



Private & Confidential

Luke Troy
Manager, Corporate Planning
Greater Wellington Regional Council
PO Box 11646
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By Email:

16 July 2014

Engagement letter for Bus Rapid Transit programme business case

Dear Luke

Introduction

This letter confirms that we have been engaged by the Greater Wellington Regional Council (“the Council” or “Greater Wellington”) on behalf of itself, the New Zealand Transport Agency and the Wellington City Council (together “the Project Partners”) to provide the services (“the Services”) set out below.

This letter outlines the Services to be provided, the timetable, personnel involved, our fee basis and Terms of Business.

Background and Purpose

The recently completed Wellington PT Spine Study (“the PTSS”) evolved as a recommendation of the earlier Ngauranga to Airport corridor study. The PTSS identified transport projects that would support the on-going development of Wellington’s growth spine (covering the area between the Wellington railway station and Wellington Hospital, including the CBD), while also being complimentary to the planned improvements to the city’s strategic road network.

The PTSS concluded that Bus Rapid Transit (“BRT”) was the preferred option from a short-list of three seriously considered transport options (the other two included bus priority and light rail transit systems). The PTSS concluded that implementing a BRT system within the study area would yield the best mix of costs and benefits, expressed as BRT having the highest benefit to cost ratio (BCR).

The PTSS indicated that BRT could be delivered as single large project or as a series of smaller project components. Therefore, a programme business case is needed to identify the preferred way to deliver BRT (“the Project”), between the extremes of a number of smaller projects and one large overall project. In this regard the programme business case:

- Is the next step required in the process of converting the findings of the PTSS into an actionable sequence of projects and so enable the Project to progress beyond the early planning stages and onto more detailed consideration of the preferred option.
- Must make the case for investment in the Project by the Project Partners.
- Should provide a basis for attracting finance for the Project from funders in addition to the Project Partners.

Scope of services

You have requested our assistance in completing the programme business case. Our role will be to compile the programme business case from existing elements of work that have already been undertaken as well as developing material for the business case, particularly in relation to economic benefits and costs. We will be responsible for the delivery of the overall programme business case, including incorporating the inputs from the other contributors and developing a programme for investing in the project(s).

Inputs from the Project Partners will include, but not be limited to developing:

- The strategic and organisation context inputs from work completed to date.
- The sequence of activities needed to deliver the BRT. This will be based on work completed for the PTSS.

We will deliver the programme business case using the Treasury's business case approach, augmented by additional, more stringent requirements of the NZTA, which are transport investment specific. The following is a brief description of the sections (cases) of the programme business case. A more detailed description of the content of the cases is presented in Appendix B.

Strategic case

- Identify the strategic regional context for the project
- Clarify the project investment objectives, existing investment circumstances (including the scheduling and timing of other strategic transport investments) and therefore the derived regional needs from the suite of projects, including BRT.
- Outline the potential business scope and service requirements, including discussion of the benefits, risks, constraints and dependencies, that the options must satisfy to cross the evaluation hurdles.
- Discuss how, based on the above, the long-list of transport options was narrowed to the short list investigated in the PTSS.

Economic case

- Explanation of the short-listed options.
- The evaluation of the short-list to determine a preferred option using multi-criteria analysis, project NPV and benefit-cost analysis (including project BCRs).
- Confirmation of BRT as the preferred way forward.
- Elaboration of the counterfactual ("if you don't do this, the city will have to ...")
- Description of other benefits that could be either quantified or expressed qualitatively that reinforce the economics underpinning the preferred option:
- Discussion on the optimal method of delivering the project – either as a single large project (possibly with stages) versus splitting the option into multiple smaller projects
- Optimisation of project delivery on an economic basis by looking at sequencing and timing either across stages or multiple projects.

Commercial case

Based on the preferred BRT option and the Alternative Funding Options Study, conduct an initial assessment of the best way of delivering the project through procurement, including the likely attractiveness of the project to potential service providers, depending on whether the project is a single large project or split into several smaller ones:

- Outline of private financing opportunities and their applicability to the BRT.
- Consideration of whether competition can be created by contracting for separate components or parts of the project, or is the best mechanism delivery by a single supplier (including consortium)?
- Discussion on the recommended procurement approaches and the conditions under which these will be favourable.
- Next steps in terms of determining the best way forward for procurement.

