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Committee Transport & Access Committee
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Overview of the Public Transport Management Act 2008

1. Purpose

To provide an overview of the Public Transport Management Act 2008 (the Act) and its implications for the provision of public transport services in the region.

2. Significance of the decision

The matters for decision in this report **do not** trigger the significance policy of the Council or otherwise trigger section 76(3)(b) of the Local Government Act 2002.

3. Background

The Act was introduced following the Public Transport Procurement Legislative Review in 2006. It is intended to help regional councils deliver better public transport services by giving them greater regulatory powers over public transport services in their region. It was passed into legislation on 25 September 2008 and replaces the Transport Services Licensing Act 1989.

The Act enables regional councils to use a combination of controls and contracting requirements to deliver public transport services in their regions.

4. Interpretation

The Act comes into force on 1 January 2009. The purpose of the Act is to contribute to “an affordable, integrated, safe, response, and sustainable land transport system” by:

1. allowing regional councils to set standards for commercial public transport services
2. conferring on regional councils powers to require all or any public transport services to be provided under contract

3. regulating the registration of public transport services

Under the Act regional councils are:

1. required to prepare regional public transport plans (within 3 years) to replace existing regional passenger transport plans
2. able to set controls or impose contracting requirements on commercial operators as part of regional public transport plans
3. able to require information from commercial operators to assist with public transport planning, contracting and monitoring
4. able to deregister commercial services that fail to comply with any control or fail to commence operation

These are explained below in further detail.

Regional councils are no longer required to register taxi companies or set their hours of operation as these tasks are now undertaken by the New Zealand Transport Agency.

4.1 Regional public transport plans

Regional public transport plans will replace regional passenger transport plans when adopted. They must be adopted within 3 years of the Act coming into force.

Regional public transport plans are equivalent to existing passenger transport plans but now also allow regional councils to set controls or contracting requirements on commercial services. The purpose of a regional public transport plan is to *give effect* to public transport service components of the regional land transport strategy.

Regional public transport plans must be prepared in accordance with the special consultative procedure under the Local Government Act 2002. Some of the things regional public transport plans must take into account are national and regional documents, the need to obtain best value for money, the views of public transport operators and the needs of persons who are transport disadvantaged.

There are certain elements that must be included in regional public transport plans. These include a description of the public transport services and any taxi services (for transport disadvantaged) to be provided¹, any policies that are to apply to public transport services and how these policies will be implemented. Regional public transport plans must include any controls or contracting requirements that are to apply to commercial services in the region (these are discussed in detail below).

¹ It is noted that all contracted services must be described in the plan.

Regional public transport plans must also include a significance policy for deciding whether changes to the plan are significant or not. This determines the level of consultation required i.e. significant changes require use of special consultative procedure while non-significant changes require consideration of consultation principles only (not the full procedure).

Regional public transport plans must be reviewed every three years and have a ten year timeframe. They must be reviewed at the same time as, or as soon as practicable after, the adoption of any relevant government policy statement, regional transport strategy, regional land transport programme, or long term council community plan.

4.1.1 Implications

The regional public transport plan provisions of the Act place no immediate requirements on Council other than the need to adopt a regional public transport plan within 3-years. The current passenger transport plan (prepared in 2007) will continue in effect until such time. However, the regional land transport strategy is required to be updated by July 2010 and will be reviewed during 2009/10.

It is appropriate that a review of the current passenger transport plan be coordinated with the strategy process. This would provide an opportunity for Council to:

1. review and update the existing passenger transport plan vision, objectives and policies
2. consider a range of methods for better implementing the plan's policies, including possible controls or contracting requirements on commercial services (refer below)
3. implement any necessary controls or contracting requirements to assist with existing projects such as real time information and integrated ticketing (noting that once adopted these control provisions have a lead-in time of twelve months, unless agreed otherwise by operators)
4. coordinate the strategy and plan processes including a combined consultation process which will aid communication and reduce cost

To this end officers will carry out preliminary planning and will report back with a proposed scope and process.

4.2 Use of controls in regional public transport plans

Controls allow regional councils to impose certain requirements in respect to commercial public transport services². Controls do not apply to contracted public transport services and can be no more onerous than the least onerous contract provision.

² Controls can only impose requirements in regard to a certain number of areas, mainly: grouping of commercial and contract services; frequencies, capacities and times; use of integrated products (e.g. real time information and integrated ticketing); quality and performance standards; vehicle emblems, signs and designs; minimum registration periods.

Any controls must be adopted by Council as part of a regional public transport plan and must contribute to the implementation of one or more policies in the plan. Controls must also be the most effective means of implementing the policies they relate to and cannot be adopted if there is a more effective alternative.

Before adopting a control the regional council is required to consider the likely impact of the control on existing operators and must use reasonable endeavours to determine whether the control is likely to have a material adverse effect on any existing commercial services. The regional council may then choose (but is not obliged) to adopt transitional arrangements to alleviate any material adverse effects³.

Also, if the regional council has reasonable grounds to believe a commercial service may be withdrawn as a result of any control and the service is described in the regional public transport plan then the regional council must ensure a “similar public transport service” is available (i.e. Council must be prepared to provide a contracted service as a replacement).

Any controls would come into effect twelve months after adopted as part of a regional public transport plan (unless an earlier date is agreed with operators) but the period could be longer if the control is appealed.

