Land Transport Management Bill

Submission by Greater Wellington – The Regional Council

Introduction

We are very pleased to see that the Land Transport Management Bill has at last been introduced into Parliament. Broadly Greater Wellington is in support of the intent of the Bill.

The newly released New Zealand Transport Strategy (NZTS), together with the Bill, provide a strategic and holistic approach to Land Transport planning and funding. An approach that Greater Wellington has advocated for over the past decade.

The bulk of this submission is concerned with the Bill as the NZTS is not a statutory document but a statement of government policy. But as the two documents are linked Greater Wellington feels it is important not to pass over the NZTS without any comment. The NZTS is not a transport strategy by any definition. It contains no policies, programmes or measures. There is no means of review, no way of assessing performance or progress and no logical link between its expressed goal and its content. At best it is an interim policy paper. Greater Wellington asks the government to either put forward a programme for the development of a robust transport strategy as specified in the current Land Transport Act 1998 or move to withdraw the requirements of that Act for such a strategy.

General Comments on the Bill

The feasibility of the funding and delivery mechanisms of the Bill, through tolls and public private partnership, will enable communities to address the provision of much needed projects across the country.

Greater Wellington does have some concerns about elements of the Bill, both general and in the detail. At the general level Greater Wellington believes the proposed decision making system, set out in the Bill, is heavily prescriptive at the front end, the development of activities, while it is somewhat silent at the assessment end, reporting on the effectiveness of those activities. None of the transport agencies are required to report on the effectiveness of their implemented programmes against the given criteria. Much faith is therefore placed on the methods for the selection of activities without any genuine attempt to measure their effectiveness.

Greater Wellington believes the consultative requirements of the Bill are onerous and confused. The explanatory note to the Bill grossly understates the additional administrative and compliance costs that these consultation requirements will impose on all transport agencies. Consultation is indeed an important principle, and it is important that it is done effectively. Adding proposals in this Bill to existing practice will not bring more effective consultation but rather add more layers to the current frustratingly ineffective consultation. Greater Wellington believes we should concentrate on making all consultation exercises effective. Thus, strategic requirements for transport projects should be tested through effective Regional Land Transport Strategy consultation, the environmental/social elements through effective RMA processes, programming through effective Local Government community planning processes (Section 12 of the Bill extends that to Transit and Transfund). These processes amount to a thorough system and cover the steps proposed in Sections 15 and 54 of the Bill. The cost and delay of additional consultations will both stifle progress and reduce the effectiveness of other consultation.

The Bill is primarily concerned with the distribution of national funding. It promotes the concept of tolls as another source of revenue for specific special roads and the involvement of the private sector as concessionaires of these roads. The unique circumstances necessary to support a toll road suggest few will be built. This does nothing to alleviate the lack of funding. Regions need the ability to progress their own priority activities by raising funds locally.

No where in the Bill is there a reference to efficiency. As the reliance on the benefit cost ratio is being diminished to need to retain the concept of efficiency is enhanced. Greater Wellington suggests that reference to efficiency in the Bill's purpose statement and that it be made a duty of the organisations responsible for preparing land transport programmes.

A further matter of concern is the unfettered influence the Minister of Transport can have on the funding levels, categories and priorities.

While no Minister would be likely to act contrary to overall government policy the nature of the actions available to the Minister ignores the consultative nature of the development of strategic policy and the fact that local roads are half funded by territorial local authorities. A major fear is that ministerial directives can be made at any time, which negates the level of funding certainty for major projects. A particular concern is that, when governments change, rather than land transport legislation requiring change to reflect new policy, the Minister of day, under sections 14 and 86 of

the Bill, can implement change on taking office with no consultation and no regard for existing strategies and policies. Clearly the Minister will be directly influenced by the uncontested advice of the Ministry of Transport and may face the need for a political trade off that is associated with governments in an MMP democracy. Greater Wellington believes that a necessary safeguard would be a requirement for the Minister to also consult with their partner in land transport, local government.

The general themes above will be taken up in the examination of the detail. Where possible Greater Wellington has proposed changes to the Bill that it feels would address the issues raised.

Detailed Comments on the Bill

1. Part 1

a) Section 5 – Interpretation

(i) The definition of "affected community" leaves too much room for legal debate. What is "close geographical proximity", who are a "group of people", why are only living, studying or working listed and how are these defined. We believe that no definition of this kind has ever worked. The current wording provides opportunities for disaffected parties to seek judicial review.

Our suggested remedy is to delete this definition and the references to it through the document.

The need for the definition relates to the desire expressed in the Bill to consult various parties outside the consultation required when preparing a regional land transport strategy, a long-term financial programme or, in terms of the Resource Management Act, when seeking a resource consent. We will later propose that there is no justification for this additional consultation and hence this definition is not required.

