

Reference: 20190581



13 November 2019

s9(2)(a)

Thank you for your Official Information Act request, received on 27 August 2019. You requested:

I am interested in the policy development process around subpart 5 of the New Zealand Infrastructure Commission/Te Waihanga Bill - and specifically s 25, which restricts the ability of the Commission to disclose information under the OIA. I would therefore like to request the following information under the OIA:

** all advice and communications on the drafting of s25. I'm particularly interested in seeing the justification for it and the circumstances in which it is believed it might apply.*

As I doubt there is a formal document on this, I expect this request will have to look at emails.

The bill is currently up for its second reading, and it may face its committee stage soon. I therefore ask that this request be handled urgently, so that I can push for an amendment if necessary.

I would prefer an electronic response to this address. if you have any queries about this request, feel free to email me, or call on (06) 359-4841. Please note that my contact information is provided for the purpose of processing this request only, and I do not consent to its use for any other purpose, or its release to any third party.

A Treasury official contacted you to clarify your request. You agreed to the below:

"...I'm happy to expand the request to cover all of sections 23 - 25, since they are clearly related, and it may help provide insight into the reasons for the drafting of s25."

On 22 October we advised you of our decision to grant their OIA request before sending the information for release.

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<https://treasury.govt.nz>

Information being released

Please find enclosed the following documents:

Item	Date	Document Description	Decision
1.	22 February 2019	Treasury Report: New Zealand Infrastructure Commission – further policy recommendations	Release in part
2.	25 February 2019	Email: Information Gathering Powers of Australian infrastructure bodies Attachment: Information gathering powers	Release in part
3.	28 February 2019	Information gathering powers - NZIC	Release in part
4.	27 March 2019	Email: NZ Infrastructure Te Waihanga – information gathering power	Release in part
5.	27 March 2019	Treasury Report: New Zealand Infrastructure Commission, Te Waihanga Final Cabinet Paper	Release in part
6.	28 March 2019	ERP Paper – Legislation update	Release in part
7.	24 April 2019	NZIC Bill Feedback	Release in part
8.	9 May 2019	Select Committee notes – New Zealand Infrastructure Commission/Te Waihanga	Release in part
9.	28 May 2019	Letter to Chair of FEC – NZIC Bill information gathering provisions	Release in part
10.	29 May 2019	Email: FW: For you review – TR recommending no change to information gathering powers Attachment: Treasury Report – New Zealand Infrastructure Commission, Te Waihanga Bill – submissions on information gathering provisions	Release in part
11.	30 May 2019	Email: RE: For you review – TR recommending no change to information gathering powers Attachment: Treasury Report – New Zealand Infrastructure Commission, Te Waihanga Bill – submissions on information gathering provisions	Release in part
12.	30 May 2019	Email: RE: For you review – TR recommending no change to information gathering powers	Release in part
13.	30 May 2019	Treasury Report: New Zealand Infrastructure Commission/Te	Release in part

		Waihanga Bill – submissions on information gathering provisions	
14.	6 June 2019	Treasury Report: New Zealand Infrastructure Commission/Te Waihanga Bill – Departmental Report Attachment: Publicly available	Release in part
15.	12 June 2019	NZIC Departmental Report – select committee speaking notes	Release in part
16.	18 June 2019	New Zealand Infrastructure Commission/Te Waihanga – Answering further questions from the Committee, 19 June 2019	Release in part
17.	24 June 2019	Aide Memoire: New Zealand Infrastructure Commission Te Waihanga Bill – information gathering provisions and local government	Release in part
18.	10 July 2019	Email: NZIC Bill – information gathering powers	Release in part
19.	11 July 2019	Email: RE: NZIC Bill – information gathering powers	Release in part
20.	11 July 2019	Email RE: NZIC Bill – information gathering powers	Release in part
21.	16 July 2019	RE: NZIC Bill – information gathering powers	Release in part

I have decided to release the documents listed above, subject to information being withheld under one or more of the following sections of the Official Information Act, as applicable:

- personal contact details of officials, under section 9(2)(a) – to protect the privacy of natural persons, including that of deceased natural persons
- direct dial phone numbers of officials, under section 9(2)(k) – to prevent the disclosure of information for improper gain or improper advantage, and
- section 9(2)(g)(i) – maintain the effective conduct of public affairs through the free and frank expressions of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any department or organisation in the course of their duty.

Direct dial phone numbers of officials have been redacted under section 9(2)(k) in order to reduce the possibility of staff being exposed to phishing and other scams. This is because information released under the OIA may end up in the public domain, for example, on websites including Treasury's website.

Information publicly available

The following information is also covered by your request and is publicly available on the Treasury's and New Zealand Parliament's websites:

Item	Date	Document Description	Website Address
22.	23 August 2019	New Zealand Infrastructure Commission/Te Waihanga Bill	https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_86603/tab/submissionsandadvice
23.	May 2019	New Zealand Infrastructure Commission/Te Waihanga Bill 2019: Approval for Introduction – Te Waihanga Bill 2019 Information Release May 2019	https://treasury.govt.nz/sites/default/files/2019-06/leg-19-sub-0033-4093661.pdf
24.	May 2019	Cabinet Minute CAB-19-MIN-0144: Minute of decision for the New Zealand Infrastructure Commission – Te Waihanga 2019: Approval for Introduction	https://treasury.govt.nz/sites/default/files/2019-06/cab-19-min-0144-4096844.pdf
25.	June 2019	Independent Infrastructure Summary of Submissions Information for Release June 2019	https://treasury.govt.nz/sites/default/files/2019-06/Independent-Infrastructure-Summary-of-Submissions-IR-June2019.pdf

Accordingly, I have refused your request for the documents listed in the above table under section 18(d) of the Official Information Act:

- the information requested is or will soon be publicly available.

Some relevant information has been removed from documents listed in the above table and should continue to be withheld under the Official Information Act, on the grounds described in the documents.

Information to be withheld

There are additional documents covered by your request that I have decided to withhold in full under the following sections of the Official Information Act, as applicable:

- section 9(2)(h) – to maintain legal professional privilege.

In making my decision, I have considered the public interest considerations in section 9(1) of the Official Information Act.

Please note that this letter (with your personal details removed) and enclosed documents may be published on the Treasury website.

This reply addresses the information you requested. You have the right to ask the Ombudsman to investigate and review my decision.

Yours sincerely

David Taylor
Manager, National Infrastructure Unit

OIA 20190581

Information for Release

1.	<u>Treasury Report New Zealand Infrastructure Commission - further policy recommendations</u>	1
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4.	<u>NZ Infrastructure Commission, Te Waihanga - information gathering power</u>	21
5.	<u>Treasury Report New Zealand Infrastructure Commission, Te Waihanga - Final Cabinet paper and bill</u>	22
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8.	<u>NZIC initial briefing - select committee speaking notes</u>	36
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15.	<u>NZIC Departmental Report - select committee speaking notes</u>	67
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17.	<u>Aide Memoire New Zealand Infrastructure Commission Te Waihanga Bill - information gathering provisions and local government</u>	73
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Treasury Report: New Zealand Infrastructure Commission - further policy recommendations

Date:	22 February 2019	Report No:	T2019/183
		File Number:	SH-11-5-16-1-6-2

Action Sought

	Action Sought	Deadline
Minister of Finance (Hon Grant Robertson)	<p>Note the contents of this report</p> <p>Agree to the recommendations contained in this report</p>	4 March 2019
Minister for Infrastructure (Hon Shane Jones)	<p>Refer this report to the Minister of State Services, the Minister of Transport, Housing and Urban Development, and the Minister for Climate Change</p> <p>Note the contents of this report</p>	26 February 2019
	<p>Agree to the recommendations contained in this report</p>	4 March 2019

Once Referred

	Action Sought	Deadline
Minister of State Services (Hon Chris Hipkins)	<p>Note the contents of this report</p> <p>Agree to the recommendations contained in this report</p>	4 March 2019
Minister of Transport, Housing and Urban Development (Hon Phil Twyford)	<p>Note the contents of this report</p> <p>Agree to the recommendations contained in this report</p>	4 March 2019
Minister for Climate Change (Hon James Shaw)	<p>Note the contents of this report</p> <p>Agree to the recommendations contained in this report</p>	4 March 2019

Contact for Telephone Discussion (if required)

Name	Position	Telephone		1st Contact
Morgan Dryburgh	Senior Analyst, National Infrastructure Unit	s9(2)(k)	s9(2)(a) (mob)	✓
David Taylor	Manager, National Infrastructure Unit		N/A (mob)	

Actions for the Minister's Office Staff (if required)

Return the signed report to Treasury.
Refer this report to the Minister of State Services, the Minister of Transport, Housing and Urban Development, and the Minister for Climate Change by 21 February 2019.

Note any feedback on the quality of the report

Enclosure: **No**



IN-CONFIDENCE**Treasury Report: New Zealand Infrastructure Commission - further policy recommendations**

Executive Summary

1. This report sets out further policy decisions and seeks direction from Ministers on these decisions to inform the establishment of the New Zealand Infrastructure Commission, Te Waihanga (the Commission). These decisions include both matters that should be implemented through legislation and through the Commission's operating procedures.
2. On 13 February, Cabinet authorised you to make subsequent policy decisions related to the Cabinet paper 'Establishing a new independent infrastructure body' [DEV-19-MIN-0021 refers].
3. The recommendations in this report have been developed with input from the Expert Review Panel established by the Treasury to guide the development of advice on the Commission.

Government response to the long-term infrastructure strategy

4. Cabinet agreed that the Commission is responsible for producing an infrastructure strategy covering a 30 year period at least every five years. The Commission is required to provide a draft strategy to the responsible Minister, for the responsible Minister to conduct consultation and provide comments. The Commission must have regard to the Minister's comments and provide the responsible Minister with the final strategy to table in parliament. The final strategy will be published on the New Zealand Infrastructure Commission's website.
5. We recommend that the responsible Minister is given three months to provide comments on the draft strategy and that this requirements is included in the Commission's establishing legislation.
6. Once the Commission has received comments from the responsible Minister, or following the three month period provided to the responsible Minister to comment, the Commission should be required to finalise the strategy within three months. We recommend that this requirement be included in the Commission's establishing legislation.
7. We recommend that the government should be required, through the Commission's establishing legislation, to respond to the final strategy and any recommendations within six months.

Operation of the procurement and delivery support functions

8. The Treasury has submitted a Budget 2019 bid on behalf of Minister Jones for a baseline level of funding for the Commission's procurement and delivery support functions.

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9. Cabinet has noted (DEV-19-MIN-0021) that if the Commission requires additional funding for its project support functions, this will be sought through the business case process for the projects the body will be supporting.
10. We recommend that the mandate for the Commission's involvement in procurement and delivery support of infrastructure projects be delivered through the Rules of Sourcing and CO 15(5). This will require agencies to involve the (Infrastructure Transactions Unit) ITU within the Commission in the development of the business case. As part of the business case, the ITU will recommend a level of involvement which will be subject to Cabinet agreement. Revised Rules of Sourcing are being prepared for public consultation and are expected to take effect later in 2019. The ITU is also currently engaged in the process of amending CO 15(5), with the revised circular expected to take effect in late 2019.

Information gathering by the New Zealand Infrastructure Commission

11. The success of the Commission will rely heavily on the Commission's ability to gather information. We recommend that the establishing legislation include a provision requiring state sector agencies to cooperate with and provide information to the Commission to enable it to carry out its functions.
12. The Statistics Act 1975 places restrictions on the release of individual schedules of statistical information which in some cases it may be necessary for the Commission to access. We recommend that the Commission's enabling legislation include a provision which provides access to statistical information where the Commission requires access to undertake its functions.
13. The Expert Review Panel gave particular attention to the issue of how the Commission will gather information, and concluded that it would be more straightforward for agencies if this was a requirement in legislation, rather than a decision to weigh against other competing priorities.

Transition from the Treasury to the Commission

14. To enable the Commission to be operational as soon as possible, the Treasury is building some functions of the Commission within the Treasury. In particular, at Ministers' instructions the ITU was set up and funded from 1 November 2018 within the Treasury, and will become part of the Commission once established.
15. We recommend that the Commission's establishing legislation provides that the Commission must make an offer of employment to Treasury staff identified as performing functions that will transfer to the Commission, on no less favourable terms, and for similar roles. These identified staff fit into two groups, new staff employed by the Treasury to carry out functions of the Commission before it is established and existing Treasury staff in the National Infrastructure Unit and ITU.
16. To enable the Commission to have premises and support services from day one, the Treasury may procure and contract these services for the Commission, with approval from board members designate. We recommend that the transfer of contracts be included in the Commission's enabling legislation.

IN-CONFIDENCE***How the New Zealand Infrastructure Commission will interact with other agencies***

17. We note that there are already sufficient incentives in place to encourage the Commission to consult other agencies including the Crown Entities Act which requires Crown Entities to carry out their functions “in collaboration with other public entities”.
18. Similarly, there are strong incentives for the Commission to engage with other public sector entities in the development of its work programme and to maintain effective working relationships. We do not recommend that any requirement for the Commission to consult with other agencies be included in legislation.

Recommended Action

We recommend that you:

- a **note** the contents of this report

Government response to the long-term strategy

- b **agree** that the responsible Minister will be required to respond to the Commission’s draft long-term infrastructure strategy within three months.

Agree/disagree

- c **agree** that the Commission will be required to publish the final long-term strategy within three months of receiving the responsible Minister’s comments.

Agree/disagree

- d **agree** that the government will be required to respond to the long-term strategy within six months of the publication of the final strategy.

Agree/disagree

Operation of the procurement and delivery support functions

- e **note** that the procurement and delivery support functions of the Commission will only seek further funding for individual infrastructure projects where additional resources are required over and above the baseline budget of the Commission, and that as part of the establishment of the Commission, the ITU will develop policies and procedures for when additional funding is required.

Agree/disagree

- f **agree** that the mandate for agencies to engage with the Commission when beginning an infrastructure project is delivered through a combination of amendments to the Rules of Sourcing and CO 15/5.

Agree/disagree

IN-CONFIDENCE***Information gathering by the Commission***

- g **agree** that the Commission's establishing legislation will include a provision requiring state sector agencies to cooperate with the Commission and provide information to enable the Commission to carry out its functions.

Agree/disagree

- h **agree** that the Commission's establishing legislation will include a provision providing the Commission access to government statistics.

Agree/disagree

Transition from the Treasury to the Commission

- i **note** that on Ministers' instructions the ITU was set up and funded from 1 November 2018 within the Treasury, and will become part of the Commission once established.

