

## Meeting with Auckland Transport

<b>Reason for this briefing</b>	You are meeting with Auckland Transport and Bell Gully on Thursday 16 March 2017. This briefing provides you with information about the issues likely to be raised by Auckland Transport, particularly the legal issues around providing for mass transit along the Auckland CBD to Auckland Airport corridor.
<b>Action required</b>	Decide if you would like the Ministry to work with Auckland Transport and the New Zealand Transport Agency now, or after Auckland Transport has completed a business case for route protection, to understand the legislative issues around establishing a physically separated and dedicated corridor for mass transit within a local road. We recommend that we wait for the outcome of Auckland Transport's business case.
<b>Deadline</b>	4.30pm, Thursday 16 March 2017
<b>Reason for deadline</b>	You are scheduled to meet Auckland Transport at this time.

### Contact for telephone discussion (if required)

Name	Position	Telephone		First contact
		Direct line	After hours	
Martin Glynn	Director Auckland	[REDACTED]	[REDACTED]	✓
[REDACTED]	Senior Adviser	[REDACTED]	[REDACTED]	

**MINISTER'S COMMENTS:** Withheld under Section 9(2)(a)

<b>Date:</b>	13 March 2017	<b>Briefing number:</b>	OC04874
<b>Attention:</b>	Hon Simon Bridges (Minister of Transport)	<b>Security level:</b>	In-Confidence

### Minister of Transport's office actions

- Noted*
 *Seen*
 *Approved*
- Needs change*
 *Referred to*
- Withdrawn*
 *Not seen by Minister*
 *Overtaken by events*

**Purpose of briefing**

- 1. This briefing provides you with information about the issues likely to be raised by Auckland Transport and Bell Gully in their meeting with you on Thursday 16 March 2017, particularly the legal issues around providing for mass transit along the Auckland CBD to Auckland Airport corridor.

**Meeting attendees and topics for discussion**

- 2. We understand that you will be meeting with the following attendees:
  - 2.1. David Warburton, Chief Executive, Auckland Transport
  - 2.2. [REDACTED], Leader Mass Rapid Transit, Auckland Transport
  - 2.3. [REDACTED], General Counsel, Auckland Transport
  - 2.4. [REDACTED], Partner, Bell Gully Withheld under Section 9(2)(a)
  - 2.5. [REDACTED], Consultant, Bell Gully.
- 3. Auckland Transport has indicated it wishes to raise with you the "possible need for legislation to allow it to overcome the serious congestion issues in accessing Auckland Airport". Since the meeting was confirmed, we have received a note from Auckland Transport (attached as an appendix) that sets out its concerns. The main issue seems to be the road controlling powers needed to enable the provision of mass transit (a high capacity bus or light rail service on a physically separated and dedicated corridor) along the Auckland CBD to Auckland Airport corridor.

- 4. [REDACTED]  
[REDACTED]  
[REDACTED] Not relevant to request

**Legal issues around providing for mass transit along the CBD to Airport corridor**

*Study of bus-based options for the corridor between Auckland CBD and Auckland Airport*

- 5. The Auckland Transport Alignment Project (ATAP) identified implementation of a mass transit system along this corridor as a medium term priority, for the decade between 2028 and 2038. The New Zealand Transport Agency (NZTA) recently received the findings of a study it commissioned into bus-based options for the public transport corridor from the Auckland CBD to Auckland Airport (map attached as an appendix).
- 6. The study concluded that a bus-based option could provide a credible solution over the next 30 years based on current forecast demand.
- 7. Following the bus study, the NZTA, Auckland Transport and Auckland Council have agreed to proceed with a staged progression from the current bus lanes, to a range of additional bus priority measures, moving to bus mass transit and then a light rail system over time. The timing of each phase has not yet been worked through, [REDACTED]  
[REDACTED] Withheld under Section 9(2)(g)(i)

*Auckland Transport's concerns*

8. The main issue that Auckland Transport wishes to discuss is the road controlling powers needed to enable the provision of mass transit along the CBD to Airport corridor, which includes a local road reserve and a State Highway (SH20 and SH20A).
9. NZTA has advised that there are no significant legal constraints preventing bus based mass transit on state highways but amendments may be necessary to permit the implementation of light rail on state highways.
10. The core of Auckland Transport's concern therefore is that they do not have the necessary powers to establish a physically separated and dedicated corridor for mass transit (both bus or light rail options) within the local road. By physically separated, our understanding is that Auckland Transport envisages physical barriers along parts of the corridor that would prevent private vehicle and possibly pedestrian movement, except at intersections. They argue that road closures would be needed but the proposed mass transit corridor would not be covered by the existing road control regime or the railway control regime.
11. The NZTA and Auckland Transport both plan to urgently progress a business case for route protection for the CBD to Airport corridor, including a plan identifying the triggers for transition steps, to future-proof options for both bus and light rail mass transit options. Auckland Transport will lead this next phase of work to be completed by 30 June 2017, in partnership with NZTA and with the ongoing involvement of Auckland Council.

