

Adrian Olney

Partner

Russell McVeagh (New Zealand)

“The policy and politics of maritime infrastructure and logistics planning: The unintended consequences and hard lessons of transport policy in New Zealand”

This speaker was not available to present, but has provided a copy of his paper.

The policy and politics of maritime planning: The lessons of transport policy in NZ

Doug Bailey ¹
Russell McVeagh

Introduction

Before I begin, I would like to express my appreciation to the conference organisers for this opportunity to present this paper.

The focus of my commentary is to some extent out of step with the main themes of this conference. It is not concerned with marine exploration. Nor does it touch on the logistics of international maritime trade. It is, more than anything else, concerned with Government and in particular the effort to shift Government transport policy settings as they impact on New Zealand coastal shipping. Putting it even more pithily, it is about the business of influence.

The exercise of influence is not foreign to the legal profession. However in our areas of specialty we tend to be the recipients of law and policy as they are handed down to us by legislature or court. Regardless of the mechanism by which it arrives, the framework within which we operate is determined elsewhere. Ours tends to be the task of interpretation and application.

This leaves the interests of our industry - in this case the maritime industry - very much in the hands of others. To the extent that what we do is constrained by Government policies and the law, those 'others' are the politicians and their advisors. To them falls the task of understanding what the industry involves, why it is important, how it relates to Government's wider economic and social objectives, and how the prevailing policy settings help or hinder.

Where that understanding is perfect and Government sympathies are aligned, the industry has little to fear and even less to do. But as those of you who deal with Government and the bureaucracy will know, this ideal is rarely evident. Faced with a less perfect reality, our choices are either to operate as best we can within the inadequate limits of Government policy, or to change things.

In the case of the New Zealand coastal shipping industry, the absence of competitive neutrality, limited infrastructure, a lack of modal integration, and limited policy capacity made doing nothing unacceptable. Acting for the New Zealand Shipping Federation ("**Federation**"), our task became one of engaging proactively with Government to bring about a re-examination of coastal maritime transport policy and to advocate for policies that would revitalise the New Zealand coastal shipping industry².

It was a process that began in earnest early in 2006. It ended in May 2008. This paper is a truncated account of that process, the issues, the eventual policy outcome, and the lessons involved.

¹ Doug is a consultant with Russell McVeagh's Public Law and Policy Team. The bulk of his practice involves lobbying government on behalf of industry interests. He was closely involved in the development of the New Zealand Government's 'Sea Change' coastal shipping strategy. He is co-author of the New Zealand Shipping Federation Issues Paper, *Roadways to Waterways*.

² This task was undertaken in close partnership with Senate Communication Counsel, a Wellington-based communications consultancy.

Background

Despite New Zealand's history as a maritime nation and its ongoing dependence on international maritime transport, New Zealand's dominant preoccupation in the transport sector has been roading. The importance of the maritime industry and coastal shipping as part of the surface transport mix is routinely acknowledged in Government's various transport strategies, but in reality it has been the indigent cousin of transport planning over the past three decades.

The shifting focus of transport policy

The shift in focus to road and rail was understandable as improved transport links and infrastructure - slowly at first and then more rapidly - reduced regional dependence on coastal shipping. By the 1980s the role of the State in the delivery of maritime transport services, as in so many other areas, seemed an anachronism. So too did the protected status enjoyed by the coastal shipping industry as a result of a long-standing practice of coastal cargo reservation, or cabotage.

By the mid 1990's this and the perceived inefficiencies associated with a lack of competition for coastal cargos combined with the still robust monetarist philosophy to form what was to be a perfect storm for the coastal shipping industry. The removal of short haul restrictions on road transport had already taken place. It was now considered time to do away with the remaining vestige of industry protection.

Accordingly, in 1994 the Maritime Transport Act was passed and cabotage was consigned to history. From that point international ships transiting the New Zealand coast would be allowed to carry locally bound cargos. The free market would take care of the rest.

In the 'real' world of transport as it was conceived by politicians then, this move left only two surface transport modes - road and rail. And with the privatisation of rail in 1993, the practical reality for politicians and officials alike was that rail too was a matter for the market. In the thinking of the time there was only one surface transport mode with which Government need concern itself - road transport.

Competitive imbalance

Unsurprisingly this is became the almost exclusive focus of Government policy and funding. Road construction may not have been the political 'pork' that it is in the United States, but being seen to fund roads and related infrastructure was an undoubted political imperative. Incrementally, the competitive imbalance between road transport and the unsubsidised area of coastal shipping continued to grow.

