

Powers and institutional framework summary

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Introduction

Objectives

Cabinet has tasked the Establishment Unit to confirm the form of the public service delivery entity (DE) to deliver the ALR project

A key task in recommending the form of the DE is to identify and analyse the powers that may need to be exercised to support the ALR project

For the purposes of the review the analysis is divided into the five key ALR project tasks

The analysis also presents the required legal powers in the context of the existing institutional arrangements and discusses ability/risks to transfer/obtain powers outside of existing arrangements

Analysis based on Chapman Tripp advice and other supporting information supplied by WK and AT

ALR Project Tasks

1. Planning and consenting
2. Procurement and build
3. Operations and maintenance
4. Funding and financing
5. Urban development

Exclusions

Excludes matters relating to rail and safety legislation and powers

Excludes considerations from planned RMA reforms

Planning and consenting I

Planning

AT is the statutory decision-maker responsible for planning and consulting on public transport services in Auckland region

AT responsible for preparing and updating the Auckland Regional Public Transport Plan (RPTP) which guides the design and delivery of public transport services, information and infrastructure in Auckland region.

Process of developing and modifying RLTP and RPTP is subject to statutory public consultation requirements

AT is the RCA and has control of the road corridor and has power to make and enforce bylaws

Designations

DE required to be a requiring authority (RA) to submit NORs

WK and CRL are RAs for certain purposes but not currently for light rail.

AT is a RA for the purposes of activities in the Auckland transport system which Council has financial responsibility

AT has a designation for Dominion Rd (1614) which anticipates light rail

Analysis

AT is required to be involved in the design of network and route planning to ensure light rail services will be optimally integrated into the broader regional public transport network

AT will need to include the light rail services in the Auckland RPTP

AT may be able to submit the required NORs and seek to transfer designations to the DE or another party in limited circumstances

DE could apply to Minister for Environment to become RA as a network utility operator for both transport and urban development activities

Significant TOD activities anticipated by a designation could increase risk of legal challenges with consequent timing and cost issues

Dominion Road designation provides precedent for multi-modal 'packaged approach' for transport activities, but TOD activities could complicate process

Planning and consenting II

Land acquisition

A local authority can acquire land by agreement or compulsion under PWA for public works (local and government)

RA may apply to Minister of Lands to compulsorily acquire lands for public works under PWA

Land obtained under PWA s23 may not be transferred to third party without potentially triggering offer back provisions under s40

Local authority may transfer land to SPV obtained under PWA s23 but subject to offer back provisions if no longer required for public works

PWA s224 provides for local authority, KO and WK to compulsorily acquire land for undertakings of both national and local importance

Land acquired under s224 may not be subject to offer back provisions

Consenting

Any person may apply for a resource consent or plan change

Analysis

An assessment of what constitutes public works needs to be made on case-by-case basis to comply with PWA conditions

Objections to compulsory acquisitions of land are likely, with consequential cost and timing risk implications

Acquisition of land using PWA for TOD likely to raise a number of risks and could strand assets in DE

Guidance required on what public works would meet test of both national and local importance

CRL generally relied on AT/AC to acquire land for transport and TOD

Resource consents and plan changes are granted by relevant local authority and subject to the relevant statutory tests

Minister of Environment may 'call in' the proposal by directing a Board of Inquiry or Environment Court to decide on the proposal

Must meet statutory considerations for a 'proposal of national significance' and 'call in' approach may undermine social license

Operations and maintenance I

Public Transport Services

AT is the statutory decision-maker responsible for procuring and contracting public transport services in the Auckland region

All public transport services other than exempt services (unsubsidised) in the Auckland region must be provided on contract with AT

WK as the main transport funder and regulator does not directly provide public transport services

Procurement

Procurement processes for public transport are determined by the PTOM and AT and approved by WK – the procurement authority

Procurement services must be designed to encourage competition and efficiency

Analysis

AT required to specify and control operations through requirements for DE (and contracted parties) to meet its scope and service requirements for public transport services

AT has statutory responsibility to specify location of light rail stops, the service route, frequency and hours of operation, and on the integration with wider public transport network, such as bus routes and stops

Light rail operator would be required to integrate and support wider AT public transport information, ticketing, fare, and customer systems and comply with brand guidelines

AT could contract for public transport services with the DE (as principal contractor) who could then subcontract with an operator following an approved procurement process

An assessment may be required to understand whether WK could be a party to an entity that provides public transport services noting the Crown Entities Act s112 provides for amendments to WK's functions

