

Proactive Release

This document is proactively released by Te Manatū Waka the Ministry of Transport.

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)



TE MANATŪ WAKA
MINISTRY OF TRANSPORT



TE TAI OHANGA
THE TREASURY



Te Tūāpapa Kura Kāinga
Ministry of Housing and Urban Development

15 September 2022

OC220796 / T2022/2061 / HUD2022 -000891

Hon Michael Wood
Minister of Transport

Action required by:
Monday, 19 September 2022

Hon Grant Robertson
Minister of Finance

Hon Dr Megan Woods
Minister of Housing

AUCKLAND LIGHT RAIL LTD ESTABLISHMENT OIC AND OTHER MATTERS

Purpose

To provide sponsoring Ministers with:

- a draft paper for the Cabinet Legislative Committee seeking its authorisation to the submission to the Executive Council of Orders in Council adding Auckland Light Rail Limited (ALRL) to Schedule 2 of the Crown Entities Act 2004 and Schedule 1, Part 2 of the Ombudsmen Act 1975
- an overview of the issues being worked through with all parties to develop the Project Planning and Funding Agreement (Project Planning Agreement) to be entered into by the Crown, Auckland Council and ALRL
- a request for a fiscally neutral adjustment including a Departmental to Non-Departmental Appropriation swap
- A shareholder resolution approving the entry by the company into an interim Project Alliance Agreement, on condition that no substantive changes are made to the agreement and that other specified conditions are met.

Key points

- As at 15 September 2022, the company has not yet been incorporated. Offices will inform Minister's offices once this has been completed.
- The effect of the Orders in Council is that ALRL will become a Crown entity company and will be subject to the Ombudsmen Act 1985 and the Official Information Act 1982.
- Departmental consultation has now been completed and confirmation is sought that the draft Cabinet Legislative Committee paper be approved for ministerial consultation.
- Seeks agreement on a departmental to non-departmental appropriation swap and other fiscally neutral financial adjustments needed for the establishment of ALRL.

- Provides advice on the Project Planning Agreement.

Recommendations

We recommend you:

	Minister of Transport	Minister of Finance	Minister of Housing
Orders in Council			
1 confirm that the draft Cabinet Legislative Committee paper (Appendix One) be approved for Ministerial consultation	Yes / No	Yes / No	Yes / No
2 authorise the Minister of Transport to sign the advice sheets for the Orders in Council for submission to the Executive Council		Yes / No	Yes / No
3 authorise the Minister of Transport to present both Orders in Council to the House of Representatives		Yes / No	Yes / No
Progressing the Project Planning Agreement			
s 9(2)(g)(i)	Yes / No	Yes / No	Yes / No
5 authorise the Ministers of Finance and Transport to complete negotiation of the Project Planning Agreement, on condition that no substantive changes are made, prior to confirmation of the final version of the agreement by all parties, prior to signing			Yes / No
6 delegate to the Minister of Finance and Transport the signing of the Letter of Commitment from the Crown to Auckland Council			Yes / No
Rescoping the ALR appropriation			
7 note that the existing operating funding for the Auckland Light Rail Unit is a departmental multi-year appropriation and changes to the existing appropriation structure is needed to provide this funding to Auckland light Rail Limited	Yes / No	Yes / No	Yes / No

	Minister of Transport	Minister of Finance	Minister of Housing
8 note that Cabinet authorised the Minister of Finance, the Minister of Housing and the Minister of Transport to approve changes to appropriations (including establishing any new appropriations and operating to capital swaps) for initial working capital requirements	Yes / No	Yes / No	Yes / No
9 note that there is now clarity on the timing of the transition changes to Auckland Light Rail Limited and that officials have worked with the ALR Unit to identify funding requirements	Yes / No	Yes / No	Yes / No
10 agree to establish the following new multi-year appropriation to run from 1 October 2022 to 30 June 2025	Yes / No	Yes / No	Yes / No

Vote	Appropriation Minister	Appropriation Administrator	Title	Type	Scope
Transport	Minister of Transport	Ministry of Transport	Auckland Light Rail – Detailed Planning Phase	Non-Departmental Output Expense	This appropriation is limited to funding Auckland Light Rail Limited for the detailed planning phase for light rail in Auckland.

