JacksonStone House
3-11 Hunter Street
PO Box 1925
Wellington 6140
New Zealand

Tel: 04 496-6555
Fax: 04 496-6550
www.businessnz.org.nz

BusinessNZ
GROWING PROSPERITY AND POTENTIAL

2 November 2018

Chris White
Infrastructure Body Consultation
The Treasury
PO Box 3714
WELLINGTON 6140

via email: infrastructure@treasury.govt.nz

Dear Chris

A New Independent Infrastructure Body

BusinessNZ is pleased to have the opportunity to provide a submission to The Treasury on its consultation document entitled 'A New Independent Infrastructure Body' dated October 2018, and released on 8 October 2018.[1]

We are grateful to the Treasury for agreeing to accept this as a late submission.

Background

BusinessNZ welcomes the on-going focus of the Government on infrastructural planning and implementation issues. While progressive improvements have been made over recent years more needs to be done, with a renewed and welcome focus on the public sector governance arrangements. Current arrangements, while an incremental improvement have, to date, let New Zealand's transport and other infrastructure fall behind the demands being made upon it by our economic expansion and positioned us poorly, relative to our trade-competitors, to weather future adverse economic conditions should they transpire.

However, this does not mean that New Zealand should now lurch towards the centralised development of infrastructure. In our view, this has as many (if not more) pitfalls than the status quo. Finding the right balance is the challenge for the Government and the Treasury.

In this regard, BusinessNZ strongly supports the creation of an independent infrastructure body as such a balanced move and has been advocating for such an entity since 2010. It was around then that it became clear while the then new National Government recognised that economic growth was placing infrastructure across the board under pressure, and had established a National Infrastructure Unit ('NIU') within the Treasury, that frustrations, especially in the private sector around

[1] Background information on BusinessNZ is attached in Appendix One.

the planning, procurement and execution of infrastructure were symptomatic of underlying, or endemic limitations with the governance arrangements that an NIU could not satisfactorily resolve.

The Core Problem

The core problem with these limitations lay in the inefficient allocation of decision-rights which undermined the confidence of businesses to invest and create jobs.

Governance arrangements essentially boil down to where the decision-rights lie. Risks have arisen because of the concern that the closeness of the NIU to the government in the development of the plan makes it subject to political expediency. The possibility that political preferences rather than the concrete costs and benefits of the contents of an infrastructure plan could play a role in its development is a real drawback to the current arrangement.[2] It is important to point out that this is not a problem of the quality of the resources available to the NIU, rather the signaling to the market that the arrangement sends and the incentives these signals give rise to.

This undermines the confidence of the business sector in the longevity, or durability of both the framework under which the NIU operates and substance of what it focuses on.[3]

The way forward

As noted above, we support the establishment of an independent infrastructure body. In doing so, we have the following comments to help shape the new institution:

a. entity scope: the scope of the new body needs to be carefully considered, and again, balance is required. There are a number of dimensions to this:

    i. on the one hand it needs to avoid becoming a new centralized, *de facto* ministry of works that resulted, for example, in the building of power stations in the wrong place and at costs that are still not being met today.[4] On the other hand, it also needs to avoid simply being an aggregator and synthesizer of information without having accountability for the delivery of certain outcomes. We currently have this with the NUI;

2 This was not helped by the apparent and progressive diminishment in status of the NIU, moving from a semi-autonomous internal unit with its own Executive Director, to that of a line function.

3 While supportive of the proposal, we wish to point out the irony that the suggested changes give testament to the very concerns about the absence of durability of the current arrangements. In light of this, we hope that some effort is being taken to engage with the opposition around its support or otherwise of the proposals otherwise their efficacy will be undermined from the outset should a measure of bipartisanship for the existence of a separate independent entity not be secured.

