

Proactive Release

This document is proactively released by Te Manatū Waka the Ministry of Transport.

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it. *Note - N/A (see below)

Listed below are the most commonly used grounds from the OIA.

N/A - Document released in full. No information has been withheld for this proactive release

<u>Section</u>	<u>Description of ground</u>
6(a)	as release would be likely to prejudice the security or defence of New Zealand or the international relations of the New Zealand Government
6(b)	as release would be likely to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by <ul style="list-style-type: none"> (i) the Government of any other country or any agency of such a Government; or (ii) any international organisation
6(c)	prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial
9(2)(a)	to protect the privacy of natural persons
9(2)(b)(ii)	to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information
9(2)(ba)(i)	to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public
9(2)(ba)(ii)	to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely otherwise to damage the public interest
9(2)(f)(ii)	to maintain the constitutional conventions for the time being which protect collective and individual ministerial responsibility
9(2)(f)(iv)	to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials
9(2)(g)(i)	to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any public service agency or organisation in the course of their duty
9(2)(h)	to maintain legal professional privilege
9(2)(i)	to enable a Minister of the Crown or any public service agency or organisation holding the information to carry out, without prejudice or disadvantage, commercial activities
9(2)(j)	to enable a Minister of the Crown or any public service agency or organisation holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)



6 November 2024

OC241260

Hon Simeon Brown

Action required by:

Minister of Transport

Monday, 11 November 2024

LAND TRANSPORT MANAGEMENT (TIME OF USE CHARGING) AMENDMENT BILL – DRAFT LEG PAPER

Purpose

This briefing provides a draft paper for the Cabinet Legislation Committee (LEG) and seeks your preferred approach to establishing the relationship between local authorities on scheme boards.

Key points

- The draft LEG paper is attached as Annex 1. The draft bill attached as Annex 2 is the version (v1.5) previously provided to you on 2 October 2024 (OC 241070 refers). We expect to provide you a version of the bill appropriate for consultation and an updated LEG paper on Monday 18 November.
- We have developed a new timeline for lodging in consultation with PCO. We expect to get the next draft in time to begin departmental and Ministerial consultation on Monday 18 November for one week. We expect to have a settled draft of the bill on Monday 25 November in advance of lodging on 28 November for the 5 December LEG meeting.
- The final substantive issue to be confirmed is the relationship between local authorities when there are more than one on a scheme board (OC 251160 refers). In all cases we envisage the New Zealand Transport Agency (NZTA) and local authorities working together, with NZTA holding the majority decision making power on the scheme board in the event of a disagreement.
- You have a choice between leaving the relationship between local authority membership to be determined by agreement between the initiating council(s) and NZTA or establishing the relationship between local authorities in the bill. Allowing negotiated agreements between local authorities would be most flexible. However, setting the relationship between local authorities in primary legislation could be more productive than voluntary arrangements.

Recommendations

We recommend you:

- 1 **agree** that board governance and voting arrangement for each scheme be determined by agreement between the NZTA and initiating local authorities; Yes / No

OR

agree scheme board local authority membership rights and voting are established in legislation; Yes / No

- 2 **note** that an updated draft of the bill and LEG paper will be provided to you on 18 November 2024, to seek your agreement to initiate Ministerial and departmental consultation on the draft bill.

s 9(2)(a)



Daniel Cruden
Acting Manager Revenue
6 / 11 / 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
Daniel Cruden, Acting Manager Revenue	s 9(2)(a)	✓
Siany O'Brien, Senior Solicitor		

DRAFT LAND TRANSPORT MANAGEMENT (TIME OF USE CHARGING) AMENDMENT BILL AND LEG PAPER

A decision is sought on how local authority scheme board relationships are determined ahead of lodging the draft bill

- 1 This paper seeks your preferred approach to establishing the relationship between local authorities on scheme boards ahead of the LEG process. It also provides a draft LEG paper, based on your prior decisions about the Bill, for your feedback.
- 2 Cabinet's previous policy decisions fixed the relationship between local authorities and the NZTA without addressing the relationship between local authorities where there are more than one on a scheme board (CBC-M24-MIN-0072 refers). These relationships will be particularly relevant to funding of scheme development and the investment agreement you reach with the local authorities.
- 3 This brief presents a choice between leaving governance arrangements to be determined by the NZTA and the initiating local authority or specifying local authority membership and voting rights in the bill. The draft version of the bill that you most recently commented on (OC241070 refers) incorporates the latter approach. Both approaches fall within the scope of the relevant Cabinet policy decisions as NZTA representatives would have the majority vote irrespective of the composition of local authority membership.

