

Office of the Minister of Transport

Office of the Minister of Finance

Office of the Minister of Housing

Cabinet

## **Cancelling the Auckland Light Rail Project**

### **Proposal**

- 1 This paper seeks Cabinet's agreement to a preferred method for stopping central government work on the Auckland Light Rail (ALR) project.
- 2 We propose that work be stopped by Auckland Light Rail Ltd (ALR Ltd) ceasing work immediately and being disestablished. ALR Ltd is the Crown entity company established to lead the business case development for the ALR project.

### **Relation to government priorities**

- 3 Stopping central government work on the ALR project is a priority action in the Government's 100-Day Action Plan released on 29 November 2023.

### **Executive Summary**

- 4 The ALR project has a drawn-out history. In 2017, the previous Government pledged to build light rail to Mt Roskill within four years and to the airport and West Auckland within a decade of being elected. The ALR project has only reached a detailed business case stage, some six years later. In the indicative business case completed in 2021 the project had a cost estimate of \$14.6 billion with a 50 percent chance this cost would go up. This cost estimate was prepared to an industry standard that has an accuracy range of -50% to +100%, inferring that the final cost could possibly be as high as \$29.2 billion.
- 5 ALR Ltd is a 100 percent Crown owned Company which was established to develop the business case for the ALR project to inform a final investment decision and prepare the project for delivery. ALR Ltd has three Shareholding Ministers – the Ministers of Transport, Finance, and Housing. Officials advise that the detailed business case is nearly complete.
- 6 The best way to stop work on the ALR project is to change the purpose of ALR Ltd from a focus on developing the project's business case, to managing an orderly disestablishment. This would be accompanied by a letter of expectation from Shareholding Ministers setting out the expectation to cease work on the project immediately and undertake the necessary activities to disestablish ALR Ltd.
- 7 These actions can be made solely by Shareholding Ministers, but we are seeking the support of Cabinet given the significance of this decision and its priority in the 100-Day Action Plan.
- 8 Officials expect that it could take up to six months to substantively complete the disestablishment process, which will involve the disposal of property, including some

land, and settling obligations and liabilities. Work to divest assets and reduce unnecessary expenditure can begin immediately.

## Background

*Despite the time and government funds expended, the ALR project has not been delivered*

- 9 In 2017, the previous Government pledged to build light rail to Mt Roskill within four years and to the airport and West Auckland within a decade of being elected. A bidding process was then held between a NZ Super Fund consortium and the New Zealand Transport Agency, but a successful bidder did not eventuate from the process and little progress was made.
- 10 In 2021, an Establishment Unit produced an Indicative Business Case which set out the case for investment in rapid transit in the project area, along with route options and estimated costs. The previous Cabinet then decided to progress the project into the Detailed Planning Phase. This phase identified a project capital cost estimate for the partially tunnelled option of \$14.6 billion, but with a 50 percent chance this cost would go up. This cost estimate was prepared to an industry standard that has an accuracy range of -50% to +100%, inferring that the final cost could possibly be as high as \$29.2 billion.
- 11 The project has faced challenges to progress. The ALR Sponsors were not unanimous on whether the tracks should be built above or below ground. The project recently missed a significant milestone of lodging the Notice of Requirement to protect the corridor, because the ALR Ltd Board did not think it was appropriate to make that decision at that time.
- 12 To progress the delivery of the Detailed Planning Phase, \$189 million was allocated from Budget 2022.

*ALR Ltd was set up to deliver the business case for ALR*

- 13 ALR Ltd was established in October 2022 as a Crown entity company named under Schedule 2 of the Crown Entities Act 2004. Its key purpose is to undertake the planning and preparatory work for the project. The Crown owns 100 percent of ALR Ltd and can make the final decisions on project matters. The Company's main activity has been developing a business case to support a final investment decision. This case is almost complete.
- 14 ALR governance has been set up as a partnership with Auckland Council and mana whenua from Auckland. The non-Ministerial Sponsors of the ALR project are Mayor Wayne Brown and Councillor Chris Darby (representing Auckland Council) and Paul Majurey, Karen Wilson and Ngarimu Blair (representing mana whenua).
- 15 Dame Fran Wilde was appointed as ALR Board Chair, along with six directors, who collectively provide oversight of ALR Ltd.

## Proposed actions to stop the work on the ALR project

*The need for Cabinet support*

- 16 The Government's priority action to stop central government work on the ALR project can be implemented by Shareholding Ministers taking the steps necessary to cease work and disestablish ALR Ltd.

