

NorSGA – Approval to Make Payments Under Auckland Council Agreements

Purpose

The purpose of this paper is to provide the Board with further information on how the Northern Region Strategic Growth Area (NorSGA) agreements for Plan Change (PC) 15 are administered as a consequence of legacy organisation decisions. It also requests that the Board conditionally approve payments being made from Auckland Transport budgets to Auckland Council, to complete progress payments relating to the transport components of the NorSGA construction work for works already undertaken and for costs to be incurred up to the end of January 2012 to a maximum of \$12.6M.

Executive Summary

At the September Board meeting detailed information was provided on the transport components within the PC15 area and approval to commence expenditure from AT budgets for transport components up to \$31.813M was requested.

Before approving this expenditure the AT Board requested further investigation on payments made to the developer during the Waitakere City Council (WCC) era. This has now been completed by Auckland Council (AC) and AC has confirmed an amount of \$1.975M was made by WCC for transport related matters. This paper reflects this and has lowered the request to commence expenditure to \$29.828M.

A full review of the commercial arrangements is being undertaken and this is expected to be completed by early next year with results available to be reported to the February 2012 Board meeting.

Notwithstanding this review, work has already commenced on the Transpower line deviation, the Works Development Agreement (WDA) 1 contracts, the WDA4 contracts and the Infrastructure Funding Agreement (IFA) roads identified in previous board papers.

This paper recommends that progress payments for work already implemented or scheduled for completion prior to the completion of the review be made subject to any outcomes from the review of the commercial arrangements.

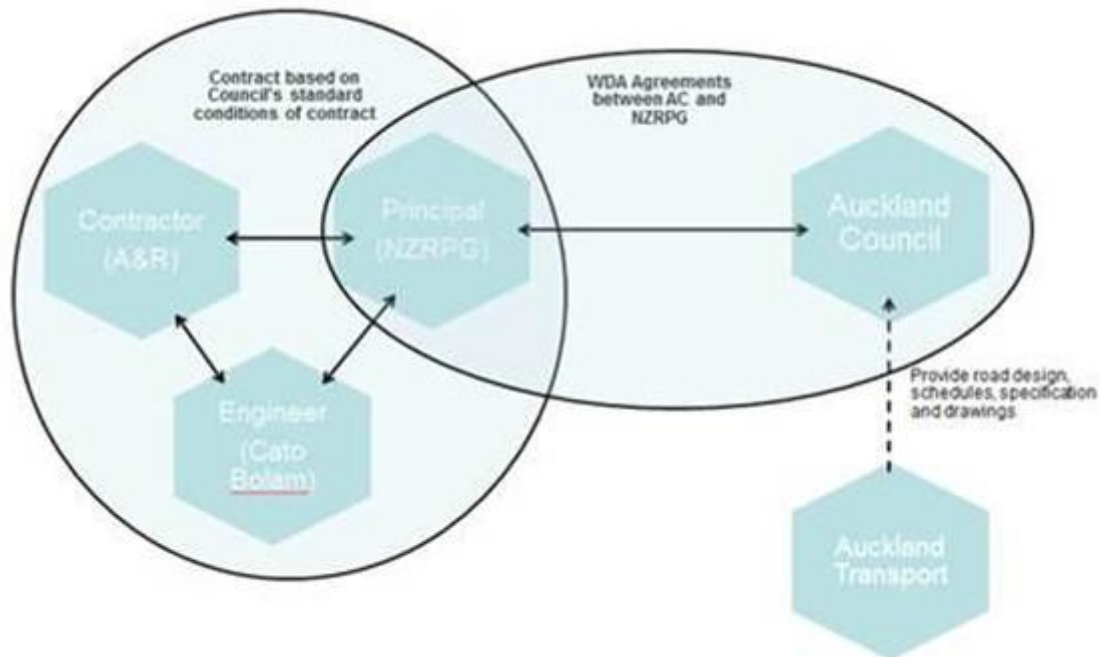
Background

At the September Board meeting detailed information was provided on the transport components within the PC15 area and approval to make payments from AT budgets for transport components up to \$31.813M was requested.

A key aspect of these agreements is that they are all legally binding agreements between AC and the developer. AT is not a legal entity in these agreements but engaged to provide input/advise to AC on the roading aspects of the AC works.

AT is not a party to the contract; however AT is required to provide specific advice on roading standards and design and to ensure that the product delivered meets quality requirements. As AT ultimately becomes accountable for the transport asset on completion the budget for its construction has been mapped to AT.