4 We refer the reader to Galvin B, Secretary to the Treasury, Review of Electricity Planning and Electricity Generation Costs, (Treasury Paper to the Minister of Finance, Wellington, March 1985 [otherwise known as the McLaughlin Report]).

ii. we would expect the entity to have a strategic role over the entire economy, but be cognisant that much of New Zealand's infrastructure is driven by consumer choice, such as in the electricity and communications markets.[5] To do this, the new entity must have a clear objective. We suggest that the primary driver of the new entity is about infrastructure as an enabler of economic development and the creation of wealth and prosperity for all New Zealanders. Therefore, we would suggest something along the following lines:

> "to promote and facilitate sustainable, productive and efficient infrastructure decisions and actions that are in the best long term interests of all taxpayers."

The importance of a clear, and preferably single purpose objective statement was a key lesson from the experience of the predecessor to the Electricity Authority, the Electricity Commission.

iii. in contributing towards a more productive economy, a key element to this is the delivery of a consistent and coherent infrastructure development policy framework for business. There are two aspects to this:

- it should help inform investment decisions. Investors (particularly overseas investors) will look to the work of the entity to gain confidence that the expected pattern of future infrastructure development is robust relative to other jurisdictions. While judgement will inevitably be required by investors, they will look for the removal of uncertainty that arises from such factors as regulatory opportunism and the absence of policy stability; and

- it should facilitate businesses (from financial institutions to engineering firms and construction companies) to marshal their international and domestic resources more efficiently. Evidence of a 'deal-flow' or pipeline of projects in some sectors would be helpful. If business is expected to assist the government deliver the infrastructure, relatively clear messages signalling investment in capability and capacity development are required;[6]

iv. the entity may not (in fact should not) be the provider of all things infrastructure but it must be a focal point for both government and

---

[5] Indeed, while a small point, the prominent use of a picture of a wind turbine in the consultation documents had some in the electricity sector, already under scrutiny by the Ministerial Electricity Price Review, raise the question about the extent to which the electricity sector would come under the purview of the entity. This just signals that care is required when thinking about the nature of the infrastructure assets under the purview of the new entity and their ownership.

[6] It is important to point out that while this statement is made in the context of infrastructure policy settings it also has implications for the Government's wider policy settings. While infrastructure settings can help, much if not more can be done to encourage or discourage investment arising from such things as changes to the regulation of overseas foreign direct investment and the decision to ban new offshore oil and gas permits.

business if it is to successfully deliver improved infrastructure outcomes for New Zealand. For example, should be linked into strategies for skills availability and training and literacy. While not an integral part of the Infrastructure Plan per se, a corollary to the 'deal-flow' point above is that the government's strategic objectives for the education and training sectors and immigration are aligned with its infrastructure development goals.[7] It must be the role of the new entity to point out these and other policy framework shortfalls out insofar as they relate to infrastructure provision; and

v. the entity must have a sectoral capability building function. While some elements of the infrastructure sector operate well, others as they relate to procurement skills are patchy, at best. This 'patchiness' imposes unnecessary costs both within the public sector but also the private sector as resources are used inefficiently;

b. independence: independence matters, a lot. A second key lesson can be taken from the experience of the Electricity Commission was its lack of independence (it was required by its statute to "give effect to" the government policy statements ['GPS's] that were issued). This gave rise to two immediate problems:

   i. the political drivers rather than market drivers that sat behind the GPS's. This often meant that they lacked any overall strategic coherence or direction, and often had elements that were at best in conflict or at worst, irreconcilable. As a result, the Electricity Commission:

      - struggled to keep pace with the growing delivery expectations it faced (the GPS's often exceeded 15 pages in length and covered every aspect of the electricity market); and

      - ended up pleasing no-one; and

   ii. the politicisation of the entity created poor incentives for market participants which meant that they saw, as a legitimate strategy to ignore the Electricity Commission and instead 'play' the political market, rather than the electricity market. This undermined the Electricity Commission.

