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**Auckland Council Submission on the Land Transport (Rail) Legislation Bill**

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Submission to the Transport and Infrastructure Committee

**Overview**

1. This is Auckland Council's written submission in response to the Land Transport (Rail) Legislation Bill. This submission was endorsed by the Planning Committee. The Planning Committee is a committee of the Governing Body including members of the Independent Māori Statutory Board. Auckland Council does not wish to speak to its submission.

**About Auckland**

2. Auckland is New Zealand's most populous city. In 2019, Auckland's population was about 1.62 million and this is projected to grow to around 2.4 million by 2050. Auckland is an extremely diverse city featuring the highest Polynesian population in the world.
3. Auckland's regional economy is the largest in New Zealand and makes the greatest contribution to national Gross Domestic Product (GDP). In the year to March 2018, the Auckland region contributed just over 37 per cent of New Zealand's GDP.

**About Auckland Council**

4. Auckland Council is a unitary authority and the largest local government organisation in Australasia. It has a governing body consisting of the Mayor and 20 councillors, and 21 local boards. Several council-controlled organisations, including Auckland Transport, receive direction from Auckland Council via statements of intent. Auckland Transport is Auckland's road-controlling authority responsible for administering the operation of rail passenger services on the metropolitan network. Transdev is the operator contracted to Auckland Transport.
5. Prudent financial governance is required to deliver services effectively and efficiently and provide value-for-money for ratepayers. Auckland Council's

financial strategy is one of balance to achieve this: All operating costs are met out of revenue and borrowing is only used to fund long-term infrastructure. This helps to distribute asset costs between the generations of Aucklanders that will benefit from them.

6. Auckland Council monitors its borrowing levels relative to income and the value of its assets to make sure borrowing is conducted wisely. One of Auckland Council's current, significant financial commitments is a share of funding for City Rail Link (CRL), which is due to open in 2024.

### **About the Auckland Plan 2050**

7. The Auckland Plan 2050 is Auckland's long-term spatial plan. It looks ahead to 2050 and considers how we will address our key challenges of:
  - (i) High population growth
  - (ii) Shared prosperity
  - (iii) Environmental degradation.
8. The plan responds to section 79 of the Local Government (Auckland Council) Act 2009 requiring that a spatial plan for Auckland is prepared and adopted with the purpose to contribute to Auckland's social, economic, environmental, and cultural wellbeing. Additionally, the Auckland Plan fulfils Auckland's requirement to produce a spatial strategy in accordance with the National Policy Statement – Urban Development (as proposed).
9. Auckland's Development Strategy and Future Urban Land Supply Strategy (FULSS) give effect to the Auckland Plan. Significant investment in enabling infrastructure including transport and more specifically, rail infrastructure is required for regional growth to be facilitated.
10. It is important that the Transport and Infrastructure Select Committee (the Committee) has regard for the Auckland Plan 2050 and associated strategies in the context of the legislative change proposed. This submission was developed referring to the Auckland Plan 2050 and these strategies. The plan can be accessed [here](#), Development Strategy [here](#) and FULSS, [here](#).

## About the Auckland Transport Alignment Project (ATAP)

11. ATAP provides a non-statutory process through which the New Zealand Government and Auckland Council agree a shared approach to the development of Auckland's transport systems. Both parties have statutory responsibilities to plan and fund different aspects of the transport system and the absence previously of a process by which shared priorities could be agreed has inhibited or delayed investment in critical infrastructure and services. With regard for rail infrastructure, these historic shortcomings reflect a national approach to the managed decline of rail assets rather than enhancement of the network.
12. ATAP was developed first in 2016 and updated last in 2018 to reflect the shared priorities of the New Zealand Government and Auckland Council. The 2018 version of ATAP included a \$28 billion indicative package of investments over ten years including \$8.4 billion of rapid transit (including rail) projects.
13. ATAP provides an agreed context for development of Auckland's three-yearly Regional Land Transport Plan (RLTP) and an important part of the strategic case that results for project funding via the National Land Transport Fund (NLTF).
14. It is important that the Committee has regard for ATAP in the context of the legislative change proposed. Auckland Council notes that the draft National Rail Plan (the Plan), that was released publicly simultaneously with the Bill, articulates the importance of ATAP to Auckland.
15. The present submission was developed referring to ATAP. ATAP 2018 can be accessed [here](#).

