

Proactive Release

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Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

Listed below are the most commonly used grounds from the OIA.

<u>Section</u>	<u>Description of ground</u>
6(a)	as release would be likely to prejudice the security or defence of New Zealand or the international relations of the New Zealand Government
6(b)	as release would be likely to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by <ul style="list-style-type: none"> (i) the Government of any other country or any agency of such a Government; or (ii) any international organisation
6(c)	prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial
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
9(2)(ba)(ii)	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 otherwise to damage the public interest
9(2)(f)(ii)	to maintain the constitutional conventions for the time being which protect collective and individual ministerial responsibility
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)(h)	to maintain legal professional privilege
9(2)(i)	to enable a Minister of the Crown or any public service agency or organisation holding the information to carry out, without prejudice or disadvantage, commercial activities
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)



23 April 2021

OC210085

Hon Michael Wood
Minister of Transport

ADVICE ON OPTIONS FOR A CITY RAIL LINK BUSINESS HARDSHIP SCHEME FOR C3 CONTRACT WORKS

Purpose

To provide you with a high-level assessment of potential options for an additional City Rail Link (CRL) business hardship scheme to address disruption from the C3 (stations and tunnels) works.

Key points

- In January 2021, you received a proposal from Viv Beck, Chief Executive of Heart of the City (HOTC), for a new hardship scheme of up to \$50 million that would assist businesses affected by disruption associated with the CRL C3 (stations and tunnels) works. You requested that the Ministry of Transport (the Ministry) investigate options for further consideration.
- Officials have evaluated a number of options for financial support in a new business hardship programme, ranging from universal payments, to loans and relocation (see **Appendix One**). Based on this evaluation, officials have identified two options you may wish to consider further: one is a version of the earlier C2 hardship scheme modified for C3 i.e. focussed on *delays*, the other is a targeted hardship fund focussed on *disruption* using similar eligibility criteria as the C2 scheme, based on a valuation of rental loss.
- The option of a programme focussed on *delays* for C3 has the advantage that it limits precedent risk (but this still exists), financial cost and complexity, and builds off the experience from the C2 scheme. Conversely, it cannot pay out until delays are confirmed and if the C3 works are completed on time businesses would not receive payments. s 9(2)(f)(iv), s 9(2)(j)
- A programme focussed on *disruption* would be more likely to pay out and do so during the construction, which businesses most impacted by C3 works would be likely to value. However, a programme focussed on disruption carries a greater precedent risk because it has not been tried in New Zealand before, and disruption is more subjective and potentially recurrent than a delay. It is also more likely that there could be wider impacts from the precedent impacting other Government, council and private sector infrastructure development. s 9(2)(f)(iv), s 9(2)(j)

s 9(2)(f)(iv), s 9(2)(j)

- A number of other risks would need to be mitigated. Not all reduced revenues that business may experience will relate to C3 works. COVID-19 has impacted small businesses throughout the CBD with reduced numbers of both workers and tourists. Some businesses are likely to have signed or renewed leases in full knowledge of the works. The complexity of operating a scheme means administration costs could exceed the payments in some cases.
- The Ministry has consulted with Auckland Council and the Treasury. s 9(2)(ba)(i)
[REDACTED]
[REDACTED]
- The process to take any option further will require that you consult with the Minister of Finance and the Mayor of Auckland (given that Auckland Council needs to agree with the approach, as co-Sponsor of the project and co-shareholder in CRLL). From there, if you wish to proceed with a preferred option after consultation, the Ministry will undertake further work including wider cross agency consultation, and prepare a paper for you to take to Cabinet. CRLL has indicated they cannot fund a hardship scheme, so additional funding would need to be sought from Cabinet.
- Please note that most of the content in this briefing is subject to legal privilege.

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TE MANATŪ WAKA MINISTRY OF TREATY REPORT

Recommendations

We recommend that you:

- | | | |
|---|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| 1 | refer this briefing to Hon Grant Robertson, Minister of Finance | Yes / No |
| 2 | note that you need to consult with the Mayor of Auckland, as co-Sponsor of the CRL project, and co-shareholder in CRLL, to agree a preferred approach for the Ministry and/or CRLL to take forward | Yes / No |
| 3 | note that if you wish to proceed with a preferred option after consultation, the Ministry will undertake further work including wider cross agency consultation, and prepare a paper for you to take to Cabinet seeking approval and additional funding. | Yes / No |



Robert Anderson
Manager, Governance
Ministry of Transport
 22 / 4 / 2021

Hon Michael Wood
Minister of Transport
 / /

Minister's office to complete:

<input type="checkbox"/> Approved	<input type="checkbox"/> Declined
<input checked="" type="checkbox"/> Seen by Minister	<input type="checkbox"/> Not seen by Minister
<input type="checkbox"/> Overtaken by events	

Comments

Contacts

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Robert Anderson, Manager, Governance, Ministry of Transport		

ADVICE ON OPTIONS FOR A CITY RAIL LINK BUSINESS HARDSHIP SCHEME FOR C3 CONTRACT WORKS

Establishment of the CRL Business Hardship Programme in December 2019

The Business Hardship Programme (BHP) for C2 contract works was carefully targeted

- 1 Following Cabinet approval in December 2019 (CAB-19-MIN-0646 refers), CRLL developed a pilot Business Hardship Programme (BHP) for the C2 contract works. The purpose of the scheme was to provide rental relief for businesses along Albert Street (between Customs and Victoria Streets) that had experienced financial hardship as a result of delays to the completion of City Rail Link's C2 works beyond what had been communicated to businesses. It was clear that there was some significant hardship being felt by the smaller more vulnerable businesses. Businesses elsewhere within City Rail Link (CRL) boundaries have not been affected by construction delay – and were not deemed eligible to apply for relief through the scheme.
- 2 Sponsors made clear to CRLL the expectations for the scheme, including that: the fund targets those suffering real hardship, and with limited ability to insulate themselves from extended delay; it does not create undue financial risk, either for this project, or subsequent urban construction projects; and it is fair and reasonable.
- 3 Financial assistance for the C2 BHP was provided on an ex-gratia, or goodwill basis. The C2 BHP was based on the 'Small Business Rent Assistance Policy-Pilot Scheme' developed and implemented by Rail Projects Victoria on the Melbourne "Metro Tunnel Project". The objective of C2 BHP was to provide financial assistance to small retail business owners - at street level - who are lease-holders of premises in the Albert Street Impact Zone (between Victoria and Customs Streets intersections) and whose number of casual foot traffic customers may have been reduced due to the impact of construction delays. The C2 BHP was not available for property owners or owner/occupiers, or other non-retail tenants.
- 4 The amount of financial assistance was determined by an independent valuer who assessed what the applicant was paying in excess of market rent rates under the circumstances during the period of the delay. The amount of financial assistance was capped at \$100,000 per applicant, and the financial assistance offered did not have any impact on business' ability to attempt to make a legal claim under the Public Works Act 1981 or common law.
- 5 To qualify for assistance, retail businesses needed to meet at least the following eligibility criteria and be able to provide supporting documentation:
 - occupies and holds a lease for premises located within the Albert Street Impact Zone
 - employs fewer than 20 full-time equivalent employees at the leased premises
 - owned by the same entity/person since 1 September 2019 (the communicated completion date for C2 works)
 - operating at this location since 1 September 2019

- a valid and existing lease for the leased premises entered into prior to 1 September 2019
- must have been financially viable as at 1 September 2019
- has been and still was operating, at the leased premises, with all required statutory and regulatory approvals under the relevant laws, including planning, licensing and building approvals.

Nearly \$600,000 in payments were made to businesses under the C2 BHP

- 6 Cabinet agreed that should the risk eventuate that the costs of the C2 hardship scheme exceed expectations of \$1-2 million and City Rail Link Ltd need to seek additional funding, the Minister of Transport would report back to Cabinet.
- 7 CRLL received 49 applications to the scheme and paid out \$590,079 in assistance. All applications were assessed against the same criteria s 9(2)(b)(ii)
- The C2 BHP closed following the completion of the C2 works in October 2020.

A proposal for a C3 hardship scheme was received from Viv Beck, CEO Heart of the City

- 8 The C3 contract works are spread across three sites – Aotea, Karangahape and Mount Eden stations. The level of disruption has been, and will, vary significantly, until the completion of the works at the end of 2024. No business will be affected for the full duration but the majority will be affected for several years. Smaller, more vulnerable businesses in this area are experiencing significant hardship as a result of the ongoing impacts from COVID-19 and from changing shopping patterns, and the disruption from the C3 works is an additional pressure for these businesses.
- 9 You received a proposal from Heart of the City (HOTC) on 27 January 2021 seeking establishment of an up to \$50 million Business Hardship Fund. This would provide payments to businesses affected by disruption from C3 contract works, at a percentage of current rents that would vary based on individual circumstances, as determined by an independent panel (cf. evaluation of rental loss for the C2 BHP). This would be effective from 1 January 2020 through until the end of the \$4.4 billion City Rail Link construction.
- 10 HOTC's proposal also sought to expand the eligibility criteria to include a much wider group of business types, not just small retailers, as per C2 BHP. Significantly, the proposal requested compensation for disruption faced by affected businesses as a result of the C3 works package, as opposed to financial support for potential delays in the completion of the C3 works package beyond its communicated completion date.
- 11 This is an important shift in focus and establishes a much greater precedent risk for future projects, i.e. there would be a precedent risk for all future infrastructure projects that disrupt businesses, and not just projects that are subject to delays. Disruption is inherently more subjective than delays, and can occur at any time.
- 12 CRLL has advised that they cannot accommodate an additional amount of \$50 million within the current funding envelope. Additional funding from the Crown and/or Auckland Council as Sponsors of the CRL project would therefore be required in

respect of any additional hardship scheme for the C3 works package at the scale of the HOTC proposal.

Options for a new business hardship scheme

- 13 You have requested that officials consider HOTC's proposal and develop workable options for a business hardship scheme. The Ministry has considered a range of options, including those tried in some other countries (Australia and the UK). Due to the time available, this work cannot be considered exhaustive, and further investigation, analysis and consultation would be required before any selected option could be implemented.
- 14 Research and engagement has indicated that schemes addressing compensation for the effects of public projects, including loss of business (e.g. a motorway that bypasses a high street), delays or disruption, are the exception internationally. The focus is on compensation for property acquisitions (as is already in place through the Public Works Act 1981). Accordingly, most of the options we have considered represent concepts, not proven models.
- 15 A summary of the benefits and challenges entailed for each option is provided in **Appendix One**. These include the HOTC proposal and options for Universal Payments, Loans and Supported Relocation, among others. Based on this initial assessment in the time available, officials have not identified an option/s that we can recommend to you for implementation at this point without further work and consultation. However, of the options identified, there are two that you may wish to consider further. These two options are: a version of the C2 scheme modified for C3 (Targeted Hardship Fund for Delays), or a Targeted Hardship Fund for Disruption.

Approximate costs for a Targeted Hardship Fund for Delays

- 16 It is very difficult to estimate the costs of new schemes given the number of unknowns, unless basing costs on parameters we can fix i.e. a capped budget and capped payment level. Even then, the number of applicants, their existing rent levels, and whether all would meet the eligibility criteria, is uncertain.
- 17 Drawing on existing experience, as a fund focussed on delays, the C2 BHP paid out about \$600,000 to 24 of the businesses that were eligible based on a rental loss valuation, for an average of \$25,000 each. This leaves \$1.4 million within the Cabinet approved funding that could be used for a C3 scheme.

- 18 s 9(2)(f)(iv), s 9(2)(j), s 9(2)(g)(i)

- 19 These numbers imply the \$1.4 million remaining from the C2 BHP budget could not meet the costs of a delay-based scheme for C3.

Clarification: The C2 Business Hardship Programme (BHP) was funded from contingency within the CRL budget, up to a maximum level of \$2 million (as approved by Cabinet). This level was set in the absence of knowing how much would be needed for the BHP initially, as this was difficult to estimate. There was no specific allocation in the CRL budget of \$2 million for the BHP and so the \$1.4 million figure does not represent an underspend that could be reallocated to fund the C3 Targeted Hardship Fund. CRL distributed payments to all eligible businesses as per the Sponsors' guidelines for the BHP.

Clarification: The C2 Business Hardship Programme (BHP) was funded from contingency within the CRL budget, up to a maximum level of \$2 million (as approved by Cabinet). This level was set in the absence of knowing how much would be needed for the BHP initially, as this was difficult to estimate. There was no specific allocation in the CRL budget of \$2 million for the BHP and so the \$1.4 million figure does not represent an underspend that could be reallocated to fund the C3 Targeted Hardship Fund. CRL distributed payments to all eligible businesses as per the Sponsors' guidelines for the BHP.

Approximate costs for a Targeted Hardship Fund for Disruption

20 For a fund focussed on disruption, the \$1.4 million budget that was tagged to delays cannot be repurposed, unless Cabinet agrees that this is a permitted use of that funding. As disruption would take place over at a minimum of five years (2020-2024), officials expect that the costs of disruption would be significantly higher than for delays.

21 s 9(2)(f)(iv), s 9(2)(j)

Complexity means administration costs could be high relative to some individual payments

22 With the number of expected applicants, it is unlikely that CRL could undertake the administration of the scheme from existing resourcing. s 9(2)(g)(i)

23 s 9(2)(f)(iv), s 9(2)(g)(i), s 9(2)(j)

24

An increase in Crown funding would be required

25 CRL is jointly sponsored and funded by the Crown and Auckland Council (50:50). Ideally, funding for this proposed hardship scheme should be 50:50 as well s 9(2)(ba)(i), s 9(2)(g)(i)
s 9(2)(ba)(i), s 9(2)(g)(i)

26 Cabinet's approval of the C2 hardship scheme was specific to delays for works on Albert Street (CAB-19-MIN-0646 refers), and did not consider a scheme for potential delays at other CRL work sites, or for general disruption. If the C3 Targeted Hardship Fund for Delays option were to be supported by both the Crown and Auckland

¹ s 9(2)(f)(iv), s 9(2)(j)

This is a cautious approach based on a range of unknowns – including lease costs, lease lengths, and unknown factors across the three different locations.

s 9(2)(b)(ii)

Council, the \$1.4 million residual budget from the C2 BHP may be able to be utilised but this would require further Cabinet approval and additional funding.

- 27 For a C3 Targeted Hardship Fund for Disruption option, Cabinet approval would also need to be sought. The Crown appropriation would need to be increased to provide additional funding, and amendments to the Sponsors' Agreement and the Project Alliance Agreement (between CRLL and Link Alliance) may be required to accommodate that approach.

Precedent risks and mitigation

Significant precedent risks arise from any scheme

- 28 A C3 hardship fund for disruption faced by businesses as a result of the C3 works is an important shift in focus and establishes a much greater precedent risk for future projects. s 9(2)(f)(iv), s 9(2)(h)

- 29 s 9(2)(g)(i), s 9(2)(f)(iv), s 9(2)(i)

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31

- 32 In addition to the existing C2 BHP eligibility criteria (which combines to mitigate precedent risk), further criteria will also need to be developed for a C3 hardship scheme. For example, criteria to mitigate the potential for a number of businesses whose location overlaps across the C2 and C3 works to ensure they do not receive financial assistance under both schemes for the same time period.

s 9(2)(h)

Other kinds of risks and mitigations

Not all losses businesses claim will relate to C3 works

- 34 There are risks that a hardship scheme will attract claims for losses that do not directly arise from the C3 works. For example, other equivalent businesses outside the construction zone are suffering from a lack of customers due to:
- COVID-19 impacts including:
 - remote working
 - the cessation of cruise ship visits and wider international tourism, and
 - vastly reduced international student numbers and increased remote learning by AUT and Auckland University students who are normally required to attend campuses in the city.
 - Changing retail shopping patterns including competition from new shopping complexes (e.g. Commercial Bay, Britomart) and on-line shopping are also very significant.
- 35 There are a large number of empty premises in the city outside of the C3 zone, demonstrating wider challenges businesses face beyond the impact of C3 disruption.
- 36 CRLL has noted to us that businesses appear to still be struggling well after C2 works finished in Lower Albert St in October 2020, despite the street being returned in a greatly enhanced condition.

Businesses have continued to lease in C3 zones

- 37 The C3 works have been consented since 2016³, and given average lease terms, a number of businesses are likely to have signed or renewed leases in full knowledge of the extent of the coming works. This suggests acceptance of the trade offs between the disruption and long term benefits⁴, and that their market leases should already reflect the impact of C3 works.
- 38 A hardship scheme should not compensate business who have made such lease decisions, particularly if their actions reveal a preference for remaining in the area long term to benefit from the gains of C3 works.

³ The CRL works were first signalled in August 2012 when Auckland Transport lodged six Notice of Requirements with Auckland Council to designate land for the construction, operation and maintenance of the CRL including the protection of subterranean works. Public submissions were heard by independent commissioners in 2014, appeals were lodged, and the six designations were confirmed in November 2015.

⁴ s 9(2)(h)


Existing processes and support are in place to mitigate disruption

- 39 From consultation and research, it appears that the current CRL mitigation arrangements follow good practices, including:
- contractors doing all they can to manage the project with regard to minimising the impact on local/neighbouring occupiers, be it businesses or residences (e.g. minimising impact from noise and construction parking, and minimising impact to street access, traffic movements, etc).
 - a well managed community liaison and business support programme to ensure ongoing dialogue with the impacted parties, to bridge any “knowledge gap” so that there is a common understanding of what is actually happening, and to assist with delivering the right solutions for the certain problems experienced by each business
 - contractors providing a pathway to receive complaints, and a process to take genuine actions, where practical, to address them, and escalation to CRLL if not resolved.
- 40 Currently the complaints process for the CRL project ends when CRLL advise businesses if they are unable to assist further (particularly with regards to hardship). Businesses are then able to take their complaint to Auckland Council, their MP, and/or the Government as part of their own escalation.
- 41 CRLL 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.
- 42 A list summarising the non-financial support in place for businesses is attached in **Appendix Two**. Examples include support with marketing and promotion, priority procurement from affected businesses and events. CRLL advise that they receive positive unsolicited feedback on the work they are doing in this area.
- 43 The 2021/22 Letter of Expectations sent to CRLL already emphasises the importance of CRLL and the Link Alliance continuing to work constructively with local businesses, residents and stakeholders to learn lessons from the issues at Albert Street, and proactively ensuring that disruption is minimised, wherever possible.

Future approaches at the planning and contracting stage could de-risk disruption

- 44 It may be that the approach used for CRL (as the project is already underway), is different to the approach to be used for future projects where disruption management and financial support is considered and factored in during the business case and funding for any new project. Looking forward, minimisation of disruption could also be incentivised at the beginning of future projects through enhanced contractual arrangements.

