

# **Rodney District Council (PENLINK Toll Road) Empowering Bill**

Local Bill

## **Explanatory note**

### **General policy statement**

#### *Overview*

The Rodney District Council (PENLINK Toll Road) Empowering Bill (the Bill) will enable the Rodney District Council (the Council) to facilitate the financing, design, construction, operation, and maintenance of the road known as the Weiti Toll Road.

The PENLINK project has two components; the Weiti Toll Road, a limited access road of approximately seven kilometres linking Whangaparaoa Road to East Coast Road at Redvale (which includes a bridge spanning the Weiti River), and the associated widening of a 1 kilometre section of Whangaparaoa Road. The Weiti Toll Road will be connected to State Highway 1 via an interchange that is to be constructed by Transit New Zealand at Redvale. The Weiti Toll Road will provide an alternative route and, as part of the Auckland Regional Land Transport Strategy, is vital to managing growth in the Whangaparaoa Peninsula area of Rodney District and the consequential traffic and transport needs.

The Whangaparaoa Peninsula (the Peninsula) has experienced widespread and accelerated growth in recent years. The population of Whangaparaoa is approximately 22 000 and is projected to rise to about 37 500 by the mid-21st century. The growth has led to additional pressures on the existing roading network. Traffic volumes have increased on Whangaparaoa Road at an average rate of 5% per year since 1994. The 2000 figure was nearly 26 000 vehicles per day west of Vipond Road, which exceeds the practical capacity of the existing 2-lane road. As a result of this increase, significant delays

occur along critical sections of the road which no longer provides an acceptable level of service.

Traffic volumes are projected to increase to between 32 000 and 35 000 vehicles per day by 2005 and to between 50 000 and 60 000 by 2020. These traffic projections do not take into account any outcomes from the Regional Growth Strategy. The effect of the Regional Growth Strategy, however, will be to increase traffic movement on the Peninsula and therefore increase the above projections.

The construction of the Weiti Toll Road will provide a second, strategic route to the Peninsula. It will reduce the distance between the Peninsula and Auckland by approximately 5.5 kilometres, and reduce travel time by 6 to 7 minutes for those who elect to use the route and pay the toll. Vehicle operating costs will be reduced by some \$50 000/day for those electing to use the toll road (based on an average operating cost of \$1/km) or \$7.5 - \$10 million in the first year after discounting the toll. This equates to a saving of \$3 - \$4 per one way trip for commuters after having paid their toll. Heavy vehicle operators will save substantially more per trip if they elect to use the toll road.

The provision of the new route supports the Energy Efficiency and Conservation Act 2000. The draft strategy required by the Act, recently published as the "Draft National Energy Efficiency and Conservation Strategy", states in its Transport Programme (p24) that energy savings are achievable by improving the management of traffic plans and improving roading characteristics. One of the Category 1 measures proposed to achieve the objectives is to reinforce the importance of better traffic demand management and roading network changes to achieve greater energy efficiency—particularly on high volume parts of the roading network. PENLINK complies in every aspect with the draft Strategy. There will be a projected annual fuel saving of 2 000 000 litres after the Weiti Toll Road's commissioning and, as a consequence of this, atmospheric pollution will be reduced.

Public transport will also be better served by PENLINK. Buses will have direct access to the Weiti Toll Road from the park and ride facility planned for the Whangaparaoa town centre. North Shore/Auckland commuters will be able to travel on express services via the Weiti Toll Road to Redvale and then on the State

Highway 1 motorway, and the proposed Busway, to their destinations. However, better public transport cannot be provided until additional roading capacity is provided in the transport corridor.

Emergency services will also benefit from the additional route and will be exempt from the payment of tolls.

The Council has extensively explored the various options for managing the increased roading and transport needs of the Whangaparaoa Peninsula. As public transport options alone, such as bus and ferry, cannot resolve the problem, the Council has concluded that the Weiti Toll Road and associated widening of Whangaparaoa Road is absolutely necessary.