Currently, the draft bill specifies local authority membership and voting

- 4 This approach provides more certainty for local authorities about their influence over scheme development and their role in the investment agreement they reach with the Minister of Transport.
- 5 There are a range of ways for voting rights could be allocated, for example:
 - 5.1 **One-member one-vote** would be simple but could result in disproportionate influence if a large and small local authority joined the scheme.
 - 5.2 **Voting based on contribution to establishment funding** would reflect the fiscal risk local authorities assume when participating in a scheme but is complex to implement and could create a disconnect between the establishing entities and the populations affected by the charge.
- 6 Currently the draft bill contains a designation of board members that is skewed towards representation favouring the council that proposed the scheme (Section 65C(2)) and uses establishment funding as a way of determining voting dynamics (Section 65C(4)). This is intended to reflect the level of commitment to the scheme and create an incentive to contribute to scheme establishment.
- 7 Regardless of approach taken, the key disadvantage of setting local authority membership and voting in the bill is that it would be inflexible once the bill is passed. The bill arrangements may not align with what the local participants consider to be most appropriate to the local circumstances, particularly disadvantaging smaller local authorities. The key advantage of the approach is that it provides greater certainty to

local authorities considering a scheme about the level of influence they would have in developing a scheme.

Scheme board governance arrangements set by the initiating local authorities and the NZTA

- 8 Allowing the NZTA and initiating local authorities to determine the governance arrangements would be flexible, allowing adoption of what the parties consider to be the most appropriate board governance arrangement for each scheme. This arrangement would also be simpler to express in legislation there is no need for any legislation beyond specifying the NZTA casting vote.
- 9 However, local authority relationships being settled by agreement creates potentially inconsistent agreements between schemes and is less predictable for local authorities considering participating in a scheme.

The preferred approach is likely to be a key focus at Select Committee

- 10 It is likely that for local authorities the scheme board management, and the investment of revenue will be key topic areas of concern. This is because Cabinet has agreed on a design where NZTA controls the development of a scheme, but local authorities will be accountable to the public for a scheme performance.
- 11 We have not engaged yet with local authorities on the design of the legislation. Whichever approach is taken it is likely that the concerns from local authorities will focus on not being able to influence scheme design or investment, and whether the governance setup fits local conditions.

Next Steps

- 12 We will instruct PCO to remove or retain the local authority governance provisions, depending on your preferred approach, and provide a draft bill for your review on Monday 18 November 2024. We expect to provide you a version of the bill appropriate for ministerial and departmental consultation by 18 November ahead of LEG on 5 December 2024. A table outlining these next steps is below.

Milestone	Date
Final drafting instructions issued to PCO	Monday 11 November
Revised draft Bill and LEG paper sent to Minister	Monday 18 November
Ministerial consultation	Monday 18-Monday 25 November
Final feedback has been incorporated, final draft sent to Minister	Wednesday 27 November
Lodge	Thursday 28 November
LEG	Thursday 5 December
Cabinet	Monday 9 December

- 13 If there are unexpected delays, as a back up option there is one more LEG meeting on 12 December for 2024, which would still allow for introduction of the bill in the last sitting week of 2024 (17-19 December).

