

## Proactive Release

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Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

Listed below are the most commonly used grounds from the OIA.

| <u>Section</u> | <u>Description of ground</u>  |
|----------------|---|
| 6(a)           | as release would be likely to prejudice the security or defence of New Zealand or the international relations of the New Zealand Government   |
| 6(b)           | as release would be likely to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by <ul style="list-style-type: none"> <li>(i) the Government of any other country or any agency of such a Government; or</li> <li>(ii) any international organisation</li> </ul>                                      |
| 6(c)           | prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial   |
| 9(2)(a)        | to protect the privacy of natural persons   |
| 9(2)(b)(ii)    | to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information  |
| 9(2)(ba)(i)    | to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public |
| 9(2)(ba)(ii)   | to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely otherwise to damage the public interest  |
| 9(2)(f)(ii)    | to maintain the constitutional conventions for the time being which protect collective and individual ministerial responsibility  |
| 9(2)(f)(iv)    | to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials  |
| 9(2)(g)(i)     | to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any public service agency or organisation in the course of their duty   |
| 9(2)(h)        | to maintain legal professional privilege  |
| 9(2)(i)        | to enable a Minister of the Crown or any public service agency or organisation holding the information to carry out, without prejudice or disadvantage, commercial activities   |
| 9(2)(j)        | to enable a Minister of the Crown or any public service agency or organisation holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)  |



22 June 2022

OC220381 / T2022/1412 / BRF21/22061366

**Hon Michael Wood**  
**Minister of Transport**

**Action required by:**  
11 July 2022

**Hon Grant Robertson**  
**Minister of Finance**

**Hon Dr Megan Woods**  
**Minister of Housing**

## **AUCKLAND LIGHT RAIL - NEXT STEPS FOR DELIVERY ENTITY POLICY WORK**

### **Purpose**

To provide options of a legal entity to take forward the Detailed Planning Phase of Auckland Light Rail (ALR).

### **Key points**

This paper:

- Provides options for the type of entity for the Auckland Light Rail Unit (ALR Unit) for the Detailed Planning Phase.
- Assesses options against criteria and recommends that the appropriate form of ALR Unit is as a Crown entity company added to schedule 2 of the Crown Entities Act 2004 (**Crown entity company**)
- notes that additional (contractual) arrangements are required to support the oversight and influence (including decision making) reserved to the Crown and other Sponsors during the Detailed Planning Phase of the ALR Project; and
- attaches an evaluation of different options for a Crown-owned delivery entity company, identifying key criteria that may inform the decision as to the appropriate form of Establishment Entity.

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**Recommendations**

We recommend you:

|   | <b>Minister of Transport</b> | <b>Minister of Finance</b> | <b>Minister of Housing</b> |
|---|------------------------------|----------------------------|----------------------------|
| 1 <b>Agree</b> that your preferred entity option to take forward the detailed planning phase is a Crown company added to Schedule 2 of the Crown Entities Act                 | Yes / No                     | Yes / No                   | Yes / No                   |
| 2 <b>Note</b> that a Sponsor Group meeting is to be held 6 July and that the preferred structural option be discussed at that meeting, informed by a summary of this briefing | Yes / No                     | Yes / No                   | Yes / No                   |
| 3 <b>Note</b> that once confirmed, Officials will prepare a Cabinet paper, associated Order in Council and other material to implement the decision.                          | Yes / No                     | Yes / No                   | Yes / No                   |

*C. Gulik*

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Hon Michael Wood  
**Minister of Transport**  
 ..... / ..... / .....

Hon Grant Robertson  
**Minister of Finance**  
 ..... / ..... / .....

Hon Dr Megan Woods  
**Minister of Housing**  
 ..... / ..... / .....

