Regulatory Impact Statement: Sustainable Public Transport Framework

Coversheet

Purpose of Document	
Decision sought:	This document provides regulatory impact analysis for the purpose of informing the Minister and Cabinet on policy decisions on changes to the Public Transport Operating Model (PTOM). If agreed, these changes would give effect to the proposed Sustainable Public Transport Framework (SPTF), which will replace the existing PTOM framework.
Advising agencies:	Te Manatū Waka Ministry of Transport
Proposing Ministers:	Hon Michael Wood, Minister of Transport
Date finalised:	20 July 2022

Problem Definition
In 2019, Te Manatū Waka, Ministry of Transport (the Ministry) began a review of PTOM. The findings of the review led the Ministry to identify specific areas where the framework requires change to ensure it is fit for purpose and aligned with government priorities.

Executive Summary

PTOM governs the planning, procurement and delivery of public transport services in New Zealand. PTOM's objectives and governing framework are contained in Part 5 of the Land Transport Management Act (LTMA). PTOM is largely implemented through operational policy developed by Waka Kotahi NZ Transport Agency (Waka Kotahi), which guides the public transport planning and procurement approaches taken by regional councils and Auckland Transport (AT). Regional councils and AT are collectively termed public transport authorities (PTAs) in this document.

The proposed SPTF would replace and expand elements of the original PTOM objectives. The four objectives for the proposed SPTF are:

- public transport services support mode shift from private motor vehicles, by being integrated, reliable, frequent, accessible, affordable, and safe,
- employment and engagement of the public transport workforce is fair and equitable, providing for a sustainable labour market and sustainable provision of public transport services,
- well-used public transport services reduce the environmental and health impact of land transport, including by reducing reliance on single-occupancy vehicles and by using zero-emission technology, and
- provision of services supports value for money and efficiency from public transport investment while achieving the first three objectives.

In addition to new objectives, key proposed changes forming part of the proposed SPTF include:

- Ensuring the framework facilitates the Government's objectives and commitments for public transport decarbonisation, including through changes to allow greater flexibility in asset ownership,
- Enabling PTAs to deliver public transport services through in-house service delivery,
- Ensuring the framework promotes the Government's objectives for a fair, equitable, and sustainable labour market for public transport workers,
- Changing elements of how 'exempt' public transport services are registered, varied and withdrawn to address issues raised by the sector during the PTOM review, and
- Incorporating on-demand public transport services into the LTMA.

The proposed changes respond to Government and wider sector concerns with the PTOM framework, which the Ministry explored in-depth through its multi-year PTOM review.

The diagram on page 4 provides an overview of the connection between identified policy problems and opportunities, the policy objectives, consultation feedback themes and the policy options analysed in this RIS.

Overall, if implemented, the proposed SPTF will enable greater flexibility of approach by PTAs in how public transport services are planned, procured and delivered in line with the principles in the LTMA that guide public transport functions. However, this flexibility will likely result in more complex operational policy to account for a wide variety of service types, ownership arrangements, and delivery pathways. It will also likely make investment and procurement decisions more complex and challenging for Waka Kotahi. For operators, a more complex framework may impose additional costs but will also create opportunities.

Limitations and Constraints on Analysis

The regulatory changes analysed in this RIS largely involve changes to decision-making principles and changes to enable greater flexibility in operational policy. Waka Kotahi and PTAs could apply the proposed new framework in a variety of ways. These changes largely do not mandate certain activities or requirements. This makes it difficult to identify and analyse marginal impacts with a high degree of certainty.

Responsible Manager(s) (completed by relevant manager)

Matthew Skinner
Acting Manager, Mobility & Safety

Te Manatū Waka, Ministry of Transport

20/07/2022

Quality Assurance (completed by QA panel)	
Reviewing Agency:	Te Manatū Waka, Ministry of Transport
Panel Assessment & Comment:	The Regulatory Impact Analysis has been reviewed by Te Manatū Waka Ministry of Transport's Regulatory Impact Assessment Panel and given a 'partially meets' rating under the quality assurance criteria. The RIS presents a reasonable case around the overall nature of the problem, and it is based on considerable consultation with affected stakeholders over a significant period of time. However, the analysis of the impacts of individual options is constrained by limited attempts to quantify the cost impacts of decarbonising the public transport fleet, as well as other changes. This has been attributed, in part, to the challenges in anticipating the operational decision-making by Waka Kotahi and other actors. Ideally this analysis would be underpinned by a more detailed assessment of the impacts of each of the options. The panel did have concerns that the criteria used to assess the options tended to prioritise implementation considerations over the achievement of identified policy objectives. However, this is largely addressed in the concluding sections that recommend each option. Importantly, for the issues where the preferred options of the Minister and the Ministry diverge, the relative merits of the options as well as the trade offs have been addressed. This should help the Minister and other decision makers to weigh up the relative costs and benefits of choosing their preferred option.

SPTF Overview Diagram

The diagram over the page summarises the connections between the:

- Key policy problems and opportunities identified by the Ministry through the policy process,
- The key policy objectives for the new SPTF (and their linkages to the Transport Outcomes Framework), and
- The seven policy issues analysed in this RIS,
- High-level themes from stakeholder consultation, and
- Policy options to address each policy issue.

Given the wide-ranging nature of the problems and opportunities addressed in this RIS, the intent of this diagram is to provide a cohesive picture of the policy landscape, including linkages to the SPTF objectives, policy issues and options, and consultation feedback

Sustainable Public Transport Framework – Overview

Transport Outcomes Framework

- Inclusive access
- Healthy and safe people
- Environmental sustainability
- Resilience and security
- Economic prosperity

Problem definition / opportunities

1. The current PTOM objectives are not well aligned with the Government's objectives for public transport and the wider land transport system
2. The current PTOM framework does not fully enable decarbonisation of the public transport fleet
3. The current PTOM framework does not cater to the Government's desire for full flexibility in service delivery models
4. Shortages and high turnover of bus drivers have led to sector wide concerns that the bus driver labour market is not sustainable under current settings
5. PTOM does provide for, or adequately regulate, on-demand public transport services
6. The notice period for withdrawing exempt services may not provide sufficient certainty to users

Policy objectives

- Public transport services support mode shift from private motor vehicles, by being integrated, reliable, frequent, accessible, affordable, and safe,
- Employment and engagement of the public transport workforce is fair and equitable, providing for a sustainable labour market and sustainable provision of public transport services
- Well-used public transport services reduce the environmental and health impact of land transport, including by reducing reliance on single-occupancy vehicles and by using zero-emission technology
- Provision of services supports value for money and efficiency from public transport investment while achieving the first three objectives

Policy issues	Consultation themes	Policy options
1. Updating the principles in Part 5 of the LMTA	Stakeholders were broadly supportive of the need to update the principles in Part 5 of the LTMA, including the inclusion of social and environmental objectives.	1. Status Quo - maintain the existing principles 2. Expand the Part 5 principles and retain access to market principle 3. Expand the Part 5 principles and remove access to market principle
2. Implementing the 2025 zero-emission mandate	PTAs are already progressing decarbonisation plans, with the mandate now forming part of Waka Kotahi's operational policy. Submitters were broadly supportive of the mandate's design.	1. Maintain the status quo 2. New principle in the LTMA 3. 2025 mandate established in the LTMA 4. 2025 mandate established in the GPS
3. Removing restrictions on PTA ownership of public transport assets	To facilitate the decarbonisation of bus fleets, PTAs are supportive of greater flexibility in asset ownership arrangements, which could include changes to the LTMA and to operational policy. Some operators oppose public ownership of public transport assets.	1. Maintain the status quo 2. Enable CCO ownership 3. Maintain CCTO requirement in certain circumstances 4. Remove CCTO requirement
4. Enabling PTAs to deliver bus and ferry services in-house	Stakeholders were not directly consulted on this issue. However, unions are supportive of in-house service provision and we anticipate PTAs would welcome additional flexibility. Operators would likely oppose this change.	1. Maintain the status quo 2. Modified status quo 3. Enable in-house provision within the PTOM contracted model 4. Enable in-house provision outside the PTOM contracted model
5. Ensuring the framework promotes a sustainable labour market for bus drivers	There is widespread concern in the sector that the labour market for bus drivers is not sustainable. In addition, there is a desire to ensure the proposed SPTF mitigates any adverse effects from tendering on bus driver terms and conditions.	1. Maintain the status quo 2. Introduce a high-level principle into the LTMA 3. New LTMA provision specifying labour market outcomes 4. Extend protections in the ERA
6. Clarifying the treatment of on-demand services in the LTMA	PTAs are concerned that there is a lack of certainty regarding the treatment of on-demand public transport services in the LTMA. Stakeholders have also highlighted the need to ensure the regulatory framework strikes the right balance between regulation and facilitating innovation.	1. Maintain the status quo 2. Classify on-demand public transport as an exempt service 3. Bring PTA-initiated initiated services into the SPTF 4. Include all on-demand PT services into the SPTF
7. Extending the notice period for withdrawal of exempt services	This policy issue reflects PTA concerns that the notice period for withdrawing exempt services is too short, and does provide for enough certainty to both PTAs and users.	1. Maintain the status quo - 15 working days' notice period 2. 60 working days' notice period for integral exempt services 3. 60 working days' notice period in all exempt services

Coloured dots indicate the policy objective aligns to the corresponding coloured outcome

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

1. Public transport plays a critical role in ensuring people have access to goods, services, education and employment, and in ensuring the efficient movement of people and use of infrastructure, particularly in our main cities. Public transport is also a key enabler of government priorities to decarbonise transport, increase mode shift, and enable more sustainable urban forms.
2. In New Zealand, public transport includes both government-funded and commercially operated services. Most public transport services are subsidised because the level of service provided commercially is not sufficient to meet community needs. The government, through the National Land Transport Programme, is investing $669 million in public transport services and infrastructure during the 2021/22 budget year.

Bus and ferry public transport services are currently delivered through the Public Transport Operating Model (PTOM)

3. Since 2013, public bus and ferry services have been planned, procured, and delivered under PTOM. Rail public transport services are delivered under a complementary framework known as the Metropolitan Rail Operating Model (MROM). Both operating models are governed by Part 5 of the Land Transport Management Act (LTMA) 2003.
4. Prior to the introduction of PTOM, bus and ferry services were delivered through a mixture of commercial and contracted services. The government of the day was concerned that increasing government spending on public transport was not resulting in commensurate increases in patronage. The regulatory framework at the time also made it difficult for regional councils and Auckland Transport (together referred to as Public Transport Authorities, or PTAs, in this RIS) to plan and deliver integrated public transport networks.
5. The government of the day set two overarching objectives for PTOM:
    - to grow the commerciality of public transport services (as measured by the proportion of costs covered by fare revenue) and create incentives for services to become fully commercial, and
    - to grow confidence that services are priced efficiently and there is access to public transport markets for competitors.
6. Following the introduction of PTOM, PTAs became fully responsible for planning, procurement, and service delivery.
7. PTAs lead the development of Regional Public Transport Plans (RPTPs), which set out regional public transport services. Services are co-funded with PTAs by central government through Waka Kotahi; specifically, service contracts are funded from a mix of fares, local share, and the National Land Transport Fund (NLTF).

The PTOM is enabling, with the detail developed through operational policy

8. The LTMA provides the high-level statutory framework for PTOM.[1] The legislation is regarded as enabling legislation. This means that, generally speaking, the LTMA does not set out detailed, prescriptive rules. Rather, implementation of PTOM is primarily

[1] The regulation of public transport services is primarily contained in Part 5 of the LTMA.

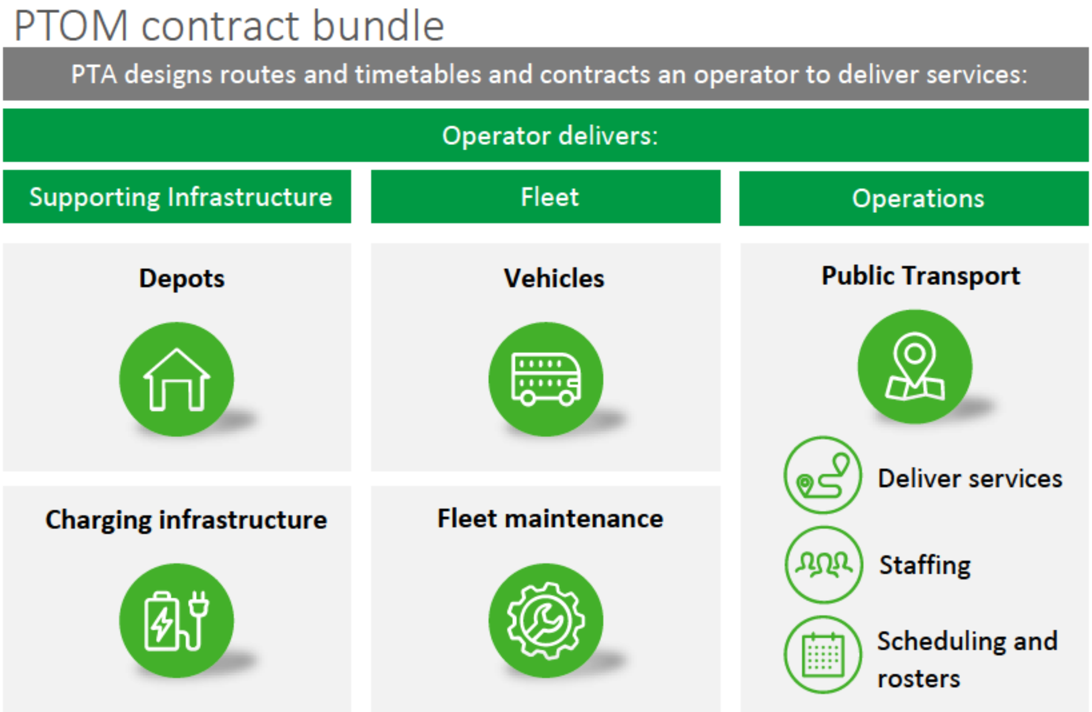
through operational policy developed by Waka Kotahi and PTAs, taking account of the principles and high-level requirements in the LTMA.

9. Waka Kotahi has a significant role to play in the delivery of PTOM – both as co-investor in public transport services and through its operational guidance set out in the Procurement Manual, RPTP Guidelines, and other policies. As part of this, Waka Kotahi sets requirements for procurement strategies and pre-approved procurement procedures, and provides guidance to PTAs on planning, procuring, and contracting services.

10. Under the current model, tendered PTOM contracts have a term of nine years and directly negotiated contracts (i.e. contracts negotiated between the operator and the PTA) last for six years. Some transitional 'like-for-like' contracts last for 12 years, in recognition of services previously provided commercially. Further to this, operators achieving a high degree of commerciality in respect of a unit, during the first term of PTOM contracts, may be offered an opportunity by the PTA to negotiate a new contract directly.

11. PTOM does not require private ownership for bus and ferry operators, or private ownership of the assets associated with service provision (such as vehicles and depots). However, private ownership and service provision is the predominant approach, and the LTMA requires NLTF-funded services to be outsourced. Under the LTMA, any PTA ownership interest in a public transport service must be held in a council-controlled trading organisation (CCTO). CCTOs operate for the purpose of making a profit.

12. The figure below captures the typical inputs into a public transport service. While the PTA specifies the outputs in terms of contracted public transport services, each of the inputs are typically bundled together and provided by private operators under PTOM.



13. Some public transport services operating on a fully commercial basis are exempt from PTOM through mechanisms in the LTMA, including some services that are considered integral to regional public transport networks. Examples of such services are the Waiheke Island ferry service and the Wellington Cable Car.

14. On-demand public transport services are currently not covered by PTOM. Unlike conventional public transport services, on-demand services do not operate to a fixed route or timetable and only operate when there is demand. With app-based technologies, on-demand services are emerging as an increasingly viable form of public transport.

Te Manatū Waka, Ministry of Transport (the Ministry) has recently completed a review of the PTOM

15. In 2019, the Ministry began a review of the PTOM. The purpose of the review was to assess whether it achieved the original objectives and to ensure it remained fit for purpose in contributing to the Government's desired outcomes for the transport sector.

16. This review was motivated to ensure PTOM was evaluated as part of good policy practice, and also responded to contemporary concerns regarding the impacts of PTOM. These included concerns that competition for PTOM contracts may be generating a 'race to the bottom' for bus driver wages and conditions, concerns around the treatment of some exempt services, and concerns over the role PTOM may have played in contributing to issues with implementing Wellington's new bus network.

17. The Government has also made specific commitments to decarbonise the public transport bus fleet. It has committed to requiring only zero-emission public transport busses be purchased by 2025 (the 'zero-emission mandate'), along with a target of decarbonising the public transport bus fleet by 2035. Mode shift from private vehicles to public transport is also a key government priority to achieve greenhouse gas emission reductions from the land transport system.

18. Decarbonisation is a significant challenge and opportunity for the sector, involving the deployment of new technologies at scale. Several PTAs are currently progressing bus decarbonisation plans. However, PTAs face several barriers to decarbonising their public transport bus fleets – technological, financial, as well as from elements of PTOM.

19. These policy priorities have also driven the requirement for a review of PTOM.

20. Key elements of the PTOM review included:

- Research by Allen+Clarke into the impacts of PTOM on bus driver employment conditions and wage rates (this research preceded the commencement of the formal PTOM review),
- An impact evaluation by KPMG and Mott MacDonald, which considered how well PTOM had achieved its original objectives, its impacts on key stakeholders, and how PTOM could be improved, and
- A policy and legislation review, which involved the release of a Discussion Paper and an accompanying public consultation exercise.

21. The KPMG and Mott MacDonald evaluation found that PTOM had only partially met its original objectives. It found the commerciality of public transport services (as measured by the proportion of operating costs covered by fare revenue) had not increased in most regions. However, the PTOM evaluation also found public transport networks had expanded; access had increased; services had become more affordable for users; and networks become more integrated.

22. The Allen+Clarke research also found that PTOM has resulted in strong levels of competition for competitively tendered contracts, resulting in a large proportion of all contracts in the main centres seeing a change in operator.

23. Since the implementation of PTOM, the number of boardings has steadily increased for both bus and ferry services. In 2015/2016, there were 112 million bus boardings and 6.2 million ferry boardings. In 2018/2019, the total number of bus and ferry boardings reached over 133 million. Of this, 126 million were bus services, and 7 million were ferry services.

24. Research by Allen+Clarke found bus drivers' employment conditions and wage rates were directly impacted by changes in the contracting and operating environment. Most operators kept their employment conditions the same, with small increases in wage rates, although these varied considerably between incumbent and new operators. The PTOM evaluation also concluded operators with lower wage costs were likely advantaged in tendering.