45 s 9(2)(f)(iv), s 9(2)(i)



s 9(2)(f)(iv), s 9(2)(j)

Social license considerations

Social license could be enhanced but there are some risks as well

- 46 In principle, a C3 hardship scheme could assist in maintaining or increasing the social license for the CRL project and future urban transport infrastructure projects. However, the experience from the C2 BHP indicates that the robustness of the eligibility criteria and application process entailed with managing a scheme appropriately can also create dissatisfaction.
- 47 Equally, there is the risk that firms outside of C3 locations perceive that the compensation is unfair - particularly if the drivers for losses are not clearly limited to those caused by C3 works (rather than other reasons such as COVID-19 impacting business in the city more widely).

The Economic Development, Science and Innovation Select Committee has recommended the Government consider compensation schemes

- 48 HOTC's proposal mentioned the Government's response to the Economic Development, Science and Innovation Committee's March 2020 report. That report recommended that the Government consider how the Albert Street businesses can be fairly supported or compensated, which may require increasing the overall funding for the CRL project. The establishment of a hardship scheme to compensate businesses affected by the C3 works would help to address this recommendation.

49 s 9(2)(g)(i)

- 50 Officials do not consider that the Committee's recommendation unduly binds you on any action or inaction in relation to implementing a hardship scheme. Further discussion of this is provided in **Appendix Four**.


Consultation

Consultation has been limited in the time available

- 51 In the time available it has only been feasible to consult briefly with the Treasury, Auckland Council and CRL. There are risks that key insights have not yet been uncovered either from these parties, or from others we have not yet consulted.

s 9(2)(g)(i), s 9(2)(ba)(i)

s 9(2)(ba)(i), s 9(2)(g)(i)



Next steps for C3 hardship fund options

- 57 The next step as you consider options further is to consult with the Minister of Finance. We recommend that you provide a copy of this briefing to the Minister of Finance.
- 58 As co-Sponsor of the CRL project, and co-shareholder in CRLL, Auckland Council also needs to agree to your preferred approach, which would require you to discuss this matter further with the Mayor of Auckland.
- 59 Following agreement of an option with the Minister of Finance and Mayor of Auckland, if you wish to proceed with a preferred option the Ministry will undertake further work including wider cross agency consultation, and prepare a paper for you to take to Cabinet seeking approval and additional funding.

Appendix One: Summary of Options Considered

The following table is heavily based on legal advice sought in the preparation of this briefing and is legally privileged.

Option	Title	Description	Recommendation
1	Heart of City C3 Proposal	Rental relief based on a to-be-determined percentage of actual rent paid that would vary based on individual circumstances, as determined by an independent panel. An expansion of the C2 BHP criteria (small retailers) to include most types of businesses in C3 (including accommodation providers, larger retailers with more than 20 FTEs, and owner occupier-businesses) and scope based on disruption (rather than delays), with a budget of up to \$50m over 5 years. This cannot be accommodated within existing CRL budgets and will require Crown funding. It would create a strong precedent with potentially far reaching impacts on public and private development. s 9(2)(g)(i)	Not recommended
2	Universal Payments	A universal (non-discriminatory) ex-gratia payment to affected parties. Such a scheme would almost certainly risk being either prohibitively expensive (i.e. if a high level of universal payments was provided), or alternatively, be perceived as having limited impact and value (i.e. if an affordable level of universal payments was provided). In either case, it would be perceived as unfair, as some deserving cases would be under-compensated while those benefiting from the presence of CRL project activity (e.g. certain lunch bars) would receive a further financial benefit. Apart from simplicity, this option has little to recommend it and would create considerable precedence risk.	Not recommended
3	Negotiated Settlements	Ex gratia payments negotiated with the most affected businesses on an individual and confidential basis up to a capped amount. s 9(2)(g)(i), s 9(2)(h) Negotiations would be complex and resource intensive. Precedence risk would remain.	Not recommended

4	Loans	<p>Loans to affected businesses. Although it still sets a precedent, it is effectively for cashflow support rather than compensation per se. Unlike a compensation scheme, surviving businesses after the project completion effectively share the upside of the development by paying back the loans. However, this could be complex to administer, be criticised for not being compensation payments per se or consistent with supporting 'hardship', and contain future fiscal and reputational risks s 9(2)(g)(i)</p> <p>s 9(2)(g)(i)</p>	Not recommended
5	Take Over of Leases	<p>CRLI could take over leases of the most affected businesses and hand them back at the end of the project. s 9(2)(g)(i), s 9(2)(f)(iv)</p> <p>s 9(2)(g)(i)</p>	Not recommended
6	Targeted Hardship Fund for Delays	<p>An extension of the C2 programme with the same eligibility criteria. Delays for C3 would only occur after December 2024, as that is the date that the works are scheduled for completion. This has the benefit of limiting further creation of precedent, and meaning operational/administrative experience from the C2 programme could be reapplied efficiently and effectively. The C3 contract is not currently forecast to run late, which if that held, would mean businesses will not receive any pay out. s 9(2)(ba)(i)</p> <p>s 9(2)(ba)(i)</p>	Consider
7	Targeted Hardship Fund for Disruption	<p>Essentially an expansion of the C2 scheme to encompass disruption employing rental loss valuation. There are a number of issues to resolve around such a fund (e.g. caps, criteria for assistance, whether managed independently, funding source etc.). s 9(2)(g)(i)</p> <p>s 9(2)(g)(i)</p> <p>As no business is expected to be affected for the full duration of the C3 works, a targeted approach could ensure that compensation is made available to businesses proportionate to the disruption they individually experience. The complexity of administration would depend on the settings of the fund (including eligibility criteria and the level of a cap). s 9(2)(g)(i)</p> <p>s 9(2)(g)(i)</p>	Consider

8	Supported Relocation	<p>Temporary relocation assistance is already available at a lower level under the status quo e.g. setting up a temporary coffee kiosk. A solution that helped the most impacted businesses exit the area altogether and re-establish somewhere else could be attractive to a small number and materially address their situation in a way other options could not. However it would be very expensive in the cases it applied to, involving buying out of leases and sub-leasing, with inherent complexity negotiating and resourcing. Potentially other support could be required (e.g. with fit-out costs). Some businesses would not accept relocation as a solution, and the level of effective financial assistance could seem inequitable to lessor affected businesses, so this option would likely require that some other options also be implemented. Sites that could not be subleased could create further fiscal costs and problems in the area (e.g. reducing foot traffic, sense of decline) for businesses remaining, and new tenants could demand compensation for signing leases. More generally, as a solution focussed on exiting businesses from the area, it could send mixed messages s 9(2)(g)(i)</p>	Not recommended
9	Lease Buy-Out	<p>Effectively a variant of option 8, for the most affected businesses that wished to exit, but which averts complexity involved with assisting businesses into new premises. Otherwise contains all the same downsides. Sites that could not be subleased could create further fiscal costs and problems in the area (e.g. reducing foot traffic, sense of decline) for businesses remaining, and new tenants could demand compensation for signing leases. More generally, as a solution focussed on exiting businesses from the area, it could send mixed messages s 9(2)(g)(i)</p>	Not recommended

Appendix Two: CRL summary of non-financial support in place for businesses

An extensive (but not exhaustive) range of existing support measures in place for businesses impacted by C3 works are listed below:

- Marketing and promotion of local businesses through Link Alliance channels. This includes internal communication channels and the production of marketing collateral for use across fences and hoardings.
- Procurement of local suppliers, where possible. Examples include printers, cafes and venue spaces.
- Advanced planning underway for a Small Business Support Package to launch ahead of the Victoria Street and Albert Street intersection closure. This will provide financial support towards bespoke, specialist business training and advice to local businesses. This package builds on the “BusinessPac” that had previously been offered to businesses, including Business Mentors NZ membership and social media training.
- Promoting regional grants and Heart of the City Covid-19 business support opportunities through Link Alliance channels, including face-to-face engagement and monthly newsletter subscribers.
- Provide nearby loading zone access to local businesses.
- Initiating in-scope opportunities for business pop-up locations, where appropriate.
- Facilitated outdoor dining agreement with Auckland Council for affected businesses.
- An extensive programme of events and activities is planned for the duration of the project, with opportunities for local businesses to collaborate with Link Alliance
- Lighting activations, Artweek tours and other arts events
- Regular Crime Prevention Through Environmental Design (CPTED) audits undertaken to ensure safety of site setup for businesses and people
- Delivery of a site-wide hoarding strategy which prioritises line of sight, business visibility, safety and improving public amenity.
- Partnership with Auckland Council to ensure illegal dumping on streets is minimised and managed effectively. This includes a 24-hour turnaround for removing waste from the area.
- Dedicated internal resource to manage graffiti removal from nearby private and public spaces, with a 48-hour policy in place for all removal.
- Daily noise and vibration monitoring across the site to ensure compliance with designation conditions.
- Annual training and specialist accessibility advice provided to ensure operational staff maintain all public spaces.
- Building and window washing, installation of temporary public street bins, relocation of public toilets, and additional street cleaning.
- A considered approach to signage and wayfinding, using the recognised Auckland Transport magenta guidelines, with all ground level businesses included.

Appendix Three: s 9(2)(h)

s 9(2)(h)

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5 s 9(2)(h)

Appendix Four: Recommendations from the Economic Development, Science and Innovation Committee in March 2020

The HOTC C3 Proposal refers to the recommendations in the report issued by the Economic Development, Science and Innovation Committee (the Committee) in March 2020. This report was issued following a petition submitted to Parliament by Viv Beck (Heart of the City) on 12 November 2019. The HOTC C3 Proposal follows on from the contents of this petition and notes that the Committee's recommendations have not yet adopted by the Government (or Auckland Council).

In its report, the Committee:

- noted that as larger infrastructure projects are delivered in urban areas, the petition demonstrated the need to design a comprehensive framework well in advance of commencement of works that takes into account the adverse effects on local businesses where significant public infrastructure projects occur;
- recommended that the Government moves swiftly to consider and develop policies that will assist businesses where there is long-term business disruption;
- recommended that the Government consider how the Albert Street businesses can be fairly supported or compensated which may require increasing the overall funding for the project; and
- in light of the current situation with COVID-19, encouraged the Government to consider this in future infrastructure projects.

The sole formal recommendation in the report is for the Government "to note the report". The recommendations around the Government moving swiftly to consider and develop policies that will assist businesses where there is long-term business disruption are parked for "future infrastructure projects". The timing for the Committee recommendation that the Government "consider how the Albert Street businesses can be fairly supported or compensated which may require increasing the overall funding for the project" still requires further consideration.



Ministry of Transport

TE MANATŪ WAKA

4 June 2021

OC210445

Hon Michael Wood
Minister of Transport

ADVICE ON ESTABLISHMENT OF A CITY RAIL LINK BUSINESS HARDSHIP SCHEME FOR C3 CONTRACT WORKS

Purpose

To provide you with advice on the establishment of a City Rail Link (CRL) business hardship scheme to address disruption from the C3 (stations and tunnels) works.

Key points

- On 23 April 2021, the Ministry of Transport (the Ministry) provided you with advice on nine potential options for an additional City Rail Link (CRL) business hardship scheme to address disruption from the C3 works (OC210085 refers). In your feedback of 25 April 2021, you asked the Ministry to undertake further development of an option for a targeted hardship fund for disruption.
- The Ministry has considered how the previous pilot C2 Business Hardship Programme (C2 BHP) operated in practice and how to minimise the expansion of precedent that it created. The core eligibility criteria and assessment approach from the C2 BHP can be employed and adapted to form the basis of eligibility for a C3 scheme focussed on disruption that is efficient and fair.
- The key criteria are that hardship funding is generally only available for small (<20 FTEs) businesses in the C3 construction zone that were commercially viable before C3 works began and that remain in the same ownership. Funding is not available to landlords, who benefit from the value-uplift once works are completed.
- Other design conclusions include that rent relief should continue to be the basis of support, as per the C2 BHP, there should be discretion to apply a minimum disruption period, payments should be made on an *ex gratia* basis, and CRLL should administer the scheme and receive funding to do so. The increased scale compared to the C2 BHP means that the C3 scheme cannot be met from CRLL's budget.
- s 9(2)(f)(iv), s 9(2)(j)
This is based on the expected number of businesses who would be impacted and eligible, lessons from the C2 BHP and differences with the C3 scheme (in particular that the C3 scheme relates to disruption rather than delay, and that disruption is repeated and over s 9(2)(f)(iv), s 9(2)(j)
- The proposed C3 scheme has been developed on its merits and with the benefit of experience gained undertaking the C2 BHP. However, in significant respects, it aligns with the \$50 million proposal you received on 5 February 2021 from Heart of the City.

COMMERCIAL IN CONFIDENCE

Clarification: The C2 Business Hardship Programme (BHP) was funded from contingency within the CRL budget, up to a maximum level of \$2 million (as approved by Cabinet). This level was set in the absence of knowing how much would be needed for the BHP initially, as this was difficult to estimate. > There was no specific allocation in the CRL budget of \$2 million for the BHP and so the \$1.4 million figure does not represent an underspend that could be reallocated to fund the C3 Targeted Hardship Fund. CRL distributed payments to all eligible businesses as per the Sponsors' guidelines for the BHP

This includes the focus on disruption, s 9(2)(f)(iv), s 9(2)(j) use of rent as the basis for assessment, and scope to expedite relief to businesses. s 9(2)(f)(iv), s 9(2)(j)

The Ministry considers that Cabinet approval is required to redeploy the \$1.4 million remaining from the C2 BHP, and that this funding would not provide a viable level of support for businesses during 2021-22. This would not meet the proposed scheme's goals or improve social licence. The Ministry recommends that instead, any scheme should be funded for an additional \$12 million over an initial (estimated) two year period, with further funding reviewed at that point.

The C3 scheme's focus on payments for disruption is an important shift and establishes a much greater precedent risk for all future infrastructure projects that disrupt businesses compared to the C2 BHP's focus on delays. It could establish an expectation for future public works or large private development, adding significant costs to each project.

- No hardship scheme can meet everyone's expectations, and there are other significant risks to the proposed budget for the C3 scheme such as cost escalation due to uncertainties around the level of uptake and disruption from construction over the five years that it is scheduled.
- Although we have engaged extensively with CRL to develop this proposal, we have not consulted at this stage with Auckland Council and the Treasury. s 9(2)(ba)(i)

The process to implement a C3 scheme will require you to seek agreement with the Minister of Finance and the Mayor of Auckland.

- If you wished to proceed with a C3 scheme after consultation, the Ministry would undertake further work including with Auckland Council and the Treasury, and wider cross agency consultation. That process may entail change to the design of the proposed C3 scheme laid out in this paper. From there we would prepare a paper for you to take to Cabinet seeking funding.
- Please note that most of the content of this briefing is subject to legal privilege.

Recommendations

We recommend you:

- 1 **refer** this briefing to Hon Grant Robertson, Minister of Finance Yes / No
- 2 **note** that you will need to consult with the Mayor of Auckland, as co-Sponsor of the CRL project, and co-shareholder in CRLL, to agree a preferred approach for the Ministry and/or CRLL to take forward Yes / No
- 3 **note** that if you wish to proceed with this scheme after consultation, the Ministry will need to undertake further work including wider cross agency consultation, which could change some of the design of the proposed C3 scheme, and prepare a paper for you to take to Cabinet seeking approval and additional funding. Yes / No



Robert Anderson
Manager, Governance

4 / 6 / 2021

Hon Michael Wood
Minister of Transport

..... / /

Minister's office to complete:

☒ Approved

☐ Declined

☐ Seen by Minister

☐ Not seen by Minister

☐ Overtaken by events

Comments

Contacts

Name	Telephone	First contact
Robert Anderson, Manager, Governance, Ministry of Transport	s 9(2)(a)	✓
Sarah Allen, Acting Principal Adviser, Governance		

ADVICE ON ESTABLISHMENT OF A CITY RAIL LINK BUSINESS HARDSHIP SCHEME FOR C3 CONTRACT WORKS

Context for a new business hardship scheme

The Ministry provided advice on options for a C3 scheme for disruption in April 2021

- 1 On 5 February 2021, you received a proposal from Viv Beck, Chief Executive of Heart of the City (HOTC), for a new hardship scheme of up to \$50 million that would assist businesses affected by disruption associated with the CRL C3 (stations and tunnels) works. You requested that the Ministry of Transport (the Ministry) investigate options for further consideration.
- 2 On 23 April 2021 the Ministry provided you with advice on nine potential options for an additional City Rail Link (CRL) business hardship scheme to address disruption from the C3 works (OC210085 refers). The advice considered the most viable options and emphasised the risk of precedent that such a scheme would create.
- 3 In your feedback of 25 April 2021, you requested that the Ministry undertake further development of option seven, a targeted hardship fund for disruption, and asked that officials structure the C3 scheme around the approximately \$1.4 million remaining budget from the earlier C2 BHP.

Design overview of C3 scheme

Precedent and experience from the C2 BHP provides a basis for C3 scheme design

- 4 The Ministry has engaged with CRL, and considered how the C2 BHP operated. The following high level design features have been identified, which allow for differences that arise from the focus on disruption during the works and the timelines of construction in the C3 impact zone:
 - 4.1 the eligibility criteria developed for the C2 BHP are a good basis for a C3 scheme focussed on disruption
 - 4.2 rental relief should be the basis of assessment for support
 - 4.3 support should be scaled to the actual level of impacts on a particular applicant
 - 4.4 total payments should be capped at \$100,000 per annum per business
 - 4.5 s 9(2)(f)(iv), s 9(2)(j)
 - 4.6 there should be discretion to apply a minimum stand-down period
 - 4.7 interim payments should be available while assessments are undertaken to shorten the timeframes for receiving assistance
 - 4.8 support should consider the net impacts on businesses from C3 works compared to factors impacting all businesses such as COVID-19

- 4.9 financial support should be provided in the form of *ex gratia* payments¹
- 4.10 CRLL should be funded to administer the scheme
- 4.11 the scheme should be commenced with \$12 million additional funding for an initial two year period.

The proposed C3 scheme addresses a significant proportion of the HOTC proposal

- 5 The proposed design of the C3 scheme has been developed on its merits and with the benefit of experience gained undertaking the C2 BHP. However, it has substantive alignment with key features of the HOTC proposal, including:
 - 5.1 a focus on disruption during C3 contract works (which are scheduled to run until 2024)
 - 5.2 s 9(2)(f)(iv), s 9(2)(j)
 - 5.3 rents as the basis of assessment (although HOTC proposes a different methodology for calculation)
 - 5.4 discretion to address individual situations that are in the spirit of the scheme's intent – as an example, extending eligibility in some cases to accommodation providers and businesses who own their premises (in their capacity as businesses not landlords/property owners)
 - 5.5 provision to expedite relief to businesses (the Ministry proposes interim payments).

s 9(2)(f)(iv), s 9(2)(j)

- 7 The HOTC proposal is for the scheme to be run independently, which the Ministry has considered. However resourcing CRLL is the most effective means to operate the programme given CRLL's previous experience and the level of its involvement that would be necessary.

C2 BHP settings and lessons for a C3 scheme

- 8 The balance of this briefing discusses the analysis behind the recommended design features of a C3 scheme for hardship in more detail, the risks entailed with the scheme and next steps if you wish to implement it.

