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Developing a Regional Land Transport Plan – Background Information

Aronga / Purpose

1. To provide background information relating to the context in which the Regional Transport Committee (RTC) develops a Regional Land Transport Plan (RLTP). It is intended to support the workshop on design principles for the development of the RLTP process, in the context of the Transport and Infrastructure Committee (TIC) of Auckland Council's (AC's) request to jointly develop the RLTP with the RTC.

Te tūtohunga / Recommendation

That the RTC:

- a) Notes the context in which the RLTP is developed.

Te horopaki / Background

2. National land transport planning and investment prioritisation in New Zealand is a cyclical process, a key component of which is the RLTP. For every region across the country, an RLTP is prepared by the RTC for that region. The statutory basis for this process *for Auckland* is the Local Government (Auckland Council) Act 2009 (LGACA), and the Land Transport Management Act 2003 (LTMA). The current RLTP is for the period 2021/31. RLTP's are reviewed every three years. That review process is commencing now, and our next RLTP will be for the period 2024/34.
3. At its meeting of 17 August 2023, the TIC resolved to request that:
 - *Auckland Transport (AT) and AC staff jointly develop the 2024 RLTP, and regularly engage with the TIC, including submitting the plan for its endorsement prior to approval by the RTC; and*
 - *AC and AT staff report to the September 2023 TIC on the options for AC and AT to jointly develop the RLTP; and*
 - *The Mayor, Chair and Deputy Chair of the TIC and staff work collaboratively with the AT Board (board) and Chief Executive on further development of these proposals.*
4. Legislation does not currently provide for Council or its committees to play a direct role in the development of the RLTP. A process needs to be designed and agreed between the RTC and TIC to give effect to this request that respects the desire for collaboration, reflects the lenses and interest of each entity, but also protects the statutory accountabilities of the RTC and the process, to minimise any risks of judicial review. Central to this will be understanding and protecting the decision-making rights of the RTC and clarifying the decision-making expectations and a role for the TIC.

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5. Critical to designing the process is a clear understanding of the context in which the RLTP is developed in Auckland, the relevant accountabilities and the history of other processes and documents that influence its preparation. The information provided below has been, in part, summarised from the affidavit prepared by Jenny Chetwynd for AT, as part of the successful defence relating to the judicial review of Auckland's 2021-31 RLTP in February 2022 (*All Aboard Aotearoa Inc (AAA) v AT (2022) NZHC 162*). That affidavit is attached in full in Attachment 1.
6. Recognising that legislation does not currently provide TIC or Council to play a direct role in the development of the RLTP, on 17 August 2023, the TIC also resolved to support legislative change that, at a high level provides for:
 - *Joint decision making between AC and the Crown on a long-term integrated transport plan for Auckland, and on the funding and implementation of that plan.*
 - *AC to have the lead role in preparing and approving the RLTP, which sets the strategic direction for transport and the allocation of funding in support of that direction.*
 - *AC to make other key regulatory decisions about the Auckland transport system, including setting parking fines.*

Me mōhio koe / What you need to know

Role of AT

7. AT is a statutory body established in 2010, with responsibility for the "Auckland transport system", defined as the roads in Auckland (excluding State highways), Auckland public transport services, and certain public transport infrastructure. AT also has a transport planning role. Its statutory functions include managing and controlling the Auckland transport system and preparing the RLTP for Auckland in accordance with the LTM.
8. AT is the only Council Controlled Organisation (CCO) to be established by legislation, and as such it has exclusive authority to carry out the statutory functions and powers conferred to it under section 46 of LGACA, and AC is expressly prohibited by law from performing these functions. However, these functions must be carried out within the context of various AC guidance, policy levers and accountability obligations, such as the Statement of Intent, the Auckland Plan, Council's Long-Term Plan (LTP), CCO accountability policy and the Letter of Expectation. This reflects the intent of the LGACA to give AT sufficient independence and authority to be able to fulfil its role, while still providing opportunities for Council guidance through policy levers and accountability mechanisms.