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

**Comments**

**Contacts**

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| Ben Wells, Principal Advisor, National Infrastructure Unit, Treasury                                    |           |               |
| Mary Barton, Senior Policy Advisor - Places and Partnerships, Ministry of Housing and Urban Development |           |               |

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## AUCKLAND LIGHT RAIL - NEXT STEPS FOR DELIVERY ENTITY POLICY WORK

- 1 Cabinet [CAB-21-MIN-0531] considered the Indicative Business Case for the ALR project in 2021 and agreed to progress the project to the detailed planning phase. At that time, Cabinet recognised that in addition to more detailed planning and development by the Establishment Unit (and its successor, the ALR Unit) a significant policy work programme on the delivery and ownership arrangements and regulation would need to be completed.
- 2 The cabinet paper included the principles for the governance arrangements and organising model for the detailed planning phase, including:
  - Direct line of sight and influence by the Crown given the significant policy and strategy decisions to make that would influence this phase of the project
  - A sponsor's partnership with Crown, Auckland Council, and mana whenua
  - Embedding the integrated urban development and transport focus
  - Maintaining project momentum
  - Mana whenua embedded in the governance arrangements
  - Clear accountabilities, roles, and responsibilities.
- 3 Cabinet noted that an ALR Unit would be established to progress the project and continue until decisions are made and implemented on the transition to the delivery entity. Cabinet also noted that the delivery entity:
  - will be designed to ensure continuity of board members and staff, to maintain momentum, knowledge, and commitment to the project
  - will create a formal legal entity to see the project through the final stages of planning before it moves onto delivery, and
  - should be planned to occur in the second half of 2022 as this is likely to be necessary in advance of consenting and land acquisition processes.
- 4 Cabinet authorised the Ministers of Transport, Finance, and Housing, in consultation with the Auckland Council and mana whenua to take decisions as required in relation to the setting up of the governance arrangements, assurance framework, accountability mechanisms, and the ALR Unit for the next phase.

### The existing ALR arrangements were set up as a bespoke model

- 5 Given the complexity of the project, the number of agencies involved and the Sponsor arrangements that bring together Crown, Auckland Council, and mana whenua, a bespoke arrangement was agreed. This was an evolution of the arrangements

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created in the Establishment phase which saw a collaborative and inclusive Establishment Board supported by the unit hosted by Waka Kotahi.

- 6 The ALR Board has since been established as a skills-based Ministerial Advisory Committee, with the appointment process for the remaining board members underway. The ALR Board was set up to be supported by an ALR Unit, which was enabled to operate through contractual arrangements with the Ministry of Transport and Waka Kotahi. The Unit is to advance the project through the detailed planning phase, including the development of further detailed business case work, technical assessments and detailed design, master planning, and associated community and stakeholder engagement. The ALR Board's roles and responsibilities are defined in the terms of reference (OC220431 / T2022/1415 / BRF21/22061367 joint report refers).

**Current ALR arrangements now need to evolve to best suit project requirements**

- 7 In December 2021, Cabinet noted that transition to a legal entity should be planned to occur in the second half of 2022 as this is likely to be necessary in advance of consenting and land acquisition processes (CAB-21-MIN-0531).

- 8 Since the current Ministerial Advisory Board arrangements were established, several developments have advanced the need for the setting up a legal entity:

- **Complexity and legal accountability.** The current contractual arrangements associated with a Ministerial Advisory Committee are complex. The ALR Board and Unit are not a legal entity and is not able to enter contracts and purchase and own land in its own right. Those functions are provided by the Ministry of Transport, creating additional responsibilities and accountabilities for the Ministry that are traditionally outside its remit.
- **Reported market confidence perception.** The ALR Unit has noted that they consider that not being a formally constituted entity does not support market confidence in the project.

