

Ability of the Regional Transport Committee to vary a Regional Land Transport Plan

For decision:

For noting:

That the committee:

- a) Notes the advice on the ability of the Regional Transport Committee to vary a Regional Land Transport Plan.

Te whakarāpopototanga matua / Executive summary

1. This report responds to the Regional Transport Committee's (RTC) request for advice on its ability under the Land Transport Management Act 2003 ("the LTMA") to vary a Regional Land Transport Plan (RLTP). In summary:
 - a. The RTC may exclude an activity from the RLTP only if it falls under section 16(3)(b) of the LTMA. This means that the activity must have been proposed for inclusion in the RLTP by Auckland Transport (AT), Auckland Council or Waka Kotahi New Zealand Transport Agency (Waka Kotahi) and funding must be being sought from the National Land Transport Fund (NLTF).
 - b. The RTC cannot:
 - (i) remove or amend any 'regionally significant' expenditure on activities that are funded from sources other than the NLTF, under section 16(2)(c). An example of this is activities under the New Zealand Upgrade Programme (NZUP) as they are funded directly by central Government;
 - (ii) remove or amend a significant rail activity proposed by KiwiRail under section 16(6)(ga).
 - c. The RTC may amend the draft RLTP before it submits a final draft to the AT Board for approval. If the changes to the draft RLTP were material, the draft RLTP may need to be consulted on afresh. If so, it is very unlikely that the RLTP would be able to be submitted to Waka Kotahi before the appointed date of 30 June 2021.
 - d. The RTC may undertake a review an RLTP at any time, and may decide to vary an RLTP based on that review.
2. Based on this advice, the RTC would be unable to exclude a Crown-funded activity from NZUP, such as Mill Road, from the draft RLTP. Further, it is unlikely it would be able to make material changes to the draft 2021 RLTP that require new consultation and still meet the deadline for

submission to Waka Kotahi of 30 June 2021. However, it could finalise this RLTP by 30 June 2021, and at a later stage undertake a review and vary it in accordance with the variation provisions of the LTMA, if it considers there is good reason to make such a variation at that time.

3. Legal advice has been obtained on the issues raised by the RTC's request and has been provided separately to RTC members. That advice is subject to legal privilege and should not be disclosed to any external party without further advice from Legal Services.

Ngā tuhinga ō mua / Previous deliberations

4. The draft 2021-31 RLTP was approved by the RTC for public consultation on 23 March 2021. The Chair and Deputy Chair of Auckland Council's Planning Committee addressed the meeting.
5. In response to a query from the RTC Chair, the EGM Planning and Investment advised that legal advice would be sought on:
 - a. the ability of the RTC to delete, amend, increase or reduce anything in the draft RLTP (particularly anything that will follow through to the NLTF); and
 - b. whether the RLTP could be reviewed by the RTC in a period shorter than the standard three-year horizon.
6. This advice would be provided in a public forum.

Te horopaki me te tīaroaro rautaki / Context and strategic alignment

7. The RLTP is Auckland's 10-year transport plan that details the programmes which will be progressed over the coming decade. The draft 2021-31 RLTP outlines the investment programme and the outcomes expected to be delivered from this programme. It has been prepared over an 18 month period, working collaboratively with Auckland Council, Waka Kotahi and KiwiRail through the ATAP process. The ATAP 2021-31 has been endorsed by Cabinet and Auckland Council, and the Planning Committee has endorsed the general direction of the draft 2021-31 RLTP in advancing agreed Auckland Council and ATAP objectives within the funding envelope available.
8. The draft RLTP sets out the outcomes expected to be achieved by the RLTP programme, including the impact on climate change and the environment. It recognises that the programme, along with the Government's initiatives around Clean Car Standards and Biofuels Mandate, as well as the Climate Change Commission's assumptions around Electric Vehicle uptake, would not achieve the targets in Te Tāruke-ā-Tāwhiri Auckland's Climate Plan target of a 50% overall reduction in GHG emissions. The draft RLTP outlines a number of policy responses that could run alongside of the investment programme to achieve the region's objectives.