The key features of the C2 BHP and how they worked inform the design of a C3 scheme

- 9 While the C2 BHP was focussed on delays, those delays in a practical sense, were experienced as disruption by the affected businesses. For that reason, the Ministry's view is that in designing a new C3 scheme it should have significant regard to the precedent set and experience gained from the C2 BHP. However, establishing a

¹ Consistent with Cabinet Office Circular 18 (2), *ex gratia* payments are made out of goodwill or a sense of moral obligation.

s 9(2)(f)(iv), s 9(2)(j)

scheme providing payments for disruption during the construction period not associated with delay will nonetheless set a new precedent.

- 10 The C2 BHP was designed to focus on more vulnerable businesses (fewer than 20 FTEs, typically street level). Recipients had to be able to prove their commercial viability before construction impacted their businesses. Initially, funding was not available to businesses that commenced or had been purchased after the works were announced. Financial assistance was only available to businesses in their capacity as a tenant (i.e. not available to landlords).

Discretion was still available to consider individual circumstances

- 11 The eligibility criteria provided a gateway for filtering applicants into consideration, but decision making on specific remedies included discretion to allow for individual circumstances, which made the scheme fairer. This is also proposed for the C3 scheme.
- 12 An example of where this could make a difference is that the C2 BHP criteria had the effect of focussing the scheme on small street-level retail businesses in the construction zone. These included dairies, gift shops, jewellers, hair and beauty salons, bars and cafes. 'Destination' (or relationship-based) businesses were mostly excluded. These included medical and dental practices, residential premises, accommodations providers (e.g. hotels, hostels and serviced apartments), gyms and commercial premises (e.g. accountants and lawyers).
- 13 These kinds of businesses have different client relationships with greater inertia for change. For example, a long standing client of an accountant would be unlikely to change accountant because of the construction, compared to someone deciding to buy a coffee from a quieter cafe outside the construction zone.
- 14 The application of discretion in the C3 scheme could reconsider some of these categorisations. In particular, the HOTC proposal advocates for the inclusion of accommodation providers (excluding MIQ). Since short term accommodation is more transactional than relational, this would be an example of where scope for discretion within the C3 scheme could be applied.

CRLL's view is that the eligibility criteria for the C2 BHP were effective, with some pragmatism, and appropriate for a C3 scheme

- 15 CRLL's advice is that with some pragmatism around how the eligibility criteria were implemented, overall the C2 BHP criteria worked well and would be suitable for application in a C3 scheme focussed on disruption.
- 16 An example of the pragmatic application of the criteria was the requirement to prove commercial viability prior to construction commencing. Due to the variety of business types, varying quality of accounts, and cost of assessing the individual circumstances, this requirement proved to be impractical. CRLL settled on rent as a proxy for viability – if a business was clearly operating *in situ* and could prove its rent payments, then it was deemed to be viable.
- 17 This worked well and CRLL see no reason to change the assessment process for a C3 scheme. As well as CRLL's experience with the criteria, this also has the benefit

of consistency with the precedent that the pilot C2 BHP created. However, a C3 scheme still adds to precedent through its focus on disruption during construction.

The C2 BHP settled on rent relief rather than revenue support and this also makes sense for a C3 scheme

- 18 Some businesses argued that revenue reduction was the key measure of construction impact. But rent was the highest fixed cost for many businesses and provided a stronger basis to assess eligibility for public funds through the evidence of leases and rental payments.
- 19 Based on CRLL's advice that the rent relief approach worked well, the Ministry's view is that rental relief should remain the basis of assessment and support for a C3 scheme. Although there are differences in methodology, HOTC's proposal is also centred on rents.

Support should be scaled to the actual level of impacts on a particular applicant

- 20 Not every business in the C2 'impact zone' was affected to the same degree because the construction activity receded as works progressed along Albert Street. For this reason, it would not have been equitable if businesses all received equal payments, and this would have impacted the required budget.
- 21 CRLL engaged valuers to create benchmarks to assess the impacts for individual businesses on market rental value. Businesses were categorised into five tiers based on the extent of disruption from the delay on their business. The resultant rating was used to scale the level of support. For example, if a business that had paid \$20,000 plus GST in rent during the construction delay phase was assessed as experiencing an impact³ at 75 percent of its rent, the business would receive an offer for \$15,000 plus GST as an *ex gratia* payment.
- 22 CRLL advise that this worked well. On the basis of maintaining precedent and not diverting without a good reason, the Ministry's view is that rating the intensity of impacts and scaling rental relief should remain core to a new C3 hardship scheme.

Additional factors to consider for a new scheme focussed on disruption

While delay is ultimately a kind of disruption, there is an important difference

- 23 As noted above in paragraph 9, though focussed on delays, the C2 BHP effectively addressed the disruption businesses in the construction zone experienced through works continuing past the published completion date.
- 24 The C3 scheme focuses primarily on disruption occurring *during* the works before the published completion date, and it may provide payment even where the relevant works are ultimately completed on time. The scheme is therefore a step change that would inherently create new and increased precedent risk compared to the C2 BHP.

Businesses can generally apply once for support, despite repeated disruption

- 25 Because the C3 works run through into 2024, there is going to be repeated disruption for many businesses, at different intensities.

³ This rating assesses significant compromises for the business in terms of access and visibility.

- 26 Based on the C2 BHP, generally this can be managed through businesses applying once and CRLL proactively assessing disruption that occurs in the location of that business. In some cases, further applications or documentation will be required, for example, where a business is offered for sale, or has had a rent review since the last disruption payment.

Total payments should be capped at \$100,000 per annum per business

- 27 The long term and repeat nature of disruption mean that both the total budget, and the administration and valuation process costs will be significantly higher than the C2 BHP. The C2 BHP had a cap of \$100,000 support for any single business, and the delay was approximately one year. This level of cap meant that some businesses with higher rents were not unfairly impacted by a lower cap. The average payment was approximately \$25,000.
- 28 The C3 scheme will be disrupting businesses in some cases for much of the five years during 2020 to 2024. It is proposed that the same \$100,000 cap per business be employed for a C3 scheme, but on a per annum basis. It would be difficult to justify a different cap that was inconsistent with the level the C2 BHP had set. If the \$100,000 applied as the total across the five years of the C3 construction programme, in effect this would make it one fifth of the level of the C2 BHP and the support available would not be meaningful or equitable for some businesses.

s 9(2)(f)(iv), s 9(2)(j)

CRLL should have the discretion to apply a stand-down period

- 31 The duration and complexity of C3 work means that CRLL should have the discretion to apply a threshold for the minimum interval of disruption a business is exposed to for administrative, budget management, consistency, equity or other reasons.
- 32 Based on advice from CRLL, the Ministry believes a lower bound for disruption would ensure minor works are discounted, and volumes for assessing and processing could be significantly smaller than otherwise, aiding costs but also speed, which benefits applicants. The expectation is that in a built-environment, businesses can generally anticipate some disruption from construction and be able to survive for short intervals on their own.

Interim payments provide a way to get relief rapidly to businesses

- 33 Based on the experience from the C2 BHP, with a large number of applicants, it can take time to process applications and undertake rental assessments. The C2 BHP addressed this through providing interim payments and this worked well as a way of

expediting assistance to businesses. The scope and flexibility to provide support on an interim basis should also be a component of a C3 scheme.

Support should consider the net impacts on businesses from C3 works compared to factors impacting all businesses such as COVID-19

- 34 There is a risk the hardship scheme attracts claims for losses that do not directly arise from the C3 works. COVID-19 has impacted retail traffic across the CBD, with more people working from home, fewer students, and international aviation and cruise tourism significantly reduced. Changing retail shopping patterns from competition (such as Commercial Bay and Britomart) and online shopping are also significant. Many premises outside the C3 zone are vacant.

35 s 9(2)(f)(iv), s 9(2)(j)

Payments to be made on an ex gratia basis, out of goodwill or a sense of moral obligation

- 36 An *ex gratia* payment is one made without the giver recognising any liability or legal obligation. In the case of the proposed C3 scheme, payments would be *ex gratia* and reflect goodwill or a sense of moral obligation.
- 37 *Ex gratia* payments are governed by specific provisions in the Cabinet Office Circular 18(2). The Circular prescribes that the Cabinet must authorise any *ex gratia* payments over \$75,000. As with the C2 BHP, this authorisation can be provided through a general authorisation of a particular scheme as a whole, through Cabinet.

Administration structure of a C3 Scheme

The size and complexity of a C3 scheme means administration costs will be substantial

- 38 All administration, business support funding and third party costs (e.g. valuations) for the C2 BHP were absorbed by CRLI via contingency funding. Because the scheme was comparatively small and short lived, this was viable. However, the increased scale involved with a C3 scheme focussed on disruption through until 2024 means the administration costs will be significantly more involved than the C2 BHP.

CRLI should be funded to administer a C3 scheme

- 39 The Ministry has considered whether a C3 scheme would be at the scale that there would be justification and benefits of creating an independent body to administer it (which HOTC proposed). However, based on similarities with operating the C2 BHP 'on the ground', there would be no benefit in this.
- 40 CRLI would need to be involved in each application to a significant degree because it has the best view of the disruption that has/is occurring, existing experience operating a scheme and engaging with individual affected businesses already. CRLI also has existing institutional structures that give it standing and competence as a fund holder

and administrator. This would be difficult to replicate in a timely and cost-effective way in a small, newly created body.

- 41 CRLL is unable to absorb the administration cost of a C3 scheme s 9(2)(ba)(i)
- 42 Based on experience from C2, CRLL also believe funding for external independent support for applicants would be valuable, particularly translators. Many businesses are operated by immigrants and English is not their first language. This barrier is only accentuated when people are trying to access a scheme created to support them due to the stressful situation they are experiencing.
- 43 On the experience of the C2 BHP, this could smooth processes for all concerned and increase the fairness of outcomes. Greater confidence could be gained that all those in need and eligible had a genuine opportunity to access support.

Budget for a C3 targeted hardship scheme

Clarification: The C2 Business Hardship Programme (BHP) was funded from contingency within the CRLL budget, up to a maximum level of \$2 million (as approved by Cabinet). This level was set in the absence of knowing how much would be needed for the BHP initially, as this was difficult to estimate. There was no specific allocation in the CRLL budget of \$2 million for the BHP and so the \$1.4 million figure does not represent an underspend that could be reallocated to fund the C3 Targeted Hardship Fund. CRLL distributed payments to all eligible businesses as per the Sponsors' guidelines for the BHP

- s 9(2)(f)(iv), s 9(2)(j)
- 44 You have asked officials to work with the \$1.4 million remaining budget from the C2 BHP over 2021-22 as a guide and on the basis that further support can be reviewed in 2023-2024. For the purposes of programme design, the total potential cost of the scheme under the design settings is laid out, and then consideration is provided on the trade offs required to scale the scheme to \$1.4 million for 2021-22.

- 45 s 9(2)(i), s 9(2)(j), s 9(2)(f)(iv)

- 46

s 9(2)(i), s 9(2)(j), s 9(2)(f)(iv)

Clarification: The C2 Business Hardship Programme (BHP) was funded from contingency within the CRLL budget, up to a maximum level of \$2 million (as approved by Cabinet). This level was set in the absence of knowing how much would be needed for the BHP initially, as this was difficult to estimate. There was no specific allocation in the CRLL budget of \$2 million for the BHP and so the \$1.4 million figure does not represent an underspend that could be reallocated to fund the C3 Targeted Hardship Fund. CRLL distributed payments to all eligible businesses as per the Sponsors' guidelines for the BHP

> *The \$1.4 million budget remaining from C2 BHP is not sufficient to start a C3 scheme*

47 s 9(2)(i), s 9(2)(j), s 9(2)(f)(iv)

Use of the \$1.4 million remaining from the C2 BHP comes out of CRLL contingency and still requires Cabinet approval

48 CRLL has emphasised that the \$2 million funding for the C2 BHP was from contingency rather than new funding. While \$1.4 million remained unspent from the \$2 million budgeted that Cabinet approved, that is not the same as saying that the \$1.4 million remains available for repurposing into a C3 scheme. There are competing demands and pressure on the contingency ahead.

49 In addition, officials believe that the Cabinet's approval for support under the C2 BHP was specific to that, and Joint Ministers do not have a delegation to repurpose the remaining \$1.4 million towards a C3 scheme without further Cabinet approval. On our analysis, the \$1.4 million would run out within weeks, requiring a second Cabinet paper seeking additional funding.

Officials recommend funding an initial two year period for \$12 million

50 Considering both that Cabinet approval is required to secure the \$1.4 million for a C3 scheme, and that the Ministry's analysis suggests significantly more funding is required, it would make more sense to seek \$12 million of funding for the first two year.

51 That would enable sufficient funding to get a long way into the C3 works programme. It would create a natural report back requirement as funds ran low, and at a point approximately two years in where there would be enough experience to indicate how the fund had been drawn down and better inform any change in settings and budget required to cover the remainder of C3 works.

52 As co-Sponsor of the CRL project and co-shareholder of CRLL, if Auckland Council agrees to support the C3 scheme it would meet half the \$12 million. This would mean Cabinet would only need to approve \$6 million funding for this initial phase. If Auckland Council was not supportive, there is the option for Cabinet to approve the full \$12 million funding.

Risks

A C3 scheme increases the general precedent risk

s 9(2)(i), s 9(2)(j), s 9(2)(f)(iv)

- 53 As emphasised in the previous briefing on options for a hardship scheme for C3 works (OC210085 refers), establishing a new hardship scheme for general disruption (rather than disruption caused by delay) inherently creates a step change in precedent value beyond the C2 BHP. This contains implications for all public works – whether central or local Government led – and potentially private developers.
- 54 Further, given it is a second scheme, it also makes it significantly more likely that there will be an expectation from the public that this will become the norm (and with impacts on social licence where payment schemes are not planned).

s 9(2)(h)

There is significant uncertainty

- 56 There are significant uncertainties about costs that may see the initial C3 scheme budget used up more rapidly than the two years indicated, s 9(2)(h)

- 57 s 9(2)(j), s 9(2)(f)(iv)

Public criticism, to some extent, is inevitable

- 58 The introduction of the C3 scheme would be anticipated to go some way to mitigating social licence concerns. However, no matter how the programme is configured, individual situations mean it will not be possible to meet everyone's expectations. Businesses may still go into liquidation and blame the C3 works, irrespective of other impacts such as competition from Commercial Bay, online shopping, or the impacts of COVID-19 border closures.
- 59 Businesses may struggle to understand the rationale for some criteria or accept the Government's perspective. It may be difficult to explain these or achieve agreement even with a support person/translator, or be difficult to communicate in the media.
- 60 Some businesses may make speculative applications for funding they are ineligible for, backed with media appearances, which are difficult for CRLL to respond to because of privacy considerations, or the impact on perceptions if they enter into debate.
- 61 Other parties, including councils, ratepayer groups and developers, may express concerns about the precedent effect on increasing the costs of development.

Consultation

62 The Ministry has not consulted with the Auckland Council or the Treasury in the preparation of this briefing, on the understanding that you intend to engage with the Mayor and the Minister of Finance once you have considered this advice.

63

s 9(2)(ba)(i)



64 The Ministry notes that demonstrating genuine hardship is challenging, and potentially subjective. To maintain fairness and consistency, the eligibility and assessment criteria proposed are the most practical way to ensure equitable outcomes, based on the experience and insights CRLL developed through operating the C2 BHP.

65 The Ministry has consulted with CRLL and incorporated their feedback and experience from the C2 BHP in this advice.

Next steps

66 If you wish to proceed further with creating the C3 scheme, you will need to consult with the Minister of Finance, and with the Mayor of Auckland (as co-Sponsor of the CRL project, and co-shareholder in CRLL), to agree a preferred approach for the Ministry and/or CRLL to take forward.

67 If you wish to proceed with this scheme after consultation, the Ministry will need to undertake further work including with Auckland Council and the Treasury, and wider cross agency consultation. That process may entail change to the design of the proposed C3 scheme laid out in this paper.

68 Once these steps were complete, we would prepare a paper for you to take to Cabinet seeking approval and additional funding.



Ministry of Transport

TE MANATŪ WAKA

12 August 2021

OC210610

Hon Michael Wood
Minister of Transport

Action Required by
Monday, 16 August 2021

CITY RAIL LINK TARGETED HARDSHIP FUND FOR C3 CONTRACT WORKS**Purpose**

To provide you with a draft Cabinet paper proposing a Targeted Hardship Fund for City Rail Link's C3 works (located in Aotea, Karangahape and Mt Eden).

Key points

- Attached is a draft Cabinet paper seeking decisions from Cabinet's Economic Development Committee (DEV) on 25 August 2021 about setting up a Targeted Hardship Fund for C3 works. Auckland Council's Governing Body is scheduled to consider the matter on 26 August 2021 (and a summary of the Governing Body's decisions will be provided to your office in advance of Cabinet's meeting on 30 August 2021).
- To finalise the draft Cabinet paper, there are several issues we would like you to consider:
 - whether you would like to indicate in the draft Cabinet paper your preferred cost-sharing / funding option for the Targeted Hardship Fund for C3. We are aware of your interest in the potential to secure a landlord contribution to the Targeted Hardship Fund for C3, and this is presented as an option in the paper. The paper currently indicates officials' preferred option (that the Crown and Auckland Council share the costs on a 50:50 basis). s 9(2)(ba)(i)
 - there is an outstanding issue relating to who administers the Targeted Hardship Fund. City Rail Link Limited (CRL) and Auckland Council have indicated they do not wish to administer the Fund. The Ministry of Transport is currently exploring whether an independent body, which specialises in complaint resolution and determination, could administer the Targeted Hardship Fund for C3. CRL administered the C2 Business Hardship Programme.
 - the draft Cabinet paper proposes that the Sponsors (the Crown and Auckland Council) set the eligibility criteria and parameters for the Targeted Hardship Fund. This is different to the approach taken for the C2 Business Hardship Programme where the Sponsors set out general guidance and City Rail Link Limited, using that guidance, determined the eligibility criteria.

COMMERCIAL IN CONFIDENCE

Clarification: The C2 Business Hardship Programme (BHP) was funded from contingency within the CRL budget, up to a maximum level of \$2 million (as approved by Cabinet). This level was set in the absence of knowing how much would be needed for the BHP initially, as this was difficult to estimate. There was no specific allocation in the CRL budget of \$2 million for the BHP and so the \$1.4 million figure does not represent an underspend that could be reallocated to fund the C3 Targeted Hardship Fund. CRL distributed payments to all eligible businesses as per the Sponsors' guidelines for the BHP.

• We are aware of your preference to use \$1.4m of unutilised funding from the earlier C2 Business Hardship Programme to contribute to the cost of the Targeted Hardship Fund for C3. Use of this funding, however, is not supported by City Rail Link Limited or Auckland Council. The Cabinet paper refers to this option but does not recommend it is pursued given this lack of support from other parties.

Instead, it is proposed that the Crown's share of costs for the Targeted Hardship Fund (around \$6m) – should Cabinet elect that costs are shared 50:50 with Auckland Council – are initially met from a small contingency of existing funding in the Auckland City Rail Link appropriation within Vote Transport, which has not to date been allocated to City Rail Link. This would require changes to appropriations but wouldn't require a new call on the between-Budget contingency or Budget 2022.

