

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"> (i) the Government of any other country or any agency of such a Government; or (ii) any international organisation |
| 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) |

Office of the Minister of Finance
Office of the Minister of Transport
Office of the Minister of Housing
Cabinet Economic Development Committee

Establishment of Auckland Light Rail Limited

Proposal

- 1 We propose to establish a company, provisionally named Auckland Light Rail Limited (ALRL), and to add it to Schedule 2 of the Crown Entities Act 2004 (CEA), to manage the delivery of the planning phase for Auckland Light Rail (ALR) project. If this is agreed, we will submit a paper to Cabinet Legislation Committee to approve the necessary Order in Council to add the company to Schedule 2.

Relation to government priorities

- 2 Cabinet has prioritised progressing light rail from the city centre to Māngere and the airport in the next decade as the first spine of a wider rapid transit network for Auckland [DEV-18- MIN-0059 refers]. This reflects the commitments the Government has made through the Auckland Transport Alignment Project (ATAP). The 2020 Labour Party Election Manifesto committed to building a light rail connection from the city centre to Māngere and the airport.
- 3 The Climate Change Response (Zero Carbon) Amendment Act 2019 set a target to reach net zero emissions by 2050. The transport priorities in the Emissions Reduction Plan emphasise the significance of public transport investments such as these in reducing carbon emissions by changing the way New Zealanders travel and supporting more compact urban form which avoids significant emissions in the long-term.

Executive Summary

- 4 ALR will be New Zealand's largest and most complex infrastructure project. It has the potential to transform Auckland's transport network and catalyse urban development along the proposed corridor. This will bring far-reaching benefits to the Auckland region, which include social and economic opportunities, as well as significantly increasing housing supply and employment opportunities.
- 5 This Government is committed to delivering a detailed investment case for the ALR project. We have already made bold decisions that have taken the project from initial planning into the current detailed planning phase. We planned to have stood up a final delivery entity in the second half of 2022 to progress the detailed planning phase. To maintain momentum, we are recommending the establishment of an entity to take forward the detailed planning phase while policy work is undertaken on the final delivery arrangements.
- 6 This paper seeks Cabinet's agreement to establish ALRL as a Schedule 2 Crown Company added to the CEA. The core function of ALRL will be to submit a business

case and associated advice and activities to Sponsors, informing Cabinet's final investment decisions.

- 7 The CEA requires that the Crown hold 100 percent of the issued share capital in a Schedule 2 company. The Minister of Finance, Minister of Transport and the Minister of Housing (Sponsoring Ministers) will hold the shares in ALRL on behalf of the Crown in equal shares.
- 8 Sponsoring Ministers, Auckland Council and mana whenua are the Sponsors for the ALR Programme. During the detailed planning phase, Sponsors will need to have a direct line of sight and influence over ALRL. This recognises the number of policy and strategy decisions that will need to be made by the Crown and Sponsors in this phase. In standing up ALRL, contractual arrangements will need to be in place that maintain and enable the role of Sponsors. This is in addition to the usual documents required to set out the expectations and intent for a Crown Company.
- 9 Sponsoring Ministers will want to be satisfied that ALRL can operate successfully. This includes being assured by the board of ALRL that appropriate systems and processes are in place or that there is a suitable plan for those actions to occur. We will work with officials and the current ALR Board for assurance on this matter.
- 10 It is our expectation that responsibilities of the ALR Ministerial Advisory Committee and the Unit will be transferred to ALRL by October 2022 (subject to the signing of a Project Planning Agreement).

The detailed planning phase of the Auckland Light Rail project

- 11 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. This phase includes:
 - 11.1 further business case work, technical assessments and detailed design, master planning, and community and stakeholder engagement, led by the ALR Board
 - 11.2 associated applications for consenting, including consideration of use of the Urban Development Act 2020
 - 11.3 developing procurement and land acquisition strategies
 - 11.4 significant policy work programme including determining funding and financing, and delivery arrangements, led by central agencies.
- 12 Cabinet noted 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.
- 13 The governance arrangements will include a Sponsor partnership between the Crown, Auckland Council and mana whenua. At the project-level, governance is provided by a skills-based board set up to guide the detailed planning phase of the project. The ALR Unit supports the Board to deliver to its objectives.
- 14 Cabinet noted that as the project transitions through its phases aspects of the governance arrangements will endure and, there will be continuity of board members and staff as a way to maintain momentum, knowledge, and commitment to the project.
- 15 The ALR Board took effect on 1 June 2022. The ALR Board's roles and responsibilities are defined in the terms of reference approved by Sponsoring Ministers.

