

OC220578

3 August 2022

s 9(2)(a)

Tēnā koe s 9(2)(a)

I refer to your email dated 28 June 2022, requesting the following under the Official Information Act 1982 (the Act):

*“Can you please send me the CRL report mentioned in this paragraph from the AG?
4.11*

More recent reports to the Ministers and the Council's Audit and Risk Committee were more comprehensive, included more analysis, and provided a clearer view on the CRL project's status and risks. We expect officials to sustain these improvements to ensure that there is a clear and reliable record on how well the risks from both the CRL project and the wider network improvements are being mitigated.”

This request was transferred to the Ministry of Transport from the Office of the Minister of Transport on 6 July 2022.

The Office of the Auditor General (OAG) clarified that there is one briefing in the scope of your request, which is detailed in the document schedule attached as Annex 1. The schedule outlines how the document you requested has been treated under the Act.

Certain information is withheld under the following sections of the Act:

- | | |
|-------------|---|
| 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 interest that such information should continue to be supplied |
| 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)(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)

With regard to the information that has been withheld under section 9 of the Act, I am satisfied that the reasons for withholding the information at this time are not outweighed by public interest considerations that would make it desirable to make the information available.

Please note that the briefing contains some information that is now out of date or requires clarification:

A risk relating to unappropriated expenditure is noted in both the Key Points section and paragraph 58. This risk did not eventuate. The OAG subsequently confirmed that there is no unappropriated expenditure in relation to the City Rail Link Limited (CRL) asset transfers. Vested asset expenses form part of the operating loss of CRL, and therefore, no appropriation is required under section 4(2) of the Public Finance Act 1989. There will be regular (annual) reviews with the OAG of the accounting treatment on asset transfers going forward.

Paragraph 53 contains a reference to the transfer of separable asset portions. The list of entities that may receive an asset transfer should have included Watercare as well as Healthy Waters.

The content under the sub-heading 'A different approach may be required for the 2020/21 financial year or in the 2021/22 financial year' (paragraphs 57-59) is now out of date. The timing and accounting treatment for asset transfers is now confirmed and, as above, there will be regular (annual) reviews with the OAG of the accounting treatment on asset transfers.

Paragraph 67 includes a reference to the OAG draft performance audit report on the governance of the City Rail Link project being provided in August/September 2021. That date is now out of date, and the Office of the Auditor General has now published this report.

You have the right to seek an investigation and review of this response by the Ombudsman, in accordance with section 28(3) of the Act. The relevant details can be found on the Ombudsman's website www.ombudsman.parliament.nz

The Ministry publishes our Official Information Act responses and the information contained in our reply to you may be published on the Ministry website. Before publishing we will remove any personal or identifiable information.

Nāku noa, nā



Fleur D'Souza
Manager, Programme Assurance and Commercial

Annex 1 - Document Schedule

Doc#	Date	Document	Decision on release
1	22 July 2021	OC210524 T2021/1764 City Rail Link Limited Performance Update to 31 March 2021	Some information withheld under sections 9(2)(a), 9(2)(b)(ii), 9(2)(ba)(i), 9(2)(f)(iv), 9(2)(g)(i) and 9(2)(j).

22 July 2021

BRIEFING

OC210524
T2021/1764

Hon Michael Wood
Minister of Transport

Hon Grant Robertson
Minister of Finance

CITY RAIL LINK LIMITED PERFORMANCE UPDATE TO 31 MARCH 2021

Purpose

The purpose of this briefing is to provide a performance update on the City Rail Link (CRL) project.

Key points

- The CRL project is due for completion in late 2024. s 9(2)(b)(ii), s 9(2)(ba)(i)
[Redacted text block]
- The anticipated final cost of the CRL project currently remains within the \$4.419 billion total funding allocated by Sponsors. s 9(2)(b)(ii), s 9(2)(j)
s 9(2)(b)(ii), s 9(2)(j), s 9(2)(f)(iv)
[Redacted text block]
- CRLL reports that more confidence on both cost and schedule will be established over time as significant milestones are progressed. In particular, it is expected that CRLL will be able to advise Sponsors with a high level of confidence both on the delivery schedule, and whether they are able to complete the project within the P50 budget of \$4.419 billion, in late 2022 when tunnel excavations are finished and station

construction is substantially completed. CRL will continue to provide updates on both expected final cost and timelines in the meantime.