- j **agree** that the Commission's establishing legislation provides that the Commission must make an offer of employment to identified Treasury staff carrying out functions that will transfer to the Commission, on no less favourable terms, and for similar roles.

Agree/disagree

- k **agree** that the Commission's establishing legislation provides that contracts entered into by the Treasury for the establishment of the Commission are transferred to the Commission on day one.

Agree/disagree

How the Commission interacts with other agencies

- l **agree** that the Commission's establishing legislation should not require the Commission to consult agencies on advice the Commission develops on particular topics and sectors.

Agree/disagree

- m **agree** that the Commission's establishing legislation should not require Commission to seek input from other agencies in the development of its work programme.

Agree/disagree

- n **note** that we expect the Commission to engage with public sector agencies as it carries out all of its functions.

- o **refer** to the Minister of Minister of State Services, the Minister of Transport, Housing and Urban Development, and the Minister for Climate Change.

Refer/not referred.

IN-CONFIDENCE

David Taylor
Manager, National Infrastructure Unit

Hon Grant Robertson
Minister of Finance

Hon Shane Jones
Minister for Infrastructure

Hon Phil Twyford
**Minister of Transport and Housing and
Urban Development**

Hon Chris Hipkins
Minister of State Services

Hon James Shaw
Minister for Climate Change

IN-CONFIDENCE**Treasury Report: New Zealand Infrastructure Commission - further policy recommendations**

Purpose of Report

1. This report sets out further policy decisions that will inform the establishment of the New Zealand Infrastructure Commission, and seeks direction from Ministers on these decisions.
2. Ministers' decisions on these matters will either form the basis for further drafting instructions to the Parliamentary Counsel Office, for decisions that should be implemented through legislation, or will form the basis of the Commission's operating procedures.
3. On 13 February 2019, Cabinet authorised you to make subsequent policy decisions on related details consistent with the policy proposals discussed in the paper 'Establishing a new independent infrastructure body' prior to the introduction of legislation, and to report back to Cabinet on the decisions taken [DEV-19-MIN-0021 refers].
4. The recommendations in this report have been developed with input from the Expert Review Panel established by the Treasury to guide its development of advice on the Commission. The Expert Review Panel is comprised of public and private sector experts¹.

Background

5. In early 2018, the Minister of Finance, Minister for Infrastructure and the Minister of Transport and Housing and Urban Development commissioned the Treasury to undertake an Infrastructure Institutional Settings Review (IISR). The review showed that while institutional arrangements for managing infrastructure investments has strengthened in recent years, the system is not consistently delivering good infrastructure outcomes.
6. To address these challenges, on 7 August 2018, the Cabinet Government Administration and Expenditure Review Committee agreed in principle to establish a new independent infrastructure body by 1 October 2019 [GOV-18-MIN-0054 refers], subject to further decisions on a number of issues such as the objectives of the infrastructure body, and options for institutional form, powers and functions.
7. The Treasury provided recommendations on the institutional form and functions of the infrastructure body to Ministers in November 2018 [T2018/3083 refers], and the recommendations that Ministers agreed to were the basis for the Cabinet paper 'Establishing a new independent infrastructure body', prepared for the Cabinet Economic Development Committee meeting on 13 February 2019.

¹ The members of the Expert Review Panel are: Simon Allen, Chair, Crown Infrastructure Partners; Jim Betts, Chief Executive, Infrastructure New South Wales; Jenny Chetwynd, Strategy, Policy and Planning General Manager, NZ Transport Agency; Fiona Mules, National Infrastructure Advisory Board; John Rae, Chair, National Infrastructure Advisory Board; and Sarah Sinclair, Partner, Minter Ellison Rudd Watts Lawyers and Board Member, Infrastructure New Zealand.

IN-CONFIDENCE**Key decisions covered in this report**

8. The policy decisions covered in this report are organised into the following sections:
9. Not all of these decisions are necessary to advance legislation, but we are advising you of these matters together to provide you with a detailed picture of how the New Zealand Infrastructure Commission will operate.

Government response to the long-term infrastructure strategy

10. The Cabinet paper 'Establishing a new independent infrastructure body' recommended that the Commission is responsible for developing and publishing a long-term infrastructure strategy at least every five years, covering a 30-year period.
11. As part of the process for developing the strategy, the Cabinet paper recommended that the Commission is required to provide the responsible Minister with a draft of the strategy, for the responsible Minister to conduct relevant consultation and provide comments on the draft. The Cabinet paper also recommended that once the Commission publishes the final version of the strategy, the government must respond to the strategy, including any recommendations made as part of the strategy.
12. The Commission's establishing legislation will need to specify the timeframe for both the responsible Minister's response to the draft strategy, the Commission's publication of the final strategy, and the overall government response to the final published strategy.

Timeframe for comment on the draft strategy

13. We recommend that the responsible Minister is given a period of three months to provide comments on the draft strategy. In making this recommendation, we have balanced the need for the Minister to be given a reasonable timeframe to respond with the need for the Commission, and for the market to have certainty in the development of the strategy.
14. We think that a timeframe of three months for the responsible Minister to respond to the draft strategy is sufficient, as government agencies who are likely to have views on the strategy will have been involved in the development of the strategy. This means that the government should be well placed to respond to the draft relatively soon after it is provided to the responsible Minister. The three month period also provides enough time for Cabinet to take decisions on the response to the draft strategy, if necessary.
15. A three month timeframe will provide certainty to the Commission, and other participants in the process of developing the strategy. This means that the development of the strategy will not lose momentum, and it will remain relevant from when it is conceived through to when it is finalised.

Action

16. If you agree to this recommendation, the Treasury will issue further drafting instructions to the Parliamentary Counsel Office to this effect, for inclusion in the establishing legislation.

Timeframe for publication of the final strategy

17. We recommend that, once the Commission has received the government's comments on the draft strategy, the Commission is required to publish the final strategy within three months.

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18. As with the timeframe for the government's comments on the draft strategy, providing a timeframe within which the Commission must publish the draft strategy will provide certainty to all participants involved in the process of developing the strategy, and will ensure the development of the strategy does not lose momentum.

Action

19. If you agree to this recommendation, the Treasury will issue further drafting instructions to the Parliamentary Counsel Office to this effect, for inclusion in the Commission's establishing legislation.

Timeframe for government response to the final strategy

20. We recommend that the government is required to respond to the long-term infrastructure strategy within six months of the publication of the final strategy. This recommendation strikes a balance between providing a reasonable timeframe for response with certainty for the market.
21. We expect that, if the Commission is effective, the final strategy will not differ substantially from the draft strategy provided to the responsible Minister earlier in the process. This means that Ministers and agencies providing input into the government response will not be unfamiliar with the content of the strategy.
22. This timeframe is similar to the timeframe set out in CO (09) 1 for the government to respond to Law Commission reports. If the government disagrees with the Commission, they are required to respond within 120 working days.
23. A six month timeframe also provides certainty to the market, who will have been involved in the development of the strategy. We expect that the strategy will include recommendations to the government, and how the government chooses to respond to those recommendations will provide information to the sector about the future direction for infrastructure. A longer timeframe could lead to a loss of momentum after the publication of the strategy, and a loss of market confidence in the certainty of future infrastructure initiatives.

Action

24. If you agree to this recommendation, the Treasury will issue further drafting instructions to the Parliamentary Counsel Office to this effect, for inclusion in the Commission's establishing legislation.

Operation of the procurement and delivery support functions

25. The Cabinet paper 'Establishing a new independent infrastructure body' noted that we would provide you with further advice on provisions to allow for the cost recovery of the Commission's procurement and delivery support functions. This advice will also outline how and on what terms the Commission will be involved in the business case development for, and procurement and delivery of, infrastructure projects.

Funding of procurement and delivery support functions

26. The Treasury has submitted a Budget 2019 bid on behalf of the Minister for Infrastructure to secure funding for the Commission including a baseline level of funding for the Commission's procurement and delivery support functions.
27. Cabinet has noted (DEV-19-MIN-0021) that if the Commission requires additional funding for its project support functions, this will be sought through the business case process for the projects the body will be supporting.

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28. This additional funding may be necessary because the number, scale or complexity of projects that the Commission provides procurement and delivery support to are likely to vary considerably over time, and from project to project. While we expect the baseline level of funding that is being sought will allow for a comprehensive level of project support by the Commission, the variable nature of infrastructure projects will make it difficult to ensure every project eventuality is covered.
29. There is flexibility for this approach to change over time, as the Crown Entities Act and the Commission legislation will not restrict the ability for the Commission to undertake cost recovery for agreed services in the future if the proposed method of funding is no longer preferred.

Action

30. As part of the establishment of the Commission, the ITU will develop policies and procedures for when additional funding is required.

The mandate for the New Zealand Infrastructure Commission's involvement in procurement and delivery support of infrastructure projects

31. We propose that the mandate for agencies to engage with Commission when beginning an infrastructure project is delivered through a combination of the Rules of Sourcing and CO 15(5). This was effective in the past in ensuring that agencies engaged with the Treasury's PPP team when considering a PPP.
32. This will require agencies to involve the ITU in the business case development process. As part of the business case, the ITU will recommend a level of ITU involvement. Ministers will then determine the mandate for ITU involvement and support to the project through the Cabinet decision.

Action

33. If you agree to this recommendation, the process for amending both the Rules and the Circular will follow the standard process for amendments, including the proposed amendments being considered and approved by Cabinet. We note that, the revised Rules of Sourcing are currently being prepared for public consultation, and the ITU is also engaged in the process of amending CO 15(5).
34. Cabinet is expected to make decisions on amendments to both documents by June 2019, with both the revised Rules and the revised circular taking effect in late 2019.

Information gathering by the New Zealand Infrastructure Commission

35. A number of the Commission's core functions will be dependent on information about New Zealand's infrastructure, which is held by central government, local government and private sector infrastructure owners. The strategy and planning functions, particularly the development of the long-term infrastructure strategy, will rely on information about the state of New Zealand's current infrastructure in order to assess future infrastructure needs.
36. The project and delivery support functions will also rely on information, although this is more likely to be information relating to specific infrastructure projects.
37. Throughout the development of the New Zealand Infrastructure Commission policy we have received questions from agencies around how much information agencies will be required to provide to the Commission, and how this information will be sought, including whether the Commission's establishing legislation will compel agencies to provide information.

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38. Many of these questions appear to arise from concerns about additional compliance costs and reporting requirements being placed on agencies, and the impact that this is likely to have on their businesses. Particularly, agencies have been concerned that the Commission's legislation will include a requirement for agencies to provide information that they may not hold, or which may require significant work to collate and provide.
39. In deciding how the Commission should best seek to gather information, we need to balance the Commission's ability to effectively and efficiently access quality information with the need to maintain good relationships with agencies, and not place a burden on them in terms of information requests.

How the New Zealand Infrastructure Commission will gather information from agencies

40. The strength of the Commission's advice will, in part, rely on the information it is provided by infrastructure asset owners. We expect that, in the first instance, the Commission will work to use existing sources of information where possible, and work with asset owners to encourage the collection and retention of good information about their infrastructure, and provision of this information to the Commission.
41. Information that is already produced includes information provided to the Treasury's Investment Management and Asset Performance (IMAP) team, such as asset information, capital intentions for the public sector, Investor Confidence Ratings and risk assessments. Local Government is also already required to provide a large amount of information in long-term plans, which are publicly available.
42. However, due to the essential nature of information to the effective functioning of the Commission, we recommend that the establishing legislation include a provision requiring state sector agencies to cooperate with the Commission and comply with information requests to enable the Commission to carry out its functions.
43. Similar provisions have been included in the legislation establishing infrastructure bodies overseas, in recognition of the importance of information to the functions of an infrastructure body.
44. We do not recommend that this provision extend to the Local Government or private sectors. Once established, the Commission will work to use existing sources of information from these sectors where possible, and build good working relationships to facilitate the voluntary provision of information.
45. The Expert Review Panel gave particular attention to the issue of how the Commission will gather information, and concluded that it would be more straightforward for agencies if this was a requirement in legislation, rather than a decision to weigh against other competing priorities.

Action

46. If you agree to this recommendation, the Treasury will issue further drafting instructions to the Parliamentary Counsel Office to include a provision around cooperation and information provision to the Commission in the Commission's establishing legislation.
47. Additionally, as part of the establishment of the Commission, the establishment team will develop agreements with existing holders of infrastructure asset data, such as the Treasury's Investment Management and Asset Performance (IMAP) team, so that the Commission will have access to information that is already produced or collected.

Access to government statistics

48. The Statistics Act 1975 places restrictions on the release of individual schedules of statistical information. In some instances, the Commission may find it necessary to

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have access to detailed statistical information, particularly in the development of the long-term strategy, or in preparation of reports on particular infrastructure issues.

49. Other Crown entities, such as the Productivity Commission, include a provision in their establishing legislation that provides for access to statistical information.
50. We recommend that the Commission's establishing legislation contain a similar provision, to ensure the Commission has the ability to access this information if it is required to carry out its functions.

Action

51. If you agree to this recommendation, the Treasury will issue further drafting instructions to the Parliamentary Counsel Office to this effect, for inclusion in the Commission's establishing legislation.

Transition from the Treasury to the Commission

52. To enable the Commission to be operational as soon as possible after the establishing legislation is passed, the Treasury is building some functions of the Commission within the Treasury. In particular, at Ministers' instructions the ITU was set up and funded from 1 November 2018 within the Treasury, and will become part of the Commission once established. We are considering whether a similar approach should be taken for some of the Commission's strategy and planning functions.
53. The Treasury may also enter into contracts for services such as information technology support, finance, and accommodation, to ensure the Commission has a functional office from day one. This would be done with the approval of the board members designate of the Commission.
54. To enable the transition from the Treasury to the Commission to occur as seamlessly as possible, we recommend that the establishing legislation includes provisions for the transfer of contracts, and Treasury staff carrying out the functions of the Commission, to the Commission. This would allow the Treasury to set up as much as possible for the Commission before it is established, while reducing operational risk to the Treasury.

Transfer of staff from the Treasury to the Commission

55. We recommend that the Commission's establishing legislation provides that the Commission must make an offer of employment to Treasury staff identified as performing functions that will transfer to the Commission, on no less favourable terms, and for similar roles. We are only seeking your agreement to what provisions go in the establishing legislation. You are not being asked to comment on the Treasury's employment decisions (under the State Sector Act, a departmental chief executive has a duty to act independently from Ministers on matters relating to decisions on individual employees).
56. There are two groups of staff that could be identified by the Treasury, and that the Commission would then need to offer to employ:
 - a New staff employed by the Treasury to carry out the functions of the Commission before it is established, such as new staff to the ITU.
 - b Existing Treasury staff in the National Infrastructure Unit and ITU.
57. This option minimises operational risks to the Treasury (as the Treasury can offer permanent employment with very low risk of having to make redundancy payments), which better ensures that there is a stronger workforce ready to transfer on day one of

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the Commission. It has a minor impact on the Commission, as the Commission would inherit the staff and their employment terms and conditions. For new staff, the Treasury would try to minimise any negative impact by keeping the terms and conditions of employment standard and generic.

