

## 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"> <li>(i) the Government of any other country or any agency of such a Government; or</li> <li>(ii) any international organisation</li> </ul>
6(c)	prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial
9(2)(a)	to protect the privacy of natural persons
9(2)(b)(ii)	to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information
9(2)(ba)(i)	to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public
9(2)(ba)(ii)	to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely otherwise to damage the public interest
9(2)(f)(ii)	to maintain the constitutional conventions for the time being which protect collective and individual ministerial responsibility
9(2)(f)(iv)	to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials
9(2)(g)(i)	to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any public service agency or organisation in the course of their duty
9(2)(h)	to maintain legal professional privilege
9(2)(i)	to enable a Minister of the Crown or any public service agency or organisation holding the information to carry out, without prejudice or disadvantage, commercial activities
9(2)(j)	to enable a Minister of the Crown or any public service agency or organisation holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)



1 September 2022

OC220762 / T2022/1951 / HUD2022-000684

**Hon Michael Wood**  
**Minister of Transport**  
**Hon Grant Robertson**  
**Minister of Finance**

**Action required by:**  
Wednesday, 7 September 2022

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

## ESTABLISHMENT OF <sup>s 9(2)(f)(iv)</sup> [REDACTED] LIMITED

### Purpose

This briefing and its associated documents will allow for the registration with the Companies Office of the new company being established to progress the Auckland Light Rail (ALR) project. The briefing provides ALR Ministers with a copy of the company's constitution, shareholder documents for signing, and a draft Letter of Expectations.

### Key points

- ALR Ministers and other Sponsors agreed that the appropriate entity form for the detailed planning phase of ALR is a Crown entity company added to Schedule 2 of the Crown Entities Act 2004 (CEA) (OC220381 / T2022/1412 / BRF21/22061366 and OC220642 / T2022/1750 / HUD2022-000471 refers).
- Cabinet has agreed to the establishment of a Crown entity company, provisionally named, Auckland Light Rail Limited. With Cabinet's agreement, the Parliamentary Counsel Office has been instructed to prepare an Order-in-Council that will place the newly incorporated company on Schedule 2 of the CEA.
- A new name for the company is proposed - <sup>s 9(2)(f)(iv)</sup> [REDACTED] Limited. Company establishment documentation has been provided using this name.
- This briefing provides documents associated with incorporating the company with the Companies Office.
- The company does not have responsibilities transferred to it until it is added to Schedule 2 of the Crown Entities Act 2004 and a Project Planning Agreement is signed between the Crown, Auckland Council and the company.
- A draft letter of expectations is provided for the Minister of Transport's signature, on behalf of shareholding Ministers. This letter will assist the company to develop its first Statement of Intent and Statement of Performance Expectations.

- The addition of a third party to the Project Planning Agreement, Auckland Council, places considerable pressure on the timeframes to establish the company, together with the local election in Auckland being held on 8 October 2022. Officials are working to address this risk.

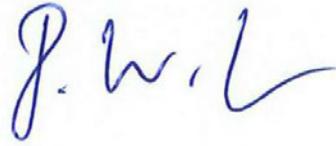
## Recommendations

We recommend you:

		Minister of Transport	Minister of Finance	Minister of Housing
1	<b>agree</b> to s 9(2)(f)(iv) Limited as the name for the new company	Yes / No	Yes / No	Yes / No
2	<b>agree</b> to the Constitution of s 9(2)(f)(iv) Limited (Appendix A)	Yes / No	Yes / No	Yes / No
3	<b>sign</b> the relevant shareholder consent form and return to Officials (Appendix B)	Yes / No	Yes / No	Yes / No
4	<b>note</b> that the Order in Council to put s 9(2)(f)(iv) Limited on Schedule 2 of the Crown Entities Act 2004 cannot proceed until the company has been registered	Yes / No	Yes / No	Yes / No
5	<b>agree</b> the Letter of Expectations for s 9(2)(f)(iv) Limited (Appendix C)	Yes / No	Yes / No	Yes / No
6	<b>agree</b> to the Minister of Transport signing the draft Letter of Expectations on behalf of shareholding Ministers (Appendix C)		Yes / No	Yes / No
7	<b>sign</b> the draft Letter of Expectations on behalf of shareholding Ministers	Yes / No		
8	<b>agree</b> to exempt s 9(2)(f)(iv) Limited from providing a Statement of Intent covering a period of 4 years to June 2026 (pursuant to s139(4) of the Crown Entities Act 2004), as the detailed planning phase is due for completion in 2024	Yes / No	Yes / No	Yes / No
9	<b>note</b> the progress with the Project Planning Agreement and that its finalisation is required before s 9(2)(f)(iv) Ltd can become operational	Yes / No	Yes / No	Yes / No