Policy Guidance from Funders

9. Auckland's LTP process is particularly relevant to the development of the RLTP. As a substantive CCO, AT must give effect to any relevant aspects of the Council's Long-Term Plan. The LTP sets out the 10-year budget for the Auckland region and includes key policy guidance relating to the Council's objectives and priorities for its investment in its transport system, decisions relating to the level of investment in transport infrastructure that it is prepared to make, and the funding mechanisms to be engaged. Funding allocated through the LTP is directly relevant to the RLTP as it provides the basis for AT's "bid" into the RLTP.

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10. From the Government's perspective, that guidance for transport investment is provided by the Government Policy Statement on Land Transport (GPS) which sets out the Government's strategic direction for the land transport system over a 10-year period, providing guidance to decision makers about where and under what conditions the Government will focus its resources. It influences decision on how money from the National Land Transport Fund (a substantial source of government co-funding for transport activities in Auckland) will be allocated by Waka Kotahi New Zealand Transport Agency (Waka Kotahi).

The RTC and the RLTP

11. In 2013, government reformed the LTMA, across the country combining the Regional Land Transport Strategy (which was AC's responsibility) with the Regional Land Transport Programme (which was AT's responsibility) into one RLTP. In Auckland, developing and approving this new RLTP became the sole responsibility of AT.
12. For every region across the country, an RLTP is prepared by the RTC for the region. Outside of Auckland, each regional council is responsible for establishing an RTC, which is comprised of representatives of the regional council and the constituent district/city councils. Together with a representative from Waka Kotahi. Reflecting Auckland's unique position, the LTMA provides for the board to perform both the RTC role and the regional council role with respect to the preparation and approval of the RLTP for Auckland. The Auckland RTC comprises the board (which includes a non-voting member Waka Kotahi representative), and a non-voting KiwiRail member.
13. The primary function of the RTC is to prepare the RLTP for submission to the board for approval. The RTC's role is confined to the assessment and prioritisation of those activities that will be funded by the National Land Transport Fund (NLTF), AC rates, and the Regional Fuel Tax. The RTC has the power of prioritisation and implicit veto through a decision not to include a project in the RLTP. The RTC does not have any operational or delivery role.
14. The RLTP includes the land transport activities of AT, Waka Kotahi, Kiwi Rail, City Rail Link and other approved public organisations. It sets out the region's transport objectives, policies and priorities, and list the activities and projects that are to be submitted as bids for funding from the National Land Transport Fund. State highway projects and nationally delivered programmes carried out by Waka Kotahi that are to receive funding from the NLTF must first be included in the RLTP. This inclusion is not automatic, and only where the RTC decides to include them. The also RLTP incorporates, but does not prioritise, activities in the Rail Network Investment Programme which is approved by the Minister of Transport and funded from the NLTF.
15. In statute, the RLTP does not "do" anything on the ground and nor is it a decision to do anything. It cannot direct or require behaviour from individual or organisations. It is simply a plan, for the purposes of applying for funding from the NLTF. In practice however, due in part to the complexity and lack of transparency in the transport planning and investment systems, the RLTP has begun to take on a bigger role than perhaps intended, primarily as it is required to go through public consultation. To some, it is the only visible forward detailed 10-year investment programme, providing a basis for communication and planning, and pathway of sorts to the outcomes expected. Recently however, with significant and frequent changes in our political and financial operating context, the value of this forward plan erodes quickly. Defining the scope of the next RLTP will be important.

Auckland Transport Alignment Project (ATAP)

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16. In 2015, AC and central government developed a strategic partnership approach to address Auckland's transport challenges with a view to ensuring the opportunities of a growing Auckland were maximised – the ATAP. ATAP is a non-statutory agreement between the Government (Minister of Transport) and the AC on transport priorities over a 10-year period. It is intended to align the transport priorities of AC and central government, to provide certainty for both parties in what each is willing to invest in (determined for government against an agreed set of objectives in the GPS) and to provide momentum for delivery.
17. This agreement, while having no statutory basis, has a range of advantages as it enables all the main agencies to participate in a joint process for identifying policy objectives and a respective capital programme that aligns, in theory, to available funding. This provides a higher level of confidence that the activities agreed in it, and therefore put forward in the RLTP will be included in the National Land Transport Plan. It is also beneficial for AC as it provides it with an important opportunity to influence the content of the RLTP.
18. Since 2015, ATAP has delivered a series of indicative 10-year packages of transport investments for Auckland on a regular basis. The current version is ATAP 2021, which updated the 2018 package to reflect the impacts of the COVID-19 pandemic; the New Zealand Upgrade Programme; and emerging priorities for urban development in Auckland. However, ATAP has not yet been updated since 2021, and is therefore not reflective of the current AC's position. Ideally, the work undertaken on the Joint Tamaki Makaurau Integrated Transport Plan would have informed a 2023 revision of ATAP, which would have in turn informed the development of the 2024/34 RLTP.