- s 9(2)(b)(ii), s 9(2)(i)

- s 9(2)(f)(iv)

- s 9(2)(f)(iv), s 9(2)(j)

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## Transition to the Detailed Planning Phase Entity and the Final Delivery Entity

*We recommend that the Detailed Planning Phase Entity is not confirmed as the Final Delivery Entity upfront*

- 9 The final governance arrangements, powers, and entity form required for the construction of ALR and the delivery of associated urban development in the corridor cannot yet be confirmed, as the project continues to be scoped through the detailed planning phase and several policy workstreams remain under development.
- 10 Predetermining what the form of the Final Delivery Entity is during the start of the Detailed Planning Phase risks the entity not being fit for purpose as the project evolves or creating additional work and uncertainty to reconstitute it later.
- 11 As a result, it is proposed that a Detailed Planning Entity be established for the purpose of carrying the ALR Unit through to the delivery of the Detailed Business Case. This will allow officials to provide further advice on the recommended form of the Final Delivery Entity. The option to transition the Delivery Planning Entity into the Final Delivery Entity can also be assessed as part of this advice.
- 12 An ongoing work programme will resolve policy questions related to the Final Delivery Entity for the construction and operation of ALR. Decisions made during Detailed Planning will have direct bearing on the options and preferred solutions. Details of that work programme, including milestones and deliverables, will be provided to Sponsors shortly.

*A transition to the Detailed Planning Entity will retain critical aspects of the existing Governance structure*

- 13 The critical existing structures and principles of the ALR governance arrangements and organising model for the detailed planning phase are consistent with a transition to the Detailed Planning Entity. The plan would be for these to remain in place, applying to the new entity, as they do now to the ALR Board and Unit, including:
  - The forthcoming Sponsors Agreement partnership between the Crown, Auckland Council, and mana whenua, including the principles already agreed in the Sponsors Agreement Heads of Terms, s 9(2)(f)(iv)
  - The key aspects of the current Terms of Reference for the ALR Board setting out the role and responsibilities of the Board, which will need to transition into the suite of governance documents for the new Entity,
  - Existing guidance to the ALR Board establishing Sponsor expectations for the detailed planning phase, such as the Investment Management Letter (OC220394 / T2022/986 / BRF21/22051333 refers),
  - The underlying approach of the ALR Unit to effectively partner with other network and urban development entities to develop the business case and associated advice such as Auckland Transport, Waka Kotahi, Auckland Council, Kāinga Ora, and Eke Panuku.

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## Options for Establishing an Entity for the Detailed Planning Phase (DPP entity)

- 14 This section proposes options for the establishment of an interim delivery entity for the Detailed Planning Phase (**DPP entity**). This entity will absorb the roles and functions currently assigned to the ALR Unit.

*There are several design criteria that need to be considered*

- 15 The key considerations, including some preferences that Ministers have already confirmed, that inform the decision on the appropriate form of DPP entity include:
- 15.1 **Legal Status and Ownership:** The DPP entity will be a separate legal entity (e.g. a company) and, for this phase should be 100% Crown owned (noting that this ownership structure may not necessarily be the case with respect to the ultimate delivery entity) to reflect (1) ALR Ministers preference for direct influence over the entity and (2) the fact that Crown is 100% funding the entity during the detailed planning phase.
- 15.2 **Ease of establishment:** Given the ambitious timeframes Ministers have put around the detailed planning phase, there is little time to establish a DPP entity. The legal structure used should not slow current momentum or result in the need to revisit existing decisions. As a result, establishment should be able to be achieved relatively quickly.
- 15.3 **Ease of future possible transition** – the DPP entity arrangements should not unnecessarily hinder any later options to change or transfer to a future Final Delivery Entity and, if needed, the DPP entity should be straight forward to disestablish.
- 15.4 Allow for **Ministerial control and oversight** – this is especially important for the detailed planning phase. The high level of tax-payer funding required for this phase and need for the project to be undertaken in partnership requires unique governance arrangements with a Sponsors Group and multiple responsible Ministers. The overall potential cost to the Crown (\$14.6 billion (P50) in the indicative business case) requires Government to make strategic decisions while the DPP entity deals with technical and operational matters, therefore the entity chosen must allow for an elevated level of Ministerial oversight and **decision-making** during the Detailed Planning Phase of ALR.
- 15.5 The DPP entity structure should **not constrain options for the establishment of the Final Delivery Entity**. As noted above, the powers, functions and role of the Final Delivery Entity will be informed by the work carried out during the full Detailed Planning Phase and an expectation should not be created with the DPP entity that they will also be the Final Delivery Entity.
- 15.6 Ability to have **Multiple Types of Objectives** – while less important for the detailed planning phase, Crown entity objectives are typically not fully commercial – multiple objectives can be mandated, while exhibiting a sense of social responsibility and being a good employer. This is particularly important for the social objective associated with the urban development outcomes.