(ii) The definition of "land transport" includes "coastal barging" and "harbour ferries". Coastal ferries, though of limited number, should be included as they are another alternative to roading possibility.

Our suggested remedy is to include "coastal ferries" in part (b) of the definition of Land Transport by using the words "harbour and coastal ferries".

b) Section II

Subclause (3) deals only with the ability to carry forward money, subject to ministerial instructions. Transfund should be able, as of right, to carry forward money allocated to projects but not yet spent, subject to any Treasury policy requirements This would ensure certainty for major projects that may take two or more years to complete. Also to ensure intergenerational equity, Transfund should have the power to borrow money within its long-term financial plan. This subclause would be an appropriate place to include that power.

Our suggested remedy would be to add two new subclauses as follows:

(4) Transfund may carry forward any money it has allocated to an approved activity in one year to the following year in order to complete that activity.

(5) Subject to approval by the Minister of Finance, Transfund may raise a land transport loan if to do so is in keeping with its stated long-term financial plan.

c) Section 12 – Consultation

Consultation on the long-term financial forecasts of Transfund and Transit provides a sound financial framework for all land transport agencies and is supported. The inclusion of "affected Maori" as one of those groups to be consulted, subsections (1) (g) and (2) (i), is of concern. "Affected Maori" is not defined and is not a group or organisation but might be an individual. We believe that consultation with Maori should be dealt with in its entirety under section 16 "consultation with affected Maori ……".

Our suggested remedy would be to delete 12 (i) (g) and 12 (2) (i) and consider consultation with affected Maori under section 16.

d) Section 13 – Transfund and approved organisations must prepare long-term financial forecast

Subclause (4) requires Transfund and Transit to have regard to local authority long-term council community plans. We ask that they should also have regard to Regional Land Transport Strategies.

Our suggested remedy is to include the words "and Regional Land Transport Strategies" after "Local Government Act 2002" in subclause 13 (4).

e) Section 14 – Minister may give instructions relating to land transport funding

We are concerned about the unrestrained discretion that this section provides the Minister of the day. Local Government in total has a partnership role with government in land transport, both roading and public transport. The funding of land transport roads involve both parties and in particular roads and public transport are fundamental elements of a community by contributing to their economic status, social cohesiveness and environmental health. We believe that in deciding on the instructions the Minister should, where appropriate, consult with the crown's partner, local government, prior to issuing these instructions.

The Minister should also be required to send a copy of their instructions to every approved organisation tasked with producing a Regional Land Transport Strategy, as those organisations are to be required to take into account any Ministerial instruction when preparing their strategies (Schedule 3, page 91).

Our suggested remedies are to add to subclause 14 (2) the words "and Local Government New Zealand" after "must consult the relevant entity". To add a new subclause 14 (6) and the words "14 (6) The Minister shall send a copy of any instruction, given under this section to Transfund or Transit, to every approved organisation required to prepare a Regional Land Transport Strategy.

f) Section 16 – Consultation with affected Maori: Land Transport Programmes and Safety Administration Programmes

This section is where we think the method and purpose of consultation with Maori should be comprehensively covered. Every Transport agency, when required to consult with transport organisations or groups, should also be required under this section to consult with Maori as presented here in this section. We have concerns about the undue number of consultation requirements for any one project but this is a different issue and will be covered elsewhere.

A second matter of concern with this section is the very broad nature of the consultation requirement. Inclusion of Maori historical, cultural, or spiritual interests at the end of subsection (2) leaves too much uncertainty on who should be consulted. Historical, cultural and spiritual interests are already specifically encompassed in RMA processes, so their

addition here is redundant. However the section as phrased puts on to the transport agency the unreasonable onus of identifying beforehand every Maori who might have such an interest.

Our suggested remedies are to replace subsection (1) with the following new subsection.

"(1) All approved organisations when required by this Act to consult with other transport organisations must also consult with affected Maori as defined in sections 16 (2) and 16 (3).

With regard to section 16 (2) we suggest that the section be ended after "Maori claims settlement Act" with the remainder deleted.

With the section now being generic, consultation with affected Maori it is sensible to remove in Section 15 all references to "affected Maori" in accordance with section 16".

g) Section 18 – Needs of transport disadvantaged must be considered

This section is found in other transport legislation. It reads as a passive response to an important issue. Needs are to be considered but there is no suggestion that these needs should be accommodated. We would prefer the section to be more active.

Our suggested remedy is to add after the words "must consider" the following phrase: "and provide for as seen as appropriate".

h) Section 19 – Land Transport Programmes

We must express our support for the use of the words "activity and activities". We assume this allows for a combination of land transport projects as one activity.

i) Section 20 – Duties of organisation responsible for preparing programmes

We have some issue with the passive nature of the words "is not inconsistent with". We feel it is too ill defined a concept that it provides an easy way for some to forgo their responsibilities.