In making this recommendation we note that funding the Targeted Hardship Scheme for C3 from the appropriation would reduce the amount of non-committed Crown funds available for project contingency and slightly increase the risk that additional funding would be required for the City Rail Link project. The Treasury already has a Specific Fiscal Risk noted for the City Rail Link project and no additional funding has been provided for City Rail Link costs related to COVID-19 at this stage (as has already taken place for other large capital projects in New Zealand).

- We are aware that achieving agreement for the Targeted Hardship Fund, and operationalising it, is urgent. Should you agree that CRL is not well placed to design the detailed eligibility criteria and administer the Targeted Hardship Fund for C3, the design and eligibility criteria for the Fund (and for rapid relief payments from the Fund) will need to be determined by Sponsors over the next week, prior to the Auckland Council Governing Body meeting on 26 August 2021. We will discuss this with you further at the Officials' meeting on 16 August 2021.
- For the paper to be considered by DEV on 25 August 2021, it will need to be lodged on 19 August 2021. The timeframe for ministerial, caucus and departmental consultation will need to be truncated (see paragraph 36). If there are delays, this may impact the approval by Auckland Council's Governing Body, which meets monthly (the next meeting is not until late September 2021).

Consultation

- Treasury, Auckland Council and CRL have been consulted in the development of this paper. Their feedback has been incorporated and comments have been noted below (paragraphs 23 refers).

Recommendations

We recommend you:

- 1 **provide** feedback to officials on the attached draft Cabinet paper seeking approval to set up a Targeted Hardship Fund for City Rail Link C3 works at your meeting with transport officials on Monday 16 August 2021. Yes / No
- 2 **agree** to begin ministerial, party and departmental consultation on the draft Cabinet paper, subject to any amendments. Yes / No



Nick Brown
**Deputy Chief Executive, System
 Performance and Governance Group**
 12 / 08 / 2021

Hon Michael Wood
Minister of Transport

Minister's office to complete:

- ☐ Approved
 ☐ Declined
☐ Seen by Minister
 ☐ Not seen by Minister
☐ Overtaken by events

Comments

Contacts

Name	Telephone	First contact
Nick Brown, Deputy Chief Executive, System Performance and Governance, Ministry of Transport	s 9(2)(a)	
Fleur D'Souza, Manager, Programme Assurance and Commercial, Ministry of Transport		
Sarah Allen, Principal Adviser, Programme Assurance and Commercial, Ministry of Transport		✓

CITY RAIL LINK TARGETED HARDSHIP FUND FOR C3 CONTRACT WORKS

We have prepared a draft Cabinet paper for your feedback

- 1 The Ministry of Transport has prepared a draft Cabinet paper for a Targeted Hardship Fund in response to complaints of financial hardship relating to the construction of City Rail Link in Aotea, Karangahape and Mt Eden (known as the C3 works).
- 2 Attached is a draft Cabinet paper for your feedback. The draft paper has four parts:
 - 2.1 **part one** – provides your Ministerial colleagues with an **update on the earlier hardship scheme** (known as the C2 Business Hardship Programme), which provided financial assistance for delays in completing C2 works in lower Albert Street
 - 2.2 **part two** – seeks approval to **set up the Targeted Hardship Fund for C3 work**. The key features of the proposed Targeted Hardship Fund are as follows:
 - financial assistance for sustained business disruption (rather than project delay) that results in genuine hardship. s 9(2)(f)(iv), s 9(2)(j)
 - eligibility criteria will be set by the Sponsors
 - any payments will be paid on a goodwill (or *ex-gratia*) basis. Businesses will retain their ability to claim under the Public Works Act 1981 (or pursue other legal remedies)
 - the Targeted Hardship Fund for C3 would not be administered by CRL; we are currently exploring options for an independent third party to advise on applications (likely based on rent valuation) and/or to administer and determine applications
 - advance rapid payments for businesses experiencing immediate and genuine hardship, subject to a rapid, high level assessment against eligibility criteria and subsequent reconciliation processes.
 - 2.3 **part three** – outlines potential **funding or cost sharing arrangements** for the Targeted Hardship Fund. The draft Cabinet paper sets out:
 - initial estimates are that around \$6 million per year will be required for the Targeted Hardship Fund for the first two years. Due to cost uncertainties, the draft Cabinet paper proposes that funding for later years be assessed based on a review of uptake in the first two years
 - the Crown's two-year contribution can be met from non-committed contingency funds in the existing Auckland City Rail Link appropriation in Vote Transport (this has been confirmed by the Treasury)
 - several cost-sharing options (including potential contributions by landlords, as per your request) are set out.

- 2.4 **part four – outlines various risks with setting up a Targeted Hardship Fund, which are namely:**

2.4.1 precedent risk

2.4.2 risk that applications for financial assistance exceed funding available, and

2.4.3 risks relating to the market dynamics s 9(2)(f)(iv), s 9(2)(i)

Would you like to indicate your preferred cost-sharing option in the draft Cabinet paper?

- 3 The draft Cabinet paper sets out a range of cost-sharing options, including various options relating to a landlord contribution. There may be merit in landlords contributing to hardship payments, especially when rent relief has not been provided to a tenant and the rent is above current market rate, thus contributing to any hardship experienced. If your preferred option includes a landlord contribution, it is important to note there is no legal mechanism to compel a landlord to pay. There are also choices, set out in the Cabinet paper in the form of sub-options, as to the extent to which eligible businesses should receive payment at all if a landlord refuses to contribute.
- 4 The draft Cabinet paper does not indicate which is your preferred option. If you wish to indicate your preferred option to your colleagues, we are happy to amend the paper based on your preference. The draft Cabinet paper currently sets out the Ministry of Transport and s 9(2)(ba)(i) preferred option (costs are shared between the Crown and Auckland Council on a 50:50 basis; with no landlord contribution).

An outstanding issue is who should administer the Targeted Hardship Fund

- 5 The draft Cabinet paper does not recommend who should administer the Targeted Hardship Fund. City Rail Link Limited (CRL) administered the C2 Business Hardship Programme, which included receiving applications, liaising with applicants, arranging an independent third-party review, and administering payments (when recommended).
- 6 CRL has indicated it does not want to administer the Targeted Hardship Scheme for C3. s 9(2)(g)(i)
- 7 Ideally, an administering body needs to be able to ascertain whether a business is impacted, the extent of the impact, and have knowledge of the construction activities and their associated disruption. It would be our preference that an agency with operational information about the project and local knowledge of Auckland administers the Targeted Hardship Fund for C3. Below is a description of potential agencies we have considered to administer the Targeted Hardship Fund:

- 7.1 Auckland Council and Auckland Transport – both have indicated that they do not wish to administer the Targeted Hardship Fund for C3.
 - 7.2 a new public organisation – set up costs could be substantial and delay in establishing the organisation
 - 7.3 the Ministry of Transport – our primary role is providing you with policy advice. We do not currently have operational expertise or resourcing relating to this type of function, and only a small presence in Auckland.
- 8 We are exploring whether it is possible and appropriate to contract out the administration, and even the determination of applications, to a third party. We are currently exploring whether a body contracted by other Government agencies for independent reviews could administer the Targeted Hardship Fund. The body would likely need to seek input from CRLL to ensure it has all relevant information to determine eligibility, but CRLL would not administer the Targeted Hardship Fund for C3.

The draft Cabinet paper proposes that the Sponsors set the eligibility criteria

- 9 For the C2 Business Hardship Programme, the Sponsors set out general guidance and parameters for CRLL to determine the eligibility criteria for the scheme. It was preferred that the specific eligibility criteria were set at arms-length. s 9(2)(g)(i)
- CRLL has indicated it can assist and could be consulted on the criteria, but it does not wish to set the criteria for the Targeted Hardship Fund for C3.
- 10 The draft Cabinet paper proposes that the Sponsors (Ministers and Auckland Council) jointly set the eligibility criteria and issue general expectations relating to the administration of the Targeted Hardship Fund for C3. It will be necessary for some discretion to be conferred to allow individual circumstances to be considered on a case-by-case basis.
- 11 This process is different to the approach taken with the C2 Business Hardship Programme. However, in practice and in substance, when CRLL set the eligibility criteria for the C2 Business Hardship Programme it adopted or mirrored those outlined by the Sponsors. Having the Sponsors set the criteria does bring a risk of complaints to Ministers (and Auckland Council) about the criteria, however that risk likely exists in any case. Individual applications for hardship assistance, and decisions on the applications, will still be made at arms' length from Sponsors.

Initial rapid relief payments are mentioned in the draft Cabinet paper

- 12 The draft Cabinet paper outlines the potential for rapid relief payments to be made to eligible businesses based on a quick, high-level assessment against eligibility criteria; but before a full assessment has been completed. The purpose of the initial payment would be to help address any immediate and genuine hardship. A payment could be relatively modest (potentially between \$5,000 and \$10,000) and it would be deducted from any future payment once the full detailed assessment of the application has been made.
- 13 There could be merit in providing rapid relief payments as it may take time to set up the Targeted Hardship Fund. Experience with the C2 Business Hardship Programme indicates it can also take time for applicants to prepare the necessary paperwork and for rental assessments to be completed before a determination can be made. An advance payment could provide some initial support to those in genuine hardship.
- 14 There is some risk associated with providing rapid relief payments. Firstly, the payments would be funded by public money, and it must be spent wisely. There is a risk that some businesses may receive early payments, but are subsequently assessed as being ineligible. In these circumstances, recovery of the rapid payment would be unlikely. However, rapid relief could help address some reports of immediate hardship.
- 15 The design and eligibility criteria for the Fund (and for rapid relief payments from the Fund) will need to be determined by Sponsors over the next week or so, prior to the Auckland Council Governing Body meeting on 26 August 2021. We would like to discuss this with you further at the Officials' meeting on 16 August 2021.

Extra funding will likely be required for the City Rail Link project

- 16 As outlined above, the estimate is that initially, \$6 million will be needed per year to fund the Targeted Hardship Fund. s 9(2)(j), s 9(2)(f)(iv)
 - 17 The draft Cabinet paper proposes that funding for only the first two years is identified now, with the remaining funding needs considered later based on a review of uptake. In addition, the paper proposes the Crown's share for the first two years of the Targeted Hardship Fund comes from money tagged for project contingencies in the Auckland City Rail Link appropriation in Vote Transport. The Treasury has confirmed that the first two years of the Targeted Hardship Fund can be met from the existing Auckland City Rail Link appropriation. If this money is used to fund the Targeted Hardship Fund for C3, it will not be available to pay for other costs associated with the project. s 9(2)(j), s 9(2)(f)(iv)
- > You indicated an interest in utilising a sum of \$1.4 million that remains unspent in CRLL's funding tagged for the C2 Business Hardship Programme. We have discussed with Auckland Council and CRLL whether this money could be used to help pay for the Targeted Hardship Fund for C3.

Clarification: The C2 Business Hardship Programme (BHP) was funded from contingency within the CRLL budget, up to a maximum level of \$2 million (as approved by Cabinet). This level was set in the absence of knowing how much would be needed for the BHP initially, as this was difficult to estimate. There was no specific allocation in the CRLL budget of \$2 million for the BHP and so the \$1.4 million figure does not represent an underspend that could be reallocated to fund the C3 Targeted Hardship Fund. CRLL distributed payments to all eligible businesses as per the Sponsors' guidelines for the BHP

s 9(2)(ba)(i), s 9(2)(g)(i)

Potential engagement with the Heart of the City

- 20 Your Office has indicated that engagement with the Heart of the City could include consultation on aspects of the proposed Targeted Hardship Fund for C3.

s 9(2)(ba)(i), s 9(2)(g)(i)

The draft Cabinet paper has been shared with the Treasury, Auckland Council and City Rail Link Limited

- 23 We have consulted key agencies (the Treasury, Auckland Council, and CRL) on the draft Cabinet paper. Due to time constraints, further departmental and agency consultation will be undertaken simultaneously as ministerial and party consultation occurs.

- 24 Substantive comments from key agencies included:

24.1 **The Treasury** s 9(2)(ba)(i)

[REDACTED]

[REDACTED] has confirmed that the Auckland City Rail Link appropriation in Vote Transport can be used to fund the Crown's share of the Targeted Hardship Fund.

- 24.2 **City Rail Link Limited** has indicated that extra funding will be required for the project if the Targeted Hardship Fund is funded from allocated CRL project funds. CRL also indicated it does not wish to determine the eligibility criteria or administer applications.

24.3 **Auckland Council** s 9(2)(ba)(i)

[REDACTED] Auckland Council indicates that CRL should not be responsible for administration but should

provide the independent third party with relevant information to help determine eligibility.

Potential matters that could arise during ministerial and party consultation

- 25 The following matters could potentially arise during ministerial or party consultation. Should any other matters arise, we can provide advice to the office to assist consultation.

Will landowners or landlords be eligible to apply?

- 26 The primary purpose of the Targeted Hardship Fund is to provide hardship assistance to small retail street-level businesses who are leaseholders. It is proposed that the eligibility criteria for assistance will be determined by Sponsors. Landlords were ineligible to apply for the C2 Business Hardship Programme. Landowners will likely benefit from a significant increase in land value (value uplift) once the City Rail Link opens.
- 27 However, the use of discretion will be considered further by Sponsors in setting the C3 Targeted Hardship Fund criteria so as to be able to address individual situations of genuine hardship that are in the spirit of the scheme's intent – such as for small businesses who own their premises (in their capacity as businesses, not landlords/property owners). The use of discretion will need to be further discussed and agreed with Auckland Council.

Does the Targeted Hardship Fund for C3 “open the floodgates” on payments for any other urban infrastructure project?

- 28 The purpose of the Targeted Hardship Fund is not to remedy or provide financial assistance for general disruption relating to the construction of the CRL. It is to address business disruption that results in genuine hardship. Any payments will be made on an *ex-gratia* basis and without any recognition of legal obligation or liability. The CRL project can be distinguished from other infrastructure projects based on its duration and the bespoke CRL decision-making and funding framework between the Crown and Auckland Council. nonetheless, there is a high probability that the scheme will be seen as a precedent by individuals impacted by other urban infrastructure projects in the future, and this is covered in the Cabinet paper.

How will sustained business disruption be assessed?

- 29 This will be considered further in the consultation with Auckland Council on the parameters and criteria for the C3 Targeted Hardship Fund. It is likely business disruption will be assessed based on factors such as a rent valuation to ascertain the difference between rent currently paid and the market rent for the premises (during periods of disruption relating to the construction of CRL).
- 30 The duration and complexity of C3 work means that Sponsors will give further consideration as to whether there should be a threshold for the minimum interval of disruption a business is exposed to. Based on advice from CRLL, the Ministry believes a lower bound for disruption would ensure minor works are discounted, and volumes for assessing and processing could be significantly smaller than otherwise, aiding costs but also speed, which benefits applicants.

- 31 Together with Treasury and Auckland Council, we will also consider whether there should be a minimum disruption period after which businesses are eligible for financial assistance. Sponsors will also need to give further consideration to whether support should be scaled to the actual level of impacts on a particular applicant as was done for C2 Business Hardship Programme (OC210445 refers). CRLL engaged valuers to create benchmarks to assess the impacts for individual businesses on market rental value. Businesses were categorised into five tiers based on the extent of disruption on their business (the ratings assess the significant compromises for the business in terms of access and visibility). The resultant rating was used to scale the level of support. For example, if a business that had paid \$20,000 plus GST in rent during the construction delay phase was assessed as experiencing an impact at 75 percent of its rent, the business would receive an offer for \$15,000 plus GST as an *ex gratia* payment.
- 32 The assessment should also consider the net impacts on businesses from C3 works compared to factors impacting all businesses such as COVID-19, as there is a risk that the hardship scheme attracts requests for impacts that do not directly arise from the C3 works. COVID-19 has impacted retail traffic across the CBD, with more people working from home, fewer students, and international aviation and cruise tourism significantly reduced. Changing retail shopping patterns from competition (such as Commercial Bay and Britomart) and online shopping are also significant. Many premises outside the C3 zone are vacant.
- 33 To mitigate this issue, assessors could consider the impact of construction relative to retail conditions for similar businesses outside of the C3 area. However, assessors should also be cognisant that a business in C3 may have had to work harder to maintain the same level of revenue (e.g. longer opening hours, more discounts), and its owner has been subject to additional stress from noise, inconvenience and disruption.
- 34 These matters will all be considered further in consultation with the Treasury and Auckland Council on the parameters and criteria for the C3 Targeted Hardship Fund.

Next steps, potential issue is the truncating of the timeframe for ministerial, caucus and departmental consultation

- 35 We would like to discuss the draft Cabinet paper with you at the Officials' meeting on Monday 16 August 2021, and we will then amend the paper based on your feedback.
- 36 Below is an indicative timeline for the submission of the Cabinet paper. Please note some actions need to occur in parallel or be truncated for the paper to be considered by DEV on 25 August 2021. In order to provide your colleagues more time, you could elect to immediately circulate the attached paper (noting it has been prepared by officials, and potentially a revised paper incorporating your feedback will be circulated after the officials' meeting).
- 37 The timeline below proposes that the time for party or ministerial consultation is truncated.

Key actions	Proposed timeframe
You receive the draft Cabinet paper	11 August 2021
Indicative time frame for caucus and departmental consultation begins (<i>please note – timeframe truncated</i>)	12 August 2021 to 19 August 2021
Your feedback provided on the draft Cabinet paper	16 August 2021 (officials' meeting)
Updated Cabinet paper provided to your office reflecting any feedback from party and ministerial consultation.	18 August 2021
Your Office lodges the Cabinet paper	19 August 2021
Cabinet Economic Development Committee	25 August 2021
Auckland Council's Governing Body meeting	26 August 2021
Cabinet consideration	30 August 2021

- 38 We will likely need to provide you with a further briefing in the coming weeks, including on potential eligibility criteria, the preferred administering agency, and financial recommendations to change the appropriations (if required).
- 39 Auckland Council's Governing Body meeting is scheduled for 26 August 2021. Subject to Cabinet approval, Auckland Council will seek their Governing Body's approval for the Targeted Hardship Fund for C3. Auckland Council's Governing Body meets monthly (the next meeting is not until late September 2021).
- 40 If Cabinet approves the Targeted Hardship Fund, Sponsors will need to set out the general parameters of the scheme, which will be used to determine the eligibility criteria. Once the eligibility criteria have been set, you will be able to announce the Targeted Hardship Fund for C3.

Commercial-in-Confidence

Office of the Minister of Transport

Cabinet Economic Development Committee

City Rail Link Targeted Hardship Fund for C3 works (located in Aotea, Karangahape and Mt Eden)

Proposal

- 1 This paper:
 - 1.1 provides an update on the Business Hardship Programme (BHP) for the C2 (Lower Albert Street) contract works for the City Rail Link (CRL) project (CAB-19-MIN-0646 refers)
 - 1.2 seeks approval for a Targeted Hardship Fund for businesses impacted by the C3 contract works (located in Aotea, Karangahape and Mt Eden)
 - 1.3 seeks approval for cost share arrangements and funding for the first two years of the Targeted Hardship Fund
 - 1.4 advises on a range of risks associated with the Targeted Hardship Fund.

