

## REGULATORY IMPACT STATEMENT

### IMPROVING THE LAND TRANSPORT MANAGEMENT ACT

#### Disclosure Statement

1. This Regulatory Impact Statement has been prepared by the Ministry of Transport.
2. The Statement sets out an analysis of options to improve the land transport planning and funding framework, arising from a review of the Land Transport Management Act 2003 (LTMA).
3. The main objectives of the current review of the LTMA are to:
  - emphasise value for money within each activity class,
  - simplify the planning provisions, and
  - reduce barriers to tolling and public-private partnerships (PPPs).
4. Worthwhile refinements identified include broadening the Government Policy Statement on Land Transport Funding and merging regional land transport planning documents, elimination of a range of ineffective decision-making criteria (including a streamlined purpose), simplification of consultation requirements, rationalisation of land transport committee membership and repeal of the provision for concession agreements and regional fuel taxes.
5. The main gains should be from improving the way funds are allocated over time due to clearer decision-making criteria, better targeted consultation, and more effective input from land transport committees that focuses on interventions that are robust and achievable.
6. The extent to which the potential gains are realised will largely depend on how successful decision makers are in striking a sound balance between the economic, social, cultural and environmental variable inherent in any allocation decisions.
7. The regulatory changes should reduce rather than increase the regulatory footprint. The proposals include measures that would marginally reduce costs to business (for example, eliminate duplicated consultation processes), and respect common law principles (for example, maintain public access to public roads).

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Signature

3/5/11

Date

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#### EXECUTIVE SUMMARY

1. The government allocates about \$2.8 billion in transport taxes annually to a range of roading and public transport activities that support New Zealand's economic, social, cultural and environmental wellbeing. The combined central and local government expenditure in land transport is well in excess of \$3 billion. A statutory framework guiding the allocation of these funds is set out in the Land Transport Management Act 2003 (LTMA) that covers planning, prioritisation and procurement processes as well as the public entities able to access the funding.
2. This legislative funding framework was subject to a major review in 2003 with the enactment of the LTMA and the introduction of multiple criteria for the allocation of funds. Provision was also made for tolling of new roads and concession agreements to support the use of private finance.
3. Amendments in 2008 introduced the Government Policy Statement on Land Transport Funding (GPS) and regionalised planning and funding bids by approved agencies. The main statutory instruments provided for in the LTMA are the National Land Transport Programme (NLTP), Regional Land Transport Strategy (RLTS) and Regional Land Transport Programme (RLTP).
4. The 2008 amendments also established of the New Zealand Transport Agency (NZTA) with responsibility for making allocations from the dedicated pool of transport taxes held in the National Land Transport Fund (NLTF). The powers of regional transport committees were also changed to take account of regionalised bidding.
5. Known issues with the funding framework that were not addressed in 2008 included the clarity of the purpose, the proliferation of evaluation criteria, the limited scope of the GPS, the unwieldy structure of regional transport committees, overlapping consultation processes and the poor fit between strategies and programmes.
6. The main objectives of the current review of the LTMA are to:
  - emphasise value for money within each activity class,
  - simplify the planning provisions, and
  - reduce barriers to tolling and public-private partnerships (PPPs).
7. The scale of public investment in the land transport systems means that even modest gains in the way funds are allocated can yield significantly improved value over time. If \$3 billion annual expenditure is delivering \$6 billion in benefits over 25 years, a one percent gain in allocative efficiency will provide a \$60 million gain over the evaluation period.
8. There are four cumulative broad options to improve the value delivered by the funding framework. The existing framework could be retained and the focus put on improving practice. Alternatively, the evaluation framework could be sharpened and processes streamlined. Additionally, the planning framework could be revised to consolidate the strategic and implementation elements or to merge them into a single programme.

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9. Policy mechanisms, such as road or network pricing, fall outside the scope of the LTMA review as pricing involves changes to the collection and taxation system, (for example the Customs and Excise Act 1996 and the Road User Charges Act 1977), while the LTMA mainly deals with the expenditure framework. Any work on pricing would need to be undertaken in this wider context.
10. Refining both the decision-making criteria and the planning framework that underpins those decisions has potential benefits over an option that relies entirely on improved practice, particularly when the nature of the statutory framework significantly limits the scope for practice improvements.
11. Worthwhile refinements to the funding framework include a streamlined purpose, broadening of the GPS, and elimination of a range of ineffective decision-making criteria, including those associated with tolling schemes. Worthwhile changes to processes within the framework include a simplified approach to statutory planning instruments, elimination of overlapping consultation requirements, rationalisation of land transport committee membership and repeal of the provision for concession agreements and regional fuel taxes.
12. The additional planning reforms include simplification of regional planning documents, the RLTS and RLTP, into a planning document focussed on at least a 10 year period. This document would be called a Regional Land Transport Programme to re-affirm its core role as a bidding document to the NLTF. There would be one consultation process and the process would not be as heavily prescribed by legislation. Funding bids relate to projects in the new RLTP could be made at any time rather than linked to the timing of the NLTP. These reforms have the potential to reducing process costs without any adverse effect on outcomes.
13. The main gains should be improved allocation of funding over time due to clearer decision-making criteria, better targeted consultation and more effective input from land transport committees. Benefits from an improved approach to planning practice are likely to be more indirect, but would include better alignment between strategic and operational decision-making, further improvements in the effectiveness of land transport committees and a more realistic approach to planning.
14. Currently about \$8 million is spent annually on LTMA planning processes. Direct cost savings of at least \$2 million could be achieved as planning beyond 10 years would no longer be compulsory. Private sector savings would be more modest and would largely relate to the reduced costs associated with elimination of unwarranted submissions and representations.
15. The extent to which the potential gains are realised will largely depend on how successful decision makers are in striking a sound balance between the economic, social, cultural and environmental variable inherent in funding allocations. Over emphasis on aspirational outcomes risks wasting public funds, while over emphasis on mechanistic benefit-cost allocation risks overlooking potential network-wide gains.
16. Consultation with departments has identified a concern that a reduced emphasis on long-term strategic transport planning could adversely impact on integration with strategic land-use planning. Under the revised framework, the blanket requirement to undertake strategic transport planning would be replaced by a more flexible approach tailored to the needs of each region. Concerns were also raised about the removal of regional fuel tax as a funding option. However, regional fuel tax is a relatively high cost form of taxation that, if implemented, would probably be undermined by price spreading.