25. Separate to the review, independent research by Ian Wallis[2] into PTOM found tendered contracts cost significantly less than negotiated contracts. According to Ian Wallis, this reflected the weak position of the PTAs in their contract negotiations with the operators and, particularly, that PTAs did not have recourse to tendering.

The PTOM review did not find a need for fundamental change

26. On the basis of the PTOM evaluation prepared by KPMG and Mott MacDonald, the Ministry considered that, with a few exceptions, the PTOM framework had largely enabled and supported positive outcomes for the delivery of public transport services. Given this, instead of a fundamental review of the framework, the final stages of the PTOM review focused on addressing specific issues identified through:

- the PTOM evaluation,
- the Ministry's wider engagement with the sector, and
- identification of priority issues for the Government.

27. The findings of the PTOM review set the context for the policy problems and opportunities addressed as part of this RIS.

The PTOM review has involved extensive consultation with the sector

28. As the figure below illustrates, the PTOM review has involved close engagement with sector stakeholders at each stage of the process.

[2] Wallis, I (2020) Value for money in procurement of urban bus services – Competitive tendering versus negotiated contracts: Recent New Zealand experience. *Research in Transportation Economics* 83.

What is the policy problem or opportunity?

29. The PTOM review confirmed that, while the current PTOM framework did not require wholesale change, there were specific areas where it requires reform to ensure its fitness for purpose. These policy problems and opportunities directly respond to the findings of the PTOM evaluation, wider stakeholder concerns with the operation of aspects of the PTOM framework, and current Government priorities. They include:

- Changing the objectives of the framework to reflect the Government's current priorities for public transport (see below),
- Ensuring the framework facilitates the Government's objectives and commitments for public transport decarbonisation,
- Enabling in-house provision of public transport services,
- Ensuring the framework promotes the Government's objectives for a fair, equitable, and sustainable labour market for public transport workers, responding to the findings of the PTOM review and wider stakeholder concerns,
- Changing elements of how 'exempt services' are registered, varied and withdrawn to address issues raised by the sector during the PTOM review,
- Incorporating on-demand public transport services into Part 5 of the LTMA, and
- Improving collaboration between key sector participants - Waka Kotahi, PTAs, territorial authorities (TAs), and operators - to address issues raised by the sector during the PTOM review.

30. Where addressing these opportunities creates material regulatory impacts, the proposed changes and related impacts are discussed in Section 3 of this RIS.

31. For context, significant elements of the proposed SPTF will be implemented through operational policy. This reflects the enabling nature of the framework, which provides flexibility to Waka Kotahi and PTAs in how it is implemented. The focus of this RIS on proposed changes to the wider enabling framework, rather than on changes to operational policy, which are not regulatory in nature.

32. Elements of the proposed SPTF are also being progressed through the following workstreams:

- The sector, through the Bus Driver Terms and Conditions Steering Group (previously the Rest and Meal Breaks Steering Group), is working to progressively implement improved employment terms and conditions for public transport bus drivers and establish minimum employment terms and conditions across operators, and
- A working group has been established to guide operational policy development for the SPTF, which is composed of representatives from the Ministry, Waka Kotahi, PTAs, operators and unions.

33. Waka Kotahi has also recently updated its operational policy to incorporate the Government's zero-emission mandate into its requirements.

What objectives are sought in relation to the policy problem?

34. In light of the findings of the PTOM review, and the broader outcomes the Government wants to realise from the land transport system, the government is proposing to expand PTOM's original objectives. The four objectives for the proposed SPTF are:

- public transport services support mode shift from private motor vehicles, by being integrated, reliable, frequent, accessible, affordable, and safe,
- employment and engagement of the public transport workforce is fair and equitable, providing for a sustainable labour market and sustainable provision of public transport services,
- well-used public transport services reduce the environmental and health impact of land transport, including by reducing reliance on single-occupancy vehicles and by using zero-emission technology, and
- provision of services supports value for money and efficiency from public transport investment while achieving the first three objectives.

35. These four objectives define what the new framework seeks to achieve and inform the options assessment below.
36. The objectives were developed in consultation with the sector and refined through the policy development process (see Section 3, Issue 1 for further details).
37. The policy objectives also respond to the Ministry's Transport Outcomes Framework. The four outcomes are to improve people's wellbeing, and the liveability of places by contributing to inclusive access, healthy and safe people, economic prosperity, environmental sustainability, and resilience and security.[3] The connections between these outcomes and SPTF policy objectives are highlighted in the diagram on page 4.
38. The substance of the SPTF's policy objectives will also be incorporated into the LTMA as high-level principles, noting the exact wording will likely be adapted through the legislative process.
39. This RIS analyses both the regulatory impacts of introducing these objectives into the LTMA (see Section 3, Issue 1) along with the more specific regulatory changes proposed to give effect to these new objectives. Section 3, Issue 1 also outlines the outcomes from sector consultation on these objectives.

[3] See Transport-outcomes-framework.pdf.

Section 2: Options analysis

What criteria will be used to compare options to the status quo?

40. The Ministry has applied a consistent set of criteria to analyse each of the separate policy issues covered in this RIS. These criteria are:

- **Cost of compliance:** The likely cost to operators or other impacted stakeholders with complying with any operational or regulatory changes related to this option. Cost detracts away from the anticipated benefits of an option. Options imposing relatively high costs on stakeholders will be scored lower than those with limited cost impacts.

- **Impacts on the operator market:** The impact on the ongoing development of a competitive operator market. Operators are critical to the delivery of public transport services and the Ministry views a competitive operator market as important to efficient delivery of quality services. Options adversely impacting on competition in this market will be given a negative score.

- **Ease of implementation**: The option's ability to be implemented within existing frameworks, or requiring significant change to the current operating model. Options that can be implemented within existing frameworks help both reduce the transactions costs and risks associated with change, and will be scored relatively highly.

- **Certainty of outcome:** The likelihood the option will deliver on the intended outcomes. Options providing greater certainty, such as prescribing certain actions, will be scored higher than options that give decision-makers greater discretion.

- **Alignment with the objectives of the SPTF:** The option's alignment with the Government's objectives for the framework. Options aligning with the policy objectives will be scored higher than those that do not.

41. Many of the policy problems and opportunities discussed in the RIS can be addressed, in part, through changes to operational policy. Therefore, much of this RIS is focused on whether or not supplementing changes to operational policy with additional regulatory interventions achieves an appropriate balance between the benefits of advancing the policy objectives and the potential costs and impacts of regulatory change.

42. The criteria seek to achieve a balance against cost impacts, impacts on competition in the operator market, ease and certainty of implementation, while advancing the new policy objectives. Solely evaluating the policy options against the four policy objectives would not enable effective differentiation between different options. This is because they do not factor in the full suite of implementation considerations, including stakeholder impacts.

43. Each criterion was given an equal weighting during the options assessment.

44. The assessment of each set of options forming part of this RIS was done involving both the Ministry, as the lead policy agency, and Waka Kotahi, as the lead operational agency.

What are the policy issues addressed in the options analysis?

45. The remainder of this RIS assesses options to address the following policy issues:

- **Issue 1**: Ensuring the principles in Part 5 of the LMTA reflect the current challenges and opportunities face by the public transport sector,

- **Issue 2:** Implementing the 2025 zero-emission mandate, which will only permit zero-emission buses to join the public transport bus fleet from 2025,
- **Issue 3:** Removing restrictions on PTA ownership of public transport assets,
- **Issue 4:** Enabling PTAs to deliver bus and ferry services in-house,
- **Issue 5:** Ensuring the framework promotes a sustainable labour market for bus drivers,
- **Issue 6:** Clarifying the treatment of on-demand services in the LTMA, and
- **Issue 7:** Reforming the framework for exempt services.

Each policy issue is assessed individually

46. The remainder of this RIS contains the options analysis for each of the policy issues identified above. Each policy issue is assessed in its own individual section covering:
    - The policy context,
    - The specific problem definition,
    - The options considered, including themes from supporting stakeholder consultation,
    - Evaluation of the options against the criteria,
    - Impact analysis of the preferred option, and
    - Monitoring and implementation of the preferred option.

Limitations applying to the options analysis

47. PTOM is largely an enabling framework. Key regulatory changes analysed in this RIS involve changes to decision-making principles and changes to enable greater flexibility in operational policy. Given these changes do not mandate certain activities or outcomes, it is difficult to analyse likely impacts with a high degree of certainty. Waka Kotahi and PTAs could apply the proposed new framework in a variety of ways. There are also related changes to operational policy taking place, or anticipated to take place, under the status quo. Therefore, the analysis in this RIS is largely framed as potential marginal impacts and risks, highlighting areas of uncertainty over the impacts of several of the proposed changes.

What is the anticipated overall impact of the SPTF?

48. This RIS analyses the key regulatory interventions forming the proposed SPTF on an individual basis. However, as a package, the regulatory interventions forming the proposed SPTF will enable greater flexibility of approach by PTAs in how public transport services are planned, procured, and delivered to achieve the broader outcomes proposed to be incorporated into the LTMA. As a result of this, we anticipate changes to asset ownership arrangements (e.g. greater direct PTA ownership of fleet and supporting infrastructure), noting the extent and pace of change will depend on PTA decisions.
49. The proposed regulatory interventions will also strengthen the direction to decision-makers in terms of the outcomes to be delivered by the public transport system. We anticipate this will result in an increased focus on zero-emission technologies, and on bus driver terms and conditions, as part of public transport planning, procurement, and

delivery. This complements changes underway at an operational level to transition fleet to zero-emission technology and to improve bus driver terms and conditions.

50. Additional flexibility will likely result in more complex operational policy to account for a wide variety of service types, ownership arrangements, and delivery pathways. It will also likely make investment and procurement decisions more complex and challenging for Waka Kotahi. For operators, a more complex framework may impose additional costs but will also create opportunities. Increased focus on broader environmental and labour market outcomes may also increase the relative cost of delivering public transport services.

51. The diagram over the page provides a summary of the connection between the proposed regulatory interventions and intended outcomes.

52. As much of the SPTF will be implemented through operational policy, the exact impacts of the SPTF cannot be determined with certainty, as Waka Kotahi is statutorily independent in its decision-making. There is a risk the framework does not fully deliver on the policy objectives, as decision-makers may interpret and apply the new decision-making principles in different ways. Aspects of achieving the policy objectives will also be subject to matters beyond the SPTF, such as achieving mode shift.

Sustainable Public Transport Framework – Intervention Logic

Transport Outcomes Framework

Inclusive access | Healthy and safe people | Environmental sustainability | Resilience and security | Economic prosperity

Proposed regulatory intervention	Outputs	Impacts
1. Updating the principles in Part 5 of the LMTA	Operational policy (e.g. Waka Kotahi's Procurement Manual, PTA procurement strategies) changed to reflect new principles	• Changes to the planning, procurement and delivery of public transport services • Wider range of delivery models • More complex planning environment
2. Implementing the 2025 zero-emission mandate	Strengthened requirement on PTAs to procure and deploy zero-emissions vehicles from 2025.	• Decarbonisation of public transport bus fleet and reduced emissions • Improved health benefits • Potential for increase in upfront capital costs but lower operating costs
3. Removing restrictions on PTA ownership of public transport assets	Legislative requirement to hold interests through a CCTO removed. Operational policy (e.g. Waka Kotahi's Procurement Manual, PTA procurement strategies) changed to allow and facilitate greater flexibility in asset ownership/asset delivery arrangements	• PTAs have greater flexibility in determining delivery arrangements for infrastructure and fleet, including direct PTA ownership • Greater certainty during operator transition • Potential for accelerated decarbonisation of fleet
4. Enabling PTAs to deliver bus and ferry services in-house	Legislative restrictions on in-house service provision removed and operational policy updated (e.g. Waka Kotahi's Procurement Manual, PTA procurement strategies)	• PTAs have greater flexibility in determining service delivery arrangements in line with SPTF objectives
5. Ensuring the regulatory framework promotes a sustainable labour market for bus drivers	Operational policy and procurement processes will put greater emphasis on maintaining and improving bus driver terms and conditions	• Greater employment terms and conditions certainty for bus drivers • Improved retention and recruitment of bus driver workforce, leading to more reliable services
6. Clarifying the treatment of on-demand services in the LTMA	PTA initiated on-demand services brought into the SPTF and some commercially operated on-demand services (above a certain threshold) classified as exempt	• Greater certainty around planning, procuring, and exempting on-demand services, supporting wider deployment of these services • Reduced certainty and increased costs for operators of some commercial on-demand services.
7. Extending the notice period for withdrawal of exempt services	Notice period for withdrawal of 'integral' exempt services raised to 60 days	• Greater certainty to PTAs and users around continuity of integral public transport services • Greater financial risk for some operators

Outcomes

- Public transport services support mode shift from private motor vehicles, by being integrated, reliable, frequent, accessible, affordable, and safe,
- Employment and engagement of the public transport workforce is fair and equitable, providing for a sustainable labour market and sustainable provision of public transport services
- Well-used public transport services reduce the environmental and health impact of land transport, including by reducing reliance on single-occupancy vehicles and by using zero-emission technology
- Provision of services supports value for money and efficiency from public transport investment while achieving the first three objectives

Coloured dots indicate the policy objective aligns to the corresponding coloured outcome

Section 3: Detailed Impact Analysis of Issues

Issue 1: Updating the principles in Part 5 of the LTMA

53. PTOM's overarching objectives are incorporated into legislation through a series of principles in s 115, Part 5 of the LTMA. Part 5 of the LTMA regulates public transport. All persons exercising relevant powers or performing functions under Part 5 must be guided by these principles. The current principles in s 115 date from 2013 and reflect the policy objectives of the government of the day.

54. There are currently five principles in s 115. Three of these address coordination and collaboration, and transparency in public transport service delivery. The remaining two principles address ensuring competition in public transport markets (the access to market principle) and increasing the commerciality of services (the commerciality principle). These two principles were designed to address specific concerns related to the value for money obtained from investment in public transport services.

55. The Ministry has reviewed these principles through the PTOM review, to ensure they remain fit for purpose and support the Government's objectives for public transport and wider transport objectives. The Ministry found that the principle aimed at reducing reliance on public subsidies does not align well with the Government's objectives. The 'access to market' objective also may not support the other proposed elements of the SPTF, including enabling a wider range of delivery models.

56. As noted above, the four policy objectives underpinning the proposed SPTF are:

- public transport services support mode shift from private motor vehicles, by being integrated, reliable, frequent, accessible, affordable, and safe,
- employment and engagement of the public transport workforce is fair and equitable, providing for a sustainable labour market and sustainable provision of public transport services,
- well-used public transport services reduce the environmental and health impact of land transport, including by reducing reliance on single-occupancy vehicles and by using zero-emission technology, and
- provision of services supports value for money and efficiency from public transport investment while achieving the first three objectives.

What is the problem definition?

57. The Government wishes to amend the principles in Part 5 of the LTMA to ensure public transport service planning, procurement and delivery support, and take account of, the Government's desired outcomes from the SPTF. Given the LTMA is an enabling framework, with most of the detail implemented through operational policy, ensuring the LTMA principles are aligned with the SPTF objectives is a key part of ensuring this framework achieves the policy objectives.

58. Three of the policy objectives for the SPTF address broader outcomes from public transport, including:

- reducing impacts on health and the environment, reflecting the role public transport plays in decarbonising the transport system.
- supporting mode shift through attractive public transport, reflecting the current Government's priorities for the land transport system and role of public transport, and
- a sustainable labour market, reflecting stakeholder concerns that the current labour market for bus drivers is not sustainable.

- The other key policy objective is to achieve value for money and efficiency in service delivery while delivering on these broader outcomes.

59. These broader outcomes are not currently incorporated into Part 5 of the LTMA.

60. Further, two of the existing principles in Part 5 of the LTMA reflect the original PTOM objectives, which were designed to tackle the public transport issues of the day. Specifically, these are:

- competitors should have access to regional public transport markets to increase confidence that public transport services are priced efficiently (the access to market principle), and
- incentives should exist to reduce reliance on public subsidies to cover the cost of providing public transport services (the commerciality principle).

61. These principles will require change to ensure they are consistent with the objectives of the SPTF, particularly that value for money and efficiency are achieved while also delivering on the other objectives of the SPTF.

62. Amending the LTMA principles to reflect the objectives of proposed SPTF is also required to help give effect to the preferred options for the subsequent issues discussed in this document.

What options are being considered?

63. Three options are being considered to address the problem definition:

- Option One: Status Quo - maintain the existing principles in Part 5.
- Option Two: Expand the Part 5 principles to reflect the government's objectives, while retaining the existing access to market principle.
- Option Three: Expand the Part 5 principles to reflect the government's objectives, including removal of the access to market principle.

64. The options are described in more detail below.

Option 1 – *Status Quo maintain the existing principles*

65. Under the status quo, Part 5 of the LTMA would remain unchanged. The existing principles would continue to guide decision making by Waka Kotahi, PTAs and operators in relation to public transport services. Some aspects of the new proposed SPTF could be implemented through mechanisms such as letters of expectation and the Government Policy Statement on land transport (the GPS).

Option 2 – *Expand the Part 5 principles and retain access to market principle*

66. Under Option Two, Part 5 of the LTMA would be amended to incorporate the four objectives of the SPTF. While the commerciality principle would be removed, the access to market principle would be retained.

67. The rationale for retaining the access to market principle is that a significant proportion of public transport services are yet to face competition. The findings of Ian Wallis (noted above) suggest these services should be subject to competition to increase confidence that they are priced efficiently. Retaining the access to market principle will help strengthen value for money outcomes, consistent with the value for money objective.

Option 3 – *Expand the Part 5 principles and remove access to market principle*

68. Under Option Three, Part 5 of the LTMA would be amended to incorporate the four objectives of the SPTF. Both the access to market and commerciality principles would be removed. This would increase the scope for PTAs to directly appoint operators (as opposed to using competitive tenders) and to deliver services in-house (see Issue 4).

What options were considered and have been ruled out?

69. Other viable options were not identified. However, an earlier version of the proposed SPTF objectives was consulted on as part of the PTOM review, which included retaining the access to market objective. Revisions to the objectives following consultation saw the addition of a value for money and efficiency objective.

Consultation

70. The proposed new objectives for the SPTF were consulted on as part of the PTOM review Discussion Paper and through targeted engagement with unions, operators and PTAs. In the Discussion Paper, it was noted the Government would seek to embed these objectives in legislation to ensure service planning and procurement support the Government's desired outcomes from public transport.

71. The proposed new objectives for PTOM in the Discussion Paper included the access to market principle, but signalled that the Government may wish to amend or replace this, and the commerciality principle, in line with any new overarching objectives.