We recommend that a Schedule 2 Crown Company is established to take forward the detailed planning phase of ALR

Why establish now

- 16 Cabinet noted that transition to the final delivery 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).
- 17 Advice from Officials has been that it is too early to move to the final delivery arrangements at this point, as policy issues in the detailed planning phase need to be resolved that will impact on the form and structure of these final arrangements. Nonetheless there is a case to move to a legal entity at this point in the detailed planning phase.
- 18 The current arrangements associated with the ALR Board (which in Machinery of Government terms is a Ministerial Advisory Committee) are complex. The ALR Board and Unit are not legal entities and are not able to enter contracts and purchase and own land in their own right. Those functions are currently provided by the Ministry of Transport. This creates additional responsibilities and accountabilities for the Ministry that are traditionally outside its remit.
- 19 The ALR Unit notes that not being a formally constituted entity does not support market confidence in the project. A legal entity will enable the ALR Unit to acquire land and hold other powers necessary for the detailed planning phase, subject to further decision making by Ministers. s 9(2)(f)(iv)

Why a Schedule 2 Crown entity company

- 20 Officials considered a number of options for the form of the legal entity for the detailed planning phase, including a Crown Company under Schedule 4A of the Public Finance Act 1989, a statutory Crown Entity (e.g., a Crown agent), a joint venture contractual arrangement, and a Council Controlled Organisation. Officials also considered adding ALR functions to existing Schedule 4A Crown companies

however, this would add risks to those entities by diverting them from existing priorities and programmes.

- 21 We consider that a Schedule 2 Crown entity company best meets our objectives. A Schedule 2 Crown entity company requires that two or more Ministers, one of whom must be the Minister of Finance, hold 100 percent of the shares in the company on behalf of the Crown, in equal shares. We believe that this wholly Crown-owned shareholding arrangement best applies for the detailed planning phase. In this phase funding is 100 percent provided for by the Crown, and decisions will be made on final funding and ownership arrangements for the delivery and operation phases of ALR.
- 22 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.
- 23 The proposed approach of using a Crown company is similar to that adopted for the establishment of City Rail Link Limited and Tamaki Redevelopment Company Limited in that they are Schedule 4A Crown companies. However, in both these cases the shareholders include the Auckland Council. For the detailed planning phase, where the Crown is the funder, 100 percent shareholding by the Crown is preferred.
- 24 We have consulted with our Sponsor colleagues from Auckland Council on this proposal, and they are supportive.

Company functions and objectives

- 25 The main function of ALRL will be to undertake detailed planning for the project in order to provide advice to Sponsors, informing their decision making, and in particular the final investment decisions. Given its planning function, ALRL will not be expected to turn a profit, and it is not expected that the company will provide returns to its shareholders.
- 26 The functions of the company will reflect the broader ALR Programme and include responsibilities that relate to the project (i.e. transport infrastructure and associated urban development) and the wider programme (supporting infrastructure, policy work, the relationship to regional infrastructure and growth).

Project-related responsibilities

- submit business case and associated advice to the Crown, within the parameters set by the Crown and Sponsors, to inform final investment decisions
- progress the project as an integrated transport and urban development project
- preparation of consenting and land acquisition strategies s 9(2)(f)(iv), s 9(2)(i)
- s 9(2)(f)(iv), s 9(2)(i)
- ensure mana whenua, communities, stakeholders and partner agencies are engaged
- advise Sponsors on how to protect the transport corridor and oversee the preparation of the necessary consents

- provide visibility of risks and assurance to Sponsors
- enter into partnership agreements with partner agencies for ALR project delivery.

