

Regional Public Transport Plan – for adoption

Recommendation(s)

That the Board:

- i. Receives the report.
- ii. Notes the steps that have been taken to ensure that the Regional Public Transport Plan complies with the requirements of the Land Transport Management Act 2003, and confirms that it is satisfied that the Plan meets its statutory obligations.
- iii. Adopts the attached Regional Public Transport Plan.

Executive summary

Auckland Transport (AT) must prepare a Regional Public Transport Plan (RPTP), which describes the public transport network proposed for the region, identifies the services that are integral to that network, and sets out the policies and procedures that apply to those services, and to supporting information and infrastructure.

A draft RPTP was prepared in 2012, and public consultation completed in early 2013. This proposed the implementation of a new, integrated network offering more frequent services, a concept that was strongly supported by submitters. The AT Board endorsed a revised draft RPTP arising from this process in March 2013, but deferred adoption pending the passage of new legislation governing public transport management, which was before Parliament at the time. That legislation became operative in June 2013.

The draft RPTP has been further revised to comply with the new legislative provisions, and further targeted consultation has taken place with operators. The changes are mainly focused on the description of the services that are integral to the regional network, and the associated treatment of “exempt” services and “units”. The legislative principles have also been given more prominence in the revised RPTP.

The legislation requires AT to be satisfied that the statutory requirements have been met before adopting the RPTP. Based on the information set out in this report, and legal advice received from Bell Gully, officers are satisfied that the RPTP meets its statutory requirements, and recommend adoption of the RPTP.

Strategic context

The Land Transport Management Act (LTMA) requires AT to adopt a Regional Public Transport Plan (RPTP). The statutory purpose of the RPTP is to provide:

- a means for encouraging AT and operators to work together in developing public transport services and infrastructure;
- an instrument for engaging with the public in the region on the design and operation of the public transport network; and

- a statement of the public transport services that are integral to the public transport network in the region; the policies and procedures that apply to those services; and the information and infrastructure that support those services.

Adoption of the RPTP will enable AT to proceed with procurement of the services required for the new integrated public transport network.

Background

A draft RPTP was approved by the Board for public consultation in September 2012. The Draft RPTP was prepared under the Public Transport Management Act 2008 (PTMA), although it took account of the likelihood of new legislation to give effect to the new Public Transport Operating Model (PTOM) that was before Parliament at the time.

The draft RPTP proposed the implementation of a new, integrated network offering more frequent services, a concept that was strongly supported by submitters.

Submissions on the Draft RPTP were heard in early 2013, and the Hearings Panel recommendations were reported to the Board at its March 2013 meeting. At that time the LTMA amendment had not been finally enacted by Parliament, but it was clear that the draft RPTP would require some further changes in order to comply with the new legislation. The Board endorsed the draft RPTP, with its new network concept, so that detailed local consultation in South Auckland could proceed. However final adoption of the RPTP was deferred pending the legislative changes.

The LTMA amendments were enacted in June 2013. This repealed the PTMA, and consolidated the public transport planning and management provisions into a new Part 5 of the LTMA. While Part 5 has retained a number of the PTMA provisions relating to RPTPs, there have been a number of changes that are relevant to the Auckland RPTP, including:

- A new purpose of the LTMA “to contribute to an effective, efficient, and safe land transport system in the public interest”.
- Inclusion of a set of principles to guide the actions of all organisations, including AT, that exercise public transport functions and powers
- All public transport services are to be contracted, unless they are “exempt”
- All services integral to the regional network are to be identified in the RPTP
- All services (except for exempt services) are to be grouped into “units”, which are to be contracted and subject to the policies in the RPTP
- Services that were previously registered as commercial services are either deemed to be “exempt” services, which must be registered but are not subject to the objectives and policies of the RPTP; or will become part of a unit, and de-registered.
- Changes to RPTP content and process requirements (including consultation requirements)

The Board-endorsed Draft RPTP has been amended to ensure compliance with the new LTMA requirements. Although the Draft RPTP was prepared under the provisions of the old PTMA, many of the changes to the LTMA, including the implementation of the PTOM, had been anticipated during its development. The key changes to the RPTP are discussed below, and include:

- Incorporation of the principles from section 115 of the LTMA

- Treatment of exempt services, including some deemed exempt services that are considered integral to the network
- Procurement policies (section 6.8) are revised to align with the LTMA
- Revision of service descriptions (Chapter 7 and Appendix 1) to focus on those integral to the network and on unit groupings
- Identification of policies that apply to units

Because a number of the LTMA amendments were focussed on the implementation of the PTOM, further targeted consultation with operators was undertaken. The feedback from this process has been incorporated into the revised RPTP (**Attachment 1**), which is now submitted for Board consideration and adoption. Legal advice has also been obtained to ensure that the amended RPTP is fully compliant with the LTMA requirements.

A marked-up version of the RPTP is provided under separate cover to highlight those parts of the document where changes have been made since the Board-endorsed version was prepared.

Key changes

The key changes that have been made to the RPTP to bring it into line with the new LTMA requirements are discussed below.

LTMA principles

Section 115 of the LTMA sets out five principles to guide those exercising public transport planning and management functions and powers. These principles apply to AT, as follows:

- a) AT and public transport operators should work in partnership to deliver the public transport services and infrastructure necessary to meet the needs of passengers
- b) The provision of services should be coordinated with the aim of achieving the levels of integration, reliability, frequency, and coverage necessary to encourage passenger growth
- c) Competitors should have access to regional public transport markets to increase confidence that services are priced efficiently
- d) Incentives should exist to reduce reliance on public subsidies to cover the cost of providing services
- e) The planning and procurement of services should be transparent

Officers have reviewed how well the RPTP reflects these principles. Although they had not previously been formally articulated, the principles address matters that AT had already implicitly taken into account in the development of the RPTP. In particular, the approach to the new network, and the PTOM approach to service planning and procurement in the RPTP are consistent with, and give effect to the principles.

Accordingly, it is not considered necessary to make significant changes to the RPTP policies to incorporate the principles. However, the principles have been specifically referenced in Chapter 2 of the RPTP, and in other relevant parts of the document; and Appendix 3 also includes a schedule that sets out how the principles have been observed in the RPTP. This schedule is also included in this report (see the Statutory Compliance section below).

We have concluded that, with the amendments proposed, the LTMA principles have been applied to the preparation of the RPTP.

Exempt services

Because the concept of “exempt” services was not formalised prior to the enactment of the LTMA, the term was not included in the Board-endorsed draft RPTP. Now that the definition and status of exempt services is included in the statute, the RPTP has been amended to incorporate these services. The key changes are the addition of explanatory text in Chapter 5 (Key Directions); procurement policies in Section 6.8 (especially policies 8.1, 8.3 and 8.7); and the description of services in Chapter 7 and Appendix 1.

Under the transitional provisions of the LTMA, some previously registered commercial services are deemed to be exempt services. Four of these deemed exempt services (Devonport, Stanley Bay & Waiheke ferries, and Airbus) are considered to be integral to Auckland’s public transport network.

These four services have therefore been included in the list of services that are integral to the network in Table 7-2 of the RPTP; but they have not been grouped into units, and the RPTP makes it clear that they will not be subject to contracts with AT. However, the RPTP includes an action to encourage operators of these services to meet the minimum service levels for frequency and hours of operation specified in the RPTP.

Procurement policies

The procurement policies in Section 6.8 of the RPTP have been amended to include reference to services integral to the regional network, and to include the necessary references to exempt services (as described above). As required by the LTMA, section 6.8 also describes how services have been grouped into units.

Policy 8.1 includes a new action to de-register any exempt or previously commercial service that forms part of a unit on the date that the time the new unit contract takes effect. Those dates are as indicated in Table 7-2.

In addition, the provisions relating to the registration of new or varied exempt services (policy 8.7) have been amended to align with the LTMA.

Service descriptions

The text in Chapter 7 of the RPTP has been revised to refer to services that are integral to the regional network, and Table 7-2 has been revised to describe all units, and include their indicative start dates. The units have been developed with input from the relevant operators.