72. There was broad support for establishing new overarching objectives for PTOM. Many agreed with the proposal to introduce new, non-commercial objectives. There was general support across the full range of sector stakeholders (including PTAs, unions and operators) for adding social and environmental objectives. Some submitters noted access to market is one option to support value for money, and value for money could be achieved in other ways. Through targeted engagement, the Bus & Coach Association noted that overall operators were supportive of the move away from the commerciality and access to market principles.

73. In light of feedback received in response to the Discussion Paper, the objectives were changed to incorporate additional concepts such as 'mode-shift' and reducing reliance on single occupancy vehicles, and to provide further detail and clarity in relation to each objective.

How do the options compare to the status quo?

	Option One – *Status Quo maintain the existing principles*	Option Two – *Expand the Part 5 principles and retain access to market principle (Ministry's preferred option)*	Option Three – *Expand the Part 5 principles and remove access to market principle (Minister's preferred option)*
Cost of compliance	0	- Costs associated with adjusting to new decision-making principles	- Costs associated with adjusting to new decision-making principles
Impact on operator market	0	0	- Reduced onus on competition could translate into fewer tender opportunities
Ease of implementation	0	- Adds complexity / trade-offs to decision making	- - Similar to Option Two, but additional complexities in interface with investment decision making
Certainty	0 Can move towards objectives through operational policy levers	+ Inclusion in legislation gives greater certainty that the SPTF objectives will be factored into decision making	+ Same as Option Two
Alignment with objectives	0	++	++
Overall assessment	0	+ The Ministry's preferred option as it achieves a balance between advancing the broader outcomes of the SPTF while retaining efficiency through competition	0 The Minister's preferred option is to remove the access to market principle, which also supports other proposals to enable in-house service provision

Key for qualitative judgements:

++	much better than doing nothing/the status quo/counterfactual
+	better than doing nothing/the status quo/counterfactual
0	about the same as doing nothing/the status quo/counterfactual
-	worse than doing nothing/the status quo/counterfactual
- -	much worse than doing nothing/the status quo/counterfactual

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

74. The Ministry's preferred option is Option Two. Our assessment is that Option Two delivers an improvement over the status quo when assessed against the criteria. We also assess that it performs more strongly against the criteria than Option Three. Both options would achieve strong alignment with the SPTF objectives and embed the objectives in legislation, providing for greater certainty. However, Option Three has greater risks in terms of adverse impacts on the operator market and is likely to be more complex to implement when compared to Option Two.

75. Option Two would embed the proposed objectives of the SPTF in legislation while retaining the existing access to market principle. This would ensure the SPTF objectives are considered by decision-makers in the planning and procurement of public transport, while also retaining a focus on value for money and efficiency through competitive markets.

76. The Minister's preferred option is Option Three. This would also embed the SPTF policy objectives while removing the existing access to market objective. This is to ensure the framework does not conflict with other proposals – such as enabling public provision of services (see Issue 4) or with realising the broader outcomes the government is seeking from the SPTF. s 9(2)(g)(i) [redacted]

77. A risk across both Option Two and Three is that by expanding the list of principles governing the planning, procurement and delivery of public transport, it becomes increasingly complex for Waka Kotahi to develop operational policy and procurement strategy. There will be more factors to consider, and trade-offs to make. Options Two and Three would also help facilitate the adoption of a wider range of delivery models to reflect the new principles. This will provide PTAs with additional flexibility but will also add more complexity. Option Three would enable the greatest degree of flexibility, but also has the potential to create the most complexity as a result.

What are the marginal costs and benefits of the option?

78. The table below considers the impacts from both Option Two and Option Three compared to the status quo. There are strong similarities between both options, so several impacts are anticipated to be similar. Where there are differences, these are identified.

Affected groups *(identify)*	**Comment** *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence Certainty** *High, medium, or low, and explain reasoning in comment column.*
Additional costs of the preferred option compared to taking no action			
Waka Kotahi	One off costs to adapt operational policies to conform with the new principles. The wider ranging set of principles may create difficult trade off decisions. Increased focus on broader outcomes may result in higher demands on the NLTF.	High	Medium certainty, guidance will change but increased NLTF demands will be a function of how PTAs apply the new principles

	Under Option Three, removing the access to market principle may also affect Waka Kotahi's investment management approach, and require changes to guidance and more complex monitoring of value for money, if there is reduced use of competitive procurement.		
Operators	Additional costs of delivering broader outcomes will be passed through to PTAs, so adverse impacts from these on operators would be limited. Under Option Three, removing emphasis on competition for service contracts may undermine confidence in the operator market. If there is greater use of direct appointment or in-house provision of services, this may discourage new entrants and investment.	High	Medium certainty, exact impacts will be dependent on the extent to which PTAs move away from competitive procurement.
PTAs	One-off costs to adapt their planning and procurement to conform with the new principles. Wider ranging set of principles may create difficult trade-off decisions. Increased focus on broader outcomes may result in more costly services.	High	Medium certainty - procurement strategies will require change. Exact impacts will be dependent on the extent to which PTAs move away from competitive procurement.
Others	N/A	N/A	N/A
Total monetised costs	Not known	N/A	N/A
Non-monetised costs	The new principles guide decision-making under the new framework. However, these will also come at a cost of revising operational policy for a wider set of principles. Further, under Option Three, there is potential for adverse impacts on the efficiency of operator markets and a reduced focus on value for money. This may lead to welfare losses if the efficiency of public transport markets and service delivery is reduced.	High	Low certainty – while the new principles represent a significant change to the decision-making framework, the exact scale and nature of any wider market impacts is difficult to predict given it will depend on Waka Kotahi operational policy and PTA procurement decisions.

Affected groups *(identify)*	**Comment** *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence Certainty** *High, medium, or low, and explain reasoning in comment column.*
	Additional benefits of the preferred option compared to taking no action		
PTAs	Under Option Three, there may be reduced use of competitive tender processes. This may reduce administrative costs for PTAs, reduce the potential for service disruption from changing operators, and support a more sustainable workforce.	Medium	Low certainty – benefits are subject to Waka Kotahi operational policy and PTA procurement decisions.
Operators	Under Option Three, some operators may benefit from potentially longer contract terms or additional opportunities to be directly appointed for contracts.	Medium	Low certainty – impacts are difficult to predict given it will depend on Waka Kotahi operational policy and PTA procurement decisions.
Other	Across Options Two and Three, there will be benefits associated with realising improvements in broader environmental and social outcomes. However, some of these benefits could also be realised under the status quo.	Medium	Low certainty – impacts are difficult to predict given it will depend on Waka Kotahi operational policy and PTA procurement decisions.
Total monetised benefits	N/A	N/A	N/A
Non-monetised benefits	Some benefits anticipated in terms of realising broader outcomes, and modest potential benefits to PTAs and the operator market	Medium	Low certainty – impacts are difficult to predict given it will depend on Waka Kotahi operational policy and PTA procurement decisions.

79. The marginal impacts of Options Two and Three are difficult to assess when compared to the status quo. The proposed regulatory changes affect the principles that decision makers must take account in planning, procuring and delivering public transport services. However, they do not mandate certain outcomes and could be implemented through a variety of operational approaches. This is a key limitation on the analysis.

80. Both options will incur one-off costs with updating operational policy to take account of the new principles. Both options also create a more wide-ranging list of principles that need to be factored into decision making, creating complexity and a degree of uncertainty.

81. s 9(2)(g)(i) [redacted]

82. The proposed new principles and their potential impacts also form part of the options and analysis for other regulatory proposals discussed in this impact statement, including:

- Issue 2: Introducing the 2025 zero-emission mandate
- Issue 3: Accelerating decarbonisation through more flexible asset ownership arrangements,
- Issue 4: Enabling in-house provision of public transport services, and
- Issue 5: Improving the sustainability of bus driver labour market.

83. The potential marginal impacts of the principles are also discussed as part of these sections.

How will the new arrangements be implemented?

84. Both options will be implemented through amending the LTMA to incorporate the four overarching objectives into what is currently s 115 of the LTMA. This will require removing the commerciality principle and modifying or adding to the remaining principles. Under Option Three, section 115 would also be amended to remove the access to market principle.

85. Waka Kotahi and PTAs will be responsible for developing refreshed operational policy that incorporates the new principles. This will likely include updates to its Procurement Manual, which guides PTA procurement policy, and its guidelines for preparing RPTPs.

86. As PTAs update their procurement strategies and RPTPs in line with the LTMA and Waka Kotahi guidance, the new objectives will influence PTA planning and procurement approaches. In turn, as the new objectives influence procurement specifications, operators will also take account of the new objectives when delivering services to PTAs. This process will likely take several years as policies and procedures are updated, RPTPs come up for renewal, and new contracts are implemented.

How will the new arrangements be monitored, evaluated, and reviewed?

87. The Ministry will monitor the implementation of the proposed SPTF from a policy perspective, and Waka Kotahi will also monitor and evaluate implementation of the Framework at an operational level. There will likely be a review of the SPTF in the future as part of good policy practice.

Issue 2: Implementing the zero-emission bus mandate

88. The Climate Change Response Act 2002 sets a target for New Zealand to achieve net zero emissions by 2050. The transport sector comprises 47 percent of New Zealand's total domestic CO_2 emissions, with public transport buses contributing one percent of road emissions.[4] While this is a small amount when compared to the emissions from other vehicles, it is still an important part of the transition to net zero emissions.

PTAs are already taking steps to decarbonise their regional public transport bus fleets

89. Diesel-powered buses currently make up around 95% of the public transport bus fleet. Of the circa 2,600 buses in the public fleet, the number of electric buses as at April 2022 was 131, with the rest being diesel-powered. However, the number of zero-emission public transport buses in New Zealand is expected to grow rapidly. PTAs covering Auckland, Wellington and Christchurch have ambitions to transition to zero-emission bus fleets, subject to funding constraints.[5] They also have policies to replace end-of-life diesel buses with zero-emission buses. Other PTAs are advancing similar plans.

The Government is proposing further steps to accelerate public transport decarbonisation

90. To accelerate the decarbonisation of the public transport bus fleet, the Government has committed to requiring only zero-emission public transport buses be purchased by 2025 (the zero-emission mandate) and targeting the decarbonisation of the public transport fleet by 2035;[6] Through Budget 2022, Cabinet agreed to support PTAs to achieve these outcomes through $137 million in funding over 12 years to invest in decarbonisation initiatives. The Government is also proposing changes to asset ownership requirements in the LTMA (discussed at Issue 3) to also help facilitate public transport decarbonisation.

91. The Government's zero-emission mandate consists of the following elements:

- Start date – the requirement will start from 1 July 2025.
- Definition of zero-emission – buses that produce zero emissions at tailpipe. This will include fuel sources such as electricity and hydrogen, but there may be other technologies available that may better suit the requirements of some PTAs.
- Scope of vehicles included – the requirement will apply to public transport buses and small passenger service vehicles used to deliver public transport services contracted by PTAs. It will not apply to vehicles used to deliver Total Mobility services or to buses used for services contracted by the Ministry of Education.
- Meaning of "purchase" – the requirement will apply to public transport buses registered for the first time in New Zealand from 1 July 2025. This will cover new and used buses imported to New Zealand and new buses manufactured or built up in New Zealand. It will not cover buses already in the public transport bus fleet prior to 1 July 2025 – even if they are transferred between regions or operators or refurbished.

[4] Hīkina te Kohupara - Kia mauri ora ai te iwi (transport.govt.nz)

[5] As at November 2021, Auckland had rolled out 33 zero-emission bus, with another 152 zero-emission bus on order, out of a fleet of circa 1300 buses.

[6] CBC-20-MIN-0118 refers.

The zero-emission mandate is now part of Waka Kotahi's operational policy

92. Waka Kotahi has recently updated its Requirements for Urban Buses in New Zealand (the RUB) to include the zero-emission mandate in line with the features described at paragraph 91 above. The RUB sets out required minimum specifications for public transport buses, and all PTAs are expected to adhere to the RUB. This update followed a request by the Minister of Transport to the Waka Kotahi board for it to consider implementing the zero-emission mandate through operational policy.

93. The zero-emission mandate, therefore, forms part of the status quo for PTAs and operators. While introducing the zero-emission mandate into the RUB will, in effect, implement the mandate, the Government has considered other options for implementation.

Given PTA decarbonisation commitments, the marginal costs and benefits of the zero-emission mandate are expected to be relatively narrow

94. PTAs are already progressing decarbonisation plans that achieve similar outcomes to the zero-emission mandate. Therefore, the marginal costs and benefits of introducing the mandate are unlikely to be significant.

95. For completeness, below the Ministry outlines the key costs and benefits of shifting to the zero-emission mandate from 2025, compared to a scenario where new diesel vehicles are still purchased to deliver public transport services. This overstates the marginal impacts given key PTAs are already moving to zero-emission fleets.

96. The main costs of the zero-emission mandate include:

- Zero-emission vehicles currently have significantly higher unit costs than diesel equivalents,[7] although unit costs are expected to fall.
- Zero-emission vehicles also often require accompanying investment in supporting infrastructure, including chargers and improved electricity distribution systems.
- High upfront capital costs of zero-emission vehicles and supporting infrastructure may give incumbent operators a significant advantage over new or smaller operators, reducing efficient competition in the operator market. This risk can be addressed through different ownership or delivery models (see Issue 3).
- Some zero-emission buses are heavier than diesel buses, which could cause additional road damage.
- Replacing and recycling batteries for some buses incurs costs when compared to diesel technologies.

[7] In the Discussion Paper, the Ministry noted that a diesel bus costs aapproximately $420,000 per unit (single deck bus), a battery-electricity bus costs aapproximately $750,000 per bus (single deck bus), and hydrogen bus costs approximately $1 million per bus (single deck bus)

97. The main benefits of the zero-emission mandate include:

- Reductions in greenhouse gas emissions and reductions in other forms of environmental pollution, including reduced particulate matter, nitrous oxide, and noise. Reducing these forms of pollution will improve environmental and human health.[8]
- Lower operating costs for some technologies compared to diesel buses. [9]

98. Only purchasing zero-emission vehicles, to either replace end-of-life diesel vehicles or to expand the fleet from 2025, has the potential to raise PTA costs compared to the status quo.[10] However, given the three main PTAs have already committed to decarbonisation plans, the marginal costs (and benefits) of introducing the mandate are likely to be limited.

99. Marginal costs are most likely to be concentrated on smaller PTAs, which may not have as advanced decarbonisation plans as the larger PTAs, and may not be able to make as efficient use of new charging infrastructure given smaller fleet sizes.

100. As noted above, the Government has committed $136.95 million through to budget year 2034/35 to support PTAs with the deployment of zero-emission buses and investment in associated infrastructure.

What is the problem definition?

101. The Government has committed to the zero-emission mandate and to accelerating the decarbonisation of the public transport bus fleet. While the mandate has been included in Waka Kotahi's RUB, the RUB is a procurement tool, which Waka Kotahi has statutory independence over. As a result, Waka Kotahi could opt to amend the RUB independently of Government. There are a range of regulatory options available to further ensure the mandate is implemented and enduring.

What options are being considered?

102. Four options are being considered to address the problem definition:

- Option One: Status quo,
- Option Two: New principle in the LTMA encouraging the use of zero-emission technology,
- Option Three: 2025 mandate established in the LTMA, and
- Option Four: 2025 mandate established in the GPS.

103. The options are described in more detail below.

104. Across all options, the design of the zero-emission mandate is assumed to be consistent with the elements described in paragraph 91.

105. None of the options are mutually exclusive – all could be implemented in parallel with one another.

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[8] AT in 2020 noted that diesel vehicles are estimated to be responsible for 81% of all vehicle-related air pollution health costs, valued at $466 million annually.

[9] For example, trials in Auckland of battery electric buses have demonstrated reductions in operating costs of over 75% compared to diesel buses.

[10] In 2020, AT estimated that the net costs of transition under a scenario similar to the zero-emission mandate would increase its operating costs by up to 0.9% compared to diesel fleet in 2030 and reduce costs by 2.7% in 2040.

Option 1 – Status quo

106. Waka Kotahi has recently published an update to the RUB, requiring only zero-emission vehicles be registered from 2025 in line with the zero-emission mandate. As a result, PTAs must implement the zero-emission mandate if they wish to receive NLTF funding for their services. Waka Kotahi can grant exemptions from the RUB. However, exemptions are only granted in limited circumstances.

107. To meet the requirements of the mandate, under existing contracts going beyond 2025, PTAs will have to negotiate with operators regarding the deployment of zero emissions buses should they wish to significantly increase services within a unit (which require extra vehicles to deliver) or where existing buses need to be replaced.

108. Even if the RUB had not been updated to include the zero-emission mandate, larger PTAs have decarbonisation plans that are in some parts more ambitious than the Government's 2025 mandate. Eighty percent of New Zealand's public transport bus fleet is deployed in Auckland, Wellington and Canterbury. Other PTAs are also exploring decarbonisation of their regional fleets.

109. Under the status quo, the outcomes of the zero-emission mandate are, therefore, likely to be realised regardless of regulatory intervention.

Option 2 – *New principle in the LTMA*

110. Option Two would add a new principle to the LTMA. The relevant objective and intention to amend the principles is also described at Issue 1, and would require Waka Kotahi, PTAs and operators to seek improved environmental and health outcomes, including through the use of zero-emission technology.

111. While legislative in nature, this change would still offer a degree of flexibility to Waka Kotahi, PTAs and operators in how they apply this principle in practice. It would strengthen the direction to Waka Kotahi in terms of operational policy, which includes the RUB.

Option 3 – *2025 mandate established in the LTMA*

112. Under this option, the LTMA would be amended to incorporate the zero-emission mandate.

113. This change is prescriptive in nature, requiring Waka Kotahi and PTAs to adhere to the zero-emission mandate. There would also likely be an exemption process included in legislation similar to the process used by Waka Kotahi in respect of the RUB. For example, to cater for situations where there may be no affordable or reliable technology capable of delivering on a PTA's operational requirements, such as operating long bus routes in rural areas. This would mitigate potential unintended consequences of the zero-emission mandate.

Option 4 – *2025 mandate established in the GPS*

114. With Option Four, the GPS would be amended to incorporate the zero-emission mandate. This would be done by amending the 2021 GPS and/or embedding the mandate into the 2024 GPS, which is currently under development.

115. This change offers a greater degree of flexibility than Option Three, uses an existing mechanism, and would help ensure land transport funding decisions are aligned with the 2025 mandate. However, the GPS can be changed relatively easily, so would not be as enduring as legislative change.

What options were considered and have been ruled out?

116. Cabinet has already noted the Government's commitment to implementing the 2025 zero-emission mandate. Therefore, the Ministry did not consider alternatives to achieving equivalent outcomes to the mandate.