- s 9(2)(g)(i), s 9(2)(ba)(i)
[REDACTED]
[REDACTED]
[REDACTED]
- As CRL completes certain contracts, it may transfer separable assets relating to enabling works for the CRL to the Sponsors (or their subsidiaries) as those assets are commissioned for use. An operating appropriation is sometimes required when Crown asset write-downs are incurred as a result of the Government decision. To date, the assets transfers by CRL have not incurred the need for this. The Office of the Auditor-General (OAG) has recently indicated that they may require some (or all) assets transferring in the 2020/21 year to be transferred via a redistribution of capital to Sponsors and transferred to the final owners (KiwiRail or Auckland Council). There is a risk that this accounting treatment could lead to an asset write-down for the Crown that could result in unappropriated expenditure for the 2020/21 year. OAG has not confirmed the accounting treatment yet, and Sponsors' officials continue to be in regular contact with OAG on this matter. Once officials receive confirmation of the preferred approach from OAG then we will provide advice to you regarding any financial implications arising and any requirement for a new appropriation for on-going interim asset transfers.

Recommendations

We recommend you:

1. **Note** the contents of this briefing

Hon Grant Robertson
Minister of Finance

..... / /

David Taylor

David Taylor
Manager, National Infrastructure Unit
The Treasury

22 / 07 / 2021

Hon Michael Wood
Minister of Transport

..... / /

Fleur D'Souza

Fleur D'Souza
Manager, Programme Assurance and
Commercial, Ministry of Transport

22 / 07 / 2021

COMMERCIAL IN CONFIDENCE

Minister's office to complete:

☐ Approved

☐ Declined

☐ Seen by Minister

☐ Not seen by Minister

☐ Overtaken by events

Comments:

Contacts

Name	Telephone	First contact
Sarah Allen, Principal Adviser, Programme Assurance and Commercial, Ministry of Transport	s 9(2)(a)	<input checked="" type="checkbox"/>
Fleur D'Souza, Manager, Programme Assurance and Commercial, Ministry of Transport	s 9(2)(a)	
David Taylor, Manager, National Infrastructure Unit, The Treasury	s 9(2)(a)	

RELEASED UNDER THE
OFFICIAL INFORMATION ACT 1982

CITY RAIL LINK LIMITED PERFORMANCE UPDATE TO 31 MARCH 2021

s 9(2)(b)(ii)

As at 31 March 2021, the anticipated final cost of the CRL project remains within the \$4.419 billion total funding allocated by Sponsors

- 1 The May 2019 budget of \$4.419 billion for the project is set at P50 (a forecast 50 percent chance that the budget could be exceeded). s 9(2)(b)(ii)

- 2 s 9(2)(b)(ii)

s 9(2)(b)(ii)

s 9(2)(b)(ii)

s 9(2)(b)(ii)

4 s 9(2)(b)(ii) [REDACTED]

[REDACTED]

6 Many of the smaller contracts have now been completed (or largely completed). See **Appendix Two** for an overview of the status of the various contracts.

s 9(2)(b)(ii) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

s 9(2)(b)(ii) s 9(2)(ba)(i) [REDACTED]

[REDACTED]

[REDACTED]

RELEASED UNDER THE
OFFICIAL INFORMATION ACT 1982

s 9(2)(b)(ii), s 9(2)(j)

[REDACTED]

[REDACTED]

[REDACTED]

s 9(2)(b)(ii), s 9(2)(j)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

RELEASED UNDER THE
OFFICIAL INFORMATION ACT 1982

- s 9(2)(b)(ii), s 9(2)(j) [Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

- [Redacted]
- [Redacted]

- [Redacted]

- [Redacted]

s 9(2)(b)(ii), s 9(2)(f)(iv) [Redacted]

- [Redacted]

RELEASED UNDER THE
OFFICIAL INFORMATION ACT 1982

25 We are expecting Eke Panuku Development Auckland (Eke Panuku) and Kāinga Ora to provide advice to Sponsors in November 2021 (OC210529 and T2021/1691 refers) on the land development programme. This advice will include precinct development plans, a business case with options analysis, and delivery structure options.

