Heads of Agreement

relating to
the City Rail Link, Auckland

Her Majesty the Queen in right of New Zealand acting by and through Her Minister of Transport

Crown

and

Auckland Council

Date
This Heads of Agreement is made on 2016

between (1) Her Majesty the Queen in right of New Zealand acting by and through Her Minister of Transport (Crown)

and (2) Auckland Council

Introduction

A. The City Rail Link ("Project" or "CRL") is a significant infrastructure project to enhance the capacity and performance of Auckland rail services and improve transport outcomes in Auckland. The Project provides an opportunity to promote housing and commercial development in accordance with the Auckland Plan and Unitary Plan.

B. The Crown and Auckland Council ("Sponsors") wish, subject to the Sponsors’ Agreement, to co-fund and partner on the delivery of the Project, through a new company to be established by the Sponsors, “City Rail Link Limited” (or another name agreed by the Sponsors) ("CRL Ltd").

C. The Sponsors also wish to optimise wider benefits associated with the Project and any future rail investment, and consider the ownership and operating structure of the wider Auckland transport network.

D. This Heads of Agreement records the Sponsors’ in-principle commitment to the Project and to the process by which the Sponsors will work in an open and collaborative manner.

It is agreed

1. Purpose and Key Principles

1.1 The purpose of this Heads of Agreement is to set out the process by which the Sponsors will work together on a best-for-project basis and in an open and collaborative manner in relation to the Project and the matters described in this Heads of Agreement.

1.2 The Sponsors will agree arrangements:

(a) for completion of the Project on a value-for-money basis, having regard to optimised whole-of-life outcomes and within the programme and target cost to be agreed between the Sponsors; and

(b) to work with key Project stakeholders, Auckland Transport (in relation to work done to date on the Project and the ongoing provision of technical and operational services for project delivery) and KiwiRail (in relation to the interface of the Project with the wider rail network and rail services) with respect to the undertaking and completion of the Project.

1.3 This Heads of Agreement sets out key matters to be negotiated in the fully term Sponsors’ Agreement, as contemplated in clause 3.2(c).

1.4 The Sponsors’ Agreement will set out a process and timetable for the Sponsors to actively consider and seek to agree the optimal final ownership and operation responsibility of the completed CRL. The Sponsors’ Agreement will set out arrangements for determining the ultimate ownership and operation of the CRL.
1.5 In addition, the Sponsors' Agreement will record the Sponsors' intention to, and process by which they will, work together on wider objectives in relation to:

(a) optimising the wider benefits of the Project, including value capture in relation to commercial and housing development opportunities across the wider Auckland rail network enabled by the Project;

(b) optimising the planning, funding and operating model of the Auckland rail network with a view to harmonising objectives and incentives, including responsibility for funding and the sharing of costs between the Crown and Auckland Council, across the Auckland road and rail transport networks; and

(c) considering how any planning for future projects for investment in the Auckland rail network may optimise benefits for Auckland of Crown investment including value uplift from commercial developments and housing development potential.

2. Project structure

2.1 The proposed structure for delivery of the Project through CRLL is set out in the diagram in Schedule 1 of this Heads of Agreement. The Sponsors acknowledge that, during the course of developing the Sponsors' Agreement and the Project Delivery Agreement, the Sponsors may agree to change this structure.

2.2 CRLL will be responsible for delivering the Project in accordance with the Project Delivery Agreement. Subject to the appropriate Sponsor approvals, CRLL will:

(a) be capitalised;

(b) have a board of directors appointed by the Sponsors, and a secretariat and executive officers; and

(c) be listed in Schedule 4A of the Public Finance Act 1989 under a 51/49% shareholding split between the Crown and Auckland Council respectively. CRLL will not be a council-controlled organisation.

2.3 The proposed structure is intended to reflect best governance practice in decision-making roles and oversight:

(a) Sponsors: Funding, scope, and strategic oversight and approval of significant or strategic decisions in relation to the Project, on a basis which promotes consensus decision making in relation to the Project subject to and as to be set out in the Sponsors' Agreement.

(b) CRLL: Delivery, procurement, business decisions and integrated services delivery, in each case in accordance with the Sponsors' requirements as set out in the Project Delivery Agreement (referred to in clause 3.2(c)(ii)). CRLL shall engage the services of Auckland Transport and KiwiRail as required for delivery of the Project.

(c) Auckland Transport: Engaged by CRLL for the ongoing provision of technical and operational services and project delivery.
3. Establishment of CRLL

3.1 From the date of this Heads of Agreement the Sponsors will work together to progress the establishment of CRLL and agreement of the associated documentation (as set out in clause 3.2), with the current intention of effecting a timely, orderly and seamless transition to the co-funding arrangements by the first quarter of 2017. However, the Sponsors acknowledge that this timetable may change.

3.2 The Sponsors agree that during this period:

(a) Project delivery:

(i) Auckland Transport will, subject to clause 3.2(a)(ii), continue to carry out technical, operational and project delivery services in relation to the Project, but will carry out such services in close consultation with, and taking into account the views of, the Sponsors. The Sponsors recognise that Project responsibility formally remains with Auckland Transport until establishment and transfer of the Project to CRLL in the manner described in Sponsors' Agreement and Project Delivery Agreement, and that until such time any significant issues should be escalated for resolution to the Sponsors and senior management of Auckland Transport;

(ii) The Sponsors will nominate representatives who will be appointed to the existing Project Control Group. During the establishment period the Sponsors will also determine the role, responsibilities and composition of the Project Control Group having regard to the new governance arrangements for the Project;

(iii) Auckland Transport will seek the Sponsors' approval before releasing any REOI or other tender documentation for any part of or matter in relation to the Project or before entering into any material contract or binding arrangement in relation to the Project, for the avoidance of doubt in each case whether or not delegation for such matter has been given to the existing Project Control Group; and

(iv) Auckland Transport will provide to the Crown all material information in connection with the Project, and such other information as may be reasonably requested by the Crown from time to time. Auckland Council and Auckland Transport shall have regard to any issue raised by the Crown as a result of its review of such information or other due diligence carried out in connection with the Project.

(b) Review: A New Zealand Government 'Gateway Review' of the Project will be undertaken, and the Sponsors and Auckland Transport shall take into account the outcomes and recommendations of such review to the satisfaction of both Sponsors, prior to the release of any REOI or other tender documentation for the Project, it being acknowledged that the next REOI is intended to be the C7 REOI.

(c) Documentation: The Sponsors will work together on preparing and, subject to the agreement of Sponsors, putting in place:

(i) Sponsors' Agreement (between the Crown and Auckland Council, as Sponsors).

This agreement will set out the Sponsors’ commitment to fund on an equal basis and partner on the delivery of the Project and how the Sponsors will work together on wider objectives. It will govern the relationship between the Crown and Auckland Council for the Project, including Sponsor roles and obligations,
the exercise of their own rights and powers (including Sponsor directed variations) to promote consensus decision-making in regard to the Project, the process and key principles of the Project Delivery Agreement, governance of the Project including the role of the Project Control Group, relationships with key stakeholders, accounting for Project assets and contributions, receipt of reports and rights of audit, review points and key approval and decision-making rights (including deadlock and dispute resolution terms), definition of Sponsor default and the consequences of the same, and step in rights of the Sponsors to CRLL.

(ii) Project Delivery Agreement (between the Sponsors and CRLL).

This will set out what the Sponsors require from CRLL in Project delivery, as well as confirming the Sponsors’ funding commitments and support to CRLL, and establish a framework for CRLL funding by the Sponsors.

This agreement will set out the arrangements to be entered into with KiwiRail and Auckland Transport and with key stakeholders.

(iii) Project Services Agreement (between CRLL and Auckland Transport).

This agreement provides for the technical, operational and project delivery services provided by Auckland Transport, other project tasks and functions allocated to Auckland Transport, and related matters.

(iv) KiwiRail Services Agreement (between CRLL and KiwiRail).

This agreement provides for the services to be provided by KiwiRail in relation to the interface of the Project with the wider rail network and rail services, and related matters. This Agreement (and the Project Services Agreement) will provide mechanisms to ensure coordination between CRLL, Auckland Transport and KiwiRail on management of interface and other integration issues.

(v) Company constitution and draft Statement of Intent for CRLL.

The constitution and Statement of Intent will reflect the Sponsors’ Agreement and the scope and objectives of the Project, as well as the Project accountabilities set out in the Project Delivery Agreement.

(d) Board appointments: The Sponsors will shortlist a pool of potential candidates for directors of CRLL, having regard to required skills and competencies for the Project, and by reference to applicable director appointment policies. The Sponsors’ Agreement and the constitution shall set out the process for the ongoing appointment of directors of CRLL by the Sponsors.

3.3 If, during the period pending the Sponsors’ Agreement coming in to effect, a matter arises outside the reasonable control of the Sponsors which either Sponsor considers might result in a fundamental change in Project assumptions or might have a significant adverse effect on the planning, budget, funding or procurement of the Project then the Sponsors shall, in good faith, meet and discuss the consequences of such matter including the feasibility of any work-around or mitigation measures, and how and whether the Project should proceed.

3.4 As Auckland Transport is not party to this Heads of Agreement, where the Heads of Agreement places an obligation on Auckland Transport, Auckland Council shall procure that Auckland Transport fulfills such obligation.
4. **Funding**

4.1 The Sponsors have agreed the principle that the Sponsors will fund the Project in equal shares, subject to:

(a) the terms of this Heads of Agreement, which for the avoidance of doubt includes all matters in clause 3.2 being observed or performed or, in the case of the agreements referenced in clause 3.2(c), those agreements coming in to effect; and

(b) the provisions of clauses 4.2 and 4.3 in relation to the funding of:

(i) the early works packages known as C1 and C2 and the Downtown Shopping Centre; and

(ii) all other works or services carried out for or on behalf by Auckland Transport prior to the date that the Sponsors' Agreement and Project Delivery Agreement come into effect,

including in each case all costs, losses, liabilities, claims and expenses (together costs) in connection with the same (together the Stage 1 Works).

4.2 The Crown's obligation to fund its share of the Stage 1 Works shall not exceed an amount equal to fifty percent of:

(a) in relation to the contracts known as C1 and C2 and Downtown Shopping Centre:

(i) the initial contract price recorded as at the date of execution of such contracts and such additional amounts payable to the contractor under and in accordance with the relevant contract as agreed by the Crown (acting reasonably); and

(ii) the cost of any scope variation to such contracts as may be agreed by the Crown (acting reasonably) from time to time,

in each case to the extent such contract price, costs or amounts that can be demonstrated to the Crown (acting reasonably) to relate directly to the Project; and

(b) in relation to all other Stage 1 Works, such costs that can be recognised as an asset and capitalised to the Project and demonstrated to the Crown (acting reasonably) as being directly related to the Project or are otherwise approved in writing in advance by the Crown.

4.3 The Crown is not obliged to fund:

(a) any financing costs (including interest) on the Stage 1 Works incurred by Auckland Council or Auckland Transport in connection with the Project up until 30 June 2016; nor

(b) any costs, losses, liabilities or claims for Stage 1 Works to the extent they arise out of or in connection with any breach, delay, negligence or act of prevention on the part of Auckland Council or Auckland Transport.

4.4 The Crown and Auckland Council shall each pay their share of the Project in accordance with the funding framework to be set out in the Sponsors' Agreement and/or the Project Delivery Agreement, provided that the Crown will not make any payments (including in relation to retrospective Project costs) before the Sponsors' Agreement comes in to effect.
4.5 The Sponsors’ Agreement will agree a target cost (with an appropriate contingency) for the Project and include a framework for responding to target cost over-runs.

4.6 Unless the Sponsors otherwise agree (acting reasonably), the Sponsors’ Agreement will provide that, to the extent possible, Auckland Council shall procure that all existing Project assets, contracts, arrangements, property (real and personal), rights and interests whatsoever and howsoever held (legally or beneficially) by Auckland Council and/or Auckland Transport in relation to the Project, shall be transferred to CRL or beneficially held for CRL (as agreed by the Sponsors). Subject to the Sponsors’ Agreement, all new assets are to be owned by CRL during the Project.

5. **Project Scope**

5.1 The key elements of the scope of the Project are the following sections of the City Rail Link:

(a) C1 (Lower Queen Street);

(b) C2 (Lower Albert Street);

(c) Downtown Shopping Centre;

(d) Main CRL works:

(i) Tunnels and stations;

(ii) Rail and tunnel (linewide) systems;

(iii) North Auckland Line Connection; and

(iv) Britomart East connection; and

(e) Network works included under the CRL project budget:

(i) Henderson station additional platform and turnback;

(ii) Otahuhu station additional platform and turnback;

(iii) Newmarket crossover; and

(iv) Strand crossover.

5.2 As at the date of this Heads of Agreement, Auckland Transport proposes separate contract packages for the remaining works comprising the Project (as summarised in clause 5.1(d) and (e)), however Auckland Council acknowledges that this contract model will be one matter subject to the Crown’s review during the establishment phase and may change.

5.3 The performance of regulatory functions by the Crown, Auckland Council or other entities will not be restricted by the documentation to be entered into by the Sponsors in relation to the Project.

6. **Communications and disclosure**

6.1 The Sponsors will co-ordinate on a communications plan for the Project and endeavour at all times to harmonise and synchronise media statements in relation to the Project.

6.2 Auckland Transport shall not make any public announcement or media statement in relation to the Sponsors or the Sponsors’ participation in the Project without the prior written consent of the Sponsors.
6.3 Any promotion, branding or other publication or public statement in relation to the Project shall reflect the role of the Crown and Auckland Council as Project Sponsors (in a form approved by the Sponsors).

Execution

SIGNED by Her Majesty the Queen in right of New Zealand acting by and through Her Minister of Transport:

Hon Simon Bridges, Minister of Transport

Auckland Council by:

Len Brown, Mayor of Auckland
Schedule 1: Structure

KEY:
- Dotted line denotes ownership
- Full line denotes contractual relationship.