Financial case

An initial assessment of the affordability of delivering the preferred BRT option as either a single large project or as multiple smaller ones. The financial case will need iterating with the economic case to determine the optimal financial outcome that also attempts to maximise the economic benefits associated with the project.

The Financial Case will also include the preliminary cash flows (based on available cost estimates) for the project sequencing. In particular, the PBC will identify the major capital components across the project lifecycle where additional funding may be required. This will enable the programme business case to feed into key documents and planning processes, including the LTP, RLTP and NLTP.

Management case

An initial assessment of the capacity and capability of each of the partner organisations to implement the preferred option and preferred approach.

Reliance on information, restrictions and disclosure

We will use historical and forecast information provided by the Project Partners but will not audit or verify this information. We will not therefore accept any responsibility for any errors contained in the information provided to us.

We understand that the programme business case may be made available to a range of stakeholders in the BRT. Our responsibility for producing the programme business case will be to Greater Wellington only, as the party that is engaging us and is the signatory to this engagement letter. We will not accept responsibility to any party other than Greater Wellington in respect of our work in preparing the programme business case and we will not accept responsibility to any party if our work is used by any party including Greater Wellington in breach of the terms of this letter.

Personnel

I will be the Partner responsible for this assignment, assisted by Chris Money and analyst resources as required. Hamiora Bowkett will be the quality review partner.

Timetable

We will endeavour to provide you with a full draft of the programme business case by no later than 15 September 2014. Where appropriate we may release sections of the business case to you for review before releasing the entire draft.

We will need to work closely with the Project Partners to obtain information and to discuss the information and solicit views about issues arising during the development of the various sections of the programme business case. Also, as noted, the Project Partners will be providing specific input to the programme business case. Our ability to deliver a programme business case within the time frame required and to the quality standard needed will depend heavily on the Project Partners providing input and assistance as required.



Luke Troy
16 July 2014

We will liaise closely with you as to the timetable and in the event that we anticipate that the timetable cannot be met, we shall notify you as soon as is reasonably practicable and an adjusted timetable will be agreed.

Fees

Our fee for completion of the programme business case is \$ [REDACTED] plus GST. Any specific disbursements such as out of town travel and accommodation will be charged in addition.

We will invoice the fee in three equal instalments – one third at the end of July 2014, one third at the end of August 2014 and the balance on delivery of the final programme business case.

The fee proposal is based on the scope of work set out in this engagement letter. It includes delivery of the final draft programme business case to the Project Partners and one presentation to each of the Project Partners to outline the approach taken to the programme business case and the conclusions reached. The fee does not include any subsequent consultations after the issue of the final report.

Standard Terms of Business

The Terms of Business attached to this letter in Appendix A set out the obligations and duties of each party in respect of the Engagement. The Terms of Business provide that, amongst other things, you will indemnify us against claims brought by any third party. The Terms of Business also exclude our liability in certain circumstances and in other circumstances limit our aggregate liability whether in contract, tort or otherwise to a maximum amount of five times fees paid.

This letter and the Terms of Business comprise the entire agreement (the Contract) for the Engagement to the exclusion of any other express or implied term, whether expressed orally or in writing, including any conditions, warranties and representations. The Contract shall supersede all previous letters of engagement, undertakings, agreements and correspondence regarding the Engagement. The Terms of Business should, therefore, be read in full.

The Terms of Business will also apply to any work which we subsequently carry out which arises out of this assignment.

Confirmation

Please acknowledge your acceptance of the Contract by signing the confirmation below and returning a copy of this letter and the Terms of Business.

Please do not hesitate to contact us if you have any questions regarding this letter or the Terms of Business.

Yours sincerely
PricewaterhouseCoopers

Bruce Wattie

Bruce Wattie
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Luke Troy
16 July 2014

Acknowledgement and acceptance

I confirm that I have read and accept the above letter and attached terms and conditions on behalf of Greater Wellington Regional Council.

