

# Review of the exempt status of Fullers360 Waiheke Ferry Service – consultant’s report November 2022

## Waka Kotahi NZ Transport Agency Disclaimer and Cover Note to Report

19 July 2023

### Disclaimer

1. The views and conclusions reached in the report are the outcomes of the independent assessment of the consultant and should not be regarded as representing the view and conclusions of Waka Kotahi.
2. The investigation is ongoing, and the consultant’s report is one input into the review Waka Kotahi is undertaking.

### Background

3. At the request of the Minister of Transport (1 July 2022), Waka Kotahi is investigating whether the Waiheke Island ferry service (the Service) between downtown Auckland and Matiatia Ferry Terminal (Waiheke Island) can legally be required to be provided under contract to Auckland Transport under the Land Transport Management Act 2003 (LTMA). The service is currently exempt and provided by Fullers360.
4. To assist it in its investigation Waka Kotahi engaged the services of an independent consultant in August 2022 to undertake an assessment of whether the LTMA criteria for changing the status of the Service were met. The consultant submitted his report to Waka Kotahi in November 2022.
5. Because this is the first time a review has been conducted under section 150 of the LTMA, upon receiving the consultant’s report, Waka Kotahi sought legal advice to determine what further steps would be required to complete the review. The legal advice took longer than expected to be finalised and this has led to a longer timeframe for the review than originally anticipated.
6. Waka Kotahi has received Official Information Act 1982 requests for the consultant’s report and is publicly releasing it in response to those requests, although the Waka Kotahi investigation is ongoing.
7. Auckland Transport and Fullers360 have been provided with a copy of the report and identified some factual errors that readers should be aware of, and which are addressed in this cover note.

### Factual errors in the report

8. The report was submitted and accepted as final and so no further revisions have been made to the report in response to feedback from Auckland Transport and Fullers360.
9. Waka Kotahi acknowledges that there are factual errors in the report that it was unaware of at the time it was submitted. These are addressed in table one.

**Table One: Factual errors identified in report**

Location	Report statement	Correction
Page 4, paragraph 2	There are 11 ferry services...identified in the Auckland Regional Land Transport Plan 2018-2028 (RPTP).	The plan is called the Regional <b>Public</b> Transport Plan.
Page 4, paragraph 2	The Waiheke Island service...is the only remaining commercial service that is integral to the RPTP.	There are two other commercial services that are identified as integral in the Auckland Transport Regional Public Transport Plan. These are the vehicular ferry services to Kennedy Point (Waiheke Island) and to Great Barrier Island. Both services are provided by Sealink.
Page 4, Table One	Vessel sizes	The vessel sizes quoted are out-of-date and do not reflect the current fleet mix.
Page 5, paragraph 4	This letter proposed reductions to the Minimum Services Timetable...leading into the summer period.	<p>The letter to the Waiheke Local Board did not propose reductions to the Minimum Services Timetable as agreed in the Quality Partnering Agreement between Fullers360 and Auckland Transport.</p> <p>Rather Fullers was advising it would not be able to deliver extra ferry services over the 2022-23 summer as it had done previously in response to increased demand over summer.</p>
Page 6, paragraph 5	The Service in principle, is open to competition...limitations of land-side infrastructure and the availability of only two berths, both of which are required for the Service's timetable, have severely limited the opportunities for competition.	<p>Auckland Transport advise that there are now several berths available at the Downtown Ferry Terminal for use by vessels that are suitable for a Matiatia service.</p> <p>On completion of existing infrastructure renewal works at Matiatia, there is no infrastructure related reason that a second operator could not operate on the Waiheke route.</p>
Page 11, Table Two	The AT Hop adult fare from Waiheke is quoted as being \$21.	The AT HOP adult from Waiheke to Auckland is \$23
Page 12, Table Three	The table identifies five discounted fare products.	<p>The list of fare products is incomplete and Fullers360 offers other fare products like family fare products and tertiary student monthly pass.</p> <p>Fullers360 has also introduced a new fare product since the report was written (Auckland to Waiheke off-peak fare).</p> <p>Latest fare information can be found on the Fullers360 website (<a href="http://www.fullers.co.nz/">www.fullers.co.nz/</a>).</p>



# **Review of the Exempt Status of Fullers360 Waiheke Ferry Service**

**November 2022  
Barry Kidd**

## Executive Summary

Waka Kotahi is reviewing the exempt status under section 150 of the Land Transport Management Act 2003 (LTMA) of the Fullers360 Waiheke Ferry service (the Service). This is due to a number of concerns about the Service being raised with recent Ministers of Transport by key Auckland public transport stakeholders and the Waiheke Local Board.

The Service is the main transport connection between Waiheke Island and Auckland City and is integrated with other services in the public transport network, providing important public transport connections within the wider Auckland area. It is an exempt commercial service and is outside of Auckland Transport's (AT) control.

s 9(2)(b)(ii)

The central issue is whether the Service should be part of the public transport system, as the current exemption excludes it from the AT network planning and performance monitoring and from NLTF funding. This has created perceived inequities that have given rise to the concerns from residents and stakeholders. Removing the exemption will enable fares to be aligned with Auckland's integrated fares system making a more accessible public transport network.

