

Proactive Release

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Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

Listed below are the most commonly used grounds from the OIA.

<u>Section</u>	<u>Description of ground</u>
6(a)	as release would be likely to prejudice the security or defence of New Zealand or the international relations of the New Zealand Government
6(b)	as release would be likely to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by <ul style="list-style-type: none"> (i) the Government of any other country or any agency of such a Government; or (ii) any international organisation
6(c)	prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial
9(2)(a)	to protect the privacy of natural persons
9(2)(b)(ii)	to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information
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
9(2)(ba)(ii)	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 otherwise to damage the public interest
9(2)(f)(ii)	to maintain the constitutional conventions for the time being which protect collective and individual ministerial responsibility
9(2)(f)(iv)	to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials
9(2)(g)(i)	to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any public service agency or organisation in the course of their duty
9(2)(h)	to maintain legal professional privilege
9(2)(i)	to enable a Minister of the Crown or any public service agency or organisation holding the information to carry out, without prejudice or disadvantage, commercial activities
9(2)(j)	to enable a Minister of the Crown or any public service agency or organisation holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)



10 March 2022

OC220107

Hon Michael Wood
Minister of Transport

Action required by:
Wednesday, 16 March 2022

Hon Grant Robertson
Minister of Finance

AMENDED FUNDING DEED TO SUPPORT THE SUCCESSFUL OPERATION OF THE FULL CLEAN VEHICLE DISCOUNT SCHEME

Purpose

To seek your agreement to amend the Funding Deed for the Clean Vehicle Discount Scheme (the Discount scheme), between the Crown and Waka Kotahi New Zealand Transport Agency (Waka Kotahi), to support the successful operation of the Discount scheme.

Key points

- In June 2021 a Funding Deed was agreed which enabled the initial Discount scheme to commence on 1 July 2021, with rebates available for electric and plug-in hybrid vehicles. The Funding Deed recorded how Waka Kotahi was to use the funding for administering the Discount scheme. The full Discount scheme, including charges on high emitting vehicles and a greater range of light vehicles eligible for a rebate, will begin on 1 April 2022. This requires an updated Funding Deed.
- Key changes have been made to the original Funding Deed to provide for the operation of the full Discount scheme. These include amendments to the repayment and reporting sections.
- The amended and restated Funding Deed is attached at Appendix One. The Deed of Amendment and Restatement (which attaches the amended Funding Deed) needs to be signed by the Ministers of Transport and Finance. Nicole Rosie, Chief Executive of Waka Kotahi, has already signed the Deed of Amendment and Restatement (4 March 2022).
- The amended and restated Funding Deed refers to a Ministerial Direction which gives Waka Kotahi certainty on the Government policy, agreed by Cabinet, that they must give effect to when administering the Discount scheme, attached at Appendix Two.
- The Deed of Amendment and Restatement needs to be signed as soon as possible to support the successful operation of the full Discount scheme from 1 April 2022.

Recommendations

We recommend you:

- 1 **note** that the full Clean Vehicle Discount Scheme is due to commence on 1 April 2022 with charges on high-emission vehicles being imposed and rebates being available for a greater range of light vehicles.
- 2 **agree** to amend the Funding Deed to provide for the full Clean Vehicle Discount Scheme and to enable Waka Kotahi to successfully administer the Discount scheme

Minister of Transport

Agree / Disagree

Minister of Finance

Agree / Disagree

- 3 **sign** the attached Deed of Amendment and Restatement (relating to the Clean Car Discount Scheme – Funding Deed)

Minister of Transport

Yes / No

Minister of Finance

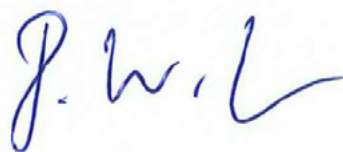
Yes / No

- 4 **note** that the Funding Deed requires Waka Kotahi to administer the Discount Scheme in accordance with any Ministerial Direction, and that a new Ministerial Direction was issued to require Waka Kotahi to give effect to Government policy, as agreed by Cabinet, when administering the Clean Vehicle Discount Scheme.
- 5 **note** that the Deed of Amendment and Restatement (attaching the amended Funding Deed) needs to be signed as soon as possible to support the successful operation of the full Clean Vehicle Discount Scheme from 1 April 2022.



