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Dear Sir/Madam

Submission on the Land Transport Management Amendment Bill 2012

Attached is a copy of a submission made on behalf of Greater Wellington Regional Council.

The Council wishes to be heard in support of its submission. I will represent the Council at the Select Committee.

If you have any questions please feel free to contact me by phone or email, or in my absence, Jane Davis, General Manager, Strategy and Community Engagement by phone on 04 830 4201 or by email at jane.davis@gw.govt.nz.

Yours sincerely

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Submission of Greater Wellington Regional Council to the Transport and Industrial Relations Committee

on the

Land Transport Management Amendment Bill 2012

1. Introduction

Thank you for the opportunity to make this submission on the Land Transport Management Amendment Bill 2012.

Greater Wellington Regional Council (Greater Wellington) supports the intent of the proposed amendments in the Land Transport Management Amendment Bill 2012 (the Bill) but has concerns about some of the changes in the Bill.

Our submission addresses a number of parts of the Bill. The key points of submission can be summarised as follows:

- The proposed purpose of the Act has an insufficient focus on an integrated approach that recognises the wider impacts of transport
- There is a lack of integrated long term planning for transport at both a national and regional level
- Less prescriptive consultation requirements are supported and in addition the programme elements of any plan do not require public consultation
- The relationship to Resource Management Act processes has been weakened and this will affect the important integration between land use and transport decisions
- NZ Police should retain membership of a regional transport committee
- Enabling provisions for alternative funding mechanisms should be included and regional fuel tax provisions retained
- The public transport operating model provisions are supported however the current drafting will not achieve the outcomes sought and may lead to increased administration costs.

We address each of these points below. Our comments also relate to specific details and address specific wording and the need to clarify some provisions.

2. Comments

2.1 Changes to the purpose of the Act and decision-making criteria (clause 4 of the Bill)

The new purpose of the Act as proposed in the Bill is:

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

This is a change from a much broader purpose that focussed on an affordable, integrated, safe, responsive, and sustainable land transport system upon which considerable regional planning processes have been based over the last decade. The new purpose now only focuses on an effective, efficient, and safe land transport system. The reference to 'public interest' is a new and relatively untested term and it is unclear how this term is intended to be interpreted and given effect to.

The supporting objectives under section 3(2) of the Act that currently contribute to the purpose have been deleted under the Bill. This removes reference to a number of important planning objectives such as providing an integrated approach to land transport funding and management, improving social and environmental responsibility and improving long-term planning. These objectives are important because land transport projects can take many years if not decades to come to fruition. With such long lead-times it is imperative that plans take a longer-term view. Transport infrastructure and its use also have significant impacts across economic, environmental, social and cultural areas that need to be considered in an integrated context.

The broad decision-making criteria in sections 14, 15, 18J, 19, 19B, 68, 75 and 87 of the Act to 'assist economic development', 'assist safety and personal security', 'improve access and mobility', 'protect and promote public health' and to 'ensure environmental sustainability' have also been removed throughout the Act.

The aim is to make the purpose simpler, clearer, easier to understand and interpret as well as simplifying processes through the reduction in decision-making criteria. While acknowledging that these changes will reduce the amount of decision-making criteria to consider in the development of regional land transport policy, thus simplifying planning processes, we are concerned that this may result in too narrow a consideration of the transport issues and needs of the region's community.

Greater Wellington believes that the government's aims of simplifying and streamlining the Act could still be achieved with a broadened purposed statement. It is our view that the purpose should be reworded to include reference to an integrated approach and to replace 'public interest' with the broad transport objectives that reflect the four well-beings.

However, if the Select Committee intends to proceed with deleting all reference to the well-beings in the Act, in line with proposed changes to the Local Government Act, then we recommend that the supporting objectives in section 3(2) be retained as a minimum as these provide an important context to the role of the land transport system in supporting the economy and society. In particular, they recognise the long-term planning and investment

role of the Act, along with the important role of land transport in supporting land use development and settlement patterns. We also request that further clarity is provided around how the term ‘public interest’ should be interpreted in the context of this Act, if this term is retained.

We recommend that the Bill be amended as follows:

Current provision of Bill	Suggest change to bill
<p>4 Section 3 replaced (Purpose)</p> <p>Replace section 3 with:</p> <p>“3 Purpose</p> <p>The purpose of this Act is to contribute to an effective, efficient, and safe land transport system that supports the public interest.”</p>	<p>4 Section 3 replaced (Purpose)</p> <p>Replace section 3 with:</p> <p>“3 Purpose</p> <p><u>(1) The purpose of this Act is to contribute to an effective, efficient, and safe, <u>and integrated</u> land transport system that supports the public interest <u>New Zealand's economic, social, cultural and environmental well-being.</u></u></p> <p><u>(2) To contribute to that purpose, this Act-</u></p> <p><u>(a) provides an integrated approach to land transport funding and management; and</u></p> <p><u>(b) recognises the important role of land transport in supporting land use development and settlement patterns; and</u></p> <p><u>(c) provides the Agency with a broad land transport focus; and</u></p> <p><u>(d) provides for long-term planning and investment in land transport; and</u></p> <p><u>(e) ensures that land transport funding is allocated in an efficient and effective manner; and</u></p> <p><u>(f) supports the flexibility of land transport funding by providing for alternative funding mechanisms.”</u></p>

2.2 Lack of long-term, integrated national planning

Greater Wellington, along with the rest of local government, has for some time been highlighting the need for a stronger strategic direction for transport and guidance at the national level over a longer term planning horizon. While a national land transport strategy has never been adopted, the Bill now removes any statutory provision for a long-term national land transport strategy.

