



# Cabinet Economic Development Committee

## Minute of Decision

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### Review of the New Zealand Transport Agency's Regulatory Capability and Performance

Portfolio                      Transport

On 25 September 2019, the Cabinet Economic Development Committee:

#### Background

- 1        **noted** that in October 2018, the Board of the New Zealand Transport Agency (NZTA) announced that the NZTA had not been performing its regulatory function effectively, and in particular that it was too focused on education and self-regulation;

#### Review into the NZTA's regulatory capability and performance

- 2        **noted** that:
  - 2.1        in response to concerns raised by the NZTA Board, the Minister of Transport commissioned a review into the regulatory capability and performance of the NZTA;
  - 2.2        the review found significant deficiencies in the NZTA's regulatory capability that, over a number of years, had resulted in regulatory failure;
- 3        **noted** that the underlying causes of regulatory failure at the NZTA included an overshadowing of regulatory functions, weak regulatory leadership and expertise, a lack of a clear regulatory strategy and approach, limited regulatory capability, resourcing and funding challenges, the absence of a regulatory culture, structural constraints, lack of accountability, and inadequate audit and risk management;

#### Response to review findings

- 4        **noted** that the Minister of Transport intends to set expectations for the NZTA Board to:
  - 4.1        develop a new strategy to strengthen the NZTA's regulatory delivery (by March 2020);
  - 4.2        establish a new regulatory operating model that defines the capability, processes, and systems to implement the NZTA's regulatory strategy (by March 2020);
- 5        **agreed** to the establishment of a statutory Director of Land Transport to lead the regulatory function and regulatory decision-making in the NZTA, and that this proposal be included in the Regulatory Stewardship (Transport) Amendment Bill (the Bill);

- 6 **agreed** that the Director of Land Transport will be accountable for the delivery of the independent regulatory functions and powers currently held by the NZTA Board under the Land Transport Management Act 2003;
- 7 **authorised** the Minister of Transport to refresh the independent regulatory functions and powers in the Land Transport Management Act 2003 to ensure they are fit-for-purpose and consistent with the overall policy intent of the paper under DEV-19-SUB-0261 without further reference to Cabinet;
- 8 **authorised** the Minister of Transport to refresh the NZTA's regulatory objectives and remaining functions and powers in the Land Transport Management Act 2003 to provide greater focus on the NZTA's regulatory role and to ensure that its existing land transport planning, investment, and delivery functions are adequately described, for inclusion in the Bill;
- 9 **noted** that the Ministry of Transport, the NZTA, and the New Zealand Police will undertake work to identify whether there are opportunities to enhance the way commercial vehicle enforcement functions are delivered, by December 2019;
- 10 **directed** officials to report back to the Minister of Transport and the Minister of Workplace Relations on the merits of designating the NZTA as a health and safety regulator under the Health and Safety at Work Act 2015, with a view to seeking an in principle decision by December 2019;
- 11 **noted** that the Minister of Transport has recently announced new appointments to the NZTA Board, which have included strengthening regulatory expertise and capability on the NZTA Board;

### Short-term regulatory cost treatment

- 12 **noted** that the NZTA plans to incur a projected deficit of around \$18 million of regulatory costs in 2019/20, with the Agency estimating that it will need to incur additional costs of up to \$17 million to support the operation of critical activities its regulatory function;
- 13 **noted** that the NZTA is continuing to incur costs to rectify and recertify vehicles affected by the backlog of regulatory non-compliance cases, and that as a result of growing cost pressures, its ability to fund these costs from its retained earnings is limited;
- 14 **agreed** to provide the NZTA with repayable capital injections to cover urgent costs associated with its core regulatory functions in advance of the forthcoming funding review;
- 15 **agreed** to provide the NZTA with repayable capital injections to cover additional direct rectification costs that it may incur as a result of its regulatory failures;

- 16 **agreed** to establish tagged capital contingencies of up to the amounts as follows in Vote Transport, to provide for the decisions in paragraphs 14 and 15 above:

Vote Transport Minister for Transport	\$m – increase/(decrease)				
	2019/20	2020/21	2021/22	2022/23	2023/24 & out years
Regulatory Costs – Tagged Capital Contingency	25.000	5.000	-	-	-
Recertification Costs – Tagged Capital Contingency	12.500	2.500	-	-	-