Programme-related responsibilities

- enable the intent of the organising model and governance arrangements for the ALR Programme in the detailed planning phase
 - contribute to and integrate ALR Programme outputs led by other agencies into the business case
 - engage with partner agencies on wider planning and growth for transport and urban development across the region, ensuring alignment of projects in the corridor.
- 27 ALRL will initially be established for the period of the detailed planning phase only, which is expected to run to approximately the middle of 2024. This will be an appropriate time to confirm whether this is the right entity form to see the project through. ALRL is being established as a Crown entity company as this provides for ease in transitioning to other entity forms if required, following final investment decisions.
- 28 The company constitution will provide a mechanism for defining the purpose and nature of ALRL.

The role of Sponsors in the detailed planning phase

- 29 In establishing ALRL, we intend for the principles of the existing governance arrangements to endure, this is particularly important with respect to the role of Sponsors.
- 30 The foundation of the governance arrangements is the partnership between the Crown, Auckland Council and mana whenua, who form the Sponsors. This partnership is critical to the success of the ALR programme.
- 31 We have confirmed the ALR Sponsoring Ministers, as well as the Mayor and the Deputy Mayor as the Sponsor representatives from Auckland Council. We continue to work through the process for mana whenua representatives.
- 32 The ALR Programme is broad and involves assessment, coordination and decision making beyond the business case work of the detailed planning phase. Sponsors are responsible for the broad ALR Programme, which comprises of:
- 32.1 Guidance and decisions to progress the ALR Project on advice from the ALR Board, which includes the delivery of a light rail transport network from the city centre to Māngere and associated urban development activities
 - 32.2 related investment decisions by Sponsors which are required in order to allow the benefits of the ALR Project to be obtained, such as regulatory decisions for the urban development in the ALR corridor, and
 - 32.3 the relationship with wider planning for growth and transport across the region, including those projects that interface with or impact on the outcomes of the ALR Programme (which include the Additional Waitemata Harbour Crossing, Auckland Rapid Transit Plan and Kāinga Ora Large-Scale projects).

- 33 The arrangements between the Sponsors (including the Sponsors Agreement for the detailed planning phase when agreed) reflect the significant policy issues and strategy decisions that are the reserve of the Crown (in consultation as appropriate with the other Sponsors) and will be made or informed during the detailed planning phase. These decisions and direction will inform the scope of work to be carried out by the current Board and new company throughout the detailed planning phase, and will be reflected in a Project Planning Agreement intended to be entered into with ALRL.
- 34 It is important to note that by entering into the Project Planning Agreement (which will also govern funding) the company contractually agrees to be bound by decisions and guidance of Sponsors, or to do or not do certain things, in specified situations – these are contractual constraints that within which ALRL is agreeing to operate by entering into this agreement.
- 35 The governance arrangements will evolve over the phases of the project, with a consequential change in Ministerial oversight being required over time, particularly once final investment decisions have been made. This will allow increasing levels of operational responsibility and decision-making to be made available to existing agencies as well as the ultimate delivery entity.

The importance of contractual arrangements to maintain the role of Sponsors with the establishment of the new company

- 36 The role of Sponsors to have a direct line of sight and influence in the detailed planning phase must continue with the establishment of ALRL. This will require a Project Planning Agreement (PPA). This type of arrangement is similar to that used for City Rail Link.
- 37 The roles and responsibilities of ALRL in relation to the ALR Project, as well as its relationship with the Crown and Sponsors, will be governed by a PPA. It is currently intended that the ALRL will enter into this Project Planning Agreement with either the Crown or Sponsors (the contracting parties are yet to be confirmed).
- 38 The purpose of the PPA will be to outline the following matters during the detailed planning phase:
- roles and responsibilities of the Crown, other Sponsors and ALRL in relation to the ALR Project
 - scope of decision-making authority of ALRL
 - information sharing between the ALRL, Sponsors and officials
 - funding arrangements and payment regime
 - assurance and monitoring arrangements.
- 39 It is expected that the PPA will be developed and agreed in-principle before ALRL is established. The transfer of responsibilities from the Ministerial Advisory Committee (and the ALR Unit) to ALRL will be contingent on the signing of the PPA. Without the PPA ALRL would not be able to access funding, nor would Ministers be able to have the level of oversight or influence expected.
- 40 With the establishment of ALRL, in the absence of mana whenua Sponsor representatives and therefore an agreed to Sponsors Agreement arrangements

between Sponsors will need to be set out in separate instrument/s. These will have reference to the heads of terms previously approved by Cabinet and Auckland Council. Officials are exploring how these arrangements are best entered into. This will determine which Sponsors will be the contracting parties of the Project Planning Agreement with ALRL.