The following diagram illustrates where the current contractual agreements are situated. This is not ideal from the perspective of Auckland Transport as the organisation is not in a position to directly influence the commercial delivery of the contractual relationship. Notwithstanding this, it is a legacy agreement entered into by WCC and as such remains binding on AC.



The structure of the NorSGA development, (specifically the work under WDA agreements in PC15) can be summarised as follows:

- Auckland Council Works (including AT works) to be carried out by the developer NZ Retail Property Group (NZRPG).
- NZRPG is required to carry out, on behalf of AC, and at AC's cost, the works as described in the September Board paper. All works are to be carried out to the design approved by AC. Auckland Council is to appoint its own consultants to carry out the design of its works. The agreements are clear that AC will provide its approved design, plans and specifications to NZRPG. For the roading components these would be designs provided by AT. Written approval will be required from AC for any alternation to the design, plans or specifications.
- Auckland Council is to approve the contract documents, which are to use the AC's Standard Conditions of Contract.

The agreements were drawn up by WCC's legal advisers and at the same time they identified the key risks to council as:

- cost blow-outs and
- the possibility that the developer becomes unable to complete the works.

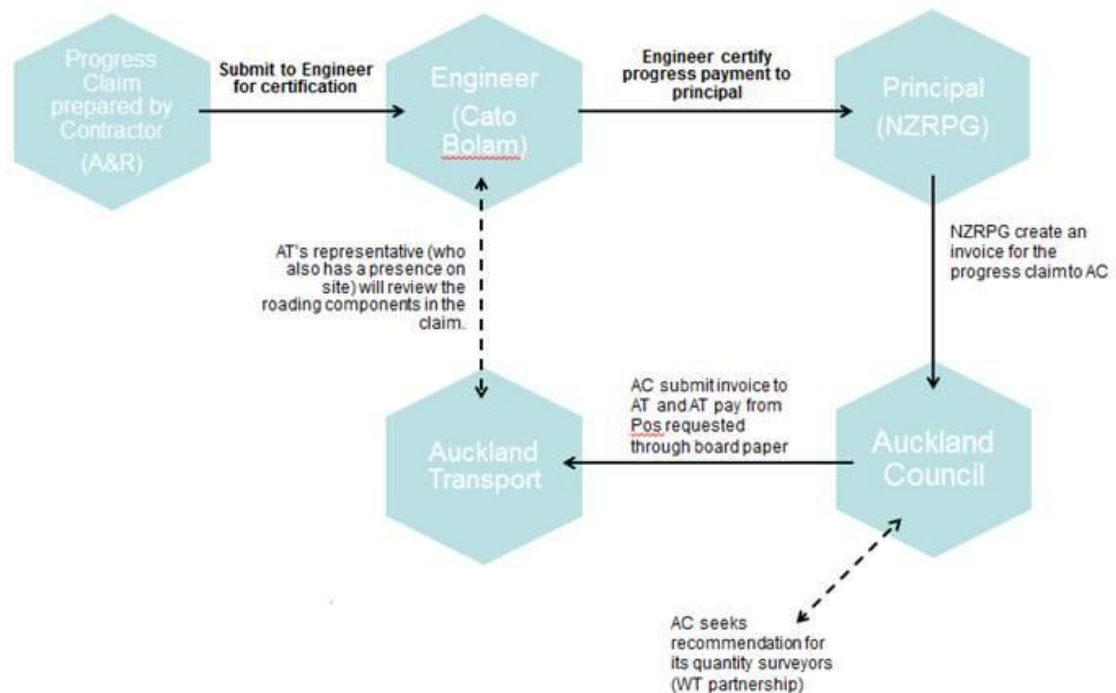
In response to the identified risks measures were added to the agreement to mitigate being:

- there will be a project leadership team (PLT) in which Auckland Transport will have a representative
- a process of estimation by a Quantity Surveyor at completion of detailed design; and with each requested variation. Any variations would need to be approved by the PLT. If parties cannot agree, it needs to be referred to an expert Quantity Surveyor.
- Payment will only be required from AC as the works progress.
- Auckland Council will have the benefit of usual retentions from progress payments
- Auckland Council has the right to terminate (or step into NZRPG's shoes) in the case of default

- A performance bond of \$1m is to be provided

Monitoring of the Works

AT will have an opportunity to ensure accurate progress payments as it will have a representative on site that will observe progress and also attend site meetings. The payment process is explained through the illustration below.