The upshot of the absence of independence resulted in elected officials taking on accountability for detailed operational aspects of the electricity

7 For example, previous experience among the business community suggests that one arm of government creates skill demands in the private sector (e.g. through increased spending on rail and other infrastructure) that are not adequately supported by the other arm through allocations to industry training (or the wider education and training system). This is further complicated as government determines (among a number of other things) the number of students funded through a particular tertiary education organisation (e.g. a university, polytechnic, private training establishment, or industry training organisation). Therefore, the ability of the Tertiary Education Commission (i.e. government) to link funding decisions to industry need in recent years has been hampered by inadequate funding mechanisms and a lack of clear results focused accountability. The quality of education and training provision has been, and continues to be, an ongoing concern for business. Care must be taken to ensure that skills provision is focused on quality (e.g. education and training that produces value for business and employees).

market (such as the day-to-day management of dry year risk) which was inappropriate given the strong presence of asymmetric information.[8]

In terms of some of the more practical, detailed arrangements associated with the execution of independence, BusinessNZ would suggest the adoption of a suitable mix of governance checks and balances that make political expediency more difficult and compensate for such factors as the absence of political bipartisanship and a positive 'track-record'.[9] For example:

i. the creation of an Infrastructure Act that would:

   - provide for the statutory underpinning of specified roles and functions of the entity, including the recommendation of strategy and priorities, and its ability to freely engage with stakeholders and media;

   - embed the public policy principles required to be demonstrated in the entity's delivery of its roles and functions; and

   - embed some duties and obligations of the relevant Minister with respect to the acceptance or not of the advice of the entity;[10] and

ii. higher organisational status for the entity, including direct, rather than diluted accountability to the relevant Minister and the appointment of a Chief Executive; and

iii. strong private sector participation in its governance;[11] and

c. international comparators: current the New Zealand infrastructure governance arrangements are not completely novel when assessed against a range of international comparators. A strong Government role in the

---

[8] For a fuller examination of the inappropriateness of the governance arrangements under which the then Electricity Commission operated we refer the reader to a report prepared by the then LECG (now Sapere Research Group) for BusinessNZ entitled: 'Determining outcomes or facilitating effective market processes: a review of regulation and governance of the electricity sector' and dated 4 February, 2009. A link to this report follows:

https://www.businessnz.org.nz/__data/assets/pdf_file/0007/74716/Regulation-and-governance-of-electricity-sector.pdf

[9] It is naive to think that it is either possible, or in fact desirable to remove the prospect of political involvement, and neither should that be the objective as this implies an ability to over-ride the wishes of the Government of the day. Instead, the objective should be to make this transparent when it occurs relative to the framework the entity operates under.

[10] For example, it is likely to be appropriate that within a specified timeframe, the Minister publicly respond to the entity with an explanation of deviations from the advice of the entity with the consequential identification of the impact of the deviations on the outcomes sought.

[11] One suggestion that warrants further consideration should the idea of an Infrastructure Act gain traction is that the private sector be provided with the right to appoint some members of the proposed Infrastructure Advisory Board. For example, that BusinessNZ be provided with the right to nominate one representative to the Board. Specific nomination rights are not a completely novel idea, being initially proposed for the appointment of the Electricity Authority in 2010.

exercise of decision-rights is evident. However, there is reasonably clear evidence of the presence, in some overseas jurisdictions, of factors specific to either the overseas jurisdictions or the New Zealand arrangement that would warrant changes to our existing governance arrangements, despite New Zealand's similarity to the overseas arrangements. This includes evidence, for example, of non-governance factors, such as political bipartisanism and a strong bureaucratic tradition meant that the governance arrangements of overseas jurisdictions are informative, but they must not be seen as determinative. The absence of these non-governance factors in New Zealand suggest that despite what might be seen as similarities with overseas governance arrangements, a loosening of the Government's grip on decision-rights is needed to address the problems identified. It is important, therefore, that we are informed by the experiences and institutional arrangements in overseas jurisdictions but they must not be seen as determinative. The goal must be to have a governance arrangement that is appropriate to New Zealand circumstances, that addresses the problems that have been identified in New Zealand.

