciate your candid comments.

We are currently drafting a report which addresses the executive chair or consultancy type roles. The panels assessment forms the front part of that report.

Happy to discuss by phone if easier .

Jon I also seek your comments but thought it easier to get Sir Brian's first.

I will circulate the final version to you both for approval.

1. Greg Miller of Auckland is currently Managing Director/Chief Executive of Toll New Zealand a position he has held since 2008, His career started with a cadetship in Transport operations with Mainfreight Group to eventually being Global Development Manager. In 2000 he moved to Tranz Link Distribution as Group General Manager and also MD of Tranz Link International.
2. Mr Miller had various senior roles in Tranz Rail and Tranzlink, and was Toll Tranzlink Director and Group General Manager from 2003-2008. He led a restructure across the company until its NZ Government buyback in 2008, and chaired the Toll Tranzlink NZ: Fonterra Strategy Committee during this period.
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4. Mr Millers governance experience has been from his role at Toll, as Chairman of subsidiary companies; Toll Group NZ Ltd, Toll Networks Ltd, and Toll Finance Ltd. These boards comprise around four staff members so are more operationally focussed compared to boards within the SOE governance framework. He also has experience as Chairman and director of smaller entities in which he has an interest. Overall the panel viewed Mr Miller as a talented director with much to offer but more suited to a director role than a chair role within the current SOE governance framework.

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8. The panel notes that the candidate is required to give three month's notice to Toll.

Gael Webster | Acting Head of Governance and Appointments | The Treasury

Tel: s9(2)(k) s9(2)(g)(ii) Gael.Webster@treasury.govt.nz

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From: Gael Webster [TSY]
Sent: Tuesday, 22 May 2018 8:54 am
To: Chris Gregory [TSY]; Mark Donnell [TSY]
Subject: RE: Treasury Report KiwiRail Holdings Ltd and New Zealand Railways Corporation Update after Due Diligence v2

Hi Chris , Mark

I've read report and think it covers issues wel. I understand we are now asked to address the possibility of a new structure for KiwiRail. Not sure I can add anything on this issue.

Please let me know if require anything else from me today – flying back from Auckland soon I hope.

Gael

Gael Webster | Acting Head of Governance and Appointments | **The Treasury**
s9(2)(k) s9(2)(g)(ii) Gael.Webster@treasury.govt.nz

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From: Chris Gregory [TSY]
Sent: Sunday, 20 May 2018 1:26 PM
To: Gael Webster [TSY] <Gael.Webster@treasury.govt.nz>; Mark Donnell [TSY] <Mark.Donnell@treasury.govt.nz>
Subject: Treasury Report KiwiRail Holdings Ltd and New Zealand Railways Corporation Update after Due Diligence v2

Gael and Mark

I have played around with Gael's draft of the report (see attached).

Let's discuss on Monday morning with a view to finalising and getting JG to sign.

From: Gael Webster [TSY]
Sent: Wednesday, 23 May 2018 6:46 pm
To: Mark Donnell [TSY] <Mark.Donnell@treasury.govt.nz>
Subject: 3962476_version 2 Treasury Report_ KiwiRail Holdings Ltd and New Zealand Railways Corporation_ Update after Due Diligence.DOC

Hi Mark

Thanks for your efforts I'm happy with most of your changes.

Just a couple of changes made- note in blue and a change in third paragraph which I had done prior to turning mark up on..

Please note that Ministers don't appoint acting chairs- they are asked to act by letter.

Hope to discuss tomorrow.

Gael

Gael Webster | Acting Head of Governance and Appointments | **The Treasury**

Tel: s9(2)(k) s9(2)(g)(ii) | Gael.Webster@treasury.govt.nz

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Treasury Report: version 2 Treasury Report: KiwiRail Holdings Ltd and New Zealand Railways Corporation: Update after Due Diligence

Date:	May 2018	Report No:	T2018/1337
		File Number:	CM-0-2-3-2018

Action Sought

	Action Sought	Deadline
Minister for State Owned Enterprises (Rt Hon Winston Peters)	Agree recommendations	June 2018
Minister of Finance (Hon Grant Robertson)	Agree recommendations	June 2018
Minister for Transport (Hon Phil Twyford)	For your information	None
Associate Minister for State Owned Enterprises (Hon Shane Jones)	For your information	None

Contact for Telephone Discussion (if required)

Name	Position	Telephone		1st Contact
Gael Webster	Acting Head, Governance and Appointments	s9(2)(k)	s9(2)(g)(ii)	✓
Chris Gregory	Manager, Commercial Operations – Governance and Performance			

Actions for the Ministers' Office Staff (if required)

Return the signed report to Treasury.

Note any feedback on the quality of the report

Enclosure: Yes (attached)

Treasury:3962476v1

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Treasury Report: version 2 Treasury Report: KiwiRail Holdings Ltd and New Zealand Railways Corporation: Update after Due Diligence

Executive Summary

The Minister of Finance instructed the Treasury to convene a panel to interview Greg Miller for the Chair of KiwiRail Holdings Ltd (KiwiRail). Mr Miller is currently the Managing Director of Toll New Zealand, a significant customer of KiwiRail.

As instructed we have undertaken due diligence on the proposed candidate Greg Miller. Mr Miller was interviewed on 14 May 2018 by a panel comprising Sir Brian Roche and Treasury representatives Gael Webster and Jon Grayson.

The panel consider that Mr Miller has deep experience across all aspects of the supply chain and significant operational knowledge of rail in New Zealand, ~~with and~~ governance experience from his role at Toll New Zealand. However, this experience appears to be on boards that are more operationally focussed compared to boards within the SOE governance framework.

The panel considered that while Mr Miller would have much to offer in an executive role he is not suited to the Chair role. Furthermore, if Mr Miller were to be the Chair of KiwiRail then there would need to be clear alignment with the Ministers expectations for the transformation strategy that Mr Miller advocates.

The panel's key concern is Mr Miller's expectation that the role would be a Managing Director/Executive Chair role at KiwiRail (i.e. a combination of the Chair and Chief Executive roles). This expectation is not consistent with the role of Chair of KiwiRail that Mr Miller was being interviewed for.

The Treasury does not support the appointment of executive chairs to SOEs, and the constitution of Kiwirail provides that a Managing Director (which an Executive Chair would be) shall only be appointed if the Board has first recommended the appointment to the Shareholders.

The Treasury recommends that governance arrangements for KiwiRail, including appointment of a new Chair, should be revisited late in 2018 once the current Ministry of Transport review of KiwiRail has arrived at recommendations on KiwiRail's structure and form.

Meanwhile the ~~pending~~ resignation of Mr Trevor Janes will leave KiwiRail without a Chair. At the same time the departure of Dame Paula Rebstock after nine years' service leaves the Board without a Deputy Chair. The Treasury recommends Ministers appoint Mike Pohio as acting Chair in the interim.

Recommended Action

We recommend that you:

- a **note** the findings of the panel that undertook an interview of Mr Greg Miller for the role of chair of KiwiRail Holdings Ltd (KiwiRail):
- Mr Miller has deep experience across all aspects of the supply chain and significant operational knowledge of rail in New Zealand,
 - But Mr Miller has limited experience in governance roles in non-operationally focussed boards,
 - And Mr Miller’s expectation is that the role would be a Managing Director/Executive Chair role at KiwiRail,
 - The panel does not support Mr Miller being appointed as Chair of KiwiRail

- b **note** that the Treasury does not support the role of executive Chairs in state owned enterprises (SOEs) or Crown entities, and that the KiwiRail constitution requires the board to recommend any appointment of a Managing Director or Executive Chair.

- c **agree** that the Ministry of Transport Review of Rail include consideration of the structure, form and governance arrangements of KiwiRail and of NZRC.

<i>Agree/disagree</i>	<i>Agree/disagree</i>
<i>Minister for State Owned Enterprises</i>	<i>Minister of Finance</i>

- a **agree** to ~~appointing~~ Mike Pohio ~~becoming as~~ acting Chair when the resignation of Trevor Janes is given effect and until a new Chair is appointed, following the Ministry of Transport Review of Rail.

<i>Agree/disagree</i>	<i>Agree/disagree</i>
<i>Minister for State Owned Enterprises</i>	<i>Minister of Finance</i>

Chris Gregory
Manager, Commercial Operations – Governance and Performance

Rt Hon Winston Peters
Minister for State Owned Enterprises

Hon Grant Robertson
Minister of Finance

Treasury Report: version 2 Treasury Report: KiwiRail Holdings Ltd and New Zealand Railways Corporation: Update after Due Diligence

Purpose of Report

1. Ministers' wish to replace the Chair of KiwiRail Holdings Ltd (KiwiRail). The KiwiRail Chair is also currently the Chair of the New Zealand Railways Corporation (NZRC). As the chair of NZRC is largely a compliance role, this report is focussed on the appointment of a Chair for KiwiRail.
2. The Minister of Finance instructed the Treasury to convene a panel to interview Mr Greg Miller for the role of Chair of KiwiRail. The purpose of this report is to advise on the interview panel's views on the suitability of Mr Miller to be Chair of the boards of KiwiRail and NZRC.

Background

3. KiwiRail is a State-Owned Enterprise (SOE) that owns and operates the rail network, rail freight and tourism operations, and the Interislander ferry operations in New Zealand. The company employs 3,400 staff (76% of whom are union members), carries 16% of the New Zealand's freight task and operates the network that allows 32 million commuter rail trips each year.
4. The Crown has provided over \$4 billion of funding to KiwiRail over the last 10 years and expects to maintain that, or a higher, level of funding to KiwiRail for the foreseeable future.

