

25 March 2021

OC210209

Hon Michael Wood
Minister of Transport**Action required by:**
Tuesday, 6 April 2021

PUBLIC TRANSPORT OPERATING MODEL (PTOM) REVIEW - DRAFT DISCUSSION PAPER

Purpose

To seek your feedback on a draft Discussion Paper for public consultation, and to support engagement with the public transport sector, on the PTOM Review and decarbonisation. This paper also seeks your agreement to the:

- proposed new overarching objectives of PTOM
- framing of other key issues in the Discussion Paper
- timing of and approach to engagement and consultation.

Key points

- We have prepared a draft Discussion Paper for public consultation and to support engagement with the public transport sector on the PTOM Review and decarbonisation. This is attached in Appendix 1.
- The PTOM Review, and the Discussion Paper, is limited to public transport bus and ferry services. While PTOM does not apply to public transport rail services, it is important to note that any amendments to section 5 of the Land Transport Management Act 2003 (LTMA) that result from the Review would also impact public transport rail services.
- As part of developing the Discussion Paper we have drafted new overarching objectives for PTOM, which retain elements of the founding objectives while also providing for wider social, economic and environmental outcomes.
- Aside from the proposed objectives, the Discussion Paper explores a range of issues and options to address them, but does not identify preferred options. This reflects the complexity of the issues and the importance of engagement before reaching preferred options.
- There is sufficient public interest in the issues covered in the Discussion Paper to justify a public consultation (in addition to targeted engagement with public transport stakeholders). In particular, we anticipate there will be broader interest in addressing issues with the public transport labour market and the framework for exempt services.

- We do not consider it is necessary for you to seek Cabinet approval prior to the Ministry publishing the Discussion Paper. On this basis we anticipate releasing the Discussion Paper in mid-April with a six week consultation period.
- We propose to target engagement with councils, operators and unions and will proactively seek to engage with peak bodies in the sector.
- We anticipate the timing and outcomes of consultation and engagement will impact on the timing of your report back to Cabinet and on the timing of Cabinet policy decisions for any legislative drafting.

Recommendations

We recommend you:

- 1 **provide** feedback to the Ministry on the draft Discussion Paper
- 2 **agree** that the Discussion Paper sets out new overarching objectives for PTOM:
 - a) competitors have access to public transport markets Yes / No
 - b) public transport is an attractive mode of transport Yes / No
 - c) there is sustainable provision of services Yes / No
 - d) the environmental impact of public transport service delivery reduces over time Yes / No
- 3 **agree** that the proposed parameters for the 2025 zero emission bus mandate are:
 - a) a start date of 1 July 2025 Yes / No
 - b) that zero emission is defined as zero emissions from the tailpipe Yes / No
 - c) that the mandate would apply to when buses are first registered in New Zealand Yes / No
- 4 **agree** the Discussion Paper notes that we:
 - a) do not anticipate mandating particular ownership or procurement models to enable decarbonisation of the bus fleet Yes / No
 - b) do not anticipate making recommendations on the future status of individual exempt services, such as the Waiheke Island ferry Yes / No
- 5 **agree** that, subject to your approval, the Discussion Paper can be released publicly without consideration by Cabinet. Yes / No

Withheld to protect the privacy of natural persons



Helen White
Manager Mobility & Safety

25 / 3 / 2021

Hon Michael Wood
Minister of Transport

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UNCLASSIFIED

Minister's office to complete:

Approved

Declined

Seen by Minister

Not seen by Minister

Overtaken by events

Comments

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Contacts

Name	Telephone	First contact
Helen White, Manager, Mobility and Safety	[REDACTED]	✓
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PROACTIVELY RELEASED BY THE MINISTRY OF TRANSPORT

PUBLIC TRANSPORT OPERATING MODEL (PTOM) REVIEW - DRAFT DISCUSSION PAPER

The Ministry has prepared a draft Discussion Paper to support engagement with the sector

Cabinet agreed to a work programme to support decarbonisation of the public transport bus fleet