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15.7 The DPP entity should have **sufficient powers** or mechanisms to access those powers through third parties to carry out its role. For example, there may be a requirement for the DPP entity to designate or secure land along the proposed route to prevent speculation and to manage eventual costs.

*While there are several possible DPP entity form options, only two strongly meet the design criteria above*

16 The following legal form options were initially considered for the DPP entity. A comparison against the criteria is provided in Annex A.

- Ministerial Advisory Committee (current arrangement)
- Existing Statutory Crown Entity
- Crown Agent
- Autonomous Crown Entity
- Independent Crown Entity
- Existing Crown Company
- New Statutory Crown Entity
- State Enterprise
- Crown Entity Subsidiary
- New Crown Company listed in schedule 2 of the Crown Entities Act
- New Crown Company listed in Schedule 4A of the Public Finance Act (PFA 4A)
- Council Controlled Organisation
- Joint Venture or an Alliance

17 In summary, only two suitable legal form options for the DPP entity were identified that strongly meet the criteria above – either a Crown entity company added to Schedule 2 of the Crown Entities Act 2004 (**Crown entity company**) or a company listed on Schedule 4A of the Public Finance Act 1989 (**PFA 4A company**).

*The two strongest DPP entity legal forms are very similar*

18 A comparison of these options is provided below and a detailed comparison in Annex B.

19 Both entity types are companies incorporated under the Companies Act. A Schedule 2 company must be 100 percent Crown owned and have two or more Ministers as shareholders. A Schedule 4A company must have majority Crown ownership (i.e. 51 percent) and can include other parties as shareholders. Both entity forms are governed by a board appointed by shareholders.

20 If its uncertain whether the shares of the company will not be 100 percent owned by the Crown in the future (that could also allow others to co-appoint directors), a Crown Entity Act schedule 2 company can be transitioned to Public Finance Act Schedule 4 company at a later date relatively easily with an Order in Council.

21 The roles and functions of the entity are set out in its Constitution and a Statement of Intent agreed by shareholding Ministers or shareholders. Sponsors have previously agreed the enduring outcomes for the ALR project and the wider programme, which the entity would be responsible for ensuring are followed in the detailed planning phase work:

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- **Access and integration** – improved access to opportunities through enhancing Auckland’s Rapid Transit Network and integration with the current and future transport network
- **Environment** – optimised environmental quality and embedded sustainable practice
- **Experience** – a high-quality service that is attractive to users and highly patronised
- **Urban and community** – enabling of quality integrated urban
- **Value for money** – investment should reflect the priorities of the Government and its partners.