This new reality was reflected in the New Zealand Ministry of Transport 2005 study of surface transport costs and charges³. Examining whether land transport users were overpaying or underpaying for the total costs of land transport, the study concluded that all users were underpaying to varying degrees. It found that, notwithstanding road user charges:

- trucks directly pay only 56% of their costs;
- cars directly pay only 64% of their costs;
- buses directly pay only 68% of their costs; and
- rail users directly pay only 77% of their costs.

³ Surface Transport Costs and Charges: Summary of Main Findings and Issues. New Zealand Ministry of Transport, March 2005. See: http://www.transport.govt.nz/assets/_PDFAttachment/surface-transport-costs-and-charges.pdf

The contrast with the local maritime industry was pronounced. Exposed to international competition, subject to the more stringent requirements of the local labour laws and faced with a growing market distortion, coastal shippers were paying also virtually all of the real costs associated with their mode.

The consequences were as you would expect. Whereas in 1994 there were 15 New Zealand flagged vessels carrying general coastal and trans-Tasman cargos outside the Cook Strait, by 2006 there were only three.⁴ Road transport was king.

Policy Incapacity

Inevitably, this narrow focus on roads was mirrored in the policy focus of the Ministry of Transport. The capacity of the officials to deal substantively with any transport mode other than road was limited. Certainly, maritime policy continued to have a home in the Ministry, but was served by an under-resourced cabal of two or three well-intentioned individuals, whose policy influence was limited at best.

The fact too that the Land Transport Costs and Charges Study focussed only on *land* as opposed to *surface* transport underscored the disregard to which maritime transport was subject. Ignoring the maritime mode altogether, the Study seemed to reflect both the biases and the relative capacity of the Ministry to address more than just the road transport mode.

The New Zealand Transport Strategy

Nominally at least, all of this was inconsistent with the New Zealand Transport Strategy. Released in December 2002, the Strategy was intended to guide decision-making and act as a reference point for all who wish to contribute to government policy and planning.

The core of the Strategy was straightforward enough:

"By 2010 New Zealand will have an affordable, integrated, safe, responsive, and sustainable transport system."⁵

Speaking in Parliament on the release of the Strategy, the then Minister of Transport, Hon Paul Swain, said:

"Today I released the Government's New Zealand Transport Strategy and introduced the Land Transport Management Bill. The New Zealand Transport Strategy allows, for the first time, all modes of transport—road, rail, sea, and air—to be looked at in an integrated way."

However, in practice modal integration was the least of what the Strategy was about. When the officials talked about integration, their focus appeared to be less on modal integration than on *administrative* integration. In such an administratively focussed environment, each transport mode had to rely on its bureaucratic proxy to advance an informed policy position. Road and rail had the Ministry and Transit New Zealand (dealing with road funding). In practice the maritime mode had Maritime New Zealand.

Although the title 'Maritime New Zealand' suggests that it compassed much, the organisation is a lesser administrative entity focussed not on maritime policy, but instead on the task ensuring an environmentally secure and operational safe marine environment. Unsurprisingly, when 'integrated' policy was advanced in the Transport Strategy, the maritime focus was more often than not restricted to those narrow considerations.

⁴ D.Bailey & M Parker, *Roadways to Waterways: Enhancing New Zealand's Surface Transport Options. A strategic issues and options paper prepared for the Minister of Transport by the New Zealand Shipping Federation.*

⁵ Minister of Transport, NZTS (December 2002), 4.

All of this is a long-winded way of saying that the maritime mode and a logistics based approach to transport planning were, in practice, remote from the consideration of those charged with the task of developing an integrated and sustainable transport system.

This lack of official regard was underscored by a discussion we had with a senior transport official during the preliminary stages of what I will call the *Sea Change* project. In response to our observations about the need to rectify the competitive imbalances that had arisen between the modes as a result of years of road (and more recently rail) subsidies, we were told sententiously that "the Government would not entertain anything that would distort the market place." That probably speaks for itself, but to labour the point, the preoccupation with roads and the business of road subsidies was so entrenched that it wasn't even recognised as a source of distortion.

Of course, this potted history does not tell the whole story. There was a range of other factors at play in the situation which time does not allow me to go into. The ownership structures of ports, internal competition for dwindling international ship visits and the role of regional government in infrastructure and transport planning were all elements that contributed to a highly fragmented - and for our clients hostile - policy environment.

