

# Submission to the Finance and Expenditure Select Committee

## In the matter of the *Land Transport Management (Regional Fuel Tax) Amendment Bill*

Auckland Council, 19 April 2018



## Mihimihi

Ka mihi ake ai ki ngā maunga here kōrero,  
ki ngā pari whakarongo tai,  
ki ngā awa tuku kiri o ōna manawhenua,  
ōna mana ā-iwi taketake mai, tauiwi atu.  
Tāmaki – makau a te rau, murau a te tini,  
wenerau a te mano.  
Kāhore tō rite i te ao.

I greet the mountains, repository of  
all that has been said of this place,  
there I greet the cliffs that have  
heard the ebb and flow of the tides  
of time,  
and the rivers that cleansed the  
forebears of all who came those  
born of this land  
and the newcomers among us all.  
Auckland – beloved of hundreds,  
famed among the multitude, envy  
of thousands.  
You are unique in the world.

## 1. Overview

This is Auckland Council's submission on the Land Transport Management (Regional Fuel Tax) Amendment Bill.

The address for service is Auckland Council, Private Bag 92300, Victoria Street West, Auckland 1142. Please direct any enquiries to Michael Burns, Manager Financial Strategy or Dani Gardiner, Manager Public Law.

Auckland Council wishes to appear before the Finance and Expenditure Select Committee to discuss this submission.

This submission has been approved by the Governing Body of Auckland Council.

## 2. Introduction

Thank you for the opportunity to submit on the Land Transport Management (Regional Fuel Tax) Amendment Bill (**the Bill**).

Auckland Council supports the amendments proposed in the Bill which will enable regional councils to fund transport infrastructure programmes that would otherwise be delayed or not funded.

This is an issue of critical importance to Auckland, and we welcome the opportunity that the Bill provides for Auckland Council to access funding that will enable it to deliver the level of investment in transport that Auckland needs to be a world-class city.

## 3. Context

Transport is one of the top concerns of Aucklanders, and it is estimated that congestion costs our economy between \$1 and \$2 billion per annum in lost productivity. All rely on an efficient transport system to keep Auckland productive. As our population grows, and housing and businesses expand, the demand for new transport infrastructure increases.

In recent years the government has partnered with Auckland to align our transport investments through the Auckland Transport Alignment Project (**ATAP**). However, there is insufficient funding currently available to deliver the level of investment that Auckland needs.

Auckland Council's usual approach to funding investment in long-life assets, such as transport infrastructure, is from borrowing. However, the capacity to borrow sustainably is limited. Other options for funding such as increasing general rates or

continuing with the existing Interim Transport Levy have been considered. Neither of these is considered as suitable in the medium to long term because of:

- the rate increases that would be required to fund a similar level of investment would be significant (9% to 10%) and this would likely be unacceptable to Auckland ratepayers; and
- linking the funding of transport investment to property owners rather than transport users is not considered to be the fairest option.

It is clear that Auckland needs additional funding mechanisms to deliver our transport programme.

#### **4. Land Transport Management (Regional Fuel Tax) Amendment Bill**

##### ***RFT as a funding mechanism***

Auckland Council supports the policy of the Bill to enable Auckland Council, and other regional councils from 1 January 2021, to obtain additional funding for transport infrastructure by way of a Regional Fuel Tax (**RFT**) scheme.

We welcome this opportunity, as we consider that a funding mechanism that links the additional funding of transport investment with transport users is the fairest available option for delivering Auckland more of the transport infrastructure it needs. In the long term, a congestion charging mechanism may be an appropriate option, but it would take time to develop and implement such a scheme.

We are pleased that the Bill enables Auckland Council to take a number of actions prior to commencement of the Amendment Act, including preparing and consulting on an RFT proposal and submitting an RFT proposal to the joint Ministers for consideration and recommendation.

Given the priority of this issue for Auckland, on the basis of the transitional provisions we are preparing a draft proposal, which will set out the programme of capital projects we propose should be funded by the RFT. Consultation on the draft proposal will occur in the coming weeks.

##### ***RFT scheme***

Auckland Council supports the approach set out in the Bill to establish and maintain an RFT scheme for an area.

