

Memorandum of Understanding (MoU)

Date:

Parties:

Her Majesty the Queen in right of New Zealand (the Crown)

The New Zealand Transport Agency (the Preferred Delivery Partner)

Background

- A. The Crown is seeking, through a Response Requirements Document issued 31 July 2019 (the **RRD**), to appoint a preferred delivery partner to deliver the City Centre to Māngere Light Rail Project (the **CC2M Project**). The Preferred Delivery Partner submitted a proposal (the **Proposal**) to be the preferred delivery partner on 29 November 2019 (the **Proposal Submission Date**).
- B. The Preferred Delivery Partner has been selected by the Crown as the preferred delivery partner to deliver the CC2M Project on the basis of the Preferred Delivery Partner's submitted Proposal.
- C. The parties agree to enter into this MoU under which:
 - (a) they will negotiate the terms of the sponsors agreement and the funding agreement for the delivery and funding of the CC2M Project as set out in paragraph 2 (the **Sponsors Agreement** and the **Funding Agreement**); and
 - (b) agreed mobilisation activities will be carried out (as set out in paragraph 3).

The parties agree as follows:

1. **Exclusive Negotiation Period**

- 1.1 The Crown and the Preferred Delivery Partner agree that during the term of this MoU as provided in paragraph 11:
 - (a) the Crown will negotiate exclusively with the Preferred Delivery Partner to finalise the Sponsors Agreement and the Funding Agreement for the CC2M Project in accordance with paragraph 2; and
 - (b) the parties will carry out agreed mobilisation activities in accordance with paragraph 3.1;(such period being the **Exclusive Negotiation Period**).

2. **Sponsors Agreement and Funding Agreement**

- 2.1 During the Exclusive Negotiation Period the parties will negotiate diligently with the intention that the Sponsors Agreement and the Funding Agreement are signed on or before 31 July 2020.
- 2.2 The parties acknowledge that the Proposal provides for the establishment of a delivery entity that will undertake the CC2M Project (**Delivery Entity**). The parties acknowledge that the Proposal provides that:
 - (a) the Delivery Entity will be established by the Preferred Delivery Partner;
 - (b) ownership of the Delivery Entity will be transferred to the Crown on signing of the Sponsors Agreement and the Funding Agreement; and
 - (c) the Delivery Entity will be added to Schedule 4A of the Public Finance Act 1989.

- 2.3 During the Exclusive Negotiation Period the Preferred Delivery Partner will procure that the Delivery Entity takes all Mobilisation Activities (as defined in paragraph 3) required of it and complies with paragraphs 6, 7, 8, 9 and 10 on the same terms as the Preferred Delivery Partner.
- 2.4 The Sponsors Agreement will govern the relationship between the parties and the Delivery Entity and the activities to be undertaken to enable the delivery and operation of the CC2M Project and the Funding Agreement will govern the funding of the CC2M Project.

3. Mobilisation Activities

- 3.1 The parties shall, within 20 working days of the date of execution by both parties of this MoU, agree the activities to be carried out by each of the Preferred Delivery Partner and the Crown during the Exclusive Negotiation Period in connection with the CC2M Project, which may include:
- (a) establishment and initial resourcing of the Delivery Entity;
 - (b) confirming the technical design requirements for the CC2M Project and progressing the cost estimate for the CC2M Project to a Level 3 estimate, determined per Table 1 of MCERP 98R-18 (Cost Estimate Classification System – as applied in road and rail transportation infrastructure projects);
 - (c) developing and agreeing the approach to the capital cost methodology, including the “Base Total Project Cost” (as defined in the Preferred Delivery Partner’s Proposal);
 - (d) commencing CC2M mobilisation work;
 - (e) commencing stakeholder engagement;
 - (f) developing partnering agreements with key stakeholders such as Auckland Council, Auckland Transport, Kāinga Ora and Kiwirail;
 - (g) confirming the procurement methodology, planning the procurement process and undertaking initial market engagement on procurement approach, costs and risks;
 - (h) agreeing governance documents required for the Delivery Entity under the Crown Entities Act 2004 and a skills matrix and selection and appointment process for the directors of the Delivery Entity;
 - (i) progressing the consenting strategy; and
 - (j) confirming the nature of the legislative changes (if any) and all Orders in Council, Ministerial directions and other approvals required in relation to the CC2M Project and the Delivery Entity,

(the **Mobilisation Activities**) and the terms and conditions governing the carrying out of such Mobilisation Activities.