Previous Resolution

In the September Board paper it was recommended that the Board approve the commencement of expenditure from AT budgets as follows:

- to the value of \$13.185M to cover the transport components under the IFA agreement between AC and the Developer.
- to the value of \$8.374M to cover the transport components under the WDA1 agreement between AC and the Developer.
- to the value of \$10.254M to cover the transport components under the WDA4 agreement between AC and the Developer.
- That \$7.539M AT budget earmarked for the Line Deviation Agreement (LDA) be transferred to Auckland Council effectively reducing the 2011/12 capital project portfolio fiscal envelope by this amount.

While the Board resolved to delegate to the Chief Executive authority to make payment from AT budgets, subject to firstly gaining approval from Christine Fletcher and Mark Ford this paper proposes an interim step as further investigations regarding the commercial arrangements are progressed.

Recommendation (iv) above relating to the LDA agreement remains valid and is therefore separated out and provided as a recommendation to this paper.

Review of Historical Payments

AC has investigated and confirmed historical payments made by WCC against the IFA agreement, specifically as it applies to transport components. AT has been advised that AT's share of the IFA should be reduced by \$1.975M as it relates to an amount paid by WCC against the IFA coded to a transport code. The implication of this to the purchase order request as per the previous Board paper is that:

- The AT share of IFA is still \$17.085M
- Less amount paid by WCC -\$1.975M
- Less amount paid by AT FY11 -\$3.910M
- Balance to pay (value of PO) \$11.200M (previously \$13.185M)

The transport component for each of these development agreements, and the revised purchase order requests are now summarised below:

	Total Value of Agreement	Total Transport Component within the Agreement	Request to Make Payment to AC for Transport Works
Infrastructure Funding Agreement (IFA)	\$23M	\$17.085M	\$11.2M
Works Development Agreement 1 (WDA1)	\$16.139M	\$8.374M	\$8.374M
Works Development Agreement 4 (WDA4)	\$16.1M	\$10.254M	\$10.254M
Line Deviation Agreement (LDA)	\$17.9M	\$0 ¹	\$0
TOTAL	\$75.1M	\$35.713M	\$29.828M

The total amount has now been reduced from \$31.813M to \$29.828M.

A review of the commercial agreements on the entire NorSGA project has also been initiated and is expected to be completed early next year with results available to be reported to the February 2012 Board meeting.

Existing Construction Activities

Currently works have commenced on all the agreements discussed above. The table below identifies the expenditure already incurred to the end of September 2011 and the forecast expenditure to the end of January 2012 which coincides with the conclusion of the review.

¹ The LDA transfer was discussed in the 28 September Board paper and there are no changes to that position or additional information in this paper.

	Payments Certified to Date	Forecast by the End of January 2012	Total Request for Transport Works
Infrastructure Funding Agreement (IFA)	\$2.7M ²	\$7.2M	\$11.2M ³
Works Development Agreement 1 (WDA1)	\$3.5M	\$2.2M	\$8.374M
Works Development Agreement 4 (WDA4)	\$0.1M	\$3.2M	\$10.254M
TOTAL	\$6.3M	\$12.6M	\$29.828M
Line Deviation Agreement (LDA)	\$1.3M ⁴	\$2.90	\$0 ⁵

Next Steps

Given the fact that we already have construction activities occurring on site, and that the review will not be reported until February 2012, this paper recommends that payments be made for all work certified to date as well as work that would be certified during the review period, up to a maximum of \$12.6M.

Further approval of payments will be brought back to the Board for consideration in February 2012 once the review outcomes are known.

Recommendation

It is recommended that the Auckland Transport Board:

- i). Approve expenditure from AT budgets for work performed under the PC15 agreements (IFA, WDA1, WDA4) for all works certified by the Engineer up to the end of January 2012 to a maximum of \$12.6M.
- ii). Approve transfer of the \$7.539M budget mapped to AT for the LDA agreement to AC reducing the 2011/12 CAPEX budget by the same.

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RECOMMENDED by	Dr Kevin Doherty Chief Infrastructure Officer	
APPROVED FOR SUBMISSION by	David Warburton Chief Executive	

² Note that additional \$3.910M was paid to AC during the previous financial year.

³ Reflect reduction of \$1.975m already paid

⁴ Note that additional \$2.044M was accrued for this under the previous financial year.

⁵ The LDA transfer was discussed in the 28 September Board paper and there are no changes to that position or additional information in this paper.

