

# Achieving better public policy outcomes at airports

Advising agencies	Ministry of Transport
Decision sought	Agree to additional elements in the new registration regime for airports, in particular a requirement for airports, working with border agencies, to produce an Enforceable Regulatory Undertaking (ERU). An ERU will outline how government and industry will work together for mutual benefit. If agreed, this regime will be given effect through the Civil Aviation Bill.
Proposing Minister	Hon Michael Wood, Minister of Transport

## Summary: Problem and Proposed Approach

### Problem Definition

Airports deliver nationally significant outcomes, including economic benefits for New Zealand, such as supporting trade and tourism. But airports are also commercial entities required to take account of shareholder interests.

Government outcomes specifically sought at (rather than just through) airports include:

- protecting New Zealand from pests and diseases at the border
- minimising safety and security risks across the aviation system
- contributing to the COVID-19 economic recovery and rebuild through, when appropriate, the support and promotion of New Zealand as a safe and attractive place to travel to and trade with
- preventing the import and export of prohibited goods, and
- managing people who seek to enter New Zealand, including public health and immigration objectives.

To achieve these outcomes, the Civil Aviation Authority (including Avsec), the New Zealand Customs Service, the Ministry for Primary Industries, and Immigration New Zealand (referred to as “relevant agencies”) must be able to obtain appropriate floor space and facilities at airports. Relevant agencies’ spatial requirements evolve over time, as international requirements change and new initiatives and technologies are introduced. The COVID-19 pandemic has also highlighted the importance of health considerations at the border.

However, airports’ revenue is dependent on the use of that real estate to generate income from facilities such as shopping and dining areas. Developing and operating airports requires significant investment, and is carefully planned by airport operators on short, medium and long term horizons. In some cases, airports’ costs are passed on to airlines, which already requires them to follow a legislatively mandated consultative process. This can lead to tension between relevant agencies’ requirements and airports’ own interests and planning cycles.

The current legislative framework for achieving government outcomes involves three different pieces of legislation and the Civil Aviation Rules. The relevant agencies individually negotiate their requirements with airports. This does not lend itself to efficient or coordinated government activity and services, nor does it appropriately balance national objectives with airports’ commercial interests.

A new approach is needed that is effective for agencies, presents minimal disruption to the travelling public, supports recovery from COVID-19, and can be reconciled with airports' needs, long term plans and commercial viability. This will require a solution that prioritises open dialogue, builds on existing best practice and lessons learned, and enhances collaboration between government, airlines and airports.

### Summary of Preferred Option

Cabinet has already agreed to establish an airport registration regime, through the Civil Aviation Bill. Under that part of the new regime, airport operators (currently regulated as airport authorities) would continue to operate essentially as they do now.

Our preferred option would add additional obligations relating to spatial planning and infrastructure requirements for airports where relevant agencies routinely operate. The new requirement, called an Enforceable Regulatory Undertaking (ERU), would provide a five-yearly<sup>1</sup> consolidated plan, endorsed by relevant agencies, through which these airports specify projects and milestones to meet their existing obligations to provide space at airports under civil aviation and border legislation (and any other future legislative requirements at airports under other Acts). ERUs would become enforceable once it has been accepted by the Secretary for Transport, although it could then be revised if needed, if agreed by all parties (for example, to respond to shock events like COVID-19).

Relevant agencies (being those that operate at each airport respectively) will also have an obligation to work together to collaboratively and coherently outline their respective needs and expectations, coordinated through the Border Executive Board work streams.

## Section B: Summary Impacts: Benefits and costs

### Who are the main expected beneficiaries and what is the nature of the expected benefit?

The ERU requirement has been designed to move the focus of engagement between airports and relevant agencies from short-term concerns to long-term investment and planning. The key benefits of the proposal are that it will enable relevant agencies to work with airports more strategically to achieve public policy objectives and give airports more certainty about regulatory requirements in their commercial decision making. Better coordinated long-term investment decision making should also result in better investment decisions and lower costs.

The beneficiaries and high level benefits to them are:

- **Airports** – Improved clarity about evolving aviation security and border regulatory requirements to inform infrastructure planning, and a coordinated approach from regulators.
- **Ministry of Transport (Ministry)** – Assurance that regulatory requirements will be appropriately weighted against commercial incentives, and that airports can be effectively held to account for any non-compliance.
- **Relevant agencies** – Greater flexibility to deliver border outcomes, and assurance that regulatory requirements will be appropriately considered against commercial incentives.
- **NZ Inc. and travelling public** – Assurance that the aviation system is safe and secure, and that airports' commercial objectives will not overshadow border protection and security objectives. Continued support for global connectivity through the border and improved passenger experience at airports.

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<sup>1</sup> This timeframe has been selected as it aligns with other statutory and best practice planning horizons airports already use.

## Where do the costs fall?

The only cost that has been monetised at this stage of the policy development process is the cost of an FTE, to provide the Secretary for Transport with support to administer the registration regime and process ERUs. This cost (of approximately \$75,000 to \$110,000 per annum) will be shared between the Ministry of Transport and airports. However, the cost recovery options have not yet been modelled, and will be considered during implementation.

There may also be some transitional costs associated with this option as people (including airports, airlines and relevant agencies) learn to work within the framework in the short term.

Our assessment is that, once in place, additional costs of the new regime in the medium term will be minimal. The considerable resource expended by all parties to engage with each other currently, the expected efficiencies of this approach are anticipated to keep any additional cost of implementation low.

We also consider that, while we have not modelled the costs at this stage, greater coordination is likely to reduce costs to airports in the long term. This is due to the benefit of engaging across the sector to plan infrastructure needs well in advance of implementation, which should reduce “regret spend” on infrastructure that needs to be amended well before end-of-life to accommodate agencies’ evolving requirements.

## What are the likely risks and unintended impacts? How significant are they and how will they be minimised or mitigated?

While stakeholders have not expressed outright opposition to the proposal for requiring ERUs during consultation, they want to see further information, and it is not their preferred approach. Airports would prefer a lighter touch approach to addressing the problem. This includes using existing levers in each agency’s respective legislation and machinery of government to improve collaboration. However, the Ministry’s view is that this will not provide the long term efficiencies and sector strengthening that ERUs would enable.

Developing ERUs on a five-yearly cycle aligns with existing airport planning timeframes and other regulatory requirements, and during business as usual times is likely to align well with policy development processes in most cases. However, the ERU regime will need to remain flexible to some degree, to enable the plans to adapt to urgent changes or shock events (such as the creation of “green” and “red” zones at airports to accommodate travellers during COVID-19 response and recovery phases).

Successful implementation of our recommended option relies on stakeholders supporting and engaging with the approach positively. The Ministry will continue to engage with airports during the legislative process and in operationalising the regime, to minimise the risk of unintentionally creating tension in the existing positive sector working relationships.