Signed (for Greater Wellington Regional Council)

Title/Name

Date

Appendix A

Introduction

These Terms of Business and the attached engagement letter together form the entire agreement (the Contract) between the New Zealand Firm of PricewaterhouseCoopers (PwC) and all addressees of the engagement letter. If there is any conflict between these terms and the engagement letter, the engagement letter will prevail. Unless otherwise agreed in writing, any further work we may carry out in connection with this service will be carried out as part of this contract.

1. Services

- 1.1. We will provide the services described in the engagement letter (the services).
- 1.2. You are responsible for determining that the scope of the services is sufficient to meet your needs.
- 1.3. Unless specifically stated to the contrary in the engagement letter:
 - (i) we may allocate appropriate partners and staff to perform the services and may replace any personnel named in the engagement letter with personnel of similar skill;
 - (ii) timetabled dates are intended for planning and estimating purposes only and are not contractually binding;
 - (iii) the services do not involve an audit or examination conducted in accordance with New Zealand auditing standards and we will not express an opinion on any financial statements or information taken as a whole, nor provide any opinion on the achievability of prospective financial information;
 - (iv) we will rely on the information that you provide and will not verify that information;
 - (v) the services do not include the provision of legal advice or legal due diligence services;
 - (vi) if the services or your reliance on the services depend upon laws, regulations or interpretations by the Courts or Government agencies, we are not responsible for any changes in those laws, regulations or interpretations (whether or not having retrospective effect) which occur after the date of our report and are not required to notify you of such changes;
 - (vii) the services are not designed to reveal fraud or misrepresentation. Accordingly, we do not accept responsibility for detecting fraud or misrepresentation whether by directors, management, staff or external parties;
 - (viii) we are not responsible for the work of any other person who you engage to perform work in conjunction with our services;
 - (ix) where the services are for appointment as Statutory Auditor, Receiver or Liquidator these have the meaning in statute law;
 - (x) where the words Examination, Compilation, Review, Opinion, Assurance or Agreed Upon Procedures are used to specify any services those words have the meanings assigned to them in professional standards issued by either the New Zealand Institute of Chartered Accountants (now trading as Chartered Accountants Australia and New Zealand) or the External Reporting Board.

2. Client responsibilities

- 2.1. You agree that you will:
 - (i) provide, in a timely fashion, all information, assistance and facilities that we require to enable us to provide the services;
 - (ii) provide information that is true, accurate and not misleading;
 - (iii) ensure that the collection, retention and dissemination of information for the purposes of the services complies with the provisions of the Privacy Act 1993 and with any other legislation governing the use of information;
 - (iv) use the results of the services only for the purpose for which the services are provided;
 - (v) advise all of our personnel who visit your premises of what is required of them in relation to health and safety in relation to safety equipment, emergency evacuations, the reporting of accidents and hazards and other matters.

3. Reliance on our work

- 3.1. Our final written report or other final product of the services will identify the persons to whom the report is addressed. Any oral comments or drafts of written reports or any other communications made prior to the final written report or other final product of the services do not represent our final conclusions and should not be relied upon.
- 3.2. Our report or other final product of the services should not be relied upon by management of the addressee of our report, or advisers to the addressee, in their personal capacities.

4. Disclosure of our work

- 4.1. The services are provided for your use only and we accept no responsibility or liability to any other person other than those who have engaged us and to whom we report.
- 4.2. You must not disclose any report or other information provided as part of the services to any other person without our prior written consent.
- 4.3. You must not use our name in connection with any prospectus, information memorandum or other offer or marketing document, whether public or private, without our prior written consent.

5. Fees and disbursements

- 5.1. Unless otherwise agreed, our fees are calculated on the basis of time spent and on the level of skill and responsibility involved in providing the services.
 - (i) Goods and services tax will be added where applicable.
 - (ii) You also agree to pay reasonable professional fees and expenses, including legal fees and expenses, in complying with or challenging any legally enforceable notice or demand issued by a third party including any government department or any court or tribunal in relation to or in connection with the services.
- 5.2. Our invoices are due for payment upon receipt. If payment is not received within 14 days we reserve the right to suspend provision of the services and/or charge interest on the outstanding amount at a rate of 3% above the current 90 day bank bill rate.
- 5.3. Any fee estimate is given in good faith but is not contractually binding.

