**NEW ZEALAND BUSINESS ROUNDTABLE**

# SUBMISSION ON THE LAND TRANSPORT MANAGEMENT BILL

**FEBRUARY 2003**

# LAND TRANSPORT MANAGEMENT BILL

## 1 Introduction

1.1 This submission on the Land Transport Management Bill (the Bill) is made by the New Zealand Business Roundtable (NZBR), an organisation comprising primarily chief executives of major New Zealand business firms. The purpose of the NZBR is to contribute to the development of sound public policies that reflect overall New Zealand interests.

1.2 The transport system is a core part of New Zealand's infrastructure. An important role for the government in promoting economic growth is to ensure the transport system is efficient and responsive to users' needs. Major improvements in transport resulted from reforms beginning in the 1970s. The main outstanding problem area has been roading infrastructure. Traffic congestion in Auckland and inadequate infrastructure in some regions are imposing large economic costs.

1.3 We are pleased that the government acknowledges the need to deal with this problem. We are also pleased that it plans to facilitate the development of toll roads and to allow the private sector to play a greater role. However, the government's downgrading of the goal of efficiency in the transport sector is inconsistent with its commitment to economic growth as its number one priority. We also think that a return to more centralised decision making will lead to greater inefficiencies in the sector. The limited moves on tolling and public private partnerships are unlikely, in our view, to go far towards solving current problems.

1.4 Section 2 of this submission discusses transport policy changes since the 1970s. Section 3 identifies the key proposals in the Bill. Section 4 discusses what appear to be their underlying motivations. Section 5 focuses on more specific problems in the Bill. Section 6 presents our conclusions and recommendations.

## 2 Background

2.1 In putting forward the Bill the government has claimed that transport decision making has not been coordinated. The implied belief is that only a centrally planned system is coordinated. This is incorrect. The alternative to central planning is coordination through markets. This is the approach that has been pursued in New Zealand after it became clear that central control and regulation of transport had failed.

2.2 Up to the 1970s national planning was in vogue in New Zealand. Governments regularly produced 'plans' and 'strategies' for transport, energy and other industries. The idea behind transport strategies was to direct freight and passenger services in particular ways through regulation. Thus freight was forced on to railways through the 40 mile and 150 kilometre limits on road haulage and road transport was restricted by licensing. The National Roads Board under the control of the minister of works funded roading projects and was often subject to political influence. An Urban Transport Council dispensed subsidies to passenger transport. Similar arrangements applied to other modes. In addition, the government owned many transport enterprises.

2.3 The waste, inefficiency and pork barrelling associated with this command and control approach to transport was legendary. Given the size of the transport sector it was a material factor in New Zealand's poor rates of productivity and economic growth. From the 1970s on, successive governments of all political persuasions moved to deregulate railways, trucking, buses, taxis and other services, and corporatised and privatised businesses such as rail. More economic pricing such as the road user charges system for heavy vehicles was introduced. The large efficiency gains from these moves have been well documented.

2.4 Contrary to some public comment, the commercialisation and privatisation of New Zealand Rail greatly reduced central government's conflicts of interest, put taxpayers less at risk, facilitated competition and brought a much greater cost and consumer service focus to the company. Taxpayers have been spared regular bail-outs costing hundreds of millions of dollars. The test of the gains from privatisation is the net benefit to the community, not the ongoing viability of the privatised company. An analysis by the New Zealand Institute for the Study of Competition and Regulation found major net public benefits from the sale of New Zealand Rail.[1]

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1 New Zealand Institute for the Study of Competition and Regulation, *Privatisation of New Zealand Rail: Part 1: Assessment of History, Markets and Data,* 22 July 1998, revised 10 July 1999. *(http://www.iscr.co.nz/navigation/research.html)*

2.5 Although some improvements were made to roading management and administration, such as the establishment of Transit New Zealand (Transit) at arm's length from the funding body Transfund New Zealand (Transfund), roading has continued to operate more on command-and-control rather than commercial lines. Not surprisingly, the problems of the transport sector are concentrated in roading. They take the form of under-investment, inadequate capacity in some parts of the network and underutilised capacity in others, inefficient pricing, queues (congestion) and a lack of responsiveness to user needs. In recent decades, governments have failed to build roads where increases in capacity were justified by demand – as with the Auckland motorway network. There is no good reason why a city of only just over a million people should seize up the way Auckland does. This is a drag on the whole economy. Roading projects should be funded when and where benefit: cost ratios are equal to or greater than one, provided that benefits and costs are properly assessed, but cut-off ratios have been pushed up to 3:1 or 4:1. Governments have failed to use the price system to manage peak traffic. In addition, there have been interminable planning delays. The 1999-2000 annual report of Transit commented that:

