

UNCLASSIFIED

Rt. Hon Winston Peters, Minister for Racing

Proactive release of Cabinet material regarding the Racing Industry Bill 2019

5 December 2019

These documents have been proactively released:

11 November 2019, CAB-19-MIN-0574 Minute: Review of Racing: Paper 3 – Racing Industry Property; and

11 Nov 2019, Cabinet Paper: Review of Racing: Paper 3 – Utilising Racing Industry Property to Support Industry Revitalisation.

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant sections of the Act that would apply have been identified. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Key to Redactions:

- **Budget sensitive**
- **Section 9(2)(f)(iv)** - the confidentiality of advice tendered by Ministers of the Crown and officials
- **Section 9(2)(h)** – legally privileged



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Review of Racing: Paper 3 - Racing Industry Property

Portfolio Racing

On 11 November 2019, following reference from the Cabinet Economic Development Committee, Cabinet:

Government intervention is necessary to empower the racing industry to overcome historic barriers

- 1 **noted** that government intervention is required to act as a circuit-breaker to empower the racing industry to overcome the historic barriers contributing to its decline identified in the report *Review of the New Zealand Racing Industry*, John Messara, 31 July 2018 (the Messara Report);

A different approach is recommended to achieve the property outcome recommended in the Messara Report

- 2 **noted** that while the Messara Report's recommendation that the refurbishment of retained venues be funded from the proceeds of surplus venues is supported, the approach proposed in the paper under CAB-19-SUB-0574 differs from the Messara Report's recommendation that legislation vest ownership of all venues in codes;
- 3 **noted** that the future of the venues proposed for closure by the Messara Report (and other venues) has not yet been decided by the codes;

Two property objectives are proposed to guide the contribution of racing property to industry revitalisation

- 4 **agreed** that the following two property objectives be included in the purpose statement of the Racing Act 2003 (the Act) to guide decision-making regarding racing property:
 - 4.1 the value of racing property should be retained in the industry;
 - 4.2 the value of racing property should be used for maximum industry benefit;

Agreement by negotiation is the best way to decide the vesting of surplus venues, where this is possible

- 5 **agreed** that, where possible, the Future Venue Plan process (an industry-led negotiated agreement between clubs and codes) be the preferred method to identify and determine the vesting of surplus venues;

- 6 **noted** that the Racing Industry Transition Agency has indicated the Future Venue Plan process will include the opportunity for local community groups to indicate any interest in surplus venues;
- 7 **noted** that negotiation between clubs and codes under the Future Venue Plan process will consider whether payments should be made from the proceeds of a surplus venue to:
- 7.1 a club that requires funding from the sale of a surplus venue to enable it to race at another venue; and/or
- 7.2 the local community if it has a valid interest in the surplus venue (e.g. arising from the community having contributed to its upkeep, or the use of the venue for community purposes that will no longer be possible);
- 8 **agreed** that the Minister for Racing can make regulations to prescribe a process and criteria that codes must apply when negotiating with clubs about the use of surplus venues, having due regard to any community interest in the venue, if in the future there is evidence this is required to support revitalisation of the racing industry;
- 9 **agreed** that a statutory restriction be imposed on club property transactions without the club first obtaining code approval, which may be given generally or specifically and subject to any conditions, and be registered by the code against the land title;
- 10 **noted** that the proposed restriction referred to above would restrict club property transactions, including the sale of venues and the establishment of encumbrances such as trusts, mortgages and leases, and would override the powers of clubs to deal with assets under their constitutions;
- 11 **agreed** that the Minister for Racing can end the restriction by Order in Council, in response to a request from the industry;
- 12 **agreed** that agreements made between a club and its code regarding the utilisation of surplus venues should override club constitutions, where the two are inconsistent;

A statutory process of last resort is proposed as a backstop to decide disagreements about vesting surplus venues

- 13 **noted** that the Minister for Racing would only recommend an Order in Council in relation to a venue that the code has determined is surplus, and where the code and club have first attempted to negotiate in good faith to reach agreement on the future of the surplus venue;
- 14 **noted** that a formal application process is not proposed but that, in practice, the club, code or community could ask the Minister for Racing to consider recommending an Order in Council, or the Minister for Racing could initiate the statutory process on his or her own initiative;
- 15 **agreed** that a statutory process be established to decide disputes regarding the utilisation of surplus venues when agreement is not reached between a club and its code, including, but not limited to:
- 15.1 the Minister for Racing must appoint and take advice from a suitably qualified Reviewer, before recommending an Order in Council is made;
- 15.2 in reaching a decision, the Minister for Racing must consider any of the following factors:

- 15.2.1 the proposed property objectives (paragraph 4 above);
- 15.2.2 if the surplus venue is owned by clubs from more than one code, the relative interests of the clubs (and therefore codes);
- 15.2.3 whether the surplus venue is used by clubs that do not have an ownership interest in the surplus venue;
- 15.2.4 the ownership and value of the buildings and facilities at the surplus venue;
- 15.2.5 whether payments are warranted to the club and local community (paragraph 7 above);
- 15.2.6 any other factors the Minister for Racing considers relevant;
- 15.3 the Minister for Racing recommending an Order in Council to transfer property to the code, with payments to the club and local community where these are warranted;
- 15.4 the Order in Council may impose restrictions on the assets vested in the code, such as limiting their use to infrastructure development and maintenance at retained venues;
- 15.5 the Crown's costs of the statutory process will be fully recovered from the participants, with the Reviewer advising on the amounts to be met by the club, code and, if appropriate, any relevant local community groups;
- 15.6 the Order in Council can only provide for the transfer of land owned by the club and will not apply to land such as council land or reserve land, where the club does not have freehold ownership;
- 16 **agreed** that the statutory process include provisions enabling the transfer, including:
 - 16.1 registered encumbrances on the surplus venue are transferred to the code;
 - 16.2 all trusts on assets transferred to a code are extinguished on transfer;
 - 16.3 any transfer of assets will be without consideration (the transfer may be to a transferee without the transferor receiving in return any or an equivalent asset);

The proposed statutory process has features that support natural justice and equitable outcomes for clubs and communities

- 17 **noted** that Appendix B of the paper under CAB-19-SUB-0574 identifies the features of the proposed statutory process supporting natural justice and equitable outcomes for clubs and communities, including the Minister for Racing receiving advice from a suitably qualified Reviewer and the potential for payments to be made to the club and/or community;
- 18 **noted** that hiring the venue of another club for race days is a viable operating model, used by more than 40 clubs presently in New Zealand;

