

Auckland Light Rail briefing for Ministerial Oversight Group

Reason for this briefing	The Auckland Light Rail Ministerial Oversight Group (the Ministerial Group) is meeting for the first time on Tuesday 23 July 2019. This briefing provides you with key papers for that meeting, for circulation to the Ministerial Group if you agree.
Action required	Approve the draft agenda and agree to circulate this briefing and relevant attachments to the Ministerial Group.
Deadline	23 July 2019
Reason for deadline	The Ministerial Group is meeting on Tuesday 23 July 2019.

Contact for telephone discussion (if required)

Name	Position	Telephone	First contact
Siobhan Routledge	Director, Strategy and Investment	██████████	✓
Bryn Gandy	Deputy Chief Executive	██████████	
Karen Lyons	Director, Auckland	██████████	

MINISTER'S COMMENTS:

Withheld to protect the privacy of natural persons

Date:	22 July 2019	Briefing number:	OC190674
Attention:	Hon Phil Twyford	Security level:	In-confidence

Minister of Transport's office actions

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|----------------------------------------------|------------------------------------------------------|-----------------------------------------------------|
| <input type="checkbox"/> <i>Noted</i> | <input type="checkbox"/> <i>Seen</i> | <input type="checkbox"/> <i>Approved</i> |
| <input type="checkbox"/> <i>Needs change</i> | <input type="checkbox"/> <i>Referred to</i> | |
| <input type="checkbox"/> <i>Withdrawn</i> | <input type="checkbox"/> <i>Not seen by Minister</i> | <input type="checkbox"/> <i>Overtaken by events</i> |

Purpose of report

1. The Auckland Light Rail Ministerial Oversight Group (the Ministerial Group) is meeting for the first time on Tuesday 23 July 2019. This briefing provides you with key papers for that meeting, for circulation to the Ministerial Group.

Comment

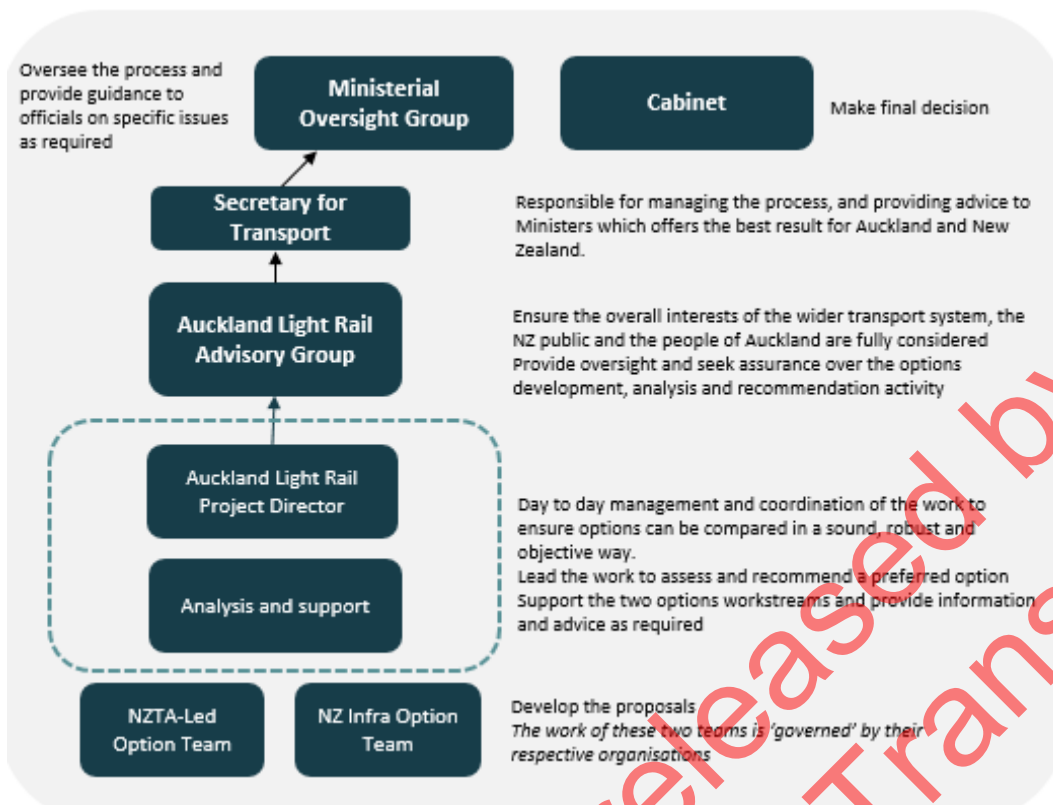
2. We propose that the meeting cover the following key items.
 - 2.1. **Terms of reference for the Ministerial Oversight Group:** a draft Terms of Reference is attached. It is critical to the overall rigour and defensibility of the parallel process that Ministers, officials and their advisors, have a shared understanding of both how the process should work to deliver the best result, and the roles of all parties in facilitating the process. Probity is a key issue, which we cover in more detail below.
 - 2.2. **Outcomes for the light rail project:** a key underpinning of the parallel process is to confirm the Government's desired outcomes from the light rail project. These are necessary to provide NZTA and NZ Infra with clarity as they prepare their proposals. The Ministry has worked with other agencies, Auckland Council and Auckland Transport, to arrive at a clear set and weightings for the project. Ministers' endorsement is sought.
 - 2.3. **(Draft) Response Requirements Document:** this draft document is designed to set out requirements for comparable responses from NZTA and NZ Infra, and to set out how their proposals will be evaluated. The probity aspects are important to give both parties, particularly NZ Infra, confidence in the process.
3. In addition, officials will be available to provide updates to the Ministerial Oversight Group, including on:
 - 3.1. key project risks
 - 3.2. the role of the (Chief Executive-level) Auckland Light Rail Governance Advisory Group
 - 3.3. the composition of the Ministry's lead team which is fronting the engagement with NZTA and NZ Infra
 - 3.4. an update on preliminary discussions with NZ Infra.

