

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) |

AUCKLAND LIGHT RAIL BOARD TERMS OF REFERENCE

12 July 2022

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TE MANATŪ WAKA MINISTRY OF TRANSPORT

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Introduction

Purpose of this document

The Terms of Reference (ToR) sets out how the Board will operate and provides information that is useful for both new and existing members of the Board, and partner agencies working together on the Auckland Light Rail (ALR) project.

The ToR seeks to strike the right balance between the need for the Sponsors and Crown to provide direction and give the Board autonomy to achieve its objectives.

The ToR is approved by the Sponsoring Ministers in consultation with other Sponsors.

The ToR will apply for the duration of the Detailed Planning Phase of the ALR project, or until the new legal entity is stood up. Changes to the ToR can be made by the Sponsoring Ministers in consultation with other Sponsors.

Terminology used in the Terms of Reference

For ease of understanding, the following terminology is used in the Terms of Reference.

- **ALR Project** or **project** comprises the delivery of a light rail transport network from the City Centre to Māngere and associated urban development activities to the extent confirmed through the detailed planning phase.
- **ALR Programme** or **programme**: The key elements of the ALR Programme are:
 - the ALR Project, which comprises the delivery of a light rail transport network from the City Centre to Māngere and associated urban development activities
 - related investment decisions by Sponsors which are required in order to allow the benefits of the ALR Project to be obtained; and
 - the relationship with wider planning for growth and transport across the region including those projects that interface with or impact on the outcomes of the ALR Programme (which include the Additional Waitemata Harbour Crossing, Auckland Rapid Transit Plan and Kainga Ora large-scale development projects).
- The **detailed planning phase** is the current phase of the ALR project. The phases that follow the detailed planning phase are called the **delivery and operation phases**.
- **Sponsors** means the Sponsoring Ministers and representatives from Auckland Council and mana whenua.
- **Sponsoring Ministers** means the Ministers of Finance, Housing and Transport.
- **Board** means the ALR Board.
- **Unit** means the ALR Unit.
- **Programme Director** means the Programme Director in charge of the ALR Unit.

Important documents to read alongside the Terms of Reference

- Cabinet decision to progress Auckland Light Rail.¹
- Sponsors Heads of Terms Agreement.
- Sponsors Agreement (once agreed).
- Sponsor's Representatives Forum Terms of Reference (once agreed).
- Investment Management System Letter from the Minister of Transport on behalf of the Sponsors..
- Board competency framework.
- Agreement that describes the shared services that will be provided to the Unit by Waka Kōtahi (*once agreed*).
- Partnering agreements between the Board and partner agencies from central and local Government that sets out what is expected from each agency to deliver as part of the Detailed Planning Phase and roles and responsibilities and ways of working together (*once agreed*).
- The policy workstreams and the accompanying work programme.
- Programme Director role description (*once agreed*).

The wider operating environment

Appendix 1 provides a diagram to show how the Board and Unit fits into the wider operating environment.

The Board will be enduring in the next phase of the project

As the project progresses into subsequent (delivery and possibly operation) phases, the intention is that the Board will be enduring and there will be a high degree of continuity in the membership of the Board across phases, subject to any relevant context or considerations at that time.

¹ <https://www.transport.govt.nz/assets/Uploads/OC210779-Auckland-Light-Rail-decision-to-progress-Cabinet-Paper.pdf>

Roles, responsibilities and functions of the Board

This section describes the role of the Board, who it is accountable to and its key responsibilities.

Role and responsibilities: Board

| | |
|--------------------------------------|--|
| The role of the Board is to: | <ul style="list-style-type: none">• Convene as a Ministerial Advisory Group with defined functions including a business case for the Crown investment in the ALR project• The outputs of the ALR Unit will be used to provide decision support to the Crown and Sponsors for the ALR project and programme; and,• Govern the Unit, with direct line of accountability to the Crown. |
| The Board is responsible for: | <p>Responsibilities are grouped according to the ALR Project, the wider ALR Programme, and policy development.</p> <p>From time to time, Sponsors may provide additional direction to the Board about Board responsibilities and about the parameters for which the Board must work within.</p> <p>The Board will engage with Sponsors and provide Sponsors and Sponsors' officials with all relevant information, throughout the Detailed Planning Phase, to ensure that Sponsors are able to monitor and evaluate progress and provide guidance and direction to the Board in relation to the Project and Programme.</p> <p>This includes information in relation to critical aspects of the project and Programme identified in the Investment Management System Letter from the Minister of Transport on behalf of the Sponsors.</p> <p>Project-related responsibilities:</p> <ul style="list-style-type: none">• Submit business case and associated advice to the Crown, within the parameters set by the Crown and Sponsors, to inform final investment decisions.• Ensure the project is progressed as an integrated transport and urban development project.• Consider and plan for possible early (construction and utilities) works, noting that if there is any Sponsor decision for early works to be delivered, the Board may have a role to do this.• Ensure mana whenua, communities, stakeholders and partner agencies are engaged, and their views and interests are taken into account when developing the business case.• Advise Sponsors on how to protect the transport corridor and oversee the preparation of the necessary consents. |

