

# The Congestion Question

Could road pricing improve Auckland's traffic?

## Workstream 5

# Legislative requirements for congestion pricing

May 2019



New Zealand Government

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## 1 Purpose

The purpose of the paper is to set out initial thinking and considerations on the legislative changes that would be required to introduce congestion pricing. This is to inform The Congestion Question project, which includes high level implementation planning for congestion pricing.

A decision on whether to introduce congestion pricing or to change legislation has not been made by Ministers.

## 2 Current legislation

The Land Transport Management Act 2003 (LTMA) provides for the Government to introduce a road tolling scheme. The LTMA allows tolls to be varied by time of day in order to manage congestion. However, the effectiveness of the existing legislation to enable congestion charging for the purpose of demand management is limited because under current provisions<sup>1</sup>:

- the use of road tolling is confined to new roads
- for a road to be tolled, there must be a feasible, un-tolled alternative route
- funds from the tolling scheme should be used for the purposes of the planning, design, supervision, construction, maintenance, or operation of a new road.

These limitations could be removed by amending the LTMA tolling provisions. However, given the distinct purposes and objectives between tolling to pay for new infrastructure, and congestion pricing for demand management purposes, the clearest and most accessible approach is likely to involve creating new enabling legislation for congestion pricing. This would fit within the current ambit of the LTMA, the purpose of which is to *'contribute to an effective, efficient, and safe land transport system in the public interest'*<sup>2</sup>.

There is also an option to create a new piece of legislation to enable congestion pricing. This may be useful if there are elements intended to be unique to an Auckland scheme.

## 3 Legislative design issues

There are a number of legislative design issues that would need to be agreed before legislation to enable congestion pricing could be drafted and a Bill introduced. Two examples of existing legislation that could be relevant are the current subparts of the LTMA that enable tolling schemes and the provisions to enable a regional fuel tax (RFT) (Subparts 2 and 3 respectively). A comparison of these subparts is provided in Appendix A.

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<sup>1</sup> Section 46(1) LTMA

<sup>2</sup> Section 3 LTMA



### 3.1 Auckland-specific or national legislation?

This decision as to whether legislation should be Auckland focused would depend on whether the Government wanted to constrain the ability to introduce congestion pricing just in Auckland, or to enable it in other places in New Zealand.

Enabling legislation could follow the tolling legislation design – and that of the regional fuel tax (RFT) – whereby the process and standards for creating the scheme are set out in primary legislation, then specific scheme designs are approved by an Order in Council.

Alternatively, the legislation could be specific to Auckland where the design of a scheme would be specified in legislation.

National enabling legislation would be more flexible and future-proofed and is likely to be the preferred option.

If the Government wanted to initially constrain introducing congestion pricing to the Auckland region, a time limit could be put in place, beyond which it could be introduced in other regions (similar to the RFT).

### 3.2 Process for recommending introducing congestion pricing

The decision-making process for approving a congestion pricing scheme could take many forms. Existing processes for RFT and tolling are described in Appendix A. In designing the process, we will need to consider:

- the role of local government and road controlling authorities
- how congestion pricing should sit within regional land transport plans
- the role of Ministers, Cabinet and Parliament
- what, if any, requirements relating to public/community engagement
- ability to set conditions.

### 3.3 Restrictions around use of revenue

Clarity in the use of revenue from congestion pricing will be important in gaining public support. Some restrictions or specifications on how the revenue can be used could be put into legislation (eg going into the National Land Transport Fund (NLTF), being ring-fenced for use in the area where the charge applies).

### 3.4 Tariffs and exemptions

A process for setting tariffs, and any exemptions from the charge, will be necessary. Given the intent is to take a rules-based approach to tariff setting, this will need to have sufficient flexibility for tariffs to be changed on a regular basis (eg by Order in Council, but with parameters set out in the enabling Act).



### 3.5 Privacy considerations

The legislation will need to set out rules around how any personal information is collected, stored and used by the scheme operator, in accordance with the Privacy Act 1993.

### 3.6 Enforcement considerations

The legislation will need to set out the rules around enforcement of the scheme, including what constitutes an offence and the penalties for this. (Tolling provisions could provide a starting point for this.)

### 3.7 Flexibility

The two preferred options currently under consideration (city centre cordon and strategic corridors) would both utilise automatic number plate recognition (ANPR) camera technology for vehicle detection and enforcement. However, satellite-based systems requiring on-board units are currently being considered in Singapore. The latter would present additional issues around privacy (eg vehicles being tracked in real-time) that would need to be considered, as well as considerations under the New Zealand Bill of Rights Act 1990 (eg if people were prevented from driving into the region/area without an on-board unit).

It will be important to consider the extent to which legislation can be made flexible to changes in technology in how congestion pricing is implemented and enforced.

### 3.8 Equity

It is not clear how equity issues might need to be addressed in legislation, but being able to articulate how any congestion pricing scheme would mitigate the equity impacts of congestion pricing would be important for taking the Bill through the Parliamentary process (as was seen in the process of developing the RFT enabling legislation in 2018).