We note that clause 65E of the Bill provides that the RFT is to be used to fund a programme of capital projects, and an RFT proposal must describe the particular features of the programme and each project in the programme. Auckland Council understands that the programme is what is funded by the RFT scheme and is made up of a number of capital projects. We also understand that the term “project” is not intended to be limited to an individual project only (for example, Skypath), but can

include groups of related projects (for example, an Auckland wide “road safety project” which includes red light cameras, minor safety improvements, safer communities and speed management across the Auckland region). We think this is a pragmatic approach given the scale of the potential investment and the duration of any scheme. It is also consistent with the way in which projects are set out in the draft Regional Land Transport Plan for Auckland as well as in ATAP. We intend to adopt this approach for our RFT proposal.

Clause 65E also makes clear that a regional council may use the RFT to fund capital expenditure, associated debt repayment, and operational expenditure when it is associated with the delivery of a package or programme of projects. We consider that this is a critical component of the Bill. From our perspective, it avoids unbalanced investment in large infrastructure assets without providing for the maintenance of these assets, or the services provided through them.

We also understand that the scope of “operating expenditure expected to be required from regional fuel tax for the delivery of the project” includes pre-feasibility work, as well as the operating expenditure needed to deliver services through a new asset (including, among other things, cleaning, maintenance, energy costs or drivers). We welcome this.

We support the requirement for regional councils to demonstrate how programmes in an RFT proposal align with any relevant regional land transport plan, GPS on land transport, or other documents which set out transport priorities for a region. We also support the joint responsibility of regional councils and Ministers to approve a proposal.

Auckland Council welcomes the accountability requirements included in the Bill including that a regional council must consult with its community in accordance with s 82 of the Local Government Act 2002, when preparing a proposal to establish an RFT. We also support the requirement for regional councils to report on the RFT scheme in its annual report.

### ***Liability to pay***

Auckland Council notes that the Bill limits the maximum rate of a regional fuel tax to 10 cents per litre, and notes that cl 65ZD allows the maximum rate of 10 cents per litre to be increased or reduced by way of Order in Council.

Auckland Council supports the collection of the tax at the distribution level, with NZTA having responsibility for the collection of the tax (and processing of refunds).

We also support a clearly defined exemption and rebate scheme. We consider this is critical to a robust and transparent RFT scheme. In that regard, we note that:

- the Bill provides that a person is not liable to pay the RFT in certain circumstances, including where there is an “exempt use” as defined in cl 65A (under cl 65O(2)). The defined categories of “exempt use” in the Bill are narrow

with some provision for further categories to be prescribed in regulations (other than use in a vehicle on a public road).

- cl 65W of the Bill also provides for a rebate scheme. Eligibility for rebates is currently limited to fuel that has been used for an exempt use (where an exemption is not claimed), or as otherwise prescribed in regulations.
- the explanatory note to the Bill makes clear that the intention is that there will be similar exemptions to those under the local authorities fuel tax provisions (part 11 of the Local Government Act 1974), and that the Bill will allow for rebates consistent with those available for fuel excise duty for off-road fuel use.
- Auckland Council understands that the Ministry of Transport will undertake consultation, in the near future, on the proposed eligibility for rebates and any further exemptions to be established by regulation. We welcome this and look forward to an opportunity to comment during the consultation period.

## **5. Suggested improvements**

We have also identified some improvements to the drafting of the Bill that we would like to see, as we consider these improvements would better ensure that the Bill achieves its intent. These improvements are outlined below.

### ***Interest repayment***

We are concerned that cl 65E(c)(vi) of the Bill will require a regional council to state the amount of operating expenditure expected to be required from the regional fuel tax for the delivery of the project. We would prefer that where this operating expenditure related to interest it is recognised at a programme rather than a project level.

This is because to specify interest costs by project would require a council to choose, at the outset of the RFT scheme, which projects are cash funded from the RFT and which use borrowing to spread the cost across the decade. Given an RFT scheme may be established for 10 years, we consider too many assumptions would need to be made and so would render that level of specificity unhelpful.

To that end, we consider that cash flow management would be best managed at a programme level and that any interest earned or incurred by the RFT account is accounted for at that level.

