

Reference: 20220075



5 April 2022



Dear 

Thank you for your Official Information Act request, received on 8 March 2022. You requested the following:

a copy of the following 2 reports:

- *(9 December 2021) Joint Report by the Treasury and Ministry of Transport T2021/2951: Final Approvals for loan facility for Waka Kotahi to support the National Land Transport Programme 2021-24*
- *(14 December 2021) Aide Memoire T2021/3144: Update on the Transmission Gully Public Private Partnership (PPP) Project*

Information being released

Please find enclosed the following documents:

Item	Date	Document Description	Decision
1.	9 Dec 2021	Joint Report by the Treasury and Ministry of Transport T2021/2951: Final Approvals for loan facility for Waka Kotahi to support the National Land Transport Programme 2021-24	Release in part

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

- section 9(2)(f)(iv) – to maintain the current constitutional conventions protecting the confidentiality of advice tendered by Ministers and officials,
- 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,
- section 9(2)(k) – to prevent the disclosure of information for improper gain or improper advantage.

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

Information publicly available

The following information is also covered by your request and is in the process of being proactively released by the Ministry of Transport:

Item	Date	Document Description	Website Address
2.	9 Dec 2021	Attachment to T2021/2951: Cabinet Paper - Loan Facility for Waka Kotahi to support the National Land Transport Programme 2021-24	https://www.transport.govt.nz/documents-and-publications

Accordingly, I have refused your request for the document listed in the above table under section 18(d) of the Official Information Act:

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

Information to be withheld

There is an additional document covered by your request that I have decided to withhold in full under the following sections of the Official Information Act, as applicable:

- section 9(2)(b)(ii) – to protect the commercial position of the person who supplied the information, or who is the subject of the information.

Item	Date	Document Description	Withholding Ground(s)
3.	14 Dec 2021	Aide Memoire T2021/3144: Update on the Transmission Gully Public Private Partnership (PPP) Project	9(2)(b)(ii)

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

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

David Taylor
Manager, National Infrastructure Unit

20220075 TOIA Binder

Table of Contents

1.	<u>Joint Report by the Treasury and Ministry of Transport T2021/2951: Final Approvals for Loan Facility for Waka Kotahi to support the National Land Transport Programme 2021-24</u>	1
----	--	---



Joint Report: Final approvals for loan facility for Waka Kotahi to support the National Land Transport Programme 2021-24

Date:	9 December 2021	Report No:	T2021/2951 OC210985
		File Number:	SH-8-0-6

Action sought

	Action sought	Deadline
Minister of Finance (Hon Grant Robertson)	<p>After Cabinet agrees on 13 December:</p> <p>Approve lending to Waka Kotahi under the Public Finance Act 1989</p> <p>Approve borrowing by Waka Kotahi under the Crown Entities Act 2004</p> <p>Sign and date the attached Notice of Facility</p> <p>Sign the attached Variation Letter for the COVID-19 NLTF Borrowing Facility</p>	20 December 2021
Minister of Transport (Hon Michael Wood)	<p>After Cabinet agrees on 13 December:</p> <p>Approve borrowing by Waka Kotahi under the Crown Entities Act 2004</p>	20 December 2021

Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
Olivia Maxwell	Graduate Analyst, National Infrastructure Unit, Treasury	N/A (wk)	✓
Tim Holland	Senior Adviser, Investment, Ministry of Transport	N/A (wk)	
Damien Looi	Senior Adviser, Investment, Ministry of Transport	N/A (wk)	✓
Alistair Birchall	Manager, Capital Markets Policy, Treasury	s9(2)(k)	N/A (mob)

Minister's Office actions (if required)

Return the signed report to Treasury and the Ministry of Transport

(Minister of Finance's Office) Return the signed Notice of Facility and Variation Letter to the COVID-19 NLTF Borrowing Facility (attached) to Treasury

Enclosure: Yes (attached)

Joint Report: Final approvals for loan facility for Waka Kotahi to support the National Land Transport Programme 2021-24

Executive Summary

You recently agreed to high-level terms for a \$2 billion loan facility for Waka Kotahi to address the gap between planned investments in the National Land Transport Programme 2021-2024 (NLTP 2021) and the level of investment required to deliver on Government priorities and commitments (OC210860 / T20212309 refers).

On 13 December 2021 Cabinet will consider your paper which:

- advises of your intention to enter into the aforementioned loan with Waka Kotahi, and
- seeks agreement to changes to appropriations to enable the loan to be implemented.

This report seeks the subsequent formal statutory decisions from you in respect of the necessary legal approvals under the Public Finance Act 1989 (PFA) and the Crown Entities Act 2004, including the documentation required to give effect to the establishment of the proposed facility.

Approval of the loan under the Public Finance Act 1989

Section 65L of the PFA empowers the Minister of Finance, as the Minister responsible for the administration of the PFA, to give a loan to a person, organisation or government if it appears (to the Minister of Finance) to be 'necessary or expedient in the public interest' to do so.

As we have previously advised (OC210860 / T20212309 refers), officials are of the view that the proposed loan is expedient in the public interest, as the benefits to the public of supporting delivery of the above NLTP 2021 outcomes appear to outweigh the risks of the proposed facility when mitigations are taken into account. Officials are satisfied that a loan is the most appropriate form of support in the context of a limited ability to increase National Land Transport Fund (NLTF) revenue in the short term (given the Government has previously committed it will not further increase Fuel Excise Duties (FED) and Road User Charges (RUC) until the Government Policy Statement on land transport (GPS) 2024) [CAB-18-MIN-0115 and LEG-19-MIN-0052 refer].

Repayment of the loan

Through the recent ministerial consultation process on the 13 December Cabinet paper, officials were made aware of some apprehension over the indicative FED and RUC increases that could be required to service the loan. We have advised that any decisions to extend the repayment period or seek alternative revenue sources in the near term would pre-empt the outcomes of the current review of NLTF revenue settings being completed by the Ministry of Transport, the Treasury, and Waka Kotahi (Revenue Review).

Variation to the COVID-19 NLTF Borrowing Facility

In preparing the attached Notice of Facility for the \$2 billion loan to support delivery of NLTP 2021, we have reached a view on the appropriate form of reporting on the loan that should be required of Waka Kotahi through its quarterly report, and a view that an annual repayment plan is not required. The agreed-on reporting requirements differ from those that were initially included when the COVID-19 NLTF Borrowing Facility was established.

We are satisfied that the reporting considered appropriate for the new facility would also be appropriate for the COVID-19 NLTF Borrowing Facility. For clarity, we propose to align the two. As such, this report also seeks agreement to a variation to the COVID-19 Facility, to align quarterly reporting requirements of that facility with those proposed for this new facility and remove the annual repayment plan reporting requirement.

