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Hon Simeon Brown
Minister of Transport
Action required by:
 No action required

TOLLING BACKGROUND IN NEW ZEALAND

Purpose

To provide detail on New Zealand's current tolling legislation and the general process for proposing and implementing a tolling scheme.

Key points

- Tolling is a direct charge for the use of a part of the roading network. In New Zealand, tolling has been used to generate additional funding to 'bring forward' projects that cannot be funded from existing revenue sources, but it is not limited to this purpose.
- There are three pieces of legislation that allow tolling in one form or another, the Land Transport Management Act 2003 (LTMA), the Local Government Act 1974 (LGA 74), and the Land Transport Act 1998 (LTA). All three currently operating toll roads in New Zealand operate under the LTMA.
 - **LTMA:** Any public road controlling authority (RCA), such as NZTA or a territorial authority, can propose a tolling scheme to you for your approval under the LTMA. For a road to be tolled under the LTMA, you as Minister of Transport must be satisfied the scheme meets several requirements, including that it must be a new road, there must be adequate community consultation and community support for the scheme, there must be an untolled, feasible alternative route, and the proposed tolling scheme must be efficient and effective.
 - **LGA 74:** Under the LGA 74, the Minister for Local Government can authorise a council to levy a toll on any bridge, tunnel, or ferry under the council's control. This tolling regime is more permissive than the LTMA, as the Minister does not need to have regard to particular criteria in the Act but can grant authority to a council to toll with any terms and conditions the Minister deems fit. If the Minister were to approve such a toll, the relevant territorial authority would implement it after following processes and requirements specified by the Local Government Act 2002, including a special consultative procedure.
 - **LTA:** The LTA allows for councils to levy a toll on heavy vehicles on a bridge, tunnel, or ferry if it complies with the relevant section in the LGA 74. This legislation is not stand-alone and requires the same procedures as in LGA 74.

Recommendations

We recommend you:

- 1 **note** the contents of this briefing

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

Comments

Contacts

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TOLLING BACKGROUND IN NEW ZEALAND

This paper responds to your request for advice on tolling

- 1 On 2 May 2024, we provided you with a briefing that addressed the challenges and outlined the opportunities for tolling in New Zealand (OC240422 refers). That briefing contained a background on New Zealand's current tolling arrangements, as well as potential changes that could be made to tolling legislation and operations to enable cost-efficiency and expansion of tolling.
- 2 Your office requested further detail on the current legislative settings governing tolling, as well as the process that a road controlling authority (RCA) must go through in order to implement a toll.
- 3 This briefing outlines the legislation that enables tolling, allocation of tolling funds, and processes for proposing and implementing tolling schemes. It does not provide advice on changes to tolling settings.

Tolling under the Land Transport Management Act 2003 (LTMA)

- 4 The Land Transport Management Act 2003 (the LTMA) enables the establishment of road tolling schemes. RCAs submit proposals to you as Minister of Transport and you must judge these proposals against the statutory criteria in the LTMA and be satisfied that the proposal meets the criteria. An Order in Council is used to establish a road tolling scheme for or on behalf of a public road controlling authority (LTMA Section 46(1)).

The statutory criteria for tolling under the LTMA

- 5 A road tolling scheme established using the LTMA must fund one or more of "the planning, design, supervision, construction, maintenance, or operation of a new road" and meet "any conditions or requirements set out in the order [in Council]" (LTMA Section 46(1)(a) and (b)).
- 6 The LTMA limits the tolling of existing roads. Existing roads can only be tolled if the Minister is satisfied that the existing road, or part, is located near, or is operationally integral to, the new road that tolling revenue will be applied to (LTMA section 48(2)). The LTMA considers additional lanes added to an existing road to be a new road.
- 7 Additionally, the LTMA states that the Minister must not recommend the making of an Order in Council for a tolling scheme unless they are satisfied:
 - 7.1 that the relevant public road controlling authority or authorities have carried out adequate consultation on the proposed tolling scheme; and
 - 7.2 with the level of community support for the proposed tolling scheme in the relevant region or regions; and
 - 7.3 that a feasible, untolled, alternative route is available to road users; and