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17. Consultation with local government identified some concerns about workloads under a more integrated approach to RLTSs and RLTPs. The proposed new RLTPs should significantly reduce the workload on local government. The revised bidding process should provide greater flexibility in the development of the RTP and bids, giving regions more control over the timing of work required as inputs to the NLTF and LGA planning cycles.
18. Consultation with transport sector stakeholders identified some concerns about continued input to regional transport committee decision-making. There was also general recognition that some transport committees are very large and need streamlining. We anticipate that committees will maintain a collaborative approach with stakeholders that show an ongoing interest in the work of the committees.
19. The package will also impact on network users. The incidence and value of benefits from transport investments to users should change as a result of this package. Those living in locations experiencing rapid growth or with degraded existing service levels are likely to benefit relative to others. The net result should, however, be an improvement in transport outcomes for society at large.

## STATUS QUO

### Reasons for land transport funding

20. New Zealand's land transport system supports over 99 percent of all passenger movements and 70 percent of freight movements by tonne-kilometres. Central and local government share responsibility for provision of the system of roads and subsidies for urban public transport services that support these movements.
21. The land transport system plays an essential role in connecting the nation. This connectivity is vital to all aspects of society's wellbeing — economic, social, cultural and environmental. The network of roads has the nature of a public good and is funded by the public sector largely through taxes raised from road users and property owners. Urban public transport increases the range of ways that people can access social and economic opportunities and increases the number of people able to be accommodated at peak periods.

### Land Transport Management Act framework

22. The LTMA sets out a framework for allocating land transport funds, raised from fuel excise duty, road user charges and motor vehicle licensing (transport taxes). These transport taxes are allocated to land transport projects and services undertaken by approved central and local government organisations. About \$2.8 billion is allocated annually from the NLTF by the NZTA, mainly to State highways provided by the NZTA, local roads provided by territorial authorities, public transport services subsidised by regional councils and to road safety activity undertaken by the New Zealand Police.
23. The LTMA prescribes a number of national and regional statutory instruments and processes that allow the NLTF to be allocated between outputs (for example, safety, policing, infrastructure), between modes (for example, State highways, local roads and public transport), between operating and capital expenditure (for example, repairing or replacing a bridge) and between individual projects (for example, two different bridge replacement projects).
24. The LTMA hypothecates (dedicates) land transport taxes to the NLTF, establishes the NZTA to operate the NLTF, the State highway system and regulate land transport system safety. It also sets out a procurement and disbursement framework that applies to all approved organisations to account for expenditure of public funds.
25. The framework of statutory instruments set out in the LTMA, as amended in 2008, is summarised in Figure 1.

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**Figure 1: Statutory Instruments under the Land Transport Management Act**

Document	Role	Issued
National Land Transport Strategy	Guidance on the Crown's land transport sector outcomes and objectives for at least 30 financial years. Issued by the Minister of Transport.  <i>NB: There has never been a National Land Transport Strategy issued.</i>	30-year horizon (6+24). If issued, every 6 years thereafter.
Government Policy Statement on Land Transport Funding	The short to medium-term impacts that the Crown wishes to achieve through the allocation of the National Land Transport Fund and a 3-year plan of investment broken down into State highways, local roads and public transport (and a forecast for years 4 to 10). Issued by the Minister of Transport.	10-year horizon (3+3+4). Issued every 3 years, usually 12 months in advance of the regional Long Term Council Community Plan cycle under the Local Government Act.
Regional Land Transport Strategy	Regional transport outcomes for a 30-year period. Prepared by regional transport committees, and approved by regional councils / unitary authorities.	30-year horizon (6+24). Issued every 6 years (no common issue date between regions).
Regional Land Transport Programme	Recommended programme of proposed State highway and local government activities required to deliver a Regional Land Transport Strategy. Prepared by regional transport committees and approved by regional councils / unitary authorities.	10-year horizon (3+3+4). Issued every 3 years in alignment with the Long Term Council Community Plan cycle under the Local Government Act.
National Land Transport Programme	Sets out a national programme of activities (following prioritisation of the activities found in Regional Land Transport Programmes). Prepared by the NZTA.	10-year horizon (3+3+4). Issued every 3 years.

26. The LTMA also includes a regime for Ministerial approval of tolling schemes where new roads are tolled, and concession agreements where land is to be leased for roading purposes. The Act also includes provision for approval or regional fuel taxes.

## OBJECTIVES

27. The challenge the Government has set is to secure better value from the direct investment of more than \$3 billion a year of public funds in the land transport systems by central and local government. This investment underpins at least \$12 billion a year in direct household expenditure on transport, mainly vehicles ownership costs, fuel costs and fares. The quality of transport investment also impacts indirectly on household and business costs in the form of time spent travelling. Transport costs are also incorporated in the cost of domestic and export production.
28. The LTMA review initiated in late 2009 mainly sought to:
- emphasise value for money within each activity class,
  - simplify the planning provisions, and
  - reduce barriers to tolling and public-private partnerships (PPPs).

## THE PROBLEMS

### Effective and Efficient allocation

29. Transport investment differs from other areas of government expenditure in that it is undertaken as a funding partnership between central and local government. The public funds involved are legislatively dedicated to that partnership. Accordingly, individual investment decisions tend to be made by local government representatives and central government appointees on behalf of the government rather than by Cabinet or the Minister of Transport from Vote: Transport. The decision-making framework in the LTMA is a key tool in guiding these arms length decisions.
30. Public expenditure on transport has increased at a substantial rate over the last 10 years, with a significant proportion of the government's discretionary Capital expenditure directed to the land transport system. The financial climate going forward is likely to be more constrained and a renewed focus on securing value for money is timely.
31. Given the scale of the public and private investment involved, even marginal improvements in the efficiency and effectiveness of public expenditure is likely to yield worthwhile gains. Efficiency and effectiveness in the LTMA context is about delivering the right projects and services at the right time and at the right cost. The revenue instruments in the LTMA also need to add value without imposing undue cost.
32. A reversion to a pure economic efficiency model for allocations across the fund of the type that applied before 2003 is outside the scope of the LTMA review and is not under consideration. Funding will need to be allocated to outputs as established by the GPS. The expectation is that allocations within outputs will be made to the most efficient and effective work under that output, but that the efficiency of expenditure will vary between outputs to reflect government priorities. Expenditure from the NLTF as a whole would need to give effect to the GPS and be efficient and effective.
33. The expectation is that these revised arrangements will re-affirm the role of economic evaluation in informing decision-making, while still giving decision makers scope to adjust the balance they strike between the economic, social, cultural and environmental variables in response to changing policy priority.