Our suggested remedy is to include the words "promotes and" prior to "is not inconsistent with" in section 20 (1). This is a more active statement whilst still providing the escape provided by the "is not inconsistent with" phrase.

The performance agreements between the Minister, Transfund and Transit are matters of public interest and should publicly available.

Our suggested remedy is to include a new subclause 86 (5) with the words "86 (5) The approved performance agreement of Transfund and Transit shall be included in the first available agenda of those organisation's Board meetings as a public item."

In section 20 (3) there is also a passive use of the word "considers". This leaves some doubt about to what level a regional council or territorial local authority needs to consider the matter before stating that its implementation is impractical. We suggest a more active approach.

Our suggested remedy is to include the word "demonstrably" before the word "consider".

j) Section 33 – Regional Council interests in public transport service or infrastructure.

We understand the need to be careful about allowing Regional Councils unfettered ownership of passenger transport operating companies. The expectation is that such ownerships will be rare and for special reasons and clearly need to be managed within strict guidelines. The ownership of passenger transport infrastructure is a different case. Greater Wellington can see no argument against Regional Councils owning infrastructure, especially if that Council has paid for that infrastructure. Here in Wellington we have a clear example of this with the Waterloo Interchange in the Hutt Valley. Greater Wellington paid for the construction of that facility prior to the end of 1989. It was required to divest itself of it under the Local Government Amendment Act No 4, but for various reasons failed to achieve this requirement. Greater Wellington has, throughout the last thirteen years, maintained the facility at its own cost. Ownership of it by Greater Wellington has not affected the operation of any services to it or through it. Greater Wellington sees no compelling reason, therefore, why similar facilities cannot be owned by Regional Councils as of right.

Our suggested remedy would be to delete all references to infrastructure from section 33.

If section 33 now only deals with ownership of public transport services then Greater Wellington is of the view that, because of the uniqueness of any circumstances that would result in this provision being required, the Bill can be substantially reworded.

Our suggested remedy is to delete subclause 33 (1) and 33 (3); reword the start of subclause 33 (2) with the words " 33 (2) A regional Council seeking to acquire the ownership of a public transport service must submit to the Minister a proposal that contains the council's assessment of –". There would be subsequent rewording of subclauses 33 (5) and 33 (6) to take account of the fact that this section now only dealt with public transport services.

2. Part II

a) Section 52 – Establishment of Tolling Schemes by Order in Council

This and the following sections concerning tolling and concession agreements is restricted to one type of private public partnership for constructing new roads. That approach is known as DBOT or design build operate transfer. There are many other possible arrangements, some of which might attract more third party involvement. We can see no reason to deny other road funding mechanisms.

The proposed tolling option does not allow for a network tolling scheme which is a necessary requirement for congestion pricing. The toll has to be applied to a new project so no existing facilities can be tolled as a demand management tool. Congestion pricing is seen as an important step in demand management for the main urban centres, particularly Auckland. Is this option still under consideration? If not, should the proposed Act provide some provisions for its later introduction.

This section infers that the road controlling authority should limit the toll to that necessary to fund the infrastructure being tolled. Subsections 52(2)(h) and subsequently 53(2)(b) infer that toll income might be used for non-transport purposes. Greater Wellington would like to see a clear statement that using toll income for other than transport purposes is not acceptable but using it to promote alternative transport modes would be encouraged. To achieve this the road controlling authority would need to act in partnership with its Regional Council. Such arrangements would need to be outlined in regional land transport strategies.

Our suggested remedies would be to increase the number of ownership and funding arrangements available in a public private partnership arrangement. To recognise that

network tolling schemes in the main urban areas will be needed to manage traffic volumes long-term. To restrict toll income to transport purposes. To provide for toll income to also be used to promote alternative modes along the same travel corridor where such arrangements have been set out in the relevant regional land transport strategy.

b) Section 61- Concessions

The 35 year maximum term is clearly arbitrary (section 61 (2) (4)). The Council suggests that as there will be only a few schemes each year that the promoters of them be allowed to argue their case for whatever term they wish. The term would be for a finite length but related to the type of project.

Our suggested remedy is to end section 61 (2) (a) after the word "term".

3. Part III

The Council welcomes part 3. It is pleased to see the alignment of the objectives of Transfund and Transit.

4. Schedule III

The changes made relating to Regional Land Transport Strategies are supported. In particular, Greater Wellington supports the need to prioritise activities in order of importance to the region (line 10 of page 93). This will ensure that the strategy is taken by all agencies as having more relevance to their own operations.