We are concerned that the proposed changes will result in a continued focus on short-to-medium term funding decisions delivering nationally and regionally significant transport

infrastructure with impacts over a significantly longer timeframe. We believe this approach may not deliver the necessary transport outcomes for New Zealand over the long term. This could be addressed by requiring the GPS to set out the long-term outcomes and objectives that the Crown wishes to achieve, as currently required for a national land transport strategy, while providing flexibility to include more or less detail as to what these outcomes and objectives might be and over what long-term timeframe.

We recommend that the Bill be amended as follows:

Current provision of Bill	Suggest change to bill
<p>Sections 66 to 71 and cross-heading above section 66 replaced</p> <p>Replace sections 66 to 71 and the cross-heading above section 66 with:</p> <p>...“68 Content of GPS on land transport</p> <p>“(1) The GPS on land transport must include—</p> <p>“(a) the results that the Crown wishes to achieve from the allocation of funding from the national land transport fund over a period of at least 10 consecutive financial years; and</p> <p>“(b) the Crown's land transport investment strategy; and</p> <p>“(c) the Crown's policy on borrowing for the purpose of managing the national land transport programme...</p>	<p>Sections 66 to 71 and cross-heading above section 66 replaced</p> <p>Replace sections 66 to 71 and the cross-heading above section 66 with:</p> <p>...“68 Content of GPS on land transport</p> <p>“(1) The GPS on land transport must include—</p> <p>“(a) <u>the long-term outcomes and objectives that the Crown wishes to achieve in relation to land transport in New Zealand and the targets against which progress will be measured; and</u></p> <p>“(ab) the results that the Crown wishes to achieve from the allocation of funding from the national land transport fund over a period of at least 10 consecutive financial years; and</p> <p>“(bc) the Crown's land transport investment strategy; and</p> <p>“(ed) the Crown's policy on borrowing for the purpose of managing the national land transport programme...</p>

Under the existing legislation a regional land transport programme is required ‘to be consistent with’ the GPS, but an RLTS is only required to ‘take into account’ the GPS (section 75 (b)(i)). However, under section 14 of the Bill, regional land transport plans are required to ‘be consistent with’ the GPS. This requirement for a regional land transport plan to be consistent with the GPS is a higher test than currently exists between the GPS and the RLTS.

While the requirement to ‘be consistent with’ is fine for the ‘programme’ part of a regional land transport plan, Greater Wellington notes that this change creates a stronger top down link from national expectations to regional policy and planning. We are concerned that regional planning will be driven through a document that has an emphasis on short-term funding priorities that are based on the views on the government of the day.

Greater Wellington recommends that the Bill be amended:

- To require regional land transport plans to *take into account* the GPS on Land Transport, as set out in current provisions under the LTMA for RLTSs, to ensure regional government has the flexibility to address its own particular transport needs, particularly in relation to the strategic policy aspects of the new regional land transport plans.

2.3 Lack of long-term, integrated regional planning

We have significant concerns that the current Bill lacks sufficient provision for long-term, integrated planning. This relates to the removal of any reference in the Act to longer-term or integrated planning, the shorter planning horizon proposed, and the merging of the Regional Land Transport Strategy with the Regional Land Transport Programme.

Some of these concerns can be addressed through the changes we requested in section 2.1 of this submission, which was to retain reference to long-term, integrated planning and to recognise the important role of land transport in supporting land use development and settlement patterns as contributing to the purpose of the Act.

However, this needs to be strengthened by providing for regional land transport plans to have a planning horizon ‘up to 30 years’ rather than the proposed ‘not less than 10 years’. Most large transport infrastructure projects have long lead times that require a longer term view. We consider that having a regional strategic framework with a long term outlook beyond ten years is particularly important to ensure that longer term trends and pressures and appropriate responses can be identified.

We recommend that the Bill be amended as follows:

Current provision of Bill	Suggest change to bill
Replace section 16 with: “16 Form and content of regional land transport plans “(1) A regional land transport plan must set out the region’s land transport objectives, policies, and measures for at least 10 financial years from the start of the regional land transport plan.	Replace section 16 with: “16 Form and content of regional land transport plans “(1) A regional land transport plan must set out the region’s land transport objectives, policies, and measures for at least 10 <u>30</u> financial years from the start of the regional land transport plan.

