



5 September 2024

OC240994

Hon Simeon Brown
Minister of Transport

Action required by:
 Tuesday, 10 September 2024

REVENUE ACTION PLAN: CONFIRMING TOLLING REFORM LEGISLATIVE POLICY DECISIONS

Purpose

Seek your agreement to policy changes necessary to enable an expanded role for tolling in the land transport revenue system.

Key points

- In line with the Revenue Action Plan, we have identified amendments to tolling legislation that will enable expanded use of tolling.
- Existing legislation is not flexible enough to enable the range of tolling schemes that may support the Roads of National Significance. Legislative amendment is required to:
 - enable tolls on existing roads where users receive benefits from the construction of a new road on the same corridor
 - enable revenue gathered through a tolling scheme to be used for all roads within that tolling scheme, new and existing, and
 - enable tolls to be considered in certain circumstances on roads where there is no feasible untolled alternative.
- The current approaches and incentives to toll price setting and adjustment can result in lower tolls than may otherwise be efficient. To remedy this to the extent possible, whilst still maintaining Ministerial control over toll rates, we recommend:
 - setting additional requirements in legislation for the Minister to consider when agreeing to toll prices, including the net revenue potential of the road, the value motorists receive from a toll road, and the effects of the toll on the wider network
 - considering automatic adjustments, for example by Consumers Price Index (CPI) on a project-by-project basis.

s 9(2)(i)

s 9(2)(i)

- We also recommend that liability to pay a toll be shifted from the driver to the 'registered person' (usually the owner) of the vehicle, which will reduce collection costs.
- Subject to your decisions on this paper, you will receive a draft Cabinet paper for Ministerial and departmental consultation on 18 September 2024, with a view to take decisions to the Cabinet Economic Policy Committee on 23 October 2024.

Recommendations

We recommend you:

- | | | |
|---|---|--------|
| 1 | agree to expand the criteria of existing roads that can be tolled to roads where users receive benefits from the construction of a new road on the same corridor | Yes/No |
| 2 | agree to enable revenue gathered through a tolling scheme to be used for new and existing roads covered by that scheme | Yes/No |
| 3 | agree to turn the feasible, untolled, alternative route requirement into a consideration to be weighed up against competing factors | Yes/No |
| 4 | agree to maintain the LTMA's broadly permissive approach to toll price setting and adjustment | Yes/No |
| 5 | agree to set requirements in legislation for the Minister to consider important factors when setting toll prices, including: | Yes/No |
| | a) the overall net revenue potential of the toll road | Yes/No |
| | b) the level of service and value a motorist receives from a toll road | Yes/No |
| | c) the effects of the proposed toll on the wider road network. | Yes/No |
| 6 | agree that automatic price adjustments using CPI or another relevant index, should be used when setting prices on a project-by-project basis rather than through primary legislation | Yes/No |

s 9(2)(i)



- 11 **agree** to change the person liable to pay a toll from the driver of a vehicle to a registered person Yes/No
- 12 **direct** the Ministry to draft a Cabinet paper giving effect to the decisions above Yes/No

 Matt Skinner
Manager Revenue
 5 / 9 / 2024

 Hon Simeon Brown
Minister of Transport
 / /

- Minister's office to complete:**
- Approved
 - Declined
 - Seen by Minister
 - Not seen by Minister
 - Overtaken by events

Comments

Contacts

Name	Telephone	First contact
Brent Johnston, Chief of Staff	s 9(2)(a)	
Matt Skinner, Manager Revenue		✓
Hugo Beale, Adviser, Revenue		

MINISTRY OF TRANSPORT TE MANATŪ WAKA
PROACTIVELY RELEASED BY

REVENUE ACTION PLAN: CONFIRMING TOLLING REFORM LEGISLATIVE POLICY DECISIONS

Purpose

- 1 This briefing recommends changes to tolling legislation as part of the Revenue Action Plan, s 9(2)(i)

Background

- 2 The Government has committed to expanding the use of tolling, with all new roads being considered for tolling to support construction and maintenance. You have committed to reviewing; the legislative settings that underpin tolling, the cost effectiveness of the New Zealand Transport Agency (NZTA) tolling operations and roadside infrastructure procurement s 9(2)(i)
- 3 As part of the Revenue Action Plan, Cabinet agreed to consider reforming tolling legislation to allow for “corridor tolling, reconsidering the requirement for an untolled alternative route, and exploring adjusting toll rates after a road has opened” (CBC-24-MIN-0063 refers). You were invited to report back to the Cabinet Economic Policy Committee by October 2024 to seek policy approval for specific legislative changes.
- 4 NZTA is progressing reforms to the tolling back-office system and infrastructure procurement and will continue to provide updates on this as it progresses. Most changes that can drive cost efficiency are operational, but NZTA has provided the Ministry with suggestions for legislative change that might help to improve efficiency. These suggestions are incorporated into this advice.
- 5 Tolling is likely to be a small source of revenue in the context of the broader land transport revenue system. Overseas, high-revenue toll roads tend to have much higher traffic volumes than those proposed to be tolled in New Zealand. However, legislative change to ensure more flexible tolling provisions will help enable potential viable tolling schemes in the future.

