

To: Peter Mersi	MEMORANDUM
From: [REDACTED]	
CC: Bryn Gandy; Maureena van der Lem	
Date: 26 October 2017	
Through: Helen White	

Subject: Auckland East-West Motorway Link

1 This memo provides you with information on how the Auckland East-West Motorway Link (East-West Link) project may be delayed. This Memo has been developed in consultation with the Legal Team and the Commercial and Governance Team.

Background

2 The East-West Link is a proposed investment in the National Land Transport Programme 2015-2018, with construction proposed to start in 2018. (See <https://www.nzta.govt.nz/planning-and-investment/2015-18-national-land-transport-programme/nltp-in-the-regions/auckland/>).

3 The East-West Link has been identified by the new government in its transport policies:

- The Labour Party transport policy document seeks a better value for money East-West Link. The cost of the East-West Link will be reduced by adopting an option with a better benefit to cost ratio, saving \$1.2 billion
- The Confidence and Supply Agreement with the Green Party states that Auckland's East-West motorway link will not proceed as currently proposed.

4 The proposal identifies savings and the ways in which these savings may be used to fund other land transport projects.

Options

5 You have asked how the government's intentions for the East-West Link might be given effect.

6 This outcome could be achieved by:

- A discussion between the Minister and the NZ Transport Agency Board about government priorities, followed up with a letter from the Minister to the Board where the Board is invited to identify how the Board expects to achieve these priorities, including if it requires any amendment to the GPS;

- The Board, in its response may identify where the GPS needs to be amended. Depending on how quickly this change is required, it may involve amending the GPS 2015 or it may be addressed in the new GPS 2018.
 - Potential follow up to confirm Government priorities through the Ministerial expectations in the GPS and potentially the Letter of Expectations to the Board (as a Crown entity).
- 7 We have considered other options, for example, recasting the strategic direction and associated funding ranges in the GPS as a first step or amending legislation to delay and require restructuring of the East-West Link, or other actions under the Crown Entity Act. These options are not recommended.

Allocation of potential NLTF savings

- 8 If the savings to the NLTF identified in the government's transport policies are intended to be applied to specific transport projects, then the Land Transport Management Act 2003 (the Act)] sets the parameters. The relevant section of the Act are:

- **Section 70 which relates to the GPS and, therefore, use of the NLTF**

"70 Agency to give effect to GPS on land transport in respect of funding of land transport system

(1)The Agency must give effect to the GPS on land transport when performing its functions under [subpart 1](#) of Part 2 in respect of land transport planning and funding.

(2) To avoid doubt, the GPS on land transport may not impose an obligation on the Agency to approve or decline funding for a particular activity or any combination of activities under [section 20](#)."

- **Section 95 (2) which sets out the Board's independent functions**

(2) The Agency's statutorily independent functions are to—

(a) issue, endorse, alter, replace, renew, suspend, or revoke any land transport document or other authorisation under any enactment; and

(b) grant exemptions under any enactment; and

(c) enforce the provisions of any enactment conferring functions or duties on the Agency; and

(d) determine whether particular activities should be included in a national land transport programme; and

(e) approve activities or combinations of activities under [section 20](#); and

(f) approve procurement procedures.

- 9 This means the GPS cannot be constructed in such as way as to remove this independence and nor can other instruments be used to direct the NZ Transport Agency Board in the matters that it is statutorily independent.

- 10 Strong signals can be provided to the NZ Transport Agency Board through the GPS and/or Crown entity instruments (e.g. Letters of Expectations), that the Board would consider when making decisions on activities within the NLTP. However, GPS signals are at a general level. This means they can capture more than is intended and, as the NZ Transport Agency Board decides on projects, still leaves some uncertainty as to which projects proceed into the NLTP.
- 11 We can advise further on other options, if required. For example, if the \$1.2 billion of savings identified from a review of the East-West Link are to fund rail projects, then the GPS could include this amount in a rail activity class where rail (and light rail) projects may be funded. This would also require the scope of the GPS could be amended to allow for this investment.
- 12 However, this example/ option is not as simple or easy to implement as it may appear. This is because decisions are being made by the NZ Transport Agency about projects on the rail network for which KiwiRail is responsible. For your information, a separate internal paper has been prepared on using the NLTF to fund rail, which canvasses these issues.
- 13 We (the investment Team) and the Legal Team would be happy to discuss this memo with you if you would find this helpful.

Kind regards

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Contractor
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Withheld under section 9(2)(a) of the Official Information Act 1982

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