- 41 We propose that Sponsoring Ministers are delegated responsibility to take decisions as required in relation to the setting up of ALRL, including signing the PPA in consultation with other Sponsors.

There are a number of considerations to be made in establishing ALRL

Company structure and governance

- 42 The company will be structured as a limited liability company with a written constitution that reflects its special purpose.
- 43 At this time, the name of the company has not yet been finalised. The ALR Unit is in the process of developing options. The current options use a combination of a Te Reo name followed by the phrase Urban Connect. We propose that Sponsoring Ministers are delegated responsibility to finalise the name before the company is incorporated. We will report back to Cabinet on the final choice.
- 44 A Board, with a Chair and directors, will govern ALRL. On 16 May 2022, Cabinet confirmed Dame Fran Wilde as Chair, and both Leigh Auton and Lucy Tukua as members of the current ALR Board [APH-22-MIN-0065 refers]. It is our intention that the current ALR Board members will transition to the board of ALRL.
- 45 Treasury, the Ministry of Housing and Urban Development, and the Ministry of Transport are currently working through the appointments process for the remaining board member positions. These appointments will be made to the new ALRL Board, or transitioned to it if made prior to the company's establishment.
- 46 Shareholders will also have statutory responsibilities relating to provisions in the Crown Entities Act 2004. For example, shareholding Ministers will need to comment on drafts of company accountability documents, such as a Statement of Intent and an annual Statement of Performance Expectations.
- 47 We propose the Sponsoring Ministers (the Minister of Finance, the Minister of Transport and the Minister of Housing) hold equal shares in ALRL on behalf of the Crown.
- 48 We anticipate that the majority of existing ALR Unit workforce, along with any relevant assets, will be transferred to ALRL.

Project funding

- 49 Cabinet has agreed as part of Budget 2022 the funding package for the detailed planning phase of ALR. The appropriation currently sits with the Ministry of Transport. It is our expectation that the funding made available to the project for the appropriation is sufficient to provide for the company establishment and ongoing requirements.
- 50 Over four years the funding package for ALR comprises of:

- 50.1 \$189.465 million of operating funding over two years for the ALR Unit, and four years for board appointment and secretariat costs for the new ALR board (2021/22 to FY 2024/25)
- 50.2 \$9.64 million of operating funding for the Ministry and Treasury over three years for ALR policy advice purposes (2021/22 to 2023/24)
- 50.3 s 9(2)(f)(iv), s 9(2)(j)

51 A delegation's framework is currently in place between the Chief Executive of the Ministry of Transport and the ALR Board and ALR Project Director, to enable the ALR Board to draw on this funding.

Company governance and accountability obligations

- 52 As a Schedule 2 Crown company, ALRL will be subject to a number of the reporting obligations contained in the Crown Entities Act 2004. This includes publication of a Statement of Intent, Statement of Performance Expectations and for the company's constitution to be presented to the House of Representatives.
- 53 The Project Planning Agreement will also require the ALRL Board to report regularly to the Sponsors on a variety of issues, including reporting on project progress and monitoring or assurance required by Sponsors.
- 54 In common with most other Schedule 2 Crown companies, ALRL will be subject to the Official Information Act 1982 and the Ombudsmen Act 1975. This will provide additional accountability and transparency measures.
- 55 ALRL will be subject to auditing by the Office of the Auditor-General, in accordance with section 14 of the Public Audit Act and section 156 of the CEA.