117. Different options for the *design* of the mandate itself were considered. However, the elements described at paragraph 91 were determined to be the most effective way to define the mandate:

- Start date: 1 July 2025 was chosen to align with the typical financial year for PTAs.
- Definition of zero-emission: This was defined as zero-emission at the tailpipe. This definition is agnostic regarding the exact technology, which could include battery electric, hydrogen, or another technology that does not produce emissions at the tailpipe. Zero-emission at the tailpipe is also critical to realising the health benefits from reduced air pollution. A wider approach that also required the fuel or electricity to be zero-emission, or for the whole-of-life emissions of the vehicle to be considered, was ruled out. These requirements would be difficult to administer and would have unintended consequences. For example, it could make it challenging to source vehicles and make compliance with the mandate very difficult to assess.
- Scope of vehicles included: The mandate will include both buses and small passenger service vehicles used to deliver public transport services, to ensure consistency. However, it will not include Total Mobility services given these are mostly provided by taxi operators and the vehicles are not typically dedicated to public transport. It will also not include buses used for services contracted by the Ministry of Education as these are not regulated under Part 5 of the LTMA. Former public transport buses are also typically used to deliver Ministry of Education services, so there would be significant implications if this fleet also had to be transitioned from the same date as the wider public transport fleet.
- Meaning of "purchase": The date a vehicle is first registered was decided as the most effective way to administer the mandate. This approach captures when a vehicle first enters the New Zealand public transport fleet, and avoids the complexities of differentiating between old and new buses.

Consultation

118. In response to the Discussion Paper, there was general support for the zero-emission mandate amongst submitters. On the question of how to establish the mandate, there was general support from PTAs, unions and operators for this to happen through amending the RUB and/or amending the GPS. Submitters suggested amending the RUB or the GPS would be less resource-intensive than amending legislation. However, some suggested legislative change may be needed to ensure compliance with the mandate.

119. Some submitters thought it should be implemented sooner than 2025, and some PTAs noted that they already had their own ambitious decarbonisation plans in place.

120. Some submitters also provided feedback against the mandate, which included:

- how the mandate would work in practice and whether it might have negative environmental consequences (e.g. the environmental impact of batteries for electric buses),
- the cost implications of requiring zero-emission public transport buses,
- that a more effective approach for reducing emissions could be through encouraging more people to travel by bus than by private motor vehicle, regardless of the fuel powering the buses, and
- making sure regional councils are able to choose the pathway for decarbonisation that best suits their circumstances.

121. These concerns relate to the establishment of the zero-emission mandate (which has already been agreed by Cabinet) rather than the design of the mandate and, as a result, we did not consider them further.

122. In addition, submitters made more detailed suggestions about the design of the mandate. Most of these suggestions had already been factored into the proposed design on the mandate. However, stakeholders queried whether the mandate was limited to ‘buses’ or would extend to smaller vehicles used to deliver public transport services (i.e. vehicles with fewer than 12 seats (referred to as small passenger service vehicles)). In response, the design of the mandate was changed to clarify that the scope of the mandate includes both small and large passenger service vehicles.

How do the options compare to the status quo?

	Option 1 – *Counterfactual mandate established in RUB*	Option 2 – *New LTMA principle*	Option 3 – *2025 mandate established in the LTMA*	Option 4 – *2025 mandate established in the GPS*
Cost of compliance	0	0 Similar requirement to RUB	- Similar requirements to the RUB, with less flexibility than the RUB	0 Similar requirements to the RUB
Impact on operator market	0	0	0 Similar requirements to the RUB, market will pass through costs and adapt	0 Similar requirements to the RUB, market will pass through costs and adapt
Ease of implementation	0	- Requires limited legislative change, while retaining some flexibility	-- Requires complex legislative change, and more rigid	- Requires changes to the existing GPS, or implementation through a future GPS
Certainty	0	+ Incorporated into legislation as overarching principle	++ Full mandate incorporated into legislation	+ Incorporated into GPS
Alignment with objectives	0	++	++	++
Overall assessment	0	++	+	++

Key for qualitative judgements:

++ much better than doing nothing/the status quo/counterfactual

\+ better than doing nothing/the status quo/counterfactual

0 about the same as doing nothing/the status quo/counterfactual

\- worse than doing nothing/the status quo/counterfactual

\- - much worse than doing nothing/the status quo/counterfactual

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

123. Options Two, Three and Four all performed more strongly against the criteria compared to the status quo, noting the Ministry anticipates each of these options would achieve similar outcomes to the status quo. The key difference between the status quo and the other options is that the potential regulatory interventions ensure the mandate is more enduring.

124. On balance, the Ministry's preferred option is Option Two as it provides additional certainty, by embedding relevant policy objectives into legislation. However, it also retains flexibility if an aspect of the mandate requires change or if compliance with the mandate would have unintended consequences. The Ministry regards this flexibility as important to ensure efficiency and value for money. This is consistent with the policy objectives, which emphasise the importance of value for money while achieving broader outcomes, such as decarbonisation.

125. The Ministry considers it is important that investment decisions also support the zero-emission mandate and engagement with PTAs has indicated that funding is a major constraint on decarbonisation of the bus fleet. The Ministry will provide advice separately to the Minister of Transport on the development of the 2024 GPS, including if/how public transport decarbonisation objectives should be incorporated into it.

What are the marginal costs and benefits of the option?

126. The Ministry has a high degree of confidence that there are limited marginal costs and benefits to implementing the preferred option compared to the status quo, including the distribution of impacts across key groups. The zero-emission mandate already forms part of the status quo. The Ministry has, therefore, not included a table outlining marginal costs and benefits.

127. The main benefit of the preferred option is enhanced certainty to stakeholders. Under the status quo, it is theoretically easier to amend the RUB to remove the zero-emission mandate. However, this seems unlikely given the Government is also proposing to amend the LTMA to incorporate the use of zero-emission technology as a key principle guiding the performance of functions in relation to public transport services.

128. The preferred option also retains some flexibility in case aspects of the mandate need to be changed to address changing circumstances.

129. An overview of the likely costs and benefits of introducing the mandate itself are noted at paragraphs 94-99 above.

How will the new arrangements be implemented?

130. The preferred option will be implemented through amending the principles in s 115 to reflect the SPTF objectives of improved environmental and health outcomes (see Issue 1 for details), which guides the development of operational policy. The mandate already forms part of Waka Kotahi's operational policy through the RUB. PTAs are expected to adhere to the RUB.

How will the new arrangements be monitored, evaluated, and reviewed?

131. The Ministry will monitor the implementation of the proposed SPTF from a policy perspective, and Waka Kotahi will also monitor and evaluate implementation of the SPTF at an operational level. There will be a review of the SPTF in the future as part of good policy practice.

Issue 3: Enabling decarbonisation through flexible asset ownership arrangements

132. New Zealand's public transport fleet is at the beginning of a significant transition from diesel to zero-emission technology. To meet the Government's target of decarbonising the bus fleet by 2035, as well as PTAs' own decarbonisation plans, new approaches may be needed to help facilitate and accelerate this transition.

133. Operational and regulatory features of the framework may require change to enable greater flexibility of ownership and delivery structures to support the decarbonisation of public transport and the wider objectives for the SPTF.

134. While PTOM is an enabling framework, public transport vehicles and supporting infrastructure are typically provided by private operators on contracts ranging between 6 to 12 years in length, in line with Waka Kotahi's operational policy. PTOM does not prevent PTA ownership of assets, but does require PTA interests in a public transport service be held through a Council-Controlled Trading Organisation (CCTO).

What is the problem definition?

135. The PTOM Review has identified that PTAs face a range of barriers to decarbonising the public transport bus fleet. These range from issues with funding and financing, the availability and viability of zero-emission technologies, and vehicle weight regulations.[11] The barriers most relevant to public transport ownership and delivery models include:

- high upfront costs of zero-emission buses and supporting infrastructure
- a significant cost premium to deploy zero-emission buses through operating contracts – driven by unknown residual value, uncertainty of the size of the follow-on market, and concern over potential mid-life battery replacement costs
- the impact of private ownership of assets on the potential for continued competition for public transport bus contracts – given the high upfront costs of zero-emission technology, ownership of this infrastructure will become more strategic and potentially create a barrier to entry of new operators.

136. While several of the barriers faced by PTAs do not relate to the design and implementation of PTOM, the PTOM review found opportunities to enable greater flexibility of ownership and deliver models.

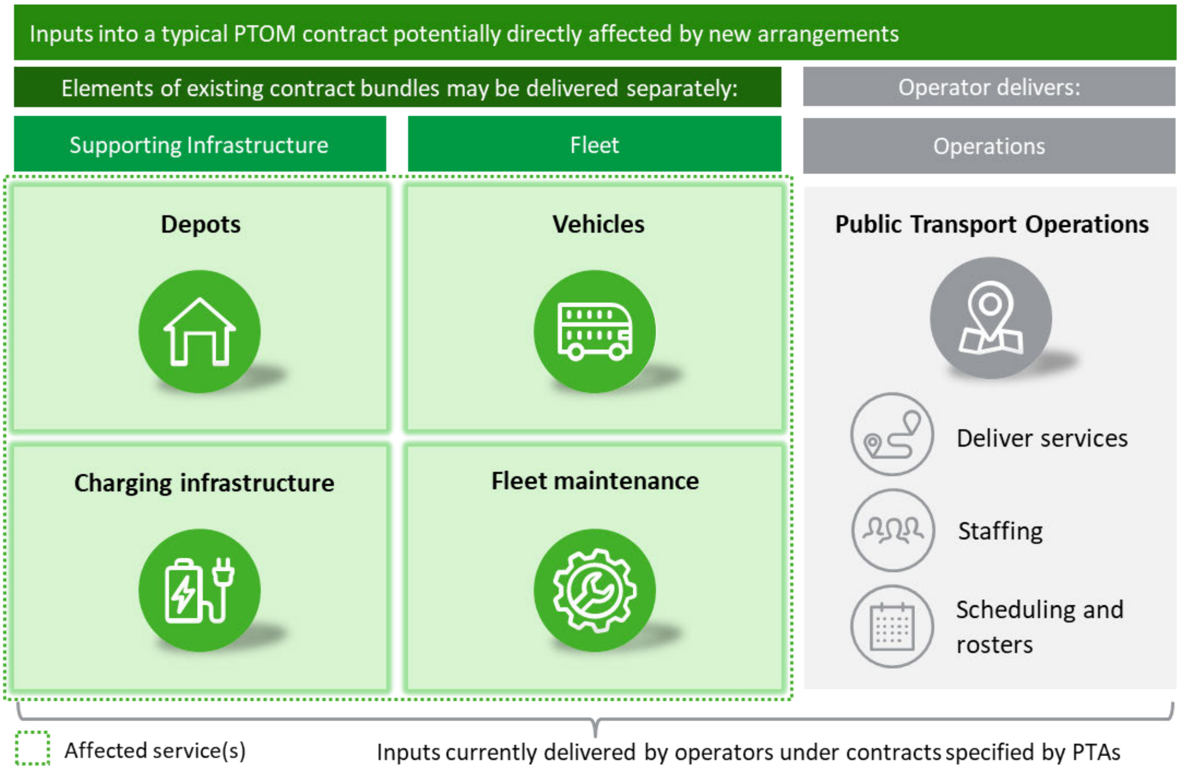
The regulatory framework is flexible but operational policy requires change

137. Engagement with key stakeholders through the PTOM review has confirmed that the current legislative framework is largely enabling of most decarbonisation pathways.

138. The key issue of interest to most stakeholders related to asset ownership arrangements. Current operational policy assumes the operator provides the public transport assets. The length of contracts, end of term arrangements, and structure of contracts may need to be adjusted should PTAs wish to implement alternative ownership and delivery models.

[11] See Discussion Paper at Part 3.2.

139. Some PTAs have signalled a desire to change asset ownership arrangements, including a desire to own or control assets – including depots, vehicles, and charging infrastructure, to facilitate decarbonisation of regional public transport fleets. For example, a PTA may wish to own vehicles/vessels and supporting infrastructure but contract out service delivery and maintenance. This is the model used for metropolitan passenger rail rolling stock. Some PTAs may wish to own depots and charging infrastructure, but not vehicles. Other PTAs may wish to extend contract terms to align the asset life of a new vehicle with the operating term.



140. The inputs into a PTOM contact that may be directly affected by a shift to PTA ownership or alternative delivery models are shaded green in the diagram below. While PTAs would still continue to contract for public transport operations (noting the in-house delivery proposal at Issue 4), they may wish to alter how the supporting infrastructure and fleet that is used to operate those services is owned and delivered.

141. Restructuring services currently provided by operators into new ownership and delivery models involves trade-offs. For example, existing PTOM contracts bundle all the depot, fleet, maintenance and operations together, ensuring integration of service outcomes. However, if the inputs highlighted in green are provided under separate arrangements this creates a new interface between operations and supporting infrastructure and fleet. Further, operators may achieve efficiencies from owning depots, using them to support both PTOM and non-PTOM contracts. PTAs would need to weigh these up against their other objectives when deciding whether to move away from existing ownership and deliver approaches.

142. Given there are variety of commercial models available to PTAs, this is a matter best addressed through Waka Kotahi’s operational policy rather than prescribing certain models in legislation.

143. As part of the new SPTF, the Ministry has established an Operational Working Group, which will be tasked with developing guidance for:

- PTA decision-making in relation to asset ownership arrangements, and
- Procurement and contracting under different asset ownership arrangements.

144. These changes are operational in nature and do not form part of the RIS, but are context for the below.

While the regulatory framework is flexible, the CCTO requirement was identified as a specific barrier

145. While there is no prohibition on public ownership under PTOM, the LTMA requires that any interest held by a PTA in a public transport service must be through a CCTO. CCTOs operate for the purpose of making a profit. This structure can be restrictive where PTAs are looking to achieve a purpose beyond profit.

146. Currently, public ownership through CCTOs can act as a barrier to new ownership and delivery models. CCTOs need to operate for a profit, which has limited benefit when the CCTO is essentially owning assets on paper and then leasing them out to operators. This would result in public subsidies going to pay a profit margin to the CCTO, which in turns pay dividends to the PTA. PTAs also incur transaction costs in establishing these entities.

147. PTAs have signalled the CCTO requirement is barrier to public ownership of assets. The Government is proposing to amend the LTMA to remove the CCTO requirement, which would enable PTAs to hold public transport interests through other structures.

What options are being considered?

148. Four options are being considered to address the problem definition:

- Option One: Maintain the status quo,
- Option Two: Public transport interests may only be owned by either a CCTO or a Council-Controlled Organisation (CCO),
- Option Three: Maintain CCTO requirement in certain circumstances - Enable direct council ownership of assets, and
- Option Four: Remove CCTO requirement - Enable direct council ownership of assets.

149. Across all options, it is assumed updates to operational policy will also occur to provide PTAs with guidance on different ownership and delivery models.

150. Across all options, any PTA interest in public transport operations would still be required to be through a CCTO (due to the outsourcing requirements in the LTMA). However, in Issue 4, we discuss options to enable in-house provision of public transport services.

151. The options are described in more detail below.

Option 1 – *Status Quo*

152. Under the status quo, almost all buses, ferries, and associated infrastructure like depots are privately owned. Public transport interests may only be held by a CCTO and assets are typically provided by operators.

153. We anticipate private ownership of assets to continue to predominate. However, it is possible that some PTAs will establish CCTOs to own public transport fleet and associated infrastructure to meet decarbonisation objectives.

Option 2 – *Enable CCO ownership*

154. PTAs would be able to own public transport assets either through CCTO or a CCO. Unlike a CCTO, CCOs do not operate for the purpose of making a profit, thereby enabling PTAs to establish entities that operate to more flexible mandates.

Option 3 – *Maintain CCTO requirement in certain circumstances - Enable direct council ownership of assets*

155. PTAs would be able to directly own public transport assets. PTAs would still need to outsource services and could elect to continue using private operators. However, under this option if a PTA chose to contract services to a public operator, it would need to be owned through a CCTO. This would ensure the public and private operators are competing on a comparable basis.

Option 4 – *Remove CCTO requirement - Enable direct council ownership of assets*

156. PTAs would be able to directly own public transport assets. PTAs would still need to outsource services, but would have greater flexibility in the ownership arrangements of any public operator contracted to deliver the services.

What options were considered and have been ruled out?

157. In addition to enabling more flexible ownership arrangements, other complementary options were explored including compulsory acquisition of assets such as depots and changes to planning laws, to ensure PTAs had continuity of access to key infrastructure. However, these were not progressed given the complexities associated with these changes, and given there are existing mechanisms (e.g. contractual requirements and planning laws) that can achieve similar outcomes.

158. Further, while the Discussion Paper highlighted the various procurement and delivery models that could be deployed by PTAs, the LTMA is enabling in nature. Regulatory options that mandate alternative models were not considered as this would be prescriptive, rather than enabling. Instead, these alternative models are to be addressed through operational policy rather than through regulatory means.

Consultation

159. Ownership of the public transport fleet and supporting infrastructure was a key focus of the PTOM review and the Discussion Paper. Feedback on the Discussion Paper demonstrated support for allowing more flexibility of ownership structures amongst PTAs, unions and many individual submitters.

160. There was opposition to public ownership and management of assets from some operators. Some operators are confident that the operator market can deliver decarbonisation in line with PTA requirements. Other operators noted that it would be more efficient for bus depot locations to be determined by technology limitations (for example the range of e-buses) and operators' business considerations, rather than local government owning depots. They noted that many operators use their depots to service buses for PTOM contracts, as well as other buses in their fleet. However, some operators are not opposed to public ownership of fleet and supporting infrastructure.

161. The proposed reforms do not require PTAs to own or control assets, but would provide greater flexibility around how they might do this. The concerns raised by operators would need to be considered on a case-by-case basis if/when PTAs develop proposals to change asset ownership arrangements.

How do the options compare to the status quo?

	Option 1 – *Status Quo*	**Option 2 – *Enable CCO ownership***	**Option 3 – *Maintain CCTO requirement in some circumstances (Ministry's preferred option)***	**Option 4 – *Enable direct ownership (Minister's preferred option)***
Cost of compliance	0	0 CCOs still incur transaction costs to establish	+ Reduces circumstances where CCTO required	+ Removes requirements
Impact on operator market	0	0 Mixed impacts, may remove some opportunities, but may create others / reduce barriers to entry	0 Mixed impacts, may remove some opportunities, but may create others / reduce barriers to entry	- Mixed impacts, similar to Option Three, but removal of the CCTO requirement in some circumstances heightens risk of adverse impacts
Ease of implementation	0	0 Similar to status quo	- Additional guidance required and change management costs, different requirements for circumstances creates complexities	- Additional guidance required and change management costs
Certainty	0	0 Similar to status quo	+ Reduces most LTMA barriers to ownership	++ Removes all LTMA barriers to ownership
Alignment with objectives	0 SPTF objectives could be converted into contractual specifications	+	+	+
Overall assessment	0	0	++	++

Key for qualitative judgements:

- ++ much better than doing nothing/the status quo/counterfactual
- \+ better than doing nothing/the status quo/counterfactual
- 0 about the same as doing nothing/the status quo/counterfactual
- \- worse than doing nothing/the status quo/counterfactual
- \- - much worse than doing nothing/the status

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

162. The Ministry's preferred option is Option Three. The Minister's preferred option is Option Four. On balance, the Ministry prefers Option Three given it provides for greater flexibility while also retaining some protections to ensure an even 'playing field' where a PTA-owned operator is competing for contracts against private operators. However, the Minister's preference is for maximum flexibility.