Ewan Delany
Manager, Environment, Emissions and Adaptation, Ministry of Transport

10 / 03 / 2022



David Taylor
Manager, National Infrastructure Unit, Treasury

09 / 03 / 2022



Hon Michael Wood
Minister of Transport

14 / 03 / 2022

Hon Grant Robertson
Minister of Finance

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- Minister's office to complete:**
- Approved
 - Declined
 - Seen by Minister
 - Not seen by Minister
 - Overtaken by events

Comments

Contacts

Name	Telephone	First contact
Ewan Delany, Manager, Environment, Emissions and Adaptation, Ministry of Transport	s 9(2)(a)	
David Taylor, Manager, National Infrastructure Unit, Treasury	s 9(2)(a)	
Jemima de Lacey, Programme Manager, Environment, Emissions and Adaptation, Ministry of Transport	s 9(2)(a)	✓ (MoT)
Ella Sparrow, Adviser, Environment, Emissions and Adaptation, Ministry of Transport	s 9(2)(a)	
Olivia Maxwell, Analyst, Housing and Urban Growth, Treasury	s 9(2)(a)	✓ (TSY)

AMENDED FUNDING DEED TO SUPPORT THE SUCCESSFUL OPERATION OF THE FULL CLEAN VEHICLE DISCOUNT SCHEME

Background to the Clean Vehicle Discount Scheme

- 1 On 19 April 2021 Cabinet agreed to proceed with the Clean Vehicle Discount Scheme (the Discount scheme).¹ Under the Discount scheme, New Zealanders who buy low-emitting light vehicles (i.e. electric and hybrid vehicles) will be eligible for a rebate and those who buy high emitting light vehicles will be imposed with a charge. Rebates and charges apply at the time of first New Zealand registration of the vehicle, and do not apply to vehicles in the existing New Zealand fleet.
- 2 The Discount scheme is designed to rapidly reduce the carbon dioxide (CO₂) emissions of New Zealand's light vehicle fleet. It is intended to be fiscally neutral to the Crown and Waka Kotahi so that, over time, the charges will fund the entire Discount scheme, including rebates on low or zero emission vehicles, administration costs and repayment of the initial grant funding.
- 3 The initial Discount scheme began on 1 July 2021 with rebates available for electric and plug-in hybrid vehicles. The full Discount scheme, with charges on high emitting vehicles, and a greater range of light vehicles eligible for a rebate, will begin on 1 April 2022.

Legislative change was required to allow the full Clean Vehicle Discount Scheme to commence

- 4 The Land Transport (Clean Vehicles) Amendment Act 2022 (the Clean Vehicles Act) came into force on 23 February 2022. This, along with associated rules and regulations, will allow the full Discount scheme to commence on 1 April 2022. The associated legislation comprises
 - 4.1 **Land Transport Rule: Vehicle Efficiency and Emissions Data 2022** – which prescribes requirements for information and data on vehicle efficiency and emissions to support the clean vehicle policies.
 - 4.2 **Land Transport (Clean Vehicle Discount Scheme) Charges Regulations 2022** – which imposes charges on higher CO₂ emission vehicles as part of the Discount scheme, which includes rebates on zero and low emission vehicles.
- 5 The Energy Efficiency (Vehicle Fuel Economy Labelling) Regulations 2007 are also in the process of being amended to ensure that at the point of purchase there is clear CO₂ emission labelling on vehicles. This labelling will include a star CO₂ emissions rating and the monetary amount of any rebate or charge.
- 6 The Clean Vehicles Act establishes the core legislative framework for the Clean Vehicle Standard, which requires vehicle importers to meet progressively stronger CO₂ emission targets on the vehicles they import. The targets and charges under the Standard will apply from 1 January 2023. Regulations prescribing the administrative detail to support the Standard are currently being drafted.