When a club winds-up, its assets should vest in its code body, to retain capital in the racing industry

- 19 **agreed** that when a club winds-up, its assets will transfer to the relevant racing code and that, if the club owns a venue, the code may decide to make a payment in recognition of community interests, consistent with paragraph 7.2 above;

- 20 **noted** that the transfer of assets to the code on wind-up will occur whether the wind-up results from a resolution of the club or following a direction of the code to the Registrar of Incorporated Societies, as provided below;

The codes should be able to direct the Registrar of Incorporated Societies to wind-up a club that does not race, so that club assets can be freed up for industry use

- 21 **agreed** that codes can direct the Registrar of Incorporated Societies to wind-up a club that does not race, having followed an appropriate process, including but not limited to:
- 21.1 criteria for a code to consider when making this decision;
 - 21.2 consistency with natural justice principles;
- 22 **noted** that where a code directs the Registrar of Incorporated Societies to dissolve a club that owns a venue, the code may decide to make a payment in recognition of community interests, consistent with paragraph 7.2 above;

The codes are best placed to manage the funds from surplus venues for infrastructure development at retained venues

- 23 **noted** that:
- 23.1 it is appropriate for codes to lead the use and management of infrastructure development funding, and for venue maintenance to sit with the club that owns or operates the venue;
 - 23.2 these matters do not require legislation;

Legislative implications

- 24 9(2)(f)(iv) [REDACTED]
- 25 **invited** the Minister to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above proposals;
- 26 **noted** that the Minister for Racing, in consultation with the Minister for Sport and Recreation and the Minister of Internal Affairs, has delegated authority to take any remaining policy decisions necessary to enable final drafting of the Racing Reform Bill (No. 2) [CAB-19-MIN-0560.01].

Michael Webster
Secretary of the Cabinet

Hard-copy distribution:
Prime Minister
Minister for Racing

Office of the Minister for Racing

Chair
Cabinet

Review of Racing: Paper 3 – Utilising Racing Industry Property to Support Industry Revitalisation

Proposal

1. Changes are proposed to maximise the contribution racing industry property¹ can make to the long-term financial sustainability of the racing industry. This paper seeks agreement to policy decisions for inclusion in the Racing Reform Bill No. 2 2019 (Bill No. 2).
2. This paper is one of a suite of four that will collectively provide the Government's final legislative response to the recommendations of the *Review of the New Zealand Racing Industry* (the Messara Report²). The other three papers are:
 - 2.1 Paper 1 - Overview of the Final Racing Industry Reforms;
 - 2.2 Paper 2 - Governance of the New Zealand Racing Industry; and
 - 2.3 Paper 4 - New Products and Strengthened Harm Prevention and Minimisation for TAB NZ.

Executive summary

3. This paper seeks policy approvals for the Government's legislative response to recommendation 12 of the Messara Report, which proposes government legislate to “vest race club property and assets to the code regulatory bodies”.
4. A package of changes to the ownership and utilisation of racing property is proposed. These proposals will provide the step-change necessary to enable the three codes³ to overcome historic barriers and drive the economic recovery of their industry.
5. Two property objectives are proposed for inclusion in the Racing Act 2003 (the Act) to guide decision-making by the industry:
 - 5.1 *the value of racing property should be retained in the industry; and*
 - 5.2 *the value of racing property should be used for maximum industry benefit.*
6. As identified in the Messara Report, the New Zealand racing industry is in decline and requires urgent action. It has too many racing venues and there is an opportunity for the industry to release capital currently in surplus venues⁴ to fund the refurbishment and modernisation⁵ of retained venues.

1 In this paper the word “property” primarily refers to freehold land at club-owned venues that have been assessed by the relevant code body as no longer required for racing (i.e. surplus venues) and includes the value of this property if it has been sold. However, on wind-up of a club, “property” refers to all net assets of the club including its freehold land, cash and investments.


2 [Review of the New Zealand Racing Industry](#), John Messara, 31 July 2018 (Messara).

3 The three racing codes are thoroughbred, harness and greyhound.

4 In this paper a “surplus venue” is a venue that has been assessed by the code as no longer required for racing. A venue comprises a race track and facilities, such as buildings.

5 Many venues require refurbishment of their tracks and/or modernisation of their facilities to support revitalising the racing industry. In this paper “refurbish” refers to both elements.

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7. While the Messara Report recommended legislation be used to vest all venues into code ownership, the approach proposed involves industry-led negotiated agreements between clubs and codes, with a statutory process of last resort created as a backstop to address the situations where agreement cannot be reached. It is not intended to legislate for the industry negotiation process. However, it is proposed that, if required, the Minister can prescribe in regulations a process and criteria that codes must apply when negotiating with clubs about the utilisation of a surplus venue.
8. Consistent with the two proposed property objectives, it is anticipated the bulk of the value of each surplus venue would vest in the code to fund the refurbishment of retained venues. However, payments to help a club race at another venue, and/or to recognise the local community interest in a surplus venue, may be made where warranted.
9. Two statutory provisions are proposed to support negotiation between clubs and codes: a restriction on club property transactions without the prior consent of the relevant code and a provision that agreements reached override the club's constitution, where the two are inconsistent.
10. As a backstop, if a club and a code can't agree the vesting of the surplus venue to the code, it is proposed a statutory decision-making process is available. This would provide for the Minister for Racing (the Minister), having received advice from a Reviewer, to recommend an Order in Council to allocate property to the code and payments to the club and local community if these are warranted. **Appendix A** contains a diagram illustrating how the utilisation of surplus venues would be determined to support industry revitalisation.
11. Two changes to club wind-up provisions are also proposed. Firstly, when a club winds-up, its capital should remain in the racing industry; and secondly a code can direct the Registrar of Incorporated Societies to wind-up a club that does not race. A payment to the local community may be appropriate when a club with a venue winds-up. These changes will help give effect to the two proposed property objectives.
12. The proposals in this paper have rights implications which are noted throughout the paper. ^{9(2)(h)}

13. While some may see venues as community assets, they are owned by racing clubs, within an overall racing code and only earn betting revenue because the relevant code grants a racing license. The racing industry contributes significantly to the upkeep of venues, including nearly \$10 million over the last five years, on top of over \$600 million in distributions to clubs from betting revenue by the three racing codes. Like clubs, the codes are incorporated societies, so surplus venues transferred to them will continue to be held and used for not-for-profit purposes.