- 1 In December 2020 Cabinet considered your paper titled *Decarbonisation of the public transport bus fleet* and:
 - 1.1 agreed that officials will commence a work programme to support local government to decarbonise the public transport bus fleet by addressing systemic barriers
 - 1.2 invited you to report back to Cabinet on the outcomes of engagement with the sector [CBC-20-MIN-0118 refers].
- 2 We are progressing this work programme and engagement as part of, and alongside, the PTOM review. The PTOM review is structured in two parts, the PTOM Evaluation (completed and now published) and the Policy and Legislative Review.
- 3 We provided you with advice on the outcomes of the PTOM Evaluation and you agreed to the scope of the Policy and Legislative Review [OC200814 refers]. We have prepared a Discussion Paper (see Appendix 1) to support consultation and engagement on the basis of this agreed scope. The draft Discussion Paper includes the following issues:
 - 3.1 the findings of the PTOM Evaluation
 - 3.2 new overarching objectives for PTOM
 - 3.3 decarbonisation of the public transport bus fleet
 - 3.4 roles and relationships in the public transport sector
 - 3.5 the labour market in the public transport bus sector
 - 3.6 the framework for services that operate outside of PTOM (exempt services)
 - 3.7 the treatment of on-demand public transport services.
- 4 These issues and the approach we have taken to each is outlined further below.

The PTOM Review and the Discussion Paper is limited to public transport bus and ferry services

- 5 The PTOM framework applies to the planning and procurement of public transport bus and ferry services. Public transport rail services have a separate procurement model called the Metro Rail Operating Model (MROM). MROM is not within scope of the PTOM Review. However, it is important to note that if the PTOM Review results in

changes to Part 5 of the Land Transport Management Act (which sets out the Regulation of Public Transport) this would also impact public transport rail services. This is noted in the Discussion Paper.

The findings of the PTOM Evaluation provide the foundation for the Policy and Legislative Review and the Discussion Paper

- 6 We previously outlined the findings of the PTOM Evaluation in OC200814. In short, the Evaluation found that PTOM has only partially met the original objectives and operators with lower wage costs were likely advantaged in tendering. However, under the PTOM framework public transport networks have expanded; access has increased; services have become more affordable for users; and networks have become more integrated.
- 7 On the basis of the Evaluation findings we consider that, with a few exceptions, the PTOM framework has largely enabled and supported positive outcomes for the delivery of public transport services. As a result, in the Discussion Paper we suggest that rather than being a fundamental review of PTOM, the Policy and Legislative Review is intended to address:
 - 7.1 specific issues identified by the Evaluation
 - 7.2 priority issues for the Government, including decarbonisation of the public transport bus fleet and protecting bus driver wages and conditions in future procurement
 - 7.3 issues we are aware of from our ongoing engagement with the sector
 - 7.4 new issues that emerge from engagement with the sector on the Discussion Paper.

The Discussion Paper largely identifies issues and options, without identifying preferred options

- 8 With the exception of the overarching objectives (discussed below), the Discussion Paper presents issues and options and seeks stakeholder feedback on these. We have not identified preferred options to address issues. This reflects that many of the issues are complex and interrelated and resolving them will require action by a range of players. As a result, to be successful the PTOM review will need to be progressed collaboratively with the sector that is responsible for the planning, procurement and delivery of services. We intend to identify preferred options following engagement.

We propose new overarching objectives for PTOM that support wider social, economic and environmental outcomes

- 9 The Discussion Paper proposes new overarching objectives that align more closely with the Government's objectives. The proposed objectives retain elements of the founding objectives, but support wider social, economic and environmental outcomes. We propose the new overarching objectives of PTOM should be:
 - 9.1 **Competitors have access to public transport markets** – this is intended to ensure ongoing value for money from public transport service procurement.

- 9.2 **Public transport is an attractive mode of transport** – this is intended to support the Government’s mode shift objectives and encompasses factors such as reliability, frequency, accessibility and affordability.
- 9.3 **There is sustainable provision of services** – this relates to the ability of the sector to deliver, on an ongoing basis, the public transport services desired by the community.
- 9.4 **The environmental impact of public transport service delivery reduces over time** – this relates to the Government’s objectives to decarbonise the transport system and particularly the public transport bus fleet.
- 10 These objectives would replace the founding objectives, which were:
- 10.1 to grow the commerciality of public transport services (as measured by the proportion of costs covered by fare revenue) and create incentives for services to become fully commercial
- 10.2 to grow confidence that services are priced efficiently and there is access to public transport markets for competitors.
- 11 Subject to stakeholder feedback, if you agree to set new overarching objectives for PTOM, we anticipate these would be embedded through the principles in section 125 of the Land Transport Management Act 2003 (LTMA).