26 s 9(2)(b)(ii)

s 9(2)(b)(ii)

[REDACTED]

The impact of COVID-19 on the project schedule continues to be monitored

30 The consequences of COVID-19 are still evolving and there will continue to be uncertainty on the impact to the project budget and schedule for some time. CRL is continuing to monitor, assess, and attempting to mitigate (where possible) these potential impacts.

31 s 9(2)(b)(ii), s 9(2)(j)

CRL reports that more confidence on both cost and delivery schedule will be established over time as significant milestones are progressed, in particular when tunnel excavations are finished, and station construction is substantially completed in late 2022.

Other key risks outlined in the previous briefing remain (OC200831 refers)

32 In addition to the main project risks concerning budget and schedule above, other key risks associated with the CRL project outlined in the previous briefing remain including:

- the ongoing impact of COVID-19

- s 9(2)(b)(ii), s 9(2)(ba)(i)

- unexpected discovery of geographic constraints and unfavourable ground conditions
- unexpected discovery of utilities not on plans leading to diversion delays
- s 9(2)(g)(i) [REDACTED]
- wider network improvements (including level crossings, traction power, train fleet, and signalling) will be necessary to ensure the full benefits of the CRL project can be realised.

33 We continue to engage with CRL, as well as AT and KiwiRail, on the management of these risks

34 There is also a risk to the social license of the CRL project from the ongoing disruption from construction works and the impact to local businesses. We understand that Sponsors are currently considering advice provided by the Ministry (OC210445 refers) and whether additional assistance could be provided to affected businesses. In the meantime:

- CRL (and the Link Alliance) continue to provide an extensive range of existing support measures for businesses impacted by C3 works, with examples including support with marketing and promotion, priority procurement from affected businesses, and events
- CRL and its contractors have extensive plans in place to manage business disruptions through a number of initiatives and have applied learnings as the project has progressed. Targeted Development Response Plans are in place at each of the three project sites

s 9(2)(b)(ii) [REDACTED]

[REDACTED]

Health and safety outcomes continue to be closely monitored

37

s 9(2)(ba)(i)

■

■

■

The role of KiwiRail for the CRL project

41

The Minister of Transport asked that the role of KiwiRail on the CRL project be set out in this report in more detail. There are four key roles that KiwiRail play in the project:

- 'Be Involved' during the CRL project
- A contractor to CRL
- 'Operational readiness' for CRL Day One
- Readiness of the network for CRL Day One.

'Be Involved' - KiwiRail's costs for involvement in design, construction, testing and commissioning are reimbursed by CRL

42

KiwiRail has a key role to participate in the design and construction of the CRL assets to ensure that CRL delivers assets that will be fit for purpose and meet the standards required of the rail network, integrate into the Auckland metro rail network, and can be operated and maintained safely and effectively.

43

The costs of KiwiRail's involvement in CRL's process will be reimbursed by CRL. This is consistent with the intention of the PDA for the costs of delivering the project to be funded by CRL.

KiwiRail also has a role as a contractor to CRL for some of the smaller works packages

44

KiwiRail has successfully delivered the C8 Strand, C8 Otahuhu and C5 (Mount Eden Single Line Early Works (MESLEW) contracts s 9(2)(b)(ii) as a provider contracted to CRL.

45 s 9(2)(g)(i)

46 s 9(2)(b)(ii), s 9(2)(j)

'Operational readiness' - KiwiRail's costs for operational readiness are funded outside of CRL

47 KiwiRail must also prepare its business for owning and operating the CRL assets and systems once they are complete. This includes recruitment and training of additional personal and significant operational, safety, and maintenance planning.

48 These operational readiness costs fall outside the PDA funding arrangements and must be funded by KiwiRail directly. There is a funding agreement in place between the Ministry and KiwiRail for these operational readiness costs s 9(2)(b)(ii)

CRL Day 1 readiness of the wider network

49 Delivery partners will also be responsible for operating the CRL assets once completed and optimising its benefits within the wider Auckland network. The full benefits of the CRL project will be realised over the decades to come as the rail network continues to increase patronage towards CRL's maximum capacity. This will require wider network improvements by KiwiRail and AT (including, but not limited to, level crossings, traction power, the train fleet, signalling, and upgrades to Auckland's other heavy rail stations).