163. Both Options Three and Four give greater flexibility to PTAs to meet the SPTF policy objectives compared to the status quo. Overall, the Ministry prefers a flexible approach as it enables PTAs to tailor their asset ownership approaches to their circumstances and the policy objectives. For example, PTAs and operators in large urban areas seeking to decarbonise may face different barriers and issues compared to those in smaller regional towns. As a result, some PTAs will need to take different factors into consideration as they develop their decarbonisation plans.

164. There are potential risks with Option Three. It could create boundary issues as to when a CCTO is required or not. As a result, it may also reduce PTA flexibility to implement the asset ownership arrangements that best meet their circumstance and the policy objectives, compared to Option Four. However, we assess the CCTO requirement would only apply in limited circumstances.

165. Compared to Option Three, Option Four grants PTAs maximum flexibility and would avoid the administrative costs and potential boundary issues of having to maintain a CCTO in some circumstances.

166. Option Two was assessed as being similar to the status quo. While it would enable greater flexibility, there would be similar transaction costs to the status quo. It also does not enable the full range of ownership models.

167. Options Two, Three and Four all increase the number of potential delivery models available to PTAs. While this provides for more flexibility, this can create costs in terms of developing operational policy to accommodate more flexible structures and transaction costs as operators may have to navigate different commercial approaches across different regions, rather than a more uniform national approach.

What are the marginal costs and benefits of the option?

168. The table below considers the impacts from Option Three and Four against the status quo. As the potential impacts of both options are similar, both Option Three and Option Four are evaluated together below. Where impacts between the options differ, these are identified.

Affected groups *(identify)*	**Comment** *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence Certainty** *High, medium, or low, and explain reasoning in comment column.*
Additional costs of the preferred option compared to taking no action			
Operators	Operators may exit regional markets if contestable opportunities are reduced, or if operating with publicly owned assets does not align with their business models. Under Option Four, if they are competing for opportunities against a CCTO operator using PTA-owned assets, this may	Medium	Low certainty - impacts are difficult to predict as they will depend on whether PTAs elect to own assets, and how PTAs structure their commercial arrangements around the use of those assets by operators.

	dissuade operators from participating in a tender. If different commercial structures are used across different regions, this may increase transaction costs for operators (which will be passed through in their pricing).		
PTAs	If PTAs elect to own assets, there will be costs associated with implementing what is a new approach, including updates to their procurement strategies, performance management systems, and developing new capabilities. Option Three may create complexities for PTAs, by maintaining a requirement to maintain a CCTO in certain limited circumstances. Compared to the status quo, PTA costs may increase if they fail to manage ownership risks as efficiently as the private sector.	Medium	Low certainty - impacts are difficult to predict as they will depend on whether PTAs elect to own assets, and how PTAs structure their commercial arrangements around the use of those assets by operators.
Waka Kotahi	There would be additional costs with developing new guidance. PTA asset ownership would create challenges in terms of investment decisions and ensuring value for money and determining appropriate procurement approaches under differing ownership models.	Medium	Medium certainty – the guidance impact can be reasonably anticipated from enabling greater use of public ownership structures. However, the extent to which public ownership creates complexities in procurement policy and investment management will depend on to what extent PTAs decide to own assets.
Users	May affect consumer welfare if it reduces the quality, efficiency, and overall value for money of public transport services (from PTAs being less efficient, and from private operators exiting the market).	Low	Low certainty - impacts are difficult to predict as they will depend on whether PTAs elect to own assets, and how PTAs structure their commercial arrangements around the use of those assets by operators.
Others	N/A	N/A	N/A
Total monetised costs	Not known	N/A	N/A
Non-monetised costs	Costs will potentially include transaction costs associated with change management, and potential welfare losses (assuming PTAs choose to own assets and this leads to reduced private operator presence in the market / reduced value for money from services.)	Medium	Low certainty - impacts are difficult to predict as they will depend on whether PTAs elect to own assets, and how PTAs structure their commercial arrangements around the use of those assets by operators.

Affected groups *(identify)*	**Comment** *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence Certainty** *High, medium, or low, and explain reasoning in comment column.*
	Additional benefits of the preferred option compared to taking no action		
Operators	PTA ownership of assets may reduce barriers to entry for some operators, stimulating competition.	Medium	Low certainty - impacts are difficult to predict as they will depend on whether PTAs elect to own assets, and how PTAs structure their commercial arrangements around the use of those assets by operators.
PTAs	PTAs can already own assets through CCTOs. However, in practice, this change allows PTAs to more easily own public transport assets, which may support continuity of services and help facilitate greater competition (by reducing barriers to entry), or more closely align with the broader outcomes of the SPTF. Option Four would give PTAs maximum flexibility. PTA ownership may also reduce PTA costs compared to the status quo as currently operators may be charging a risk premium on zero-emission technology and accelerating the amortisation of these assets and passing costs on to PTAs.	Medium	Low certainty - impacts are difficult to predict as they will depend on whether PTAs elect to own assets.
Waka Kotahi	N/A	N/A	N/A
Users	No material impacts identified. Users may benefit from improved continuity of services and more intense competition for contracts in some circumstances.	N/A	N/A
Others (eg, wider govt, consumers, etc.)	N/A	N/A	N/A
Total monetised benefits	N/A	N/A	N/A
Non-monetised benefits	Key benefits are that it may enable broader outcomes to be achieved, better facilitate decarbonisation, and reduce barriers to entry, as well as reduce transaction costs for PTAs.	Medium	Low certainty - impacts are difficult to predict as they will depend on whether PTAs elect to own assets, and how PTAs structure their commercial arrangements around the use of those assets by operators.

169. The marginal impacts of Options Three and Four are difficult to assess and is a key limitation on the impact assessment. Both are enabling in nature – PTAs may or may not choose to own public transport assets. Under the status quo, PTA ownership is also possible, and there is already the possibility of greater PTA participation in asset ownership as they look to rapidly decarbonise their fleets.

170. A risk from both options is perceived reductions in value for money. The current ownership arrangements, including the requirement that PTA interests in public transport are held through CCTOs, are intended to ensure efficient pricing and transfer of risk, thereby delivering more land transport activities from the funding available. Delivery of public transport fleet and associated infrastructure is a complex undertaking, and the capability to manage these assets currently sits with private operators. However, there is precedent for public ownership of assets in the rail sector, noting there are different considerations in the bus sector (e.g. larger fleet, multiple operators, more complex routes) that mean public ownership of bus and ferry assets would have their own unique challenges. Purchasing assets such as fleet, depots and charges would also create upfront capital costs for PTAs.

171. Public ownership may also realise increased value in some circumstances, such as increased competition for contracts if barriers to entry are reduced,[12] and value from increased continuity of service.

172. There are also risks with retaining the status quo. The CCTO requirement may hamper efforts by PTAs to implement different ownership structures. These ownership structures may be required to decarbonise the public transport fleet at least cost and on accelerated timeframes. Private ownership of assets like depots and charging infrastructure can also impede competition in some public transport markets where there are few alternative sites.

173. The potential impacts from Options Three and Four on the operator market are mixed. If commercial opportunities are reduced, operators may exit the market and / or invest less in their services. This may compromise dynamic efficiency in the market for public transport services, reducing societal welfare through time. At the same time, private ownership of assets can be a barrier to entry. Public ownership of assets, when combined with opportunities for private operators to deliver services using those assets, may create new commercial opportunities and stimulate competition in the market.

174. The potential for adverse impacts on the operator market is likely to be higher under Option Four than Option Three. Under Option Four, a PTA-owned operator could theoretically compete for contracts without a profit-making imperative. In such situations, this may dissuade operators from competing for contracts if they perceive that the PTA-operator may have an unfair advantage in the procurement process (either due to pre-existing knowledge or the potential for cross subsidies within the PTA).

175. The risks associated with Options Three and Four can be partly mitigated through Waka Kotahi's operational policies, which can set out the considerations applying to different ownership and delivering models. The Ministry has established an Operational Working Group to develop such policy.

[12] If new entrants do not need to provide fleet, depots or other infrastructure, this may reduce barriers to entry and increase competition for public transport service delivery contracts.

How will the new arrangements be implemented?

176. The Minister's preferred option will be implemented through amending the LTMA. The CCTO requirement would be removed. Waka Kotahi will then be responsible for updating its Procurement Manual to address a wider range of ownership and delivery models, which will be informed by the Operational Policy Working Group. PTAs will have discretion over whether or not to implement a wider range of ownership and delivery models in line with the updated Procurement Manual.

How will the new arrangements be monitored, evaluated, and reviewed?

177. The Ministry will monitor the implementation of the proposed SPTF from a policy perspective, and Waka Kotahi will also monitor and evaluate implementation of the SPTF at an operational level. We anticipate that if PTAs chose to deploy different ownership models, Waka Kotahi will monitor how these models are deployed to capture lessons learned for the benefit of all PTAs.

178. There will be a review of the SPTF in the future as part of good policy practice.

Issue 4: Enabling PTAs to deliver bus and ferry services in-house

179. In New Zealand, public transport services are exclusively delivered by private operators, mainly under contract to PTAs. The Government is proposing to give PTAs more flexibility to deliver public transport services in-house.

180. Prior to the deregulation of public transport markets in the 1980s and 1990s, public transport services were largely operated by council-owned bus companies. During the 1990s most of these companies were privatised. New Zealand's sole remaining publicly owned bus operator was sold in 2020, meaning all public transport bus and ferry services are now delivered by private operators.

181. Both PTOM and the LTMA are underpinned by outsourcing of service delivery. The LTMA requires most NLTF funded activities be outsourced.[13] Part 5 of the LTMA also requires Waka Kotahi and PTAs be guided by the principle that competitors should have access to public transport markets. These provisions were intended to build confidence in the efficient pricing of services.

182. While the current public transport market is characterised by private service provision, PTAs can own interests in public transport operators. However, these interests must be held at arm's length through a CCTO. Once a CCTO is established, PTAs can participate in the provision of public transport services by competing on the same basis as other operators through a tender process, or, in limited circumstances, through direct negotiation with CCTOs in line with Waka Kotahi guidance. Under PTOM, these services must also be delivered under a contract with the PTA.

183. The design of PTOM was also in line with wider government procurement policy, which promoted open competition for government contracts with a view to achieving efficient pricing and value for money. With the introduction of concepts such as public value and broader outcomes, government procurement policy now has a more holistic focus.

184. The PTOM review identified that PTOM's focus on competition and private provision may have unintended consequences in some circumstances. For example, the focus on competition has potentially rewarded operators with lower wage costs, and some existing drivers who have had to transfer to a new operator have been made worse off as a result. The review also found operational policy, which emphasises private provision, combined with the requirement to hold assets through a CCTO, may also act as a barrier to accelerating decarbonisation in some circumstances.

185. PTAs and Waka Kotahi are taking steps to address these issues within the current model, however the PTOM review provides an opportunity to address these issues further.

What is the problem definition?

186. To address the potential unintended consequences of PTOM, the Government wants to also enable greater flexibility of service delivery models – as opposed to requiring that service delivery be outsourced, primarily through competitive tender.

187. In-house service delivery may better align with the SPTF objectives in some circumstances; for example, where a PTA believes in-house service delivery might realise better public value or broader outcomes. These broader outcomes include mode shift, a more sustainable labour market, and improved environmental outcomes.

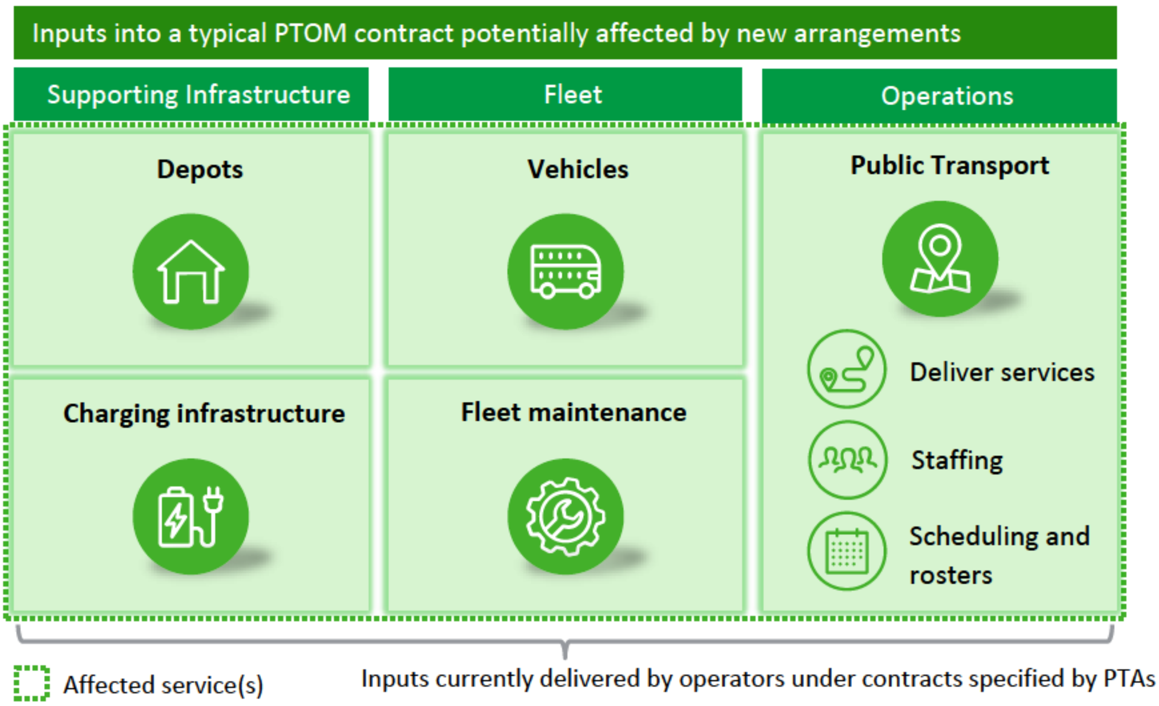
[13] Certain minor and ancillary works and in-house professional services are exempt.

188. The profit-making objective of CCTOs and private businesses may not always align to broader outcomes that form part of the proposed SPTF, noting these objectives and outcomes can be incorporated into contract design. Further, agreeing new initiatives to achieve the proposed SPTF objectives under commercial settings can become protracted compared to in-house delivery. For example, by bringing operations in-house, the PTA becomes the employer and can make employment decisions like increasing wage rates. Under the current outsourced model, once the contract has been awarded the council can try and influence employment matters but cannot directly intervene. However, this situation can also be addressed through changes to contract design in future tenders.

189. In some situations, regional public transport markets may not support outcomes such as continuity of service, or there may be a lack of competition in the market. In-house delivery may be preferred by PTAs in those circumstances.

190. The Government is also proposing specific decarbonisation and labour market interventions discussed at Issues 2, 3 and 5. It is proposing to complement these with amendments to the LTMA to remove the CCTO and outsourcing requirements. Removal of these requirements would enable PTAs to deliver services either in-house or through private operators.

191. The Government is not proposing PTAs be required to deliver services in-house. Its proposal is aimed at creating greater choice and increasing the options available to PTAs so they can match delivery models to requirements. In effect, PTAs would have much greater flexibility to structure each of the inputs in the figure below, which currently form a typical PTOM contract, into new delivery models.



What options are being considered?

192. Four options are being considered to address the problem definition:

- Option One: Maintain the status quo,
- Option Two: Modified status quo,
- Option Three: Enable in-house provision within the PTOM contracted model, and
- Option Four: Enable in-house provision outside the PTOM contracted model.

193. Option Two assumes that other aspects of the proposed SPTF are implemented, with no change in the requirement to outsource service delivery.

194. Options Three and Four would both enable in-house service provision of public transport services. However, Option Three would keep the requirement for there to be a CCTO and a contract in place.

195. The options are described in more detail below.

Option 1 – *Status Quo*

196. As noted above, public transport services are delivered by private operators, which we anticipate will continue under the status quo. We do not anticipate a move to greater in-house service provision given the current requirements in the LTMA. In addition, while PTAs can establish CCTOs to provide public transport services, no PTAs are currently delivering public transport services through this structure.

197. Under the status quo, public transport services must also be provided under contract with the PTA as part of a unit, unless they are an exempt service.

198. PTAs are also evolving their approach to procurement. There is work underway across PTAs to improve bus driver terms and conditions and to decarbonise public transport services. Wider government procurement policy has also shifted from value for money to incorporating the concepts of public value and broader outcomes into procurement.

Option 2 – Modified Status quo

199. Under the modified status quo, it is assumed that the new SPTF is implemented, incorporating the other proposals in this RIS, while leaving the outsourcing requirement in the LTMA unchanged.

200. Specifically, it is assumed that the proposed new principles and the labour market outcomes described at Issue 5 are incorporated into the LTMA, and that changes are made to enable more flexible asset ownership arrangements.

201. As a result, the SPTF objectives would flow into Waka Kotahi's operational policy, PTA contract design, and outcomes that operators commit to deliver under their contracts with PTAs.

Option Three – *Enable in-house provision with contractual requirement*

202. Under this option, the LTMA would be amended to exempt public transport:

- from the outsourcing requirements in this legislation, and
- from the requirement that Waka Kotahi consider the desirability of enabling competition and encouraging competitive and efficient markets when approving a procurement procedure.

203. These changes, combined with changes to the LTMA Part 5 principles, would enable public transport services to be delivered in-house.

204. PTAs wanting to provide services in-house would need to do so through a CCTO under a contract. However, as the outsourcing requirement would be removed, the PTA could choose to directly appoint the CCTO rather than running a competitive tender.

205. This change is enabling in nature and does not impose additional requirements on PTAs or operators. Instead, it provides another option for PTAs to use. PTAs could elect to continue using private operators to deliver public transport services, or choose to use a CCTO instead.

206. In-house delivery would still be subject to the requirements of Waka Kotahi's operational guidance.

207. This option would still require PTAs to have a contract in place for relevant public transport units being delivered in-house. The contract would be consistent with contracts in place with private operators, setting out the expected service levels, costs and performance regime (among other things).