There are a number of issues and risks that Waka Kotahi may wish to consider before deciding to make a request to the Minister of Transport to remove the exempt status by Order on Council. s (9)(2)(g)(i)

In July 2022, AT and Fullers360 signed a 12-year Quality Partnership Agreement (QPA) after two years of negotiation as a way of addressing some of the stakeholders issues. The QPA introduced the AT HOP Waiheke Monthly Pass for the most regular users, which has aligned fares with other outer harbour ferry services. Any further reduction to fares is likely to be subject to the removal of exemption, funding constraints and other priorities. This agreement is in the early stages of implementation and it is unclear to what extent it will address all the issues raised, which have prompted this review.

Should the Service's exempt status be removed, the Service may continue to be provided by Fullers360, but on a contracted basis, to avoid service disruption as the immediate availability of suitable alternative providers and vessels is limited. Subject to decisions about the level of service and fare subsidy, removing the exempt status is likely to incur transitional costs and considerable ongoing operational costs to AT and Waka Kotahi.

Some of the residents' concerns may not be addressed by the Service's change of exempt status such as concerns over reduced service frequency and size of vessel over winter and the perceived threat of service withdrawal at short notice. Reducing fares, as part of integrating the Service into Auckland's public transport network, is likely to increase the volume of visitors to Waiheke Island, especially over the peak summer weekends. This may exacerbate issues of congestion and overcrowding on the ferries and wharves, in addition to residents not being able to board their ferry of choice.



In terms of the wider tourism context, tourist operators on Waiheke Island work closely with Fullers360 s 9(2)(b)(ii)

Fullers360 is also the major sponsor of several of major events on Waiheke Island. s 9(2)(b)(ii)

The Service presents unique situation in the NZ transport context and requires careful consideration of the issues and risks and their intended and unintended consequences. This review sets out four possible options to consider in terms of a way forward.

## Background

A spate of ferry cancellations in May 2019, primarily as a result of inclement weather conditions, led to an increased focus on the Fullers360 Waiheke Ferry service's (the Service) exempt status under the Land Transport Management Act 2003 (LTMA) and lobbying for the removal of this status as a solution to the concerns. Around that time, several key public transport stakeholders, including Auckland Transport's (AT) Acting Chief Executive, Rodger Murphy, Auckland Mayor, Phil Goff and Planning Chair, Auckland Council, Cr Chris Darby, Auckland Deputy Mayor, Bill Cashmore, Auckland Central MP, Hon Nikki Kaye, and Waiheke Local Board Chair, Cath Handley all wrote to then Minister of Transport, Hon Phil Twyford asking him to begin the process to remove the Service's exempt status.

On 1 July 2022, Minister Wood wrote to Sir Brian Roche, Chair of Waka Kotahi, requesting that Waka Kotahi starts the LTMA section 150 process to remove the exemptions for the Fullers360 ferry services to Waiheke Island and Devonport. The Minister noted that he was aware that AT was progressing negotiations with Fullers360 in relation to ferry services in Auckland but was frustrated by the protracted nature of these negotiations and that they may ultimately not achieve the outcomes he expected to see.

## The Review

Waka Kotahi is reviewing the exempt status under section 150 of the Land Transport Management Act 2003 (LTMA) of the Service. This purpose of this report is to examine whether there is a case for revoking the Service's exempt status to inform Waka Kotahi's discussions and advice to the Minister and any recommendations regarding the exempt status. The Service operates between Waiheke Island (Matiatia) and Downtown Auckland. It is a commercial service, which means it is not under contract to Auckland Transport and not in receipt of National Land Transport (NLTF) funds. It does receive some funding from Auckland Transport (AT) to support the Waiheke Adult Monthly AT HOP pass and for the funding of free travel for SuperGold Card holders.

## Contextual Information

### *Waiheke Island – Key Facts*

Waiheke is 22 km from Auckland and a 40 minute ferry ride from the Downtown Ferry Terminal

Population of 9,500 with around 1300 people commuting to the city on a regular basis

About 21% of residents are 65 or older, compared to 12% for the rest of Auckland and 16% are under 15, compared to 20% across Auckland

New Zealand's third most populated island after the North and South Islands

Over 1.1 million visitors annually

A median household income of \$51,000 pa compared to Auckland's \$76,000 pa

1,452 Community Service Card holders as at September 2019

3,780 occupied and 2079 empty residences on the 2018 Census day

The wine industry and tourism are significant contributors to the Waiheke economy

One primary school, one high school and three medical centres.



## *Auckland Ferry Services – Key Statistics*

While bus and train carry most of the volume of public transport passengers, Auckland’s ferry network plays a key role within Auckland’s transport system. It provides critical access to some parts of the region, modal choice in others, and a direct and fast access option that delivers additional transport system capacity and resilience.