- 7.4 that the proposed tolling scheme is efficient and effective (LTMA Section 48(1)(a)-(e)).
- 8 To date, tolling provisions have been used to bring forward the construction of a roading project that would otherwise be delayed or deferred due to inadequate funding from existing sources. However, more recently, tolling has been proposed for roads that are fully funded either by the National Land Transport Fund (NLTF) or the Crown. The revenue generated from tolling will be used to offset the ongoing operating and maintenance cost of the roads.

The process of NZTA proposing a toll road under the LTMA

- 9 NZTA's newest tolling policy was released in March 2020 and outlines the process by which they assess and propose road tolling schemes. This is how NZTA ensures compliance with legislation and best practice.
- 10 NZTA assesses all new state highways and significant improvements to existing state highways for tolling suitability. Their tolling suitability assessment will take place in either one or two stages of a roading project:
- 10.1 During the **detailed business case** to see whether a road can be constructed sooner than initially expected using tolls
- 10.2 **On approval for construction** to assess the use of tolling for public private partnership (PPP) repayments and/or the operation and maintenance of the road.
- 11 NZTA's tolling assessments have a three step (or gate) process, legislative requirement and practicality tests, value for money and investment rationale tests (and policy and project alignment tests), and finally a public interest test.
- 11.1 The **legislative requirements and practicality test** checks the road against the statutory requirements in the LTMA, models whether more than 10,000 vehicles are likely to travel the road per day and examines whether tolling infrastructure can be installed in a cost-effective and reasonable manner within the time limits of the LTMA (once a road opens, it is no longer a new road).
- 11.2 The **value for money and investment rationale tests, and policy and project alignment tests** examine if the toll rate is reasonable and doesn't result in undue traffic volume change that impacts the wider network. It also investigates whether tolling infrastructure costs no more than 20 percent of anticipated revenue, sees whether tolling would make a meaningful contribution to the project cost, and if tolling delivers value for money and public good for New Zealanders. The policy and project alignment tests assess whether tolling does not significantly reduce project outcomes and whether it aligns with Government Policy Statement on land transport (GPS) priorities.
- 11.3 The **public interest** test ensures an effective and transparent public consultation process has been completed.

The public consultation process

- 12 One of the statutory requirements you must assess a road tolling proposal against is that you must be satisfied “with the level of community support for the proposed tolling scheme in the relevant region or regions” (LTMA Section 48(1)(b)).
- 13 NZTA carries out public consultation on all proposed tolling schemes. Consultation happens after the tolling assessment outlined in paragraphs 11.1 and 11.2 indicate that a tolling scheme is feasible, and you as the Minister of Transport have agreed to progress to scheme development which includes public consultation.
- 14 Consultation runs for at least four weeks and can include the public release of documents explaining the scheme, opportunities for online and in-person submissions, public workshops, and question and answer opportunities.
- 15 The submissions and feedback collected through this process inform the final tolling proposal that is sent for you to approve. This process provides an opportunity for you as the Minister of Transport, as well as the relevant RCA to assess public opinion on the tolling scheme at a general level, but also the specifics of the scheme being consulted on.

Where you are brought in to progress or approve a scheme

- 16 The Minister is brought into the process at two of the stages of an NZTA road tolling assessment.
 - 16.1 After the value for money assessment outlined in paragraph 11.2, the NZTA board will bring a recommendation to you for you to agree to public consultation. This is not a legislative requirement, but NZTA considers it best practice.
 - 16.2 After the public consultation is carried out, NZTA will put together a final tolling proposal. If the NZTA board agrees to recommend a toll, then the proposal would be put to you to consider against the statutory criteria in the LTMA.
- 17 Generally, if the Minister agrees to this proposal, they will then take a recommendation for an Order in Council to be made to Cabinet in the form of a Cabinet paper. This Order in Council will make it legal for NZTA to toll the road and NZTA will go ahead and implement the proposed scheme before the road opens.