11 approve the following changes to appropriations to give effect to recommendation 10 above, with no impact on the operating balance and/or net core Crown debt	Yes / No	Yes / No	Yes / No
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Vote Transport Minister of Transport	\$m – increase/(decrease)	
	2022/23 to 2024/25	2025/26 & Outyears
Non-Departmental Output Expenses: Auckland Light Rail - Detailed Planning Phase MYA	106.333	-
Departmental Output Expenses: Auckland Light Rail Unit MYA (funded by revenue Crown)	(106.333)	-

	Minister of Transport	Minister of Finance	Minister of Housing
12 note that the indicative funding profile for the new multi-year appropriation described in recommendation 10 above is as follows:	Yes / No	Yes / No	Yes / No

Indicative annual spending profile	\$m – increase/(decrease)				
	2022/23	2023/24	2024/25	2025/26	2026/27 & Outyears
Non-Departmental Output Expenses: Auckland Light Rail - Detailed Planning Phase MYA	20.095	85.518	0.720	-	-

13 note that Auckland light Rail Limited requires initial working capital and funding for capital expenditure to enable it to manage its activities and cash flows	Yes / No	Yes / No	Yes / No
14 agree to allocate \$25 million of the total funding as initial working capital and up to \$1 million for capital expenditure for Auckland light Rail Limited	Yes / No	Yes / No	Yes / No
15 agree to establish the following new appropriation:	Yes / No	Yes / No	Yes / No

Vote	Appropriation Minister	Appropriation Administrator	Title	Type	Scope
Transport	Minister of Transport	Ministry of Transport	Auckland light Rail Limited – Capital injection	Non-Departmental Capital Expenditure	This appropriation is limited to providing capital injections to Auckland light Rail Limited for working capital and capital expenditure requirements.

16 agree to a fiscally neutral operating to capital swap to provide for the capital injection into Auckland light Rail Limited and funding for capital expenditure, with	Yes / No	Yes / No	Yes / No
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	Minister of Transport	Minister of Finance	Minister of Housing
the following impacts on the operating balance and net core Crown debt:			

Vote Transport	\$m – increase/(decrease)				
	2022/23	2023/24	2024/25	2025/26	2026/27 & Outyears
Operating Balance and Net Core Crown Debt Impact	-	-	-	-	-
Operating Balance Only Impact	(25.698)	(0.302)	-	-	-
Net Core Crown Debt Only Impact	25.698	0.302	-	-	-
No Impact	-	-	-	-	-
Total	-	-	-	-	-

17 approve the following changes to appropriations to give effect to the swap in recommendation 16 above	Yes / No	Yes / No	Yes / No
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Vote Transport Minister of Transport	\$m – increase/(decrease)				
	2022/23	2023/24	2024/25	2025/26	2026/27 & Outyears
Departmental Output Expenses: Auckland Light Rail Unit MYA (funded by revenue Crown)	(25.698)	(0.302)	-	-	-
Auckland light Rail Limited – Capital Injection	25.698	0.302	-	-	-
Total Operating	(25.698)	(0.302)	-	-	-
Total Capital	25.698	0.302	-	-	-


18 note that the indicative funding profile for the existing departmental multi-year appropriation after the changes in recommendation 11 and 17 above is as follows	Yes / No	Yes / No	Yes / No
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Indicative annual spending profile	\$m – increase/(decrease)				
	2022/23	2023/24	2024/25	2025/26	2026/27 & Outyears
Departmental Output Expenses: Auckland Light Rail Unit MYA (funded by revenue Crown)	57.132	-	-	-	-

	Minister of Transport	Minister of Finance	Minister of Housing
19 note that any remaining funding for the detailed planning phase in the departmental appropriation above after the transition to the new entity will be transferred into the non-departmental output expense appropriation by the Minister of Transport and the Minister of Finance (acting jointly) through a future baseline update	Yes / No	Yes / No	Yes / No
20 agree that the proposed changes to appropriations above be included in the 2022/23 Supplementary Estimates and that, in the interim, the increase be met from Imprest Supply	Yes / No	Yes / No	Yes / No
Interim Project Planning Alliance and shareholder resolution			
21 note that sign-off processes for the interim Project Planning Agreement allow for the company to be incorporated or for the Ministry of Transport to sign on behalf of the ALR Unit	Yes / No	Yes / No	Yes / No
22 note that if the company is incorporated the Interim Project Alliance Agreement would be a Major Transaction that would need shareholder approval	Yes / No	Yes / No	Yes / No
23 sign the resolution (Appendix Three) that allows the board to sign the IPAA if defined shareholder specified conditions are met	Yes / No	Yes / No	Yes / No