Implementation also depends on relevant agencies agreeing how to operationalise the approach. In particular, agencies will need to ensure consistency across government when developing policy and implementing their respective elements of the border protection and aviation security regime. Work is underway to ensure that relevant agencies will be able to create an efficient process to engage with each other and airports. The approach is currently being trialled with Auckland International Airport.

## Section C: Evidence certainty and quality assurance

### Agency rating of evidence certainty?

We are confident of the qualitative evidence base. The Ministry of Transport has extensive experience working with airports (especially those where the Aviation Security Service operates),

and we have worked with other agencies and industry stakeholders in developing the recommended approach. Our role on the Border Executive Board<sup>2</sup> also enables us to have a system view of domestic border requirements and international expectations.

Quantitative evidence is largely unavailable in relation to this aspect of airport regulation, and so the Ministry has relied on experience, sector knowledge, and engagement with stakeholders to determine the scale of the problem and strength of our preferred option.

*To be completed by quality assurers:*

Quality Assurance Reviewing Agency:
Ministry of Transport
Quality Assurance Assessment:
Partially meets the QA criteria
Reviewer Comments and Recommendations:
The Regulatory Impact Assessment has been reviewed by the Ministry of Transport's Regulatory Impact Assessment Panel as partially meeting the quality assurance criteria. The RIA sets out a clear policy problem, which has particular significance in the context of New Zealand's COVID-19 recovery. The RIA demonstrates efficient and effective engagement with relevant stakeholders, and their concerns and views have been reflected in the analysis. [REDACTED] Cabinet does not have the full information available to take decisions on the proposal.

**Withheld due to information subject to an obligation of confidence, and release is likely to prejudice the supply of similar information in future.**

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<sup>2</sup> The Border Executive Board consists of chief executives from the New Zealand Customs Service, the Ministry for Primary Industries, the Ministry of Business, Innovation and Employment, the Ministry of Transport, the Ministry of Foreign Affairs and Trade, and the Ministry of Health.

# Impact Statement: Achieving better public policy outcomes at airports

## Section 1: General information

### 1.1 Purpose

The Ministry of Transport is solely responsible for the analysis and advice set out in this Regulatory Impact Assessment, except as otherwise explicitly indicated.

This analysis and advice has been produced for the purpose of informing final decisions to proceed with policy changes, to be taken by Cabinet for implementation in the Civil Aviation Bill (the Bill).

## 1.2 Key Limitations or Constraints on Analysis

### Cabinet has already made a range of decisions that affect this proposal

This proposal would be given effect through the Civil Aviation Bill, which is in its final stages of development. Cabinet has already made a number of decisions about how airports will be treated under the new civil aviation regime, including:

- modernising the airport authorities regime (currently under the Airport Authorities Act 1966) by removing clauses that are no longer necessary, in particular in light of changes to other legislation (e.g. local government and Crown entity legislation) [CAB-19-MIN-0167 and CAB-20-MIN-0248]
- shifting the administrative decision regarding the authorisation of airport authorities from the Minister of Transport, to the Secretary for Transport (the Secretary) [CAB-20-MIN-0248]
- introducing a statutory criteria and authorisation for airports, including: the decision-maker having regard to the new Act; being satisfied that there is no reason to believe the airport authority will not comply with the new Act; and providing for consultation with interested persons [CAB-20-MIN-0248]
- amending the legislation to require further consultation on certain capital expenditures [CAB-16-MIN-0568].

This framework is considered the “status quo” for the purpose of this analysis, as it will be given effect through the Bill independently of any decisions taken on improved collaboration mechanisms.

### Cabinet had agreed to consider an airport licensing regime for inclusion in the Bill<sup>3</sup>

The options in this paper are partially constrained by Cabinet’s agreement to consider an airport licensing regime in 2020 [CAB-20-MIN-0248]. This does not constrain the Ministry’s analysis of the options presented, but has served as a guide for the shape of the preferred proposal.

Airport licensing itself has been removed from consideration as a result of discussions with industry stakeholders. Airport *registration* replaces airport *licensing* as the preferred approach. Registration (with the proposed addition of ERUs) will achieve similar objectives to the licensing proposal, in a more targeted way that is less onerous on airports, and reduces the potential for overlap with other regulatory systems.

### Consultation

This revised proposal was not included in public consultation which occurred in 2019 on the Civil Aviation Bill (through the Bill’s Exposure Draft and accompanying commentary document). However, public comment on the Exposure Draft (i.e. views presented on airport regulation and proposed changes to the Airport Authorities Act provisions) has influenced the shape of this proposal.

The preferred option (in the form of the A3 annexed to this document) was presented in a workshop to key aviation stakeholders, including airports, airlines and select advocacy groups. These stakeholders are generally supportive of the proposal in its current form and agree greater coordination will benefit their operations.

The proposal was also discussed with relevant agencies, who have additionally been consulted on the Bill and accompanying Cabinet paper. Relevant agencies are unanimously supportive of the proposal, noting that more work will need to be done collectively in order to implement the process, should it be introduced in the Civil Aviation Bill.

**Withheld due to information subject to an obligation of confidence, and release is likely to prejudice the supply of similar information in future.**

<sup>3</sup> In June 2020, Cabinet directed the Ministry to consult key stakeholders on a proposed licensing regime for airports, authorised the Minister of Transport to refine the proposal after consultation and engagement with border agencies; and invited the Minister of Transport to seek final policy approvals at the time of introduction of the Bill [CAB-20-MIN-0248].

### 1.3 Responsible Manager (signature and date):

5 May 2021

Tom Forster  
Manager - Economic Regulation  
Ministry of Transport

## Section 2: Problem definition and objectives

### 2.1 What is the current state within which action is proposed?

Airports are among the largest infrastructure investments a city or region can make and are a vital part of New Zealand's transport system. Government has important public policy outcomes it seeks to achieve at airports including safe, secure and efficient passenger facilitation, and protecting New Zealand from prohibited imports, pests and diseases.

Our international airports, as the primary gateway to New Zealand, will play a key role in rebuilding confidence in New Zealand as a safe destination for trade and travel during international recovery from COVID-19. Airports are also crucial to maintain movement of goods and freight during the response to, and long-term recovery from, the pandemic.

Airports are also critical to New Zealand's resilience beyond the COVID-19 pandemic, in terms of connectivity and resilience in the event of natural or human made disasters. In total, 21 airports are listed as lifeline utilities under Schedule 1 of the Civil Defence and Emergency management Act 2002, which means they are considered essential infrastructure that underpin public services and connectivity even if the rest of the network was to shut down (e.g. as the result of a natural disaster).

Over the past few decades, airport ownership has been increasingly privatised. The current regime reflects and allows for a range of ownership structures, but does not fully recognise airports' evolving role in achieving nationally significant government outcomes. Airports manage their relationships with government, and requirements to allow for aviation security and border activities within their terminals, on an as-needed basis directly with the agencies as they would consult with any other stakeholder.