4. Preferred Delivery Partner’s Proposal

- 4.1 The Preferred Delivery Partner acknowledges that:
- (a) the programme to achieve final contractual close for the CC2M Project (by execution of the Sponsors Agreement, the Funding Agreement and all related documentation) as prepared by the Preferred Delivery Partner and attached as Appendix 3 to this MoU, represents the Preferred Delivery Partner’s good faith estimate of such programme and the Preferred Delivery Partner has committed or otherwise engaged the resources to achieve such programme;
 - (b) its Proposal represents in all respects (including commercial, contractual and technical) the Preferred Delivery Partner’s position (having regard to the information available to the Preferred Delivery Partner as at the Proposal Submission Date and the requirements of the Crown’s Response Requirements Document) with respect to the matters to be negotiated by the parties for the delivery of the CC2M Project and shall form the basis of that negotiation, and that the Preferred Delivery Partner has been selected on this basis; and

- (c) it will negotiate the contractual arrangements for the delivery of the CC2M Project (including the Sponsors Agreement, the Funding Agreement and all related arrangements) diligently having regard to (a) and (b) above.

4.2 Notwithstanding paragraph 4.1, the parties acknowledge that:

- (a) as a result of the negotiations and Mobilisation Activities during the Exclusive Negotiation Period, aspects of the Preferred Delivery Partner's Proposal will develop and may, with agreement of the parties, be amended to reflect those negotiations and Mobilisation Activities and the information that becomes available to the parties during this period;
- (b) paragraph 4.1 does not prevent the Preferred Delivery Partner from constructively offering alternative positions or options intended to improve its Proposal; and
- (c) there are elements of the Preferred Delivery Partner's Proposal (such as funding) that have been developed by the Preferred Delivery Partner with limited input from the Crown and which may require adjustment to reflect the Crown's requirements as communicated during the Exclusive Negotiation Period.

4.3 During the Exclusive Negotiation Period, the Preferred Delivery Partner shall provide the Crown with all documentation and information in its possession or control (including in native format) requested by the Crown in respect of the CC2M Project.

5. **City Centre to NorthWest Option**

The Crown and the Preferred Delivery Partner agree that during the Exclusive Negotiation Period the parties will, by reference to the Proposal (including the Preferred Delivery Partner's description of its approach to accommodating the potential expansion of light rail from the city centre to the North West (**CC2NW**)), discuss whether it is feasible to include an option for the delivery of CC2NW as part of the Sponsors Agreement and the Funding Agreement.

6. **Development IP**

6.1 If Interim Contractual Close does not occur for any reason whatsoever including:

- (a) either party electing to terminate this MoU under paragraph 12; or
- (b) the Exclusive Negotiation Period expiring,

then, if the Crown at its sole discretion so elects by written notice to the Preferred Delivery Partner within six months' of the end of the Exclusive Negotiation Period, the Crown shall (from the date of such notice) have ownership of, and unfettered rights to use for any purpose whatsoever, the Preferred Delivery Partner's rights in the Development IP (or so much of it as is specified by the Crown), in which case the Preferred Delivery Partner shall provide to the Crown all of the Development IP (or so much of it as is requested by the Crown). The Preferred Delivery Partner makes no warranty as to the suitability of the Development IP, or the any person's ability to use it, for any purpose.

6.2 For the purpose of this MoU:

- (a) **Development IP** means intellectual property (including designs, studies and reports) relating to the CC2M Project owned by the Preferred Delivery Partner and contained within both the Preferred Delivery Partner's Proposal and other documentation relating to the CC2M Project developed by or on behalf of the Preferred Delivery Partner in connection with the Proposal, this MoU and the Mobilisation Activities;
- (b) **Interim Contractual Close** means the execution of the Sponsors Agreement and the Funding Agreement by all parties and satisfaction of conditions precedent (if any) to the Sponsors Agreement and the Funding Agreement coming into force, as agreed by the parties.

7. **Insurance**

- 7.1 The Preferred Delivery Partner will take out or procure insurance policies for specified Mobilisation Activities (as agreed with the Crown) as soon as reasonably practicable.
- 7.2 The Preferred Delivery Partner shall not commence any Mobilisation Activity for which insurance is required under paragraph 7.1 prior to the relevant insurance policy in relation to that activity being in full force and effect.
- 7.3 The insurance policies will be taken out on terms that are consistent with good industry practice and shall continue at least until this MoU comes to an end (by expiry or termination) in accordance with paragraph 11 (Term).