There are 11 ferry services identified in the Auckland Regional Land Transport Plan 2018-2028 (RPTP) as integral to the Regional Public Transport Network, carrying around 5.7M passengers annually. The Waiheke Island service makes up over 40% of these passenger trips and is the only remaining commercial service that is integral to the RPTP. Fullers360 operates seven of the routes identified in the RPTP as integral to the Regional Public Transport Network and carries over 93% of the ferry passenger journeys. Table 1, below, provides details of the Auckland integral services.

**Table 1: Auckland Ferry Services Integral to the Regional Public Transport**

<b>Service</b>	<b>Operator</b>	<b>Exempt/ Contracted</b>	<b>Annual PAX</b>	<b>No. Vessels</b>	<b>Vessel Size</b>
Waiheke Island	FGL	Exempt	2,320,000	4	246 – 650 seats
Devonport	FGL	Contracted	1,880,000	2	160 – 450 seats
Half Moon Bay	FGL	Contracted	340,000	2	150 – 284 seats
Hobsonville / Beach Haven	FGL	Contracted	170,000	1	160 seats
Gulf Harbour	FGL	Contracted	182,000	3	127 – 199 seats
Bayswater	FGL	Contracted	220,000	1	103 – 194 seats
Stanley Bay	FGL	Contracted	63,000	1	120 seats
Birkenhead / Northcote Point	FGL	Contracted	170,000	1	103 – 194 seats
West Harbour	Belaire	Contracted	172,000	3	49 - 124 seats
Pine Harbour	SeaLink	Contracted	196,000	4	2 x 49 seats
Rakino Island	Belaire	Contracted	8,000	1	1 x 49 seats

### *Overview of the Waiheke Quality Partnership Agreement*

To address the concerns of Waiheke residents, Auckland Transport and Fullers360 spent two years developing a way forward for the Devonport and Waiheke ferry services. In July 2022, agreements were signed to bring the Devonport service into Auckland Transport’s contracted service model, and to manage the Waiheke service through a 12 year agreement, the QPA.

The QPA attempts to address the ongoing concerns of the Waiheke residents and other Auckland transport stakeholders, while recognising that the Service is an exempt service under the LTMA and, therefore, not subject to controls, policies and actions identified in the Auckland’s Regional Public Transport Plan.

Through the QPA, Fullers360 agrees

- to commit to a Minimum Services Timetable to provide certainty of public transport ferry services for Waiheke residents
- to accept the Waiheke Adult Monthly AT HOP pass to achieve AT's multi-modal integration bringing regular commuters' fares in line with other outer harbour services

• s 9(2)(b)(ii) [Redacted]

[Redacted]

[Redacted]

On 12 September 2022, Fullers360 wrote to the Waiheke Local Board Chair advising that Fullers360 were anticipating disruption and delays over the summer period on the service due to crew shortages. This letter proposed reductions to the Minimum Services Timetable when the Waiheke Local Board were expecting an increase in services leading into the summer period.

## Overview of LTMA and PTOM

The Public Transport Operating Model (PTOM) is the national framework of legislation, policy guidance and procurement rules designed to build long-term, collaborative public transport partnerships between regional councils (including AT) and transport operators. PTOM was developed out of a context of increasing public investment in public transport



resulting in decreasing additional increases in patronage. The focus on making public transport more commercial was seen as a solution to this problem. Thus, the original objectives of the were to:

- Grow the commerciality of public transport services and create incentives for services to become fully commercial.
- Grow confidence that services are priced efficiently and there is access to public transport markets for competitors.

In the context of the original objectives of PTOM, it is unsurprising that established ferry services that were operating without public subsidies were specifically excluded from being considered part of the public transport network. The October 2011 Cabinet Paper entitled *Introduction of a new Policy Framework for Bus and Ferry Public Transport Services* describes commercial ferry services as niche services, not requiring public subsidy and not integrated into the core public transport network. They were, therefore, excluded from the requirements of PTOM with the expectation that access to the market by other operators would provide sufficient competitive threat to keep their fares in check and maintain efficient service delivery.

The same Cabinet Paper states that if the efforts of the regional council and the NZTA do not prove effective in preventing monopolistic behaviour on the part of the operator, the mechanism discussed in paragraph 21 (Section 150 of LTMA) could be used. This allows the Governor-General, on the recommendation of the Minister of Transport, to require exempt services to be provided under contract with the regional council.

Subsequent to the introduction of PTOM, the importance and focus on ferry services in Auckland has increased. Although ferries make up less than 10 per cent of total passenger trips, they play an important role in reducing road traffic congestion and can provide a faster travel option direct into the city centre for some passengers. For some residents, such as Waiheke Islands residents, ferries provide the only transport connecting residents to the rest of Auckland.

The Service in principle, is open to competition. However, the limitations of land-side infrastructure and the availability of only two berths, both of which are required for the Service's timetable, have severely limited the opportunities for competition. This has created a monopoly service in what was intended to be an open market.