We acknowledge the intention to reduce the number of planning processes by replacing regional land transport strategies with a policy component in regional land transport plans, and agree that a closer relationship between the strategic approach and the significant projects can be beneficial in assisting people to understand the implications of policy.

However we believe that a new tension will be created between the policy and programme elements of the plan. This tension arises from the different purposes of these aspects of planning. It is important that the overall long-term strategy and policy approach is considered and consulted on prior to any consideration of specific project costing and

timings, otherwise the plan and any consultation feedback is very likely to be driven by the details of individual projects rather than what they are intended to achieve as an overall package and approach.

The planning horizon and timing of these two parts of the proposed plans are also quite different. The overall strategic approach needs to take a longer-term view (up to 30 years as recommended above), whilst the programme must take a short-term view of the next 3 years. Also whilst it is appropriate to review the programme elements every 3 years (as proposed in the Bill) it would be inappropriate and a waste of resources to review the strategic approach on this same timeframe – a period of 6 years would be more appropriate.

We therefore recommend that the two elements of transport planning are separated, with a regional land transport plan (with a 30 year horizon) being prepared and consulted on prior to the preparation of a regional land transport programme (with a planning horizon of 3 years).

We further believe that the significant transport infrastructure projects can be identified in a revised regional land transport plan, and that this should be the focus of public consultation. The regional land transport programme, with its much more detailed emphasis on funding and timing, should not be subject to full public consultation processes, as these projects are largely outside the control of Regional Transport Committees.

The preparation of regional land transport programmes is currently primarily an administrative process of regional transport committees collating local council and state highway activities and prioritising these. These activities are then passed on to the NZ Transport Agency for funding consideration as part of the National Land Transport Programme.

Regional transport committees have limited discretion in relation to what is included in regional land transport programmes and has no influence over proposed funding levels. However, the regional prioritisation of significant activities in the programme does provide a mean of influencing national priorities and advocating for funding of those activities that the region considers are most important.

The level of detail required to satisfy NZTA requirements is also such that meaningful consultation with the public is extremely difficult. As such we believe there is limited value in requiring public consultation on the regional land transport programme, or any of these aspects in a regional land transport plan (if this remains the preferred instrument as in the Bill).

Greater Wellington is also concerned with the proposed amendment to section 20(3) of the LTMA, which removes the consideration of regional transport planning documents by the NZ Transport Agency when considering funding for proposed activities.

The current legislation requires the NZ Transport Agency to “take into account” the RLTS when considering funding for transport activities. These regional documents provide the policy context to support the funding case for regionally significant activities. In our view, removing the statutory links under section 20 will create a mismatch between the NZTA funding process and the regional planning process proposed under the Bill.

Greater Wellington recommends that the Bill be amended:

- To separate the two elements of transport planning, with a regional land transport plan (with a 30 year horizon) being prepared and consulted on prior to the preparation of a regional land transport programme (with a planning horizon of 3 years).
- To not require public consultation on a regional land transport programme (or the programme elements of a regional land transport plan if this is retained as a single joint plan).
- To retain the current clause in the LTMA that requires the NZ Transport Agency to *take into account* the regional land transport plan when considering funding for transport activities.

2.4 Appropriate timeframes

The Bill requires that a GPS on land transport be issued before the start of the first financial year to which it applies (section 66(1)(a) as revised by clause 54 of the Bill) but this timeframe does not take account of the timeframes required to prepare the proposed regional land transport plans or for local government processes under the Local Government Act 2002¹.

We suggest that any new GPS on land transport be issued no later than 6 months prior to the start of the first financial year to which it applies. This would remove the risk of additional planning churn that might result if regional transport committees were required to review and revise their regional land transport plans outside the usual local government planning cycle.

We recommend that the Bill be amended as follows:

Current provision of Bill	Suggest change to bill
<p>54 Sections 66 to 71 and cross-heading above section 66 replaced</p> <p>Replace sections 66 to 71 and the cross-heading above section 66 with:</p> <p><i>"GPS on land transport</i></p> <p>"66 Minister must issue GPS on land transport</p> <p>"(1) The Minister must issue a GPS on land transport—</p> <p>"(a) before the start of the first financial year to which it applies; and...</p>	<p>54 Sections 66 to 71 and cross-heading above section 66 replaced</p> <p>Replace sections 66 to 71 and the cross-heading above section 66 with:</p> <p><i>"GPS on land transport</i></p> <p>"66 Minister must issue GPS on land transport</p> <p>"(1) The Minister must issue a GPS on land transport—</p> <p>"(a) <u>at least 6 months</u> before the start of the first financial year to which it applies; and...</p>

¹ We also note that the requirement for regional land transport plans to be consistent with the GPS on land transport may mean more frequent changes to regional land transport plans than envisaged by the Bill. We address this particular matter in the part of this submission on regional land transport plans.

Regional land transport plans are required to be prepared every six years under the Bill, whereas current regional land transport programmes are required every three years.