The upshot was that for the public, the politicians and the officials alike, the sea was just something you sat beside.

The New Zealand Shipping Federation

The Federation was far from idle in the face of this. Staunch in its defence of the coastal maritime industry, the Federation fought a long rearguard action. Not every step that it took was backward. It did secure its wins. Not least of these was the agreement of the newly elected Labour Government in 2000 to review the state of the maritime industry and measures to develop New Zealand's coastal shipping options.

The Shipping Industry Review 2000

In August 2000⁶ a Shipping Industry Review was announced by Minister of Transport, Hon Mark Goshe. The reviewers were briefed to make strategic recommendations on what could be done to increase New Zealand's participation in shipping and maritime services.

Representing a wide array of business, union and maritime interests, consensus was reached on a number of key points. Significant among these was the acknowledgment of the need for a viable and sustainable New Zealand domestic shipping industry that is competitive in costs and services and applies best practice in its operations⁷. The need for measures to provide a more equitable trading environment for coastal shipping was also acknowledged and unanimity or substantial consensus was reached on initiatives intended to enhance the viability of the coastal shipping industry.

However, despite these recommendations, progress in advancing coastal shipping and related infrastructure was limited. It wasn't until 2004 that a post Shipping Review discussion group, known as the Shipping Dialogue Group, was established. To the cynic the diversity of the interests represented on the Group and the intermittent nature with which it met suggested that it was intended less to achieve policy improvements that obstruct them. The slightly less cynical would describe it as a sop.

⁶ The review panel comprised The Chair, Mr Ian Mackay (former Chair of the Maritime Safety Authority), Mr Dave Morgan (National President of the New Zealand Seafarers' Union); Mr Graham Cleghorn (Board Member - NZ Manufacturers Union); Captain John Deeney (Master Mariner); Mr Rod Grout (President NZ Shipping Federation); Mr Trevor Smith (Chair, Shippers' Council).

⁷ Report of the Shipping Industry Review, *A Future for New Zealand Shipping*, (December 2000).

Cabotage

In the face of all this - the funding anomalies, market liberalisation, the competitive imbalance resulting from government's subsidisation of road transport, and the lack of material progress in discussions with official - coastal operators felt that they had little option but to fall back on coastal cargo reservation for their survival. Seen as the only viable course, cabotage became the Federation's dominant focus.

Unfortunately, whilst the maritime unions were sympathetic to the Federation's position, the Government was not, Nor was the main opposition party. The restoration of cabotage was a political no-go area for the political left and right alike, and the more the Federation and its allies called for it, the more isolated they became. Along with the coastal maritime sector, it seemed, the Federation was relegated.

Some lessons

In this background, there are already several lessons that may be drawn. There were four that were salient for us at the time. The first lay in the incremental but real market distortions that can arise over time from a lack of policy rigour - in this case in respect of the differential subsidisation of the transport modes. The second lay in the relative lack of capacity on the part of the officials to deal substantively with modal policy outside road transport, and the doggedness with which they pursued the status quo. The third related lesson was the silo-based way in which transport policy was being addressed by the different administrative arms of Government. The fourth (and perhaps most salient lesson) lay in the relegation of the domestic shipping industry and the importance of understanding the political and policy dynamic that lies behind any policy area. Put another way, the starting point for effective engagement with Government is to understand their language, where their interests lie and what drives their behaviour.

Changing course

Developing such an understanding was the first and, as it turned out, most important of the tasks undertaken by the Federation.

A succession of meetings with key politicians, officials and political advisors in 2006 quickly established that the persistence with which the Federation had held to the restoration of cabotage, was also the main obstacle to its effective engagement in the policy process.

The fact that the Labour-led administration had effectively endorsed the use of market instruments as a means of ensuring (among other things) transport efficiencies meant that no Minister of Transport could be seen, or would be inclined, to restore industry protection. The opposition National Party was equally trenchant in its dismissal of special treatment. Its position was conveyed in a blunt fashion by former Transport Minister and long-time transport spokesperson Hon Maurice Williamson who, on the subject of coastal reservation, said, with some apparent satisfaction: "See, I told you that you'd get no change out of them [Labour]." For the officials, the lack of political engagement by either main party mean there was no mileage for them either in pleading the industry's case - even if they had been so inclined.