Auckland's 2015 and 2018 RPTPs identify the Devonport and Waiheke Services as being integral to the region's public transport network, as these services provide an important public transport connection within the urban area and are integrated with other services in the network.

AT and Fullers360 agreed in July 2022 that the Devonport service be brought under contract to AT, removing its exempt status, leaving Waiheke as the only exempt service that has been identified as being integral to the region's public transport network.

Under the LTMA, exempt services are not subject to the policies and controls in the RPTP, and as they are operated on a commercial basis operators set the fares, timetables and routes as they see appropriate.

## Section One - The Review

### *Residents' Views*

Some Waiheke Island residents have raised a number of concerns about the Service over a number of years, with a series of petitions and regular media attention given to issues raised by residents. More recently, the Waiheke Local Board raised with the Minister of Transport, Hon Michael Wood, the Waiheke community's ongoing concerns with the Service.

The Waiheke Local Board's concerns can be summarised into seven points:

- The cost of travelling to Auckland from Waiheke is significantly more expensive when compared with other outer harbour services
- Fullers360 is a monopoly service provider and is making excessive profits
- Services are provided in inconsistent vessel sizes and there is a seasonal reduction in service frequency
- Over summer months residents have experienced issues with being unable to board full services
- There have been persistent service performance failures
- The concern that Fullers360 may withdraw the Service on short notice
- Waiheke residents have been unable to take advantage of recent public transport promotions such as half price fares and AT's under 16 travel free on weekends - further disadvantaging residents who are already paying a disproportionately high fares, compared to other Aucklanders who enjoy subsidised public transport.

### *Fullers360's View*

Fullers360 considers that Waiheke Island and Auckland are best served by the existing commercial model and that moving to a contracted model would not improve service. Fullers360 also asserts that not being part of the Public Transport Operating Model (PTOM) provides the flexibility to respond to unpredictable demand especially over the summer peaks with additional services to increase capacity. It has invested in new vessels to continue to improve reliability and increase service standards. Contracted Auckland ferry services have not made similar investments and on average have much older vessels that are near the end of their service life with higher risks of breakdowns and reliability issues. Fullers360 operates a base timetable for most of the year and increases services over the summer peak to meet increased demand. They have acknowledged that there were more than usual cancellations in May 2019, mainly due to weather events.

Fullers360 voluntarily monitors and publishes Waiheke Service Performance Indicators based on AT's benchmarks. (<https://www.fullers.co.nz/fullers360-dashboard/>). The Service consistently performs better than AT's benchmarks and exceeds the performance of Auckland contracted public transport services.

s 9(2)(b)(ii)

s 9(2)(b)(ii)

Fullers360 works closely with the Waiheke Island tourism businesses s 9(2)(b)(ii)

Fullers360 is also the major sponsor of several of major events on Waiheke Island. s 9(2)(b)(ii)

s 9(2)(b)(ii)

[Redacted content]

### *Auckland Transport's Position*

AT advises that its position is that the Waiheke service is integral to the public transport network and should be a contracted service and not an exempt service under the LTMA, as stated in their current RPTP. However, AT notes there are some complexities with contracting the Waiheke service. The commuter / leisure component of the service is integrated within the service structure along with servicing of the tourist market. The transition to a contracted service would need to be carefully considered to protect public subsidy and service continuity. Ideally it would have the cooperation of the operator.

AT recognises that there are ongoing customer concerns with the performance of exempt services and will continue to work with operators to seek to address issues. In particular, AT will seek to use the available mechanisms under legislation to ensure provision of

services deemed to be required for servicing affected communities and full fare integration with the broader public transport fare structure.

Should exempt services, such as Waiheke, cease to be operated by the relevant transport operator, the relevant service would be deregistered. The route description of the formerly exempt service will then become a PTOM unit and contracted.

## Exempt Services

The Service is deemed exempt under the transitional provisions of the LTMA section 153(2). There are three ways this exempt status can be changed.

1. An exempt can be deregistered by the Regional Council if the operator fails to operate the service or the operator fails to commence the service.
2. The operator could give notice that it is no longer providing the service.
3. Waka Kotahi can request that the Minister of Transport, by Order in Council, require an exempt service to be replaced by a unit to be provided under contract.

Section 150 of the LTMA outlines the requirements of the third way an exemption can be changed.

## Section 150 Requirements

Section 150 of the LTMA, consolidated below, outlines the requirements to change the status of an exempt service to a contracted one:

- (1) The Governor-General may, by Order in Council, on the recommendation of the Minister tendered on the request of the Agency, make regulations—*
  - (b) requiring an exempt service to be replaced by a unit or part of a unit to be provided under contract.*
- (2) Before recommending the making of an Order in Council under subsection (1), the Minister must be satisfied that the Agency has consulted any relevant regional council and,*
  - (b) in the case of an Order in Council under subsection (1)(b), that the Agency has consulted the operator of the public transport service, and that the public transport service—*
    - (i) is an integral part of the relevant region's public transport network; and*
    - (ii) needs its fares to be regulated.*

Before Waka Kotahi can request the Minister have an exempt status removed, there are two requirements that need to be met:

- the service needs to be integral to the regional public transport network; and
- the service needs its fares to be regulated.

