

Executive Summary

The Government's Package: A Response Needed

On 12 December 2003 the Prime Minister launched a package of proposals intended to rapidly upgrade Auckland's transport system, planning and consent processing for transport projects, and to improve integration between transport and land use, including intensification. Part of the package seeks improvements to the Auckland Regional Policy Statement (ARPS) and Auckland District Plans (ADPs). There are two key objectives for the changes.

The first objective is for the changes to acknowledge the importance of an effective transport network for the Auckland region; indicate that this network is an integrated multi-modal system covering infrastructure investment, traffic demand management, and passenger transport; and to give clearer guidance about the integration of transport priorities and land use policies, including intensification in transport corridors and growth nodes. The Joint Officials Group (JOG) report points to the potential for improvements to RMA policy documents to better align with the Regional Growth Strategy (RGS) and the Regional Land Transport Strategy (RLTS). The legislation requires the latter two documents not to be inconsistent with the ARPS. The government seeks greater, and appropriate, integration between the RGS, the ARPS, RLTS, and the ADPs. It also seeks advice on the practical implementation of these policies.

The second objective is to allow for greater certainty in the consideration of designation and applications for key Auckland infrastructure projects, including both public transport and roading. The certainty sought relates to clarity about the strategic policy framework and timeliness of process. Projects would continue to be expected to assess negative environmental and other effects, and put forward solutions for dealing with these. While the JOG report highlights "buildability" as potentially the most significant constraint to achieving an enhanced transport network, Resource Management Act (RMA) policy and consents are also seen as an issue. The construction industry has signalled that overcoming consenting and process delays would promote greater confidence within the industry for increasing industry capacity, a prerequisite for building an enhanced transport, including public transport, network.

The Cabinet minute (CAB MIN (03) 40/7/B) makes clear that the changes must be done before any new transport funding is allocated. It is assumed that this would effectively be by 30 June 2005 after which the government's extra transport contribution of \$900 million to Auckland over 10 years is due to begin.

This report considers possible responses to that part of the government's 12 December 2003 transport, growth and development package that seeks changes to Auckland's statutory documents. It outlines recommendations for consideration by Auckland councils in determining their responses to the government's request for statutory changes. These responses are due back with the government by 30 January 2004, though some council meeting schedules will mean responses occur in early February.

Why change the ARPS and the ADPs?

There are significant reasons for changing the ARPS and, to a lesser extent, the ADPs. The Court of Appeal has held that the RPS is the heart of resource management in a region (NSCC v ARC AO70/94). The ARPS policy is mixed and gives only limited guidance to councils, the public, development applicants, requiring authorities and the courts. Its policies do not provide a sufficient basis for integrated management, and are now severely dated in that they do not reflect the region wide agreements contained in the RGS and its sector agreements. It would also be opportune to upgrade the transport policy in tandem with the review of the RLTS to give effect to the Land Transport Management Act 2003, and the policy and machinery changes included in the government package. In this sense, the changes can be seen to be building on work already done. They would strengthen work already underway – but move the focus to Auckland's key statutory documents.

Given the current lack of strategic policy guidance in RMA documents, particularly combined with significant growth, RGS outcomes are being achieved too slowly and future opportunities foreclosed. These will impact negatively on the region into the longer term. The RGS, launched in 1999, provides a vision for Auckland's future and an agreed long term approach to managing Auckland's population increasing from over 1 million now, to around 2 million by 2050. It seeks to protect lifestyle and quality of life factors, including its high quality urban amenity and open space, its harbours and the bush, while supporting the region's diverse communities, enhancing economic prosperity and ensuring Auckland is easy to get around. It is vital that its implementation is effective.

The RGS is based on accommodating growth predominantly through targeted intensification around centres and transport nodes. If growth is not accommodated in this manner then it is likely to be accommodated through a mixture of the following:

- Continued low density sprawl
- Continued ad hoc infill within the existing area
- Intensification in inappropriate areas

Any of these options results in a potential disconnection between the resultant land use and currently planned and publicly funded infrastructure projects, particularly transport.

As indicated above, statutory changes would also support the more timely and appropriate consideration of applications, including transport applications.

Changing the ARPS is critical. And given changes to the ARPS, to ensure integrated management, and to strongly support RGS outcomes, changes to the ADPs are also necessary. What is required is a package of changes that ensures that all the region's statutory documents are in step, and thus provide a strong, effective and integrated policy framework. With the ADPs, this is likely to mean less change, and varied change, given the different approaches and states of individual plans, so some flexibility will be needed. Even if there was no government requirement for changes in order to gain transport funding, changes to the ARPS and the ADPs are needed to ensure that they work together effectively and with the RGS and RLTS.

An Opportunity for Auckland

The government's request therefore provides the region with an opportunity to significantly improve and update its statutory documents, potentially with government support, involvement, and financial assistance, and with the region working together. This would be in marked contrast to the first round of RMA documents when there was conflict and references over the ARPS, for example, both with other councils and with government ministers – at quite substantial cost. Here, instead, if an approach similar to the recent Joint Officials Group (JOG) is chosen, key government and council representatives could be in the tent developing the changes together, sharing key costs, and avoiding much litigation, with its time delays, costs and loss of control.

Taking on the changes to Auckland's statutory documents would demonstrate leadership and a willingness to make decisions critical to investing in Auckland's future. It would create a common policy framework across the region. While allowing for local differences, that would mean the development industry would face common priorities and development parameters. It would build on the region's history (for example, through the RGS, the RLTC, and the current bylaws review) of working together co-operatively and collaboratively, while respecting different perspectives, identities and issues. If done in conjunction with central government, it would expose central government to the very real, practical implementation issues that face councils.

Such a work approach could benefit Auckland into the longer term. This report identifies a range of risks and barriers to these statutory changes but more importantly to effectively managing future growth, while enhancing quality of life factors. It is considered that sound project management of the plan changes should manage the risks effectively, although meeting the government's deadline will be challenging, given the work to be done.

Investing in Auckland's Future: Implementing the RGS

There is significant cause for concern, however, about the risks and barriers to the practical and effective implementation of the RGS. These risks apply with or without changes to statutory documents, but are **greater** without the changes, given the limited guidance in current policy documents, and the lack of incorporation of key RGS matters. In addition, there are valid community and other concerns about Auckland's transport and growth. While changes to statutory documents will strengthen Auckland's policy framework, that framework will not ensure appropriate development on the ground. For such development to happen a range of other measures is essential.