> … it is frustrating to watch projects, often those which have strong local community support, become bogged down in prolonged consultation, and numerous hearings and appeals. Without such delays, the planning and building of roading projects still takes years to achieve. With them the benefits to road users can be substantially deferred. As well, the associated expense in participating in those processes chews through the money that would be better invested in the roading network and safety initiatives.[2]

2.6 The solutions to these problems basically call for a move away from political and bureaucratic control towards greater private sector involvement, more efficient pricing, and commercial decision making structures similar to other utilities such as electricity, gas and water. An approach along these lines was recommended in a 1993 report for the Business Roundtable and was taken up but not implemented by incumbent governments in the 1990s.[3] The proposals

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2 'Chairman's Report', *Transit New Zealand Annual Report*, Wellington, 1999–2000, p 5.

3 CS First Boston New Zealand Limited, *Options for the Reform of Roading in New Zealand*, New Zealand Business Roundtable, June 1993.

in the Bill contain only weak features of this approach and these are outweighed by moves back towards centralised control. In addition, the Resource Management Act 1991 continues to place obstacles in the way of badly needed roading developments.

## 3 Key proposals in the Bill

3.1 The minister of transport has summarised the key changes being introduced by the Bill as follows:

- (government) long-term planning for land transport as a whole involving 10-year financial forecasts;
- flexible funding to be "in line" with regional priorities;
- Transit and Transfund to focus on land transport as a whole, not just roads;
- Public private partnerships (PPPs) to "secure funding for projects that might otherwise not get off the ground" and to spread costs "when a number of high cost projects come on stream at one time"; and
- a generic framework for toll roads.[4]

3.2 The Bill requires Transfund to exhibit "a sense of social and environmental responsibility" in allocating resources so as to achieve the Bill's purpose of "an integrated, safe, responsive, and sustainable land transport system". It requires Transit to operate the state highway system "in a way that contributes" to the same aim. The interpretative clause in the Bill does not define these terms. However, clauses 70 and 79 emphasise, *inter alia*, that a sense of social and environmental responsibility includes taking into account (a) the need to minimise adverse effects on the environment and (b) the views of affected communities. The interpretative clause defines an affected community in terms of geographic proximity. It does not define an "adverse effect" or "the environment".

3.3 The Bill proposes a number of conditions on PPPs and a number of criteria for toll roads. These include:

- partnership arrangements to be for no more than 35 years;
- continuing public ownership for land transport infrastructure;
- no public compensation if traffic numbers fall below forecast;
- a high degree of support from "affected communities";
- toll roads must be new roads;
- an alternative route must be available;

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4 Hon Paul Swain, 'Land Transport Management Bill Introduced', media statement, 3 December 2002.

- the tolling scheme must be consistent with government and regional strategies;
- the local community and road users must be consulted;
- special requirements to consult Maori; and
- final proposals for PPPs and toll roads need ministerial approval.

3.4 In addition, the Bill drops the concept of economic efficiency as the central objective of land transport policy. The principal objective of Transfund under the Transit New Zealand Act 1989 is to allocate resources to achieve a "safe and efficient" roading system. Transit's principal objective is to operate a "safe and efficient" state highway system.

## 4 Motivations for the Bill's approach

4.1 While introducing some market-oriented features (eg tolling and PPPs), the thrust of the Bill is to move the transport sector away from a structure determined primarily by market demands and users' willingness to pay for services. Instead there will be political control over its shape. Features of the Bill and comments by ministers and others suggest a desire to downgrade economic efficiency as a goal in favour of environmental and safety considerations, a bias against motorists and road transport, a pessimistic view of the potential of roading solutions, a belief that current inter-modal competition is not neutral, and a lack of awareness of the inefficiencies of government ownership. We comment on what we regard as mistaken ideas before addressing specific problems with the Bill.

***Efficiency as a goal***

4.2 The downgrading of the efficiency goal seems to be motivated by a desire to give more weight to social and environmental considerations. However, an efficiency goal should already accommodate these considerations. To some extent they are taken into account in the cost-benefit analysis used to determine roading priorities. Safety considerations, for example, are incorporated via estimates of the benefits of a project in reducing road accidents. An efficient transport system avoids the wastage of fuel and lessens air pollution. The pursuit of energy efficiency as an independent objective is inconsistent with economic efficiency and could undermine both safety and environmental objectives, as could the stated intent to favour rail over road wherever possible.