50 CRL and Sponsors have focussed additional attention on managing the delivery partner risks for day 1 operational readiness through the CRL Delivery Partner Steering Committee and the Operational Readiness Group, and through ongoing monitoring by TSA. Through the Auckland Transport Alignment Project (ATAP) 2021-31 investment package, we are ensuring that appropriate investment is included to ensure CRL Day One operation requirements are met.

Staged handover of early assets following completion of works

Most assets will not be transferred until the end of the CRL project, however some need to be transferred earlier

51 The value of the majority (~90 percent) of CRL's key assets will stay with CRL until the completion of the project. Therefore, they will remain as CRL capital work-in-progress until that time.

52 The PDA was amended in October 2019. One of the changes provided for through this amendment was the staged handover of assets following completion of works packages (separable portions) earlier in the project (~10 percent of assets), subject to the decision on ownership of the assets by Auckland Council and the Crown.

53 As CRL completes certain contracts, it may transfer separable assets relating to enabling works for the CRL to the Sponsors (or their subsidiaries) as those assets are commissioned for use. These transfers have needed to take place once they are finished for the benefit of the network or to ensure that they are maintained and operated by the appropriate entity. CRL has kept Sponsors' officials updated on

COMMERCIAL IN CONFIDENCE

assets to be transferred, and all assets are going to either Auckland Council (Healthy Waters), KiwiRail or AT.

During the 2018/19 and 2019/20 financial years, a separate Crown appropriation for asset transfers was not required

- 54 An operating appropriation is sometimes required when Crown asset write-downs are incurred as a result of a Government decision. To date, the assets transfers by CRLL have not incurred the need for this.
- 55 In 2018/19, the C8 Strand works were completed and transferred back to KiwiRail (as third party works). KiwiRail retained ownership of their assets at all times (as per their contractual agreement with CRLL). The C8 Strand works did not require an appropriation.
- 56 In the 2019/20 financial year CRLL transferred two completed utility assets to Auckland Council without compensation. Audit New Zealand accepted the accounting approach that saw the transfers treated as vested asset expenses for CRL, not requiring an appropriation.

Table 1: Asset transfer summary from 2018/19 and 2019/20

Contract	Owner	Value of assets
C2 SP2 - pipe jack	Healthy Waters	\$ 17,599,113
C6 - pipe jack/shafts	Healthy Waters	\$ 21,835,917
C8 Strand	KiwiRail	\$ 6,093,339
	Asset Total	\$ 45,528,369

A different approach may be required for the 2020/21 financial year or in the 2021/22 financial year

- 57 For CRLL's transfer of other types of assets in the 2020/21 and 2021/22 financial years, there are ongoing considerations being given to the need for an operating appropriation. The assets and their current value estimates from CRLL are set out in Table 2 below.

s 9(2)(b)(ii), s 9(2)(g)(i)

[illegible]

- 58 The Office of the Auditor-General (OAG) has recently indicated that they may require some (or all) assets transferring at this early stage to be transferred via a redistribution of capital to Sponsors and transferred to the final owners (KiwiRail or

Auckland Council), but this has not yet been confirmed. There is a risk that this accounting treatment could lead to an asset write-down for the Crown that could result in unappropriated expenditure for the 2020/21 year. OAG has not confirmed the accounting treatment yet, and Sponsors' officials continue to be in regular contact with OAG on this matter. Once officials receive confirmation of the preferred approach from OAG then we will provide advice to you regarding any financial implications arising and any requirement for a new appropriation for on-going interim asset transfers.

Due to the current lack of clarity on the accounting treatment, there is a delay to Sponsors notifying CRLL on ownership and ongoing arrangement for assets as intended in the Project Delivery Agreement

59 There is currently insufficient clarity on which assets should be capitalised or expensed, or what financial year these asset transfers should be included in. Ideally, Sponsors would have notified CRLL by now through a Post Completion Notice (as intended through the PDA) of the ownership and ongoing operational arrangements that are to apply in respect of the completed CRL assets. We are not able to advise you on the financial implications of notifying CRLL at this point and are awaiting an update from OAG on this matter.

60 s 9(2)(g)(i)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Operational risks are being managed by the appropriate entities

61 CRLL was not established or funded to maintain or operate assets. As such, we are using an agile approach to these transfers and working with all parties to ensure operational risks (maintenance, insurance, liability, etc) are being managed by the appropriate entities.