Option 4 – *Enable in-house provision without contractual requirement*

208. As with Option Three, the LTMA would be amended to exempt public transport services from the requirement that they be outsourced and from the requirement that Waka Kotahi considers the desirability of enabling competition and encouraging competitive and efficient markets when approving a procurement procedure. These changes, combined with changes to the LTMA Part 5 principles, would enable public transport services to be delivered in-house.

209. Under Option Four, PTAs could elect to continue using private operators to deliver public transport services, or choose to use a CCTO, a CCO, or an internal business unit instead. PTAs could also still choose to contract, or not, with a CCTO.

210. Option Four is enabling in nature and does not impose additional requirements on PTAs or operators. Instead, it provides PTAs with greater flexibility over service delivery models.

211. In-house delivery would still be subject to the requirements of Waka Kotahi's operational guidance and investment management process. However, new guidance would need to be developed to account for in-house delivery without a contract, which is not currently provided for. We also anticipate Waka Kotahi would impose reporting conditions on its co-investment in PTA-delivered services.

212. The option would also see the LTMA amended to remove the requirement that public transport services be delivered under contract, where those services are provided in-house. However, a general legislative requirement would be established that public transport services must be procured, contracted, and delivered in a manner that ensures transparency of operating costs, service performance, the vehicles or vessels used to delivery services, aggregate employee terms and conditions, and financial performance of operators. Where a PTA chooses to provide services in-house, it would have flexibility to determine the best structure to achieve this general requirement, in line with Waka Kotahi guidance.

What options were considered and have been ruled out?

213. The proposal to enable in-house delivery emerged subsequent to the PTOM review and the Ministry has not developed alternative feasible options for achieving the Minister of Transport's direction.

Consultation

214. The proposal emerged subsequent to the PTOM review and at the direction of the Minister of Transport. Therefore, this proposal did not form part of the Discussion Paper and has not been consulted on publicly or with the wider sector.

215. The Ministry is not aware of any desire from PTAs to shift to in-house delivery. However, the Ministry anticipates PTAs would likely welcome additional flexibility around service delivery models. Through submissions on the PTOM review and targeted engagement we are also aware that unions are supportive of in-house delivery, as were some individual submitters responding to the Discussion Paper. The Ministry anticipates operators will be against this proposal given it would potentially lead to fewer commercial opportunities.

216. The Ministry of Business, Innovation and Employment (MBIE) and Waka Kotahi were consulted. s 9(2)(g)(i) [redacted] MBIE did not raise any concerns around a conflict between enabling in-house delivery and Government Procurement rules.

How do the options compare to the status quo?

	Option 1 – *Status Quo*	Option 2 – *Modified status quo*	Option 3– *Enable in-house provision with contracts (Ministry's preferred option)*	Option 4 – *Enable in-house provision without contracts (Minister's preferred option)*
Cost of compliance	0	- PTAs still required to tender most contracts and Waka Kotahi and PTAs must revise operational policy and procurement approaches	- May reduce transaction costs from tendering if there is great use of direct appointment, but a CCTO must be established for in-house delivery. PTAs still required to tender contracts and Waka Kotahi and PTAs must revise operational policy and procurement approaches	+ May reduce transaction costs from tendering if PTAs elect to deliver services in-house
Impact on operator market	0	0 Mixed impacts, labour market and asset ownership changes may create a more even playing field but transaction costs may rise and commercial opportunities may reduce	- Creates some uncertainty over the pipeline of future competitive opportunities, if some services are potentially moved in-house	- Creates some uncertainty over the pipeline of future competitive opportunities, if some services are potentially moved in-house
Ease of implementation	0	-	- Retains contractual approach, but in-house delivery would be a new approach for PTAs, and if PTAs elect to use there would be change management and transition costs	- - In-house delivery would be a new approach for PTAs, and if PTAs elect to use there would be change management and transition costs. This option also departs from PTOM contractual approach, requiring a new approach to be developed to ensure performance and transparency
Certainty	0	+ SPTF objectives embedded into decision making, increasing likelihood they will flow into contractual requirements	+ Removes requirements that make in-house delivery unattractive, making the framework more flexible and responsive in terms of approaches to delivering on the SPTF	+ Removes requirements that make in-house delivery unattractive, making the framework flexible and responsive in terms of approaches to delivering on the SPTF
Alignment with objectives	0	+ SPTF objectives embedded into decision making, increasing likelihood they will flow into contractual requirements	+ Enables increased flexibility to implement in-house solutions that align with the objectives	+ Enables increased flexibility to implement in-house solutions that align with the objectives
Overall assessment	0	0 We assess this option as a marginal improvement on the status quo when compared to the criteria and policy objectives	0 We assess this option as a marginal improvement on the status quo when compared to the criteria and policy objectives	- This option performs worse than the status quo when compared to the criteria

Key for qualitative judgements:

++	much better than doing nothing/the status quo/counterfactual
+	better than doing nothing/the status quo/counterfactual
0	about the same as doing nothing/the status quo/counterfactual
-	worse than doing nothing/the status quo/counterfactual
- -	much worse than doing nothing/the status quo/counterfactual

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

217. The Ministry's preferred option is Option Three. Our assessment is that Option Three delivers a marginal improvement over the status quo when compared against the policy objectives. Under all options, moves are likely to be made to align public transport delivery with aspects of the SPTF. Option Two strengthens this by embedding these objectives into the LTMA and operational policy, while Options Three and Four enable in-house delivery as one option for PTAs to implement the objectives. By enabling another service delivery mechanism, Options Three and Four provide some additional flexibility to PTAs to meet the policy objectives.

218. Compared to Option Two, Option Three has the benefit of enabling more flexibility to PTAs. This flexibility would allow them to implement in-house delivery, which may better align with PTA objectives in some circumstances.

219. Option Three also retains the contractual requirement. This requirement is a core element of the current framework. The contract works to provide accountability and transparency in service delivery. Keeping this requirement maintains a coherent framework and helps provide a basis for comparing in-house and outsourced service delivery.[14] However, removing the threat of competition will still create challenges in terms of ensuring incentives for efficient delivery and innovation, and with assessing value for money. However, these challenges can be partly addressed through Waka Kotahi's guidance and oversight, including value for money benchmarking.

220. The Minister's preferred option is Option Four. In our assessment, while Option Four is similar to Option Three, it will create additional challenges when ensuring in-house services deliver value for money, including high performing service outcomes. This is because there would be no requirement to have a contract in place as an accountability mechanism. This can be partly addressed through Waka Kotahi guidance and monitoring and increased transparency as set out above, but would be a more fundamental departure from the existing framework.

What are the marginal costs and benefits of the option?

221. Table below considers the impacts from both the Ministry's and the Minister's preferred options. As the potential impacts of both options are similar, both Option Three and Option Four are evaluated together below. Where impacts between the options differ, these are identified.

[14] In-house business units and CCOs do not operate for the purpose of making a profit and would not incur a project margin. This means service delivery models cannot be compared on a like-for-like basis without appropriate adjustment.

Affected groups *(identify)*	**Comment** *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence Certainty** *High, medium, or low, and explain reasoning in comment column.*
Additional costs of the preferred option compared to taking no action			
Operators	Operators may exit regional markets if contestable opportunities are reduced. Under Option Four, operators may have less confidence in tender processes that involve internal business units or CCOs.	Low	Low certainty - impacts are difficult to predict as they will depend on whether PTAs elect to use in-house delivery.
PTAs	If PTAs elect to use in-house delivery, there will be costs associated with implementing what is a new approach for PTAs, including updates to their procurement strategies and performance management systems. Compared to the status quo, PTA costs may increase if in-house delivery results in less efficient service delivery. Under Option Four any such impacts would likely be worse, if PTAs do not use contracts.	Low	Low certainty - impacts are difficult to predict as they will largely depend on whether PTAs elect to use in-house delivery.
Waka Kotahi	There would be additional costs with developing new guidance. In-house provision would create challenges in terms of investment decisions and ensuring value for money. Option Four will likely be more complex and costly for Waka Kotahi as, without contracts between PTAs and operators, their operational policies will need to identify alternative mechanisms for transparency and accountability. Waka Kotahi may need to increase its resourcing to monitor PTA delivery performance to ensure its co-investment is delivering value for money.	Medium	Medium certainty – the guidance impact can be reasonably anticipated from introducing in-house delivery as an option. However, the extent to which in-house delivery creates complexities in procurement policy and investment management will depend on the extent to which PTAs use in-house delivery.
Users	May affect consumer welfare if it reduces the quality, efficiency, and overall value for money of public transport services (from in-house services being less efficient, and from private operators exiting the market). Under Option Four, adverse impacts on users (and society more widely) may be higher given the loss of contracts as a performance accountability mechanism.	Low	Low certainty - impacts difficult to predict as it will depend on whether PTAs elect to use in-house delivery.
Affected	**Comment**	**Impact**	**Evidence Certainty**

groups *(identify)*	*nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.*	*$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	*High, medium, or low, and explain reasoning in comment column.*
Others	N/A	N/A	N/A
Total monetised costs	Not known	N/A	N/A
Non-monetised costs	Costs will potentially include transaction costs associated with change management, and potential welfare losses (assuming in-house services are deployed and this leads to reduced private operator presence in the market / reduced value for money from services.) Under Option Four, adverse impacts to society may be higher.	Low	Low certainty - impacts difficult to predict as it will depend on whether PTAs elect to use in-house delivery.

Affected groups *(identify)*	**Comment** *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence Certainty** *High, medium, or low, and explain reasoning in comment column.*
	Additional benefits of the preferred option compared to taking no action		
Operators	N/A	N/A	N/A
PTAs	Provides PTAs with more options and Option Four removes the need for councils to operate public transport services through a CCTO. In-house provision may also enable councils to deliver broader outcomes, and associated benefits – however, these benefits can also be realised through appropriately designed contracts with private operators. PTAs may also benefit from reduced transaction costs if they decide not to tender for services. Under Option Four, transaction cost reductions for PTAs may be higher.	Low	Low certainty - impacts are difficult to predict as they will depend on whether PTAs elect to use in-house delivery.
Waka Kotahi	N/A	N/A	N/A
Users	May support outcomes like continuity of service, depending on the circumstances.	Low	Low certainty - impacts are difficult to predict as they will depend on whether PTAs elect to use in-house delivery.
Others (eg, wider govt, consumers, etc.)	N/A	N/A	N/A
Total monetised benefits	N/A	N/A	N/A
Non-monetised benefits	Key benefits are that it may enable broader outcomes to be achieved as well as reduced transaction costs for PTAs.	Low	Low certainty - impacts are difficult to predict as they will depend on whether PTAs elect to use in-house delivery. Broader outcomes can also be delivered under the status quo through contract design.

222. The marginal impacts of the Ministry's and the Minister's respective preferred options are difficult to assess. Both options are enabling in nature – PTAs may or may not choose to deploy in-house delivery models, and we are not aware of any immediate plans to do so. Under the status quo, a form of PTA-owned delivery is also possible, but only where a PTA-owned operator wins a contract in a competitive procurement.

223. There has been limited consultation with the sector on this issue. This is a key limitation on the impact assessment in terms understanding to what extent PTAs would use in-house delivery, if given the option.

224. s 9(2)(g)(i) [redacted]

225. Any move away from a contractual approach under Option Four may also reduce transparency over cost and performance. In the Ministry's assessment, this means Option Four comes with greater downside risk than Option Three.

226. Further, if commercial opportunities are reduced, under both options operators may exit the market and / or invest less in their services. This may compromise dynamic efficiency in the market for public transport services, reducing societal welfare through time.

227. Value for money and transparency concerns can be partly mitigated through an additional broad transparency requirement in the LTMA and through supporting operational policies administered by Waka Kotahi's, which can require benchmarking approaches and reporting over key performance and cost indicators. These approaches come with transaction costs and may not successfully replicate the outcomes of contracts and competitive procurement.

How will the new arrangements be implemented?

228. The Minister's preferred option will be implemented through amending the LTMA the LTMA to exempt public transport:

- from the outsourcing requirements in this legislation, and
- from the requirement that Waka Kotahi consider the desirability of enabling competition and encouraging competitive and efficient markets when approving a procurement procedure.

229. The 'access to market' principle will also be removed (this is discussed at Issue 1) along with CCTO requirement (this is also discussed at Issue 3) and the requirement to contract for public transport services.

230. The LTMA will also be amended to establish a requirement that public transport services must be procured, contracted, and delivered in a manner that ensures transparency of operating costs, service performance, the vehicles or vessels used to deliver services, aggregate employee terms and conditions, and financial performance of operators.

231. Waka Kotahi will then be responsible for developing new operational policies that address in-house service provision. PTAs will have discretion over whether to implement in-house provision of services applying Waka Kotahi's operational policies, and subject to investment decisions from Waka Kotahi.

232. Waka Kotahi will also likely implement new monitoring approaches applying to any in-house service provision, to verify the performance and value for money of such services.

How will the new arrangements be monitored, evaluated, and reviewed?

233. The Ministry will monitor the implementation of the proposed SPTF from a policy perspective, and Waka Kotahi will also monitor and evaluate implementation of the Framework at an operational level. There will likely be a review of the SPTF in the future as part of good policy practice.

Issue 5: Labour market – improving bus driver terms and conditions

234. The potential adverse impacts of PTOM on bus driver terms and conditions were a key driver for the PTOM review. Research to support the review found mixed impacts for bus drivers. It found that while some drivers would have been worse off as a result of tendering, others would be better off. The PTOM Evaluation found that a strong focus on price in evaluating tenders was likely to reward operators with lower labour costs.

235. Participants across the sector, including PTAs, operators, unions and government, have concerns regarding the sustainability of the public transport bus driver labour market. Bus driver wages and conditions are relatively low compared with those in several comparable sectors.[15] High rates of staff turnover, difficulty recruiting and retaining drivers, and ongoing driver shortages have been caused, in part, by relatively low wages and conditions. Both AT and GWRC have reported that a proportion of their services are being cancelled due to bus driver shortages, with other regions also reporting a shortage of bus drivers.[16] These issues, and the impact they have had on public transport services, have been well documented in recent years.

236. In the short term, improvements to driver wages and conditions for existing contracts are being addressed through collective bargaining and tripartite collaboration between operators, unions, and PTAs.[17] This includes negotiation of a nationally consistent set of bus driver minimum terms and conditions. Waka Kotahi has made funding available to co-fund the implementation of a base hourly rate equivalent to the living wage for all drivers in New Zealand.

237. Through Budget 2022, the Government has set aside $61 million in funding over four years to support PTAs with improvements to public transport bus driver terms and conditions, noting the additional funding requirement is contingent on the outcome of negotiations currently underway between PTAs, operators, and unions.

238. Waka Kotahi is also exploring options to incorporate mechanisms to protect and improve bus driver wages into its operational policy. These could include requiring PTAs to set a wage floor that all suppliers must meet, factor employee terms and conditions into tender evaluation, and requiring non-incumbent suppliers to engage current employees on existing or equivalent terms and conditions. Some PTAs are also incorporating employment terms and conditions into their procurement requirements.[18]

239. The proposed new Fair Pay Agreements system of collective bargaining may also be an avenue to improve driver wages and conditions. This system will enable unions and employers to bargain for new minimum terms and conditions that will then apply right across a sector. Legislation to create this system was introduced in March 2022 and is before Select Committee at the time of writing.

240. In addition to these changes, the Government wants to ensure drivers' wages and conditions are better protected under the SPTF and the Ministry has explored operational and regulatory options to achieve these through the PTOM review.

[15] For example, other heavy vehicle driver roles are better remunerated.

[16] See for example Reduced bus services continue in Christchurch over summer | RNZ News.

[17] First through the Rest and Meal Breaks Steering Group, and now the Bus Driver Conditions Steering Group.

[18] The Ministry is aware of two PTAs including weightings/minimum rates for driver pay in their tendering process.

241. s 9(2)(g)(i) [redacted]

What is the problem definition?

242. The sector is concerned that the current labour market for bus drivers is unsustainable, and that employment terms and conditions need to be protected and improved to address this. The Government has goals to grow public transport services to facilitate mode shift and transport decarbonisation, which will require additional drivers. A shortage of bus drivers will compromise these goals.

243. The Government wants to ensure terms and conditions are not undermined through competition for service contracts, and that terms and conditions are improved through time. The Government wants to develop a nation-wide approach to protecting drivers' wages and conditions during the procurement process, rather than relying on ad hoc measures by individual regions.

244. In light of this, the Minister has agreed that the proposed SPTF should achieve the following outcomes:

- bus drivers have the opportunity to maintain employment if there is a change of operator,
- the substantive terms and conditions of bus drivers are not negatively impacted by a change of operator, and[19]
- the terms and conditions of the bus driver workforce are improved to increase recruitment and retention.

245. There are options for addressing these outcomes through operational policy, regulatory interventions, or both.

What options are being considered?

246. Three options are being considered to address the problem definition:

- Option One: Status quo
- Option Two: Introduce a high-level principle into the LTMA,
- Option Three: New LTMA provision specifying labour market outcomes, and
- Option Four: Extend protections in the Employment Relations Act.

247. The options are described in more detail below.

248. We anticipate that Waka Kotahi will develop operational policy across all options, including the status quo. The Minister has written to the Waka Kotahi board inviting Waka Kotahi to develop operational policy to achieve the labour market outcomes noted at paragraph 244 above as part of the proposed SPTF. The Ministry anticipates the existing Bus Driver Terms and Conditions Steering Group, which has a mandate closely aligned with these outcomes, could be tasked with helping shape this operational policy.

[19] Substantive terms would include terms and conditions such as leave entitlements, wage rates, and redundancy provisions, but would not include additional benefits such as access to an onsite gym.

Option 1 – Status quo

249. Under the status quo, the sector is working towards improved terms and conditions consistent with the outcomes at paragraph 244. However, these outcomes are not guaranteed.

250. A tripartite working group, the Bus Driver Terms and Conditions Steering Group, is progressing measures to improve driver terms and conditions, including the adoption of a nationally consistent set of minimum terms and conditions. The objectives of this process are to achieve outcomes consistent with those described at paragraph 244 above.

251. Some PTAs have already adopted, or are looking at adopting, minimum employment conditions into their procurement requirements.

Option 2 – *Introduce a high-level principle into the LTMA*

252. Option Two would add a new principle to the LTMA. The relevant principle is also described at Issue 1, and would require Waka Kotahi, PTAs and operators to factor in the desirability of a fair, equitable and sustainable labour market for public transport workers into the planning, procurement and delivery of public transport services.

253. While legislative in nature, this change would still offer a degree of flexibility to Waka Kotahi, PTAs and operators in how they apply this principle in practice. It would provide further direction to Waka Kotahi in terms of operational policy.