Background

4. Cabinet has agreed to establish a parallel process to determine the Government's preferred delivery partner for Auckland light rail. This process reflects that the proposals developed by NZTA and NZ Infra are at entirely different stages of development, making a meaningful comparison between them very difficult. A key goal is to obtain enough information from both so that the Government can reasonably make a decision. The process is designed to enable Ministers to work through the choices each of these parties offers in a structured way.

5. As outlined in the June Cabinet paper 'Progressing Plans to Deliver Light Rail in Auckland' [DEV-19-MIN-0141 refers], the parallel process will take place over a four to six month period, and will involve:
 - 5.1. NZTA, working with officials, developing and enhancing its business case
 - 5.2. Officials undertaking MOU discussions with NZ Infra, so that the Government can arrive at a very clear position on the merits of its proposal.
6. To inform this process, officials were directed to undertake further work to clarify the outcomes that the Government (and other parties) are seeking from light rail in Auckland. This work is a necessary foundation to ensure that both NZTA and NZ Infra are working on a common set of assumptions of what light rail should deliver now and into the long term.
7. Since the Cabinet paper process, officials have been setting up the project structures and work streams necessary to manage the parallel process. As part of this, we have considered how best to ensure that the two parties are able to provide sufficiently advanced proposals to allow for a meaningful comparison, and that we are working in a transparent and predictable way. We have also developed a process for governing the work over the next four to six months, so that all key parties are engaged over what will be a fast moving and complex project.
8. Outlined below is an overview of a proposed 'Response Requirements Document'. This document is designed to provide NZTA and NZ Infra with a common set of requirements so that their proposals can be developed to a point where the Government can make an informed decision on its preferred delivery partner. This is necessary to give the Government a solid 'baseline' understanding of the features that each party offers, including their funding and financing, commercial and technical solutions. It also enables each party to explore innovative solutions.
9. Its design reflects that officials will have a good understanding of the Respondents' delivery models but this does not provide enough for a decision without understanding its application to cost, commercial terms, design, and operation.
10. As part of the assessment of the proposals that will be developed during the parallel process, officials will be providing advice on alternative funding models for the project,
[REDACTED]
[REDACTED]
Withheld to protect the confidentiality of advice tendered by Ministers or officials
11. To support this process, a governance structure is being put in place.

12. An overview of the key elements of the governance model are as follows:



Agenda item one: Terms of Reference and probity matters

13. A draft terms of reference for the Ministerial Oversight Group is provided as Appendix 1. We are seeking agreement from the Ministerial group to this terms of reference.
14. The draft terms of reference have been designed to support a process which is as robust and impartial as possible, and which also reflects Ministers' roles with respect to key public policy issues.
15. Getting the balance right is particularly important given that the work to develop the proposals is commercially sensitive to the two parties (NZTA and NZ Infra), there will be a high degree of public and market interest in the process, and the scale of the investment.
16. The draft terms of reference take a principled approach, and particularly seek to ensure that there are clear rules of engagement which ensure that Ministers are sufficiently distant from the development of the proposals so that Ministers can review the outcome of officials' advice independently. This principle of distance is critical to ensure that the process for developing the proposals is conducted in the most rigorous way possible so that Ministers can be confident that the final proposals are the best that can be achieved.
17. This principle of distance aligns with the Process and Probity Deed that has been provided to NZ Infra and the equivalent letter that has been provided to NZTA. (It would not be appropriate to issue NZTA a Process and Probity Deed, given that it is a Crown Entity. However the letter sets out the same requirements to those set for NZ Infra.)
18. The terms of reference set out key roles for the Ministerial Oversight Group:
- 18.1. Confirm the Government's key outcomes for light rail in Auckland