Ngā matapakinga me ngā tātaritanga / Discussion and analysis

Adding, amending or deleting (i.e. not including) an activity in the RLTP

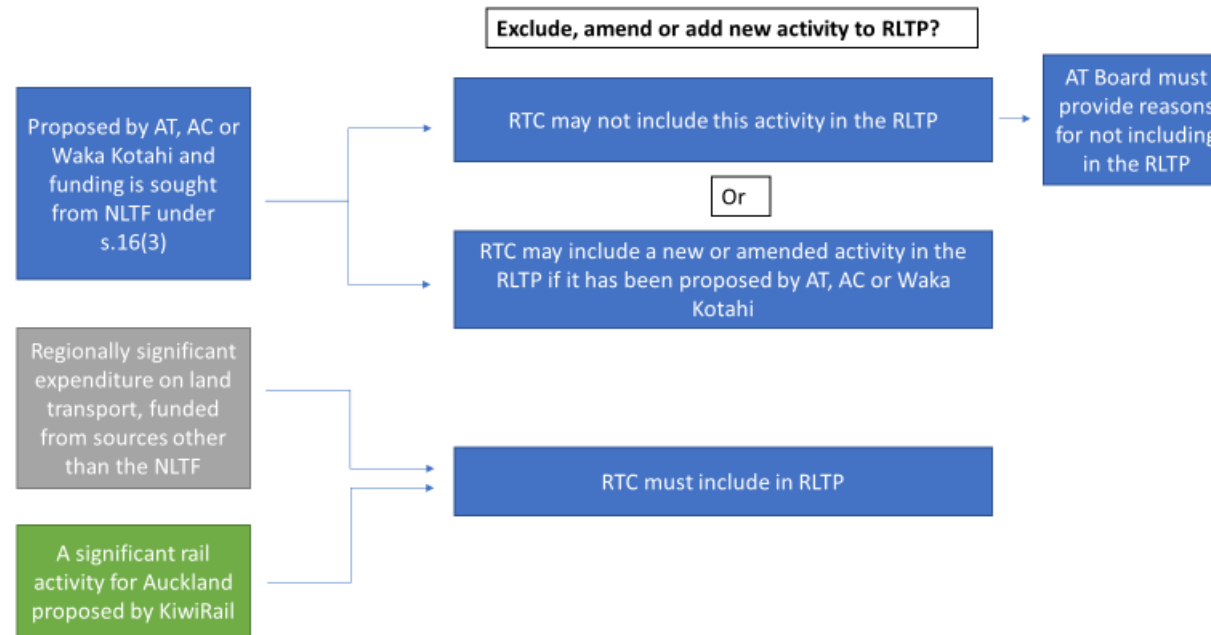
9. We have sought legal advice on the ability of the RTC to change the RLTP's investment programme by adding, amending, or deleting (or not including) an activity from the draft RLTP.
10. The RTC's discretion as to whether or not to include an activity in the RLTP applies only to those activities falling within section 16(3)(b) and (c) of the LTMA. These are activities where (i) funding is sought from the NLTF, and (ii) the activities have been proposed by either AT, Auckland Council or Waka Kotahi¹.
11. If the AT Board decides not to include an activity in the RLTP, it must give the proposer (Auckland Council or Waka Kotahi as the case may be) written advice of the decision and the reasons for the decision.
12. The RTC's ability to add a new or amended activity to the RLTP also falls within the parameters of section 16(3)(b) and (c) of the LTMA i.e., only if the new or amended activity has been proposed by AT, Auckland Council, or Waka Kotahi and funding is being sought from the NLTF. This reflects the RTC's role at the regional planning level in deciding which activities should be put forward for investment through the NLTF, rather than involvement in the details of the activities themselves. Of course, the RTC can make recommendations to the organisation responsible for the activity about how an activity could/should be changed in a way that the RTC would be prepared to include it in the RLTP.
13. There are two types of activities that the RTC is not able to exclude from the RLTP:
 - a. The RLTP is required to include all regionally significant expenditure on activities that are funded from sources other than the NLTF². Examples are expenditure on the NZ Upgrade Programme (such as Mill Road, Penlink) and the City Rail Link. The RTC does not have discretion to exclude those activities as the decision to invest in these areas does not rest with AT or Waka Kotahi and no NLTF funding is being sought.
 - b. The RLTP must list any significant rail activities proposed by KiwiRail for Auckland³. The RTC does not have discretion to exclude those activities as they are listed for the purposes of co-ordinated planning rather than to determine their eligibility for funding.