#### The pre-COVID-19 picture

Airports can be profitable businesses, but at the same time the movement of people and goods through airports creates significant risks for New Zealand that need to be managed. Therefore, airport operators play an important role in supporting the Government's need to manage these risks, and meet its wider policy objectives. Airports do this by ensuring aviation and border agencies and other essential services have sufficient space, infrastructure and facilities to carry out roles that enable the safe, secure and efficient movement of people and goods through our airports.

Until March 2020, airports, airlines, and relevant agencies had been dealing with growing passenger volumes. Passenger arrivals into New Zealand by air increased by approximately 51 percent (from 4.6 million to 6.9 million) between 2010 and 2018. In 2019, eight New Zealand airports had passenger flows of more than 500,000 people.<sup>4</sup>

While this increase in passenger volumes has provided significant economic benefits, it has put pressure on airports to facilitate a greater number of passengers, and on relevant agencies to continue to meet their respective objectives at airports.

#### Impacts of COVID-19

With COVID-19 border restrictions from late March 2020, most international airlines suspended commercial passenger services to New Zealand. International passenger numbers effectively reduced to zero and for most of the past year have been below 350 per day (limited by the capacity of the Managed Isolation and Quarantine system). Even as the course of the pandemic changes across the world and vaccines become available, border restrictions are likely to remain in place in some form, for some time. Any recovery of international passenger aviation may be slow due to fear of opening borders too early, and low demand due to economic recession. This has increased the

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<sup>4</sup> Auckland International Airport, Christchurch International Airport, Wellington International Airport, Queenstown International Airport, Dunedin International Airport, Nelson Airport, Hawkes Bay Airport, and Palmerston North Airport.

importance of government working closely and collaboratively alongside airports and airlines to ensure New Zealand stays connected to the rest of the world.

Air freight services have continued throughout the COVID-19 response, but at a reduced rate, and supported by the International Air Freight Capacity scheme. Given the anticipated slow recovery, significant financial impacts will be felt on airports and the aviation sector, both internationally and domestically, for some time. Border agencies are also affected by trends such as increasing levels of online shopping and personal imports, which create additional resourcing pressures.

Throughout the recovery period, it is more crucial than ever that the government, airlines and airports work closely to ensure the recovery is optimised and accounts for wider public policy objectives. Government and industry will continue to work together on important areas of continued uncertainty, such as how the aviation industry can recover and how freight moves to and from New Zealand. There are also questions about what the pandemic may mean for how borders operate in the future. For example, there may be ongoing requirements for health screening at the border, which would require government use of additional space at airports.

### **Government objectives at airports**

The government has a number of public policy objectives that it seeks at New Zealand airports. These include:

- protecting New Zealand from pests and diseases at the border
- minimising safety and security risks across the aviation system
- contributing to the COVID-19 economic recovery and rebuild through, when appropriate, the support and promotion of New Zealand as a safe and attractive place to travel to and trade with
- preventing the import and export of prohibited goods, and
- managing people who seek to enter New Zealand, including public health and immigration objectives.

## **2.2 What regulatory system(s) are already in place?**

### **Civil aviation legislation in New Zealand**

Airports are currently subject to the Airport Authorities Act 1966 (the Act) and rules made under the Civil Aviation Act 1990. These are the two main pieces of aviation legislation in New Zealand. The Act gives airport authorities a range of functions and powers to establish and operate airports. It provides for airport authorities to establish and operate airports. This legislation has been amended several times, but the basic framework remains unchanged.

Airport authority status is not a pre-condition to operating an aerodrome, but airport authority status has value to operators. At a high level, airport authorities are more easily able to access compulsory land acquisition powers, have some special powers to deal with airport land and their tenants, can receive land from the Crown or local authorities without giving rise to offer-backs, and can make bylaws in relation to traffic on their land and over the airport. They also have obligations, including consulting with their customers over airport charges.

The Act does not clearly set out airport responsibilities in relation to security and border requirements or spatial planning; this is left to other legislation, which has limited powers. This creates a risk that security and border requirements are seen as add-ons and not as a key function of operating an airport.

### **The current laws governing airport regulation are set to be repealed and replaced**

The Civil Aviation Bill (the Bill) will repeal and replace the Act and the Civil Aviation Act 1990. In April 2019, Cabinet agreed that the Bill would omit provisions carried over from the Act that are outdated or obsolete in light of the Local Government Act 2002 and other legislation [CAB-19-MIN-0167]. Relevant aspects of the Act that will be retained in the Bill include:

- authorisation of aerodrome operators

- requirements concerning the transfer of Crown land or local authority land to an airport authority
- an airport operated by an airport authority that is not a local authority is a government work for the purposes of the Public Works Act 1981
- airport authorities must consult substantial customers (as defined in the Act) concerning charges
- airport authorities must consult substantial customers concerning capital expenditure plans
- leasing powers of airport authorities
- subdivision of airport land, and
- airport bylaw making and enforcement.

### Airports also interface with border legislation

Airports are required to provide space and facilities to aviation security and border agencies at certain airports under a number of different pieces of legislation, including the Customs and Excise Act 2018, the Biosecurity Act 1993, and the Immigration Act 2009, as well as under civil aviation rules as set out below .

**Table 1: Ability for agencies to require space at airports under civil aviation and border legislation**

	Civil Aviation Act 1990 & Civil Aviation Rule Part 139	Biosecurity Act 1993	the New Zealand Customs Service and Excise Act 2018	Immigration Act 2009
Auckland	Y	Y	Y	Y
Christchurch	Y	Y	Y	Y
Dunedin	Y	Y	Y	Y
Hamilton	N	Y	Y	Y
Hawke's Bay (Napier)	N	Y	N	N
Invercargill	Y	Y	N	N
Kerikeri	N	Y	N	N
Nelson	N	Y	N	N
Palmerston North	N	N	Y	N
Queenstown	Y	Y	Y	Y
Rotorua	N	N	Y	Y
Wellington	Y	Y	Y	Y

### International comparisons

It is difficult to compare international regimes due to the different ways that airports are owned, operated and regulated. For instance, in the United States most commercial airports are owned by state or federal government meaning airport and government objectives are closely aligned.

The closest comparable regimes are likely to be Australia and the United Kingdom (UK), both of which regulate airports in a more comprehensive way than New Zealand.

At the UK's largest airports, the UK Civil Aviation Authority ensures that airports meet their safety and security requirements while meeting airport users' needs for cost and quality of service. Airports hold a license, which allows for graduated compliance mechanisms, and the ability to address additional concerns outside of the areas of safety, security and border requirements.

Australia's main airports are required to submit master plans which set out the long term development plans at airports. These master plans are developed and agreed in consultation with government departments, and provide a framework to support coordinated development at airports to meet public policy objectives.