KiwiRail Board

5. The Shareholding Ministers agreed to ~~retire~~^{allow} Deputy Chair Dame Paula Rebstock ~~to retire~~ at the end of her term on 30 April 2018, reducing the board back to eight members. The board had extended to nine members as a temporary measure due to the extra workload arising from the Kaikoura earthquakes.
6. The current board composition is as follows:

Table 1. KiwiRail Board membership and skills as at 18 May 2018

Board Member	Appointed	Term ends	Skills
Trevor Janes (Chair)	30 Sept 2016	29 Sept 2019	Senior governance, business, accountancy, commercial, finance
John Dennehy	1 May 2017	31 Oct 2019	Commercial, investment banking and infrastructure financing including rail, asset management
Paul Harper	1 May 2016	30 April 2019	Maritime, shipping, logistics, supply chain, procurement, senior executive experience
John Leuchars	1 July 2010	30 April 2019	Civil engineer, professional director, international engineering consulting
Bob Major	1 May 2017	31 Oct 2019	Commercial, senior executive experience in large corporate, international, customer relationships, large scale organisational

			change
Sue McCormack	22 May 2017	31 Oct 2019	Legal, Insurance, Property
Mike Pohio	1 May 2016	30 April 2019	Governance, accountancy, finance, networking industry, CEO Tainui
Guy Royal	1 Nov 2012	31 Oct 2018	Commercial lawyer, cultural business investment, international

Ministers' Instructions

7. The Minister of Transport met with Mr Janes on 8 May 2018 and informed him of Ministers' intentions to replace him as Chair of KiwiRail. Mr Janes is considering his position and is expected to resign by 30 June 2018.
8. -The Minister of Finance instructed the Treasury to convene a panel to interview Mr Miller for the role of Chair of KiwiRail. Mr Miller was interviewed on 14 May 2018 by a panel led by Sir Brian Roche. Ministers selected Sir Brian Roche as a suitable independent chair to carry out this task. Assisting Sir Brian Roche were Treasury representatives Gael Webster (Acting Head, Governance and Appointments) and Jon Grayson (Deputy Secretary, Commercial and Financial Operations).
9. The Panel was asked to provide advice on the suitability of the candidate for the role of the Chair of KiwiRail (and NZRC if the current approach to dual chairs is maintained).

Panel Assessment

1. Greg Miller of Auckland is currently the Managing Director/Chief Executive of Toll New Zealand a position he has held since 2008. His career started with a cadetship in Transport operations with the Mainfreight Group to eventually being Global Development Manager. In 2000 he moved to Tranz Link Distribution as Group General Manager and also Managing Director of Tranz Link International.
2. Mr Miller had various senior roles in Tranz Rail (which at the time owned what is now KiwiRail) and Tranzlink, and was Toll Tranzlink Director and Group General Manager from 2003-2008. He led a restructure across the company until the Government buyback of the rail assets in 2008, and chaired the Toll Tranzlink NZ: Fonterra Strategy Committee during this period.
3. s9(2)(g)(i) Mr Miller also has a three month notice period with Toll New Zealand.
4. Mr Miller presented as a confident and experienced Managing Director/CEO who was focussed, energetic and driven. He described himself as both pragmatic and innovative, a cultural leader and systems architect who leads from the front and sets high standards. The panel considered Mr Miller very knowledgeable and experienced in all aspects of the supply chain across rail, road, sea and air freight with significant knowledge of rail operations and logistics. He would bring to the board freight industry experience both in NZ and internationally and rail experience, which skills are not well covered on the board at present.
5. Mr Miller's governance experience derives from his role at Toll, as chairman of subsidiary companies; Toll Group NZ Ltd, Toll Networks Ltd, and Toll Finance Ltd. However, these boards appear to be more operationally focussed compared to boards within the SOE governance framework. He also has experience as chairman and director of smaller entities in which he has an interest, has Iwi (Waikato Tainui) governance experience, and has entrepreneurial interests in technology /start-up companies.

6. Overall the panel considered that Mr Miller was smart, with a strong personality, and would be controlling in his approach to governance and quite operationally focussed.
7. Mr Miller's ambition for rail is significantly different from the strategy that has been operating in recent years. He signalled an intention for significant transformation and change and considers that this is also the shareholders' expectation. The Treasury notes that Governments' ambitions for rail have largely been restrained by budget limits rather than a lack of transformational ambition. Mr Miller's ambitions would likely require significant additional capital investment in KiwiRail and Ministers would need to be confident the required funding was available. The panel viewed Mr Miller as a talented logistics executive with much to offer a company in this industry, but our assessment is that he would be more suited to an executive role rather than to the Chair role within the current SOE governance framework.
8. Mr Miller was clear that he was not interested in the Chair role but rather that his interest was in an Executive Chair role. He expects to work in the business 3-4 days per week in the first year of his tenure to study what KiwiRail (and NZRC) would need to do to transform its operations to a customer-facing efficient freight/rail/passenger/tourist business. Mr Miller would then intend working one day a week.
9. The Treasury does not support the appointment of Executive Chairs or Managing Directors for publicly-funded entities, including SOEs. The Treasury considers there are important governance disciplines and protections that are best served by separating governance from executive management. [This is reflected in the Owners Expectation Manual.](#)
10. The constitution of KiwiRail does provide for a Managing Director for time-limited duties. The constitution sets out that this appointment would be at the election of the board (rather than the shareholder) and that the board determine the role, responsibilities and remuneration of the Managing Director and then seek approval and confirmation of that appointment from Shareholding Ministers.

Acting Chair

11. ~~Meanwhile -~~ The pending departure of Mr Janes and the recent retirement of Dame Paula Rebstock will leave KiwiRail with no Chair or Deputy Chair.
12. At the same time the Ministry of Transport and the Treasury are conducting a review of rail which will, among other issues, consider the form, structure and governance of KiwiRail and NZRC. The Treasury expect this review will recommend changes to KiwiRail and NZRC that would flow through to changes to the boards of those entities. Given the timing of the review (recommendations expected by the end of October 2018) the Treasury recommends holding off on any appointment of a new Chair of KiwiRail until after those recommendations are known.
13. In the interim the Treasury recommends Shareholding Ministers appoint Mr Mike Pohio as acting Chair of KiwiRail and of NZRC. Mr Pohio has been on the board of KiwiRail since 1 May 2016 and whilst not the longest serving member the Treasury consider him most suited to the task. Mr Pohio was previously on the board of Transpower and is currently on the board of NIWA, the University of Waikato and Panuku Development Auckland. He was previously CEO of Tainui Holdings Ltd and has a background in accountancy. His CV is attached as Annex I
14. If Shareholding Ministers agree then the Treasury will provide a letter to confirm Mr Pohio as acting Chair.

Next Steps

15. The next steps for this matter are:

- Ministers to provide their feedback on the issues raised by the Treasury
- The Treasury to follow up with Mr Janes on the timing of his resignation from the Chair of KiwiRail
- Ministers to agree to ~~appointment of~~ Mike Pohio ~~as an~~ becoming acting chair until alternative arrangements are put in place
-

DRAFT

From: Gael Webster [TSY]
Sent: Wednesday, 23 May 2018 3:31 pm
To: Mark Donnell [TSY] <Mark.Donnell@treasury.govt.nz>
Subject: 3962476_version 2 Treasury Report_ KiwiRail Holdings Ltd and New Zealand Railways Corporation_ Update after Due Diligence.DOC

Where Ive got to so far
Gael

Gael Webster | Acting Head of Governance and Appointments | **The Treasury**
Tel: s9(2)(k) s9(2)(g)(ii) | Gael.Webster@treasury.govt.nz

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Treasury Report: version 2 Treasury Report: KiwiRail Holdings Ltd and New Zealand Railways Corporation: Update after Due Diligence

Date:	May 2018	Report No:	T2018/1337
		File Number:	CM-0-2-3-2018

Action Sought

	Action Sought	Deadline
Minister for State Owned Enterprises (Rt Hon Winston Peters)	Agree recommendations	June 2018
Minister of Finance (Hon Grant Robertson)	Agree recommendations	June 2018
Minister for Transport (Hon Phil Twyford)	For your information	None
Associate Minister for State Owned Enterprises (Hon Shane Jones)	For your information	None

Contact for Telephone Discussion (if required)

Name	Position	Telephone		1st Contact
Gael Webster	Acting Head, Governance and Appointments	s9(2)(k)	s9(2)(g)(ii)	✓
Chris Gregory	Manager, Commercial Operations – Governance and Performance			

Actions for the Ministers' Office Staff (if required)

Return the signed report to Treasury.

Note any feedback on the quality of the report

Enclosure: **Yes (attached)**

DRAFT

Treasury Report: version 2 Treasury Report: KiwiRail Holdings Ltd and New Zealand Railways Corporation: Update after Due Diligence

Executive Summary

The Minister of Finance instructed the Treasury to convene a panel to interview Greg Miller for the Chair of KiwiRail Holdings Ltd (KiwiRail). Mr Miller is currently the Managing Director of Toll New Zealand, a significant customer of KiwiRail.

As instructed we have undertaken due diligence on the proposed candidate Greg Miller. Mr Miller was interviewed on 14 May 2018 by a panel comprising Sir Brian Roche and Treasury representatives Gael Webster and Jon Grayson.

The panel consider that Mr Miller has:

- deep experience across all aspects of the supply chain and significant operational knowledge of rail in New Zealand
- governance experience from his role at Toll New Zealand, however, this experience appears to be on boards that are more operationally focussed compared to boards within the SOE governance framework.

The panel considered Mr Miller would have much to offer but is more suited to an executive role not the chair role, and that their needs to clear alignment with the Ministers expectations for the transformation strategy that Mr Miller is advocating.

The panel's key concern is Mr Miller's expectation that the role would be a Managing Director/Executive Chair role at KiwiRail (i.e. a combination of the chair and chief executive roles). This expectation is not consistent with the role of Chair of KiwiRail that Mr Miller was being interviewed for.

The panel is also of the view that he should not be appointed to the role of Chair and director of KiwiRail Holdings Ltd and NZRC due to his current expectation of the role to be that of an executive chair which is not consistent with the current SOE governance framework.

The Treasury does not support the appointment of executive chairs to SOEs, and the constitution of Kiwirail provides that no Managing Director (essentially an executive chair) shall be appointed unless the Board has recommended the appointment to the Shareholders.

The Treasury recommends that governance arrangements for KiwiRail, including an executive chair role, should be revisited in the current Ministry of Transport review of KiwiRail.

The Treasury recommends Ministers agree to Mike Pohio becoming an acting chair in the interim.

Recommended Action

We recommend that you:

: version 2 Treasury Report: KiwiRail Holdings Ltd and New Zealand Railways Corporation: Update after Due Diligence Page 3

- a **note** the findings of the panel that undertook an interview of Greg Miller for the role of chair of KiwiRail Holdings Ltd (KiwiRail):
- Mr Miller has deep experience across all aspects of the supply chain and significant operational knowledge of rail in New Zealand
 - Mr Miller's expectation that the role would be a Managing Director/Executive Chair role at KiwiRail
 - The panel does not support Mr Miller being appointed as Chair of KiwiRail
- b **note** that the Treasury does not support the role of executive chairs in state owned enterprises (SOEs) or crown entities and the KiwiRail constitution requires the board to recommend an executive chair (managing director) appointment
- c **agree** that the Ministry of Transport review of KiwiRail include consideration of the role of an executive chair as part of the governance arrangements

*Agree/disagree**Minister for State Owned Enterprises**Agree/disagree**Minister of Finance*

- a **agree** to Mike Pohio becoming acting chair when the resignation of Trevor Janes is given effect and until a new chair is appointed.