¹ Section 16(3) (b) and (c) LTMA.

² Section 16(2)(c) LTMA.

³ Section 16(6)(ga) LTMA.

14. The following flow chart summarises these decision points:



Ability of the RTC to vary the draft RLTP after consultation but before submitting it to the AT Board

15. The RTC is able to amend the draft RLTP after public consultation but before it submits a final draft to the AT Board for approval. This could include adding in or removing activities, as outlined above. This is consistent with the consultation principle in section 82(1)(e) of the Local Government Act 2002 that the RTC must receive all submissions with an open mind and give them due consideration. It can be expected that feedback received through the consultation process may lead to some changes to a draft RLTP. Any changes to the draft RLTP post-consultation would need to reflect feedback received through the consultation process. Other than minor or technical changes considered necessary, the RTC should not make changes to the draft post-consultation that are not supported by or respond to feedback received through the consultation.
16. If the RTC decides to amend a draft RLTP it would need to assess whether it needs to consult on the amended draft. That would involve an assessment of whether the amendment(s) constituted such a “material change” from the previous draft RLTP that people should be given an

opportunity to provide feedback on the updated version. It is suggested that the most appropriate test would be the significance test that must be applied in the case of variations to adopted plans to any proposed amendments to a draft RLTP. The Significance Policy in the draft RLTP includes tests relating to (paraphrased):

- a. strategic importance – the addition or removal of an activity that the RTC considers to be of strategic importance, namely a significant effect on the objectives of the RLTP or significant network, economic or land use implications or impact on other regions
- b. financial impact – a new activity or change in scope to an existing activity which impacts expenditure by 30 percent in any year.

17. If deciding to amend and re-consult on a draft RLTP, the RTC will need to consider the statutory timeframes it must meet. The RTC needs to have the draft RLTP ready for approval by the AT Board by the date appointed by Waka Kotahi – in this case, 30 June 2021. This timeline is very unlikely to be met if re-consultation were required on this draft RLTP.

Ability of the RTC to vary the RLTP once it has been adopted by the AT Board

18. The RTC is able to review an adopted RLTP at any time. It may prepare a variation to the RLTP as a result of its review under section 18CA of the LTMA or if it considers that good reason exists for making the variation. The RTC may also prepare a variation at the request of Auckland Council or Waka Kotahi.

19. The same statutory requirements that apply to the preparation of a new RLTP (such as those regarding form and content of the RLTP and the process for approval) apply to a variation of an RLTP (with any necessary modification). However, consultation is not required for any variation that is not significant or arises from the declaration or revocation of a State highway.

Ngā tūraru matua / Key risks and mitigations

20. No material risks have been identified.

Ngā ritenga-ā-pūtea me ngā rauemi / Financial and resource impacts

21. This report has no financial implications.

Ngā whaiwhakaaro o te taiao me te panonitanga o te āhuarangi / Environment and climate change considerations

22. The implications of the investment programme for GHG emissions and climate change are set out in the draft RLTP.

Ngā reo o mana whenua rātou ko ngā mema pooti, ko ngā roopu kei raro i te maru o te Kaunihera, ko ngā hāpori katoa / Voice of mana whenua, elected members, Council Controlled Organisations, customer and community

23. The advice does not require consultation.



Ngā whaiwhakaaro haumaruru me ngā whaiwhakaaro hauora / Health, safety and wellbeing considerations

24. This report has no health, safety and well-being implications.

Ā muri ake nei / Next steps

25. The results of the consultation on the draft RLTP will be reported to the RTC in May 2021. The RTC can then make decisions as part of finalising the RLTP.

Te pou whenua tuhinga / Document ownership

Submitted by	Mark Fleming Principal Policy Adviser	
Recommended by	Jenny Chetwynd Exec GM Planning & Investment	
Approved for submission	Shane Ellison Chief Executive	