The detailed description of services in Appendix 1 of the RPTP (including routes, frequency and hours of operation) has been re-ordered to align with the unit descriptions, and the descriptions of current and future services have been separated into different appendices (Appendix 1: future services; and Appendix 2: current services), to provide greater clarity

Policies that apply to units

Section 120 (1) (b) of the LTMA requires the RPTP to specify any objectives and policies that are to apply to units. A schedule of the relevant policies has been included in the preamble to Chapter 6.

Other key changes

Ferry plan: A more specific commitment to the development of a ferry plan has been incorporated into Chapter 5 (Key Directions) and section 6.2 (Integrated Service Network).

Consultation: Section 6.10 (Monitoring and Review) has been revised to align with the new LTMA requirements relating to consultation, which no longer require the special consultative

procedure in the Local Government Act 2002 to be used for significant variations to the RPTP (although AT may choose to use it). Consequential amendments to the Policy on Significance (Appendix 9) have also been made. Note that consultation with affected parties is still required, and AT must follow the consultation principles set out in section 82 of the Local Government Act 2002.

Service changes: In response to discussion at the operator workshop (see below), a new action has been added to Policy 10.2 describing how changes to the RPTP may be made. This will cover changes due to network design but also the day to day changes as part of contract management to improve performance and respond to changing circumstances.

Infrastructure: Chapter 8 (Implementation Plan) has been amended with more information about prioritisation and funding of the infrastructure programme. In accordance with the Hearings Panel recommendation, the capital expenditure programme has been re-prioritised to recognise the investment implications associated with the implementation of the new network. A new Table 8.2 Proposed Infrastructure Programme for New Network (prioritised) has replaced the former table.

A number of minor editing and consequential changes have also been made to the document.

Stakeholder engagement

An operator workshop was held on 15 August and the proposed changes to the endorsed draft RPTP were discussed. In general there was support for the proposed changes to the RPTP from those in attendance. There was some discussion on the treatment of exempt services in the RPTP, and the need for this to be clarified. This has since been addressed, as discussed above. Operators also proposed an additional action to facilitate minor service changes. This has been incorporated into Policy 10.2.

Three written submissions were received from operators:

- NZ Bus (**Attachment 2**): supports the proposed changes to the RPTP, and believes that they reflect the intent and dual objectives of PTOM.
- Fullers (**Attachment 3**): raises concerns about the treatment of exempt services in the RPTP, and the need to be clear that exempt services are not units. This issue has since been addressed, as discussed above, and the final version of the RPTP makes a clear distinction between deemed exempt services and units.
- Sealink (**Attachment 4**): raises a number of issues in relation to the manner in which the RPTP has dealt with ferry services. It also suggests that the RPTP has not taken sufficient account of the new legislative provisions (especially the principles in section 115 of the LTMA), and that adoption of the RPTP should be deferred until the proposed ferry plan is completed. As noted elsewhere in this report, officers believe that the RPTP does fulfil its statutory requirements. It also includes a more specific commitment to completion of a ferry plan, but delaying the adoption of the RPTP until that work is completed would seriously delay the implementation of the new network and PTOM contracts.

Auckland Council and NZTA officers have also been kept informed of the process.

Statutory Compliance

Section 124 of the LTMA sets out the matters that are to be taken into account when preparing the RPTP. The Act requires AT to be satisfied that the RPTP fulfils these criteria before adopting the RPTP. The RPTP is also required to comply with a number of mandatory content requirements, as set out in section 120 of the LTMA.

Tables 1 and 2 below set out the relevant matters from these two sections of the LTMA, and describes how these obligations have been met. These compliance schedules have also been included as part of Appendix 3 of the RPTP.

Based on the information set out in the tables, officers are satisfied that the RPTP meets its statutory requirements.

Table 1: Matters that must be taken into account before RPTP adoption (LTMA section 124)

LTMA requirement	How the requirement has been addressed
S 124 (a): AT must be satisfied that the RPTP:	
i. contributes to the purpose of the LTMA (the purpose of the LTMA is <i>to contribute to an effective, efficient, and safe land transport system in the public interest</i>).	The RPTP will contribute to the LTMA purpose by providing the platform for the development and operation of an improved public transport system that will better meet the access needs of Aucklanders. This will have a beneficial effect on the effectiveness, efficiency and safety of the wider land transport system in Auckland, and contribute to the public interest as described in the Auckland Plan and the RPTP vision and objectives.
ii. has been prepared in accordance with any relevant guidelines that NZTA has issued	Not applicable. At the time of adoption of this RPTP, no relevant guidelines have been issued by the NZTA
iii. is, if it includes a matter that is not within the scope of the regional land transport plan, otherwise consistent with that plan	Not applicable. The regional land transport plan will not be in place until June 2015.
S 124 (b): AT must be satisfied that it has applied the principles specified in section 115 (1):	
(a) AT and public transport operators should work in partnership to deliver the regional public transport services and infrastructure necessary to meet the needs of passengers	AT has worked in partnership with public transport operators in the development of the PTOM, and its specific application to the Auckland public transport network. Operators have also been closely involved in the preparation of the RPTP, including policies and service descriptions. The policies in the RPTP, especially in relation to procurement (section 6.8) reflect the ongoing commitment to a partnership approach.
(b) the provision of public transport services should be coordinated with the aim of achieving the levels of integration, reliability, frequency, and coverage necessary to encourage passenger growth	A central theme of the RPTP is the development of a new, integrated network of services that is designed to provide a more accessible and frequent public transport network. This is described in more detail in Chapter 5, and supported by the policies in sections 6.1 and 6.2. Policies on reliability are included in section 6.4. Once in place, the new network is expected to

	better meet travel demands, and result in patronage growth.
(c) competitors should have access to regional public transport markets to increase confidence that public transport services are priced efficiently	The adoption of the PTOM approach to service planning and procurement is an important element of this RTP, and described in detail in section 6.8. The application of the PTOM approach in this RTP, including the way in which units have been arranged, and the approach to competitive tendering, will provide good opportunities for competitors to access the Auckland public transport market, and is expected to deliver efficient pricing of services.
(d) incentives should exist to reduce reliance on public subsidies to cover the cost of providing public transport services	The PTOM approach that is incorporated into the RTP is strongly focused on providing incentives for operators to improve the commerciality of services, and reduce the reliance on subsidies. In particular, the publication of PTOM “league tables” and the linking of contract performance to contract tenure will encourage operators to grow patronage and increase commerciality, thereby reducing reliance on subsidies. An important focus of the new network design is to make better use of existing resources, to enable higher levels of service to be delivered. In combination with the efficiencies expected from the application of the PTOM (section 6.8), and the policies relating to farebox recovery (section 6.9), this is expected to reduce the pressure on public subsidies in future.
(e) the planning and procurement of public transport services should be transparent	AT has adopted a clear and transparent process for planning and procuring services, which is reflected in the consultative approach to the development of the new network in this RTP. It is also reflected in the commitment to ongoing local consultation and community engagement over the detailed implementation of new services (see section 6.10 and Chapter 8). The PTOM procurement policies (section 6.8) and the monitoring and reporting policies (policy 4.6 and section 6.10) reinforce this approach.
S 124 (c): AT must take into account:	
(i) any national energy efficiency and conservation strategy	Table 2-1 and Appendix 3 refer to the NZ Energy Efficiency and Conservation Strategy objective of a more energy efficient transport system, with a greater diversity of fuels and alternative energy technologies. The RTP has responded to this by planning for an integrated, efficient and effective public transport network, which will grow patronage and improve overall transport energy efficiency. The RTP also makes provision for operation of electric trains from 2015; vehicle quality standards that promote vehicle energy efficiency and investigations into alternative fuels (policy 4.4); and policies to provide a high quality travel experience (policy 6.6).