Allocation of funds and treatment of tolling revenue in an NZTA Scheme

- 18 The treatment and allocation of toll revenue differs slightly between the three toll roads in New Zealand s 9(2)(i) [REDACTED]
- 19 All tolling revenue in the three currently operational schemes are hypothecated to those projects. The Northern Gateway toll road (NGTR) revenue is collected and passed on to the Crown to repay the debt the Crown holds. The same “advancement” strategy was used for the NGTR, except that the debt was provided in the form of debt facility directly from the Crown, rather than a loan to the NZTA. This means that the Crown, on a year to year basis, bears the risk of any shortfall in payment because

at the time “it was not considered appropriate that interest repayments impact on the prioritisation and programming of other projects¹.”

- 20 In the case of the Tauranga Eastern Link (TEL), NZTA borrowed \$107 million from the Crown to help pay for construction costs, as well as tolling infrastructure costs for the road. This borrowing, supported by tolling, allowed the NZTA to commence construction of the project years before it would normally be funded under regular NLTF provisions. The tolling revenue from the TEL is treated as an inflow to the NLTF and is used to repay this debt and related interest. TEL’s on-going operation and maintenance costs are met by the NLTF. On a year-to-year basis, NLTF carries the risk of any shortfall in tolling revenue.
- 21 Toll revenue can be treated as an inflow to the NLTF for administrative ease. However, it must be approved by the Minister in writing (usually in the Order in Council) and “the activities to be funded by that toll revenue inflow [must be] specified” in the Order in Council made as a part of a tolling scheme². This specification is required to ensure revenue raised on a specific road stays with that road and is not used for raising general revenue³.
- 22 New Zealand does not have any tolls on any PPP roading projects. However, both Transmission Gully and Puhoi to Warkworth were assessed for their tolling potential. Under the PPP arrangements contractual payments have been set aside through the NLTF and are linked to specific contractual performance criteria relating to road availability, predictability/consistency of road user journey time and other service outcomes (asset condition, customer satisfaction).^{s 9(2)(i)}

The process of a territorial authority proposing a toll road under the LTMA

- 23 The LTMA is agnostic to the source of a tolling proposal, and so a proposal from a territorial authority would be assessed by the Minister with the same criteria as a proposal from NZTA.
- 24 All three currently operating toll roads are state highways, and therefore have NZTA as their RCA. No territorial authorities operate or have submitted a tolling scheme to any Minister of Transport seeking to toll a local road under the LTMA. This means that the following process is hypothetical and may vary from council to council.
- 25 When a territorial authority (TA) proposes a new road, it could identify through the business case process that a road is suitable for tolling due to, for example, high projected traffic volumes, or a desire to bring forward the construction of a project. Territorial authorities do not assess all new roads for tolling suitability, as NZTA does. The TA would then need to undertake the formulation of a tolling assessment that

¹ <https://www.transport.govt.nz/assets/Uploads/Cabinet/Tauranga-Eastern-Link-Cabinet-Paper.pdf> pg. 6

² LTMA Section 10 (2)(ba)(ii)

³ [Cabinet Paper: Land Transport Management Act 2003 Review: Tolling and Public Private Partnerships pg. 4](#)

examines in detail whether the proposed toll road would meet the criteria of a toll road under the LTMA. A TA could follow the same policy that NZTA undertakes when assessing a toll road, as outlined in paragraphs 10.1 to 10.3.

- 26 The TA would then need to undertake adequate public consultation and put together a tolling proposal to submit to the Minister for approval. This tolling proposal would contain detail about the tolling scheme, its suitability for tolling, compliance with the statutory criteria in the LTMA, and results of public consultation.
- 27 Additionally, the Minister of Transport would ultimately need to approve the toll road, therefore it would be likely (and best practice) for a TA that wants to submit a tolling proposal to engage with you early in the process, before submitting a scheme.