Relation to government priorities

- 2 The Government continues to invest in transport infrastructure to get our cities moving and lay the foundations for a better future. The CRL project will be a key part of Auckland's transport infrastructure and have long-term benefits. However, in the interim, there are some temporary adverse impacts relating to its construction, especially for small street-level businesses near the project's construction sites. Supporting small businesses and workers is a priority for the Government.

Executive Summary

- 3 Following Cabinet approval in December 2019 (CAB-19-MIN-0646 refers), City Rail Link Limited (CRL) developed a Business Hardship Programme (BHP) for the C2 (Lower Albert Street) contract works for delays in the completion of the C2 construction works. Hardship payments were made to 25 small, street-level businesses which totalled approximately \$617,000. Hardship payments were not made to property owners or owner/occupiers or non-retail businesses.
- 4 The Minister of Transport, in consultation with the Mayor of Auckland, proposes a new Targeted Hardship Fund for businesses experiencing financial hardship associated with sustained disruption relating to the C3 works (located in Aotea, Karangahape and Mt Eden). Approval is sought to set up a Targeted Hardship Fund.
- 5 Arrangements for the practical administration of the Targeted Hardship Fund are still under consideration, including an option that an independent party will assess applications from affected businesses based on criteria and parameters set by Sponsors (the Crown and Auckland Council). However, such matters will likely be confirmed by Sponsors at a later date.

- 6 Additional funding from the Crown, over and above the \$4.4 billion funding envelope already allocated by Sponsors, is required for the first two years of the Targeted Hardship Fund. The cost for the Crown can be met out of the existing CRL Appropriation at this time. However, additional funding will be required in 2023 to cover the remainder of the construction period for C3. The amount to be appropriated for the final two years will depend on a review of uptake over the initial two years.
- 7 In accordance with the overarching funding approach for CRL, the preferred option of the Ministry of Transport and the Treasury is that the Crown and Auckland Council share the costs of the Targeted Hardship Fund equally. s 9(2)(ba)(i)
[REDACTED]
[REDACTED]
[REDACTED]
- 8 Consideration has been given to whether landlords should contribute to hardship payments s 9(2)(f)(iv), s 9(2)(j), s 9(2)(g)(i) his has been considered because many of the hardship requests are from leaseholders and are possibly related to leasing arrangements. s 9(2)(h)
[REDACTED]
[REDACTED]

Background on the BHP for C2 (lower Albert Street)

- 9 The CRL project, which has a \$4.4 billion budget, is jointly funded by the Crown and Auckland Council on a 50:50 basis.
- 10 The project construction sites are in Auckland's CBD, and some small retail businesses have been or are likely to be affected by its construction. It is not unusual for urban construction projects to have temporary adverse impacts on local businesses. The statutory mechanism available to businesses affected by the construction of a public work is the Public Works Act 1981, s 9(2)(h) [REDACTED] The Targeted Hardship Fund does not remove applicant's ability to claim under the Public Works Act 1981 (or pursue other legal remedies). However, the CRL project will affect some businesses through to the completion of the project, and some small businesses have already reported genuine financial hardship.
- 11 CRLL and its contractors seek to manage business disruptions through several initiatives. CRLL has engaged with affected businesses for ways to mitigate hardship (such as offering to take over the lease of a property as it could be of use to CRLL or assisting in setting up a pop-up store in another location). CRLL has also provided extensive non-financial support for businesses, including marketing and promotion, priority procurement from affected businesses, and events. However, this assistance is considered insufficient by some businesses impacted, particularly those that are leaseholders (and must pay rent to landlords).

Update on the operation of the BHP for C2 works along Albert Street for project delays

- 12 Following Cabinet's approval in December 2019 (CAB-19-MIN-0646 refers), CRLL developed a BHP for the C2 (Lower Albert Street) contract works. The purpose of the BHP for C2 was to provide rental relief for businesses along Albert Street (between Customs and Victoria Streets) that had experienced financial hardship due to delays in completing the C2 works beyond what was planned and communicated to businesses. There were reports of significant hardship being experienced by some

smaller, more vulnerable businesses. Businesses outside the C2 'impact zone' were not deemed eligible to apply for relief through the BHP.

- 13 The objective of the BHP was to provide financial assistance to small retail business owners - at street level - who were leaseholders of premises in the Albert Street Impact Zone. Financial assistance was on an *ex-gratia* or goodwill basis. The BHP was not available for property owners or owner/occupiers, or other non-retail tenants. In part, based on overseas experience, this programme reflected that once the CRL is open, property owners may experience increases in the value of their properties associated with being close to vibrant transport hubs.
- 14 On 16 December 2019, Sponsors set out the high-level expectations and criteria to be considered by CRLL in designing the C2 scheme explicitly for project delays. Sponsors' expectations were that:
 - 14.1 funds would target those suffering hardship and with limited ability to insulate themselves from extended disruption
 - 14.2 the scheme should not create an undue financial risk, either for the project or subsequent urban construction projects
 - 14.3 it is fair and reasonable.
- 15 Sponsors set out the following high-level criteria to be considered by CRLL in designing the BHP for C2:
 - 15.1 hardship funding is only made available where there is a significant delay in construction
 - 15.2 financial assistance is only made available to the more vulnerable (small) businesses and on an *ex-gratia* basis
 - 15.3 recipients should be able to prove their commercial viability before the CRL construction impacted their business
 - 15.4 financial assistance is only available to businesses in their capacity as a tenant (not available to property owners)
 - 15.5 should incorporate discretion based on the individual circumstances of the business and overall levels of available funding
 - 15.6 can be managed within CRLL's current funding allocation
- 16 The amount of financial assistance was determined with input from an independent valuer. The process involved an assessment of the degree to which the applicant was paying above-market rent rates during the delay period. The amount of financial assistance was capped at \$100,000 per applicant.
- 17 CRLL made payments totalling approximately \$617,000 to 25 businesses for delays associated with the C2 works (the delay period was September 2019 through to October 2020). The C2 works were completed in October 2020 and the BHP for C2 closed following this.

I seek approval to set up a Targeted Hardship Fund for C3 for sustained business disruption

- 18 There have been requests for financial assistance from businesses relating to the disruption from the C3 works, particularly from street-level retailers that are leaseholders. Despite efforts made by CRL to provide non-financial support and assistance to the businesses, businesses are seeking financial support. Businesses have alleged that the disruption is more than that associated with any other infrastructure project, which a business would ordinarily be expected to withstand during normal operations.
- 19 The C3 works are underway and are anticipated to conclude in 2024. No business in the area will likely be impacted for the entire duration of the C3 works, but some businesses may be impacted (to some degree) for several years. s 9(2)(f)(iv), s 9(2)(f)

The proposed Targeted Hardship Fund for C3 will be similar to the BHP for C2 but will provide financial assistance for hardship associated with sustained disruption (rather than hardship only associated with project delays)

- 20 Having listened to the requests from small businesses, I propose to set up a Targeted Hardship Fund for sustained small business disruption associated with the C3 works. Unlike the BHP for C2, which was focused on delays, the Targeted Hardship Fund will be for sustained disruption relating to the C3 works. I have discussed creating the Targeted Hardship Fund with the Minister of Finance and the Mayor of Auckland. s 9(2)(ba)(i) and Auckland Council's Governing Body is due to consider the matter on 26 August 2021.
- 21 The reason for extending the scheme to disruption rather than delay is that hardship has, and will occur, in the absence of project delay in this instance, reflecting the length and nature of the works.

Eligibility criteria for the Targeted Hardship Fund will be set by Sponsors (Ministers and Auckland Council)

- 22 I propose the eligibility criteria, application process and level of financial support provided by the Targeted Hardship Fund will be set by parameters and guidance issued by Sponsors.
- 23 The purpose of the Targeted Hardship Fund is not to provide financial assistance or remedy general disruption relating to the construction of the CRL project. Its purpose is to provide *targeted* financial assistance where disruption results in genuine hardship from 1 February 2021. Where there is sustained business disruption from the construction of the project, but hardship is not demonstrated, it is unlikely financial assistance from the Targeted Hardship Fund would be available.
- 24 The Targeted Hardship Fund will be focused on sustained disruption but will likely be similar to the BHP for C2 (paragraphs 14 and 15 above). Officials' initial expectation is that determining "sustained business disruption" will consider the difference between the net rent the applicant is paying for its leased premises and the market rent payable for those premises (during a period of disruption). Officials advise a rent valuation will likely be key to considering whether sustained disruption is demonstrated. However, eligibility criteria and other parameters for assistance will be determined by Sponsors.

Any financial assistance for hardship would be ex gratia

- 25 Like with the BHP for C2, I propose that any payment or financial assistance is *ex gratia* without the giver recognising any liability or legal obligation. Payments would reflect goodwill or a sense of moral obligation. A business that decides to apply for assistance would retain its legal rights, including those under the Public Works Act 1981.
- 26 *Ex gratia* payments are governed by specific provisions in Cabinet Office Circular 18(2). The Circular prescribes that the Cabinet must authorise any *ex gratia* payments over \$75,000. As with the BHP for C2, I propose that Cabinet provides a general authorisation for the Targeted Hardship Fund as a whole.

A fair process for assessing applications including a third-party assessor

- 27 I expect a workable and fair process to be put in place for hardship applications. The administration of Targeted Hardship Fund will be considered by Sponsors in the coming weeks, however it is anticipated that an independent third party assessor will at least have input or provide advice on individual applications.
- 28 The independent third-party assessor is to help ensure applications are assessed fairly and provide confidence to applicants that their applications are assessed solely on their merits. A level of independence should help ensure there is confidence in the application and assessment process.

Rapid relief for eligible businesses

- 29 Where a business is likely to be eligible for payment based on a rapid, high-level assessment against eligibility criteria, I expect processes where practicable to be put in place to provide rapid relief through advance/interim payments, as was put in place for the BHP for C2. A reconciliation process would apply once the application has been assessed in more detail, and initial payments deducted from the total when final payments are being made.
- 30 Based on the experience from the BHP for C2, it can take time to process applications and undertake assessments in full, including rent valuations. There should be sufficient scope and flexibility to provide interim support to those businesses experiencing immediate hardship.

Initial estimates are the Targeted Hardship Fund will cost around \$6 million per year

- 31 Given several unknowns, it is difficult to estimate the cost of the Targeted Hardship Fund until some fixed criteria and parameters are set. Ultimately, the cost will depend on the eligibility criteria, uptake and level of hardship demonstrated.

- 32 s 9(2)(f)(iv), s 9(2)(j) A budget of approximately \$6 million per year would be required for each year of the Targeted Hardship Fund. As such, a total of \$12 million would be required for the first two years of the fund. The Crown's funding contribution will depend on which cost-sharing option is chosen (discussed below), assuming a start date of 1 February 2021.

- 33 There may also be a need for independent support for applicants, mainly translators to assist businesses to apply and demonstrate financial hardship, which are factored

into the above estimates. Costs due to any delays to completion after 2024 would be additional and addressed at the time and are not factored in here.

Cost-sharing options for the Targeted Hardship Fund

- 34 Consideration has been given to different cost-sharing options. Given the cost uncertainties involved, I propose that funding be appropriated initially for two years (likely to be around \$12 million for the first two years). Funding for the remaining years could be considered later with the benefit of actual cost information relating to prior years.

- 35 The following funding sources for the Crown contribution have been considered for the first two years:

- 35.1 **Unspent C2 BHP funds** – In December 2019, the former Minister of Transport wrote on behalf of Sponsors to the Chair of CRLC permitting \$2 million of CRLC's project funding to be used for BHP for C2. Approximately \$1.4 million of this remained unutilised following the closure of the BHP for C2, and has been released back into the wider CRLC contingency.

Although Cabinet could agree that the C3 Targeted Hardship Fund is also a permitted use of the unspent \$1.4 million, s 9(2)(ba)(i), s 9(2)(g)(i)

As such, this approach has not been considered further.

- 35.2 **Non-committed funds** – Based on current forecasts, the existing Auckland City Rail Link appropriation has some non-committed funds tagged for contingencies s 9(2)(i), s 9(2)(j)

These non-committed funds could be utilised for the Crown's share of the Targeted Hardship Fund.

Repurposing this money increases the risk that additional funding is required for the CRL project. The Treasury already has a Specific Fiscal Risk noted for the CRL project and no additional funding has been provided for CRL costs related to COVID-19 at this stage (as has taken place for other large capital projects in New Zealand).

I am seeking Cabinet's approval that these non-committed funds from within the existing CRL appropriation can be used for the Targeted Hardship Fund.

- 36 Should Cabinet agree to use non-committed funds in the Auckland City Rail Link appropriation to fund the first two years of the Targeted Hardship Fund, the Crown's funding of the Targeted Hardship Fund would be fiscally neutral for those two years. There would then be a report back to Cabinet once the hardship fund has been in place for two years to provide an update on the hardship assistance provided, and to seek further funding for the remainder of the C3 works.

- 37 To date, costs associated with the project have been shared between Auckland Council and the Crown. Other cost-sharing options could also be considered including landlords contributing funds to any hardship payment or being encouraged to relief to a tenant experiencing hardship.

Option one – Crown and Auckland Council share the costs 50:50 of the Targeted Hardship Fund s 9(2)(ba)(i)

- 38 To date, the Crown and Auckland Council have jointly funded the project. Consistent with this, the BHP for C2 was jointly funded 50:50 by the Crown and Auckland Council.
- 39 It would be consistent with the overall funding arrangement to date that Crown and Auckland Council share costs on a 50:50 basis for the C3 Targeted Hardship Fund.

s 9(2)(ba)(i)

Option two – Crown funds the Targeted Hardship Fund entirely

- 40 The Crown could consider funding the Targeted Hardship Fund fully for the first two years and subsequent years.
- 41 A key feature of the CRL project is that it is a bespoke arrangement between the Crown and Auckland Council. The Crown fully funding the Targeted Hardship Fund (for its first two years) is not the preferred option of officials as it is inconsistent with the overarching funding approach taken to CRL to date. It also is inconsistent with the joint decision-making approach for CRL.

42 s 9(2)(g)(i), s 9(2)(j)

Option three – landlords contribute s 9(2)(f)(iv), s 9(2)(j), s 9(2)(g)(i)

- 43 Consideration has also been given to landlords contributing to assist tenants where the applicant leases an impacted property. There have been suggestions that much of the hardship being experienced by small retail businesses relates to paying rent. There could be merit in landlords contributing, as:
- 43.1 it has been suggested that in some instances the rents paid by tenants do not reflect market conditions, and the tenant has not received rent-relief from the landlord
- 43.2 once CRL is complete, it is likely the project will result in land values increasing in the area of the project. Such land value increases could potentially result in a windfall gain to landowners from the project, funded by public money.

44 s 9(2)(f)(iv), s 9(2)(g)(i), s 9(2)(j)

s 9(2)(g)(i), s 9(2)(f)(iv), s 9(2)(j)

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s 9(2)(h), s 9(2)(g)(i)

46

s 9(2)(f)(iv), s 9(2)(g)(i), s 9(2)(j)

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- 48 Even if this Option 3 is not favoured, and Cabinet chooses Option 1, there could be merit in encouraging landlords to contribute or assist tenants, especially in cases where the rent for the premises exceeds the likely market rent. CRL, which is funded from public funds, is likely to result in land values increasing in the project's vicinity. Land value increase is likely to accrue to landlords. Landlords could be encouraged to provide rent relief or their tenant assistance over-and-above any hardship payment provide by this scheme.

Risks with setting up a Targeted Hardship Fund

- 49 Creating another hardship scheme and extending it to cover sustained business disruption has risks. Risk exists for both CRL and other future significant infrastructure projects in urban areas.

There is a risk of creating a public expectation of financial support for hardship associated with disruption by large, urban and lengthy construction projects

- 50 Creating the BHP for C2 for delay, and now expanding it to financial hardship relating to sustained disruption, creates a precedent risk for future infrastructure projects that disrupt businesses, not just those that encounter unexpected delays. While this is a shift and potentially establishes a greater precedent risk for future projects (than that

established under the BHP), it also provides the opportunity to consider how business disruption caused by infrastructure projects should be addressed going forward.

- 51 There is a recognition that the CRL project is the first time that an urban transport infrastructure project of this scale and complexity has been undertaken in New Zealand in an existing urban area. Due to the length of the disruption, I consider it is appropriate for a hardship fund to assist small businesses on an *ex gratia* (or goodwill) basis. The Targeted Hardship Fund will not provide relief for disruption in general, but only sustained disruption that results in financial hardship determined on a case-by-case basis.
- 52 Going forward, the expectation is that any new and significant urban transport infrastructure project will outline how it intends to manage business disruption before the project commences (this work is currently being undertaken for Auckland Light Rail).
- 53 It is likely that creating the BHP for C2 resulted in an expectation that financial support would be provided for further CRL works. Putting in place another scheme may compound or validate the expectation. The key mitigation for this risk is designing an approach for managing business disruption and impacts on businesses at the start of future projects. The proposed Targeted Hardship Fund is considered as a bespoke approach for the single purpose of the CRL C3 works due to their scale, complexity and duration. I also consider this risk will be mitigated to some extent by putting in place robust criteria to only include businesses impacted by sustained disruption that results in financial hardship, determined on a case-by-case basis.

It may be challenging to differentiate between adverse impacts including those that do not relate to CRL

- 54 There is a risk the Targeted Hardship Fund attracts applications for financial hardship that is attributable at least in part to causes other than the C3 works. COVID-19 has impacted retail traffic across the CBD, with more people working from home, fewer students, and significantly reduced international aviation and cruise tourism. Changing retail shopping patterns from competition (Commercial Bay and Britomart) and online shopping are also likely to have impacted some businesses. Many premises outside the C3 zone are vacant. As part of the assessment, third party and independent assessors will likely consider the impact of construction relative to retail conditions for similar businesses outside of the C3 area to mitigate this risk.

Risks that applications exceed available funding

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s 9(2)(g)(i)



Market dynamics

56

s 9(2)(f)(iv), s 9(2)(j), s 9(2)(g)(i)

57

s 9(2)(f)(iv), s 9(2)(g)(i), s 9(2)(j)

Financial Implications

- 58 Funding from Sponsors will be required for the Targeted Hardship Fund. The Crown contribution for the first two years of the fund (irrespective of cost-sharing options) can be met from the existing Auckland City Rail Link appropriation in Vote Transport. This will require a fiscally neutral adjustment between capital and operating expenditure within the appropriation.
- 59 Utilising the existing appropriation reduces the amount of non-committed Crown contingency funding to pay for the project. Currently, the project anticipates being on time and budget. However, the project is identified as a Specific Fiscal Risk by the Treasury and, unlike some other capital projects, at this stage the CRL project has not received additional funding related to the impacts of COVID-19.
- 60 There is a risk that utilising the non-committed funding in the CRL appropriation to fund the Targeted Hardship Fund will make it more likely that additional funding will be required at a later date. If further funds are required from Sponsors, the Minister of Transport will inform Cabinet.

Legislative Implications

- 61 There are no legislative implications.

Impact Analysis

Regulatory Impact Statement

- 62 No legislative or regulatory change is proposed, so no Regulatory Impact Statement is required.

Climate Implications of Policy Assessment

- 63 There are no climate implications as a result of this proposal and no assessment has been completed.

Population Implications

- 64 There are no population implications.

Consultation

- 65 The Treasury and Auckland Council were consulted. The Department of Prime Minister and Cabinet was informed.
- 66 Consultation will take place with relevant departments and agencies at the same time as cross-party consultation. Key departments and agencies include the Department of Internal Affairs, Land Information New Zealand, Ministry for the Environment, Ministry of Business, Innovation and Employment, Ministry of Housing and Urban Development, Waka Kotahi NZ Transport Agency, and Te Waihanganga the Infrastructure Commission.

- 67 s 9(2)(f)(iv), s 9(2)(j)

Clarification: The C2 Business Hardship Programme (BHP) was funded from contingency within the CRLL budget, up to a maximum level of \$2 million (as approved by Cabinet). This level was set in the absence of knowing how much would be needed for the BHP initially, as this was difficult to estimate. There was no specific allocation in the CRLL budget of \$2 million for the BHP and so the \$1.4 million figure does not represent an underspend that could be reallocated to fund the C3 Targeted Hardship Fund. CRLL distributed payments to all eligible businesses as per the Sponsors' guidelines for the BHP.

- 68
- 69 City Rail Link Limited is opposed to being responsible for the design of the detailed eligibility criteria, to administering the scheme, to the Project Delivery Agreement being altered to enable it to do so, and to using the \$1.4 million remaining from the original internal allocation of \$2 million for the BHP for C2.
- 70 Auckland Council also does not support the scheme being administered by CRLL and does not consider the Council could administer the scheme as an alternative.

Communications

- 71 Following approval by both Cabinet and Auckland Council Governing Body, the Minister of Transport and Auckland Council will make an announcement on the establishment of the Targeted Hardship Fund.

Proactive Release

- 72 The Minister of Transport intends to release this Cabinet paper proactively (in whole or in part), within 30 business days of decisions being confirmed by Cabinet, subject to redaction as appropriate under the Official Information Act 1982.

Recommendations

The Minister for Transport recommends that the Committee:

- 1 **note** that in December 2019, Cabinet agreed to the development of a Business Hardship Programme (BHP) for delay in the completion of C2 contract works (located in lower Albert Street) for the construction of the City Rail Link [CAB-19-MIN-0646]
- 2 **note** concerns have been expressed by businesses adversely impacted by the C3 works (located in Aotea, Karangahape and Mt Eden) relating to the construction of the City Rail Link

- 3 **note** that the proposed Targeted Hardship Fund for the C3 works is an extension of the scope of the BHP for C2 beyond project delays and could create an expectation of financial assistance for businesses affected by sustained disruption by other large infrastructure projects
- 4 **agree** to the establishment of a Targeted Hardship Fund to provide financial assistance for hardship associated with sustained business disruption relating to C3 works for the construction of the City Rail Link
- 5 **note** that I will co-ordinate with the Minister of Finance and the Mayor of Auckland to determine the parameters, criteria and administrative arrangements for the Targeted Hardship Fund
- 6 **agree** to:

EITHER

- 6.1 Option 1 – Crown and Auckland Council meeting the cost of the Targeted Hardship Fund on a 50:50 basis (Crown 50 percent, Auckland Council 50 percent)

OR

- 6.2 Option 2 – Crown funds the Targeted Hardship Fund entirely (Crown 100 percent)

OR

- 6.3 Option 3 – the cost of the hardship fund or payments is shared with landlords

- 7 **note** there could be merit, even if Option 3 is not chosen, in encouraging landlords to contribute or assist tenants, especially when the rent for the premises exceeds the market rent. The CRL, which is funded from public funds, is likely to result in land values increasing in the project's vicinity.
- 8 **note** there is a risk that although that the Targeted Hardship Fund is bespoke to City Rail Link it could create or validate a public expectation that similar arrangements (or

financial support) will be provided for hardship associated with other large infrastructure schemes

- 9 **authorise** the Minister of Finance and Minister of Transport, as Sponsors of the City Rail Link project, to:

EITHER

- 9.1 approve the use of \$6 million of the contingency available in the Auckland City Rail Link appropriation in Vote Transport for a targeted hardship fund for businesses adversely affected by the C3 works to cover the Crown's share of the initial costs of the scheme for the first 2 years.

OR

- 9.2 approve the use of \$12 million of the contingency available in the Auckland City Rail Link appropriation in Vote Transport for a targeted hardship fund for businesses adversely affected by the C3 works for the Crown to fund the Targeted Hardship Fund entirely to cover the initial costs of the scheme for the first 2 years.

- 10 **note** that should the risk eventuate that the costs of the hardship fund exceed expectations in the first two years, and there is a need to seek additional funding, the Minister of Transport will report back to Cabinet
- 11 **note** that there will be a report back to Cabinet once the hardship fund has been in place for two years to provide an update on the hardship assistance provided and to seek further funding for the remainder of the C3 works
- 12 **authorise** the Minister of Finance and the Minister of Transport acting jointly to make the necessary changes to appropriations (including establishing new appropriations as necessary) to give effect to the policy decisions in recommendations above.
- 13 **note** that this paper will be released following Cabinet agreement.

Authorised for lodgement

Hon Michael Wood
Minister of Transport

Commercial-in-Confidence

Office of the Minister of Transport

Cabinet Economic Development Committee

City Rail Link Targeted Hardship Fund for C3 works

Proposal

- 1 This paper:
 - 1.1 provides an update on the Business Hardship Programme (BHP) for the C2 (Lower Albert Street) contract works for the City Rail Link (CRL) project (CAB-19-MIN-0646 refers)
 - 1.2 seeks approval for a Targeted Hardship Fund for businesses impacted by the C3 contract works (located in Aotea, Karangahape and Mt Eden)
 - 1.3 seeks approval for cost-sharing arrangements and funding for the first two years of the Targeted Hardship Fund and a framework for future funding
 - 1.4 advises on a range of risks associated with the Targeted Hardship Fund.

Relation to government priorities

- 2 The Government continues to invest in transport infrastructure to get our cities moving and lay the foundations for a better future. The CRL project will be a key part of Auckland's transport infrastructure and have long-term benefits. However, in the interim, there are some temporary adverse impacts relating to its construction, especially for small street-level businesses near the project's construction sites. Supporting small businesses and workers is a priority for the Government.

Executive Summary

- 3 Following Cabinet approval in December 2019 (CAB-19-MIN-0646 refers), City Rail Link Limited (CRL) developed a Business Hardship Programme (BHP) for the C2 (Lower Albert Street) contract works for delays in the completion of the C2 construction works. Hardship payments were made to 25 small, street-level retail businesses which totalled approximately \$617,000. Hardship payments were not made to property owners or owner/occupiers or non-retail businesses.
- 4 The Minister of Transport, in consultation with the Mayor of Auckland and the Minister of Finance, proposes a new Targeted Hardship Fund (for years 2021 to 2024, with funding for the first two years in the first instance) for businesses experiencing financial hardship associated with sustained and major disruption relating to the C3 works. Approval is sought to set up a Targeted Hardship Fund backdated to 1 February 2021.
- 5 I am proposing that the Targeted Hardship Fund will be administered by CRL and an independent party will have input into the assessment of applications from affected businesses. Detailed eligibility criteria will be set based on high-level parameters and guidance provided by Sponsors (the Crown and Auckland Council).

- 6 The Sponsors will provide funding for the first two years of the Targeted Hardship Fund outside the \$4.4 billion funding envelope already allocated by Sponsors. The costs (including administration) are estimated to be around \$6 million per year shared between the Sponsors. The cost for the Crown can be met out of the existing Auckland City Rail Link appropriation at this time. However, additional funding will be required in 2023 to cover the remainder of the construction period for C3. The amount to be appropriated for the final two years will depend on a review of the initial two years.
- 7 Consideration has been given to various funding and cost-sharing options for the Targeted Hardship Fund, including the Auckland Council sharing the costs on a 50:50 basis (option one), full Crown funding (option two), and landlords potentially contributing s 9(2)(g)(i), s 9(2)(f)(iv), s 9(2)(j) with the Crown and Council equally sharing the remaining contribution (option three).
- 8 My preferred option, which I recommend to the Committee, is option three (that landlords contribute to hardship payments s 9(2)(g)(i), s 9(2)(f)(iv), s 9(2)(j) with the Crown and Council equally sharing the remaining contribution). This is my preferred option as much of the hardship relates to leasing arrangements and property owners could experience land value increases resulting from the CRL project, which is funded by public funds. s 9(2)(h) any landlord contribution will be voluntary. I am considering options to encourage a landlord to contribute to hardship payments.

Background on the CRL project

- 9 The CRL project, which has a \$4.4 billion budget, is jointly funded by the Crown and Auckland Council on a 50:50 basis.
- 10 The project construction sites are in Auckland's CBD, and some small retail businesses have been, or are likely, to be affected by its construction. It is not unusual for urban construction projects to have temporary adverse impacts on local businesses. The statutory mechanism available to businesses affected by the construction of a public work is the Public Works Act 1981, s 9(2)(h)
- 11 The CRL project will affect some businesses through to the completion of the project, and some small businesses have already reported genuine financial hardship. CRLL and its contractors seek to manage business disruptions through several initiatives. CRLL has engaged with affected businesses for ways to mitigate hardship (such as offering to take over the lease of a property as it could be of use to CRLL or to assist in setting up a pop-up store in another location). CRLL has also provided extensive non-financial support for businesses, including marketing and promotion, priority procurement from affected businesses, and events. However, this assistance is considered insufficient by some businesses experiencing genuine hardship, particularly those that are leaseholders (and must pay rent to landlords).

Update on the BHP for C2 works along Albert Street for project delays

- 12 Following Cabinet's approval in December 2019 (CAB-19-MIN-0646 refers), CRLL developed a BHP for the C2 (Lower Albert Street) contract works. The purpose of the BHP for C2 was to provide rental relief for businesses along Albert Street (between Customs and Victoria Streets) that had experienced financial hardship due to delays in completing the C2 works beyond what was planned and communicated to businesses. There were reports of significant hardship being experienced by some

smaller, more vulnerable businesses. Businesses outside the C2 'impact zone' were not eligible to apply for relief through the BHP.

- 13 The objective of the BHP was to provide financial assistance to small retail business owners - at street level - who were leaseholders of premises in the Albert Street Impact Zone. Financial assistance was on an *ex-gratia* or goodwill basis. Financial assistance through the BHP for C2 did not limit or remove an applicant's ability to claim under the Public Works Act 1981 (or pursue other legal remedies). The BHP was not available for property owners or owner/occupiers, or other non-retail tenants. In part, based on overseas experience, this limitation reflected that once the CRL is open, property owners may experience increases in the value of their properties associated with being close to vibrant transport hubs.
- 14 On 16 December 2019, Sponsors set out the high-level expectations and criteria to be considered by CRLL in designing the C2 scheme explicitly for project delays. Sponsors' expectations were that:
 - 14.1 funds would target those suffering hardship and with limited ability to insulate themselves from extended disruption
 - 14.2 the scheme should not create an undue financial risk, either for the project or subsequent urban construction projects
 - 14.3 it is fair and reasonable.
- 15 Sponsors set out high-level parameters to be considered by CRLL in designing the BHP for C2 which included:
 - 15.1 hardship funding is only made available where there is a significant delay in construction
 - 15.2 financial assistance is only made available to the more vulnerable (small) businesses and on an *ex-gratia* basis
 - 15.3 financial assistance is only available to businesses in their capacity as a tenant (not available to property owners)
 - 15.4 that the detailed eligibility criteria should incorporate discretion based on the individual circumstances of the business and overall levels of available funding
 - 15.5 can be managed within CRLL's current funding allocation.
- 16 The amount of financial assistance was determined in some cases with input from an independent valuer. The process involved an assessment of the degree to which the applicant was paying above-market rent rates during the delay period. The amount of financial assistance was capped at \$100,000 per applicant.
- 17 CRLL made payments totalling approximately \$617,000 to 25 businesses for delays associated with the C2 works (the delay period was September 2019 through to October 2020). The C2 works were completed in October 2020 and the BHP for C2 closed following this.

I seek approval to set up a Targeted Hardship Fund for C3 for sustained and major disruption backdated to 1 February 2021

- 18 There have been requests for financial assistance from businesses experiencing genuine hardship relating to the sustained disruption from the C3 works, particularly from street-level retailers that are leaseholders even though there are no project delays. These requests reflect concerns at the length of disruption (the main C3 station works started in 2020). I would note that the footprint of the works in some cases may be impacting pedestrian numbers for specific retail businesses that rely on customers physically entering the premises. For these businesses, the length of the remaining C3 works extends through to 2024. While businesses in the area are unlikely to be impacted for the entire duration of the C3 works, some businesses may be impacted for several years.
- 19 Despite efforts made by CRLL to provide non-financial support and assistance to the businesses, businesses are seeking financial support. Businesses have alleged that the disruption is more than that associated with any other infrastructure project, which a business would ordinarily be expected to withstand during normal operations.

The proposed Targeted Hardship Fund for C3 will be similar to the BHP for C2 but will provide financial assistance for hardship associated with sustained and major disruption (rather than hardship only associated with project delays)

- 20 Having listened to the requests from small businesses, I propose to set up a Targeted Hardship Fund for sustained and major disruption associated with the C3 works resulting in genuine hardship. Unlike the BHP for C2, which was focused on delays, the Targeted Hardship Fund will be for sustained and major disruption relating to the C3 works. I have discussed creating the Targeted Hardship Fund with the Minister of Finance and the Mayor of Auckland.
- 21 The reason for extending the scheme to sustained and major disruption rather than delay is that hardship has, and will occur, in the absence of project delay in this instance, reflecting the length and nature of the works. Sustained disruption is anticipated to be lengthy (around four years), whilst the previous BHP for C2 was for a delay which was much shorter (around one year). s 9(2)(f)(iv), s 9(2)(j)

- 22 The Targeted Hardship Fund will be backdated to 1 February 2021 to reflect that some businesses have been suffering hardship for an extended period of time. s 9(2)(f)(iv), s 9(2)(j)

I propose that CRLL administers the Targeted Hardship Fund

- 23 I propose, as for the BHP for C2, that CRLL administers the Targeted Hardship Fund. This will be discussed further with Auckland Council and CRLL (subject to approval of the Targeted Hardship Fund by Auckland Council's Governing Body).

The high-level parameters and guidance for the Targeted Hardship Fund will be provided by Sponsors, within which the fund should be designed

- 24 I propose that the administrator determines the detailed eligibility criteria, designs the application process and determines the level of financial support provided by the

Targeted Hardship Fund (with the involvement of an independent third-party assessor). The administrator will determine these matters considering any parameters outlined and guidance provided by Sponsors.

- 25 I will coordinate with the Minister of Finance and Auckland Council to issue parameters and guidance relating to the Targeted Hardship Fund.
- 26 The purpose of the Targeted Hardship Fund is not to provide financial assistance or remedy general disruption relating to the construction of the CRL project. Its purpose is to provide *targeted* financial assistance where sustained disruption results in genuine hardship from 1 February 2021. Where there is sustained and major disruption relating to the construction of the project, but hardship is not demonstrated, it is unlikely financial assistance from the Targeted Hardship Fund would be available.
- 27 The Targeted Hardship Fund will be focused on sustained and major disruption but will likely be similar to the BHP for C2 (outlined above). Officials' initial expectation is that determining "sustained disruption" will consider the difference between the net rent the applicant is paying for its leased premises and the market rent payable for those premises (during the period of disruption). An assessment of rental valuation was used for the C2 BHP. Officials advise a rent valuation will likely be key to whether sustained disruption is demonstrated.
- 28 However, the final detailed eligibility criteria will be determined by the administrator considering the high-level parameters outlined and guidance provided by the Sponsors.

Any financial assistance for hardship would be ex gratia

- 29 As with the BHP for C2, I propose that any payment or financial assistance is *ex gratia* without the giver recognising any liability or legal obligation. Any payments will be on a goodwill basis. A business that decides to apply for assistance would retain its legal rights, including those under the Public Works Act 1981.
- 30 *Ex gratia* payments are governed by specific provisions in Cabinet Office Circular 18(2). The Circular prescribes that the Cabinet must authorise any *ex gratia* payments over \$75,000. As with the BHP for C2, I propose that Cabinet provides a general authorisation for the Targeted Hardship Fund as a whole.

A fair process for assessing applications including an independent third-party assessor

- 31 I expect a workable and fair process to be put in place for hardship applications and that an independent third-party assessor will have input or provide advice on individual applications.
- 32 The independent third-party assessor is to help ensure applications are assessed fairly and provide confidence to applicants that their applications are assessed solely on their merits. A level of independence should help ensure there is confidence in the assessment process.

Rapid relief for eligible businesses

- 33 Where a business is likely to be eligible for payment based on a rapid, high-level assessment against the detailed eligibility criteria, I expect processes where

practicable to be put in place to provide rapid relief through advance/interim payments, as was put in place for the BHP for C2. A reconciliation process would apply once the application has been assessed in more detail and initial payments would be deducted from the total when final payments are made.

- 34 Based on the experience from the BHP for C2, it can take time to process applications and undertake assessments in full, attain rent valuations and independent third-party input. There should be sufficient scope and flexibility to provide interim support to those businesses experiencing immediate hardship.

Initial estimates are the Targeted Hardship Fund will cost around \$6 million per year

- 35 Given several unknowns, it is difficult to estimate the cost of the Targeted Hardship Fund until the high-level parameters are outlined by Sponsors and the detailed eligibility criteria set by the administrator. Ultimately, the cost will depend on the eligibility criteria, uptake and level of hardship demonstrated.

- 36 s 9(2)(f)(iv) . A budget of approximately \$6 million¹ per year would be required for each year of the Targeted Hardship Fund (including administration). As such, a total of \$12 million would be required for the first two years of the fund. The Crown's funding contribution will depend on which cost-sharing option is chosen (discussed below), assuming a start date of 1 February 2021.

- 37 There may also be a need for independent support for applicants, such as translators, to assist businesses to apply and assemble required information, which are factored into the above estimates. s 9(2)(f)(iv)

- 38 I do not anticipate future CRL contract works will result in similar levels of sustained disruption and genuine hardship as with the C3 works.

Cost-sharing options for the Targeted Hardship Fund

- 39 Consideration has been given to different cost-sharing options to pay for the Targeted Hardship Fund. Given the cost uncertainties involved, I propose that funding be appropriated initially for two years (with a total budget of up to \$12 million for the first two years, in the first instance). Funding for the remaining years could be considered later with the benefit of actual cost information relating to prior years.

- 40 Based on current forecasts, the existing Auckland City Rail Link appropriation has sufficient non-committed funds tagged for contingencies s 9(2)(i), s 9(2)(j)

These non-committed funds could be utilised for the Crown's share of the first two years of the Targeted Hardship Fund.

- 41 Repurposing this money increases the risk that additional funding is required for the CRL project. The Treasury has included a Specific Fiscal Risk in the 2021 Budget

¹ This estimate is based the approximate number of small businesses directly impacted by the C3 works, the estimated average payments for businesses per year based on the experience of the C2 BHP, estimated third-party costs (independent valuer, translators, etc), and the estimated administration costs.

Economic and Fiscal Update for the CRL project and no additional funding has been provided for CRL costs related to COVID-19 at this stage (as has taken place for other large capital projects in New Zealand). The impact of the current Alert Level 4 lockdown is unknown but could be significant. I am seeking Cabinet's approval that these non-committed funds from within the existing Auckland City Rail Link appropriation can be used for the Targeted Hardship Fund.

- 42 Should Cabinet agree to use non-committed funds in the Auckland City Rail Link appropriation to fund its share of the first two years of the Targeted Hardship Fund, the Crown's funding of the Targeted Hardship Fund would be fiscally neutral for those two years. There would then be a report back to Cabinet once the hardship fund has been in place for two years to provide an update on the hardship assistance provided and seek further funding for the remainder of the C3 works.
- 43 To date, costs associated with the project have been shared between Auckland Council and the Crown. Other cost-sharing options could also be considered, including landlords contributing funds to any hardship payment or being encouraged to provide relief to a tenant experiencing hardship.

Option one – Crown and Auckland Council share the costs 50:50 of the Targeted Hardship Fund (consistent with existing funding approach for CRL)

- 44 To date, the Crown and Auckland Council have jointly funded the project. Consistent with this, the BHP for C2 was jointly funded 50:50 by the Crown and Auckland Council.
- 45 It would be consistent with the overall funding arrangement to date that the Crown and Auckland Council share costs on a 50:50 basis for the C3 Targeted Hardship Fund. This is the Ministry of Transport's preferred option.

Option two – Crown funds the Targeted Hardship Fund entirely

- 46 The Crown could consider funding the Targeted Hardship Fund fully for the first two years and subsequent years.
- 47 A key feature of the CRL project is that it is a bespoke arrangement between the Crown and Auckland Council. The Crown fully funding the Targeted Hardship Fund (for its first two years) is not the preferred option of officials as it is inconsistent with the overarching funding approach taken to CRL to date. It also is inconsistent with the joint decision-making approach for CRL.

48

s 9(2)(g)(i)

Option three – the Crown and Auckland Council [redacted] and landlords contribute [redacted] (preferred option of the Minister of Transport)

49 Consideration has also been given to landlords contributing to assist tenants where the applicant leases an impacted property. There have been suggestions that much of the hardship being experienced by small retail businesses relates to paying rent. There could be merit in landlords contributing, as:

49.1 it has been suggested that in some instances the rents paid by tenants do not reflect market conditions, and the tenant has not received rent-relief from the landlord

49.2 once CRL is complete, it is possible the project will result in land values increasing in the area of the project. Such land value increases could potentially result in a windfall gain – or betterment – to landowners from the project, funded by public money.

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51 Auckland Council's Governing Body is due to consider the Targeted Hardship Fund and the various cost-sharing options on 26 August 2021.

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s 9(2)(g)(i), s 9(2)(j)

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- 55 Even if this Option 3 is not favoured, and Cabinet chooses Option 1 or Option 2, there could be merit in encouraging landlords to contribute or assist tenants, especially in cases where the rent for the premises exceeds the likely market rent.

Risks with setting up a Targeted Hardship Fund

- 56 Creating another hardship scheme and extending it to cover sustained disruption has risks. Risk exists for both CRL and other future significant infrastructure projects in urban areas.

There is a risk of creating a public expectation that financial assistance will be considered for hardship for sustained and major disruption relating to other large, nationally significant, urban, and lengthy construction projects

- 57 Creating the BHP for C2 for project delay, and creating a Targeted Hardship Fund for C3 for sustained and major disruption, presents a precedent risk or public expectation that financial assistance will be provided for other large existing or future infrastructure projects.
- 58 The establishment of the C2 BHP or this Targeted Hardship Fund for C3 is not intended to create a general precedent for infrastructure projects. I consider that the CRL project is unique and that it is the first time that a transport infrastructure project of this scale, length and complexity has been undertaken in New Zealand in an existing urban area with so many small retail businesses in close proximity. Due to its size, the length and extent of the disruption, I consider it is appropriate to put in place an exceptional arrangement in this instance for sustained and major disruption. I do not consider any precedent will be created as payments will be provided explicitly on an *ex gratia* basis.
- 59 The BHP for C2 or this C3 Targeted Hardship Fund is not intended to signal or create a public expectation that financial assistance would be provided for further CRL works. Further CRL works are not anticipated to result in similar levels of sustained and major disruption and genuine hardship. The proposed Targeted Hardship Fund is bespoke for C3.
- 60 Whether or not this creates an expectation of a precedent, it is important to recognise that for some large scale, nationally significant, publicly-funded infrastructure projects, some business and many landowners may benefit or experience windfall gains in the long-term. Such beneficiaries may be expected to make a financial

contribution to the costs of the infrastructure in future projects as is commonplace in other jurisdictions. Conversely, as in this case, there may be small retail businesses that experience genuine financial hardship over the shorter-term and I consider it appropriate in certain circumstances for hardship payments to be considered. These issues will need to be carefully worked through and designed into business cases for projects of this nature on a case-by-case basis.

It may be challenging to differentiate between adverse impacts including those that do not relate to CRL

- 61 There is a risk the Targeted Hardship Fund attracts applications for financial hardship that are attributable, at least in part, to causes other than the C3 works. COVID-19 has impacted retail traffic across the CBD, with more people working from home, fewer students, and significantly reduced international aviation and cruise tourism. Changing retail shopping patterns from competition (Commercial Bay and Britomart) and online shopping are also likely to have impacted some businesses. Many premises outside the C3 zone are vacant.
- 62 It may be difficult to disentangle the various potentially adverse factors at play impacting businesses in the area and ascertain those that relate to the CRL C3 works. To mitigate this risk, as part of the assessment, third party and independent assessors will likely consider the impact of construction relative to retail conditions for similar businesses outside of the C3 area.

Risks that applications exceed available funding

- 63 s 9(2)(g)(i)
- 64 I would expect that the administrator actively monitors claims and risks and keeps Sponsors updated. Should the risk eventuate that the costs of the Targeted Hardship Fund exceed expectations in the first two years, and there is a need to seek additional funding, the Minister of Transport will report back to Cabinet.

Market dynamics

- 65 s 9(2)(f)(iv), s 9(2)(j)
- 66

s 9(2)(f)(iv), s 9(2)(j)

Financial Implications

- 67 Funding from Sponsors will be required for the Targeted Hardship Fund. The Crown contribution for the first two years of the fund (irrespective of cost-sharing options) can be met from the existing Auckland City Rail Link appropriation in Vote Transport. This will require a fiscally neutral adjustment between capital and operating expenditure within the Auckland City Rail Link appropriation.
- 68 Utilising the existing Auckland City Rail Link appropriation reduces the amount of non-committed Crown contingency funding to pay for the project. Currently, the project is tracking well. CRLL 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. The project is identified as a Specific Fiscal Risk by the Treasury and, unlike some other capital projects, at this stage, the CRL project has not received additional funding related to the impacts of COVID-19. However, the project is identified as a Specific Fiscal Risk by the Treasury and, unlike some other capital projects, at this stage, the CRL project has not received additional funding related to the impacts of COVID-19.
- 69 There is a risk that utilising the non-committed funding in the Auckland City Rail Link appropriation for the Targeted Hardship Fund will make it more likely that additional funding will be required at a later date. If further funds are required from Sponsors, the Minister of Transport will inform Cabinet.

Legislative Implications

- 70 There are no legislative implications.

Impact Analysis

Regulatory Impact Statement

- 71 No legislative or regulatory change is proposed, so no Regulatory Impact Statement is required.

Climate Implications of Policy Assessment

- 72 There are no climate implications as a result of this proposal and no assessment has been completed.

Population Implications

- 73 There are no population implications.

Consultation

- 74 The Treasury and Auckland Council were consulted. The Department of Prime Minister and Cabinet was informed.

- 75 Consultation has taken place with relevant departments and agencies at the same time as ministerial consultation. Key departments and agencies include the Department of Internal Affairs, Land Information New Zealand, Ministry for the Environment, Ministry of Business, Innovation and Employment, Ministry of Housing and Urban Development, Te Kawa Mataaho Public Service Commission, Waka Kotahi NZ Transport Agency, and Te Waihanganga the Infrastructure Commission.
- 76 A number of departments and agencies (particularly the Ministry for Housing and Urban Development, Waka Kotahi NZ Transport Agency, Te Waihanganga Infrastructure Commission, Ministry for the Environment and Land Information New Zealand) have expressed concerns about the potential precedent implications of this paper.
- 77 CRLL has expressed concerns with being responsible for administering the Targeted Hardship Fund.
- 78 Auckland Council's Governing Body is due to consider the Targeted Hardship Fund on 26 August 2021.

Communications

- 79 Subject to approval by both Cabinet and Auckland Council's Governing Body, the Minister of Transport and Auckland Council will make an announcement on the establishment of the Targeted Hardship Fund.

Proactive Release

- 80 The Minister of Transport intends to release this Cabinet paper proactively (in whole or in part), within 30 business days of decisions being confirmed by Cabinet, subject to redaction as appropriate under the Official Information Act 1982.

Recommendations

The Minister for Transport recommends that the Committee:

- 1 **note** that in December 2019, Cabinet agreed to the development of a Business Hardship Programme (BHP) for delay in the completion of C2 contract works (located in lower Albert Street) for the construction of the City Rail Link [CAB-19-MIN-0646 refers]
- 2 **note** concerns have been expressed by businesses adversely impacted by the C3 works (located in Aotea, Karangahape and Mt Eden) relating to the construction of the City Rail Link
- 3 **note** that the proposed Targeted Hardship Fund for the C3 works is an extension of the scope of the BHP for C2 beyond project delays and could create an expectation of financial assistance for businesses affected by sustained and major disruption by other large infrastructure projects
- 4 **agree** to the establishment of a Targeted Hardship Fund to provide financial assistance for hardship associated with sustained and major disruption relating to C3 works for the construction of the City Rail Link (for years 2021 to 2024, with funding for the first two years)
- 5 **note** the costs of the Targeted Hardship Fund (including for administration) are estimated to be around \$6 million per year (for the first two years)

- 6 **note** that I intend that City Rail Link Limited will administer the Targeted Hardship Fund and an independent third-party will have input on assessing applications
- 7 **note** that Sponsors will outline the high-level parameters and provide guidance for the Targeted Hardship Fund's administrator
- 8 **note** that I propose that the administrator will determine the detailed eligibility criteria and level of financial support provided by the Targeted Hardship Fund, within the high-level parameters and guidance outlined by Sponsors
- 9 **agree** to (noting that Auckland Council's Governing Body has yet to consider the matter):

EITHER

- 9.1 Option 1 – Crown and Auckland Council meeting the cost of the Targeted Hardship Fund on a 50:50 basis (Crown 50 percent, Auckland Council 50 percent). This is the Ministry of Transport's preferred option.

OR

- 9.2 Option 2 – Crown funds the Targeted Hardship Fund entirely (Crown 100 percent)

OR

- 9.3 Option 3 – the cost of the hardship fund or payments is shared with landlords

s 9(2)(f)(iv), s 9(2)(j), s 9(2)(g)(i)

- 10 **note** there could be merit, even if Option 3 is not chosen, in encouraging landlords to contribute or assist tenants, especially when the rent for the premises exceeds the market rent. The CRL, which is funded from public funds, could result in land values increasing in the project's vicinity
- 11 **note** there is a risk that although that the Targeted Hardship Fund is bespoke to City Rail Link it could create or validate a public expectation that financial support will be provided for hardship relating to sustained disruption associated with the construction of other large nationally significant and publicly funded urban infrastructure projects

- 12 **authorise** the Minister of Finance and Minister of Transport, as Sponsors of the City Rail Link project, to:

EITHER (if Option 1 or Option 3 is chosen)

- 12.1 approve the use of \$6 million of the contingency available in the Auckland City Rail Link appropriation in Vote Transport for a targeted hardship fund for businesses adversely affected by the C3 works to cover the Crown's share of the initial costs of the scheme for the first 2 years (the Crown and Auckland costs share costs 50:50)

OR (if Option 2 is chosen)

- 12.2 approve the use of \$12 million of the contingency available in the Auckland City Rail Link appropriation in Vote Transport for a targeted hardship fund for businesses adversely affected by the C3 works for the Crown to fund the Targeted Hardship Fund entirely to cover the initial costs for the first 2 years (full Crown funding; no Auckland Council contribution)
- 13 **note** that should the risk eventuate that the costs of the Targeted Hardship Fund exceed expectations in the first two years, and there is a need to seek additional funding, the Minister of Transport will report back to Cabinet
- 14 **note** that there will be a report back to Cabinet close to the time of the Targeted Hardship Fund being in place for two years to provide an update on the hardship assistance provided and to seek further funding for the remainder of the C3 works
- 15 **authorise** the Minister of Finance and the Minister of Transport acting jointly to make the necessary changes to appropriations (including establishing new appropriations as necessary) to give effect to the policy decisions in recommendations above
- 16 **note** that the Cabinet paper will be released following Cabinet agreement subject to redactions as appropriate under the Official Information Act 1982

Authorised for lodgement

Hon Michael Wood
Minister of Transport



Cabinet Business Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

City Rail Link Targeted Hardship Fund for C3 works

Portfolio Transport

On 25 August 2021, the Cabinet Business Committee:

- 1 **noted** that in December 2019, Cabinet authorised the Minister of Finance and the Minister of Transport to approve a targeted Business Hardship Programme (BHP) for businesses adversely affected by delays in the completion of C2 contract works (located in lower Albert Street) in the construction of the City Rail Link (CRL) [CAB-19-MIN-0646];
- 2 **noted** that concerns have been expressed by businesses adversely impacted by the C3 works (located in Aotea, Karangahape and Mt Eden) relating to the construction of the CRL;
- 3 **noted** that the Targeted Hardship Fund for the C3 works in paragraph 4 below is an extension of the scope of the BHP for C2 beyond project delays, and could create an expectation of financial assistance for businesses affected by sustained and major disruption by other large infrastructure projects;
- 4 **agreed** to the establishment of a Targeted Hardship Fund to provide financial assistance for hardship associated with sustained and major disruption relating to C3 works for the construction of the CRL (for years 2021 to 2024, with funding for the first two years);
- 5 **noted** that the costs of the Targeted Hardship Fund (including for administration) are estimated to be around \$6 million per annum for the first two years;
- 6 **noted** that the Minister of Transport intends that City Rail Link Limited will administer the Targeted Hardship Fund, and that an independent third-party will have input on assessing applications;
- 7 **noted** that Sponsors will outline the high-level parameters and provide guidance for the Targeted Hardship Fund's administrator;
- 8 **noted** that the Minister of Transport proposes that the administrator will determine the detailed eligibility criteria and level of financial support provided by the Targeted Hardship Fund, within the high-level parameters and guidance outlined by Sponsors;
- 9 **agreed in principle**, subject to Auckland Council's Governing Body considering the matter and to paragraph 10 below, that the cost of the Targeted Hardship Fund or payments be shared with landlords;

- 10 **authorised** the Minister of Finance and Minister of Transport, as Sponsors of the CRL project, jointly to:
- 10.1 make any further decisions, in discussion with Auckland Council's Governing Body, on the details, establishment, and implementation of the Targeted Hardship Fund;
 - 10.2 approve the use of the contingency available in the Auckland City Rail Link appropriation in Vote Transport to cover the Crown's share of the initial costs for the first 2 years of the Targeted Hardship Fund;
 - 10.3 make the necessary changes to appropriations, including establishing new appropriations as necessary, to give effect to the policy decisions above;
- 11 **noted** that there is a risk that although that the Targeted Hardship Fund is bespoke to CRL, it could create or validate a public expectation that financial support will be provided for hardship relating to sustained disruption associated with the construction of other large nationally significant and publicly funded urban infrastructure projects;
- 12 **noted** that the Minister of Transport will report back to Cabinet if the costs of the Targeted Hardship Fund exceed expectations in the first two years and there is a need to seek additional funding;
- 13 **noted** that the Minister of Transport intends to report back to Cabinet close to the time of the Targeted Hardship Fund being in place for two years to provide an update on the hardship assistance provided and to seek further funding for the remainder of the C3 works;
- 14 **note** that the Minister of Transport will provide an update to Cabinet following discussions with Auckland Council.

Rachel Clarke
Committee Secretary

Present:

Rt Hon Jacinda Ardern (Chair)
Hon Grant Robertson
Hon Kelvin Davis
Hon Dr Megan Woods
Hon Chris Hipkins
Hon Carmel Sepuloni
Hon Andrew Little
Hon David Parker
Hon Nanaia Mahuta
Hon Poto Williams
Hon Damien O'Connor
Hon Stuart Nash
Hon Kris Faafoi
Hon Michael Wood

Officials present from:

Office of the Prime Minister
Department of the Prime Minister and Cabinet



Cabinet

Minute of Decision

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Report of the Cabinet Business Committee: Period Ended 27 August 2021

On 30 August 2021, Cabinet made the following decisions on the work of the Cabinet Business Committee for the period ended 27 August 2021:

[Unrelated items removed]

PROACTIVELY RELEASED BY
TE MANATŪ WAKA MINISTRY OF TRANSPORT

CBC-21-MIN-0078 **City Rail Link Targeted Hardship Fund for C3 works** CONFIRMED
Portfolio: Transport

Michael Webster
Secretary of the Cabinet

PROACTIVELY RELEASED BY
TE MANATŪ WAKA MINISTRY OF TRANSPORT



2 September 2021

OC210694

T2021/2247

Hon Michael Wood
Minister of Transport

Action required by:
Tuesday, 7 September 2021

Hon Grant Robertson
Minister of Finance

CITY RAIL LINK - TARGETED BUSINESS HARDSHIP FUND FOR C3 WORKS

Purpose

To provide you with advice on the high-level guidance from Sponsors for the Targeted Hardship Fund (the Fund) that City Rail Link Limited (CRL) develops, with a draft letter from Sponsors to CRL attached. To establish and implement the Fund, we also seek your agreement:

- to make necessary changes to the appropriations
- for the Crown to enter a funding agreement with Auckland Council and CRL for the Fund.