-
- Provide visibility of risks and assurance to Sponsors that the ALR project is on-track and well managed.
 - Enter into partnership agreements with partner agencies for ALR project delivery, making best use of existing capability and capacity in the system.
 - Comply with the Government Procurement Charter, the Government Procurement Rules, the five principles of Government Procurement, the Cabinet agreement that project procurement should adopt a 'Zero Harm and Thriving Infrastructure Approach'², and the Ministry of Transport's procurement processes.

Programme-related responsibilities

- Enable the intent of the organising model and governance arrangements for the ALR Programme in the detailed planning phase. In particular the collaborative approach required across agencies and, the role of the Crown and Sponsors.
- Integrate delivery workstreams of the ALR Programme led by other agencies into the business case.
- Engage with partner agencies on wider planning and growth for transport and urban development across the region. Ensure alignment of projects in the corridor, escalating risks and opportunities to Sponsors where projects are not aligning. Include this information in the business case and accompanying advice to properly inform investment decisions.

Policy-related responsibilities

- Integrate Crown policy decisions and those of other Sponsors relating to the programme into the business case.
- The Crown and Auckland Council are responsible for a significant policy work programme in the Detailed Planning Phase. The Board will contribute to the policy work programme and integrate with its own work programme as necessary.

The Board is accountable to:

- The Sponsoring Ministers.

The Board will take direction from:

- Sponsors, through the Sponsors' Representative, when Sponsors achieve consensus.³ If consensus cannot be reached, the Board will take direction from the Crown.

The relationship between the Board, the Sponsors, and the Sponsors' Representative is discussed further on page 7.

The Board will have powers delegated to it by:

- The Sponsoring Ministers to achieve the objectives of the project and programme.
- The Chief Executive of the Ministry of Transport, and Sponsoring Ministers as delegated by Cabinet, to fund the work of the Board and Unit.

² OC210779-Auckland-Light-Rail-decision-to-progress-Cabinet-Paper.pdf (transport.govt.nz). Page 14 and Appendix 3.

³ The Sponsors' Representative is appointed by the Sponsors' Forum and is the conduit for communicating between the Sponsors and the Board. The Sponsors' Representative does not have any decision-making rights.

Delegations are discussed further on page **Error! Bookmark not defined..**

The Board will delegate to:

- The Programme Director who, in turn, may delegate to members of the management team of the Unit in accordance with the guidance or direction of the Board. This will be enabled through a delegation from the Chief Executive of the Ministry of Transport to the Programme Director.
-

Roles and responsibilities: Crown and other Sponsors

Cabinet set key principles about the governance and oversight needed in the Detailed Planning Phase of the ALR project.⁴ They are:

- Direct line of sight and influence by the Crown. Reflecting the significant policy and strategy decisions that need to be made going forward, which are the reserve of the Crown.
- Reflecting the nature of the Crown, Auckland Council, and mana whenua partnership.
- Embedding the integrated urban development and transport focus.
- Reflecting the role of mana whenua.
- Accountabilities to Sponsors to ensure their agreed outcomes are being delivered, allowing trade-offs to be made during the development of the project (for example between urban and transport outcomes).
- Clarity of the roles, responsibilities and accountabilities of the many partners, including placing key agencies on a level playing field.

Decisions, guidance and direction reserved to the Crown and Sponsors

The Cabinet Paper, and the arrangements between the Sponsors (including under Sponsors Agreement for the Detailed Planning Phase when agreed) reflect the significant policy issues and strategy decisions that are the reserve of the Crown (in consultation as appropriate with the other Sponsors) and will be made or informed during the Detailed Planning Phase.