Gareth Fairweather  
Director Auckland Light Rail, Ministry  
of Transport



David Taylor  
Manager, National Infrastructure Unit,  
the Treasury



Nic Hill  
Manager, Ministry of Housing and  
Urban Development

Hon Michael Wood  
Minister of Transport

..... / ..... / .....

Hon Grant Robertson  
Minister of Finance

..... / ..... / .....

Hon Dr Megan Woods  
Minister of Housing

..... / ..... / .....

Minister's office to complete:

Approved

Declined

Seen by Minister

Not seen by Minister

Overtaken by events

Comments

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TE MANATŪ WAKA MINISTRY OF TRANSPORT

**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		✓
Bruce Anderson, Programme Management Adviser, Auckland Light Rail, Ministry of Transport		
Ben Wells, Principal Advisor, National Infrastructure Unit, Treasury		
Mary Barton, Senior Policy Advisor - Places and Partnerships, Ministry of Housing and Urban Development		

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## ESTABLISHMENT OF s 9(2)(f)(iv) LIMITED

- 1 ALR Sponsoring Ministers and other Sponsors have noted the reasons for standing up a legal entity at this point in the project, and agreed that the appropriate form of entity to carry out the detailed planning phase is a Crown entity company added to Schedule 2 of the CEA [OC220381 / T2022/1412 / BRF21/22061366 and OC220642 / T2022/1750 / HUD2022-000471 refers].
- 2 Cabinet [DEV-22-MIN-0191 and CAB-22-MIN-0388 refers] authorised the ALR Ministers, in consultation with Auckland Council and mana whenua as appropriate, to take decisions as required in relation to the setting up of the Schedule 2 Crown company including the governance and governance contractual arrangements, confirming the company name, and incorporating the company.
- 3 Before a Crown entity company can be added to Schedule 2, it must be registered with the Companies Office. As part of the registration process, shareholder and director consents must be signed by the relevant parties. The Company must have a constitution agreed by the shareholders (in this case the Minister of Finance, Minister of Housing, and the Minister of Transport).
- 4 This entity will absorb the roles and functions currently assigned to the ALR Unit.

### Forming the company

#### *Company name*

- 5 To date the project has been progressed by the ALR Unit. In seeking agreement to establish a Schedule 2 Crown entity company the entity has been provisionally called Auckland Light Rail Limited. This holding name has been used while the ALR Unit developed naming options and undertook due diligence on the preferred option.
- 6 The ALR Unit has developed a preferred name of s 9(2)(f)(iv)
- 7 s 9(2)(f)(iv)
- 8 Due diligence has been carried out by the ALR Unit to check for clashes, trademarks and copyright with other agencies and organisations.
- 9 It is recommended that the name s 9(2)(f)(iv) Limited is agreed by ALR Ministers. While this will be the name of the company, the ALR project will continue to be branded as such.
- 10 If ALR Ministers do not agree to s 9(2)(f)(iv) Limited as the name, Officials have provided alternative documents in the name of Auckland Light Rail Limited to the Office for the Minister of Transport.