## 2.3 What is the policy problem or opportunity?

The current approach to achieving government outcomes involves relevant agencies individually negotiating their requirements with airports. This does not lend itself to efficient or coordinated government activity. Nor does it appropriately balance national objectives with airports' commercial interests. There is a risk that, if airport regulation does not explicitly support greater coordination, government objectives may not be met in the future. Airports may find themselves under increasing pressure from relevant agencies seeking to modernise their respective border and security measures, independently of one another.

Airports and airlines have worked very closely with government during the COVID-19 response to implement a broad range of health requirements imposed on passengers, staff and facilities. This cooperation has been key to the "keep it out" pillar of the COVID-19 elimination strategy.

In the absence of enforceable requirements, non-regulatory approaches, such as applying pressure or influence, have had limited effectiveness, particularly in the face of strong commercial imperatives. A new approach is needed that is effective for agencies, presents minimal disruption to the travelling public, supports recovery from COVID-19, and can be reconciled with airports' needs, long term plans and commercial viability. This will require a solution that prioritises open dialogue, builds on existing best practice and lessons learned, and enhances collaboration between government, airlines and airports.

### **Airport regulation is being modernised through the Civil Aviation Bill**

The current authorisation process for airports is antiquated and inconsistent with modern approaches to statutory decision-making, in terms of the nature of the decision, the lack of statutory criteria or process, and the decision-maker. Cabinet has already agreed to modernise this decision-making process in amendments that are consistent with, but independent of, the proposal for an airport registration regime in this paper. This work provides an opportunity and a baseline to review airport regulation settings, particularly around how government/airport relationships can be strengthened in the long-term.

### **The current regime does not adequately recognise airports' evolving role in achieving nationally significant government outcomes**

Compared to 50 years ago, many airports are now operated by private companies or local government as commercial undertakings. Today, central government has less of a role in running airports, but its requirements and objectives at airports have increased. The aviation security sector has been transformed in the past 20 years, particularly as a result of international events and trends. Over the past year health requirements at the border have been critical.

Effective, modern airport regulation will be critical to the future of New Zealand's aviation industry, particularly during recovery from the COVID-19 pandemic. Strong relationships between relevant agencies and industry stakeholders will support government outcomes through airports. Regulation should reflect the role airport companies now play in the aviation sector and New Zealand's economy more generally, and provide airport operators with the assurances they need to plan their businesses and future plans efficiently.

### **The current regime is clear on airport authorities' rights, but is not sufficiently clear on obligations**

Airports receive a number of legal rights under the Act (for example, the ability to access land for development or to change leases without compensating the lessor). In submissions on the Civil Aviation Bill stakeholders have raised concerns about these powers and the ability they give airports to override a number of lessor rights with little consultation.

In part airports have these rights, because alongside them they have legal obligations to manage risks at airports. However, these obligations are not always clear, and are not supported by appropriate graduated compliance mechanisms.

Much of the relevant legislation requires airports to provide space for respective border agencies, but does not specify what this looks like. While agencies normally provide specifications, these do not have sufficient legislative backing, and often areas provided are insufficient to allow for efficient and effective delivery of aviation and border security outcomes and efficient passenger facilitation. It can also lead to insufficient space for agency staff to work in healthy and safe working environments.

### **Airports' and government's needs are not sufficiently aligned**

All parties (relevant agencies, airports and airlines) have incentives to ensure New Zealand's aviation system is safe, secure and efficient, and that our border promotes smooth passenger facilitation and good passenger experiences at airports and promotes our national interests. We collectively have an interest in preserving the reputation of New Zealand as a competitive and safe destination for business, trade and travel. New Zealand's experience during COVID-19 has shown the importance and benefits of working collaboratively more than ever, and airports and government have worked together well during this time.

However, airports' incentives can compete with government objectives where these require use of airport floor space that could otherwise be used for commercial purposes, leading airport operators to prioritise commercial outcomes. For example, an airport may choose to invest first and more heavily in profit making parts of its business, while applying a just-in-time, or minimum required, investment approach to relevant agencies' needs. Increasing revenue will be important for airports trying to rebuild commercial revenue streams as quickly as possible once passengers start returning following the global response to COVID-19.

On the other side, relevant agencies may not always provide sufficient advance warning of infrastructure and spatial needs at airports, and do not always provide a sufficiently coordinated approach across agencies. This makes the challenge for airports to plan infrastructure that meets the needs of its customers and agencies more difficult than it needs to be.

These factors can lead to inadequate prioritisation of space, infrastructure and investment for facilities that would contribute to government objectives and needs. If this is not addressed, these factors are likely to lead to greater challenges in the future. There is a risk that inaction now could lead to a quagmire of interrelated issues around evolving border and security requirements, passenger volume growth and major airport infrastructure planning.

### **Existing mechanisms are not effective to ensure compliance**

The regulatory tools for ensuring effective compliance and cooperation from airports are limited and, in many cases, not effective. Agencies can use fines when an airport is non-compliant with their duties or obligations under transport or border legislation. However, these tend to be small, for example \$25,000 in the Customs and Excise Act or \$30,000 under Civil Aviation Rules. These amounts are unlikely to be of sufficient incentive when dealing with an airport with annual revenue in the hundreds of millions of dollars (pre-COVID-19 figures).

In the event of non-compliance, agencies can take drastic measures, such as revoking an airport's aviation document or other approval to operate as a port. However, this is not a realistic option at larger international airports, such as Auckland, where revoking such an approval would effectively shut down air transport operations and have widespread adverse outcomes for New Zealand. For this reason, larger airports are likely to view this as an unrealistic option on the part of agencies, and for agencies there are significant disincentives to using these measures.

## 2.4 What do stakeholders think about the problem?

The key stakeholders of this proposal are the regulated parties and the regulators, including:

- **Security designated airports** (where aviation security services are provided)<sup>5</sup> and border airports (where biosecurity, immigration and/or other controls are in place)
- **Regional airports** (who may be affected by evolving government requirements in the future)
- **Airlines** who operate at these airports, and
- **Relevant agencies** (currently the Ministry for Primary Industries, the New Zealand Customs Service, Immigration New Zealand, and the Civil Aviation Authority, including Avsec).

*Stakeholders disagreed with the proposal for airport licensing*

Targeted consultation on the original proposal for airport licensing in mid-2020 highlighted that airports, airlines and relevant agencies agree that continued collaboration would be beneficial. All parties wanted a greater understanding of each others' planning requirements. However, airports disagreed with the Ministry's view of the nature of the problem and proposal for a licensing regime, which they regarded as overly interventionist. They did not consider legislative change of the kind described at that time was necessary or proportionate to meet the proposal's objectives.