The Cabinet Minute indicates the government is seeking feedback on the practical implementation of changes to the ARPS, and by inference, the ADPs. This report points to the importance of a range of complementary approaches to supporting improved growth outcomes. It focuses on areas where central government, or central government working with the region, can make a difference, and seeks a dialogue with the government about the suggestions. At this point it is not expected that

decisions would be taken about such measures, given the need for further work on them. However the region may wish to signal to the government that expeditious investigation, prioritisation, and implementation of key measures, would create more confidence in Auckland that RGS implementation is seen as both a national and regional priority.

Possible measures include initiatives to improve the effectiveness of government agencies that impact on urban areas, investigating a metropolitan urban land corporation, considering Public Works Act issues, investigating a regional urban design panel, and considering the need for an agency that provides leadership and is an advocate for good urban design. Investment in such measures could support improved outcomes in the short as well as the medium and longer term.

Other Matters

This report also considers other options to changes to statutory documents. These include statutory and non-statutory approaches, and the option of doing nothing. Consideration of the range of alternatives, however, confirms changes to the ARPS and the ADPs as the preferred approach to providing a strong strategic policy framework that will assist with effective and efficient RMA administration, including the timely consideration of RMA applications.

The report considers matters to do with the changes, including content options, possible timetabling, and a range of process issues. They are indicative, and for use by those involved in developing the briefs for a statutory changes project and the group undertaking the work. Should the changes project occur, key matters raised would be considered further and brought back to councils for decision. A key matter is funding. Councils have not scheduled this work. Given the urgency and significance of the changes, the government and Auckland councils could agree on a schedule of work which could set out how costs would be shared.

Given the time constraints on a changes project, the report considers possible RMA process changes that would require being legislated for, to support timely completion of the changes. Other possible legislative changes to strengthen the policy framework and implementation are also suggested. Some of these may have national application, as well as being useful for Auckland.

Concluding Comments

For the reasons outlined above, and in this report, it is considered there is a very strong case for Auckland to agree to the government's request, and to move quickly to make changes to Auckland's statutory documents. Changes to the ARPS and the ADPs are needed, and doing them in response to the government's request, will have the benefit of government support to achieve them.

Some councils may wish to negotiate with the government over this or other aspects of its 12 December package. For this reason, an interim approach is suggested in the immediate term. It should also be noted that regardless of how the changes are

developed, changes to statutory documents remain the responsibility of each council, and that this provides a safeguard for each council.

Recommendations

The requirements for changes to the ARPS to be completed and changes to the ADPs to be notified by 30 June 2005 lend urgency to decisions by Auckland councils on whether to proceed with the changes as requested by the government. Delaying a decision may result in the councils being unable to meet the government's deadline, given the extent of the work required

I recommend that the councils of the Auckland region:

1. **agree** in principle to make changes to the Auckland Regional Policy Statement and to the seven District Plans of the Auckland region as quickly as is practicable in line with Cabinet Minute (CAB MIN (03) 40/7/B), and with a view to completing the changes by 30 June 2005
2. **note** that in line with Cabinet Minute (CAB MIN(03) 40/7/B) the changes are intended to give clearer policy guidance about the integration of transport priorities and land use policies, including intensification, and so allow for greater certainty in the consideration of resource consents for key Auckland transport projects, and to ensure appropriate integration between the Auckland Regional Policy Statement, the Regional Growth Strategy, the Regional Land Transport Strategy (amended to accord with the Land Transport Management Act), and the seven District Plans of the Auckland region
3. **agree** to the urgent establishment of an interim Auckland taskforce, with representatives from each council to work with government and to report back urgently to the Chief Executives Forum and Councils on:
 - a draft brief for the project to change the ARPS and the ADPs, including the scope of and timetable for the changes
 - the draft terms of reference for the taskforce or group responsible for the changes, including reporting requirements
4. **advise** the government:
 - of the councils' decision in 1 and 3 above; and that if the decision is to proceed with changes, that:
 - there may be a need to amend the Resource Management Act to ensure that the project can be completed within the government's timeframes
 - the work proposed is not anticipated or planned for, and that considerable funding assistance will be necessary for early and expeditious progress to be made, and that
 - by themselves the changes to the region's RMA statutory documents, while critical, will not ensure the practical implementation of the Auckland Regional Growth Strategy or the Auckland Regional Policy Statement or the District Plans of the region, and that a range of other mechanisms is essential to their practical implementation

5. **note** that the government is seeking feedback on the practical implementation of any changes, and that this report includes discussion of a range of possible mechanisms that officials will consider, including:
- an urban design panel or panels
 - timely and effective implementation of the urban design protocol by key publicly funded agencies
 - a metropolitan land development corporation to ensure that land for urban purposes is capable of being used efficiently and effectively
 - adding value to the government's research agenda, through focusing on critical urban implementation issues
 - enhancing the effectiveness of the HNZN in Auckland, thereby enabling more mixed communities capable of attracting investment
 - working on effective approaches to communications on key urban issues, both in Auckland and by the government
 - working to improve professional, business and community understanding of urban systems, particularly urban design and also urban economics
 - considering how to ensure effective leadership in urban systems, and how this could be a catalyst and advocate for improved urban outcomes on the ground
 - working on Public Works Act issues
 - working on Transit New Zealand planning issues

ATTACHMENT 3: TRANSPORT GOVERNANCE PROPOSALS

REPORT TO COUNCILS 23 JANUARY 2004

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1. Summary

1.1 Background

Prior to Christmas 2003, the CEO Forum directed officials to consider the transport governance proposal made by government on 12 December 2003. A transport funding package for Auckland was announced simultaneously and is contingent on regional acceptance of the basic components of the governance proposal. There may be limited scope to agree as a region to small changes which will make the new structure work more effectively. This paper describes the proposals and investigates areas where improvements may be possible or where there are issues that require resolution. Implementation and transition issues are discussed in the second half of the paper.

1.2 Key Issues

The key outstanding issues are broadly:

- Integration with national programmes and plans (currently limited)
- ARTA's role in local roading and funding
- The location of 'operational assets' within the structure (as opposed to investment assets)
- Achieving alignment between implementation and planning (currently limited) and the development of a partnership approach
- Alignment of transport strategy and planning processes with Community Outcomes
- Criteria for use of former IA/ARH funds

1.3 Implementation

The implementation of the new structure requires consideration around:

- Establishment/dis-establishment of various bodies including –
 - The dis-establishment of IA
 - The establishment of ARH and ARTA
 - The possible dis-establishment or re-constitution of ARTNL
- The requirement for certainty and continuity of services and funding flows.
- Taxation issues, including:
 - Issues around triggering taxable events through the transfer of funds.
 - Establishing ARH and ARTA in a way which does not have significant tax disadvantages.
- Human resources implications, including:
 - The movement of staff between organisations and possible skills gaps
 - Financial implications of redundancies.
 - Need for ARH and ARTA boards to be appointed and in a position to make CEO appointment as soon as legislation is passed.
 - CEO must have ability to develop management structure and appoint a management team based on competencies as soon as possible.
- Consultation implications (and the preference for legislating for exemptions).

