

Joint report: Approving Terms of Reference for entity form review of
 KiwiRail and New Zealand Railways Corporation

Date:	15 September 2021	Report No:	T2021/2044 (Treasury) OC210738 (Ministry of Transport)
		File Number:	SE-2-25-1

Action sought

	Action sought	Deadline
Minister of Finance (Hon Grant Robertson)	Agree to the Terms of Reference attached to this report and refer this report to the Minister for the Public Service	27 September 2021
Minister of Transport (Hon Michael Wood)	Agree to the Terms of Reference attached to this report and refer this report to the Minister for the Public Service	27 September 2021
Minister for State Owned Enterprises (Hon Dr David Clark)	Agree to the Terms of Reference attached to this report and refer this report to the Minister for the Public Service	27 September 2021

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 the Official Information Act 1982

Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
Daniel Madley	Analyst, Commercial Performance, The Treasury	██████████	✓
Michael Moore	Principal Advisor, Commercial Performance, The Treasury	██████████	
Rory Sedgley	Principal Advisor, Supply Chain, Ministry of Transport	██████████	✓
Harriet Shelton	Policy Manager, Supply Chain, Ministry of Transport	██████████	

Minister's Office actions

Return the signed report to the Treasury and the Ministry of Transport. Once agreed, **send** the report and its attachment to the Minister for the Public Service.

Note any
 feedback on
 the quality of
 the report

Enclosure: [Annex One: Terms of Reference \(Treasury:4516903v1\)](#)

Joint report: Approving Terms of Reference for entity form review of KiwiRail and New Zealand Railways Corporation

Purpose

1. This report seeks your approval of the Terms of Reference (ToR) for the entity form review of KiwiRail Holdings Limited (KiwiRail) and New Zealand Railways Corporation (NZRC).

Background

2. In May 2020, as part of the Future of Rail review, Cabinet considered KiwiRail's structure and form. Cabinet noted that there would be no changes to KiwiRail's organisational form or structure at this time, and that KiwiRail would continue to operate as a State-Owned Enterprise (SOE), pending a further review of KiwiRail's status as an SOE [DEV-20-MIN-0082 refers].
3. We briefed you in April 2021 on matters that the review could consider, and you directed us to prepare a ToR for your approval (T2020/3536 and OC210325 refer).
4. A draft ToR is attached as **Annex One** for this purpose. The ToR outlines the context of the review, its scope, what is explicitly out of scope for the review to consider and the nature of participants' engagement in the review. The ToR states that advice will be provided to Ministers by 30 June 2022.

Analysis of key aspects of the Terms of Reference

How organisations will contribute to the review

5. We have engaged with the Public Service Commission (PSC) and KiwiRail in the preparation of the draft ToR, in part to determine how they will contribute to the review.
6. The draft ToR proposes that KiwiRail and PSC, in addition to the Treasury and the Ministry of Transport, will be members of the review's Working Group. A Steering Group, comprising of senior officials from the Treasury and the Ministry of Transport, will hold overall accountability for the delivery of the review to Ministers.
7. During consultation, KiwiRail requested that it be a member of the Steering Group, given its unique knowledge of its internal operations and rail expertise is integral to the review's outcomes being well-considered and pragmatic.
8. We agree that KiwiRail will be a vital participant in the review and holds unique information that will benefit the review. However, we advise that it would be most appropriate for the Steering Group leading the review, and accountable for delivery of the review, to remain comprised of Government agencies, and for the Steering Group to remain independent of the entity being reviewed. This is also consistent with Cabinet's directive that the Treasury and the Ministry of Transport jointly lead the review [DEV-20-MIN-0082 refers].
9. KiwiRail and the PSC will be consistently engaged and involved with the review's progress through their participation in the Working Group.
10. KiwiRail has accepted this level of involvement if this is agreed by Ministers.

Feedback from KiwiRail on the draft Terms of Reference, and the status of the review

11. KiwiRail has requested that the costs and benefits of any potential changes be fully understood before Ministers receive advice, given the significant impact any change could have on KiwiRail's business and operations. We agree with KiwiRail's view that any change can have significant impacts but note that fully understanding the costs and benefits of any changes will involve subsequent discussions with Ministers followed by more detailed work. This level of detail may therefore be more appropriate to consider as part of any implementation/change plan, depending on the findings of the review and the nature of Ministers' decisions.

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12. [REDACTED]

Scope of the review

13. The scope of the review builds upon the Cabinet paper "KiwiRail Structure and Track User charges" that outlined Ministers' decision for the Ministry of Transport and the Treasury to jointly lead a review into KiwiRail's status [DEV-20-MIN-0082 refers]. Based on this, we recommend that the following matters be within the scope of the review (expanded in more detail in the attached ToR):

- a How entity form handles expectations around commercial outcomes relative to non-commercial public benefit outcomes;
- b Whether Ministers have sufficient levers to achieve public benefit outcomes;
- c The effectiveness of operationalising Future of Rail recommendations in order to achieve anticipated outcomes;
- d The extent to which status quo, or any alternative, creates challenges around roles and responsibilities; and
- e Associated costs and benefits.

14. Any change of ownership or structural separation away from the current vertical integration model is recommended to be outside the scope of the review.

Work streams occurring in parallel with the review

15. Significant policy work is being delivered in parallel to consideration of KiwiRail's entity form. The Ministry of Transport is currently undertaking a review of the system factors that may have contributed to the acceleration of rolling contact fatigue on the Auckland metro network. This work is considering if and how the current metropolitan rail operating model (MROM), contributed to rolling contact fatigue. We expect that this will lead to a deeper review of metro rail services, and there could be interdependencies between that work, and the review of KiwiRail's entity form.

16. We also note that the Minister of Finance and Minister for State Owned Enterprises, as KiwiRail's shareholding Ministers, are also considering appointments to the KiwiRail Board as a result of the passing of the previous Chair, Brian Corban, and the resignation of Fiona Mules.

Risks

- 17. As has been signalled previously (T2020/3536 and OC210325 refer), the review may cause disruption and uncertainty to KiwiRail's ongoing operations. This includes time consumed by KiwiRail staff engaging in the review, and potential disruption of KiwiRail's commercial negotiations with customers.
- 18. We still advise that the review should proceed now. It is important that the matters in scope of the review are thoroughly considered and decisions are taken by Ministers in order to provide clarity to KiwiRail and all stakeholders.

Next steps

- 19. If you approve the Terms of Reference, officials will commence the review and provide advice to you by 30 June 2022.
- 20. The Steering Group will engage with Ministers as required, in line with paragraph 29 of the Terms of Reference.

Recommended action

We recommend that you:

- a **agree** to the Terms of Reference for the entity form review, attached as Annex One.

<i>Agree/disagree.</i> Minister of Finance	<i>Agree/disagree.</i> Minister of Transport	<i>Agree/disagree.</i> Minister for State Owned Enterprises
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- b **refer** this briefing to the Minister for the Public Service for his information.

<i>Agree/disagree.</i> Minister of Finance	<i>Agree/disagree.</i> Minister of Transport	<i>Agree/disagree.</i> Minister for State Owned Enterprises
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Hon Grant Robertson
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