Monitoring arrangements

- 56 As a Crown entity company, all three shareholding Ministers are defined as 'responsible Ministers' under the Crown Entities Act 2004.
- 57 The Ministry of Transport will take on the role of Monitor under the CEA for ALRL, leading advice for responsible Ministers and will work closely with Treasury and the Ministry of Housing and Urban Development as the departments advising their portfolio Ministers.
- 58 A collaborative approach to developing the monitoring arrangements is being taken to provide all parties with clear expectations, roles and responsibilities.
- 59 A no surprises approach will be embedded within this framework that provides shareholding Ministers and Sponsors with early warning of risks and issues related to the operating performance of the entity.
- 60 The Ministry of Transport, in consultation with Treasury and the Ministry of Housing and Urban Development, will support responsible Ministers in monitoring activities and any subsequent advice to improve performance, including:
 - 60.1 appointing and maintaining an effective ALR Board

- 60.2 reviewing the operations and performance of ALRL in achieving its objectives
 - 60.3 participating in the process for setting the ALRL's strategic direction and performance expectations, and monitoring performance
 - 60.4 administering the PPA and other governance documentation
 - 60.5 administering appropriations.
- 61 A monitoring and assurance framework is being developed that will define the approach to monitoring ALRL, which will be consistent with the CEA. This will factor in a range of roles, responsibilities and relationships including:
- 61.1 statutory monitoring, which encompasses the role of the monitor in the CEA and supporting how Ministers test the Board's decision making as noted in the paragraphs above
 - 61.2 assessing whether decisions made are consistent with Sponsor's and the Government's objectives for the ALR Project, and relevant Cabinet and government guidelines. This also recognises that ALRL will set up its own assurance arrangements.
 - 61.3 the role of the Ministry of Transport, Treasury and Ministry of Housing and Urban Development as independent policy advisors to Ministers.
- 62 The monitoring framework will also incorporate wider monitoring activities related to investment management.

Application of specific financial provisions in the Crown Entities Act 2004 to ALRL

- 63 Table 1 below outlines the provisions of the CEA (relating to financial matters, rather than reporting or governing matters) that can be applied to ALRL.
- 64 Given that ALRL has only a core objective of the delivery of a business case, and funding is being provided by the Crown, we do not consider that it is necessary for ALRL to acquire financial products, borrow, or have the broad ability to give guarantees or indemnities or use derivatives.

Table 1: Application of specific financial provisions of Crown Entities Act 2004

| Section | Applies to ALRL? | Justification |
|---|------------------|---|
| Section 161 (restriction on acquisition of financial products) | Yes | ALRL has one particular purpose. It is not considered necessary for ALRL to acquire financial products in order to deliver on this purpose. |
| Section 162 (restriction on borrowing) | Yes | Funding for ALRL is being entirely provided by Crown. It is not necessary for ALRL to have the ability to borrow. |

| Section | Applies to ALRL? | Justification |
|---|------------------|---|
| Section 163 (restriction on giving of guarantees or indemnities) | Yes | Funding for ALRL is being entirely provided by Crown. It is not necessary for ALRL to have broad ability to give guarantees and indemnities. ¹ |
| Section 164 (restriction on use of derivatives) | Yes | ALRL has one particular purpose. It is not considered necessary for ALRL to engage in derivative transactions in order to deliver on this purpose. |

- 65 We also propose **not** to allow an exemption to ALRL in relation to section 165 of the CEA. Section 165 provides that the Minister of Finance may, in writing, require a Crown entity company to pay to the Crown the whole or any part of the net surplus of the Crown entity company. Section 165 gives the option, but not the obligation, for the Minister of Finance to seek the repayment of any net surplus. Given the uncertainty the company will face moving forward, ^{s 9(2)(f)(iv), s 9(2)(f)} [REDACTED], and the short-lived nature of the company, we recommend that we retain this option.

Transfer of responsibilities to ALRL

- 66 It is important that ALRL is set up to successfully operate as a company. To date, the ALR Unit has been supported by the Ministry of Transport and Waka Kotahi providing core systems including payroll, human resources and contract administration. The Ministry of Transport and Waka Kotahi have also undertaken compliance functions on behalf of the ALR Unit. Once established ALRL will need to have capability to operate as a standalone company with appropriate processes and systems in place.
- 67 We will seek the assurance of the ALR Board that it has appropriate systems, processes and policies in place, or a plan for their implementation, before the transition to ALRL.