A range of property issues currently holds the New Zealand racing industry back

14. The Messara Report noted several previous reviews and reports dating back to 1965 have identified property issues that are contributing to the decline of the racing industry in New Zealand. The racing codes have struggled to address historic issues such as:

14.1 too many race tracks for the size of the country and volume of racing activity;

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- 14.2 many facilities not being fit for purpose, with infrastructure development required to resolve an accumulation of deferred property problems;
 - 14.3 barriers to freeing up the capital associated with venues no longer required for racing, to benefit the wider racing industry; and
 - 14.4 a history of under investment in venue maintenance.
15. Current racing infrastructure requires significant upgrades to ensure, for example:
 - 15.1 a good track surface (which enables more races at the venue, reduces random race outcomes, supports increased betting revenue and provides health and safety benefits for participants and animals);
 - 15.2 right-sized facilities, without surplus capacity that can be expensive to maintain;
 - 15.3 good on-course hospitality that provides a positive customer experience, e.g. clear signage, good food, toilets etc;
 - 15.4 the contracted number of race meetings, with races starting on time; and
 - 15.5 modern facilities that enable clubs to maximise non-racing revenue, e.g. through community hires on non-race days.
 16. Resolution of these property issues is essential for the industry to pivot towards a more commercial operating model and long-term financial sustainability.

The Messara Report recommended government legislate to “vest Race Club property and assets to the Code regulatory bodies”

17. The Messara Report (recommendation 12) identified that retained venues can be upgraded by utilising the proceeds from venues no longer required for racing and some club co-funding. Refurbished venues with better race surfaces can enable more races to be run at a smaller number of venues, therefore reducing maintenance overheads and increasing betting revenue. It noted it is generally not feasible for clubs to modernise their venues from existing revenue streams in a timely way to help drive the economic recovery of the industry.
18. Of the 69 venues in New Zealand⁶ the Messara Report recommended 48 active thoroughbred race courses be reduced to 28. However, the future of the venues proposed for closure by the Messara report (and other venues) has not yet been decided by the codes.
19. The rateable land value for all freehold venues totalled \$171 million in 2016. This is likely to significantly under-state the true commercial value of the properties because a venue that could be subdivided into residential properties would be worth considerably more than its rateable value as a racing venue. The Messara report indicated that funding from surplus venues would be sufficient to refurbish retained venues.

⁶ The 69 venues comprise the 48 venues discussed in the Messara report plus a further 21 venues for: harness racing (8), greyhound racing (2), combined greyhound and harness racing (4), one combined thoroughbred training and harness racing venue, thoroughbred training (4) and harness training (2). The 48 venues in the Messara report comprise thoroughbred racing (23), thoroughbred and harness racing (24) and one joint thoroughbred, harness and greyhound racing venue.

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20. To enable surplus venues to be used in this way, the Messara Report (recommendation 12) suggested government legislate to “vest Race Club property and assets to the Code regulatory bodies”. However, this one-size-fits-all approach would remove any opportunity for clubs to reach voluntary agreements with codes on vesting surplus venues. It would also transfer unwanted obligations to the codes in respect of retained venues (e.g. health and safety, maintenance and insurance) and would have significant implementation difficulties.

Empowering the industry is preferred to the legislative approach recommended by the Messara report

21. While the intention of Messara Report recommendation 12 is supported, a different approach is proposed to achieve similar outcomes. This involves:
 - 21.1 two property objectives to guide decision-making regarding racing property;
 - 21.2 the existing industry-led Future Venue Plan (FVP) process using good faith negotiation, to identify surplus venues and achieve agreement between clubs and codes on their utilisation;
 - 21.3 a statutory process of last resort, as a backstop to decide disputes if agreement cannot be achieved; and
 - 21.4 amended club wind-up provisions to retain assets in the racing industry.
22. **Appendix A** contains a diagram illustrating how the utilisation of surplus venues would be determined to support industry revitalisation. While much of the necessary change can be implemented by the racing codes using commercial arrangements, legislative change is necessary to act as a circuit-breaker to empower the racing codes to drive the reforms.
23. All racing codes would benefit from the proposals in this paper, to the extent they will be able to raise funds from the sale of surplus venues. The greyhound code’s clubs hold comparatively little property and as a result the code does not stand to gain materially from the proposed property reforms. Nevertheless, it is intended the proposals in this paper be applied to all codes, as all may benefit to some degree.

Vesting surplus venues to codes will help increase the significant betting revenue that flows to clubs, race participants and their communities

24. While some may see venues as community assets, which may have been maintained by the local community, the racing industry has also contributed significantly to venues. For example, over the five years from 2014/15 to 2018/19 nearly \$10 million has been put into venues from various industry sources, on top of payments from codes to clubs totalling over \$600 million. Despite venue closures those clubs that continue to race are expected to have lower costs overall and increasing income over time with the economic recovery of the industry.
25. Currently more than 40 clubs do not own a venue and race at venues owned or operated by another club. This is a viable operating model. One example is the Awapuni venue, owned by the Manawatu Racing Club and also raced at by the Marton Jockey Club, the Rangitikei Racing Club and the Fielding Jockey Club. These three clubs moved to Awapuni in 1980, 1969 and 1999 respectively, generally because they could not afford to maintain their own venue. These clubs say that today they are in good health.

Two property objectives are proposed to guide the contribution of racing property to industry revitalisation

26. Forty-three of the current 63 racing venues⁷ are owned freehold by race clubs (with most of the balance on leased or reserve land). Two key objectives have been identified to guide decision-making regarding racing property:
- 26.1 *the value of racing property should be retained in the industry* – the value of club property should be retained in the industry for revitalisation and not be distributed for other purposes, unless this is warranted to enable the club to race at another venue, and/or to recognise the community interest in a surplus venue (see paragraph 34); and
- 26.2 *the value of racing property should be used for maximum industry benefit* – e.g. if a club's venue is no longer required for racing, then the proceeds from the surplus venue should be able to be used by the associated racing code to refurbish retained venues, which will help drive industry revitalisation.
27. These property objectives recognise the viability of the racing industry depends on the retention and optimal use of capital within the industry. It is proposed the property objectives be included in a new purpose statement for the Act.
28. The first property objective (the value of racing property should be retained in the industry) could challenge the views of some who may see the local community having an interest in the club's assets (e.g. if the community has contributed to a venue through working bees, etc). As discussed below, when there is a demonstrable local community interest in a surplus venue, a one-off payment to it may be appropriate and should be considered.
29. Venues and other assets are held by clubs, which are incorporated societies whose members have no pecuniary interest in the assets of the club. Club members can continue to derive utility from the venue proceeds by participating at retained venues that will be revitalised.
30. The proposed property objectives are given effect through proposals in this paper to:
- 30.1 realise the opportunity to use surplus venues to refurbish retained venues; and
- 30.2 amend club wind-up provisions to retain capital in the racing industry and support its use for maximum industry benefit.