It is expected to be very difficult for regions, local authorities and NZTA to prepare all the detailed information required for a 6 year funding programme, particularly for activities planned beyond three years and where the investigation work to determine the effectiveness and efficiency of activities has not yet been concluded. This is a practical limitation of around three years for developing programmes.

We note that the current review clause in the Bill (proposed section 18CA in clause 21 of the Bill) is unclear as to the expected extent of the three-yearly review as opposed to a new plan every 6 years.

Greater Wellington recommends that:

- The Bill be amended to require a regional land transport plan to be prepared and reviewed every 6 years and for a regional land transport programme to be prepared every 3 years.

2.5 Changes to consultation requirements

We support removing the requirement to use the special consultative procedure under the Local Government Act. We believe that this will provide more flexibility to carry out community consultation and engagement in a manner that best suits the requirements of the particular situation.

We advise that it is likely a process similar to the special consultation procedure will continue to be used when preparing the regional land transport plans based on the significance of the issues involved and to ensure that those individuals and organisations that expect to have an input will have the opportunity to do so.

We note our previous comments regarding consultation on programmed projects as part of the regional land transport programme, and our recommendation that this is not required.

2.6 Relationship to the Resource Management Act 1991 (RMA)

One area that the Bill does not adequately address is the relationship to RMA processes, particularly links to regional policy statements and other planning documents under the RMA and of particular significance the potential for statutory spatial planning under as a result of the RMII reform process. We believe that integration of land use and transport planning is a key issue that needs to be strengthened, particularly for the Wellington region and other metropolitan areas, where land use decisions impact significantly on transport and vice versa.

The current provisions in relation to regional land transport strategies require that they are consistent with any relevant regional policy statement or regional plan under the Resource Management Act (RMA) 1991. Conversely, section 30(1)(gb) of the RMA requires that a regional council ensures 'the strategic integration of infrastructure with land use through objectives, policies, and methods'. These provisions have resulted in close collaboration during the development of the Wellington Regional Policy Statement and the Wellington

Regional Land Transport Strategy to ensure that these two policy documents are well aligned.

Under the Bill, regional land transport plans are only required to “...have taken into account... any relevant regional policy statement or regional plan under the Resource Management Act (RMA) 1991”. This weaker alignment is a concern at a time where there is growing recognition around the need to improve integration between these planning functions.

These issues might be addressed if statutory spatial plans were introduced through the RMA reform process, however at present this is unknown. A spatial plan would enable long-term and integrated planning, and enable linkages between policy areas to be recognised and appropriately responded to a strategic level. However, to achieve effective spatial plans, as in Auckland, other changes to either government structure or strong legislative mandates will be required.

Greater Wellington recommends that:

- A new provision is added to require that the land transport objectives, policies and measures set out under Section 16 (1) are consistent with any relevant regional policy statement under the RMA 1991.
- That the Select Committee give particular consideration to the impact of wider legislative reforms, including those relating to the RMA and spatial planning, on the land transport planning framework.

2.7 Regional transport committees

We have no particular view on the proposed changes to membership of regional transport committees (clause 66 of the Bill). However if the Select Committee retains the Bill’s provisions, we request that NZ Police are specifically represented on the regional transport committees to recognise their significant role in road safety and the fact that they are allocated funding directly from the National Land Transport Fund.

2.8 Regional funding mechanisms

We note that there is a lack of any provisions in the Bill that enable considering of alternative funding mechanisms, in particular provision for road pricing (e.g. congestion charging) as a possible funding tool for local and regional councils and the NZ Transport Agency. We believe that further provisions should be included in the Bill to provide enabling provisions for alternative funding solutions for transport infrastructure. Alternatively the Select Committee may wish to identify this area as one for which further policy development is required by the Ministry of Transport.

Significant new investment in transport is unlikely to be affordable in the foreseeable future using existing funding mechanisms, especially given pressure on rates. This will have potential significant implications for regions in the longer-term. Transport investment doesn’t stand still, renewal is required, and New Zealand risks falling further behind in

international competitiveness if it cannot provide modern transport solutions into the future that our key competitor cities are providing.

In this context we do not support the removal of regional fuel taxes, as these provide one actual mechanism that could be utilised by regions, as recommended by Treasury in the consultation section of the regulatory impact statement.

We support the streamlining of decision-making criteria for road tolling schemes and simplification of processes around public private partnerships.

Greater Wellington recommends:

- That the Bill include enabling provisions to allow local authorities to utilise alternative funding solutions for transport infrastructure, or that this area is specifically identified as an area for further policy development by the Ministry of Transport.
- That the provisions enabling regional fuel tax are retained.

2.9 Public transport operating model (PTOM)

Public transport services are critical for the functioning of the Wellington region, supporting economic growth and social cohesion, while reducing environmental impacts and energy use. The Wellington region has a high quality, well used public transport network of bus, train and harbour ferry services, as well as the iconic cable car. There are more than 100 bus routes, 4 train lines and 2 harbour ferry routes providing public transport services across the region, with over 36 million passenger trips occurring annually. These services receive significant public funding, and it is important that the regulatory framework enables an efficient network of services that provide value for money.

