

# Regulatory Impact Statement: Cost recovery for new or restarting international airports

## Coversheet

Purpose of document	
<b>Decision sought:</b>	Analysis produced to inform final decisions on cost recovery for border services at new or restarting international airports
<b>Advising agencies:</b>	Ministry for Primary Industries (policy lead), Ministry of Transport, New Zealand Customs Service
<b>Proposing Ministers:</b>	Minister for Biosecurity (lead Minister), Minister for Transport, Minister of Customs
<b>Date finalised:</b>	8 November 2024
Problem definition	
<p>The New Zealand Customs Service (Customs) and the Ministry for Primary Industries (MPI) incur costs to establish border services at new or restarting international airports. Two airports – Hamilton and Dunedin – have publicly announced they intend to start trans-Tasman flights in 2025. Other airports are also investigating whether to offer scheduled services.</p> <p>There is no means of funding the establishment of border services at new airports. If that lack of funding continues into 2025 then the costs of establishing border services for any airport that starts international services will be borne by the Crown. This means that airports would not be paying for the benefits they receive from the services provided by border agencies. Neither would they need to factor in the costs of border services into their commercial decisions. This is inequitable and inefficient.</p>	
Executive summary	
<p>Demand for international flights has increased since the COVID-19 pandemic. Regional airports may wish to capitalise on this demand by becoming international airports. Border agencies need to fit out, equip, and staff the airport to process and screen air passengers.</p> <p>The Airports (Cost Recovery for Processing of International Travellers) Act 2014 (the Airports Cost Recovery Act) seeks to reduce the Crown's fiscal exposure when new airports start receiving international flights. Regulations are required to fully implement the Act.</p> <p>The lack of a funding mechanism means the Crown could be liable for significant costs. As well as presenting fiscal risk, this is inequitable and inefficient. A long-standing principle of cost recovery policy is that the costs of a service should be charged to the beneficiary of the service, or to those who create the need for the services. Airports are beneficiaries of providing new international services. Without a charging mechanism, airports are unlikely to factor in the full costs of providing new services into their commercial decision making.</p>	

Border agencies consulted with industry stakeholders on options to allocate costs. Stakeholders' preference was to not make regulations under the Airports Cost Recovery Act and instead have all costs funded by the existing Border Processing Levies (BPLs).

Agencies' preference is for airports, if they start or re-start international services, to pay for the costs of establishing the capacity to process travellers only. The costs of processing travellers once the airports opens would be funded by the BPLs. This was Option 3B in the discussion document. Option 3B is preferred because it is better than the status quo in all criteria, is more administratively efficient than the next best option, and of the preferred options it was the least disliked by submitters (although only one submitter supported it).

The impact on the Crown's ability to manage its financial risk is unknown at this point and will depend on a policy decision on how non-capital establishment costs are able to be recovered.

### Limitations and constraints on analysis

Not all options are possible under current legislative settings.

Full cost recovery under the Airports Cost Recovery Act was set aside because it was deemed impractical. This is because border agencies would have to exempt travellers to the new airport from paying the BPLs so they would not have to pay twice for the same border processing service. This would be administratively complex.

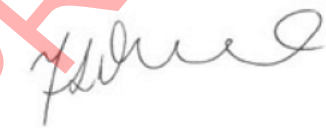
Full cost recovery under the BPLs is considered infeasible. This is because costs recovered, or to be recovered, under the Airports Cost Recovery Act cannot be recovered under the Biosecurity Act 1993, or the Customs and Excise Act 2018. Agencies' view is that the costs of establishing the capacity to process travellers are to be recovered under the Airports Cost Recovery Act rather than the BPLs. However, as this was preferred by most submitters, we have assessed this option for comparative purposes.

Analysis of the financial impacts of the options is limited because border agencies have only developed preliminary cost estimates for two airports. Estimating the financial impact for all airports without a detailed proposal to start services is difficult because costs at each airport will differ markedly depending on their individual circumstances.

The Act does not allow for the recovery of disestablishment costs (e.g. redundancy pay-outs to border staff) if an airport ceases international flights. This constrains border agencies' ability to fully eliminate the fiscal exposure they face.

### Responsible manager

Fiona Duncan  
Director Regulatory Systems Policy  
Policy and Trade  
Ministry for Primary Industries



8/11/2024

### Quality assurance (completed by QA panel)

<b>Reviewing agency:</b>	A cross-agency RIA Quality Assurance Panel, with representatives from the Ministry for Primary Industries, the New
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	Zealand Customs Services and the Ministry for Transport assessed the Regulatory Impact Statement.
<b>Panel assessment &amp; comment:</b>	The Panel assessed the RIS using assessment criteria (complete, convincing, clear & concise and consulted) and considers that the RIS 'meets' the Quality Assurance criteria for the purpose of informing Cabinet decisions.

PROACTIVELY RELEASED

## Terms used in this document

Term	Description
Airports Cost Recovery Act	The Airports (Cost Recovery for Processing of International Travellers) Act 2014.
Border agencies	The two government agencies that provide air passenger processing services, the Ministry for Primary Industries and the New Zealand Customs Service, whose costs are proposed to be recovered under the new regulations.
BPLs	Border Processing Levies, referring collectively to two levies: <ul style="list-style-type: none"> <li>the Border Processing Levy collected under the Customs and Excise (Border Processing Levy) Order 2015 made under the Customs and Excise Act 2018; and</li> <li>the Border Processing Levy collected under the Biosecurity (Border Processing Levy) Order 2015 made under the Biosecurity Act 1993.</li> </ul>
CAA	The Civil Aviation Authority.
Customs	The New Zealand Customs Service.
IPSL	The International Passenger Security Levy, which funds aviation security services, collected under the Civil Aviation (Safety and Security) Levies Order 2002 made under the Civil Aviation Act 1990.
MPI	The Ministry for Primary Industries.
'new airport'	An airport that is either starting or re-starting international flights.
'the Act'	The Airports (Cost Recovery for Processing of International Travellers) Act 2014.