- The possible dis-establishment of ARTNL, or changes to its structure could have consultation implications for its shareholders and the ARC.
- The establishment of ARH and ARTA could have consultation implications for the ARC.

2. Recommendations

It is recommended that councils:

1. Note that the Government has advised that the funding package announced on 12 December 2003 is dependent upon the councils accepting the basic governance structure announced at the same time, but there are some elements of the structure which remain open to further consideration.
2. Agree that the region supports an integrated transport governance structure which supports the effective and efficient delivery of transport and related economic, social, environmental and land use outcomes in the best interests of the Auckland region, and note that there are some issues embodied in the following recommendations which require resolution in order to achieve this aim.
3. Note that some of the measures in the following recommendations require legislative change, while others require agreement between the parties within existing legislative frameworks; and that to the extent possible, matters agreed between the region's councils, and between the councils and the government, will be formalised in an appropriate instrument such as a memorandum of understanding which is referred to in the legislation giving effect to the new governance arrangements.
4. Agree the issues identified and the proposed means of addressing them¹:
 - a. *Issue: Incentives for collaboration should be formally incorporated into the proposed governance structure. A collaborative approach is more likely to foster acceptance and support for the structure in practice.*

It is recommended that:

- I. TA membership on the RLTC be confirmed
- II. The executive support group (comprised of senior ARC and TA executives) for the RLTC be formalised
- III. An Officer Working Group (comprised of TA and ARC representatives) be formally established to work closely with the ARC and ARTA on the development of the RLTS and the Regional Land Transport Programme
- IV. ARTA be required by legislation and/or by its statement of intent to work collaboratively with stakeholders and partners such as Transit, TrackCo and the TA's in the development of the Regional Transport Plan.
- V. ARTA be required to develop agreements and/or supporting Memoranda of Understanding with implementers of transport project, including the TA's, to encourage integrated implementation of the Regional Land Transport Plan
- VI. Strategic documents such as the Triennial Agreement be used to reinforce an intention to work collaboratively and inclusively

¹ Note: The CEO of the ARC does not agree with all recommendations. Where this is the case, the recommendation is marked with an asterisk. Full explanations for the reasons for differences are outlined in the report entitled "Transport Funding and Governance Proposals: Report to Councils from CEO Forum".

- b. *Issue: The role and composition of the appointments panel needs to reflect the significant interest which both the ARC and TA's will have in the success of ARTA and support collaborative decision-making to ensure that success.*

It is recommended that:

- I. That an independent chair be appointed by government, to chair the appointments panel in order to recognise the significance which both the ARC and TA's will have in the success of ARTA and to encourage collaborative decision-making to support this².
- I. Formal opportunity be provided for the appointments board to contribute to the development of ARTA's Statement of Intent

- c. *Issue: Better integration between national and local transport networks, including local roads and state highways, and the national and regional rail corridor, is required. Co-ordination across agencies and modes is limited by exclusion of central government transport agencies from regional planning processes. There is also a risk that ARTA will duplicate Transfund funding and audit processes, and that the process for funding the maintenance of local roads will become complex*

It is recommended that:

- I. Through the government review of the transport sector and finalisation of arrangements in respect to Trackco, government consider means of integrating the Auckland functions of Transit and Trackco into the regional governance structure
- II. That council's consider means of integrating local roading functions into ARTA should government agree to the integration of state highways and rail.
- III. That this be achieved in the short term via contractual agreements between ARTA and councils, Transit and Trackco to ensure these agencies actively support regional priorities;
- IV. In order to avoid duplication of functions between Transfund and ARTA in the interim, that either
 - (i) Transfund's responsibilities for local roads be delegated to ARTA under a joint protocol which provides for the bulk allocation of funds and the delegation of some of Transfund's audit and monitoring responsibilities; or
 - (ii) Existing arrangements for local roading remain, but ARTA would become involved in the process of approving land transport programmes for the region. It would act as a filter which evaluates the degree to which programmes are consistent with, and support regional strategies and plans and by providing recommendations to Transfund in this regard.

² The CEO of the ARC did not agree to this recommendation. See page __ of the covering report for the reasons for this.

- d. *Issue: Integration of planning for different transport modes and regional co-ordination could be better supported by transferring responsibility for some regional functions to ARTA*

It is recommended that:

- i. The ARC's legislative mandate be amended to ensure that the strategic elements of the Regional Passenger Transport Plan become part of the Regional Land Transport Strategy, and the operational planning elements become part of the ARTA Regional Land Transport Plan
- ii. The co-ordination of the Traffic Management Unit be transferred to ARTA

- e. *Issue: An appropriate entity is needed to assume responsibility for integrated development, stewardship and management of operational assets. It is desirable to determine the future of ARTNL as part of finalising the transport governance arrangements before legislation giving effect to those arrangements is introduced.*

It is recommended that:

- i. A council controlled trading organisation (CCTO) be established with responsibility for owning, developing and managing operational assets in a sustainable manner which is consistent with delivery of passenger transport services determined in the Regional Land Transport Plan.*
- ii. That further consideration be given as to whether the CCTO is more appropriately a subsidiary of ARH or ARTA*
- iii. That further consideration also be given as to whether this is best achieved by transferring the shares in ARTNL from the existing shareholders to ARTA or ARH or by disestablishing ARTNL and creating a new entity.*

- f. *Issue: Certainty is required around the sustainable use of former Infrastructure Auckland funds for both capital and operational expenditure to achieve the desired transport outcomes identified by the Joint Officials Group.*

It is recommended that:

- i. The basic intent of current legislative provisions in respect of Infrastructure Auckland be retained, that is, that the funds and assets of Infrastructure Auckland are held primarily to be applied to the capital components of transport and stormwater projects*
- ii. There be some relaxation to allow income derived from Infrastructure Aucklands assets to meet the operational expenditure requirements of ARTA for the transport purposes defined by the existing Infrastructure Auckland provisions.*

- g. *Issue: Identified community outcomes for the Auckland Local Authorities should be taken into account when developing the Regional Land Transport Strategy:*

It is recommended that:

- i. From July 2006, revisions of the Regional Land Transport Strategy (RLTS) be sequenced to align with the completion of community outcomes processes for the Auckland Local Authorities to allow those outcomes to be taken into account in the RLTS

h. Issue: Care should be taken to establish ARH and ARTA in an effective manner which allows them to readily fulfil their functions. This should recognise the need for these bodies to be accountable to the ARC, but also the need for them to be sufficiently empowered and resourced.