## 4 Timeframes

In general, 12-18 months is likely to be a feasible timeframe to pass legislation once policy decisions to allow congestion pricing have been made by Cabinet. This is dependent on many factors including complexity of the legislation to be drafted, number of issues raised at select committee stage and political priorities.

Work to design the primary legislation (ie enabling national legislation to allow congestion pricing) could begin after the current work has been reported back to Ministers and the Mayor, if they decide to do so. This could be passed in parallel with further detailed design work being undertaken on the specific scheme for Auckland, which could then be introduced at a later point through the Order in Council process. This would have the benefit of separating out (as much as possible) the discussion on the merits of allowing congestion pricing *generally* to the debate on whether to introduce a specific scheme in Auckland.



However, if there was a desire to introduce congestion pricing in Auckland on an accelerated timeframe, either:

- primary legislation specific to Auckland could be introduced, or
- an Order in Council could be prepared in parallel to the primary legislation and enacted at the same time as the Bill (as was done with the introduction of RFT in 2018).

Incorporating the necessary legislative changes into an existing bill would further reduce the expected length of time required for an amendment to come into force.

## 5 Process

### 5.1 National legislative process

If Ministers agreed to an approach using national enabling legislation, with specific schemes agreed by an Order in Council, the high-level steps for changing legislation to allow congestion pricing are as follows:

- Minister agrees to policy change to allow congestion pricing
- Legislative design work undertaken by Ministry of Transport (MoT) in consultation with project team (including preparation of Regulatory Impact Statement)
- Paper taken to Cabinet to seek policy decision to change legislation
- Drafting instructions for legislation prepared by MoT and sent to Parliamentary Counsel Office (PCO)
- PCO drafts legislation, consulting with MoT and others as required
- Draft legislation taken to Cabinet Legislation Committee for approval
- Legislation introduced into the House
- Select committee process (anyone can submit on draft legislation)
- Bill enacted (congestion pricing is now legally allowed in New Zealand).

Under the Order in Council model, there would then be a separate process by which a specific scheme for Auckland (and potentially other regions) would be approved. The process and steps for this would need to be worked through as part of designing the enabling legislation, but based on the existing tolling/RFT provisions, could be something like:

- Auckland congestion pricing scheme is designed and consulted on
- Auckland Council puts forward proposal to Minister of Transport (and potentially Minister of Finance) to enable congestion pricing in a specified location
- Minister decides whether to accept proposal (potentially with Cabinet consideration)
- Order in Council drafted by PCO and considered by Cabinet Legislation Committee
- Notification (required at least 28 days before coming into force).



## 6 Conclusion

The clearest and most accessible approach to defining the legislation to implement a congestion pricing scheme is considered to be the creation of new enabling legislation, most likely as an amendment to the LTMA. The process and requirements are recommended to be set out in primary legislation, with specific scheme designs approved by an Order in Council. This would potentially accommodate an accelerated timeframe, with the national enabling legislation being able to be passed in parallel with detailed scheme design for Auckland.

Following detailed design, an Order in Council would then be required to introduce the scheme in Auckland.



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## Appendix A

TABLE 1: DESIGN FEATURES OF EXISTING TOLLING AND REGIONAL FUEL TAX LEGISLATION

	Tolling	Regional fuel tax	Comment
Coverage of legislation	National – local schemes are applied for through Order in Council (OiC).	National – local schemes are applied for through OiC.	Enabling legislation at a national level provides greatest flexibility and futureproofing. However, the Government may wish to constrain congestion pricing to specific parts of the country.
Conditions	Minister must not recommend toll scheme unless satisfied that: <ul style="list-style-type: none"> <li>a feasible un-tolled alternative is available</li> <li>the proposed scheme is efficient and effective</li> <li>adequate consultation has been carried out (below).</li> </ul>	Proposal to establish RFT is subject to a number of requirements including: <ul style="list-style-type: none"> <li>describing programme of capital projects RFT will support and their relation to RLTP and GPS</li> <li>describing each individual project's costs and benefits, proposed completion date, and amount of capex, opex and debt servicing required from RFT</li> <li>RFT rates, time period and forecast revenue</li> <li>forecast expenses of administering scheme</li> <li>extent to which RFT is expected to change fuel-buying behaviour.</li> </ul>	Need to consider level of prescription, level of control Government wants – dependent on broader process.
Consultation	Minister must be satisfied: <ul style="list-style-type: none"> <li>that the relevant road controlling authority or authorities have carried out adequate consultation on the proposed tolling scheme; and</li> <li>with the level of community support for the proposed tolling scheme in the relevant region or regions.</li> </ul>	Council must carry out consultation in accordance with the Local Government Act 2002.	Consultation requirements likely to be built into the legislation (particularly if OiC model adopted) – but need to decide which organisation consults, how and if there is explicit requirement for public support.
Use of revenue	OiC must specify the purposes for which the revenue may be used including reimbursement of costs related to the new road (planning, design, supervision, construction, maintenance, or operation of a new road).	OiC must list capital projects in the programme supported by RFT scheme.	Decisions are needed on level of prescription – need to consider costs of operating scheme, repaying capital costs, mitigations etc.
Proposing body	Road controlling authority.	Regional (or unitary) council.	Need to consider role of district councils (if national legislation) and how this should tie into regional land transport plans.