Financial Implications

- 68 The \$189.465 million of operating funding for the ALR Unit is in a Ministry of Transport departmental multi-year appropriation, reflecting the current situation where the ALR Unit is a part of the Ministry. While new funding is not required for the establishment of the new company, changes to the existing appropriation structure will be needed. It is likely this will include the requirement for an operating to capital swap to enable an initial capital injection into the company to ensure it has the working capital to operate as a going concern.
- 69 The final timing of the transition to the new company will determine how much funding will need to be transferred into the new company. We propose that Cabinet authorise the Minister of Finance, Minister of Transport and the Minister of Housing, acting jointly, to approve changes to appropriations (including establishing new

¹ While Section 163 limits ALRL's ability to issue guarantees and indemnities, the company will still have the ability to issue some classes of indemnities without the approval of shareholding Ministers in the ordinary course of the company's operations, under the provisions of the Crown Entities (Financial Powers) Regulations 2005.

appropriations and any operating to capital swaps) once there is further clarity on timing of the transition and funding requirements.

Legislative Implications

- 70 An Order in Council will be required to add ALRL to Schedule 2 of the CEA. An Order in Council will also be required to add ALRL to the Ombudsmen Act 1975.
- 71 Subject to Cabinet approval the Parliamentary Counsel Office will be instructed to prepare the Orders in Council which will then be submitted to Cabinet Legislation Committee (LEG) for consideration.

Waiving of 28-day rule

- 72 We consider that it is appropriate to waive the 28-day rule for the Orders in Council because the establishment of ALRL has little or no effect on the public, and it is desirable to establish ALRL as soon as possible.

Impact Analysis

Regulatory Impact Statement

- 73 The Treasury's Regulatory Impact Analysis team has determined that the establishment of Auckland Light Rail Limited is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

Climate Impact Assessment

- 74 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this paper as there are no decisions that will have a direct emissions impact at this stage.

Human Rights

- 75 This proposal is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

- 76 The Public Service Commission and Ministry of Justice have been consulted on this paper.
- 77 The decisions in this paper have been informed by discussions with the ALR Unit and Auckland Council.

Communications

- 78 We intend to issue a press release announcing that a company called Auckland Light Rail Limited will be added to Schedule 2 of the Crown Entities Act 2004 to manage the detailed planning for the Auckland Light Rail project once the Orders in Council have been gazetted.

Proactive Release

- 79 It is our intention to proactively release this paper once ALRL has been established.

Recommendations

IN CONFIDENCE

The Minister of Finance, the Minister of Transport and Minister of Housing recommend that the Committee:

- 1 **agree** to the creation of a limited liability company called Auckland Light Rail Limited to prepare a business case and associated planning advice and activities, during the planning phase of the Auckland Light Rail project to inform final investment decisions.
- 2 **agree** that Auckland Light Rail Limited be added to Schedule 2 of the Crown Entities Act 2004.
- 3 **note** that the governance documents establishing Auckland Light Rail Limited will clarify the company's functions which will include (but not be limited to)
 - 3.1 submitting a business case to Sponsors, and associated planning advice
 - 3.2 progressing the project as an integrated transport and urban development project
 - 3.3 preparation of consenting and land acquisition strategies s 9(2)(f)(iv), s 9(2)(i)
 - 3.4 s 9(2)(f)(iv), s 9(2)(i)
 - 3.5 engaging with mana whenua, communities, stakeholders
 - 3.6 managing and providing visibility of risks and assurance to Sponsors
 - 3.7 enabling the governance arrangements and supporting the collaborative nature of the organising model for the ALR Programme in the detailed planning phase
 - 3.8 contributing to and integrating the ALR Programme outputs led by other agencies into the business case.
- 4 **note** that following further policy work on the final delivery arrangements for the delivery and operations of Auckland Light Rail the Minister of Finance, the Minister of Transport and the Minister of Housing will report back to Cabinet.
- 5 **note** that, contingent on final investment decisions by Cabinet, many of the characteristics of Auckland Light Rail Limited may suit the final delivery arrangements for the project, and this will be considered as part of the further policy work.
- 6 **agree** that the suitability of Auckland Light Rail Limited in delivering the project will be confirmed alongside final investment decisions.
- 7 **agree** that Auckland Light Rail Limited will be disestablished if Cabinet decides not to progress the Auckland Light Rail project during, or at the completion of, the detailed planning phase.
- 8 **note** that the Crown will hold 100 percent of the shares of Auckland Light Rail Limited.