This includes the Investment Management System Letter from the Minister of Transport on behalf of the Sponsors to the Board which sets out where optioneering is required in the business case, and the areas which will require direction from Sponsors on how to proceed. These decisions and direction will inform the scope of work to be carried out by the Board and Unit throughout the Detailed Planning Phase.

The arrangements between the Sponsors (including the Sponsors Agreement for the Detailed Planning Phase) will identify:

- the key decisions that will be made by Sponsors collectively
- decisions that will be reserved for particular Sponsors. Examples include the Crown's role and responsibility to make a final investment decision for the ALR Project and to determine the form of the Delivery Entity. Other examples include any Sponsor decision to deliver early works, and

⁴ [OC210779-Auckland-Light-Rail-decision-to-progress-Cabinet-Paper.pdf \(transport.govt.nz\)](#). Page 17, paragraph 120.

- policy issues and strategy decisions that are the reserve of the Crown and Sponsors during the Detailed Planning Phase.

The Board will:

- regularly engage with Sponsors and provide Sponsors will all relevant information throughout the Detailed Planning Phase in relation to matters that are, or are likely to be relevant to or informed by, the policy issues and strategy decisions that are to be considered by the Crown and Sponsors
- provide information as may be requested from time to time by or on behalf of Sponsors (including the Sponsors Representative's Forum) as contemplated in the Assurance and Monitoring section of this terms of reference, and
- seek appropriate guidance and direction from the Crown in relation to matters that are likely to be relevant to the policy and strategy issues that are the reserve of Crown and Sponsors in a timely and fulsome manner.

Sponsors will exercise decision-making rights within their own statutory functions and in accordance with their governance arrangements.

Decisions reserved to the Board

Given the complexity and size of the project, it is neither feasible nor possible to list all matters in advance that the Board shall seek the guidance or direction of the Crown (in consultation with other Sponsors as appropriate). The following are examples of the sorts of matters that Sponsors expect the Board to seek guidance on. The examples are illustrative only, and not exhaustive.

| Matters to raise with Sponsors | Examples (not all inclusive) |
|---|---|
| Issues potentially affecting the reputation of the Sponsors | <ul style="list-style-type: none"> • public consultation • topics that are likely to be of high public interest or generate public debate |
| Significant project decisions that are the reserve of the Crown (in consultation with Sponsors as appropriate) | <ul style="list-style-type: none"> • changes to project scope • commissioning major contracts in relation to scope of works • significant policy decisions |
| Significant trade-offs that are made in the business casing process | <ul style="list-style-type: none"> • the issues identified in the Investment Management System letter from the Minister of Transport on behalf of the Sponsors to the Board, including the matters under '<i>Business case point of entry</i>' • view shafts • intensification • options that create significant differences in final costs |
| Decisions about matters that Sponsors are known to have different views about | |

Relationships and tools to support how the Board operates

This section summarises how the Board will be funded, and the role of the Sponsors and Sponsor's Representatives Forum in relation to the Board. The section then describes the key tools that the Board will use to deliver its functions.

In Machinery of Government terms, the Board is a Ministerial Advisory Committee

The Unit is a precursor to a legal entity. In the Detailed Planning Phase, the Board is neither a statutory entity nor a legal entity in its own right. For this reason, the Board needs a unique set of tools to enable it to carry out its functions.

Ministers set up Ministerial Advisory Committees to provide them with independent advice on particular issues.

Ministerial Advisory Committees can include members from the private sector and officials. Appointments follow the same principles that apply to a Crown entity board member and Ministers must be able to certify that an appropriate appointment process has been followed. Members are subject to the Cabinet Fees Framework.

Ministerial advisory committee members report directly to the responsible Minister(s).

Key relationships in the organising model

Relationship between Board and Sponsors

- Sponsors will try to achieve consensus and provide direction to the Board, communicating with the Board on a “one sponsor” basis.
- In most instances, Sponsors will seek to resolve differences between themselves and so far as is practicable, not communicate or make these differences visible to the Board. Some differences will be made visible, for example where the Board is required to consider more than one option to reflect differences.
- If consensus cannot be reached, the Board will take direction from the Crown.