Stakeholders and government agencies wanted to understand better how this legislation would interact with other border legislation. Through a series of workshops and via written submissions from six industry stakeholders, the Ministry has reviewed its characterisation of the problem (and its preferred option) to give more weight to stakeholder views.

*Consultation since then has reflected a more positive view of airport registration and the proposed ERU regime*

The current proposal for an airport registration regime supported by ERUs has been shared with key industry and government stakeholders. While most industry stakeholders would still prefer a non-regulatory approach, they acknowledge there are benefits for them under this proposal. They have acknowledged that the ERU regime reflects industry's needs, is more targeted to address the problem, and would align with existing planning best practice and timeframes.

Relevant agencies have been consulted on this regulatory impact assessment, and support the problem definition and preferred option. The Ministry will continue to work with agencies on how to operationalise the regime, should this option progress through the legislative process via the Civil Aviation Bill.

## 2.5 What are the objectives sought in relation to the identified problem?

The regulatory system needs to give airports certainty about agencies' requirements that will affect their commercial decisions and infrastructure planning. This is especially true in the COVID-19 recovery and post-recovery phases, as the aviation system will continue to operate under considerable financial strain. Regulation should also facilitate better ongoing relationships between airports and relevant agencies.

While there is still some divergence of views on what the core problems are, government and industry stakeholders are broadly aligned on the overarching objective: to strengthen collaboration between the various stakeholders (government, airports and airlines) and provide greater line of sight across the sector in relation to spatial planning and agencies' operational requirements.

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<sup>5</sup> There are currently six security designated aerodromes in New Zealand. They are the international airports in Auckland, Wellington, Christchurch, Queenstown and Dunedin, plus Invercargill Airport.

A new approach is needed that is effective for agencies, presents minimal disruption to the travelling public, supports recovery from COVID-19, and can be reconciled with airports' needs, long term plans and commercial viability.

## Section 3: Option identification

### 3.1 What options are available to address the problem?

#### **Option One – Status Quo (Airport registration with no ERU statutory requirement for collaboration)**

As noted in section 1.2 (Key Limitations or Constraints on Analysis), we are treating the move from Airport Authorities to registered airports agreed by Cabinet for inclusion in the Civil Aviation Bill as the status quo. This is because the regime in the Bill is based on the current regulatory system under the Act, and it will be brought into force independently of decisions taken on mechanisms for enhanced collaboration proposed in this analysis.

The key characteristics of the status quo are that:

- Aerodrome operators can apply for registration from the Secretary. There are statutory criteria to guide the Secretary's decision-making.
- There is no requirement for aerodrome operators to seek registered airport status, but doing so is of considerable benefit to them as it provides access to a range of powers associated with running an airport (e.g. making bylaws, being treated as public or government works, and being able to vary leases).
- There are only a few obligations on airport operators (e.g. they must consult substantial customers on charges and capital expenditure plans, and consult substantial customers and relevant agencies on spatial plans).
- Airport operator registration is enduring (does not expire or require renewal), and can only be cancelled in limited circumstances.
- Government can require space at airports for provision of aviation security services through the Rules, and for border protection services through other Acts. Contravention of civil aviation security requirements is a regulation offence, with a maximum fine on conviction of \$30,000. This applies to all security designated aerodromes regardless of whether they have airport authority status.

*Under the status quo, agencies could work to use existing levers and relationships better*

Relevant agencies could use existing powers under their respective legislation, and engagement through the new Border Executive Board and airport forums, to work with airports to better deliver government outcomes. Ministers could also provide support in ensuring the government's objectives are well understood and implemented.

Some stakeholders have suggested that, in light of improved collaboration during the COVID-19 response, agencies could achieve better outcomes without any further regulatory response. This would enable airports to continue within a "known" environment during a time of uncertainty. However it would not address a number of core elements of the problem described above.

We think the issues with the current regulatory arrangements should be addressed in a sustainable and cohesive way especially as we are currently working on the Bill to modernise aviation legislation. Furthermore, a system change affecting airports (e.g. a change in personnel, economic circumstances, or shock events) could reverse the gains made, as the current approach often relies on personal relationships and recent experience of working together.

While agencies frequently have positive experiences engaging with airports, this can be variable, particularly when airports are faced with large infrastructure spends, or circumstances change.

There has also been a pattern of delays and/or changes to infrastructure plans and timelines by airports, which has impeded the ability of relevant agencies to engage with them effectively. For these reasons, we believe informal cooperation alone is not sufficient. It can work in certain circumstances, and at certain times, however it cannot be relied upon to consistently and sustainably ensure that government policy outcomes are adequately provided for at airports.

This approach does not directly address airports' need to reliably receive information from agencies at the right time to build it into early spatial and infrastructure planning.

### **Option Two – Strengthen existing levers across aviation and border legislation**

Agencies could seek to create stronger and better aligned powers, remedies, and graduated penalties under their respective legislative frameworks. This could include additional obligations for airports to consult with government on spatial plans or to produce an action plan if requested by the Secretary.

This approach would improve border and aviation security sector outcomes by setting out clear expectations and processes. It could improve consistency across the relevant legislative frameworks.

As with Option One, greater collaboration could be encouraged through coordinating groups such as the Border Executive Board and at aviation forums. This could be done informally, and does not by itself require legislative amendment.

The issues with this option include:

- it does not address the airports' concern about relevant agencies not signalling their needs in advance, or failing to align their respective needs
- it involves multiple regulatory approaches that may address individual agency issues, but not in a way that encourages a collective approach by the relevant parties to build relationships, understanding and joint planning
- it requires amending multiple legislative regimes, and
- it relies on punitive action by regulators.

### **Neither Option One nor Option Two is likely to support strengthened relationships and outcomes at airports that are sustainable**

While these options may in some cases provide greater regulatory incentives, neither achieves the objective of ensuring border agencies and airports work together more strategically to achieve public policy objectives. Nor do they give airports the certainty they need about government agency requirements into the future to inform their commercial decision-making.

### **Option Three – Enforceable Regulatory Undertakings (ERUs)**

Option Three is to add mechanisms empowering greater alignment and cooperation to the airport registration regime. Many airports would continue to operate as they do under the status quo. The additional requirements associated with this option would only apply to the subset of airports where relevant agencies routinely operate, and the agencies that operate there.

We propose that airports where one or more relevant agencies routinely operate will be required to develop a plan called an ERU. Key characteristics of the ERU are that it:

- is required at registered airports that are security designated aerodromes, or where border agencies routinely operate
- must specify projects, plans and milestones to meet requirements of each relevant agency
- reflects a collaborate view from agencies about their respective needs, and
- is approved by the Secretary and then becomes enforceable by the Secretary and through Courts.

A key benefit of this approach for airports is that relevant agencies will be required to collaborate and agree their joint “all of government” requirements prior to engaging with airports. There will be a role for the Border Executive Board in administering this approach to airport engagement.