58. The mandated transfer of staff being recommended is consistent with the broader agreed policy to transfer the ITU from the Treasury to the Commission. This will provide a core of staff for the Commission to function on day one, but also provide the Commission with flexibility to make its own employment decisions in building to full capacity.

Action

59. If you agree to this recommendation, the Treasury will issue further drafting instructions to the Parliamentary Counsel Office to this effect, for inclusion in the Commission's establishing legislation.

Transfer of non-employment contracts from the Treasury to the Commission

60. To enable the Commission to have premises and support services from day one of its operation, the Treasury may decide to procure and contract these services for the Commission. We recommend that the Commission's establishing legislation provide for those contracts to transfer to the Commission on day one.
61. This will impact the Commission, but the Treasury would manage any negative impact by working with the board members designate of the Commission and getting their approval to enter any contracts.
62. The alternative would be for the Commission to agree to novate (take over) the contracts from the Treasury. There would be small risk the Commission would choose not to, and the Treasury would be left with the contract. That would create an operational risk for Treasury that could impact the transition to day one of the Commission, as it may not have accommodation (for example).

Action

63. If you agree to this recommendation, the Treasury will issue further drafting instructions to the Parliamentary Counsel Office to this effect, for inclusion in the Commission's establishing legislation.

How the New Zealand Infrastructure Commission interacts with other agencies

64. During agency consultation on the Treasury's recommendations for the functions and form of the Commission [T2018/3083 refers], and on the Cabinet paper, some questions were raised around how the Commission intends to interact with other agencies, particularly in relation to how it develops any advice it provides to Ministers, and how it determines its work programme.

Consultation on advice

65. During consultation, one agency suggested that the Commission's establishing legislation should require the Commission to consult agencies during the development of advice on particular topics and sectors.
66. We believe that it is reasonable to expect that the Commission will consult with relevant agencies in the preparation of its advice, as its credibility will be reliant on incorporating the views of subject matter experts. However, we do not recommend placing this in legislation, as we believe the provisions of the Crown Entities Act that require Crown

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Entities to carry out their functions "in collaboration with other public entities" will ensure the Commission acts in good faith in the preparation of any reports.

67. Additionally, two of the factors critical to the Commission's success will be its credibility and the strength of its relationships with the wider public sector. If the Commission does not build constructive relationships with public sector agencies, it is unlikely to receive the engagement and information required to fully carry out its functions. Therefore, there is a strong incentive for the Commission to work well with agencies, including collaborating and sharing its advice, as not taking into account the views of subject matter experts is likely to harm the overall credibility of the Commission.

Action

68. No action is required at this stage, but good engagement with agencies will be incorporated into the operating practices of the Commission.

Input into the New Zealand Infrastructure Commission's work programme

69. Another suggestion that arose during agency consultation was that the Commission seek input from other agencies in the development of its work programme.
70. We believe that it is reasonable to expect the New Zealand Infrastructure Commission to engage with public sector agencies as it carries out all of its functions. As with the development of the Commission's advice, there are strong incentives for the to maintain effective relationships with public sector agencies. This engagement should give rise to the identification of any priority issues that should be included on the Commission's work programme. Due to the incentives that will exist for the Commission, we do not believe this needs to be included as a legislative requirement.

Action

71. No action is required at this stage, but good engagement with agencies will be incorporated into the operating practices of the Commission.

Next Steps

72. If you agree to the recommendations included in this report, the Treasury will undertake the appropriate actions to implement each decision. In the case of decisions that should be implemented through the Commission's establishing legislation, the Treasury will issue further drafting instructions to the Parliamentary Counsel Office.
73. When the final legislation is presented to the Cabinet Legislation Committee, which we expect to be on 2 April 2019, the accompanying paper will note the subsequent decisions that have been incorporated into legislation, for Cabinet's confirmation.
74. Decisions that affect how the Commission will operate, but do not need to be implemented through the Commission's establishing legislation, will be incorporated into the operating practices of the New Zealand Infrastructure Commission.
75. If any further matters arise that require policy decisions during the preparation of the legislation, we will provide you with further information at that point in time.

From: Amy Van Bunnik [TSY]
Sent: Monday, 25 February 2019 11:22 AM
To: Morgan Dryburgh [TSY]
Subject: Information gathering powers of Australian infrastructure bodies
Attachments: Information gathering powers.docx

[UNCLASSIFIED]

Hi Morgan,

I have attached some information about the information gathering powers of infrastructure bodies in Australia.

In summary,

Building Queensland: no information gathering powers in Act,

Infrastructure Victoria: May make reasonable requests to a public entity or public service for information. The public entity or public service must co-operate with Infrastructure Victoria in the performance of its functions,

Infrastructure NSW: Government agencies must comply with reasonable information requests to enable INSW to exercise its functions,

Infrastructure SA: Infrastructure SA may require information from a person to assist with the performance of its functions (penalties for non-compliance apply),

Infrastructure WA: No legislation has been enacted. Consultation document implies that the agencies will be required to cooperate with information requests.

Thanks

Amy

Amy van Bunnik | National Infrastructure Unit | **The Treasury - Kaitohutohu Kaupapa Rawa**

Tel: s9(2)(k) | Amy.vanBunnik@treasury.govt.nz

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Information gathering powers of Australian infrastructure bodies:

Building Queensland:

Act does not mention any information gathering powers.

Infrastructure Victoria:

The Infrastructure Victoria Act states:

23 Infrastructure Victoria may request information to perform its functions

(1) Infrastructure Victoria, by written notice delivered to a public entity or public service body, may make a reasonable request for the entity or body to provide information of a kind specified in the notice.

(2) Infrastructure Victoria must not disclose to any person any document that it has obtained from any agency (as defined in the Freedom of Information Act 1982) or Minister that is an exempt document under the Freedom of Information Act 1982 in the hands of the agency or Minister.

24 Obligations of public entities and public service bodies

A public entity or public service body must—

- (a) co-operate with Infrastructure Victoria in the performance of the functions of Infrastructure Victoria; and
- (b) respond to a reasonable request under section 23(1) in a timely and efficient manner.

Infrastructure NSW:

The Infrastructure NSW Act states

15 Obligations of government agencies

(1) A government agency has the following obligations in respect of infrastructure projects:

- (a) to co-operate with Infrastructure NSW in the exercise of the functions of Infrastructure NSW, including complying with any reasonable request of Infrastructure NSW for information to enable Infrastructure NSW to exercise its functions,
- (b) to notify Infrastructure NSW of any proposed exercise of the functions of the agency that may impact adversely on the current 5-year infrastructure plan or a project implementation plan under Part 4.

(2) This section does not extend to the investigative, complaints handling and other law enforcement functions of the NSW Police Force, the Independent Commission Against Corruption, the Ombudsman's Office, the Police Integrity Commission or the office of the Auditor-General.

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Infrastructure SA:

The Infrastructure SA Act states

Division 4—Collection and use of information

29—Power to require information

(1) Infrastructure SA may, by written notice served personally or by post, require a person to provide Infrastructure SA with such information and material as may be reasonably required for the purposes of assisting Infrastructure SA in the performance of its functions under this Act.

(2) A person required to provide information or material under subsection (1) must—

(a) provide the information and material within the time specified in the notice (which must be reasonable); and

(b) provide the information and material in the manner and form specified in the notice (which may, for example, include the provision of a business case).

Maximum penalty: \$20 000.

(3) A person cannot be compelled to give information under this section if the information might tend to incriminate the person of an offence or is privileged on the ground of legal professional privilege.

30—Obligation to preserve confidentiality

(1) Information gained under this Part that—

(a) could affect the competitive position of a person; or

(b) is commercially sensitive for some other reason,

is, for the purposes of this Act, confidential information and a person performing a function under this Act is guilty of an offence if the person discloses such information otherwise than as authorised under this section.

Maximum penalty: \$20 000 or imprisonment for 2 years.

(2) Confidential information may be disclosed if—

(a) the disclosure is made to another who is also performing a function under this Act; or

(b) the disclosure is made with the consent of the person who gave the information or to whom the information relates; or

(c) the disclosure is authorised or required under any other Act or law; or

(d) the disclosure is authorised or required by a court or tribunal constituted by law; or

(e) the disclosure is authorised by regulation.

(3) If a person, when giving information to Infrastructure SA in response to a requirement of Infrastructure SA under this Part, claims that the information is confidential information, Infrastructure SA must, before disclosing the information otherwise than as referred to in subsection (2), give the person written notice of the proposed disclosure and the reasons for the disclosure.

(4) A person performing a function under this Act must not use confidential information for the purpose of securing a private benefit for themselves or for some other person.

Maximum penalty: \$20 000 or imprisonment for 2 years.

(5) Information classified by Infrastructure SA as being confidential under subsection

(1) is not liable to disclosure under the Freedom of Information Act 1991.

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Infrastructure WA:

The Infrastructure WA Act is expected to be introduced to the House in February 2019.

The consultation document indicated that Infrastructure WA would have some information gathering powers however it does not specify how these powers will be granted.

Paragraph from Infrastructure WA consultation document:

To undertake its functions effectively, IWA will need to access information and expertise within agencies. Agencies, including Government Trading Enterprises (GTEs), will therefore be required to cooperate with IWA and provide IWA with any information required (with appropriate exceptions, e.g. certain Police matters).

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Issue:

- s9(2)(g)(i)

- This means they are likely to advise Minister Hipkins of their view – other Ministers may also express similar views.
- This could lead to Ministers other than Jones not agreeing to the information gathering recommendation on Monday – requiring conversations which may not resolve the issue by COP Monday, delaying the process.
- Any delay in agreement to provisions in the legislation is likely to lead to a delay in the LEG paper and introduction.

Proposal:

- We could prepare advice for Minister Jones putting forward options to progress information-gathering abilities for the Commission in a way that would not delay the introduction of the legislation:
 - **Option 1 – Select Committee via Departmental Report:** Any information gathering provision would not be included in the introduction version of the legislation. Treasury would carry out the appropriate consultation and development of the information gathering provisions, and propose them to the Select Committee through the Departmental Report.
 - **Option 2 – Supplementary Order Paper:** [Not recommended, may not even need to include in options] Treasury would carry out the appropriate consultation and develop the provisions, and the Minister could introduce an SOP post-Select Committee to include an information gathering provision in the Bill.
 - **Option 3 – Whole of Government Direction:** Instead of including powers in the legislation, the Minister of State Services and the Minister of Finance could jointly direct Crown entities to support a whole of government approach to cooperating with the Commission.

From: Morgan Dryburgh [TSY]
Sent: Wednesday, 27 March 2019 10:13 AM
To: 'Megan Gray'
Subject: NZ Infrastructure Commission, Te Waihanga - information gathering power

[IN-CONFIDENCE]

Hi Megan,

Thanks for the discussion just now.

Based on the description you gave on the information the Ministry holds about school infrastructure assets, we are comfortable that the Ministry is a good central point to gather information about education infrastructure, and that the type of information the Commission would want to seek from Boards/schools is collected by the Ministry.

I can confirm that we have amended the drafting of the Bill so that the information gathering provisions now only apply to departments, departmental agencies and statutory entities (Crown agents, ACEs and ICEs). This means the provisions no longer apply to Boards of Trustees.

Cheers,

Morgan

Morgan Dryburgh | Senior Analyst, National Infrastructure Unit | Te Tai Ōhanga – The Treasury

s9(2)(k)

s9(2)(a)

Morgan.Dryburgh@treasury.govt.nz

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TE TAI ŌHANGA
THE TREASURY

Treasury Report: New Zealand Infrastructure Commission, Te Waihanga -
Final Cabinet paper

Date:	27 March 2019	Report No:	T2019/881
		File Number:	SH-11-5-16-1-6-2

Action Sought

	Action Sought	Deadline
Minister of Finance (Hon Grant Robertson)	Note the contents of this Report	None
Minister for Infrastructure (Hon Shane Jones)	Note the contents of this Report Refer this report to the Minister of State Services, the Minister of Transport and Housing and Urban Development, and the Minister for Climate Change Sign the attached Cabinet paper	27 March 2019 10am, 28 March 2019

Contact for Telephone Discussion (if required)

Name	Position	Telephone	1st Contact
Morgan Dryburgh	Senior Analyst, National Infrastructure Unit	s9(2)(k) (mob)	✓
David Taylor	Manager, National Infrastructure Unit	N/A (mob)	

Actions for the Minister's Office Staff (if required)

Return the signed report to Treasury.

Refer this report to the Minister of State Services, the Minister of Transport and Housing and Urban Development, and the Minister for Climate Change.

Lodge the Cabinet paper with the Cabinet office by 10am, Thursday 28 March 2019

Note any
feedback on
the quality of
the report

Enclosure: Yes

IN-CONFIDENCE**Treasury Report: New Zealand Infrastructure Commission, Te Waihangā - Final Cabinet paper**

Executive Summary

Purpose and content

1. This report provides a finalised Cabinet paper to introduce at the Cabinet Legislation Committee on 2 April 2019. It also provides a draft copy of the New Zealand Infrastructure Commission/Te Waihangā Bill, which is subject to final checking. A final copy will be submitted to the Cabinet Legislation Committee by the Parliamentary Counsel Office.
2. The Cabinet paper seeks Cabinet's approval for the introduction of the Bill, and notes that the content of the Bill is primarily consistent with decisions made by Cabinet on the functions and form of the New Zealand Infrastructure Commission, Te Waihangā, (the Commission) [DEV-19-MIN-0021 refers], and subsequent policy decisions made by authorised Ministers, for the purposes of the drafting of the Bill.