IN CONFIDENCE

- 9 **agree** that the Minister of Finance, the Minister of Transport and the Minister of Housing will hold equal shares in Auckland Light Rail Limited on behalf of the Crown.
- 10 **note** that a project planning agreement will be used to define the:
- 10.1 roles and responsibilities of the Crown, other Sponsors and Auckland Light Rail Limited
 - 10.2 scope of decision-making for Auckland Light Rail Limited
 - 10.3 information sharing between Auckland Light Rail Limited, Sponsors and officials
 - 10.4 funding arrangements
 - 10.5 assurance and monitoring arrangements.
- 11 **note** that responsibilities will not transfer to Auckland Light Rail Limited until the Project Planning Agreement has been entered into by all parties.
- 12 **note** that the current governance and contractual arrangements, for example the ALR Board Terms of Reference and the Delegations Framework, will continue until responsibilities transfer to Auckland Light Rail Limited.
- 13 **authorise** the Minister of Transport, Minister of Finance and the Minister of Housing, in consultation with Auckland Council and mana whenua as appropriate, to take decisions as required in relation to the setting up of Auckland Light Rail Limited including the governance and governance contractual arrangements, confirming the company name and, incorporating the company.
- 14 **note** that the existing operating funding for the Auckland Light Rail Unit is a departmental multi-year appropriation and that changes to the existing appropriation structure will be needed to use this funding for Auckland Light Rail Limited, including a potential operating to capital swap to enable an initial capital injection into the new company to ensure it has the working capital to operate as a going concern.
- 15 **authorise** the Minister of Finance, Minister of Transport and Minister of Housing, acting jointly, to approve changes to appropriations (including establishing any new appropriations and operating to capital swaps) once there is further clarity on timing of the transition to the new company and its funding requirements.
- 16 **agree** that members appointed to the current Auckland Light Rail Board will transition their roles to the board of Auckland Light Rail Limited.
- 17 **agree** that Auckland Light Rail Limited will **not** be exempt under the Crown Entities Act 2004 from:
- 17.1 acquiring financial products (section 161)
 - 17.2 borrowing (section 162)
 - 17.3 the giving of guarantees and indemnities (section 163)
 - 17.4 use of derivatives (section 164).

IN CONFIDENCE

- 18 **agree** that Auckland Light Rail Limited **not** be exempted from section 165 of the Crown Entities Act 2004 (net surplus payable to the Crown).
- 19 **note** that Auckland Light Rail Limited will be subject to the provisions of the Official Information Act 1982 and the Ombudsmen Act 1975.
- 20 **agree** that The Ministry of Transport will have the role of monitor under the Crown Entities Act 2004 and will lead monitoring of the company on behalf of Responsible Ministers, in consultation with Treasury and the Ministry of Housing and Urban Development.
- 21 **agree** to the issue of drafting instructions to the Parliamentary Counsel Office to draft an Order in Council to add Auckland Light Rail Limited to Schedule 2 of the Crown Entities Act 2004.
- 22 **agree** to the issue of drafting instructions to the Parliamentary Counsel Office to draft an Order in Council to add Auckland Light Rail Limited to the Ombudsmen Act 1975.
- 23 **note** that the Minister of Transport, Minister of Finance and the Minister of Housing will seek satisfaction from the Auckland Light Rail Board that the Auckland Light Rail Unit is adequately prepared to transition to its responsibilities as a company before signing the Project Planning Agreement.

Authorised for lodgement

Hon Grant Robertson
Minister of Finance

Hon Michael Woods
Minister of Transport

Hon Megan Woods
Minister of Housing



Cabinet Committee Background Information and Talking Points

Cabinet Committee: *Cabinet Economic Development Committee (DEV)*

Paper Title: Establishment of Auckland Light Rail Limited

Portfolio: Transport

Officials Attending:

- *Chris Gulik, Acting Associate Director – Auckland Light Rail, Ministry of Transport*

Background Information:

- The Government committed through the Auckland Transport Alignment Project (ATAP) and the 2020 Labour Party Election Manifesto to building a light rail connection from the city centre to Māngere and the airport.
- Cabinet has agreed the Indicative Business Case and instructed officials to prepare detailed plans and costings.
- The Auckland Light Rail Unit (ALR Unit) is **making solid progress** with the detailed investment case required to inform project and funding decisions.