Agreement by negotiation is the best way to decide the vesting of surplus venues, where this is possible

31. The FVP process involves the three racing codes assessing venues against criteria to decide which venues are no longer required for racing (i.e. are surplus). The relevant code will then engage with the club concerned regarding why the venue is surplus, whether the club wants to race at an alternate venue or not, and the use of any potential funds from the sale of the surplus venue. The FVP process also includes a negotiated process to resolve any dispute about the use of funds from the sale of the club's surplus venue.

⁷ Excludes 6 training venues. There are 69 venues in total.

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32. Where a venue is used or owned by more than one code, the interests of the respective codes will need to be factored into the negotiations. The proceeds will be shared among those codes according to the proportion each has in freehold ownership. This will mean a code whose club leases the venue or owns only buildings will gain little or no benefit from the surplus venue.
33. The FVP is an industry-led commercial process, conducted in good faith. It is an example of the industry starting to undertake the necessary pivot to a more commercial operating model. It is not proposed to set out the details of the FVP process in legislation. However, it is proposed the Act contains provisions to enable the Minister to prescribe in regulations a process and criteria that codes must apply when negotiating with clubs about the use of a surplus venue. The regulations would be made if in the future there is evidence this is required to support the revitalisation of the racing industry. The process would require the code to have due regard to any local community interest in the surplus venue.

A Future Venue Plan agreement may include payments to allow a club to race at another venue or in recognition of a community interest in a surplus venue

34. It is expected the FVP process will generally result in ownership of surplus venues being transferred to a code or, if it has been sold, the bulk of the proceeds being transferred to the code. The code will use the proceeds to enable it to enhance facilities and tracks at retained venues. However, the code may decide it is appropriate to provide one-off payments to:
 - 34.1 a club that requires funding from the sale to enable it to race at another venue; and/or
 - 34.2 the local community if it has a valid interest in the surplus venue (e.g. arising from it having contributed to the upkeep of the surplus venue or its use of the surplus venue that will no longer be possible).
35. These payments, if any, would be negotiated and agreed through the FVP process.⁸ Consistent with the proposed property objectives, it is anticipated payments would be made where there is a compelling case for it.
36. The Racing Industry Transition Agency (RITA)⁹ has indicated where venues are identified as surplus, the FVP process will include opportunity for local community groups to indicate any interest. This may include persons or groups that use the surplus venue for community purposes, as well as others that may be interested in purchasing some or all the surplus venue if it is later sold by the code.

The Future Venue Plan process would benefit from two supporting amendments

37. Two legislative amendments are proposed to support negotiations between clubs and codes regarding the utilisation of surplus venues:
 - 37.1 a statutory restriction requiring all clubs to obtain code approval for property transactions; and
 - 37.2 a provision that agreements made between club and code would override club constitutions, where the two are inconsistent.

⁸ Payment to the local community through the FVP process may be money or in kind. For example, it could be a small gift of land to enable the community to establish facilities they would otherwise lose, like a scout hall for example.

⁹ RITA is the successor Agency to the Ministerial Advisory Committee and the New Zealand Racing Board.

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A statutory restriction on club property transactions should apply

38. It is proposed legislation provides for a statutory restriction on club property transactions, unless a club obtains code approval. The restriction would override powers of clubs to deal with assets under their constitutions. The transactions restricted would be those that limit the codes' ability to refurbish retained venues from the proceeds of surplus venues. These transactions include the transfer or sale of venues and the establishment of encumbrances such as establishing or extending mortgages and leases. To protect third parties the codes would register the restriction against affected land titles.
39. To reduce bureaucracy, the legislation would enable the code to approve property transactions generally or specifically and subject to any conditions. It is intended the code could contact clubs and authorise property transactions generally with no further approval needed from the code. This approval could also be for a specified term or be subject to any other conditions (such as relating only to a certain property, or a certain transaction).
40. While the compliance costs imposed on the industry by the proposed restriction are not expected to be significant, it is proposed the Minister be able to end the restriction by Order in Council, in response to a request from the industry. For example, if the FVP process is complete and the compliance costs associated with the restriction are no longer justified.
41. Such a restriction would support the achievement of the two proposed property objectives in paragraph 26 by empowering codes to prevent property being disposed of outside the racing industry and by helping to maximise the capital that codes have available for industry revitalisation. The Minister considers in practice the impact on the freedom of clubs would be limited and out-weighted by the benefits from revitalising the racing industry and its contribution to the New Zealand economy and employment in rural areas.

Agreements made between club and code should override club constitutions

42. It is proposed agreements made between a club and its code regarding the utilisation of surplus venues should override club constitutions, where the two are inconsistent. This is most likely to occur where the constitution of a club specifies how funds should be distributed if its venue is sold.
43. It is important that uncertainty about the future of surplus venues is resolved as quickly as possible, so the industry can benefit from the reforms without delay. On the passage of Bill No. 2, it is likely some club constitutions will contain provisions inconsistent with the proposed property objectives. Codes may require up to date constitutions as a condition for registration. This will be a matter for the industry to decide.
44. It is considered the impact of this proposal on the rights of the club would be comparatively small, as only an agreement entered into voluntarily by the club would override its constitution. It is not intended other provisions in club constitutions, for example regarding how clubs meet and make decisions, will be overridden by the agreements reached between the club and the code.

A statutory process of last resort is proposed as a backstop to decide disagreements about vesting surplus venues


45. Industry revitalisation requires the utilisation of surplus venues be decided, so retained venues can be refurbished with the proceeds. It is preferable this be achieved by agreement between the club and the code through the FVP process. However, this may not be possible if, for example, a club does not accept the closure, the proposed vesting of its surplus venue, or the club intends to wind-up and is unwilling to see its property used for industry purposes. If agreement cannot be reached it is proposed a statutory decision-making process of last resort be created as a back stop to achieve the necessary certainty in a timely way.
46. The proposal is to create a power to compulsorily transfer property between clubs and codes (both incorporated societies in the same industry) without a right of compensation.^{9(2)(h)}
- [REDACTED]
- To mitigate natural justice concerns the proposed statutory process provides for decision-making independent of the codes and opportunities for those who are affected to participate in the decision process.