¹ [CAB-21-MIN-128.01 refers].

The original Funding Deed was signed in June 2021 to support the commencement of the Discount Scheme

- 7 The original Funding Deed recorded the parties' agreement on how Waka Kotahi was to use the repayable grant funding for the Discount scheme from 1 July 2021. It was signed by yourselves – Ministers of Finance and Transport, and Nicole Rosie, Chief Executive of Waka Kotahi (for Waka Kotahi).
- 8 The original Funding Deed set out the details around how the payment of funding would work, what that funding could be used for, and what the reporting requirements were.

The Funding Deed needs amending now that the full Discount scheme is ready to start

- 9 It was always envisioned that we would need to amend the Funding Deed. Clause 8.1 of the Funding Deed (copied below) determined that the mechanism for payment to the Crown would be determined at the time that the full legislation was enacted.

8.1 Mechanism for payments to the Crown to be agreed: Waka Kotahi and the Crown agree that a regime for the periodic payment by Waka Kotahi to the Crown of amounts in the CCD Fund that are in excess of the amounts required to enable Waka Kotahi to administer the CCD Scheme in accordance with each CCD Direction, the CCD Legislation and this Deed (including making all payments for Permitted Purposes other than payments under the mechanism to be agreed under this clause 8.1) will be established at the time that any CCD Legislation is enacted. Waka Kotahi and the Crown will work together in good faith to determine a basis for the calculation and payment of any such amounts to the Crown while enabling Waka Kotahi to continue to administer the CCD Scheme in accordance with each CCD Direction, the CCD Legislation and this Deed.

- 10 Officials from the Ministry of Transport, the Treasury and Waka Kotahi have worked together to agree on necessary amendments to the original Funding Deed. Law firm Chapman Tripp has drafted both the original and amended Funding Deeds. The amended and restated Funding Deed is attached at **Appendix One**.

Changes to the original Funding Deed

- 11 The key changes to the Funding Deed support the successful operation of the full Discount scheme and will account for revenue from charges now flowing into the Discount scheme. This includes repayments, by Waka Kotahi to the Crown, of surplus funds received to date to repay the Crown Grant. The circumstances when that would occur and any future Crown Grant drawdowns, if required, and a summary of the expected reporting has also been added.
- 12 Additional minor updates have been made throughout the Funding Deed to clearly align definitions with those found in Clean Vehicle legislation.
- 13 The amended Funding Deed reflects the intention (under legislation) for the actual and reasonable costs of Waka Kotahi to administer the Discount scheme to be covered by the Discount scheme itself (rather than be a cost to Waka Kotahi).

- 14 The changes to the original Funding Deed have been consolidated into an amended and restated version of the Funding Deed (the amended Funding Deed). Parties will sign the “Deed of Amendment and Restatement (relating to the Clean Car Discount Scheme – Funding Deed)” rather than signing the amended Funding Deed. The Deed of Amendment and Restatement will record the parties’ agreement to amend and restate the Funding Deed.

