

Auckland Light Rail – decisions on next stage

Reason for this briefing	<p>There are a number of issues that require decisions from you, namely:</p> <ul style="list-style-type: none"> resourcing for the Ministry to continue delivery of the City Centre to Māngere (CC2M) Light Rail Project inclusion of cost-recovery for the Preferred Delivery Partner for the next stage via a Memorandum of Understanding (Respondent MoU) inclusion of the Northwest Line in the Respondent MoU to enable future negotiations with the Preferred Delivery Partner.
Action required	<p>Consider the issues and options presented in this paper.</p> <p>Consider due to the cost-recovery commitments in the MoU and additional budget sought, that this should be sent to the Minister of Finance.</p>
Deadline	As soon as practicable.
Reason for deadline	To enable the Ministry to continue progress on the delivery of the CC2M project.

Contact for telephone discussion (if required)

Name	Position	Telephone	First contact
Bryn Gandy	DCE, Strategy and Investment		
Amelia East	Project Director – Auckland Light Rail	██████████	✓

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MINISTER'S COMMENTS:

Date:	6 December 2019	Briefing number:	OC191156
Attention:	Hon Phil Twyford Minister of Transport	Security level:	In-Confidence

Minister of Transport's office actions

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 Withdrawn | 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

Purpose of report

1. The briefing seeks your decisions on a number of issues:
 - 1.1. **Decision 1** – Resourcing for the Ministry to continue delivery of the City Centre to Māngere (CC2M) Light Rail Project.
 - 1.2. **Decision 2** – Memorandum of Understanding with the Respondents (Respondent MoU) on the approach to exclusive negotiation, [REDACTED].
2. To maintain momentum and ensure the successful delivery of the CC2M project, it is critical to address these issues as soon as possible.

Decision 1 – resourcing for the Ministry to continue delivery of the CC2M project

Background information

3. The Ministry is currently leading a process for selecting the Preferred Delivery Partner on the CC2M light rail project. This involves the Ministry engaging with the Respondents throughout the development of their proposals, assessing the proposals against criteria set out in the Response Requirements Document (RRD), and preparing advice for Ministers.
4. To support this work, you sent a letter to the Chair of the New Zealand Transport Agency (NZTA) Board on 14 June 2019, seeking assistance from the NZTA. The NZTA Board subsequently agreed to offer financial assistance to the Ministry, utilising funds from the National Land Transport Fund (NLTF).
5. Following that decision, the Ministry and NZTA entered into a Memorandum of Understanding (MoU) for the provision of financial assistance, subject to a cap of \$3 million (plus GST). The funding is to enable the Ministry to procure specialist technical, legal, commercial and operational professional services as required to manage the process for developing and evaluating proposals from NZ Infra and NZTA.
6. The MoU recognises the joint interest in ensuring the Government receives robust advice on the merits of different approaches to financing and delivering CC2M, and ensuring the Ministry is well-resourced to run a robust process that treats all parties fairly and reasonably.

The Ministry budget only covers up to selecting a Preferred Delivery Partner

7. The current Ministry funding only covers up to providing advice on a Preferred Delivery Partner. The budget has been managed extremely carefully and we can confirm that we will be able to deliver our recommendation for a Preferred Delivery Partner in February 2020 within the \$3 million funding cap.
8. As part of making a decision on its Preferred Delivery Partner, Cabinet will need to consider what funding sources will be required to deliver the CC2M project. Options for this will be set out in the Cabinet paper.
9. There is therefore a shortfall in funding between the end of February and the Cabinet decision. Should you wish to maintain the momentum of the CC2M project past February, the Ministry would require this funding to support:
 - 9.1. preparation work for the exclusive negotiation phase including drafting of the relevant contracts, which may include the Sponsor Agreement, Funding Agreement, and Project Agreement

- 9.2. work on developing the north-west line part of the project
- 9.3. continued negotiations, if required, with either Respondent

10. [Redacted]

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11. [Redacted]

Comments

- 12. If funding is not secured for the interim period, the key risk is that the core project team would have to be 'de-mobilised', resulting in significant disruption to the continuity of the CC2M project. This is likely to have flow-on effects on the overall timeline, including delays in initiating the exclusive negotiation phase.
- 13. Our advice is also that you would wish to continue with the current structure until the first contract is signed by either Respondent and Cabinet has had the chance to think about the ongoing roles in the system. The current team has worked very well and has a good understanding of the project and is the only team that would be mobilised and able to immediately start working on getting a delivery agreement signed during 2020. It is difficult to also identify who else would be placed to do this work.

