

LOCAL GOVERNMENT FORUM

18 September 2009

Graham Hill
Clerk of the Committee
Transport and Industrial Relations Select Committee
Parliament Buildings
WELLINGTON
By email: Steven.Mitchell@parliament.govt.nz (Committee Support)

LOCAL GOVERNMENT FORUM SUBMISSION ON THE INFRASTRUCTURE BILL

Dear Mr. Hill,

Thank you for your letter of 27 August inviting the Local Government Forum ('the Forum') to make a submission on the Infrastructure Bill. The Forum welcomes the opportunity to make this submission.

The Forum comprises organisations that have a vital interest in the activities of local government. Its members include Business New Zealand, the Electricity Networks Association, Federated Farmers of New Zealand, New Zealand Business Roundtable, New Zealand Chambers of Commerce, and New Zealand Retailers' Association. The Forum was established in 1994 to promote greater efficiency in local government and to contribute to debate on policy issues affecting it.

Forum members are each significant representatives of ratepayers in their own right but the Forum's perspective is to advance community welfare through the advocacy of sound public policy. We believe that local government can best serve the interests of the community and ratepayers by focusing on the efficient provision of public goods at a local level.

The Forum supports the Bill and recommends that it proceed, subject to the addressing of concerns about:

- (a) Barriers to accessing the rail corridor;**
- (b) Lack of clarity around cost allocation;**
- (c) The corridor access code; and**

The Forum also recommends the repeal of all provisions of the Affordable Housing: Enabling Territorial Authorities Act 2008 and that clause 54 of this Bill should be deleted.

Accessing Transport Corridors

The Forum supports the intention of the Infrastructure Bill, and the code of practice it provides for, and wishes to thank the Government and officials for their efforts in presenting

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this legislation. The Bill should assist utility operators when accessing transport corridors, and we believe it will reduce compliance costs. Until now access to transport corridors has been inconsistently administered by local government (in some areas) and by the rail corridor manager and this has been a barrier to infrastructure development.

However, we submit that the Bill could go much further in improving consistency and clarity in regard to accessing corridors. In particular, in our view the current access regime for rail results in an under utilised asset (the rail corridor) which could, if administered optimally, contribute to national benefit by allowing the more efficient placement of electricity, gas and telecommunications services.

In regard to rail, we support electricity and gas industry submitters in stressing that the changes proposed by this Bill are 'completely inadequate' in improving access to the rail corridor. Utilities have identified a number of barriers that effectively block access, and in their view these barriers do not put sufficient onus on the rail provider to make efficient planning decisions, so creating unnecessary costs to utility operators operating in or seeking access to the rail corridor under the current regime. Examples include (and the Bill only partly addresses the first of these):

- (a) The lack of timely responses by KiwiRail to requests to access railway land;
- (b) No right, or legislative guidance regarding access, to install new lines on railway land;
- (c) No security of tenure for lines installed on railway land;
- (d) No statutory provision for cost allocation for movement of lines; and
- (e) KiwiRail's broad discretion to set rental, administration, application and access fees.

Cost Allocation

The current cost allocation regime (as specified, for example, in the Electricity Act) is also unclear, and the Bill as drafted misses an opportunity to correct this. The Bill provides for a change to bring more consistency for telecommunication providers with other utilities, but misses the opportunity to provide needed clarity within specific utility empowering legislation. It also falls short in providing for a consistent regime covering all roading and rail controlling authorities. However we acknowledge agreement on cost allocation is inherently difficult and this has been the hardest, as expected, chapter to reach agreement on in the code – and here we note its drafting and interpretation is still under discussion.

Utilities have raised significant concerns about the ability of KiwiRail to revoke permission for lines installed in or on railway land with little or no notice, at KiwiRail's discretion. Some installations have been required to move more than once within a two year period, at the utilities' cost. The legislation does not recognise the capital investment made in utility assets and that all infrastructure providers require certainty and secure tenure, nor does it encourage KiwiRail to make efficient, coordinated and considered work plans (as the costs of moving others assets are borne by other parties).

In addition, utilities are concerned that KiwiRail has an unfettered ability to set, and review, rental and other charges for works installed on or crossing railway land, and that this discretion may be exercised (now or at any time in the future) to set unreasonably high annual rents. This uncertainty (along with no security of tenure) impacts on the viability of a decision to enter the corridor, assuming access would even be granted. There are no

requirements or limits setting the basis on which any rentals can be assessed (e.g. is it a figure based on loss of value or market value of the easement?) and the case for an opportunistic charge for parallel infrastructure provision is a weak one anyway: it could reasonably be argued that the rail corridor, like the road corridor, is effectively a utilities access corridor to be optimised for the national benefit.

The NZUAG Code

Work on the so-called draft 'NZUAG Code'¹, which seems likely to become the corridor access code provided for in the Bill, has led to the development of a set of criteria that clearly limits what can be deemed a reasonable condition that can be imposed on parties seeking access to transport corridors, and we submit that legislated limits, along the lines of those identified in the draft NZUAG Code, should be added to the Electricity, Gas and Telecommunications Acts.

We understand that roading authorities are concerned that the Ministry of Transport's new *Safer Journeys* road safety strategy could impose additional requirements and costs on them in terms of managing roadside hazards. We note that the NZUAG draft Code has developed (collaboratively between road authorities and utilities and the NZ Transport Agency) procedures for assessing road safety risks in existing works and also to ensure hazards are minimised when placing new utilities in the road corridor using an agreed risk management approach. We support utility service providers in submitting that legislative change on hazard management should only occur after a period of explicit consultation on this topic, possibly in conjunction with consultation on the *Safer Journeys* strategy.