Repayment requirements under the amended Funding Deed

- 15 Under the amended Funding Deed Waka Kotahi is required to make repayments to the Crown of any amount that exceeds the amount required to administer the discount Scheme. This reimburses the repayable grant provided through Budget 2021. Any excess repayment further to the repayment of the Grant, is retained within the NLTF to be used for Clean Vehicle Discount (CVD) Permitted Purposes.
- 16 Under Clause 8.1, Waka Kotahi and the Crown agree that where the amount in the Clean Vehicle Fund exceeds the amount required to enable Waka Kotahi to administer the discount Scheme in accordance with each CVD Direction, the CVD Legislation and this Deed (including making all payments for Permitted Purposes other than payments under this clause 8.1) (an Excess Amount), Waka Kotahi will pay the Excess Amount to the Crown, subject to clause 8.2.
- 17 Clause 8.2 provides further conditions, that: notwithstanding clause 8.1, Waka Kotahi will have no obligation to pay any Excess Amount to the Crown if the Excess Amount is less than \$15,000,000, if the payment is not in multiples of \$5,000,000, or if Waka Kotahi is not satisfied that they will be able to meet their obligations under the Deed during the current Quarter and the following Quarter.

Ability to draw on further grant funding

- 18 The criteria for the ability of Waka Kotahi to submit a further funding request has changed, reflecting the passage of the Clean Vehicles Act. Waka Kotahi may submit a funding request for grant funding in addition to the initial \$40,000,000 if:
- 18.1 projected payments required to be made by Waka Kotahi under the Discount scheme in the next month exceeds the appropriated CVD charges to be received in that same period; or
- 18.2 the amount of the “CVD Fund” (being the aggregate of Grant Funding plus appropriated CVD charges) is less than \$10,000,000, in which case further funding may be drawn to enable there to be a minimum balance in the fund of \$10,000,000.

Reporting requirements under the amended Funding Deed

- 19 Updates have been made to clauses under 9.1 in relation to reporting requirements for Waka Kotahi to include, among other things, the closing balance of the CVD Fund and an explanation for any material underspend or overspend for the preceding quarter. This information is required in each Quarterly Report.

- 20 We note that any reporting requirements that are not included within the amended Funding Deed are being worked through in good faith between Waka Kotahi and the Ministry. Further work will be done on the reporting framework that both Waka Kotahi and Ministry programmes of work will facilitate to ensure the right information is provided in a way that meets all parties needs.

A new Ministerial Direction has been issued to direct Waka Kotahi to give effect to Government policy in administering the Discount scheme

- 21 The amended Funding Deed requires Waka Kotahi to administer the Discount scheme in accordance with any Ministerial Direction relating to the Discount scheme (it is referred to as the CVD Direction in the Funding Deed). The Ministerial Direction to Waka Kotahi (signed on 20 June 2020), which added administering the Discount scheme to the functions of Waka Kotahi, has now been revoked. A new Ministerial Direction relating to the administration of the Discount scheme was signed on 28 February 2022 under section 103 of the Crown Entities Act 2004.
- 22 The new Ministerial Direction requires Waka Kotahi to give effect to Government policy, as agreed by Cabinet, when administering the Discount scheme. The new Ministerial Direction includes Cabinet's decisions on the eligibility criteria for rebates and provides clarity on the criteria Waka Kotahi must apply when issuing rebates.
- 23 The new Ministerial Direction is attached as **Appendix Two**.

Next steps

- 24 The Deed of Amendment and Restatement (which attaches the amended Funding Deed) needs to be signed as soon as possible to support the successful operation of the full Discount scheme from 1 April 2022.
- 25 Nicole Rosie, Chief Executive of Waka Kotahi, has signed the Deed of Amendment and Restatement on behalf of Waka Kotahi. Once you have both counter-signed the Deed, a copy will be provided to the Treasury, Ministry and Waka Kotahi officials to signal acceptance of the amended and restated Funding Deed in accordance with its terms and conditions.

Appendix One: Deed of Amendment and Restatement (relating to the Clean Car Discount Scheme – Funding Deed) *(with the Amended and Restated Funding Deed as Schedule 1 to the Deed of Amendment and Restatement)*

PROACTIVELY RELEASED BY
TE MANATU WAKA MINISTRY OF TRANSPORT

Appendix Two: Ministerial Direction to New Zealand Transport Agency Waka Kotahi on the Administration of Clean Vehicle Discount Scheme Rebates

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TE MANATU WAKA MINISTRY OF TRANSPORT