The Minister for Racing would decide the vesting of disputed assets from surplus venues and effect the arrangements by Order in Council

47. It is proposed that where agreement is not reached through the FVP process, the Minister would have a statutory power to recommend an Order in Council (an Order) be made to transfer a surplus venue¹⁰ to the code, with payments to the club and local community where these are warranted.
48. The proposal includes the Minister being required to appoint and take advice from a suitably qualified Reviewer before recommending an Order. The Reviewer would consider a proposal from the code for the vesting of the surplus venue (including any proposed payments to the club and the local community) and talk to the club and interested local community groups, before advising the Minister on the proposal and any recommended modifications.
49. The Minister would only recommend an Order in relation to a venue the code has determined is surplus where the code and club have first attempted to negotiate in good faith. It is not intended to relitigate the code's decision that a venue is surplus through the statutory process.
50. It is not proposed a formal application process be provided for but, in practice, the club, code or the local community could ask the Minister to consider recommending an Order. In addition, the Minister could initiate the statutory process on his or her own initiative. The proposed matters the Minister must consider would include:
- 50.1 the proposed property objectives (paragraph 26);
 - 50.2 if the surplus venue is owned by clubs from more than one code, the relative interests of the clubs (and therefore codes);

¹⁰Other non-venue assets of a club are excluded from allocation under the proposal, such as balance sheet reserves, shares and investments, and other parcels of land (although these assets may be considered in determining whether a club needs some proceeds from the sale of its surplus venue in order to be able to race at another venue).

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- 50.3 whether the surplus venue is used by clubs that do not have an ownership interest in the surplus venue;
- 50.4 ownership of the buildings and facilities at the surplus venue, any value they may have and, if relevant, likely removal costs;
- 50.5 whether payments are warranted to the club and/or the local community (as in paragraph 34); and
- 50.6 any other factors the Minister considers relevant.
51. It is proposed legislation will provide for the mechanics of transfer.¹¹ It would provide that:
- 51.1 registered encumbrances on surplus venues are transferred to the code;
- 51.2 all trusts on assets that are transferred to a code are extinguished on transfer;
- 51.3 any transfer of assets will be without consideration (transfer may be to a code without the club receiving in return any or an equivalent asset);
- 51.4 transfers are not affected by, and may proceed irrespective of, any requirements for additional consents under any other enactment; or any agreement with a third party;
- 51.5 transfers are not to be treated as placing a person in breach of, or in default under, any contract, or in breach of trust, or in breach of confidence, or otherwise making a person guilty of a civil wrong;
- 51.6 transfers are not to be treated as entitling a person to terminate, cancel or modify any contract, agreement or arrangement, or require the performance of an obligation; and
- 51.7 transfers may impose restrictions on the assets vested in the code, such as limiting the use of the proceeds from the future sale of the asset to infrastructure development and maintenance at retained venues.
52. 9(2)(h) 
53. Trusts are not recorded on property titles. Until the surplus venues are identified it is not possible to ascertain the existence or nature of any such claims. Extinguishing trusts will make it more straight forward for codes to acquire surplus venues through the proposed statutory process. The statutory process includes the ability for the community interest to be recognised through a payment made where this is warranted.
54. The Order will trigger the transfer of property and may impose restrictions on the assets vested in the code, such as limiting the use of the proceeds from the future sale of any surplus venues to infrastructure development and maintenance at retained venues.

¹¹ Relevant Acts which may affect transfer of surplus venue property include the: Reserves Act 1977, Charitable Trusts Act 1957, Public Works Act 1981, Conservation Act 1987, Land Act 1948, Estate and Gift Duties Act 1968.

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55. Other elements of the proposed statutory process include that:
- 55.1 the Crown's costs of the statutory process be fully recovered from the participants with the Reviewer advising on the amounts to be met by the club, code and, if appropriate, any relevant local community groups;
 - 55.2 the Order can only provide for the transfer of land owned by the club. It will not apply to land such as council land, reserve land or land owned by third parties, where the club does not have freehold ownership; and
 - 55.3 there is no requirement for the code to sell any surplus venue transferred to it, i.e. the land might be retained for other industry purposes (e.g. training) or be sold later on.
56. The draft Order would be subject to Cabinet scrutiny¹² and be subject to review by the Regulations Review Committee. The proposal that disputes arising regarding the utilisation of surplus venues be decided by the Minister reflects the importance of the individual rights and interests involved. The process followed by the Minister may be challenged subject to judicial review. **Appendix B** gives a summary of the features of the proposed statutory process that support natural justice and equitable outcomes for clubs and communities.

Amended club wind-up provisions will retain capital in the racing industry for maximum industry benefit

57. Two additional statutory provisions are proposed:
- 57.1 when a club winds-up, its capital should vest in its code body; and
 - 57.2 codes should be able to direct the Registrar of Incorporated Societies to wind-up a club that does not race.

When a club winds-up, its assets should vest in its code

58. At present club constitutions and legislation mean that on wind-up club assets could generally go to a mix of not for profit community purposes and the racing industry. Section 27(1) of the Racing Act provides for the code to approve asset disposal plans of a club on wind-up. However, this provision is insufficient to enable the code to retain the club's assets in the industry and meet the first proposed property objective.
59. It is proposed that when a club winds-up,¹³ its assets will transfer to the relevant racing code for industry revitalisation. This would apply whether the club resolves to wind-up or the code directs the Registrar of Incorporated Societies to wind-up the club, as detailed below. Where a club that winds-up has a venue, the code may decide to make a payment in recognition of the community interests.
60. This would override existing provisions in club constitutions. It recognises clubs are part of the racing industry first and part of their local community second and is an important part of the commercial pivot required for the racing industry.

¹² Section 5.12 of the Cabinet Manual indicates the matters that must be submitted to Cabinet, including significant or controversial matters. Section 5.38 provides that individual Ministers require Cabinet agreement to take an item to Executive Council, required for an Order in Council.

¹³ On wind-up, where a club is not an incorporated society, currently section 27(4) of the Act provides it is treated as one. This may need to be clarified as part of the drafting of Bill No. 2 to ensure its effect is retained. While clubs are presently incorporated societies, they are able to choose other organisational forms.