- 22 A Schedule 2 Crown company tends to typically be not fully commercial and can have multiple objectives, while exhibiting a sense of social responsibility and being a good employer. Whereas a Schedule 4A company may be a mix of social, cultural, public policy and commercial goals, but typically with a single focus. In the case of the DPP entity its focus will be urban development and transport infrastructure along with the outcomes above.
- 23 Establishment (and disestablishment) processes for both entities are the same and straightforward. The entities are incorporated under the Companies Act and then added to the relevant legislative schedules by Order in Council. They can also be liquidated under the Companies Act and removed from the relevant schedule by Order in Council.
- 24 Once established all rights, obligations and liabilities currently held by either the ALR Unit, or the Ministry of Transport on its behalf, would be transferred to the new entity. The transition from Ministerial Advisory Committee to Crown company would also see the existing skills-based board becoming the board of the new company.
- 25 Both entity forms can deal with land (i.e. buy, hold, and sell). Upon application and with the approval of the Minister for the Environment either entity could become a Requiring Authority. This would be a separate process initiated once the entity has been established.
- 26 A key consideration for the Detailed Planning phase is that Ministers and Sponsors will need higher levels of oversight and to retain appropriate decision rights. This is specially so since Cabinet has not agreed the Detailed Business Case or allocated funds for construction. Ministers cannot direct either a Schedule 2 or 4A company except in limited situations relating to all of government policy. For Ministers and Sponsors to fulfil their oversight and (where appropriate) decision-making requires additional contractual agreements with the Entity. This is discussed further below.

*On balance, a Schedule 2 Crown Entity Company is the preferred option*

- 27 Both a schedule 2 Crown entity company and a company listed on Schedule 4A of the Public Finance Act 1989 meet the majority of the assessment criteria.
- 28 The main differences are that a Schedule 2 Crown Entity company must be 100 per cent Crown-owned while a Schedule 4A company can be 100 percent Crown-owned but must, at a minimum, only be majority Crown-owned. On hundred percent Crown ownership best aligns with the detailed planning stage of the project, specifically the requirement for Cabinet agreement to the detailed business case (advised by the Sponsors), and the fact that the ALR Unit is funded by exclusively by the Crown.
- 29 As noted, if further analysis determines that the Final Delivery Entity should have additional shareholders then the Schedule 2 company this can be transferred to a Schedule 4A company by Order-In-Council.
- 30 The other difference is the way the entities deal with objectives. The difference is minor but a Schedule 2 company is traditionally structured to respond to multiple objectives and therefore can potentially better deal with urban development and transport infrastructure. Whereas a Schedule 4A tends to typically have a single focus.
- 31 On balance, Officials have assessed that a Schedule 2 Crown company best meets the criteria. This arrangement would be supported with contractual arrangements in the form of a Crown funding agreement or some other mechanisms, as well as the usual Crown Entity Act governance mechanisms such as Annual Letters of Expectation.

*There are further matters that will need to be addressed as part of the process to set up the DPP entity and successfully transition from the current arrangements*

- 32 **Contractual arrangement for Ministerial and Sponsors Group decision-making.**  
The governance arrangements for the ALR Unit have been set up with a direct line of sight and influence required by the Crown to make these decisions and guide the ALR Unit. However, if there is a separate legal entity during the DPP of the sort contemplated, then the public sector oversight framework governing the entity has limited scope for Ministerial oversight and where appropriate decision-making; it falls short of what is required to reflect the intended roles of Ministers and Sponsors during the Detailed Planning Phase of the ALR Project.
- 33 The Detailed Planning Phase requires significant policy and strategy decisions that need to be made by, and are the reserve of, Ministers and the Crown (in consultation with other Sponsors). At this time, the ALR Unit is still preparing a Business Case and given the potential cost to the Crown there are choices (at a strategic level) that need to be made by Government to ensure the broader public interest.
- 34 Controls and oversight required by Ministers and the Crown (in consultation with Sponsors) therefore need to be reflected in additional arrangements – this is likely best reflected in contractual arrangements between the Crown and the DPP entity. These arrangements can be appropriately tailored to reflect the phase of the project. This was the same issue faced by City Rail Link (CRLL). In this case, a Project Delivery Agreement was put in place, through which the Sponsors exercise project

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oversight of CRL (which is also monitored at an entity level through the public sector framework of the Public Finance Act and Crown Entities Act).