8. **Intellectual Property**

- 8.1 Each party acknowledges and agrees that, subject to paragraph 6 (Development IP), it does not acquire any rights, title or interest in or to any intellectual property owned by the other party through this MoU.

9. **Governance and Communication**

- 9.1 The parties shall, within 10 working days of the date of this MoU, establish the interim governance group to govern the Mobilisation Activities during the Exclusive Negotiation Period on the terms of reference set out in Appendix 1.
- 9.2 The Preferred Delivery Partner shall at all times during the Exclusive Negotiation Period comply with:
- (a) the Project Probity Requirements set out in Appendix 2; and
 - (b) the communications protocol attached as Appendix 4 (**Communications Protocol**).

10. **Confidentiality**

10.1 Each party must:

- (a) not use the other party's Disclosed Information for any purpose whatsoever except for purposes in connection with the CC2M Project, the potential expansion of light rail in Auckland from the City Centre to the North West, performance of this MoU and/or the Mobilisation Activities (the **Permitted Purpose**);
- (b) keep confidential and not copy or duplicate (or allow the copying or duplication of) any of the other party's Disclosed Information except for the Permitted Purpose (subject to disclosure permitted under paragraph 10.2);
- (c) subject to paragraph 10.2, only disclose the other party's Disclosed Information, or any part of it, to any other person if the disclosure is necessary solely for the Permitted Purpose (subject to disclosure permitted under paragraph 10.2); and
- (d) take any further steps reasonably required by the other party to maintain the confidentiality of the other party's Disclosed Information.

10.2 The provisions of paragraphs 10.1(b) and 10.1(c) do not apply to:

- (a) the disclosure of Disclosed Information for which the other party has given its prior written consent;
- (b) the disclosure to a party's advisors and contractors for the Permitted Purpose, provided that the recipient is subject to a form of confidentiality agreement approved by the Crown;
- (c) the disclosure of Disclosed Information after (but only to the extent that) it becomes generally available to the public other than because of a breach of this MoU;
- (d) the disclosure of Disclosed Information to the extent necessary to comply with the Official Information Act 1982, the Local Government Official Information and Meetings Act 1987 any other applicable law, court process, or disclosure requirement of a recognised stock exchange provided (to the extent legally permissible) the proposed disclosure is notified to the other party prior to making such disclosure and the other party is provided reasonable opportunity to consult on the disclosure of the Disclosed Information; or

- (e) the disclosure of Disclosed Information to Ministers and public sector agencies/officials required in the ordinary course of a party's business, provided the Disclosed Information is noted as 'Commercial in Confidence'.

10.3 For the purposes of this MoU, "**Disclosed Information**" means:

- (a) in respect of the Crown, all information of whatever nature which is obtained by or on behalf of the Preferred Delivery Partner from or on behalf of the Crown relating in any way to the CC2M Project; and
- (b) in respect of the Preferred Delivery Partner, the Proposal and all information of whatever nature which is obtained by or on behalf of the Crown from or on behalf of the Preferred Delivery Partner relating in any way to the Proposal or the CC2M Project (including all information provided under paragraphs 4.3 and 6.1).

10.4 The Preferred Delivery Partner must not make a media release or other public announcement or statement in relation to the CC2M Project (including in relation to this MoU or their appointment as Preferred Delivery Partner) other than with the prior written consent of the Crown.

11. **Term**

11.1 The parties agree that the terms of this MoU shall be effective from the date of execution by both parties of this MoU and shall remain in force until the earlier of:

- (a) the date on which Interim Contractual Close occurs;
- (b) 18 December 2020 (or such other date as the parties may agree in writing); and
- (c) termination of this MoU by either party in accordance with paragraph 12 (Termination Rights).

12. **Termination Rights**

12.1 Either party may terminate this MoU at any time by written notice to the other party. Without limitation to its other rights, if this MoU is terminated, the Crown reserves the ability to cease to negotiate with Preferred Delivery Partner and/or to commence negotiations with NZ Infra Limited or undertake an alternative procurement approach.

13. **General Terms**

13.1 The Preferred Delivery Partner acknowledges and agrees that all activities or other matters carried out by the Preferred Delivery Partner under or in connection with this MoU, including without limitation the Mobilisation Activities, are at the sole cost and risk of the Preferred Delivery Partner.