A representation of how the proposed airport registration regime will work as a whole is provided at **Attachment 1**.

**3.2 What criteria, in addition to monetary costs and benefits have been used to assess the likely impacts of the options under consideration?**

We have assessed these options against the following criteria:

#	Criteria	Description
1	Effectiveness	How well does the option support the public policy objectives (border facilitation and aviation security) and enable airports to plan and operate successfully?
2	Administrative efficiency	How costly would the regime be to implement over the short and long term? Where will those costs fall?
3	Transparency/alignment	How well does the option signal intention and obligations to agencies and participants, and align with long term planning requirements?
4	Stakeholder views	How well does the option meet the known needs and views of relevant agencies, airports and airlines?
5	Economic recovery and future settings	How well does the option prepare New Zealand as a whole for recovery from COVID-19 and beyond?

This analysis is outlined in section 4.

**3.3 What other options have been ruled out of scope, or not considered, and why?**

**A previous proposal for an airport licensing regime is no longer under consideration, and has been replaced by the proposal for airport registration supported by ERUs**

The airport registration proposal is the result of consultation with stakeholders on an earlier proposal for a licensing regime. While Cabinet had agreed to consider a comprehensive licensing regime, targeted consultation with stakeholders in 2020 showed that this option was unlikely to be as effective as government intended, and would risk damaging the positive relationships government has with airports now.

The primary difference between licensing and registration, conceptually, is that licensing would entail a more onerous approach to regulation, with greater administrative oversight by the Secretary for Transport. Licensing would have included a higher bar for entry to the system, conditions could have been made on how airports operate, and the regime may have included a requirement to consider transport outcomes beyond aviation.

Elements of this option were discarded, but consultation led to further discussion with relevant agencies, airports and airlines about what proportionate and targeted regulation might look like. Taking these views into account, the licensing proposal was refined into this ERU proposal to address the key issues centred on spatial planning and use of airport facilities.

The option proposed here is less onerous than our original licensing proposal both for airports and for government. It does not present a high bar to entry, and will not enable government to direct airports’ commercial decisions.

## **The Ministry has reviewed its original characterisation of the problem taking into account concerns presented by industry stakeholders**

Airports raised concerns that the licensing approach would risk:

- consolidating an untested approach in primary legislation, limiting flexibility if amendments are needed later
- duplicating or complicating existing airport planning processes, which operate on a different timeframe to the proposed licensing regime and political cycles
- exacerbating previous tensions, rather than overcoming them
- exposing airport regulation and operation to undue political influence through requirements that involve the Minister of Transport
- the Secretary prioritising security and safety outcomes over reasonable cost considerations, and
- regulatory overreach into airports' commercial decisions and their relationship to broader transport outcomes (with flow on costs to airlines).

Airports are generally supportive of the proposal to enable a form of action plan (now presented as ERUs), but do not agree that this should be tied to a licensing regime. As a result, the Ministry worked with stakeholders to develop the proposed registration regime.

## Section 4: Impact Analysis

How does each of the options identified in section 3.1 compare with taking no action under each of the criteria set out in section 3.2?

<b>Key</b> ++ much better than doing nothing/the status quo + better than doing nothing/the status quo 0 about the same as doing nothing/the status quo - worse than doing nothing/the status quo -- much worse than doing nothing/the status quo			
	<b>Option One – Airport registration with no statutory requirement for collaboration</b> Non-regulatory, other than existing Cabinet decisions	<b>Option Two – Strengthen Existing Levers</b> Regulatory and non-regulatory	<b>Option Three – Enforceable Regulatory Undertakings (ERUs)</b> Regulatory change to drive behavioural change
<b>Effectiveness</b>	0 Relevant agencies continue to have insufficient levers to ensure airports invest in adequate space and infrastructure, including core airport safety infrastructure, to support government policy objectives at airports and the border.  Improved relationships are important and do have an impact, but ad hoc relationships will not provide a long-term framework.	0 This would address some relevant agencies' concerns in relation to the effectiveness of their respective regimes.  However, it does not address stakeholder needs or encourage parties to come to the table to build relationships and understanding. This does not support a balanced approach to airport regulation.	++ Provides more negotiation power for the agencies, but also enables airports and relevant agencies to agree pragmatic solutions.  Provides better incentives for compliance, and provides for better aviation and border outcomes.  Aligns with airport planning timeframes and obligations under other Acts, and provides a single government view when they seek to negotiate plans.
<b>Administrative efficiency</b>	0 No change or impact. Costs to support existing processes and negotiations for use of space and infrastructure upgrades at airports will stay as they are, or grow as more agencies seek to engage with airports (e.g. Health or Police requirements).	- This would involve multiple regulatory approaches across agencies. Legislative processes are often high cost, so any Act-level changes across multiple regimes would be likely to introduce inefficiencies.  While this approach could create short-to-medium term efficiencies, the long term result is likely to be increased administrative costs across government, and potentially more so for airports.  There is no single approach to long-term planning or negotiating policy implementation timeframes.	+ Relevant agencies will still have their own regimes and needs, and there would be short-term transitional costs. However, providing a centralised framework and greater coordination will encourage efficiencies when compared to the status quo, especially in the medium-to-long term.  We expect limited medium-to-long term impacts on costs, given airports and agencies already required to engage with each other.
<b>Transparency/alignment</b>	0 There will not be a single transparent planning and decision-making process for allocating space within airports. Existing problem remains or potentially worsens.	+ Would go some way to aligning government approaches. However, this does not address the airports' concern about agencies not signalling their needs sufficiently in advance, or aligning their needs across government.	++ Encourages greater transparency. Clearly signals intentions and obligations to participants. Provides a framework for airports and agencies discuss and plan future needs. Provides agencies with more advanced warning of increases in capacity needed at airports.
<b>Stakeholder views</b>	0 Although it has the benefit of being a 'known' approach, the option does not meet relevant agencies' needs.  Airports preferred this option during consultation on airport registration.	-- Relevant agencies do not consider this to be a suitable approach in the long term.  Industry generally did not support this option during consultation.	- This is relevant agencies' preferred option, as it will most directly address their collective needs.  However, compared to the status quo, industry stakeholders are reluctant to wholeheartedly support greater regulation.  While this option is not airports' preferred approach, it has been developed to reflect their views during consultation about how further regulation might work.
<b>Economic recovery and future settings</b>	0 Faced with immediate imperatives of the COVID-19 response, agencies and stakeholders have worked well together. However, agencies are uncertain this will be sustainable as business returns to usual and businesses and agencies alike return to more disparate approaches to infrastructure and business planning.	+ Updates the regimes to equivalent and modern standards. However, the risk of complicating the overall regulatory framework and creating inefficiencies remains, without supporting airports to meet their economic objectives or requiring agencies to present a collective view of their needs.	++ This option would ensure that agencies and airports have clear line of sight and communicate early as the international and domestic aviation landscapes evolve, and will accommodate any future settings at airports.  The process will provide for amending ERUs if required and agreed by all parties.
<b>Overall assessment</b>	0 Despite potential short-term benefits and stakeholder support, this option would not substantively change the status quo or address the policy objectives.  May be somewhat effective in the short-term as long as settings under relevant agencies' regimes do not evolve rapidly, and personnel remain stable across the parties to retain existing relationships.	0 May address some aspects of the identified problem, but does not address the airports' concern about agencies not coordinating and signalling their needs in advance, or aligning their airports' needs across government.  Does not encourage parties to come to the table, and at worst could encourage a more siloed approach to engaging with airports.  This option is not supported by relevant agencies or by industry stakeholders.	+ By design, the option will strengthen collaboration between the various stakeholders and provide greater line of sight across the sector in relation to airports' spatial planning and agencies' operational requirements.  This is the only option that will directly support long-term planning, outcomes and accommodate future settings (regardless of how many or few agencies end up operating at airports).