Relationship between the Board and Sponsors' Representative

- The Board has accountability to the Sponsoring Ministers. The Sponsor's Representative is the practical mechanism for how the Board is informed about Sponsor's decisions that impact the Board's work programme, and for ensuring the Board receives the necessary supporting detail (noting that the sponsors include central and local Government and mana whenua).
- Nothing about the role of the Sponsor's Representative is intended to limit the Chair's relationship with the Sponsoring Ministers.

| | |
|---|---|
| <i>Relationship between the Board and Programme Director</i> | <ul style="list-style-type: none"> • The Unit is governed by the Board. The Board will link governance and management functions through the Programme Director, who leads the Unit. • Between Board meetings, the Chair will maintain a link between the Board and the Programme Director. The Director will keep the Chair informed of all relevant matters. |
| <i>Relationship between the Board and partner agencies</i> | <ul style="list-style-type: none"> • The objectives of the ALR Project can only be achieved by all partners working together. Through partnership agreements, the Board and partner agencies will formalise how work is done in the Unit, including what is expected from each agency to deliver as part of the Detailed Planning Phase and roles and responsibilities and ways of working together (this is discussed further on page 8). |

Key tools to support how the Board operates

Chief Executive of the Ministry of Transport will delegate financial and other delegations to the Board

The Chief Executive of the Ministry of Transport will delegate financial and other delegations to the Board subject to general and specific directions and conditions. The delegation will set out limits to the administration by the Board of Crown appropriations for the project under Vote Transport 2022/23.

This appropriation is limited in scope to expenses incurred by the Board and Unit, including secretariat services and support.

The delegations made to the Board are set out in a separate delegations policy.

All delegations will be made in accordance with the relevant legislation and public sector accountability requirements and the Ministry of Transport's internal policies and management controls.

The Ministry of Transport will employ staff on behalf of the Unit and act as the contracting entity for the Unit

These arrangements will enable the Unit to hire staff (including for secondments and fixed term and full time and part-time positions), and purchase goods and services such as professional services or to engage contractors (consistent with delegation policies).

Services will be provided to the Unit by Waka Kotahi

Waka Kotahi will provide some of the services needed to enable the Unit to operate efficiently and effectively. These will be documented in a services agreement with the Ministry of Transport.

The Unit's partnering arrangements will be formalised in an agreement

It is essential that the Board – working through the Unit – continues with a multi-agency approach to do its work. Partnership agreements will reflect guidance from the Sponsors and commitments made at the Sponsor-level to codify how the Unit works at a project-level with its local and central government partners.

The Unit will provide secretariat support to the Board

Secretariat support will:

- provide secretariat services to support the Board
- coordinate the Board meeting agenda and papers
- maintain a list of action items and maintain a forward agenda
- maintain the Declaration of Interests Register on the Board's behalf, and
- provide governance advice to assist in the execution of the Board's responsibilities.

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Membership and remuneration

This section describes the composition of the Board, how Members are appointed or removed from the Board and their rate of remuneration.

Membership

The membership of the Board will be skills-based and comprises between 5-7 voting members.

Appointment and resignation

Members of the Board

Persons nominated for the role of Chair and Members of the Board will be considered by the Cabinet Appointments and Honours Committee and appointed by the Sponsoring Ministers. The Ministers will consult with other Sponsors as part of the appointment process.

Each Member's initial term is up to two years which is aligned to the available funding for this phase of work. The intention is that the Board will be enduring and there will be a high degree of continuity in the membership of the Board across subsequent (delivery and operation) phases. The terms of each member may be extended by the Ministers to ensure continuity of membership over consecutive phases of the project.

Members are subject to the Cabinet Fees Framework.^[2]

A Member continues their appointment after the expiry date of their term until they are either reappointed, the Member's successor is appointed, or Ministers tell Members that their appointment has ended.

A Member may resign by advising the Ministers in writing. The notice of resignation must state the date on which the resignation takes effect.

The Sponsoring Ministers may, after consultation with the person concerned, remove a Member from the Board. The Ministers have to provide in writing a reason for removal and date for when the removal takes effect.

Induction

On their first appointment, the Ministry of Transport will provide an induction to new Members to deepen their understanding of the Sponsors expectations, the ALR project, the Auckland context, and the wider operating environment. Members will be given the opportunity to meet with key stakeholders.

Advisors to the Board

The Board is encouraged to seek support from advisors where this would support the Board. Te Waihanga and the Sponsors' Representative could be of particular value to the Board. Advisors could participate in discussion at Board meetings but would have no voting rights.

If the Advisor is an official of central or local Government and they resign from their organisation, they are no longer an Advisor on the Board.