<p>ii) any relevant regional policy statement, regional plan, district plan, or proposed regional plan or district plan under the Resource Management Act 1991</p>	<p>Table 2-1 notes that the plans and policy statements currently in place make provision for the integration of land use and public transport. The Auckland Council is in the process of preparing the Unitary Plan, which will replace the plans and policy statements currently in place, and give effect to the development strategy in the Auckland Plan.</p> <p>The RPTP responds by:</p> <ul style="list-style-type: none"> designing and developing the public transport system to align with the Auckland Plan development strategy including policies which encourage mutually supportive land use and public transport development policies (section 6.1) providing public transport planning input into plan change processes and transport investigations for greenfield and brownfield development (section 6.2)
<p>(iii) the public transport funding likely to be available within the region</p>	<p>Section 2.3 of the RPTP provides a discussion of the public transport funding likely to be available in the Auckland region.</p>
<p>(iv) the need to obtain the best value for money, having regard to the desirability of encouraging a competitive and efficient market for public transport services</p>	<p>The adoption of the PTOM approach to service planning and procurement will provide good opportunities for competitors to access the Auckland public transport market, and is expected to deliver efficient pricing of services. The new network has also been designed to deliver improved value for money by making better use of available resources.</p>
<p>(v) the views of public transport operators in the region</p>	<p>The views of public transport operators have been sought at several stages during the development of this RPTP, and a number of their comments have been incorporated into the final document. Operators have been particularly closely involved in the development of the PTOM approach, the new network development, and unit allocations.</p>
<p>S 124 (d): AT must consider the needs of persons who are transport-disadvantaged</p>	<p>Appendix 7 of the RPTP provides an assessment of the needs of the transport-disadvantaged; and section 6.7 sets out the policies and actions that will assist the needs of the transport-disadvantaged.</p>

Table 2: Mandatory RPTP content requirements (LTMA section 120)

LTMA requirement	How the requirement has been addressed
<p>S 120 (1) (a): The RPTP must:</p>	
<p>i. identify the public transport services that are integral to the public transport network that AT proposes to provide;</p>	<p>The public transport network that AT proposes is described in Chapter 5, and the services that are integral to that network are listed in Table 7-2, and described in more detail in Appendix 1.</p>
<p>ii. provide an outline of the routes, frequency, and hours of operation of the</p>	<p>Appendix 1 provides details of the routes, frequency, and hours of operation of the services</p>

services identified under subparagraph (i)	that AT considers to be integral to the regional public transport network
iii. arrange all of the public transport services identified under subparagraph (i) into units	The services that are integral to the regional public transport network (other than exempt services) have been arranged into units in Table 7-2 in accordance with Policy 8.1.
iv. indicate the date by which a unit is expected to start operating	Table 7-2 includes the indicative date by which each unit is expected to start operating
v. indicate the date by which any exempt service that is to be replaced by a unit is to be deregistered	Policy 8.1 includes an action to de-register any exempt or previously commercial service that forms part of a unit on the date that the time the new unit contract takes effect. Those dates are as indicated in Table 7-2.
vi. identify any units for which AT intends to provide financial assistance	Section 7.1 notes that the units listed in Table 7-2 of the RPTP are, with the exception of exempt services, those for which AT intends to provide financial assistance where required through PTOM contracts.
vii. identify any taxi services or shuttle services for which AT intends to provide financial assistance	Policy 7.2 (f) and Appendix 1 identify the Total Mobility services which are funded by AT. No other taxi or shuttle services are identified for funding in this RPTP (unless they are provided as part of a unit).
viii. describe how the network of public transport services and the services referred to in subparagraph (vii) will assist the transport-disadvantaged	Section 6.7 of the RPTP describes how the public transport services and Total Mobility services will assist the transport disadvantaged. It also describes other policies and actions that are aimed at addressing the needs of the transport-disadvantaged that are described in Appendix 7.
S 120 (1) (b): The RPTP must specify any objectives and policies that are to apply to —: i) any units; and ii) any services referred to in paragraph (a)(vii)	The introduction to Chapter 6 (Policies and Actions) lists the policies and actions that will apply to units. It also notes that Policy 7.2 applies to taxi and shuttle services for which Auckland Transport intends to provide financial assistance.
S 120 (2): The RPTP must, in relation to any units, include policies on—	
a) accessibility, quality, and performance	Section 6.4 of the RPTP includes the following policies on accessibility, quality, and performance that apply to units: 4.3 Reliability and punctuality standards, monitoring and driver training 4.4 Vehicle and vessel standards 4.5 Performance-based contracts 4.6 Information required to monitor service performance In addition, policy 7.1 (c) refers to services to be operated with accessible vehicles
b) fares and the method or formula or other basis for setting and reviewing those fares	Section 6.5 of the RPTP includes the following policies on fares and ticketing that apply to units: 5.1 Integrated fares and ticketing system 5.2 Participation in integrated fares and ticketing 5.3 Setting and reviewing fares

	5.7 Concession fares
c) the process for establishing units	The process for the establishment of units is included in Policy 8.1
d) the approach that will be taken to procuring the delivery of the service or services in a unit	<p>Policies on the procurement of services in units are included in Section 6.8, and include:</p> <p>8.1 Establishment of units and PTOM framework</p> <p>8.2 Service continuity provisions</p> <p>8.4 PTOM agreements and partnership approach</p> <p>8.5 Rail units</p> <p>8.6 Transition to PTOM contracts (see also Appendix 8)</p>
e) how the procurement of units will be phased in over time	Policy 6.8 and Appendix 8 describe the policy for the phasing in of units and the transition to PTOM contracts.
f) managing, monitoring, and evaluating the performance of units	<p>Sections 6.4 and 6.10 include policies related to the managing, monitoring, and evaluating the performance of units. These include:</p> <p>4.3 Reliability and punctuality standards, monitoring and driver training</p> <p>4.5 Performance-based contracts</p> <p>4.6 Information required to monitor service performance</p> <p>10.1 Unit performance monitoring</p>
S 120 (4) The RPTP must set out the policy AT will apply in determining whether a proposed variation to the RPTP is significant for the purpose of section 125(6)	The policy on significance is contained in Appendix 9 of the RPTP.

Next steps

The LTMA enables AT to vary the RPTP from time to time, to take account of changing circumstances, and to incorporate the outcome of service and policy reviews.

Two examples that are identified in the RPTP are the review of fares and pricing that is currently underway; and the ferry review and ferry plan that is proposed for completion by mid-2014.

The fares and pricing review will make recommendations on the future fare structure and approach to integrated fares, but this process, including any necessary consultation, will not be completed in time for inclusion in the RPTP at this time. It is proposed that the final fares material will be incorporated into the RPTP as a variation at a later date. This will include the outcome of the review of concessionary fares.

The adopted RPTP will come into effect 20 working days following the date that it is adopted by AT. As required by the LTMA, notice will be given in the relevant newspaper and to interested parties including NZTA, Auckland Council, Local Boards, PT operators and the major stakeholders identified in the consultation requirements. The RPTP will be posted on

the AT internet site and copies will be available in public places such as libraries as well as for distribution to the public if requested

Attachments

Number	Description
1	Amended Auckland Regional Public Transport Plan 2013, recommended for adoption
2	NZ Bus submission 19 August 2013
3	Fullers Group submission 19 August 2013
4	Sealink submission (from P Fuller, Barrister) 26 August 2013
5	Certification of compliance (Bell Gully) 16 September 2013

Document ownership

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Glossary

Acronym	Description	Business Unit
AT	Auckland Transport	
LTMA	Land Transport Management Act 2003	
NZTA	New Zealand Transport Agency	
PTMA	Public Transport Management Act 2008	
PTOM	Public Transport Operating Model	
RPTP	Regional Public Transport Plan	

Attachment 1

Circulated separately .

Attachment 2



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19 August, 2013

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Draft Regional Public Transport Plan Submission by NZ Bus on proposed amendments for the Land Transport Management Amendment Act 2013

1. NZ Bus congratulates Auckland Transport (AT) on the Draft Regional Public Transport Plan (RPTP) released for comment in October 2012. We provided a submission on the overall plan in November 2012 and are pleased that many of our comments have been supported by the Hearing Committee and included in the revised Draft RPTP endorsed by the Auckland Transport board in May 2013.
2. In June 2013 the Land Transport Management Amendment Act 2013 was passed into legislation. As a result, Auckland Transport have proposed some amendments to the Draft RPTP and are now seeking feedback from public transport operators. Feedback is sought only on those proposed changes as a result of the LTMAA, not changes made as a result of the October 2012 consultation and hearings held in early 2013.
3. Auckland Transport have provided NZ Bus with an updated version of the Draft RPTP 2013, with proposed changes as a result of the LTMAA tracked. A workshop for public transport operators was held on Thursday 15 August to explain the proposed changes. NZ Bus attended this workshop. The revised Draft RPTP will be submitted to the Auckland Transport Board in September 2013 for adoption.
4. NZ Bus supports the proposed changes and believes that they reflect the intent and dual objectives of PTOM.