- 35 The ALR arrangement could take the form of a Crown funding agreement, a contract, letter of expectation or some other means to codify existing agreed collaborative decision-making processes. This arrangement would specify conditions or circumstances when Ministers and Sponsors would expect to be consulted and involved.
- 36 Any contract (or other arrangement) for ALR would need to be tailored to the level of decision-making being reserved to Ministers, and to ensure the ALR Board has the appropriate independence to carry out its roles and functions. These arrangements would be based on the principles and approaches already agreed to in the Sponsors Agreement Heads of Terms and the ALR Board terms of reference.
- 37 Of note is that Officials intend, to the extent possible given the ambitious timelines, that the contractual DPP entity governance documents should be developed in parallel to setting up the new entity. However, these arrangement should not prevent the establishment of the entity. To provide certainty to the ARL Unit, Officials will ensure that appropriate clarity on the expectations is provided in Cabinet recommendations.
- 38 **Continuity of the board and appointment of additional members.** Three members have been appointed to the ALR Board. It is recommended these members are confirmed as the members for the board of the Crown company. Cabinet directed the ALR Board be established with the skills necessary to take forward the detailed planning phase. The appointment of the remaining board members will bring essential skills needed to oversee this phase. In establishing a Crown company, it is critical that appointing the remaining board members is a priority.

39 s 9(2)(f)(iv)

40

41 **Monitoring Arrangements under the Crown Entities Act**

Under the Crown Entities Act, a Crown Company requires Responsible Ministers and a Monitoring Agency to give effect to the legislative monitoring and governance functions. We recommend that:

- The Responsible Ministers include the Ministers of Finance, Transport, and Housing, consistent with the existing delegations from Cabinet and the Sponsor

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status of these Ministers under the Sponsors Agreement and ALR Board Terms of Reference,

- The Ministry of Transport have the role of Monitor under the Crown Entities Act. In doing so The Ministry will work closely with the Treasury and the Ministry of Housing and Urban Development , to ensure all Responsible Ministers receive the appropriate coordinated advice – this is a similar arrangement to the City Rail Link Limited.

### **Ensuring there is a strong representation of the Final Operator in the Detailed Planning Phase**

- 42 One downside of not confirming an existing institution as the final owner and operator of the ALR assets during the detailed planning phase, is that there is less of an acute responsibility for that institution to challenge and contribute to the business case development to ensure that the design process is properly taking into account operator considerations.
- 43 This was an issue at the beginning of the CRL project in 2017. In the years following, strong contractual arrangements were required to ensure that Auckland Transport and KiwiRail were confirmed as final owners and operators of the CRL assets, and to ensure they were appropriately engaged in the design and assurance processes.
- 44 During the detailed planning phase, the ALR Unit is planning to do considerable detailed design and engineering investigation across options that would benefit from the challenge and contribution of a confirmed owner/operator. While further work progresses on the question around what institution will own and operate the ALR asset, officials recommend that Sponsors should request that, in the meantime, an existing institution should act in this role, for the benefit of the project at this stage.
- 45 Officials are working on how to strengthen this final owner and operator representation and have a work programme underway. In the meantime, Auckland Transport is now part of the Sponsors Group and has been consulted on the options discussed in this briefing.

### **ALR Unit wants early certainty**

- 46 The ALR Unit has conveyed that it is relatively agnostic on the entity type. Its primary concern is having certainty of what structures it must work with and the timeframes for these.
- 47 The Unit seeks to have a formal entity established by 1 September primarily because of its forthcoming procurement processes, to give the market certainty of who they would be contracting with and to attract high quality responders.
- 48 The ALR Unit also stated that the uncertainty of form was a challenge for recruitment of specialists, especially from overseas. At an operational level, the Unit was also mindful of the time to put in place organisational systems (i.e. HR, contract, payroll) to meet whatever structure was decided.

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### **Other Parties consulted are supportive**

- 49 This paper has been jointly prepared by the Ministry of Transport, the Treasury, and Ministry for Housing and Urban Development. Auckland Council have been consulted on the selection criteria and preferred option.