The reformed scope and purpose of tolling

- 6 You have confirmed a dual purpose for tolling, that tolling should:
 - 6.1 principally be a way of providing extra funding to bring transport infrastructure projects forward in time so benefits can be accrued sooner, and
 - 6.2 secondly, represent users paying to receive a higher level of service versus alternative routes.
- 7 These purposes reflect the differences between tolling and other tools, such as road user charges (RUC) and time of use charging. RUC is paid by users to reflect the costs they impose on the roading network, and time of use charging increases network productivity by reducing low-value trips on congested parts of the network.

Tolls represent a charge for a higher level of service, reflecting the benefits of high-quality new roads and the costs of building and/or maintaining them.

Options for tolling reform have been assessed against the relevant objectives of the revenue action plan

- 8 For each of the gaps and problems that we have identified with the current tolling legislation, we have developed several options that aim to maximise the benefits and opportunities of tolling legislative reform.
- 9 As part of the Revenue Action Plan, Cabinet agreed to several objectives and principles to inform the redesign and reform of the land transport revenue system (CBC-24-MIN-0063 refers). We have used the three most relevant objectives and principles to tolling as the criteria for assessing options:
 - 9.1 **user/beneficiary pays** because toll roads provide a direct link between the use of a road and contributing to its costs
 - 9.2 **revenue sufficiency** because tolls provide additional revenue to contribute to specific projects and enable National Land Transport Fund (NLTF) revenue to be spent on other activities
 - 9.3 **user choice and competition** because motorists can choose to pay for a higher level of service on a toll road that provides reduced travel times and is safer when compared to alternative routes.

Tolling legislation is inflexible, and changes should be made to get the most out of an expanded tolling system

- 10 The statutory criteria for tolling are outlined in the Land Transport Management Act 2003 (LTMA) sections 46 to 48. The key potential areas for reform are:
 - 10.1 the requirement that a toll road must be a new road (new road requirement)
 - 10.2 the requirement that the Minister must be satisfied each toll road has a feasible untolled alternative route (alternative route requirement).
- 11 The new road requirement ensures that users do not perceive that they are paying for a road for a second time, after the road was constructed using NLTF revenue. The alternative route requirement exists so users are not forced to pay a toll to get where they need to go and can choose not to pay if they wish to.
- 12 These requirements are inflexible, do not allow for any discretion, and may limit the revenue potential of tolling with regards to which roads can be tolled.
- 13 Similarly, the current policy for setting and adjusting toll prices encourages lower than optimal price setting and infrequent price increases, which has contributed to low tolls compared to overseas. [s 9\(2\)\(g\)\(i\)](#)
The value that motorists place on current toll roads may be low by international standards due to the location and profile of current toll roads, and because of perceptions that users have already paid for roads via the NLTF.

14 Improving the flexibility of key statutory tests and toll price setting practices could allow for greater use of tolling, which would help accelerate new projects by providing additional revenue.

15 s 9(2)(i) [Redacted]

The new road requirement provides a barrier to potentially viable projects and should be made more flexible in some circumstances

16 In New Zealand, tolling schemes can only be set up on new roads. Section 46(1)(a) of the LTMA indicates the Minister can establish a tolling scheme for the purpose of “planning, design, supervision, construction, maintenance, or operation of a new road.” Section 48(2) confirms that existing roads are only able to be tolled where the “existing road or part is located near, and is physically or operationally integral to, the new road.”

17 The Government has indicated tolling should play a part in funding the Roads of National and Regional Significance (RoNS/RoRS) programmes s 9(2)(iv) [Redacted]

18 s 9(2)(i) [Redacted] Although we have not modelled the impacts of these changes on specific projects, tolling just the new section of road is likely to result in higher levels of diversion onto the untolled alternative route due to limited time travel savings leading to lower willingness to pay.

19 We have identified two options in relation to this issue:

19.1 **remove the new road requirement in its entirety** to enable corridor tolling, and all existing roads would be able to be tolled

19.2 **expand the criteria of existing roads that can be tolled** to include those where their efficiency has been enhanced by, or they have accrued benefit from, the construction of a new road on the same corridor.