It is recommended that:

- i. Clarity be established as to the process by which funds will be provided by the ARC to ARTA
- ii. Consideration be given to providing an initial allocation of funds to ARTA, from IA proceeds, which will enable it to continue the timely implementation of agreed transport projects and plans*

i. Issue: In order to establish the new governance structure by 01 July 2004, some transition processes will need to begin before there is legislative provision for them to do so. Other processes will trigger legislative requirements, including consultation requirements which may impede early implementation.

It is recommended that:

- i. The Government be requested to provide an early assurance that it will provide exemptions from the consultation requirements of the Local Government Act so that work on establishment processes can commence prior to legislation being amended.

k. Issue: The implementation of the new governance structure by 01 July 2004 will be a complex process. This process should be undertaken in a collaborative manner which recognises the interests that all parties have in its successful establishment, the smooth transfer of existing functions to new entities, and the ongoing effectiveness of the new arrangements.

It is recommended that:

- i. An establishment unit comprised of representatives from each of the Auckland Local Authorities, Infrastructure Auckland and ARTNL, be established with urgency to determine the process and critical path for implementation.*

3. Background

3.1 Context

The funding package announced by central government on 12 December is contingent upon acceptance of a proposed governance structure which was announced at the same time. The key elements of the structure are non-negotiable, although changes which will make the structure work more effectively may be further considered by government.

The key elements of the governance package were outlined in a letter to the Chair of the CEO Forum by the Hon Michael Cullen on 18 December 2003. That letter outlines both the negotiable and non-negotiable elements of the package. The letter stated:

"As a condition of the new funding, include the following governance arrangements –

- The ARC will have overall responsibility for the integrated planning and delivery of Auckland transport, including accountability for the new transport entities, and will remain responsible for strategic planning including the Regional Land Transport Strategy
- The Auckland Regional Transport Authority (ARTA) will be established from 1 July 2004 as a wholly-owned subsidiary of ARC, responsible for the delivery of a sustainable transport system for Auckland in line with relevant strategic documents and Government policies. Its key functions will be *operational planning* of integrated transport infrastructure and services; *funding* of projects and services, including all roads other than stage highways; and *implementation* of operational plans
- Transit will remain responsible for state highways and the future TrackCo will be responsible for rail track and related infrastructure (i.e. they will be outside ARTA). However, ARTA, Transit and TrackCo will need to closely co-ordinate their operational plans, with all entities ensuring that their plans reflect both the Regional Land Transport Strategy and Transfund's priorities under the Land Transport Management Act, and contribute to the goals of the New Zealand Transport Strategy
- ARTA will be governed by a Board appointed by a panel consisting of the Chair of the ARC as panel Chair, seven other ARC members and one member from each of the territorial authorities. The panel will ensure that the Board has appropriate professional expertise, and shall not be elected representatives or staff of the appointing bodies, nor have direct financial interests in ARTA.
- Auckland Regional Holdings (ARH) will be established from 1 July 2004 as a wholly-owned subsidiary of ARC, responsible for prudently managing investments and assets in the long term interest of the region. Its key functions will be *managing investments* and *owning and managing regional infrastructure assets*. ARH's income and capital will be exclusively available to the ARC. We are open to considering exactly where, under ARC's overall responsibility, specific assets are best located to achieve the best possible transport outcomes and urban development outcomes for the region. ARH will be governed by a Board appointed by the ARC, with similar restrictions (expertise etc) that apply to ARTA

- Infrastructure Auckland will be disestablished from 1 July 2004 and its assets and liabilities transferred to ARH or similar entity (but retaining similar obligations to those that currently apply). We look forward to working with Auckland on how best to manage this transition, and within what timeframes
- Further work is needed on the implications and timing of transferring transport infrastructure assets to ARH, including those currently managed by ARTNL".

3.2 Principles

Three considerations have underpinned our consideration of the proposed governance structure:

Effectiveness

The structure should be effective and able to deliver agreed regional transport outcomes. It should also be practical. Where changes are proposed, these should be practical changes which can make the structure work more effectively and increase its chances of success rather than wide-scale changes.

Collaboration and engagement of stakeholders

Collaborative structures which involve and engage stakeholders have a higher likelihood of acceptance and success, and can improve the quality of decision-making. The structure should encourage collaboration.

Regional/local hierarchy of responsibilities

The structure should recognise that national, regional and local responsibilities should be held by appropriate bodies, at appropriate levels.

4. Roles and relationships

4.1 Illustration of roles and relationships

The roles and relationships of the various bodies are outlined on the table on the next page.

4.2 Planning framework and mechanisms

ARTA is central to the planning process, including:

- The planning process which contributes to the development of the RLTS (identification of needs and feasibility of potential solutions).
- The development of a Regional Land Transport Plan³ following the sign-off of the RLTS. This provides a blueprint for how RLTS outcomes will be achieved in practice. The Regional Land Transport Plan would precede the development of a Regional Land Transport Programme, which is a detailed document developed for the purpose of obtaining Transfund funding⁴.

4.3 Funding framework and mechanisms

The funding framework remains complex:

- The RLTS will be required to take account of funding under the LTMA.
- ARTA will:
 - Co-ordinate the development of a Regional Land Transport Programme, which will form the basis of a regional funding application to Transfund.
 - Be a conduit for Transfund funding to TA's;
 - Receive funds from ARC for transport.
 - Will be accountable to Transfund for the use of funds
- The ARH will:
 - Manage assets which will be used to fund some transport projects;
 - Transfer funds to the ARC/ARTA in accordance with ARC allocation decision.
- The ARC will:
 - Make funding decisions in relation to ARH funds;
 - Continue to rate for regional transport.
- TA's are expected to continue to rate for local transport projects.

³ This was not proposed in the 12 December announcements, but would make logical sense. It would be logical if provision were made for this plan to replace other documents, such as the current Regional Passenger Transport Plan.

⁴ The government announcements refer to the development of a regional roading programme, but the Land Transport Management Act refers to the development of Land Transport Programmes. It is assumed that this inconsistency will be resolved, and that ARTA will be required to develop a Land Transport Programme, in accordance with the Land Transport Management Act, rather than a Regional Roding Programme.