6. Liability limitation

- 6.1. Our liability for any loss or damage that you suffer caused by our breach of contract, tort (including negligence), breach of fiduciary duty or other actionable wrong of any kind shall be limited as follows:
 - (i) we shall have no liability for any consequential or indirect loss or loss of profit;
 - (ii) our liability will be reduced to take into account any contributory negligence on your part pursuant to the Contributory Negligence Act 1947;
 - (iii) in the event that more than one person caused or contributed towards your loss, our liability to you will be limited to the proportion of the loss that the Court would apportion to us under section 17 of the Law Reform Act 1936, based on an assessment of our degree of responsibility and the responsibility of the others who contributed to the loss (whether or not those other persons are able to meet any liability they may have);
 - (iv) notwithstanding the foregoing, our liability for loss shall in no circumstances exceed the amount of 5 times the total fees paid in the case of non-recurring work or 5 times the annual fees paid in the case of recurring work (the liability cap) or such other amount specified as the liability cap in the engagement letter.
- 6.2. Where there is more than one addressee to the engagement letter, the amount of our liability as derived from clause 6.1 above is a total limit to be allocated between addressees, such allocation being entirely a matter for the addressees, who will be under no obligation to inform us of it.

7. Time limit for claims

- 7.1. No legal proceedings may be commenced later than two years after the date on which the party bringing the claim became aware or ought reasonably to have become aware of the facts giving rise to the claim.
- 7.2. In any event, no legal proceedings may be commenced more than four years after the date on which the facts giving rise to the claim occurred.

8. Indemnity

- 8.1. To the maximum extent permitted by law, you agree to indemnify PwC, its partners and staff, and other PricewaterhouseCoopers firms and their partners and staff, and to hold each harmless against any liabilities, losses, expenses and other costs, including legal costs and the cost of PwC professional time reasonably incurred in connection with any claims, inquiries, investigations or similar matters whether made against them or you by any third party arising out of or in any way connected with the services.
- 8.2. This clause is for the benefit of the third parties referred to herein and they may enforce this clause under the Contracts (Privity) Act 1982.

9. Contract solely with PwC

- 9.1. You agree that in relation to the services and the Contract the client relationship is solely with PwC. Accordingly, you agree not to bring a claim of any nature against any partner, employee, contractor or sub-contractor of PwC or against any other member firm of the global network of PricewaterhouseCoopers firms.
- 9.2. This clause is for the benefit of the third parties referred to herein and they may enforce this clause under the Contracts (Privity) Act 1982.

10. Confidentiality

- 10.1. Subject to any need to make disclosures required by law or professional ethical obligation, both parties agree that information or documents received by or provided to the other for the purposes of the Contract and provision of the services, or are marked confidential or are manifestly confidential (confidential information) will be treated as confidential, except if the information:
- is or becomes generally available to the public other than by a breach of the obligations under the Contract,
 - is known to the parties prior to entering into the Contract, or
 - is received from a third party who owes no obligation of confidence in respect of the information.
- 10.2. You agree that PwC may disclose confidential information:
- for the purpose of providing the services and on a "need to know" basis, to our personnel (including contractors and sub contractors) and other PricewaterhouseCoopers firms involved in the provision of the services, and to our insurers or legal advisors;
 - to the Financial Markets Authority, or any party appointed by the Financial Markets Authority to undertake reviews on its behalf in relation to quality control reviews performed in accordance with the Financial Markets Authority Act 2011, or any quality review completed by the New Zealand Institute of Chartered Accountants (now trading as Chartered Accountants Australia and New Zealand) as part of its quality review process defined in Rule 20 of the New Zealand Institute of Chartered Accountants Rules;
 - once a completed transaction is no longer confidential, we may cite the performance of the services to clients and prospective clients as an indication of our experience;
 - for internal business purposes within the PwC Network;
 - if necessary to meet any legal request from a New Zealand or overseas governmental agency.

11. Ownership and destruction of working papers

- 11.1. The working papers that we produce in the course of performing the services are our property and we have no obligation to disclose our working papers to you or to any other person.
- 11.2. You acknowledge that we may, after a period of time, destroy our working papers, reports and other records relating to the services, including any of your documents that have come into our possession, in accordance with our standard procedures relating to document retention.