Operations and maintenance II

Ownership

Ownership of light rail infrastructure – including line and stations can be held by any entity

Substantial sections of track, lines and power infrastructure will be located on the road corridor on land owned by AC and controlled AT

Ownership of rolling stock can be held by any entity

Maintenance Services

Maintenance services can be provided at the discretion of the licensed access provider assumed to be the owners of the light rail infrastructure

Analysis

Ability for third party to own light rail infrastructure assets located in road corridor would be problematic and constrained by numerous operational matters

Potential risk that ownership arrangements for rolling stock may limit ability to create contestable process for operator selection in breach of LTMA

Potential risk that bundled arrangement for rolling stock and operator could create 'hostage' situation raising contract costs and could undermine service and maintenance outcomes.

CRL situation demonstrates importance of clarifying arrangements for the handover of assets to long-term owner, maintenance responsibilities and need to manage whole-of-life costs

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Funding and finance

Funding

Grant funding directly available from Crown and AC

Capital and operating funding available from NLTF via WK to approved public organisations

Local authorities typically required to provide matching funding for WK contributions on basis of FAR policy

Farebox revenue available for to public transport operating expenses

Targeted rates available for AC to meet capital and operating expenses

Development contributions (DCs) levied for infrastructure costs on new developments available to AC

IFF Act provides SPV potential access to a multi-year levy on parties who benefit from new infrastructure

Commercial opportunities available to DE noting risks attached

Finance

DE may have ability to raise debt financing subject to legal status

Analysis

Level of direct funding reflects overall budget and program allocations, as well as political priorities

Public entity must be approved to become public organisation to undertake activities that qualify for NLTF funding

AT determines policies and method for setting fares in RPTP

Targeted rates subject to statutory consultation and setting process and can only be used by local authority to meet its own infrastructure costs

DCs must be set through statutory consultation and setting process and only apply to new developments

IFF highly complex and untested, and may not work for brownfields projects and/or when beneficiaries and levy area unclear or ambiguous

IFF may not be available for public transport given existing statutory roles

AT may not be able to be a party to a DE that raised debt finance or agreed to other financial obligations (TBC)

Urban development

Urban Development Act

UDA grants new development powers for KO to undertake urban development projects whether on its own account, in partnership or on behalf of other parties

UDA creates a new process for specified development projects (SDP) designated by an establishment order with approval of Minister

UDA provides KO with a toolkit of powers including:

- access to expedited planning processes, including designations
- ability to act as resource consent authority and requiring authority
- ability to build, change and move infrastructure associated with SDP
- ability to act as RCA and create/amend bylaws
- tools to fund infrastructure and development activities – targeted rates, DCs, and betterment payments
- land acquisition and transfer powers that can be used for wider urban development – not just SDPs

Analysis

Further analysis is required to confirm whether the UDA regime could provide a material advantage for delivery of ALR project

A primary focus on the delivery of transport infrastructure and services would make it difficult for the ALR project to be subject to an SDP

Inclusion and integration of extensive urban development activities could strengthen case for ALR project to be facilitated by KO through an SDP

Establishment of SDP is linked to a particular geographic area, raising issues of whether an SDP could cover the entire ALR project, or be focused on particular sections such as around certain stations

UDA is an untested, large and complex Act involving multiple parties and contributing statutes

Any party including the DE could undertake BAU urban development activities using the existing RMA procedures

Summary

1. Preliminary analysis suggests DE can deliver light rail project within existing legislative framework through agencies, partnerships and commercial arrangements
2. AT is the statutory decision-maker responsible for planning and consulting on public transport services in Auckland region
3. AT appears to be a RA for the purposes of light rail (TBC)
4. DE could apply to become RA and may apply to compulsorily acquire lands for public works under PWA
5. An assessment of what constitutes public works needs to be made on case-by-case basis noting potential issue around TOD activities
6. Acquisition of land using PWA likely to face significant objections with consequential cost and timing risk implications
7. No significant issues with consenting identified noting Minister of Environment may 'call in' the proposal
8. AT is the statutory decision-maker responsible for procuring and contracting public transport services in the Auckland region
9. AT could contract for public transport with the DE (as principal contractor) who could then subcontract with an operator
10. Confirmation required whether WK could be a party to an entity that provides public transport services
11. Ownership of light rail infrastructure can be held by any entity, noting substantial sections of assets will be located on AC land
12. Grants, targeted rates and DCs, and NLTF funding potentially available to DE - but bound by various statutory processes
13. Value capture instruments not yet available and IFF highly complex and untested, and may not be applicable for public transport project
14. AT may not be able to be a party to DE that raised debt finance or agreed to other financial obligations (TBC)
15. Further analysis required to confirm whether the UDA regime could provide a material advantage for delivery of ALR project
16. KO logical agency to lead urban development activities noting difficulty for DE to acquire capability and similar powers to KO