4.3 The regulatory impact and compliance cost statement accompanying the Bill acknowledges that allocating funding to particular types of transport in the ways proposed may result in less economically efficient expenditure. These changes are not consistent with the primacy the government says it is giving to improving economic growth.

***The anti-motorist bias***

4.4 A bias against cars comes through strongly in the Road Traffic Reduction Bill but also permeates the government documents. Such a bias reflects outdated environmental nostrums. Fossil fuel reserves are plentiful and alternative energy sources are becoming more competitive. Ongoing technological changes are seeing cars becoming less polluting and safer. People are entitled to value the convenience, flexibility and privacy of cars. Cars have probably done more than any other single invention or discovery in history to expand the freedom and enjoyment of ordinary people day in and day out. In cities they replaced horse-drawn transport which was much more polluting. With the removal of import protection and reductions in the prices of cars in New Zealand, lower income people in particular have been able to enjoy increased mobility.

4.5 Contrary to the presumptions of the Road Traffic Reduction Bill, people are perfectly capable of deciding for themselves whether it is better to travel by sea, air, car, bus, bike, rail, or to walk or use the telephone.[5] It reflects what has been called 'green totalitarianism', involving gross abrogations of personal freedom. As countries grow richer, patronage of trains and buses can be expected to decline given the greater flexibility and convenience of the car. Governments should be focusing on finding the arrangements that are most likely to produce the best price signals and investment decisions. Willingness to pay and competitive pressures on costs of supply are key considerations.

4.6 The outdated attitudes of the Green Party on these issues contrasts with those reported in an article entitled 'German Greens embrace the car' which appeared in the *Financial Times* of 28 May 2000. It noted that:

> After years battling against motorways, petrol-guzzling motorists and anything that slows up a bicycle, Germany's environmentalist Green Party has taken a step towards ending its rage against cars.
>
> A strategy paper by senior figures in the party, junior member of Chancellor Gerhard Schröder's coalition, has acknowledged that any attempt to limit individual mobility simply backfires. Cars may

5 The Bill does not consider the diverse preferences of the public or the issue of willingness to pay. It simply presumes that government knows best. In contrast, a genuine concern for people's welfare would seek to balance benefits and costs in relation to safety and environmental issues.

> even be a good thing, "synonymous for many with the freedom to decide, at any time, where to go".

The Greens' strategy paper went on to acknowledge that:

> For women, the car means security on the streets at night and the possibility of combining family and career. For the old and handicapped, it is a synonym for independent movement.

4.7 Policies based on anti-motorist attitudes make no more sense than New Zealand's costly experiments with carless days, 'Think Big' projects and attempts to restrict 'urban sprawl'. Roading offers by far the most effective solution to Auckland's transport problems. Public passenger transport can only solve a small part of them.

***Pessimism about roading solutions***

4.8 The New Zealand Transport Strategy states (p12) that the "transport sector cannot build its way out of all of its problems". A related proposition is that it is self-defeating to expand the capacity of the road system to reduce congestion. These arguments are either fallacious or irrelevant. There is ample scope to expand road capacity relatively inexpensively: New Zealand is nowhere near needing to resort to solutions such as double-decked motorways and tunnels, which are commonplace overseas. No one would argue that electricity supply should not be expanded in the event of risks of power blackouts. The proper strategy is to expand the network when the benefits of doing so exceed the costs. This is an efficiency criterion. It could be argued with more justification that there is no point in building more roads if they are not properly charged for, which implies higher charges for costly and congested urban roads. Under-priced roads will certainly result in the re-emergence of queues (congestion) in due course. Yet the minister's statement rules out charges for existing roads of the kind that have recently been introduced in London.

***Confusion about inter-modal competition***

4.9 The minister of finance was recently reported as claiming that current arrangements disadvantage rail against roads because Tranz Rail is "expected to provide a return on capital".[6] There is no reason why there should be any

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6 'Cullen considers giving rail freight a helping hand', *National Business Review*, 14 February 2003.

such disadvantage. The cost of capital is built into the evaluation of new capital road works for roads, as it is for Tranz Rail's capital expenditures. Of course roads should be priced *efficiently*, in part to avoid inter-modal distortions. If road user charges are not correctly set, they should be adjusted. This highlights the Bill's lamentable failure to focus on efficiency. On the other hand, road user charges should not be manipulated to ensure the profitability of rail. That would give the wrong signals to road users and to Tranz Rail. The latter would have less incentive to find productivity gains and better ways of serving customers. There is no case for subsidies to rail freight operations as mooted by the minister of finance in the same article.