Gareth Fairweather
Director, Auckland Light Rail, Ministry of Transport



David Taylor
Manager, National Infrastructure Unit, the Treasury



Natasha Tod
Partnership Director, Ministry of Housing and Urban Development

Hon Michael Wood
Minister of Transport

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Hon Grant Robertson
Minister of Finance

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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

Name	Telephone	First contact
Gareth Fairweather, Director, Auckland Light Rail, Ministry of Transport	s 9(2)(a)	
Chris Gulik, Acting Associate Director, Auckland Light Rail, Ministry of Transport		✓
Ben Wells, Principal Adviser, the Treasury		
Mary Barton, Senior Advisor, Ministry of Housing and Urban Development		

AUCKLAND LIGHT RAIL LTD ESTABLISHMENT OIC AND OTHER MATTERS

Background and recap on relevant Cabinet decisions

- 1 Cabinet agreed [DEV-22-MIN-0191 and CAB-22-MIN-0338 refers] to the establishment of a Crown entity company and for this to be added to Schedule 2 of the Crown Entities Act 2004 (CEA). The Minister of Finance, the Minister of Housing and the Minister of Transport are to be equal shareholders and existing board members will become the directors of the company,
- 2 Cabinet also authorised the Minister of Finance, the Minister of Housing and the Minister of Transport (Sponsoring Ministers):
 - 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
 - acting jointly, to approve changes to appropriations (including establishing any new appropriations and operating to capital swaps) once there is further clarity on the timing of the transition to the new company and its funding requirements.
- 3 Briefing (OC220762 / T2022/1951 / HUD2022-000682 refers) advised joint Ministers about the ARL Unit's preferred name as Auckland Light Rail Limited (ALRL), provided shareholder consents forms, a draft company Constitution and a draft Letter of Expectations.

Company Incorporation

- 4 As at 15 September 2022 Auckland Light Rail Limited (ALRL) has **not** been incorporated as a limited liability company under the Companies Act 1993. The company will be incorporated before papers are submitted to the Legislative Committee.
- 5 As noted above, the Sponsoring Ministers are to be equal shareholders and the existing board members appointed to the Auckland Light Rail Unit are the board of the new company. Once Shareholding Ministers agree, ALRL's Constitution will be filed with the Companies Office.
- 6 Once incorporated, the company will not become operational until:
 - It is added to Schedule 2 of the Crown Entities Act 2004 (CEA) and a notice is published in the Gazette; and
 - the Sponsoring Ministers have received appropriate assurances from the ALR Board that the ALR Unit is prepared to transition to its responsibilities as a Crown entity company; and
 - the project planning agreement is signed between Sponsoring Ministers, Auckland Council and the company.

ORDERS IN COUNCIL

- 7 The attached Cabinet Legislation Committee paper (Appendix One) proposes that the Cabinet Legislation Committee (the Committee) authorise the submission to the Executive Council of the Crown Entities (Auckland light Rail Limited) Order 2022 (the Crown Entities Order) and the Ombudsmen (Auckland light Rail Limited) Order 2022 (the Ombudsmen Order) (together, the Orders).
- 8 The Crown Entities Order provides that Auckland light Rail Limited is added to Schedule 2 of the Crown Entities Act 2004 (CEA) as a Crown entity company.
- 9 The Ombudsmen Order provides that Auckland light Rail Limited is added to Schedule 1, Part 2 of the Ombudsmen Act 1982 (OA). This will make Auckland light Rail Limited subject to the Official Information Act 1982 (OIA) and the OA.