- 18.2. Provide guidance on the Government's requirements for proposals, and acceptable (or potentially acceptable) public policy trade-offs
- 18.3. Provide an early point of engagement, prior to Cabinet in early 2020, for discussing the potential further process beyond February 2020
19. In addition, the terms of reference propose that the Ministers' Group:
 - 19.1. As required, provide guidance to the lead team on any emerging matters
 - 19.2. Direct all communications with NZ Infra through the lead team, so as to not compromise the Government's independent decision making.

Probity matters

20. Entering into the parallel process is a significant undertaking for NZ Infra in particular, and they are required to enter into this process at their own cost and risk with no guaranteed outcome. In this context, we are mindful that the Government is entering into this process on a good faith basis, will be expected to run a fair and transparent process, and to consider the two proposals in an even-handed manner.
21. Officials have provided a Process and Probity Deed to NZ Infra, and a similar instrument, by way of a letter to NZTA, which outlines various rules of engagement. Included in these instruments are a set of reserved rights for the Ministry, which includes our rights to suspend, vary or terminate the process, or to cancel the project. While this provides the Government with protection should there be a significant policy or direction change, it is important to maintain market confidence (beyond these parties), that this process is undertaken in a good faith and predictable way.

Agenda item two: Outcomes for the light rail project

22. A draft outcomes framework for the City Centre to Māngere Light Rail project is provided as Appendix 2. We are seeking agreement from the Ministerial group to this framework and to the relative weightings of the outcomes.
23. The purpose of the framework is to:
 - 23.1. Provide clear direction to the design, delivery and implementation of light rail in Auckland
 - 23.2. Articulate the role the City Centre to Māngere Light Rail will play in Auckland's rapid transit network
 - 23.3. Provide clarity to NZTA and NZ Infra as they prepare their proposals, including setting out the basis for determining the strategic fit of their proposals through the evaluation process.
24. The outcomes are enduring for the life of the City Centre to Māngere Light Rail project, extending beyond this next phase.
25. The framework builds on expectations set out in ATAP 2018. There has been significant engagement with ATAP partners and government agencies in its development, including Auckland Council, Auckland Transport, Ministry of Housing and Urban Development, HLC, Treasury, and Ministry for the Environment.

26. The table below sets out the four outcomes and their relative weightings. There may be further refinement of the specific measures that will be used to evaluate achievement against the outcomes.

1.	Access and Integration	Improved access to opportunities through enhancing Auckland's Rapid Transit Network and integrating with the current and future network.	40%
2.	Environment	Optimised environmental quality and embedded sustainable practices.	15%
3.	Urban and Community	Enabling of quality integrated urban communities, especially around Māngere, Onehunga and Mt Roskill.	30%
4.	Customer Experience	A high quality, attractive and highly patronised service.	15%

27. The strongest weighting has been applied to the Access and Integration outcome in recognition of the fact that this is first and foremost a transport project intended to significantly improve access to labour markets, education and social activities for communities and businesses located along the corridor. A successful outcome is light rail that is accessible and integrated with the wider transport network.
28. The Environment Outcome seeks to ensure a sustainable approach is taken to the development of the light rail infrastructure and that opportunities are taken to protect and enhance the natural environment. Long-term climate change considerations will be factored into its planning, design and delivery. This outcome includes some mandatory requirements that must be achieved to optimise environmental quality.
29. The Urban and Community outcome recognises the role of rapid transit in shaping urban form. The light rail will enable quality high density development along the corridor and good amenity and connectivity for communities, particularly in centres and around stations. The light rail line must be fully integrated with land use planning and urban development.
30. The Customer Experience outcome sets out the importance of a quality customer experience to the success and high levels of patronage of the light rail line. This includes safety, reliability, accessibility and resilience, all contributing to a world class customer experience.
31. A fundamental trade-off within the outcomes is travel time versus community catchment. Alignment of the route and location of stations/stops in a town centre compared to alignment along the motorway increases the proximity to the service for members of that community. However, travel through a residential area may involve a longer journey time and may also require a reduction in speed. While length of journey is important, reliability is also an important factor.
32. These outcomes have a combined weighting on 20% in the framework that the Ministry will use to evaluate the proposals.