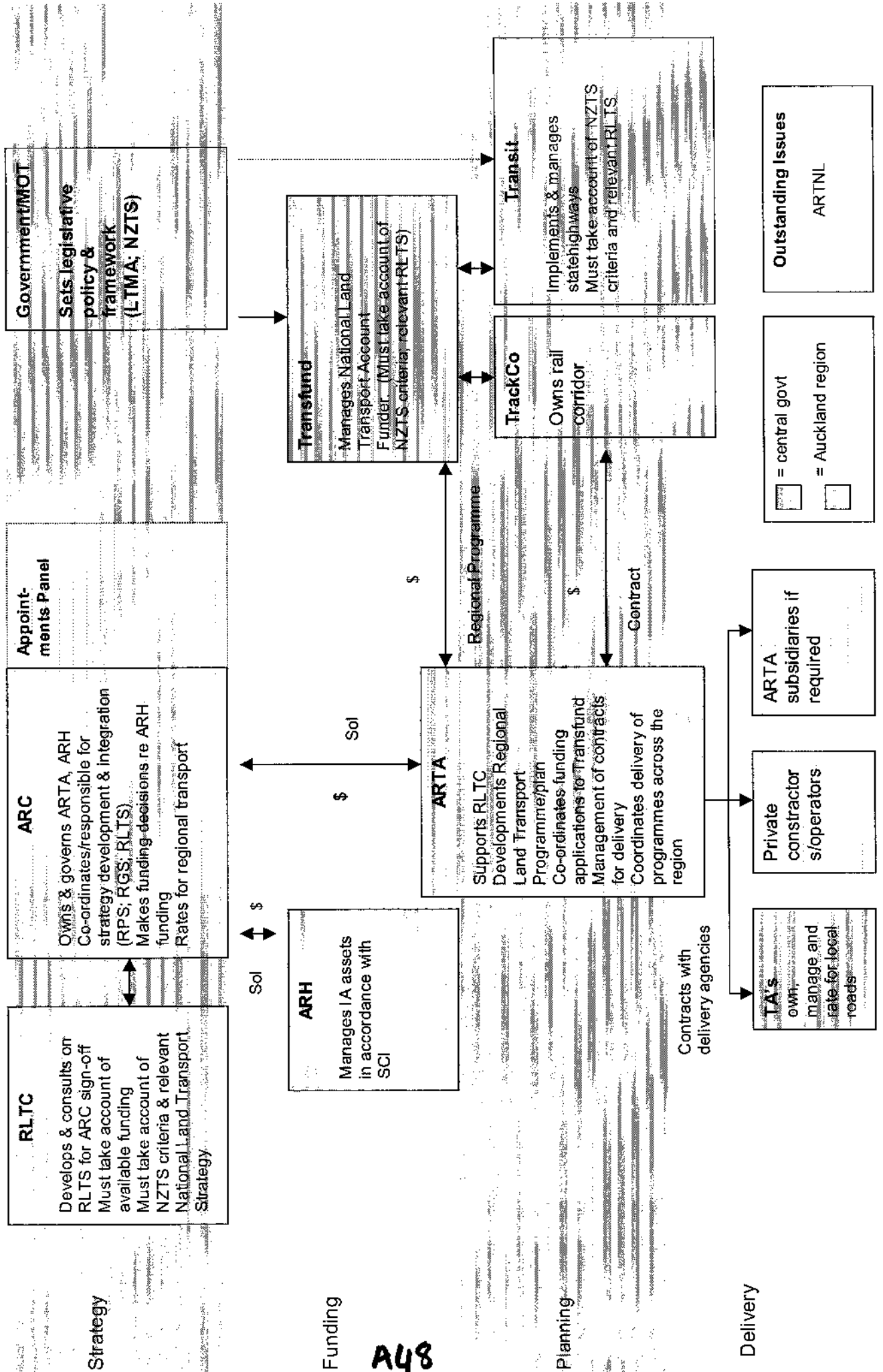
4.4 Governance and accountability framework and mechanisms

The governance and accountability framework is based on three fundamental premises:

- One organisation (the ARC) holds ultimate accountability.
- Transport planning and contracting will be held in a single-purpose, arms length entity (ARTA), owned by the ARC. This body will be governed through a Statement of Intent. An appointments board will appoint the board of directors for ARTA.
- Financial assets will be managed by a single purpose, arms length entity (ARH), owned by the ARC. This body will be governed by a Statement of Intent.

These governance structures are likely to be supported by a 'web' of contractual relationships such as sector agreements between ARTA and the TA's and contractual agreements between TrackCo and ARTA. Ideally, similar relationships with Transit would also exist.

Transport Governance Structure – Auckland



5. Outstanding Issues and Assessment

5.1 Outstanding Issues

The key outstanding issues raised by the announcements can be grouped into the following areas:

- ARTA's role in the integration of planning, funding and transport modes
 - Integration of planning, decision-making and implementation for the national and regional transport networks
 - Integration of planning for different transport modes
 - ARTA's role in the co-ordination of the Regional Land Transport Programme
 - Risk of duplication of activities by ARTA and Transfund.
- The location of 'operational assets' within the structure
- Providing incentives for collaboration which support the alignment of planning, funding and implementation
- Alignment of transport strategy and planning processes with Community Outcomes
- Criteria for use of former IA funds

5.2 Issue 1: ARTA's role in the integration of planning, funding and transport modes

It is envisaged that the key functions of ARTA will be operational planning, funding and the implementation of operational plans. Several issues arise in respect of these roles.

ARTA's role to carry out operational planning and coordination of a regional transport programme for application to Transfund will provide a measure of coordination currently absent. What this means in practice remains unclear and significant further work is required to clarify the role of ARTA and the impacts of this on other agencies with transport responsibilities.

5.2.2 *The structure does not integrate national and regional planning, decision-making or implementation for transport. Coordination across agencies and modes is limited by exclusion of central government transport agencies from regional planning processes. Integration of modes and networks are not assured in the proposed governance structure*

The structure does not integrate national and regional planning for transport⁵. A significant number of RLTS projects for Auckland are likely to be state highways but there is no direct relationship between ARTA (the body responsible for regional planning) and Transit (the body responsible for managing the state highway network). The region has minimal ability to influence transport outcomes in relation to these projects.

⁵ The Land Transport Management Act 2003 provides a framework for the development of consistent objectives across national, regional and local bodies, but this alone will not guarantee good outcomes for Auckland transport. It requires national agencies (Transfund and Transit) to take into account relevant regional land transport strategies and a set of criteria from the NZTS, and regional agencies must take into account the national land transport strategy, and the same set of NZTS criteria.

The exclusion of Transit and Trackco from coordination via ARTA is therefore of serious concern and limits the delivery of coordinated transport policies and programmes for Auckland.