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MINISTRY OF TRANSPORT TE MANATŪ WAKA

**ANNEX 1 – DRAFT LEG PAPER FOR LAND TRANSPORT
MANAGEMENT (TIME OF USE CHARGING) AMENDMENT BILL**

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ANNEX 2 – V1.5 DRAFT LAND TRANSPORT MANAGEMENT (TIME OF USE CHARGING) AMENDMENT BILL (PREVIOUSLY PROVIDED ON 2 OCTOBER 2024)

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Office of the Minister for Transport

Cabinet Legislation Committee

Land Transport Management (Time of Use Charging) Amendment Bill: Approval for Introduction

Proposal

- 1 This paper seeks approval for the introduction of the Land Transport Management (Time of Use Charging) Amendment Bill (the Bill).

Policy

- 2 Time of use charging involves dynamic pricing to travel on certain parts of the road network. It will encourage people to adjust the timing or mode of their travel and can improve network efficiency and travel times.
- 3 There is currently no legislative framework for time of use charging in New Zealand. However, studies done in Auckland and a subsequent Select Committee inquiry showed that charges during peak hours would reduce congestion in New Zealand's larger metropolitan areas.
- 4 In July 2024, Cabinet approved the policy for time of use charging by amendment to the Land Transport Management Act 2003 [CAB-24-MIN-0072 refers]. Key features of the policy include:
 - 4.1 The New Zealand Transport Agency (NZTA) will lead time of use charging scheme development with any local authorities that initiate a scheme or choose to opt in.
 - 4.2 Schemes are established by Order in Council, based on recommendations from the Minister of Transport, in consultation with the Minister of Finance.
 - 4.3 Scheme boards will be established to manage schemes and can set charges and designate roads subject to fees, within agreed parameters. Scheme boards will be composed of the NZTA and local authorities with the NZTA holding the majority decision-making power.
 - 4.4 Revenue from schemes will fund regional transport activities without replacing national or local funding, prioritizing operational costs and enhancing state highways, local roads, and public transport.
 - 4.5 The Secretary for Transport will oversee scheme performance, with public engagement required for major changes. The Government will have the ability to intervene in failing schemes.

IN CONFIDENCE

Confirmation sought regarding new policy issues

- 5 Cabinet authorised me to make further decisions consistent with the overall policy, subject to its confirmation [recommendation 19 of CBC-24-MIN-0072 refers].
- 6 During drafting of the amendment Bill several issues were identified requiring decisions by me, these are summarised along with my decision in the table below:

Issue	Decision
The phrasing of the Cabinet decision does not limit scheme initiation to a local authority's district.	I have clarified the drafting so that a local authority is only able to propose time of use charging schemes within its jurisdiction.
Scheme boards require access to road corridors, in a similar way to network utility providers, to effectively operate a time of use scheme.	As necessary to enable schemes to operate effectively, I have enabled NZTA, and any respective local authorities identified in an Order in Council establishing a scheme, certain powers to access and affect infrastructure on a road, for time of use charging purposes, similar to certain powers under the Electricity Act 1992 and the Telecommunications Act 2001.
Scheme board governance and partnership management.	I have decided that the scheme board membership between NZTA and local authorities is prescribed in the Bill, with NZTA having the casting vote to give effect to their lead status in schemes.
The body text of the Cabinet paper indicates that time of use revenue investment decisions are on a fixed three-year cycle.	I have decided that investment decisions should be agreed between the Minister of Transport and the local authorities on, at least, five-year cycles so there is investment continuity and a meaningful quantum of revenue to re-invest.
The Cabinet minute (at 15.2) added the Minister of Finance to the list of the responsible Ministers scheme approval and oversight powers.	My preference is that the Minister of Transport consults with the Minister of Finance on the initial scheme proposal and subsequent operational decisions stay with Minister of Transport.

Impact analysis

- 7 A regulatory impact statement was prepared in accordance with the necessary requirements and was submitted at the time that the Cabinet Business Committee approved the policy for the Bill [CBC-24-MIN-0072 refers].