## Section 1: Diagnosing the policy problem

### What is the context behind the policy problem?

#### The border risk environment

1. Protecting New Zealand from risk is the core purpose of the border agencies. The cost to New Zealand of not doing so is immense. There has been an increasing number of attempts to traffic people and drugs into New Zealand as well as biosecurity risks to be managed. Establishing a new place of entry could undermine the overall integrity of New Zealand's border if border and security services are not established to appropriate standards.
2. Air passenger numbers fell 97% between 2020 and 2021. Although passenger numbers have rebounded since 2022 they have still not recovered to pre-pandemic levels. Nevertheless, there is a clear trend towards increased volumes of air passengers arriving in New Zealand which adds to the necessity of establishing high quality border services.<sup>1</sup> This is because airports will try to capitalise on that increased demand; two have announced they are restarting international flights next year.

#### Border services at new or restarting international airports

3. When an airport decides to start or restart international services, the Ministry for Primary Industries (MPI), the New Zealand Customs Service (Customs), and the Civil Aviation Authority (CAA) must establish border services at the airport so that they can process passengers from international flights.<sup>2</sup> Border services include:
  - a. Biosecurity services, provided by Biosecurity New Zealand (a business unit within MPI), which protect New Zealand from biological and ecological threats brought into the country by air travellers, cargo, and craft.
  - b. Customs clearing services, provided by Customs, which protect New Zealand from risks arising from trafficking of illegal or dangerous goods via international flights.
  - c. Aviation security services, provided by the CAA's Aviation Security Service, which protect airlines, passengers, and other New Zealanders from terrorism or dangerous activities that could endanger an aircraft or airport. This involves passenger screening, patrols, and checking bags and goods.
4. Establishing border services is a major undertaking. Significant lead-in times of at least 12 months are required to recruit and train staff, purchase or lease significant equipment, and to fit-out the airport for facilities required by border staff. All of this involves significant costs to border agencies.
5. There are two types of costs that border agencies face: establishment costs and processing costs. Establishment costs are the costs of setting up the capacity to process travellers at new or restarting international airports. These costs may be incurred before the airport starts operating. Processing costs are the ongoing costs of processing travellers at new or restarting international airports. Processing costs would generally not include purchasing capital items but may include leasing capital items. This could include ongoing costs of leasing space within an airport or equipment where

<sup>1</sup> Data is available from StatsNZ Infoshare, <https://infoshare.stats.govt.nz/default.aspx>

<sup>2</sup> Only MPI and Customs would collect charges via proposed regulations under the Airports Cost Recovery Act. CAA has their own funding arrangements so the proposed regulations do not apply to them. Refer to Appendix A for CAA's arrangement.

required. Within processing costs there are 'site-specific costs'. An example is the cost of transporting border agency staff to the new airport (plus accommodation) to service flights if it is uneconomic to have them based permanently there.

Figure 1: Types of costs

<b>Establishment costs (capital)</b>
Physical alterations to an airport
Vehicles owned by the Crown
Equipment associated with the New Zealand Traveller Declaration set up
Passport readers
E gates and kiosks
Hold-stowed baggage screening equipment
Search benches
Podiums and signage
Lockers and disposal bins
X-ray and scanner machines
CCTV equipment and associated storage media
Installation of equipment and machinery (including items that assist in the set-up of machinery and equipment)
Detector dog kennels
Radios/communications devices
Computers and servers, monitors, and printers
Office furniture and storage
Other equipment or new technology
<b>Establishment costs (non-capital)</b>
Recruitment and training <i>specifically</i> for a restarting or new airport
Project management costs
<b>Processing costs (general)</b>
Leasing costs (including leasing any part of the airport and leasing vehicles or equipment)
Staff salaries
Staff uniforms and kit
Staff training
Recruitment costs
Ongoing costs associated with detector dogs (e.g., veterinarian and food costs)

### Processing costs (site specific)

Travel and accommodation costs for border agency staff coming to an airport from another base of operations if it is not justifiable to base staff permanently at the new airport.

Site security costs to protect plant, equipment, or administrative files at infrequently staffed locations.

### Funding for air passenger clearance: the status quo

6. The Airports (Cost Recovery for Processing of International Travellers) Act 2014 ('Airports Cost Recovery Act' or 'the Act') enables the Crown to recover some of its costs incurred in establishing or re-establishing the capacity to process travellers on international flights. Regulations are required to recover establishment costs (provided for under section 7) and processing costs (provided for under section 8). There are no regulations in place.<sup>3</sup>
7. There are three existing levies that fund the processing of international air passengers. MPI recovers costs for biosecurity services through the Biosecurity (Border Processing Levy) Order 2015. Customs recovers its costs for screening passengers through the Customs and Excise (Border Processing Levy) Order 2015. These two border processing levies (the BPLs) are payable by travellers and collected by airlines. They are set at a standard rate per traveller to recover the nationwide costs of traveller processing by border agencies.
8. The CAA recovers costs for aviation security services through the International Passenger Security Levy (IPSL) under clause 10G of the Civil Aviation (Safety and Security) Levies Order 2002. The IPSL is payable by airlines on a per passenger basis.

### What is the policy problem?

#### Problem with the status quo

9. Regional airports may seek to capitalise on increasing demand for international flights by becoming international airports. When that happens, border agencies must fit out, equip, and staff the airport so that passengers can be screened to manage risks. Currently there is no means of recovering these costs. This presents a fiscal risk to the Crown.
10. A long-standing principle of cost recovery policy is that the costs of a service should be charged to the beneficiary of the service, or to those who create the need for the services. This is reflected in the purpose of the Airports Cost Recovery Act (section 3) and in that Act's policy objectives (see paragraph 18 below).<sup>4</sup> Airports are beneficiaries of providing new international services. Without a way to recover costs of border services, airports would not be paying for the benefits they receive from the services provided by border agencies. Neither would they need to factor in the costs of border services into their commercial decisions. This is inequitable and inefficient.<sup>5</sup>

<sup>3</sup> The legislative framework of the Airports Cost Recovery Act is outlined in Appendix B.

<sup>4</sup> Refer to the joint Departmental Report by the Ministry of Agriculture and Forestry, New Zealand Customs Service and Ministry of Transport, 19 October 2010.

<sup>5</sup> Refer to Appendix C for a list of other principles relevant to cost recovery policy.

## Stakeholder groups affected by the policy

11. The key stakeholder group for the policy are airports, especially airports who intend to start or restart international flights. Airports would be directly affected by the policy proposal because they will face costs to establish border services. This will directly affect their business decisions because they will have to factor in the costs when deciding whether it is commercially viable to go international.
12. Already-established international airports are interested parties too because some of the proposed options alter the regulatory regime for funding of air passenger processing services, of which they are a part. Airports – both existing international airports and prospective ones – are represented by the New Zealand Airports Association.
13. Another stakeholder group is international airlines. This group includes those who may wish to operate from the new airports as well as other airlines currently operating at existing New Zealand international airports. They are interested parties because they are responsible for collecting the BPLs (though passengers are the levy payers). Airlines are represented by the Board of Airline Representatives and the International Air Transport Association.
14. Other interested groups include local councils which hold shares in regional airports, tourism interests and regional development agencies. Those with shares in regional airports have a direct commercial interest in those airports starting international flights. The tourism agencies are interested parties because opening new international air routes into New Zealand may boost tourist numbers in the regions.
15. Passengers also have an interest in the policy problem. This includes passengers who may wish to travel to the new airport, as well as passengers arriving at existing airports. Although airlines are responsible for collecting the BPLs the levies are paid by passengers. Any changes to the BPL rate to account for the cost of border services at new airports will affect passengers.
16. The policy problem does not disproportionately affect any population groups. There are no implications relating to Te Tiriti o Waitangi/the Treaty of Waitangi. Rural connectivity may be improved through the provision of international flights at regional airports. The opportunity for the use of regional airports for international flights and freight may have an indirect benefit of lowering costs of travel and freight for rural businesses and communities travelling overseas.

## What objectives are sought in relation to the policy problem?

17. Our objectives are to:
  - a. Reduce the Crown's exposure to unpredictable liabilities arising from providing border services to process travellers when international flights are established or re-established at airports; and
  - b. Ensure that airports factor the costs of aviation security, biosecurity, and customs services associated with processing travellers on international flights into their commercial decisions.



## Section 2: Deciding on an option to address the policy problem

18. MPI issued a set of options for public discussion in a consultation document published on 7 August 2024.<sup>6</sup>

### What scope will options be considered within?

19. Options have been developed by considering what is possible under the Airports Cost Recovery Act, what is administratively feasible, and what is possible using other cost recovery mechanisms.
20. In addition, so that our analysis is comprehensive, we have included analysis of recovering all costs under the BPLs. This was strongly supported by most submitters. Officials had previously set aside this option. This is because costs recovered or to be recovered under the Airports Cost Recovery Act cannot be recovered under the Biosecurity and Customs and Excise Acts.<sup>7</sup>
21. It was, and remains, border agencies' view that while establishment costs (those provided for under section 7 of the Act) cannot be recovered by the BPLs, processing costs (those provided for under section 8 of the Act) can still be fully or partially recovered by the BPLs.
22. The Act enables the making of regulations to prescribe charges for establishment costs and processing costs using four methods.<sup>8</sup> These are charges based on estimated costs, recovery of actual and reasonable costs, fixed charges, and charges based on a formula. Options that do not involve the Act are funding border services entirely through the BPLs and recovering costs through a voluntary arrangement with new airports.

### What options are being considered?

Figure 2: Summary of options<sup>9</sup>

<b>Option 1</b>	Status quo: no regulations, with additional Crown funding potentially required.
<b>Option 2</b>	Establishment and processing costs are estimated then billed to the airport and are later reconciled, under the Airports Cost Recovery Act. Passengers arriving to the new airport are exempt from paying the BPLs.
<b>Option 3A</b>	Airports are billed actual and reasonable establishment and site-specific processing costs. All other processing costs are met under the BPLs.
<b>Option 3B</b>	Airports are billed actual and reasonable establishment costs only. All processing costs are met under the BPLs.

<sup>6</sup> Ministry for Primary Industries, Discussion Paper No. 2024/04, *Cost recovery under the Airports (Cost Recovery for Processing of International Travellers) Act 2014* (August 2024), pp. 10-14.

<sup>7</sup> Section 140AA(5) Biosecurity Act 1993 and section 413(5) Customs and Excise Act 2018.

<sup>8</sup> See sections 7, 8, 11 and 15 of the Act. The Act says that passenger processing costs are only recoverable from the new airport for a maximum amount of time – the cost recovery period – which can be no higher than three years, after which the processing costs are added to the BPLs.

<sup>9</sup> Refer to Figure 1 for a list of items that make up each type of costs.

<b>Option 4</b>	The establishment costs and processing costs are funded through the BPLs; new airports pay nothing.
<b>Option 5</b>	A voluntary arrangement is agreed whereby the new airport will pay the establishment costs.

#### Option 1 (status quo)

23. Option 1 is to retain the status quo by not making any regulations under the Airports Cost Recovery Act. As airports would not be obligated to pay the costs of border services, additional Crown funding may be required, or baseline funding will need to be re-prioritised.

#### Option 2 (payment of costs based on estimated charges)

24. Option 2 is a method of cost recovery where the estimated charges, or charges based on estimated costs, are paid at the start of the cost recovery period.<sup>10</sup> This would be followed by reconciliation and an appropriate further payment or refund after provision of biosecurity and border services.
25. Under Option 2, both establishment and processing costs would be recovered. It would require passengers to the new airport to be exempted from the BPL.
26. How this option would work in practice is that an airport, once they have decided to establish international services, would notify border agencies about the flight schedules and other information necessary to estimate costs. Border agencies would provide an airport with an estimate of the total costs of establishing border services, and processing travellers for three years.
27. The airport would then pay the border agencies the estimated costs up front. Afterwards the airport's actual costs would be calculated, and any over-recovery would be reimbursed to the airport, and any under-recovery would be billed.

#### Option 3 (actual and reasonable establishment costs)

28. Option 3 would recover establishment costs on an actual and reasonable basis. (Refer to Figure 1 for a list of items that are considered to be 'establishment costs'.) It is divided into two sub-options: 3A and 3B. Option 3A would recover establishment costs and site-specific processing costs (e.g. the costs of transporting border staff to the airport and accommodation) for the three-year duration of the cost recovery period. All other processing costs (that is, costs that are not site-specific such as staff salaries) would be recovered under the BPLs – not from the new airport. Option 3B would recover establishment costs only and all processing costs would be recovered under the BPLs.
29. Under this option, a domestic airport would notify border agencies that they are starting international flights. Border agencies would then consult with the airport to understand what the requirements would be for processing international passengers. The airport would be billed for the actual and reasonable establishment costs (and for Option 3A, site-specific processing costs that are outside of the standard expenditure for the processing of international passengers).

<sup>10</sup> The consultation document proposed a three-year cost recovery period.

30. Establishment costs can be further divided into capital costs (such as podiums, search benches and x-ray machines) and non-capital costs (such as training and recruitment for additional staff required). All of these costs are contemplated by the Airports Cost Recovery Act. However, there is an argument that non-capital costs should instead be able to be recovered through the BPLs. For example:
  - a. It may be more equitable that the cost of all training and recruitment is recovered via the same mechanism (given that staff may be redeployed or work across different sites);
  - b. It may be more administratively efficient to charge all training and recruitment in the same way.

31. s9(2)(h)

#### Option 4 (fund border services through the BPLs)

32. Option 4 would recover all costs under the BPLs (noting that this is not possible under current legal settings).
33. How Option 4 would work in practice is once an airport announces international services, border agencies would assess the costs involved. Then, once the airport starts receiving international flights, the establishment costs and ongoing processing costs would be assigned to the BPL memorandum accounts from the respective border agencies. The BPLs would be reviewed (they regularly are) and rate adjustments would be made along the same lines as they are normally updated to take into account the new airport's costs.
34. Option 4 would remove the burden of border services costs from the airport that causes the need for the services and place it instead on all air passengers coming into the country, regardless of which airport they fly in to. It renders the Airports Cost Recovery Act redundant because it means new airports would no longer have to factor in the costs into their decision to start receiving international flights.

#### Option 5 (recover costs through a voluntary arrangement)

35. Option 5 is to recover costs through voluntary arrangements with new international airports. Under this option, border agencies, when notified of an airport's intention to start international flights, would consult with the airport on the likely establishment costs. Border agencies and airports would agree on what establishment costs would be recoverable, eliminating the need for regulatory action. Processing costs would not be included because exempting passengers from paying these costs would require regulatory change, which defeats the point of a voluntary arrangement.

#### What feedback did the options receive during consultation?

36. Fourteen stakeholders sent in submissions. The submitters were various airports, the New Zealand Airports Association, the Board of Airlines Representatives, and local government, regional development and tourism organisations. Many of the stakeholders based their submission on a legal opinion (supplied by the New Zealand Airports Association) that argued the Crown's costs could be funded through the BPLs.

37. Of the fourteen submissions received, twelve did not support cost recovery under the Act. Most submitters stated that any amount of cost recovery would have negative impacts. However, if the decision was to recover costs, then Option 3B was the least disliked. One submitter said Option 3B may be workable but only if the airport was in a strong financial position. They said it would nonetheless make route viability more difficult as it would weaken airports' financial positions. Submitters agreed that Option 3B was more administratively simple than the other preferred option, 3A.
38. Only one submitter, Air New Zealand, supported Option 3B. It felt that the option provided accountability to ensure the BPLs are used for the purposes they were intended for.
39. Some submitters commented that they felt consultation was unnecessary. Their reason was that the Airports Cost Recovery Act was outdated and that the BPLs could provide an equitable, efficient cost recovery mechanism to cover border services costs at new airports. Submitters noted that there is already cross-subsidisation within aviation (through the BPLs) and that it is considered acceptable by the industry. Some submitters suggested that border agencies should review the Airports Cost Recovery Act to see if it is still fit-for-purpose, rather than introduce new regulations.
40. Many submitters disagreed that airports are the primary beneficiaries of border services. They said New Zealand is the primary beneficiary, emphasising the economic benefits – tourism, Gross Domestic Product, employment, and consumer spending – that international air travel provides. They said that if cost recovery from new airports proceeds, then it would create a barrier to economic growth and tourism.
41. Many submitters thought that recovering costs from new or restarting airports is anti-competitive, because it means new airports will have to pay for something that existing airports do not, creating an unfair advantage and stopping new air routes.
42. Some submitters were concerned about the impact on passengers and airlines if airports chose to pass on costs to passengers, especially when they are already paying levies for border services.
43. Regarding the classification of costs, submitters generally thought that the concept of 'site-specific costs' was confusing, and that border agencies and airports could not be confident as to which costs would be 'site specific'.

### What criteria will be used to compare options to the status quo?

44. There are six criteria against which we will evaluate the options. The first two criteria assess whether the option achieves the policy intent of the Act: that Crown's fiscal exposure is reduced and that airports have certainty abouts costs so they can make business decisions with this information in mind. The remaining four criteria are based on the principles of cost recovery that are set out in the Office of the Auditor-General and the Treasury guidelines.<sup>11</sup> These criteria assess whether each option is transparent, justifiable, efficient, and equitable.

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<sup>11</sup> Controller and Auditor-General, *Setting and administering fees and levies for cost recovery: Good practice guide* (August 2021).

Figure 3: Criteria used to assess each option

Criteria	Description
Reducing the Crown's fiscal risk	The first part of the policy intent behind the Act is to reduce the Crown's exposure to unpredictable and unlimited liabilities arising from the processing of travellers. Government funding does not budget for the resources needed to establish and operate new international traveller processing services.
Certainty to make business decisions	The second part of the policy intent behind the Act is to ensure that airports can factor the costs of aviation security, biosecurity, and customs processing into their decisions by obtaining certainty about cost recovery allocation. Certainty means airports that are seeking to establish or re-establish international services have a clear understanding of who would pay the costs and under what circumstances so that they can make business decisions in light of this information.
Transparency	Transparency means adequate information about costs (including dollar figures) is available to ensure that those impacted by the cost recovery can understand and have an opportunity to comment on the basis on which charges are calculated and imposed.
Justifiability	An option would be justifiable if costs are only collected to meet the reasonable costs (including indirect costs) for providing the services. If costs are to be recovered, then they should be appropriate for the service provision, and the services themselves should be effective and efficient.
Efficiency	Costs should generally be allocated and recovered to ensure that the maximum benefits are delivered at most reasonable cost. There are two types: allocative efficiency (encouraging users to make the best decision about whether to make a decision that requires the provision of a service) and administrative efficiency (charges should be cost effective and easy to understand and implement).
Equity	Equity is about whether costs are distributed fairly. Determining whether a cost recovery option is equitable is not a matter of mathematical calculation, but of value judgements. Equity can compete with the efficiency principle because what is most efficient might not necessarily be the fairest.

## How do the options compare to the status quo?

- ++ Significantly better than the status quo
- + Better than the status quo
- 0 No better or worse than the status quo
- Worse than the status quo
- Significantly worse than the status quo

Figure 4: Summary of assessment of options

Criteria	Option 1 – status quo (no regulations)	Option 2 (payment of costs based on estimated charges)	Option 3A (establishment and site-specific costs, all other processing costs under the BPLs)	Option 3B (establishment costs only, processing costs under the BPLs)	Option 4 (full cost recovery under the BPLs)	Option 5 (voluntary arrangement)
<b>Act purpose (Crown's fiscal risk)</b>	0	++ Reduces the Crown's exposure to financial risk by ensuring costs are recovered under regulations.	++ Reduces the Crown's exposure to financial risk by ensuring establishment and site-specific costs are recovered under regulations: processing costs would be recovered under the BPLs.	++ Reduces the Crown's exposure to financial risk by ensuring establishment costs are recovered under regulations: processing costs would be recovered under the BPLs.	++ Reduces the Crown's exposure to financial risk because all costs would be recovered under the BPLs.	0 Costs for one airport might be so small they decide to voluntarily pay (eliminating financial risk), whereas another airport's costs may be so high that they decide not to pay (retaining risk). So the option is likely no better or worse than the status quo.
<b>Act purpose (certainty)</b>	0	0 Although it indicates to airports what kinds of charges they can expect to face, the dollar figures in those charges is still uncertain, as they would be based on estimates.	+ Provides better certainty than the status quo, but the concept of 'site-specific costs' was not clear to submitters. This could be mitigated by a definition of site specific costs within any regulations.	++ Provides greatest certainty of viable options. The scope of actual and reasonable costs will be set out in regulations.	-- Although it provides more certainty than the status quo about how costs are allocated it does not ensure that airports factor these costs into their business decisions..	0 Airports can consult directly with border agencies on costs already so it is likely no better or worse than the status quo.
<b>Transparency</b>	0	- Does not indicate transparently of what exact costs airports will face, as the costs are based on estimates only.	+ Exact costs are not known in advance because each airport's circumstances are unique, but a definition of establishment costs in regulations will provide a clear indication of what costs are recoverable.	+ Exact costs cannot be known in advance as every airport's requirements will be unique. However, a definition of establishment costs in regulations provides a clear scope of what will be cost recoverable.	++ Very transparent because the BPL rates are publicly consulted on, so the costs of new airports will be scrutinised.	0 Not transparent because costs are unknown up front until consultation between airports and border agencies begins.
<b>Justifiability</b>	0	It is not possible to determine whether costs are justifiable for all affected stakeholders. Assessing the justifiability of the costs will be an ongoing process during reviews if regulations proceed. However, there is the ability to build safeguards into the process. This may include external checks on the costs that might be charged, advising likely costs and negotiating on what costs are reasonable in particular situations, and any review or appeal processes.				
<b>Efficiency</b>	0	- Would likely lead to the over- or under-recovery of costs, which is not allocatively efficient. When cost estimates are inaccurate users are unlikely to make the best decision about whether to use the services.	+ Allocatively efficient because it means that the airport will only demand border agencies' services if there were net benefits, compared with the costs they had to pay for the establishment and site-specific operations. But there is a	+ Administratively efficient because it means no additional work is required to separate out site-specific costs from base processing costs during the consultation process between border agencies and the airport. But this is a trade-off for allocative efficiency, it is not as allocatively efficiency as Option	+ Administratively efficient because it means very little work has to go into allocating costs, as they will be all funded through the BPLs. Not allocatively efficient because if passengers subsidise the new airport's costs, then airports are not incentivised to demand border	0 While airports potentially paying costs may seem to promote economic efficiency, the voluntary nature of a non-regulatory arrangement means potentially some airports could pay costs while consultation with others could stall. It would not be

			trade-off on administrative efficiency (see Option 3B).	3A because the airport would not pay for their site-specific processing costs.	services only when it makes good commercial sense.	economically efficient for some sections of the industry to pay whereas others get services for free, or at a reduced rate.
<b>Equity</b>	0	++ The beneficiary/risk exacerbator of the services is the one paying for them, which is equitable.	++ Supports equity because the beneficiaries of the services are paying for it, unlike the status quo. More equitable than Option 3B because a greater proportion of costs would be met but the airport – but this comes with the trade-off of being less administratively efficient (see above).	+ More equitable than the status quo because beneficiaries will be paying the services, but not as equitable as Option 3A because passengers meet more of the costs.	0 Not more equitable than the status quo because other passengers would subsidise the costs of the new airport. It is not any less equitable, though, because under the status quo the Crown would subsidise the costs, which is just as inequitable.	0 While the fact that a new airport could pay costs under a negotiated agreement would support equity (because the beneficiary would be paying for the services), there is a risk that one airport pays while consultation with another breaks down. It would be inequitable for different new international airports to potentially pay nothing while others did pay.
<b>Overall rating compared to the status quo</b>	0	+ Better than the status quo but does not meet the transparency or efficiency criteria.	++ Much better than the status quo. Involves trade-offs with administrative efficiency compared with Option 3B.	++ Much better than the status quo. Compared with Option 3A it is administratively simpler. It requires trade-offs with allocative efficiency, may be less equitable, and charges airports a smaller portion of costs.	<b>Not valid</b> Although it achieves some of the objectives of the Act it is a legislatively infeasible option.	0 Not much more preferable than the status quo.

PROACTIVELY RELEASED

## Reducing the Crown's fiscal risk

45. This criterion assesses each option's likelihood that it will reduce the Crown's exposure to unpredictable financial liabilities from establishing border services at new airports.
46. Option 1 does not conform with the first part of the policy intent of the Act as the Crown would be unable to recover costs. The issue of cost allocation would go unresolved, and airports would not factor in these costs to make a commercially viable decision.
47. Compared with the status quo, options 2, 3A, 3B and 4 are consistent with the first part of the policy intent of the Act. These options would reduce the Crown's exposure to financial risk by ensuring that some costs are able to be recovered (either under new regulations, or under the BPLs). Option 5 (voluntary arrangement) would only eliminate the financial risk if the airport readily agreed to pay (for example if the costs to the airport were very low). Otherwise, its likelihood to reduce financial risk is no better than the status quo.

## Certainty to make business decisions

48. This criterion assesses whether each option provides enough certainty so that prospective new international airports can make an informed decision to start international services.
49. If the status quo is retained then regulations could be made at a later point in time. This would affect any airports that seek to start international services in the future, which would create ongoing uncertainty for the industry.
50. Option 2 provides more certainty than the status quo, because it would indicate to airports which costs are recoverable from them. However, in terms of dollar figures, it is still highly uncertain as to how much money is payable because the costs would be estimated.
51. Option 3A provides more certainty than the status quo. However, submitters indicated during consultation that the concept of 'site-specific costs' added uncertainty. This could be mitigated by a clear definition of site-specific costs in any regulations.
52. Option 3B best meets the certainty criterion. It is proposed that there will be a clear definition in regulation as to what is covered under establishment costs (see Section 1 above). Some negotiation will still be required between the Crown and airports as to what costs would be reasonable in each specific case.
53. Option 4 provides certainty about costs as they will simply be allocated to the BPLs. However, as airports will not be liable for any of these costs, there is no connection between the cost of providing services and airports' commercial decisions. This could result in services being demanded by airports beyond that which the market can sustain. This would be the case even if legislation were changed to make this legally feasible.
54. Option 5 provides no more certainty than the status quo because airports are already able to consult on costs with border agencies.



## Transparency

55. Transparency is about making sure adequate information is available to those impacted by cost recovery so they can understand and comment on the basis on which charges are calculated.
56. Consultation included a set of hypothetical cost scenarios. These were not modelled on any particular business case. Hypothetical situations were used because it was not possible to state the exact costs to be recovered from airports. Geographical location, proximity to another (already established) international airport, and whether the airport is new or restarting all influence the amount of costs recoverable – so there is no single set of dollar figures that would be applicable to all airports.
57. Option 2 sees costs being estimated, which is not transparent. Options 3A and 3B are more transparent than the status quo because although exact costs cannot be known in advance (each airport's costs will be unique to them), a definition of establishment costs included in regulations will provide a clear indication as to what costs are recoverable. Option 4 is transparent because if all costs are added to the BPLs, then the BPL rate – when it needs to be changed – will be publicly consulted on, so those costs can be scrutinised by affected stakeholders. Option 5 is unlikely to be better than the status quo – costs will only be known in the process of negotiations.

## Justifiability

58. Justifiability is about making sure that the costs which are being recovered are appropriate and that they relate to the service that is being provided. Justifiability ensures border agencies are accountable for the way they manage revenue.
59. The actual costs of providing biosecurity and border services for most potential international airports are unknown at this point. Ascertaining the exact costs requires extensive consultation with airports, and receipt of a formal proposal for services.
60. Costs would be more justifiable if border agencies made efforts to share resources such as office space, interview rooms etc. to be able to provide the lowest-cost services. Border agencies would work in good faith with airports during implementation to ensure costs are kept reasonable. (See the Implementation section.)

## Efficiency

61. Efficiency means costs should be recovered and allocated in a way that delivers maximum benefits at minimum cost.
62. The status quo is not allocatively efficient as it would result in airports not having to pay any of the costs associated with establishing or re-establishing international services. This would mean that an airport could decide to proceed with international services due to a core cost component being subsidised, despite the decision potentially not having a sound commercial business case.
63. Option 2 would likely lead to the over- or under-recovery of costs. Unders and overs arise from a reconciliation of actual expenditure against the amount charged. This is because it is difficult to estimate what the correct costs would be, given that each airport has its individual circumstances. Costs would eventually be reconciled. If there is over-recovery it would be reimbursed to an airport whereas under-recovery would be billed. However, this does not mean it meets the efficiency criterion. Cost recovery

must be done in a way that allows users to make the best decision about whether to use the service. If the estimates were not accurate (which could occur under Option 2), then this option would not support good decision-making.

64. Option 3A involves an airport paying for the establishment costs and any site-specific processing costs. As the airport would be paying for all the establishment costs and a portion of the processing costs, it supports efficiency. This is because the airport would likely only demand the services of border agencies if there were net benefits from international services compared with the costs involved in servicing those flights.
65. Option 3B is more administratively efficient because it will not require additional work to separate out site-specific processing costs from base processing costs. As it recovers less directly from airports, it may be less efficient from an allocative efficiency perspective.
66. Option 4 – funding all costs using an existing method (the BPLs) – would be administratively efficient. However, it is not allocatively efficient as it does not encourage users – the new or restarting airport – to make a commercial decision which accounts for the true costs of border services.
67. Option 5 does not support efficiency. As payment is subject to a voluntary arrangement, it could lead to a situation where one airport chooses to pay but another airport declines to pay, meaning that some businesses would face higher costs than others even though they receive the same services. This is not economically efficient.

## Equity

68. Equity is about fairness. Whether or not it is appropriate to recover the costs of a certain service will often come down to whether this is fairer than taxpayer funding. Equity can be disputed: who ultimately benefits from a service is often contested, and sometimes value judgements are required to determine who should pay. Similarly, those who create the need for the services ('risk exacerbators') should generally pay.<sup>12</sup>
69. While there are secondary benefits to all economic activity, airports are the direct beneficiaries of new international services because they receive a commercial return from it.<sup>13</sup> They also create the need for border services by opening another route into New Zealand for threats from passengers, cargo, and craft – making them risk exacerbators. It takes considerable effort from the Crown to establish border processing services at a new airport to manage those threats. While disestablishment costs are not contemplated by the Airports Cost Recovery Act, if an airport later suspends international services then it leaves the Crown with sunk costs, stranded assets and redundancy pay-outs.
70. Option 1 is not equitable because the Crown (or taxpayers) is not the chief beneficiary but would nonetheless be paying for the services. Option 2 supports equity because the beneficiary/risk exacerbator would pay costs.

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<sup>12</sup> When a service is designed to manage or mitigate these risks it can often be efficient and equitable to charge risk exacerbators for the cost of those services. It is equitable because it is usually fairer to charge those whose actions or inactions create the need for a service than the taxpayer. The stronger the link between the risk and the risk exacerbator, the more equitable charging will be.

<sup>13</sup> Many submitters disagreed, saying that receiving international flights into regional airports would benefit the entire country in terms of GDP gains, rather than just the airport.

71. Options 3A and 3B also support equity on the same grounds. Option 3A could be seen as more equitable than Option 3B as a greater proportion of the costs would be met by new or restarting airports, rather than all travellers. The equity of 3A and 3B would be reduced somewhat if the new airport decides to on-charge their establishment costs to passengers arriving there because the beneficiary (airport) would be passing on costs. New airports passing on costs to passengers is not guaranteed, though because they may manage their cost base in other ways.
72. Option 4 is neither more equitable nor less equitable than the status quo. This is because under Option 4 all air passengers subsidise the new airport's costs, whereas under the status quo the Crown is the one subsidising. Similarly, Option 5 is neutral regarding equity compared to the status quo, because such is the nature of a voluntary arrangement that the airport could choose either to pay the costs (which would be equitable) or not pay them (inequitable).

### What option is likely to best address the problem and meet the policy objectives?

73. The options assessment showed that two options were much better than the status quo: Option 3A and Option 3B. They are better than the status quo for different reasons. Option 3A is more allocatively efficient, 3B is more administratively efficient. It is a trade-off – though not an even one – but 3B is preferred.
74. It is not an even trade-off because 3A does not actually recover that much more money from airports compared with 3B. Officials calculated the potential costs for an airport that may start international services: site-specific costs would account for just 11 percent of the total overall establishment and processing costs for that airport. That is likely not high enough to justify the inefficient process of trying to carve out site-specific costs from the other processing costs. The administrative ease of 3B is therefore preferable given that the alternative will result in much more complexity for little gain.
75. One submitter actively supported 3B because it said it promoted accountability for cost recovery. Compared with the other preferred option, 3B was the option that some submitters agreed could be viable (but not desirable) under certain circumstances.

### What are the financial impacts of the options?

76. The exact financial and economic impacts of the options for all airports cannot be accurately measured. This is because working out the exact costs of border services requires targeted consultation with airports, which can only happen if the airport has a firm proposal to start international services. It will be a commercial decision for airports as to how these costs are managed.

## Section 3: Delivering an option

### How will the new arrangements be implemented?

#### How establishment and processing costs would be treated

77. Establishment costs are items and activities required to establish or re-establish the capacity to process travellers at an international airport. Processing costs are the ongoing operational costs for screening travellers at new or restarting international airports. All establishment costs are able to be recovered from new airports under the proposed regulatory option (3B). All processing costs would be recovered under the BPLs. The complete list of establishment and processing costs is in Section 1 above.
78. Should proposed regulations be made under the Act, border agencies would engage with any airport that is seeking to establish or re-establish international services to understand the costs involved. Border agencies would negotiate in good faith to work out which costs are reasonable. (For instance, if an airport had a spare, suitable workbench then they could let the border staff use it instead of it being purchased, thereby keeping costs down.)
79. In terms of how the costs are billed, border agencies would calculate the establishment costs they have spent and send invoices to the airport. Invoicing would occur until all establishment costs are accounted for. Invoices will be itemised to show transparency in the costs that are collected and to allow airports to see exactly what has been paid for by border agencies.

#### Cost recovery period

80. The Act allows for a cost recovery period of up to a maximum of three years. However, as it is only relevant for processing charges, a cost recovery period is not required should Option 3B be pursued.

### How will the new arrangements be monitored, evaluated, and reviewed?

81. MPI intends to review the Act to ensure it is fit for purpose. Subject to decisions by the Minister for Biosecurity and Cabinet, a review of the Act could begin in 2025. s9(2)(f)(iv)

82. Customs and MPI monitor the BPLs regularly to check for memorandum account imbalances. There is a performance report produced every year.

## Appendix A: Minor amendment to the International Passenger Security Levy

83. The International Passenger Security Levy (the IPSL) under the Civil Aviation (Safety and Security) Levies Order 2002 is designed to effectively recover the same costs that could be recovered through regulations under the Airports Cost Recovery Act. This includes operational costs as well as capital costs. Therefore, while MPI and Customs may require new regulations under the Airports Cost Recovery Act to recover establishment costs, the same is not the case for the CAA.
84. The CAA has advised that the IPSL mechanism is appropriate to recover costs for establishing aviation security services at new or restarting international airports. As such, it is not seeking to be included in these regulations. However, a minor amendment to the Civil Aviation (Safety and Security) Levies Order is required.
85. Section 10G(5)(f) of Civil Aviation (Safety and Security) Levies Order 2002 currently states that the IPSL is not payable in respect of a passenger departing an airport to which the Airports Act applies. Section 10G(5)(f) will need to be amended or revoked to permit the CAA to continue to collect the IPSL at any airports, subject to the Airports Act. This amendment would be required whether or not proposed regulations are made under the Airports Act and whether the regulations provide for the CAA's aviation security function.

## Appendix B: The legislative framework

86. The purpose of the Airports Cost Recovery Act is set out in Section 3 of the Act:

*to enable the Crown to recover some of its costs incurred in—*

- (a) establishing or re-establishing at an airport the capacity to process travellers arriving in, or departing from, New Zealand on an international flight; and*
- (b) processing international travellers at new and re-established international airports; and*
- (c) processing international travellers at an international airport in other than a routine manner.*

87. The policy objectives of the Act are to:<sup>14</sup>

- a. reduce the Crown's exposure to unpredictable and unlimited liabilities arising from the processing of travellers on international flights; and
- b. ensure that airports factor the costs of aviation security, biosecurity and customs services associated with processing travellers on international flights into their commercial decisions.

88. How costs are recovered must be specified in regulations under the Act.<sup>15</sup>

89. Sections 7 and 8 of the Act set out what costs can be recovered. These sections of the Act apply to an airport that:

- a. begins receiving international flights;
- b. stops receiving international flights during a cost recovery period that applies to it, but later resumes receiving international flights;
- c. stops receiving international flights but later resumes receiving international flights after the expiry of a grace period of up to 6 months.

90. Section 7 requires that the operator of the airport pay any prescribed charge relating to the costs incurred by a border agency in establishing or re-establishing the capacity to process travellers at the airport, whether the costs are incurred before or after the airport begins receiving international flights. These are referred to in this document as establishment costs.

91. Section 8 requires the operator of an airport to pay any prescribed charge for the processing of travellers carried out at the international airport during a cost recovery period that applies to the airport. These are referred to in this document as processing costs.

92. Section 11 of the Act specifies that regulations can have:

- a. a grace period<sup>16</sup> shorter than six months;
- b. a cost recovery period shorter than three years;

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<sup>14</sup> See for example the General Policy Statement for the Airports (Cost Recovery for Processing of International Travellers) Bill as introduced to the House on 9 September 2010.

<sup>15</sup> Sections 7 and 8 require a new airport to pay any "prescribed charge", which is defined in s 4 of the Act as "a charge prescribed or provided for by regulations made under section 11". Section 11 empowers the making of regulations for the purposes of the Act.

<sup>16</sup> The Act has a provision whereby airports that cease operating as an international airport but then restart shortly after would not be liable for cost recovery under the Airports Cost Recovery Act regulations. This is the 'grace period'. It is defined in Section 4 of the Act.

- c. charges, or a means by which charges, may be calculated or ascertained to recover the direct and indirect costs of processing, and establishing or re-establishing the capacity to process, international travellers;
  - d. returns to be made by persons liable to pay charges;
  - e. providing for any other matters contemplated by or necessary for the Airport Act's administration, or to give it full effect.
93. Charges may be prescribed on:
- a. a differential basis, including different charges for different airports or classes of persons, airports, businesses, or operations, and for different times of use; or
  - b. may be set in a way that is determined by calculations that involve averaging of costs.
94. Section 15 of the Act sets out the following methods of cost recovery that may be used in regulations:
- a. fixed charges;
  - b. charges based on a scale or formula or at a rate determined on an hourly or per traveller or other unit basis;
  - c. the recovery of the actual and reasonable costs spent in or associated with the processing of travellers;
  - d. estimated charges, or charges based on estimated costs, paid before the processing of travellers, followed by reconciliation and an appropriate further payment or refund after provision of the service.
95. Section 13 of the Airports Cost Recovery Act requires the Director-General of MPI to ensure that persons or representatives of industry organisations likely to be directly affected by the regulations are consulted with and the results of this consultation are provided to the Minister for Biosecurity.
96. While the Minister for Biosecurity can recommend that regulations are made under the Act, the Minister cannot make a recommendation in relation to the processing of travellers by Customs or the Aviation Security Services without the agreement of those Ministers.<sup>17</sup>

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<sup>17</sup> Section 12 of the Act.

## Appendix C: Cost recovery principles

97. The Office of the Auditor-General has four principles that guide the cost recovery approach.<sup>18</sup> They are:
- a. Transparency – costs are transparent
  - b. Justifiability – costs are reasonable
  - c. Efficiency – net benefits are maximised
  - d. Equity – costs are fair.
98. These guidelines inform border agencies' approaches to cost recovery and are reflected in Treasury guidance.

### Transparency

99. Transparency means providing adequate information to people such that they can understand charges and have an opportunity to input into their calculation and setting. It is also about ensuring costs are identified and allocated as closely as practicable in relation to services provided. 'Allocated' does not mean 'charged'. How costs are charged is a result of consideration of all the principles.

### Justifiability

100. Justifiability means only recovering the reasonable costs (including indirect costs) for the provision of the services. 'Reasonable costs' are those necessary to deliver the service at the demanded quantity and quality, acknowledging that small inefficiencies may occur from time to time.

### Efficiency

101. Efficiency means that costs should be allocated and recovered to ensure maximum benefits are gained at minimum cost. Costs should be charged to those who benefit from the service – if the customer pays, they have the incentive to demand only those services that provide them benefit compared to other things they might purchase. If parties other than the beneficiary pays, then the beneficiary will demand more services than otherwise.
102. Costs should also be charged to those whose behaviour can reduce the need and cost of the service – this factor covers situations where there are externalities. In these cases, it may be efficient to charge the third party as well, or instead of, charging the customer/beneficiary.
103. Charges should account for administrative costs – for instance, sometimes it will be administratively prohibitive to charge according to precisely charge those that benefit or those that can reduce costs, so a simplified approach is warranted.
104. Charges should be competitive neutral – an agency should not use any dominant market position to charge inflated prices and make more than a fair economic return.
105. All relevant costs are potentially recoverable, including:
- a. direct costs associated with services, such as staff time, travel costs, systems and equipment used in delivering the specific service, and

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<sup>18</sup> Controller and Auditor-General, *Setting and administering fees and levies for cost recovery: Good practice guide* (August 2021).



- b. support costs associated with delivery of the service, such as training and development costs for staff, administrative support costs, management costs, project costs and capital costs, and
  - c. a proportion of wider business support or common costs, for example costs associated with corporate functions like finance, human resources management, information technology, and costs of property and utilities.
106. It is administratively impractical to precisely allocate wider business support or common costs to the wide range of services provided. Instead, staff hours are used as a proxy on the assumption that the more staff hours are part of a service, the more property, human resources and other wider support and common costs the service will use.
107. If costs are to be recovered from beneficiaries, the appropriate type of charge to use depends on whether the service is a private good or club good.
108. Fees are used for private goods – services that are of direct benefit to individual businesses. Levies pay for club goods – services that benefit sectors or groups of businesses as a whole.

### Equity

109. Equity means that funding for services should generally be gained from the users or beneficiaries of the services. The Government will usually deem it fair that beneficiaries pay. On other occasions, the Government will determine that other fairness considerations mean that another party contributes to the costs. For example, sometimes industry will be happy to support parts of its industry. Other times, Governments will want to provide additional support.