Waka Kotahi also needs to consult with the Regional Council and the operator (AT and Fullers360).

## Integral to the Regional Public Transport Network

As the LTMA does not define what constitutes an integral service, the definition of what is 'integral' is determined by the Regional Council through identification in their RPTP. This



conclusion is support by section 134(2)(c) that permits a regional council to decline a registration of an exempt service, if the Regional Council has adopted a RPTP and it identified the service as integral. Section 137 also outlines the process to deregister an exempt services relying on the Regional Council's determination of what is integral to the (4)(b) identified in the RC's RPTP as integral to the public transport network.

This leaves the Regional Council (AT) to determine what services are integral to their public transport network. AT has identified the Service as integral to Auckland's public transport network in its 2015 RPTP and in the 2018-2028 RPTP. It is therefore reasonable to conclude that the Service is integral to the regional public transport network.

## Fares need to be regulated

In general, competition between businesses ensures that consumers are charged fair prices for the goods and services they purchase. The process of rivalry between businesses means that excessive profits are limited in the long term, and in the absence of competition, prices are usually higher. While it may be difficult to determine what price would be charged if there was competition, what is generally agreed is that in monopoly situations prices tend to be higher than where competition exists. In New Zealand, the few industries which are subject to price regulation are all natural or statutory monopolies.

The need to regulate fares should be seen in the context of price regulation more broadly. Price regulation is the policy of setting prices by a government agency, legal statute or regulatory authority. The decision to regulate prices is usually first based on the assessment of the community impacts of the higher prices, before looking at how the prices have been set, to what extent are they justified or could be reduced. Section 150 of the LTMA is focused on whether there is a case to regulate fares rather than actually regulating fares. Therefore, any assessment of the need to regulate should focus on the community impacts, and not how fares are set, or whether the current prices are reasonable.

To determine if fares on the Service needs to be regulated, three key issues have been considered.

1. Relative fare alignment with comparable contracted ferry services
2. Level of integration required with the HOP ticketing system
3. Composition of the customer base (such as visitors versus residents)

### *Relative fare alignment with comparable contracted ferry services*

There is a strong equity argument that Waiheke residents have a reasonable expectation to be treated in a similar way and enjoy the same benefits as other Auckland residents. This includes having the opportunity to be consulted on transport services that they use and be able to access transport at a similar cost to other Aucklanders. As there are very limited alternatives, the timing and cost of ferry services are even more important to Waiheke residents to be able to access specialist medical treatment, tertiary education, employment and to maintain social connections located in the city. Similarly, the cancellation of services, and changes to timetables have a disproportionate impact on Waiheke residents.

Waiheke residents have also been unable access recent initiatives such as half price public transport fares, Auckland Transport's free child weekend fares on public transport, and the soon to be launched Community Connect, giving Community Service Card holders

50% off adult fares on selected bus, train and ferry services. While Fullers360 are open to enabling these initiatives on the Service, there are practical and legal constraints that make these initiatives difficult to implement on an exempt commercial service. AT cannot access NLTF funding for exempt services, such as Waiheke Island. If these initiatives were to be provided on the Service, AT would have to fund the full cost. As a result, Waiheke residents are unable to access the same benefits on the Waiheke Ferry available to other Auckland residents on their public transport services.

Table 2 compares the Auckland ferry services that are integral to the regional public transport network.

**Table 2: Auckland Ferry Services Fares**

Service	Journey time (mins)	Distance	Adult Cash	Adult Hop	Child Cash	Child Hop
To Waiheke	40	22 kms	\$30.00	\$23.00	\$14.00	\$11.50
From Waiheke	40	22 kms	\$30.00	\$21.00	\$14.00	\$10.50
Devonport	15	3 kms	\$8.00	\$5.40	\$4.50	\$3.10
Half Moon Bay	35	12 kms	\$11.50	\$8.00	\$6.50	\$4.70
Hobsonville / Beach Haven	35	12 kms	\$11.50	\$8.00	\$6.50	\$4.70
Gulf Harbour	50	26 kms	\$16.00	\$11.60	\$8.50	\$6.10
Bayswater	10	2 kms	\$8.00	\$5.50	\$4.50	\$3.10
Birkenhead / Northcote Point	10	4 kms	\$8.00	\$5.40	\$4.50	\$3.10
West Harbour	35	12 kms	\$11.50	\$8.00	\$6.50	\$4.70
Pine Harbour	35	21 kms	\$16.00	\$11.60	\$8.50	\$6.10
Rakino Island	45	22 kms	\$42.00	NA	\$25.00	NA

The most comparable services in terms of time and distance are Gulf Harbour and Pine Harbour. Using the adult HOP fare as a base, the Waiheke fare is \$9.40 more for a trip single trip originating on Waiheke Island or \$11.40 more for a trip originating from Downtown Auckland compared with other outer harbour services. This is on average over 90% more than the comparable outer harbour fare. The only fares which are more expensive than Waiheke Island are Rakino Island, which is a three times per week service with 8,000 passengers per year. Rakino Island has a permanent population of 16 and living there is a life-style choice due to its remote location and off the grid.