BACKGROUND

5. NZ Bus is the leading supplier of public transport services in the Auckland Region, operating 700 buses and employing 1300 staff. NZ Bus currently has both contracted and commercial services and operates around 64% of services in the region. We carry 37 million passengers in Auckland annually, which is around 72% of all passenger trips.
6. NZ Bus also operates a significant business in Wellington.
7. In keeping with the partnership and commercial incentive principles of PTOM, NZ Bus has continued to demonstrate its commitment to public transport and its partnership

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with Auckland Transport, despite the contractual uncertainty in the Auckland market over the past few years. NZ Bus has invested upwards of \$150 million into its Auckland business over the past 4 years.

8. NZ Bus leads the Auckland market in commitment to innovation and efficiency:
 - We have introduced a new standard of vehicle to the market with approximately 250 state of the art, Euro 5 buses acquired for the Auckland market since 2011.
 - Together with Auckland Transport, NZ Bus has implemented major service improvements in the central Auckland area and continued to improve planning for periods of peak demand.
 - NZ Bus is investing substantially into health and safety systems and driver training which will be game changers for the industry and its customers
9. We are committed to the communities we serve, the authorities we partner with and the Government, Agencies and other stakeholders we work with. Together we are able to provide:
 - A focus on meeting customers' needs and growing public transport;
 - A zero harm approach to safety and the environment; and
 - Excellent systems and processes that provide best practice in effective and efficient service delivery, network planning and development projects.

LTMA Principles

10. The Draft RPTP 2012 was prepared at a time of some legislative uncertainty. Our previous submission acknowledged that Auckland Transport had done well in taking into account the many aspects of Public Transport Operating Model (PTOM) especially the partnership approach between funders and operators. As a result, the amendments required now are not substantial.
11. Chapter 2 Strategic context has been updated to outline the principles to guide those exercising powers under Part 5 including;
 - Auckland Transport/Public Transport operators partnership and collaboration
 - Coordination and integration to achieve patronage growth
 - Access for competitors
 - Incentives to reduce subsidies
 - Transparency of planning and procurement

These principles are also reflected in other Chapters 6.8, Procurement and Commercial services.

Exempt Services

12. The definition of exempt services is clear in both the glossary and other references throughout the Draft RPTP. It is also clear that these services will not be subject to

contract. Auckland Transport has also identified some exempt services described as integral to the Regional Network. Operators of exempt services that are integral to the Regional Public Transport Network will be encouraged to meet the minimum service levels for frequency and hours of operation. NZ Bus supports an integrated network and believes that consistency across modes is important within an integrated network.

Procurement Policies

13. NZ Bus supports the proposed changes to Chapter 6.8 Procurement and Commercial Services.

Monitoring and Review Policies

14. NZ Bus supports the proposed changes to Chapter 6.10 Monitoring and review.

Description of Services

15. NZ Bus supports the proposed changes to the format of Chapter 7 including the addition of the indicative start dates of new unit contracts.
16. We also support the reformatting of Appendix 1 to include all services in a Unit; both service network and school network services.
17. We also understand that there will be some minor changes to some units prior to the Draft RPTP being finalised. As communicated at the workshop, we would like the opportunity to review any changes and provide feedback prior to the Draft RPTP going to the Auckland Transport board to be adopted.

Yours sincerely



Scott Thorne
GM STRATEGY

Attachment 3

Fullers Group Limited Submission on the second draft RPTP

19 August 2013

Introduction

Thank you for the opportunity for us to make this further submission on the draft RPTP. We have identified a number of issues. In particular, the draft RPTP appears to not comply with the provisions of the Land Transport Management Act 2008 in a number of instances, in particular in relation to exempt services.

For the purpose of this submission, the relevant exempt services are the Waiheke, Devonport, and Stanley Bay Ferry services operated by Fullers. We note the Plan (RPTP) states under 1.3, and other places that unless specifically identified, the policies and actions in this Plan does not apply to *exempt services*. Therefore, we will focus on the applicable policies to the above listed exempt services.

This submission is an addition to our earlier submissions, the latest, submitted by email to Mr Simon Milner of Auckland Transport on 16 August 2013.

Submission

1. The Land Transport Management Act 2003 (LTMA) is the overriding legislation which requires regional transport plans to be created. The regional transport plan must adhere to the LTMA.
2. LTMA defines the following under Part 1, section 5(1):

“Exempt service means a public transport service that is exempt under section 130(2) or treated as exempt under section 153(2).”

“Unit means a public transport service, or group of public transport services, -

- (a) That a regional council identifies as integral to the region’s public transport network: and
- (b) That operates, or will operate, on the entire length of 1 or more routes specified in the regional council’s public transport plan; and
- (c) That includes all the public transport services operating to a timetable that applies to the entire route or routes specified for the unit.”

3. Section 153 refers to transitional provision for existing registered public transport services that will become exempt services and under subsection (1)(b)(ii) “applies to a public transport service that, as of 30 June 2011, was a ferry service that –
 - (A) Was registered as a commercial public transport service under the Public Transport Management Act 2008; and
 - (B) Comprised all the trips conducted by a ferry on every route operated by the service.”

This applies to the Waiheke, Devonport and Stanley Bay Ferry service routes which were registered as at 30 June 2011 and are currently registered.

4. **“Section 116 Public Transport services must be provided under contract -**
(1) Any public transport service operated in a region must be provided under contract with a regional council as part of a unit unless it is an exempt service.
(2) A regional council must contract for the provision of every unit on an exclusive basis.”

It is our interpretation of s116(1) that an exempt service cannot be contracted, and a unit is required to be contracted, therefore an exempt service cannot be a unit.

This point was made in our previous submissions, including our email dated 16 August 2013.

We therefore consider that it is inappropriate to include these exempt services in “units” in the RPTP. This is reinforced by the following provisions of the LTMA.

“Section 137 Deregistration of exempt services and removing details of variations -

- ...
(4) A regional council must, on the date specified by the regional council in a notice to the operator, deregister a public transport service that was operating as an exempt service before it was –
(a) Required, by Order in Council, to be replaced by a unit; and
(b) Identified in the regional council’s regional public transport plan as integral to the public transport network.”

It is our interpretation of s137 that the Act specifically refers to a unit replacing an exempt service when that exempt service has become deregistered. It infers that it is only when an exempt service is deregistered, that it can then be a unit, even when it is identified as integral to the public transport network.

5. Exempt services operated by Fullers are already registered with the regional council. The details that are registered are specified by the old Act (PTMA) and are: service frequency, fares, timetable, and other operator details. Under the LTMA, exempt services can only be deregistered if they persistently fail to operate under s137.

“Section 137 Deregistration of exempt services and removing details of variations -

- (1) A regional council may at any time, deregister all or part of an exempt service if the regional council is satisfied that the operator –
(a) Has persistently failed to operate the exempt service or part of the exempt service; or
(b) Has failed to commence operating the exempt service within 90 days after the registration of the exempt service. ...”

6. The policies outlined in the draft RPTP and Appendix 1A go well beyond the statutory authority of AT. We consider it essential that the plan be drafted to comply with the statutory rights and limitations of AT; to do otherwise is to invite confusion and disharmony.

As stated in our earlier submissions, Appendix 1A has listed Waiheke, Devonport, and Stanley Bay Ferry services in the table with “To be confirmed” in the PTOM unit allocation column.

Again, it is our submission that an exempt service cannot be a unit and therefore cannot have a PTOM unit allocation.

7. Further noted in Appendix 1A, there is another heading: “*Exempt Services Not Subject to PTOM Contracts*” where it states: “*Ferry Services to be Confirmed as part of PTOM Contracting Negotiations*”. Airbus is already listed here, with PTOM unit allocation “N/A”.

As previously stated, it is our submission point that the exempt services Waiheke, Devonport and Stanley Bay should be put under this heading Exempt Services Not Subject to PTOM Contracts as well, designated with “N/A”, and has no PTOM unit allocation.