13.2 Each party shall bear its own costs and expenses throughout the Exclusive Negotiation Period.

13.3 The Preferred Delivery Partner acknowledges that any failure by the Crown to perform any obligation or discharge any duty arising under or in connection with this MoU will not give rise to an enforceable obligation at law or in equity, except insofar as such failure relates to obligations and duties arising under or in connection with paragraphs 8 (Intellectual Property) and 10 (Confidentiality), and provided that this provision does not limit liability that cannot be limited at law.

13.4 Notwithstanding any provision to the contrary, neither party shall have any liability whatsoever or howsoever arising to the other with respect to or in connection with any loss of use, loss of opportunity, loss of profit or any consequential or indirect loss, cost, expense or damage.

13.5 Nothing in this MoU shall constitute either party being a partner, agent or representative of the other party, or create any trust, and neither party shall have the authority to act for, or to incur any obligation on behalf of, the other party, except as expressly provided for in such document.

13.6 The terms and conditions set out in paragraphs 6 (Development IP), 8 (Intellectual Property) and 10 (Confidentiality) of this MoU shall survive expiry or termination of this MoU.

14. **Status of this MoU**

COMMERCIAL IN CONFIDENCE

- 14.1 The obligations set out in this MoU are intended to be legally binding and reflect the parties' good faith intentions at the date of this MoU to enable the Preferred Delivery Partner to carry out the Mobilisation Activities and for the parties to negotiate the terms and conditions for the Sponsors Agreement and the Funding Agreement.
- 14.2 Notwithstanding anything to the contrary, nothing in this MoU is intended to oblige either party to enter into the Sponsors Agreement, the Funding Agreement or any other or further agreement. Failure to enter into the Sponsors Agreement, the Funding Agreement or any further agreement will not affect the legally binding nature of this MoU.
- 14.3 This MoU (including the Mobilisation Activities and the Communications Protocol)) will govern the relationship between the parties during the Exclusive Negotiation Period and will prevail over the RRD and the Probity and Process Letter (as defined in the RRD) in the event of any inconsistency. Where the Preferred Delivery Partner is complying with this MoU it will not be in breach of the RRD or the Probity and Process Letter.



EXECUTED as an agreement

Signature of authorised signatory

SIGNED for and on behalf of the **New Zealand Transport Agency** by its authorised signatory:

Mark Ratcliffe

Name

SIGNED for and on behalf of **Her Majesty the Queen in right of New Zealand** by:

Signature of the Crown

Name

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APPENDIX 1: INTERIM GOVERNANCE GROUP TERMS OF REFERENCE

- 1.1 The Crown and the Preferred Delivery Partner will establish the Interim Governance Group with the terms of reference set out in this Appendix.
- 1.2 The function of the Interim Governance Group is to have oversight over the Mobilisation Activities and to provide direction to the parties/the Preferred Delivery Partner on key decisions in relation to the Mobilisation Activities during the Exclusive Negotiation Period.
- 1.3 The Interim Governance Group will comprise four members and each party will, by notice to the other, appoint two representatives to be members of the Interim Governance Group. A party may at any time replace a representative as a member of the Interim Governance Group by notice to the other party.
- 1.4 Each party will ensure that its representatives attend Interim Governance Group meetings and that they have the necessary authority to participate in those meetings.
- 1.5 If a representative is unable to attend an Interim Governance Group meetings she or he may appoint an alternative to attend in her or his place.
- 1.6 The Preferred Delivery Partner will provide the Interim Governance Group with regular updates and the necessary information to enable the Interim Governance Group to carry out its function.
- 1.7 The Interim Governance Group will meet regularly, and at any time requested by a party, during the Exclusive Negotiation Period.
- 1.8 The Interim Governance Group does not have the power or authority to direct either party, or the Delivery Entity, and may not make any decision that would bind the parties, or the Delivery Entity.
- 1.9 Except as provided in this Appendix or as agreed by the parties and notified to the Interim Governance Group, the Interim Governance Group will determine its own processes and procedures.
- 1.10 There will be open, honest and frequent communication between the Interim Governance Group members.
- 1.11 The Preferred Delivery Partner will provide administrative, secretarial and logistical support for the Interim Governance Group and premises at which meetings can be held.