Talking Points:

Why set up a new Crown entity company now

- In December 2021, Cabinet committed to standing up a legal entity to take forward the project in the second half of this year. The decisions sought today achieve that commitment.
- The establishment of a new company **does not change the scope of work** for the detailed planning phase, nor the extent to which other partners will need to continue to be involved.
- Setting up a legal entity now **reduces some of the complexity** in the current arrangements and will **enable the new company to acquire land and hold powers necessary** for the detailed planning phase, subject to further Ministerial decision making.

Establishing a Crown entity company to take forward the detailed planning

- We propose the establishment of a **Schedule 2 company** which is **100 percent Crown owned**. Shareholders are the Minister of Finance, Minister of Transport and the Minister of Housing.

- This is the best arrangement for **this phase** of the project where the Crown is fully funding the preparation of detailed planning and where the quantum of construction funding and associated urban development costs, nor the powers required to deliver, have yet been determined or allocated amongst participants.
- When Cabinet makes final investment decisions, there **may need to be changes to the entity/s needed for** the construction and operation of the project and the delivery of urban development along the corridor. Policy work is underway to inform the best long-term structural arrangements. If there are any changes in entity form, I expect **continuity in capacity and capability** to ensure project momentum and to build on the experience and institutional knowledge being developed.
- We considered a range of other structural forms including a Schedule 4 company and utilising an existing entity. None of these were considered appropriate **for this phase**.

Continuity from the current arrangements to the new company

- There is no intention to change the governance arrangements with the establishment of the new company. The Sponsor arrangements with Auckland Council and mana whenua will continue, the members of the current Auckland Light Rail Board will transfer to the board of the new company.
- The roles and functions of the current board and unit will transfer to the new company.
- There will be no change in the amount of the Auckland Light Rail (ALR) appropriation to enable the company's establishment.

Project Planning Agreement

- With the project still in the detailed planning phase there is a requirement for an additional **mechanism to enable joint Ministers and sponsors to provide input into, and oversight of, the plans being developed**. This is an important agreement to confirm the settings for this phase of the project and the Government's role in it.
- The Project Planning Agreement will be informed by the previously agreed terms of reference and heads of terms for the Sponsors Agreement. It will confirm:
 - roles and responsibilities of the Crown, other Sponsors and Auckland Light Rail Limited (ALRL) in relation to the ALR Project
 - scope of decision-making authority of ALRL
 - information sharing between the ALRL, Sponsors and their officials
 - funding arrangements and payment regime
 - assurance and monitoring arrangements.
- The Project Planning Agreement will be formalised with the company, and ALR Ministers are working with the council to confirm which Sponsor parties will enter into the agreement.
- The signing of the Project Planning Agreement is a major dependency on the establishment of the company. We require this agreement to be signed (agreed in principle) before the company can commence operation.

Board to provide assurance it is ready to take on the functions and responsibilities of a company

- We will be asking the board of the ALR Unit to **provide ALR Ministers with an assurance** that appropriate establishment functions have been completed sufficiently for the entity to be established. If we are not satisfied, we will delay the next steps until that assurance can be provided.

Company name

- In the paper we are calling the company Auckland Light Rail Limited. This is a **holding name** as we have been working through the process of confirming options.
- A naming process has taken place that incorporates English and Te Reo Māori with three names identified.
- s 9(2)(f)(iv) [Redacted]
- s 9(2)(f)(iv) [Redacted]
- We are seeking Cabinet's authorisation to finalise the name, and will report back to Cabinet on the outcome of this decision when we bring the Orders in Council to LEG in September.
- **If asked for more details on the name see below but names still required further due diligence;** Current names under consideration are;

s 9(2)(f)(iv)

Next steps

- A paper will be brought to LEG at the end of September with the Orders in Council necessary to put the company on Schedule 2 of the Crown Entities Act.
- Work is underway on the development of the Project Planning Agreement.
- Our best case scenario would see the transfer of responsibilities to the new company in the beginning of October.