- 17 Shareholding Ministers are seeking Cabinet's support on this proposed approach to stopping the ALR project given the significance of the decision and because it is a priority in the Government's 100-Day Action Plan.
- 18 The Minister of Transport will write to the non-Ministerial ALR Sponsors to advise them of the intention to cease work immediately and disestablish ALR Ltd.

*Amending ALR Ltd's constitution and issuing a letter of expectation*

- 19 ALR Ltd ceasing work and initiating disestablishment is best achieved by changing the Company purpose. ALR Ltd's Company constitution currently provides that the Company is to undertake, deliver and construct the ALR project in the manner contemplated by, and subject to, all decisions made by the Crown.
- 20 We propose ALR Ltd's purpose be changed to managing the Company's disestablishment in a manner that protects the Crown's financial and other interests. As the directors of ALR Ltd must govern the Company in accordance with its constitution, this approach will ensure the incentives on the directors are aligned to the Company's disestablishment. This intent can be reinforced through a letter of expectation from the Shareholding Ministers to the Board of ALR Ltd, setting out their expectations for managing the disestablishment of the Company.
- 21 The letter of expectation would address the following matters, that ALR Ltd:
  - 21.1 immediately cease all work on the ALR project and avoid incurring any unnecessary expenditure;
  - 21.2 will be removed from the companies register after it has ceased to carry on business, discharged in full its liabilities to creditors, and distributed its surplus assets;
  - 21.3 undertake disestablishment activities in consultation with the Ministry of Transport (as its monitor under the Crown Entities Act 2004); and
  - 21.4 identify and assess the treatment of any assets, intellectual property (IP), residual rights, obligations and liabilities, and data holdings.

*The ALR Ltd Board will operationalise the disestablishment of the Company*

- 22 The ALR Ltd Board is responsible for giving effect to the decisions to cease work and disestablish the Company. The Board's responsibilities will include terminating employment contracts (including making staff redundant as appropriate), transferring all IP, disposal of land, exiting leases, and signing off financial statements.
- 23 Officials advise that it would not be necessary to retain the full seven member ALR Ltd Board. Two directors would be sufficient and there are existing directors on the ALR Ltd Board who have the relevant experience and expertise required to oversee the cessation of work and disestablishment. Initial consideration is being given to the current Chair (Dame Fran Wilde) and Leigh Auton.
- 24 Using existing directors would be the simplest approach and, if taken, Shareholding Ministers would terminate the remaining ALR Board directors' appointments by written notice.

*Protecting the Crown's financial, physical and IP assets*

- 25 ALR Ltd's constitution gives the Crown all rights to the Company's surplus assets.
- 26 The Ministry of Transport, as monitor, will lead due diligence of ALR Ltd's contractual commitments, assets, and liabilities to build an authoritative, comprehensive picture of the Company's assets, and its outstanding obligations. This is to ensure ALR Ltd is disestablished in a transparent and accountable manner. Liabilities will include providing for the cessation of staff and outstanding value on leases.
- 27 It is proposed that ALR Ltd's IP is transferred to the Ministry of Transport.
- 28 ALR Ltd owns a land holding at 317 New North Road, Auckland (the Kiwi Bacon Factory). <sup>s 9(2)(b)(ii)</sup>

**Financial implications**

- 29 Officials believe that existing funding to ALR Ltd will be sufficient to fund disestablishment. ALR Ltd's directors have a duty under the Companies Act 1993 to avoid insolvency.
- 30 The total remaining existing funding at 29 October 2023 includes:
- 30.1 Of the \$153.4 million operating expenditure Auckland Light Rail – Detailed Planning Phase appropriation, \$33.6 million is available.
- 30.2 Of the \$26 million Auckland Light Rail Limited – Capital Injection appropriation, \$302,000 is available.
- 30.3 Of the \$131 million Auckland Light Rail - Strategic Land Acquisition appropriation, \$98 million is available.
- 31 We propose that the \$98 million of surplus funding in the Auckland Light Rail Strategic Land Acquisition appropriation be immediately returned to the Crown.
- 32 Once ALR Ltd has been disestablished, I expect to return an additional amount of up to \$33.6 million. The amount returned will depend on the costs of disestablishing ALR Ltd.

**Legislative implications**

- 33 There are no immediate legislative implications at this stage of the disestablishment process.
- 34 Once all assets have been transferred from ALR Ltd and the Company wound up, it will be removed from the Companies Register. ALR Ltd will then need to be removed from both the Crown Entities Act 2004 and Ombudsmen Act 1975 schedules by Order in Council.

