

22 November 2017

By email: m.willberg@transport.govt.nz

Ministry of Transport
PO Box 3175
Wellington 6140

Attention: Marian Willberg

Dear Marian

Regional Fuel Tax Legislation

1. We write further to our recent meeting concerning legislation which will enable an Auckland fuel tax. At that meeting we described the core features Auckland Council needs from the legislation. We also highlighted aspects of the preferred 2008 LTMA regime which we consider problematic and which will need to be changed in order to ensure the new regime is fit for purpose.
2. We take this opportunity to reiterate our thoughts and to confirm what is needed relatively urgently, if the tax is to be effective from 1 July 2018 as intended.
3. We consider the repealed 2008 legislation to be a good starting point, but in our view it is unnecessarily complex and prescriptive and not suited to the current local government context. We suggest that the proposed legislation be considerably simplified so that it recognises and does not duplicate existing local government processes which identify and budget for priority transport infrastructure and activities.
4. Every three years local authorities are required by legislation to prepare and adopt a Long Term Plan (ten year budget) and for the two years in-between, an Annual Plan. These budgets involve the comprehensive prioritisation and programming of transport capital and operational activities. Auckland Transport prepares Auckland's Regional Land Transport Plan (RLTP) under the Land Transport Management Act 2003, which aligns with Auckland's Long Term Plan (LTP). Instead of requiring an additional process, the fuel tax legislation should leverage off these existing plans and the associated statutory public consultation associated with them.
5. As to whether the legislation is Auckland specific or more general, Auckland Council does not have a firm view, so long as broadening the coverage does not delay the passage of the legislation or create a material delay between the enactment of the legislation and the implementation of a fuel tax in Auckland. It does seem to us that the legislation could be general, with the Government able to control new entrants through the Order in Council process.
6. In our view, the core features of the redesigned legislation should be:
 - a. The requirement for a specific "regional fuel tax scheme" which forms the basis for Ministerial approval and an Order in Council is eliminated. We see this as adding an unnecessary layer of complexity, bureaucracy and delay. The development of

Auckland's RLTP, coupled with Auckland Council's LTP or Annual Plan can fulfil the intended purpose of the previous regional fuel tax scheme.

- b. The trigger for a recommendation from the Minister(s) for the establishment of a regional fuel tax is a formal request from the local authority. We would recommend a formulation where the Minister(s) may recommend an Order in Council establishing a tax if satisfied that: **the transport activities for which the tax revenue may be used are specified in the RLTP, LTP or Annual Plan as transport activities which may be partially funded from the fuel tax;** have been consulted on as part of those budgeting processes; are a priority for the region (Auckland); and cannot otherwise be funded within the intended timeframe.

Creating an explicit link to the RLTP, LTP and Annual Plan fits well with legislative requirements for council to consider the appropriate funding mix of funding sources, given a range of equity based principles and a focus on financial prudence. It also supports a comprehensive approach to planning transport investment, with clear linkages to services levels, asset management plans and growth / land-use planning.

- c. For practical reasons, we are opposed to the level of particularisation the repealed 2008 legislation required of the former regional fuel tax scheme (which became part of the Order in Council) and to the hypothecation of funding to particular capital projects. Such a highly specific Order, describing specific projects, anticipated benefits, timing and costs, additional funding sources and precise percentage allocations between projects, is unnecessarily complex and inflexible. Projects inevitably change as they progress through the consenting process, or as community needs change during the operation of a project. If there is divergence from the highly prescriptive provisions in an Order in Council, there will be a risk of judicial review, unless the Order in Council is amended.

s 9(2)(g)(i) of the
OIA.



The use of the broader language of "transport activities" to hypothecate fuel tax revenues also allows us to avoid unbalanced investment in large infrastructure assets without providing for the maintenance of these assets, the services provided through them, or important smaller scale capital investments (e.g. network optimisation).