13.1. [Redacted]

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13.2. [Redacted]

Funding options

14. The Ministry has identified two options to address the likely funding shortfall:

Option 1: NLTF funding, subject to the NZTA Board approval (preferred option)

- 15. This option involves amending the existing MoU and increasing the funding cap from \$3 million to \$5 million. As any funding increase will impact on the NLTF, amendments to funding levels in the MoU will be subject to approval from the NZTA Board.
- 16. Given the scope of funding is unchanged (i.e. work to deliver the CC2M project), this option is consistent with our previous approach and there is a clear statutory basis under Section 95(1)(h) of the Land Transport Management Act 2003¹ for the NZTA to provide assistance to the Ministry.

¹ Section 95(1)(h) provides for the NZTA to provide assistance to central or local government agency when requested to do so by the Minister, as long as its functions and duties are not compromised.

17. This is the Ministry's preferred option as it utilises existing MoU arrangements and would minimise the level of effort required to secure funding.

18. [Redacted]
[Redacted]
[Redacted]
[Redacted]:

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18.1. [Redacted]

18.2. [Redacted]
[Redacted]

18.3. [Redacted]
[Redacted]
[Redacted]

Option 2: Crown funding

19. This option involves seeking Cabinet approval for funding from Between-Budget Contingency (BBC) to support the Ministry in delivering the CC2M project. The BBC is a general operating contingency that provides for operating proposals that arise between Budget rounds.

20. Due to time constraints, the Ministry has not had the opportunity to engage with the Treasury on progressing this option, including establishing the level of available funding within the BBC for the 2019/20 financial year. Notwithstanding this, the Ministry does not recommend you to pursue this option for the following reasons:

20.1. There is usually a high threshold for proposals to be funded from the BBC, and there is a risks that the CC2M may not meet this threshold given limited engagement with the Treasury to date.

20.2. As noted before, funding from the BBC requires Cabinet approval and there is a limited number of Cabinet meetings left in the calendar year.

20.3. Any funding approved through the BBC to support the CC2M project would mean less funding is available to support the Government's well-being initiatives for the 2019/20 financial year. The opportunity loss would also be greater if the \$2 million is not fully utilised.

Next steps

21. If you agree to pursue Option 1, a draft letter highlighting the key points in paragraph 16 is attached for your signature. Once approval is granted from the NZTA Board, the Ministry will work with the NZTA to amend the MoU and increase the funding cap. Should the NZTA Board decline an increase to the funding cap, the Ministry will explore avenues to seek funding through the BBC process.

22. If you wish to pursue Crown funding, we will work with your Office to engage with the Treasury and the Minister of Finance on the availability of BBC to support the CC2M project. Should the BBC not be available to support the CC2M project, we would most likely have to wait until the Cabinet decision on the Preferred Delivery Partner is made to secure funding for the next stages. This would mean it is unlikely that the exclusive negotiations could start before Q3 or Q4 2020.

Decision 2 – Memorandum of Understanding with the Respondents (Respondent MoU)

Background

23.

[Redacted]

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24.

[Redacted]

without prejudice or disadvantage

25.

[Redacted]

26.

[Redacted]

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27.

[Redacted]

without prejudice or disadvantage

28.

[Redacted]

29.

[Redacted]

Next steps

30.

[Redacted]

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Recommendations

31. The recommendations are that you:

Decision 1 – resourcing for the Ministry to delivery of the City Centre to Māngere (CC2M) Light Rail Project

- (a) **note** that the Ministry has a Memorandum of Understanding (MoU) with the New Zealand Transport Agency (NZTA), for funding assistance to deliver a recommendation on the Preferred Delivery Partner for the CC2M project, up to a cap of \$3 million
- (b) **note** that the Ministry will deliver this recommendation within the \$3 million funding cap
- (c) **note** that there is no funding to address any additional work before a permanent funding source can be determined by Cabinet
- (d) **note** that the Ministry has identified two options to address the interim funding shortfall:
 - a) **Option 1** – increase the funding cap from the National Land Transport Fund, subject to the NZTA Board approval (the Ministry's preferred option)
 - b) **Option 2** – Crown funding
- (e) **agree** to pursue Option 1 Yes/No
- (f) **sign** the attached letter to the NZTA Board seeking NZTA assistance to increase the funding cap Yes/No

Decision 2 – Memorandum of Understanding with the Respondents (Respondent MoU)

- (g) [Redacted] Yes/No
- (h) [Redacted] Yes/No
- (i) [Redacted] Yes/No
- (j) [Redacted] Yes/No
- (k) [Redacted] Yes/No
- (l) [Redacted] Yes/No

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Project Director – Auckland Light Rail

MINISTER'S SIGNATURE:

DATE:

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