8. Chapter 5 of the draft RPTP states “Accordingly, these services have been included in the description of *units* in this Plan as Auckland transport wishes to ensure that services are maintained on these routes in future” in reference to Airbus and the Devonport, Waiheke and Stanley Bay ferry services.

It is our submission that it should be emphasised in the Plan that those exempt services are not units, and cannot therefore be included in the description of a unit.

9. We refer to Policy 8.1. Specifically under Actions point a: “Work with operators, suppliers and funders to implement the PTOM to deliver an efficient and effective range of public transport services across the region, resulting in increased patronage and fare revenues that cover a greater proportion of operating costs. Specifically:
 - All public transport services that are integral to the regional public transport network described in this Plan will be grouped into *units*, based around logical geographic catchment, and taking into account the need for *units* to be sufficient size to ensure competitive service supplier market and deliver efficient and effective service which can increased (*sic*) patronage.
 - All public transport services described in this Plan (other than exempt services) will operate under a contract with Auckland Transport, in order to implement the policies and actions in this Plan.”

We submit that this action point should be amended to comply with the LTMA. As earlier stated, it is our understanding of the LTMA that an exempt service cannot be a unit, or have a PTOM unit allocated to it, even if the service is deemed integral to the public transport network and therefore cannot be “grouped into units”.

10. We refer to Policy 8.7: Ensure that the operation of services does not adversely affect the wider public transport network.

It is worth noting that the currently registered services already conform to the wider public transport network by virtue that they have been accepted and registered.

11. In further reference to “Policy 8.7: Ensure that the operation of services does not adversely affect the wider public transport network. Action point b. states
 - Require a minimum notice period of 65 days for the variation or withdrawal of exempt services that Auckland Transport considers are integral to the regional network. (note : this notice period may be waived for exempt services that are not integral to the regional network).”

Section 136 LTMA states:

“Section 136 requires that the registration of and variation to exempt services are:

- (1) Within 15 working days (or such longer period as the regional council and operator may agree) of receiving a notice under section 133(1), a regional council must (as the case may be)—
 - (a) register the exempt service to which the notice relates, unless the regional council declines to register the service under section 134; or
 - (b) record in the register the variation of the details of the exempt service to which the notice relates, unless the variation relates to the route or routes of the exempt service and is declined by the regional council under section 134.
- (2) The registration of an exempt service or the variation of an exempt service under this section remains in effect until the service is deregistered, or the details of the variation are removed, in accordance with section 137(1), (2), or (4), or 139(3).”

The proposed 65 day notice period conflicts with the statutory 15 day period. Accordingly the statutory 15 day period should be adopted in the Plan. Of course the parties are free to agree to a different period in a particular case should they wish to.

12. It noted that the three exempt ferry services have different frequency and times to those listed in the appendices and are currently registered, Appendix 1A needs to be corrected.

Thank you for the opportunity for us to make this further submission on the draft RPTP. We think it is very important with the new LTMA, that Auckland Transport and operators together get it right.

Yours sincerely,

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Attachment 4

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WITHOUT PREJUDICE

26-Aug-13

The Board
Auckland Transport

By e-Mail:

Sealink Comments on the Act and the latest draft Regional Public Transport Plan

Introduction

1. This letter is in response to the Auckland Transport (AT) Memorandum of 2 August 2013 and the latest amendments that have been made to the draft Regional Public Transport Plan dated September 2013 (the "Plan") to incorporate changes following the passage of the Land Transport Management Amendment Act 2013 (the "Act").
2. This letter has been prepared after consideration of:
 - The Act;
 - The Land Transport Management Act Amendment Bill 2012 (the "Bill") that Sealink Travel Group (NZ) Ltd ("Sealink") made submissions on;
 - The Public Transport Management Act 2008 (the "PTMA");
 - The Local Government Act 2002 (the "LGA");
 - The proposed tracked changes to the Plan dated September 2013 which AT is consulting on; and
 - The Hearings Panel Report on the draft Plan (the "Report").
3. Sealink was a submitter on the Bill and the first draft Plan. Both of these submissions are attached for ease of reference. On 19 August 2013 Sealink attended a meeting with Mr Milner and Mr Mein to discuss the latest version of the Plan and various other issues in regard to ferry activities in the region.
4. Sealink wishes to emphasise that it believes that ferries are a "good news" public transport story for Auckland and ferries are either commercially viable or have the highest fare-box returns of any current public transport mode that is subsidised. In regard to growth, ferry passenger numbers increased by 44% between 2003 and 2012 whereas bus patronage increased only 19% over the same period. This growth has been achieved when very little public investment has been made in ferries compared

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to busses (Northern Bus-way, dedicated lanes, park and ride, new vehicles and services etc)

5. Notwithstanding the positive future for ferries in Auckland, if properly planned for, Sealink finds itself in the unfortunate position of having to be critical of the Plan for the reasons outlined in previous submissions and in this letter. This assessment is a preliminary analysis of the Act and the latest version of the Plan and is made by Sealink on a 'Without Prejudice' basis to try and be helpful to AT. Sealink reserves its rights under the Act, including lodging an Appeal to the Environment Court (s140).

Amendments to the Plan Inadequate

6. The Plan is purported to have been amended to take into account the passage of the Act and a new section has been added in 2.1, which outlines the key principles guiding public transport (s115) and the statutory purpose of a regional public transport plan (s 117) ("RPTP"). It is noted that the new s120 on the contents of RPTPs has not been quoted in section 2.1 or Appendix 2: Statutory Requirements.
7. Sealink submitted previously that development of a RPTP was premature because, until the principles etc. were established by legislation, the regional objectives and policies could not be properly ascertained. In Sealink's submission on the notified version of the Plan in section G, including parts 1.1 and 1.2, Sealink submitted that it was inappropriate for AT to notify and hold Hearings on its Plan before the statutory basis for the plan and PTOM had been determined. In paragraph 40 the submissions stated:

"The release of this Plan now implies that nothing will change in the Bill through the Select Committee process and if that were the case, it would make a mockery of the submission and Parliamentary process and is an affront to the principles of nature justice."

8. At paragraph 41 in the relief sought Sealink submitted:

"That this Plan is withdrawn and thoroughly reviewed following completion of the Integrated Transport Plan and coming into law of the legislation amending the Public Transport Management Act 2008."

9. This concern is still very relevant because as the Report indicates, in order to try and satisfy Sealink's concerns that the Plan had been prepared based on speculation about the Legislation, the Report claimed that the Plan was prepared in accordance with the previous requirements of the PTMA (page 12 – 13) but was also future proofed for the pending legislation. In order to test the validity of both of these propositions and because only modest changes have been made to the Plan following the passage of the Act, it is important to compare the purpose and principles of the PTMA, the Bill and the Act.

PTMA 2008

*3 Purpose

(1) The purpose of this Act is to contribute to the aim of achieving an affordable, integrated, safe, responsive, and sustainable land transport system.

(2) To contribute to this purpose, this Act—

(a) confers powers on regional councils to set standards for commercial public transport services provided in their regions; and

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(b) provides for and regulates the registration of commercial public transport services; and

(c) confers powers on regional councils to require all or any public transport services in their regions to be provided under contract with them, and consequently to discontinue any commercial public transport services provided in their regions that are subject to such a requirement; and

(d) helps regional councils and the Agency obtain the best value for money in achieving an affordable, integrated, safe, responsive, and sustainable public transport system, having regard to the desirability of encouraging fair competition and a competitive and efficient market for public transport services."

Land Transport Management Amendment Bill 2012

"3 Purpose

The purpose of the Act is to contribute to an effective, efficient, safe land transport system that supports the public interest.

14 Core requirements of regional land transport plans

Before a regional transport committee submits a regional land transport plan to a regional council or Auckland Transport (as the case may be) for approval, the regional transport committee must—

(a) be satisfied that the regional land transport plan—

"(i) contributes to the purpose of this Act; and

"(ii) is consistent with the GPS on land transport; and

(b) have considered—

(i) alternative regional land transport objectives that would contribute to the purpose of this Act; and

(ii) the feasibility and affordability of those alternative objectives; and

(c) have taken into account any—

(i) national energy efficiency and conservation strategy; and

(ii) relevant national policy statements and any relevant regional policy statements or plans that are for the time being in force under the Resource Management Act 1991; and

(iii) likely funding from any source."