Timing and 28-day rule

- 10 A waiver of the 28-day rule is sought on the basis that there are no compliance requirements for the public. These Orders in Council have little or no effect on the public as they only provide a more suitable operating structure to undertake complex planning and design work that is to be of benefit to Auckland. The entity is required to provide a detailed investment case for Government to consider. Decision rights remain, and final responsibility rests, with Responsible Ministers.
- 11 Further, the Ombudsmen Order, which makes ALRL subject to the OIA and the OA, provides benefits to the public.
- 12 Subject to Cabinet's approval, the Orders will be notified in the New Zealand Gazette (the Gazette) on 6 October 2022 to come into force on 6 October 2022. Should a waiver not be agreed the company would not be able to become operational until at least 1 November 2022.

PROJECT PLANNING AGREEMENT

- 13 Cabinet authorised Sponsoring Ministers to make decisions on governance contractual arrangements [CAB-22-MIN-0338 refers]. This arrangement takes the form of a Project Planning Agreement (PPA) which sets out the terms on which the company advances the Detailed Planning Phase (DPP) of the ALR Project. The PPA will provide Sponsors with a direct line of sight and influence over the DPP, following the establishment of the ALR Company. It will also enable access to funding.
- 14 The Crown, Auckland Council, and the company entering into the PPA is one of the conditions required for the responsibilities of the ALR Ministerial Advisory Committee and the ALR Unit to be transferred.

Development of the Project Planning Agreement

- 15 The intent is for the governance principles agreed to for the detailed planning phase to endure from the current arrangements of the ALR Board and ALR Unit to the company when it is established and takes responsibility for the ALR Project.

- 16 Therefore, the PPA is based on the principles and approaches already agreed to in the Sponsors Agreement Heads of Terms and the ALR Board Terms of Reference. Considerable effort was spent articulating the settings for this phase of the project through the development of these documents. These two documents have been approved by Crown, as well as being consulted on or approved by the Council. The ALR Board Chair was consulted on the Terms of Reference.
- 17 Only matters that relate to the role of the company and its scope of works are covered in the PPA. The relationship between Sponsors is confirmed through the letter of expectation. This will confirm the Heads of Terms as the basis for the Sponsors relationship until a Sponsors Agreement can be entered into. Ministers will receive this for confirmation next week.
- 18 The ways in which the Sponsor agencies will undertake their responsibilities has not been included in the PPA, as this is a matter for those agencies to determine. For example, the Sponsors Representatives Forum is a mechanism that Sponsor agencies have created to support themselves in coordinating their advice for Sponsors. This is not a matter for negotiation with the company. Drafting the PPA has involved close collaboration with the ALR Unit and Auckland Council, including shared drafting and meetings with both parties. Officials from these agencies and the Crown are in ongoing discussions about the PPA.

Feedback from the council and ALR unit on the PPA

- 19 Overall, in consultation with the ALR Unit and the Council, both parties are supportive of the form of the PPA and most of the content. A draft of the PPA is provided at Appendix Two. A number of points have been raised by the council and the ALR Unit on the PPA. These are discussed below, alongside an explanation of how the point has been resolved in the PPA.

s 9(2)(g)(i)

- 23 This has been addressed in the PPA. In addition, the letter of commitment will be based on the Heads of Terms, which includes principles about how Sponsors will make decisions. The letter of commitment is not the Sponsors Agreement, further detail on how these principles will work in practice will be included in the Sponsors Agreement when this is prepared.
- 24 The current draft of the PPA is attached (Appendix Two). This is a working draft. We are still working with the ALR Unit to prepare content for one of the schedules and we are awaiting final drafting comments from both the council and the unit. We are conscious that a detailed review needs to be undertaken to ensure consistency in terms used in the agreement. This reflects the pace in which this agreement is being developed. Nonetheless, we see value in sharing this with Ministers now to seek initial feedback, particularly on the points below, to support officials in our ongoing discussions with the other parties.

s 9(2)(f)(iv)

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Pages 12-15 are withheld in full under sections 9(2)(f)(iv) and 9(2)(g)(i) of the Official Information Act 1982.

s 9(2)(g)(i)

