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Report PE01.743

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Report to the Policy and Finance Committee
from Greg Schollum, Chief Financial Officer

Wellington Urban Rail Services

1. Purpose

To seek approval in principle of the detailed documentation which has been prepared in support of the WRC's proposed public/private partnership, after noting the feedback that has been received as a result of "road testing" the documentation with interested rail operators.

2. Public Excluded

Grounds for exclusion of the public under section 48(1) of the Local Government Information and Meetings Act are:

That the public conduct of the whole or relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists (i.e. to carry on commercial negotiations).

3. Background

Over the past 6-12 months officers have been working on implementing Council's preferred solution to the Rail situation – a 50/50 public/private partnership.

The draft documentation that has been developed to date is separately enclosed as **Attachment 1**.

It is recognised that further work is required to "fine tune" the documentation as a result of:

- Operator feedback from "road testing" (refer **Attachment 2**)

- The matters raised in the Booz Allen and Hamilton (Booz Allen) and Office of the Auditor-General (OAG) reports (Refer report 01.742).

However, the broad principles and the majority of the detail contained in **Attachment 1** (separately enclosed) is expected to remain intact.

Subject to Council's decision in respect of report 01.742, officers consider that it is appropriate to now seek Council's approval in principle to the documentation. Such approval in principle by the Council will need to recognise that officers may wish to change certain aspects of the documentation. (e.g. to insert buy back clauses in relation to rolling stock within the Funding Agreement.)

All final versions of the documents contained in **Attachment 1** will need to come back to Council for approval as the implementation process proceeds.

4. **WRC's Public/Private Partnership Documentation**

The key features of the documentation in **Attachment 1** are as follows:

- An overview of what is proposed is at the front of the document. This explains what the Council is trying to achieve and how.
- The key issues which could impact the timing or ability of WRC to complete the proposed transaction are noted as:
 - Legislative mandate
 - Public consultation
 - Continuity of funding through Transfund New Zealand

These matters have all been incorporated into the implementation process outlined in report 01.742 on this order paper.

- The documentation includes a draft Community Charter which is seen as important in demonstrating transparency about the new rail operating company to the Regional community.
- The documentation includes a draft Funding Agreement (Rail Contract) which has been prepared on the basis that it is irrelevant who owns the Rail operating company (i.e. we have tried to build in sufficient safeguards and controls over delivery of a quality rail service so that the Council will not need to rely long-term on its ownership interest in a rail operating company to achieve its objectives.)
- The documentation includes the stated intent of the WRC to review its ownership interest after a period of five years.
- The documentation precludes any elected members serving as Directors of the rail operating company.
- The documentation includes a "Tie break" C share which the Council could exercise in the event that the two partners can not agree.

5. Results of “Road Testing”

During July and August 2001 the draft documentation (**Attachment 1**) was “road tested” with interested rail operators. Feedback was sought but operators were under no obligation to do so as this did not form part of the partner selection process.

The feedback received (refer **Attachment 2**) was generally supportive although there was a feeling that the draft documentation was ‘stacked in WRC’s favour’. This of course was the intention, to allow some movement during the negotiations that will inevitably arise as part of the partner selection process.

The major issues raised during road testing were as follows:

- Concern that the arrangements did not represent low risk for the operators, particularly in relation to capital expenditure investment where there is no certainty over contract renewal (at the end of 10 years). In response, officers have agreed that a ‘buy back’ clause needs to be inserted into the Funding Agreement that allows the operating company to recoup its investment in rolling stock in the event that its operating contract is not renewed.
- Concern that there might be insufficient incentive for the operating company to grow revenue (i.e. to increase patronage). Officers need to further examine this issue.
- Concern that future Government funding is uncertain. Clearly Council would require back to back funding certainty from Government before it could enter into a 10 year Funding Agreement with the rail operating company. Interestingly, the operators expressed some concern at the prospect of WRC selling its ownership interest after five years.
- Concern at the potential for the Council to misuse the ‘C’ share. Officers believe this is more of an issue of further educating the interested operators rather than changing the documentation, as the documentation already incorporates the necessary dispute resolution procedures.

6. **Recommendations**

That the Committee recommend to Council that it:

- (1) Receive the report and note its contents.*
- (2) Approve in principle the draft documentation which supports the WRC's 50/50 public/private partnership.*
- (3) Authorise the General Manager to further develop the documentation to the extent that the public/private partnership is progressively implemented and to seek further authorisations from the Council as the implementation process unfolds.*

Prepared by:

Approved by:

GREG SCHOLLUM
Chief Financial Officer

HOWARD STONE
General Manager

Attachment 1: **A Public/Private Partnership** (Enclosed Separately)

Attachment 2: **Results of "Road Testing" with interested operators**