#### *Signing Shareholder and Director consents*

- 11 To register the company, shareholders and directors must sign consents, and shareholders must agree the Constitution either on establishment or soon after.
- 12 The Minister of Finance, the Minister of Housing, and the Minister of Transport are equal shareholders and must sign the relevant attached shareholder consent forms (Appendix B).
- 13 The existing ALR Board will form the Board of the new entity. Officials will work with the existing members of the ALR Board to have them sign director consents. Any subsequent directors appointed to the entity will sign consents upon appointment.

*Agreeing the Constitution*

- 14 The draft Constitution for s 9(2)(f)(iv) Limited has been prepared (Appendix B). As shareholders of s 9(2)(f)(iv) Limited, ALR Ministers must agree the Constitution. This can be achieved by agreeing to the appropriate recommendation in this briefing.
- 15 The Constitution is of a standard form and broadly sets out that:
  - the purpose and nature of the company (consistent with Cabinet's direction, the draft PPA, and the existing Terms of Reference), and referencing the PPA that will be the main governing contract between Sponsors and the Company for the project.
  - shares and shareholder rights (consistent with the Companies Act 1993 (Companies Act)) and that the power to issue shares rests solely with shareholders.
  - appointment and removal of directors (consistent with Companies Act and the CEA) and for a term not exceeding three years (with reappointments permitted).
  - powers and duties of the Board are consistent with Companies Act and that the board must ensure that every decision made by it is consistent with the Project Planning Agreement.
  - proceedings of the Board are consistent with Companies Act.
  - the Board must hold an annual meeting of shareholders, but this can be done by shareholder resolution instead of holding a meeting.
  - notwithstanding the Companies Act (s128) and the Crown Entities Act (s86) a shareholder resolution will be binding on the Board.
  - shareholders can liquidate the company and any shares distributed equally or however shareholders decide.
- 16 As required by s82 of the CEA, the Constitution will need to be tabled in the House as soon as possible after the entity becomes a Crown-owned company. This cannot occur until the Order in Council is made adding the company to Schedule 2 of the CEA and this is gazetted.

*Company Purpose*

17 In considering the purpose of the entity to advance the ALR project through the detailed planning phase, Cabinet agreed that it shall involve detailed planning work and, associated planning advice and activities required to develop a business case to enable the Crown to make a final investment decision in relation to the ALR Project. This includes, but is not limited to: undertaking technical assessments, detailed design, master-planning, community and stakeholder engagement and, preparatory work as approved by the Crown.

18

s 9(2)(f)(iv)

19 If any changes need to be made to the company's purpose that requires Cabinet agreement, the September LEG paper with the Order in Council could be used to confirm those changes with Cabinet. If necessary, it is a straight-forward process to amend the Constitution and other documents. Alternative options for designating the route could also be explored.

*Commencing Operation*

20 The ALR Unit needs to undertake preparatory actions before s 9(2)(f)(iv) Ltd is established. The ALR Board and ALR Unit will be responsible for ensuring their readiness for the transfer to a company. The Board is responsible for ensuring that the Company has the systems, processes, policies, capacity and capability needed to comply with its statutory obligations, and the PPA, and complete its agreed work programme to a high standard. This responsibility is made clear in the Letter of Expectations.

21 Cabinet noted that the Minister of Finance, the Minister of Housing and the Minister of Transport would seek satisfaction from the ALR Board that the ALR Unit is adequately prepared to transition to its responsibilities as a company before signing the PPA.

22 s 9(2)(f)(iv) Ltd will not commence operation until it has been added to Schedule 2 of the CEA and the PPA between the ALR Ministers, Auckland Council and the new company has been signed. For example, the PPA includes contractually establishing the funding arrangements for the company. The PPA will be agreed in principle by the existing board of the ALR Unit and then formalised at an appropriate date after the new company has been gazetted.

**Development of the Project Planning Agreement**

23 Solid progress has been made developing the PPA. Drafting the PPA has to-date involved close collaboration with the ALR Unit. Following direction from yourselves

that Auckland Council will also be a contracting party to the PPA, officials have begun engagement with council staff.