4.2.1 Implications

The Council is not required to implement any controls but may wish to consider the use of controls during development of the regional public transport plan (as discussed above).

An appropriate and well-considered use of controls would appear to have the potential to improve the quality of public transport services in the region (for example controls could require operators to adopt and implement real time information and integrated ticketing systems). But there are also a number of hurdles that must be passed. In particular, controls must implement specific policy, must be the best alternative, and impacts on operators must be considered. There are also relatively wide grounds for operators to appeal.

Controls cannot impose requirements that are more onerous than the least onerous contract requirement. Officers will work to ensure all public transport service contracts include appropriate provisions to implement regional passenger transport plan policies.

It is suggested above that officers carry out preliminary planning and report back with a proposed scope and process for developing a regional public transport plan. It is further suggested that officers also consider (at a high level only) the potential use of controls and other methods to implement the existing passenger transport plan policies.

³ Transitional arrangements may be any one or more of delaying the commencement date of the control, providing financial or other assistance to operators, or anything else that assists operators to comply with the control.

4.3 Use of a contracting requirement in regional public transport plans

A “contracting requirement” allows regional councils to require that all or any public transport services be operated as contracted services and not commercial services. The effect is that any existing commercial services operating in the area that the contracting requirement applies are discontinued.

Any contracting requirement must be adopted by Council as part of a regional public transport plan and must contribute to the implementation of one or more policies in the plan. Any contracting requirement must also be the most effective means of implementing the policies it relates to and cannot be adopted if there is a more effective alternative.

Before adopting a contracting requirement the regional council is required to implement appropriate transitional arrangements to alleviate as far practicable any material adverse effects on commercial operators.⁴ Unlike controls, regional councils are obliged to adopt transitional arrangements.

Any contracting requirement would come into effect twelve months after adopted as part of a regional public transport plan (unless an earlier date is agreed with operators) but the period could be longer if the contracting requirement is appealed.

4.3.1 Implications

The Council has been empowered to require that all services in the region be contracted services. This would have a significant impact on operators in the region and would require the Council to tender and contract (and thus pay for) services that are currently commercial services.

While the Council may wish to consider a contracting requirement as an option during development of the regional public transport plan, it is not recommended at this stage.

4.4 Power to require information from commercial operators

The Act gives the regional councils the power to require information from operators of commercial services to assist with public transport planning, contracting and monitoring.

The information that can be required is limited to: passenger numbers and ticket types, fare revenue, distance travelled, information on vehicles including condition, and service performance (e.g. reliability). The information has to be provided in a form specified by the regional council but having regard to the manner in which the information is kept by the operator.

Regional councils must keep confidential any information described as commercial sensitive by the operator but any information disclosed more than five years in the past may be released.

⁴ Transitional arrangements may be any one or more of delaying the commencement date of the control, providing financial or other assistance to operators, or anything else that assists operators to comply with the control.

4.4.1 Implications

The Council can from 1 January 2009 require certain information from operators of commercial services to assist it with planning. This information is already available for contracted services as per contract conditions and in most instances is also available for commercial services (particularly where routes are made up of a combination of commercial and contracted services).

This provision will have little immediate impact but should over time allow more comprehensive planning as information on purely commercial services such as the Airport Flyer can be considered when planning services.

4.5 Registration and deregistration of commercial services

The regional council is required to hold a current register of all commercial public transport services and all contracted public transport services. This register is similar to that under the Transport Services Licensing Act 1989 but now excludes taxi and shuttle services. All existing registered public transport services are automatically registered under the new Act.

Registration of services

The requirement for the registration of services is similar to present although some details such as the number of day notice have changed. Operators are now required to provide 35 working days notice to register or vary a commercial service⁵.

The grounds for regional councils to decline commercial registrations are similar to existing provisions⁶ except that commercial registrations can now also be declined if:

1. the regional council has already resolved to tender the service, or
2. the regional council does not believe the service will comply with any applicable controls
3. a contracting requirement applies to the service.

The regional council must notify the operator within 15 working days of any intention to decline and must make a final decision with 30 working days.

Deregistration of services

The ability for regional councils to monitor and deregister services is a new power under the Act. This power is only available where a service has persistently failed to perform or has failed to commence operating within 90 days of registration.

⁵ A regional public transport plan can increase this up to 65 working days.

⁶ Existing grounds for regional councils to decline to register a commercial service are – (a) that is likely to have a material adverse effect on the financial viability of any contracted public transport service; or (b) that is likely to increase the net cost to the regional council of any contracted public transport service; or (c) that is contrary to sound traffic management or any environmental factor identified by the regional council as important to its region.

4.5.1 Implications

The Council is required to manage registrations in accordance with the Act. This can continue to be done using existing processes and resources.

The Council may now also monitor existing commercial services and in cases of persistent failure deregister commercial services. At this stage officers do not believe this would happen very often as there are a number of offences under the Act that incur fines and which the Council would likely have recourse to first. In any case involvement of the courts would be required.

5. Communication

All existing operators and the local authorities will be sent a copy of this report for their information. No other communications are required.

6. Recommendations

That the Committee:

1. **Receives** the report.
2. **Notes** the content of the report.
3. **Agrees** that the current passenger transport plan be reviewed during 2009/10 as part of a coordinated review of the regional land transport strategy which is also planned for this period.

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