INDICATIVE SUMMARY OF KEY POWERS RELEVANT TO ALR PROJECT AND ABILITY TO ACCESS THEM

- Key:
- ✓ Entity holds power
 - ~ Entity could potentially hold power
 - ✗ Entity does not hold power and unable to obtain it (absent law change)
- Low** Low difficulty
Medium Medium difficulty
High High difficulty

A. Activity	B. Power to...	Does entity hold power?							If entity does not hold power...	
		C. Crown/Minister	D. Auckland Transport (AT)	E. Auckland Council (AC)	F. Waka Kotahi	G. City Rail Link Limited (CRL)	H. Kāinga Ora	I. Other delivery entity	J. ...how difficult to obtaining benefit of power from an entity that does hold the power? (low, medium, high)	K. ... how difficult for entity to obtain the power itself? (low, medium, high)
Land designation	Designate land through notice of requirement by a requiring authority ¹ in order to authorise the requiring authority's proposed activity on the land	✓ Minister of Crown defined as a requiring authority under RMA	~ Can designate if holds relevant requiring authority status. AT deemed a requiring authority for specified purposes .	✓ AC is a 'local authority' under the RMA so is a requiring authority.	~ Can designate if holds relevant requiring authority status. Is currently a requiring authority for specified purposes (not currently for light rail).	~ Can designate if holds relevant requiring authority status. Is currently a requiring authority for specified purposes (not currently for light rail).	~ Can designate if holds relevant requiring authority status. KO is currently a requiring authority for activities relating to an SDP (s.131 UDA)	~ Can designate if holds relevant requiring authority status	Medium Designations may be utilised by a party other than the requiring authority only in limited circumstances	Medium Other than a Minister or local authority, an entity can only obtain requiring authority status if the entity is a network utility operator approved as a requiring authority by Environment Minister (s.167 RMA).
Resource consent	Apply for and hold a resource consent to do something that would otherwise be a contravening activity on the land	✓	✓	✓	✓	✓	✓ May exercise consenting functions and powers including land use and sub-division consents within SDP	✓	Low Resource consents may be utilised by any person with the permission of the consent holder (s.3A RMA).	N/A Anybody can apply for a resource consent
Plan changes	Apply for a plan change so that proposed activity on land is not a contravening activity	✓	✓	✓	✓	✓	✓ Access to enabling powers to override/amend RMA plans relevant to SDP	✓	Low Any person may utilise the amendments created by way of plan change	N/A Anybody can apply for a plan change
Land acquisition	Commercially acquire land on market	✓	✓	✓	✓	✓	✓	✓	Low Anybody can commercially acquire land for the benefit of another	N/A Anybody can commercially acquire land
	Compulsory acquire land	✓ Minister of Lands may acquire land compulsorily under s.23 PWA (for public works) or under s.224 PWA (for undertakings of both national and local importance)	~ May apply to Minister of Lands to have land acquired if holds relevant requiring authority status (see cell B.1) (s. 186 RMA)	✓ Local authority may acquire land compulsorily under s.23 PWA (for public works) or under s.224 PWA (for undertakings of both national and local importance)	~ May apply to Minister of Lands to have land acquired if holds relevant requiring authority status (s. 186 RMA) (public works) or acquire as party to a s.224 PWA agreement (undertakings of both national and local importance)	~ May apply to Minister of Lands to have land acquired if holds relevant requiring authority status (for public works) (s. 186 RMA)	~ May apply to Minister of Lands to have land acquired (for specified work) (s. 253 UDA) or acquire as party to a s.224 PWA agreement (for undertakings of both national and local importance)	~ May apply to Minister of Lands to have land acquired if holds relevant requiring authority status (for public works) (s. 186 RMA)	High General reluctance to provide delegations to enable compulsory land acquisitions	Medium If not Crown/local authority, an entity can only obtain power to apply to Minister of Lands by first becoming a network utility operator who has requiring authority status
Land access	Access local roads (e.g. to use / occupy / stop roads; relocate in-road assets owned by network utility operators)	✓	✓	✓	✓ WK is RCA for SH network	✓	✓ If KO has roading powers within a project area (s. 153 UDA) provides for it to become the corridor manager	✓	Low Anybody can apply to corridor manager to access road corridor	N/A
	Undertake land and stormwater drainage work	✓	✓	✓	✓	✓	✓ May construct or alter non-roading infrastructure (s. 155 UDA) within project area and outside to connect to adjoining services	✓	Low Anybody can undertake non-roading infrastructure works subject to RMA	N/A
Bylaws	Creating or amending bylaws	✓	✓	✓	✗	✗	✓ May request or require bylaw changes under (s. 176 UDA) provides for KO to become the corridor manager	✗	High Bylaw making powers generally restricted to Councils and RCAs	High Would require legislation
Operations	Operate light rail network	✓	✓ AT may operate PT services but generally contracted out to private operators)	✗	~ Not currently provided for but Crown Entities Act (s112) provides for amendments to core functions	✓ Could be appointed by AT to provide and operate PT services	✗	✓ Could be appointed by AT to provide and operate PT services	Low Anybody can undertake non-roading infrastructure works subject to RMA	N/A
	Operate services	✓	✓	✗	~ See above	✓	✗	✓	Low Anybody can undertake non-	N/A