- 24 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.
- 25 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.
- 26 The main areas that officials have been working through include:
- Roles and responsibilities of the Crown and Sponsors, including how the ALR Company will interact with the Crown and Sponsors, and the scope of the ALR Company role with decision making.
  - Funding arrangements for the Company, including equity capitalisation and operational funding arrangements, and consideration of technical appropriations for which Cabinet have delegated authority to ALR Ministers.
  - Monitoring, assurance and reporting.
  - Commercial aspects such as major transactions and indemnities.
- 27 In addition to the PPA, a Monitoring and Assurance Framework is being developed. This will provide detail on how the principles set out in the PPA are to be operationalised. The Ministry of Transport is leading the development of this framework, in collaboration with other Sponsor agencies and the unit.
- 28 Finalising the PPA will require considerable engagement across the Sponsor agencies and the company. Ministers will be kept informed, through future briefings, on the ongoing negotiations on the detail of the PPA, including any areas where direction from Ministers may be needed.

#### *Pressures on timeframes*

- 29 The best case scenario for the company becoming operational, and the PPA agreed would be 6 October 2022. This is an ambitious timeframe and adding a third party to the PPA puts pressure on this. In addition, local elections take place on 8 October 2022. It is recommended the PPA is agreed before the elections to prevent having to complete negotiations with the incoming council.
- 30 It is noted that the Minister of Housing is overseas from 19-30 September, which is an important period to confirm the PPA. Officials are working with ALR Minister's offices on how this will be managed.

#### **Letter of Expectations**

- 31 Under the CEA, s 9(2)(f)(iv) [REDACTED] Ltd must prepare a Statement of Performance Expectations (SPE) and Statement of Intent (SOI) "as soon as practicable" after establishment. These public accountability documents allow

shareholding Ministers to participate in setting the annual and longer-term performance expectations of the entity. To assist the company to draft these documents, a draft letter of expectations has been provided for your approval (Appendix C).

- 32 In addition to supporting these statutory processes, the letter of expectations is a useful mechanism for ALR Ministers to manage the company's expectations prior to entering into PPA negotiations.
- 33 The letter of expectations has been prepared to provide high-level direction and avoid too much specificity. The intent is that this provides greater clarity to the Board about Shareholding Ministers' priorities.
- 34 The letter of expectations emphasises the unique aspects of the project and expectations with respect to these. This includes the role of Sponsors, the need for a high-level of transparency between the company and Sponsor agencies and, the approach to monitoring and assurance. As with the Constitution, the LOE references the upcoming PPA as the main governing contract for the project between the company and Ministers.
- 35 Ministers may wish to meet with the Chair shortly after the letter has been received, to provide further clarity. This would also be an appropriate opportunity for the Chair to brief the Ministers on the unit's transition and readiness to take on company responsibilities.
- 36 We suggest that the Company present a draft SPE and SOI to shareholding Ministers by 28 October 2022. This will allow the SPE and SOI to be finalised by the end of 2022.
- 37 Section 139 of the CEA requires SOIs to cover at least a four-year time period. As the entity's mandate is currently limited to the detailed planning phase, and this phase is expected to be completed by mid-2024, it is recommended an exemption to this requirement is made.

### **Other work underway and next steps**

#### *PCO instructed*

- 38 PCO has been instructed to prepare the Orders in Council that will add s 9(2)(f)(iv) Ltd to Schedule 2 of the CEA and to make the company subject to the Official Information Act 1982 and the Ombudsmen Act 1975.

#### *LEG Cabinet paper*

- 39 Officials are preparing a draft Cabinet paper with the associated Orders in Council and propose ALR Ministers take this to the LEG on 29 September 2022. It is proposed that the LEG paper would also seek Cabinet's agreement to waive the 28-day rule.

#### *Project Planning Agreement*

- 40 Decision-makers from all parties to the PPA will receive a first draft of the PPA in mid-September.