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Codes should be able to direct the Registrar of Incorporated Societies to wind-up a club that does not race

61. A club that does not race may tie up industry assets without producing a meaningful commercial return for the industry. It is proposed codes be able to direct the Registrar of Incorporated Societies to wind-up a club that does not race. The role for the Registrar would be limited to exercising existing powers under the Incorporated Societies Act to dissolve the racing club. In practice dissolution is a relatively simple administrative process.
62. If the code's decision is that the club will be wound-up, the assets of the club will vest in its code, with the potential for the code to make a payment to the local community.

Good process will help mitigate risks when a code directs the Registrar of Incorporated Societies to wind-up a club that does not race

63. Due to the significant assets that may be involved in wind-up decisions, there is considerable litigation risk. Criteria for a code to consider when making this decision would include:
 - 63.1 the code being satisfied a club is no longer racing or will no longer hold races (because e.g. the club has indicated it will not race);
 - 63.2 the club is not registered for racing; and
 - 63.3 the club does not meet, or is unlikely to meet, the criteria for registration, or refuses to register, or is unable to do so in a reasonable timeframe.
64. The wind-up of a club by a code would occur following a process consistent with natural justice, that could include:
 - 64.1 the code informing the club it intends to wind it up, including the reasons why it is considered not to be racing, and providing the club a reasonable time in which to respond;
 - 64.2 the club having an opportunity to respond providing any evidence contradicting the code's reasons; and
 - 64.3 a decision by the code to direct the Registrar of Incorporated Societies to dissolve the club.

Management of infrastructure development funding and venue maintenance responsibilities do not require legislation

65. The industry can self-manage the prioritisation and use of funding for infrastructure development and the maintenance of venues. These matters do not require legislation and are described in **Appendix C**.

Consultation

Racing Industry Transition Agency (RITA) comments on the proposals

66. RITA supports the redistribution of revenue from property which is no longer required for racing, to fund infrastructure at retained venues. RITA considers it is important a statutory process is included in the Act to decide the utilisation of surplus assets when agreement cannot be reached by negotiation between the code and the club. RITA also supports the principles that the value of freehold racing property should be retained in the industry and this property should be used for maximum industry benefit. RITA supports the proposed changes to club wind-up provisions.

Agency consultation

67. The following agencies have been consulted in the preparation of this paper: Inland Revenue, Land Information New Zealand, Ministry of Business Innovation and Employment (MBIE), Ministry of Justice, Ministry of Primary Industries and The Treasury. The Department of the Prime Minister and Cabinet was informed.


Consultation with MBIE

68. MBIE considers the proposals in this paper are broadly compatible with the surplus asset distribution rules under the Incorporated Societies Bill. This Bill, which will replace the Incorporated Societies Act 1908, will be introduced in late 2019 or early 2020. The two Departments will work together to ensure the specific provisions are consistent.

Public consultation

69. The Department consulted publicly on the recommendations of the Messara Report during September and October 2018. More information about the consultation is provided in the Regulatory Impact Assessment.

Financial implications

70. Budget sensitive
- 

Human rights

71. 9(2)(h)
- 

73. 9(2)(h)



Gender and Disability implications

74. The proposals have no gender or disability implications.

Legislative implications

75. The proposals in this paper require amendments to the Racing Act 2003. The current Racing Act binds the Crown. The proposed changes set out in this paper, and to be part of the Racing Reform Bill No. 2 2019, will also bind the Crown.

Impact analysis

76. A Regulatory Impact Assessment has been completed and is attached to the Overview paper as Appendix B. The Department has assessed that the Regulatory Impact Assessment partially meets the requirements.

Publicity

77. There is a great degree of interest from the racing industry and community organisations that utilise racing industry property. Following Cabinet decisions an announcement will be made about the proposed contents of Bill No. 2.

Next steps

78. The Minister for Racing has sought delegation in 'Paper 1 - Overview of the Final Racing Industry Reforms' to take any remaining policy decisions necessary to enable final drafting of Bill No. 2.

79. Consistent with Cabinet Office Circular CO (18) 4 – Proactive Release of Cabinet Material: Updated Requirements, the Minister intends to proactively release this paper, subject to any redactions that may be warranted under the Official Information Act 1982, within 30 business days of decisions being taken. The relevant Regulatory Impact Assessment will also be published at the same time.

Recommendations

80. The Minister for Racing recommends Cabinet:

Government intervention is necessary to empower the racing industry to overcome historic barriers

1. **note** that government intervention is required to act as a circuit-breaker to empower the racing industry to overcome historic barriers contributing to its decline identified in the report *Review of the New Zealand Racing Industry*, John Messara, 31 July 2018 (and listed above in paragraph 14);

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A different approach is recommended to achieve the property outcome recommended in the Messara Report

2. **note** that while the Messara Report's recommendation that the refurbishment of retained venues be funded from the proceeds of surplus venues is supported, the approach proposed in this paper differs from the Messara Report's recommendation that legislation vest ownership of all venues in codes;
3. **note** that the future of the venues proposed for closure by the Messara report (and other venues) has not yet been decided by the codes;

Two property objectives are proposed to guide the contribution of racing property to industry revitalisation

4. **agree** that two property objectives be included in the purpose statement of the Racing Act 2003 (the Act) to guide decision-making regarding racing property:
 - 4.1 *the value of racing property should be retained in the industry;* and
 - 4.2 *the value of racing property should be used for maximum industry benefit;*

Agreement by negotiation is the best way to decide the vesting of surplus venues, where this is possible

5. **agree** that, where possible, the Future Venue Plan process (an industry-led negotiated agreement between clubs and codes) is the preferred method to identify and determine the vesting of surplus venues;
6. **note** that the Racing Industry Transition Agency has indicated the Future Venue Plan process will include opportunity for local community groups to indicate any interest in surplus venues;
7. **note** that negotiation between clubs and codes under the Future Venue Plan process will consider whether payments should be made from the proceeds of a surplus venue to:
 - 7.1 a club that requires funding from the sale of a surplus venue to enable it to race at another venue; and/or
 - 7.2 the local community if it has a valid interest in the surplus venue (e.g. arising from the community having contributed to its upkeep or the use of the venue for community purposes that will no longer be possible);
8. **agree** that the Minister for Racing can make regulations to prescribe a process and criteria that codes must apply when negotiating with clubs about the use of surplus venues, having due regard to any community interest in the venue, if in the future there is evidence this is required to support revitalisation of the racing industry;
9. **agree** that a statutory restriction be imposed on club property transactions without the club first obtaining code approval, which may be given generally or specifically and subject to any conditions, and be registered by the code against the land title;
10. **note** that the proposed restriction would restrict club property transactions including the sale of venues and the establishment of encumbrances such as trusts, mortgages and leases, and would override the powers of clubs to deal with assets under their constitutions;
11. **agree** that the Minister for Racing can end the restriction by Order in Council, in response to a request from the industry;