62 There is no disagreement across the Ministry, the Treasury, Auckland Council, AT or KiwiRail as to who the assets should be handed over/back to based on where those assets are best operated and owned within the transport operating model in Auckland.

63 We also acknowledge that these early assets could not realistically be handed to any entity except to the expected recipients of Auckland Council (Healthy Waters), KiwiRail and AT, as:

- KiwiRail retained ownership of their assets at all times (as per their contractual agreement with CRLL)
- the stormwater pipe works/diversions could not be transferred back to anyone except Auckland Council/Healthy Waters
- AT's role as the transport operator means that they have already been operating services at Britomart station following the re-opening of the Chief Post Office Building in April 2021.

Upcoming briefings

The reappointments of the CRL Board members and the addition of a sixth board member with rail systems and integration, and stakeholder engagement experience

- 64 The CRL Board evaluation has concluded that the CRL Board is a well-rounded and cohesive unit, with largely the right composition of governance capability. It has recommended that the current Board members are retained through to the end of the project, and highlighted the need for an additional board member with strong rail systems and integration experience, and possibly stakeholder engagement experience. Both the CRL Board, and shareholding agencies (the Ministry, Treasury and Auckland Council) are comfortable with the recommendations, and Shareholders agreed to increase the CRL Board membership on the basis of these findings (OC210257 refers).
- 65 The CRL Constitution has now been amended to accommodate an additional sixth board member and to allow for current board members to remain in office for an extended period of time before appointment decisions are taken. We will consult with Auckland Council and the Treasury and then provide further advice to you on the terms of the reappointments of the current four board members, and the proposed appointment process for the additional board member. This will include a position description that reflects the findings of the evaluation and the shareholding agencies recommendations.

OAG draft performance audit report on the governance of the CRL project

- 66 OAG has recently sought additional briefings that have been provided to you since the initial provision of all documents for the audit in 2020. We have provided the additional briefings to OAG this week.
- 67 OAG had advised that they have nearly completed the draft report. We expect to receive it in late August/September 2021. Officials will liaise with your offices to keep them updated on timeframes and seek your input once the draft report has been received.

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

s 9(2)(b)(ii), s 9(2)(j)

s 9(2)(b)(ii), s 9(2)(j)

RELEASED UNDER THE
OFFICIAL INFORMATION ACT 1982

Appendix 2: CRL Packages of Works – status updates as at 31 March 2021

	Scheduled Completion				Comments
	s 9(2)(b)(ii)	Annual Report 2018	Annual Report 2019	Annual Report 2020	
C1: Lower Queen Street (Britomart / Chief Post Office)	s 9(2)(b)(ii)	Aug-2020	Aug-2021	Nov-2021	Expected to be completed in September 2021.
Downtown Shopping Centre:	s 9(2)(b)(ii)	Nov-2018	Apr-2019	Complete	Completed.
C2: Lower Albert Street	s 9(2)(b)(ii)	Dec-2020	Dec-2020	Dec-2020	Completed.
C3: Stations and tunnels	s 9(2)(b)(ii)	Mar-2024	Oct-2024	Dec-2024	s 9(2)(b)(ii), s 9(2)(ba)(i) [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted]
C5: Western Line	s 9(2)(b)(ii)	Jan-2024			
C7: Tunnel Trackwork and Railway Systems	s 9(2)(b)(ii)	Mar-2024			
C6: Mt Eden Stormwater Diversion	s 9(2)(b)(ii)	Feb-2020	Aug-2019	Aug-2019	Completed.
C8: Wider network improvements: • The Strand • Ōtāhuhu • Henderson • Newmarket	s 9(2)(b)(ii)		Strand: Complete Ōtāhuhu: Sep-2020	Strand: Complete Ōtāhuhu: Sep-2020 Newmarket design finalised: December 2020	C8 (Strand) completed. C8 (Ōtāhuhu) completed. s 9(2)(f)(iv) [Redacted] It is expected that Newmarket works will be completed by KiwiRail, who are undertaking a detailed cost breakdown and procurement of key components.
C9: Britomart East connection	s 9(2)(b)(ii)	None outlined	None outlined	Detailed design phase 1 finalised: October 2020	s 9(2)(b)(ii), s 9(2)(j) [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted]

Sources: CRL Annual Reports; CRL Monthly Reports to Sponsors