Table 1: Comparing options for the new road requirement

Option	Users and beneficiaries should cover the costs	Revenue Sufficiency	User Choice and Competition
Option 1: Remove the new road requirement in its entirety	+ Enables more toll roads through corridor tolling but limited by modest traffic volumes.	+ Increased revenue potential through corridor tolling but limited by modest traffic volumes.	+/- Enables more toll roads, thus more competition. This would allow tolling on a wider range of roads than necessary.
Option 2: Expand the criteria of existing roads that can be tolled to include those where their efficiency has been enhanced by the construction of a new road on the same corridor (recommended)	+ Reduces flexibility versus option 1. However, tolls are only put in place where there is a justification.	+ Reduces overall revenue potential versus option 1. This may not matter if only corridor tolls are considered.	+ Creates a clear requirement that there must be an efficiency benefit, which motorists can then consider against the untolled route.

++ Completely or largely aligns with the criterion | + Partially aligns with the criterion
 - Mostly does not align with the criterion | - Does not align with the criterion

20 We recommend enabling existing roads to be tolled where a new road on the same corridor will benefit the users of the existing road. This option brings a level of flexibility that is commensurate to the benefits of new projects, without enabling tolling on any road on the network.

21 This option maintains the general policy intent of the new road requirement while providing expanded flexibility. It would enable tolling where upgrades include additional lanes on a given corridor (whether that is through adding lanes to an existing road or adding an extension to a highway). A roading corridor will need to be defined clearly in legislative drafting to maintain the policy intent of this change. Lower-level upgrades to existing roads that do not add capacity, such as lane widening, would be ineligible.

Enabling tolling revenue to be used across the whole tolling scheme

22 We also recommend the legislation be amended to allow toll revenue to be applied on any road that forms part of a tolling scheme. Currently Section 46(1)(a) only allows revenue to be used on the new section of a road, which would be problematic where tolling schemes are made up of existing and new roads.

The alternative route requirement should be amended to allow more projects to proceed

23 Section 48(d) of the LTMA requires the Minister of Transport to be satisfied “that a feasible, untolled, alternative route is available to road users.” The term “feasible” is not defined in legislation, so the test usually considers the characteristics of the route.

24 Ensuring motorists do not have to pay a toll has strong fairness and equity grounds. However, it does have some downsides:

24.1 the concept of allowing a “feasible” untolled route encourages diversion away from toll roads, reducing their overall revenue potential

- 24.2 it is an inflexible requirement that cannot be weighed up against other factors
- 24.3 even where a community is in favour of tolling a road that has no alternative route (e.g. to bring forward investment in a project), there is no means to progress tolling it
- 24.4 if a person required access to a toll road to get to their property, the requirement would apply and could affect project design (as was the case with Penlink).
- 25 We have identified two options to help address the above issues:
 - 25.1 **remove the alternative route requirement in its entirety** which would enable any projects without feasible, untolled, alternative routes to go ahead
 - 25.2 **turn the feasible, untolled, alternative route requirement into a consideration** to be weighed up against competing factors.

Table 2: Comparing options for the alternative route requirement

Option	Users and beneficiaries should cover the costs	Revenue Sufficiency	User Choice and Competition
Option 1: Remove the alternative route requirement in its entirety	+ Provides maximum flexibility for viable user-pays tolling schemes, as users may have to use some toll roads.	+ Increased revenue versus status quo, but marginal extra revenue may not balance the negative effects of losing the alternative route	- Forcing road users to use toll roads stifles user choice and is inconsistent with allowing users to pay for a higher level of service relative to alternatives, but a tolling scheme without an untolled alternative is only likely to happen in limited circumstances.
Option 2: Turn the feasible, untolled, alternative route requirement into a consideration to be weighed up against competing factors (recommended)	+ Allows projects to be considered on their overall costs and benefits, including the value received by users.	+ Increased revenue potential, but only likely in limited circumstances where a road is tolled despite the absence of untolled alternatives.	+ The importance of the untolled route acting as competition can be considered against other relevant factors for a project, such as efficiency and resilience benefits.

++ Completely or largely aligns with the criterion | + Partially aligns with the criterion
 - Mostly does not align with the criterion | - Does not align with the criterion

- 26 We recommend an amendment to turn the alternative route requirement into a consideration to be weighed up against competing factors. This provides flexibility for the Minister to toll and gather revenue from a road in circumstances where they are satisfied that a toll scheme will have public support. However, it still sets a high bar for tolling schemes without feasible alternatives.
- 27 The preferred option would also enable limiting the use of alternative routes by certain classes of vehicle (such as heavy vehicles) to effectively require the use of toll roads. The merits of such a step would best be decided on a case-by-case basis, depending on the design and maintenance costs of the toll road and alternative route, as well as the toll rates paid by the relevant classes of vehicle.

- 28 This approach would require consideration of enforcement and co-ordination with road controlling authorities (RCAs) to identify where local routes and state highways that act as alternative routes are not appropriate for heavy vehicles. Consideration would also need to be given to the Land Transport Rule: Vehicle Dimensions and Mass 2016 to restrict or discourage the use of alternatives as and when it is required.