Next steps to finalise the Project Planning Agreement

- 61 To finalise the PPA ahead of the expected company establishment date (6 October) and the local government elections (8 October 2022), the following steps are required:
- Receive feedback on the draft PPA from Ministers by Monday 19 September.
 - The attached version of the draft PPA is being shared with the ALR Unit and council at the same time as Ministers. We are encouraging those agencies to seek the views of their decision-makers by Monday next week as well.
 - Final draft provided to Ministers, Mayor and Deputy Mayor, and ALR Board by 22 September. There will be an opportunity to discuss outstanding issues at the Sponsors meeting on 27 September 2022.
 - The Crown and Auckland Council approve and sign the PPA by the end of September. The ALR Board agrees the PPA in-principle by the end of September.
 - The ALRL Board signs the PPA on its first day of establishment (6 October).
- 62 As Shareholding and Sponsoring Ministers, it is critical that all three Sponsoring Ministers agree and sign the PPA. The Minister of Housing is away for the period that the PPA will be finalised. To mitigate this it is proposed that, the Minister of Housing: is provided with an opportunity through this briefing to provide her views on the PPA and is requested to delegate to the Ministers of Finance and Transport the authority to finalise the negotiation of the PPA, conditional that no substantive changes are made, prior to confirmation of the PPA by all Sponsoring Ministers.

ESTABLISHMENT FUNDING ARRANGEMENTS

- 63 Sponsoring Ministers have been authorised by Cabinet [CAB-22-MIN-0338 refers] to approve changes to appropriations (including establishing any new appropriations and operating to capital swaps)
- 64 This section proposes new funding arrangements for ALRL and discusses the financial implications for the Crown. Changes to the existing funding arrangements are necessary as the ALR Unit transitions from being hosted by the Ministry of Transport on behalf of the Crown to being a Crown entity company. The changes are fiscally neutral. The proposals have been agreed by the ALR Unit.
- 65 The PPA contractually sets out the new funding arrangements based on the recommendations in this briefing and describes the parameters that govern the access and uses of funding by ALRL. s 9(2)(g)(i)

Equity injection for initial working capital

- 66 Officials propose Ministers agree to a \$25 million initial capital injection into ALRL for the establishment of the company. This equity funding will capitalise the balance sheet of the company with equity and serve as working capital for ALRL to manage fluctuations in its cash flows resulting from timing differences between expenses incurred and funding flows from the Crown into the entity.
- 67 Ministry of Transport and ALR Unit officials have worked together to agree an appropriate amount of working capital. The sum of \$25 million is the equivalent of three months of budgeted expenditure and is sufficient to allow ALRL to manage its cash flows (as the Crown will provide funding one month in arrears) and to allow the ALRL Board to satisfy statutory obligations under the Companies Act 1993 (Companies Act) including solvency conditions and major transaction requirements.
- 68 As the detailed planning phase winds down, the working capital is expected to be drawn down once the output expense appropriations are exhausted and if no additional funding is provided to keep the entity operating as a going concern. If ALRL is wound down after the detailed planning phase, the Minister of Finance reserves the right to direct the transfer of any surplus assets remaining in the company back to the Crown under the Companies Act.

Operational funding and capital expenditures

- 69 A new non-departmental output expense appropriation is proposed for operating funding to flow into the new entity. This replaces and draws funding from the existing departmental appropriation for Auckland Light Rail.

s 9(2)(g)(i)

- 71 As part of the new appropriation providing a capital injection into the new company, it is proposed for funding to be provided to ALRL to pay for capital asset purchases totalling \$1 million across 2022/23 and 2023/24. These purchases cover office equipment, office fitouts and IT equipment.

Transition of hosting from Ministry of Transport to ALRL

- 72 While funding for ALRL is expected to commence from early November when expenditure for the detailed planning phase is recognised under the new entity, officials regard the retention of an additional six months of funding in the existing departmental appropriation as appropriate to manage transition risks.
- 73 Any remaining funding in the departmental appropriation after the transition to ALRL will be transferred into the new non-departmental output expense appropriation through a future baseline update.

Financial implications

- 74 The initial working capital and funding for capital expenditure will be provided through swapping operating funding from the existing departmental appropriation to capital. No additional funding is required.

- 75 The swapping of operating to capital funding for the new entity and establishment of the new appropriations is collectively treated as fiscally neutral, with a corresponding increase in the operating balance equally offset by an increase in net debt as shown below. There would be no impact on operating allowances.