Review of AC's CCOs – Report of Independent Panel (July 2020) -- Consideration of Accountabilities for Transport Planning

19. In July 2020, a review of AC's Controlled Organisations, undertaken by an independent panel, expressed criticism of the amendments made to the LTMA in 2013 that effectively gave the role of preparing and approving the RLTP to AT the RTC. It recommended that AT and the Council jointly prepare the RLTP, the draft of which council endorses before going to the CCO's Board for approval. AT's response at that time was, given it was already well into the processes for developing the RLTP, to provide Council with an ability to endorse the draft RLTP before it went to the board for approval, and the principal purpose of that endorsement was to ensure alignment between the RLTP and Council's relevant policy guidance documents.

2021 Judicial Review of the RLTP 2021/31 and the Role of Council

20. In 2021, AAA applied to judicially review the decisions of the Auckland RTC, and the board to approve the RLTP 2021/31. AC was also named as a respondent in those proceedings in relation to the decision by its Planning Committee to endorse the RLTP before it was approved by the Board. The application was heard in April 2022, and judgement was delivered in July 2022 finding all of AAA's challenges to the respondents' decisions and actions failed, awarding costs to the respondents (AAA v AT (2022) NZHC 162). AAA appealed this decision, however in July 2023, the matters were settled on the basis that: the RLTP is largely spent; AAA abandoned its appeal and costs fall where they lie.
21. A key issue in these proceedings was the role of the Council in preparing the RLTP, with AAA suggesting that the Council should have required AT to make changes. In his decision, Justice Venning summarised the Council's role (in the guise of the Planning Committee) with respect to the development of the RLTP. He considered that the Planning Committee has no power, either under the LTMA in relation to the preparation of the RLTP, nor under its oversight role in respect of AT, to require changes to the RLTP. The suggestion that the Planning Committee should

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have required AT to make changes was misplaced, as there was no practical or legal ability for the Planning Committee to amend the RLTP or refer the RLTP back to the RTC to request reconsideration of one or more aspects.

Possible Roles for Council in Jointly Developing the RLTP

22. While Council cannot under the statute play a role in prioritising the RLTP, its influence over the content of the RLTP can be achieved more effectively through the higher order processes. There are several opportunities for Council and Council staff to play a deeper role and to improve improving our approach to involving Council from the last RLTP. These are: through the development of Council's LTP – where Council considered and decides its 10-year budget for Auckland, in effect providing a funding envelope for Auckland transport's activities; and the development of AT's "bid" into the RLTP; and the endorsement of the draft RLTP before it goes to the board for approval - the principal purpose of that endorsement being to ensure alignment between the RLTP and Council's relevant policy guidance documents. There is also a significant opportunity for Council to influence the RLTP through the Joint Tamaki Makaurau Integrated Transport Plan, especially if this translates into an updated ATAP agreement. This will also necessitate a commitment to involve council staff in the working group that supports the RLTP development process.
23. In considering the design of the RLTP development process, the RTC must also consider other aspects including how it engages with the public on the content of the plan, its relationship with manawhenua and how it incorporates a Te Ao Māori perspective, how RTC members are informed of the relevant expectations and policy guidance of the funders (particularly as they may change with an upcoming election) its approach to prioritisation; and how the RTC can receive audit and assurance across the process to ensure probity.

Ā muri ake nei / Next steps

24. A workshop will be held to work through the principles that will guide the RLTP process definition. It's proposed that these will be agreed with the TIC and form the basis for confirmation of the process to be followed in developing the 2024/34 RLTP.

Te whakapiringa / Attachment

Attachment number	Description
1	Affidavit of Jenny Chetwynd in the matter of an application for judicial review between All Aboard Aotearoa Incorporated and Auckland Transport, and the Regional Transport Committee for Auckland and Auckland Council.

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Te pou whenua tuhinga / Document ownership

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