In addition to the fares in Table 2, Fullers360 offers discounted fare products, mainly for regular users. The 40 trip ticket is the most cost effective of these and is still \$2.86 per trip more than the equivalent single trip HOP fare for other outer harbour services. It requires a considerable up front cost, which may not be affordable for some regular users. The main fare products are summarised in Table 3.

**Table 3: Fullers360 Waiheke Discounted Fare Products**

Product	Restrictions or conditions	Child Cost	Effective child per trip cost	Adult Cost	Effective adult per trip cost
\$35 off Peak Return	Off Peak	NA	NA	\$35.00	\$17.50
Family Return	2 adults and 2 children	\$122.50	NA	NA	NA
Flexipass 10 trip ticket	Max four people per trip, valid for one year	\$77.00	\$7.70	\$166.50	\$16.65
40 trip ticket	Max two people per trip, valid for one year .	\$262.50	\$6.56	\$574.50	\$14.36
Fullers360 Monthly Pass	Unlimited travel for one month from the first day of use.	\$177.00	\$4.43	\$403.00	\$10.08

The development of the AT HOP Waiheke monthly pass, as part of the QPA, is AT setting the fares for the Service for the most regular Waiheke commuters. This brings fares in line with the similar passes for Gulf Harbour and Pine Harbour. Auckland Transport subsidises the Waiheke ferry monthly pass by \$58 a month for each pass sold and provides free bus and train travel at either end of the journey within the zone. [s 9\(2\)\(g\)\(i\)](#)

Also as part of the QPA, HOP fares from Waiheke Island have been reduced by \$2, as the first step towards the introduction of more affordable fares for Waiheke residents. In addition to the projected \$300,000 per annum for these subsidies costs, Fullers360 also receive approximately \$2.3M per annum for SuperGold Card passengers. [s 9\(2\)\(b\)\(ii\)](#)

While the introduction of the AT HOP Waiheke Monthly pass has addressed the equity for the most regular users, the majority of Waiheke Island residents who do not use the service on a daily basis are still required to pay fares which are significantly higher than other Aucklanders on similar services.

#### *Level of integration required with the HOP ticketing system*

Fares on the Service are already fully integrated with the HOP ticketing system. From a review perspective it could be argued that this is no longer a barrier and therefore is a contributing reason for removing the exemption. Fullers360 also offer their own cash fares and a range of tickets and passes and ferry travel as part of packaged tourist and travel products.

#### *Composition of the customer base*

The Service's customer base is a mix of Waiheke residents, commuters working on Waiheke Island and domestic and international visitors. [s 9\(2\)\(b\)\(ii\)](#)

There is a strong case for regulating fares for Waiheke residents and Auckland residents working on Waiheke Island as the service is effectively their only transport option for movement between Waiheke and the rest of the city. Many of the visitors to Waiheke Island are Auckland residents and according to Fullers360, prior to Covid, made up the second largest visitor group. When setting fares Public Transport Authorities (PTA) do not distinguish between residents and visitors as it would create extra cost and complexity for PTAs to manage and possibly not conducive to the efficient operations. PTAs frequently offer attractive short term fare products to encourage visitors to use public transport during their stays. Modern public transport networks are designed to enable both residents and visitors to move around a city to access the places where they live, work and play in a way that supports the efficient use of the network.

The distinction between regular commuters and visitors/tourists is a relatively straight forward distinction as they are at opposite ends of a continuum in terms of both regularity and purpose of a travel. Between these two groups there are Waiheke residents who use the Service less regularly, or bach owners and friends and family who visit regularly but not regularly enough to use the discounted fare products. Some of these groups have sufficient connection to Waiheke Island that it would be difficult to justify excluding them from any “local” fares.

## Conclusion

There is a strong case for changing the status of the Waiheke Ferry Service from exempt to contracted. AT have consistently identified it as integral to the region’s public transport network. For many Waiheke Island residents it is their only transport link to Auckland City enabling vital access to employment, tertiary education and training, hospitals and specialist medical services, and therefore should be part of the public transport system.

Waiheke Island residents have not been able to take advantage of a number of targeted local and central government support while the Service is not contracted. These include the recent 50% discount of public transport fares, Auckland Transport’s under 16s travelling free on the weekends and the soon to be launched Community Connect, giving Community Service Card holders 50% off adult fares on selected bus, train and ferry services.

The Service’s exemption is an anomaly as it is not a niche service for Waiheke residents, but their main connection to the rest of Auckland and the many essential services this enables. The rationale for exempting it has proven to be flawed as the lack of land side infrastructure and the wharf berths have been sufficient barriers to entry that the threat of competition has had little effect.