Recommended Action

After Cabinet has agreed to the recommendations set out in your paper dated 13 December 2021, we recommend that you:

- a **note** that you recently agreed to high-level terms for a \$2 billion loan facility for Waka Kotahi to address the gap between planned investments in the National Land Transport Plan 2021-2024 (NLTP 2021) and the level of investment required to deliver on Government priorities and commitments (OC210860 / T20212309 refers)
 - b **note** that Cabinet has previously signalled its comfort for the Ministers of Finance and Transport to progress work on the provision of a Crown loan facility of up to \$2 billion to Waka Kotahi to support delivery of NLTP 2021 [CAB-21-MIN-0337 refers], and is due to consider the necessary changes to appropriations on 13 December 2021
 - c **note** that under section 65L of the Public Finance Act 1989, the Minister of Finance may, on behalf of the Crown, give a loan if it appears to the Minister to be necessary or expedient in the public interest to do so
 - d **note** that in the current circumstances the Treasury considers giving a loan on the terms set out in this report to Waka Kotahi to be expedient in the public interest, as the public benefits of supporting delivery of NLTP 2021 appear to outweigh the risks of the proposed facility when mitigations are taken into account, and a loan is considered to be the most appropriate form of support
 - e **agree** (*Minister of Finance only*) that it appears to you to be expedient in the public interest to provide the loan to Waka Kotahi on the terms set out in the Notice of Facility
- Agree/disagree.*
Minister of Finance
- f **agree** (*Minister of Finance only*) to provide a loan to Waka Kotahi under section 65L of the Public Finance Act 1989 on the terms set out in the Notice of Facility
- Agree/disagree.*
Minister of Finance
- g **note** that approval from the Ministers of Finance and Transport is required, pursuant to section 160(1) and 162 of the Crown Entities Act 2004, for Waka Kotahi to borrow or amend the terms of borrowing
 - h **approve** borrowing by Waka Kotahi under section 160 of the Crown Entities Act 2004 on the terms set out in the Notice of Facility

Agree/disagree.
Minister of *Finance*

Agree/disagree.
Minister of Transport

- i **sign and date** (*Minister of Finance only*) the attached Notice of Facility in order to grant the loan to Waka Kotahi

Agree/disagree.
Minister of Finance

- j **sign** (*Minister of Finance only*) the attached Variation Letter for the COVID-19 NLTF Borrowing Facility

Agree/disagree.
Minister of Finance

- k **note** there is a risk that the loan may be considered concessional for accounting purposes and a fair value write-down may need to be recognised for the loan

- l **note** that approval will have been sought through the 13 December Cabinet paper to establish a fair value write-down appropriation and give Joint Ministers the authority to increase the appropriation as required to provide for fair value write-downs

- m **agree** to mitigate the risk in recommendation k by providing for a fair value write-down

- n **approve** the following changes to appropriations to give effect to the policy decision in recommendation m above, with no corresponding impact on the operating balance:

	\$m – increase/(decrease)				
Vote Transport Minister of Transport	2021/22	2022/23	2023/24	2024/25	2025/26 & Outyears
Non-departmental Other expense: National Land Transport Programme Loan 2021 – 2024: Fair Value Write-down	127.000	-	-	-	-

Agree/disagree.
Minister of Finance

Agree/disagree.
Minister of Transport

- o **note** that the increase to appropriations in recommendation n above has no impact on net debt

- p **agree** that the proposed changes to appropriations for 2021/22 above be included in the 2021/22 Supplementary Estimates and that, in the interim, the increase be met from Imprest Supply

Agree/disagree.
Minister of Finance

Agree/disagree.
Minister of Transport

Alistair Birchall
Manager, Capital Markets Policy
The Treasury

Tim Herbert
Manager, Investment
Ministry of Transport

Hon Grant Robertson
Minister of Finance

Hon Michael Wood
Minister of Transport

Joint Report: Final approvals for loan facility for Waka Kotahi to support the National Land Transport Programme 2021-24

Purpose of Report

1. You recently agreed to high-level terms for a \$2 billion loan facility for Waka Kotahi to address the gap between planned investments in the National Land Transport Programme 2021-2024 (NLTP 2021) and the level of investment required to deliver on Government priorities and commitments (OC210860 / T20212309 refers).
2. The purpose of this report is to seek formal statutory decisions from you in respect of the necessary legal approvals under the Public Finance Act 1989 (PFA) and the Crown Entities Act 2004 (Crown Entities Act), including the documentation required to give effect to the establishment of the aforementioned loan facility.
3. After Cabinet has agreed to the recommendations set out in your paper dated 13 December 2021, this report seeks:
 - a. your agreement (*Minister of Finance only*) to provide a loan to Waka Kotahi under section 65L of the Public Finance Act 1989, on the terms set out in the attached Notice of Facility, on the basis that it appears to you to be expedient in the public interest to do so,
 - b. your agreement to borrowing by Waka Kotahi under section 160 of the Crown Entities Act,
 - c. your signing (*Minister of Finance only*) of the attached Notice of Facility in order to grant the loan to Waka Kotahi, and
 - d. your signing (*Minister of Finance only*) of the attached Variation Letter for the COVID-19 NLTF Borrowing Facility

Context

4. In August 2021, you agreed to consider a loan to address the gap between planned investments in NLTP 2021 and the level of investment required to deliver on Government priorities and commitments (T2021/2088 / OC210673 refers). Cabinet indicated its comfort for the Ministers of Finance and Transport to progress work on the facility [CAB-21-MIN-0337 refers].
5. The proposed facility will support Waka Kotahi to implement NLTP 2021, and enable ongoing investment in areas of Government priority, including climate change mitigation. This includes:
 - a. maintaining current levels of service on the state highway and local road network
 - b. supporting delivery of projects that are highly aligned with priorities agreed through the Government Policy Statement on land transport (GPS)
 - c. ensuring central government's share towards the Auckland Transport Alignment Project (ATAP) and Let's Get Wellington Moving projects are funded
 - d. supporting delivery of critical transport investments that deliver housing and urban growth outcomes as part of integrated land use and planning
 - e. supporting delivery of projects that optimise other Crown investments (e.g. investment in new Cook Strait ferries and the New Zealand Upgrade Programme).