### Decision-making

34. The LTMA is prescriptive, process driven and contains a large number of assessment criteria designed to influence the content of planning documents and the types of activities delivered. Consequently, the current form of the LTMA is arguably an impediment to delivering the right projects and services at the right time and at the right cost.
35. The current LTMA purpose is to contribute to the aim of achieving an affordable, integrated, safe, responsive, and sustainable land transport system. This purpose is repeated throughout the LTMA as a high-level test. Five "transport" objectives are also used widely in the legislation, these are:
  - assisting economic development
  - assisting safety and personal security
  - improving access and mobility
  - protecting and promoting public health

- ensuring economic sustainability

36. As well, the NZTA has a comprehensive set of social and environmental responsibilities that have an unclear relationship with the purpose and the transport objectives. These criteria overlap and do not result in a consistent approach to economic, social, cultural and environmental aspects. This proliferation of assessment criteria makes concise and relevant reporting difficult. Decision-making is not aided by this proliferation of repetitive or peripheral decision criteria.
37. The NZTA's funding procedures have been criticised as being prescriptive and onerous. The NZTA has been streamlining its processes and procedures in an effort to improve this as much as possible. However, these attempts are hampered by the prescriptive nature of the LTMA.
38. The LTMA was intended to establish a high-level basis for decisions, while emphasising the need to consider the economic, social and environmental aspects of those decisions. However, the current purpose lacks clarity. Repeated use of the transport objectives as criteria at many levels in the LTMA creates uncertainty for users of the legislation and promotes bureaucracy through repeated analysis using the same point of inquiry. Attempts to evaluate individual projects against the transport objectives have been counterproductive as they are more suited to assessment of overall programmes rather than individual projects. This is largely due to their broad coverage and application.
39. Difficulties in negotiating the many tests in the LTMA led to the introduction of the GPS to give direction to the agencies and organisations funded under the LTMA. This has improved the position, but collectively the decision-making criteria remain unduly prescriptive and detailed. The complexity of the current provisions is contrasted with a more streamlined approach in Figure 2.

**Figure 2: Illustrative comparison of existing and streamlined decision criteria**

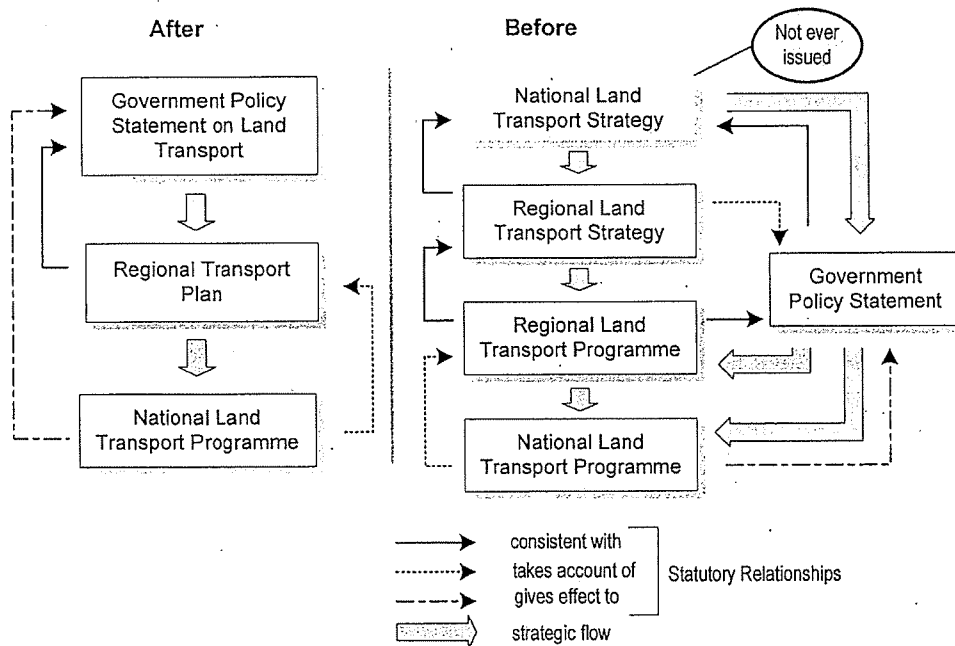
Current project level decision criteria	Streamlined project level decision-making criteria
Give effect to the GPS Affordable Integrated Safe Responsive Sustainable Assist economic development Assist safety and personal security Improve access and mobility Protect and promote public health Ensure economic sustainability Social responsibility Environmental responsibility	Give effect to the GPS Effective Efficient

40. The GPS criterion would enable the government to provide guidance on the weight that should be given to each of the economic, social, cultural and environmental variables in the purpose to reflect current policy priority. The effectiveness criterion would give weight to selection of investments that makes a substantive difference in transport outcomes (the right project), while the efficiency criterion looks to achieve the most results for the least cost (at the right time and cost).