^[2] Members are not employees or contractors of the government. This means that Members are not covered by the Holidays Act 2003, the Employment Relations Act 2000, the Parental Leave and Employment Protection Act 1987, or the PAYE provisions of the Income Tax Act 2007. There is, however, specific legislation that does apply to Members. This includes, but is not limited to, the Human Rights Act 1993, the Privacy Act 2020, the Health and Safety at Work Act 2015, the Fees and Travelling Allowances Act 1951, the KiwiSaver Act 2006.

Remuneration

Board remuneration will be set in accordance with the Cabinet Fees Framework and the Fees and Travelling Allowances Act 1951.

An exception to the Cabinet Fees Framework has been approved by Cabinet. The Chair will receive the higher daily rate of \$1,428 per day, and Members will receive \$1,190 per day.

Non-voting members attending as advisors will receive no fees but will be paid as employees of their agency in accordance with their contracts of employment.

Members are paid for work, which includes:

- attendance at Board meetings
- discussions involving business of the Board, irrespective of where the work is conducted or whether it is by telephone or video conference
- preparation for all discussions and meetings
- time spent travelling to out-of-town locations.

The making of travel arrangements and claims for expenses must follow the Host agency's travelling and allowance policies.

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Duties and responsibilities

This section sets out the Sponsoring Ministers expectations about the duties and responsibilities of Members appointed to the Board. The terms in this section are intended to aid Members by providing them with a common set of principles for appropriate conduct and behaviour and serves to protect the Board and its Members.

The Chair is the Senior Responsible Owner (SRO) for the project

Responsibilities

The Chair is the SRO because of the direct line of accountability between the Programme Director, the Board, and the Sponsoring Ministers.

As the SRO, the Chair is responsible for the delivery of the detailed planning phase objectives (set out on page 3). This includes:

- submitting the business case to the Crown
- as the opportunity arises, submitting proposals to the Crown to acquire land for the project
- providing advice to Sponsors about protecting the transport corridor
- readying consent applications for submission to relevant regulatory authorities
- ensuring mana whenua, communities, and stakeholders are engaged.

Key functions

As the SRO, the Chair will do the following functions.

- Provide leadership to the ALR Project
- Build relationships across all partners - mana whenua, central and local Government.
- Support the Programme Director to resolve challenges, including about resourcing the Unit, by working with partner agencies and through the Crown appropriation, and escalating issues to the Sponsor's Representative Forum.

In addition, the Chair will:

- provide accurate and timely reporting to the Sponsoring Ministers and to Sponsors
- ensure the integrity and effectiveness of the governance process of the Board
- maintain regular dialogue with the Programme Director over all operational matters
- consult with the remainder of the Board promptly over any matter that gives cause for major concern.
- act as facilitator at meetings of the Board to make sure appropriate discussion takes place, that relevant opinion among members is forthcoming, and discussions result in logical and understandable outcomes.

Duties and responsibilities of each Member

- Members are expected to make every effort to attend all Board meetings and devote sufficient time to become familiar with the affairs of the Board and the wider environment within which it operates.
- Members unable to attend a meeting will advise the Chair at the earliest date possible and confirm in writing to the secretary.
- Members will:
 - be diligent
 - be prepared and participate fully, frankly and constructively in Board discussions to bring the benefit of their particular knowledge, skills and abilities to the table
 - be respectful, loyal and supportive
 - not denigrate or harm the image of the Board
 - attend meetings and undertake Board activities as independent persons responsible to the Board as a whole
 - comply with the relevant policies of the Unit's Host organisation including, but not limited to, its ICT, information security and travel policies
 - avoid situations that might compromise their integrity or otherwise lead to conflicts of interest.
- The Board as a whole will:
 - ensure that the independent views of members are given due weight and consideration
 - ensure fair and full participation of members
 - regularly review its own performance
 - act in accordance with the principles of the Treaty of Waitangi.

Board procedures

This section sets out the policies and rules to enable the efficient and effective running of the Board.

Meetings

The Board will agree a policy for meetings and the production and distribution of material to inform Board discussion and record accurate minutes of the meeting. The policy will include:

- the process for setting ordinary and special meetings, and the methods for holding the meetings
- the process for setting the agenda for the Board meetings, including standing items and the frequency of other key matters
- the minimum timeframe for receiving papers prior to the Board meeting
- whether and, if so, how late agenda items are accepted
- the process for reviewing draft minutes and approving the minutes as an accurate record of the meeting.

Achieving a quorum

The approach to a quorum is consistent with the Crown Entities Act 2004.