Feedback from agency consultation on information gathering power

3. The information gathering provisions in the Bill provide for the Commission to request information that is necessary or desirable for it to perform its functions.
4. During consultation concerns were raised about the breadth of agencies that the information gathering power would apply to. In response to these concerns, the Bill now provides that the Commission can only make formal requests from:
 - a public service departments, except the Government Communications Security Bureau and the New Zealand Security Intelligence Service
 - b departmental agencies
 - c statutory entities (and not other Crown entities, such as school boards of trustees), and
 - d the New Zealand Defence Force (which is a non-public service department).
5. The Bill allows agencies to withhold information if necessary to maintain legal professional privilege, or if the supply of the information would limit the ability for an agency to act judicially or to carry out its statutorily independent functions. Following agency feedback, the Bill now also provides that information cannot be obtained by the Commission if the following applies:
 - a the supply of the information would be likely to result in the matters set out in section 6(a) or (b) of the Official Information Act 1982,
 - b it is held by the Government Statistician that was collected under the Statistics Act, or is revenue information under the Tax Administration Act 1994 that the Commissioner of Inland Revenue is required to keep confidential.
6. Given that some information provided may be commercially confidential or sensitive, the Bill now provides that the Commission must not publish or disclose information obtained under the information gathering power unless one of the following applies:

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- a the information is already publically available, or available to the public under an enactment (such as the Official Information Act)
 - b the information is in statistical or summary form
 - c the publication or disclosure is with the consent of the person to whom the information relates or to whom the information is confidential, or
 - d the publication or disclosure is required by law.
7. The Commission will be subject to the Official Information Act (OIA) and people may request it release information obtained using its information gathering power. We would expect the Commission to consult with agencies that have provided the information and/or the people who are the subject of the information, or transfer requests to an agency to which the request is more closely connected. Under the OIA, the Commission can also withhold information that is subject to an obligation of confidence, or where disclosure would be likely to prejudice the supply of similar information in the future (and subject to any overriding public interest considerations in favour of release).
8. The Green Party expressed the view that the Bill should expressly require the Commission to consider climate change mitigation and adaptation in the prioritisation of infrastructure. To address this, clause 11 was included in the Bill, requiring that when advising on infrastructure needs and priorities, the Commission must have regard to the long-term trends that impact on or are impacted by infrastructure, including climate change. This is also discussed in the Cabinet paper, and includes a specific recommendation for Cabinet to agree.
9. The decision to provide the Commission with the power to gather information was made by authorised Ministers. The State Services Commission has indicated that this decision should be considered separately through a Cabinet policy committee, however we note this is not feasible if you wish to maintain the target date for the Bill to be introduced to the House, Monday 8 April 2019. If you consider that the information gathering power should be decided upon by full Cabinet, we recommend that the Cabinet Legislation Committee refers the paper *New Zealand Infrastructure Commission/Te Waihanga Bill: Approval for Introduction* to Cabinet for consideration on Monday 8 April 2019.

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Recommended Action

We recommend that you:

- a **note** the contents of this report
- b **note** that the attached Cabinet paper seeks approval to introduce the New Zealand Infrastructure Commission/Te Waihanga Bill
- c **sign** the attached Cabinet paper.

Signed/not signed
Minister for Infrastructure

David Taylor
Manager, National Infrastructure Unit

Hon Shane Jones
Minister for Infrastructure

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IN-CONFIDENCE**Treasury Report: New Zealand Infrastructure Commission, Te Waihangā - Final Cabinet paper**

Purpose of Report

10. This report provides you with a finalised Cabinet paper to introduce for consideration at the Cabinet Legislation Committee on 2 April 2019. It also provides you with a draft copy of the New Zealand Infrastructure Commission/Te Waihangā Bill, which is subject to final checking. A final copy will be submitted to the Cabinet Legislation Committee by the Parliamentary Counsel Office.
11. This report also provides you with an update on the results of agency and Ministerial consultation on the Bill and Cabinet paper, and responds to questions raised during consultation.

Content of the Cabinet paper

12. As noted in T2019/503, the Cabinet paper seeks Cabinet's approval for the introduction of the Bill, and notes that the content of the Bill is consistent with:
 - a Decisions made by Cabinet on the functions and form of the New Zealand Infrastructure Commission, Te Waihangā, (the Commission) [DEV-19-MIN-0021 refers], with minor points of difference arising through the legislative drafting process.
 - b Subsequent policy decisions made by authorised Ministers, for the purposes of the drafting of the Bill.
13. The paper also indicates those particular areas where the drafting in the Bill differs from the decisions made by Cabinet, and provides an explanation for why this is the case.
14. Following consultation, the paper has been updated to provide further information on particular aspects of the Bill that drew interest during agency consultation, particularly the Commission's information gathering power.

Feedback from agency consultation on the information gathering power

15. The information gathering provisions in the Bill provide for the Commission to request information that is necessary or desirable for it to perform its functions.

Agencies the information gathering power apply to

16. The Bill previously provided for the Commission to be able to make formal requests for information from public service departments, departmental agencies, Crown entities and the New Zealand Defence Force (which is a non-public service department). The Commission cannot request "personal information", which helps to protect the privacy of natural persons.
17. In response to concerns raised during consultation about the breadth of agencies that the information gathering power would apply to, the Bill now provides that the Commission can only make formal requests from:

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- a public service departments, except the Government Communications Security Bureau and the New Zealand Security Intelligence Service (which were excluded to best deal with national security concerns as they relate to those agencies)
 - b departmental agencies
 - c statutory entities (rather than all Crown entities, as previously proposed), and
 - d the New Zealand Defence Force (which is a non-public service department).
18. This now excludes Crown entity companies, Crown entity subsidiaries, school boards of trustees, and tertiary education institutions, which were previously captured by the information gathering power in the Bill.

Reasons agencies can withhold information

19. The Bill requires agencies to supply the requested information to the Commission, unless withholding the information is necessary to maintain legal professional privilege, or the supply of the information would limit the ability for an agency to act judicially or to carry out its statutorily independent functions.
20. Following feedback from agencies, the Bill now also provides that information cannot be obtained by the Commission if the following applies:
- a the supply of the information would be likely to result in the matters set out in section 6(a) or (b) of the Official Information Act 1982, and
 - b it is held by the Government Statistician and collected under the Statistics Act, or is revenue information under the Tax Administration Act 1994 that the Commissioner of Inland Revenue is required to keep confidential.
21. Some agencies were concerned that the Commission's ability to set a timeframe for the provision of information could result in a significant imposition on agencies, depending on the amount of information requested, and asked for the Bill to include the ability to extend the timeframe for, or decline a request, as it is possible for agencies do for requests made under the OIA that require 'substantial collation and research'.
22. Clause 23(3) in the Bill states that any date specified by the Commission in a request for information must be reasonable. We believe this addresses agency concerns around the potential for significant imposition, as in determining a date that is 'reasonable', we expect the Commission would discuss an information request with the agency. As part of this, agencies would be able to express any difficulties they are likely to face in collating the information, and this would factor into what a reasonable date is.
23. As well as requesting the ability to extend or decline a request, some agencies suggested that they would like the ability to charge the Commission for the information they provide to it. While the OIA provides for agencies to charge requesters for information, charging for information sharing between agencies in the State sector would be an unusual approach, which we do not recommend.

Limits on the release of the information

24. Some of the information provided may be commercially confidential or sensitive. The State Services Commission raised concerns that public trust and business confidence could be damaged if the confidentiality of information is not maintained, as a breach of the restrictions or misuse of the information by the Commission could have serious consequences to the reputation of the agencies and the portfolio Minister that passed on the information.

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25. To address concerns around the use of information provided to the Commission using these powers, the Bill provides that the Commission must not publish or disclose any information obtained under the information gathering power unless one of the following applies:
- a the information is already publically available, or available to the public under an enactment (such as the Official Information Act)
 - b the information is in statistical or summary form
 - c the publication or disclosure is with the consent of the person to whom the information relates or to whom the information is confidential, or
 - d the publication or disclosure is required by law.
26. There is always a risk that agencies may mishandle information with resulting damage to public confidence. This risk exists in many places across the State sector that hold sensitive information. The Commission, like other agencies, would be expected to have the people and processes to ensure compliance with the limitations on handling information set out in the Bill.
27. During consultation, some agencies suggested that it would be useful if the Bill provided for the Commission to be able to disclose the information it gathers to other State sector agencies without needing to seek the consent of the party that supplied it.
28. We do not believe that such a provision is necessary for departments to gather information from other departments. Departments and Ministers do not face the same difficulties that the Commission, as a Crown entity, would face without these information gathering provisions. Additionally, providing for information to be shared without placing further restrictions on the use of that information would introduce further risks around the use of confidential or sensitive information that the Bill aims to prevent.

Interaction with the OIA

29. A number of agencies asked how the Official Information Act (OIA) would apply to information gathered from agencies by the Commission.
30. The Commission will be subject to the OIA and so people may request that it release information it has obtained using its information gathering power. The Commission can withhold under the OIA information that is subject to an obligation of confidence, or where disclosure would be likely to prejudice the supply of similar information in the future (and subject to any overriding public interest considerations in favour of release).
31. In responding to official information requests, we would expect the Commission to consult with those agencies that have provided information to it and/or the people who are the subject of the information, or transfer the request if the information requested is more closely connected with the functions of another agency, for example if the request is for raw data provided to the Commission by an agency.
32. This is the same framework that applies to a range of agencies that have powers to gather information and are also subject to the OIA. Regulators and others have demonstrated that they deal with OIA requests responsibly and consult with the person from whom they gathered the information or who is the subject of the information.

Other changes to the Bill

33. Further scrutiny and review of the Bill by officials has also led to minor changes to the expressions of the Commission's main function in clause 9 and additional function in

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- clause 10(a). In particular, the Commission must develop broad public agreement on its overall approach under the main function, and on its long-term strategy report. Officials consider the new drafting is clearer and better gives effect to the policy.
34. During cross-party consultation on the Bill, the Green Party expressed the view that the Bill should expressly require the Commission to consider climate change mitigation and adaptation in the prioritisation of infrastructure.
35. To address this, clause 11 was included in the Bill, requiring that when advising on current and future infrastructure needs, or the priorities for infrastructure, the Commission:
- a must provide advice with the objective of achieving infrastructure, and services that result from the infrastructure, that improve the well-being of New Zealanders, and
 - b must have regard to long-term trends that impact on, or are impacted by, infrastructure, including (but not limited to)—
 - i changes to demographics
 - ii the emergence and availability of new technology, and
 - iii matters relating to the mitigation of effects of climate change (including through reducing emissions of greenhouse gases) and adapting to the effects of climate change, and
 - c may have regard to any other matters the Commission considers relevant.
36. This new clause is also discussed in the Cabinet paper, and has a specific recommendation for Cabinet to agree.

Other areas of interest during consultation

37. A number of agencies questioned why the Bill does not include a definition of infrastructure.
38. During the drafting of the Bill, we considered this matter, and concluded that the risk of including a definition of infrastructure is that it would narrow the Commission's scope of focus and work. Other legislation that defines infrastructure, such as the Resource Management Act, lists specific types of infrastructure that fall within that definition.
39. The Commission should be enabled to work laterally and innovatively, particularly in carrying out its strategy and planning functions. Infrastructure is likely to evolve over time, including from new technologies that change what infrastructure looks like. Not specifically defining infrastructure in the legislation provides flexibility for the Commission over time, and prevents the Commission becoming overly concerned with interpreting legislative language when considering its work programme.
40. We also think there is very low risk of the Commission misunderstanding what infrastructure is and focussing on the wrong assets. The description of infrastructure used in Government documents is also included in the Explanatory Note to the Bill to assist with a general understanding of the term.
41. The approach taken in the Bill mirrors the approach taken in the legislation of all of the Australian state infrastructure bodies, whose establishing legislation does not define infrastructure.

IN-CONFIDENCE**Process matters**

Consultation

42. Some agencies raised concerns with the scope of consultation on the information gathering power included in the Bill, as not every agency that will come within the scope of the powers was provided an opportunity to comment on the provisions.
43. We believe that, given the tight timeframes we are working within, we have adequately consulted with the agencies most likely to be significantly impacted by the information gathering power in the Bill. The Bill deliberately defines who the Commission may gather information from by class of agency, rather than naming individual organisations, to provide flexibility through changes to state sector organisations, and not require amendment every time a new statutory entity or department is created. However, this approach means it is highly likely that many statutory entities covered by the provisions will never receive an information request from the Commission.
44. The challenges likely to be faced by agencies in terms of the type of information that should be withheld, and concerns around the publication of information provided to the Commission, are common across the agencies we consulted with. There are provisions in the Bill that set out the reasons for withholding information from the Commission and restrictions on dissemination of any information received. We believe that these provisions are sufficiently general and should provide reassurance to any agencies that were not consulted but who are covered by the provisions and may receive an information request from the Commission in the future.

Cabinet decision-making

45. The decision to provide the Commission with the power to gather information was not made by Cabinet as part of the decision to establish the Commission, but is the result of further policy recommendations made by authorised Ministers.
46. Cabinet requested that authorised Ministers report back to Cabinet on the further policy decisions they made in relation to the Bill.
47. The State Services Commission has indicated that the decision to include information gathering power in the Bill is larger than the scope of authorisation considered by Cabinet, and should be brought to a Cabinet policy committee for decision, rather than being confirmed by the Cabinet Legislation Committee.
48. Considering the information gathering power separately through the Cabinet Economic Development Committee is not currently feasible if you wish to maintain the target date for the Bill to be introduced to the House, 8 April 2019.
49. An alternative approach, if you consider that the information gathering power should be considered and decided upon by full Cabinet, is to suggest that the Cabinet Legislation Committee refers the paper *New Zealand Infrastructure Commission/Te Waihanganga Bill: Approval for Introduction* paper to Cabinet for consideration and decision on Monday 8 April 2019.

Next Steps

50. The Cabinet paper attached to this report should be lodged with the Cabinet Office by 10am, Thursday 28 March 2019.
51. We will also provide a copy of the departmental disclosure statement of the Bill to your Office, which will be lodged with the Cabinet paper.

Date: 28 March 2019
To: Expert Review Panel Members
From: Morgan Dryburgh, Senior Advisor, National Infrastructure Unit
Cc: Infrastructure Transactions Unit, and National Infrastructure Unit

Legislation Update

Purpose

This paper provides an update on the progress of the legislation to establish the New Zealand Infrastructure Commission, Te Waihanga, and the decisions made by authorised Ministers as part of the drafting of the legislation.

Recommendations

- **Note** the attached New Zealand Infrastructure Commission Bill/Te Waihanga Bill, due to be discussed at the Cabinet Legislation Committee on 2 April 2019
- **Note** the decisions made on additional policy recommendations by authorised Ministers as part of the development of the Bill

Background

On 18 February, Cabinet authorised the Minister of Finance, Minister for Infrastructure, Minister of State Services, Minister of Housing and Urban Development, and Minister for Climate Change to make subsequent policy decisions on related policy details consistent with policy proposals discussed in the paper prior to the introduction of legislation.