Vote Transport	\$m – increase/(decrease)				
	2022/23	2023/24	2024/25	2025/26	2026/27 & Outyears
Operating Balance and Net Core Crown Debt Impact	-	-	-	-	-
Operating Balance Only Impact	(25.698)	(0.302)	-	-	-
Net Core Crown Debt Only Impact	25.698	0.302	-	-	-
No Impact	-	-	-	-	-
Total	-	-	-	-	-

Novation

- 76 The ARL Unit has existing contracts that will need to be novated to ALRL upon establishment or at some other agree date. This is process managed by the Ministry and does not need Ministerial agreement. However, the table below provides timing for high-level finance cutover – including timing of novation. These timings have been agreed with ALR Unit but are subject to the company being established and operational:

High-Level Activities and timeline

Area	Action	Timing	If go Live 6 Oct
Notices to Suppliers	Notice of novation to be sent to suppliers and instructions regarding invoicing	2 to 3 weeks before Cutover	11 to 18 Oct
Cutover decision	Deadline for a “Go/No Go Decision” on cutover	2 weeks before Cutover	18 Oct
Novation of Contracts	Contracts Novated to ALRL	Week 1 after Cutover	1 - 6 Nov

Interim Project Alliance Agreement

- 77 The ALRL/ALR Unit propose to enter into an Interim Project Alliance Agreement (IPAA) on or about 10 October 2022. Due to the size and nature of the IPAA, before the Board of ALRL/Unit can sign Shareholder/Sponsoring Ministers must resolve/approve to the agreement being entered into.
- 78 The IPAA sets out sets out an Urban Engineering and Planning (UEP) alliance scope which comprises the following key deliverables:
- **Confirmation of Preferred Option:** The Alliance will undertake an integrated urban and transport optioneering process to confirm the solution that provides the optimal urban and transport outcomes for Auckland.
 - **Corridor Strategic Framework (CSF):** The Alliance will draft the CSF which is the long-term strategic framework that reflects the values, vision, core

objectives and early key moves of the project in every respect. It is jointly informed by urban and transport disciplines.

- **Corridor Business Case (CBC):** The Alliance will draft the CBC, which will articulate the case for investment in both transport infrastructure (to a DBC level) and, urban planning and development (to an IBC level) within the City Centre to Mangere corridor. It will enable a final investment decision on the transport infrastructure to be made by Government by early 2024, as well as allowing for subsequent urban interventions to progress.
- **Statutory Approvals:** The UEP Alliance will deliver the statutory approvals required to protect the corridor and enable the construction of the transport infrastructure and urban realm improvements. This will involve assessing the environmental effects of the project, submitting applications, attending hearings and providing expert witness services.
- **Reference Design and Requirements:** The UEP Alliance will provide inputs to the procurement of the delivery phase of the transport infrastructure. This will include a reference design and requirements setting out the scope, functionality and performance criteria to be delivered.

79 The Unit would prefer to sign the IPAA in its own right. Given the uncertainty when the company will be incorporated, added to Schedule 2, and the PPA agreed, two parallel processes will be undertaken to ensure IPAA can be entered into regardless of the settings in place at the time.

80 This briefing seeks shareholder agreement to the resolution that would allow for the Board to sign the IPAA, if the company is incorporated and specified conditions are met. This section provides advice on the review, approval and signing processes that will be used so that all eventualities can be covered i.e. the company is established or it is still the ALR Unit.

Processes for Shareholder or Ministerial Consent

81 The first process assumes that the company is incorporated and operational. In this situation, approval to enter the contract will be via shareholder resolution. A resolution is required because under the Companies Act this agreement would be defined as a major transaction and require a special resolution of shareholders. The PPA sets out what information shareholders require to make this decision.

82 The shareholder resolution (Appendix Three) sets out conditions that must be met before ALRL can enter the IPAA. Due to travel commitments the Minister of Housing may be unavailable to consider the IPAA at the point when full information is available. However, signing the resolution at this point would allow conditional agreement subject to defined conditions being met. If these conditions are not met, or the company is not established at the date the IPPA is signed, this shareholder resolution will become invalid.

83 The second process (i.e. if the company is not established) assumes that the IPAA will be signed on behalf of the ALR Unit by the Ministry of Transport under the existing arrangement.