The Discussion Paper explores a range of issues and options to enable accelerated decarbonisation of the bus fleet

We have proposed a set of parameters for the 2025 zero emission bus mandate and identified several options to establish it

- 12 The Government has announced it will require only zero-emission buses to be purchased by 2025 (the 2025 mandate). In the Discussion Paper we have proposed a set of parameters for this mandate:
- 12.1 Start date – we propose the requirement will start from 1 July 2025.
- 12.2 Definition of zero-emission – buses that produce zero emissions at tailpipe. We expect this would include fuel sources such as electricity and hydrogen.
- 12.3 Scope of vehicles included – the requirement will apply to public transport buses used for services contracted to regional councils.
- 12.4 Meaning of “purchase” – we propose the requirement applies to public transport buses registered for the first time in New Zealand from 1 July 2025. This would cover new and used buses that are imported to New Zealand and new buses manufactured or built up in New Zealand. It would not cover buses that are already in the public transport bus fleet prior to 1 July 2025 – even if they are transferred between regions or operators, or refurbished.

- 13 The Discussion Paper also explores three potential options to establish the 2025 mandate:
- 13.1 an amendment to the Requirements for Urban Buses; or
 - 13.2 through changes to the existing Government Policy Statement on Land Transport (GPS) or in the next GPS; or
 - 13.3 through legislative changes (such as the LTMA).

We do not anticipate mandating particular ownership or procurement options to enable decarbonisation

- 14 The Discussion Paper explores a range of issues with decarbonising the public transport bus fleet under the existing ownership and procurement models. We have also identified a range of alternative models that could be considered. However, at this stage we do not anticipate that central government would mandate particular ownership or procurement models.
- 15 We have taken this approach because councils and operators in large urban areas may face different barriers/issues compared to those in smaller regional towns. As a result some councils will need to take different factors into consideration as they develop their decarbonisation plans. For example, councils with a large public transport bus fleet may wish to change asset ownership arrangements, while those with small fleets may see little benefit. These issues are a core element of the Discussion Paper and we expect to get a wide range of feedback from stakeholders.

The Discussion Paper presents options to refine roles and relationships for public transport

- 16 In the Discussion Paper we have highlighted some issues with current roles and relationships in the public transport sector. We have identified two potential options to improve outcomes from public transport investment:
- 16.1 To improve cooperation between regional councils and territorial local authorities we could require that they prepare regional public transport plans in partnership to ensure alignment of service networks and infrastructure. As part of this, territorial authorities could be required to demonstrate how they plan to support efficient public transport service delivery.
 - 16.2 To give Waka Kotahi a stronger role in ensuring consistency and efficiency from public transport service procurement a new principle to support this outcome could be added to section 125 of the LTMA, which contains the principles that guide the performance of functions in relation to public transport.
- 17 We have also noted there may be opportunities to improve the partnership between councils and operators, but have not proposed any specific option to achieve this. The Discussion Paper notes that the role of unions, and relationship between unions and operators, is outside the scope of the PTOM Review. This is because the legal framework for these relationships is in the Employment Relations Act 2000.

We explore options to protect bus driver wages and conditions under PTOM

18 The Discussion Paper notes the Government wants to ensure bus driver wages and conditions are protected in the longer-term. We outline two pathways to achieve this: through Waka Kotahi's procurement guidance or through legislative change. We identify two legislative options:

18.1 Through amendments to the LTMA – for example adding to or amending the principles in section 125 to confirm that drivers' wages and conditions should not be negatively affected by procurement under PTOM. This would provide a legislative backing for changes to procurement guidance set by Waka Kotahi and would also guide the functions of regional councils.

18.2 Add public transport bus drivers to Schedule 1A of the Employment Relations Act. This would mean that if councils choose to procure bus services through competitive tendering, the employees of existing operators would have the right to transfer to any new operator of the services under their existing terms and conditions.

We envisage that the PTOM Review will not make recommendations for individual exempt services

19 In the Discussion Paper we have explored the framework for exempt commercial public transport services and the treatment of inter-regional services under PTOM. While these services are operated outside of PTOM, the LTMA sets out processes for their registration, variation, and withdrawal. It also set out the process to create or remove exemptions for existing services.