It was a lesson that the Federation took on board.

The circuit breaker

Resiling from its position on cabotage and industry protection, the Federation changed tack and used that fact as platform for reengaging with both the officials and the politicians. Its focus shifted to Government's express objectives for integrated transport planning and enhancing New Zealand's competitive position. Its position continued to be one of self-interest, but of an enlightened sort.

Having sought and obtained the endorsement of yet another transport Minister - this time Hon David Parker - the Federation developed its views in the strategic options paper, *Roadways to Waterways*. In it the Federation identified Government's goals and used its own language to outline the high level principles that, if logically applied, would persuade of the need to engage constructively with the coastal shipping industry to remove barriers to its effective operation.

Gaining traction

The paper found fertile ground. Finalised in September 2006 and coupled with a selective media campaign - one that carefully avoided painting the Government into a corner or providing the Opposition with a basis for attack - *Roadways to Waterways* gained traction as an obvious and, as it turned out, compelling case. Completed in time to greet the next Minister of Transport, Hon Annette King, it provided a direction that was timely and one with which the new Minister was naturally sympathetic. The groundwork for policy change was in place.

Of course this happy result was not the work of moments and neither was the process of policy engagement that followed. Both the paper and the Federation's growing political influence were matters of understandable concern for other transport interests. Modal competition was so much a practical reality that it had its mirror in the defensive positions taken by ports, road transporters, and freight owners alike. All were, to varying degrees, exercised about where the Federation's logic would lead.

The officials, too, were less than enthusiastic. In part beleaguered, in part lacking capacity and in part ingrained in a particular mode of thinking, their initial response to *Roadways to Waterways* suggested that they were either inclined to obstruct or were simply unsure what to do. After all, the Shipping Dialogue Group was meeting - albeit sporadically - and the market was operating. Were these things not sufficient?

However, a series of official information requests in the months and weeks before *Roadways to Waterways* was finalised had rendered transparent the policy black hole into which coastal maritime policy had fallen. This and the competitive imbalance between modes was something with which the Minister quickly came to grips. Rather than deferring to official wishes that she make haste slowly, she instead directed the Ministry to act on the Federation's recommendations. Core among these was the rapid development of a policy for coastal transport that would form part of the revised New Zealand Transport Strategy.

To the Ministry of Transport's considerable credit, that commission was acted upon with none of the reservation that had been evident up to that point. Resources were redirected and a significantly beefed up maritime policy unit bent itself to the task of producing what became the Government's blueprint for dealing with coastal shipping in the future.

In May 2008 the resulting Government policy document, *Sea Change: Transforming Coastal Shipping in New Zealand*⁸ was released. It was not a complete solution. Nor did it redress the significant competitive disadvantages to which Government's funding policies had placed the coastal maritime industry. However, what it did do was to reprioritise the role and place of maritime transport and infrastructure as part of New Zealand's total transport solution. Thirty million dollars was allocated for coastal shipping and related infrastructure development and policy thinking was nudged a step closer to a logistics-based approach that conceived of New Zealand's surface transport networks as a strategic national resource. It was a material beginning.

⁸ <http://www.transport.govt.nz/assets/Images/NewFolder-2/Sea-Change-2008.pdf>

Summary

It is difficult in so short a time to provide you with a sense of the hard work and occasional drama and political missteps that were part and parcel of this lobbying campaign. The frustration at the position the Federation and the industry found themselves in may be something with which you can relate and I hope that I have succeeded in conveying the flavour of the policy problem and the political and other obstacles that had to be overcome in advancing a solution.

Hopefully, too, the lessons are self-evident. Some I have rehearsed already. On the risk side of the ledger are poor policy design, the limited capacity of under-resourced officials to come to grips with the practical realities of an industry and the entrenched nature of some political and official thinking. On the positive side are the importance of understanding what drives politicians, officials, and policy. There is also the usefulness of finding the circuit breakers and the value of enlightened self-interest - the task of aligning your industry's objectives with Government's (and the Minister's) economic, social and environmental goals. But perhaps the most compelling of the lessons to arise from the Sea Change project is that industry need not be a passive recipient of bad policy and static thinking. Change can be achieved.

The satisfying demonstration of this comes next week with Pacifica Shipping's launch of the aptly named Spirit of Endurance. It will be the largest New Zealand-flagged ship in decades to run in domestic waters and the first expansion in coastal shipping services in nearly 20 years.