### **Next Steps - Straightforward Establishment process**

- 50 The Sponsors are scheduled to meet on 6 July 2022. In line with the intent of the sponsor arrangements, officials suggest the matters outlined in this paper are discussed at that meeting prior to Sponsoring Ministers providing their decisions on the matter to officials. Officials will prepare a paper for Sponsors to inform that discussion.
- 51 Officials are working at pace to establish the new entity, nonetheless 1 September is unlikely to be achievable given the process involved in establishing a new entity. The contractual arrangements to enable the ALR Board and Unit in their current forms to make decisions, allocate funds and function are almost in place. The Unit will need to use current arrangements until the new entity form is established.
- 52 The Ministry of Transport will work closely with the ALR Unit to understand and provide what it needs to be able to operate effectively until the new entity is established and not lose project momentum.
- 53 Once decisions of Ministers are received, a Cabinet paper and associated Order-in-Council will be prepared and can be ready in August. With Cabinet agreement, we anticipate that the entity could be stood up in late September to early October.

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## ANNEX A

## Other options considered

54 For completeness the following additional options were also considered.

| Entity Arrangement              | Reasons to exclude or consider further  | Examples  |
|---------------------------------|---|---|
| Ministerial Advisory Committee  | Used for the initial set up. Determined to not be suitable or have sufficient land acquisition powers. Does not have status of a legal entity. Therefore, requires complex contractual arrangements to give effect to the intent of arrangements – therefore unlikely to give the market the confidence needed. | Existing arrangement  |
| Existing Statutory Crown Entity | Would need to be consistent with the Entity's current role and functions as set out in legislation. Would need both transport and urban development functions. To add function may require legislation. Would not allow for unique governance oversight arrangements.   | Waka Kotahi, Kāinga Ora   |
| Existing Crown Company          | Possible but would require a change in the role and function of the entity and the merging of existing structures. Has the potential to divert the existing organisations from original objectives. Also does not fit current governance arrangements (i.e. the ALR Unit competency-based board).               | CRLL, Crown Infrastructure Partners   |
| New statutory Crown Entity      | Requires legislation. Time required do the underpinning policy work and to develop legislation. Roles and functions of Ultimate Delivery Entity are evolving.   |   |
| Crown Entity Subsidiary         | Possible if consistent with entity's (and its parent's) role, functions appropriation but does not allow for level of Ministerial or Sponsor Group oversight.   |   |
| State Enterprise                | Required to return a profit to the Crown so not an option for the detailed planning phase or construction but could be considered for the operational entity.   | New Zealand Post, Kordia, KiwiRail  |
| CCO                             | Does not provide the level of required Ministerial oversight.   | Regional Airports   |
| Joint Venture or an Alliance    | Possible but the commercial and contractual arrangements may take some time. Limited ability for heightened Ministerial or Sponsor Group oversight. Better suited to later phases.  | Stronger Christchurch Infrastructure Rebuild Team (SCIRT), Piratahi (a KO Alliance) |