This has implications for choices around the treatment of local roads under the proposed structure. There may be little benefit to the region to place decision-making on local roads with ARTA if state highways and rail are not also in the mix. Local roads will not attract much of the new funding being made available, and apart from some key arterials are non-strategic in the regional sense.

A number of details need to be worked through prior to full implementation of the package. Many of these relate to the way in which ARTA will operate, and ARTA's relationship to councils, Transfund, Transit NZ and Trackco.

The future roles of Transit, Trackco and Transfund are being reviewed as part of the Government's review of the transport sector. This increases the uncertainty around the effectiveness of the proposed governance arrangements.

A mechanism needs to be put in place to ensure that Transit's and Trackco's development and expenditure programmes for the Auckland region are coordinated with ARTA, and actively support regional priorities, similar to the proposed treatment of local roads. In the longer term, the best answer is to formally include these programmes within ARTA's sphere of influence.

Councils may wish to limit the role of ARTA in dealing with local roads to Transfund roles should state highways and rail programmes not be coordinated via ARTA.

5.2.3 Integration of planning for different transport modes and regional co-ordination could be better supported by transferring responsibility for some regional functions to ARTA

At a modal level, ARTA may increase coordination, but this will not necessarily increase modal integration particularly in relation to the integrated planning and funding of state highways and local roads, and the responsibilities for public transport infrastructure. Changes to the ARC's legislative mandate to ensure that the strategic elements of the Regional Passenger Transport Plan become part of the Regional Land Transport Strategy, and the operational planning elements become part of the ARTA Regional Land Transport Plan, could go some way to addressing this issue.

Similarly, the co-ordination of the Traffic Management Unit, which is currently carried out by Transit under a service level agreement, could be transferred to ARTA.

5.2.4 ARTA's role in co-ordinating the Regional Land Transport Programme requires further clarification. The roles and relationships between Transfund, ARTA and the TA's could overlap and result in duplication.

The intention is that ARTA would co-ordinate funding applications to Transfund for all local roads. Essentially, the TA's would have a primary relationship with ARTA rather than Transfund in respect of the Land Transport Programmes in relation to their respective districts.

There is benefit in ARTA assuming some of Transfund's roles in respect of the Auckland Region, by completing a regional land transport programme each year for application to Transfund compiled from assessment and prioritisation of applications from transport agencies including councils. If this occurs, further thought should be

given to the relationship which ARTA has with Transfund, the role ARTA has with the TA's, and the role the TA's have with Transfund (if any). Unless these roles and relationships are carefully developed and clearly identified, there is significant potential for overlap and conflict between Transfund, ARTA and territorial authorities.

In further developing the details of the relationship between the TA's and ARTA, the following should be borne in mind:

- A large proportion of local roads are not regionally significant and a regional body such as ARTA may have little direct interest in them.
- Maintenance comprises approximately 80% of Transfund funding for local roads. This is usually bulk-funded to TA's on a 'roll-over' basis

ARTA's primary focus should therefore be on the strategic and high level planning of transport infrastructure in the region, and local councils should retain responsibility for operational planning in respect of assets management and planning the maintenance and development of infrastructure. ARTA's role would essentially be limited to a high level vetting to ensure alignment with implementation of the RLTS.

5.2.5 There is a risk of duplication of activities by ARTA and Transfund. Funding delays and complexity could arise as a result.

If Transfund is to allocate funding to TA's for local roading via ARTA, it is appropriate that ARTA take on monitoring and review functions of Transfund. It would therefore be appropriate for Transfund to delegate functions to ARTA, to avoid duplication. A joint protocol could be considered to give effect to this.

5.2.5 Recommended options

It is recommended that:

- Through the government review of the transport sector and finalisation of arrangements in respect to Trackco, government consider means of integrating the Auckland functions of Transit and Trackco into ARTA
- That council's consider means of integrating local roading functions into ARTA should government agree to the integration of state highways and rail.
- That this be achieved in the short term via contractual agreements between ARTA and councils, Transit and Trackco to ensure these agencies actively support regional priorities,
- In order to avoid duplication of functions between Transfund and ARTA in the interim, that either
 - Transfund's responsibilities for local roads be delegated to ARTA under a joint protocol which provides for the bulk allocation of funds and the delegation of some of Transfund's audit and monitoring responsibilities; or
 - Existing arrangements for local roading remain, but ARTA would become involved in the process of approving land transport programmes for the region. It would act as a filter which evaluates the degree to which programmes are consistent with, and support regional strategies and plans and by providing recommendations to Transfund in this regard.

- The ARC's legislative mandate be amended to ensure that the strategic elements of the Regional Passenger Transport Plan become part of the Regional Land Transport Strategy, and the operational planning elements become part of the ARTA Regional Land Transport Plan
- Responsibility for the Traffic Management Unit be transferred to ARTA

5.4 Issue 2: Location of Operational Assets within the structure

The ARH will manage IA's (investment) assets in order to generate good financial returns. The location of operational assets needs to be considered further. It is important that the development of assets is an inclusive process, which includes input from interested parties, and which integrates the development of assets with desired transport outcomes.

This issue has implications for the future of ARTNL, whose assets are largely operational in nature, and for the operational assets currently held in relation to the Northshore Busway project.

The issues in relation to the location of operational assets are discussed further at paragraph 6.1.3.

5.4.1 Possible options:

- Absorb operational assets into a subsidiary of ARH
- Locate operational assets in a subsidiary of ARTA

5.5 Issue 3: Providing incentives for collaboration which support the alignment of planning, funding and implementation

Under the proposed structure, different bodies are responsible for planning, funding and implementing the Regional Land Transport Strategy. There is therefore potential for misalignment, or conflicting objectives between organisations.

Achievement of the goals set out in the RLTS depends upon implementation by key parties, including the TA's, Transit and TrackCo. Collaborative structures which involve and engage stakeholders have a higher likelihood of acceptance and success, as sovereign parties are more likely to choose to implement a plan which they have helped to develop. Incentives to encourage collaboration and opportunities for stakeholders to influence the development of plans and funding programmes is essential to the success of the proposed structure.