### Introduction

16. Auckland Council welcomes the opportunity to submit on the Land Transport (Rail) Legislation Bill. The Council **supports** the intent of reform in the rail sector, which is the establishment of a longer-term planning and funding system for rail. This could address existing issues associated with short-term funding decisions that are inadequate for long-lived rail assets and investment decision-making for rail in isolation from the balance of the land transport system. Integrated planning and funding would facilitate network investments in keeping with the Government's mode-neutrality policy and a consistent set of transport objectives.

17. The Council **supports** the intent of some legislative changes included in the Bill.

These changes include:

- Clause 10 (new section 19C(ea)) pertaining to the inclusion of rail activities or combinations of rail activities in the National Land Transport Programme
- Clause 11 (new sections 22A(1) and 22A(2)) pertaining to development of a three-year national rail investment programme consistent with the ten-year vision for rail in New Zealand as per the draft National Rail Plan.

18. Auckland Council **opposes** specific aspects of the proposed legislative change.

Those aspects opposed by Auckland Council relate to the:

- Proposed separate planning, funding and approvals processes for rail activities compared to other land transport activities that would have significant implications for regional planning
- Provisions that could impact on the application and efficacy of the existing Auckland Network Access Agreement (ANAA).

19. Instead, Auckland Council **recommends** the full integration of rail into the land transport planning and funding system, and the preservation of the existing ANAA.

20. The legislative change reflects the 'partial integration' sector reform option (Option 3) defined in the *Impact Summary: New Planning and Framework for Rail in New Zealand*, produced by the Ministry of Transport. The full integration option (Option 4), whereby rail is treated the same as road, was considered but assessed as less preferable to partial integration. Full integration has not been ruled out in future.

21. Reform of the national rail sector is of critical importance to Auckland Council given the roles of passenger rail for public transport and urban growth, and freight rail for connecting our region with external markets. Auckland Council has and will continue to make significant investment in rail infrastructure, such as CRL and metropolitan passenger rail services via our funding of Auckland Transport.

22. In the 2019 financial year, Auckland Council invested \$69.5 million in rail operations, net of revenue. Total investment of \$2.2 billion in the CRL is forecast

by 2025, alongside \$0.52 billion over the next seven years in new rolling stock and stabling facilities.

23. These investments are essential for Auckland Council to achieve the outcomes identified in Auckland Plan 2050. Rail provides the backbone of Auckland's passenger network and is a key activity class included in ATAP.
24. Continued population growth in the Auckland Region exerts pressure on our transport infrastructure. Since the early 2010s, there has been strong growth in rail passenger numbers that has exceeded rates of population growth. Between 2010 and 2019, rolling annual ridership (July to June) grew from 9.9 million to 21.4 million, a compound growth rate of 10.1% *per annum*.
25. Ongoing growth in rail transport ridership will be a critical indicator of Auckland Council's response to a declaration in June 2019 of a climate emergency and political commitment to 1.5-degree Celsius-compliant emissions reduction pathway. Growth will be enabled by delivery of investments in accordance with ATAP, including (but not limited to) rail electrification between Papakura and Pukekohe, and construction of a third main line (and a fourth main, contingent on demands, which is noted in ATAP as a future priority), prioritising the section between Wiri and Quay Park.
26. Additionally, rail freight demands are anticipated to increase over time, and it is essential that these are accommodated on the metropolitan rail network without compromising passenger operations. The existing ANAA between Auckland Transport and KiwiRail is essential in this regard.
27. Auckland Council looks forward to its concerns being addressed by the Committee and continuing dialogue with the Ministry of Transport resolving challenges implementing rail sector reform in a manner that meets both national and our regional interests.

## Key issues

28. Part 1 of the Bill proposes amendments to the Land Transport Management Act (LTMA) 2003 and Part 2 of the Bill proposes amendments to both the Land Transport Act (LTA) 1998 and Legislation Act (LA) 2012. The subject of the Bill is New Zealand's heavy rail network.

29. Auckland Council is concerned that the legislative change as proposed currently is inadequate to lead reform in the manner intended and provide the requisite assurance that:

- Auckland's future critical infrastructure needs will be met; particularly, providing the operational capacity required to support growth of our city and avoiding timetabling conflicts between our critical metropolitan rail passenger services and freight operations
- Existing track access agreements are retained between Auckland Transport and KiwiRail in a manner that ensures the successful functioning of our metropolitan passenger operations, provides long-term cost certainty, and delivers an effective mechanism to hold KiwiRail to account for the state of the rail network in Auckland.

30. The following, specific aspects of the Bill are addressed in Council's submission (sections A to F):

- A. Potential for misalignments in planning and funding between the Regional Land Transport Plan and Rail Network Investment Programme
- B. The role of the Minister of Transport in approving the Rail Network Investment Programme and funding of any projects
- C. The role of KiwiRail in the planning and funding process
- D. Implications for the Auckland Network Access Agreement
- E. Relative merits of a full integration option
- F. Summary of critical issues for Auckland Council.

## A. Potential for misalignments in planning and funding between the Regional Land Transport Plan and Rail Network Investment Programme

**Recommendation: That legislation be revised to give effect to the full integration option (Option 4), ensuring that the RNIP is consistent with the RLTP.**

31. Clause 9 of the Bill addresses alignment of regional and national investment priorities. Proposed new sections of the LTMA include:
- New section 16(6)(ga) *“in the case of the plan for Auckland, a list of rail activities that have significance for Auckland and that are included in the current rail network investment programme or that KiwiRail intends to propose be included in the programme immediately after that...”*
  - New section 16(6A) *“The matters included in a regional land transport plan under subsection (6)(ga) or (gb) are for the purposes of co-ordinated planning and do not limit or affect the process by which any rail activities or combinations of rail activities may be included or excluded, as the case may be, from a rail network investment programme and its funding processes.”*
32. In accordance with these provisions, the RNIP should have due regard to negotiations informing and inclusions in the RLTP; however, the RNIP may feature projects not anticipated in the RLTP, omit projects or propose alternative scales or sequencing of investments. This introduces untenable risks to Auckland of investment programmes defined in the RLTP being compromised through inconsistencies with the RNIP. This would have knock-on effects for our region’s growth planning, rail operations and integration of road-based public transport services.
33. As per Clause 11 of the Bill, the New Zealand Transport Agency (NZTA) assumes responsibility for advising the Minister of Transport regarding the suitability of the RNIP (new section 22C of the LTMA), including its contribution to the purpose of the Act (as proposed) and consistency with the GPS on land transport.

34. New section 22C neither requires the Minister of Transport nor the NZTA to report on or have specific regard to consistency between the RNIP and the RLTP, unless this is considered as “*any other matter the Agency thinks relevant.*”
35. With respect for Ministerial approval of funding for activities specified in the RNIP, (new section 22F(b) of the LTMA), NZTA is required to advise “*whether the [rail] activity or combinations of activities take into account...any relevant regional land transport plan.*”
36. The draft legislation does not address how any inconsistencies arising will be resolved. For example, a situation could arise where the RLTP and the RNIP feature conflicting projects, meaning a revised RLTP, including new public consultation, may be required.
37. Risks of misalignment should be avoided or, as a minimum, a robust resolution pathway defined through relevant legislative provisions.
38. The addition of projects to the RNIP after the RLTP is finalised may lead to funding decisions by the Minister that diminish money available in the NLTF for other rail projects. This may be to the detriment of projects identified as priorities in the RLTP and requiring funding.
39. Auckland Council is also concerned that decisions made regarding inclusion of activities in the RNIP may occur without the full consideration necessary of urban growth and broader, integrated transport planning issues. This risk is apparent because of the partial integration option preferred.
40. Clause 5 of the Bill (new section 5A of the LTMA - Meaning of rail activity), defines “*railway infrastructure*” and “*railway premises*” in accordance with Part 1 Section 4 of the Railways Act 2005:
- “***railway infrastructure*** means-
    - *railway lines:*
    - *rail traffic control equipment:*
    - *communications equipment:*
    - *electrical traction equipment:*
    - *any other property specified as railway infrastructure in regulations*”
  - “***railway premises*** means the land, buildings, or structures that are-



- (a) located near a railway line; and  
(b) used for the purposes of, in connection with, or for obtaining access to, a railway.”

41. The definition of rail activity means there is potential for impacts on a broader range of rail-related assets, not just track assets, that are material to Auckland’s rail transport operations.

## **B. The role of the Minister of Transport in approving the Rail Network Investment Programme and funding of specific projects**

**Recommendation: That adoption and funding approval for rail activities becomes the responsibility of the NZTA Board as per the existing approval pathway applied to other forms of land transport. This can be achieved via legislative reform consistent with the full integration option.**

42. The Bill defines the approval pathway for the RNIP, with the Minister of Transport being the ultimate decision-maker in consultation with KiwiRail’s shareholding Ministers and following consideration of advice from NZTA. This differs to the approval pathway for RLTP activities, which is via the NZTA Board.

43. The division of decision-making power within the land transport system bypasses the independence of the NZTA Board for rail but not road activities and means:

- The Government’s policy position regarding mode-neutrality is not observed
- Added risk of inconsistency between the RLTP and the RNIP
- The overall process is unsatisfactory for addressing any disagreement between national government and the regions relating to the approval of rail plans and programmes, and their associated funding decisions.

### C. Role of KiwiRail in the planning and funding process

**Recommendation: That there is a requirement for the RNIP to be endorsed by Auckland Council and Auckland Transport before it is presented to the NZTA Board for approval. This could be incorporated into new legislation in accordance with a full integration option.**

44. Auckland Council is strongly supportive of a collaborative planning and programming process that produces the best outcomes for the region and rest of the rail network. Rail investment needs should be assessed within the context of the whole land transport system.
45. Under the partial integration option, KiwiRail collaborates with Auckland Council, Auckland Transport and Greater Wellington Regional Council in the development of RLTP.
46. KiwiRail is anticipated to engage with regional and national stakeholders (including Auckland Council, Auckland Transport and NZTA) during development of the RNIP and this would occur in accordance with planning, investment and monitoring guide prepared by NZTA. NZTA also has proposed legislated review and advisory roles as per the new sections 22C and 22F. Nonetheless, the draft legislation does not require KiwiRail to revise the RNIP on advice from NZTA (or another stakeholder), should any misalignments between regional and national planning and funding priorities be identified.
47. The Ministry of Transport continues to develop the guiding framework to give effect to the legislative change including lining key milestones/deadlines between the RLTP and the RNIP. In practice, if the RNIP is modified and finalised following decision-making pertaining to the RLTP, a revision of the RLTP may become necessary. This would have resource and financial implications for Auckland Council and Auckland Transport, as noted earlier.
48. KiwiRail has dual and corporately indistinct functions as a State-Owned Enterprise (SOE) and public agency. Conflicts-of-interest may arise during development of the RNIP, which Auckland Council, Auckland Transport and Greater Wellington Regional Council would not be involved in directly. Additionally, conflicts-of-interest may arise if the RNIP is varied during its period

of currency. Auckland Council is particularly concerned with this risk given proposed changes to the LTA (see point E, below).

49. The new section 22D permits KiwiRail to vary the RNIP during its period of currency without any legislated obligation to consult with Auckland Transport or Auckland Council, which introduces additional risks to the integrity of RLTP, the operation of metropolitan rail networks and growth planning for the Auckland region. In the case of variances, decision-making authority is vested with the Minister of Transport following consideration of advice from NZTA and consultation with KiwiRail's other shareholding Ministers.
50. New section 105A (Clause 4 of the Bill) prescribes that KiwiRail appoints a member to both Auckland's and Wellington's Regional Transport Committees (RTC); however, these members would lack voting rights and may not be either Committee Chairs or Deputy Chairs. The appointment may facilitate beneficial discussions by the RTC and help improve the robustness of the RLTP relative to the formative RNIP; however, the omission of KiwiRail voting rights is not ideal as it may reduce the ownership taken by KiwiRail for any inconsistencies that may arise subsequently between the RLTP and the RNIP.
51. If Auckland Council's preference of a full integration option is pursued rather than the partial integration option, the allocation of voting rights to KiwiRail may still be considered by the Select Committee, as this would support a collaborative approach to rail planning and investment.

#### **D. Implications for Auckland Network Access Agreement (ANAA)**

**Recommendation: That legislation is amended allowing for the existing Auckland Network Access Agreement to be preserved.**

52. Part 2 of the Bill proposes changes to the LTA 1998 enabling reform to track-user charges. Changes to these charges may impact on Auckland Transport's existing contractual arrangements with KiwiRail (the ANAA) and may create conflicts-of-interest relating to both KiwiRail's dual functions as an SOE and public agency, and track access for different sectors (passenger and freight).

53. The ANAA, signed in 2012, is an 85-year contract between Auckland Transport and KiwiRail that:

- Provides access to the Auckland rail network for Auckland Transport's contracted operator (currently Transdev)
- Establishes a rolling ten-year network management plan
- Provides the mechanism for rail operations timetabling and allocation of network capacity, which is essential for making sure that sufficient access is allowed for metropolitan passenger services alongside freight and other rail services
- Is the key means for Auckland Transport to participate in decision-making relating to Auckland's rail network.