Compliance

- 8 The Bill complies with:
- 8.1 the principles of the Treaty of Waitangi;
 - 8.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 8.3 the disclosure statement requirements, (a disclosure statement has been prepared and is attached to the paper);
 - 8.4 the principles and guidelines set out in the Privacy Act 2020 (if further steps are taken in the Bill to mitigate the privacy risk identified by the Privacy Commissioner);
 - 8.5 relevant international standards and obligations;
 - 8.6 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.
- 9 In the Privacy Commissioner's view time of use charging may present serious risks to New Zealanders' privacy. Charging fees for using roads at specific times will require tracking of vehicle movements and the people associated with them, at least with respect to the areas where fees apply. He recommends that the Bill include a statutory requirement to consult with the Privacy Commissioner as part of implementing a scheme, to allow the privacy implications involved to be fully explored and made transparent to decision maker.
- 10 Advice was not sought from the Treaty Provisions Officials Group as the Bill does not contain any Treaty of Waitangi provisions.
- 11 I note that the Parliamentary Counsel Office will continue to make minor and technical changes to the Bill consistent with the CBC-24-MIN-0072 policy decisions up until introduction of the Bill.

Consultation

- 12 The following departments and agencies were consulted throughout the development of the Bill: Ministry for the Environment, Ministry of Business, Innovation and Employment, Ministry of Housing and Urban Development, Ministry of Social Development, The Treasury, Department of Internal Affairs, and the New Zealand Transport Agency. The Department of the Prime Minister and Cabinet has been informed.
- 13 Public consultation on congestion charging was also undertaken by the Ministry of Transport in conjunction with partner agencies during the Congestion Question project (2020)¹. Further engagement occurred during

¹ 'The Congestion Question' Technical Report Ministry of Transport, July 2020.

the inquiry into congestion pricing by the Transport and Infrastructure Committee (2021).

- 14 The Government caucus and other parties represented in Parliament have been consulted.

Binding on the Crown

- 15 The Cabinet Business Committee decided that the Bill would bind the Crown [CBC-24-MIN-0072 refers].

Creating new agencies or amending law relating to existing agencies

- 16 The Bill does not create a new agency. However, it does expand the functions and powers of the NZTA as under time of use charging it will be responsible for:

16.1 collection of charges;

16.2 enforcement;

16.3 leading all time of use charging schemes by virtue of its majority decision-making power on scheme boards;

16.4 affecting time of use charging infrastructure (this may also be done by a designated local authority in the establishing Order in Council of a scheme);

16.5 making notices by land transport record of decisions and changes within the parameters of a time of use charging scheme (NZTA is already the registrar of the land transport register).

- 17 The Ombudsmen Act 1975 and the Official Information Act 1982 will continue to apply to the NZTA and their expanded functions and powers.

Allocation of decision-making powers

- 18 The Bill does not involve the allocation of decision-making powers between the executive, the courts, and tribunals.

Associated regulations

- 19 Regulations will not be required to bring the Bill into operation, but regulations and other orders in council will be required prior to or contemporaneously with the first Order in Council establishing a time of use charging scheme:

19.1 The Bill will require an amendment to the Land Transport (Offences and Penalties) Regulations 1999. This amendment would add an infringement penalty amount for the new type of moving vehicle offence the Bill creates – failing to pay a time of use charge. This would be a simple amendment to draft.

- 19.2 Regulations defining vehicle types and their respective charging ratios standardised across all schemes will be required. These regulations would be relatively simple to draft.
- 19.3 Regulations made under sections 167(1)(mf) and 168AAA of the Land Transport Act 1998 will be required to create a new category of land transport records, as the Bill allows the NZTA to make notices by land transport record to support the operation of a scheme (see [21]). These regulations would be relatively simple to draft and there is a precedent with the Land Transport (Register of Land Transport Records—Speed Limits) Regulations 2022, which create a category of land transport records for speed limits.
- 19.4 The Bill will come into force 12 months after the date of Royal assent, these associated regulations will be developed and brought to Cabinet within this 12-month period between enactment and commencement of the Bill.
- 20 The regulations envisioned in [19] are the minimum regulations required to enable time of use charging schemes, however the Bill also enables regulations for the following purposes:
- 20.1 specifying any other information required to be included in a scheme proposal;
- 20.2 providing for anything incidental that is necessary for carrying out, or giving full effect to the Bill.