Allocation of funds and treatment of tolling revenue in a territorial authority tolling scheme

- 28 The LTMA does not make a specific directive for how the funding and financing of a toll road should work. However, in the absence of some sort of special arrangement with NZTA, the NLTF, or a PPP, a toll levied by a territorial authority would likely pay off debt that had been specifically accrued to pay for the entirety or part of a new road. This debt would likely sit on the council's books.
- 29 Section 46(3)(g) of the LTMA allows you to specify the purposes for which toll revenue inflow may be used. As the Minister of Transport, you could specify in the empowering Order in Council that the tolling revenue inflow could only be used to repay that debt, alongside any tolling infrastructure and operational costs that may be accrued. You could also set other conditions under Section 46(3) of the LTMA, such as the rate or maximum limit of tolls, and information the territorial authority is required to provide on the toll road operations.
- 30 This debt-toll strategy is similar to that used by the Takitimu Drive Toll Road (Route K). The Tauranga City Council built Route K in 2003 without NZTA funding, as it did not meet the minimum funding thresholds. This meant the City Council took on debt to bring forward construction so the benefits to the Tauranga region would occur five to seven years ahead of when the NZ Transport Agency planned to build the road under the National Land Transport Programme (as State highway project). This debt would be repaid through tolling and this approach received strong support in the Tauranga region at the time.
- 31 It is worth noting that due to the Council's high debt costs, NZTA purchased the road from Tauranga City Council in 2015 using NLTF revenue. The ongoing tolling revenue is used to reimburse the NLTF for the purchase.

Tolling under the Local Government Act 1974

- 32 Section 361 of the Local Government Act 1974 (LGA 74) allows the Minister of Local Government to authorise a council, by using the special consultative procedure, to establish toll gates and collect tolls at any bridge, tunnel, or ferry⁴.

⁴ <https://www.legislation.govt.nz/act/public/1974/0066/latest/DLM420736.html>

- 33 In addition, the Land Transport Act 1998 allows for a toll to be levied on any class of heavy vehicle, just so long as it is in accordance with Section 361 of the LTA (it must be a bridge, tunnel, or ferry) and all of the associated consultative procedures.
- 34 As far as can be ascertained, there has never been a tolling scheme that has operated under either of these statutes. Advice to the then Minister of Transport on tolling in 2001, notes that tolling in New Zealand has traditionally been provided for on a project-by-project basis. Auckland Harbour Bridge and the Lyttelton Road Tunnel both had specific enabling legislation⁵. Tolling of Tauranga Harbour Bridge was enabled by a Local Act.
- 35 We suspect this statute has not been used because in the past, not only the tolling, but the building of local infrastructure such as tunnels and bridges has required a broader legislative package than section 361 of the LGA 74 provides on its own.

Differences between LGA 74 and LTMA Tolling Provisions

- 36 The LGA 74 only provides for the tolling of bridges, tunnels, and ferries, but is less prescriptive than the LTMA in other ways in that it does not have statutory criteria that the Minister has to assess the tolling proposal against. Instead, it allows the Minister to grant authority to a council to establish a toll scheme "subject to such terms and conditions as the Minister thinks fit."
- 37 This means tolling revenues are not necessarily tied to the costs of the toll bridge, tunnel, or ferry. Technically, tolling could be undertaken on an existing bridge or tunnel without a feasible, untolled alternative route, whereas the LTMA, as it currently stands, would not allow tolling on an existing route, or a route without a feasible, untolled alternative.
- 38 It is likely that strong rationale and public support would be needed for a territorial authority to consider putting in place a tolling scheme on an existing tunnel, bridge or ferry.

Councils would need to follow processes and requirements specified in the Local Government Act 2002 to set up tolling

- 39 The Local Government Act 2002 (LGA 02) specifies a range of processes and requirements including planning, decision-making and financial management that a council would need to follow as part of setting up tolling in its jurisdiction.
- 40 Before a council proposes a toll, the LGA 02 mandates several considerations. Firstly, the council must explore all practical alternatives and take into account the views and preference of its community (LGA 02 Section 77(1) and 78(3)). However, Section 79(1) permits the council to exercise discretion in determining the extent of these requirements.
- 41 The council must also consider its relationship with Māori and the potential impact a toll might have on their taonga, including ancestral land, water, and other sites that could be affected by a toll bridge, tunnel, or ferry (Section 77(1) (c)).