Agenda item three: Response Requirements Document

33. To provide these parties with the clarity they need, officials have developed a draft Response Requirements Document, provided as Appendix 3, which sets out the information that will be needed to inform the proposals. Parties are able and encouraged to include the

Northwest in their proposals and officials are currently considering how to best reflect that. The Resource Requirements Document will be updated once we have worked through options and discussed these with the Minister of Transport.

34. In preparing this document, officials have been mindful of the various needs that this document must meet:
 - 34.1. It needs to enable a like-with-like comparison of the two proposals. Key to this is providing NZTA and NZ Infra with clarity on outcomes that the Government (and its partners) are seeking from the project.
 - 34.2. It also needs to take account of the different financing and delivery models that underpin NZTA's and NZ Infra's offerings, and ensure that both parties are able to put forward their best solutions. For NZTA, this may mean that they identify a financing arrangement which currently isn't within their toolkit. Officials are of the view that this innovative thinking should be encouraged, and by putting in place an interactive process, early engagement between the lead team and the parties will allow us to test any significant issues (and as necessary to seek feedback from Ministers).
 - 34.3. It needs to allow maximum flexibility and minimum constraints – so that the parties arrive at the best solution which meets the project's outcomes (within key parameters, which are discussed further below).
 - 34.4. To enable Ministers to make well informed decisions, it also needs to provide sufficient guidance so that the deliverability and cost of the solutions can be assessed. Accordingly, the document seeks information on design and technical matters, as these are critical drivers of cost.
35. This document is based on a standard request for proposals (RFP) document for complex infrastructure projects which we have scaled for this process and the time available.
36. The Response Requirements Document covers:
 - 36.1. Outcomes sought from light rail (as outlined in the discussion above)
 - 36.2. Process and probity requirements, including
 - 36.2.1. Roles of the Ministry, key agencies and stakeholders
 - 36.2.2. Access to information to inform the proposals
 - 36.2.3. An interactive engagement process which will allow the parties frequent and scheduled access to the lead team and other specialist advisors
 - 36.3. Evaluation approach and principles
 - 36.4. Detailed requirements for the:
 - 36.4.1. Commercial response
 - 36.4.2. Financial response
 - 36.4.3. Construction works and delivery response

- 36.4.4. Service delivery response
- 36.4.5. Lifecycle and asset management response
- 36.4.6. Sustainability, environment and property response
- 36.4.7. Community, Māori and stakeholder response
- 36.4.8. Partnership approach
- 36.4.9. Whole of life considerations

37. It also signals that in addition to the requirements outlined above, the Government will need to take account of a set of wider policy considerations in making its final decision. It is important to signal that this 'overlay' will be part of the decision making, so that the parties have a good appreciation of the context and the significant choices that are facing the Government. We see these choices as likely falling into the following areas:
- 37.1. The Government's views on the partnership approach that can be achieved with both respondents, and their confidence in how different partners would perform in operating a key transport asset over the long term
 - 37.2. The Government's preferred approach to funding and financing large scale transformative transport projects over the long term, and understanding any necessary changes to the operation of the National Land Transport Fund and current legislation
 - 37.3. The nature and duration of any concessions sought by the respondents, and understanding any potential flow on consequences for an integrated transport system that meets Auckland's needs over the long term
 - 37.4. The nature of the risks of the two proposals, and the Government's assessment of both how these risks can be managed and any consequential risks for Government.
38. Other key policy matters may come to light over the next four to six months.

Parameters

39. There are a number of parameters which have been incorporated into the document. We would like to test your comfort with these.

Crown to retain ownership of the land

40. We have proposed in the document that the Crown will retain the permanent ownership of any land that may be required for the light rail alignment. This reflects the role of the Crown as holding long term responsibility for major transport spines in Auckland. This also assists in managing the Crown's leverage in the long term relationship, should the Government decide to pursue an arrangement with NZ Infra.