Greater Wellington has been heavily involved in the development of the public transport operating model, and supports its introduction through this legislation. Stronger network coordination, collaboration, and increased competition will provide more effective services and better value for money. We support the requirement that all services other than exempt services must be provided under contract. In our view this will significantly improve our ability to provide an integrated public transport network.

While the Council has many comments on the wording of the Bill, these are primarily matters of detail, where we are concerned to ensure that the model agreed by the stakeholders is accurately represented in the new legislation in a way that is workable, without unnecessarily increasing administrative costs or causing delay. As a general comment, the public transport provisions in the Bill are difficult to follow, and it has not been easy to understand how they will work in practice. We would support changes to clarify and simplify these sections of the Bill.

Clause 69 of the Bill inserts a new Part 5 into the Act. Except where specified, the following comments refer to Part 5, and reference the new section numbers.

2.9.1 Regional public transport plans

(a) Purpose of regional public transport plans; section 116

The regional public transport plan (RPTP) is a major element of the public transport operating model – it is a major mechanism for consultation on public transport with the public, operators, and other stakeholders. It is also a statutory document that allows regional councils to identify services and policies that work together to create an integrated network. The network forms the basis for the procurement of services that can be worth hundreds of millions of dollars over the life of the plan.

The purpose of the RPTP should be clear enough to provide guidance to regional councils on the information that should be included. It is important that the plans provide enough detail to support consultation with the public and with operators, without providing so much detail that the plans become inaccessible and continually require updating.

As drafted in the Bill, the purpose of the RPTP is unclear, does not reflect the key principles of the public transport operating model, and also raises the following specific issues:

- S116(a) is narrowly focused on public transport services, whereas the public expects a more general consultation on public transport, including policies and plans relating to information and infrastructure, as well as on services.
- The RPTP is likely to include policies on matters that are too detailed to be referred to in a regional land transport plan. It would therefore be more appropriate for the RPTP to be ‘not inconsistent’, rather than ‘consistent’ with, the regional land transport plan.
- Territorial authorities are identified, but other road controlling and infrastructure road controlling authorities (such as NZTA, and the NZ Railways Corporation) are not.

In our view, the purpose of the RPTP under the public transport operating model is:

- To specify how the regional council intends to give effect to the public transport components of the regional land transport plan
- To enable the integrated management of public transport services
- To encourage a competitive, efficient, and fair market for public transport services by:
 - Identifying marketable groups of public transport services
 - Specifying policies to encourage co-operation and coordination between the regional council, infrastructure providers, and operators
 - Specifying policies and information requirements that apply to public transport services

We submit that section 116 should be replaced with the purpose outlined above, or otherwise reviewed to clarify the purpose of the RPTP.

We recommend that the Bill be amended as follows:

- **Delete** section 116 and replace with:

116 The purpose of a regional public transport plan is to-

 - (a) To specify how the regional council intends to give effect to the public transport components of the regional land transport plan,
 - (b) To enable the integrated management of public transport services
 - (c) To encourage a competitive, efficient, and fair market for public transport services by:
 - (i) Identifying marketable groups of public transport services
 - (ii) Specifying policies to encourage co-operation and coordination between the regional council, infrastructure providers, and operators
 - (iii) Specifying policies and information requirements that apply to public transport services
- **Or revise** section 116 to clarify the purpose of the plan.
- **Amend** 117 (b) to read “has included any matter that is not referred to in the regional land transport plan so long as the included matter is ~~consistent~~ *not inconsistent* with the regional land transport plan”

(b) **Contents of Regional Public Transport Plan: Section 119**

The detailed provisions relating to the RPTP contents are both very prescriptive and all encompassing. To meet these requirements, the Wellington RPTP would need to be expanded to a size that will make it impractical for consultation, while the level of detail required will ensure that the plan will constantly be out of date. We support a more flexible approach which would make it easier to respond to changes in travel patterns and demand. This would also be more consistent with the Bill’s proposals for the planning and funding framework, which aim to make the application of the Act simpler, reduce compliance costs and simplify processes.

As an example, the Bill requires the RPTP to specify the routes, capacities, times, and frequencies of the public transport services to be provided (s119(1)(c)(ii) and (iii)). The description of the routes and times for just one of the larger of our existing public transport contracts ran to 38 pages in the procurement documentation. Since the contract commenced, frequent changes have been negotiated – usually involving relatively minor timetable amendments but sometimes making more major route changes, or changes reacting to alterations in demand, and there have been 4 formal contract variations in the year to date.

An RPTP involving this level of detail for all of Wellington's public transport services would be hundreds of pages long, and would need updating constantly (a process that we estimate would take at least 4 months for even relatively minor changes).

We submit that section 119(1) be revised to reduce the level of prescription, including amending (a) to read 'in a manner that is *not inconsistent* with the public transport components of the regional land transport plan' and replace (c)(ii) and (iii) with the equivalent wording from the Public Transport Management Act: "must describe the network of public transport services that the regional council proposes to be provided in its region, and may include (but is not limited to) a statement or description of routes, capacities, times and frequency of services".