Other instruments

- 21 The Bill allows for the NZTA to make notices (registered as a land transport record under the Land Transport Act 1998) to make changes within the parameters of an approved scheme. Charges may be changed within the maximum charge limit by notice. A change in the areas where charges apply within the wider approved scheme area may also be changed by notice, subject to public consultation. These notices will be disallowable secondary legislation, and they must be published, in accordance with the Legislation Act 2019, at least 28 days before they come into force.
- 22 It is appropriate for the NZTA to make these notices on behalf of scheme boards as the central agency involved in each time of use charging scheme, and as the registrar for the land transport record register. Notices of these nature support the day-to-day management of time of use charge schemes and only make changes within the parameters approved by the Executive in the relevant Order in Council for a scheme. More significant changes to a scheme such as raising the maximum charge limit will require a formal variance to a scheme made by Order in Council.
- 23 I confirm that the explanatory note for the Bill explains the purpose of these notices made by land transport record.

Definition of Minister/department

- 24 The Bill does not contain a definition of Minister, department (or equivalent government agency), or chief executive of a department (or equivalent position).

Commencement of legislation

- 25 The Bill will come into force 12 months after the date of Royal assent.

Parliamentary stages

- 26 I propose that the Bill is introduced no later than 19 December 2024 and passed by the end of 2025.
- 27 I propose that the Bill is referred to the Transport and Infrastructure Committee.

Proactive Release

- 28 I intend to proactively release this paper within 30 business days of final decisions being taken by Cabinet, subject to any redactions appropriate under the Official Information Act 1982.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that the Land Transport Management (Time of Use Charging) Amendment Bill (the Bill) holds a category 5 priority on the 2024 Legislation Programme (to proceed to select committee by the end of 2024);
- 2 **note** that the Parliamentary Counsel Office will continue to make minor and technical changes to the Bill consistent with the CBC-24-MIN-0072 policy decisions up until introduction of the Bill;
- 3 **note** that the Bill will enable a legislative framework for time of use charging schemes to be developed and implemented by the New Zealand Transport Agency and partnering local authorities;
- 4 **note** that time of use charging schemes will be established by Order in Council;
- 5 **approve** the Land Transport Management (Time of Use Charging) Amendment Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 6 **agree** that the Bill be introduced no later than 19 December 2024;
- 7 **agree** that the government propose that the Bill be:

IN CONFIDENCE

- 7.1 referred to the Transport and Infrastructure committee for consideration;
- 7.2 enacted by the end of 2025.

Authorised for lodgement

Hon Simeon Brown

Minister for Transport

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MINISTRY OF TRANSPORT TE MANATŪ WAKA

IN CONFIDENCE



Cabinet Legislation Committee

Minute of Decision

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Land Transport Management (Time of Use Charging) Amendment Bill: Approval for Introduction

Portfolio Transport

On 5 December 2024, the Cabinet Legislation Committee:

- 1 **noted** that the Land Transport Management (Time of Use Charging) Amendment Bill (the Bill) holds a category 5 priority on the 2024 Legislation Programme (to proceed to select committee by the end of 2024);
- 2 **noted** that the Parliamentary Counsel Office will continue to make minor and technical changes to the Bill, consistent with the policy decisions under CBC-24-MIN-0072, up until its introduction;
- 3 **noted** that the Bill will enable a legislative framework for time of use charging schemes to be developed and implemented by the New Zealand Transport Agency and partnering local authorities;
- 4 **noted** that time of use charging schemes will be established by Order in Council;
- 5 **approved** the Land Transport Management (Time of Use Charging) Amendment Bill [PCO 24531/3.2] for introduction, subject to the final approval of the Government caucuses and sufficient support in the House of Representatives;
- 6 **agreed** that the Bill be introduced no later than 19 December 2024;
- 7 **agreed** that the Government propose that the Bill be:
 - 7.1 referred to the Transport and Infrastructure Committee for consideration;
 - 7.2 enacted by the end of 2025.