## Section 5: Conclusions

### 5.1 What option, or combination of options is likely to best address the problem, meet the policy objectives and deliver the highest net benefits?

The preferred approach is to introduce a requirement for ERUs into the **airport registration regime**, building on those provisions transferred from the Act into the Bill.

Option Three, in its current form, was developed following consultation with airport representatives (including the New Zealand Airports Association) and Air New Zealand, as well as with the New Zealand Customs Service, the Ministry for Primary Industries, the Ministry for Business, Innovation and Employment (Immigration New Zealand) and the Civil Aviation Authority (including the Aviation Security Service). Given its current important role at the border, the Ministry of Health was also consulted.

#### **ERUs as part of airport registration (Option Three) is most likely to deliver the greatest benefits for airports and relevant agencies, and is best aligned to the regulatory context**

The Ministry considers this option speaks directly to the identified problems, and the stated objective of this analysis. In particular, the ERU process within the registration regime:

- introduces new obligations to balance the powers airports have under the existing regime, strengthening the framework that will be given effect through the Civil Aviation Bill
- will include scalable offences and penalties and other mechanisms for enforcement that do not need to be duplicated across other relevant legislation, as relevant agencies are party to the ERU
- acknowledges the importance and current challenges of rebuilding airports' commercial performance, including the wider social and economic benefits airports provide
- provides a platform to better align government-government and government-airport collaboration on meeting their respective needs and developing future spatial plans, and
- provides better incentives for compliance with legislative requirements and providing early, transparent line of sight over emerging issues.

Enhanced collaboration with airports has a role in the government's recovery programme for COVID-19 and readiness for any future shock events. By providing a consistent approach across government and airports to address uses of space, the ERU will reduce the ambiguity and uncertainty relevant agencies and stakeholders experience when planning for or responding to future settings.

This approach is also scalable to accommodate any future border requirements, as it will be presented in a way that is able to incorporate any future government agencies as "relevant agencies". Health screening, for example, may become an ongoing feature of border controls like security or biosecurity screening, and so the Ministry of Health may become party to certain ERUs.

#### **Relationship to other legislative provisions**

The ERU regime does not limit relevant agencies' powers under other legislation related to airports (including approvals and planning). It is designed to support those systems and fill a regulatory gap by acknowledging the role of multiple regulatory systems. It will provide for a more coordinated approach between agencies by encouraging long term engagement and planning to ensure all parties' needs are accounted for.

Minor amendments to other Acts will be required to ensure the system is fully aligned (e.g. technical amendments to ensure ERUs will be considered when performing functions under relevant Acts). We will work with the relevant agencies and/or administering departments to ensure any amendments are proportionate and do not limit their existing powers.

## 5.2 Summary tables - costs and benefits of the preferred approach

Additional costs of proposed approach compared to taking no action			
Affected parties	Comment <i>Nature of cost or benefit</i>	Impact <i>high, medium or low, or \$ figures</i>	Evidence certainty <i>High, medium or low</i>
Airports	<b>Short term:</b> There may be some transitional costs for airports associated with this option as the ERU process is trialled and established.	Anticipated to be low additional cost – repurposed resources already in place under status quo.	<b>LOW</b> – but current trial will provide more information
	<b>Short term:</b> The perception of regulatory intervention may affect the share price of publicly listed airports, but we anticipate this to be short lived.	<u>Short term:</u> Medium <u>Long term:</u> Low	<b>LOW</b> – we have not modelled this possibility
	<b>Long term:</b> Airports <sup>6</sup> will bear some of the cost of administering the regime, through regulated fees and charges.	Cost recovery mechanisms will be explored during implementation.	<b>LOW</b> – cost recovery options have not yet been modelled
Ministry of Transport	<b>Long term:</b> This option would have administrative costs to run, monitor and enforce. This may be met in part by airports.	One new FTE at the Ministry to administer registration and finalised ERUs is likely to be within the range of \$75,000 to \$110,000 per annum. Cost recovery mechanisms will be explored during implementation.	<b>LOW</b> – Cost of FTE is known but cost recovery and resulting impact on airports has not been modelled
Relevant agencies	<b>Long term:</b> Agencies will need to provide consistent and ongoing resource to engage with the ERU process. However, agencies already put considerable resource towards engaging and negotiating with airports.	Existing resource to be repurposed. Little or no additional cost anticipated.	<b>MEDIUM</b> – based on discussion with agencies
Border Executive Board	<b>Long term:</b> Implementation of the ERU process will be coordinated through the Border Executive Board. This will require a commitment at the executive level to oversee and resource the ERU process.	Machinery of government arrangements for the Border Executive Board are still being implemented.	<b>LOW</b> – this depends on arrangement of how the Board itself is being established
Airlines and passengers	<b>Long term:</b> If airports are required to contribute financially to administering the regime, part of this cost could be passed on to airlines, and possibly through to passengers.	Unknown cost – this will be considered when exploring cost recovery options.	<b>LOW</b>
<b>Total Monetised Cost</b>	The only cost we have currently monetised is the cost of administering the regime. This is estimated at \$75,000 to \$110,000 per annum. Further analysis will be undertaken during implementation design.		
<b>Non-monetised costs</b>	<b>LOW</b>		

<sup>6</sup> At least the six aerodromes that are currently security designated under the Civil Aviation Act 1990 and any other aerodromes that are (or become) subject to the ERU requirements.