The provision in section 119(1)(c)(vi) relating to the date of deregistration of a service that is not an exempt service and is not included in a unit in the RPTP appears to be a transitional provision which only applies to the first RPTP. If this is the case, it should be clarified to prevent confusion.

We would expect to include the matters listed in section 119(2)(a)(i) to (vii) in the RPTP. However, we do not consider it necessary for all of these matters to be mandatory, and we therefore submit that in section 119(2)(a) "must" be replaced with "may".

As currently drafted, the Bill requires the PRTP to include policies on the contracting procedure and procurement timeline the Council will use, and the contracting procedure must be approved by NZTA (s119(2)(a)(v) and (vi), s119(3)). The requirement in subsection 119(2)(a)(v) is for the RPTP to include a policy on a contracting procedure, while subsection 119(3) requires the actual contracting procedure to be specified. The relationship between the policies, the contracting procedure, and the existing requirements of section 25 relating to approved procurement procedures is unclear – the proposed sections appear to add another layer to the existing requirement to have an NZTA endorsed procurement strategy, and to use NZTA approved procurement procedures, but it is unclear what the additional layer is designed to achieve. We request that these provisions are reviewed and clarified.

It is unclear why the Agency needs to approve a contracting procedure for services where there is no financial assistance. We therefore submit that section 119 (3) (b) be deleted.

We recommend that the Bill be amended as follows:

- **Review** section 119 to reduce the prescriptive nature of the requirements
- **Amend** section 119(1)(a) so that it reads "... in a manner that is ~~consistent~~ *not inconsistent* with the public transport components of the regional land transport plan that applies to the region;"
- **Replace** section 119(1)(c)(ii) and (iii) with
 - (c) must -
 - (ii) *describe the network of public transport services that the regional council proposes to be provided in its region, and may include (but is not limited*

to) a statement or description of routes, capacities, times and frequency of services.

- **Review** section 119(1)(c)(vi) to clarify whether it is a transitional provision
- **Amend** section 119(2)(a) so that it reads
 - (2) .. a regional council –
 - (a) ~~must~~ *may*, in relation to any public transport services (other than exempt services), include in a regional public transport plan policies on- ...
- **Review** section 119(2)(a)(v) and 119(3) to clarify the requirements for procurement
- **Delete** section 119(3)(b)

(c) **Consistency with the GPS on land transport: section 123**

Section 123 (a)(iii) requires that the RPTP “is consistent with the GPS on land transport”. The requirement for the plan to be consistent with the GPS may prevent legitimate regional aspirations from being included in the regional public transport plan, even where these are fully funded at the regional or local levels.

The current requirement in the Public Transport Management Act is that the RPTP must “take into account” the GPS. We submit that either this clause be deleted, and that the GPS on land transport be added to the list of matters to be taken into account in section 123 (b); or that section 123 (a) (iii) be amended to read “is not inconsistent with the GPS on land transport”.

We recommend that the Bill be amended as follows:

- **Either delete** section 123(a)(iii) and **amend** section 123(b) by adding
 - (vii) *the GPS on land transport;*
- **or amend** section 123(a)(iii) to read:
 - “is ~~consistent~~ *not inconsistent* with the GPS on land transport”.

2.9.2 **Power to require information; section 126**

We support the ability for a regional council to require revenue and patronage data, and to disclose the revenue data to potential bidders, which is essential for increasing the competitiveness and efficiency of the market for public transport services.

In our view, revenue information should be able to be made available more widely than to potential bidders. This would increase transparency and accountability, assist in providing value for money contracts, and reduce administrative expenses in complying with information requests under sections 128. Many of the provisions relating to the disclosure of information have been carried over from the Public Transport Management Act, where they were required to protect the operators of commercial services who had no contractual relationships with regional councils. Under the new operating model, the need for these provisions is less clear, given that they will only apply to operators with contracts, and that

normally these would be matters addressed at the contractual level rather than in statute using the standard Local Government Official Information and Meetings Act processes.

We submit that section 126(2) should be clarified to confirm that, where units cover multiple routes, revenue and patronage can be requested at the route level rather than only by unit.

We recommend that the Bill be amended as follows:

- **Delete** 126(1)(c) and replace with (c) *may publish the revenue data for the unit.*
- **Amend** 126(2) to confirm that, where units cover multiple routes, revenue and patronage can be requested at the route level.
- **Review** whether section 128 is required

2.9.3 Exempt Services

We support the proposal that services that are not included in the public transport network specified by a regional council will be exempt from operating under contracts, and will be identified as exempt services in a register held by the regional council.

(a) Definition of exempt services: section 129

The definition of exempt services in section 129(2) conflicts with the intention of the Bill to require all bus, ferry and rail services in a region that make up the planned public transport network to be segmented into units and provided under exclusive contract to the regional council.