- d. The requirement for consultation is satisfied by the stakeholder and public consultation local authorities will have undertaken on the proposed tax and its utilisation for transport activities, as part of the RLTP, LTP or Annual Plan. The obligations on local authorities concerning consultation on these budgets are contained in Part 6 of the Local Government Act 2002. The Auditor-General audits local authorities' compliance with these obligations with respect to LTPs, which provides a further level of assurance to the Crown.
- e. We propose that the rate of fuel tax set for Auckland is 10 cents per litre of fuel. This is sufficient to allow Auckland residents and businesses to make a significant contribution towards the region's transport priorities over the next decade, without unduly impacting on demand for fuel. There would be benefit in the legislation including a provision to allow Ministers to approve a higher rate of fuel tax at some future date if Auckland Council made a reasoned case for doing so.

- f. We do not support a legislative requirement that the tax be phased-in, as required by section 65G(4) of the repealed 2008 legislation. Auckland Council does not believe the complications that a phased tax would entail are warranted

We note that the 2007 Bill as introduced did not require a phasing-in of the tax. It appears from Hansard that the eventual phasing-in was a political reaction to increasing fuel prices and perhaps the global financial crisis. It is also instructive that while the current regional fuel taxes under the Local Government Act 1974 allows the "scale of tax" to be varied by local authorities, in every case it has been set at the maximum.

Auckland Council will inevitably consider affordability impacts and transitioning options for any Auckland fuel tax when consulting and deciding on its LTP and Annual Plans. One flexibility mechanism that may need to be introduced into the legislation is a refund system for public transport operators to minimise the fare box impact of the tax on public transport passengers.

- g. With respect to the duration of the fuel tax, we can accept the current 30 year limit that is already embodied in the 2008 legislation, given that the development of new transport technologies is anticipated to significantly reduce the demand for fossil fuels over coming decades.

7. Other Important elements of the new legislation which we will need to work through with you include:

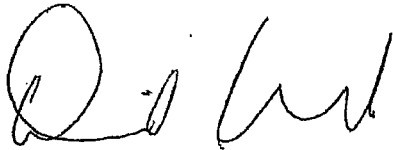
- a. The definitions of "petrol" and diesel" We note that there is some variation between definitions in the Customs and Excise Act 1966, the Local Government Act 1974 and the repealed LTMA regime and in the excise duty area a dispute went to the Supreme Court on the definition of "motor spirit" where butane was added. It will be important that taxable fuel is defined accurately from a technical/scientific perspective.
- b. An appropriate exemptions and refund system.
- c. Powers and processes to address avoidance and price spreading by fuel companies.
- d. NZTA's role as administrator of the regime.
- e. Transitional issues (fuel supplied before commencement date and sold afterwards).
- f. How to integrate the new tax with the current Local Government Act 1974 fuel tax of 0.66 cents/litre for petrol and 0.33 cents/litre for diesel.

8. If our proposed design for the legislation is acceptable, and on the basis of an Auckland fuel tax coming into effect from 1 July 2018, Auckland Council will need to consult on the proposed partial funding of transport activities from an Auckland fuel tax in its consultation on the LTP 2018-2028. As indicated at the meeting, the deadline for confirming the items for consultation and preparing the formal LTP Consultation Document is driven by the Local Government Act requirements. Our timeline is:

- a. 30 November 2017: Mayoral Proposal including proposed items for consultation.
- b. 11 December 2017: Governing Body agrees on items for consultation.
- c. 22 December 2017: Consultation Document and Supporting Information to Audit NZ.
- d. 7 February 2018: Consultation Document and Supporting Information formally adopted by Governing Body.
- e. 28 February to 28 March 2018: public consultation.

9. In order to satisfy the requirements of the prospective regional fuel tax legislation concerning consultation, Auckland Council will need to know within the next two to three weeks how broadly or narrowly transport activities will need to be defined, to satisfy the Minister(s) that appropriate consultation has taken place. We would therefore be grateful for your early indication on this point.
10. Finally, we appreciated the opportunity to meet with you and the Ministry team on 10 November and look forward to continuing to work with you on the design and implementation of the legislation. We would welcome an opportunity to meet with the Ministry at the earliest opportunity to progress our discussion on the points outlined in this letter.

Yours sincerely



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s9(2)(a) of the OIA.

c.c. Stephen Town, Chief Executive, Auckland Council
Peter Mersi, Secretary for Transport

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