At the previous meeting of the Expert Review Panel on 1 February 2019, the Panel provided feedback on a draft Treasury Report that contained recommendations on these additional policy decisions. The main points of the Panel's feedback were:

- The Commission should be required to publish the final strategy within three months of receiving the Minister's comments on the draft strategy;
- The maximum length of time between the establishment of the Commission and the publication of the Commission's first strategy should be shorter than five years; and
- The Commission should have the power to require state sector agencies to provide it with information necessary to carry out its functions.

This feedback was incorporated into the advice that the Treasury provided to Ministers.

Further policy decisions made by Ministers

The authorised Ministers subsequently made the following decisions, based on Treasury's advice:

- The name of the infrastructure body will be the New Zealand Infrastructure Commission, Te Waihanga.

- The responsible Minister will be required to respond to the Commission's draft long-term infrastructure strategy within three months. This deadline is extended if a general election occurs during that period.
- The Commission will be required to publish the final long-term strategy within three months of receiving the responsible Minister's comments.
- The Government will be required to respond to the long-term strategy within six months of receiving the final strategy. This deadline is also extended if a general election occurs during that period.
- The mandate for agencies to engage with the Commission when beginning an infrastructure project will be delivered through a combination of amendments to the Government Rules of Sourcing and Cabinet Office Circular CO (15) 5: Investment Management and Asset Performance in the State Services.
- The Commission's establishing legislation will provide that the Commission must make an offer of employment to identified Treasury staff carrying out functions that will transfer to the Commission and whose positions at the Treasury will cease to exist because of the establishment of the Commission. The offer of employment must be on no less favourable terms, and for similar roles (including location in Wellington).
- The Commission's establishing legislation will provide that contracts entered into by the Treasury for the establishment of the Commission are transferred to the Commission once it is established.
- The Commission's establishing legislation will include a provision requiring State sector agencies to provide information to enable the Commission to carry out its functions.

These decisions have been given effect in the attached New Zealand Infrastructure Commission/Te Waihanga Bill.

Information gathering provisions

The decision by Ministers to include information gathering provisions in the Bill acknowledges that the success of the Commission will rely heavily on its ability to gather information and that, as a Crown entity, the Commission will not have the same ability to gather information from government departments as Ministers do, and will not have Ministers' statutory power to request information from statutory entities.

The Bill provides for the Commission to request information that is necessary or desirable for it to perform its functions, but it cannot request personal information, information held by the Government Statistician and collected under the Statistics Act 1975, or information that a revenue officer must keep confidential under the Tax Administration Act 1994. It could only make formal requests from public service departments (except the New Zealand Security Intelligence Service and Government Communications Security Bureau), departmental agencies, statutory entities and the New Zealand Defence Force (which is a non-public service department).

Agencies will be required to supply the requested information, unless there are good reasons for agencies to refuse to supply the information, such as to protect legal professional privilege or for national security reasons.

Some of the information provided to the Commission may be commercially confidential or sensitive. To address this, the Bill provides that the Commission must not publish or disclose any information obtained under the information gathering power unless one of the following applies:

- the information is already publically available, or available to the public under an enactment (such as the Official Information Act),
- the information is in statistical or summary form,
- the publication or disclosure is with the consent of the person to whom the information relates or to whom the information is confidential, or
- the publication or disclosure is required by law.

Requirement to have regard to long-term trends including climate change

A further provision has also been included in the Bill, requiring that when advising on current and future infrastructure needs, or the priorities for infrastructure, the Commission:

- i. must provide advice with the objective of achieving infrastructure, and services that result from the infrastructure, that improve the well-being of New Zealanders, and
- ii. must have regard to long-term trends that impact on, or are impacted by, infrastructure, including (but not limited to)
 - a. changes to demographics,
 - b. the emergence and availability of new technology, and
 - c. matters relating to the mitigation of effects of climate change (including through reducing emissions of greenhouse gases) and adapting to the effects of climate change, and
- iii. may have regard to any other matters the Commission considers relevant.

s9(2)(g)(i)

Attachments: New Zealand Infrastructure Commission/Te Waihangā Bill

NZIC Bill feedback

Corrections

Not uncomfortable with the proposed approach. [To information gathering]

Education

Suggest that provisions similar to the OIA are included in the legislation. Namely that there is an ability for organisations to extend a date for supplying the information, and if significant collation and research is required, there should be an ability for the affected entity to charge the Infrastructure Commission a fee for the resources used to collate the information.

In practice, it is likely to be unreasonable and unnecessary to impose information requests on Schools/Boards of Trustees. Though Crown entities, Boards often face difficulties finding capacity to deliver on information requests. Because of this, and in the spirit of aiming to reduce the burden on Schools, we suggest that the Ministry of Education be the point of contact for information on school infrastructure and that the Commission's powers are limited to the Ministry and are not applied to Schools/Boards of Trustees.

MBIE (NZGPP)

Given the types of information contemplated to be sought under powers) and its potential crossover with GPG matters depending on the meaning of "infrastructure", the Bill perhaps should be clearer that the Commission can share its information with other parts of the Crown for proper purposes and that such sharing would not be to "disclose" it under the Bill. GPG could then comfortably make use of this information for its purposes. Otherwise, GPG would need to rely on the Commission seeking and obtaining consent to share it

HNZC

- It is uncertain what the Commission's obligations are when it is asked to make available information that it required HUDA/HNZ to supply.
 - HUDA will be required under this Act to give information to the Commission. The Commission will itself be subject to the OIA, and will receive requests for information that it required HUDA to supply. Its unclear how the Commission's obligation not to disclose works with the Commission's OIA obligations. The risk is the Commission releases information that HUDA would not have, and that release negatively affects HUDAs functions, or its tenants. For example, Women's Refuge is a tenant of HUDA, there is public interest in keeping the location of those

houses confidential and HNZ/HUDA. Would such information requests be answered by the Commission, or HUDA and how will the obligation not to disclose apply?

- It's also unclear what grounds are available to HUDA/HNZ to refuse Commission requests.
 - o Clause 23(2) arguably brings the grounds for withholding information under the OIA into an entity's decision about whether to refuse a Commission request. Alternatively it imports the public interest analysis of the OIA legal professional privilege ground into one of the grounds for refusing a Commission request. If the grounds for refusing are to be narrow – ie legal professional privilege (without a public interest analysis), and limiting statutorily independent functions, we suggest the reference to the OIA grounds be removed. This would create a very powerful right to access information, and the information HUDA/HNZ supplies. Requests for copies of that information will need to be carefully considered.

Definition of infrastructure

Education
MBIE (NZGPP)
HNZC

No comments

TEC
MfE

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Select Committee notes – New Zealand Infrastructure Commission/Te Waihanga Bill

Key messages

1. The Commission will add a regularly published, independent, specialist, long-term vision that is currently missing in New Zealand.
2. The Commission's functions are advisory only. There will be no changes to existing accountabilities or decision-making rights.
3. The Bill prescribes the broad framework and boundaries within which the Commission will operate – within the Crown Entities Act, and with a broad set of functions.

Jon Grayson

Introduction/scene setting (Section 2 of initial briefing)

- The vision for the Commission – what it is intended to achieve, why this is important
- Balancing act of the Commission – credibility, independence, influence
- The support from the sector (through Treasury consultation), what it is they're looking for
- Overseas examples – have taken influence from overseas models and learned from their experiences, have been successful overseas

Morgan

Contents of the Bill

- The Bill establishes the Commission as an autonomous Crown entity. This institutional form strikes the appropriate balance between the independence and interconnectedness that the Commission needs to be effective.
- As an autonomous Crown entity, the Crown Entities Act governs how the Commission will function in terms of its relationship to Ministers, appointment of the Board, accountability procedures.
- The Bill sets out the functions of the Commission. These functions are enabling, and set the outer bounds within which the Commission operates.
- There are two instances where the Bill provides specific direction on how the Commission operates; the direction here is intended to provide transparency and certainty that enhances the independence of the Commission, and its relationship with the Minister

- The Bill sets out a process for how the long-term infrastructure strategy is developed, including how the Minister provides comments on the draft. This section does not prescribe other elements of the process the Commission may use to develop the strategy, such as consultation with relevant parties.
- The definition of infrastructure is similarly enabling. The limitations it places are on physical infrastructure – meaning it excludes instances of metaphorical infrastructure like ‘democratic infrastructure’ – and that relates to New Zealand.

How does the Commission link with the rest of Government/industry/a specific work programme?

The Commission’s role is to provide an overarching strategic view. It is advisory only, and will not change any decision-making or accountability rights. How the Commission is involved in particular programmes of work will depend on the nature of the work. The Commission will provide specialist infrastructure expertise, but not replace the expertise within agencies.

Why are the GCSB and SIS excluded from the information gathering provisions?

We determined that the need for infrastructure information from these agencies was small, and that the burden of these agencies needing to work through their existing legislation as well as these requirements outweighed any potential benefit.

Why are government statistics and revenue information specifically excluded from the provisions? Surely there are other regimes that also protect information?

In the development of these provisions, we felt that there was a strong case for excluding these datasets, particularly as there is already a prescribed process for access to government statistics. But there is the potential to consider other information regimes.

Why do the information gathering provisions not extend to local government/why are they needed/why?

The information gathering powers are aimed at addressing the problem of the Commission, as a crown entity, facing barriers to accessing information held by public sector departments. As a Crown entity, the Commission will not have the same ability to gather information from government departments as Ministers do. We do not want the Commission to rely on Ministers’ ability to direct agencies to provide information to the Commission. The success of the Commission relies on it being able to perform its functions independently from Ministers.

We recognise the burden that these provisions have the potential to place on agencies, so have limited their application to the state sector agencies the Bill applies to.

Local government also often has more information available on their infrastructure assets – as they are required to produce 30-year infrastructure plans where central government often produces four year plans.

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TE TAI ŌHANGA
THE TREASURY

28 May 2019

Michael Wood, MP
Chair, Finance and Expenditure Committee

Dear Mr Wood,

New Zealand Infrastructure Commission/Te Waihanga Bill – Proposed power of Commission to obtain information

In preparation for the oral submissions to be heard on the New Zealand Infrastructure Commission/Te Waihanga Bill by the Finance and Expenditure Committee on 29 May 2019, officials have been reviewing the written submissions received on the Bill.

Ten submissions, five of them from local government organisations (Auckland Council, Hamilton City Council staff, Watercare Services Limited, Whanganui District Council, and the Society of Local Government Managers), suggested that clause 23 of the Bill be amended to include local government within the scope of the information gathering power of the Commission.

It would be useful for officials, in preparing to assist the Committee in its deliberations on this aspect of the Bill, if the views of Local Government New Zealand (LGNZ) were sought on this suggestion.

LGNZ is scheduled to be heard by the Committee on 29 May 2019. If you agree that it would be useful to hear LGNZ's views on this issue, you may wish to ask LGNZ:

- What is LGNZ's view on the suggestion that local government organisations should be included in the proposed information gathering power of the Commission?
- Would the inclusion of local government in these provisions raise any issues from their members' perspective?

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Jon Grayson'.

Jon Grayson
Deputy Secretary, Financial & Commercial

1 The Terrace
PO Box 3724
Wellington 6140
New Zealand

tel. 64-4-472-2733

<https://treasury.govt.nz>

From: Morgan Dryburgh [TSY]
Sent: Wednesday, 29 May 2019 5:55 PM
To: Henry Clayton [TSY]; Greg Low [TSY]
Subject: FW: For your review - TR recommending no change to information gathering powers
Attachments: 4116110_Treasury Report_ New Zealand Infrastructure Commission_Te Waihanganga Bill - submissions on information gathering provisions.DOC
Importance: High

[IN-CONFIDENCE]

Hi Henry/Greg,

I've drafted up a report to Jones on changing the information gathering powers. I would appreciate a legal look-over just to check that I'm referencing the Bill correctly, if possible. I have referenced the Cabinet manual requirement on substantive changes to Bills, but as we are not actually recommending a change, I think this may be a slightly less relevant section of the report.

Cheers,
Morgan

From: Morgan Dryburgh [TSY]
Sent: Wednesday, 29 May 2019 5:53 PM
To: Jon Grayson [TSY] <Jon.Grayson@treasury.govt.nz>; Chris White [TSY] <Chris.White@treasury.govt.nz>; David Taylor [TSY] <David.Taylor@treasury.govt.nz>
Subject: For your review - TR recommending no change to information gathering powers
Importance: High

[IN-CONFIDENCE]

Hi Jon and Chris,

For your review and comment, please find below (and attached, if you are unable to access imanage) a draft report to Minister Jones on the information gathering powers, and the inclusion of LG within these.

The report recommends that Minister Jones *not* amend the information gathering powers to include local government.

We intend to send this report **tomorrow afternoon – ideally in the 2.30pm bag**. If you could please provide comments as soon as possible so that I can make any necessary changes, that would be much appreciated.

[Treasury Report: New Zealand Infrastructure Commission/Te Waihanganga Bill - submissions on information gathering provisions \(Treasury:4116110v1\)](#) [Add to worklist](#)

Regards,
Morgan



Morgan Dryburgh (she/her) | Senior Analyst, National Infrastructure Unit | Te Tai Ōhanga – The Treasury

Tel: s9(2)(k) | Mobile: s9(2)(a) | Email/IM: morgan.dryburgh@treasury.govt.nz

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TE TAI ŌHANGA
THE TREASURY

Treasury Report: New Zealand Infrastructure Commission/Te Waihanga Bill - submissions on information gathering provisions

Date:	[Date Sent]	Report No:	T2019/1572
		File Number:	SH-11-5-16-1-6-3

Action Sought

	Action Sought	Deadline
Minister of Finance (Hon Grant Robertson)		
Minister for Infrastructure (Hon Shane Jones)		

Contact for Telephone Discussion (if required)

Name	Position	Telephone	1st Contact
Morgan Dryburgh	Senior Analyst, National Infrastructure Unit (NIU)	s9(2)(k)	s9(2)(a) ✓
David Taylor	Manager, National Infrastructure Unit, National Infrastructure Unit (NIU)		N/A (mob)

Actions for the Minister's Office Staff (if required)

Return the signed report to Treasury.
Refer a copy of this report to the

Note any feedback on the quality of the report

Enclosure: No/Yes (attached) OR Yes (iManage links)

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IN-CONFIDENCE**Treasury Report:** Treasury Report: New Zealand Infrastructure Commission/Te Waihanga Bill - submissions on information gathering provisions

Purpose of Report

1. This report seeks your decision on the inclusion of local government within the information gathering provisions contained in subpart 5 of the New Zealand Infrastructure Commission/Te Waihanga Bill. It provides information on this issue for you to discuss with your colleagues.