In particular, Greater Wellington opposes section 129(2)(b) and (c), which include existing commercial harbour ferry services and some existing commercial bus services in the definition of exempt services. Some of these services, which in Wellington include some individual ferry trips and the airport bus service, are integral to the urban public transport network, and are the only public transport service available in some suburbs. If they ceased to operate in their current form, there would be a strong public expectation that we would make provision for their continued operation.

The definition of exempt ferry services in section 129(2)(b) as an existing commercial ferry service also contradicts one of the core principles of the public transport operating model - that units will contain all services on a route, replacing the existing practice of operators being able to register a single timetabled service on a route as 'commercial'.

The definition of inter-regional services as exempt ignores the fact that there publically funded interregional services currently, and others that have been run previously (for example, local bus services currently operate between Pukekohe and Tuakau, and have previously operated between Otaki and Levin). There is no obvious reason why the definition of exempt services should be based on administrative boundaries, or why, if the current discussion on Wellington's regional government results in changes to the regional boundaries, legislation should make public transport services that are currently subsidised ineligible for future funding.

For these reasons, we submit that sections 129(2)(b) and (c) be deleted, and that 129(2)(a) be amended to read “an inter-regional public transport service that does not receive financial assistance from a regional council”.

Alternatively, a number of other provisions relating to the registration of exempt services would need to be amended to enable us to effectively manage the Wellington public transport network. These are outlined in more detail below, and include:

- the period within which regional councils must register exempt services, or variations to exempt services (sections 132(4), 134, 135(1));
- the notice period for withdrawal of an exempt service (section 138).

Further, if sections 129(2)(b) and (c) are not deleted, we submit that the following changes are made:

- the definition of exempt ferry services should be modified to refer to services where **all** the trips on a route are commercial as at 30 June 2011
- the reference to the ‘published fare schedule’ in relation to bus services should be amended. Greater Wellington publishes a schedule of all public transport fares in Wellington (including commercial fares) as a service to public transport users. As a result, in our view this section would not identify existing commercial services charging premium fares, which we understand to be the intent.

We recommend that the Bill be amended as follows:

- **Amend** section 129(2)(a) to read “an inter-regional public transport service *that does not receive financial assistance from a regional council*”
- **Delete** section 129(2)(b) and (c) **or amend** sections 129(2), 132(4), 134, 135(1), and 138 to address the issues identified above

(b) Information requirements: section 130

The grounds for declining to register an exempt service set out in section 133 include that the service is likely to have a material adverse effect on the financial viability of a contracted service, or to increase the cost of a contracted service to the regional council. To judge whether a service will have these impacts, a regional council will need more information than currently provided for under section 130. We submit that the regional council should also be able to request:

- the proposed timetable (there is a major difference, for example, between the impact of a service operating on a route once a week and a daily frequent service),
- the proposed fares (a proposed exempt service could undercut the standard fare for a section of a route, effectively cherry picking the most profitable sections),

- the duration of the service (services are sometimes proposed for a short period, such as additional services during the school holidays, which have a different impact from services that will be provided over a longer period).

Corresponding requirements should be added to section 132, so that council approval is required notified if variations are proposed.

We recommend that the Bill be amended as follows:

- **Amend** section 130 to give a regional council the power to request additional information, including the timetable, fares, and duration of the proposed exempt service.
- Make consequential **amendments** to section 132 to provide for a regional council to require the operator of an exempt service to apply to vary the timetable, fares, or duration of an exempt service.

(c) Timelines: sections 132, 134, 135, 138

The Bill provides a notice period for registering, varying, or withdrawing an exempt service of 15 working days. This is a significant change to the timelines that exist under the Public Transport Management Act for commercial services, which specified 35 days for the registration or variation of a commercial service and 15 working days for a withdrawal, unless otherwise specified in a region's RPTP. Greater Wellington's current RPTP specifies 65 working days notice for registration and 120 working days for a withdrawal, based on the minimum time required to arrange a replacement service if one is required.

While exempt services will generally not be critical parts of the PT network under the new operating model, there are still specific services defined as exempt under section 129 either where a variation involving a reduction in service or a withdrawal would have a considerable impact on the network, and where some kind of replacement service would be required to minimise the impact on communities. The proposed notice period of 15 working days is inadequate to complete a procurement process for a replacement service.

In addition, in some cases 15 working days will be insufficient time to evaluate the impact of a proposed exempt service, particularly if information is required from the operator of a potentially affected service.

We recommend that the Bill be amended as follows:

- **Amend** section 132(4) to read "...applicable period means not less than 15 working days before the exempt service or variation is intended to commence or *the number of working days specified in the relevant regional public transport plan*"
- **Amend** section 134 to make it consistent with section 132
- **Amend** section 135(1) to make it consistent with section 132
- **Amend** section 138(1):

- (1) The operator of an exempt service who proposes to withdraw from providing the exempt service must notify the regional council in whose region the exempt service is registered of the proposal *either*:
 - (a) not less than 15 working days before the exempt service is to cease operating; *or*
 - (b) *not less than the number of working days specified as the period of notice in the relevant regional public transport plan.*

2.9.4 Environment Court Appeal: section 139

The Bill provides for operators of a unit or a proposed exempt service to appeal to the Environment Court against the decision to adopt a RPTP, however the grounds for appeal are not defined, and operators could potentially appeal against any part of a RPTP. This could potentially see operators using the appeal process to unreasonably delay progress in implementing public transport improvements, or attempting to use the appeal process to obtain a commercial advantage. The Bill does not provide any guidance to the court on the basis for its judgement.

