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**Hon Michael Wood**  
Minister of Transport

**Action required by:**  
Monday, 7 December 2020

**CC Hon Grant Robertson**  
Minister of Finance

## **CROLL AS A POTENTIAL DELIVERY ENTITY FOR CC2M AUCKLAND LIGHT RAIL**

### **Purpose**

Provide you with Ministry of Transport (the Ministry), The Treasury, City Rail Link Limited (CROLL), and [REDACTED] perspectives on the potential for CROLL to be the delivery entity for the City Centre to Māngere (CC2M) Auckland Light Rail project.

This briefing also answers the questions you asked about the suitability of CROLL for this role. These are attached as annexes one and two.

### **Key points**

- CROLL has established capabilities in infrastructure delivery. It was set up to operate as a delivery entity, with a mandate to deliver a well-defined project that has an agreed business case. [REDACTED]  
[REDACTED] While CROLL has strong capabilities, it is too early to determine whether it should be the delivery entity.
- It is well positioned to contribute to the next stages of the project, and we propose that we explore options for CROLL to participate in the proposed CC2M programme office (the Programme Office) and business case process.
- Before deciding on a delivery entity, the Government must make key scope choices, and work out how several delivery responsibilities will be apportioned across agencies. These are critical choices that will shape the overall success of, and social license, for the project. It is usual for this work to be housed in a government department so that Ministers (with Auckland local government as required) can make these choices.
- [REDACTED]

- Bearing in mind officials' advice, if the Government wants CRLI to be considered as the delivery entity after the indicative business case (IBC) is completed, it may want to start talking with Auckland Council now as there are many complex issues that will take time to resolve. In addition, there would also need to be a negotiation with the company's Directors.

- [REDACTED]

## Recommendations

We recommend you:

- 1 **note** that CRLI can be considered alongside other delivery entity options as part of the CC2M business case process, but that it is too early to make a decision now on delivery entity form and structure.
- 2 **note** that a number of key decisions need to be taken on the scope the project, and that this will help you establish the appropriate entity form ('form follows function'). These key decisions will include: project scope (including mode and route), the powers and functions that the delivery entity needs to hold, and how it is funded and financed.
- 3 **note** that a Programme Office structure will allow you to work through these choices, and that the governance of this Office is designed to give Ministers (working with local government) key decision making rights so that you are able to make choices on these strategic matters.
- 4 **agree** that CRLI's expertise could be very helpful in contributing to this process, particularly reflecting CRLI's technical capabilities in delivery of rail infrastructure.
- 5 **agree** that officials work with CRLI to identify how CRLI could most effectively contribute to the indicative business case process.
- 6 **note** that for CRLI to become the delivery entity, that consideration will need to be given to: shareholding arrangements; governance; ownership (including of assets); whether the current Crown Company form is suitable for an entity with a wider mandate; and that negotiations would need to be held with the Auckland Council Governing Body.
- 7 **discuss** with officials the content of this briefing and any subsequent questions you may have.

Bryn Gandy  
**Deputy Chief Executive, System  
Strategy and Investment**  
**Ministry of Transport**

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Hon Michael Wood  
**Minister of Transport**

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**Minister's office to complete:**

Approved

Declined

Seen by Minister

Not seen by Minister

Overtaken by events

**Comments**

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## CROLL AS A POTENTIAL DELIVERY ENTITY FOR CC2M AUCKLAND LIGHT RAIL

### Considering CROLL for the role of CC2M delivery entity

- 1 You have asked officials for further advice, in consultation with CROLL on the opportunity for CROLL to be considered as the delivery entity for the CC2M Auckland Light Rail project. To prepare this advice officials met with the Chief Executive of CROLL, with Auckland Council officials, and with the legal advisors that developed the existing sponsors and shareholding agreements that govern CROLL.
- 2 These discussions were constructive, and CROLL took some time to outline its experience delivering a significant and complex construction programme in Auckland. CROLL believes that it could take on a role in the delivery of CC2M, including developing a business case, and notes that it has established expertise, relationships and market credibility. CROLL also outlined some initial thinking on how it would progress the project, should it be asked to.
- 3 If Ministers wanted to take this idea further in the short term, officials would need to have more detailed discussions with CROLL and Auckland Council as joint owners than has been possible this week.

The City Rail Link project started in 2017, and is due to be completed in 2024. The Crown and Auckland Council are co-Sponsors of the project. In 2017 these co-Sponsors established CROLL, a Schedule 4A company under the Public Finance Act 1989, to deliver the City Rail Link project.