**Planning**

- 41. Planning under the LTMA is convoluted and there is ambiguity in the relationships between planning documents. In addition, consultation requirements are onerous and lengthy.
- 42. The LTMA provides for the production of three national planning documents and two regional ones. The documents either establish strategic outcomes or set out detailed programmes of proposed inputs and outputs. There is a complicated set of statutory relationships between the documents, which are not necessarily linear. There are also issues with poor alignment between aspirational strategies and more practical programmes.
- 43. Figure 3 illustrates the complex relationship between instruments and the potential that exists for a simplified structure. There are a number of issues under the old model, including:
  - a lack of long-term central government guidance (particularly in the absence of an NLTS)
  - a lack of clarity for decision makers about how central government priorities are transmitted through the system
  - a perception of planning and consultation taking precedence over action

**Figure 3: Revised transport planning system**



- 44. A simplified structure that consolidates the RLTS and RLTP into a single instrument has the potential to improve alignment between the strategic and implementation components of plans, enable more effective public input and reduce administrative costs. The consolidated document could be framed in a way that requires a strategic component (up to 30 years) or leaves this to the region's discretion (at least 10 years).
- 45. Responsibility for developing the new document would continue to rest with regional transport committees outside Auckland. In Auckland, Auckland Transport would be

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responsible for approving the new document. . In developing the new document Auckland Transport will have to give effect to any relevant aspect of Auckland Council's Long Term Plan and be consistent with any relevant aspect of any other plan or strategy specified by Auckland Council, which could include the Spatial Plan (Section 92 of the Local Government (Auckland Council) Act 2009 refers).

#### *National guidance*

46. There is a view shared by many in the land transport sector that central government needs to give greater guidance on the outcomes it wants. Successive governments have not issued an NLTS to provide this long-term guidance. While previous governments have issued non-statutory transport strategies to provide a central government perspective, such strategies cannot formally guide statutory planning under the LTMA. Decision makers have been obliged to infer the government's priorities from a range of non-statutory sources. While these sources leave the government considerable flexibility to respond quickly to changing priorities, they leave an uncertain investment framework for the other decision makers within the funding framework.
47. The current form of GPS is an inadequate substitute for the NLTS as the GPS is limited to funding and does not deal with other policy interventions such as regulatory policy. A consequence of this situation is a risk that regional transport planning will not be well aligned with central government priorities.
48. While there is room for differences between national and regional perspectives, the potential for a lack of strategic and planning alignment risks poor outcomes for network users. The legislative framework needs to resolve this tension. A clear planning hierarchy, with well articulated national priorities, would increase certainty at the programming level.

#### *Regional transport committees*

49. Regional transport committees are currently responsible for preparing RLTSs and RLTPs. They bring together city and district councils, the regional council and the NZTA in an effort to reach a regional consensus on transport in a region. There is a committee for each region in New Zealand and each committee must have a representative for each of the five transport objectives, as well as a cultural representative (six altogether). The transport objective representatives are not able to vote on the RLTP so that content is determined by those responsible for funding and delivering land transport activities. In Auckland, the Auckland Council is currently charged with producing the RLTS and Auckland Transport is charged with developing the RLTP.
50. This arrangement is designed to give community voices a say on transport policy while at the same time avoiding the blurring of accountability when it comes down to decisions on what activities will actually be funded and delivered. However, it means that the committees are invariably large, and require tailored voting processes. The number of local authorities in some regions means that some committees have 20 or more members. Committees of this size are not ideal for debate and discussion and are much larger than the six to eight member committees that work well in most statutory transport entities. There has been at least one case of a regional committee membership being expanded to beyond 30 members to enable a regional council to secure a voting majority. Another consequence is that committees in unitary council areas are larger than necessary because of the need to have enough council representatives to balance the transport objective representatives.

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51. Feedback also points to problems with the appointment of the community representatives. Some committees have had difficulty filling vacancies and, in some cases, the community representatives have felt disempowered during committee deliberations. It seems preferable to allow the committees themselves to determine what advice they require in appropriate situations. Consultation would be another avenue for input from such groups.
52. The current and a more streamlined approach to committee membership are compared in Figure 4. Under the revised approach membership would be limited to funder-providers, with sector interests addressed in advice to the committee. Total numbers on committee members would be reduced and there would be no need to distinguish between the voting powers of different members. The regional transport committee in Auckland would comprise of Auckland Transport's Board, which includes two Auckland Council members.

**Figure 4: Illustrative comparison of existing and streamlined committees**

Current regional transport committee (Program decisions)	Streamlined regional transport committee (Program decisions)
Regional council representatives (Voting) Territorial authority representatives (Voting) NZTA representative (Voting) Economic development representative (Non-voting) Safety and security representative (Non-voting) Access and mobility representative (Non-voting) public health representative (Non-voting) economic sustainability representative (Non-voting) cultural representative (Non-voting)	Regional council representatives (Voting) Territorial authority representatives (Voting) NZTA representative (Voting)

*Consultation*

53. The LTMA requires consultation or engagement at each stage of the land transport planning process. An RLTS and an RLTP must go through a full public consultation process whenever they are changed. As local government partly funds the activities, there is also additional public consultation on long term plans (LTPs) under the principles and procedures of the LGA.<sup>1</sup> However, the LTMA adds to these requirements by listing specifically those who should be consulted and by requiring that the local government special consultative procedure be used. This procedure is very prescriptive.
54. The LTMA also includes a number of additional requirements that overlap with these consultation process that are designed to influence the way decisions are made by the entities, particularly the NZTA. For example, the NZTA must ensure, to the extent practicable, that statutory consultees have early and full opportunities to contribute to the development of RLTPs [see section 96(1)(a)(ii)(C)]. Such requirements are difficult to comply with.
55. Public input into land transport planning is important to better inform decisions and enable community engagement. However, duplicated and prescriptive consultation processes add little value. Better targeted consultation would also see some reduction in cost.

**Tolling**

<sup>1</sup> Section 82, Local Government Act 2002

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56. The LTMA has a separate regime for approving tolling to fund new roads. There have been three tolling schemes approved since the enactment of the LTMA in 2003 (the Northern Gateway tolling scheme in Auckland, the Tauranga bridge duplication, which was subsequently fully funded from grants, and most recently the Tauranga Eastern Link). None of the tolling schemes examined to date have been self-supporting. All have been dependent on funding from the NLTF to a substantial degree. Maintaining a degree of consistency between the evaluation criteria for tolling and LTMA funding is therefore desirable.
57. As with other parts of the LTMA, the tolling provisions include duplicative and unnecessary statutory tests and prescriptive consultation requirements. The provisions have been criticised as being complicated and confusing. The evaluation criteria would benefit from streamlining similar to that proposed in the LTMA funding framework.

