

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)

Office of the Minister of Finance

Office of the Minister of Housing

Office of the Minister of Transport

Chair, Cabinet Legislation Committee

Crown Entities (Auckland Light Rail Limited) Order 2022 and Ombudsmen (Auckland Light Rail Limited) Order 2022

Proposal

- 1 This paper 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).
- 2 The Crown Entities Order provides that Auckland Light Rail Limited is to be added to Schedule 2 of the Crown Entities Act 2004 (CEA) as a Crown entity company.
- 3 The Ombudsmen Order provides that Auckland Light Rail Limited is to be added to Schedule 1, Part 2 of the Ombudsmen Act 1975 (OA). This will make Auckland Light Rail Limited subject to the Official Information Act 1982 (OIA) and the OA.

Background to the establishment of a Crown entity company to take forward Auckland Light Rail

- 4 This Government is committed to progressing light rail in Auckland. On 13 December 2021, Cabinet agreed [CAB-21-MIN-0531 refers] that the Auckland Light Rail project (ALR project) should progress into the detailed planning phase and noted that a transition to an entity to see through the planning and delivery of the project should occur in the second half of 2022, in advance of consenting and land acquisition processes.
- 5 On 29 August 2022, Cabinet agreed [CAB-22-MIN-0338 and DEV-22-MIN-0191 refers] to the creation of a limited liability company, called Auckland Light Rail Limited, to prepare a business case and associated planning advice and activities, during the planning phase of the ALR project to inform final investment decisions. It agreed that the company be added to Schedule 2 of the CEA and noted that the company will be subject to the provisions of the OIA and the OA.
- 6 Cabinet also authorised the Ministers of Finance, Housing and Transport (Sponsoring Ministers), in consultation with Auckland Council and mana whenua, as appropriate, to take decisions in relation to the setting up of the company including the governance and governance contractual arrangements, confirming the company name, and incorporating the company.
- 7 The company was provisionally called Auckland Light Rail Limited in DEV-22-MIN-0191 and associated papers. Subject to Cabinet's authorisation, Sponsoring Ministers have agreed to the name Auckland Light Rail Limited (ALRL) for the company. The project itself will continue to be called the Auckland Light Rail project.

Incorporation of Auckland Light Rail Limited

- 8 ALRL has been incorporated as a limited liability company under the Companies Act 1993. A Constitution has also been adopted, the Sponsoring Ministers are equal shareholders and the existing Board members appointed to the ALR Unit are to form the Board of the new company.
- 9 While incorporated, ALRL cannot become operational until:
- 9.1 the company is added to Schedule 2 of the CEA and a notice is published in the Gazette;
 - 9.2 a Project Planning and Funding Agreement (PPA) is signed between Sponsoring Ministers, Auckland Council and ALRL; and
 - 9.3 the Sponsoring Ministers receive satisfactory assurance from the ALR Board that that ALRL has the systems, policies, and processes in place to take on its responsibilities and obligations.
- 10 The PPA is a significant part of the company establishment and is necessary to put in place the settings the Crown requires for this phase of the project. This will set out the roles of Sponsors, the Crown and the company, it will confirm information sharing requirements and set out the company's funding arrangements. The negotiation of the PPA is ongoing, it is intended to be agreed ahead of local government elections on 8 October 2022.
- 11 As Sponsoring Ministers, we have received advice on matters necessary to establish the new company and are satisfied this process is on track to achieve our ambitious expectations that the company is operational by early October 2022. We have received advice on changes required to the ALR appropriation and, the progress of the PPA.

Application of specific financial provisions in Crown Entities Act 2004 to Auckland Light Rail Limited

- 12 The Crown Entities Order reflects the decisions made in DEV-22-MIN-0191 that the company not be exempted from sections 161 – 165 inclusive of the CEA.

Whole of Government directions

- 13 The only whole of government direction that applies to ALRL is the 2014 direction regarding Procurement Functional Leadership – requiring all Crown entity companies to apply the Government Procurement Rules, and be guided by the Ministry of Business, Innovation and Employment on any issues relating to the application of the Rules.
- 14 The Rules apply to new construction works with an estimated value of \$9 million or more (excluding GST), which includes contracts that form part of the ALR project. The Rules require an open and competitive tendering processes.