12. [REDACTED]

Withheld under Section 9(2)(g)(i)

*Ministry advice*

13. In the time available, neither the Ministry nor the NZTA have been able to form a firm view on the legislative issues that Auckland Transport has raised. We think that legislative change may be needed given that:
  - 13.1. the proposed mass transit options for both bus and light rail are likely to involve physical barriers along the corridor that result in greater restrictions on local road use than a bus lane; and
  - 13.2. there are potentially several pieces of legislation involved (the Land Transport Act 1998, Local Government Act 1974, Resource Management Act 1991, Public Works Act 1981 and the Railways Act 2005).
14. The key question that needs to be answered in the short term is whether the legislative issues raised by Auckland Transport pose any constraints to proceeding with a business case for route protection. It is not immediately clear to us that this is the case.
15. We intend to monitor Auckland Transport's work on the business case for route protection and report back to you after this is complete (towards the end of 2017) on any possible legislative constraints to route protection.
16. If you are asked about the legislative issues, you may wish to ask Auckland Transport why they consider these issues need to be resolved urgently, given they are first proceeding with a business case for route protection.

17. If you deem it appropriate, the Ministry can undertake further work with the NZTA and Auckland Transport now to understand the legislative issues around establishing a physically separated and dedicated corridor for mass transit within a local road, and determine the impact, if any, of these issues on the ability to proceed with route protection.
18. If this is your preferred approach, you may wish to ask Auckland Transport to work with us and the NZTA.
19. In the short term, the NZTA and Auckland Transport are aware of the need to urgently address current access issues at Auckland Airport. We understand both agencies are looking into measures to improve bus services and better integrate these services with rail, road improvements, and better demand management. You may wish to ask Auckland Transport about its progress in addressing the current access issues at Auckland Airport.

**Recommendation**

20. The recommendation is that you:

EITHER

(a) **Agree** that the Ministry will monitor Auckland Transport's work on the business case for route protection of a physically separated and dedicated corridor for mass transit between the Auckland CBD and Auckland Airport corridor and report back to you after this is complete, towards the end of 2017, on any possible legislative constraints to route protection (Ministry's preferred approach) Yes/No

OR

(b) **Direct** Ministry of Transport officials to undertake further work with the New Zealand Transport Agency and Auckland Transport now to understand the legislative issues around establishing a physically separated and dedicated corridor for mass transit within a local road, and determine the impact, if any, of these issues on the ability to proceed with a business case for route protection. Yes/No

Withheld under Section 9(2)(a)

**Senior Advisor**

Martin Glynn  
**Director Auckland**

**MINISTER'S SIGNATURE:**

**DATE:**

**Mass rapid transit – scope of Ministerial discussion****Background:**

In summary, the proposed mass rapid transit (MT) system involves [the development of high-capacity public transport system, primarily connecting Auckland Airport and areas of south-central Auckland with the central city, that complements the rail and bus public transport systems]. The available options for the proposed MT system are light rail transit (LRT) and bus rapid transit (BRT). Both LRT and BRT involve a physically-separated dedicated public transport corridor within or alongside either local roads or state highway.

The Boards of Auckland Transport and New Zealand Transport Authority support the progression-through-mode approach (ie, the [staged, integrated] transition from BRT to LRT [along the preferred "Airport to City" route] to accommodate increased patronage) rather than a simple dichotomy of either LRT or BRT.

**The issue:**

1. AT may establish bus lines using road markings only. However, the statutory powers of Auckland Transport do not provide an effective mechanism for the development and operation of the proposed MT system, whether LRT or BRT. It appears that NZTA may have a similar difficulty in relation to the section of the MT system for the Airport link along SH20.
2. The only available mechanism for Auckland Transport for the development of the MT system is the road stopping procedure under the Local Government Act 1974 (LGA 1974). This is because:
  - (a) the MT system involves a physically separated dedicated corridor within the road that is available only to light rail vehicles/buses;
  - (b) the road stopping procedure under the Public Works Act 1981 is unlikely to be used by LINZ because of the wider public interest. This alternative procedure does not involve public consultation or objection rights.
3. Although the Land Transport Rule – Traffic Control Devices 2004, the Land Transport (Road Users) Rule 2004 and the Auckland Transport Traffic Bylaws 2012 each contemplate special vehicle lanes (for LRT vehicles and buses), there is no statutory authority (in the Land Transport Act 1998 or other legislation) for Auckland Transport to regulate the operation of a MT system, other than using bus lanes identified by road markings only.
4. If the [longer-term] preferred option for the MT system is LRT, and the mechanism used for establishing the dedicated vehicle lanes is a road stopping, then:
  - (a) the light rail vehicles will not be "light rail vehicles" for the purposes of the Railways Act 2005 or the Land Transport Act 1998. Instead, the vehicles (and the system) will be ordinary heavy rail, as a "light rail vehicle" does not include such a vehicle while it is on a railway line that is not a road;
  - (b) the light rail vehicles will not be "vehicles" for the purposes of the Land Transport Act 1998, because the vehicles will be "rail vehicles" under that Act;
  - (c) Auckland Transport's bylaw-making power under the Land Transport Act 1998, which would otherwise be used to establish special vehicle lanes, does not apply to any railway over or on a road. NZTA used its bylaw-making powers to establish the Northern Busway. However, it appears that this was possible because the Northern Busway was not existing State highway or road.
5. Similar to Sydney, Auckland Transport would require specific authority to develop and operate a separated dedicated MT system, whether light rail or buses, without the requirement to stop roads

using the ordinarily available LGA 1974 process. NZTA does not have the statutory authority to stop a State highway.

**Principal areas for law reform:**

1. Specific authority for Auckland Transport for the development and operation of the MT system, including financing and the use of a PPP/concession model, without the requirement for road stopping under the LGA 1974 or the Public Works Act 1981.
2. Modification of the Railways Act and the Land Transport Act to deal with the interface between road and a dedicated MT corridor (whether light rail or bus) and to enable licensing and regulation of light rail systems and operations.

**Appendix – Indicative public transport corridor from Auckland CBD to Auckland Airport**