#### *Decision-making*

58. The regime for toll schemes sets out high-level criteria that the Minister must take into account when considering whether to approve a toll scheme. Tolling is subject to both the many tests that apply to NLTF funding and special tests like preparation of a demand management plans. Those special test prevent the Minister from approving a toll proposal unless they have taken into account:
- the availability of alternative land transport options and the impact of the activity on those options
  - the land transport options and alternatives that have been considered by the public road controlling authority
  - whether the activity is consistent with current priorities for land transport expenditure.
59. This multiplicity of tests is often cited as an unwarranted barrier to the use of the tolling provisions.
60. It would be helpful if the criteria focussed on criteria necessary to inform a tolling decision and did not include criteria that may be relevant but not critical to the tolling decision. Identifying the relevant criteria is not, however, entirely straight forward. While some of the tests are clearly of marginal value to the core tolling decision, like the demand management plan, some criteria do have value that may not be immediately apparent. At face value, the alternative route test adds little value as there should always be an alternative route when adding a new road to an existing network. The alternative route test has, however, proven to be of particular value where tolling project's have the potential to cut existing properties off from the un-tolled network.

#### *High degree of support from the affected community*

61. The LTMA requires that the project, subject to the tolling scheme, must be included in the current NLTP or the Minister must be satisfied that there is a high degree of support from affected communities for toll roads [see section 48(1)(d)]. Affected communities are defined as a group of people who are affected by the proposed activity because of living, studying or working in close geographical proximity to the proposed activity. For projects to date, the NZTA addressed this criterion by carrying out a random sample survey of the affected communities, irrespective of whether the project is already in the NLTP.

62. The test gives residents living near the toll scheme greater standing than residents that may be more affected by the tolled nature of the road due to factors such as living on the alternative route or living in the catchment served by the road. A less prescriptive and more inclusive approach to consultation with affected parties would be desirable.

#### *Consultation*

63. The costs associated with consultation on tolling schemes can be significant. For a relatively localised tolling project, such as the Tauranga Eastern Link, the costs of consultation are in the range of \$600,000 to \$1 million. For a project with wider impacts, such as the Auckland Western Ring Route, communication and consultation cost are likely to be in the order of \$1.5 million to \$2 million.
64. The community is generally consulted on toll road projects due to the need to comply with the RMA, formal planning processes under the LTMA and, in the case of a local authority toll road, LTP processes. An approach that avoids duplication of consultation process appears desirable.

#### **Public private partnerships**

65. The LTMA includes a process for Ministerial approval of road leasing called a concession agreement in the LTMA. Concession agreements enable certain road management powers to be exercised by a concessionaire. This concession agreement terminology is confusing as concession agreements are more usually the contract between the partners in public private partnerships (PPPs). The concession agreement provisions are also perceived as being linked to tolling. While approval of road leases or tolling may form part of a PPP, they are not inherently linked. In a transport context, PPP arrangements involve any long-term payment for a service.
66. No proposals for concession agreements have been considered or approved since the LTMA's enactment in 2003. There could be a number of reasons for this, including the confusing terminology, the lack of suitable proposals, the complexity of the tests or limited benefits associated with the power to lease road space. It is difficult to be certain of the balance of reasons as the regime is essentially untested.
67. There are, however, potential advantages to using a PPP as a procurement tool, including:
- opportunities for private sector innovation
  - optimal risk transfer between the public and private sectors
  - whole of life cost savings
  - smoothing cash flow requirements
68. The LTMA already includes a general procurement regime that potentially has application to a wide variety of PPPs. Under that general regime, the NZTA must approve procurement procedures for any of the organisations that have access to the NLTF, including itself. This procurement regime has already been used for shorter term PPP-type arrangements and can be used for longer term PPP arrangements in future. One example is the use of performance specified maintenance contracts to deliver some State highway maintenance. These are medium-term maintenance contracts tendered competitively with a lump sum price.
69. The current confusion between measures to control leases and measures to deal with procurement is unhelpful. Leasing would be better dealt with by an express

provision providing for Ministerial approval, while PPPs would be better viewed as a form of long-term contract for service that must conform to the normal procurement and borrowing rules.

### Flexibility in borrowing

70. The LTMA provides for borrowing to smooth short-term cash flows in the NLTF within set limits. Any borrowing is also subject to Minister of Finance approval under the Public Finance Act 1989.
71. The limitations on borrowing to cash flow purposes [see section 10(1)(b) of the LTMA] have, in practice, significantly constrained the NZTA's ability to manage volatile revenue and lump sum expenditure within the NLTF.

### OPTIONS

72. Four leading options have been identified.

*Option 1: Status quo*

This would involve retaining the existing purpose, statutory instruments, evaluation criteria and financial instruments, such as tolling, and concession agreements.

*Option 2: Simplified decision-making frameworks*

This would involve updating the LTMA and tolling decision-making criteria, extending the role of the GPS (which involves combining the NLTS and the GPS), removing the concession agreement provisions and addressing the composition of land transport committees, but retaining the current planning framework.

*Option 3: Option 2 plus a consolidated planning framework*

This would involve addressing the matters covered in Option 2 and consolidating the regional planning instruments, the RLTS and RLTP, into one document in two parts. One part would deal with strategy up to 30 years, while the other part would deal with implementation within 10 years.

*Option 4: Option 2 plus a simplified planning framework*

This would involve addressing the matters covered in Option 2 and a simplified planning framework, a revised RLTP, in which a single document sets out the regional policy and proposals for at least the next 10 years. Regional transport committees would be responsible for preparing the revised RLTP.