12. Intellectual property rights

- 12.1. Intellectual property rights in all documentation, systems, materials, methodologies and processes (tools) brought to and utilised by PwC in relation to the services or created in the course of providing the services, and in all working papers and reports, remain vested in PwC.
- 12.2. Subject to the requirement to treat confidential information as confidential any spreadsheet, database, system, technique, methodology, idea, concept, information or know-how developed in the course of the Contract may be used in any way we deem appropriate, including by or for our clients, without any obligation to account to you.
- 12.3. In the case of documentation or software prepared by PwC for you we may, on termination or completion of the Contract, retain one copy of such information as a professional record of our involvement.

13. Other Engagements

- 13.1. Nothing in this contract prevents PwC from providing services to other clients provided that we take reasonable steps to ensure that each client's confidential information is not disclosed to other clients.
- 13.2. This contract is separate from other engagements that we may perform for you or for other clients and we have no obligation to utilise knowledge gained from such other engagements when performing the services under this contract.
- 13.3. By entering into this contract and providing the services, we do not assume a responsibility to you in relation to any reports or opinions that we may have provided under separate engagements, including statutory audit reports, or in relation to any other work that we may have performed for any other client, whether or not that client is the subject of the services.

14. Circumstances outside the Parties control

- 14.1. Neither party will be liable to the other for any failure to fulfil obligations caused by circumstances outside its reasonable control.

15. Assignment

- 15.1. Neither party may assign, transfer, charge or otherwise deal with its rights or obligations under the Contract without the prior written consent of the other party, except that each may transfer its respective rights and obligations to a partnership or legal entity authorised to take over all or part of its business.

16. Termination of Contract

- 16.1. The contract may be terminated by either party by written notice.
- 16.2. You will pay PwC for all services provided up to the date of termination.
- 16.3. Where you terminate the Contract before we have completed the services, you will pay any additional costs that we incur in connection with the early termination.
- 16.4. The provisions of the Contract which expressly or by implication are intended to survive its termination or expiry will survive and continue to bind both parties.

17. Entire agreement

- 17.1. The contract forms the entire agreement between the parties.
- 17.2. To the extent permissible by law all warranties, conditions, representations and liabilities or terms other than those expressly stated are excluded.
- 17.3. If any term of the Contract is held to be invalid the enforceability of the remainder of the Contract will not be affected.

18. Resolving disputes

- 18.1. The contract is governed by New Zealand law.
- 18.2. Should any dispute arise, the parties will attempt to resolve it in good faith by senior level negotiations (this may include mediation using the services of an agreed mediator).
- 18.3. If the dispute is not resolved through negotiation or mediation the New Zealand Courts will have exclusive jurisdiction, over all claims that may arise out of or in connection with the Contract.
- 18.4. Each party hereby irrevocably waives any claim that an action is brought in an inconvenient forum, or that the New Zealand Courts do not have jurisdiction.

19. Sub-contractors selected by you

- 19.1. Where you are using third parties in connection with the Services to be provided in accordance with this Contract, you will ensure that you have appropriate agreements with them. Unless agreed otherwise in the Engagement Letter, you will be responsible for the management of those third parties and the quality of their input and work.
- 19.2. Where you require to contract the services of a sub-contractor specified by you, you will accept responsibility for the work to be performed by such sub-contractor. PwC will not be responsible or liable to you or to any other person for the work performed by, or for any act, omission, default or neglect of, such sub-contractor. In the above circumstances, you will be responsible and liable for, and will indemnify PwC against and from, any liability which PwC may incur to any person and against all claims, demands, proceedings, damages, losses, costs and expenses made against, suffered or incurred by PwC, directly or indirectly as a result of or in connection with the work performed by any such sub-contractor.

20. Employment

- 20.1. During the term of this Contract or within 12 months of its termination or completion, neither party will directly or indirectly solicit for employment any of the other party's employees who have been providing Services or otherwise connected with this Contract without the other party's prior written consent.