254. Under this option, it is assumed Waka Kotahi will develop new operational policy in line with the outcomes specified above given both the request by the Minister of Transport and the new direction in the LTMA. New procurement approaches could include setting a minimum base rate or incentivising operators to propose initiatives that improve the terms and conditions of employees as part of tendering.

Option 3 – New LTMA provision

255. Under Option Three, the LTMA would be amended to specify the labour market outcomes that Waka Kotahi must give effect to through its operational policy, which are described at paragraph 244.

256. This option would give stronger direction to Waka Kotahi and PTAs compared to Option Two, while still retaining flexibility over exactly how these outcomes are achieved. For example, the practicalities of identifying which employees would need to transition between operators.

Option 4 – Extend protections in the Employment Relations Act

257. Option Four would extend the Part 6A protections in the Employment Relations Act 2000 to public transport bus drivers. This would enable bus drivers to choose to transfer to a new operator with their existing terms and conditions following tendering (assuming the existing operator was unsuccessful in the relevant tender).

258. This option would provide bus drivers with the right to transition to a new operator on their existing terms and conditions. It is more prescriptive than Options Two and Three, and does not have the caveat of ‘substantive’ term of conditions suggested above.

259. The option would not necessarily improve terms and conditions through time, given Part 6A focuses on preserving existing terms and conditions.

What options were considered and have been ruled out?

260. The Ministry considered introducing detailed labour market protections into the LTMA, similar to Part 6A of the Employment Relations Act 2000. However, this option was ruled out to avoid establishing requirements in the LTMA that duplicate the existing framework in the Employment Relations Act.

Consultation

261. In response to the Discussion Paper, there was a strong sentiment from individuals and sector stakeholders that wages and conditions for bus drivers need to be protected and improved, but there were a range of views on the best way to achieve this. Many supported a procurement approach (i.e. through operational policy), particularly many PTAs and operators. PTAs argued that a procurement approach gives them more flexibility to ensure wages and conditions better reflect the living costs of their region. Some operators wanted a regional, rather than national, approach that takes into account differences in cost of living.

262. Some submitters supported a legislative approach, either through the LTMA or the Employment Relations Act. Some also suggested a legislative approach, supported by procurement requirements, was the best approach.

263. There were other suggestions for improving wages, as well as feedback indicating the need for other changes to make bus driving more attractive as an occupation. Some submitters suggested a multi-employer collective agreement or a Fair Pay Agreement as ways to protect and standardise wages and conditions. Improving shift structures was suggested to make the job more attractive.

264. Given feedback on policy options was mixed and the policy options are not mutually exclusive, final option selection was determined through evaluating options as part of the policy process (e.g. against the criteria used in this RIS).

How do the options compare to the status quo?

	Option 1 – *Counterfactual*	Option 2 – *Introduce a high-level principle in LTMA*	Option 3 – *New LTMA provision*	Option 4 – *Extend protections in the Employment Relations Act*
Cost of compliance	0	0 Limited difference to work already underway/planned	- Reduces flexibility and can generate cost if approaches are too rigid	- - ERA is prescriptive
Impact on operator market	0	0 See above	- Increases transaction costs of tendering and creates commercial uncertainty, which may push up labour costs across other roles	- - Far more prescriptive than status quo
Ease of implementation	0	0 See above	- - Moves away from enabling nature of the framework by detailing required outcomes, and incorporates labour market regulation into LTMA	- Existing framework, but new to public transport bus sector and would require changes to contracts
Certainty	0	+ Creates more certainty than the status quo that Waka Kotahi and others will implement desired outcomes	++ Provides stronger direction	+ Provides direction on two of three of the desired outcomes
Alignment with objectives	0	++	++ Details outcomes in legislation	+
Overall assessment	0	++ Preferred option	0	- -

Key for qualitative judgements:

++	much better than doing nothing/the status quo/counterfactual
+	better than doing nothing/the status quo/counterfactual
0	about the same as doing nothing/the status quo/counterfactual
-	worse than doing nothing/the status quo/counterfactual
- -	much worse than doing nothing/the status quo/counterfactual

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

265. The Ministry's preferred option is Option Two. Our assessment is that Option Two delivers the greatest improvement over the status quo when compared against the policy objectives. Option Two has the benefit of improving direction to Waka Kotahi, PTAs and operators in formulating operational policy, while also retaining flexibility in how improved labour market outcomes are incorporated into policy. The Ministry anticipates that under Option Two, Waka Kotahi will incorporate requirements broadly in line with the outcomes described at paragraph 244 above, and that PTAs will then incorporate these into their procurement strategies. However, Waka Kotahi has statutory independence and PTAs can propose alternate procurement strategies to Waka Kotahi. This means Option Two is not as certain to achieve the policy objectives as Option Three.

266. Option Two has the potential for adverse impacts on the operator market compared to current practices, noting that under the status quo work is underway to introduce more consistent terms and conditions for public transport bus drivers. There is a risk that requiring operators to take on employees from another operator will increase transaction costs for operators, if they are required to hold multiple collective employment agreements with the same union and or have drivers on substantially different terms and conditions within the same workforce.

267. Option Two may have some positive impacts on the operator market. If operational policy gives workers the right to transition from an incumbent operator to a new operator, this may reduce mobilisation and transition risks for operators (and PTAs), given there is an existing workforce in place. They key risk to an operator becomes anticipating the number of drivers that will want to transition over.

What are the marginal costs and benefits of the option?

268. Table below considers the impacts from the preferred option

Affected groups *(identify)*	**Comment** *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence Certainty** *High, medium, or low, and explain reasoning in comment column.*
Additional costs of the preferred option compared to taking no action			
Operators	Increased complexity for operators (if workforces need to be transitioned over, and multiple agreements are operating in parallel) and less flexibility in how operators can manage their workforces. This may benefit incumbents over new entrants (as incumbents will have greater access to operating cost information). Increases in the wages of bus drivers may also create pressure on operators to raise wages for other related roles, increasing costs. However, increased costs will likely be passed through to PTAs.	High	Medium certainty – operators can reasonably anticipate to face higher costs, however these may also occur under the status quo.
PTAs	Increased complexity as procurements will potentially have to address workforce	Medium	Medium certainty – workforce transition will likely require increased administration and

	transition between operators, and transition of employment terms and conditions. Cost of delivering services may increase through time relative to the status quo, reducing funds available for other service improvements.		associated costs. However, these costs may also occur under the status quo.
Waka Kotahi	Increased complexity as procurement guidance will have to account for labour market outcomes. Cost of delivering PT services may increase through time relative to the status quo, increasing demands on the NLTF.	Low	Medium certainty – high certainty to changes in operational policy, but medium certainty of higher demands on the NLTF given work underway as part of the status quo.
Others	Improved public transport bus driver terms and conditions may make other related roles (e.g. other bus and heavy vehicle drivers) relatively less attractive and cause a shift to bus driving relative to the status quo or generating pressure for higher wages throughout the transport sector (or exacerbating other labour shortages), resulting in higher costs.	High	Low certainty – bus driver terms and conditions may improve across all options and labour market dynamics are difficult to predict.
Total monetised costs	N/A	N/A	N/A
Non-monetised costs	Less competition and less efficient pricing would create costs to society over the status quo. There are opportunity costs associated with higher wage bills.	Medium-high	Low-medium certainty – overall cost impacts are difficult to predict as they will depend on how options are implemented and steps taken under the status quo.

Affected groups *(identify)*	**Comment** *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence Certainty** *High, medium, or low, and explain reasoning in comment column.*
	Additional benefits of the preferred option compared to taking no action		
Operators	Operators may benefit from increased certainty under Option Two as workforce transition risk is reduced compared to the status quo.	Medium	Medium certainty.
PTAs	If workforces are transitioned between operators, this would reduce contract mobilisation risks for PTAs when they replace an incumbent operator with a new operator.	Medium	Medium certainty.
Others (eg, wider govt, consumers, etc.)	Incumbent bus drivers may benefit from improved conditions. Users may enjoy higher consumer welfare from more	High	Low certainty – changes under status quo may realise similar benefits to Option Two. Service reliability could improve as a result of multiple factors.

	reliable services.		
Total monetised benefits	N/A	N/A	N/A
Non-monetised benefits	Improved reliability of public transport services may realise welfare benefits and barriers to entry may reduce for new operators, increasing competition.	Medium-high	Low-medium certainty – overall benefits are difficult to predict as labour market outcomes are a function of a variety of factors, not just bus driver terms and conditions. Further, changes under status quo may realise similar benefits to Option Two.

269. The marginal impacts of introducing a new principle are difficult to assess with confidence. Under the status quo, significant work is underway to link public transport bus driver wages to living wages across regions and to unify minimum terms and conditions. If public transport terms and conditions become unified across regions, then the marginal impacts of Option Two could be very limited.

270. s 9(2)(f)(iv) [redacted]

271. As noted above, the Government has set aside $61 million in funding over four years to support PTAs with improvements to public transport bus driver terms and conditions. This gives an insight into the cost impacts of the Minister’s desired labour market outcomes for the SPTF, noting these costs are likely to be incurred regardless of regulatory change. Further, the current additional funding likely understates cost impacts as the $61 million does not capture PTA co-funding or ongoing costs beyond the next four years.

How will the new arrangements be implemented?

272. The preferred option will be implemented through amending the LTMA, to introduce a high-level principle into the LTMA, which will help guide changes to operational policy.

273. Waka Kotahi will also develop operational policy to support labour market outcomes, likely to form part of a revised Procurement Manual. The requirements in the Procurement Manual will then be incorporate into PTA procurement strategies as these are updated and then into contract design.

How will the new arrangements be monitored, evaluated, and reviewed?

274. The Ministry will monitor the implementation of the proposed SPTF from a policy perspective, and Waka Kotahi will also monitor and evaluate implementation of the Framework at an operational level. There will be a review of the SPTF in the future as part of good policy practice.

Issue 6: Treatment of On-Demand Services

275. On-demand public transport services refer to passenger transport services that are:

- not operated to a timetable and are only operated when there is demand,
- provided in shared vehicles – users that book to use a service will usually share the vehicle with other users, and
- available to the public generally – anyone can book to use an individual service, subject to vehicle capacity.

276. This differs from other forms of on-demand transport, including small passenger services such as taxis and ride hailing platforms like Zoomy and Uber, that are not typically shared and, once booked are not available to the public generally.

277. When PTOM was introduced, the framework was designed with conventional fixed route, timetabled public transport services as the focus. This reflected the limited extent of on-demand public transport services at the time. Now, technology has increased the attractiveness, demand for, and potential efficiency of, on-demand public transport services.

278. By offering new, flexible services for users, on-demand public transport has the potential to generate significant benefits

279. In recent years, several PTAs have set up trial on-demand public transport services, and we are aware that PTAs and some operators are looking at the feasibility of establishing further on-demand public transport services. Examples of on-demand public transport trials currently underway include AT Local in Auckland and MyWay in Timaru. On-demand public transport can take a variety of forms, and can involve the use of small passenger vehicles, shuttles and buses.

280. Under the LTMA, passenger transport services operating without a schedule are not considered "public transport services" for the purposes of Part 5. As a result, the Ministry's view is that on-demand services are not subject to the requirements in Part 5 or PTOM. Therefore, there is no requirement for these services to be registered with PTAs and no need to include them in RPTPs.[20] Further, for the purposes of Part 5, the LTMA excludes shuttle services from the definition of public transport services.

281. Waka Kotahi is currently co-investing in trials of on-demand public transport services. However, there is an opportunity to improve clarity over Waka Kotahi's ability to co-invest in these services to provide additional confidence to Waka Kotahi and PTAs.

What is the problem definition?

282. On-demand public transport is not regulated under the LTMA, which gives rise to two policy problems.

283. First, from discussions with PTAs and Waka Kotahi, the Ministry has identified a lack of clarity over how the LTMA treats the procurement, planning and funding of on-demand public transport services. There is currently limited guidance to PTAs on these services, noting Waka Kotahi is planning to develop relevant guidance. While Waka Kotahi is currently co-investing in trials of on-demand public transport services, the planning and procurement of these services is not directly regulated under Part 5 of the LTMA.

284. Given the increasing focus by PTAs on on-demand public transport services, there would be benefit in explicitly ensuring that such services are subject to the same

[20] Driver and vehicle requirements relevant to on-demand services are regulated under the Land Transport Act 1998.

planning, procurement, and funding framework as other public transport services.

285. Second, the PTOM review identified that PTAs have limited oversight of commercial on-demand public transport services. A lack of oversight may lead to negative externalities in some circumstances. For example, it is possible that some commercial on-demand public transport services may undermine wider public transport network strategy. This could be through creating congestion on certain routes or by competing for the same passengers as subsidised services.

286. Given the market for on-demand services is evolving rapidly, any intervention to further regulate commercial on-demand public transport services needs to balance the benefits of additional PTA oversight against imposing additional costs on operators and, thereby, potentially discouraging innovation in this area.

287. The Ministry has considered a range of regulatory options to better integrate on-demand public transport services into Part 5 of the LTMA, including consideration of whether commercial on-demand public transport services should be regulated as part of the proposed SPTF.

What options are being considered?

288. Four options have been considered to address this problem:

- Option One: Maintain the status quo,
- Option Two: Classify on-demand public transport as an exempt service,
- Option Three: Bring PTA-initiated on-demand public transport services into the proposed SPTF and a subset of commercial services, and
- Option Four: Include all on-demand PT services into the SPTF.

289. Across all options, we assume Waka Kotahi will adopt new guidance for PTAs to consider when planning and procuring on-demand public transport services.

290. Under the current definition of a 'unit' in the LTMA, a potential interpretation is that PTA-funded on-demand public transport services may have to be bundled with existing timetabled services. Options Three and Four consider modifications to this definition to enable greater flexibility to PTAs in selecting service providers for on-demand public transport.

Option 1 – *Status Quo*

291. On-demand services remain outside of the PTOM and the proposed Sustainable Public Transport Framework. This means operators of these services are free to establish services that may compete with, or complement, contracted public transport services.

292. We anticipate PTAs will continue to expand their on-demand public transport offerings, noting uncertainty over the planning, procurement, and funding of the services under the LTMA could inhibit introduction of these services. Some operators may also establish commercial on-demand services, particularly in areas not currently served by public transport.

Option 2 – *Classify on-demand public transport as an exempt service*

293. Under this option, the LTMA would be amended to designate on-demand public transport services as an 'exempt service', similar to how inter-regional public transport service are also classified in the LTMA. The effect of this change would be all on-demand services would need to be registered with PTAs. PTAs would have the opportunity to decline a registration if it would be detrimental to the region's public transport network.[21]

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[21] Applying the grounds for declining a registration, which are set out in the LTMA, s 134.

294. This option would enable councils to have oversight of on-demand public transport services, while providing flexibility in procurement and contracting approaches.

295. Unless they are included in an RPTP and are contracted to a PTA, on-demand public transport services would otherwise remain outside of the proposed SPTF.

296. While PTAs could still provide these services, this option would not provide additional certainty to the sector that Waka Kotahi and PTAs can plan, procure and fund on-demand public transport services.

Option 3 – *Bring PTA-initiated on-demand public transport services into the proposed SPTF and a subset of commercial services*

297. Under this option, the definition of public transport service in the LTMA would be amended to include on-demand public transport services. However, for the purposes of Part 5, only PTA-initiated services and a subset of commercial services would be subject to the principles and requirements regulating public transport.

298. The commercial on-demand services subject to Part 5 of the LTMA would be those services provided exclusively in buses (which are vehicles with 9 or more seats) and or provided by 10 or more vehicles. These services are most likely to impact on PTA networks.

299. This change would provide for greater clarity and consistency in the procurement, planning and funding of on-demand public transport services. It would also provide for greater PTA oversight of some commercial services.

300. Under this option, the definition of a 'unit' in the LTMA would also be amended to enable PTAs to procure and contract on-demand services separately to timetabled services. The requirement that every unit has to be contracted on an exclusive basis (the exclusivity requirement) would also be removed.

Option 4 – *Include all on-demand public transport services within the proposed SPTF*

301. Under this option, the LTMA would be amended to require on-demand public transport services to be contracted by PTAs, unless the service is commercial and registered as an exempt service.

302. This would treat on-demand public transport services the same as scheduled public transport services, providing a clear framework for planning and procurement. Commercial on-demand services could still operate with an exemption from the proposed SPTF. All commercial on-demand services would need to be registered with PTAs.

303. Under this Option, the definition of a 'unit' in the LTMA would also be amended to enable PTAs to procure and contract on-demand services separately to timetabled services. The exclusivity requirement would also be removed.

What options have been considered and have been ruled out?

304. For Option Three, the Ministry considered different options for what subset of commercial services should be subject to oversight under Part 5 of the LTMA. The Ministry has decided that defining the subset as commercial on-demand public transport services provided exclusively in buses (which are vehicles with 9 or more seats) and or provided by 10 more vehicles strikes a reasonable balance between capturing those services that could impact on PTA networks while also not overregulating smaller operators or trials of new innovative services.

Consultation

305. Options Two and Four were presented to the sector in the Discussion Paper. There was some support for bringing on-demand services under PTOM, but also some reservations. Many council submissions supported these services being brought under PTOM to assist their ability to plan for, and procure, such services. However, one submitter and several survey respondents (including both councils and operators) were concerned that bringing on-demand services under PTOM could stifle innovation.

306. Most stakeholders considered it important for councils to have some level of oversight over commercial on-demand public transport services.

307. Those submitters on the Discussion Paper who were in favour of classifying on-demand services as exempt services (Option Two) (but with operators required to register the services with regional councils) suggested that this approach would offer a degree of oversight, would make it easier to bring on-demand services under PTOM at a later date, and to collect data about usage rates.

308. Following the Discussion Paper, the Ministry engaged in targeted consultation with PTAs and Waka Kotahi on potential options for the regulation of on-demand public transport services under the LTMA. As a result of this engagement and additional policy work, Option Three was developed to strike a balance between providing certainty to PTAs, while minimising the administrative burden on operators and PTAs and facilitating innovation.

How do the options compare to the status quo?