***Government ownership***

4.10 The inefficiencies of government ownership are well understood and no analysis of the problems of land transport points to the case for renationalisation of any part of the rail system.[7] Tranz Rail may not have done everything right, but to expect otherwise is utopian. That it has a tough job covering its cost of capital because of stiff competition in the freight market is a fact of commercial life, not a reason for government intervention. The company will have to continue to adjust to changing market demands and technologies and the viability of some of its operations cannot be assured. Unlike the Rail Freight Action Group, we have no reason to believe that privatisation was done the wrong way and that the government should buy back the tracks. There are clear efficiency benefits from integration. Arguments that Tranz Rail is exercising monopoly power do not square with the reality of intense competition and the company's struggle for adequate profitability. Nor do we see any case for allowing regional councils to become involved in rail passenger operations. Regional councils should be primarily regulatory authorities and allowing them to become operators would create conflicts of interest. We see no case for passenger transport subsidies, particularly given proper pricing in all parts of the system, and in any case councils can ensure the provision of services through contracts. Any subsidies should be funded locally, not by central government.

4.11 It should be added that other mistaken ideas are sometimes put forward by parties involved in debates about transport policy. One is that all revenue derived from road user charges (including petrol tax) should be ploughed back into roading. It does not make sense to undertake such expenditures if they are not justified by the returns; no utility company, for example, would operate on this basis. Another is the claim that "petrol tax should not be diverted into the Consolidated Fund". Desirably, for the reasons set out in the McLeod Tax Review, the excise element of petrol tax should be scrapped and replaced by the standard rate of GST. Pending the introduction of more efficient forms of tolling or electronic billing, road use by cars should desirably be charged for by some combination of an annual fee (reflecting non-use related costs such as weather–inflicted damage to roads) and a fuel tax.

7 See Phil Barry, *The Changing Balance between the Public and Private Sectors*, New Zealand Business Roundtable, September 2002.

## 5 Specific problems with the Bill

***Lack of accountability***

5.1 The Bill sets vague and undefined objectives for land transport (see paragraph 3.2 above). A characteristic of bad legislation is that people do not understand what it intends to achieve or what they have to do in order to comply. Unclear objectives mean a lack of accountability. In essence the Bill asks parliament to hand arbitrary power to the executive. This opens the way to a return to the politicised system of the past and to decisions made for special interest reasons rather than in the public interest. An example is the undefined and extremist requirement to "minimise adverse effects on the environment". This is not a public interest requirement because it takes no account of the balance of the costs and benefits of a decision to people. A public interest objective would be to balance all costs and benefits – including environmental ones – to people, not to some abstract entity called "the environment".

***Weak governance arrangements***

5.2 There is no detectable awareness of the importance of sound governance arrangements in the measures in the Bill or in the commentary in the government's New Zealand Transport Strategy. The problems of political incentives and lack of knowledge about willingness to pay are not acknowledged, let alone addressed. Yet political imperatives are often partisan and short-term. Responsibilities for diverse roles – funding, provision and regulation – need to be separated and each entity given a single over-riding objective in order to alleviate conflicts of interest and to increase transparency and accountability. In contrast, the proposed new objectives for Transfund and Transit and the open-ended provision for ministerial instructions represent a major step in the opposite direction. In addition, neither Transfund nor Transit is required to give any particular consideration to the issue of value for money for those paying road user charges or petrol tax. Instead the Bill emphasises the interests of 'Maori' and the 'transport disadvantaged' (not defined in clause 5). It also promotes 'public transport' rather than the interests of users in general. These features are undesirable and should be changed.

5.3 The consultative and planning measures in the Bill seem likely to exacerbate existing problems of project delays due to hold-out and extortion. They appear to add new layers of consultation without alleviating the existing sources of delay arising from the Resource Management Act. There is no justification in our view for the special consultative provisions for Maori. These features should be removed and the problems with the RMA which have led to serious delays with roading projects should be addressed as a matter of urgency. The current RMA amendment bill has now languished in the House for four years.

***Toll roads***

5.4 Tolling is a more efficient system of pricing for some roads and it is desirable to facilitate its introduction where it is economical to do so. However, such approaches should be available for the roading system as a whole, and not be limited to new projects. Unless it is markedly more attractive, a tolled road cannot be expected to be economic if users have to pay both tolls plus normal road user charges (including petrol tax) when using it and an alternative road can be used on the basis of normal charges. Either wider systems of charging on a more efficient basis should be applied to the relevant part of the network or the option of rebating normal road user charges incurred on a toll road should be explored.