Summary

Decision-making by elected officials is inevitable and, indeed, appropriate for many (but not all) infrastructure decisions. The Government will always retain ultimate decision-rights about spending on the infrastructure it owns. However, it is desirable that swings in policy positions be avoided unless they can be substantiated by analysis. Since 2008 we have seen political decisions about the provision of broadband, roads, and now rail. Without commenting on the efficacy of these decisions, we note that dramatic policy swings politicises the infrastructure market, undermines business confidence in its ability to plan and secure finance and ensure suitable skills are available.

A new independent entity tasked with a role in formulating recommendations on infrastructure strategy and priorities will help counter-balance the short-term incentives of elected officials and, in bringing a real sense of authoritativeness about current and future outcomes and service levels, will advance the interests of all New Zealanders. BusinessNZ would support such an entity.

BusinessNZ looks forward to assisting the Treasury as it develops the roles, functions and powers of the new entity.

Yours sincerely

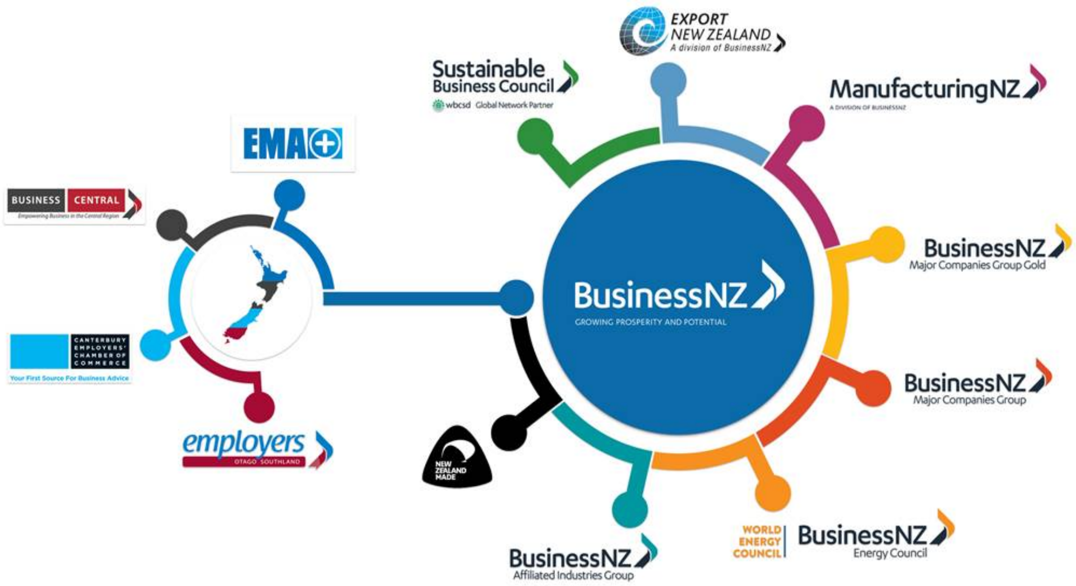
John A Carnegie
Executive Director, Resources and Infrastructure
BusinessNZ

APPENDIX ONE: ABOUT BUSINESSNZ

BusinessNZ is New Zealand's largest business advocacy body, representing:

- Regional business groups EMA, Business Central, Canterbury Employers' Chamber of Commerce, and Employers Otago Southland
- Major Companies Group of New Zealand's largest businesses
- Gold Group of medium sized businesses
- Affiliated Industries Group of national industry associations
- ExportNZ representing New Zealand exporting enterprises
- ManufacturingNZ representing New Zealand manufacturing enterprises
- Sustainable Business Council of enterprises leading sustainable business practice
- BusinessNZ Energy Council of enterprises leading sustainable energy production and use
- Buy NZ Made representing producers, retailers and consumers of New Zealand-made goods

BusinessNZ is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy. In addition to advocacy and services for enterprise, BusinessNZ contributes to Government, tripartite working parties and international bodies including the International Labour Organisation (ILO), the International Organisation of Employers (IOE) and the Business and Industry Advisory Council (BIAC) to the Organisation for Economic Cooperation and Development (OECD).



www.businessnz.org.nz