*Agree/disagree**Minister for State Owned Enterprises**Agree/disagree**Minister of Finance*

Chris Gregory

Manager, Commercial Operations – Governance and Performance

Rt Hon Winston Peters

Minister for State Owned Enterprises

Hon Grant Robertson

Minister of Finance

Treasury Report: version 2 Treasury Report: KiwiRail Holdings Ltd and New Zealand Railways Corporation: Update after Due Diligence

Purpose of Report

1. Ministers' wish to replace the Chair of KiwiRail Holdings Ltd (KiwiRail). The KiwiRail Chair is also currently the Chair of the New Zealand Railways Corporation (NZRC). As the chair of NZRC is largely a compliance role, this report is focussed on matters in relation to the appointment of a Chair for KiwiRail
2. The Minister of Finance instructed the Treasury to convene a panel to interview Greg Miller for the Chair of KiwiRail. The purpose of this report is to advise on (i) the interview panel's views on the suitability of Mr Miller to be Chair of the boards of KiwiRail and NZRC.
3. The purpose of this report is to advise the interview panel's views on the suitability of the candidate Mr Miller to be Chair of the boards of KiwiRail Holdings Ltd (KiwiRail).
4. In the process of interviewing Mr Miller it became apparent that he is seeking an executive chair role. The Treasury considers this a very different role from the "norm" in public sector governance, particularly where oversight is required of significant public funds. It also requires approval of the KiwiRail Board under the Constitution of KiwiRail.

Background

5. KiwiRail is a State Owned Enterprise (SOE) that owns and operates the rail network and the Interislander ferry operations in New Zealand. The company employs 3,400 staff (76% of whom are union members), carries 16% of the New Zealand's freight task and operates the network that allows 32 million commuter trips each year. The Crown has provided over \$4 billion of funding to KiwiRail over the last 10 years.

KiwiRail Board

6. The Shareholding Ministers agreed to retire Deputy Chair Dame Paula Rebstock at the end of her term on 30 April 2018, reducing the board back to eight members. The board had extended to nine members as a temporary measure due to the extra workload arising from the Kaikoura earthquakes.
7. The current board composition is as follows:

Table 1. KiwiRail Board membership and skills as at 18 May 2018

Board Member	Appointed	Term ends	Skills
Trevor Janes (Chair)	30 Sept 2016	29 Sept 2019	Senior governance, business, accountancy, commercial, finance
John Dennehy	1 May 2017	31 Oct 2019	Commercial, investment banking and infrastructure financing including rail, asset management
Paul Harper	1 May 2016	30 April 2019	Maritime, shipping, logistics, supply chain, procurement, senior executive experience
John Leuchars	1 July 2010	30 April 2019	Civil engineer, professional director,

			international engineering consulting
Bob Major	1 May 2017	31 Oct 2019	Commercial, senior executive experience in large corporate, international, customer relationships, large scale organisational change
Sue McCormack	22 May 2017	31 Oct 2019	Legal, Insurance, Property
Mike Pohio	1 May 2016	30 April 2019	Governance, accountancy, finance, networking industry, CEO Tainui
Guy Royal	1 Nov 2012	31 Oct 2018	Commercial lawyer, cultural business investment, international

Ministers' Instructions

8. The Minister of Transport met with Mr Janes on 8 May 2018 and informed him of Ministers' intentions to replace him as Chair of KiwiRail. Mr Janes is considering his position and is expected to resign by 30 June 2018.
9. As instructed by the Minister of Finance, the Treasury has convened a panel and undertaken an interview of Mr Miller for the role of Chair of KiwiRail. Mr Miller was interviewed on 14 May 2018 by a panel comprising Sir Brian Roche and Treasury representatives Gael Webster (Acting Head, Governance and Appointments) and Jon Grayson (Deputy Secretary, Commercial and Financial Operations).
10. Ministers selected Sir Brian Roche as a suitable independent chair to carry out this task.
11. The Panel was asked to provide advice on the suitability of the candidate for the role of the Chair of KiwiRail (and NZRC if the current approach to dual chairs is maintained).

Panel Assessment

1. Greg Miller of Auckland is currently the Managing Director/Chief Executive of Toll New Zealand a position he has held since 2008. His career started with a cadetship in Transport operations with the Mainfreight Group to eventually being Global Development Manager. In 2000 he moved to Tranz Link Distribution as Group General Manager and also Managing Director of Tranz Link International.
2. Mr Miller had various senior roles in Tranz Rail (which at the time owned what is now KiwiRail's above rail operations) and Tranzlink, and was Toll Tranzlink Director and Group General Manager from 2003-2008. He led a restructure across the company until its Government buyback in 2008, and chaired the Toll Tranzlink NZ: Fonterra Strategy Committee during this period.
3. Mr Miller presented as a very confident and experienced Managing Director/CEO who was focussed, energetic and driven. He described himself as both pragmatic and innovative, a cultural leader and systems architect who leads from the front and sets high standards. The panel considered Mr Miller deeply knowledgeable and experienced in all aspects of the supply chain across rail, road, sea and air freight with significant knowledge of rail operations and logistics. He would bring to the board highly valuable freight industry experience both in NZ and internationally and rail experience, which skills are not well covered on the board at present.
4. Mr Miller's governance experience derives from his role at Toll, as chairman of subsidiary companies; Toll Group NZ Ltd, Toll Networks Ltd, and Toll Finance Ltd. These boards appear to be more operationally focussed compared to boards within the SOE governance framework. He also has experience as chairman and director of

smaller entities in which he has an interest, has Iwi (Waikato Tainui) governance experience, and has entrepreneurial interests in technology /start-up companies.

5. Overall the panel considered that s9(2)(g)(i) [REDACTED]
[REDACTED]
The Panel viewed Mr Miller as a talented logistics executive with much to offer a company in this industry, but our assessment is that this would not be in a chair role within the current SOE governance framework.
6. His ambition for rail is significantly different from the strategy that has been operating in recent years. That signals his intention of significant transformation and change. He understands that this is the shareholders' expectation. He expects to work in the business 3-4 days per week in the first year of his tenure to study what KiwiRail (and NZRC) need to do to transform its operations to a customer facing efficient freight/rail/passenger/tourist business. Mr Miller would then intend working one day a week.
7. The key concern of the panel is that it was interviewing Mr Miller for the chair role while in fact he wants a different role, namely Executive Chair. This raises the question of what executive role Mr Miller would be contracted to undertake, where this executive role would fit within the organisational structure of KiwiRail and whether such an arrangement has shareholder approval.
8. The Panel considered that there needs to be a clear strategy document of what shareholders want out of KiwiRail to ensure the candidates' expectations matched the shareholders' expectations and that the shareholder is fully apprised of the likely implications of a very different approach to the governance of KiwiRail, and is sufficiently agile to keep up with his aspirations. Furthermore the panel considered that Mr Miller's ambitions would likely cost significant additional capital expenditure by KiwiRail, the costs and impacts of which need to be worked through.
9. s9(2)(a) [REDACTED] Mr Miller also has a three month notice period with Toll New Zealand.

The Treasury View of Executive Chair Role

Governance for KiwiRail as an SOE

10. KiwiRail is currently structured as an SOE and is incorporated under the Companies Act 1993. Under this structure, Ministers effectively delegate responsibility for governance of KiwiRail to the board. In turn, the role of the board is to oversee operational management of the company.
11. In our view, for as long as KiwiRail is structured as an SOE or in a corporate form, it is critical that independence between the chair and chief executive roles at KiwiRail is maintained. Independence can only be achieved by maintaining a clear division between the governance and operational management for KiwiRail.
12. In our view, the following unresolved issues should be considered by Ministers before significant decisions are made on the governance, (including an executive chair role) of KiwiRail:
 - *The Role of Rail in New Zealand.* The Ministry of Transport is leading a review of the role of rail in New Zealand. We anticipate that an output of this review will be a clear view on the purpose of rail and the benefits that are received from the Crown's investment.

13. We recommend that Ministers instruct the Ministry of Transport to include consideration of an executive chair as part of their consideration of governance arrangements in its rail review prior to making significant changes to the chair role at KiwiRail.

Acting Chair

14. Due to the pending departure of Mr Janes and there being no Deputy Chair on the KiwiRail board, the Treasury recommend that Ministers agree to an acting chair until a new chair is appointed and recommend Mike Pohio for this role.
15. Mr Pohio has been on the board since 1 May 2016 and whilst not the longest serving member, the current Chair and the Treasury consider him most suited to the task. Mr Pohio was previously on the board of Transpower and is currently on the board of NIWA, the University of Waikato and Panuku Development Auckland. He was previously CEO of Tainui Holdings Ltd and has a background in accountancy. His CV is attached as Annex I
16. If shareholding Ministers agree, the Treasury will provide a letter to confirm Mr Pohio as acting chair if agreed.

Next Steps

17. The next steps for this matter are:
 - Ministers to provide their feedback on the issues raised by the Treasury
 - The Treasury to follow up with Mr Janes on the timing of his resignation from the Chair of KiwiRail
 - Ministers to agree to appointment of Mike Pohio as an acting chair until alternative arrangements are put in place

From: Gael Webster [TSY]
Sent: Thursday, 24 May 2018 11:46 am
To: Chris Gregory [TSY] <Chris.Gregory@treasury.govt.nz>; Mark Donnell [TSY] <Mark.Donnell@treasury.govt.nz>
Subject: 3957960_Treasury Report_ KiwiRail Holdings Ltd and New Zealand Railways Corporation_ Update after Due Diligence.DOC

Chris,

KiwiRail report for sending to Gabs and Jon Grayson if you are ok with it.

Gael

Gael Webster | Acting Head of Governance and Appointments | **The Treasury**

Tel: s9(2)(k) | s9(2)(g)(ii) Gael.Webster@treasury.govt.nz

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Treasury Report: KiwiRail Holdings Ltd and New Zealand Railways Corporation: Update after Due Diligence

Date:	May 2018	Report No:	T2018/1337
		File Number:	CM-0-2-3-2018

Action Sought

	Action Sought	Deadline
Minister for State Owned Enterprises (Rt Hon Winston Peters)	Agree recommendations	June 2018
Minister of Finance (Hon Grant Robertson)	Agree recommendations	June 2018
Minister for Transport (Hon Phil Twyford)	For your information	None
Associate Minister for State Owned Enterprises (Hon Shane Jones)	For your information	None

Contact for Telephone Discussion (if required)

Name	Position	Telephone	1st Contact
Gael Webster	Acting Head, Governance and Appointments	s9(2)(k)	s9(2)(g)(ii) ✓
Chris Gregory	Manager, Commercial Operations – Governance and Performance		

Actions for the Ministers' Office Staff (if required)

Return the signed report to Treasury.

Note any feedback on the quality of the report

Enclosure: Yes (attached)

Treasury Report: KiwiRail Holdings Ltd and New Zealand Railways Corporation: Update after Due Diligence

Executive Summary

The Minister of Finance instructed the Treasury to convene a panel to interview Greg Miller for the Chair of KiwiRail Holdings Ltd (KiwiRail). Mr Miller is currently the Managing Director of Toll New Zealand, a significant customer of KiwiRail.

As instructed we have undertaken due diligence on the proposed candidate Greg Miller. Mr Miller was interviewed on 14 May 2018 by a panel comprising Sir Brian Roche and Treasury representatives Gael Webster and Jon Grayson.

The panel consider that Mr Miller has deep experience across all aspects of the supply chain and significant operational knowledge of rail in New Zealand, with governance experience from his role at Toll New Zealand. However, this experience appears to be on boards that are more operationally focussed compared to boards within the SOE governance framework.

The panel considered that while Mr Miller would have much to offer in an executive role he is not suited to the Chair role. Furthermore, if Mr Miller were to be the Chair of KiwiRail then there would need to be clear alignment with the Ministers expectations for the transformation strategy that Mr Miller advocates.

The panel's key concern is Mr Miller's expectation that the role would be a Managing Director/Executive Chair role at KiwiRail (i.e. a combination of the Chair and Chief Executive roles). This expectation is not consistent with the role of Chair of KiwiRail that Mr Miller was being interviewed for.

The Treasury does not support the appointment of executive chairs to SOEs, and the constitution of Kiwirail provides that a Managing Director (which an Executive Chair would be) shall only be appointed if the Board has first recommended the appointment to the Shareholders.

The Treasury recommends that governance arrangements for KiwiRail, including appointment of a new Chair, should be revisited late in 2018 once the current Ministry of Transport review of KiwiRail has arrived at recommendations on Kiwi Rail's structure and form.

Meanwhile the pending resignation of Mr Trevor Janes will leave KiwiRail without a Chair. At the same time the departure of Dame Paula Rebstock after nine years' service leaves the Board without a Deputy Chair. The Treasury recommends Ministers appoint Mike Pohio as acting Chair in the interim.

Recommended Action

We recommend that you:

- a **note** the findings of the panel that undertook an interview of Mr Greg Miller for the role of chair of KiwiRail Holdings Ltd (KiwiRail):
- Mr Miller has deep experience across all aspects of the supply chain and significant operational knowledge of rail in New Zealand,
 - Mr Miller has limited experience in governance roles in non-operationally focussed boards,
 - Mr Miller's expectation is that the role would be a Managing Director/Executive Chair role at KiwiRail,
 - The panel does not support Mr Miller being appointed as Chair of KiwiRail
- b **note** that the Treasury does not support the role of executive Chairs in state owned enterprises (SOEs) or Crown entities, and that the KiwiRail constitution requires the board to recommend any appointment of a Managing Director or Executive Chair
- c **agree** that the Ministry of Transport Review of Rail include consideration of the structure, form and governance arrangements of KiwiRail and of NZRC

*Agree/disagree**Minister for State Owned Enterprises**Agree/disagree**Minister of Finance*

- a **agree** to Mike Pohio becoming acting Chair when the resignation of Trevor Janes is given effect and until a new Chair is appointed, following the Ministry of Transport Review of Rail.

*Agree/disagree**Minister for State Owned Enterprises**Agree/disagree**Minister of Finance*

Chris Gregory

Manager, Commercial Operations – Governance and Performance

Rt Hon Winston Peters

Minister for State Owned Enterprises

Hon Grant Robertson

Minister of Finance

Treasury Report: KiwiRail Holdings Ltd and New Zealand Railways Corporation: Update after Due Diligence

Purpose of Report

1. Ministers' wish to replace the Chair of KiwiRail Holdings Ltd (KiwiRail). The KiwiRail Chair is also currently the Chair of the New Zealand Railways Corporation (NZRC). As the chair of NZRC is largely a compliance role, this report is focussed on the appointment of a Chair for KiwiRail.
2. The Minister of Finance instructed the Treasury to convene a panel to interview Mr Greg Miller for the role of Chair of KiwiRail. The purpose of this report is to advise on the interview panel's views on the suitability of Mr Miller to be Chair of the boards of KiwiRail and NZRC.

Background

3. KiwiRail is a State-Owned Enterprise (SOE) that owns and operates the rail network, rail freight and tourism operations, and the Interislander ferry operations in New Zealand. The company employs 3,400 staff (76% of whom are union members), carries 16% of the New Zealand's freight task and operates the network that allows 32 million commuter rail trips each year.
4. The Crown has provided over \$4 billion of funding to KiwiRail over the last 10 years and expects to maintain that, or a higher, level of funding to KiwiRail for the foreseeable future.

KiwiRail Board

5. The Shareholding Ministers agreed to retire Deputy Chair Dame Paula Rebstock at the end of her term on 30 April 2018, reducing the board back to eight members. The board had extended to nine members as a temporary measure due to the extra workload arising from the Kaikoura earthquakes.
6. The current board composition is as follows:

Table 1. KiwiRail Board membership and skills as at 18 May 2018

Board Member	Appointed	Term ends	Skills
Trevor Janes (Chair)	30 Sept 2016	29 Sept 2019	Senior governance, business, accountancy, commercial, finance
John Dennehy	1 May 2017	31 Oct 2019	Commercial, investment banking and infrastructure financing including rail, asset management
Paul Harper	1 May 2016	30 April 2019	Maritime, shipping, logistics, supply chain, procurement, senior executive experience
John Leuchars	1 July 2010	30 April 2019	Civil engineer, professional director, international engineering consulting
Bob Major	1 May 2017	31 Oct 2019	Commercial, senior executive experience in large corporate, international, customer relationships, large scale organisational change

Sue McCormack	22 May 2017	31 Oct 2019	Legal, Insurance, Property
Mike Pohio	1 May 2016	30 April 2019	Governance, accountancy, finance, networking industry, CEO Tainui
Guy Royal	1 Nov 2012	31 Oct 2018	Commercial lawyer, cultural business investment, international

Ministers' Instructions

7. The Minister of Transport met with Mr Janes on 8 May 2018 and informed him of Ministers' intentions to replace him as Chair of KiwiRail. Mr Janes is considering his position and is expected to resign by 30 June 2018.
8. The Minister of Finance instructed the Treasury to convene a panel to interview Mr Miller for the role of Chair of KiwiRail. Mr Miller was interviewed on 14 May 2018 by a panel led by Sir Brian Roche. Ministers selected Sir Brian Roche as a suitable independent chair to carry out this task. Assisting Sir Brian Roche were Treasury representatives Gael Webster (Acting Head, Governance and Appointments) and Jon Grayson (Deputy Secretary, Commercial and Financial Operations).
9. The Panel was asked to provide advice on the suitability of the candidate for the role of the Chair of KiwiRail (and NZRC if the current approach to dual chairs is maintained).

Panel Assessment

10. Greg Miller of Auckland is currently the Managing Director/Chief Executive of Toll New Zealand a position he has held since 2008. His career started with a cadetship in Transport operations with the Mainfreight Group to eventually being Global Development Manager. In 2000 he moved to Tranz Link Distribution as Group General Manager and also Managing Director of Tranz Link International.
11. Mr Miller had various senior roles in Tranz Rail (which at the time owned what is now KiwiRail) and Tranzlink, and was Toll Tranzlink Director and Group General Manager from 2003-2008. He led a restructure across the company until the Government buyback of the rail assets in 2008, and chaired the Toll Tranzlink NZ: Fonterra Strategy Committee during this period.
12. s9(2)(a) [REDACTED] Mr Miller also has a three month notice period with Toll New Zealand.
13. Mr Miller presented as a confident and experienced Managing Director/CEO who was focussed, energetic and driven. He described himself as both pragmatic and innovative, a cultural leader and systems architect who leads from the front and sets high standards. The panel considered Mr Miller very knowledgeable and experienced in all aspects of the supply chain across rail, road, sea and air freight with significant knowledge of rail operations and logistics. He would bring to the board freight industry experience both in NZ and internationally and rail experience, which skills are not well covered on the board at present.
14. Mr Miller's governance experience derives from his role at Toll, as chairman of subsidiary companies; Toll Group NZ Ltd, Toll Networks Ltd, and Toll Finance Ltd. However, these boards appear to be more operationally focussed compared to boards within the SOE governance framework. He also has experience as chairman and director of smaller entities in which he has an interest, has Iwi (Waikato Tainui) governance experience, and has entrepreneurial interests in technology /start-up companies.

15. s9(2)(g)(i)
16. Mr Miller's ambition for rail is significantly different from the strategy that has been operating in recent years. He signalled an intention for significant transformation and change and considers that this is also the shareholders' expectation. Mr Miller's ambitions would likely require significant additional capital investment in KiwiRail and Ministers would need to be confident the required funding was available as to date transformational ambitions have largely been constrained by budget limits. The panel viewed Mr Miller as a talented logistics executive with much to offer a company in this industry, but our assessment is that he would be more suited to an executive role rather than to the Chair role within the current SOE governance framework.
17. Mr Miller was clear that he was not interested in the Chair role but rather that his interest was in an Executive Chair role. He expects to work in the business 3-4 days per week in the first year of his tenure to study what KiwiRail (and NZRC) would need to do to transform its operations to a customer-facing efficient freight/rail/passenger/tourist business. Mr Miller would then intend working one day a week.
18. The Treasury does not support the appointment of Executive Chairs or Managing Directors for publicly-funded entities, including SOEs. The Treasury considers there are important governance disciplines and protections that are best served by separating governance from executive management. This is reflected in the Owners Expectation Manual.
19. The constitution of KiwiRail does provide for a Managing Director for time-limited duties. The constitution sets out that this appointment would be at the election of the board (rather than the shareholder) and that the board determine the role, responsibilities and remuneration of the Managing Director and then seek approval and confirmation of that appointment from Shareholding Ministers.

Acting Chair

20. The pending departure of Mr Janes and the recent retirement of Dame Paula Rebstock will leave KiwiRail with no Chair or Deputy Chair.
21. At the same time the Ministry of Transport and the Treasury are conducting a review of rail which will, among other issues, consider the form, structure and governance of KiwiRail and NZRC. The Treasury expect this review will recommend changes to KiwiRail and NZRC that would flow through to changes to the boards of those entities. Given the timing of the review (recommendations expected by the end of October 2018) the Treasury recommends holding off on any appointment of a new Chair of KiwiRail until after those recommendations are known.
22. In the interim the Treasury recommends Shareholding Ministers appoint Mr Mike Pohio as acting Chair of KiwiRail and of NZRC. Mr Pohio has been on the board of KiwiRail since 1 May 2016 and whilst not the longest serving member the Treasury consider him most suited to the task. Mr Pohio was previously on the board of Transpower and is currently on the board of NIWA, the University of Waikato and Panuku Development Auckland. He was previously CEO of Tainui Holdings Ltd and has a background in accountancy. His CV is attached as Annex I
23. If Shareholding Ministers agree then the Treasury will provide a letter to confirm Mr Pohio as acting Chair.

Next Steps

24. The next steps for this matter are:

- Ministers to provide their feedback on the issues raised by the Treasury
- The Treasury to follow up with Mr Janes on the timing of his resignation from the Chair of KiwiRail
- Ministers to agree to Mike Pohio becoming acting chair until alternative arrangements are put in place

Attached Documents

25. Attached to this report:

Annex I: CV for Mike Pohio

DRAFT

From: Gael Webster [TSY] <Gael.Webster@treasury.govt.nz>
Sent: Friday, 25 May 2018 1:23 pm
To: Chris Gregory [TSY] <Chris.Gregory@treasury.govt.nz>; Mark Donnell [TSY] <Mark.Donnell@treasury.govt.nz>
Subject: Fwd: KiwiRail

Fyi

Sent from my iPhone

Begin forwarded message:

From: Brian Roche <s9(2)(a)>
Date: 25 May 2018 at 11:24:58 AM NZST
To: <Gael.Webster@treasury.govt.nz>
Cc: <jon.grayson@treasury.govt.nz>
Subject: KiwiRail

Hi

Just thought you should know that I had a chat with the Minister of Finance earlier today around Greg Miller.

He is obviously thinking his way through things but was pretty clear that the idea of an Executive Chair wasn't on the agenda.

Cheers

Brian

Sent from my iPhone

-----Original Message-----

From: Gael Webster [TSY]

Sent: Wednesday, 30 May 2018 3:56 pm

To: Brian Roche <s9(2)(a)>

Subject: RE: KiwiRail

Hi Sir Brian

Just updating you that the report on our interview of Mr Miller is sitting with Gabs and is unlikely to be signed out until discussion with (including yourself I understand) and between the Ministers resolves issues around the nature of any appointment.

If you have any further thoughts on the matter please let me know.

Regards

Gael

Gael Webster | Acting Head of Governance and Appointments | The Treasury

Tel: s9(2)(k) s9(2)(g)(ii) | Gael.Webster@treasury.govt.nz

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-----Original Message-----

From: Brian Roche <s9(2)(a)>

Sent: Friday, 25 May 2018 11:25 AM

To: Gael Webster [TSY] <Gael.Webster@treasury.govt.nz>

Cc: Jon Grayson [TSY] <Jon.Grayson@treasury.govt.nz>

Subject: KiwiRail

Hi

Just thought you should know that I had a chat with the Minister of Finance earlier today around Greg Miller.

He is obviously thinking his way through things but was pretty clear that the idea of an Executive Chair wasn't on the agenda.

Cheers

Brian

Sent from my iPhone

From: Gael Webster [TSY]
Sent: Tuesday, 5 June 2018 1:04 pm
To: Daniel White <Daniel.White@parliament.govt.nz>
Cc: ^Parliament: Adrienne Reid <Adrianne.Reid@parliament.govt.nz>
Subject: RE: Kiwirail matters

Kia Ora Daniel

I had a message from Sir Brian an hour ago to ring him but have not been able to connect with him yet. I have no knowledge of any progress in the matter re: the KiwiRail Chair.

Regards
Gael

Gael Webster | Acting Head of Governance and Appointments | **The Treasury**
Tel: s9(2)(k) s9(2)(g)(ii) | Gael.Webster@treasury.govt.nz

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From: Daniel White <Daniel.White@parliament.govt.nz>
Sent: Tuesday, 5 June 2018 12:30 PM
To: Gael Webster [TSY] <Gael.Webster@treasury.govt.nz>
Cc: ^Parliament: Adrienne Reid <Adrianne.Reid@parliament.govt.nz>
Subject: Kiwirail matters

Kia ora korua

I understand from a note from Minister Jones that he has spoken to Brian Roche and there was nothing for me to progress with. Therefore I take it that everything is now in motion? Can you please as a matter of urgency advise of next steps and in particular if and when an announcement can be made about Greg Miller? The timing of the Greg Miller Kiwirail appointment is to coincide with a related appointments and these related appointments need to be announced as soon as possible.

Ngā mihi,

Daniel White

out of scope

From: Jon Grayson [TSY]
Sent: Thursday, 7 June 2018 10:16 AM
To: Gael Webster [TSY] <Gael.Webster@treasury.govt.nz>; Gabriel Makhoulf [TSY] <Gabriel.Makhoulf@treasury.govt.nz>
Cc: Bill Frecklington [TSY] <bill.frecklington@treasury.govt.nz>; Caroline Wahid [TSY] <Caroline.Wahid@treasury.govt.nz>; Mark Donnell [TSY] <Mark.Donnell@treasury.govt.nz>
Subject: RE: KiwiRail

Thanks for this background Gael.

It's clear that the KR constitution does not contemplate an Executive Chair. In practice an Exec Chair is a (big) step up from a Managing Director. Ordinarily a MD is not the chair. Perhaps a question for the lawyers but I expect the provisions for MD would apply to an Exec Chair, since a Chair is a director.

JDG

Sent with BlackBerry Work
www.blackberry.com

From: Gael Webster [TSY] <Gael.Webster@treasury.govt.nz>
Date: Thursday, 07 Jun 2018, 10:00 AM
To: Gabriel Makhoulf [TSY] <Gabriel.Makhoulf@treasury.govt.nz>, Jon Grayson [TSY] <Jon.Grayson@treasury.govt.nz>
Cc: Bill Frecklington [TSY] <bill.frecklington@treasury.govt.nz>, Caroline Wahid [TSY] <Caroline.Wahid@treasury.govt.nz>, Mark Donnell [TSY] <Mark.Donnell@treasury.govt.nz>
Subject: RE: KiwiRail

Gabs

The constitution permits an extension of a Managing Director for another three years.

An extract of the KR constitution which refers to Managing Directors is attached fyi. Other SOEs we have checked have similar provisions.

When MOMs were set up there were special fees approved by Ministers to be paid to the directors for extra work involved in preparing for listing.

Director Interests

Director Remuneration

None of the directors is entitled to any remuneration from

Meridian except for directors' fees and reasonable travelling, accommodation and other expenses incurred in the course of performing duties or exercising powers as directors. The Company's shareholders have approved annual fees of \$91,000 for each director, \$165,000 for the Chair, \$114,000 for the Deputy Chair and an additional aggregate allowance of \$70,000 for board committee work. These fees take effect from the date on which the Company is listed. Prior to this, shareholders agreed to the payment by the Company of additional fees of up to \$195,000 to compensate directors for additional work required for the transition to a mixed ownership model company.

Those fees were not to undertake the work of the management of the company. Rather, they were to reflect that additional work as directors was required for the listing process.

These are the talking notes for the Ministers on the options for an appointment of a chair for KiwiRail.

[18.06 Options for Ministers to consider for appointment of KR chair \(Treasury:3967337\)](#) [Add to worklist](#) .

Bill is available to assist today, Bill works Tuesday-Thursday.

I'll be very interested to see where this all lands on my return.

Regards
Gael

Gael Webster | Acting Head of Governance and Appointments | **The Treasury**

Tel: s9(2)(k) s9(2)(g)(ii) Gael.Webster@treasury.govt.nz

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From: Gabriel Makhoulf [TSY]
Sent: Thursday, 7 June 2018 7:38 AM
To: Gael Webster [TSY] <Gael.Webster@treasury.govt.nz>
Subject: RE: KiwiRail

Thanks Gael. Is that unique to KR or also in other SOEs? And is there any restriction on the fixed term being renewed for a further 3 years?

Gabs

Gabriel Makhoulf | Secretary to the Treasury | **The Treasury/Kaitohutohu Kaupapa Rawa**

Tel: s9(2)(k) | Gabriel.Makhoulf@treasury.govt.nz

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[UNCLASSIFIED]

From: Gael Webster [TSY]
Sent: Wednesday, 6 June 2018 6:24 PM
To: Gabriel Makhlouf [TSY] <Gabriel.Makhlouf@treasury.govt.nz>
Subject: KiwiRail

Gabs.

Fyi

The KR company constitution allows for shareholders to appoint a Managing Director (Executive chair) for a fixed term not exceeding three years on the recommendation of the KiwiRail Board.

Gael Webster | Acting Head of Governance and Appointments | The Treasury

Tel: s9(2)(k) | s9(2)(g)(ii) | Gael.Webster@treasury.govt.nz

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Treasury Report: KiwiRail Holdings Ltd and New Zealand Railways Corporation: Update after Due Diligence and Documentation to Confirm Appointments

Date:	13 June 2018	Report No:	T2018/1624
		File Number:	CM-0-2-3-2018

Action Sought

	Action Sought	Deadline
Minister for State Owned Enterprises (Rt Hon Winston Peters)	Agree to sign APH Committee documentation for submission to Cabinet Office	10.00am, Thursday 14 June 2018 (Cabinet Office deadline)
Minister of Finance (Hon Grant Robertson)	Agree to sign APH Committee documentation for submission to Cabinet Office	10.00am, Thursday 14 June 2018 (Cabinet Office deadline)

Contact for Telephone Discussion (if required)

Name	Position	Telephone	1st Contact
Bill Frecklington	Senior Advisor, Governance and Performance	s9(2)(k)	✓
Matthew Appleby	Acting Manager, Commercial Operations – Governance and Performance		

Actions for the Ministers' Office Staff (if required)

If signed, lodge APH Committee documentation with Cabinet Office by 10.00am, Thursday 14 June 2018 for consideration at the APH Committee on Wednesday 20 June 2018. Return the signed report to Treasury.

Note any feedback on the quality of the report

Enclosure: Yes (attached)

Treasury Report: KiwiRail Holdings Ltd and New Zealand Railways Corporation: Update after Due Diligence and Documentation to Confirm Appointments

Executive Summary

This report provides the draft Cabinet Committee documentation regarding new appointments of a Chair and Deputy Chair of KiwiRail Holdings Ltd (KiwiRail) and the Chair of New Zealand Railways Corporation (NZRC).

Treasury has conducted a due diligence process, comprising a panel interview of the prospective candidate for the Chair of KiwiRail, Greg Miller, and he is recommended for appointment. You have also identified Brian Corban as the proposed appointee for the Deputy Chair position. Mr Corban is a highly experienced company director, including several roles as Chair for Crown organisations and a previous term as Deputy Chair of KiwiRail. It is considered that no further due diligence is required for Mr Corban.

It has been the practice that the Chair of KiwiRail has also held the role of Chair of the property-holding entity NZRC and this report proposes the continuation of that practice by also appointing Mr Miller as Chair of NZRC.

You are asked to agree to an allowance of up to \$22,000 for Mr Miller's first year on the KiwiRail Board as special fees above the ordinary fees payable, to cover expected extra work relating to the review of rail and the KiwiRail insurance claim relating to the 2016 Kaikoura earthquake.

If you agree you are asked to sign the attached APH Committee documentation confirming the appointments. The documentation should be submitted to Cabinet Office by 10.00am on Thursday 14 June 2018 for consideration at the APH Committee meeting on Wednesday 20 June 2018.

Recommended Action

We recommend that you:

- a **agree** that Greg Miller be appointed as Chair of KiwiRail Holdings Ltd and of New Zealand Railways Corporation

Agree/disagree.
- b **agree** that Brian Corban be appointed as Deputy Chair of KiwiRail Holdings Ltd

Agree/disagree.
- c **agree** that the new Chair of KiwiRail Holdings Ltd be allocated an allowance of up to \$22,000 for his first year of office as special fees above the ordinary fees payable, to cover expected extra work relating to the review of rail and the KiwiRail insurance claim relating to the 2016 Kaikoura earthquake

Agree/disagree.

- d **agree** to sign the attached APH documentation confirming the appointments to KiwiRail Holdings Ltd and New Zealand Railways Corporation and the special fees approval for consideration at the Committee meeting on Wednesday 20 June 2018.

Agree/disagree.

Matthew Appleby
Acting Manager, Commercial Operation – Governance and Performance

Rt Hon Winston Peters
Minister for State Owned Enterprises

Hon Grant Robertson
Minister of Finance

Treasury Report: KiwiRail Holdings Ltd and New Zealand Railways Corporation: Update after Due Diligence and Documentation to Confirm Appointments

Purpose of Report

1. You are asked to sign and submit the attached APH Committee documentation confirming the appointments of the Chair and Deputy Chair of KiwiRail Holdings Ltd and the Chair of New Zealand Railways Corporation.

Background

2. Shareholding Ministers agreed to retire Deputy Chair Dame Paula Rebstock at the end of her term on 30 April 2018, reducing the board back to eight members. The board had extended to nine members as a temporary measure due to the extra workload arising from the Kaikoura earthquakes.
3. The current board composition is as follows:

Table 1. KiwiRail Board membership and skills as at June 2018 (term under consideration is shaded)

Board Member	Appointed	Term ends	Skills
Trevor Janes (Chair)	30 Sept 2016	29 Sept 2019	Senior governance, business, accountancy, commercial, finance
John Dennehy	1 May 2017	31 Oct 2019	Commercial, investment banking and infrastructure financing including rail, asset management
Paul Harper	1 May 2016	30 April 2019	Maritime, shipping, logistics, supply chain, procurement, senior executive experience
John Leuchars	1 July 2010	30 April 2019	Civil engineer, professional director, international engineering consulting
Bob Major	1 May 2017	31 Oct 2019	Commercial, senior executive experience in large corporate, international, customer relationships, large scale organisational change
Sue McCormack	22 May 2017	31 Oct 2019	Legal, Insurance, Property
Mike Pohio	1 May 2016	30 April 2019	Governance, accountancy, finance, networking industry, CEO Tainui
Guy Royal	1 Nov 2012	31 Oct 2018	Commercial lawyer, cultural business investment, international

Ministers' Instructions

4. The Minister of Transport met with Mr Trevor Janes on 8 May 2018 and informed him of Ministers' intentions to replace him as Chair of KiwiRail. Mr Janes is considering his position and was expected to resign by 30 June 2018. Treasury has had subsequent discussions with s9(2)(a)

s9(2)(a)

5. The Minister of Finance instructed the Treasury to convene a panel to interview Mr Miller for the role of Chair of KiwiRail. Mr Miller was interviewed on 14 May 2018 by a panel led by Sir Brian Roche. Ministers selected Sir Brian Roche as a suitable independent chair to carry out this task. Assisting Sir Brian Roche were Treasury representatives Gael Webster (Acting Head, Governance and Appointments) and Jon Grayson (Deputy Secretary, Commercial and Financial Operations).
6. The panel was asked to provide advice on the suitability of the candidate for the role of the Chair of KiwiRail (and NZRC if the current approach to dual chairs is maintained).

Chair Candidate

7. Greg Miller of Auckland is currently the Managing Director/Chief Executive of Toll New Zealand, a position he has held since 2008. His career started with a cadetship in Transport operations with the Mainfreight Group to eventually being Global Development Manager. In 2000 he moved to Tranz Link Distribution as Group General Manager and also Managing Director of Tranz Link International.
8. Mr Miller had various senior roles in Tranz Rail (which at the time owned what is now KiwiRail) and Tranzlink, and was Toll Tranzlink Director and Group General Manager from 2003-2008. He led a restructure across the company until the Government buyback of the rail assets in 2008, and chaired the Toll Tranzlink NZ Fonterra Strategy Committee during this period.
9. Mr Miller's current role at Toll Holdings would be a conflict with the KiwiRail Chair role and he will leave Toll if he is appointed to the KiwiRail Board. Mr Miller has a requirement to give three months notice to Toll of his departure and he will observe that obligation. This will result in a three months hiatus between his appointment and his commencement as Chair. It is unlikely that the current Chair would be prepared to continue acting in the role once a new Chair has been signalled. However, the Deputy Chair designate, Brian Corban, is prepared to be Acting Chair in the interim.

Deputy Chair Candidate

10. Brian Corban is an Auckland-based company director and lawyer. He has experience in leading companies through restructuring and deregulatory changes in the television, telecommunications, transport and electricity sectors. Mr Corban brings a wealth of experience in Crown governance, having been Chair of Genesis for ten years, Chair of Radio New Zealand Ltd, the Foundation Chair of Television New Zealand Ltd and has previously served as Deputy Chair of NZ Railways Corporation/KiwiRail in 2008, when it was in transition back to Crown ownership. He is also Chair of the Melanesian Trust Board, Board Member of Auckland War Memorial Museum, director of Ngatarawa Wines and a number of private companies and a trustee of various community trusts. His service to the community includes being a former Chair of Auckland City Mission and a Member of the Waitangi Tribunal. Mr Corban's appointment will bring expertise in Crown company governance, including structural change of entities and leadership that will greatly assist a new Chair in adjusting to the role.
11. Mr Corban has indicated that he would have no conflicts of interest in taking up a role as a director of KiwiRail and he is available to commence immediately. He has an expectation of being appointed as the Deputy Chair, but he advised that if there was a need to act in the Chair role for a brief period at the outset, he would be happy to do so.

NZRC

12. In June 2012 the Government announced that New Zealand Railways Corporation (trading as KiwiRail Group) would be restructured as a step towards putting the company on a more commercial footing. There were two main parts of the restructure: NZRC would continue to hold the 18,000 hectares of rail network land, from which no financial return will be expected, and on 1 January 2013, Kiwirail Group's freight, passenger, infrastructure and ferry businesses, together with rolling stock, rail infrastructure and plant and equipment, was transferred to a new state-owned enterprise – Kiwirail Holdings Ltd.
13. It has been the practice that the Chair of KiwiRail has also held the role of Chair of the property-holding entity, NZRC, and this report proposes the continuation of that practice by also appointing Mr Miller as Chair of NZRC. Trevor Janes would concurrently resign as Chair of both KiwiRail and NZRC.
14. There are three directors of NZRC, Mr Janes, Hon Paul East and Ms Sharon Shea. Both Paul East and Sharon Shea have terms that expire soon, on 31 October 2018. Treasury will liaise with the new Chair to discuss recommendations for membership of the Board beyond that date.

Diversity

15. The KiwiRail currently has one woman director (Sue McCormack) from a total of eight (12.5%). With the appointment of both Mr Miller and Mr Corban and the retirement of Mr Janes, the board will comprise nine members and the percentage of women will drop to 11%. There are two Maori directors, s9(2)(a)

Special Fees

16. The standard annual rate for a director of KiwiRail is \$44,109; however, the Board has a global pool approved each year for the whole board and the actual figure paid to any one director in a year may vary slightly from that shown, depending on responsibilities. The standard annual rate allowed for a Chair is double that of a director and for a Deputy Chair it is 1.25 times the director rate.
17. We note that you have an expectation that the new Chair will have a significant involvement in the government's review of rail that is currently underway. In turn the outcome of the review is likely to have some impact on the operations of KiwiRail itself. There is also an extra stream of work relating to progressing KiwiRail's insurance claim for damage and losses incurred in the 2016 Kaikoura earthquake. The Chair will be expected to undertake extra duties in finalising the claim.
18. There is precedent for the approval of special fees to be paid to chairs and/or directors for work required that is greater than the usual attendances expected on a board. We consider that the extra work relating to the rail review and insurance issues would increase the Chair's workload beyond that normally expected and would be justified in the approval of special fees. It is unusual for special fees to exceed 25% of the annual allowance in any one year and the recommendation is that an allocation of \$22,000 (approximately 25%) be provided for Mr Miller's first year of office, if he is appointed as Chair of KiwiRail. SOE fees are approved each year by the Minister and, if they are required in further years, the company can apply to have them rolled over.



Treasury Report: KiwiRail Holdings Ltd and New Zealand Railways Corporation: Documentation to Confirm Chair Appointment

Date:	23 July 2018	Report No:	T2018/2057
		File Number:	CM-0-2-3-2018

Action Sought

	Action Sought	Deadline
Minister for State Owned Enterprises (Rt Hon Winston Peters)	Agree to sign APH Committee documentation for submission to Cabinet Office	10.00am, Thursday 26 July 2018 (Cabinet Office deadline)
Minister of Finance (Hon Grant Robertson)	Agree to sign APH Committee documentation for submission to Cabinet Office	10.00am, Thursday 26 July 2018 (Cabinet Office deadline)

Contact for Telephone Discussion (if required)

Name	Position	Telephone	1st Contact
Gael Webster	Acting Manager, Governance and Appointments	s9(2)(k)	s9(2)(g)(ii) ✓

Actions for the Ministers' Office Staff (if required)

If signed, lodge APH Committee documentation with Cabinet Office by 10.00am, Thursday 26 July 2018 for consideration at the APH Committee on Wednesday 1 August 2018. Return the signed report to Treasury.

Note any feedback on the quality of the report

Enclosure: Yes (attached)

Treasury Report: KiwiRail Holdings Ltd and New Zealand Railways Corporation: Documentation to Confirm Chair Appointment

Executive Summary

You have identified Greg Miller as the proposed appointee for the Chair position on the boards of KiwiRail Holdings Ltd and New Zealand Railways Corporation.

You are asked to sign the attached APH Committee documentation confirming the appointment of Mr Miller. The documentation should be submitted to Cabinet Office by 10.00am on Thursday 26 July 2018 for consideration at the APH Committee meeting on Wednesday 1 August 2018.

Recommended Action

We recommend that you:

- a **agree** that Greg Miller be appointed as Chair of KiwiRail Holdings Ltd and New Zealand Railways Corporation for a term of three years from the date of appointment

Agree/disagree.

- b **agree** to sign the attached APH documentation confirming both appointments for consideration at the Committee meeting on Wednesday 1 August 2018.

Agree/disagree.

Gael Webster
Acting Manager, Governance and Appointments

Rt Hon Winston Peters
Minister for State Owned Enterprises

Hon Grant Robertson
Minister of Finance

Minister for State Owned Enterprises and Minister of Finance

Memorandum for Cabinet Appointments and Honours Committee

KiwiRail Holdings Ltd and New Zealand Railways Corporation: Board Appointments

Introduction

1. In this memorandum the Cabinet Appointments and Honours Committee is invited to note the intention of shareholding Ministers to make new appointments to the boards of KiwiRail Holdings Ltd and New Zealand Railways Corporation, as below:

Company	Person	Designation	Appointment/ Reappointment	Replacing
KiwiRail Holdings Ltd	Gregory John (Greg) <u>Miller</u>	Chair	Appointment	Trevor Janes
New Zealand Railways Corporation	Gregory John (Greg) <u>Miller</u>	Chair	Appointment	Trevor Janes

Background

2. These appointments are made in accordance with the guiding legislation and the constitutions of the companies, which stipulate that the shareholders may, at any time, appoint or reappoint directors to the boards. Directors are also appointed in accordance with the Cabinet-approved appointment process.
3. In the case of the appointment of the Chair detailed in the table above, shareholding Ministers will first appoint the individual concerned as director in accordance with the constitutions of the companies.

KiwiRail Holdings Ltd (KiwiRail)

4. KiwiRail Holdings Ltd (KiwiRail) is a state owned enterprise that owns and operates the New Zealand rail network and the Interisland ferry service. Major services include national freight, ferries and the Tranz Scenic long distance passenger services. Other KiwiRail divisions maintain the network and service the rolling stock. The company employs approximately 4,000 staff and maintains approximately 4,000 kilometres of rail track. KiwiRail operates with commercial objectives, however, currently requires Crown funding in order to meet its significant capital expenditure requirements.
5. It is the intention of shareholding Ministers to appoint Greg Miller as Chair and director for a first term of three years. Mr Miller has an obligation to give three months' notice to his current employer, Toll Holdings. He is proposing to work that notice period out before he takes up the KiwiRail Chair role. He will be replacing Trevor Janes as Chair who has resigned effective 30 June 2018.
6. Brian Corban was appointed as Deputy Chair and director from 10 July 2018 and is currently acting as Chair until a new Chair is appointed.

New appointment – Chair

Greg Miller, of Auckland, is currently the Managing Director/Chief Executive of Toll New Zealand, a position he has held since 2008. His career started with a cadetship in Transport operations with the Mainfreight Group to eventually being Global Development Manager. In 2000 he moved to Tranz Link Distribution as Group General Manager and also Managing Director of Tranz Link International. Mr Miller had various senior roles in Tranz Rail (which at the time owned what is now KiwiRail) and Tranzlink, and was Toll Tranzlink Director and Group General Manager from 2003-2008. He led a restructure across the company until the Government buyback of the rail assets in 2008, and chaired the Toll Tranzlink NZ Fonterra Strategy Committee during this period. His leadership in the transport industry in New Zealand, both in rail and road, gives him a strong base for leading the Board of Kiwirail. He would bring to the Board freight industry experience both in NZ and internationally and rail experience.

New Zealand Railways Corporation (NZRC)

7. In June 2012 the Government announced that New Zealand Railways Corporation (trading as KiwiRail Group) would be restructured in another step towards putting the company on a more commercial footing under its challenging Turnaround Plan. There were two main parts of the restructure: NZRC would continue to hold the 18,000 hectares of rail network land, from which no financial return will be expected, and on 1 January 2013, Kiwirail Group's freight, passenger, infrastructure and ferry businesses, together with rolling stock, rail infrastructure and plant and equipment, was transferred to a new state-owned enterprise – Kiwirail Holdings Ltd. NZRC has granted the use of the railway land to Kiwirail Holdings Ltd, and all NZRC's employees transferred to Kiwirail Holdings Ltd. NZRC is managed by Kiwirail Holdings Ltd under a long-term nominal fee management agreement, and therefore has limited operational activities.
8. It is the intention of shareholding Ministers to appoint Greg Miller as Chair and director for a first term of three years, concurrently with his role as Chair of KiwiRail. He will be replacing Trevor Janes who resigned from the Board effective 30 June.

New appointment – Chair

Greg Miller, of Auckland, is currently the Managing Director/Chief Executive of Toll New Zealand, a position he has held since 2008. His career started with a cadetship in Transport operations with the Mainfreight Group to eventually being Global Development Manager. In 2000 he moved to Tranz Link Distribution as Group General Manager and also Managing Director of Tranz Link International. Mr Miller had various senior roles in Tranz Rail (which at the time owned what is now KiwiRail) and Tranzlink, and was Toll Tranzlink Director and Group General Manager from 2003-2008. He led a restructure across the company until the Government buyback of the rail assets in 2008, and chaired the Toll Tranzlink NZ Fonterra Strategy Committee during this period. His leadership in the transport industry in New Zealand, both in rail and road, gives him a strong base for leading the Board of NZRC.

Certification

9. The appointment process included the following elements:

- due diligence interview with the candidate being considered for appointment
- background checks.

Conflicts of interest

10. Shareholding Ministers can confirm that appropriate enquiries concerning conflicts of interest have been carried out for the candidate in accordance with the Treasury appointment guidelines. The boards maintain an ongoing conflict of interest disclosure regime, in accordance with the Companies Act 1993. The appointments are also subject to the satisfactory completion of background checks.
11. The Chair designate of both KiwiRail and NZRC, Greg Miller, will be unable to take up either role until he has left his current role as Managing Director of Toll Holdings Ltd. He is required to work out a three months' notice period with Toll and will not join the boards until that time has elapsed.

Representativeness of appointments

12. Shareholding Ministers can confirm that full consideration has been given to the need for the membership of the boards concerned to have an appropriate gender, age, ethnic and geographical balance.
13. Once the appointment noted in this paper is made, the KiwiRail Board will have nine directors, one of whom is female. There are two Maori directors. Shareholding Ministers intend to appoint more female directors to the KiwiRail Board at the earliest opportunity.

Fees

14. The fees will be drawn from the remuneration approved for each board by shareholding Ministers. The rate for the chair is twice the ordinary unit rate. These fees have been set in accordance with Cabinet Minute CAB-16-MIN-0678. The fees were last reviewed in December 2016. The following table details the current unit rate of ordinary fees for each company.

Company	Unit rate per annum
KiwiRail	\$44,109
NZRC	\$18,000

Recommendations

15. It is recommended that the Cabinet Appointments and Honours Committee:

1. **note** the intention of shareholding Ministers to make the following appointments to the boards of two state-owned enterprises:

Company	Person	Designation	Appointment/ Reappointment	Term	Replacing
KiwiRail Holdings Ltd	Gregory John (Greg) <u>Miller</u>	Chair	Appointment	Three years from the date of appointment	Trevor Janes
New Zealand Railways Corporation	Gregory John (Greg) <u>Miller</u>	Chair	Appointment	Three years from the date of appointment	Trevor Janes

2. **note** that shareholding Ministers will first appoint the individual concerned as director, in accordance with the constitutions of the companies
3. **note** that the appointments are subject to the satisfactory completion of background checks.

Authorised for lodgement

Rt Hon Winston Peters
Minister for State Owned Enterprises

Authorised for lodgement

Hon Grant Robertson
Minister of Finance

Organisation Form

Cabinet Appointments and Honours Committee

All sections must be completed.

This form is available in Word format at <http://cabguide.cabinetoffice.govt.nz/>

Organisation

Kiwirail Holdings Ltd

Current Membership

Name	Age	City/Town	Date of original appointment	Expiry date of present term
Mr Brian Phillip Najib Corban (Acting Chair)	s9(2)(a)	Auckland	10/07/2018	30/06/2021
Mr John Dennehy		Auckland	1/05/2017	31/10/2019
Mr Paul Harper		Auckland	1/05/2016	30/04/2019
Mr John Mitchell Leuchars		Melbourne	6/11/2012	30/04/2019
Mr Robert Malcolm (Bob) Major		Mount Maunganui	1/05/2017	31/10/2019
Ms Susan Mary Anna (Sue) McCormack		Christchurch	22/05/2017	31/10/2019
Mr Michael Eric (Mike) Pohio		Hamilton	1/05/2016	30/04/2019
Mr Guy Richard Kiniwe Royal		Wellington	6/11/2012	31/10/2018

Brief Outline of the Functions and Responsibilities of the Organisation

KiwiRail Holdings Ltd (KiwiRail) is a state owned enterprise that owns and operates the New Zealand rail network and the Interisland ferry service. Major services include national freight, ferries and the Tranz Scenic long distance passenger services. Other KiwiRail divisions maintain the network and service the rolling stock. The company employs approximately 4,000 staff and maintains approximately 4,000 kilometres of rail track.

KiwiRail operates with commercial objectives, however, currently requires Crown funding in order to meet its significant capital expenditure requirements. The objective for KiwiRail is for it to grow its freight revenue to the extent that Crown funding requirements will reduce over time.

Use further pages, if required, to provide the information requested.

Date: 23/07/2018

Candidate CV Form

All sections must be completed.

This form should be completed in consultation with the candidate where possible.

This form is available in Word format at <http://cabguide.cabinetoffice.govt.nz/>

Name (family name in upper case; include title if appropriate)	Gregory John (Greg) MILLER
--	----------------------------

The Position


Organisation	KiwiRail Holdings Ltd
Position (chair/member etc)	Chair and Director
Term	Three years commencing from the date of appointment
Payment (per day and/or per year)	\$88,218 per annum

How the Candidate Meets the Needs of the Position

Skills and attributes the candidate will bring to the position (eg: business skills, community involvement, cultural awareness, regional perspective – as relevant to the needs of the position)	<p><u>Greg Miller</u>, of Auckland, is currently the Managing Director/Chief Executive of Toll New Zealand, a position he has held since 2008. His career started with a cadetship in Transport operations with the Mainfreight Group to eventually being Global Development Manager. In 2000 he moved to Tranz Link Distribution as Group General Manager and also Managing Director of Tranz Link International. Mr Miller had various senior roles in Tranz Rail (which at the time owned what is now KiwiRail) and Tranzlink, and was Toll Tranzlink Director and Group General Manager from 2003-2008. He led a restructure across the company until the Government buyback of the rail assets in 2008, and chaired the Toll Tranzlink NZ Fonterra Strategy Committee during this period. His leadership in the transport industry in New Zealand, both in rail and road, gives him a strong base for leading the Board of Kiwirail. He would bring to the Board freight industry experience both in NZ and internationally and rail experience.</p>
Possible conflicts of interest	Mr Miller is currently employed as Managing Director of Toll New Zealand, which would be a direct conflict with membership on the Kiwirail Board.
Proposals for conflict management (if applicable)	Mr Miller needs to provide three months' notice. It is not clear whether there would be any 'non-competition' requirement following his departure from Toll, but any appointment should be made subject to assurance that he has fulfilled all obligations he has to Toll.

Continue on next page if required

The Candidate

Name (family name in upper case; include title if appropriate)	Gregory John (Greg) MILLER
Address	s9(2)(a) 
Citizenship (if not New Zealand)	
Age	Unknown
Current or most recent employment (specify position and employer, include years)	Chief Executive, Toll New Zealand (2008-current)
Government board appointments held (current and previous, include years)	Nil
Private and/or voluntary sector board appointments held (current and previous, include years)	Chair, Toll Group NZ Ltd (2011-current) Chair, Toll Networks NZ Ltd (2011-current) Chair and shareholder, Hika Group (2012-current) Director, ASPAC Dairy Holdings Ltd (2017-current) Director, Omana Agri Ltd (2017-current)
Qualifications and experience (include significant work history and community involvement)	<u>Qualifications</u> Executive development program, Hong Kong University (2002) Diploma in Supply Chain Excellence, Monash University (1998) Fellow, Chartered Institute of Transport and Logistics <u>Previous employment</u> Director & Group General Manager, Toll Tranzlink (2003-2008) Group General Manager, Tranz Link Distribution (2000-2003) Global Development Manager, Mainfreight Group Ltd (1996-2000)

Date: 23 July 2018

Candidate CV Form

All sections must be completed.

This form should be completed in consultation with the candidate where possible.

This form is available in Word format at <http://cabguide.cabinetoffice.govt.nz/>

Name (family name in upper case; include title if appropriate)	Gregory John (Greg) MILLER
--	----------------------------

The Position


Organisation	New Zealand Railways Corporation
Position (chair/member etc)	Chair and Director
Term	Three years commencing from the date of appointment
Payment (per day and/or per year)	\$36,000 per annum

How the Candidate Meets the Needs of the Position

Skills and attributes the candidate will bring to the position (eg: business skills, community involvement, cultural awareness, regional perspective – as relevant to the needs of the position)	<p><u>Greg Miller</u>, of Auckland, is currently the Managing Director/Chief Executive of Toll New Zealand, a position he has held since 2008. His career started with a cadetship in Transport operations with the Mainfreight Group to eventually being Global Development Manager. In 2000 he moved to Tranz Link Distribution as Group General Manager and also Managing Director of Tranz Link International. Mr Miller had various senior roles in Tranz Rail (which at the time owned what is now KiwiRail) and Tranzlink, and was Toll Tranzlink Director and Group General Manager from 2003-2008. He led a restructure across the company until the Government buyback of the rail assets in 2008, and chaired the Toll Tranzlink NZ Fonterra Strategy Committee during this period. His leadership in the transport industry in New Zealand, both in rail and road, gives him a strong base for leading the Board of NZRC.</p>
Possible conflicts of interest	Mr Miller is currently employed as Managing Director of Toll New Zealand, which would be a direct conflict with membership on the NZRC Board.
Proposals for conflict management (if applicable)	Mr Miller needs to provide three months' notice. It is not clear whether there would be any 'non-competition' requirement following his departure from Toll, but any appointment should be made subject to assurance that he has fulfilled all obligations he has to Toll.

Continue on next page if required

The Candidate

Name (family name in upper case; include title if appropriate)	Gregory John (Greg) MILLER
Address	s9(2)(a) 
Citizenship (if not New Zealand)	
Age	Unknown
Current or most recent employment (specify position and employer, include years)	Chief Executive, Toll New Zealand (2008-current)
Government board appointments held (current and previous, include years)	Nil
Private and/or voluntary sector board appointments held (current and previous, include years)	Chair, Toll Group NZ Ltd (2011-current) Chair, Toll Networks NZ Ltd (2011-current) Chair and shareholder, Hika Group (2012-current) Director, ASPAC Dairy Holdings Ltd (2017-current) Director, Omana Agri Ltd (2017-current)
Qualifications and experience (include significant work history and community involvement)	<u>Qualifications</u> Executive development program, Hong Kong University (2002) Diploma in Supply Chain Excellence, Monash University (1998) Fellow, Chartered Institute of Transport and Logistics <u>Previous employment</u> Director & Group General Manager, Toll Tranzlink (2003-2008) Group General Manager, Tranz Link Distribution (2000-2003) Global Development Manager, Mainfreight Group Ltd (1996-2000)

Date: 23 July 2018

Cabinet and Cabinet Committee Submission Form (replaces CAB100)		
Agency to complete		
Step	Information Required	
1.	Submission Type	Appointment
2.	Complete Submission information	
	a. Title of paper	KiwiRail Holdings Ltd and New Zealand Railways Corporation: Documentation to Confirm Chair Appointment
	b. Portfolio	State Owned Enterprises and Finance
	c. Owning Minister	Rt Hon Winston Peters and Hon Grant Robertson
	d. Owning Agency	The Treasury
	e. Agency contact	Paula Dobson, Governance and Appointments
	<i>Repeat steps b-e if a joint paper with another Minister's portfolio, or if two agencies (even if same portfolio) have jointly drafted the paper. (insert rows above as required). Otherwise move to step 1f.</i>	
	f. Minister's office contact	Angus Hodgson
	g. Security classification of paper	In Confidence
	h. Endorsement	N/A
3.	Indicate Intended meeting	
	Meeting type	APH - Cabinet Appointments and Honours Committee
	Intended meeting date	1/08/2018
4.	Complete Agency consultation information	
	i. Consulted agencies, including portfolio (refer to attached schedule)	Nil
	j. Informed agencies	Nil
	k. Other consulted groups	Nil
	l. Nominations sought (appointments only)	Nil
5.	Attach final draft paper Electronic copy of paper (Word or PowerPoint 2003 onwards, <u>not pdf</u>).	
6.	Attach attachment/s If there are multiple documents, attach them in the order they should be presented in the final paper (Word or PowerPoint 2003 onwards, or saved PDF (not scanned) if the source file format is not Word or PowerPoint). Attach the most up-to-date version of draft legislation. For an Appointment paper: Organisation form and the Candidate CV form/s must be attached.	
	m. Security classification of attachment	In Confidence
	n. Endorsement of attachment	N/A
	<i>Repeat steps m-n if there are multiple attachments and make sure it is clear which set of classification/endorsement applies to which attachment. Insert rows immediately below this row as required.</i>	
7.	Send email to appropriate staff member in Minister's office. Copy this form into the body of an email, or save as a separate document and attach.	

Cabinet and Cabinet Committee Submission Form (replaces CAB100)																									
Minister's Office to complete																									
Step	Information Required																								
1.	If Travel paper, confirm Submission Type and complete other information <i>Refer to step 1 on Agency Form and choose "Travel".</i> <i>Complete other relevant information on Agency Form.</i>																								
2.	Confirm with Minister (in accordance with internal office processes) <table border="1"> <tr> <td>a. Minister's approval of the paper and any attachment/s has been given <i>Note: signature on paper is not required</i></td> <td><input type="checkbox"/></td> </tr> <tr> <td>b. Consultation details (step 4) clarified by Minister (items below)</td> <td><input type="checkbox"/></td> </tr> </table>	a. Minister's approval of the paper and any attachment/s has been given <i>Note: signature on paper is not required</i>	<input type="checkbox"/>	b. Consultation details (step 4) clarified by Minister (items below)	<input type="checkbox"/>																				
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3.	Check information supplied by agency <i>Review and amend all information in the Agency Form as necessary (e.g. intended meeting date, consulted agencies – including portfolio)</i> <i>Check Minister's office contact and extension</i> <i>See information supplied in step 2f on Agency Form. Amend contact person if required, and add phone extension.</i>																								
4.	Complete Ministerial Consultation Information <table border="1"> <tr> <td colspan="2">c. Has been discussed with:</td> </tr> <tr> <td>Minister of Finance</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Other Minister/ Parliamentary Under Secretary</td> <td>Click here to enter text.</td> </tr> <tr> <td>Labour Caucus</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Parties</td> <td>Click here to enter text.</td> </tr> <tr> <td colspan="2">d. Will be discussed with:</td> </tr> <tr> <td>Labour Caucus</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Parties</td> <td>Click here to enter text.</td> </tr> <tr> <td colspan="2">e. Does not need discussion with:</td> </tr> <tr> <td>Ministers</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Labour Caucus</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Parties</td> <td><input type="checkbox"/></td> </tr> </table>	c. Has been discussed with:		Minister of Finance	<input type="checkbox"/>	Other Minister/ Parliamentary Under Secretary	Click here to enter text.	Labour Caucus	<input type="checkbox"/>	Parties	Click here to enter text.	d. Will be discussed with:		Labour Caucus	<input type="checkbox"/>	Parties	Click here to enter text.	e. Does not need discussion with:		Ministers	<input type="checkbox"/>	Labour Caucus	<input type="checkbox"/>	Parties	<input type="checkbox"/>
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	g. Endorsement of attachment <i>(if new attachment)</i>	Choose an item.
	Repeat steps f – g if there are multiple new attachments and make sure it is clear which set of classification/endorsement applies to which attachment. <i>Insert rows immediately below this row as required.</i>	
7.	Amend subject line to: ‘Paper for [insert Cabinet or Committee identifier, eg CAB, APH]’ Send email to Cabinet Office (cabpapers@dpmc.govt.nz)	