54. The track-user charges paid by Auckland Transport to KiwiRail, funded by Auckland Council, occur via the ANAA and include a performance-based component. Consequently, the ANAA is used by Auckland Transport as a mechanism to hold KiwiRail to account for the state of the rail network and delivery of their broader contractual obligations in Auckland. This mechanism may be compromised by the new legislation.

55. The draft National Rail Plan (footnote to page 22), reiterates advice provided to Auckland Transport previously in 2019, specifying that “We [the New Zealand Government] recognise that there are existing track access arrangements in place in Auckland and Wellington. The intention is not to make changes to these arrangements in the near term.”

56. The proposed new legislation makes no references to the ANAA; accordingly, preservation of its provisions for any length of time is not assured. This is of acute concern to Auckland Transport and has the potential for knock-on implications for Auckland Council funding and planning, and urban growth in Auckland more broadly.

57. The new section 186(4)(h) (Clause 16) of the LTA specifies: “*identify those fees and charges that are to be treated as land transport revenue for the purposes of the Land Transport Management Act 2003.*”

58. The legislative changes will affect the nature and scale of payments of track-user charges, and create ambiguity whether charges paid by Auckland Transport to KiwiRail will in future, irrespective of preservation of other aspects of the ANAA, be paid into the NLTF instead. If track-user charges levied on Auckland Transport are no longer paid to KiwiRail in accordance with the provisions of the ANAA and are paid instead into the NLTF, the ANAA loses effectiveness as a tool to ensure KiwiRail accountability.
59. Auckland Council and Auckland Transport have been excluded from discussions regarding potential restructuring of KiwiRail to avoid or mitigate risks of conflicts-of-interest and the perverse outcomes that are articulated above. The Ministry of Transport's impact summary refers to consultation with Auckland Council and Auckland Transport during development of the reform proposals, but does not articulate these risks in the sections of the document "*What do stakeholders think about the problem and the proposed solution?*" or the section "*How will the new arrangements be given effect?*"
60. Instead, Table 3 (page 22), defines implications of change for Auckland Transport to be minimal and that "*current arrangements will be largely unchanged.*"

## **E. Relative merits of full integration option**

**Recommendation: That legislation is amended reflecting a full integration option, delivering on the intent of reform and allowing for the existing Auckland Network Access Agreement to be preserved.**

61. The Bill reflects the preferences of KiwiRail's shareholding Ministers and favourable multicriteria assessment of the Ministry of Transport for a partial integration of rail and road planning and funding processes. According to the impact summary document, full integration also has merit and is therefore not precluded in the future. The findings of the Ministry's assessment are based on assumed benefits of Ministers' decision-making powers and more opportunity for production of an integrated, nationally-focused RNIP.

62. Full integration would be simpler and mitigate a range of issues associated with partial integration: Particularly, the development of the RLTP and the RNIP would be synchronised, and the independent decision-making role of NZTA would apply to rail as it does road transport. All land transport projects could then be assessed on their relative merits. Demands on the national network are driven by the economic activity generated in New Zealand's biggest cities-Auckland and Wellington-meaning the national rail picture should reflect their investment requirements.
63. The Minister of Transport would still be able to apportion funding to the applicable activity class in the NLTF via provisions of the GPS. This would help to address issues with the current state of underinvestment in the national rail network.
64. Significantly, the full integration option should be developed to preserve the existing ANAA; particularly, the mechanisms it provides ensuring KiwiRail meets its obligations under the agreement.

#### **F. Summary of critical issues for Auckland Council**

**Recommendation: That the legislation is amended reflecting a full integration option; however, should the partial integration option be adopted, that the legislation is modified to address Auckland Council's concerns**

65. Auckland Council's recommendation is that legislation be drafted consistent with the full integration option. Alternatively, should the legislative changes included in the current Bill be broadly retained, Auckland Council requests that:
- The legislation defines the pathway for resolving any misalignments between the RLTP and the RNIP
  - The RNIP be subject to review and endorsement by Auckland Council, Auckland Transport and Greater Wellington Regional Council
  - KiwiRail be allocated voting rights on the RTC
  - KiwiRail be required to consult with Auckland Council, Auckland Transport and Greater Wellington Regional Council should changes be proposed to the RNIP during its period of currency and that stakeholders' advice be presented

to the Minister of Transport for consideration during decision-making prior to the finalisation of the RNIP

- The ANAA be preserved; particularly, the mechanisms it provides ensuring KiwiRail meets its obligations under the agreement.

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