Proposed Facility

Terms of the facility

6. In November 2021, you agreed to the following high-level terms for the proposed loan facility for Waka Kotahi (OC210860 / T20212309 refers):
 - a. The facility will be a 'bullet', meaning any principal drawn down by Waka Kotahi will be paid back at the end of the loan
 - b. Drawdowns will be at a fixed rate, above the government cost of funds. The Treasury considers that the proposed loan is not concessional
 - c. Amounts repaid cannot be redrawn, as the facility is not intended to operate as an overdraft. The proposed loan is not a commitment to enduring debt for Waka Kotahi
 - d. Reflecting the intent of the facility, proceeds will be able to be used for all NLTP 2021 approved activities
7. The full terms are captured in the attached 'Notice of Facility' to the existing Master Facility Agreement (MFA) between Waka Kotahi and the Crown.¹

Fiscal impact

8. The facility will be 'fiscally neutral'. Under the Fiscal Management Approach, this means that the loan will be repaid within 10 years, and the loan is not concessional.
9. As we have previously advised (OC210860 / T20212309 refers):
 - a. The facility will increase net debt during the repayment period (whereas borrowing by Waka Kotahi from the capital markets would not)
 - b. In Treasury's view the interest rate (which captures the Crown's cost of funds plus a small margin) is 'fair' and is not concessional. As the proposed loan is not considered concessional for fiscal management purposes, there would be no impact on operating allowances
 - c. The facility will not have any impact on OBEGAL
10. Any lending under section 65L of the PFA must be made from a capital expenditure appropriation, or other authority, approved by Parliament for the purpose. Cabinet approval is being sought through the 13 December Cabinet paper for a new multi-year appropriation running from 14 December 2021 to 30 June 2025.
11. There is a risk that the loan may be considered concessional for accounting purposes and a fair value write-down may need to be recognised for the loan. To manage this risk, Cabinet approval is being sought through a paper on 13 December 2021 to establish a fair value write-down appropriation, should one be required. Cabinet approval is also being sought through the same paper to give Joint Ministers the authority to increase the above appropriation as required to provide for fair value write-downs.
12. While we consider the likelihood of the above risk materialising to be low, we do not have certainty at this point in time. If a fair value write-down were to be identified at that time as being required, this would need to be recognised as of the date the attached Notice of Facility is signed.

¹ The MFA is an agreement that sets out the terms and conditions on which the Crown provides loans to Waka Kotahi. The MFA applies to several different facilities.

13. As such we propose taking a conservative approach, by increasing the fair value write-down appropriation by \$127 million, the expected amount that would need to be recognised in the event that Audit NZ does not agree with our assessment that the loan is not concessional for accounting purposes. We note that this increase would be non-cash and does not need to be charged against allowances.

Minister of Finance's power under section 65L of the Public Finance Act 1989 to lend on behalf of the Crown

14. Section 65L of the PFA empowers the Minister of Finance, as the Minister responsible for the administration of the PFA, to give a loan to a person, organisation or government if it appears to you to be 'necessary or expedient in the public interest' to do so, and to give such a loan on any terms and conditions thought fit.
15. It is a matter for the Minister of Finance to decide whether it appears to you to be necessary or expedient in the public interest to lend money to Waka Kotahi on the terms summarised in paragraph 6 of this report, and detailed in the attached Notice of Facility.
16. For the reasons set out in full in the advice we provided to you on 28 October 2021 (OC210860 / T20212309 refers – attached as an Annex), officials consider that:
 - a. there is a public interest in giving a loan to Waka Kotahi on the terms set out in the attached Notice of Facility;
 - b. the benefits of the proposed facility appear to outweigh the risks when mitigations are taken into account; and
 - c. officials consider a loan to be the most appropriate solution when it comes to addressing the gap between planned investments in NLTP 2021 and the level of investment required to deliver on Government priorities and commitments.
17. Accordingly, given Ministers' decisions, officials are of the view that giving the requested facility on the terms set out in the attached Notice of Facility is expedient in the public interest and therefore satisfies the "public interest test" in section 65L of the PFA.

Joint Ministers' power under the Crown Entities Act 2004 to approve borrowing by Waka Kotahi

18. Approval by joint Ministers under the Crown Entities Act is required in order for Waka Kotahi to borrow.
19. Section 162 of the Crown Entities Act states that a Crown entity must not borrow from any person, or amend the terms of any borrowing, other than as provided in section 160.
20. Section 160(1)(b) states that approval can be given jointly by Waka Kotahi's responsible Minister (i.e. Minister of Transport) and the Minister of Finance.
21. While the Crown Entities Act does not specify what Ministers should take into account when giving such an approval, we recommend that the same public interest test be applied here. For the same reasons set out in full in the advice we provided to you on 28 October 2021 (OC210860 / T20212309 refers), we consider that allowing borrowing by Waka Kotahi is in the public interest.

22. Accordingly, we recommend that you give approval to Waka Kotahi to borrow from the Crown on the terms set out in the attached Notice of Facility.

Repayment of the Loan

23. Through the recent ministerial consultation process on your 13 December Cabinet paper, officials were made aware of some apprehension over the indicative increases to Fuel Excise Duties (FED) and Road User Charges (RUC) that could be required to service the loan. We have advised that any decisions to extend the repayment period or seek alternative revenue sources in the near term would pre-empt the outcomes of the current review of NLTF revenue settings being carried out by the Ministry of Transport, the Treasury, and Waka Kotahi (Revenue Review):
24. *Extending the repayment period to longer than ten years*
- a. Under the Fiscal Management Approach, loans are typically treated as fiscally neutral and not counted against allowances if they are expected to be repaid within ten years and subject to market interest (or in this case, interest at a fair rate above the Crown cost of funds). This reflects the fact that while loans of this type have an initial impact on net core Crown debt, the repayments neutralise this impact across a ten-year period.
 - b. Repaying the loan over a period of longer than ten years would result in the loan no longer being fiscally neutral, and the capital component of the loan should then be charged against the multi-year capital allowance (MYCA). The effect of this would be to reduce the Government's room for investment in other capital initiatives that could be otherwise funded from the MYCA.
 - c. Significantly extending the loan repayment period (e.g. to 20 years) would also represent a substantive policy shift away from the core pay-go and user-pays principles of the NLTF model, as has been noted in previous advice on the loan (T2021/2088 refers). The Revenue Review, due for completion in September 2022, will consider the principles underpinning the NLTF. A decision now to depart from existing principles would pre-empt the outcomes of the Revenue Review.
25. *Exploring alternative revenue sources to FED and RUC*
- a. The FED/RUC increases mentioned in the Cabinet paper were indicative only, intended to give a sense of the increase in NLTF revenue that would be required to repay the loan under current settings. The Revenue Review will inform subsequent advice on other potential revenue sources which could offset the FED/RUC increases required to repay the loan.
26. *Reducing NLTP investments*
- a. If the indicative increases to NLTF revenue required to repay the loan are ultimately unpalatable to Cabinet, Cabinet could consider meeting repayments from projected NLTF revenue and not raising FED and RUC to the extent required, and/or reducing the size of the loan.
 - b. Both of these pathways would result in a substantially lower level of investment through NLTP 2021 or future NLTPs and would not deliver on the expectations Ministers have already set through GPS 21. We note that NLTP 2021 has already been finalised and announced.