APPENDIX 2: PROBITY REQUIREMENTS

1. **Contact with the Crown and Stakeholders**

- 1.1 The Preferred Delivery Partner acknowledges and agrees that it will not make contact with the Crown, Auckland Transport, Auckland Council, any other governmental agency or officer, or any of their Associates, the Treasury, any of the Ministry advisers to the CC2M Project, or any Members of Parliament, elected members of Auckland Council and its local boards, Auckland Transport's board of directors or their staff, to discuss any aspect of the CC2M Project, except as provided for in this MoU (including the Communications Protocol) or as otherwise expressly agreed by the Crown.
- 1.2 In particular, but without in any way limiting paragraph 1.1, the Preferred Delivery Partner shall not, without the prior written approval of the Crown, engage any person in respect of the CC2M Project who has been engaged or employed by or on behalf of the Crown, its Associates or NZ Infra Limited to work or advise on the CC2M Project. If the Preferred Delivery Partner acts contrary to this requirement, the Crown may, without prejudice to the Crown's rights under this MoU, terminate this MoU without any obligation on the Crown to make any payment to the Preferred Delivery Partner.
- 1.3 The Preferred Delivery Partner acknowledges and agrees that it will not offer any gift, inducement, promotional products or services, fee or reward to the Crown or any of its Associates.
- 1.4 Nothing in this paragraph 1 or this MoU is intended to prevent or limit the Preferred Delivery Partner's engagement with its responsible Minister(s) or anything required by the Preferred Delivery Partner's reporting or accountability obligations as a Crown entity or anything required by applicable law.
- 1.5 For the purposes of this Appendix 2 "**Associate**" means, in relation to a person, any related body corporate of that person or any officer, employee, agent, contractor, consultant, nominee, licensee or adviser of that person or that related body corporate, and in the case of the Crown, "Associate":
- (a) includes Auckland Transport, Auckland Council and any other governmental agency; but
 - (b) excludes (i) the Preferred Delivery Partner and its officers and employees, and (ii) the Preferred Delivery Partner's agents, contractors, consultants, nominees, licensees and advisers engaged by the Preferred Delivery Partner in the subject matter of the CC2M Project (in accordance with this Appendix).

2. **Probity, security and commercial checks**

- 2.1 The Crown may conduct any probity, security and commercial checks that the Crown thinks fit on the Preferred Delivery Partner and any of its Associates engaged in the subject matter of the CC2M Project at any time during the Exclusive Negotiation Phase.
- (a) The Preferred Delivery Partner consents to such probity, security and commercial checks, and agrees to procure the consents of its board members, and the consents of such other employees or other Associates of the Preferred Delivery Partner engaged in the subject matter of the CC2M Project as are requested by the Crown, and as are required by law to be obtained to such probity, security and commercial checks.
 - (b) The Preferred Delivery Partner acknowledges and agrees that the Crown:
 - (i) is not under any obligation to provide to the Preferred Delivery Partner or any of its Associates engaged in the subject matter of the CC2M Project the results of any probity, security or commercial checks; and
 - (ii) may take such action as it considers appropriate, in its absolute discretion, in light of matters revealed by any probity, security or commercial checks.

3. **Disclosure of interests and conflicts**

- 3.1 The Preferred Delivery Partner and its Associates engaged in the subject matter of the CC2M Project must disclose, at the time of execution of this MoU (which have not already been disclosed to the Crown) and on a continuing basis as they arise, any actual, potential or perceived conflict of interests (including any relationship or connection that in the reasonable opinion of the Preferred Delivery Partner in the ordinary course would give rise to a perception of partiality or unfair advantage) in connection with the CC2M Project (the **Disclosed Interests**), by

completing in full the relevant form supplied by the Crown to the Preferred Delivery Partner, as appended to this Appendix 2.

3.2 The Preferred Delivery Partner covenants to the Crown that:

- (a) other than in respect of the Disclosed Interests (including disclosure prior to and subsequent to execution of this MoU), no conflict of interest has arisen or will arise in respect of the engagement by a person within the Preferred Delivery Partner or its Associates in respect of the CC2M Project;
- (b) it will ensure that the Preferred Delivery Partner and its Associates engaged in the subject matter of the CC2M Project will not be extended to include, or otherwise involve, any person who:
 - (i) is a member of, or otherwise involved with, Auckland Transport, Auckland Council or NZ Infra Limited in the subject matter of the CC2M Project; or
 - (ii) is or has been engaged or employed by the Crown and has been involved in the course of the person's employment or engagement in the subject matter of the CC2M Project,

where this has not been disclosed to, and agreed to by, the Crown.

3.3 The Crown may manage any conflicts of interest as it sees fit and the Preferred Delivery Partner agrees to follow any direction given by the Crown relating to the management of a conflict of interest.