Background

2. The New Zealand Infrastructure Commission/Te Waihanga Bill (the Bill) had its first reading on 11 April 2019, and was referred to the Finance and Expenditure Committee (the Committee). The Committee called for submissions on the Bill, received 37 submissions on the Bill, and heard 15.
3. The Committee has directed officials to prepare the departmental report on submissions on the Bill, which will contain any recommended amendments to the Bill as a result of submissions received.
4. One issue which has received a considerable amount of attention in both written and oral submissions has been the question of whether or not local government should be included within the scope of the information gathering provisions contained in subpart 5 of the Bill.
5. Subpart 5 provides that the New Zealand Infrastructure Commission, Te Waihanga (the Commission), can request specified entities to supply to the Commission any information that is necessary or desirable to enable the Commission to perform its functions. It sets out reasons for refusing to supply information, and provisions to restrict the Commission's ability to
6. The entities specified in the Bill, as drafted, are government departments (other than the Government Communications Security Bureau and the New Zealand Security Intelligence Service), departmental agencies, Crown agents, autonomous Crown entities, independent Crown entities, and the New Zealand Defence Force. The provisions do not apply to local government.

Summary of submissions

7. The Committee received 11 written submissions suggesting that local government organisations should fall within scope of the information gathering provisions in subpart 5.
8. Five of those submissions came from local government organisations (Auckland Council, Hamilton City Council staff, Watercare Services Limited, Whanganui District Council, and the Society of Local Government Managers), while six submissions came from other organisations (Engineering New Zealand, Auckland District Law Society,

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BusinessNZ, Guardians of New Zealand Superannuation, Infrastructure New Zealand, and the Property Council New Zealand).

9. Local Government New Zealand (LGNZ) did not comment on the information gathering provisions in their written submission, but in an oral submission to the Committee on 29 May 2019 stated that they did not support the suggestion that the Bill being amended to include local government within the scope of the information gathering provisions.
10. In their oral submission, they noted that while a number of local government organisations had included this suggestion in their submissions, this number was small compared to the number of territorial authorities in New Zealand, 67, the majority of which did not submit on the Bill.
11. LGNZ opposed this suggestion due to the potential compliance costs information requests could place on local government organisations, and noted that local government is already required to publish a large range of information under various reporting requirements. LGNZ also questioned the policy problem that the information gathering provisions are intended to solve.

Analysis and recommendation

12. A key policy problem that the information gathering provisions are intended to solve is the challenge that, as a Crown entity, the Commission will not have the same ability to gather information and be prioritised in its requests from government departments as the Treasury (which currently provides some of the proposed infrastructure functions) currently has.
13. In deciding how the Commission should best seek to gather information, we considered how to balance the Commission's ability to effectively and efficiently access quality information with the need to maintain good relationships with organisations, and not place a burden on them in terms of information requests.
14. In recommending the scope of information gathering provisions as currently proposed in the Bill [TR2019/183 refers], we recommended that the provisions did not extend to cover local government because local government organisations are already required to, and do, publish large amounts of information about their infrastructure. We expect the Commission to use existing sources of information in the first instance.
15. Additionally:
 - a If local government are working in partnership with the Commission, or seeking Crown funding for projects, provision of information to the Commission can be included as a requirement for funding or Commission support.
 - b The Commission has the ability to work with agencies who hold levers over local government (such as funding or regulation) to build information the Commission requires into existing information requirements on local government.
 - c The ability for the Commission to gather information does not assist where the information itself does not exist. In their oral submission to the Committee on the Bill, Infrastructure New Zealand noted used as an example of this that many councils do not hold adequate information on their water assets.
16. There are some benefits that could be realised through the Commission having the ability to gather information from local government. For example, the Commission could ask for information that is publicly available, but in an inaccessible format, to be provided in a format that is more easily used. However, the Commission could also

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request this information be provided voluntarily, in the absence of a power to gather information.

17. On balance, the reasons for recommending local government not be covered by the information gathering provisions are still relevant. Therefore, we do not recommend that you propose a change to the Bill including local government in the information gathering provisions.
18. Once established, the Commission will work to use existing sources of information from local government where possible, and build good working relationships to facilitate the voluntary provision of information.

Next Steps

19. You have indicated that you would like to discuss this matter with your colleagues. We recommend that you refer a copy of this report to your colleagues as a basis for this discussion.
20. If, following discussion with your colleagues, you decide to propose a change to the Bill, this will be reflected in the departmental report prepared for the Committee by the Treasury.
21. The Cabinet manual states that where a Minister's officials advising a select committee are to propose substantive amendments to a bill before the committee, Cabinet should be advised and prior policy approvals should be sought from Cabinet if time permits.

Recommended Action

We recommend that you:

- a **note** that 11 submitters on the New Zealand Infrastructure Commission/Te Waihangā Bill suggested that local government organisations should be included within the information gathering provisions contained in the Bill.
- b **note** that Local Government New Zealand opposed the extension of the information gathering provisions to include local government in their oral submission on 29 May 2019.
- c **agree** that the information gathering provisions in the Bill should remain as drafted, and not be extended to include local government.

Agree/disagree.

- d **refer** a copy of this report to the Minister of State Services, the Minister of Transport, Housing and Urban Development, and the Minister for Climate Change, for discussion.

Refer/not referred.

- e **refer** a copy of this report to the Minister of Local Government, for her information.

Refer/not referred.

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David Taylor
Manager, National Infrastructure Unit

Hon Shane Jones
Minister for Infrastructure

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From: Henry Clayton [TSY]
Sent: Thursday, 30 May 2019 9:56 AM
To: Morgan Dryburgh [TSY]; Greg Low [TSY]
Subject: RE: For your review - TR recommending no change to information gathering powers
Attachments: 4116110_Treasury Report_ New Zealand Infrastructure Commission_Te Waihanga Bill - submissions on information gathering provisions.DOC

Hi Morgan,

This looks good.

I have put some tracking and comments in the attached.
I removed all the references to subpart 5 (of Part 2). As we only have one set of info gathering provisions, I think we can just refer to the info gathering provisions in the Bill.

Henry

From: Morgan Dryburgh [TSY] <Morgan.Dryburgh@treasury.govt.nz>
Sent: Wednesday, 29 May 2019 5:55 PM
To: Henry Clayton [TSY] <Henry.Clayton@treasury.govt.nz>; Greg Low [TSY] <Greg.Low@treasury.govt.nz>
Subject: FW: For your review - TR recommending no change to information gathering powers
Importance: High

[IN-CONFIDENCE]

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Cheers,
Morgan

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[Treasury Report: New Zealand Infrastructure Commission/Te Waihanga Bill - submissions on information gathering provisions \(Treasury:4116110v1\)](#) [Add to worklist](#)

Regards,
Morgan



**TE TAI ŌHANGA
THE TREASURY**

Morgan Dryburgh (she/her) | Senior Analyst, National Infrastructure Unit | Te Tai Ōhanga – The Treasury

Tel: s9(2)(k) | Mobile: s9(2)(a) | Email/IM: morgan.dryburgh@treasury.govt.nz

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Treasury Report: New Zealand Infrastructure Commission/Te Waihanga
Bill - submissions on information gathering provisions

Date:	[Date Sent]	Report No:	T2019/1572
		File Number:	SH-11-5-16-1-6-3

Action Sought

	Action Sought	Deadline
Minister of Finance (Hon Grant Robertson)		
Minister for Infrastructure (Hon Shane Jones)		

Contact for Telephone Discussion (if required)

Name	Position	Telephone	1st Contact
Morgan Dryburgh	Senior Analyst, National Infrastructure Unit (NIU)	s9(2)(k)	s9(2)(a) ✓
David Taylor	Manager, National Infrastructure Unit, National Infrastructure Unit (NIU)	N/A (mob)	

Actions for the Minister's Office Staff (if required)

Return the signed report to Treasury.
Refer a copy of this report to the

Note any feedback on the quality of the report

Enclosure: No/Yes (attached) OR Yes (iManage links)

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Treasury Report: Treasury Report: New Zealand Infrastructure Commission/Te Waihanga Bill - submissions on information gathering provisions

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5. ~~Subpart 5~~The Bill currently provides that the New Zealand Infrastructure Commission, Te Waihanga (the Commission), can request specified entities to supply to the Commission any information that is necessary or desirable to enable the Commission to perform its functions. It sets out reasons for refusing to supply information, and provisions to restrict the Commission's ability to
6. The entities specified in the Bill, as currently drafted, are government departments (other than the Government Communications Security Bureau and the New Zealand Security Intelligence Service), departmental agencies, Crown agents, autonomous Crown entities, independent Crown entities, and the New Zealand Defence Force. The provisions do not apply to local government (i.e. local authorities under the Local Government Act 2002).

Summary of submissions

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8. Five of those submissions came from local government organisations (Auckland Council, Hamilton City Council staff, Watercare Services Limited, Whanganui District Council, and the Society of Local Government Managers), while six submissions came from other organisations (Engineering New Zealand, Auckland District Law Society,

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Formatted: Underline

Analysis and recommendation

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15. Additionally:
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 - b The Commission has the ability to work with agencies who hold levers over local government (such as funding or regulation) to build information the Commission requires into existing information requirements on local government.
 - c The ability for the Commission to gather information does not assist where the information itself does not exist. In their oral submission to the Committee on the Bill, Infrastructure New Zealand noted used as an example of this that many councils do not hold adequate information on their water assets.
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request this information be provided voluntarily, in the absence of a power to gather information.

- 17. On balance, the reasons for recommending local government not be covered by the information gathering provisions are still relevant. Therefore, we do not recommend that you propose a change to the Bill including local government in the information gathering provisions.
- 18. Once established, the Commission will work to use existing sources of information from local government where possible, and build good working relationships to facilitate the voluntary provision of information.

Commented [HC1]: Should this point have more prominence, or be lead out as the first item in the list above?
And the point that if the Commission is adding value for local govt, local govt will want to co-operate?
These are not legal points – up to you.

Next Steps

- 19. You have indicated that you would like to discuss this matter with your colleagues. We recommend that you refer a copy of this report to your colleagues as a basis for this discussion.
- 20. If, following discussion with your colleagues, you decide to propose a change to the Bill, this will be reflected in the departmental report prepared for the Committee by the Treasury.
- 21. The Cabinet ~~manual~~ Manual states that where a Minister's officials advising a select committee are to propose substantive amendments to a bill before the committee, Cabinet should be advised and prior policy approvals should be sought from Cabinet if time permits.

Commented [HC2]: Can we refer to Cab Minute or Cab Paper where not extending to local government was explicitly considered by Cabinet?

Recommended Action

We recommend that you:

- a **note** that 11 submitters on the New Zealand Infrastructure Commission/Te Waihangā Bill suggested that local government organisations should be included within the information gathering provisions contained in the Bill.
- b **note** that Local Government New Zealand opposed the extension of the information gathering provisions to include local government in their oral submission on 29 May 2019.
- c **agree** that the information gathering provisions in the Bill should ~~remain as drafted, and~~ not be extended to include local government.

Agree/disagree.

- d **refer** a copy of this report to the Minister of State Services, the Minister of Transport, Housing and Urban Development, and the Minister for Climate Change, for discussion.

Refer/not referred.

- e **refer** a copy of this report to the Minister of Local Government, for her information.

Refer/not referred.

IN-CONFIDENCE

David Taylor
Manager, National Infrastructure Unit

Hon Shane Jones
Minister for Infrastructure

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IN-CONFIDENCE

From: Morgan Dryburgh [TSY]
Sent: Thursday, 30 May 2019 11:24 AM
To: Henry Clayton [TSY]; Greg Low [TSY]
Subject: RE: For your review - TR recommending no change to information gathering powers

Thanks Henry. Have made those changes.

I've inserted the Cab min reference in terms of the 'substantive changes to the Bill' para – the LEG paper didn't explicitly have Cabinet agree to not include LG, but they agreed that the scope of the provisions would be state sector agencies.

From: Henry Clayton [TSY] <Henry.Clayton@treasury.govt.nz>
Sent: Thursday, 30 May 2019 9:56 AM
To: Morgan Dryburgh [TSY] <Morgan.Dryburgh@treasury.govt.nz>; Greg Low [TSY] <Greg.Low@treasury.govt.nz>
Subject: RE: For your review - TR recommending no change to information gathering powers

Hi Morgan,

This looks good.

I have put some tracking and comments in the attached.
I removed all the references to subpart 5 (of Part 2). As we only have one set of info gathering provisions, I think we can just refer to the info gathering provisions in the Bill.

Henry

From: Morgan Dryburgh [TSY] <Morgan.Dryburgh@treasury.govt.nz>
Sent: Wednesday, 29 May 2019 5:55 PM
To: Henry Clayton [TSY] <Henry.Clayton@treasury.govt.nz>; Greg Low [TSY] <Greg.Low@treasury.govt.nz>
Subject: FW: For your review - TR recommending no change to information gathering powers
Importance: High

[IN-CONFIDENCE]

Hi Henry/Greg,

I've drafted up a report to Jones on changing the information gathering powers. I would appreciate a legal look-over just to check that I'm referencing the Bill correctly, if possible. I have referenced the Cabinet manual requirement on substantive changes to Bills, but as we are not actually recommending a change, I think this may be a slightly less relevant section of the report.

Cheers,
Morgan

From: Morgan Dryburgh [TSY]
Sent: Wednesday, 29 May 2019 5:53 PM
To: Jon Grayson [TSY] <Jon.Grayson@treasury.govt.nz>; Chris White [TSY] <Chris.White@treasury.govt.nz>; David Taylor [TSY] <David.Taylor@treasury.govt.nz>
Subject: For your review - TR recommending no change to information gathering powers
Importance: High

[IN-CONFIDENCE]

Hi Jon and Chris,

For your review and comment, please find below (and attached, if you are unable to access imange) a draft report to Minister Jones on the information gathering powers, and the inclusion of LG within these.

The report recommends that Minister Jones *not* amend the information gathering powers to include local government.

We intend to send this report **tomorrow afternoon – ideally in the 2.30pm bag**. If you could please provide comments as soon as possible so that I can make any necessary changes, that would be much appreciated.