Variation to the COVID-19 NLTF Borrowing Facility

27. The COVID-19 NLTF Borrowing Facility was established on 7 June 2020 as a loan for Waka Kotahi in response to the impacts of COVID-19 on land transport revenue (T2020/1571 refers).
28. In preparing the attached Notice of Facility for the \$2 billion loan to support delivery of NLTP 2021, we have reached a view on the appropriate form of reporting on the loan that should be required of Waka Kotahi through its quarterly report, and a view that an annual repayment plan is not required. The agreed-on reporting requirements differ from those that were initially included when the COVID-19 NLTF Borrowing Facility was established. We are satisfied that the reporting considered appropriate for the new facility would also be appropriate for the COVID-19 NLTF Borrowing Facility. For clarity, we propose to align the two.
29. We recommend the Minister of Finance agree to a variation in the terms of the COVID-19 NLTF Borrowing Facility, as detailed in the attached Variation Letter, in order to align the reporting required for the COVID facility through Waka Kotahi's quarterly report with that proposed for the new \$2 billion facility, and remove the annual repayment plan reporting requirement.

Next Steps

30. Following Cabinet's consideration of the necessary appropriation changes on 13 December 2021, your agreement to the formal statutory decisions in this report, and your signing of the attached Notice of Facility, officials will engage with Waka Kotahi to put the loan facility in place.
31. Following your signing of the attached Variation Letter for the COVID-19 NLTF Borrowing Facility, officials will also engage with Waka Kotahi to arrange countersigning.

Attached to this report

- Notice of Facility with Waka Kotahi
- Variation Letter to the June 2020 COVID-19 Borrowing Facility
- Previous joint briefing (OC210860 / T20212309) - *Loan facility for Waka Kotahi to support the National Land Transport Programme 2021-24*

Notice of Facility

From: Minister of Finance

To: Chief Executive Officer
Waka Kotahi NZ Transport Agency
Chews Lane, 50 Victoria Street
Private Bag 6995
Wellington 6141

Dated: December 2021

WAKA KOTAHI NZ TRANSPORT AGENCY - NOTICE OF FACILITY

I refer to clause 3.1 of the Master Facility Agreement, made between Her Majesty the Queen in right of New Zealand (the **Crown**) and Waka Kotahi NZ Transport Agency (**NZTA**) on 25 June 2014 as amended or amended and restated from time to time (the **Master Agreement**), and hereby give notice of a Facility as follows:

NZTA Loan Appropriation: as detailed in the table below:

Vote	Appropriation Minister	Title	Type	Period	Scope
Transport	Minister of Transport	National Land Transport Programme Loan 2021 – 2024	Non-departmental Capital Expenditure	Start: 1 December 2021 End: 30 June 2025	This appropriation is limited to a loan to Waka Kotahi NZ Transport Agency to support the implementation and delivery of the National Land Transport Programme 2021 – 2024.

Facility Amount:	\$2,000,000,000
Purpose of Facility:	NZTA must use this Facility to fund National Land Transport Plan 2021-2024 approved activities.
Drawdown restrictions:	This Facility may be drawn in tranches, so long as the total of all tranches outstanding does not exceed the Facility Amount for this Facility. The amount of a Drawdown must not be less than \$10,000,000.
Form of Facility:	Fixed Rate Facility
Interest Rate:	Regardless of anything in the Master Agreement to the contrary, the interest rate applicable to each Drawdown under this Facility will be the percentage rate per annum which is the aggregate of: <ul style="list-style-type: none"> (a) the New Zealand Government Bond Rate on the relevant Rate Set Date; and (b) a margin of 0.15 per cent. per annum. A Drawdown under this Facility is otherwise deemed to be a Fixed Rate Drawdown under the Master Agreement. For the purposes of this Facility Notice:

	<p>Mid Rate means, with respect to the determination of the New Zealand Government Bond Rate for a Fixed Rate Advance, the yield as displayed on page ICNG3 on Bloomberg L.P. or any other generally accepted successor page, at or about 11.00am on the relevant Rate Set Date or at any other time advised by the Crown;</p> <p>New Zealand Government bond means a nominal bond issued by the New Zealand government; and</p> <p>New Zealand Government Bond Rate means, in respect of a Fixed Rate Advance, an interest rate expressed as a percentage per annum being:</p> <p>(a) the Mid Rate for a New Zealand Government bond which has the same term as the Fixed Rate Advance; or</p> <p>(b) if there is no New Zealand Government bond with the same term as the Fixed Rate Advance:</p> <p>(i) the rate derived by NZDMO using Linear Interpolation of the Mid Rates for New Zealand Government Bonds which have a term:</p> <p>(A) shorter than, but closest to, the term of the Fixed Rate Advance; and</p> <p>(B) longer than, but closest to, the term of the Fixed Rate Advance; or</p> <p>(ii) if no such rates are displayed, the rate determined by NZDMO in its absolute discretion taking into account market rates and conditions.</p>
Availability Period Commencement Date:	The date that NZDMO receives a properly completed and signed Confirmation of Facility from NZTA in respect of the Facility, in accordance with clause 3.3 of the Master Agreement.
Availability Period Termination Date:	30 June 2025
Facility Termination Date:	<p>Date falling 10 years after the last Drawdown under this Facility within the Availability Period.</p> <p>The Crown reserves the right to terminate this Facility with immediate effect and declare that all or part of the Facility Balance and accrued interest for the Facility is payable on demand, if:</p> <p>(a) NZTA fails to pay any of the Facility Balance, accrued interest and all other amounts outstanding and payable by it in relation to the Facility, in the manner required, within 10 Business Days of the date when due; or</p> <p>(b) any loan obligation of NZTA in excess of \$50,000,000:</p> <p>(i) becomes due and payable before its due date by reason of any event of default or breach by NZTA; or</p> <p>(ii) is not paid when due or within any applicable grace period and is not being contested in good faith by NZTA; or</p>