⁵ Cabinet paper: Land transport policy: Financing of and charging for new roading infrastructure and congestion pricing

- 42 In formulating the proposal, the council must ascertain whether a toll would be a suitable revenue source, compared to other revenue options. This involves weighing the costs and benefits, including expected community outcomes, benefit distribution, and the timeframe over which these benefits are anticipated (Section 101(3)(a) refers).
- 43 Any proposed toll must also align with the council's policies regarding the funding of operating expenses or capital expenditure (Section 103(1)(a) and (b)).

The council then submits a proposal to the Minister of Local Government

- 44 If a territorial authority has a bridge, tunnel, or ferry it would like to be tolled, it must apply to the Minister of Local Government. They can authorise a council to establish the toll by using the special consultative procedure.
- 45 There is no formal requirement for what form a tolling request or tolling proposal to the Minister of Local Government must take under the LGA 74. However, the proposals by NZTA that include information on legislative requirements, value for money and community support would contain information that would likely be relevant to the Minister of Local Government in making a decision under this legislation.

A council must consult with ratepayers on a tolling proposal

- 46 A special consultative procedure is described specifically in Section 83 of the Local Government Act 2002⁶. It requires a local authority to prepare and adopt a statement of proposal, which is a draft plan that must include the reasons for the proposal, an analysis of the reasonably practicable options and any other information that the local authority identifies as relevant (LGA 2002 Section 87(2) and (3)). If the special consultative procedure is about making a bylaw, it must include a draft of that bylaw (LGA 2002 Section 86(2)(a)(i))
- 47 The council must then make the statement of proposal publicly available, as well as a plan for public engagement, and the period of consultation must be "not less than one month" (LGA 2002 Section 83 (b)). The period of consultation must provide an opportunity for all persons who wish to present their views to do so.
- 48 Once the special consultative procedure has been completed, the authority granted to the Council to enable the toll can then be exercised.
- 49 Under the LGA 74, there are no time restrictions as to when a council should have completed its tolling scheme. If the LGA 74 were to be used on a new local bridge or tunnel, it is likely that a council would try to have authorisation from the Minister for the implementation of tolling scheme before open day to avoid having to introduce a toll once the public is already used to the new road. However, this is not a legislative requirement.

Allocation of funds and treatment of tolling revenue in a territorial authority tolling scheme

- 50 The LGA 74's tolling settings do not have any requirements for how funds gathered by a tolling scheme should be treated. However, the authority granted by the Minister

⁶ <https://www.legislation.govt.nz/act/public/2002/0084/latest/DLM172328.html>

of Local Government to the Council to establish the tolling scheme can be “subject to such terms and conditions as the Minister thinks fit” (LTMA 1974 Section (2)).

- 51 In practice, this means the Minister could require the tolling revenue from the scheme to pay directly for the construction, operation, and/or maintenance of the bridge or tunnel being tolled. This could enable similar tolling schemes as currently operating toll roads, where debt and tolling are coupled together to bring forward roading projects that would otherwise be years away through business-as-usual procedures.
- 52 For a council to gain public support to successfully introduce tolling, it is likely that they would seek to link the tolling revenue directly to the cost of construction of a tunnel or bridge or towards public transport that would use the tolled route. The council would likely set out funding allocation as part of the proposal to toll and as part of consultation with ratepayers.
- 53 Alongside this, the nature of the terms and conditions the Minister of Local Government would be able to implement under the LGA 74 means that they would be able to use similar tools as exist in Order in Councils made under the LTMA. This includes, but is not limited to, the rates of tolls that can be set, how tolls should be collected, exemptions from the obligation to pay tolls, and different levels of tolls depending on the time of day.

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