At any meeting, a quorum is the number that is:

- half the number of members (if the board has an even number of members); or
- a majority of the members (if the board has an odd number of members).

If the board has only 2 members, the quorum for a meeting is both members.

If one member of the board has a conflict, the Chair may determine it is in the public interest for that member to nonetheless participate in decision-making and be counted in the quorum (this is discussed further on page 14 in the section about Conflicts of Interest).

No business may be transacted at a meeting of the board if a quorum is not present.

Voting at meetings

Each Member has 1 vote. At the first full Board meeting, Members will agree how the Board will reach its decisions. This could include:

- whether there are different classes of decisions and, if so, how each class of decision is reached
- what happens if a consensus cannot be reached, including whether a majority vote will apply
- whether dissenting votes should be recorded in the minutes
- the role of the Chair in respect to having a casting vote.

Conflicts of interest

The Chair will be responsible for ensuring that Board Members have no actual, potential or perceived conflicts of interest, or, if a such a conflict arises, it is managed through the use of appropriate

mitigations. The Auditor General has published guidance on managing conflicts of interest in the Public Sector.⁵

The Board will use the Ministry of Transport Conflicts of Interest Policy for managing and disclosing any actual and potential conflicts of interests so that:

- any actual, potential or perceived conflicts of interest are declared as they arise
- the Chair is able to determine:
 - whether or not the interest represents a conflict, and if so, what action will be taken
 - whether, at the discretion of the Chair, members may participate in discussions about issues in which they have declared a conflict of interest, or must recuse themselves from those discussions (and any decisions)
 - whether non-voting members have to declare interests that arise from their substantive role and how these would be managed.

Declaration of interests

A Declaration of Interest register will record the course of action for addressing each declaration of interest. The register will be updated at each Board meeting.

Confidentiality

Board business

Members must ensure that the confidentiality of Board business is maintained. Members must be clear about what Board matters are permitted to be discussed with people that are not Members and, in doing so, should be familiar with the information that is publicly available about the Board's work.

Meetings of the Board including agenda material and draft minutes, are confidential.

Board correspondence or papers can only be released with the approval of the Chair. The next section (*Assurance and monitoring and Assurance*) on page 17 describes the approach to sharing information with others.

Confidentiality of Sponsor's information

The Board must only use confidential information of another Sponsor for the purposes related to the Sponsors Agreement and not disclose confidential information to a third party except with the consent of the relevant Sponsor.

Intellectual property

The intellectual property of each Sponsor prior to entering into the Sponsors Agreement shall remain the property of that Sponsor.

Sponsors may request that another Sponsor grant them a licence to use that Sponsor's intellectual property for the purposes of meeting the Board's objectives.

All intellectual property created or developed by the Board shall be owned by the Crown.

⁵ <https://oag.parliament.nz/2020/conflicts/docs/conflicts-of-interest.pdf>

OIA considerations

The Board is subject to the Official Information Act 1982 and the Ombudsmen Act 1975, and the Privacy Act 2020.

The Board will advise the Sponsor's Representative and, if appropriate, the Sponsoring Ministers in advance of official information being released.

Media policy

Only the Chair and members of the Board are authorised to comment publicly on the affairs and policies of the Board. Before making public announcements, the Chair must advise the Sponsoring Ministers in advance. The Ministers may decide to consult with other Sponsors and, as a result, direct the Board not to make any public comment.

Where the Chair has asked another Member to comment, the Member must publicly support a course of action decided by the Board. If unable to do so, Members must not publicly comment on decisions.

The Chair or Members will not support any action or public statement that is derogatory or in any way damaging to the Board.

Members have the right to comment to the media on any matter in their professional capacity, as long as they do not attribute the comment to the Board or imply that they are speaking on behalf of the Board. If a member is forewarned of being asked to comment to the media, they should advise the Board accordingly. If a Member is not forewarned, they should advise the Chair immediately after making comment to the media.

Provision of business or professional services by Members

The Chair and other Board Members should not provide business or professional services of an ongoing nature to the Unit because a conflict of interest (actual, potential or perceived) may be created.

If there is a need to engage the services of a Member (for example, if they have special expertise in the particular field) or the Member's organisation, all relevant procurement rules and policies of the Ministry of Transport must be followed. Mitigations, such as the creation of virtual barriers to prevent information sharing within the Member's organisation, must also be required.