	<p>(c) NZTA is presumed unable to pay its debts within the meaning of clause 3 of Schedule 11 to the Companies Act 1993, or a liquidator is appointed to NZTA, or NZTA is declared to be subject to statutory management under the Corporations (Investigations and Management) Act 1989; or</p> <p>(d) the parties have been unable to agree terms on which the Crown is willing to continue to make this Facility available to NZTA by the date six months after the date of notice that the Crown requires negotiations following an Event of Review.</p>
Compound Interest Facility:	Yes
Compound Interest Period Termination Date:	30 June 2024 (or, if that date is not a Business Day, the next Business Day). Interest is to be paid in arrears every six months thereafter.
Drawdown Maturity Date:	The Drawdown Maturity Date for each Drawdown under this Facility will be the date 10 years after the Drawdown Date for the relevant Drawdown. The repayment schedule will be agreed on the Drawdown Date.
Additional undertakings:	<p>In addition to the undertakings in the Master Agreement, NZTA agrees that:</p> <p>(a) Quarterly Reporting: it will include, with its quarterly report to the Minister</p> <p>(i) details of each Drawdown requested under this Facility;</p> <p>(ii) a forecast of each Drawdown to be requested under this Facility in the six months following the date of the report; and</p> <p>(iii) Total spend by activity class and forecast spend for each activity class; and</p> <p>(b) Event of Review: it will promptly notify the Crown of the occurrence of any of the following events (each an Event of Review), and, if required by notice in writing from the Crown, it will enter into negotiations in good faith with the Crown with a view to agreeing terms on which the Crown is willing to continue to make this Facility available to NZTA:</p> <p>(i) NZTA fails to comply in any material respect with any material undertaking in clause 12.1 of the Master Agreement or in this Facility Notice and in respect of any such failure which is capable of being remedied, such failure is not remedied within 10 Business Days of NZTA becoming aware of such failure; or</p> <p>(ii) any representation or warranty under clause 11.1 of the Master Agreement is untrue, incorrect or misleading in a material respect when made or repeated and, if the circumstances giving rise to the misrepresentation are capable of being remedied, such circumstances are not remedied within 10 Business Days of NZTA becoming aware of such misrepresentation; or</p> <p>(iii) an event or circumstance has occurred or exists and is outstanding which constitutes a default by NZTA under any other agreement or instrument which is binding on</p>

	NZTA or to which its assets are subject which has had or will have a material adverse effect in respect of NZTA.
--	--

The terms and conditions of the Master Agreement will apply to this Facility.

The Facility will be available upon delivery by you of a Confirmation of Facility to the Crown in accordance with clause 3.3 of the Master Agreement.

Yours faithfully

Minister of Finance

December 2021

Waka Kotahi NZ Transport Agency
Chews Lane, 50 Victoria Street
Private Bag 6995
WELLINGTON 6141

Variation Letter – COVID-19 NLTF Borrowing Facility

1. We refer to the master facility agreement dated 25 June 2014, as amended or amended and restated from time to time between Waka Kotahi NZ Transport Agency (**NZTA**) and Her Majesty the Queen in right of New Zealand (the **Crown**) (the **Master Agreement**).
2. In this letter:
 - (a) the **Effective Date** means the date of this letter; and
 - (b) capitalised terms used but not otherwise defined have the same meaning as in the Master Agreement.
3. This letter constitutes a variation of:
 - (a) the Notice of Facility dated on or about 7 June 2020 (the **2020 Notice of Facility**); and
 - (b) the Confirmation of Facility dated on or about 10 June 2020 (the **2020 Confirmation of Facility**),

as contemplated by clause 16.1 of the Master Agreement.

Amendments to Transaction Documents

4. The Crown and NZTA agree that, on and from the Effective Date, the 2020 Notice of Facility is amended by:
 - (a) deleting paragraph (b) in the row of the facility table titled “Additional undertakings” and replacing it with the following:
 - “(b) *it will include with its quarterly report to the Minister:*
 - (i) *details of each Drawdown requested under this Facility;*
 - (ii) *a forecast of each Drawdown to be requested under this Facility in the six months following the date of the report; and*
 - (iii) *total spend by activity class and forecast spend for each activity class;”*; and
 - (b) deleting paragraph (c) in the row of the facility table titled “Additional undertakings”.
5. The Crown and NZTA agree that, on and from the Effective Date, the 2020 Confirmation of Facility is amended by:
 - (a) deleting paragraph (d) and replacing it with the following:
 - “(b) *it will include with its quarterly report to the Minister:*
 - (iv) *details of each Drawdown requested under this Facility;*
 - (v) *a forecast of each Drawdown to be requested under this Facility in the six months following the date of the report; and*
 - (vi) *total spend by activity class and forecast spend for each activity class;”*; and
 - (b) deleting paragraph (e).

Conditions precedent

6. This letter will not become effective until the Crown has received a duly executed and dated original copy of this letter.

Confirmations

7. The Crown and NZTA acknowledge and agree that:
 - (a) this letter is a "Transaction Document" for the purposes of the Master Agreement and each other Transaction Document; and
 - (b) apart from the variations in this letter, all other terms of the Master Agreement, 2020 Notice of Facility and 2020 Confirmation of Facility remain unchanged and in full force and effect.

General provisions

8. This letter may be executed in any number of counterparts which, when taken together, will constitute one and the same instrument.
9. This letter is governed by New Zealand law.

Execution follows.

EXECUTED as an agreement

SIGNED by **HER MAJESTY THE QUEEN IN
RIGHT OF NEW ZEALAND** acting by and
through the **MINISTER OF FINANCE:**

Signature

Name

NZTA hereby acknowledges and agrees to the terms set out in this letter.

SIGNED by **WAKA KOTAHI NZ TRANSPORT
AGENCY**

Signature of authorised signatory

Name of authorised signatory



Joint Report: Loan facility for Waka Kotahi to support the National Land Transport Programme 2021-24

Date:	28 October 2021	Report No:	T2021/2309 OC210860
		File Number:	SH-8-0

Action sought

	Action sought	Deadline
Minister of Finance (Hon Grant Robertson)	<p>Agree to the proposed high-level terms for a loan facility for Waka Kotahi</p> <p>Agree to the Minister of Transport circulating the attached Cabinet paper for Ministerial consultation and lodging the Cabinet paper, subject to the outcome of Ministerial consultation</p> <p>Note that, subject to Cabinet's comfort with the above, you will be asked to approve lending to and borrowing by Waka Kotahi under the Public Finance Act 1989 and Crown Entities Act 2003, and sign the Notice of Facility</p>	1 November 2021
Minister of Transport (Hon Michael Wood)	<p>Agree to the proposed high-level terms for a loan facility for Waka Kotahi</p> <p>Circulate Cabinet paper for Ministerial consultation</p> <p>Lodge Cabinet paper, subject to the outcome of Ministerial consultation</p> <p>Note that, subject to Cabinet's comfort with the above, you will be asked to approve borrowing by Waka Kotahi under the Crown Entities Act 2003</p>	1 November 2021

Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
Olivia Maxwell	Graduate Analyst, National Infrastructure Unit, Treasury	N/A (wk)	✓
Tim Holland	Senior Adviser, Investment, Ministry of Transport	N/A (wk)	
Damien Looi	Senior Adviser, Investment, Ministry of Transport	N/A (wk)	✓
Alistair Birchall	Manager, Capital Markets Policy, Treasury	s9(2)(k)	N/A (mob)

Minister's Office actions (if required)

Return the signed report to Treasury and the Ministry of Transport

Circulate the attached draft Cabinet paper for Ministerial consultation

Lodge the attached draft Cabinet paper by 18 November 2021 for consideration by the Economic Development Committee on 24 November 2021

Enclosure: Yes (attached)

Joint Report: Loan facility for Waka Kotahi to support the National Land Transport Programme 2021-24

Executive Summary

You recently agreed to consider a loan facility to address the gap between planned investments in the National Land Transport Plan 2021-2024 (NLTP 2021) and the level of investment required to deliver on Government priorities and commitments (T2021/2088 / OC210673 refers). The purpose of this report is to provide advice on that loan facility.