73. Each of the three options is summarised in Figure 5.

**Figure 5: Options summary**

	Option 1 Status quo	Option 2 Update criteria	Option 3 Consolidated Planning	Option 4 Simplified Planning
Purpose	To contribute to the aim of achieving an affordable, integrated, safe, responsive, and sustainable land transport system.	Substitute a purpose to contribute to an effective, efficient and safe land transport system to support New Zealand's economic, social and environmental wellbeing	As for Option 2	As for Option 2
Objectives	<ul style="list-style-type: none"> <li>• assisting economic development</li> <li>• assisting safety</li> </ul>	Delete the objectives	As for Option 2	As for Option 2

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	Option 1 Status quo	Option 2 Update criteria	Option 3 Consolidated Planning	Option 4 Simplified Planning
	and personal security <ul style="list-style-type: none"> <li>• improving access and mobility</li> <li>• protecting and promoting public health</li> <li>• ensuring economic sustainability</li> </ul>			
Regional Transport Committees	Representatives from councils stakeholders, plus NZTA	Representatives of councils plus NZTA (No committee in unitary authorities)	As for Option 2	As for Option 2
Consultation	Prescribed consultation process	Substitute a general duty to consult in RLTS and rely on project level consultation elsewhere	As for Option 2	As for Option 2
Programme criteria	Purpose, objectives and responsibilities	Align with new purpose	As for Option 2	As for Option 2
Project criteria	Purpose, objectives and responsibilities	Substitute efficient and effective	As for Option 2	As for Option 2
Borrowing	Borrowing is limited to short-term smoothing of cash flow	Enable medium-term borrowing to manage volatile revenue and lump sum expenditure	As for Option 2	As for Option 2
Monitoring	A duty on the Secretary to review NZTA funding policy annually (s101)	Substitute a reserve power to conduct a review if an issue of particular concern or risk became apparent.	As for Option 2	As for Option 2
Reporting	NLTF Annual Report contains an explanation of how funding activities have contributed to the GPS (s11(2)(f))	Substitute a 3-yearly cycle enabling reporting of outcomes rather than outputs.	As for Option 2	As for Option 2
National instruments	NLTS and GPS	Extended GPS on land transport that includes revenue policy and covers up to a 30-year period in place of the NLTS.	As per Option 2	As for Option 2
Tolling	Toll new roads and integral existing roads provided there is an un-tolled alternative route and a range of criteria, including support from affected community.	Toll new roads including integral existing roads provided there is an un-tolled alternative route, tolling would be efficient and effective and the Minister is satisfied with the consultation.	As for Option 2	As for Option 2
Concession agreements	Concession agreements allow for leasing of formed roads subject to Ministerial approval and confer some road management powers.	Long-term PPP contracts considered under existing procurement processes.  Provision for leasing of formed roads where the	As for Option 2	As for Option 2

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	Option 1 Status quo	Option 2 Update criteria	Option 3 Consolidated Planning	Option 4 Simplified Planning
		Minister approves as leasing can effectively close roads to the public.		
RLTS and RLTP Purpose	Purpose references multiple criteria.	Align with new LTMA purpose.	As for Option 2	As for Option 3
RLTS and RLTP	RLTS and RLTP remain separate	RLTS and RLTP remain separate	Consolidate RLTS and RLTP into a new form of regional transport plan with strategic (30 year) and implementation (10 year) parts.	Simplification of RLTA and RLTP into a new regional transport plan dealing with policy and implementation for at least 10 years.
RLTS Content	An extensive list of prescribed RLTS content.	No change	Make identifying the preferred strategic direction for transport the core function of the new plan.	Make identification of the region's policies and proposals for up to 10 years the core function of the new plan.
RLTS Projects	The RLTS is limited in the extent it can identify projects.	No change	Enable inclusion of a prioritisation framework in the strategic element of the new plan.	No limitation in identification of projects.
RLTP Prioritisation	The RLTP is both a prioritisation and bidding instrument.	No change	Make prioritisation in advance of bidding the core function of the implementation part of the new plan.	As for option 3
RLTP Variation of programme	Any variation requires fresh consultation.	No change	No consultation on variations of the new plan.	As for option 3
Bidding	RLTP is a bidding document with timing linked to NLTP cycle.	No change	Allow bidding for any project included in the RTP at any time.	As for option 3

## Impact analysis

### GPS

74. The expanded form of the GPS that includes regulatory as well as funding policy, is expected to play a significant part in securing gains. The GPS would signal the balance between economic, social, cultural or environmental aspects in the LTMA purpose favoured by the government. The current Government has used the existing form of the GPS to place the funding emphasis on economic growth and productivity.
75. The revised form of the GPS would also set out the outcomes and priorities sought by government over at least 10 years, a timeframe that would matches the timeframes in the revised form of regional transport plans. This formalised national guidance should lead to better informed and more feasible regional planning.

### *Emphasise value for money*

76. While some progress could be made through improved operational practice under Option 1, the multiplicity of decision-making criteria provide mixed signals to decision makers and stakeholders. A sharper legislative focus on efficiently and effectively

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supporting society's wellbeing, as common to the other three options, should lead to increased rigour in the prioritisation process and increase the likelihood that the most valuable projects will get priority. While the impact of a renewed focus on value for money at an individual project level may be modest, the cumulative effect across the programme should be significant.

77. The value delivered by projects, output classes and the programme as a whole varies with revenue inflows linked to economic conditions, the sizing of each output within the NLTP and project selected. The changes to the evaluation framework focus on the last of these variables, which is within the control of councils and the NZTA. Different parts of the NLTP deliver differing levels of value under an evaluation system that blends quantitative and qualitative benefits within the various ring-fenced outputs. Benefit-cost ratio assessments (BCRs) that record the quantitative benefits and costs of transport expenditure are not currently available across all outputs. It is, therefore, not feasible to forecast the potential for measurable gains across the NLTP as a whole.
78. The outcome, in terms of improved network efficiency, will depend on the balance struck by key decision makers between responding to qualitative and quantitative impacts. There are very significant pressures within the system to fund high-profile projects that are relatively costly but support the transport needs of only a few. While a robust analytical framework is needed to ensure decision makers are well informed about the consequences of their prioritisation decisions, those decisions will almost inevitably give weight to a range of factors that go beyond issues of strict economic allocative efficiency.
79. However, even very small gains in allocative efficiency will deliver substantial gains over time. A 1 percent gain in allocative efficiency on a \$3 billion annual expenditure that is delivering \$6 billion in benefits over 25 years (BCR 2) translates into a \$60 million gain over the evaluation period. The gain escalates with increased efficiency of expenditure. A 1 percent improvement in a BCR 3 programme translates into a \$90 million gain and at BCR 4 into \$120 million in gains. Any gains are locked in given the long service life of transport infrastructure. These gains can be repeated each year provided the focus on selecting efficient and effective projects is maintained.