## Section Two – Matters Waka Kotahi should consider before making a request

The Service is unique in the context of the New Zealand transport system and there are a number of issues and risks associated with this situation. A simple binary approach regarding its inclusion, or not, in the the public transport system needs to be carefully considered in light of the intended and unintended consequences. An understanding of these factors will guide whether removal of the exemption is an appropriate course of action.

### *Legal matters*

s (9)(2)(g)(i)

Waka Kotahi should obtain legal advice on the risk of a challenge to their decision and likelihood of its success.

Removing the exemption for the Service would set a precedent for other registered exempt services. In addition to commercial ferries, exempt services also include commercial public transport bus services (such as the Sky Bus in Auckland) as well as inter-regional services such as Intercity bus services and KiwiRail passenger train services. The removal of exemption for the Service could result in requests for the removal of other exempt services.

### *Residents concerns may not addressed by removal of the exemption*

Some of the concerns of the residents may not be solved by removing the exemption and may in fact exacerbate some of them. Fare reductions are likely to increase demand, particularly over the summer weekends and when there are events on Waiheke. There are already capacity issues at these times. The increase in demand is likely to be closely related to the reduction in fares.

Smaller vessel size and reduced frequency over winter seem to be more about demand and capacity management than the current operator's business model. While AT could specify a standard timetable and vessel size, value for money considerations are likely to result in a seasonal timetable and more than one vessel size as there are significant variations in demand between summer and winter.

### *Wider issues and risks that should be considered before deciding to make a request to the Minister*

#### *Financial and funding considerations*

Providing the Service under contract to AT would likely result in additional costs to AT and the National Land Transport Fund (NLTF). This is because any any reduction to fares and/or increases to the level of service would require subsidy since the current services and fare levels are provided on a commercial basis.

The level of additional cost for the Service would likely be driven by

- the extent to which fares are reduced from their current levels and whether reduced fares are available to both visitors and residents of Waiheke Island
- the level of service required by AT, including:
  - the number and frequency of daily sailings relative to the current timetable
  - the journey time and vessel capacity to be achieved
  - any vessel quality standards set by AT
  - whether the procurement of additional boats is required to meet the desired timetable and level of service
  - how much of the current revenue generated on the Service is able to be maintained and could be reinvested in the service to break-even
  - the performance regime established for the unit or units, including the level of risk the operator is taking to meet the required performance (the operator's risk premium).

While the cost of any transition to a service contracted to AT are likely to be phased in over several years and are dependent on the extent to which fares that are fully aligned with AT's other ferry services, there is likely to be significant additional funding from both AT and the NLTF. Based on pre-Covid passenger numbers and fully aligning fares with outer ferry services, this could be in the order of s (9)(2)(b)(ii) annually split between AT and the NLTF.

*Time to transition from an exempt to contracted service*

Decisions about the timing of any change of status needs to be made in conjunction with Auckland Transport, who will need to undertake a number of processes prior to being able to contract the Service. This includes varying Auckland's RPTP and undertaking a procurement process, making decisions about the level of service including the timing and frequency of daily sailings, and possibly vessel size and quality. Some of these decisions may be deferred by a continuation of the status quo especially if the likely short term solution may be contracting the service back to Fullers under a negotiated contract. AT may also want to align procurement of a long term contract with the proposed ferry procurement plans for rest of Auckland.

s 9(2)(b)(ii)

Residents' concerns about a sudden discontinuation of the Service do not appear to be well founded. Fullers360 has positive views about the long term opportunities for the Service. The Service's visitor and tourism connections make it different from the Devonport service, which has had challenges recovering patronage following Covid. AT has committed to providing continuity of service should Fullers360 give notice that it is ceasing to operate the the Waiheke service.

There is a greater risk of short term disruption should any transition from the current operator to a new arrangement not be well planned, effectively communicate and well executed.

## *Unintended consequences*

### *Impacts on Tourism*

Waiheke tourism operators rely heavily on Fullers360, not only for a steady stream of customers as casual day trippers, but also as a key business partner through marketing, promotions and sales via the Fullers360 website and their other sales channels. s 9(2)(b)(ii)

### *Removing the Exemption increases lobbying and media attention*

Removing the exemption is likely to increase calls for fares that are aligned with the fares on contracted outer harbour ferry services at an early stage, especially for residents. The three year glide path suggested by AT is unlikely to be acceptable to some Waiheke residents, and may result in increased lobbying for change and more media attention. Residents only fares will not address residents' concerns that fares are too expensive for friends and family to visit.

### *Fullers as the interim contracted operator*

To minimise service disruption and to mitigate some of the other risks, the Service may be contracted back to Fullers, either on a short term contract or on a longer negotiated contract. This may not be an expected or acceptable outcome to some Waiheke residents who may have an expectation that there would be a new ferry operator as a result of the Service's change from exempt to contracted service.

## **Alternative options to removing the Service's exempt status**

In addition to the recommended option of removing the Service's exempt status, there are three alternative options that each present their own risks and challenges.