Our suggested amendments:

- After cl 65E(b)(iv), insert: “(v) state the net amount of interest expenditure expected to be required from the regional fuel tax for the delivery of the programme”

### ***Variation***

Clause 65G of the Bill provides that a council may "vary" an RFT scheme. We agree that an ability to vary an RFT scheme is necessary, but we consider that the Bill could be clearer as to when a variation is required under cl 65G(a), and particularly what constitutes a change to the programme of capital projects supported by the RFT scheme.

In that regard, we consider it would be impractical and unnecessary if a regional council was required to vary a scheme if the specific elements of a project change as it progresses, for example if a project’s proposed completion date or costs change, which is normal for infrastructure projects. In addition the long term nature of the programme means that the estimated costs and completion dates may change over the ten year period. That being said, we agree that it is appropriate to vary a proposal if there is a significant or material change to the programme of capital projects, such as a decision to remove one project from the programme altogether and replace it with a different project.

*Our suggested amendments:*

- In cl 65G(a) and before “the programme of capital projects supported by the RFT scheme” insert: “a significant or material aspect of”

### ***Termination***

Clause 65L(1)(b) and 65L(2) provides that the Minister of Finance and the responsible Minister may terminate an RFT scheme if:

- they have reasonable concerns that a regional council is not duly carrying out the proposal on which the RFT scheme for their region is based; and
- following a 3 month opportunity to respond to those concerns, the joint Ministers are satisfied, on reasonable grounds, that the regional council has not adequately responded to those concerns.

Auckland Council agrees that an express ability for Ministers to terminate an RFT scheme under regulations is appropriate, as an important aspect of accountability and transparency for regional councils when implementing an RFT scheme for their region. However, as with our understanding of the scope of cl 65G relating to variations, we understand that the intention in relation to the Ministers’ ability to terminate is that this discretion will be limited to instances where a regional council is not duly carrying out the proposal in a significant or material way. We consider this could be clearer in the legislation.

Our suggested amendments:

- In cl 65L(2) immediately after “that a regional council is not duly carrying out the proposal on which the RFT scheme for their region is based” insert: “in a significant or material way”.

### **Other technical improvements**

Other, minor technical improvements to the Bill are set out in the table below.

<b>Clause</b>	<b>Suggested improvement</b>	<b>Explanation</b>
65D	A regional council may prepare a proposal to establish or replace an RFT scheme if the council, having regard to the views of the regional <del>land</del> transport committee, considers that there are 1 or more capital projects that...	Section 5 of the Land Transport Management Act defines “regional transport committee” not regional land transport committee.
65E(b)(iii)	explain how it is expected to contribute to achieving the objective of any relevant <b>current or draft</b> regional land transport plan, ...	We consider that it needs to be clear that a proposal may align with a draft RLTP, or GPS. In some cases, an RFT proposal may be prepared concurrently with the preparation of those documents, and we would expect them to align as opposed to aligning with current (but shortly to be superseded) documents.
65E(b)(iii)	... and any other document that sets out transport priorities for the region and that the Minister of Finance and the responsible Minister specify <b>in writing</b>	We consider that it needs to be clear how the joint Ministers will specify which other documents are relevant for the purposes of explaining how a programme is expected to contribute to the objectives of it.
65I(1)	After a proposal to establish, replace, or vary an RFT scheme has been <b>prepared</b> <del>consulted on</del> , the regional council may submit it to the Minister of Finance and the responsible Minister	We consider that it needs to be clear in the Bill that a proposal may change following consultation, and before it is submitted to the Minister. Consistent with the approach in the Local Government Act 2002 ( <b>LGA</b> ) regarding consultation when adopting a plan or proposal, we suggest amending this section to provide that a proposal may be submitted once it has been prepared (noting that to prepare a proposal under cl 65G inherently requires consultation.)

65V	<p>(a) Operate a regional fuel tax <b>reserve fund account</b></p> <p>(b) Deposit into or credit to that <b>reserve fund account</b> all funds received by the council under section 65U;</p> <p>(c) Ensure that all payments from that <b>reserve fund account</b> are...</p>	<p>For the avoidance of doubt, we consider that cl 65V should be amended to make clear that a council should manage the scheme through a specific reserve fund (as opposed to requiring a separate bank account to be opened). We note that sch 10, cl 31 of the LGA requires a council to report on each reserve fund in its annual report (there is no such requirement in relation to separate bank accounts).</p>
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