<b>Expected benefits of proposed approach compared to taking no action</b>			
<b>Affected parties</b>	<b>Comment</b> <i>Nature of cost or benefit</i>	<b>Impact</b> <i>high, medium or low, or \$ figures</i>	<b>Evidence certainty</b> <i>High, medium or low</i>
Airports	<b>Ongoing:</b> Better line of sight on government priorities and upcoming policy and operational planning processes is anticipated to save airports money and time in the long run.	HIGH	<b>LOW</b> – current trial will provide more information, but level of engagement to date has been good
Ministry of Transport (and the Secretary for Transport)	<b>Ongoing:</b> Greater visibility of airport spatial planning and processes, and sector coordination, to support the Secretary in fulfilling their role under the Civil Aviation Bill in airport regulation.	MEDIUM – this will introduce a mechanism to support the Ministry’s role in administering the airport registration regime	<b>MEDIUM</b>
Civil aviation and border agencies	<b>Ongoing:</b> Earlier and more coordinated engagement with airports will enable agencies to better plan their operations, understand each others’ needs and streamline future consideration of their settings at airports.	HIGH	<b>LOW</b> – current trial will provide more information, but learnings to date support this assumption
Border Executive Board	<b>Ongoing:</b> Significantly improved oversight of cross-government and cross-industry sector issues as these arise.	MEDIUM	<b>LOW</b> – current trial will provide more information
Airlines	<b>Ongoing:</b> Greater engagement with government and agencies on their future access to space and wider role within airports.	MEDIUM	<b>LOW</b> – current trial will provide more information
<b>Assessment of non-monetised benefits</b>	<b>LOW</b>		

## Section 6: Implementation and operation

### 6.1 How will the new arrangements work in practice?

#### Legislative vehicle

Airport registration and the ERU framework will be given effect through the Civil Aviation Bill, should the policy proposal receive Cabinet agreement.

#### Transition to the new regime

We will need to design an orderly and efficient transition from current airport authorisations under the Act to registrations authorised under the new Act. The design process will include consideration of cost recovery mechanisms in relation to the cost to the Ministry of administering the registration regime and processing finalised ERUs. The cost of engaging with agencies, airports and the Border Executive Board will be met through existing baselines using existing resource that currently works on airport issues.

Transition may not be all done at once, and will provide for airports to keep operating under the current Act or to operate under transitional licences during a transition period. Indicatively, we anticipate airports would have up to two years to make the transition from when the Bill is enacted. This will apply equally to government (Crown or local government) owned and privately owned airports.

#### Airports – Implementation

As part of this transition, relevant airports will need to engage with government to produce their first ERU. Timeframes for this will be directed by the Secretary.

Withheld due to information subject to an obligation of confidence, and release is likely to prejudice the supply of similar information in future.

#### Central government – Implementation

##### The regime will be administered by the Secretary, through the Ministry of Transport

The Secretary has overall responsibility for ensuring airports and relevant agencies engage appropriately and in a timely manner with the new regime. However, the Secretary will not be directly involved in the preparation of the ERU.

The Ministry will provide Secretariat services to administer the airport registration regime and process ERUs, at approximately 1 FTE per annum. Cost recovery mechanisms (which are allowed for under the Bill) will be considered to cover this expense.

##### Border agencies will have joint responsibility for engaging collaboratively with airports

Border and aviation security agencies (currently the Ministry for Primary Industries, the New Zealand Customs Service, Immigration NZ (the Ministry of Business, Innovation and Employment) and the Civil Aviation Authority, including Avsec) will be jointly responsible for managing their collective role within the ERU process, which is to agree on their collective needs, negotiate priorities between themselves as necessary, and engage with airports to ensure they can collectively endorse the airport's proposals in the ERU. This will be coordinated via the Border Executive Board, and monitored by the Secretary.

##### The whole-of-sector coordination and governance will be led through the Border Executive Board

As part of its remit, the Border Executive Board is accountable for strategic border system improvements, including developing a Border Sector Strategy, monitoring performance and user experiences across the system, advising on investment decisions for the border system, and delivering joint initiatives to build a safer and smarter border.

In line with this role and existing work streams, we anticipate the ERU process will be coordinated by the Border Executive Board and secretariat, which is chaired and hosted by the New Zealand Customs Service. This coordination will be supported by department

officials and advising agencies.<sup>7</sup> This is intended to ensure the regime remains effective and streamlined, building on existing machinery of government and associated resourcing.

### **Airlines do not have any responsibilities under this proposal**

Airlines will be engaged during transition, as ERUs are developed. However, they will not have any obligations in relation to this transition.

## **6.2 What are the implementation risks?**

While stakeholders have not presented outright opposition to the proposal for a registration regime during consultation, it is not their preferred approach. Successful implementation will result in stronger relationships between government and airport operators. It will be crucial to this approach to have stakeholders supporting this implementation.

Although the process would have legislative underpinnings, successful delivery of the intended outcomes will rely on behavioural change by both relevant agencies and industry stakeholders.

The Ministry will continue to engage with airports during the legislative process and in developing a collaborative approach that considers stakeholder input. This will promote an ongoing positive relationship with the sector.

Implementation also depends on relevant agencies being able to agree a streamlined approach to communicating between each other and with airports. Agencies also need to make long term commitments to resource the approach and prioritise relationship building across the sector. Work is underway via Border Executive Board work streams to ensure that relevant agencies will be able to create an efficient process to engage with each other and then with airports.

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<sup>7</sup> Border agencies currently represented on the Border Executive Board are: the New Zealand Customs Service, the Ministry for Primary Industries, the Ministry of Business, Innovation and Employment (Immigration New Zealand (INZ) and Managed Isolation and Quarantine (MIQ)), the Ministry of Transport, the Ministry of Foreign Affairs and Trade, and the Ministry of Health.

## Section 7: Monitoring, evaluation and review

### 7.1 How will the impact of the new arrangements be monitored?

Under the Civil Aviation Bill, the Secretary will have regulatory functions that include monitoring, investigating, managing, and enforcing compliance in relation to the airport registration regime, as well as other matters under the Bill. The Secretary will be able to issue warnings, reports, or guidance about any matter relating to civil aviation.

By bringing airports into the regime and monitoring system participation, the Secretary will have the ability to understand whether the objectives of the approach are being met, or whether further work is needed to address operational challenges.

As the Secretary will have a regulatory duty in relation to this regime, the Ministry will be able to consider what information might be necessary to monitor the impacts of the regulatory intervention.

The Ministry secretariat FTE will support the Secretary in their monitoring role, as will Ministry representative at the Border Executive Board. The exact information that will be provided in this capacity is not yet determined.

### 7.2 When and how will the new arrangements be reviewed?

There is no formal, built in review mechanism. However, as administering department for the Civil Aviation Act, the Ministry of Transport is responsible for ensuring continued fitness for purpose of the proposed legislative vehicle for this regime.

The Border Executive Board and supporting officials will assess how the process is going following the agency endorsement process and as any issues arise. The Border Executive Board, and the Secretary for Transport, will be able to suggest operational improvements to the ERU process.

Feedback from airlines and airports will be sought during regular catch ups, and may be provided at any time through existing channels.

Attachment 1: A3 visualisation of the proposed airport registration regime, including Enforceable Regulatory Undertakings (ERUs)