### The Ministry believes CROLL could contribute to the delivery of CC2M, but it is too early to determine whether it should form the basis of the delivery entity

- 4 CROLL is a successful, capable delivery agency that may be able to contribute meaningfully to the CC2M project. However, we are mindful that the CC2M Project is substantially different from the delivery of City Rail Link and a different form of entity and capabilities may be needed.
- 5 Key points underpinning the Ministry's view are that:
  - CROLL was established as a focused company to deliver a single transport infrastructure project, with clarity on its role provided through an agreed business case. It was not designed to manage additional broader outputs such as urban development/regeneration and possibly even service operations. These functions were excluded from CROLL, but may be core to the delivery of CC2M.
  - [REDACTED] but it would need a clear steer from government on key requirements that will drive the project's design (such as whether the solution will be segregated, and how much development might be possible at Māngere town centre) and how the delivery entity's role will sit alongside the roles of other agencies. Ministers will be able to decide these questions from the proposed IBC process (about 4 months).
  - [REDACTED]

- CRLL's ownership, constitution and governance reflects the unique characteristics of the City Rail Link project, most notably the 50:50 shared ownership with the Council mirrors the funding arrangements and risk allocations in the City Rail Link Project Delivery Agreement. It may be much harder to change the ownership and governance of the company to be suitable to deliver CC2M, compared to setting up a separate new delivery entity, following the business case process.

[REDACTED]

**Distraction risk to City Rail Link project**

6 [REDACTED]

7 The City Rail Link project is in the early stages of the delivery phase, and will soon be moving from station and tunnel preparatory work to the most complex part of the project - the tunnelling between stations. [REDACTED]

- 8 Key risks specifically associated with the delivery stage of the City Rail Link project (that could materially affect the project budget and the ability of CRLL to complete the project [REDACTED]) include:
- unexpected discovery of geographic constraints and unfavourable ground conditions
  - unexpected discovery of utilities not on plans leading to diversion delays
  - [REDACTED]
  - interface risks with existing systems and networks
  - other cost pressures and fiscal risks with a project of this size and complexity.

9 [REDACTED]

**Decisions on delivery entity should follow other decisions and be determined through a business case process**

- 10 The merits of having a Public Finance Act Schedule 4A company (whether CRL or a new one) as the delivery entity for CC2M should be assessed against other options in the business case process, such as Waka Kotahi NZTA or a new Crown entity.
- 11 The most appropriate delivery entity arrangement will depend on clarity around other key features of the project that will be also be explored through a business case process, including: scope, mode, route, funding and financing arrangements, powers and functions (such as land acquisition and use, rating and value capture, utilities and an urban development functions), asset ownership and any operational arrangements.
- 12 Officials' view is that a CC2M Programme Office, (at least initially) housed within a government department, would best manage the business case process. This structure would create a direct relationship between a Department and Ministers (with Auckland local government as required) so that there can be a high level of Ministerial decision making to influence the indicative level business case (IBC). IBCs for Crown-funded projects are most often developed in a government department setting given their focus on strategic option selection by the purchaser (Minsters).
- 13 By creating an overarching programme of work within a single governance structure that spans the IBC, policy work, and stakeholder engagement, we can be more confident that the work will take place in a coordinated and collaborative way (minimising 'interagency rub'). This allows for high levels of collaboration between central and local government. We believe that a collaborative approach is critical to allow the project's key strategic issues to be worked through and to take account of the potential impacts for Auckland Council and Auckland Transport.
- 14 The resourcing of the Programme Office will need to be extensively drawn from the private sector and from experts within partner agencies – its staff need to be highly skilled in both the technical work to support a business case process and to undertake high quality stakeholder engagement.

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**Consultation with other parties**

- 17 To inform this briefing, the Ministry undertook discussions with Auckland Council, CRLI and the Treasury.
- 18 The Treasury's view closely reflects the Ministry's view – that CRLI can make significant contributions to the next stages of the project in the proposed Programme Office and business case process, but that it may not be suitable as the final delivery entity and that this decision would best be made later in the process, assessed against other options, and taking a form-follows-function approach.

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20 CRLI's view is that it could successfully be the delivery entity for CC2M if commissioned by the Government to do so, noting it would need considerable additional resourcing and agreement from Sponsors.

Annex one

**Advantages and disadvantages to CRL being the CC2M delivery entity**

Note, the advantages or disadvantages are not black and white – rather they highlight some issues that would need further work. A number of these points are also made in the body of this briefing.

Advantages / Benefits
Existing delivery capability, stakeholder engagement and procurement expertise in the technical aspects of the CRL Project. This includes some specific expertise (including technical) that is important for large infrastructure projects – e.g. running alliances, working with delivery partners.
It has capable governance and leadership, with experience in large-scale infrastructure delivery. CRL will have learned lessons from City Rail Link delivery that could be incorporated into CC2M if needed, noting significant difference between the projects.
Disadvantages / Challenges
It was set up for a particular purpose and mandate, with specific milestones. These would need to be revised. Governance and ownership would need to be restructured, including the nature of the arrangement with Auckland Council and the allocation of decision-making rights amongst the parties. These matters, plus implications for associated agreements (e.g. Heads of Agreement, Sponsors Agreement) are not insurmountable, but could take time to work through.
Does not have existing capacity and experience in delivering urban regeneration and development – CRL was expressly established as a delivery vehicle (and not resourced for operations and/or development activities). It was set up for a particular purpose and mandate, with specific milestones. These would need to be revised, in agreement with Auckland Council.
Governance and ownership arrangements in respect of CRL would need to be restructured and relevant agreements amended, including the nature of the arrangement with Auckland Council and the allocation of decision-making rights amongst the parties.
These matters, plus implications for associated agreements (e.g. Constitution, Sponsors Agreement and Project Delivery Agreement (PDA)) are not insurmountable, but will require negotiation with Auckland Council, and approval by Council's Governing Body. Any timeframe for finalising negotiations and achieving the relevant approvals would be speculative (but could take some time to work through, e.g. months not weeks).
Could distract delivery of its current programme of works. The current work programme is currently entering its most significant phase, and practical completion is currently forecast for [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
The scale of CRL is relatively small (circa 40 people), so would require an increase in capability – a challenge true of any other option (see below sections for more detail).