3.4 Without limiting paragraph 3.3, the Preferred Delivery Partner acknowledges and agrees that the Crown may impose additional obligations on the Preferred Delivery Partner and its Associates engaged in the subject matter of the CC2M Project if the Crown reasonably determines that the relationship of the Preferred Delivery Partner or its Associates engaged in the subject matter of the CC2M Project to any person currently or previously involved with the CC2M Project renders these additional obligations necessary or appropriate to ensure confidentiality, competitiveness or probity with respect to the CC2M Project.

4. **Communication with other Preferred Delivery Partner personnel**

4.1 Given the roles that the Preferred Delivery Partner has in the CC2M Project, the Preferred Delivery Partner shall ensure that all appropriate mechanisms and practices are in place and maintained such that there is sufficient separation between the team responsible for the negotiation of the project agreements for the CC2M Project (including the Funding Agreement and the Sponsors Agreement) and carrying out the Mobilisation Activities, and other Preferred Delivery Partner personnel. This may include, where required to achieve such separation, the Preferred Delivery Partner to ring-fencing certain personnel (including in respect of information and document systems) from wider involvement in the CC2M Project, including not being available to, or to be accessed by, other Preferred Delivery Partner personnel who have been or are engaged in the negotiation of the project agreements for the CC2M Project (including the Funding Agreement and the Sponsors Agreement) and carrying out the Mobilisation Activities.

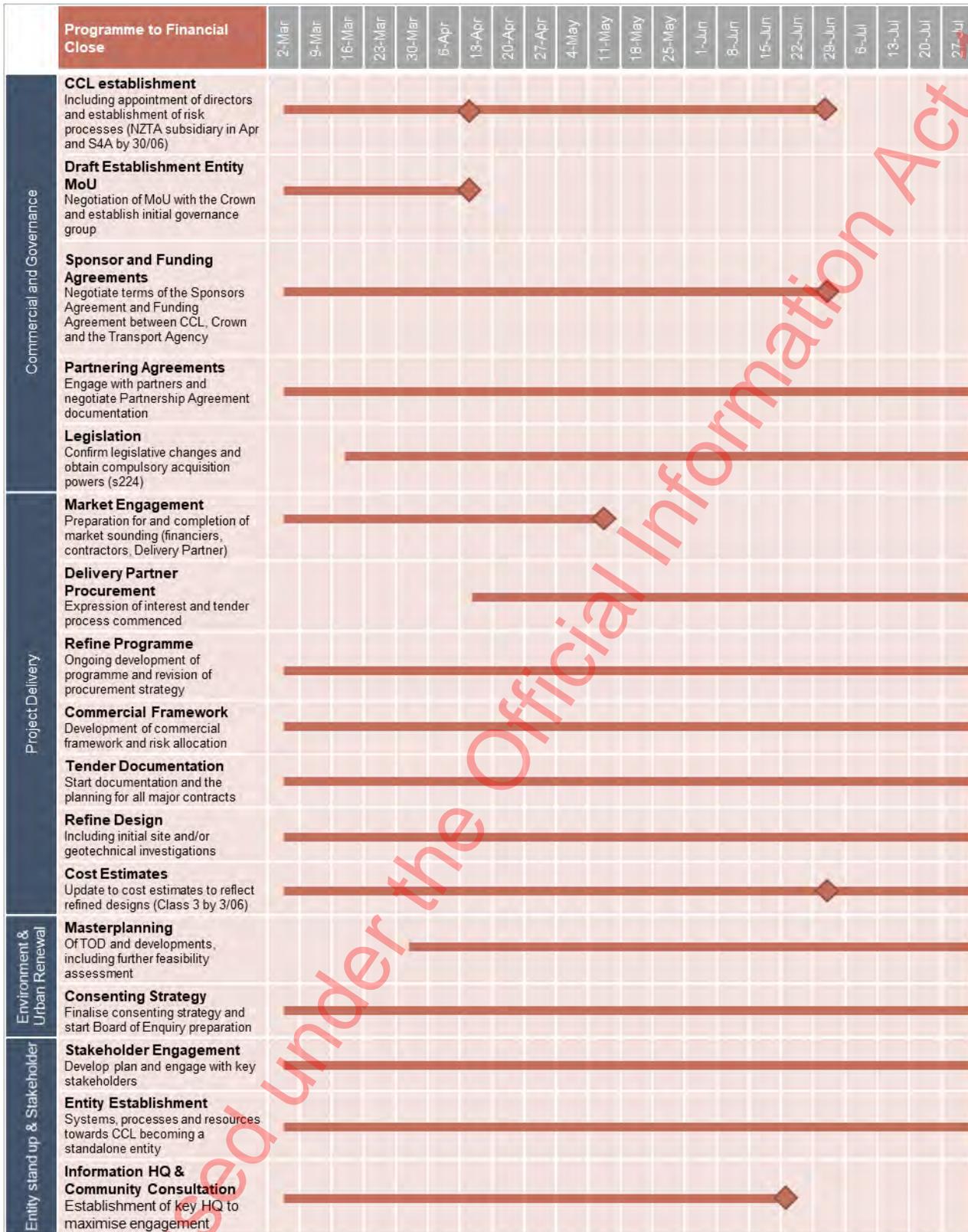
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Conflict Disclosure Form