Some of the key areas where this collaborative approach would improve transport outcomes include:

- Involvement of TA's (politicians and officers) in the development of the RLTS
- Involvement of Transit, TrackCo and TA's in the development of the Regional Land Transport Plan.
- Involvement of TA's in the development of the Regional Land Transport Programme
- Involvement of the Appointments panel in the Sol process for ARTA

5.5.1 Recommended Options:

- A clear commitment that TA's will remain members of the RLTC, and an effective, and better resourced RTEG to support it.
- RTEG could be underpinned by an Officer Working Group (comprised of TA representatives) which works closely with the ARC and ARTA on the development of the RLTS and the Regional Land Transport Programme.
- Sector agreements between ARTA and TA's to ensure integrated implementation
- ARTA's Sol could require ARTA to act collaboratively, and to include stakeholders and partners such as the TA's and Transit in certain policy and planning processes.
- Use strategic documents such as the Triennial Agreement to reinforce an intention to work collaboratively and inclusively
- That formal opportunity be provided for the appointments board to contribute to the development of ARTA's Statement of Intent in order to recognise the significance which both the ARC and TA's will have in the success of ARTA.⁶
- That an independent chair be appointed by government, to chair the appointments in order to recognise the significance which both the ARC and TA's will have in the success of ARTA and to encourage collaborative decision-making to support this⁷.

5.6 Issue 4: Alignment of transport strategy and planning processes with Community Outcomes Processes

All local authorities are required to carry out a process at least once every six years to identify community outcomes for the intermediate and long term future of its district or region. The RLTS must take into account the views of affected communities. The community outcomes identified periodically by the Auckland Local Authorities could therefore become an important tool to inform the policy development process in relation to the RLTS. Appropriate timing and sequencing will be required.

5.6.1 *Recommended option:*

- RLTS revisions which occur after 1 July 2006, should be sequenced to align with the identification of community outcomes by the Auckland local authorities.

5.7 Issue 5: Use of IA Funds

The criteria for use of former IA funds need to provide the flexibility to make capex/opex decisions in a holistic but sustainable way. Certainty is required around the sustainable use of the funds for both capital and operational expenditure to achieve the desired transport outcomes identified by the Joint Officials Group. This use should take into account the needs of current and future generations.

Some of the remaining issues which should be considered when developing the criteria include:

⁶ The CEO of the ARC has noted her disagreement with this recommendation. The reasons for this are outlined in the covering report to councils from the CEO Forum.

⁷ The CEO of the ARC has noted her disagreement with this recommendation. The reasons for this are outlined in the covering report to councils from the CEO Forum.

- Extent that ARH is able to influence transfer of capital and income to ARC
- Simple allocation criteria (for ARH and ARC?)
- Ensuring funding is used in way which is consistent with the RLTS
- Allocation to Capex vs Opex – appears to be a need for a broad requirement for the ARH and ARC to optimise ARH funding between opex and capex
- Process for determining the notional allocation between stormwater and transport and of applying for stormwater funding
- Integration with other funding sources
- IA is currently prohibited from making offshore investments. New body should have investment flexibility which is consistent with that of a local authority

5.7.1 Recommended Options:

It is recommended that:

- The basic intent of current legislative provisions in respect of Infrastructure Auckland be retained, that is, that the funds and assets of Infrastructure Auckland are held primarily to be applied to the capital components of transport and stormwater projects⁸
- There be some relaxation to allow income derived from Infrastructure Auckland's assets to meet the operational expenditure requirements of ARTA for the transport purposes defined by the existing Infrastructure Auckland provisions.

⁸ Section 707ZZZA(1)(i) provides that the Infrastructure Auckland deed must contain provisions ensuring that grants made by Infrastructure Auckland are made primarily for the purpose of funding the capital components of projects.

6. Implementation of the new governance structure

6.1A key issue for the implementation of the new governance structure is timing. It is understood that it is government's intention to implement the new structure as far as possible before 01 July 04. In order to meet some deadlines, however, some processes will need to begin before there is legislative provision for them to do so. Other processes (particularly the establishment and dis-establishment of entities) may trigger some legislative consultation requirements.

It is important that the transition process, and the establishment and dis-establishment of entities is managed in a collaborative manner which reflects the significance that the process has for a number of regional parties – both in terms of establishment and dis-establishment, and in its ongoing success.

The details of the transition, including the development of a plan for action and identification of a 'critical path' will need to be developed further, possibly by an Establishment Unit. Only the key issues in relation to the establishment and dis-establishment processes associated with transition are noted in this paper.

6.1.1 Recommended Options

It is recommended that:

- the Government be requested to provide an early assurance that it will provide exemptions from the consultation requirements of the Local Government Act so that work on establishment processes can commence prior to legislation being amended.
- an establishment unit comprised of representatives from each of the Auckland local authorities, Infrastructure Auckland and ARTNL, be established with urgency to determine the process and critical path for implementation.⁹
- the Government be urged to work collaboratively with the councils of the Auckland region in developing the details of the implementation plan, taking into account the matters raised in this report and the supporting detailed assessment reports.

6.2 Establishment/disestablishment of organisations

The establishment of the new governance structure will entail:

- The dis-establishment of IA
- The establishment of ARTA and the ARH
- Possible dis-establishment or re-constitution of ARTNL

The sequencing of the establishment of new entities and the dis-establishment of old entities is an issue for further consideration.

6.1.1 Dis-establishment of IA

It is currently proposed that IA be dis-established, some of the issues in relation to dis-establishment are addressed below. However, it is worth noting that one possible option to assist in the practical establishment of ARH, would be to make legislative

⁹ The CEO of the ARC has noted her disagreement with this recommendation. The reasons for this are outlined in the covering report to councils from the CEO Forum.

changes which effectively preserve the current IA structure in practice, but under the new name of ARH and within the boundaries set by the new legislative amendments.

- Based upon a maximum potential liability as at 30/06/04, on 01 July 2004, IA would be in a position to transfer to any new entity, approximately \$270 - \$290million. ARH could be expected to take over the management of approximately \$330m of grant liabilities from IA as at 30/06/04

The following should be considered in any 'transfer' process:

- IA will process applications submitted prior to 10 February 2004. It will not be able to give assurances as to whether or not these applications will be granted if a decision has not already been made prior to 30 June 2004.
- In a resolution of the IA Electoral College in October 2003, the Electoral College supported the land and waterspace currently owned by ACVL being vested in either the Auckland City Council or a charitable trust established by Auckland City Council for no cost. Discussions around this issue have been put on hold by IA in light of the 12 December announcements, but this is an issue which requires resolution.
- IA is in the process of preparing its Annual Plan for 2004/05. It cannot halt this process until legislative changes are made.
- IA has a current GST binding ruling on grants which needs to be renewed in May 2004. If this is not renewed, major incremental liability issues may arise.
- Transfer of the Ports of Auckland should provide flexibility for future decision-makers to balance public policy and stewardship considerations with commercial considerations.

