

## Proactive Release

This document is proactively released by Te Manatū Waka the Ministry of Transport.

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 sections of the OIA. Where information has been withheld, a numbered reference to the applicable section of the Act has been made. For example, a [23] appearing where information has been withheld in a release document refers to section 9(2)(a).

<u>Key</u>	<u>Section and description of ground</u>
[23]	9(2)(a) - to protect the privacy of natural persons
[25]	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
[33]	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
[34]	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
[35]	9(2)(g)(ii) - to maintain the effective conduct of public affairs through the protection of Ministers, members of government organisations, officers and employees from improper pressure or harassment
[39]	9(2)(k) - to prevent the disclosure of official information for improper gain or improper advantage

# Hon Grant Robertson

MP for Wellington Central  
Deputy Prime Minister  
Minister of Finance  
Minister for Infrastructure  
Minister for Sport and Recreation



19 September 2022

David McLean  
Chair  
KiwiRail Holdings Limited and New Zealand Railways Corporation  
[23]

Dear David

## **ENTITY FORM REVIEW OF KIWI RAIL HOLDINGS LIMITED AND NEW ZEALAND RAILWAYS CORPORATION**

I am writing, on behalf of shareholding Ministers and the Minister of Transport, to advise you of the outcome of the review of the entity forms of KiwiRail Holdings Limited (KiwiRail) and New Zealand Railways Corporation (NZRC) led by Treasury and Ministry of Transport officials.

Our officials have recommended that there be no change to KiwiRail's and NZRC's status as state-owned enterprises (SOEs), but have advised that there are opportunities to enhance the way we work within the current arrangements. We are comfortable with the findings of the review and our officials' recommendations. However, our decision is predicated on KiwiRail being able to deliver on Ministers' expectations.

This means delivering in terms of commercial performance and supporting achievement of the Government's broader outcomes expected from the rail system as outlined in the New Zealand Rail Plan (Rail Plan) – restoring the national freight network and enabling metropolitan rail networks to support growth and productivity. We expect KiwiRail to prove itself as a cooperative facilitator in the realisation of the public policy benefits of rail and in supporting the implementation of the Emissions Reduction Plan (ERP).

The Government has invested a significant amount in KiwiRail over recent years and is committed to further investment to deliver the strategic investment priorities in the Rail Plan. We are aware that the realisation of benefits from this investment programme will take some time. We have heard your concerns that disruption to the programme, through entity form change, would be counter-productive. This has contributed to our decision and places a responsibility on KiwiRail to deliver on expectations that underpin the investment and to deliver a business strategy that appropriately balances the expectations of improved commercial performance alongside the delivery of Rail Plan outcomes and strategic investment priorities.

It is also important that KiwiRail achieves commercial (above-rail) self-sustainability as this provides the incentive structure to realise the value of the SOE commercial model. In this regard, we have directed the Treasury to report to shareholding Ministers should any of the following conditions arise:

- KiwiRail's commercial value, independently reviewed, is either negative or trending in a negative direction;
- KiwiRail requires any further equity contributions, other than for a value-enhancing shareholder approved investment; and

- KiwiRail's forecasts indicate it will be unable to self-fund above-rail asset maintenance and renewal, over the long-term, to maintain asset quality at a level that the current investment programme will achieve.

Ministers regard the integrity of reporting as critical to the enduring success of the distinct business models for above- and below-rail operations. Reporting separation should be produced on a consistent basis and be able to withstand independent external review. It is an example of an area, alongside others such as access to the rail network, that Ministers may seek independent assurance if required.

We have also asked the Treasury and the Ministry of Transport to work with you, alongside Waka Kotahi, to continue to strengthen and integrate monitoring arrangements, with a focus on Rail Plan and ERP outcomes. We expect KiwiRail to actively support these monitoring arrangements and work with officials.

With regards to providing access to the rail network, we have been advised of the systems and processes you have in place to support open access and consider applications. As the network is improved through the investments the Government is making, it will be critical to ensure that we are enabling access to this public asset and that it is utilised as much as possible. We would like you to work with officials to incorporate greater transparency on access decisions into ongoing monitoring arrangements.

Regarding NZRC, our view is that the matter of its entity form is secondary to that of KiwiRail's. While NZRC stands as an anomaly amongst SOEs, its form does not raise any significant performance concerns and we acknowledge that there are benefits to its status as an SOE, including having the same business planning and accountability arrangements as KiwiRail. Therefore, we are not anticipating any change of form at this point.

Finally, we convey our thanks for KiwiRail's contribution and constructive engagement, both at a board and staff level, throughout the entity form review, including KiwiRail's participation on the review's Working Group. We are aware of the disruption that such a review process brings, and we now look forward to KiwiRail delivering on the benefits and opportunities that the considerable investment in rail enables.

Yours sincerely



Hon Grant Robertson  
**Minister of Finance**

*On behalf of shareholding Ministers and the Minister of Transport*

cc Minister of Transport, Hon Michael Wood  
Minister for State Owned Enterprises, Hon Dr David Clark  
Peter Reidy, KiwiRail Chief Executive, [23]