	Option One – *Status Quo*	Option Two – *Classify as Exempt*	*Option Three - Bring PTA-initiated services into PTOM*	Option Four – *Align with other public transport services*
Cost of compliance	0	- All operators would have to register services with PTAs, and PTAs may incur some additional costs in administering this	- Unless operating under contract with a PTA, a subset of operators would have to register commercial on-demand public transport services. PTAs may incur some additional costs in administering this	- - Unless operating under contract with a PTA, all operators would have to register commercial on-demand public transport services. PTAs may incur some additional costs in administering this
Impact on operator market	0 Allows the maximum level of flexibility and innovation for operators and councils to develop and implement on-demand services. The definition of a unit and exclusivity requirement may restrict PTA-initiated services to bus operators	- - Creates some additional uncertainty that a registration may be declined, but still allows significant flexibility for operators and PTAs. The definition of a unit and exclusivity requirement may restrict PTA-initiated services to bus operators	+ Potentially expands the market to other transport operators. Creates some additional uncertainty that a registration may be declined for a subset of operators, but still allows significant flexibility for operators and PTAs	- Potentially expands the market to other transport operators. Creates some additional uncertainty that a registration may be declined, but still allows flexibility for operators and PTAs, and PTAs can have more oversight to create competitive opportunities where required
Ease of implementation	0 New procurement guidance is anticipated under the status quo given increasing focus by PTAs on these services	- Leverages existing exemption mechanism, but requires legislative change	- - Leverages existing framework, but creates additional complexity by requiring certain on-demand public transport services to be registered	- Leverages existing framework, but requires legislative change
Certainty	0	0 Provides PTAs with a clear mechanism for managing on-demand services, but does not resolve uncertainties over how these services are planned, funded, and delivered	++ Creates a clear framework for planning, procuring and exempting on-demand services	++ Creates a clear framework for planning, procuring and exempting on-demand services

Alignment with objectives	0	+ Would allow PTAs greater control of on-demand services where they might conflict with the objectives, noting these services would still be outside the framework	++ Would bring PTA-initiated and a subset of commercial on-demand services into the LTMA framework, where they would be planned, procured and exempted taking account of the objectives	++ Would bring on-demand services fully into the LTMA framework, where they would be planned, procured and exempted taking account of the objectives
Overall assessment	0	- -	+	0

Key for qualitative judgements:

++ much better than doing nothing/the status quo/counterfactual

\+ better than doing nothing/the status quo/counterfactual

0 about the same as doing nothing/the status quo/counterfactual

\- worse than doing nothing/the status quo/counterfactual

\- - much worse than doing nothing/the status quo/counterfactual

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

309. On balance, we assess that Option Three is most likely to address the policy problem, meet the policy objectives, and deliver the highest net benefits to society over the status quo. Option Three would result in a more unified framework for all public transport services, rather than leaving on-demand public transport services outside of the framework. This would address sector concerns regarding certainty of planning, procurement and funding under the LTMA.

310. Unlike Options Two and Four, Option Three would not impose a registration requirement on smaller operators. This is to ensure the regulatory framework does not impose cost and uncertainty on operators that is disproportionate to any potential adverse externalities. Option Three does create the risk of boundary issues between smaller and larger operators, with some operators subject to PTA oversight and others not.

311. While Option Four would not differentiate between commercial on-demand services, it would run the risk of imposing an inefficiently high level of cost on some operators and discouraging innovation in the on-demand services market.

312. Both Options Three and Four would ensure PTA-initiated on-demand services are planned, procured, and delivered in line with the SPTF objectives. Further, changes to the definition of a 'unit' in the LTMA and removing the exclusivity requirement in the LTMA would clarify that PTAs have flexibility to award contracts for on-demand public transport services to a variety of operators. Under the current definition and under the exclusivity requirement, one interpretation is that on-demand services have to be bundled with timetabled services and that incumbent bus operators may have the exclusive right to operate on-demand services in a particular area, when established during the term of a contract. Changing this definition and removing the exclusivity requirement will clarify that PTAs can separately contract on-demand public transport services from existing timetabled series. This will enable maximum flexibility to appoint the operator best suited to the service. This could include appointing shuttle and taxi operators instead of bus operators. This will also support the development of a competitive operator market and the value for money policy objective.

313. In contrast, Option Two does not provide the sector with additional certainty regarding the planning, procurement and funding of on-demand services and therefore was not considered viable. Further, by maintaining the current definition of a 'unit' and retaining the exclusivity requirement in the LTMA, this may inhibit PTA flexibility if there is uncertainty over whether or not contracts for on-demand public transport should be bundled with timetabled services and/or awarded to incumbent operators.

What are the marginal costs and benefits of the option?

314. Table below considers the impacts from both the preferred option.

Affected groups *(identify)*	**Comment** *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence Certainty** *High, medium, or low, and explain reasoning in comment column.*
Additional costs of the preferred option compared to taking no action			
Operators	Creates ongoing costs with registering for exemptions and the potential risk of a registration being declined or eventually removed. This may affect new or smaller operators and benefit incumbents, noting that a subset of generally smaller operators would not be captured by the	Medium	Low - Impacts difficult to predict as this market is relatively nascent, and it seems likely that most of the types of on-demand public transport services that will be captured by LTMA Part 5 are/will be contracted by PTAs.

	registration requirement. Commercial operators operating near the threshold of the registration requirement may be dissuaded from expanding. Those who cross the threshold and are required to register may be subject to higher regulatory costs than operators just under the threshold, which could affect market efficiency. By clarifying the definition of a unit and removing the exclusivity requirement, there may be reduced opportunities for incumbent bus operators to participate in on-demand public transport service provision as PTAs may target opportunities to different operators. PTAs may also make greater use of competitive processes to appoint on-demand service operators rather than direct appointment of incumbents.		
PTAs	Ongoing cost of administering exemptions and contracting services.	Low	Medium- Expansion of the existing exemption regime, so incremental costs unlikely to be large.
Waka Kotahi	Waka Kotahi would have to develop additional guidance. Potential increase in use of the Order in Council process if number of commercial on-demand services increases.	Medium	Medium - Waka Kotahi already likely to develop new guidance under the status quo.
Users	May affect consumer welfare if it undermines innovation / deployment of new technologies.	Low	Low - Impacts difficult to predict given market is nascent.
Others	N/A	N/A	N/A
Total monetised costs	Not known	N/A	N/A
Non-monetised costs	Additional transaction costs / loss of innovation are the main marginal costs. If this reduces efficient competition in the market for these services, it will compromise dynamic efficiency by stifling innovation and the development of this market	Low-medium	Low - Impacts difficult to predict given market is nascent

Affected groups *(identify)*	**Comment** *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence Certainty** *High, medium, or low, and explain reasoning in comment column.*
	Additional benefits of the preferred option compared to taking no action		
Operators	By clarifying the framework, it may create new opportunities for on-demand public transport services to access NLTF funding. By clarifying the definition of a unit and removing the exclusivity requirement, a wider set of operators will potentially have the opportunity	Low	Low - PTAs can already contract for on-demand services, but bringing them clearly into the LTMA may encourage greater deployment by PTAs.

	to tender for PTA-initiated on-demand public transport services.		
PTAs	PTAs can better manage on demand services to optimise their public transport strategy and avoid adverse impacts.	Medium	Low - Impact difficult to assess given nascent market, but key feedback from PTAs through PTOM review.
Waka Kotahi	Waka Kotahi will have increased certainty over the planning, procurement and funding of these services under the LTMA.	Low	Low – Waka Kotahi is already funding trials, but this may provide greater impetus for wider deployment of this form of public transport.
Users	Helps ensure coherent public transport networks and ensure negative externalities are mitigated.	Low	Low - Impact difficult to assess given nascent market.
Others (eg, wider govt, consumers, etc.)	N/A	N/A	N/A
Total monetised benefits	N/A	N/A	N/A
Non-monetised benefits	Key benefit is that it provides a tool for mitigating any adverse externalities from on-demand services competing with the wider public transport network and provides PTAs/Waka Kotahi with greater certainty that they can fund and deploy these types of services.	Low-medium	Low - Impacts difficult to predict given market is nascent.

315. Due the nascent state of this market, the marginal impacts are difficult to assess with confidence and on a quantitative basis.

316. There is a risk that introducing Option Three may stifle innovation and deployment of services in the commercial on-demand public transport market, when compared to the status quo. Our view is that the risks associated with the requirement to register some commercial on-demand services are low because:

- With an exemption, commercial on-demand public transport services can still be delivered,
- Registration costs are unlikely to be significant,
- There are limited grounds for declining a registration,
- Commercial services are most likely to be viable in areas where there are currently limited public transport services, meaning PTAs would have limited grounds for declining a registration, and
- Smaller exempt services will not be subject to the registration requirement.

317. We also anticipate that PTAs will be the main purchaser of on-demand public transport services under both the status quo and Option Three. Therefore, the impacts of Option Three would be limited compared to the status quo.

318. While there are risks with Option Three, these are likely outweighed by the benefits of greater certainty for this market and a more coherent approach to public transport planning, procurement, and funding.

How will the new arrangements be implemented?

319. The preferred option will be implemented through changing the definition of public transport services, changing the definition of a unit, and removing the exclusivity requirement in the LTMA. Waka Kotahi will then be responsible for developing relevant operational policies for on-demand public transport services. PTAs will be responsible for including on-demand public transport services in their RPTPs, updating their procurement strategies, and for administering exemptions.

How will the new arrangements be monitored, evaluated, and reviewed?

320. The Ministry will monitor the implementation of the proposed Sustainable Public Transport Framework from a policy perspective, and Waka Kotahi will also monitor and evaluate implementation of the Framework at an operational level. There will be a review of the Sustainable Public Transport Framework in the future as part of good policy practice.

321. Increasing use of on-demand public transport services is part of an ongoing shift in transport towards shared mobility. As technology evolves, there is potential for shared mobility to displace existing transport modes, or it may be that these services become complementary to existing transport modes. The Ministry is actively monitoring developments in this area and anticipates policy will evolve as these markets develop and mature.

Issue 7: Minimum notice period for the withdrawal of exempt services

322. Under PTOM, public transport services are either contracted to a PTA or operate under an exemption. Exempt services operate on a fully commercial basis. The operators of these services are free to set their own fares and timetables. These services do not receive operational funding from the NLTF (although some of these exempt services receive SuperGold funding or funding for concessionary fares). Exempt services must be registered with PTAs, noting some commercial services that pre-dated PTOM have been granted exemptions under transitional provisions in the LTMA.

323. Examples of exempt services include the Waiheke Island and Devonport ferries, the Wellington Cable Car, and InterCity bus services.

324. Some exempt public transport services have been designated as 'integral' to their public transport network by PTAs in their RPTPs.[22] Where a service is integral to public transport networks it is likely that a PTA would likely choose to contract these if they ceased to operate commercially.

325. Exempt services status can be removed through two mechanisms:

- The LTMA provides for exemption to be removed through Order in Council provided the tests in the LTMA are met. This Order in Council power has not been used since PTOM was introduced.
- Operators may choose to withdraw an exempt service, with 15 working days' notice.

326. Through the PTOM review, several issues were raised with the process for registering, varying and withdrawing exempt services, including:

- Inconsistent registration process across PTAs,
- The 15 working day notice period for withdrawal,
- A lack of clarity over how the Order in Council process should be initiated, and
- Suggestions that the criteria governing the Order in Council process are too narrow.

327. As part of the proposed SPTF, the Government is proposing these issues be addressed through a combination of operational policy and regulatory change. The key regulatory changes are related to the Order in Council process and notice period for withdrawal. The changes to the Order in Council process have been assessed as having minor regulatory impacts and are, therefore, not addressed in this RIS.

328. The rest of this section focuses on proposed changes to the minimum notice period for withdrawal.

What is the problem definition?

329. Currently, exempt public transport services can be withdrawn by an operator with 15 working days' notice to the relevant PTA. This includes services identified as integral in that region's RPTP.

330. The 15 working day notice period may not provide sufficient time to allow PTAs to negotiate with the operator, or to find a new operator, if the PTA wishes the public transport service to continue or to secure funding. If a public transport service is ceased, this can cause disruption to the community. 15 working days may also not be a practical period in which to find an alternative operator, giving the incumbent operator considerable leverage in any negotiations to retain the service.

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[22] Examples of integral exempt services include certain ferry services to Waiheke Island, Devonport and Great Barrier Island.

331. Any extension of the notice period needs to achieve a balance so that operators are not forced to maintain a loss-making service indefinitely, but also that PTAs and communities are not faced with the prospect of losing an integral service with too short a notice period for PTAs to respond effectively.

What options are being considered?

332. Three options are being considered to address the problem definition:

- Option One: Status Quo – 15 working days' notice period,
- Option Two: 60 working days' notice period for integral exempt services, and
- Option Three: 60 working days' notice period for all exempt services.

333. The options are described in more detail below.

Option 1 – *Status Quo maintain 15 days' notice period*

334. Under the status quo, the LTMA requires an operator to give 15 working days' notice before it can withdraw an exempt service.

Option 2 – *Extend notice period to 60 days for integral exempt services*

335. Option Two would extend the notice period to 60 working days for integral exempt services and leave the notice period at 15 working days for all other exempt services. Integral exempt services are those public transport services identified as such in the region's RPTP.

Option 3 – *Extend notice period to 60 days for all exempt services*

336. Under Option Three, the minimum notice period would be increased to 60 working days for all exempt services.

What options were considered and have been ruled out?

337. Other variations of Option Two and Three have been considered, including different minimum notice timeframes ranging from 30-180 days. The upper bound of this range was ruled out as it would result in operators being obliged to run a potentially loss-making service for extended periods of time. This could be seen as unreasonable and, in practice, may be difficult to enforce.

Consultation

338. The sector was consulted on this issue through the Discussion Paper. AT noted the short notice period is a significant risk as it effectively means the incumbent operator has to be contracted to maintain the service. AT noted that a significantly longer notice period is required to allow it to secure the funding and an appropriate operator to deliver the service once the current operator withdraws. AT proposed a notice period of 180 days. As noted above, this length of minimum notice period was ruled out.

How do the options compare to the status quo?

	Option One – *Status Quo maintain the existing principles*	**Option Two – *60 day notice period for integral exempt services (Ministry's preferred option)***	**Option Three – *60 day notice period for all exempt services***
Cost of compliance	0	- May be obliged to operate a loss-making service for longer	- - Option Two but on a greater scale
Impact on operator market	0	0 Marginal increase in risk for operators	- Increases risk across a wider range of exempt services
Ease of implementation	0	0 Modification to existing process	0 Modification to existing process
Certainty	0	+ More time to negotiate with incumbent or secure an alternative operator	+ Same as Option Two, but across a wider group
Alignment with objectives	0	+ Less risk of loss of service / more time to negotiate so better opportunity to achieve value for money outcomes	+ Same as Option A
Overall assessment	0	+ Preferred option as it achieves broader outcomes of the SPTF, while adding minimal costs	-

Key for qualitative judgements:

- ++ much better than doing nothing/the status quo/counterfactual
- \+ better than doing nothing/the status quo/counterfactual
- 0 about the same as doing nothing/the status quo/counterfactual
- \- worse than doing nothing/the status quo/counterfactual
- \- - much worse than doing nothing/the status quo/counterfactual

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

339. The preferred option is Option Two. The Ministry's assessment is that Option Two delivers an improvement over the status quo when assessed against the criteria. The Ministry's view is Option Two strikes a reasonable balance between the interests of operators and the wider community. While extending the notice period will increase compliance costs for operators in some circumstances, restricting this extension to integral services should mitigate this impact.

340. Option Two also aligns with the policy objectives, which emphasise public transport reliability to support mode shift as well as value for money.

341. Extending the notice period for integral exempt services only keeps the proposed regulatory change focused on the services most important to the community. Compared to Option Two, Option Three has greater risks in terms of adverse impacts on the operator market, given it would apply across exempt public transport services.

What are the marginal costs and benefits of the option?

342. The table below considers the impacts from both Option Two compared to the status quo.

Affected groups *(identify)*	**Comment** *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence Certainty** *High, medium, or low, and explain reasoning in comment column.*
	Additional costs of the preferred option compared to taking no action		
Waka Kotahi	One-off costs to develop operational guidance on processes relating to exempt services	Low	Medium certainty – new guidance required.
Operators	Operators of integral exempt will have less flexibility, and may be financially burdened if required to maintain a loss-making service for a longer period. The longer notice period may increase the risk of doing business, which could adversely affect the operator market.	Low-medium	Medium certainty – operators of integral services have less flexibility, but can plan around this requirement to reduce costs. The impact of increased risk is difficult to assess (e.g. operators may already make decisions to end a service well ahead of giving notice of withdrawal) and impacts may be marginal.
Others	N/A	N/A	N/A
Total monetised costs	Not known	N/A	N/A
Non-monetised costs	The longer minimum notice period potential imposes addition costs on operators in some circumstances and has the potential to increase risk.	Low	Medium certainty – operators of integral services will have less flexibility than under the status quo, but the extent of any impacts is difficult to predict.

Affected groups *(identify)*	**Comment** *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence Certainty** *High, medium, or low, and explain reasoning in comment column.*
Additional benefits of the preferred option compared to taking no action			
PTAs	Greater flexibility from the increased notice period, which provides more of an opportunity to negotiate with the operator or contract a new operator. As this increases a timeframe for an existing process, there would be limited implementation impacts.	Medium	High certainty – avoids PTAs having to contract the same operator back on a potentially costly interim contract or service disruptions.
Users	There is likely to be reduced potential for disruption to users as the increased notice period allows PTAs more time to contact a new operator.	Low	High certainty – longer notice period provides PTAs with a greater opportunity to find an alternative operator/ensure service continuity.
Total monetised benefits	N/A	N/A	N/A
Non-monetised benefits	Some benefits anticipated to PTAs and users in terms greater continuity of service/opportunity to negotiate	Low-medium	High certainty

343. The marginal costs associated with Option Two are likely to be modest. There are few integral, exempt services around the country, noting some of these are commercially significant operations, such as the Waiheke and Devonport ferries.

344. Option Two may raise the perceived risk of operating a purely commercial public transport service (as operators have less commercial flexibility), potentially discouraging entry into the market or investment relative to the status quo. We anticipate a requirement to provide 45 additional working days' notice to withdraw a service would be factored into business planning to mitigate risk and impacts. Operators would still have flexibility to vary their services with 15 days' notice to PTAs.

345. Exempt services not currently identified as integral would not be directly affected by Option Two. While there is a risk to those operators of those services being identified as integral in the future, there is an opportunity for Waka Kotahi and operators to comment on draft RPTPs and to challenge PTAs who propose classifying a service as integral without a sound rationale.

346. We anticipate 60 days' notice will realise marginal benefits by providing greater confidence that integral exempt public transport services will not be withdrawn at short notice. Further, it provides 45 additional working days for PTAs to negotiate with the incumbent or a new provider. This makes it more likely that a service can continue without significant disruption, and that value for money is achieved – if the PTA wants that service to continue.

How will the new arrangements be implemented?

347. Option Two will be implemented through amending the LTMA to change the notice period for integral exempt public transport services only.

How will the new arrangements be monitored, evaluated, and reviewed?

348. The Ministry will monitor the implementation of the proposed SPTF from a policy perspective, and Waka Kotahi will also monitor and evaluate implementation of the Framework at an operational level. There will be a review of the SPTF in the future as part of good policy practice.