<p>Do you have any actual, potential or perceived conflicts of interest relating to the CC2M Project? This includes any relationship or connection with the Ministry of Transport, Auckland Council or Auckland Transport (or any person directly or indirectly engaged by any of them) that could give rise to a perception of partiality or unfair advantage in relation to the CC2M Project.</p>		<p>Yes/No</p>
<p>If “Yes”, please declare the conflict here and provide details below, including a conflict management plan that details how you will address and mitigate any actual, potential or perceived conflicts of interest of which you are aware or that may arise during the course of the CC2M Project.</p>		
<p>Details of Conflict</p>		<p>Mitigation Strategy</p>
Empty space for conflict details		Empty space for mitigation strategy

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APPENDIX 3: PROGRAMME TO CONTRACTUAL CLOSE



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APPENDIX 4: COMMUNICATIONS PROTOCOL

Purpose

This protocol sets out the principles and processes for managing communications, media, and stakeholder engagement to apply in the Exclusive Negotiation Period, once Waka Kotahi, the New Zealand Transport Agency (NZTA) has been appointed Preferred Delivery Partner and is subject to the Preferred Delivery Partner Memorandum of Understanding between the Crown and NZTA (MOU).

Parties to this protocol

Parties to this protocol are:

- The Ministry of Transport
- NZTA and its subsidiaries (if any)

Please note: whilst the Minister of Transport is aware of the need to maintain distance from the process, he is not bound by this protocol.

Overview

The City Centre to Māngere Light Rail Project is a priority in the Auckland Transport Alignment Project investment package agreed by the Government and Auckland Council.

The intention of the project is to expand Auckland's mass transit network to improve access, thereby encouraging a shift to public transport and enabling quality urban communities.

Following a process with NZTA and NZ Infra to develop their proposals for building light rail in Auckland, the Crown has appointed NZTA as preferred delivery partner and the parties have entered into the MOU.

During the Exclusive Negotiation Period under the MOU, the Parties will agree to a number of "mobilisation activities" to enable the City Centre to Māngere Light Rail Project (CC2M Project) to progress while the parties are negotiating a Sponsors Agreement and a Funding Agreement. These will require a greater level of communication with stakeholders than was previously appropriate while parties prepared responses to the Ministry of Transport's Response Requirements Document.

Scope

This protocol covers:

- all media statements and requests that the Parties receive
- all Official Information Act requests the Parties receive
- all stakeholder engagement to be undertaken by NZTA, in relation to the CC2M Project.

Overriding principles

The following principles are those which intend to govern the approach to communications during this phase of the CC2M Project.

1) *Engagement between NZTA and the Ministry of Transport will be on a no-surprises basis*

- engagement between NZTA and the Ministry of Transport will be undertaken as openly and transparently as possible. Any issues will be raised and discussed by each party when known to ensure a no-surprises approach

2) *Flexibility is key*

- the Ministry of Transport does not wish to constrain the ability of NZTA to develop its proposal within reasonable bounds.

3) *Confidentiality of information is an overriding objective*

- all Parties agree to adhere to the confidentiality provisions as set out in the MOU.

4) *We will act in good faith*

- the Parties will operate diligently and in good faith
- the Parties will not knowingly interfere, or undertake actions that could undermine the CC2M Project or the negotiations during the Exclusive Negotiation Period.

5) *This is a government-led commercial process*

NZTA is participating in a government-led commercial process. As such it is important that it does not:

- make public statements that could put commercial process and commercial information at risk
- make public statements that could be seen as undermining the process and principles that have been agreed by both Parties.