The purpose of appeal rights for the operator of a proposed exempt service are unclear as there are separate appeal rights to the District Court under section 140 against an adverse decision relating to a proposed exempt service, and it is unclear why the operator of a proposed exempt service would have appeal rights when there are no appeal rights for the operator of an exempt service.

We submit that the grounds for appeal be confined to operators of a unit on matters which affect the definition and allocation of units in the regional public transport plan.

We recommend that the Bill be amended as follows:

- **Amend** section 139 by:

Removing the right of an operator of a proposed exempt service to appeal

Limiting rights of appeal by the operator of a unit to matters which affect the definition and allocation of units in the regional public transport plan

2.9.5 Offences

Section 147 makes it an offence to vary the route or routes of a registered exempt service without giving notice to the regional council. This provision should be expanded to include operators of exempt services that vary the fares, timetable, or duration of the service without notification, as these variations could substantially alter the nature of the service and its impact on other services.

We note that one of the overarching objectives of the public transport operating model is to grow the commerciality of public transport services. A critical component of this commerciality is the protection of revenue from public transport fares, particularly in a

modern environment where paper tickets are no longer the norm. We submit that a regime be introduced that:

- makes it an offence to use public transport without evidence of paying the correct fare
- allows for the imposition of a penalty fares instead of prosecution of the offence
- allows for regional councils to appoint ticket inspectors with statutory enforcement powers.

We recommend that the Bill be amended as follows:

- **Amend** section 147 to read “A person who, without reasonable excuse, operates, in a region, a registered exempt service and varies the route or routes, fares, timetable, or duration of the registered exempt service without giving the notice required under section 132 commits an offence ...”
- **Add** new provisions making it an offence to use public transport without evidence of paying the correct fare, allow for the imposition of a penalty fares, and allows for regional councils to appoint enforcement officers.

2.9.6 Other issues

(a) Interpretation: Clause 6

The definition of public transport service has been changed from that currently used in a way that does not make any clear sense. Under the current definition in the Public Transport Management Act, the last item is a catch all item that is worded “any other mode of transport (other than air transport) available to the public generally”. The replacement definition however reverses this provision by stating that it includes only those modes that are not available to the public: “(vi) any other mode of transport (other than air transport) that carries passengers but is **not** available to the public generally”. We submit that this change should be reversed.

The definition of unit needs to be clarified to enable services on more than one unit to share part of the route. The current wording of (c) in the definition could be interpreted as indicating that any public transport service that uses part of a route must be included in a single unit. The concept of a unit is well understood by the parties to the public transport operating model; it is a group of services that form a ‘marketable whole’ that form a sensible procurement package, and will be operated exclusively by a single operator, although units can overlap. Our concern is to see this understanding reflected unambiguously in the legislation so that there is no confusion for example with new operators entering the market. We submit that the definition of unit should be reviewed.

(b) Status of the New Zealand Rail Corporation

The consultation and notification requirements in section 120 and 124 specifically identify the New Zealand Railways Corporation (NZRC). As the NZRC is being restructured, this

requirement may become unclear in future. We consider there are two reasons for consulting the NZRC – as an operator of public transport services, and as the rail infrastructure provider. Consultation with operators is the subject of separate provisions in the Bill so, in this context, sections 120 and 124 could be clarified by requiring consultation with the access provider in terms of the Railways Act 2005. The access provider, in relation to a railway line is defined as the person who controls the use of that railway line by rail operators. This role will remain defined under the Railways Act irrespective of any changes to the corporate form of the NZRC.

(c) **Deregistration of exempt services section 136(4)**

Section 136 (4), as currently drafted, is unclear. We understand that it is intended to relate to exempt services that are required to be provided under contract, pursuant to an Order in Council under section 149(1)(b), but if this is the case, it needs to be made explicit in section 136(4).

We recommend that the Bill be amended as follows:

- **Amend** the definition of ‘unit’ in clause 6(2) to clarify that services that are part of more than one unit may share part of a route
- **Amend** the definition of public transport service in clause 6(3) by amending (a)(vi) to read “any other mode of transport (other than air transport) that carries passengers ~~but is not~~ and is available to the public generally”
- **Replace** reference to the New Zealand Railways Corporation with reference to the access provider under the Railways Act 2005 in Section 120 Notification and provision of copies of plans and Section 124 Consultation requirements for regional public transport plans.
- **Amend** section 136(4) to clarify its intent.

3. Request to be heard

Greater Wellington wishes to be heard in relation to this submission.

4. Contact details

For any matters relating to this submission please contact:

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