



28 November 2023

OC230920

Hon Simeon Brown**Action required by:****Minister of Transport**Friday, 1st December 2023

ADVICE ON CANCELLING THE AUCKLAND LIGHT RAIL PROJECT

Purpose

This briefing provides you with advice on delivering the coalition agreement commitment to issue a stop-work notice and cancel the Auckland Light Rail (ALR) project.

Key points

- Both coalition agreements include a commitment to cease work and cancel the ALR project.
- We propose that this commitment be executed by winding-up the operations of Auckland Light Rail Ltd (ALR Ltd), the Crown company leading the business case development for the project.
- Winding up ALR Ltd provides the opportunity for responsibility for the planning of the rapid transit corridor from the City Centre to Māngere to be assigned to another authority or entity.
- The ALR Ltd Board is legally responsible for operationalising the disestablishment process, including making staff redundant, terminating contracts, authorising the sale of assets, and signing off financial statements.
- Officials propose that the Government's intent be implemented by the three Shareholding Ministers (Finance, Housing and Transport) of ALR Ltd taking the following actions:
 - directing officials to commission independent financial and legal due diligence of the company for the purpose of quantifying and protecting the Crown's financial, physical and intellectual property assets.
 - issuing a directive to the company to cease work on the project, and to facilitate full access by the Crown's independent advisers to the company's records and intellectual property.
 - making a resolution to change the constitution of the company so that its sole purpose is to wind up the company.
 - reducing the company's Board to two to three directors who are best qualified to oversee the company's disestablishment.
 - issuing a Letter of Expectations to the reconstituted Board that provides guidance about how the disestablishment process should be executed.

- Officials will prepare a Cabinet paper regarding the wind-up of Auckland Light Rail Ltd for consideration at its meeting on 11 December 2023, and we would welcome direction on the following:
 - the reconfiguration of the company's Board of Directors, which we recommend should be no more than two to three Directors;
 - nomination of the agency to be assigned the company's intellectual property, which we recommend should be the Ministry of Transport in the first instance.
- Once Cabinet has made its decision, officials estimate that it will take approximately six months to complete the disestablishment process.

s 9(2)(f)(iv)

Recommendations

We recommend you:

- | | | |
|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| 1 | agree that the preferred approach to implement the incoming government's directive to 'cancel the ALR project' is to secure approval from Cabinet for the three Shareholding Ministers (Finance, Housing and Transport) of Auckland Light Rail Ltd (ALR Ltd) to take the necessary steps to wind-up the company. | Yes / No |
| 2 | direct officials to draft a Cabinet paper authorising Shareholding Ministers to wind up ALR Ltd | Yes / No |
| 3 | agree that the Cabinet paper include the following proposals: | |
| 3.1 | a direction to officials to commission independent financial and legal due diligence of the company for the purpose of quantifying and protecting the Crown's financial, physical and intellectual property assets. | Yes / No |
| 3.2 | issuing a Shareholder resolution to change the constitution of the company so that its sole purpose is to wind up the company. | Yes / No |
| 3.3 | reducing the company's Board to two to three directors best qualified to oversee the company's disestablishment. | Yes / No |
| 3.4 | issuing a Letter of Expectations to the reconstituted Board, providing guidance about how the disestablishment process should proceed, including a direction to cease all work on the project, and to facilitate full access by the Crown's independent advisers to the company's records and property. | Yes / No |
| 3.5 | agreeing that the Ministry of Transport should hold the intellectual property of ALR Ltd on behalf of the Crown. | Yes / No |
| 4 | agree to discuss your intent to cease the ALR project with each ALR Sponsor prior to Cabinet decisions being taken | Yes / No |
| 5 | note the decision to disestablish ALR Ltd provides an opportunity for responsibility for the planning of the rapid transit corridor from the City Centre to Māngere to be assigned to another authority or entity. | Yes / No |

- 6 **note** it will take approximately six months to complete the disestablishment of ALR Ltd. Yes / No
- 7 **agree** to refer this briefing with the Minister of Finance and Housing Yes / No

C. Gulik

Chris Gulik
Acting Director, Auckland Light Rail,
Ministry of Transport
 / / 2023

Hon Simeon Brown
Minister of Transport
 / / 2023

- Minister's office to complete:**
- Approved Declined
 - Seen by Minister Not seen by Minister
 - Overtaken by events

Comments

Contacts

Name	Telephone	First contact
Chris Guilk – Acting Director, Auckland Light Rail, Ministry of Transport	s 9(2)(a)	✓
Tristan Coulson – Senior Adviser, Auckland Light Rail, Ministry of Transport		

ADVICE ON CANCELLING THE AUCKLAND LIGHT RAIL PROJECT

Introduction

1. The incoming government's coalition agreements include a commitment to cease all work on, and to cancel, the Auckland Light Rail (ALR) project.
2. The incoming government's directive to cancel the ALR project can be implemented by Cabinet authorising the three shareholding Ministers of ALR Ltd (Ministers of Finance, Housing and Transport) to take the steps necessary to initiate the cessation of work, and the disestablishment of ALR Ltd.

