Public Office status

Organisation	Ōtākaro Limited
Recommendation	Is not a public office
Rationale	In order to decide whether Ōtākaro Limited is an agency or instrument of the executive government, factors relevant to the nature and degree of control which the executive could exercise over Ōtākaro Limited have been assessed and given a weighting in relation to Ōtākaro Limited's particular current circumstances.

The recommendation was approved by:

Name	Position	Date	Signature:
Marilyn Little	*Chief Archivist*	4/4/16	

1 General Criteria

None apply.

1 Crown control test assessment

Ōtākaro Limited is to deliver Anchor Projects in the Christchurch precincts in a manner that is not inconsistent with any Recovery Plan or Regeneration Plan and to acquire, manage and divest the Crown's assets associated with the Anchor Projects (including Crown-owned Land) over a timeframe agreed from time to time with the Shareholding Ministers, with the objective of achieving a commercial return for the Crown.

The company website states the following;

Ōtākaro Limited has been established and incorporated by the Crown to take over some of the functions of the Canterbury Earthquake Recovery Authority from April 2016.

The company will be capitalised and funded by the Crown but act as a company, accountable to its Board. Our role is to ensure the work already in play accelerates with minimal disruption and that the community maintains confidence in the city centre's major projects and precincts and the outcome they will provide for Christchurch.

In order to decide whether Ōtākaro limited is an agency or instrument of the executive government (and therefore a "public office"), an assessment has been undertaken of the relevance and weighting of various control factors.

On the weighting of the factors noted below, Ōtākaro Limited is not an agency or instrument of the executive and is therefore not subject to the requirements of the Public Records Act 2005.

Released under the Official Information Act 1982

2.1 Factors strongly for/against

For: there are none.

Against:

- Acts of Ōtākaro Limited are not acts of the responsible ministers. The Board is responsible for the acts of the Company.
- Ōtākaro Limited has considerable freedom in its business decisions. While it is required to act consistently, with reconstruction and regeneration plans, little scope exists for the Crown giving direction as to how the directors of Ōtākaro Limited make business decisions.
- The Crown is not liable to contribute towards the payment of any debts or liabilities of a Schedule 4A company (section 49, Public Finance Act 1989).

2.2 Factors moderately for/against

For:

- The shareholding Ministers may comment on Ōtākaro Limited's statement of intent and direct Ōtākaro Limited to make amendments (section 145, Crown Entities Act 2004).
- The shareholding Ministers can review the operations and performance of Ōtākaro Limited at any time and can request, and Ōtākaro Limited must supply, information on the operations and performance of the Company (section 132 and 133, Crown Entities Act 2004).

Against:

- Ōtākaro Limited is a Crown Company incorporated under the Companies Act 1993. It is not a statutory body.
- The Public Finance Act excludes Schedule 4A companies from its definition of the Crown.

2.3 Factors weakly for/against

For:

- Ōtākaro Limited is subject to the same statutory requirements as Crown entity companies in terms of its formation, acquisition of shares, presentation of a constitution to the House of Representatives, and the provision of information to shareholders (sections 79 and 81-85 Crown Entities Act 2004).
- Ōtākaro Limited's financial statements are audited by the Auditor-General. (section 15 Public Audit Act 2001).There are also restrictions on Ōtākaro Limited's ability to acquire securities, borrow, give guarantees and indemnities and use derivatives (sections 150, 156, 161-164, Crown Entities Act 2004).
- The Minister of Finance and the Minister of State Services can jointly direct Ōtākaro Limited to follow a whole-of-government approach (section 107, Crown Entities Act 2004).
- The shareholding Ministers can appoint and remove members of the board (clauses 12.3 and 12.4 of the Constitution).