***Public private partnerships***

5.5 PPPs offer the possibility of bringing in outside capital and management expertise to supplement government resources. However, they will not attract private investors, or will do so only at excessive costs, if the conditions for participation are onerous or uncertain. Restrictive conditions will be priced into bids, or bids will not be made at all. One commentator with expertise on PPPs has stated that "At present the bill contains too many risks and too great a level of uncertainty to attract business interest."[8] This would defeat the government's purpose.

5.6 Accordingly we believe the legislation should be less prescriptive, allowing contracts to be negotiated on a case-by-case basis. Constraints in the Bill such

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8 Matthew Cockram, chairman, Bell Gully, 'Gearing up for transport progress', *NZ Herald*, 27 February 2003.

as those on compensation are undesirable. Any subsequent renegotiations due to changes in conditions should be done on the basis of mutual agreement – free from coercive threats or actions.

***Points made by Business New Zealand***

5.7 We concur with the following points raised in Business New Zealand's submission:

- Parliament should not confer on the prime minister the power to reallocate responsibility for land transport at will. The Bill should specify that the responsible minister is the minister of transport and the responsible ministry is the ministry of transport.
- Parliament should not confer on the responsible minister an open-ended ability to instruct funding which could be used for political gain. The Bill should limit the power to instruct to matters of high-level policy and such instructions should be made in writing and publicly notified in the Gazette.
- The existing provisions in the Transit New Zealand Act 1989 preserving the statutory independence of Transfund and Transit should be restored.
- The procurement procedures in the Bill should be revisited with a view to restoring the emphasis on efficiency and severely limiting the scope for exemptions.

## 6 Conclusions and recommendations

6.1 The key problem with the Bill is that it is inconsistent with the top priority the government is giving to economic growth in the interests of restoring average New Zealand incomes to the top half of the OECD ladder. The Bill downgrades economic efficiency as a goal of transport policy, and hence the contribution of the sector to economic growth. The government cannot continue to say one thing and do another and expect to be credible. Polls confirm that few in the business sector think the government has a credible growth strategy.

6.2 The proposals in the Bill seem to be based on many misunderstandings and mistaken ideas. We cannot identify any coherent framework for analysis in either the Bill or the New Zealand Transport Strategy. Nor is there an adequate analysis of existing problems. The government's failure to consult meaningfully with the transport sector and more generally the business community concerning the transport strategy heightens these concerns.

6.3 The greater politicisation of road funding represents a move back to the days of the former National Roads Board structures where politicians could influence road spending decisions for short-term political gain. This led to much uneconomic spending. These risks are also acute with public passenger transport. Projects such as Britomart have been hopelessly uneconomic yet similar unjustifiable projects are being mooted in Auckland. The advent of MMP heightens these risks. For example, one minor party is promoting the Transmission Gully project despite the fact that cost benefit analysis suggests it is a low priority for the foreseeable future.

6.4 If the Bill proceeds in its present form the contrast between the stalemate on progress in New Zealand in the last decade and the ferment of innovative developments overseas with new road pricing technologies and private sector involvement in roads seems unlikely to change materially. The proposals in the Bill seem bound to produce a transport system that is even less responsive to diverse and changing user requirements. Instead of a return to more central control, moves away from political and bureaucratic decision making and towards more user-driven and commercial approaches are needed.

6.5 We submit that the Bill should be withdrawn and the New Zealand Transport Strategy revisited following proper consultation. In formulating a more effective approach, priority should be given to:

(i) restoring the key objective of economic efficiency;

(ii) maintaining the statutory independence of Transit and Transfund;

(iii) establishing a more flexible framework for the introduction of toll roads and public private partnerships;

(iv) exploring the introduction of more efficient forms of charging, including congestion charges, on the roading system more generally;

(v) ensuring the funding of capital expenditure projects whose benefits exceed their costs, provided costs and benefits are accurately calculated;

(vi) dropping the onerous consultation procedures (and the special requirement in respect of Maori);

(vii) amending the Resource Management Act to eliminate unacceptable delays with roading projects;

(viii) exploring the establishment of Transit as a state-owned enterprise with powers to borrow for capital expenditures;

(ix) asking the Ministry of Transport to report on ways of advancing the more general use of commercial structures for road operation; and

(x) making any subsidisation of public passenger transport a local government responsibility rather than a charge on taxpayers in general.