Appendix B Deliverables

The following reflect the proposed deliverables for GW and partners for the programme business case to promote BRT development along Wellington's growth spine.

Project management

The initial meeting will deliver the following outputs:

- Confirmed scope of the programme business case
- Agreed deliverables for the case components (based on the outline below acting as a starting point for each of the cases)
- Project management reporting schedule

Strategic case

Developing the strategic case includes the following outputs as deliverables:

- Summary, based on existing information and workshops of the strategic regional context the project exists within, including
 - The issues confronting the region from a growth perspective
 - Tying in the existing regional strategic planning documentation
 - How the project fits into and contributes to the portfolio of current and future projects aimed at developing the region's transport infrastructure.
 - Building in the initial ILM work done under PTSS
- Document the project investment objectives, existing investment circumstances as identified in existing funding papers.
- Discuss how, based on the above, the long-list of transport options was narrowed to the short list investigated in the PTSS.

The strategic case should also act as the lead business case component for elaborating why the region should invest in the project.

Economic case

Building on the strategic case, the deliverables from the economic case will cover:

- An explanation of the detail behind the short-listed options.
- The evaluation of the short-list to arrive at the preferred way forward, covering the results from the evaluations already undertaken for multi-criteria analysis, project NPV and benefit-cost analysis (including project BCRs).
- Confirmation of BRT as the preferred way forward.
- Description of other potential benefits that could be either quantified or expressed qualitatively that reinforce the economics underpinning the preferred option.
- Discussion on the optimal method of delivering the project – either as a single large project (possibly with stages) versus splitting the option into multiple smaller projects. This will be based on existing information and discussion with the project partners.

The economic case builds the compelling message based on value to the region of the project from both the perspective of potential benefits relative to costs and the optimal way to delivery it (ie the most expedient way to get to the benefits faster).

As part of the Economic Case we will include a detailed assumptions and modelling workshop where ourselves and the Project Partners will agree key assumptions, model outputs, and the approach to presenting the economic output. This will enable us to pick up the core of the EEM approach (including emissions, operational savings and WEBs), while also discussing wider economic values including amenity, land value uplift and alternate land uses.

The economic case will also evaluate the programme critical path in terms of timing and sequencing of projects this will include:

- Assessing the “optionality” and timeframes over which the BRT can be delivered, including consideration of the efficiency trade-offs of different timing options
- Assessing the impact of the programme delivery and options against the Strategic Case,, in particular the degree to which delivery at various stages of the project lifecycle will meet the BRT standard.

Commercial case

Based on the preferred BRT option, conduct an initial assessment of the best way of delivering the project through procurement, including the likely attractiveness of the project to potential service providers, depending on whether the project is a single large project or split into several smaller ones:

- Outline of Private Financing opportunities and the conditions under which these may become employable. This will be based on the prior work commissioned by the project partners
- Discussion of recommended procurement approaches and the conditions under which these will be favourable (eg summarised through a matrix of project composition – single large or many small, versus procurement methods).
- Next steps in terms of determining the best way forward for procurement.

The deliverable provides the delegations in terms of which organisation is responsible for what, along with identification of the preferred procurement approach and an outline of the likely process.

Financial case

The deliverable is an initial assessment of the affordability of the delivering the preferred BRT option as either a single large project or as multiple smaller ones. The financial case will need iterating with the economic case to determine the optimal financial outcome that also attempts to maximise the economic benefits associated with the project. Factors to be considered include:

- Making best use of the existing capital and operating cost information contained in the PTSS, supplemented with our own experience where appropriate.
- Identify flow of funds required from partners to complete the project.
- Discuss risk, including elements of risk, but this will remain at a high level and provide a basis for discussion at further stages of the project.
- Examination of alternative funding opportunities following the development of BRT, including tax and rate opportunities, fare box recovery policy etc.

The Financial Case will also include the preliminary cash flows (based on available cost estimates) for the project sequencing. In particular, the PBC will identify the major capital components across the project lifecycle where additional funding may be required. This will enable the programme business case to feed into key documents and planning processes, including the LTP, RLTP and NLTP.

Management case

The deliverable is an initial assessment of the capacity and capability of each of the partner organisations to implement the preferred option and preferred approach.