The Bill leaves establishment or appointment of a body to administer a stakeholder initiated Code entirely to stakeholders. We share utilities' concern that this may lead to the emergence of multiple "representative" groups, undermining the broad consensus that has currently been achieved and potentially diverted by local body political issues. It would be helpful for the legislation to at least provide for the possibility of a single representative body and process tasked with administering the Code.

Repeal of Affordable Housing: Enabling of Territorial Authorities Act 2008

The Forum **strongly supports** the repeal of the Affordable Housing: Enabling of Territorial Authorities Act 2008. In its February 2008 submission on the Affordable Housing Bill, the Forum said the following:

The Forum considers the Bill to be unnecessary and undesirable.

*Most significantly **the Local Government Act 2002 is broadly empowering and it already enables any council to make such an assessment and to develop an affordable housing a policy if it wishes** (subject to consultation with communities). Also, as part of their long-term planning processes councils are required to consult their communities on 'community outcomes' across the Act's 'well-beings' (economic, social, environmental and cultural) and if housing is indeed an issue then it should be picked up through the development of community outcomes.*

¹ 'NZUAG' is the New Zealand Utilities Advisory Group.

Although the Bill is intended to be enabling rather than prescriptive, the Forum predicts that in practice the Bill will provide strong encouragement for councils to develop and implement affordable housing policies even in areas outside of Auckland and other high growth areas.

For councils there will be higher costs for policy development, consultation, and administration (which will be passed on to ratepayers) and for developers there will be more stringent restrictions and higher compliance costs (which will be passed onto home buyers). We are disappointed that the Bill's Regulatory Impact Statement does not attempt to quantify these costs.

*We are concerned that this **intervention may have the perverse outcome of reducing the supply of new housing** due to development becoming more difficult and less profitable. If supply is reduced it will exacerbate affordability problems as illustrated by overseas studies that Forum members have sighted².*

The Bill also provides for councils to be able to address rental affordability. With regard to rental affordability, the Forum considers councils to be in a poor position to know people's incomes so we have consistently argued that they should not be in the business of income redistribution. Local government should leave the provision of 'social housing' to agencies of central government. The Forum therefore opposes this provision.

The Bill's most pernicious provisions however relate to its complete disregard for private property rights. For example, the Bill's explanatory note states that "there is no limit to the options a territorial authority can consider...[including]...requiring a developer to pay (land or money) to the territorial authority". The Forum agrees with Business New Zealand's assessment that this is 'blatant theft' and we totally oppose such a provision.

The Bill also prohibits the use of covenants. The Forum is opposed to intervening in the use of legitimate contractual safeguards for home buyers who want to retain a certain quality or character of neighbourhood and therefore protect their significant investments.

The Forum's submission expressed disappointed that the underlying problems around housing affordability had not been considered. In its submission it said:

*On the **supply side** the costs of development and building are likely to have been substantially increased by:*

- *Increased costs of labour and building materials;*
- *Higher compliance costs and fees under the Building Act 2004 and requirements for new residential buildings;*
- *The Resource Management Act 1991, which has delayed developments and imposed high costs on developments;*
- *Large (and increasing) fees payable by developers to councils (e.g., development contributions under the Local Government Act 2002); and*
- *The impact of planning restrictions imposed by councils that have reduced the supply and increased the price of land.*

² For example, Reason Public Policy Institute, "Housing Supply and Affordability: Do Affordable Housing Mandates Work?", by Benjamin Powell and Edward Stringham (April 2004) and The Independent Institute, "Below Market Housing Mandates as Takings: Measuring their Impact" by Tom Means, Edward Stringham, and Edward Lopez (November 2007).

The Forum believes that these supply-side factors have conspired to constrain housing supply and to make new and existing housing more expensive. They should therefore be reviewed to assess how they have impacted on housing affordability.

Another important factor to consider is the use of government funding intended to help people buy their first home. While policies such as the 'Welcome Home Loan' are well-intentioned they are likely to have stimulated demand and have had the perverse outcome of driving up house prices even further. The subsidy for the deposit for a first home purchase through the KiwiSaver scheme may in time have a similar effect.

The Forum agrees with the [then] Prime Minister's observation that there is a limit to these initiatives in her comment with regard to housing affordability "it's not a problem which can be solved by throwing a lot more money at mortgage subsidies - that would only drive prices up still further"³.

The Forum is also concerned that the proposal to introduce a shared-equity scheme will also help drive house prices up. Furthermore the need for the government to get an adequate return on its investment will give it a vested interest in maintaining an appreciating property market.

*The use of such **demand-side** policies to assist home buyers should therefore be reviewed to assess how they have impacted and will impact on housing affordability.*

While the Forum is strongly supportive of the repeal of this Act, we oppose clause 54 of this Bill which amends the Property Law Act 1977 to carry forward the provision in the Affordable Housing: Enabling Territorial Authorities Act 2008 to void covenants that have the purpose of stopping the provision of affordable housing or social housing. This is an example of disregard of private property rights and we repeat the comments made in our submission on the Affordable Housing Bill:

The Bill also prohibits the use of covenants. The Forum is opposed to intervening in the use of legitimate contractual safeguards for home buyers who want to retain a certain quality or character of neighbourhood and therefore protect their significant investments.

The Forum recommends the repeal of all provisions of the Affordable Housing: Enabling Territorial Authorities Act 2008 and that clause 54 of this Bill should be deleted.

Conclusion

The Forum would welcome the opportunity to present its submission to the Committee. Please contact Nick Clark (ph 03 357 9459 or email nclark@fedfarm.org.nz) to make the appropriate arrangements.

Yours sincerely



Charles Finny
Chair

³ Prime Minister Rt Hon Helen Clark's speech to Parliament, 12 February 2008.