Land Transport Management Amendment Act 2013

"3 Purpose

The purpose of this Act is to contribute to an effective, efficient, and safe land transport system in the public interest.

115 Principles

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(1) All persons exercising powers or performing functions under this Part in relation to public transport services must be guided by each of the following principles to the extent relevant to the particular power or function:

(a) regional councils and public transport operators should work in partnership and collaborate with territorial authorities to deliver the regional public transport services and infrastructure necessary to meet the needs of passengers:

(b) the provision of public transport services should be coordinated with the aim of achieving the levels of integration, reliability, frequency, and coverage necessary to encourage passenger growth:

(c) competitors should have access to regional public transport markets to increase confidence that public transport services are priced efficiently:

(d) incentives should exist to reduce reliance on public subsidies to cover the cost of providing public transport services.

(e) the planning and procurement of public transport services should be transparent.

(2) Without limiting subsection (1), the principles specified in subsection (1) must be taken into account by—

(a) the Agency when—

(i) approving procurement procedures under section 25(1):

(ii) preparing guidelines to be issued under section 95(1):

(iii) approving the approach to procurement under section 120(3):

(b) the Environment Court when it considers an appeal against a regional public transport plan under section 140:

(c) the Minister when the Minister considers making a recommendation under section 150.

(Emphasis added)

10. When comparing the wording there are significant differences between the purpose and principles of the Act, the Bill and the PTMA. The Bill did not even have a set of principles, but had apparent duplication between clause 14, the "Core Requirements of a Regional Land Transport Plan", and clause 16, the "Form and Content of Regional Land Transport Plans".
11. Furthermore, and with particular regard to s115(1)(c) and (d), Sealink comments that the new wording in the principles is very consistent with the submissions that Sealink made on Bill. In paragraph 11 of its Bill submission Sealink stated:

"In summary, Sealink considers that the starting premise for the Bill that public transport services are all subsidised, and contracted subsidised operators need protection, is flawed. The starting point for the Bill should be to maintain and enhance commercial unsubsidised operations and then ensure that the highest public benefit can be achieved for every public dollar spent on subsidies through competition and carefully considering the efficiency and effectiveness of different modes."

12. In paragraphs 51 to 57, Sealink submitted that:

"...the first priority for public transport should be to maintain and enhance existing commercially viable services and ensure that they are free to grow and expand."

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The second priority is to incentivise subsidised contracted services to become fully commercially viable rather than lock them into a perpetual state of public subsidy.

Thirdly, for those public transport services that are required for public policy reasons, but are unable to be provided commercially, priority should be given to those modes and operators that can most efficiently deliver services to ensure that the public gets the best return on its investment."

(emphasis added)

13. Sealink submits that core elements of its submissions to the Select Committee have been adopted into the principles in the Act, which should now guide the preparation of AT's Plan and which the Environment Court must take into account on any appeal on a RPTP.
14. While elements of the principles can no doubt be identified in the latest version of the Plan (September 2013), Sealink is not aware that the Plan has been thoroughly reviewed and rewritten to reflect the new statutory requirements. For example, it is difficult to identify any objectives and policies that incentivise public transport operators to reduce reliance on public subsidies.
15. Therefore, Sealink doubts that the Plan meets the statutory tests because few substantive amendments to reflect significant changes in emphasis between the Act, the Bill (to the extent that AT relied on this for the drafting of the Plan) and the PTMA. It is noted that a similar exercise could be gone through when comparing the relative documents in terms of the form and content of RPTPs, which has also changed markedly between the respective legislative documents.

Integral Services

16. Another change from the Bill that Sealink considers is a response to its submissions is in the treatment of "integral services". As pointed out in paragraph 39 of Sealink's submission on the Bill, Sealink sought that clause 119 be amended with the strikethrough:

"Describe the network of public transport services (~~excluding exempt services~~) that the Regional Council proposes to provide; and

17. Section 117 states;

s117(c)(i) the purpose of a regional public transport plan is to provide a statement of -

- (i) the public transport services that are integral to the public transport network; and*
- (ii) the policies and procedures that apply to those services; and*
- (iii) the information and infrastructure that support those services."*

18. Section 130 of the Act states that all exempt services are to be registered and that public transport services are exempt services if they are not identified in the plan as integral to the public transport network (s130(2)(b)(i)(B).
19. Sealink has always been concerned that commercial services should be identified in the Plan and policies developed to protect and enhance those services in accordance with the principle of reducing reliance on subsidies. The Bill was aimed to largely

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exclude exempt services from the Plan, but was amended to be consistent with Sealink's relief to require the Council/AT to plan for all services not only those that receive financial support.

20. Section 130 indicates that an 'integral' service cannot be an exempt service, and presumably this is based on the policy premise that it may be in the "public interest" (s3 purpose) for a council to control the service delivery of all integral services, even commercially viable ones, that would otherwise be exempt.
21. In a similar manner to the submission on purpose and principles above, there is little evidence in the Plan that it has been changed to reflect the shift in emphasis between the PTMA, the Bill and the Act. There is little substantive planning in the Plan for Sealinks commercial services that are an integral part of regional public transport services, but are also potentially exempt services.
22. For example, the services that Sealink provides to the Hauraki Gulf Islands are a "lifeline", particularly to Great Barrier Island. It is hard to conceive of a service that is not more "integral" because of a lack of alternative public transport services (in contrast to most land based services). This service is not currently described in detail in the Plan and Sealink is yet to finalise its position on its services under the Act and the Plan.
23. However, the principle of collaboration and partnership in s115 has not been followed in Sealink's view. This is because AT has not engaged with Sealink from the outset in the development of the Plan so that a position can be included in the Plan that meets the requirements of the Act and serves the interests of ferry users, Sealink and AT. Whether or not Sealink's existing services are described as integral and have units developed for them or they are deemed to be exempt, has a significant impact on Sealink's commercial viability and service delivery. This includes potential threats from rival subsidised operators as outlined in the submission and the onerous penalties in the Act for operators of exempt services if they, for example, simply fail to give adequate notice about schedule changes.
24. Furthermore, the planning of future expanded ferry services that customers, Sealink and other operators are seeking, has a major impact on investment decisions. These matters need to be properly investigated prior to the Plan being adopted. Ferries have a significant future potential role in the provision of efficient and effective public transport services that should be properly investigated before the Plan is adopted in order to meet the statutory requirements.

Overall Scheme of the Act

25. Reading the overall scheme of the Act, including the definitions, Principles (s115), Purpose of Regional Public Transport Plans (s117), Contents of Regional Public Transport Plans (s120), All Exempt Services to be Registered (s 130), and Grounds for Declining Registration or Variation of Exempt Services (s134), it can be arguably concluded that:
 - a. The Plan must identify "public transport services" that are integral to the public transport network (s117 and 120);
 - b. If a service (even a commercially viable one) is considered to be an integral service it cannot be described as an exempt service (s130);

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- c. All integral services that are identified for financial assistance are to be arranged into units and must have specified objectives and policies (s120(1)(b));
 - d. Exempt services can be described (s120(1)(c)) however, exempt services are not to be subject to the objectives and policies described in s120(1)(b) because those units receive financial assistance.
 - e. Policies must be developed for units in the plan on a wide range of matters including performance, fares, establishment, procurement and monitoring (s120(2)).
 - f. The Agency must approve the approach to procurement for services that the regional council does not intend to provide financial assistance for (but are described as units and have policies) (s120(3)).
 - g. There is a wide discretion to describe other matters a council thinks fit (s120(1)(d)); "actions" to support integral or exempt services can be specified in the plan in accordance with s120(5)(a), and a regional council can include a matter that is not within the scope of a RLTP, but is otherwise consistent with that plan (s124(a)(iii)).
26. A clue as to the relationship between services that are "integral" and exempt services is s134(2)(c), which sets out that one of the grounds for declining registration or variation of exempt services is that "the regional council has adopted a regional public transport plan and it identifies the service as integral to the public transport network". This implies that there will be a policy framework for "integral" services to enable the regional council to control these services and prevent them from escaping council "management" because they are exempt services. Presumably, they could be deemed to be units to re-enforce the policy and objective framework for the management of the public transport services in question. Whether or not there is financial support for the operator that is supplying that service as compensation for council control is a matter that would ideally be reached by agreement.
27. Exempt services, which will generally be commercially viable, should not be subject to the objectives and policies associated with subsidies. It is not considered to mean that an exempt service cannot also be described as a "unit" (the definition does not exclude exempt services) or that an exempt service cannot have objectives and policies to maintain and enhance that service. Indeed there is arguably a positive duty to plan for exempt services as the top priority to meet the principle of reducing dependence on subsidies and incentivising commercial viability.
28. To deem a commercially viable service, that would otherwise be an exempt service, an "integral service" and exert regulatory control over it, is a significant decision that should not be taken lightly. The principles of partnership and collaboration are particularly important and it may be appropriate in such circumstances for there to be consideration for an operator as an incentive to agree (i.e. by not exercising rights of appeal) to come under council control.
29. It is to be noted that the Agency reserves control over policies in a RPTP when the services that the regional council intends to provide are identified as units and have policies for procurement, but no financial support is given to those services (s120(3)). This is considered to be an appropriate level of oversight to balance public and private

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commercial interests. However, presumably the Agency should provide this approval before the Plan is adopted and Sealink is concerned that all of the requirements in s 120 are fully complied with and it is currently unclear if that is the case for the Plan.