6) *Best for project*

- the parties acknowledge that NZTA has agreed to undertake the mobilisation activities during the Exclusive Negotiation Period and this protocol should be understood within that context
- to deliver the CC2M Project and build trust with key stakeholders, the parties agree to the highest level of transparency with the public and other stakeholders, within the bounds that are appropriate during the Exclusive Negotiation Period.

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Specific principles and processes

STAKEHOLDER ENGAGEMENT

For the purposes of this protocol, stakeholders include but are not limited to, politicians, local boards, business associations, mana whenua, utilities, schools, banks, Auckland Council, Auckland Transport, Kāinga Ora, Kiwirail, private companies, media, special interest groups and the public at large.

Stakeholder engagement will be planned and agreed in advance

The expectation is that NZTA will be able to freely engage with all stakeholders it needs to in order to develop its proposal and undertake the mobilisation activities.

The Parties are able to meet, engage and report to stakeholders, including Ministers, as part of their business as usual activities, on the basis that no details about their proposal that would undermine the commercial negotiations during the Exclusive Negotiation Period can be discussed. Engagement on the CC2M Project can only be managed in accordance with this protocol. The Parties must inform the Ministry immediately should there be any breach of this principle.

Process for stakeholder engagement

Each party to this protocol will nominate a single point of contact for stakeholder engagement.

The parties will agree the scope of permitted stakeholder engagement when they agree the mobilisation activities pursuant to clause 3 of the MOU.

Unless already agreed as part of the mobilisation activities, NZTA agrees to provide the Ministry of Transport, by email, details of what organisations and individuals they wish to engage with, ahead of any engagement.

The Ministry of Transport will respond with a decision within two working days. This will be either:

- the engagement may proceed indefinitely
- the engagement may proceed subject to conditions (for example, subject to an official from the Ministry of Transport being present)
- the engagement may not proceed.

Contact details for stakeholder engagement

Name	Organisation	Phone	Email
Suzanne Cookson	Ministry of Transport	s 9(2)(a)	s.cookson@transport.govt.nz
Elizabeth Ann	NZTA	s 9(2)(a)	elizabeth.ann@nzta.govt.nz

MEDIA ENGAGEMENT

For the purposes of this protocol, media includes, but is not limited to print, broadcast, social and online media, bloggers, and commentators.

Media engagement will be coordinated by the Ministry of Transport

The Ministry of Transport will lead media comment and engagement relating to the CC2M Project and will coordinate media engagement where possible with NZTA .

From NZTA

The Ministry of Transport and NZTA will agree key messages for the CC2M Project, which may occur prior to the announcement of NZTA as the Preferred Delivery Partner.

Any other media responses may only be made with the explicit approval of the Ministry of Transport.

Regardless of the response, NZTA must inform the Ministry of Transport of all media queries they receive.

From the Ministry of Transport

The Ministry of Transport will inform NZTA in advance of significant public statements relating to the CC2M Project.

The Ministry of Transport, at its discretion, may make additional media comment, and will endeavour to inform NZTA in advance of any statement.

Process for managing media engagement

All parties to this protocol will nominate a single point of contact for media engagement.

NZTA will inform the Ministry of Transport as soon as practicable, and no later than within 24 hours, of any media queries or approaches for comment they receive.

The Ministry of Transport will respond as soon as practicable, and no later than 24 hours, to coordinate media engagement.

Contact details for media engagement

Name	Organisation	Phone	Email
Suzanne Cookson	Ministry of Transport	s 9(2)(a) [REDACTED]	alrmedia@transport.govt.nz
Andrew Knackstedt	NZTA	s 9(2)(a) [REDACTED]	andrew.knackstedt@nzta.govt.nz

Released under the Official Information Act 1982

Managing Official Information Act Requests

For the purposes of this protocol, the Official Information Act is the process by which Government entities in New Zealand are bound to manage the public publication of information¹.

The Ministry of Transport and NZTA are subject to New Zealand's Official Information Act (the Act) and will act in accordance with the Act.

Process for managing Official Information Act requests

NZTA will inform the Ministry of Transport as soon as practicable, and no later than within five working days of receiving requests that are subject to the Act.

The Parties will discuss with the Ministry of Transport how best to deal with the requests, in accordance with the Act, which may include responding, declining or transferring the requests.

Contact details for Official Information Act requests

Name	Organisation	Phone	Email
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¹ See <http://www.legislation.govt.nz/act/public/1982/0156/latest/DLM65921.html>