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12. **agree** that agreements made between a club and its code regarding the utilisation of surplus venues should override club constitutions, where the two are inconsistent;

A statutory process of last resort is proposed as a backstop to decide disagreements about vesting surplus venues

13. **note** that the Minister for Racing would only recommend an Order in Council in relation to a venue that the code has determined is surplus and where the code and club have first attempted to negotiate in good faith to reach agreement on the future of the surplus venue;
14. **note** that a formal application process is not proposed but, in practice, the club, code or community could ask the Minister for Racing to consider recommending an Order in Council, or the Minister for Racing could initiate the statutory process on his or her own initiative;
15. **agree** that a statutory process be established to decide disputes regarding the utilisation of surplus venues when agreement is not reached between a club and its code, including, but not limited to:

15.1 the Minister for Racing must appoint and take advice from a suitably qualified Reviewer, before recommending an Order in Council is made;

15.2 in reaching a decision the Minister for Racing must consider any of the following factors:

15.2.1 the proposed property objectives (above at recommendation 4);

15.2.2 if the surplus venue is owned by clubs from more than one code, the relative interests of the clubs (and therefore codes);

15.2.3 whether the surplus venue is used by clubs that do not have an ownership interest in the surplus venue;

15.2.4 the ownership and value of the buildings and facilities at the surplus venue;

15.2.5 whether payments are warranted to the club and local community, as in recommendation 7; and

15.2.6 any other factors the Minister for Racing considers relevant;

15.3 the Minister for Racing recommending an Order in Council to transfer property to the code, with payments to the club and local community where these are warranted;

15.4 the Order in Council may impose restrictions on the assets vested in the code, such as limiting their use to infrastructure development and maintenance at retained venues;

15.5 the Crown's costs of the statutory process will be fully recovered from the participants with the Reviewer advising on the amounts to be met by the club, code and, if appropriate, any relevant local community groups; and

15.6 the Order in Council can only provide for the transfer of land owned by the club and will not apply to land such as council land or reserve land, where the club does not have freehold ownership;

16. **agree** that the statutory process include provisions enabling the transfer, including:

16.1 registered encumbrances on the surplus venue are transferred to the code;

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- 16.2 all trusts on assets transferred to a code are extinguished on transfer;
- 16.3 any transfer of assets will be without consideration (transfer may be to a transferee without the transferor receiving in return any or an equivalent asset);

The proposed statutory process has features that support natural justice and equitable outcomes for clubs and communities

- 17. **note** that **Appendix B** identifies features of the proposed statutory process supporting natural justice and equitable outcomes for clubs and communities, including the Minister for Racing receiving advice from a suitably qualified Reviewer and the potential for payments to be made to the club and/or community;
- 18. **note** that hiring the venue of another club for race days is a viable operating model, used by more than 40 clubs presently in New Zealand;

It is proposed when a club winds-up its assets should vest in its code body, to retain capital in the racing industry

- 19. **agree** that when a club winds-up its assets will transfer to the relevant racing code and, if the club owns a venue, the code may decide to make a payment in recognition of community interests, consistent with recommendation 7.2;
- 20. **note** that the transfer of assets to the code on wind-up will occur whether the wind-up results from a resolution of the club or following a direction of the code to the Registrar of Incorporated Societies, as provided below;

It is proposed codes should be able to direct the Registrar of Incorporated Societies to wind-up a club that does not race, so that club assets can be freed up for industry use

- 21. **agree** that codes can direct the Registrar of Incorporated Societies to wind-up a club that does not race, having followed an appropriate process, including but not limited to:
 - 21.1 criteria for a code to consider when making this decision;
 - 21.2 consistency with natural justice principles;
- 22. **note** that where a code directs the Registrar of Incorporated Societies to dissolve a club that owns a venue, the code may decide to make a payment in recognition of community interests, consistent with recommendation 7.2;

The codes are best placed to manage the funds from surplus venues for infrastructure development at retained venues

- 23. **note** that it is appropriate for codes to lead the use and management of infrastructure development funding, and for venue maintenance to sit with the club that owns or operates the venue, and that these matters do not require legislation;

Impact analysis

- 24. **note** that a Regulatory Impact Assessment has been completed and is attached as Appendix B to *Paper 1 - Overview of the Final Racing Industry Reforms* and that the Department has assessed it partially meets the requirements;

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Next steps

25. **note** that the Minister for Racing has sought delegation in '*Paper 1 - Overview of the Final Racing Industry Reforms*' to take any remaining policy decisions necessary to enable final drafting of Bill No. 2; and
26. **note** that the Minister for Racing intends to proactively release this paper, subject to any redactions that may be warranted under the Official Information Act 1982, within 30 business days of decisions being taken.