Tom Kelly
Committee Secretary

Attendance: (See over)

Present:

Hon Chris Bishop (Chair)
Hon Simeon Brown
Hon Shane Jones
Hon Brooke van Velden
Hon Louise Upston
Hon Tama Potaka
Hon Casey Costello
Hon Nicole McKee
Hon Simon Watts
Hon Nicola Grigg
Hon Andrew Bayly
Hon Scott Simpson, MP
Todd Stephenson, MP

Officials present from:

Officials Committee for LEG
Leader of the House's Office

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Cabinet

Minute of Decision

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Report of the Cabinet Legislation Committee: Period Ended 6 December 2024

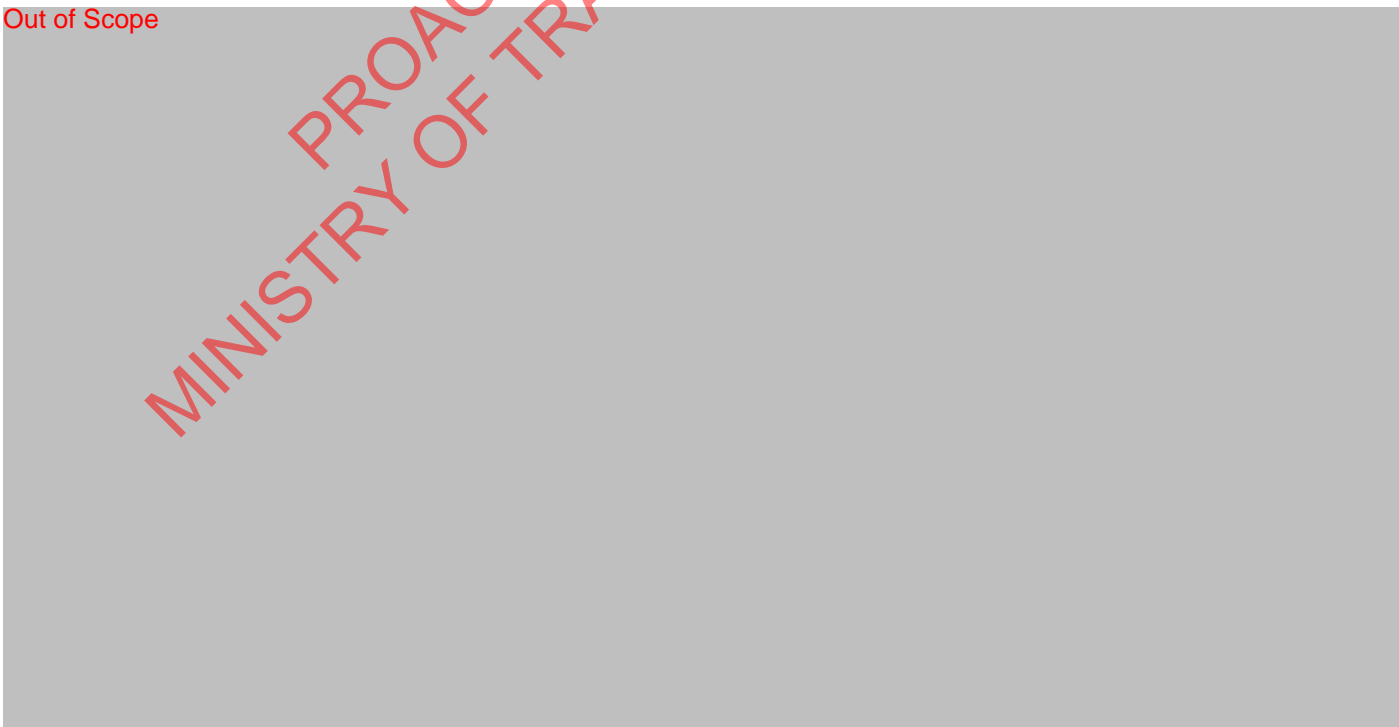
On 9 December 2024, Cabinet made the following decisions on the work of the Cabinet Legislation Committee for the period ended 6 December 2024:

Out of Scope



LEG-24-MIN-0255 **Land Transport Management (Time of Use Charging) Amendment Bill: Approval for Introduction** CONFIRMED
Portfolio: Transport

Out of Scope



Out of Scope



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Rachel Hayward
Secretary of the Cabinet