This report proposes that a \$2 billion loan facility (Facility) be made available to Waka Kotahi. The Facility would be on the following terms:

- The Facility will be a 'bullet', meaning any principal drawn down by Waka Kotahi will be paid back at the end of the loan.
- Drawdowns will be at a fixed rate, above the government cost of funds. The Treasury considers that the proposed loan is not concessional.
- Amounts repaid cannot be redrawn, as the Facility is not intended to operate as an overdraft. The proposed loan is not a commitment to enduring debt for Waka Kotahi.
- Reflecting the intent of the Facility, proceeds will be able to be used for all NLTP 2021 approved activities.

Ministers recently agreed that repayment of any financing facility be funded via future increases to beneficiary-pays revenue to the National Land Transport Fund (NLTF). This will be considered through a joint review of NLTF revenue settings being completed by the Ministry of Transport, the Treasury, and Waka Kotahi, to report back in the second half of 2022 (T2021/2088 refers).

The proposed Facility will support Waka Kotahi to implement NLTP 2021, and enable ongoing investment in areas of Government priority, including climate change mitigation. This includes:

- maintaining current levels of service on the state highway and local road network
- supporting delivery of projects that are highly aligned with priorities agreed through the Government Policy Statement on land transport (GPS)
- ensuring central government's share towards the Auckland Transport Alignment Project (ATAP) and Let's Get Wellington Moving project are funded
- supporting delivery of critical transport investments that deliver housing and urban growth outcomes as part of integrated land use and planning
- supporting delivery of projects that optimise other Crown investments (e.g. investment in new Cook Strait ferries and the New Zealand Upgrade Programme).

Section 65L of the Public Finance Act 1989 (PFA) empowers the Minister of Finance, as the Minister responsible for the administration of the PFA, to give an loan to a person, organisation or government if it appears (to the Minister of Finance) to be 'necessary or expedient in the public interest' to do so.

Officials are of the view that the proposed loan is expedient in the public interest, as the benefits to the public of supporting delivery of the above NLTP 2021 outcomes appear to outweigh the risks of the proposed facility when mitigations are taken into account. Officials are satisfied that a loan is the most appropriate form of support in the context of limited ability to increase NLTF revenue in the short term (given the Government has previously committed it will not further increase FED and RUC until GPS 2024) [CAB-18-MIN-0115 and LEG-19-MIN-0052 refer].

Subject to any amendments through Ministerial consultation, this report seeks your approval to lodge the attached Cabinet paper, advising of your intention to enter a loan and seeking changes to appropriations to enable the loan to be implemented.

After Cabinet's consideration of the above, officials will provide you with subsequent advice that seeks formal statutory decisions in respect of the necessary legal approvals under the PFA and the Crown Entities Act 2004, including the documentation required to give effect to the establishment of the proposed Facility.

Recommended Actions

We recommend that you:

- a **note** that Cabinet has signalled its comfort for the Ministers of Finance and Transport to progress work on the provision of a Crown loan facility of up to \$2 billion to Waka Kotahi to support delivery of the National Land Transport Plan 2021 (NLTP 2021) [CAB-21-MIN-0337 refers]
- b **note** that you directed officials to progress work on the above \$2 billion loan facility for Waka Kotahi (T2021/2088 / OC210673 refers)
- c **note** that approval from the Ministers of Finance and Transport is required, pursuant to section 160(1) and 162 of the Crown Entities Act 2004, for Waka Kotahi to borrow or amend the terms of borrowing
- d **note** that under section 65L of the Public Finance Act 1989, the Minister of Finance may, on behalf of the Crown, give a loan if it appears to the Minister to be necessary or expedient in the public interest to do so
- e **note** that in the current circumstances the Treasury considers giving a loan on the terms set out in this report to Waka Kotahi to be expedient in the public interest, as the public benefits of supporting delivery of NLTP 2021 appear to outweigh the risks of the proposed facility when mitigations are taken into account, and a loan is considered to be the most appropriate form of support
- f **agree** to the proposed high-level terms for the loan:
 - a. The Facility will be a 'bullet', meaning any principal drawn down by Waka Kotahi will be paid back at the end of the loan.
 - b. Drawdowns will be at a fixed rate, above the government cost of funds. The proposed loan is not concessional.
 - c. Amounts repaid cannot be redrawn, as the Facility is not intended to operate as an overdraft. The proposed loan is not a commitment to enduring debt for Waka Kotahi.
 - d. Reflecting the intent of the facility, proceeds will be able to be used for all NLTP 2021 approved activities.

Agree/disagree.
Minister of Finance

Agree/disagree.
Minister of Transport

- g **note** that the Treasury considers the above interest rate is 'fair' and is not concessional, reflecting that the Crown is providing on-lending, Waka Kotahi is a Crown entity, and the lending is being provided to achieve a non-commercial rather than a commercial objective

- h **note** that, subject to consideration through the joint review of National Land Transport Fund (NLTF) revenue settings, repaying the loan will require additional revenue for the NLTF over 2024/25–2030/31 equivalent to a 6 cents per litre increase in fuel excise duty (and the equivalent in road user charges), or a decrease in other transport spend of an average of \$300 million per year
- i **note** that, subject to your comfort with all of the above, Cabinet approval would be needed for changes to appropriations to implement the proposed facility and that officials recommend you advise Cabinet of your intended decision to establish the facility
- j **agree** to the Minister of Transport circulating the attached Cabinet paper for ministerial consultation, subject to any changes you wish to make

Agree/disagree.
Minister of Finance

Agree/disagree.
Minister of Transport

- k **agree** to the Minister of Transport lodging the attached Cabinet paper for consideration by the Economic Development Committee on 24 November 2021, subject to any changes arising from the consultation process

Agree/disagree.
Minister of Finance

Agree/disagree.
Minister of Transport

- l **note** that, after Cabinet's consideration of the paper, officials will provide the Ministers of Finance and Transport with subsequent advice to:

- a. *(Minister of Finance only)* agree that it appears to you to be expedient in the public interest to provide the loan to Waka Kotahi on the terms set out in this report, and agree to provide a loan to Waka Kotahi under section 65L of the Public Finance Act 1989; and
- b. agree to approve borrowing by Waka Kotahi under section 160 of the Crown Entities Act 2004

- m **note** that, after Cabinet's consideration of the paper, officials will (alongside the advice in recommendation k above) provide the Minister of Finance with a Notice of Facility for signing that gives effect to the establishment of the facility described in this report

Alistair Birchall
Manager, Capital Markets Policy
The Treasury

Tim Herbert
Manager, Investment
Ministry of Transport

Hon Grant Robertson
Minister of Finance

Hon Michael Wood
Minister of Transport

Joint Report: Loan facility for Waka Kotahi to support the National Land Transport Programme 2021-24

Purpose of Report

1. The purpose of this report is to propose that a \$2 billion loan facility (Facility) be made available to Waka Kotahi.
2. This report seeks:
 - a. your agreement to the proposed high-level terms of the Facility
 - b. subject to the above, your agreement to circulate the attached Cabinet paper, advising of your intention to enter a loan and seeking the changes to appropriations which would be required to implement the loan, for Ministerial consultation
 - c. subject to any amendments through Ministerial consultation, your agreement to lodge the attached Cabinet paper by 18 November 2021 for consideration by the Economic Development Committee on 24 November 2021

Context

3. In August 2021, you agreed to consider a loan to address the gap between planned investments in the National Land Transport Plan 2021-2024 (NLTP 2021) and the level of investment required to deliver on Government priorities and commitments (T2021/2088 / OC210673 refers). Cabinet indicated its comfort for the Ministers of Finance and Transport to progress work on the Facility [CAB-21-MIN-0337 refers].
4. The proposed Facility will support Waka Kotahi to implement NLTP 2021, and enable ongoing investment in areas of Government priority, including climate change mitigation. This includes:
 - a. maintaining current levels of service on the state highway and local road network
 - b. supporting delivery of projects that are highly aligned with priorities agreed through the Government Policy Statement on land transport (GPS)
 - c. ensuring central government's share towards the Auckland Transport Alignment Project (ATAP) and Let's Get Wellington Moving projects are funded
 - d. supporting delivery of critical transport investments that deliver housing and urban growth outcomes as part of integrated land use and planning
 - e. supporting delivery of projects that optimise other Crown investments (e.g. investment in new Cook Strait ferries and the New Zealand Upgrade Programme).

Proposed Facility

Terms of the Facility

5. Following discussions between Waka Kotahi and the Treasury's New Zealand Debt Management (NZDM) function, it is proposed that the Facility will be made available to Waka Kotahi through a loan on the terms set out below. The terms will be captured in a 'Notice of Facility' to the existing Master Facility Agreement (MFA) between Waka Kotahi and the Crown:¹
 - a. The Facility will be a 'bullet', meaning any principal drawn down by Waka Kotahi will be paid back at the end of the loan.
 - b. Drawdowns will be at a fixed rate, above the government cost of funds. The Treasury considers that the proposed loan is not concessional.
 - c. Amounts repaid cannot be redrawn, as the Facility is not intended to operate as an overdraft. The proposed loan is not a commitment to enduring debt for Waka Kotahi.
 - d. Reflecting the intent of the facility, proceeds will be able to be used for all NLTP 2021 approved activities.
6. Should you agree to the above high-level terms, officials will provide you with a full set of terms for your approval in due course and will advise of any other material information.

Expectations outside the terms of the Facility

7. In a recent Letter of Comfort provided to the Chair of Waka Kotahi on 26 August 2021, Ministers indicated that, "should the Crown establish a central "green" or "sustainable" bond programme, the Treasury would consider whether Waka Kotahi projects that met eligibility criteria could be financed through that programme".
8. The Treasury has recently provided advice on the structure of a potential green or sustainable bond programme (T2021/2425 refers). While the Treasury and Waka Kotahi will work closely together on the development of any programme, and will consider the inclusion of Waka Kotahi projects, there is currently insufficient certainty about the nature of the programme to include that expectation as a condition of the Facility itself.

Fiscal impact

9. The Facility will be 'fiscally neutral'. Under the Fiscal Management Approach, this means that:
 - a. the loan will be repaid within 10 years, and
 - b. the loan is not concessional.
10. In our view the interest rate (which captures the Crown's cost of funds plus a small margin) is 'fair' and is not concessional. This reflects a context where (i) the Crown is providing on-lending, (ii) Waka Kotahi is a Crown entity and part of New Zealand's state services, and (iii) the lending is being provided to achieve a non-commercial rather than a commercial objective.

¹ The MFA is an agreement that sets out the terms and conditions on which the Crown provides loans to Waka Kotahi. The MFA applies to several different facilities.

11. As the loan is not concessional in our view, there would therefore be no impact on operating allowances.
12. The Facility will increase net debt during the repayment period (whereas borrowing by Waka Kotahi from the capital markets would not). However, we understand that consideration is being given to including Crown agency borrowing within core Crown net debt, given the degree to which this borrowing is subject to Ministerial approval and supported by a strong implicit Crown guarantee (T2021/2416 refers). The Facility will not have any impact on OBEGAL.
13. Any lending under section 65L of the PFA must be made from a capital expenditure appropriation, or other authority, approved by Parliament for the purpose. A new appropriation will be required for this purpose, requiring Cabinet approval. This appropriation is proposed to be a multi-year appropriation running from 1 December 2021 to 30 June 2025.

Minister of Finance's power under section 65L of the Public Finance Act 1989 to lend on behalf of the Crown

14. Section 65L of the PFA empowers the Minister of Finance, as the Minister responsible for the administration of the PFA, to give a loan to a person, organisation or government if it appears to you to be 'necessary or expedient in the public interest' to do so, and to give such a loan on any terms and conditions thought fit.
15. It is a matter for the Minister of Finance to decide whether it appears to you to be necessary or expedient in the public interest to lend money to Waka Kotahi on the terms outlined in paragraph 5 of this report.
16. The following paragraphs set out factors that officials consider are relevant to that assessment. You may choose not to take these factors into account, or to take into account other factors you consider relevant, and you may give such weight to the factors referred to below as you deem fit. You should make an independent decision and are not bound to accept the assessment below. However, your decision must be based on reasonable grounds.
17. In brief, we consider that in the circumstances, giving the requested Facility on the terms set out in paragraph 5 of this report satisfies the "public interest test" in section 65L of the PFA.