84 In this case, the Ministry of Transport will need to be satisfied of the appropriateness of the IPPA and its terms before it can enter into the IPAA on behalf of the ALR Unit. Ultimately the IPAA will be novated to the company, which Ministers will then have

shareholding responsibilities for, so under this process Sponsoring Ministers satisfaction will also be sought.

85 A summary of the two processes is provided below.

ALRL established and enters into the IPAA, Shareholder approval is required	ALR Unit is still in operation, Ministry of Transport enters into the IPAA and must be satisfied of the appropriateness of the IPAA and its terms
Shareholders resolve to approve the major transaction subject to conditions shareholders feel appropriate. This allows the resolution to be prospective i.e. when defined conditions are met, ALRL may enter the agreement.	
IPAA information provided for MOT review	IPAA information provided for MOT review
Board resolves to enter the IPAA and provides the necessary information to satisfy shareholders of the appropriateness of the IPAA and its terms	Board resolves to enter the IPAA and provides the necessary information to satisfy the Ministry of Transport as well as ALR Ministers of the appropriateness of the IPAA and its terms
	Acting Secretary of Transport consults with sponsoring Ministers of intent to sign IPAA
	If no feedback given, Acting Secretary of Transport signs IPAA on the ALR Unit's behalf
ALRL enters into IPAA	Agreement novated to ALRL when established

Shareholder resolution

86 The Shareholder resolution is supported by a Director Resolution that contains the IPAA (transaction Document). The shareholder resolution has the following conditions;

- satisfying clause 9.2(b)(i)(aa) of the draft Project Planning Agreement;
- the shareholders have received a letter from a director of the Company confirming, in relation to the Transaction Document, the matters required by clause 9.2(b)(i)(bb) of the draft Project Planning Agreement;
- the non-owner participants entering into the Transaction Document remain as those identified in Annex A to these resolutions;
- any amendment or variation to the form of Transaction Document (as attached to these resolutions) prior to the Company entering into the Transaction Document constitutes a 'Permitted Variation' for the purposes of the draft Project Planning Agreement (or has otherwise been approved by the shareholders in writing);

- the description of the scope of services to be performed under the Transaction Document, as described in Annex A (Transaction Document) to these resolutions, is not materially amended or supplemented prior to the Company entering into the Transaction Document (without the shareholders' prior written approval);
- the capped cost for the initial IPAA services is not increased beyond the amount specified in Annex A to these resolutions prior to the Company entering into the Transaction Document (without the shareholders' prior written approval);
- the indemnities given by the Company at clauses 6.1.9 and 7.5.1 of the Transaction Document are not amended and no additional indemnities are given by the Company (without the shareholders' prior approval in accordance with the requirements of the Crown Entities Act 2004);
- for the avoidance of doubt, the Company may only proceed to enter into (or require an Alliance participant to enter into) an agreement for works or services in relation or pursuant to the Transaction Document, including (without limitation) for:
 - geotechnical and utilities services investigations; and
 - planning and engineering work,in accordance with and subject to the requirements of clause 9.2 ("Material Contracts") of the Project Planning Agreement; and
- for the avoidance of doubt, the shareholders have not given, and do not by this special resolution give or intend to give, approval for the Company to:
 - progress early (construction and utilities) works or procurement of materials that require capital expenditure; and/or
 - enter into the project alliance agreement in relation to the Transaction.

Appendix One

Draft Legislative Committee Paper including

Crown Entities (Auckland light Rail Limited) Order 2022

Ombudsmen (Auckland light Rail Limited) Order 2022

The final version of the Legislative Committee paper titled 'Crown Entities (ALR Ltd) Order 2022 and Ombudsmen (ALR Ltd) Order 2022' is published separately in this proactive release.

The two orders are published on the Legislation website here:

Crown Entities (Auckland light Rail Limited) Order 2022:

<https://www.legislation.govt.nz/regulation/public/2022/0271/latest/whole.html>

Ombudsmen (Auckland light Rail Limited) Order 2022:

<https://www.legislation.govt.nz/regulation/public/2022/0272/7.0/whole.html>

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Appendix Two: DRAFT Project Planning and Funding Agreement

The final version of this paper will be released separately.

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Appendix Three

Shareholder resolution on the Interim Project Alliance Agreement

The final version is published separately within this proactive release.

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