## Annex two

### Detailed answers to your specific questions

#### ***What changes might be needed to the structure and shareholding proportions of CRL?***

CRL is currently jointly owned, governed and funded by Auckland Council and the Crown (albeit the Crown holds a slight majority of shares to ensure that CRL operates as a Schedule 4A Public Finance Act Company). To the extent that the Crown intends for the delivery entity to be wholly Crown owned and funded, CRL's ownership, governance and funding arrangements would need to be restructured to facilitate this.

In particular, [REDACTED] the joint funding commitment in respect of CRL would therefore need to be restructured. Consideration will also need to be given to the Auckland Council's role in any future governance process in respect of CC2M, outside of the existing joint governance structure.

Extensive negotiation with Auckland Council and redrafting of the constitutional and contractual arrangements in place between Auckland Council, CRL and the Crown (as applicable) would be required to effect this. These arrangements would ultimately need to be approved by Council's governing body (as well as Ministers). Officials expect that this negotiation and approval process would take some time, given experiences to date.

For City Rail Link there is a PDA between CRL and the Sponsors. If CC2M becomes a deliverable for CRL then there may need to be an additional PDA developed.

#### ***What additional capacity and resourcing would CRL need to become the delivery entity?***

While there is some existing capability that could be drawn from, much of the expertise required for early project stages is not currently in place. CRL acknowledge that if tasked with taking on this project, it would be a serious expansion of its duties and would require significant resourcing to undertake these new functions.

To become delivery-capable CRL would establish a new CC2M delivery team within the current organisational structure that operates separately from the City Rail Link team. Likewise to the City Rail Link procurement approach, CRL would populate the team with a mix of secondees, contractors, consultants and permanent staff, with the mix depending on project stage.

The Ministry's understanding based on discussions with CRL is that there is an appetite to deliver the technical elements of CC2M, but less focus on the delivery of the wider urban development scope of CC2M. CRL would likely need to partner with other delivery entities (e.g. Kāinga Ora) to deliver the full scope of CC2M. It would be important to establish a clear set of expectations from the outset on how that partnership should take place.

***What timeframes would CRLI need to make necessary changes to its structure, when would be in a position to begin project delivery?***

CRLI would not be in a position to start delivery until the ownership, governance and funding arrangements discussed above have been resolved as between Auckland Council and the Crown. Any timeframe for achieving this would be speculative (but is unlikely to be short-term).

[REDACTED] his potential assumption of responsibility would ideally take place following completion of the CRL Project, and once Auckland Council and the Crown had reached agreement on ownership, governance and funding arrangements (as well as ultimate asset ownership, operations and residual liabilities).

***What legislative changes would be required?***

No CRLI-specific legislative change would be required for CRLI to act as a potential delivery entity for CC2M. As discussed above, the key changes required relate to the joint Crown / Council ownership, governance and funding arrangements which currently underpin CRLI's delivery of the City Rail Link Project.

Depending on which delivery entity the Government elects to use, legislation may be needed to empower this entity with the relevant powers and functions it needs to deliver CC2M (e.g. in respect of land acquisition, consenting, utilities).

***How could leading the delivery of ALR impact CRLI's delivery of City Rail Link?***

In September 2020 CRLI let the final major works package for the CRLI Project, and is now entering the most significant works phase of the project.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The overall governance structure would need to be very clear to ensure that each project is considered adequately by the Board and each project resourced effectively at the different project stages.

*If CRLI ran the Programme Office from the start, what would this mean for:*

- *timeframes to establish the office and start the business case process?*
- *Programme Office costs?*
- *how responsibilities should be split?*

Notwithstanding the matters raised in this advice, if you wished to proceed with setting up a Programme Office in CRLI, we are mindful that the Office would likely look quite different to the concept we outlined in our advice of 16 November.

In effect, functions related to design of a solution and some technical elements such as consenting would sit in CRLI. The Government would need to have separate work streams that would be led out of government departments. These would include: relating advice to Ministers on how to negotiate delivery of the project; funding and financing, allocating specific functions to agencies (for example, the role of Kāinga Ora to partner for urban development projects). Functions relating to regulatory and policy issues would also sit with their departments.

This would be a more complex structure overall than is proposed for a single Programme Office, and the lines of communication between the centre and CRLI would be longer. The intention of the Programme Office is to get short lines of communication early in the life of the project.

Officials estimate that decision making under a split arrangement would be longer.

Some of the issues associated with establishing a split arrangement are challenging, and some (such as how issues left over from the parallel process are managed) have not been considered in the time available. Officials can provide further advice on this if that would be helpful.