Price setting provisions encourage setting tolls low and inconsistent adjustment, and should be amended

Current price setting practices

- 29 Tolls are currently set in the Orders in Council for each road. Section 46(3)(a) of the LTMA indicates that a tolling order may set tolls or set a method by which they can be adjusted. However, Section 48(1)(e) requires that the Minister must be satisfied that “the proposed tolling scheme [including the toll rates] is efficient and effective.”
- 30 While some communities have previously supported tolling to bring projects forward, there is often pressure on the Minister to keep tolls lower than the optimal level (taking into account revenue maximisation, balanced with the effects of diversion). As public pressure is a factor in low toll prices, legislation may not fully resolve it but may be able to improve price setting on the margins.

Improving price adjustment practices

- 31 On current toll roads, toll price adjustments are currently limited to the Consumers Price Index (CPI) by their respective Orders in Council. Price adjustments must be completed manually each time by NZTA, except for the Tauranga Eastern Link which allows increases greater than CPI with the approval of the Minister of Transport.
- 32 NZTA bases toll price adjustment on long run CPI and sets tolls in increments of 10 cents. Price adjustments typically happen infrequently, because CPI does not always annually increase enough to justify a 10-cent increase. There is also an implementation cost to increase toll rates (\$100,000 for the three existing toll roads the last time prices were increased in July 2023).

Identifying options to improve price setting and adjustment practices

- 33 We have identified several non-exclusive options to help address the issue to the extent legislation can do so:
- 33.1 **set requirements in legislation for factors** that the Minister must consider when agreeing to tolls, such as:
- 33.1.1 the overall net revenue potential of the toll road
 - 33.1.2 the level of service and value a motorist receives from a toll road
 - 33.1.3 the effects of the proposed toll on traffic diversion to other routes.
- 33.2 **lock in automatic price adjustments** at regular intervals. Adjustments are likely to be based on CPI or another relevant index.

Table 3: Comparing options for the price setting and adjustment

Option	Users and beneficiaries should cover the costs	Revenue Sufficiency	User Choice and Competition
Option 1: Set requirements in legislation for factors that the Minister must consider when agreeing to tolls (recommended)	+ Minister must consider the value a motorist receives from a toll road, which reinforces user-pays, but success will be limited by project attributes.	+/- More revenue potential than the status quo, which considers other factors that dampen revenue potential, but limited by traffic volumes.	+/- Competition is not considered in the current factors, but increased toll prices may marginally increase project viability.
Option 2: Lock in automatic adjustment (recommended)	+ Would maintain the value of the toll but limited by toll price as originally set.	- More opportunities for revenue but limited by toll price as originally set.	+/- More revenue may marginally increase the viability of some toll roads.

++ Completely or largely aligns with the criterion | + Partially aligns with the criterion
 - Mostly does not align with the criterion | - Does not align with the criterion

34 We recommend setting requirements in legislation for the Minister to consider additional factors when setting toll prices. This will help to optimise revenue while also factoring in user-pays considerations and competition and retain Ministerial ability to set tolls. The Minister can receive advice from officials on price setting options that best consider these factors.

35 We also recommend automatic adjustments, for instance by CPI, to maintain the real toll rate and for tolls better align with the revenue sufficiency criterion. Legislation already allows for this to be set in each tolling scheme. As each toll road may have different attributes that require different price-setting arrangements we recommend retaining the current project-by-project approach.

36 s 9(2)(f)(iv)

s 9(2)(i)

PROACTIVELY RELEASED BY
MINISTRY OF TRANSPORT TE MANATŪ WAKA

NZTA have also identified toll liability as an issue that affects operational efficiency

- 47 Section 52 of the LTMA indicates that “the driver of a motor vehicle” is liable for payment of a toll. NZTA has indicated there can be issues collecting tolls from people such as tourists that would be alleviated by having the registered person of the vehicle being the liable person.
- 48 We consider it would be effective to make vehicle owners liable for paying tolls to optimise efficiency, per NZTA’s advice. This will improve the cost efficiency of tolling schemes and aligns with the proposed approach in the draft Land Transport Management (Time of Use Charging) Amendment Bill.

Next steps

- 49 Below are our proposed next steps to enable drafting of legislation later this year.

Date	Milestone
5 September 2024	Receive advice regarding tolling legislative reform decisions
18 September 2024	Provide draft Cabinet paper to Minister seeking agreement on proposals for tolling reform
September – October	Ministerial and departmental consultation
23 October 2024	ECO/Cabinet Committee on decisions
29 October 2024	Cabinet decisions to support drafting instructions
November 2024	Prepare and issue drafting instructions