Key points

- Following the approval from both Cabinet and Auckland Council Governing Body on the establishment and funding for the Fund, you have jointly been authorised to make any further decisions, in discussion with Auckland Council, on the details, establishment, and implementation of the Fund (CBC-21-MIN-0078 and CAB-21-MIN-0338 refers).
- In order to establish the Fund, we seek your agreement to make the required fiscally neutral changes to the CRL appropriations and for the Crown to enter into a funding agreement with Auckland Council and CRL for the Fund.
- In order to provide direction to CRL and ensure that the Fund is appropriately targeted without creating undue precedent risk, we recommend Sponsors outline the high-level guidance that they expect to be considered for any Fund that CRL develops. A draft letter setting out Sponsors' expectations is attached. The Ministry has consulted with the Treasury, the Mayor of Auckland and Auckland Council officials, and all are comfortable with the letter.

Recommendations

We recommend you:

- 1 **note** that Cabinet agreed to the establishment of a Targeted Hardship Fund to provide financial assistance for hardship associated with sustained and major disruption relating to C3 works for the construction of the City Rail Link (for years 2021 to 2024, with funding for the first two years) [CBC-21-MIN-0078 and CAB-21-MIN-0338 refers] and:

- 1.1 approved the use of the contingency available in the Auckland City Rail Link capital appropriation in Vote Transport to cover the Crown's share of the initial costs for the first two years of the Targeted Hardship Fund
- 1.2 authorised the Minister of Finance and Minister of Transport, as Sponsors of the CRL project, jointly to make the necessary changes to appropriations, including establishing new appropriations as necessary, to give effect to the policy decision above.

- 2 **agree** to establish the following new multi-year appropriation, to run from 1 July 2021 to 30 June 2025:

Vote	Appropriation Minister	Title	Type	Scope
Transport	Minister of Transport	Auckland City Rail Link Targeted Hardship Fund MYA	Non-departmental Other Expense	This appropriation is limited to the Crown's share of the administration costs and payments to eligible businesses for hardship associated with sustained and major disruption relating to C3 works for the construction of the Auckland City Rail Link.

Yes / No
Minister of Finance

Yes/ No
Minister of Transport

- 3 **approve** the following changes to appropriations to give effect to the policy decision in recommendation 1 above, with a corresponding impact on the operating balance outlined in recommendation 4 below:

Vote Transport Minister of Transport	\$m – increase/(decrease)	
	2021/22 to 2024/25	2025/26 & Outyears
Non-departmental Other Expense: Auckland City Rail Link Targeted Hardship Fund MYA	6.000	-
Non-departmental Capital Expense: Auckland City Rail Link MYA	(6.000)	-
Total Operating	6.000	-
Total Capital	(6.000)	-

Yes / No
Minister of Finance

Yes/ No
Minister of Transport

- 4 **note** that the indicative funding profile for the new multi-year appropriation described in recommendation 3 above is as follows:

	\$m – increase/(decrease)				
Indicative annual spending profile	2021/22	2022/23	2023/24	2024/25	2025/26 & outyears
	4.200	1.800	-	-	-

- 5 **agree** that the proposed changes to appropriations above be included in the 2021/22 Supplementary Estimates and that, in the interim, the increase be met from Imprest Supply

Yes / No
Minister of Finance

Yes/ No
Minister of Transport

- 6 **agree** that a funding agreement for the Targeted Hardship Fund be entered into between the Crown, Auckland Council and CRL, with delegated authority for the Secretary for Transport to sign on behalf of the Crown.

Yes / No
Minister of Finance

Yes/ No
Minister of Transport

- 7 **note** that Sponsor representatives have agreed high-level guidance that should be set as an expectation for the Targeted Hardship Fund

- 8 **agree** that the Minister of Transport signs the attached letter to CRL on behalf of Sponsors to request that CRL establish a Targeted Hardship Fund for businesses affected by major and sustained disruption as a result of the C3 works that includes the high-level guidance and expectations for the Targeted Hardship Fund

Yes / No
Minister of Finance

Yes/ No
Minister of Transport

Hon Grant Robertson
Minister of Finance

..... / /

Fiona Stokes

Fiona Stokes
Acting Manager, National Infrastructure Unit The Treasury

03 / 09 / 2021

Hon Michael Wood
Minister of Transport

..... / /

Fleur D'Souza

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

03 / .09 / 2021

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)	✓
Fleur D'Souza, Manager, Programme Assurance and Commercial, Ministry of Transport		
David Taylor, Manager, National Infrastructure Unit, The Treasury		

CITY RAIL LINK - TARGETED HARDSHIP FUND FOR C3 WORKS

Background

- 2 You are already aware of the issues around the hardship faced by some businesses in the vicinity of the C3 works (Aotea, Karangahape and Mt Eden sites) as a result of the extended period of time of CRL construction works in those areas.
- 3 The Government agreed to support a fund administered by CRLL that makes ex-gratia payments to businesses that meet certain criteria, and you sought Cabinet's consideration of the matter (OC210610 refers).
- 4 On 25 August 2021 Cabinet Business Committee agreed to the establishment of a Targeted Hardship Fund and, among other things, authorised the Minister of Finance and Minister of Transport, as Sponsors of the CRL project, jointly to make any further decisions, in discussion with Auckland Council's Governing Body, on the details, establishment, and implementation of the Targeted Hardship Fund (the Fund) (CBC-21-MIN-0078 and CAB-21-MIN-0338 refers).
- 5 Auckland Council Governing Body approved the establishment and funding for the Fund on 26 August 2021.
- 6 Costs of the Fund will be shared equally between Auckland Council and Crown, up to a total of \$12 million over the first two years of the Fund. As agreed by Cabinet, CRLL is also expected to encourage and seek contributions from affected business's landlords towards financial assistance as part of the Fund's administration. This is also reflected in the attached letter and discussed further below.

Changes to the appropriations

- 7 We have set out the necessary changes to the appropriations to give effect to Cabinet's decision (CBC-21-MIN-0078 and CAB-21-MIN-0338 refers) in Recommendations 1- 6 above.
- 8 We recommend the establishment of a new multi-year appropriation, to run from 1 July 2021 to 30 June 2023. This is a fiscally neutral move of \$6 million from the Auckland City Rail Link capital appropriation to a new operating appropriation ('Auckland City Rail Link Targeted Hardship Fund').
- 9 We expect the costs of the Fund to be significantly higher in 2021/22 than in 2022/23 due to the higher administrative costs and third party costs when establishing the Fund and assessing applicants for the first time, as well as due to backdating of hardship payments to 1 Feb 2021. As such, the indicative funding profile has \$4.2 million in 2021/22 and \$1.8 million in 2022/23.
- 10 We will receive reporting from CRLL on the operation of the Fund. We intend to provide an update to you in October 2022 on the implementation and costs of the Fund. A report back to Cabinet will follow, providing an update on the hardship assistance provided and to seek further funding for the remainder of the C3 works.

"Please note the reference to 2023 included here is an error, the details for this appropriation are set out above on page 2."

A funding agreement will be required between Sponsors and CRLL

- 11 The funding of \$12 million for the Fund will be provided pursuant to a funding agreement to be entered into between the Crown, Auckland Council and CRLL
- 12 The management of the Fund will be consistent with the purpose of City Rail Link Limited (as provided for in its constitution) to manage, deliver and complete the City Rail Link project.
- 13 Subject to your agreement, the Ministry of Transport will enter into a funding agreement with Auckland Council and CRLL for the Targeted Hardship Fund.

High-level guidance for the hardship fund

- 14 In order to ensure that the Fund is appropriately targeted without creating undue precedent risk, Sponsors should provide direction of the high-level guidance that they would expect to be considered for any Fund that CRLL develops.
- 15 The overall objective of the Fund is to provide targeted assistance to small businesses that experience major and sustained disruption and genuine hardship relating to the C3 construction activity from 1 February 2021 onwards. We have been careful within the letter to provide CRLL with enough discretion so that the guidelines are not overly prescriptive and allow CRLL to design the details of the Fund appropriately, and with reference to their detailed knowledge of the construction activity and affected areas, to best meet the Fund's intended objective.
- 16 The level of support provided to each business will need to be tailored to their particular circumstances, following an assessment of the level of disruption, hardship and the case for financial assistance. The Fund (including the prudent and proportionate costs of administration) will need to be managed within the additional \$12 million funding allocated for the first two years of the Fund.
- 17 In consultation with Auckland Council, we recommend that the following be included in a letter to CRLL:
 - Financial assistance to businesses should be made available on an *ex-gratia* basis only
 - Financial assistance should target businesses where there is evidence of major and sustained disruption, financial hardship, and a reasonable case for financial assistance being required (such as small vulnerable businesses)
 - Financial assistance should target affected businesses immediately adjacent to the C3 works. In exceptional circumstances, businesses in the wider proximity of the C3 works (e.g. a business that is not immediately adjacent to the C3 works but where access is severely compromised) could be considered where CRLL determine there is a strong case for financial assistance
 - Financial assistance should be made available to businesses in their capacity as a tenant. In exceptional circumstances, small businesses that occupy their own premises could be considered where CRLL determine there is a strong case for financial assistance

s 9(2)(f)(iv), s 9(2)(j), s 9(2)(g)(i)

- Eligible businesses should be limited to businesses that commenced in the affected area before 1 October 2019, when the C3 works began
- If a business is receiving the COVID-19 Wage Subsidy (or other targeted Government financial support for a COVID-19 Alert Level 3 or 4 event), it should not be eligible for financial assistance from the Fund for the same time period.
- Given that applications from affected businesses may take time to assess, advance or interim relief should be available for likely eligible businesses experiencing immediate hardship once their application has been received and is under consideration. Any advanced or interim payment would be deducted from the total assistance provided
- That CRLL provides updates on the operation of the Fund in the monthly reporting to Sponsors.
- That CRLL will provide a copy of the detailed criteria before it is announced, so that Sponsors' representatives can review and confirm to CRLL that it is in line with Sponsors' high-level guidance in the attached letter.

Considerations for how a landlord contribution could be encouraged

- 18 The high-level guidance above includes that a contribution s 9(2)(f)(iv), s 9(2)(j), s 9(2)(g)(i) towards the level of financial assistance for an eligible business determined by CRLL should be sought from landlords in each year of the Fund.

s 9(2)(f)(iv), s 9(2)(g)(i), s 9(2)(j)

s 9(2)(f)(iv), s 9(2)(j)

Consultation

- 20 The Ministry has consulted with the Treasury and Auckland Council on the content of the letter attached. The Treasury and Auckland Council have confirmed that they are comfortable with it.

Next steps

- 21 Following the attached letter being sent to CRLL, we will work with CRLL as it finalises the details of the Fund to ensure that the Fund has considered the high-level guidance set out in the attached letter from Sponsors.
- 22 CRLL will provide a copy of the detailed criteria before it is announced, so that Sponsors' representatives can review and confirm to CRLL that it is in line with Sponsors' high-level guidance.
- 23 The formal approval of the final Fund is a matter for CRLL's Board.
- 24 It is expected that the Fund will be announced on 3 September 2021 (or the following week). The Minister of Transport's office is managing this with the Mayor's office. The media release and other communications will need to align with this draft letter. We note that there is some risk in making an announcement prior to you reviewing and agreeing the attached letter.

Hon Michael Wood

MP for Mt Roskill

Minister of Transport

Minister for Workplace Relations and Safety

Deputy Leader of the House



Sir Brian Roche
Chair
City Rail Link Limited
s 9(2)(a)

Dear Sir Brian

Targeted Hardship Fund for businesses relating to the C3 works

I am writing on behalf of Sponsors of the City Rail Link (CRL) project to request that City Rail Link Limited (CRL) put in place a Targeted Hardship Fund (the Fund) for businesses affected by major and sustained disruption as a result of the C3 works. Additional funding of up to \$12 million will be provided by Sponsors for the first two years to expend on the Fund, with a review of whether further funding is required in late 2022. This additional funding will be provided pursuant to a funding agreement to be entered into between Auckland Council, the Ministry of Transport, and CRL.

This letter sets out the Sponsors' high-level expectations and guidance to enable CRL to set up and administer the Fund. The overall objective of the Fund is to provide targeted assistance to small businesses that experience major and sustained disruption and genuine hardship relating to the C3 construction activity from 1 February 2021 onwards. The Fund is limited to businesses affected by the C3 works and will not extend to other parts of the project.

Based on this overall objective, we have developed the following high-level guidelines that we expect to be considered by CRL when developing the detailed eligibility criteria and administering the Fund. Assessing the level of disruption and the financial impact on each business will require CRL to apply judgement and discretion. The level of support provided to each business will need to be tailored to their particular circumstances, while in aggregate the support provided will need to be within the available funding.

The high-level guidelines are as follows:

- Financial assistance to businesses should be made available on an *ex-gratia* basis only
- Financial assistance should target businesses where there is evidence of major and sustained disruption, financial hardship, and a reasonable case for financial assistance being required (such as small vulnerable businesses)
- Financial assistance should target businesses immediately adjacent to the C3 works. In exceptional circumstances, businesses in the wider proximity of the C3 works (e.g. a business that is not immediately adjacent to the C3 works but where access is severely compromised) could be considered where CRLI determine there is a strong case for financial assistance
- Financial assistance should be made available to businesses in their capacity as a tenant. In exceptional circumstances, small businesses that occupy their own premises could be considered where CRLI determine there is a strong case for financial assistance
- A s 9(2)(f)(iv), s 9(2)(j), s 9(2)(g)(i) the level of financial assistance for an eligible business determined by CRLI under the Fund should be sought from the business' landlord in each year the Fund is in operation. This should include the following approach:
s 9(2)(f)(iv), s 9(2)(j)
 - in the case that landlords do not contribute, that CRLI makes up the full 100% of the determined level of financial assistance to the eligible business.
- Eligible businesses should be limited to businesses that commenced in the affected area before 1 October 2019, when the C3 works began
- If a business is receiving the COVID-19 Wage Subsidy (or other targeted Government financial support for a COVID-19 Alert Level 3 or 4 event), it should not be eligible for financial assistance from the Fund for the same time period.
- Given that applications from affected businesses may take time to assess, advance or interim relief should be available for likely eligible businesses experiencing immediate hardship once their application has been received and is under consideration. Any advanced or interim payment would be deducted from the total assistance provided.

Ultimately, we ask that the Board satisfies itself that the detailed eligibility criteria, application process and the overall administration of the Fund, are consistent with the high-level expectations and guidelines provided in this letter, and are in accordance with the good management of public funds.

The Fund (including the prudent and proportionate costs of administration) should be managed within the funding allocated by Sponsors. We ask that CRLL provides updates on the operation of the Fund in the monthly reporting to Sponsors.

We expect that the detailed eligibility criteria CRLL develops will be made available publicly. We also expect that CRLL will provide a copy of the detailed criteria before it is announced, so that Sponsors' representatives can review and confirm to CRLL that it is in line with Sponsors' high-level guidance in this letter.

Thank you for your ongoing work to support the businesses of Auckland as the construction of the CRL project continues.

Yours sincerely,

Michael Wood
Minister of Transport

Copy to:

Grant Robertson
Minister of Finance
g.robertson@ministers.govt.nz

Phil Goff
Mayor of Auckland
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Document 8

Hon Michael Wood

Minister of Transport
Minister for Workplace Relations and Safety



Sir Brian Roche
Chair
City Rail Link Limited
s 9(2)(a)

Dear Sir Brian,

Targeted Hardship Fund for businesses relating to the C3 works

I am writing on behalf of Sponsors of the City Rail Link (CRL) project to request that City Rail Link Limited (CRL) put in place a Targeted Hardship Fund (the Fund) for businesses affected by major and sustained disruption as a result of the C3 works. Additional funding of up to \$12 million will be provided by Sponsors for the first two years to expend on the Fund, with a review of whether further funding is required in late 2022. This additional funding will be provided pursuant to a funding agreement to be entered into between Auckland Council, the Ministry of Transport, and CRL.

This letter sets out the Sponsors' high-level expectations and guidance to enable CRL to set up and administer the Fund. The overall objective of the Fund is to provide targeted assistance to small businesses that experience major and sustained disruption and genuine hardship relating to the C3 construction activity from 1 February 2021 onwards. The Fund is limited to businesses affected by the C3 works and will not extend to other parts of the project.

Based on this overall objective, we have developed the following high-level guidelines that we expect to be considered by CRL when developing the detailed eligibility criteria and administering the Fund. Assessing the level of disruption and the financial impact on each business will require CRL to apply judgement and discretion. The level of support provided to each business will need to be tailored to their particular circumstances, while in aggregate the support provided will need to be within the available funding.

The high-level guidelines are as follows:

- Financial assistance to businesses should be made available on an *ex-gratia* basis only
- Financial assistance should target businesses where there is evidence of major and sustained disruption, financial hardship, and a reasonable case for financial assistance being required (such as small vulnerable businesses)
- Financial assistance should target businesses immediately adjacent to the C3 works. In exceptional circumstances, businesses in the wider proximity of the C3 works (e.g. a business that is not immediately adjacent to the C3 works but where access is severely compromised) could be considered where CRLL determine there is a strong case for financial assistance
- Financial assistance should be made available to businesses in their capacity as a tenant. In exceptional circumstances, small businesses that occupy their own premises could be considered where CRLL determine there is a strong case for financial assistance
- A meaningful contribution towards the level of financial assistance for an eligible business determined by CRLL under the Fund should be sought from the business' landlord in each year the Fund is in operation. This should include the following approach:
 - as part of CRLL's communications and stakeholder engagement, encourage a meaningful contribution where viable for the landlord
 - in the case that landlords do not contribute, that CRLL makes up the full 100% of the determined level of financial assistance to the eligible business.
- Eligible businesses should be limited to businesses that commenced in the affected area before 1 October 2019, when the C3 works began
- If a business is receiving the COVID-19 Wage Subsidy (or other targeted Government financial support for a COVID-19 Alert Level 3 or 4 event), it should not be eligible for financial assistance from the Fund for the same time period.
- Given that applications from affected businesses may take time to assess, advance or interim relief should be available for likely eligible businesses experiencing immediate hardship once their application has been received and is under consideration. Any advanced or interim payment would be deducted from the total assistance provided.

Ultimately, we ask that the Board satisfies itself that the detailed eligibility criteria, application process and the overall administration of the Fund, are consistent with the high-level expectations and guidelines provided in this letter, and are in accordance with the good management of public funds.

The Fund (including the prudent and proportionate costs of administration) should be managed within the funding allocated by Sponsors. We ask that CRLL provides updates on the operation of the Fund in the monthly reporting to Sponsors.

We expect that the detailed eligibility criteria CRLI develops will be made available publicly. We also expect that CRLI will provide a copy of the detailed criteria before it is announced, so that Sponsors' representatives can review and confirm to CRLI that it is in line with Sponsors' high-level guidance in this letter.

Thank you for your ongoing work to support the businesses of Auckland as the construction of the CRL project continues.

Yours sincerely,



Hon Michael Wood
Minister of Transport

Copied to:

Grant Robertson
Minister of Finance

Phil Goff
Mayor of Auckland

Bill Cashmore
Deputy Mayor of Auckland

PROACTIVELY RELEASED BY
TE MANATŪ WAKA MINISTRY OF TRANSPORT