20 The Discussion Paper notes we do not anticipate that the PTOM review will make specific recommendations about the future status of individual exempt services. We consider exempt services will need to be assessed on a case-by-case basis, and the PTOM Review is intended to consider issues at a framework level – rather than for individual services. [REDACTED]

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There are several options for the treatment of on-demand public transport services under PTOM

21 Currently on-demand public transport services operate outside of the PTOM framework. This means operators of these are free to establish services that may compete with or complement contracted public transport services. The Discussion Paper explores several options for the treatment of on-demand services:

21.1 Status quo – on-demand services remain unregulated for the purposes of PTOM.

- 21.2 Classify as exempt – all on-demand services would need to be registered with councils and councils would have the opportunity to decline a registration if it would be detrimental to the region’s public transport network.
- 21.3 Require on-demand public transport services to be contracted, unless exempt/commercially operated – this would treat on-demand public transport services the same as scheduled public transport services.

We propose to make the Discussion Paper publicly available and invite written submissions for a period of six weeks

- 22 While we do not envisage a high level of public interest in the PTOM Review, we anticipate there will be sufficient interest to justify a public consultation. In particular, we expect individual bus drivers (especially those not represented by unions), Waiheke Island residents, and other stakeholder groups outside the public transport sector will want to have input into the Review. As a result, we propose to make the Discussion Paper publicly available on the Ministry’s website and invite written submissions for a period of six weeks.
- 23 We propose to focus our engagement effort with the key sector stakeholders, namely Waka Kotahi, councils, operators, and unions. These stakeholders are critical to the success of public transport planning, procurement and delivery. We propose to notify these key stakeholders when the Discussion Paper is published and offer to meet with them to engage on the Discussion Paper. We will also proactively seek engagement with peak bodies, such as Local Government NZ Transport Special Interest Group, the Bus and Coach Association, and the Council of Trade Unions. We will also engage with the Rest and Meal Breaks Steering Group, which includes representatives from these organisations.

We do not consider it is necessary to seek Cabinet approval before publishing the Discussion Paper

- 24 Cabinet has agreed that officials commence a work programme to support local government to decarbonise the public transport bus fleet and invited you to report back on the outcomes of sector engagement. The Discussion Paper has been prepared as part of this work programme and to support engagement with the sector. Because the Discussion Paper presents issues and options, without identifying preferred options, we also consider releasing the Discussion Paper relatively low risk.
- 25 Subject to your feedback and approval, we expect to publish the Discussion Paper in mid-April. However, should you decide to seek Cabinet approval before publishing the Discussion Paper, we will provide further advice on the expected timeframes. The table below shows the current timing of key milestones. Please note, these timeframes are subject to the extent of your feedback on the draft Discussion Paper and the volume of submissions received through public consultation. We will keep you informed on the outcomes of engagement and consultation, and associated timeframes, through the Weekly Report.

Milestone	Indicative Timing
Your feedback on draft Discussion Paper	By 6 April 2021
Revised draft Discussion Paper to your office	12 April 2021
Discussion Paper published	19 April 2021
Consultation closes	31 May 2021
Advice on the outcomes of consultation and engagement	30 June 2021

The expected timing of consultation and engagement on the Discussion Paper will mean a Cabinet report back in the second half of 2021

- 26 Cabinet invited you to report back on the outcomes of engagement in the first half of 2021. Based on the timeline above, we expect this Cabinet report back will now be in the second half of 2021 (indicative timing of August 2021).
- 27 We also expect the timing and the outcomes of public consultation and sector engagement will impact the timing of Cabinet policy decisions to inform any legislative drafting. Depending on the scale of feedback from engagement and our approach to identifying preferred options, we could prepare advice on preferred options, supporting regulatory impact analysis, and a draft Cabinet paper by the end of 2021.

Resolving complex issues may require continued sector engagement

- 28 The PTOM Review considers a range of complex issues, most notably in the area of decarbonisation. We anticipate there will be a range of views on how best to address these issues, [REDACTED]. As a result, further sector engagement beyond the planned six week consultation period may be necessary to resolve these issues. It may also be desirable to engage with the sector once we have identified preferred options, and prior to seeking policy decisions from Cabinet.

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- 29 [REDACTED]

- 30 [REDACTED]

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Next steps

- 31 We are seeking your feedback on the draft Discussion Paper by 6 April 2021, and intend to provide a revised draft by 12 April for your consideration. We will also be available to meet with you to discuss your feedback, should you wish to.

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Appendix 1: Draft Discussion Paper

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