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## Annex B

55 The table below sets out characteristic for a Crown entity company and a company listed in Schedule 4A.

|   | <b>Crown entity company under Schedule 2 of the Crown Entities Act (CEA)</b>  | <b>Company listed in schedule 4A of the Public Finance Act (PFA 4A)</b>  |
|---|---|--|
| Legal status and Ownership                      |   |  |
| Type of entity                                  | Company incorporated under the Companies Act.<br><br>Examples include New Zealand Venture Investment Fund Limited, Radio New Zealand Limited, and Television New Zealand Limited.   | Same as Crown entity company under schedule 2 of the CEA<br><br>Examples include Crown Asset Management Limited, City Rail Link Limited, Education Payroll Limited, New Zealand Green Investment Finance Limited and Ōtākaro Limited.  |
| Ownership requirements                          | 100 per cent Crown-owned. Shares must be held by two or more Ministers, one of whom must be the Minister of Finance.  | The Crown must own more than 50 per cent of ordinary issued shares. Shares must be held by two or more Ministers, one of whom must be the Minister of Finance.   |
| Establishment and Transition to Ultimate Entity |   |  |
| Ease of establishment                           | Simple process to incorporate company under the Companies Act. Functions and objectives can be set out in the company's constitution and statement of intent.<br><br>The company is added to schedule 2 of the Crown Entities Act by the Governor-General by Order in Council | Same as Crown entity company under schedule 2 of the CEA<br><br>Same process but company is added to schedule 4A of the Public Finance Act   |
| Ease of transfer of ownership                   | Shares cannot be transferred outside the Crown's ownership.   | Up to 49 per cent of the shares may be transferred out of Crown ownership using the standard Companies Act process. If the Crown no longer holds more than 50 per cent of the company's shares, it must be removed from schedule 4A of the Public Finance Act by Order in Council. |
| Ease of disestablishment                        | Usual Companies Act processes to liquidate or wind-up company.<br><br>The company can be removed from schedule 2 of the Crown Entities Act by Order in Council in recognition of the company's dissolution or removal from register.  | Same as Crown entity company under schedule 2 of the CEA<br><br>Same process but removed from schedule 4A of the Public Finance Act.   |

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|   | Crown entity company under Schedule 2 of the Crown Entities Act (CEA)   | Company listed in schedule 4A of the Public Finance Act (PFA 4A)  |
|---|---|---|
| <b>Objectives and Powers</b>                |   |   |
| Principal objective                         | Typically, not fully commercial but with multiple objectives, while exhibiting a sense of social responsibility and being a good employer.  | May be a mix of social, cultural, public policy and commercial goals but typically has a single focus.  |
| How objectives and functions are determined | The company's objectives and functions are set out in the company's constitution, the statement of intent. The company must prepare a statement of intent for the current financial year and at least the two following financial years and submit it to its shareholding Ministers for approval. | Same as Crown entity company under schedule 2 of the CEA  |
| Financial powers and provisions             | Subject to financial powers and restrictions in Crown Entities Act (i.e., restrictions on borrowing, investing, etc.) unless exemption granted.   | Same Crown Entities Act financial powers and restrictions can be applied to company. Schedule 4A of the Public Finance Act outlines what Crown Entities Act financial restrictions apply to each schedule 4A company. |
| Power to deal with Land Acquisition         | Can own acquire and sell land. <sup>s</sup> 9(2) (f)(iv)  | Same as Crown entity company under schedule 2 of the CEA  |
| <b>Ministerial Control and Oversight</b>    |   |   |
| Ministerial influence                       | Would require contractual arrangement, letter of expectation or other means to codify existing agreed collaborative decision-making. Also be used to specify conditions or circumstances when Ministers and the Sponsors Group would expect to be consulted and involved.                         | Same as Crown entity company under schedule 2 of the CEA  |
| Ability to influence operations of entity   | Power to direct on some changes to the company's statement of intent.   | Same as Crown entity company under schedule 2 of the CEA  |
| Key ministerial powers to direct the board  | May direct to have regard to any "whole of government" direction.   | Same as Crown entity company under schedule 2 of the CEA  |

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|                           | <b>Crown entity company under Schedule 2 of the Crown Entities Act (CEA)</b>  | <b>Company listed in schedule 4A of the Public Finance Act (PFA 4A)</b> |
|---------------------------|---|---|
| Other powers of direction | Power to request information and review operations and performance. May be subject to “whole of government” directions  | Same as Crown entity company under schedule 2 of the CEA                |
| Role of the board         | Manage the business and affairs of the company in accordance with the Companies Act and the company’s statement of intent (if applicable). Usual Companies Act duties apply. Additional individual and collective duties in the Crown Entities Act apply. | Same as Crown entity company under schedule 2 of the CEA                |
| Removal of board member   | Can be removed by ordinary resolution of shareholders under Companies Act, or as otherwise provided for by the company’s constitution   | Same as Crown entity company under schedule 2 of the CEA                |

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