Public interest

18. The PFA does not define 'the public interest'. However, it is generally accepted that the public interest is broadly equivalent to the concept of the public good, and can cover a wide range of values and principles relating to the public good, or what is in the best interests of society. In the context of the PFA, the public interest should be viewed in a New Zealand context, that is, in the interest of the New Zealand public.
19. The counterfactual of not making the proposed loan available to Waka Kotahi is a significant risk that maintenance of transport networks and infrastructure, improvements to key public transport services, and development of transport networks to support housing development and urban growth, would not be able to be carried out as planned. This would significantly negatively impact the New Zealand public.

Officials consider a loan to be the most appropriate solution

20. Officials' first preference, in light of the beneficiary-pays principle that the current NLTF system is based on, would be for the investment gap to be managed directly through an increase in revenue.
21. However, in the context of further increases to FED or RUC rates beyond those agreed for GPS 18 not currently being considered [CAB-18-MIN-0115 and LEG-19-MIN-0052 refer] and given that in practice, increasing FED and/or RUC would take time to implement, our view is that a loan is the most appropriate approach to manage the investment gap. This will require future increases to land transport revenue.
22. A Crown grant, by contrast, would be significantly outside of the beneficiary-pays model because it would remove the direct dependency between funding for the transport system and users of the transport system – currently preserved through the use of FED and RUC. Direct funding would also increase the fiscal burden on the Crown.
23. It is more efficient for Waka Kotahi to borrow from the Crown, rather than the capital markets, given the latter has higher financing costs that officials do not consider reflects transfer of risk.
24. Given the above, and the size of the gap between planned investments in NLTP 2021 and the level of investment required to deliver on Government priorities and commitments, officials are satisfied that a loan is the most appropriate solution to addressing the investment gap.

Necessary or expedient

25. In light of the context given in the previous section, without this loan, the level of investment in the NLTF would not be sufficient to deliver on NLTP 2021. As well as the negative impacts on the New Zealand public outlined above, this would significantly hinder the delivery of priorities agreed through, and key projects aligned with, the GPS.
26. On that basis, we consider that a Crown financing facility of up to \$2 billion for Waka Kotahi, supported by future increases to land transport revenue, is expedient to support implementation of NLTP 2021.

Risks and mitigations

27. The primary risks associated with the Facility are:
 - a. *Waka Kotahi's capacity to repay*: there is a risk that revenue from the NLTF is insufficient to repay the Facility, alongside other committed investment in future NLTPs.
 - b. *Nature of the Facility*: the Facility is intended to support investment in NLTP 2021. There is a risk that the Facility is rolled-over without being repaid, and becomes long-term debt without a clear policy decision from Ministers to move to such a model.
 - c. *Insufficient funding to deliver NLTP 2021*: it is possible that \$2 billion may be insufficient to deliver NLTP 2021, due to cost escalation. ^{s9(2)(f)(iv)}

28. We have sought to mitigate these risks through:
- a. *An upfront assessment of Waka Kotahi's capacity to repay:* this analysis indicates that Waka Kotahi has sufficient revenue to repay the Facility under current NLTF revenue settings.
 - b. *A review of transport revenue settings:* Ministers recently agreed that (i) repayment of any financing facility be funded via future increases to beneficiary-pays revenue to the NLTF, and (ii) directed officials to complete a review of NLTF revenue settings in the next twelve months (T2021/2088 refers). The Terms of Reference for that review include consideration of Waka Kotahi's capital structure, and whether it should include long-term debt.
29. Overall, to repay the loan over 2024/25–2030/31 will require either increased revenue for the NLTF, or decreased expenditure through the NLTF, of an average of around \$300 million per year. Raising sufficient additional annual revenue would require an increase in the order of 6 cents per litre in FED (and the equivalent in RUC) on 1 July 2024. This will be considered through the joint review of NLTF revenue settings.

Benefits

30. The Facility will support Waka Kotahi to deliver NLTP 2021, as described in paragraph 4. There is also a direct dependency between those NLTP 2021 outcomes, and delivery of the Government's Emission Reduction Plan (ERP).

Assessment of risks and benefits against the public interest threshold

31. In light of the above, officials consider that:
- a. there is a public interest in giving a loan to Waka Kotahi on the terms set out in paragraph 6 of this report;
 - b. the benefits of the proposed Facility appear to outweigh the risks when mitigations are taken into account; and
 - c. officials consider a loan to be the most appropriate solution when it comes to addressing the gap between planned investments in NLTP 2021 and the level of investment required to deliver on Government priorities and commitments.
32. Accordingly, given Ministers' decisions, officials are of the view that the Facility is expedient in the public interest.

Joint Ministers' power under the Crown Entities Act 2004 to approve borrowing by Waka Kotahi

33. Approval by joint Ministers under the Crown Entities Act 2004 (Crown Entities Act) is required in order for Waka Kotahi to borrow.
34. Section 162 of the Crown Entities Act states that a Crown entity must not borrow from any person, or amend the terms of any borrowing, other than as provided in section 160.
35. Section 160(1)(b) states that approval can be given jointly by Waka Kotahi's responsible Minister (i.e. Minister of Transport) and the Minister of Finance.

36. While the Crown Entities Act does not specify what Ministers should take into account when giving such an approval, we recommend that the same public interest test be applied here. For the same reasons identified in paragraphs 14 to 32 above, we consider that allowing borrowing by Waka Kotahi is in the public interest.
37. Accordingly, we recommend that you give approval to Waka Kotahi to borrow from the Crown on the terms set out in paragraph 5 of this report.

Next Steps

38. While Cabinet itself has no decision-making powers with regard to approving lending or borrowing for Crown entities, should you agree to the recommendations in this report, Cabinet agreement is required for the appropriation changes to give effect to the increase in size of the Facility.
39. The attached Cabinet paper would advise of your intention to enter a loan and seek Cabinet's agreement to changes to appropriations to enable the loan to be implemented. As noted in the paper, there is no impact on Budget allowances as long as the Facility continues to be subject to terms set at a fair price above the Crown cost of borrowing, and is repaid within the forecast period.
40. In addition, if you intend to establish the Facility, officials recommend that you first advise Cabinet of your intended decision, in light of the Cabinet Manual principle of informing Cabinet of the exercise of individual statutory powers relating to important financial commitments (clause 5.35). The attached draft Cabinet paper incorporates this advice to Cabinet.
41. If Ministers support the proposed approach, we recommend that the Minister of Transport lodge the attached Cabinet paper with Cabinet Office by Thursday 18 November, for consideration by DEV on Wednesday 24 November 2021. This will ensure financial decisions can be taken and the loan made available to Waka Kotahi prior to the end of 2021.
42. After Cabinet has considered the proposals and provided the requisite financial authorisation, officials will seek formal statutory decisions from joint Ministers. These decisions would be in respect of the necessary legal approvals under the PFA and the Crown Entities Act (noting that such decisions are strictly matters for Ministers to decide), and a Notice of Facility for signing that gives effect to the establishment of the Facility described in this report.