ALR Board should oversee the disestablishment

3. This is a solvent liquidation, so it's preferable that the disestablishment process is overseen by the ALR Ltd Board rather than being assigned to a receiver or administrator. It will be necessary for the incentives on the directors to be aligned with the intent to disestablish the company. This can best be achieved by reframing the purpose of the company in its constitution to managing its orderly winddown in a manner that protects the Crown's financial and other interests. This intent can be reinforced through a Letter of Expectations from ALR Shareholding Ministers to ALR Ltd, setting out expectations for managing the winddown of the company. While not legally binding, this is the standard way for Ministers to set expectations for arms-length companies.
4. It won't be necessary to retain the full seven member Board of ALR Ltd to manage the winddown. Two or three directors should be sufficient. You may want to take soundings through the Board Chair about potential candidates or, alternatively, delegate this to the Secretary of Transport. All ALR Board members have been appointed until 30 June 2024, but these appointments can be terminated by Shareholding Ministers.
5. In the event you prefer to appoint new directors the candidates would need to be nominated in the December Cabinet paper given the normal appointments process can take months to reach a resolution. Treasury has advised us of insolvency specialists that could be nominated to serve as directors.

6. s 9(2)(f)(iv)

Exiting the Project Planning and Funding Agreement

7. Should Cabinet agree to cancel the ALR project, the Crown has the discretion to exit from the Project Planning and Funding Agreement (PPFA) that governs the project (PPFA clause 2.2). Alternatively, the PPFA can also be terminated when agreed by the Crown, Council and ALR Ltd (clauses 2.2 and 21.1). Upon termination:
 - the Crown can require ALR Ltd to return surplus funding (clause 21.1(a)); and
 - ALR Ltd has obligations to assist with transition (clause 11.2 and 21.1(b)) and cooperate with the Crown on all the documents, IP and all other information concerning the ALR project.
8. The PPFA states that the Crown should consult with other Sponsors (Council and mana whenua) where appropriate, and prior to making Crown decisions. The non-Ministerial Sponsors are Mayor Wayne Brown, Councillor Chris Darby, Paul Majurey, Karen Wilson

and Ngarimu Blair. We recommend you discuss your intent to cease the ALR project with each Sponsor prior to Cabinet decisions being taken.

Assignment of ALR Ltd assets

9. There are a number of ALR Ltd company assets that will need to be assigned as part of the disestablishment process. The *Project Planning and Funding Agreement* (PPFA) between the Crown, Council and ALR Ltd gives the Crown all rights to these assets. While decisions don't need to be taken in December, our current proposal is that:

- Surplus cash, both operating and capital, is returned to the Crown – we estimate that up to ~\$40 million opex and \$ \$98 million capital from the land acquisition fund will be returned.

s 9(2)(f)(iv)

- Intellectual property is assigned to the Ministry of Transport on behalf of the Crown, to ensure it's available to support future rapid transit planning in Auckland.

s 9(2)(f)(iv)

Future planning for the rapid transit corridor

10. The decision to disestablish ALR Ltd provides an opportunity for reassigning responsibility for planning the rapid transit corridor from the City Centre to Māngere to another authority or entity. Candidates include Auckland Council & Auckland Transport and Crown agents such as Waka Kotahi, Kāinga Ora, and potentially the new Infrastructure Agency (depending on its functions).

11. ALR Shareholding Ministers may want to consider the role of the ALR Sponsors in future decisions about the rapid transit corridor and who assumes responsibility for future planning. There is benefit in sustaining strong relationships between the Crown, Council and mana whenua as this thinking is advanced.

Timelines and milestones to disestablish ALR Ltd

12. Officials advise that it will take approximately six months to complete the disestablishment processes. Additional time may be required should ALR Shareholding Ministers decide to remove ALR Ltd from the Companies Register. This is because Cabinet will need to consider two Orders in Council to remove ALR Ltd from both the Crown Entities Act 2004 and Ombudsmen Act 1975 schedules.