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## APPENDIX A

Constitution of s 9(2)(f)(iv) Ltd

Appendix A is withheld in full as it is a draft version and the final version is available on the Companies Office website here: <https://app.companiesoffice.govt.nz/companies/app/service/services/documents/6173F0146D9BD9FAE631355DE4DE601B>

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## APPENDIX B

Shareholder consent for the registering of a limited liability company - s 9(2)(f)(iv) Ltd.

Please sign the respective consent forms and return to Officials.

Note: the company cannot be registered until these forms have been submitted to the Companies Office.

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**IMPORTANT!** Please do not return your signed consent by post.  
You must upload this document online. Refer to our [help guide on filing shareholder consent forms](#)

## Consent of shareholder of proposed company

Section 12(1) Companies Act 1993

Name of proposed company

Auckland Light Rail Limited

Name reservation number

15073437

Proposed company number

Shareholder's full legal name

Minister of Finance

Shareholder's address

Parliament Buildings, Wellington 6160

Number of shares held

30

Shareholder's consent

I consent to act as shareholder of the above proposed company and to taking the number of shares specified.

.....  
(Signature)

Name of signatory

Date

### IMPORTANT INFORMATION

Shareholders

- > A trust, whether expressed, implied or constructive, cannot be entered on the share register. Where, for example, shares are held by a family trust the name of the trustees must be entered individually as members of a share parcel.
- > Initials of the person's name are not allowed. The full legal name must be provided.
- > A postal address, private bag or DX number is not permitted for the shareholder's address.
- > Only one person must complete this form. If the shares are held jointly with others then each shareholder must complete and sign their own form, indicating they own them jointly.
- > If the shareholder is a natural person, please give a residential address. If the shareholder is a body corporate, please give the address of its registered office or, if it does not have a registered office, the address of its principal place of business.
- > If this form has been signed by an agent, it must be accompanied by the instrument authorising the agent to sign it. An example where this would be used is when the shareholder is overseas and unable to sign the form when the company is to be incorporated.  
For more information on this process including a sample authorisation form, visit our website - <https://companies-register.companiesoffice.govt.nz/filing-consent-forms>.
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Completed by

Name:

Postal address:

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## Consent of shareholder of proposed company

Section 12(1) Companies Act 1993

Name of proposed company

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

Name reservation number

15077504
----------

Proposed company number

--

Shareholder's full legal name

Minister of Finance

Shareholder's address

Parliament Buildings, Wellington 6160

Number of shares held

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Shareholder's consent

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Auckland Light Rail Limited

Name reservation number

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Shareholder's full legal name

Minister of Housing

Shareholder's address

Parliament Buildings, Wellington 6160

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## Consent of shareholder of proposed company

Section 12(1) Companies Act 1993

Name of proposed company

s 9(2)(f)(iv)	Limited
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Name reservation number

15077504
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Proposed company number

--

Shareholder's full legal name

Minister of Transport
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Shareholder's address

Parliament Buildings, Wellington 6160
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Number of shares held

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- > Only one person must complete this form. If the shares are held jointly with others then each shareholder must complete and sign their own form, indicating they own them jointly.
- > If the shareholder is a natural person, please give a residential address. If the shareholder is a body corporate, please give the address of its registered office or, if it does not have a registered office, the address of its principal place of business.
- > If this form has been signed by an agent, it must be accompanied by the instrument authorising the agent to sign it. An example where this would be used is when the shareholder is overseas and unable to sign the form when the company is to be incorporated.  
For more information on this process including a sample authorisation form, visit our website - <https://companies-register.companiesoffice.govt.nz/filing-consent-forms>.
- > If this form is signed under power of attorney, the attorney must provide a Certificate of Non-Revocation.  
For more information on this process, visit our website - <https://companies-register.companiesoffice.govt.nz/filing-consent-forms>.

Completed by

Name:
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Postal address:
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## APPENDIX C

### Letter of Expectations

Appendix C included a draft Letter of Expectations. The final version will be released separately.

PROACTIVELY RELEASED BY  
TE MANATŪ WAKA MINISTRY OF TRANSPORT