[Treasury Report: New Zealand Infrastructure Commission/Te Waihanga Bill - submissions on information gathering provisions \(Treasury:4116110v1\)](#) [Add to worklist](#)

Regards,
Morgan



**TE TAI ŌHANGA
THE TREASURY**

Morgan Dryburgh (she/her) | **Senior Analyst, National Infrastructure Unit** | **Te Tai Ōhanga – The Treasury**

Tel: s9(2)(k) | Mobile: s9(2)(a) | Email/IM: morgan.dryburgh@treasury.govt.nz

Visit us online at <https://treasury.govt.nz/> and follow us on [Twitter](#), [LinkedIn](#) and [Instagram](#)

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Treasury Report: New Zealand Infrastructure Commission/Te Waihanga
Bill - submissions on information gathering provisions

Date:	30 May 2019	Report No:	T2019/1572
		File Number:	SH-11-5-16-1-6-3

Action Sought

	Action Sought	Deadline
Minister of Finance (Hon Grant Robertson)	Note the contents of this report	6 June 2019
Minister for Infrastructure (Hon Shane Jones)	Note the contents of this report Agree to the recommendations in this report Refer a copy of this report to the Minister of State Services, the Minister of Transport, Housing and Urban Development, the Minister for Climate Change, and the Minister for Local Government	6 June 2019

Contact for Telephone Discussion (if required)

Name	Position	Telephone	1st Contact
Morgan Dryburgh	Senior Analyst, National Infrastructure Unit (NIU)	s9(2)(k)	s9(2)(a) (mob) ✓
David Taylor	Manager, National Infrastructure Unit (NIU)		N/A (mob)

Actions for the Minister's Office Staff (if required)

Return the signed report to Treasury.

Refer a copy of this report to the Minister of State Services, the Minister of Transport, Housing and Urban Development, the Minister for Climate Change and the Minister for Local Government.

Note any feedback on the quality of the report

Enclosure: No

IN-CONFIDENCE**Treasury Report: Treasury Report: New Zealand Infrastructure Commission/Te Waihanga Bill - submissions on information gathering provisions**

Purpose of Report

1. This report seeks your decision on the inclusion of local government within the information gathering provisions contained in the New Zealand Infrastructure Commission/Te Waihanga Bill (the Bill). It provides information on this issue for you to discuss with your colleagues.

Background

2. The Bill (the Bill) had its first reading on 11 April 2019, and was referred to the Finance and Expenditure Committee (the Committee). The Committee called for submissions on the Bill, received 37 written submissions on the Bill, and heard 15 of those submitters in person.
3. The Committee has directed officials to prepare the departmental report on submissions on the Bill, which will contain any recommended amendments to the Bill as a result of submissions received.
4. One issue which has received a considerable amount of attention in both written and oral submissions has been the question of whether local government should be included within the scope of the information gathering provisions contained in the Bill.
5. The Bill currently provides that the New Zealand Infrastructure Commission, Te Waihanga (the Commission), can request specified entities to supply to the Commission any information that is necessary or desirable to enable the Commission to perform its functions. It sets out reasons for refusing to supply information, and provisions to restrict the Commission's ability to
6. The entities specified in the Bill, as currently drafted, are government departments (other than the Government Communications Security Bureau and the New Zealand Security Intelligence Service), departmental agencies, Crown agents, autonomous Crown entities, independent Crown entities, and the New Zealand Defence Force. The provisions do not apply to local government (i.e. local authorities under the Local Government Act 2002).

Summary of submissions

7. The Committee received 11 written submissions suggesting that local government organisations should fall within scope of the information gathering provisions.
8. Five of those submissions came from local government organisations (Auckland Council, Hamilton City Council staff, Watercare Services Limited, Whanganui District Council, and the Society of Local Government Managers), while six submissions came from other organisations (Engineering New Zealand, Auckland District Law Society, BusinessNZ, Guardians of New Zealand Superannuation, Infrastructure New Zealand, and the Property Council New Zealand).

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9. Local Government New Zealand (LGNZ) did not comment on the information gathering provisions in their written submission, but in an oral submission to the Committee on 29 May 2019 stated that they did not support the suggestion that the Bill being amended to include local government within the scope of the information gathering provisions.
10. In their oral submission, they noted that while a number of local government organisations had included this suggestion in their submissions, this number was small compared to the number of territorial authorities in New Zealand, 67, the majority of which did not submit on the Bill.
11. LGNZ opposed this suggestion due to the potential compliance costs information requests could place on local government organisations, and noted that local government is already required to publish a large range of information under various reporting requirements. LGNZ also questioned the policy problem that the information gathering provisions are intended to solve.

Analysis and recommendation

12. A key policy problem that the information gathering provisions are intended to solve is the Commission's ability to access information from government departments. As a Crown entity, the Commission will not have the same ability to gather information and be prioritised in its requests from government departments as the Treasury (which currently provides some of the proposed infrastructure functions) or Ministers currently have.
13. In deciding how the Commission should best gather information, we considered how to balance the Commission's ability to effectively and efficiently access quality information with the need to maintain good relationships with organisations, and not place a burden on them in terms of information requests.
14. In recommending the scope of information gathering provisions as currently proposed in the Bill [TR2019/183 refers], we recommended that the provisions did not extend to cover local government because local government organisations are already required to, and do, publish large amounts of information about their infrastructure. We expect the Commission to use existing sources of information in the first instance.
15. Additionally:
 - a If local government are working in partnership with the Commission, or seeking Crown funding for projects, provision of information to the Commission could potentially be included as a requirement for funding or Commission support.
 - b The Commission has the ability to work with agencies who hold levers over local government (such as funding or regulation) to build information the Commission requires into existing information requirements on local government.
 - c The ability for the Commission to gather information does not assist where the information itself does not exist. In their oral submission to the Committee on the Bill, Infrastructure New Zealand noted as an example of this that many councils do not hold adequate information on their water assets.

IN-CONFIDENCE

16. There are some benefits that could be realised through the Commission having the ability to gather information from local government. For example, the Commission could ask for information that is publicly available, but in an inaccessible format, to be provided in a format that is more easily used. However, the Commission could also request this information be provided voluntarily, in the absence of a power to gather information.
17. On balance, the reasons for recommending local government not be covered by the information gathering provisions are still relevant. Therefore, we do not recommend that you propose a change to the Bill including local government in the information gathering provisions.
18. Once established, the Commission will work to use existing sources of information from local government where possible, and build good working relationships to facilitate the voluntary provision of information.

Next Steps

19. You have indicated that you would like to discuss this matter with your colleagues. We recommend that you refer a copy of this report to your colleagues as a basis for this discussion.
20. If, following discussion with your colleagues, you decide to propose a change to the Bill, this will be reflected in the departmental report prepared for the Committee by the Treasury.
21. The Cabinet Manual states that where a Minister's officials advising a select committee are to propose substantive amendments to a bill before the committee, Cabinet should be advised and prior policy approvals should be sought from Cabinet if time permits. On 8 April 2019, Cabinet agreed that the information gathering provisions would extend to state sector agencies [CAB-19-MIN-0144].

IN-CONFIDENCE**Recommended Action**

We recommend that you:

- a **note** that 11 submitters on the New Zealand Infrastructure Commission/Te Waihangā Bill suggested that local government organisations should be included within the information gathering provisions contained in the Bill.
- b **note** that Local Government New Zealand opposed the extension of the information gathering provisions to include local government in their oral submission on 29 May 2019.
- c **agree** that the information gathering provisions in the Bill should not be extended to include local government.

Agree/disagree.

- d **refer** a copy of this report to the Minister of State Services, the Minister of Transport, Housing and Urban Development, and the Minister for Climate Change, for discussion.

Refer/not referred.

- e **refer** a copy of this report to the Minister of Local Government, for her information.

Refer/not referred.

David Taylor
Manager, National Infrastructure Unit

Hon Shane Jones
Minister for Infrastructure

IN-CONFIDENCE

TE TAI ŌHANGA
THE TREASURY
**Treasury Report: New Zealand Infrastructure Commission/Te Waihanga
Bill - Departmental Report**

Date:	6 June 2019	Report No:	T2019/1664
		File Number:	SH-11-5-16-1-6-3 (Phase 2)

Action Sought

	Action Sought	Deadline
Hon Grant Robertson Minister of Finance	Note the recommended changes to the Bill. Note the draft Departmental Report to the Finance and Expenditure Committee.	12 June 2019
Hon Shane Jones Minister for Infrastructure	Agree recommended changes to the Bill. Approve the draft Departmental Report to the Finance and Expenditure Committee.	7 June 2019

Contact for Telephone Discussion (if required)

Name	Position	Telephone		1st Contact
Morgan Dryburgh	Senior Analyst, National Infrastructure Unit (NIU)	s9(2)(k)	s9(2)(a) (mob)	✓
David Taylor	Manager, National Infrastructure Unit (NIU)	s9(2)(k)	N/A (mob)	

Actions for the Minister's Office Staff (if required)

Return the signed report to Treasury.

Note any feedback on the quality of the report

Enclosure: Yes [Departmental Report New Zealand Infrastructure Commission Te Waihanga Bill \(Treasury:4117631v1\)](#) [Add to worklist](#) publicly available

IN-CONFIDENCE**Treasury Report: Treasury Report: New Zealand Infrastructure Commission/Te Waihanga Bill - Departmental Report**

Purpose of Report

1. This report seeks your approval of one proposed change to the New Zealand Infrastructure Commission/Te Waihanga Bill (the Bill) and your approval of the attached draft New Zealand Infrastructure Commission/Te Waihanga Bill: Departmental Report to the Finance and Expenditure Committee on submissions on the Bill (Departmental Report).

Background

2. The Bill received its first reading on 11 April 2019, and was referred to the Finance and Expenditure Committee (the Committee). Officials presented the initial briefing to the Committee on 8 May 2019. The Committee received 37 submissions on the Bill and heard 15 oral submissions.

Summary of submissions

3. 34 submissions supported the Bill and the establishment of the Commission. The remaining three submissions did not specifically state whether or not they supported the Bill.
4. Submitters were from local government, representative organisations, central government, private companies, and individual members of the public.
5. Overall, submissions were supportive of the establishment of the Commission, its organisational form, and the preparation of a long-term strategy. The majority of recommendations for amendments to the Bill were related to particular interests that submitters wished to see reflected in the text of the Bill.
6. We do not disagree with the intent of many of the specific amendments recommended by submitters. However, each particular requirement, if included in the Bill, would reduce its ability to exercise its independence and expertise in determining the best way to achieve its main objective. We believe that retaining the high-level provisions in the Bill that enable the Commission to exercise its best judgement in delivering its advice will enable the Commission to carry out its role most effectively.
7. As a consequence, the Departmental Report only recommends one minor, technical amendment to the Bill.

IN-CONFIDENCE**Recommended change to the Bill**

8. The Privacy Commissioner made a submission on clause 24 of the Bill, which provides reasons for withholding information requested by the Commission under clause 23 (which provides the power for the Commission to gather information).
9. The Privacy Commissioner submitted that even though the power to obtain information in clause 23 explicitly does not include personal information, it is possible that in some situations releasing requested information may interfere with the privacy of an individual or individuals. This is because, due to the definition of personal information in the Privacy Act 1993, some requests for information could technically not include personal information but may still interfere with the privacy of a person. The Privacy Commissioner recommended that clause 24 be amended to include a reason to withhold information.
10. The Privacy Commissioner's submission highlights a technical issue with the scope of the information gathering provisions that means the Commission could inadvertently request information that may interfere with an individual's privacy, despite the intent to exclude personal information from the scope of the Commission's ability to gather information.
11. On this basis, the Departmental Report recommends amending clause 24 of the Bill to include as a further reason to withhold information: if necessary to protect the privacy of a person.

Next Steps

12. We are continuing to refine the Departmental Report, and will make minor editorial and technical amendments to the attached version of the Report prior to its submission to the Committee.
13. The Committee requires the final Departmental Report on 7 June 2019 for circulation to the Committee members in advance of the presentation of the Report on 12 June.

IN-CONFIDENCE**Recommended Action**

We recommend that you:

- a **note** that on 12 June we are presenting the attached *New Zealand Infrastructure Commission/Te Waihanga Bill: Departmental Report to the Finance and Expenditure Committee on submissions on the Bill*;
- b **agree** that the Bill is amended to incorporate the additional reason for agencies to withhold information suggested by the Privacy Commissioner;

Agree/Disagree

- c **approve** the attached draft Departmental Report, subject to your feedback and minor editorial changes from our final proof read;

Approved/Not approved

David Taylor
Manager, National Infrastructure Unit

Hon Shane Jones
Minister for Infrastructure

NZIC Departmental Report – speaking notes

Key messages

1. Submissions were overall supportive of the Bill and the establishment of the Commission
2. The Bill prescribes the broad framework and boundaries within which the Commission will operate – within the Crown Entities Act, and with a broad set of functions.
3. This framework will allow the Commission to best exercise its expert judgement in carrying out its functions.

Chris White

Introduction/overview of submissions

- As the Committee will be aware, the Bill establishes the New Zealand Infrastructure Commission, Te Waihanga, to provide independent, expert advice on infrastructure
- The Committee received 37 submissions on the Bill. The large majority of submissions were supportive of the Commission and the Bill.
- Would like to thank the helpful contributions of submitters – it is clear that many people thought deeply about this Bill and how to ensure the Commission is best set up to achieve its purpose.
- Overall, recommendations for amendments to the Bill focused on particular interests that submitters wanted to see reflected in the Bill.
- The Bill deliberately sets out a high level framework for the Commission to operate within:
 - First, the Commission operates within the Crown entities Act, which determines generally how it operates as an entity
 - Second, the Bill prescribes the outer bounds of the Commission's actions
- The Committee will note that we have not recommended a large number of changes to the Bill. This is because the Bill already empowers the Commission to carry out much of the work on particular topics, or consultation with particular parties, that submitters suggested.
- The functions of the Commission are deliberately high-level and permissive to enable the Commission to use its expert specialist knowledge to determine how best to deliver its independent advice and support functions.

Morgan Dryburgh

Matters of particular interest to submitters

Additional functions for the Commission

- A large number of submitters suggested new functions that could be included in clause 10 of the Bill. Providing advice on the funding and financing of infrastructure, regulatory matters relating to infrastructure, and asset management were particular areas of interest.
- Because the Commission's functions are enabling, it could provide advice on all the matters submitters requested it provide advice on, with no change to the Bill required.
- Some submitters asked for particular products listed in the explanatory note to the Bill to be included as functions of the Commission,
- We consider it best to leave particular products, outside of the long-term strategy that is provided for in the Bill, up to the Commission to use its expert judgement on what to produce and when.