Establishing Committees

Committees of either a technical or representative nature may be needed to help the Board carry out its functions. The board may appoint a committee to:

- advise it on any matters relating to its functions and powers that are referred to the committee by the board; or
- to perform or exercise any of the entity's functions and powers that are delegated to the committee, if the committee includes at least 1 member of the Board and any other person or persons that the board thinks fit.

Before appointment to a committee, all persons must disclose to the Board any relevant details that may give rise to an actual, potential, or perceived conflict of interest.

Indemnity insurance

Members will be provided with professional indemnity insurance to protect against legal liability incurred by giving negligent advice or through a breach of professional duty.

Health and Safety

The Ministry of Transport is likely to be the ‘person conducting a business or undertaking’ (PCBU) under the Health and Safety at Work Act 2015 (HWSA). As such, it bears the primary duty of care for the health and safety of all Board Members and staff working for the Unit. It is also likely that because Board members have significant influence over the management of the business or undertaking of the Unit, Board members may be construed to have duties under the HWSA as officers of the Ministry of Transport, rather than in their capacity as Board members.

Board Members and staff working for the Unit must take all practical steps to ensure their safety and the safety of any other persons on the work premises (wherever they may be from time to time, including if working from home) and comply with all Waka Kotahi’s health and safety policies and the Act.

Cabinet has agreed that the project should from the outset adopt a ‘zero harm and thriving infrastructure approach’ that embeds a focus for caring for the wellbeing of people at every level, including governance and procurement. This approach is detailed in the Cabinet paper⁶.Assurance and monitoring.

Information sharing

The Board will need to share information that it is working on in order to enable others involved with the ALR project and programme to carry out their role – this includes sharing information with Sponsors, the Sponsors Representatives Forum, officials from the Ministry of Transport, the Treasury and the Ministry of Housing and Urban Development, as well as other partner agencies. Such information may relate to:

- the business case and associated working documents
- market dynamics and relevant suppliers
- procurement plans and contracts, associated issues and risks
- budget and funding considerations
- risk allocation in key contracts
- assurance of risk management
- financial models
- project agreements
- project performance and cost out-turn information.

The Board will make sure that all information is shared within reasonable timeframes.

The Board may be asked to share information that is confidential or sensitive. In these instances, the Board may reasonably expect that, once shared, all confidential and sensitive information:

⁶ [OC210779-Auckland-Light-Rail-decision-to-progress-Cabinet-Paper.pdf \(transport.govt.nz\)](#). Page 14 and Appendix 3.

- is stored securely, using electronic information barriers wherever appropriate to do so
- is limited to staff who need to know that information to perform their role
- is not passed on to third parties without the Board's permission
- is used in a way that complies with all relevant legislation.

Reporting

The Sponsors Agreement will specify monthly reporting requirements by the Board to Sponsors, and the basis for providing additional information and reports that Sponsors may reasonably request to enable both the Sponsors and Board to perform their roles.

The minutes of the Board meetings will be provided to the Sponsor's Representatives Forum within 1 week of the Board confirming the minutes. The Board is able to redact information, however this should only be done after having regard to the withholding grounds and any countervailing public interest considerations (if any) in the Official Information Act 1982.

Monitoring and Assurance

The Sponsors Agreement (Detailed Planning Phase) will set out the basis for monitoring and assurance of the ALR Programme, including the ALR Project, including a set of KPI's to be developed to measure the Board's performance against expectations.

In addition, the Board will agree with the Sponsoring Ministers an assurance pathway that is consistent with the Investment Management System Letter from the Minister of Transport on behalf of the Sponsors. The assurance pathway will:

- describe the process for making the investment decision (for example, the type and number of business cases that will be submitted to the Sponsoring Ministers)
- the use of key documents (for example, Treasury's Business Case Scoping document) and application of the Better Business Case Framework (for example, intervention logic map and economic appraisal methodology).
- be consistent with the "3 lines of defence" model and identifies:
 - functions in the Unit that own and manage risk
 - functions in the wider organising model that oversee or manage risk (eg through the role of partner agencies and the Sponsors' Representative Forum)
 - types of independent assurance that will be used.

Board and member evaluations

The performance of the Board and individual Members will be assessed each year using a process agreed by the Sponsors. The evaluation process must include the involvement of the Board, and the outcome of the evaluation will be reported to the Sponsoring Ministers.

Appendix 1: The wider operating environment

The appendix shows how the Board and Unit fits into the wider operating environment.