#### *Simplify planning*

80. The additional gains from the consolidated regional planning instruments in Option 3 or 4 are likely to be of a lower order of magnitude to the gains from changes in the basis for decision-making in Option 2. The additional gains would be of two types: a better fit across projects, and reduced administrative costs.
81. The project gains would derive from improved alignment between strategy and implementation. These allocative efficiency gains would derive from better project selection and performance over time. Gains of this type would supplement the efficiency gains obtained under Option 2.
82. The main risk associated with planning processes is that decision makers give inadequate weight to one or more of the economic, social, cultural and environmental aspects. Over emphasis on aspirational outcomes risks wasting public funds, while over emphasis on mechanistic allocation risks overlooking potential network-wide gains. Risks of this nature are difficult to manage through regulatory intervention. The outcomes largely depend on the attitudes of decision makers and the quality of advice provided by their advisers.

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83. Administrative gains would flow from improvements in plan preparation and consultation processes. A less prescriptive approach to plan content and consultation should lead to less tick-box plan preparation, reduce planning churn and duplicate consultation processes. Direct cost savings would, however, largely be limited to the reduced publication and consultation costs from not producing two documents. Agencies would still be faced with doing the analytical work required to underpin any arrangement of plans. The gains could therefore be expected to be at the margins of administrative costs in plan preparation.
84. Savings are unlikely to exceed 5 percent of total plan preparation costs. Preparation of strategies and programmes costs about \$8 million annually and annual public sector savings are unlikely to exceed half a million dollars a year. Private sector savings would be more modest again and largely relate to the reduced costs associated with elimination of unwarranted submissions and representations.

#### *Planning timeframes*

85. Option 3 would require the preparation of a strategy part in the new regional transport plan that relates to a 10 to 30 year timeframe, where Option 4 would only require preparation of objectives and measures for at least a 10 year period.
86. The main advantage of specifying a 30 year period is that it provides a long-term context for transport projects that often take 15 to 20 years to come to fruition. The main disadvantages are that it is difficult to look out beyond 10 years with any confidence and this type of strategic view is only likely to be relevant to regions experiencing significant growth.
87. The main advantage of specifying at least a 10 year timeframe for the new regional transport plans is that this would allow each region to decide if a longer-term component is warranted given the circumstances in their region. This approach follows the approach adopted in Council Long Term Plans under the Local Government Act 2002. The main disadvantages are that there would be no express duty to undertaken strategic transport planning in a way that aligns with the LTMA purpose or open that policy to public testing through the consultation process.

#### *Barriers to tolling*

88. Tolling has the potential to provide additional revenue. On the other side of the equation, tolling tends to reduce the economic value of a project due to traffic diversion onto un-tolled alternative routes and can be a relatively expensive way to collect revenue. Any tolling scheme needs to add substantive value to be more efficient as a source of revenue than other revenue sources.
89. The use of a multiplicity of evaluation criteria in assessing a tolling scheme takes the focus away from the core decision about the viability of tolling. The merits of the road itself and impact on neighbours will have been assessed in the RTP and RMA processes, before the decision is placed before the Minister.
90. The key focus in decision-making by the Minister on tolling schemes needs to be on the economic trade-offs involved. The trade-off between: toll revenue and traffic diversion; early completion and displacement of higher valued projects; toll rates and toll income; and, the ability of forecast toll revenues to cover financial commitments.
91. Streamlining the tolling evaluation criteria to remove the marginal criteria and highlight the key revenue and economic factors that are likely to be pivotal to any

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final decision should enable better informed decision-making by tolling proponents and the responsible Minister.

92. The changes proposed would not substantively change the obligation to consider the distributional effects of tolling. The criteria being repealed generally do not relate to the merits of pricing some users off part of the network, tolls linked to financing or the economics of tolling a particular new road. These questions are embedded in the efficiency and effectiveness test that will replace the multi-criteria approach and form the central decisions required of Ministers when considering the merits of a tolling scheme proposal.

#### *Barriers to PPP*

93. The concession agreement provisions have been characterised as a PPP framework by government and sector interests. In practice they are a quite limited set of measures dealing with leases of roads and a limited set of road management powers. Local government and stakeholders have found it hard to understand how they fit into the wider procurement and approval framework under the LTMA and that concession agreements are not inherently linked to tolling schemes.
94. Provision for PPP's has existed in the procurement provisions of the LTMA from its inception in 2003 and the provisions have no impact on the need to secure Ministerial approval of any borrowing inherent in a PPP proposal.
95. The use of private finance is embedded in the procurement procedures enabled under the LTMA. A key reason for contracting out the design and operation of land transport infrastructure is that it leads to a sharp focus on cost effectiveness. Private finance is an inherent element in this contracting regime. Private finance is raised to fund multi-year construction projects, buy buses for use in public transport contracts and 10-year road maintenance contracts. These contracts are generally not considered to constitute PPPs as they are relatively short term (such as construction contracts), or do not involve the transfer of capital assets to the public upon completion (such as bus service contracts).
96. Contracts that involve a private sector contractor building, operating and returning transport infrastructure to public control over a long term (that is, 10 years or more) are not expressly provided for within this framework, but are enabled. Long-term contracts of this type tend to involve enduring commitments of public revenue to fund substantial private sector project finance in out years and are generally characterised as PPPs.
97. The contracting regime under the LTMA procurement regime is well understood by contactors and has sufficient flexibility to cope with large scale PPP contracts without special legislative provision. Replacing the concession agreement provisions in the LTMA and relying on the established procurement procedures to regulate long-term contracts, in combination with provisions to expressly deal with leasing of formed roads, should eliminate perceived barriers to more innovative longer term contracts.
98. The amendments would not change the role of the Minister of Finance in managing the government's total debt position under the Public Finance Act.