30. Note that this section offers a preliminary purposive and policy based interpretation of the scheme of the Act that will need to be further clarified by subsequent research and discussions and ultimately, the courts. Litigation cannot be ruled out with new legislation aimed to regulate substantial commercial interests.

Objectives and Policies in the Plan

31. There are approximately 74 Objectives and Policies in the Plan, and Sealink is concerned that none of them squarely address the key principle of incentives to reduce reliance on public transport subsidies. The closest Objectives and Policies are Objective 9: *“Effective and efficient allocation of public transport funding”*; Policy 9.1 *“Improve value for money from existing public transport funding”*; and Policy 9.2 *“Increase the level of fare-box recovery”*.
32. While reducing reliance on public transport subsidies is a component of these Objectives and Policies, allocation efficiency and improving value for money is arguably different to reducing reliance on public subsidies, and the key issue of incentivising operators to be more commercial. These principles are not squarely addressed in the current version of the Plan.
33. The apparent disconnect between the new principles of the Act and the current Plan, conceived prior to the knowledge of those principles, is evident in Section “6.10 Monitoring and Review”. The primary focus is on patronage growth and access. While the Farebox Recovery Ratio is proposed to be part of the KPI’s, there is nothing in the current Monitoring and Review programme that specifically measures whether or not reliance of public transport subsidies is reducing or increasing. From a policy analysis perspective, monitoring incentive policies (currently not in the Plan) is critical to reducing dependence on subsidies. Sealink is concerned that without Objectives and Policies addressing all of the principles, the purpose of the Act will not be achieved.

Matters to Take Into Account

34. Section 124 of the LTMA outlines the matters to be taken into account when adopting regional public transport plans.

“ 124 Matters to take into account when adopting regional public transport plans

A regional council must, before adopting a regional public transport plan,—

“(a) be satisfied that the plan—

“(i) contributes to the purpose of this Act; and

“(ii) has been prepared in accordance with any relevant guidelines that the Agency has issued; and

“(iii) is, if it includes a matter that is not within the scope of the regional land transport plan, otherwise consistent with that plan; and

“(b) be satisfied that it has applied the principles specified in section 115(1); and

“(c) take into account—

“(i) any national energy efficiency and conservation strategy; and

- *(ii) any relevant regional policy statement, regional plan, district plan, or proposed regional plan or district plan under the Resource Management Act 1991; and
 - *(iii) the public transport funding likely to be available within the region; and
 - *(iv) the need to obtain the best value for money, having regard to the desirability of encouraging a competitive and efficient market for public transport services; and
 - *(v) the views of public transport operators in the region; and
- *(d) consider the needs of persons who are transport-disadvantaged.

35. As noted in the section above, a regional council must, before adopting a RPTP, be satisfied that the plan contributes to the purpose of the Act, which is to "...contribute to an effective, efficient and safe land transport system in the public interest." Sealink is concerned that this purpose has not been fully met, particularly in regard to effectiveness and efficiency because, for example, insufficient planning has been undertaken for the most efficient and effective mode of public transport in the region, which is ferries.
36. Also, as outlined above, AT and the Council must be satisfied that it has applied the principles specified in s115 before adopting the Plan. Sealink is concerned that because the principles were not even known at the time the Plan was first drafted, and the principles are substantially different to previous statutory requirements and the Bill, and few changes have been made to the over 70 Objectives and Policies following the passing into law of the Act, it is hard to see how AT and the Council can be satisfied it has applied the new statutory principles.
37. Of particular note is the wording of s124(b) that a regional council must, before adopting a regional public transport plan, be satisfied that it has applied the principles specified in s115. The temporal element in this section requires active application of the principles during the development of a plan because the principles are known at the outset. This is quite different procedurally to any claim AT may now make that the principles, or some of them at least, are evident in the latest iteration of the Plan.
38. The most recent post Act amendments to the Plan do not substantively change the Plan in Sealink's view. Therefore, Sealink cannot see how the Council can be satisfied that it has applied those principles to the Plan. Sealink believes that if the purpose and principles of the Act had been taken into account at the start of the plan development process, the outcomes for ferry services would be markedly different from this Plan.

The Status of the Auckland Plan and the Regional Land Transport Strategy

39. As noted in s124, a regional council is required to take into account a Regional Policy Statement, Regional Plan, District Plan, or proposed Regional Plan or District Plan. This provision does not have a catch-all phrase in terms of other documents that the Regional Council may have regard to at its discretion, and it does not specifically refer to the Auckland Plan or the Regional Land Transport Strategy.
40. In light of the above, Sealink has an issue with the way its submission has been considered in the Report and it questions the legality of the approach that AT has taken in that Report. As the Report notes on page 14, Sealink submitted that the plan does not meet the statutory requirements because insufficient regard has been paid to

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the relative efficiency and effectiveness of different modes of public transport and that the most investment has been made in the least efficient and effective mode of public transport, i.e. rail. The Report response quoted it is that:

"The Panel does not agree with the submission point. The investment in rail is consistent with well-established policies in the Auckland Region, including the Auckland Plan and Regional Land Transport Strategy. The RPTP gives effect to these policies, and it is not appropriate that they are revisited as part of this process."

41. Contrary to the position the Panel has adopted, it is a statutory requirement that the Plan should meet the purpose and principles of the Act in terms of efficiency and effectiveness, competitive access and incentives to reduce reliance on public subsidies. A legislative requirement will always trump a regulatory document derived from other legislation.
42. The Auckland Plan in particular has been developed under the LGA and has arguably a weak evidential foundation and has not been subject to the efficiency and effectiveness legislative requirements of the Act. While parties were able to make submissions on the Auckland Plan they had no appeal rights to have their concerns tested by the courts which is provided for in this Act. The real "test" for the Auckland Plan will come through the Unitary Plan process where, for example, s32 requirements of the Resource Management Act 1991 (cost benefit analysis etc) will be applied and parties will have proper rights to have their evidence tested before independent decision makers.
43. While wider policies and strategies can be considered in the Plan within the constraints of the Act, they cannot be adopted in a RPTP at the expense of meeting the purpose and principles of the Act. For example, if aspects of the Auckland Plan are based on preferences that give insufficient recognition to efficiency and effectiveness of public transport services and the need to reduce subsidies, it is the Auckland Plan that legally needs to be changed, not this Plan. If it is considered by AT and the Council that there is a lack of integration across the legislation, this is a matter for legislative reform not a reason to overlook current legislative requirements. Parliament has set out what it expects from regional councils in PTMPs. Sealink does not consider it is appropriate to undermine the requirements of the Act in favour of the Auckland Plan or the RLTS.