- 17 **authorised** the Minister of Transport and the Minister of Finance acting jointly to draw down the tagged capital contingencies in paragraph 16 above (establishing any new appropriations as necessary), subject to the NZTA confirming details on the rationale for the additional amount of regulatory costs and rectification costs it will incur;
- 18 **agreed** that the ‘Regulatory Costs’ and ‘Recertification Costs’ tagged capital contingencies in paragraph 16 above will expire on 1 June 2021;
- 19 **noted** that the expenditure associated with the ‘Regulatory Costs’ and ‘Recertification Costs’ tagged capital contingencies in paragraph 16 above will have no impact on Budget allowances, as the capital injections are intended to be subject to market interest rates and will be repaid within ten years of each drawdown;
- 20 **noted** that officials will provide further advice to the Minister of Finance and the Minister of Transport about the terms and conditions for repayment of the capital injections associated with the ‘Regulatory Costs’ and ‘Recertification Costs’ tagged capital contingencies;

### Creating a sustainable funding pathway

- 21 **noted** that the NZTA has commenced a broader review of its regulatory funding, and that a paper will be brought to Cabinet outlining the outcome of the review, including any proposals to the current funding arrangements, in early 2020;
- 22 **noted** that under well-established transport funding principles, NZTA’s regulatory activities should principally be cost-recovered through charges in the nature of levies imposed on identifiable groups of land transport system participants according to the benefits and risks they contribute to the system, supplemented by fees charged for specific products and services and some limited Crown funding;
- 23 **noted** that road users are one of the groups of system participants in the land transport regulatory systems who benefit from, and exacerbate risks within, the land transport regulatory system, and should be required to fund a portion (but not all) of the cost of the regulatory activities of the NZTA;
- 24 **noted** that currently there is no clear or established charging mechanism in place to recover the costs of operating the land transport regulator from road users who benefit from having a well-resourced and effective regulator;

- 25 **agreed** to amend the Land Transport Management Act 2003 to provide for a more balanced and equitable approach to funding the NZTA's regulatory function, by providing that:
- 25.1 the Crown may, without further appropriation, fund the NZTA regulatory activities and the Ministry of Transport's associated monitoring activity up to an amount agreed by the Minister of Transport and the Minister of Finance from land transport revenue;
- 25.2 the amount of NZTA regulatory activities funded is paid from land transport revenue inflows prior to inclusion in the National Land Transport Fund;
- 26 **noted** that that the funding model for NZTA regulatory activities and the Ministry of Transport's monitoring function, including the amount of any top-slice and charges for other groups of participants, will be consulted on and considered by Cabinet;

### **Review of the Ministry of Transport's monitoring performance**

- 27 **noted** that in addition to the review of the NZTA's capability and performance, the Secretary for Transport has commissioned a review to assess whether the Ministry of Transport, through its monitoring role, should have identified the performance issues within the NZTA's regulatory function earlier;
- 28 **noted** that the review has found that while the Ministry of Transport's historic approach to monitoring was light touch, it has made significant improvements in how it undertakes its monitoring function, which is now considered more constructive, proactive, collaborative, and representative of best practice;

### **Legislative implications**

- 29 **noted** that the above proposals in response to the NZTA review that have legislative implications will be given effect to in the Regulatory Stewardship (Transport) Amendment Bill, which has a category 4 priority on the 2019 Legislation Programme (to be referred to a select committee in 2019);
- 30 **invited** the Minister of Transport to issue drafting instructions to the Parliamentary Counsel Office to give effect to the decisions in paragraphs 5, 6, 7, 8 and 25 above;
- 31 **authorised** the Minister of Transport to make final decisions, consistent with the overall policy intent, on details that arise during the drafting of the Bill without further reference to Cabinet.

Janine Harvey  
Committee Secretary

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**Present:**

Rt Hon Winston Peters  
Hon Kelvin Davis  
Hon Grant Robertson (Chair)  
Hon Phil Twyford  
Hon Dr Megan Woods  
Hon Dr David Clark (part of item)  
Hon Nanaia Mahuta  
Hon Stuart Nash  
Hon Iain Lees-Galloway  
Hon Jenny Salesa  
Hon Shane Jones  
Hon Kris Faafoi  
Hon James Shaw

**Officials present from:**

Office of the Prime Minister  
Officials Committee for DEV

**Hard-copy distribution:**

Minister of Transport