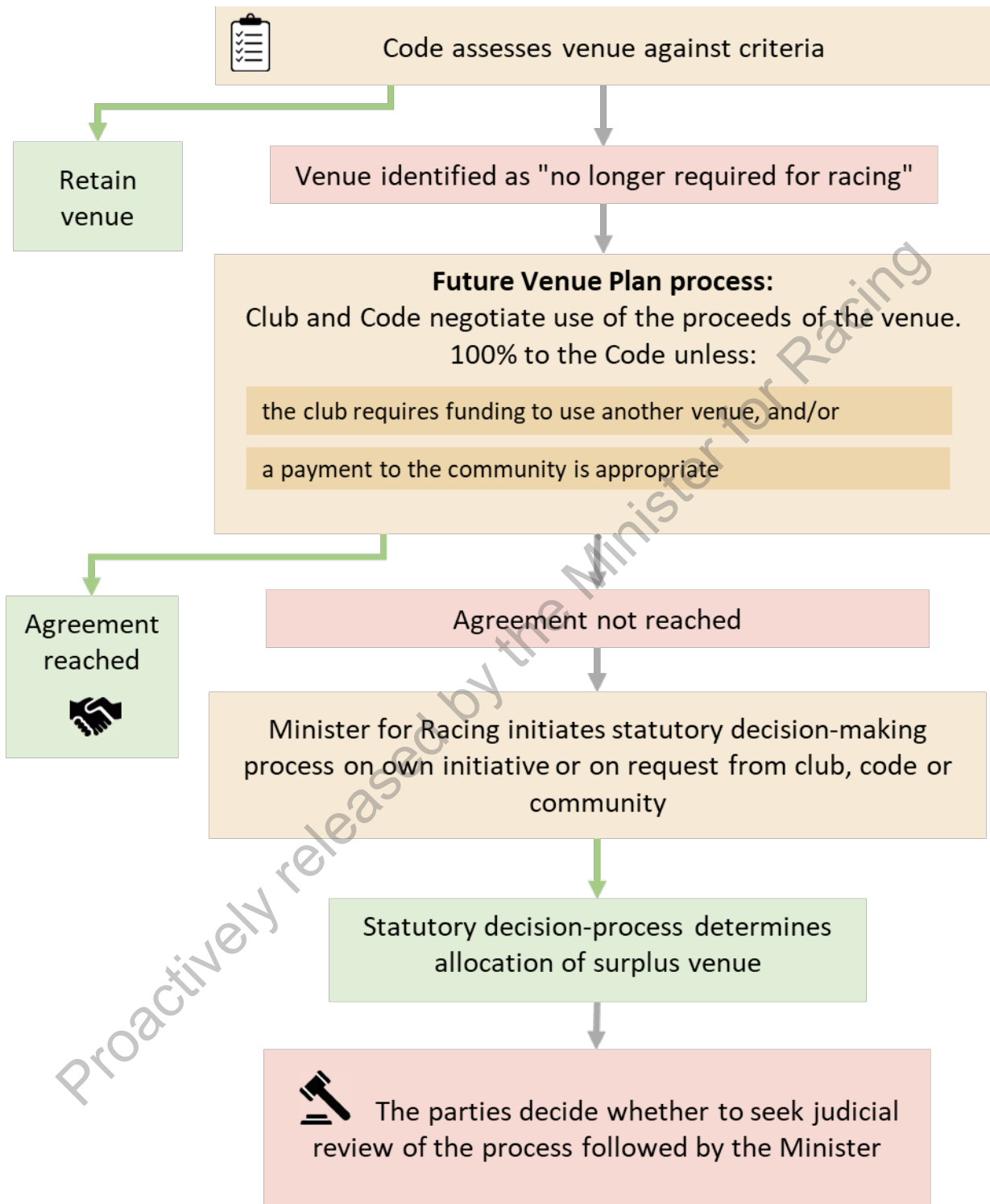
Authorised for lodgement

Rt Hon Winston Peters

Minister for Racing

Proactively released by the Minister for Racing

Appendix A: How the proposals will enable codes to address surplus venues



Proactively released by the Minister for Racing

Appendix B: Summary of features of the proposed statutory process that support natural justice and equitable outcomes for clubs and communities

81. The proposed statutory process has the following features that support natural justice and equitable outcomes for clubs and communities:
- 81.1 the venues to close and their vesting have not yet been decided and will be determined by negotiation through the existing industry-led FVP negotiation process;
 - 81.2 RITA has indicated the FVP process will include opportunity for local community groups to indicate any interest in the surplus venue;
 - 81.3 a one-off payment to the race club may be made to enable the club to race at an alternative venue;
 - 81.4 a one-off payment to the local community may be made when there is a demonstrable community interest in a surplus venue;
 - 81.5 to protect third parties, the restriction on club property transactions would be registered against the land title;
 - 81.6 only a FVP agreement entered into voluntarily by a club would override its constitution, limiting the impact of this on the rights of the club;
 - 81.7 the Order in Council can only provide for the transfer of land owned by the club; land such as council land, reserve land, and land owned by third parties is excluded;
 - 81.8 consistent with requirements in the Cabinet office Manual regarding significant or controversial matters, Cabinet would have oversight of the Minister for Racing's appointment of the Reviewer and the draft Order in Council; and
 - 81.9 the process followed by the Minister for Racing is subject to judicial review.

The proposed statutory process is consistent with the Incorporated Societies Act 1908 and has precedents in other sectors

82. The proposed transfer of property from a race club to its parent code is a transfer from one incorporated society to another within the same industry. Both the club and code organisations are not-for-profit entities, so the transferred property will continue to be used for not-for-profit purposes. This is consistent with the Incorporated Societies Act 1908 and is broadly compatible with the surplus asset distribution rules under the Incorporated Societies Bill to be introduced in late 2019 or early 2020.
83. Transfers of assets without compensation has occurred in the health and local government sectors, to achieve reorganisation goals. The Health Sector Transfers Act 1993 allowed transfers within the health sector without consideration and is the legislative model that has been used for the statutory process proposed. The reorganisation of local government in Auckland also involved extensive vesting of assets between entities within the local government sector.

Appendix C: Aspects of the proposals that do not require legislation

The codes are best placed to manage funds from surplus venues and wound-up clubs for infrastructure development at retained venues

84. An industry-led approach to infrastructure development is proposed where each code would manage a fund realised from its surplus venues and the wind-up proceeds of its clubs. The code's responsibilities would include:
- 84.1 investment and financial management of funding;
 - 84.2 prioritisation of racing venues for investment;
 - 84.3 agreeing appropriate co-payment arrangements with the club;
 - 84.4 ensuring oversight arrangements are in place, appropriate for the scale of each construction project; and
 - 84.5 disbursing funding.
85. This approach does not require legislation and is broadly consistent with the recommendations of the Messara Report. Having codes lead infrastructure development is appropriate because the codes are best-placed to make decisions at a national level on the prioritisation of racetrack development work.
86. Alternative options involving third party management of funds to constrain the ability of codes to divert infrastructure development and maintenance funding to other purposes have been discounted. Constraining how the industry uses its resources is not consistent with achieving the desired transition to self-determining, commercially-oriented code bodies.

Legislation is not required for venue maintenance

87. Responsibility for venue maintenance sits with the club that owns or operates the venue; legislation is not required to establish this responsibility. Clubs are closest to the venue and are better placed than code bodies to operate the asset maintenance plan for their venue and identify routine maintenance requirements.
88. Refurbished facilities at retained racing venues will offer clubs improved non-racing income (e.g. from community venue hires and other commercial opportunities) from which to fund maintenance. Codes also can provide maintenance grants and create financial incentives for clubs to provide a high-quality presentation of the venue on race day. Codes could direct any residual infrastructure development funding to maintenance grants. None of these approaches would require legislation.