Financial Implications

- 15 There are no additional financial implications of the proposed Orders in Council. Funds have already been appropriated for this phase of the project. No additional funding is sought.

- 16 The Ministers of Finance, Housing and Transport were authorised by Cabinet [CAB-22-MIN-0338 and DEV-22-MIN-0191 refers] to approve changes to appropriations (including establishing any new appropriations and operating to capital swaps) once there was further clarity on the timing of transitions to the new company and funding arrangements.

Timing and 28-day rule

- 17 A waiver of the 28-day rule is sought on the basis that the Orders have little or no effect on the public or confer only benefits on the public. The Crown Entities Order provides for a more suitable operating structure to undertake the detailed planning phase of the ALR project that is of benefit to Auckland. The Ombudsmen Order, which makes ALRL subject to the OIA and the OA, provides benefits to the public in terms of enabling more effective public participation in the making and administration of laws and policies, and promoting the accountability of the Crown, Ministers and officials.
- 18 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, ALRL would not be able to become operational until at least 1 November 2022.

Compliance

- 19 The Orders comply with:
- 19.1 the principles of the Treaty of Waitangi;
 - 19.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 19.3 the principles and guidelines set out in the Privacy Act 2020;
 - 19.4 relevant international standards and obligations; and
 - 19.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

Legislative Implications

- 20 Nil.

Regulations Review Committee

- 21 There are no grounds for the Regulations Review Committee to draw the Orders to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

- 22 Parliamentary Counsel Office has certified the Orders as being in order for submission to the Executive Council except that the Orders will come into force earlier than the 28th day after their notification in the Gazette.

Impact Analysis

- 23 The Treasury's Regulatory Impact Analysis team has determined that the establishment of ALRL is exempt from the requirement to provide a Regulatory

Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

Proactive release

- 24 We intend to proactively release this paper within 30 business days of final decisions being taken by Cabinet, subject to any redactions appropriate under the Official Information Act 1982.

Consultation

- 25 The following departments and agencies were consulted:
- 25.1 The Treasury;
 - 25.2 the Ministry for Housing and Urban Development;
 - 25.3 The Ministry of Justice; and
 - 25.4 the Public Service Commission.
- 26 The Department of the Prime Minister and Cabinet and the Office of the Ombudsman were informed.
- 27 No issues were raised during consultation.

Recommendations

The Ministers of Finance, Housing and Transport recommend that the Cabinet Legislative Committee:

- 1 note that on 29 August 2022 Cabinet agreed [CAB-22-MIN-0338 and DEV-22-MIN-0191 refers]:
 - 1.1 to the creation of a limited liability company to prepare a business case and associated planning advice and activities, during the planning phase of the Auckland Light Rail project; and
 - 1.2 that the company be added to Schedule 2 of the Crown Entities Act 2004.
- 2 note that Cabinet noted that the company will be subject to the provisions of the Official Information Act 1982 and the Ombudsmen Act 1975.
- 3 note that Cabinet also authorised the Ministers of Finance, Housing and Transport (Sponsoring Ministers), in consultation with Auckland Council and mana whenua, as appropriate, to take decisions in relation to the setting up of the company including the governance and governance contractual arrangements, confirming the company name, and incorporating the company.
- 4 note that Sponsoring Ministers have now confirmed that the name of the company is to be Auckland Light Rail Limited.
- 5 note that the Crown Entities (Auckland Light Rail Limited) Order 2022 and the Ombudsmen (Auckland Light Rail Limited) Order 2022 will give effect to the decision referred to in paragraphs 1.2 and 2 above.