**Impact Analysis**

*Regulatory Impact Statement*

- 35 There are no immediate regulatory impacts associated with this paper.

*Climate Impact Assessment*

- 36 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that CIPA requirements do not apply to this proposal, as emissions impacts are not yet able to be quantified. The CIPA team notes that the decision to cease work on the ALR project and disestablish ALR Ltd does not have a direct emissions impact.
- 37 However, if this project were to proceed, it will likely result in significant emissions impacts, such as large increases in early years due to construction related emissions, followed by significant net reductions in the long term, by supporting a transport mode shift from bus and car travel to rail. As this project is progressed, the CIPA team will be kept updated with policy decisions as appropriate.

### Human Rights

- 38 This proposal is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

### Consultation

- 39 Land Information New Zealand, the Treasury and the Ministry of Housing and Urban Development have been consulted on this paper and agree with the recommendations. The Department of Prime Minister and Cabinet has been informed.

### Communications and Proactive Release

- 40 Once ALR Ltd and the project's sponsors have been informed of Cabinet's decisions, the Ministers of Finance, Housing and Transport intend to:
- 40.1 issue a press release announcing that Cabinet has confirmed the cancellation of the ALR project and that Shareholding Ministers have provided a letter of expectation to the Board of ALR Ltd to cease work on the project and disestablish ALR Ltd
- 40.2 proactively release this paper within 30 business days of final decisions being made by Cabinet.

### Recommendations

We recommend that Cabinet:

- 1 **agree** to fulfil the commitment in the Government's 100 Day Action Plan to stop central government work on the Auckland Light Rail (ALR) project by:
- 1.1 the Minister of Transport, the Minister of Finance and the Minister of Housing as Shareholding Ministers in Auckland Light Rail Ltd (ALR Ltd) immediately confirming their expectation to ALR Ltd to cease all work on the ALR project, and
- 1.2 disestablishing ALR Ltd;
- 2 **note** ALR Ltd was established by the previous Government to progress the ALR project by completing a business case for the project and other preparatory work;
- 3 **authorise** ALR Ltd's Shareholding Ministers to take the necessary decisions and actions to implement recommendation 1, including:

**IN CONFIDENCE**

- 3.1 issuing an amended letter of expectation to ALR's Board;
  - 3.2 resolving by Christmas 2023 to amend ALR Ltd's constitution to change the Company's purpose to disestablishment activities;
  - 3.3 making changes to ALR Ltd's Board so it can support the new purpose and reducing its size to 2-3 directors (which may involve the need to remove or appoint new directors depending on the skills of existing directors and their willingness to continue on the Board); and
  - 3.4 following ALR Ltd ceasing to carry on business, resolving to close down the company and distribute the assets of ALR Ltd;
- 4 **note** it will take up to six months to substantively complete the disestablishment of ALR Ltd;
- 5 **agree** that, given the decision in recommendation 1 to cease work on the ALR project, the \$98 million remaining in appropriations for land acquisition is no longer required and can be returned to the centre now, with any further return of surplus funding to be considered once wind-up of the ALR Ltd is complete;
- 6 **approve** the following changes to appropriations to give effect to the policy decision in recommendation 5, with a corresponding impact on net debt:

Vote Transport Minister of Transport	\$m – increase/(decrease)				
	2023/24	2024/25	2025/26	2026/27	2027/28 & Outyears
Non-departmental Capital Expenditure: Auckland Light Rail Strategic Land Acquisition (98.000)		-	-	-	-

- 7 **agree** that the proposed changes to appropriations in recommendation 6 be included in the 2023/24 Supplementary Estimates;
- 8 **agree** that the net fiscal impact of the decision in recommendation 6 be managed against the Multi-Year Capital Allowance;
- 9 **invite** the Minister of Transport, in consultation with the Minister of Finance and the Minister of Housing, to report back to Cabinet on progress on disestablishing ALR Ltd, including the future of its land holding and disposition of its other assets and the settlement of obligations and liabilities, by the end of March 2024;

- 10 **invite** the Minister of Transport, Minister of Finance and the Minister of Housing to issue a press release announcing that Cabinet has confirmed the cancellation of the ALR project, and that Shareholding Ministers will have confirmed their expectations to the Board of ALR Ltd to cease work on the ALR project and start the process to disestablish ALR Ltd.

Authorised for lodgement

Hon Simeon Brown  
**Minister of Transport**

Hon Nicola Willis  
**Minister of Finance**

Hon Chris Bishop  
**Minister of Housing**

PROACTIVELY RELEASED BY  
TE MANATŪ WAKA MINISTRY OF TRANSPORT