Consultation Requirements

44. Section 125 sets out the consultation requirements for a RPTP. AT must consult in accordance with the consultative principles specified in s82 of the LGA and there is discretion to use the "special consultative procedure" in the LGA. Section 82 of the LGA is set out below:

"82 Principles of consultation

- (1) Consultation that a local authority undertakes in relation to any decision or other matter must be undertaken, subject to subsections (3) to (5), in accordance with the following principles:
 - (a) that persons who will or may be affected by, or have an interest in, the decision or matter should be provided by the local authority with reasonable access to relevant information in a manner and format that is appropriate to the preferences and needs of those persons:

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- (b) *that persons who will or may be affected by, or have an interest in, the decision or matter should be encouraged by the local authority to present their views to the local authority;*
 - (c) *that persons who are invited or encouraged to present their views to the local authority should be given clear information by the local authority concerning the purpose of the consultation and the scope of the decisions to be taken following the consideration of views presented;*
 - (d) *that persons who wish to have their views on the decision or matter considered by the local authority should be provided by the local authority with a reasonable opportunity to present those views to the local authority in a manner and format that is appropriate to the preferences and needs of those persons;*
 - (e) *that the views presented to the local authority should be received by the local authority with an open mind and should be given by the local authority, in making a decision, due consideration;*
 - (f) *that persons who present views to the local authority should be provided by the local authority with information concerning both the relevant decisions and the reasons for those decisions.*
- (2) *A local authority must ensure that it has in place processes for consulting with Māori in accordance with subsection (1).*
- (3) *The principles set out in subsection (1) are, subject to subsections (4) and (5), to be observed by a local authority in such manner as the local authority considers, in its discretion, to be appropriate in any particular instance.*
- (4) *A local authority must, in exercising its discretion under subsection (3), have regard to—*
- (a) *the requirements of [section 78](#); and*
 - (b) *the extent to which the current views and preferences of persons who will or may be affected by, or have an interest in, the decision or matter are known to the local authority; and*
 - (c) *the nature and significance of the decision or matter, including its likely impact from the perspective of the persons who will or may be affected by, or have an interest in, the decision or matter; and*
 - (d) *the provisions of [Part 1](#) of the Local Government Official Information and Meetings Act 1987 (which Part, among other things, sets out the circumstances in which there is good reason for withholding local authority information); and*
 - (e) *the costs and benefits of any consultation process or procedure.*
- (5) *Where a local authority is authorised or required by this Act or any other enactment to undertake consultation in relation to any decision or matter and the procedure in respect of that consultation is prescribed by this Act or any other enactment, such of the provisions of the principles set out in subsection (1) as are inconsistent with specific requirements of the procedure so prescribed are not to be observed by the local authority in respect of that consultation.”*
- (Emphasis added)

45. As per previous submissions from Sealink, Sealink is concerned that access to relevant information in a manner and format that is appropriate has not been fully complied with. For example, in its original submission on the draft Plan, Sealink

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requested that information be provided about the relative efficiency and/or inefficiency of different modes of public transport services over past years (refer paragraph 6 (g)).

46. This request was not unreasonable and was made in the context of the fact that the primary reason for the change in legislation to bring into the PTOM model was to address the significant issue of increasing subsidies for public transport with only modest growth in patronage. This is the "mischief" that is of concern to Central Government and yet it appears to be still unclear, at least in terms of information that is publicly available, which modes in Auckland have not been achieving efficiency gains or have been becoming less efficient?
47. Sealink is concerned that understanding the nature of current inefficiencies and subsidies should be the primary basis for the development of objectives and policies in a RPTP particularly because this is the purpose of the Act and a core principle is transparency of planning and procurement.

Submissions and Hearing and Current Consultation

48. Sealink appreciates that AT has informally met with it to discuss the latest draft of the Plan and that it has previously made a submission and appeared before a Hearings Panel. However, Sealink believes that, because the legislation has recently changed in a substantive manner, the Plan should be redrafted following new research and analysis of the ferry sector in collaboration with operators. Parties should then be given a proper opportunity to submit and present their views to the local authority about important issues such as whether or not the draft plan properly meets the purpose and principles of the Act.
49. It is noted that the view presented to the local authority should be received by the local authority with an "open mind" and should be given by the local authority, in making a decision, due consideration. Sealink is concerned that due to commitment to the current version of the draft Plan by the Council and AT, it may not receive the concerns from Sealink with an open mind and give them due consideration.
50. For the avoidance of doubt, Sealink has prepared this letter to assist AT and does not consider that the writing of this letter, of itself, fully discharges the obligations to Sealink under s 82 of the LGA.
51. Sealink stands by its relief in its original submission on the Plan that the preparation of the Plan should have been deferred until the legislative framework was determined and then the work that had been done up to the date of deferment should have been thoroughly reviewed (zero-based) in the light of the new legislative requirements. What AT appears to be doing is trying to justify that the latest iteration of the draft Plan meets the statutory requirements instead of starting with the statutory requirements and deriving a plan based on a fresh analysis of the issues and the priorities set out in the legislation.
52. The relevance of this point is that Sealink believes that if a robust zero-based policy development process derived from the Act was followed, the interests of Sealink and other ferry operators in servicing the public transport needs of the commuters of Auckland would feature far more significantly in a final plan. Sealink accepts that some outcomes are likely to be the same, but believes that other outcomes, such as an enhanced role for ferries to meet public transport needs, are very likely to feature more prominently in a future Plan. It is also noted that one of the key principles is that

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the planning and procurement of public transport services should be transparent. Sealink submits that the emphasis in the current version of the Plan on busses and rail largely at the expense of investment and commitment to ferry services, is not transparent from an evidential base.

Amendments for Ferries in the Plan

53. Sealink can see that some attempt has been made to acknowledge ferries through the new paragraph on page 22 and Policy 2.4 to develop a Ferry Plan. Sealink is concerned about the lack of detail on the timing, process and budgetary commitment to implement this policy.
54. However, of most concern, this late addition does not overcome issues arising from the fundamental question of why so much public investment in CAPEX and OPEX is being invested in the least efficient modes of public transport. This is particularly the case when the national target of FRR is 50% and ferries are the only service that currently exceeds this target. Any dilution of the market share of ferries in the future due to inadequate planning and funding will further compromise the overall 50% target.
55. The latest version of the Plan that AT is now consulting on does include more provisions in relation to "exempt services", these services are included on the basis that they contribute to the regional public transport network so have been described as units in the Plan. However, it is not intended that they will be provided under contract even though they are included in the description of units in this Plan (See page 22) and there is little guidance about the management of these services including appropriate commitments to providing new infrastructure.
56. In Section 7, the description of services, various ferry routes are described in Table 7.1. Table 7.2 is very important because it describes public transport units proposed for the 2016 network and while many ferry services are listed in the Table, services to Great Barrier Island are not currently listed. Sealink will need to form a view about whether or not it should be an integral service or an exempt service.
57. One important issue in terms of these decisions is the lack of detail on unit descriptions in the Plan notwithstanding the statutory requirements. This raises procedural issues in terms of appeal rights because arguably, if the detail is subsequently to be developed following formal adoption of the Plan, parties' rights may be compromised if AT then argued that the appeal period had closed.
58. It is to be noted that the Farebox Recovery Ratio (FRR) is supposedly to be reviewed for ferries to exclude exempt services (page 60 and Appendix 6). Sealink will need to ensure that in any review "apples are being compared with apples and not oranges" in comparisons across modes.
59. The development of a Ferry Plan is important and Sealink believes the Plan should be delayed until this study is completed so the findings can be incorporated into the new plan. This is because the plan is precipitating a major restructure of public transport services (PTOM) that is coinciding with unprecedented (in Auckland's history) long-term land-use and transport planning (e.g. the Unitary Plan) that will set in place funding priorities for public transport services for decades into the future. Despite Considering that Auckland is first and foremost a "maritime city", for which land based transport is compromised by two major harbours, ferries are undervalued in the current Plan. Once the Plan develops inertia it is going to be even more difficult for the

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interests of ferries to be properly represented in planning and funding priorities for the region.

60. In summary, the primary concerns of Sealink with the overall policy direction of the Plan remain and have been reinforced by the Act, which has been materially changed since the Plan was drafted to adopt some of Sealink's policy concerns. Inadequate consideration and planning has been undertaken for existing and future ferry services and this is considered to be contrary to the purpose and principles of the Act. Sealink is willing to engage further with AT so explore how its' concerns can be addressed. It may also be beneficial for the respective legal advisers to attend any further meetings to see if there is a common understanding about the requirements of the Act.

Yours sincerely,



Peter Fuller
Barrister

cc: Simon Milner
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and

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