- 6 authorise the submission to the Executive Council of the Crown Entities (Auckland Light Rail Limited) Order 2022 and the Ombudsmen (Auckland Light Rail Limited) Order 2022.
- 7 note that a waiver of the 28-day rule is sought:
 - 7.1 so that the Orders can come into force on 6 October 2022; and
 - 7.2 on the grounds that the Orders have little or no effect on the public or confer only benefits on the public,
- 8 agree to waive the 28-day rule so that the Crown Entities (Auckland Light Rail Limited) Order 2022 and the Ombudsmen (Auckland Light Rail Limited) Order 2022 can come into force on 6 October 2022.
- 9 note that that the transfer of responsibilities and the start of Auckland Light Rail Limited operations is conditional on:
 - 9.1 the company being added to Schedule 2 of the Crown Entities Act 2004 and being notified in the Gazette;
 - 9.2 the signing by the Crown, Auckland Council and Auckland Light Rail Limited of the Project Planning and Funding Agreement; and
 - 9.3 The Ministers of Finance, Housing and Transport receiving satisfactory assurance from the Auckland Light Rail Board that Auckland Light Rail Limited has the systems, policies and processes in place to take on its responsibilities and obligations.

Authorised for lodgement

Hon Grant Robertson

Minister of Finance

Hon Dr Megan Woods

Minister of Housing

Hon Michael Wood

Minister of Transport

Appendices

Crown Entities (Auckland Light Rail Limited) Order 2022

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

Ombudsmen (Auckland Light Rail Limited) Order 2022

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



Cabinet Legislation Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Crown Entities (Auckland Light Rail Limited) Order 2022 and Ombudsmen (Auckland Light Rail Limited) Order 2022

Portfolio Finance / Housing / Transport

On 29 September 2022, the Cabinet Legislation Committee:

- 1 **noted** that on 24 August 2022, the Cabinet Economic Development Committee (DEV) agreed:
 - 1.1 to the creation of a limited liability company to prepare a business case and associated planning advice and activities, during the planning phase of the Auckland Light Rail project; and
 - 1.2 that the company be added to Schedule 2 of the Crown Entities Act 2004;[DEV-22-MIN- 0191];
- 2 **noted** that DEV noted that the company will be subject to the provisions of the Official Information Act 1982 and the Ombudsmen Act 1975;
- 3 **noted** that DEV also authorised the Minister of Finance, Minister of Housing and Minister of Transport (Sponsoring Ministers), in consultation with Auckland Council and mana whenua, as appropriate, to take decisions in relation to the setting up of the company including the governance and governance contractual arrangements, confirming the company name, and incorporating the company [DEV-22-MIN- 0191];
- 4 **noted** that the Sponsoring Ministers have now confirmed that the name of the company is to be Auckland Light Rail Limited;
- 5 **noted** that the Crown Entities (Auckland Light Rail Limited) Order 2022 and the Ombudsmen (Auckland Light Rail Limited) Order 2022 (the Orders) give effect to the decision referred to in paragraphs 1.2 and 2 above;
- 6 **noted** that a waiver of the 28-day rule is sought:
 - 6.1 so that the Orders can come into force on 6 October 2022;
 - 6.2 on the grounds that the Orders have little or no effect on the public or confer only benefits on the public.

- 7 **agreed** to waive the 28-day rule so that the Crown Entities (Auckland Light Rail Limited) Order 2022 and the Ombudsmen (Auckland Light Rail Limited) Order 2022 can come into force on 6 October 2022.
- 8 **noted** that that the transfer of responsibilities and the start of Auckland Light Rail Limited operations is conditional on:
- 8.1 the company being added to Schedule 2 of the Crown Entities Act 2004 and being notified in the Gazette;
 - 8.2 the signing by the Crown, Auckland Council and Auckland Light Rail Limited of the Project Planning and Funding Agreement; and
 - 8.3 The Ministers of Finance, Housing and Transport receiving satisfactory assurance from the Auckland Light Rail Board that Auckland Light Rail Limited has the systems, policies and processes in place to take on its responsibilities and obligations;
- 9 **authorised** the submission to the Executive Council of the:
- 9.1 Crown Entities (Auckland Light Rail Limited) Order 2022 [PCO 25019/2.0];
 - 9.2 Ombudsmen (Auckland Light Rail Limited) Order 2022 [PCO 25020/2.0].

Rebecca Davies
Committee Secretary

Present:

Hon Andrew Little
Hon David Parker (Chair)
Hon Poto Williams
Hon Damien O'Connor
Hon Michael Wood
Hon Dr David Clark
Dr Duncan Webb, MP

Officials present from:

Office of the Prime Minister
Officials Committee for LEG