### **Option 1: Maintain Status Quo**

Fullers360 appears to be providing a service that exceeds AT's KPIs for reliability and punctuality and is performing better than contracted ferry services. It has recently, invested in new vessels and provides an extensive timetable including early morning, late night and weekend services. This timetable is more extensive than any of the contracted ferry services. s 9(2)(b)(ii)

Many of the presenting problems may not be addressed by a change to the exempt status without significant additional funding and some, such as overcrowding and residents being unable to catch their preferred ferry home may well be exacerbated by the removal of the Service's exempt status, at least in the short to medium term.

Fullers360 is well regarded by and works closely with the Waiheke and Auckland Tourism businesses. It markets and sells a range of Waiheke tours and experiences provided by other businesses s 9(2)(b)(ii)

Fuller360 are the key sponsors and supporters of several of the major events and festivals on Waiheke s 9(2)(b)(ii)

## Option 2: Monitor and Review QPA

In July 2022, Auckland Transport and Fullers360 signed a 12 year agreement for the Service. This agreement is in the early stages of implementation and it is yet to be determined whether it will address the concerns raised by resident and stakeholders. An approach under this option would be for Waka Kotahi to be clear about the key success indicators that are critical to achieving the outcomes for the resolution of issues raised by residents. The monitoring of these indicators could be combined with the establishment of a residents and stakeholder group that could give regular feedback on progress. This would contribute to a more formal review of July 2023 after 12 months of operation to assess whether the intended impact and improvements are being delivered for all parties.

## Option 3: Third Party Facilitated Negotiation

This option would provide a more formal intervention using an independent third party to focus and guide a plan that addresses the issues and concerns of all affected stakeholders. The QPA had a narrow focus, limited consultation with stakeholders and as an exempt service AT had little leverage. This option would ensure the wider concerns are a focus, unintended consequences are avoided, and public benefits and commercial interests are balanced. Fullers 360 has invested and built up the Service since 1981. It has developed expertise and experience, systems and processes that may be difficult to replicate in the short term. The Service appears to be performing at least as well as, possibly better than contracted services. A sudden change to the current operating arrangements has a risk of service disruption, legal challenge and may create an adversarial situation, counter to the aims of PTOM, and potentially damaging the relationship with the major Auckland ferry provider. Finding an alternative operator and suitable vessels at short notice to replace the incumbent may be problematic.

AT and Waka Kotahi would need to be clear about what they want to achieve by changing the service to a contracted service and that there may be significant cost in doing this. There also needs to be a recognition that Fullers360 has commercial expertise and business arrangements leveraged from the Service that generate additional revenue, which would be preferable for both parties for it to be maintained. This option recognises that the Service's exempt status is anomalous and will need to change but there is part of the Waiheke ferry market that may be a better served by a commercial provider. This option would seek to find what parts of the current commercial arrangement could be maintained to reduce the need for public subsidy.

Noting the length of time to negotiate previously arrangements including the QPA, a tight and binding timeframe would need to be agreed to ensure the negotiations have a timely conclusion.

## Recommendations

1. That Waka Kotahi seek legal advice on the risk of a challenge to their decision and likelihood of its success.
2. That Waka Kotahi seek legal advice on the required notice period under the QPA to better understand the risk of possible service disruption should removal of the exemption by OIC be requested.
3. That Waka Kotahi engage with AT prior to any considerations of removing the exemption by OIC to fully understand AT's preferred approach to transitioning to a contracted service and its preferred timeline.
4. That Waka Kotahi undertake additional analysis on the likely impacts of the removal of the Service's exemption on Waiheke Island's tourist and events industries to understand full impacts and how these might be mitigated.

## Appendices

### Appendix 1

#### *Approach /Methodology*

The LTMA provides guidance on how a review of exempt status should be undertaken. There are two requirements that need to be met for a service's exempt to be removed:

- the service needs to be integral to the region's public transport network; and
- the service needs its fares to be regulated.

In addition, Waka Kotahi needs to consult with the relevant regional council and the operator of the public transport service.

The general approach to the review has been as follows

- Engagement with Auckland Transport and Fullers360 to seek their views on the Service's exempt status and to understand the scope and likely impacts of the Quality Partnership Agreement (QPA) and the recently agreed commercial arrangements including both parties' rationale for not including the Waiheke Service
- Engagement with Waiheke Island Board, Sealink and Waiheke Tourism Group, which includes Waiheke tourism businesses who have a direct relationship with Fullers360 and may be affected by a changes to the Service
- Discuss and summarise any issues raised by the consultation
- Consider LTMA section 150 requirements and the need to further refine the two criteria to assess whether the Service is integral to the region's public transport network and that its fares need regulation.
- Consider the feasibility of revoking the Service's exempt status and whether is it justified.
- Consider other issues and risks, including the likelihood of the Minister's decision (or Waka Kotahi's recommendation) being reviewed
- Options and Recommendations

## *Appendix 2*

As part of the process of developing this report the following organisations provided input and information behalf of their respective organisations:

Auckland Transport

Fullers360

Waiheke Island Tourism Inc

Waiheke Local Board