6.1.2 Establishment of ARH and ARTA

There are a range of issues which are related to the establishment of ARH and ARTA. The three main issues are:

- Effectiveness
Care should be taken to establish all new entities in an effective manner which allows them to readily fulfil their functions. Clarification and consideration of the relationship between ARC and ARTA (and the balance between considerations of accountability to the ARC and empowerment of ARTA), as well as the capitalisation of ARTA with cash funds upon establishment, is required.
- Taxation
It will be important that any transfer of assets to ARH/ARC/ARTA will not trigger a taxable event (such as the imposition of gift duty). Furthermore, tax exemptions may be required so that income derived from ARH or any subsidiaries is not taxable. If a tax exemption is not granted, it would be preferable for both companies to be able to take advantage of depreciation for taxation purposes.

- Human Resources
There are human resource issues related to the transfer of staff between organisations:
 - Potential resource and recruitment gaps due to the movement of staff
 - Redundancy liabilities arising from changes
 - Need for ARH and ARTA boards to be appointed and in a position to make CEO appointment as soon as legislation is passed
 - CEO must have ability to develop management structure and appoint a management team based on competencies as soon as possible
- Consultation Obligations
Without enabling legislation, ARH and ARTA would be likely to be council-controlled organisations (CCO's). The establishment of a CCO triggers consultation obligations for the ARC under the Local Government Act 2002 and could prevent a start date of 01 July 04. Dis-establishment or changes to ARTNL's structure could also trigger consultation obligations for its shareholders unless legislative exemptions are provided for.

Recommended Options:

It is recommended that:

- The region request legislative exemption from consultation obligations under the LGA 02 in relation to the establishment of ARH and ARTA.
- Clarity be established as to the process by which funds will be provided by the ARC to ARTA¹⁰
- Consideration be given to providing an initial allocation of funds to ARTA, from IA proceeds, which will enable it to continue the timely implementation of agreed transport projects and plans¹¹

6.1.3 Options for ARTNL

ARTNL's current role encompasses:

- Project management
- Development of assets
- Operation of assets

Decisions on its future should take account of where these functions will best, and most logically sit. The issue of the location of operational assets within the overall governance structure is linked to the future of ARTNL.

The significant assets which ARTNL currently holds are:

- Ferry terminals (including land, buildings, wharves support, furniture and fittings and capital work in progress) of \$12.5m
- Rolling stock of \$1.5m

¹⁰ The CEO of the ARC has noted her disagreement with this recommendation. The reasons for this are outlined in the covering report to councils from the CEO Forum.

¹¹ The CEO of the ARC has noted her disagreement with this recommendation. The reasons for this are outlined in the covering report to councils from the CEO Forum.

- Leasehold improvements of \$1.4m
- Access rights improvements on the rail corridor of \$1.9m
- Capital work in progress on stations of \$4.4m

ARTNL also holds various leases and contracts (as at 31 December 2003), including lease arrangements in regard to 39 suburban railway stations on the Auckland Rail Network, and the lease with Auckland City for the use of the interior of Britomart by ARTNL Britomart.

Where should ARTNL's functions and assets sit in the new structure?

The functions undertaken by ARTNL do not readily fit with ARTA, whose primary functions are planning, service contracting and co-ordination of funds allocation; or with ARH, whose prime role is to manage investments and cash to generate funds for the ARC's transport and stormwater responsibilities¹².

It is important that there remains a strong co-ordination and project management role for ongoing development, stewardship and sustainable management of operational assets. While some functions are capable of being contracted to operators, eg. operation and maintenance of rail stations, others cannot. Ferry terminals, for example, will have open access for multiple operators and the same will apply for future busway stations. This development and co-ordination role will involve a focus, skill sets and disciplines which will be different from the focus and skills sets required for the prime functions of ARH and ARTA.

It is therefore recommended that a CCTO be established to undertake asset stewardship, development and management functions. The CCTO could either be a subsidiary of ARTA or ARH.

The primary benefits of placing the subsidiary under ARTA is that it provides for the integration of services and infrastructure under the umbrella of ARTA and may provide ARTA with a vehicle for managing other operational assets.

The primary benefits of placing the subsidiary under ARH, is that it preserves the purity of ARTA's planning, service contracting and funding role. It also enhances the perception of transparency on matters of pricing. Under this option, ARTA's neutrality in respect of making funding trade-offs across all services and infrastructure is maintained. However, implementation of this option could require explicit recognition that ARH's responsibilities go beyond generating returns. It is unlikely that the subsidiary would be producing dividends in the foreseeable future.

Recommended Options

A council controlled trading organisation (CCTO) be established with responsibility for owning, developing and managing operational assets in a sustainable manner

¹² It has been said that the ARH structure is modelled to an extent on Christchurch Holdings Limited (CH), which undertakes co-ordinated management of assets and provides funds to Christchurch City Council. On closer examination, CH co-ordinates the councils shareholding interest in a number of companies and undertakes a treasury management role. In other words, it manages equities and liquid investments. It does not manage physical assets. Responsibilities for management and decisions in respect of physical assets (eg airport assets or port assets) are made by the companies responsible for those assets, not by CH.

which is consistent with delivery of passenger transport services determined in the Regional Land Transport Plan.¹³

It is recommended that further detailed consideration be given to whether the subsidiary best sits into ARTA or ARH¹⁴.

Further consideration should also be given as to whether it is best to establish a new CCTO and dis-establish ARTNL, or simply transfer the shares of ARTNL from the existing shareholders to either ARH or ARTA¹⁵.

¹³ The CEO of the ARC has noted her disagreement with this recommendation. The reasons for this are outlined in the covering report to councils from the CEO Forum.

¹⁴ The CEO of the ARC has noted her disagreement with this recommendation. The reasons for this are outlined in the covering report to councils from the CEO Forum.

¹⁵ The CEO of the ARC has noted her disagreement with this recommendation. The reasons for this are outlined in the covering report to councils from the CEO Forum.

Extract from Cabinet Minute (CAB MIN(03) 40/7/B):

11.1 ***Before any new funding is allocated:***

11.1.1 the Auckland Regional Policy Statement is to be updated expeditiously in order to give clearer guidance about the integration of transport priorities and land use policies, and so allow for greater certainty in the consideration of resource consents for key Auckland projects;

11.1.2 the Regional Land Transport Strategy is to be reviewed in accord with the Land Transport Management Act;

11.1.3 Auckland local authorities are to ensure there is appropriate integration between the Regional Policy Statement, the regional Growth Strategy, the Regional Land Transport Strategy, and notify changes to integrate District Plans;

...

16.4 the results of consultation between the Ministry for the Environment and Auckland Regional Council on a preferred option for expediting implementation of a change to the Auckland Regional Policy Statement and its practical implementation;