Information gathering provisions

- The Committee heard a number of oral submissions that suggested local government organisations should be included within the scope of the information gathering provisions of the Bill.
- The Committee also heard Local Government New Zealand speak against local government's inclusion in these provisions, noting that the majority of councils did not submit on the Bill, but this outcome may have been different if the Bill, as consulted on, had included local government in these provisions.
- We have not recommended a change to this aspect of the information gathering provisions in the Bill.
- As LGNZ noted, local government is already required to produce a large amount of information about its infrastructure assets and intentions.
- The Commission will be able to make non-binding requests for information from anyone, and we expect local government will share information with the Commission to support its work.

Inclusion of local government

- A number of submitters noted that the Bill contains no mention of local government, and requested that local government be specifically included in the Bill, and the Commission's remit.
- As noted previously, the Bill sets out the framework in which the Commission operates. It is neutral as to who owns the infrastructure that it considers –

outside of the information gathering provisions, the Bill does not mention central government, either.

- Local government is responsible for a large amount of infrastructure in New Zealand, therefore we expect the Commission will engage with local government in carrying out its functions.
- There are other mechanisms for the Government to ensure the Commission engages appropriately with local government – such as the Statement of Intent and Letter of Expectations.

One recommended change to the Bill

- We are recommending one change to the Bill on page 33 of the Departmental Report.
- The Privacy Commissioner's submission on the Bill highlighted a potential gap in the information gathering provisions that could lead to information that might interfere with an individual's privacy being captured in an information request by the Commission.
- We are recommending that clause 24 of the Bill be amended to include protecting the privacy of a person as a reason for withholding information from the Commission.

How does the Commission link with the rest of Government/industry/a specific work programme?

The Commission's role is to provide an overarching strategic view. It is advisory only, and will not change any decision-making or accountability rights. How the Commission is involved in particular programmes of work will depend on the nature of the work. The Commission will provide specialist infrastructure expertise, but not replace the expertise within agencies.

Why do the information gathering provisions not extend to local government/why are they needed/why?

The information gathering powers are aimed at addressing the problem of the Commission, as a crown entity, facing barriers to accessing information held by public sector departments. As a Crown entity, the Commission will not have the same ability to gather information from government departments as Ministers do. We do not want the Commission to rely on Ministers' ability to direct agencies to provide information to the Commission. The success of the Commission relies on it being able to perform its functions independently from Ministers.

We recognise the burden that these provisions have the potential to place on agencies, so have limited their application to the state sector agencies the Bill applies to.

Local government also often has more information available on their infrastructure assets – as they are required to produce 30-year infrastructure plans where central government often produces four year plans.

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IN-CONFIDENCE**New Zealand Infrastructure Commission/Te Waihanga –
Answering further questions from the Committee, 19 June**

On 12 June 2019 the Committee requested further advice from officials on three matters relating to the New Zealand Infrastructure Commission/Te Waihanga Bill:

- Suggestions as to whether any language in the Bill could be amended to help make clear that the matters submitters raised, such as additional functions of the Commission, are enabled by the Bill.
- Further advice on the rationale for not making local government subject to the information gathering provisions, and any suggestions for recognising local government in the Bill.
- Why officials recommended that the Bill does not include a requirement that the Commission upholds the principles of The Treaty of Waitangi / Te Tiriti o Waitangi in all of its functions, and why officials did not recommend the Bill include a requirement for a Māori Commissioner.

Key points***Potential amendments to the wording of the Bill***

- Any changes to the wording of the Bill are not necessary to enable the Commission to consider the matters raised by submitters.
- We do not consider that any amendments are desirable. The line has to be drawn somewhere, and we consider that the current arrangement is a good balance. This is because:
 - Including all the matters raised by submitters would result in a long list, meaning the Commission may attempt to stretch its resources over all matters, and would not use its own judgement in choosing topics to work on.
 - The question would be raised as to why other matters are not on the list – reflecting the arbitrary nature of any listing.

Information gathering and local government

- The further information provides our reasoning as to why we did not recommend extending the provisions to cover local government, but we understand that the Committee wants to include local government.
- We understand the Committee has been provided proposed wording for the Bill to include local government.
- In our further information, we have provided some matters for the Committee to consider (bottom of page 5):
 - Council Controlled Organisations – last week a Committee member noted these would not be automatically captured as ‘local government’.

IN-CONFIDENCE

Does the Committee want to include CCOs? They are likely to hold a lot of information about infrastructure e.g. Auckland Transport, Wellington Water.

- Noted that local government have not been consulted on their inclusion.

Treaty of Waitangi/Māori Commissioner

- The Courts will presume that Parliament intends to legislate in a manner that is consistent with the principles of the Treaty and interpret legislation accordingly (unless there are clear words to the contrary).
- It is unclear what it would mean for an advisory body such as the Commission, which does not make binding legal decisions or funding decisions, to uphold Treaty principles.
- Unlike other organisations with the name 'Commission' - such as the New Zealand Human Rights Commission - it is not intended that there are 'Commissioners' with individual roles or specific responsibilities outside of the general board duties of Crown entities.
- We consider that it is preferable to use other mechanisms under the current Bill and Crown Entities Act framework for the Government to inform the Commission of how the Treaty, and Māori interests, should inform a particular piece of work.

IN-CONFIDENCE



Reference: T2019/1865

SH-11-5-16-1-6-3

Date: 24 June 2019

To: Minister of Finance (Hon Grant Robertson)

Cc: Minister for Infrastructure (Hon Shane Jones)

Deadline: None
(if any)**Aide Memoire: New Zealand Infrastructure Commission/Te Waihanga Bill - information gathering provisions and local government**

This aide memoire provides you with a summary of the Treasury's advice on the inclusion of local government in the information gathering provisions of the New Zealand Infrastructure Commission/Te Waihanga Bill (the Bill).

Context

As noted in T2019/1572, the Finance and Expenditure Committee is currently considering the Bill. The Committee received 37 written submissions on the Bill, and heard 15 of those submitters in person.

The Committee received 11 written submissions suggesting that local government organisations should fall within scope of the information gathering provisions. Five of those submissions came from local government organisations, while six submissions came from other organisations.

Local Government New Zealand (LGNZ) did not comment on the information gathering provisions in their written submission, but in an oral submission to the Committee on 29 May 2019 stated that they did not support the suggestion that the Bill be amended to include local government within the scope of the information gathering provisions.

Treasury's advice

The Treasury's Departmental Report on the Bill (T2019/1664 refers) recommended no changes to the information gathering provisions.

When presenting the report to the Committee, officials were asked to provide the Committee further advice on the rationale for not making local government subject to the information gathering provisions in the Bill.

IN-CONFIDENCE

Our further advice to the Committee was, and remains, that we do not recommend the inclusion of local government within the scope of these provisions because:

- The intent of these provisions is to ensure the Commission has the same access to information from departments and Crown entities as Ministers and central government agencies have;
- Local government is already required to publish large amounts of information relating to infrastructure that the Commission could use;
- Including local government within the provisions does not address instances where local government does not hold the information.

We further consider that including local government within the Commission's information gathering provisions is not required because:

- If local government is working in partnership with the Commission, or seeking Crown funding for projects, provision of information to the Commission could potentially be included as a requirement for funding or Commission support.
- The Commission would have the ability to work with agencies who hold levers over local government (such as funding or regulation) to build information the Commission requires into existing information requirements on local government.

However, we understand that the Committee is interested in extending the information gathering provisions of the Bill to cover local government.

Considerations

In exploring the issue of whether the information gathering provisions in the Bill should extend to local government, we think there are two main considerations:

- The potential **cost burden** on local government – at this stage we are not able to quantify the size, nature or frequency of information requests that the Commission may make to local government, but requiring organisations to provide information does create a cost burden. We considered this as part of formulating our initial, and subsequent, advice.
- How best to engage with local government on their inclusion within the provisions. Since the version of the Bill that was publicly consulted on did not extend the information gathering powers to local government, many local government organisations will not have considered what the provisions will mean for their organisations.

IN-CONFIDENCE

Morgan Dryburgh, Senior Analyst, National Infrastructure Unit (NIU), s9(2)(k)
David Taylor, Manager, National Infrastructure Unit, National Infrastructure Unit (NIU),
s9(2)(k)

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From: Morgan Dryburgh [TSY]
Sent: Wednesday, 10 July 2019 5:15 PM
To: ^Parliament: Daniel White
Cc: David Taylor [TSY]; Darren Baars [TSY]
Subject: NZIC Bill - information gathering powers

[IN-CONFIDENCE]

Hi Daniel,

Thanks for the discussion earlier relating to the information gathering provisions in the bill extending to cover local government.

Essentially there are two options for making these changes to the Bill, as requested:

- 1) If the Select Committee instructs officials to draft this into the Bill and agrees to those changes – the Bill reported back in August would then have the information gathering provisions amended. The Committee would need to instruct us as soon as possible after the end of the recess period to ensure that the additional drafting by PCO, etc. can be undertaken before the Committee is required to report back on the Bill. This would need to be facilitated by the Minister having a discussion with the Chair of the Committee. As this is a change from the policy decision confirmed at LEG for the introduction of the Bill (on who the information gathering provisions cover), it would be advisable for the Minister to keep Cabinet informed. He could do this with an oral item.
- 2) The Committee could report back recommending the information gathering provisions be amended to include local government, and the Minister puts in an SOP to achieve these changes. This has the potential to slow down the progress of the legislation in the House, as an SOP would need to go to Cabinet (so first the SOP would need to be drafted, Cab paper developed, lodged and considered by the relevant committee etc.). This may also require the preparation of a RIS. If this is the option that the Minister wants to go with, we will discuss with the RQ team about the requirements for impact analysis.

Please let us know which option the office would like to progress.

Morgan



Morgan Dryburgh (she/her) | Senior Analyst, National Infrastructure Unit | Te Tai Ōhanga – The Treasury

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Visit us online at <https://treasury.govt.nz/> and follow us on [Twitter](#), [LinkedIn](#) and [Instagram](#)

From: Daniel White <Daniel.White@parliament.govt.nz>
Sent: Thursday, 11 July 2019 9:13 AM
To: Morgan Dryburgh [TSY]
Cc: David Taylor [TSY]; Darren Baars [TSY]
Subject: RE: NZIC Bill - information gathering powers

Thanks for the clarity very helpful.

As discussed the Minister is with Georgie this week, so I will see if I can get direction and your email below is appreciated to support advising on next steps.

Ngā mihi,

Daniel White
 Private Secretary – Infrastructure, Associate Finance and Associate State Owned Enterprises
 Office of Hon Shane Jones I Minister of Forestry | Minister for Infrastructure | Minister for Regional
 Economic Development
 Associate Minister of Finance I Associate Minister for State Owned Enterprises | Associate Minister of
 Transport
 6.4 Beehive, Parliament Buildings, Private Bag 18041, Wellington 6160, New Zealand
 s9(2)(k) M: s9(2)(a)
 E: daniel.white@parliament.govt.nz | W: <http://www.beehive.govt.nz> and <http://www.parliament.nz>

From: Morgan Dryburgh [TSY] <Morgan.Dryburgh@treasury.govt.nz>
Date: Thursday, 11 Jul 2019, 8:57 AM
To: Daniel White <Daniel.White@parliament.govt.nz>
Cc: David Taylor [TSY] <David.Taylor@treasury.govt.nz>, Darren Baars [TSY] <Darren.Baars@treasury.govt.nz>
Subject: RE: NZIC Bill - information gathering powers

Hi Daniel,

Yes, both options require the Committee to agree that they think the provisions should be amended, which is most likely to happen in option 2 if the Minister has a conversation with the Chair.

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Thanks Morgan

To be clear in my mind, both options require the committee to seek the amendment. Option 1 committee instructs Treasury to make change. Option 2 committee reports back recommending change. Dont both options require the Committee to change its mind (and therefore may require the Minister to discuss with the Chair?).

Option 1 would be preferred from a timing and ease perspective.

Ngā mihi,

Daniel White

Private Secretary – Infrastructure, Associate Finance and Associate State Owned Enterprises
Office of Hon Shane Jones I Minister of Forestry | Minister for Infrastructure | Minister for Regional Economic Development
Associate Minister of Finance I Associate Minister for State Owned Enterprises | Associate Minister of Transport

6.4 Beehive, Parliament Buildings, Private Bag 18041, Wellington 6160, New Zealand

s9(2)(k) M: s9(2)(a)

E: daniel.white@parliament.govt.nz I W: <http://www.beehive.govt.nz> and <http://www.parliament.nz>

From: Morgan Dryburgh [TSY] <Morgan.Dryburgh@treasury.govt.nz>

Date: Wednesday, 10 Jul 2019, 5:15 PM

To: Daniel White <Daniel.White@parliament.govt.nz>

Cc: David Taylor [TSY] <David.Taylor@treasury.govt.nz>, Darren Baars [TSY] <Darren.Baars@treasury.govt.nz>

Subject: NZIC Bill - information gathering powers

[IN-CONFIDENCE]

Hi Daniel,

Thanks for the discussion earlier relating to the information gathering provisions in the bill extending to cover local government.

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- 1) If the Select Committee instructs officials to draft this into the Bill and agrees to those changes – the Bill reported back in August would then have the information gathering provisions amended.
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Please let us know which option the office would like to progress.

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RELEASED UNDER THE OFFICIAL INFORMATION ACT

From: Daniel White <Daniel.White@parliament.govt.nz>
Sent: Tuesday, 16 July 2019 12:26 PM
To: Morgan Dryburgh [TSY]
Subject: RE: NZIC Bill - information gathering powers

FYI Georgie was unable to completely sort this out before she went on leave. What is the timing? Is there a critical timing issue that I can provide will to get momentum for him to progress the issue this week?

From: Daniel White
Sent: Thursday, 11 July 2019 1:32 PM
To: 'Morgan Dryburgh [TSY]' <Morgan.Dryburgh@treasury.govt.nz>
Subject: RE: NZIC Bill - information gathering powers

Thanks for the FYI – shared this with Georgie

From: Morgan Dryburgh [TSY] [<mailto:Morgan.Dryburgh@treasury.govt.nz>]
Sent: Thursday, 11 July 2019 1:29 PM
To: Daniel White <Daniel.White@parliament.govt.nz>
Subject: RE: NZIC Bill - information gathering powers

Thanks Daniel. I think that Deborah Russell may now be the Chair of FEC (someone in our office just mentioned he got a new role in the recent reshuffle) so could be worth Georgie following up with her office as well.

Cheers,
Morgan

From: Daniel White <Daniel.White@parliament.govt.nz>
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To: Morgan Dryburgh [TSY] <Morgan.Dryburgh@treasury.govt.nz>
Subject: RE: NZIC Bill - information gathering powers

FYI Georgie has emailed Michael Wood. Will chase tomorrow given it is her last day

Ngā mihi,

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