Released under the Official Information Act 1982

- Shareholding Ministers in Ōtākaro Limited can make resolutions about the management of Ōtākaro Limited (section 109, Companies Act 1993 and clause 9.4 of the Constitution).
- The shareholding Ministers may make comments on Ōtākaro Limited's draft statement of performance expectations and direct amendments to some of the information in that statement (sections 149B-149M, Crown Entities Act 2004).
- Ōtākaro Limited is wholly Government owned currently but must maintain at least 50% Crown ownership (clause 4.2a of the Constitution).
- The Minister of Finance may issue instructions to Ōtākaro Limited relating to minimum requirements for publication of information that Ōtākaro Limited would have to publish under the Public Finance Act, the non-financial reporting standards Ōtākaro Limited must apply and the form in which Ōtākaro Limited must provide the information to the House (sections 80A and 81, Public Finance Act 1989).
- Schedule 4A companies are "state services" under the State Sector Act 1988.

Against: there are none.

2.5 Neutral Factors

3 The Ombudsman Act 1975 and the Official Information Act 1982 apply to Ōtākaro Limited.

Released under the Official Information Act 1982

Factor weighting	For	Against
Strongly	• There are none	• Acts of Ōtākaro Limited are not acts of the responsible ministers. The Board is responsible for the acts of the Company. • Ōtākaro Limited has considerable freedom in its business decisions. Little scope exists for the Crown giving direction as to how the directors of Ōtākaro Limited make business decisions. • The Crown is not liable to contribute towards the payment of any debts or liabilities of a Schedule 4A company (section 49, Public Finance Act 1989). •
Moderately	• The shareholding Ministers can review the operations and performance of Ōtākaro Limited at any time and can request, and Ōtākaro Limited Ltd must supply, information on the operations and performance of the Company (section 132 and 133, Crown Entities Act 2004).	• Ōtākaro Limited is a Crown Company incorporated under the Companies Act 1993. It is not a statutory body. • The Public Finance Act excludes Schedule 4A companies from its definition of the Crown.
Weakly	• Ōtākaro Limited is subject to the same statutory requirements as Crown entity companies in terms of its formation, acquisition of shares, presentation of a constitution to the House of Representatives, and the provision of information to shareholders (sections 79 and 81-85 Crown Entities Act 2004). • Ōtākaro Limited financial statements are audited by the Auditor-General. (section 15 Public Audit Act 2001).There are also restrictions on Ōtākaro Limited's ability to acquire securities,	• There are none.

Released under the Official Information Act 1982

	borrow, give guarantees and indemnities and use derivatives (sections 161-164, Crown Entities Act 2004). • The Minister of Finance and the Minister of State Services can jointly direct Ōtākaro Limited to follow a whole-of-government approach (section 107, Crown Entities Act 2004). • The shareholding Ministers can appoint and remove members of the board (clauses 12.3 and 12.4 of the Constitution), • Shareholding Ministers in Ōtākaro Limited can make resolutions about the management of Ōtākaro Limited (section 109, Companies Act 1993 and clause 9.4 of the Constitution). • The shareholding Ministers may make comments on Ōtākaro Limited's draft statement of performance expectations and direct amendments to some of the information in that statement (sections 149B-149M, Crown Entities Act 2004). • Ōtākaro Limited is wholly Government owned currently but must maintain at least 50 % Crown ownership (clause 4.2a of the Constitution). • The Minister of Finance may issue instructions to Ōtākaro Limited relating to minimum requirements for publication of information that Ōtākaro Limited would have to publish under the Public Finance Act, the non-financial reporting standards Ōtākaro Limited must apply and the form in which Ōtākaro Limited must provide the information to the House (sections 80A and 81, Public Finance Act 1989). • Schedule 4A companies are "state services" under the State Sector Act 1988.	

Released under the Official Information Act 1982

Relevant Sources include:

Companies Office website – company # 5891655 https://www.business.govt.nz/companies/app/ui/pages/companies/5891655
Companies Act 1993
Crown Entities Act 2004
Public Finance Act 1989
State Sector 1988

Released under the Official Information Act 1982