¹ (being a Minister of the Crown, a local authority, or a network utility operator approved as a requiring authority under s.167 RMA)

A. Activity	B. Power to...	Does entity hold power?							If entity does not hold power...	
		C. Crown/Minister	D. Auckland Transport (AT)	E. Auckland Council (AC)	F. Waka Kotahi	G. City Rail Link Limited (CRL)	H. Kāinga Ora	I. Other delivery entity	J. ...how difficult to obtaining benefit of power from an entity that does hold the power? (low, medium, high)	K. ... how difficult for entity to obtain the power itself? (low, medium, high)
									roading infrastructure works subject to RMA	
	Operate infrastructure (e.g. stations/stops)	✓	✓	✗	~ See above	✓	✗	✓	Low Anybody can undertake non-roading infrastructure works subject to RMA	N/A
	Procure services	✓	✓ Statutory decision-maker for planning, procuring and PT services in AK	✗	~ See above	✗	✗	✗	High Bylaw making powers generally restricted to Councils and RCAs	High Would require legislation
	Ownership of assets	✓	✓	✓	✓	✓	✓ Ownership of transport assets restricted to roads, cycleways footpaths, and PT stations	✓	Low Anybody can undertake non-roading infrastructure works subject to RMA	N/A
Funding	Receive a Crown appropriation	✓	✓	✓	✓	✓	✓	✓	Low Anybody can receive a Crown appropriation subject to appropriate approvals	N/A
	Receiving NLTF funds	✓	✓	✗	✓	✓ May apply to WK to become approved public organisation to receive NLTF funds	✓ May apply to WK to become approved public organisation to receive NLTF funds	~ Has to be a public organisation to receive NLTF funds	High	Low Wide discretion to approve public organisation to receive NLTF
	Impose a general / targeted rate	✓	✗	✓ Power to levy general or targeted rate and require payment of DCs across Auckland region	✗	✗	✓ Can levy a targeted rate and require payment of DCs within project area	✗	High Light rail operator would be required to integrate and support AT ticketing, fares and customer systems	High Would require legislation
	Imposing / setting fares	✓	✓ Has statutory responsibility to determine PT fares and policies	✗	✗	✗	✗	✗	High Light rail operator would be required to integrate and support AT ticketing, fares and customer systems	High Would require legislation
	IFF levy	✓	~ May able to be funded for provision of infrastructure via IFF levy	✓	~ May able to be funded for provision of infrastructure via IFF levy	✓	✓	✓	Low Anybody can propose using IFF process to support housing and urban development	N/A
	Private sector partnering	✓	✓	✓	✓	✓	✓	✓	Low Private partnering open to any entity subject to statutory governance and approval regime	N/A
Financing	Raise debt	✓	✓ Required to comply with AC CCO governance policies that control financial structure	✓	✓ Required to comply with Crown governance policies	✓	✓	✓	Low Financing options available to any entity subject to statutory governance and approval regime	N/A
	Raise equity	✓	✓	✓	✓	✓	✓	✓	Low See above	N/A
	Provide security (assets, revenue)	✓	✓	✓	✓	✓	✓	✓	Low See above	N/A
	Provide indemnity, guarantee	✓	✓	✓	✓	✓	✓	✓	Low See above	N/A
	Enter into hedging transactions	✓	✓	✓	✓	✓	✓	✓	Low See above	N/A