#### **Consultation**

##### *Departments*

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99. The following departments were consulted on one or more aspects of the policy addressed in this regulatory impact statement: the Treasury, the National Infrastructure Unit, the Ministry of Economic Development, the Department of Internal Affairs, and the Ministry for the Environment, the Office for Disability Issues, the Ministry of Social Development and Te Puni Kōkiri. Additionally, the NZTA was involved in the preparation of the proposals included in this paper. The Department of the Prime Minister and Cabinet and the State Services Commission were informed.
100. Departments noted that finding a balance between strategic and operational planning was a key issue. Work has been completed or is underway in the transport, local government and resource management contexts to improve vertical integration between long-term strategic planning and shorter term operational planning. Work is also underway in a spatial planning context with an aim to improve horizontal integration between strategic regulatory, financial and infrastructure planning at a regional level.
101. The work to improve vertical integration is generally more advanced than the work on horizontal integration. Work on streamlining local government community planning documents has been completed with the implementation of the Local Term Plan framework. These transport proposals would similarly streamline of the regional transport planning framework. The Ministry notes that decisions are yet to be made on the value of creating a statutory duty to undertake merged strategic planning across community, transport and regulatory planning functions, possibly under a spatial planning umbrella.
102. Another issue raised was the possibility of losing representation due to changes in the composition of the regional transport committees. The Ministry notes that some transport committees had difficulty finding people to be representatives for the transport objectives, while other committees have had unwieldy numbers of members. Representation has been compromised in these situations, and arguably the current legislative provisions are not providing an acceptable outcome. The re-constituted regional transport committees will be obliged to consult on their programmes and this will provide the opportunity for community input.

#### *Local government*

103. Discussions have taken place with Local Government New Zealand, local government officials in Auckland; the Waikato; the Bay of Plenty; Wellington and Canterbury. The main point of concern from local government was around the practicality of changes to the RLTS and the RLTP. Regions were mainly concerned about the resource implications associated with developing the strategic and programming content at the same time.
104. Removing the statutory obligation to produce plans that look out more than 10 years should reduce the workload imposed on local authorities.

#### *Stakeholders*

105. The Ministry has had preliminary discussions with stakeholders within the transport sector, including the Automobile Association of New Zealand, the Road Transport Forum and the New Zealand Council for Infrastructure Development. Consultation with groups in the wider community was not undertaken.
106. The proposals were generally well received. Stakeholders recognised that the sheer number of parties involved on some regional transport committees is an issue. They

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also appreciate there is a necessary difference in role between funders and representative groups. Stakeholders' reservations mainly centred on their input to regional transport committee decision-making. Committees will be free to continue a collaborative approach with key stakeholders over and above formal consultation obligations.

#### *Transport users*

107. The largest group affected by the changes are land transport system users. Achieving genuine engagement with a representative sample of users is problematic. The changes proposed are quite technical and not readily explained to the typical user. The general pattern of user views is, however, apparent from ongoing communication and public comment. Users understandably prefer funding allocations that addresses their transport wishes without increasing their personal costs.
108. This package will impact on the way allocations are made from the NLTF and will benefit some users over others. Those changes are likely to direct the limited pool of discretionary funding in the NLTF towards those areas that are experiencing greatest travel growth, have the most congestion, poorest safety records or the most degraded environment. Both the incidence and value of benefits should change. The net result should be an improvement in transport outcomes for society at large.

#### **Preferred option**

109. Option 1 would not advance the established objectives. Option 2 offers potential gains against the objectives, but the gains are likely to be limited without accompanying reform of planning processes. Option 3 offers the greatest potential for gains in terms of the potential to improve alignment between strategy and planning. Option 4 offers the most potential gains in compliance costs without necessarily affecting outcomes.
110. Transport officials note that there are a number of points in common between Option 3 and Option 4. Both options offer the benefits of a single instrument and provide for strategic (outcomes and objectives) and implementation (projects and measures) components over periods longer than 10 years. Officials, however, favour the express duty in Option 3 to formulate long-term transport policy within the LTMA framework where strategy and implementation must be closely aligned and can be examined together. Option 3 also expressly provides for elected representatives in Auckland to set the transport outcomes and objectives.
111. The Minister prefers the more enabling approach of Option 4, where development of longer-term regional strategic policy under the LTMA framework is a discretionary matter for each region. Councils also have the option of using existing local government plans, such as the Long Term Plan, or in Auckland the Spatial Plan, to inform and guide the strategic content of the new form of RLTP. Compliance costs are also likely to be marginally lower under Option 4 than for other options.

#### **Implementation**

112. The key characteristics of the land transport funding framework that would be changed under the preferred package are all codified in the LTMA. Amendments are therefore proposed to the LTMA to implement the preferred package. The legislative

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process will also provide stakeholders and Parliament an opportunity to examine the merits of the changes proposed.

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#### **Monitoring evaluation and review**

114. The Ministry of Transport will be responsible for monitoring the success of the new planning framework. The performance of the NZTA in planning and making funding allocations from the NLTF will be pivotal to achieving the key value for money objective. The NZTA is subject to the usual governance controls as a Crown entity, largely centring on the Statement of Intent, Annual Report and performance agreement with the Minister of Transport. While these measures are all useful to assess the NZTA's performance, they are of limited assistance in assessing the performance of the NLTF itself.
115. Before 2003, tangible measures of performance were available as outputs from the BCR process undertaken at a project level. These could be monitored at a project, output and programme level. Changes in the funding cut-off were used as a key tool in maintaining the relationship between expenditure and revenue policy.
116. After 2003, with the shift to multi-criteria analysis and an effective reduction in the weight given to quantitative benefits over qualitative benefits, the ability to monitor fund performance on an impartial basis has been eroded.
117. The package of changes proposed is expected to put greater emphasis on the use of quantitative values to identify the projects that will most efficiently and effectively support economic, social, cultural and environmental wellbeing. It is likely that these values will feature more prominently in the NLTP and new regional transport planning instruments. Re-emergence of a focus on efficient and effective funding should provide a solid basis for assessing the performance of the NLTF and whether further adjustments to administrative or legislative policy are warranted. The performance of the system on a regionalised basis will also be easier to assess, including the performance of the revised regional transport committee structure.

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