Ownership of the assets (e.g. rail infrastructure, stations, rolling stock)

41. The document is currently silent on whether the Government has a view on the acceptability of permanent ownership of the rail infrastructure. This reflects that there are multiple possible ownership arrangements under the NZTA or NZ Infra led options (which may reflect the funding streams), and we need to better understand their offerings to determine how much

risk is involved. Accordingly, we propose that ownership should be considered at the next stage of the process. [REDACTED]

Risk allocation

42. The original NZ Infra proposal included a number of project risks that would be taken on by NZ Infra, including significant construction and patronage risks. However, limited detail was provided, and we are mindful that risk transfer will usually come at a price. We do not propose to set out an acceptable risk allocation model, but rather to seek a clear set of detailed principles that each party proposes to apply to risk allocation, by risk area. An evidence based rationale, with the cost impact of the risk transfer, will also be required.

Commercial and value capture opportunities

43. The document notes that the Ministry will value commercial and financial approaches that capture the value created by the project in order to help fund it. The document requires the parties to outline their approach to value capture, and how they intend to use this to fund and or finance the project.
44. The document also asks the parties to outline their strategy for commercial or other development opportunities around the light rail alignment (both integrated into the line – e.g. air rights surrounding the stations; and adjacent or near to the line). A very transparent approach is required, not only to ensure that the parties are working to support the wider project outcomes around urban and economic development, but also to ensure that community interests and possible reputational risks are managed.

Route alignment, technical and service requirements

45. To date, an indicative corridor has been adopted for the project, and Auckland's strategic transport network, transport planning policies and transport interchanges have been designed based on this route. The document indicates that the parties are not bound to apply this indicative corridor, and that they are expected to consider alternative route alignments – and to demonstrate the benefits of these.
46. However, minimum requirements are set out, including terminals in the CBD (Britomart), and Auckland International Airport, along with major intermediate stops in Mount Roskill, Onehunga and Māngere Town Centre. These major intermediate stops align with planned / existing interchanges.
47. A series of service requirements are laid out, including for example, the need to demonstrate a service that is integrated into Auckland's rapid and mass transport plans, demonstration of how the service supports mode shift, and integration with existing AT systems (including the HOP card).
48. The parties are also required to demonstrate how their proposed solution can be extended, including to the North West, and to Wynyard as a means of supporting future extension to the North Shore.

Sustainability requirements

49. The document requires parties to outline their environmental sustainability strategy, including managing impacts during construction, and managing impacts on residents (e.g. noise, vibrations), preserving and enhancing the natural environment, including native habitats and biodiversity.

50. The parties are also asked to demonstrate how they'd achieve a world class sustainable project which achieves an excellent/gold or better ISCA rating, including how they'd deliver value for money, improve the local construction industry, and leave a long lasting community legacy. Stations are expected to achieve at least a four gold star rating.

Other key matters

51. As a general rule, the parties are expected to deliver a high quality proposal within the bounds of existing legislative or regulatory frameworks. However, where a party identifies that these frameworks unduly constrain the value it is able to deliver through the project, it should identify these constraints in its proposal.
52. The document signals that the parties are not to engage with mana whenua or undertake community or wider stakeholder engagement (eg business associations) during the proposals process. We believe that a stakeholder engagement process, involving two competing parties, is likely to lead to significant confusion amongst the community. However, the parties are required to develop a comprehensive approach which outlines how they would engage once a decision has been taken.

Agency consultation on the draft Response Requirements Document

53. Officials have circulated a draft of this document to partner agencies for feedback.
54. Useful feedback has been provided to date. We are continuing to work through this and will provide a verbal update on key points at the Ministerial Oversight Group meeting on 23 July 2019. We are working this feedback into the next draft of the Response Requirements Document.
55. We will also continue to work with Auckland Transport to ensure that key operational issues have been appropriately reflected in the document. One outstanding issue to be particularly worked through is understanding Auckland Transport's views on their role as the 'nominated operator'. We anticipate that these discussions will continue over the next few days, and if necessary we will engage directly with the Minister of Transport on any significant outstanding matters.

Recommendations

56. The recommendations are that you:

- (a) **Forward** this briefing, the draft terms of reference for the Ministerial Oversight Group and the draft outcomes framework for the City Centre to Māngere Light Rail project to the Ministerial Oversight Group Yes/No
- (b) **Discuss** the contents of these documents with your colleagues in the Ministerial Oversight Group and invite feedback on the content by midday Friday 26 July 2019 Yes/No
- (c) **Note** the intent and scope of the Response Requirements Document and the wider public policy considerations that the Government will need to take account of in its final decision
- (d) **Provide feedback** on the parameters in the draft Response Requirements Document including Crown ownership of land that may be required for the light rail route, ownership of the assets, risk allocation, commercial and value capture opportunities, route alignment, and sustainability requirements Yes/No

MINISTER'S SIGNATURE:

Hon Phil Twyford
Minister of Transport
DATE: