



Cost recovery under the Airports (Cost Recovery for Processing of International Travellers) Act 2014



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Contents

1.	EXECUTIVE SUMMARY	1
2.	INTRODUCTION	2
3.	CONSULTATION.....	5
4.	BORDER SERVICES AND THE REGULATORY FRAMEWORK	7
5.	OPTIONS	10
6.	ASSESSMENT OF OPTIONS	15
7.	PREFERRED OPTIONS	24
8.	FINANCIAL IMPACTS.....	25
9.	IMPLEMENTATION	26
10.	APPENDIX A: POLICY BACKGROUND.....	29
11.	APPENDIX B: COST RECOVERY PRINCIPLES	31
12.	APPENDIX C: COST SCENARIOS FOR THE PREFERRED OPTIONS	33

Terms used in this document

Term	Description
Airport	When this document refers to an airport the meaning is ‘new or restarting international airport’, unless otherwise specified.
AvSec	Aviation Security Service, part of the Civil Aviation Authority.
Border agencies	The two border government agencies (Ministry for Primary Industries and New Zealand Customs Service) whose costs are proposed to be recovered under the new regulations.
BPLs	Border Processing Levies refers collectively to two levies. One is the Border Processing Levy collected under the Customs and Excise (Border Processing Levy) Order 2015 made under the Customs and Excise Act 2018, and the other is the Border Processing Levy collected under the Biosecurity (Border Processing Levy) Order 2015 made under the Biosecurity Act 1993.
CAA	The Civil Aviation Authority. The CAA’s costs are not being considered as part of this consultation as they have separate funding arrangements in place to fund establishment costs for aviation security services.
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.
MBIE	The Ministry of Business, Innovation and Employment.
MOT	The Ministry of Transport.
MPI	The Ministry for Primary Industries.
‘the Airports Act’	Airports (Cost Recovery for Processing of International Travellers) Act 2014.
‘the regulations’	Proposed regulations for the Airports (Cost Recovery for Processing of International Travellers) 2024.

1. Executive summary

Cost recovery plays an important role in funding services which the Government provides, such as biosecurity and customs screening at airports.

Under the Airports Act, if an airport chooses to start or re-start international air services, the costs incurred by MPI and Customs to establish a traveller processing capacity (establishment costs) and the processing of travellers (operating costs) can be recovered from the airport. Processing services include scanning baggage for unwanted items and screening passengers for biosecurity risks.

It is appropriate to consider cost recovery for establishing or re-establishing international flights, as the benefits from these flights are received by the airport and those that use the airport.

MPI has developed a set of options that propose to allocate and recover these costs in different ways. These options have been assessed against criteria that are based on the policy intent of the Airports Act and the cost recovery principles set in the Office of the Auditor-General and the Treasury guidelines (transparency, justifiability, efficiency, and equity).

Our current preferred option is to recover actual and reasonable establishment costs from airports under the Airports Act. In addition, we prefer operating costs being recovered either via existing cost recovery mechanisms, or via existing cost recovery mechanisms with site-specific operating costs being recovered from the airport.

A three-year cost recovery period is proposed.

This document seeks feedback from stakeholders so that a final, well-informed decision can be made.

2. Introduction

Overview

MPI is consulting stakeholders on proposals for border agencies to recover costs for border services provided at new or restarting international airports within New Zealand.

We propose to recover these costs either fully through proposed regulations under the Airports (Cost Recovery for Processing of International Travellers) Act 2014 (the Airports Act) or using a mix of new regulations, and existing cost recovery methods.

New regulations could provide greater certainty to airports that may be considering offering international services on the potential costs associated with providing international flights (international services).

The legislative framework

The purpose of the Airports Act is set out in Section 3:

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.*

The policy objectives of the Airports Act are to:

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

How costs are recovered must be specified in regulations under the Airports Act.

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

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

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.

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 operating costs.

Section 11 of the Airports Act specifies that regulations can have:

- a grace period¹ shorter than six months;
- a cost recovery period shorter than three years;
- 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;
- returns to be made by persons liable to pay charges;
- providing for any other matters contemplated by or necessary for the Airport Act's administration, or to give it full effect.

Charges may be prescribed on:

- a differential basis, including different charges for different airports or classes of persons, airports, businesses, or operations, and for different times of use; or
- may be set in a way that is determined by calculations that involve averaging of costs.

Section 15 of the Airports Act sets out the following methods of cost recovery that may be used in regulations:

- fixed charges;
- charges based on a scale or formula or at a rate determined on an hourly or per traveller or other unit basis;
- the recovery of the actual and reasonable costs spent in or associated with the processing of travellers;
- 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.

Section 13 of the Airports 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.

While the Minister for Biosecurity can recommend that regulations are made under the Airports 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.

¹ The Airports Act creates a provision whereby airports that cease operating as an international airport but then restart shortly after would not be liable for cost recovery under Airports Act regulations. This is the 'grace period'. It is defined in section 4.

The Airports Act builds on previous policy decisions in relation to funding international traveller processing at airports. Appendix A provides a summary of these previous decisions.

Existing funding arrangements for border processing are discussed in Section 4 of this document.

3. Consultation

Submitting feedback

MPI welcomes submissions on the proposals in this document. Your feedback is essential for helping make decisions on cost recovery for biosecurity and border services.

MPI needs to understand what impacts the proposals in this document may have on you, your business, and your community.

Please send your feedback to us by 5:00pm, 28 August 2024. Send submissions to:

Email: BSP@mpi.govt.nz

Letters: Biosecurity System Policy
Ministry for Primary Industries
PO Box 2526
Wellington 6140
New Zealand

Please include the following in your submission:

- The title of the consultation document
- Your name and title
- Your organisation's name (if you are submitting on behalf of an organisation)
- Your phone number
- Your email address.

Official Information Act 1982

Submissions are official information and may be requested under the Official Information Act 1982 (OIA). The OIA specifies that information is to be made available to those who request it unless there is a good reason for withholding it.

Additionally, Cabinet papers and cost recovery impact statements are typically proactively released. These documents generally contain summary information about submissions including who submitted and what the submissions said. Sometimes a fuller summary of submissions document is published.

You may wish to suggest reasons for withholding specific information in your submission, such as if information is commercially sensitive or if personal information should be withheld. We will consider these requests in accordance with the provisions of the OIA and will contact you if needed. MPI decisions, including withholding of information, are reviewable by the Ombudsman.

Next steps

This consultation process will run from 7 August 2024 to 28 August 2024.

Following consultation, we will consider the submissions received and will provide advice to the Minister for Biosecurity, taking into consideration the feedback we receive.

4. Border services and the regulatory framework

What border services do government agencies provide?

MPI, Customs and the CAA provide the following services to travellers arriving and departing on international flights at New Zealand's airports:

- Biosecurity services, provided by Biosecurity New Zealand (a business unit within MPI) protect New Zealand from biological or ecological threats brought into the country from air travellers.
- Customs clearing services, provided by Customs, protect New Zealand from risks arising from trafficking of illegal or dangerous goods via international flights.
- The CAA's Aviation Security Service (AvSec) helps protect airlines, passengers, and other New Zealanders from terrorism or dangerous activities that could endanger an aircraft or airport. This involves passenger screening, patrols, checking bags and goods.

The Airports Act enables MPI, Customs and the CAA to recover costs associated with airports establishing or re-establishing international flights.

The CAA recovers costs for aviation security services through the International Passenger Security Levy (the IPSL) under the Civil Aviation (Safety and Security) Levies Order 2002. The CAA is included in the Airports Act as a border agency. However, it is not included in these proposed regulations.

The IPSL enables the CAA to recover costs for aviation security services at an airport. Accordingly, additional cost recovery mechanisms under the Airports Act for these aviation security services are not currently required.

A minor amendment or revocation will be required to section 10G(5)(f) of the Civil Aviation (Safety and Security) Levies Order 2002 to permit the continued collection of the IPSL at any airports subject to the Airports Act, should any regulations proceed.

Other government agencies also perform services at international airports where required. These agencies include the Ministry of Business, Innovation and Employment (immigration), Te Whatu Ora Health New Zealand, the New Zealand Police, New Zealand Defence Force, and intelligence agencies. These services are not able to be cost recovered under the Airports Act and are therefore out of scope for this document.

How are these services funded?

For airports that already offer international flights, the costs of these core services are funded through existing cost recovery mechanisms. For MPI and Customs, this cost recovery mechanism is called the Border Processing Levy (BPL). There are two BPLs – one for MPI to fund biosecurity screening, one for Customs. MPI's BPL is collected under the Biosecurity Act 1993. Customs' BPL is collected under the Customs and Excise Act 2018. The BPLs are collected from passengers by airlines and then passed on to Customs and MPI.

What costs are incurred when international services are started or re-started?

The costs of establishing and providing international traveller processing at an airport ultimately depend on the particular circumstances of the airport concerned.

There is a range of factors influencing costs, including the location of the airport, flight schedules (number of flights and the time of day that flights are provided), and the country of origin and destination of flights (which will influence staffing and other requirements). If border agencies can use staff from existing international airports to service new airports, then the costs will likely be lower.

There are two types of costs that are recoverable under the Airports Act: establishment costs and operating costs.

Establishment costs are the costs that go into developing a presence at the airport. They include recruiting, training, and kitting-out staff, acquiring and installing equipment, leasing any part of the airport, and making physical alterations to it. Establishment costs can also include capital items such as computer servers, monitors and printers, office furniture and storage, CCTV and associated storage media, radios, passport readers, smart gates, detector dog kennels, baggage x-ray equipment, booths and search benches, hold-stowed baggage screening equipment, metal detectors, and vehicles.

In addition, the regulatory approvals that are required to designate an airport as a place of first arrival is also an establishment cost.²

The establishment costs for a restarting international airport may be less than those at a new international airport due to the possibility of some capital items, such as CCTV or general office equipment, already being in place from previous operations.

Operating costs are staff salaries and wages (including accrued leave costs, allowances, overtime payments, superannuation and KiwiSaver expenses, ACC levies), transport and travel expenses, occupancy costs, communications and IT expenses, administration and office supplies, lease costs, and other overheads and indirect costs (e.g. a requirement for staff travel from an existing international airport).

Question for submitters

- **Question 1:** Do you have any feedback on how costs have been classified?

² A place of first arrival is a port of entry (air or sea) approved for the entry of all kinds of craft. An airport must be approved as a place of first arrival under section 37 of the Biosecurity Act 1993 to be able to operate as an international airport.

Problem definition

When an airport becomes an international airport and airlines establish or re-establish scheduled international flights, MPI, Customs and the CAA are required to provide international traveller biosecurity and border processing services.³ These services help protect New Zealand from pests and diseases, criminal activity, and security risks that may cause harm to our economy, our environment, and our way of life.

Border agencies cannot anticipate the future commercial decisions of airports and airlines. Agency budgets do not provide for the establishment and operation of international traveller processing services at new locations. Having to provide these services places pressure on the delivery of existing biosecurity, customs, and aviation security services unless and until Crown appropriations can be adjusted or costs can be recovered via other mechanisms (such as the BPLs).

Regulations under the Airports Act would reduce the Government's exposure to the unpredictable costs associated with the providing international traveller processing services. Requiring cost recovery for an initial period ensures border agencies are able to maintain high standards of border protection without needing to reprioritise resources from other frontline operations.

It also reflects longstanding government policy that an airport needs to demonstrate the commercial viability and sustainability of international services before it is transitioned to the funding arrangements for established international airports.

The Airports Act identifies that the operator of a new or restarting airport is the primary beneficiary of establishing border services at these locations. Because of this, it is more equitable that costs should lie with operators, rather than the Crown or travellers for new or restarting international services.

Since borders have re-opened after the Covid-19 pandemic, there has been increasing demand for international services. If New Zealand airports seek to capitalise on this demand, then there needs to be transparency around what kinds of costs will be payable (and who should pay) so that informed decisions can be made to on starting or restarting international services.

Without regulations in place there is no certainty about costs or cost allocations for establishing or re-establishing international services at airports. This leaves the Crown exposed to uncertain fiscal risks and impedes timely commercial decision-making by airports.

To resolve this problem, MPI is consulting (using this document) to determine which method of cost recovery will work best to ensure that costs for establishing or re-establishing international services at airports are recovered appropriately.

³ There would also be a significant regulatory approval requirements that the airport would need to meet.

Question for submitters

- **Question 2:** What are your views on the problem definition? To what extent does it adequately and accurately describe the problem and potential issues?

5. Options

How options were identified

As detailed in Section 2 of this document, the Airports Act enables the recovery of costs associated with the establishment or re-establishment of an international airport using four methods: charges based on estimated costs, recovery of actual and reasonable costs, fixed charges, charges based on a formula. The options set out in this document have been developed in line with the methods listed in the Airports Act: Option 2 is fixed charges based on estimated costs, Option 3 is actual and reasonable charges for establishment costs, along with a formula (i.e. costs divided by passengers) under the BPLs.

This section provides a summary of each cost recovery option we are considering.

At this stage we are proposing a cost recovery period of three years (but we are open to feedback). This is the maximum allowable period under the Airports Act.⁴ We have proposed to use the full three-year period because this would lengthen the amount of time airports are paying for their own site-specific costs, rather than having them cross-subsidised by passengers arriving at other airports.⁵ We are inviting stakeholders to submit feedback on the cost recovery period.

After the cost recovery period ends, ongoing costs incurred by MPI and Customs for processing travellers and their baggage would be recovered via the BPLs.

Part of the policy intent for the Airports Act was to reduce the Crown's exposure to unpredictable and unlimited liabilities arising from the processing of travellers. This includes risks relating to "stranded assets" should an airport cease providing international services before all capital costs had been recovered.

We have considered making airports liable for:

- a) residual depreciation and capital charges and any lease costs that would have been recovered for the remainder of the cost recovery period for general, non site-specific capital assets that could be redeployed at another location
- b) residual depreciation and capital charges and any lease costs for the full remaining useful life of site-specific capital items that cannot economically be redeployed at other locations.

However, we are not proposing this at this stage. It is likely unfair that an airport subject to cost recovery under the Airports Act would, in effect, pay for equipment that is eventually used by a

⁴ The cost recovery period of three years refers to operating costs.

⁵ This is most relevant for Option 3A.

competitor (under scenario a above). Section 9 outlines how airports would be billed for capital costs should regulations proceed.

In addition, the Airports Act does not clearly provide for recovery of disestablishment costs.

Questions for submitters

- **Question 3:** Do you have any feedback about what the cost recovery period should be?
- **Question 4:** What is the most equitable way to ensure that the Crown is not left with stranded assets and that airlines do not cross subsidise other operators should capital assets be deployed?

We have set aside two infeasible options

Full cost recovery under the Airports Act

We have assessed whether all start-up costs (establishment and operating) could be recovered from airports under the Airports Act. We consider this option impractical, so we are not taking it any further.

Border agencies would have to exempt travellers to the new airport from paying the BPLs so that they would not be charged twice for the same service. This would be administratively complex. Airlines would have to recalibrate their ticketing systems to allow the exemption (likely at a significant cost to them). The changes would then have to be removed from their systems again once the cost recovery period under the regulations ended. MPI and Customs would also need to change their billing and reconciliation systems and create a 'carve out' provision from two sets of BPL regulations.

There are other practical difficulties. For example, should a flight be diverted to an alternative airport due to bad weather, the operating costs could be unfunded at the place of landing, yet paid for by the new international airport. It would be burdensome and complex to account for this.

Full cost recovery under the BPLs

We are not pursuing the option of full cost recovery via the BPLs. This is because cost recovery provided for in the Airports Act cannot be recovered under the Biosecurity and Customs and Excise Acts.⁶

It is MPI's view that while establishment costs (those provided for under section 7 of the Airports Act) cannot be recovered under the BPLs, operating costs (those provided for under section 8 of the Airports Act) can still be fully or partially recovered under this existing cost recovery method.

The options below have been developed on this basis.

⁶ Section 140AA(5) Biosecurity Act 1993 and section 413(5) Customs and Excise Act (2018).

Questions for submitters

- **Question 5:** Do you agree that it would be impractical for airports to be liable for all establishment and operating costs? Please outline your reasons.
- **Question 6:** For airlines: how difficult would it be to adjust your ticketing systems to allow for exemptions to BPLs for travellers to new or restarting airports?

Option 1 (status quo – no regulations)

Option 1 is to retain the status quo by not making any regulations under the Airports Act.

Airports could not be required to pay establishment costs. Additional Crown funding may be required to establish services, or baseline funding may need to be re-prioritised. Establishment costs could not be recovered from the BPLs.

If no regulations are in place, there would be an additional administrative burden on agencies to determine a funding arrangement for each new international airport's establishment costs.

Question for submitters

- **Question 7:** What (if any) problems would you face if regulations were not put in place (e.g. would there be less certainty for your business decisions)?

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

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, followed by reconciliation and an appropriate further payment or refund after provision of biosecurity and border services.

How this option would work in practice is that an airport, once they have decided to establish or re-establish international services, would notify border agencies about the flight schedules and other information necessary to estimate costs. Border agencies, after a proposed 60 working day period, would provide an airport with an estimate of the total costs of:

- establishing or re-establishing biosecurity and border services; and
- processing travellers for three years to mitigate all financial risk to the Crown.

The airport would then pay the border agencies the estimated costs up front. After the three-year period the airport's actual cost would be calculated, and any over-recovery would be reimbursed to the airport, and any under-recovery would be billed.

Question for submitters

- **Question 8:** What would the impact on your business be if the costs of establishing or re-establishing international flights were estimated and paid up-front, and later a portion reimbursed if it was over-recovered?
- **Question 9:** How would this approach affect your decision to establish or re-establish international flights?

Option 3 (actual and reasonable costs: preferred option)

Option 3 would recover costs on an actual and reasonable basis. It is divided into two sub-options: 3A and 3B.

Option 3A would recover establishment costs under section 7 of the Airports Act and site-specific operating costs for the duration of the cost recovery period under section 8 of the Airports Act. All other operating costs (that is, costs that are not site-specific) would be recovered under the BPLs. Site-specific costs are in addition to the amount recovered under the BPLs.

Option 3B would recover establishment costs under section 7 of the Airports Act. All operating costs would be recovered under the BPLs.

A prospective new international airport would notify border agencies that they are seeking to establish or re-establish 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 operating costs that are outside of the standard expenditure for the processing of international passengers).

Establishment costs broadly fall into two categories: capital items and staff establishment (i.e., training and recruiting). For capital items, it is proposed that border agencies would buy or supply capital items and would retain ownership.

The costs for re-establishing an international airport may be less than those at a newly established international airport, due to the possibility of some capital items, such as CCTV or general office equipment, having already been in place from previous operations as an international airport. Airport operators would be given the option to supply non-specialist items for border agencies use,⁷ and retain ownership of these items. If an airport were to cease international flights before the end of the cost recovery period, agencies would look to re-deploy capital items to other airport locations if possible.

There are likely to be costs associated with the recruitment and training of staff. Upfront staff recruitment and training costs would be recovered from airports on an actual and reasonable costs

⁷ Any capital items supplied by an airport would have to meet the requirements of border agencies. Border agencies would work with airports to ensure items supplied meet their needs.

basis. These costs include salaries, KiwiSaver employer contributions, and recruitment and transfer expenses.

Site-specific operating costs would include travel and accommodation costs for border agency staff coming to an airport from another base of operations if it is not justifiable for those staff to be located permanently at the new airport. For example, it may not be justifiable to base staff permanently at the new airport if the airport only received one international flight per week. Other examples include the costs of providing site security at infrequently staffed locations to protect plant, equipment, or administrative files during unstaffed periods.

While airports will be charged their own capital costs, airports may pass on costs to airlines, who may then pass costs onto passengers. The economic burden of all costs in a supply chain are shared by all participants in the supply chain no matter where they occur. In deciding whether to enter the market, airports will consider the demand response by passengers not just to the costs the airport passes on, but also to the other costs a passenger faces.

This means that under Options 3A and 3B, passengers travelling to a new airport could be seen as indirectly paying both the capital costs of a new airport but, via the BPLs, subsidising the capital costs of existing airports. This would only be for the period before a new airport transitions to all cost recovery (for MPI and Customs) occurring under the BPLs.

See Section 9 further provides further details on the implementation of Options 3A and 3B.

Questions for submitters

- **Question 10:** What are your views on Option 3A and Option 3B? How might they provide a suitable solution for cost recovery?
- **Question 11:** Option 3B represents a trade-off: it recovers a smaller proportion of operating costs from airports (and a greater proportion from travellers in general) in return for administrative simplicity. Which sub option do you prefer, and why?
- **Question 12:** What other factors might we have missed in developing this trade-off?

6. Assessment of options

This section assesses each of the options against six criteria. Each option's relative merits and trade-offs are identified to identify a preferred option.

Criteria used to assess options

Our six criteria are outlined in Figure 2 below. The first two criteria assess whether the option achieves the policy intent of the Airports Act. 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.⁸ These criteria assess whether each option is transparent, justifiable, efficient, and equitable. The principles of cost recovery are detailed at Appendix B.

Figure 2: Criteria used to assess each option

Criteria	Description
Policy intent of the Airports Act (reduce Crown's fiscal exposure)	The first part of the policy intent behind the Airports 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, or to provide non-routine services.
Policy intent of the Airports Act (certainty)	The second part of the policy intent behind the Airports Act is to ensure that airports can factor the costs of aviation security, biosecurity, and customs processing into their business decisions. Certainty means airports that seeking to establish or re-establish international services have a clear understanding of who would pay the costs and under what circumstances.
Transparency	Transparency means adequate information about costs 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 be 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.

⁸ Controller and Auditor-General, *Setting and administering fees and levies for cost recovery: Good practice guide* (2021). <https://oag.parliament.nz/2021/fees-and-levies/docs/fees-and-levies.pdf>

Efficiency

Costs should generally be allocated and recovered to ensure that the maximum benefits are delivered at minimum cost. There are two types: allocative efficiency (encouraging users to make the best decision about whether to use a service) and administrative efficiency (charges should be 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 therefore compete with the efficiency principle because what is most efficient might not necessary be the fairest.

Question for submitters

- **Question 13:** In the following assessment, we treated all these criteria equally – that is, we have not weighed any as being more important than others. Are there any of the criteria that you think are particularly important? Are there any that you feel are less relevant? Please outline your reasons.

Multi-criteria assessment

Our multi-criteria assessment of each option is summarised in Figure 3 below.

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

Figure 3: Summary of the assessment of options

	Option 1 – status quo (no regulations)	Option 2 (total payment of costs based on estimated charges)	Option 3A (establishment and site-specific costs)	Option 3B (establishment costs only)
Act purpose (Crown's fiscal risk)	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 costs are recovered under regulations.	Reduces the Crown's exposure to financial risk by ensuring costs are recovered under regulations. A greater proportion is recovered from airports, compared with Option 3A.
Act purpose (certainty)	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.	The consultation process between border agencies and the airport gives more certainty about types of costs and the specific dollar figures.	The consultation process between border agencies and the airport gives more certainty about types of costs and the specific dollar figures.

	Option 1 – status quo (no regulations)	Option 2 (total payment of costs based on estimated charges)	Option 3A (establishment and site-specific costs)	Option 3B (establishment costs only)
Transparency	0	Can only be determined during the implementation of any regulations given the unknown financial impacts.		
Justifiability	0			
Efficiency	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 the airport will only demand border agencies' services if there were net benefits compared with the costs they had to pay for establishment and site-specific operations. But there is a trade-off on administrative efficiency (see Option 3B).	+ Administratively efficient because it means no extra work is required to separate out site-specific costs from base operating 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 efficient as Option 3A because the airport would not pay for their site-specific operating costs.
Equity	0	++ The beneficiary 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 by 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 for the services, but not as equitable as Option 3A because passengers meet more of the costs.

	Option 1 – status quo (no regulations)	Option 2 (total payment of costs based on estimated charges)	Option 3A (establishment and site-specific costs)	Option 3B (establishment costs only)
Overall rating compared to status quo	0	Better than the status quo but does not provide certainty or meet the efficiency criterion.	Better than the status quo. Involves trade-offs with administrative efficiency compared with Option 3B.	Better than the status quo. Compared with Option 3A, is administratively simpler. However, requires trade-offs with allocative efficiency, may be less equitable, and charges airports a smaller portion of costs.

Conformance with the policy intent of the Airports Act (Crown's fiscal risk)

Option 1 (status quo) does not conform with the first part of the policy intent of the Airports Act. The Crown would be unable to recover costs as envisaged. The issue of cost allocation would go unresolved, and airports would not factor in these costs to make a commercially viable business decision.

Compared with the status quo, Option 2 (estimated charges) and Options 3A and 3B are consistent with the first part of the policy intent of the Airports Act. They reduce the Crown's exposure to financial risk by ensuring that costs are recovered. Option 3A enables a greater proportion of the costs to be recovered from airports, compared with Option 3B.

Question for submitters

- **Question 14:** Is our assessment of the options' conformance with the purpose of the Airports Act correct? Please outline your reasons.

Conformance with the policy intent of the Airports Act (certainty)

If Option 1 (the status quo) is retained regulations could be made at a later point in time. This would affect any airports that seek to start international services in the future. This would create ongoing uncertainty for the industry.

Option 2 provides slightly more certainty than Option 1, because it will indicate to airports what kinds of charges are cost recoverable. However, in terms of financial figures, it is still highly uncertain how much money will have to be paid. Charges will be estimated (with a portion reimbursed if over-recovery has occurred) or will not be fully known until after services are established.

Options 3A and 3B best meet the certainty criterion. Border agencies would consult with the airport to understand their requirements and then indicate actual and reasonable costs. The consultation process gives airports certainty about what types of costs they are liable for before committing to delivering new services. Section 9 provides some further details of how greater certainty may be achieved during the final regulatory design, and during consultation with airports who signal their intent to start or restart international services.

Question for submitters

- **Question 15:** How could Option 3A and 3B be improved to provide greater certainty?

Transparency

It is not possible to calculate potential line-by-line costs for an airport at the consultation phase. Geographical location, proximity to another (already established) international airport, and whether the airport is new or restarting all influence the amount of costs recoverable. For this reason, none of the options can be said to meet the transparency principle at face value.

There is another way to conform with the transparency principle. This would occur during implementation of the regulations. Once the regulations are in place, if any airports start discussing whether they should provide international services, border agencies would consult with the airport to assess all set-up and operating costs, taking into account the airport's own circumstances. This supports transparency as it will show how recovered costs are linked to service provision. Additionally, border agencies could bill an airport using itemised invoices so that individual cost components are transparent.

Implementation is discussed further in Section 9 of this document.

Question for submitters

- **Question 16:** How else might transparency be supported in cost recovery regulations under the Airports Act?

Justifiability

The actual costs of providing biosecurity and border services for a new or restarting international airport are unknown at this point, as ascertaining the exact costs requires extensive consultation with an airport.

A classification of the potential costs for establishing and operating border services at an international airport is in Section 4. We invite submitters to provide feedback to determine whether these costs have been classified correctly so that any potential regulations would cover costs appropriately. Having a more detailed understanding of the classification of costs will ensure that costs are reasonable, thereby supporting the justifiability principle.

Question for submitters

- **Question 17:** How else might justifiability be supported in cost recovery regulations under the Airports Act?

Efficiency

The status quo is not allocatively efficient as it would result in airports not having to pay any of the establishment or operating 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.

If airports are paying for services, it may incentivise them as commercial entities to make appropriate commercial decisions on the viability of offering the service.

Having no regulations in place makes funding biosecurity and border services at new airports more complex to administer. Border agencies would have to negotiate different ways to cover their costs, for example by seeking a funding injection from the Crown.

Option 2 would likely lead to the over- or under-recovery of costs. This is because it is difficult to estimate what the correct costs would be, given that each airport has its individual circumstances. Costs would be eventually reconciled so that there is a reimbursement to an airport if there was over-recovery or billed more if there was under-recovery. 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.

Option 3A involves an airport paying for the establishment costs and any site-specific operating costs. As the airport would be paying for all the establishment costs and a portion of the operating 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 the flights.

Option 3B is similar to Option 3A. It may be more administratively efficient as it will not require additional work to separate out site-specific operating costs from base operating costs. As it recovers less directly from airports, it may be less efficient from an allocative efficiency perspective.

Questions for submitters

- **Question 18:** Option 3A would see an airport pay for establishment and site-specific operating costs. What impact would this have on your operations?
- **Question 19:** Do you consider administrative efficiency, or allocative efficiency as more important in this situation? How has this affected any preference you may have between Option 3A and 3B?

Equity

Option 1 is not equitable because the main beneficiaries of the services would not be paying for the services.

Option 2 supports equity because the beneficiary of the service is the one that is paying for it.

Options 3A and 3B also support equity on the same grounds. Option 3A could be more equitable than Option 3B as a greater proportion of the costs would be met by new or restarting airports, rather than all travellers.

Questions for submitters

- **Question 20:** Each cost recovery option has been assessed against the equity criterion. Are there other, more equitable ways to recover costs?

- **Question 21:** Do you agree that Option 3A is more equitable than Option 3B? Please outline your reasons.

7. Preferred options

Options 3A and 3B meet all of the criteria, and for this reason they are our preferred options. Neither of them fully meets the policy intent behind the Airports Act because they do result in passing some costs onto passengers rather than costs being fully charged to airports.⁹

We have not selected either 3A or 3B as the definitive ‘preferred’ option because we note that there are trade-offs between them (particularly regarding the different aspects of the efficiency criterion). We would like to test how these trade-offs should be balanced during the consultation process.

Questions for submitters

- **Question 22:** What is your preferred option? Please explain why.
- **Question 23:** Can you suggest any other options that are not presented in this document? If so, please provide details about your option, and how it would better meet the criteria.
- **Question 24:** Would any option cause you significant concern? If so, please explain why and provide any data on the impacts (if possible).

⁹ As we have discussed in Section 5, fully charging airports all costs under the Airports Act regulations is considered impractical.

8. Financial impacts

It is not yet possible to do detailed financial analysis as robust data on the proposed costs for establishing or re-establishing international services at airports is not yet available. These costs are likely to differ significantly between airports depending on the location and situation (as noted in Section 4 of this document).

To give an indication of the likely financial impacts, Appendix C provides a hypothetical scenario to show the types of costs that could be incurred with the establishment or re-establishment of international services at an airport.

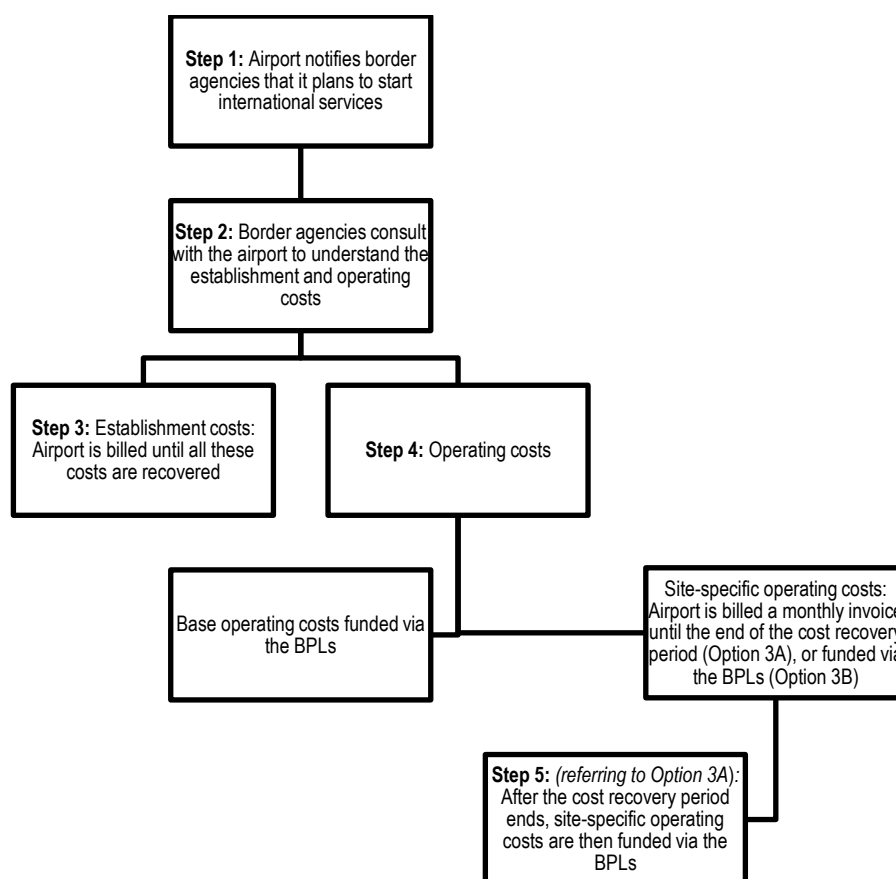
Questions for submitters

- **Question 25:** What are the likely financial impacts cost recovery would have on your business?
- **Question 26:** How would cost recovery under the Airports Act impact your business decisions?

9. Implementation

Figure 4 below provides a summary of how Option 3A or Option 3B (the preferred options) could be implemented.

Figure 4: Process map for cost recovery under the preferred options



Regulations

Should proposed regulations be made under the Airports Act, border agencies would engage with any airport that is seeking to establish or re-establish international services to understand the specific costs involved. This would assist airports and airlines in making informed commercial business decisions.

If proposed regulations proceed, they could specify the way staff rates are to be calculated. For example, they could specify that the hourly rate chargeable for staff will be calculated as the sum of all staff costs to deliver international traveller processing services nationally, divided by the sum of hours worked annually by staff.

Staff costs would include salaries and wages, accrued leave costs, allowances, overtime payments, superannuation and KiwiSaver employer contributions, ACC levies, OSH expenses, recruitment and transfer costs, and any and all other staff related expenses.

The proposed regulations could specify that the hourly rate chargeable for operational (non-staff) overheads to deliver biosecurity and border services for processing travellers on international services would be calculated as the sum of all overhead costs, divided by the sum of hours worked annually by staff.

Overhead costs are defined as all costs incurred, both direct operating costs and the cost of holding capital assets, to deliver international traveller processing services, less those staff costs calculated separately to derive the hourly rate chargeable for staff.

Invoicing

Under the preferred options, establishment costs would be billed directly to the airport by border agencies. While the cost of capital items is normally depreciated over their useful lives, cost recovery under the Airports Act will involve billing airports the full cost of the capital items.

In terms of how the costs are billed, it is proposed that border agencies would calculate the establishment costs they have spent and send joint invoices to the airport. Invoicing would occur until all establishment costs are accounted for. Invoices will be itemised where possible to show transparency in the costs that are collected and to allow airports to see exactly what has been paid for by border agencies. If applicable, monthly invoicing for site-specific operating costs would occur and continue until the end of the initial cost recovery period.

If the airport later decides to not receive international flights, border agencies would look to repurpose capital items at other airport locations. When this occurs, the airport could potentially be reimbursed a portion of the value of the capital item where it is economic to do so, having regard to the depreciation in value for the length of time the airport used it.

Questions for submitters

- **Question 27:** What alternative ways might regulations be implemented that would, in your view, better support airports in processing international flights?
- **Question 28:** Are there any other aspects of implementation that you would like MPI to consider when developing regulations?

Monitoring and review

The Airports Act was created prior to the BPLs. None of the options seek to cost recover to the full extent contemplated by the Airports Act.

For example, if Option 3B is selected, border agencies would not be recovering any costs under section 8 of the Airports Act. None of the options implement cost recovery for costs incurred by the CAA.

MPI intends to review the Airports Act to ensure it is fit for purpose and that it works well with other cost recovery provisions. Subject to decisions by the Minister for Biosecurity, a review could start in 2025.

Questions for submitters

- **Question 29:** Do you have any suggestions for the monitoring and/or review of the Airports Act or the preferred option/s presented in this document?

10. Appendix A: Policy background

There have been a number of policy decisions by successive governments on the question of who should pay for passenger clearance services delivered by border agencies.

Funding of passenger clearance services across Customs, MPI (previously MAF), and CAA was reviewed in 2004. As a result, the Government at the time agreed in late 2004 and early 2005 that Customs and MPI passenger processing services would be funded by the Crown, and CAA services would be funded by a per passenger levy charge on airlines. Customs and biosecurity services were considered to deliver primarily public benefits and would be Crown funded in most circumstances. Avsec was considered to deliver private benefits (i.e. to the airlines and those travelling on the aircraft) and would be funded by a per passenger fee charged on airlines. This funding policy came into effect in 2005.

However, there was a different policy setting for CAA, Customs and MPI costs at new and low-volume international airports. In these cases, they were to be funded by cost recovery from airports. Cost recovery would apply for a minimum of one year and until the airport reached a threshold of 9,000 departing passengers. This was to ensure that the Crown was not exposed to an unlimited and unpredictable liability for providing passenger services at locations where international flights might start. Costs for non-routine services were to be recovered from whoever requests or is the primary beneficiary of the service.

In 2006, work started on an International Clearance Funding Bill to implement the Government's decisions on cost recovery at new and low volume international airports, and on non-routine services. The Ministry of Transport circulated a consultation document to get industry views on low volume airports. Industry accepted that all passenger processing charges at low volume international airports should be collected from the airports rather than the airlines. A 2007 Government policy decision reflected this position.

In 2008, the Minister of Transport and the Minister of Customs reported to Cabinet on the performance of the shared funding regime between the Crown and industry. The report followed aviation sector consultation on this issue and showed that industry was largely satisfied with the regime. The report also identified a need to further investigate how passenger processing services should be funded when international flights stop at a location and then start up again sometime later (a restarted international airport).

In 2009, Customs consulted with stakeholders to determine how services at restarting international airports should be funded. The general view was that costs should not fall entirely on the Crown. In July 2009 the Government decided that passenger clearance services for restarting international airports should be funded on the same basis as for new international airports.

In 2010, the Government re-confirmed the funding regime and finalised the policy for funding international traveller processing. It agreed that at established international airports, the Crown would fund Customs and MPI services, and Avsec services will be cost recovered via a nationally averaged charge on airlines. For new and restarting international airports, costs would be recovered from an airport on the basis of a fixed time period, up to a maximum of three years, with the ability to set a

shorter period via regulations (removing the complex and uncertain nature of the previously proposed volume-based cost recovery approach). The Government agreed in principle, subject to the results of consultation on the Bill, that the cost recovery period be set at two years.

Requiring cost recovery for an initial period reflected the Government's policy that an airport needed to demonstrate the commercial viability and sustainability of international flights before it is transitioned to the funding arrangements for established international airports. It also reduced the Crown's exposure to an unpredictable and uncertain fiscal liability for providing traveller processing services at international airports and ensures border agencies can maintain high standards of border protection without needing to reprioritise resources from other frontline operations.

An established international airport would be able to cease operating international flights and then restart them within a six month "grace period" (or any lesser period specified in regulations) without triggering cost recovery. This policy position was reflected in the Airports (Cost Recovery for Processing of International Travellers) Act 2014.

The Government announced in the 2015 Budget the introduction of a border clearance levy to recover the cost of border clearance activities for international travellers (passengers and crew). The Customs and Excise Act 1996 and the Biosecurity Act 1993 were amended to introduce levies to fund the direct and indirect costs of activities carried out by MPI and Customs which relate to the processing of people arriving in and departing from New Zealand.

Following public consultation in mid-2015, the Border Clearance Levy came into effect on 1 January 2016. Differential rates were set for air and cruise passengers, reflecting the extra costs required to process cruise passengers at various parts throughout the country. Rates were set initially for a period of three years and were first reviewed at the end of the 2017/18 financial year. They continue to be reviewed annually.

The next review of the levies is scheduled for completion during 2024.

11. Appendix B: Cost recovery principles

The Office of the Auditor-General has four principles that guide the cost recovery approach.¹⁰ They are:

- Transparency – costs are transparent
- Justifiability – costs are reasonable
- Efficiency – net benefits are maximised
- Equity – costs are fair.

These guidelines inform Customs and MPI's approaches to cost recovery and are reflected in Treasury guidance.

Transparency

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

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

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.

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.

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.

¹⁰ Controller and Auditor-General, *Setting and administering fees and levies for cost recovery: Good practice guide* (August 2021), <https://oag.parliament.nz/2021/fees-and-levies/docs/fees-and-levies.pdf>.

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.

All relevant costs are potentially recoverable, including:

- direct costs associated with services, such as staff time, travel costs, systems and equipment used in delivering the specific service, and
- 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
- 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.

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.

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.

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.

If costs are to be recovered from exacerbators, the appropriate type of charge is a levy on the Airports Activity, or proxy for the Airports Activity, that causes the risk.

Equity

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.

12. Appendix C: Cost scenarios for the preferred options

This appendix contains hypothetical establishment cost scenarios to help airports understand the potential costs that the preferred options would have if they decided to start (or restart) international flights. The preferred options are Options 3A and 3B:

- Option 3A: Establishment costs and site-specific operating costs are recovered from the airport
- Option 3B: Only establishment costs are recovered from the airport.

The real-life costs of establishing traveller processing at an airport will depend on the individual circumstances and staffing requirements. There are a range of factors that influence costs such as location of the airport and flight schedules. For example, decisions on whether to lease or purchase equipment would take into account the circumstances at a particular airport and consider the volume of passengers and risks being managed.

Scenario A: One return international flight per week (new services)

An airport is planning to undertake international services for the first time. It plans for one return Trans-Tasman flight once per week. This airport is located 3 hours' drive away from the nearest established international airport. Border agencies plan to provide services at this airport from existing staff from the nearest international airport.¹¹ This is because there will not be enough hours of work to permanently recruit staff to be based at the new airport. One night's accommodation per week would be required for staff. The return flight will be serviced using an Airbus A320. Seating configurations for the Airbus A320 can range between 150-189 passengers per flight. Assuming a 70% capacity on the aircraft, and with one return flight per week, annual return passenger numbers are expected to be approximately 6,200.

Site-specific annual operating costs

- Travel costs (including vehicle lease, fuel, accommodation, and staff time for travel): \$129,000

One-time establishment costs

- Office equipment and tech: \$22,000
- Recruitment and training of new staff: Not required (existing staff pool)
- Baggage x-ray screening equipment: \$600,000
- Other specialist equip. e.g. passport readers: \$38,000
- Installation of equipment: \$30,000
- Fit-out work for airport layout: \$50,000

¹¹ The annual staff salaries would be funded under the BPLs, according to the preferred options. An operation of this size could except a Senior Customs Officer (0.3 FTE), a Customs Officer (0.6 FTE), a Senior Quarantine Officer (0.3 FTE), and a Quarantine Officer (0.3 FTE).

Total costs recoverable from the airport

- Site-specific annual operating costs: \$129,000 (Option 3A only)
- Total one-time establishment costs: \$740,000 (Options 3A and 3B)

Scenario B: Ten international flights per week (restarting services)

An airport is establishing international services (it did so in the past but has since stopped), with international flights arriving twice daily, five days per week, on trans-Tasman and Pacific Island routes. The airport is located 2 hours' drive from the nearest established international airport. Agencies plan to recruit new staff to provide border services at the airport, with support from the established airport initially for the first year.¹²

As the airport is restarting international services, much of the infrastructure required for border services is already in place. Some items, however, require upgrading due to their age and as they no longer meet all operational requirements. Flights will be serviced using the Airbus A320. Seating capacity can range from 150-189 passengers per flight. Assuming a 70% capacity on the aircraft, and with 10 return flights per week, annual return passengers is 62,000.

Site-specific operating costs

- Travel costs (including vehicle lease, fuel, and staff time for travel): \$226,000

One-time establishment costs

- Office equipment and technology: \$7,000
- Recruitment and training of new staff: \$175,000
- Baggage x-ray screening equipment: \$600,000
- Other specialist equipment e.g. passport readers: \$30,000
- Installation of equipment: \$20,000

Total costs recoverable from the airport

- Site-specific annual operating costs: \$226,000 (Option 3A only)
- Total one-time set up costs: \$832,000 (Options 3A and 3B)

¹² An operation of this size could require a Chief Customs Officer (1 FTE), a Senior Customs Officer (1 FTE), and a Customs Officer (2 FTE), along with a Chief Quarantine Officer (1 FTE), a Senior Quarantine Officer (1 FTE), a Quarantine Officer (2 FTE), and a Detector Dog Handler (1 FTE). All staff salaries would be funded under the BPLs according to the preferred options.