Road users will not be forced to use the toll road, as they will be able to choose between using it and the current routes. The existing Whangaparaoa Road route will be the alternative for those with origins or destinations on the Peninsula not wishing to take advantage of the toll road. Stillwater residents who do not wish to pay tolls will be able to continue to use their existing route, Duck Creek Road.

The bulk of the Peninsula's population is in favour of the project. The local community has been extensively consulted and surveyed, and is in support of the need for PENLINK and the funding of the Weiti Toll Road through tolls. A market survey undertaken in 2000 showed that twice as many people supported the project as opposed it.

The Bill will provide the statutory environment whereby the Weiti Toll Road can be developed using a BOOT-type model. A similar BOOT-type project has been successfully completed in Melbourne, the Melbourne City Link.

The BOOT-type model involves an arrangement whereby a private sector entity (the concessionaire) is responsible for the financing, design, construction, maintenance, and operation of the asset for an agreed period (generally about 30 years) in exchange for the right to levy a toll on motor vehicles which use the road. In the PENLINK case, cyclists and pedestrians will not be charged a toll. Fire, police, army, and ambulance services will be statutorily exempt from payment of a toll.

The concept is not new—it is commonly used overseas for the provision of “public” assets, based on the user pay principle. Although the involvement of the private sector in this way is new for roading projects in New Zealand, it has been used to provide other

public assets here, for example, the Hutt City Council Sewerage Plant.

The Bill authorises the Council to enter into a BOOT-type concession agreement to be known as the PENLINK Agreement. While the PENLINK Agreement is in force, the concessionaire will receive the benefit of the tolls in return for financing, designing, constructing, maintaining, and operating the infrastructure, and taking the financial and other risks associated with the project. At the conclusion of an agreed concession period, the assets will be returned to the Council at no cost. The road will be operated toll free after that date.

Without a BOOT-type arrangement, the Weiti Toll Road would not be able to be built. The project would simply not be able to be financed by the Council. To be eligible for a Transfund New Zealand subsidy, ratepayers would have to invest about \$22 million in the Weiti Toll Road. This is an unaffordable proposition for the Council and its ratepayers. In addition to the Council's contribution, Transfund New Zealand would need to invest over \$25 million. As a toll road, only users would fund the road, and no Transfund New Zealand subsidy would need to be paid. Transfund New Zealand would therefore have approximately \$25 million available to invest in other roading assets either regionally or nationally.

A second major benefit of the Council being able to enter into a BOOT-type agreement is that most of the risks associated with the project can be transferred from the Council to the concessionaire.

The allocation of risks will be a matter for negotiation with the preferred tenderer during the preparation of the PENLINK Agreement. The objective will be to minimise the risks to be taken by the Council in relation to material adverse effects, e.g. changes to any legislative regime, force majeure, zoning changes prejudicial to the long term success of the venture, etc. All the principal risks including financial viability, traffic volumes, construction costs, and compliance risks will fall on the concessionaire rather than the Council and its ratepayers.

The terms concerning the revocation, or expiry etc, of the contract and the procedures in the event that the concessionaire experiences financial difficulty, will be negotiated with the preferred tenderer during the tender process. It is usual practice in BOOT-type arrangements for financiers/bankers to step into the shoes of the concessionaire if it gets into difficulty. Accordingly, the financiers will be given

a limited right through the PENLINK Agreement to sell certain rights to another service provider with the approval of the Council. The PENLINK Agreement also allows the Council to step in if the concessionaire's financiers/bankers are not able to do so. However, the Council will not use such step-in rights unless a serious event occurs and then they would be exercised only until other arrangements can be made.

The Council, as part of the negotiated PENLINK Agreement, will require performance guarantees or performance bonds for the various parts of the project including the construction of the road. If the concessionaire gets into difficulty, the financiers will be liable for the cost of the bond and/or its guarantee obligations. The bond will enable the Council to make necessary arrangements for the road including the re-tendering of the construction of the road and/or undertaking the operations and maintenance itself during the intervening period if the concessionaire's financiers/bankers are unable to do so. The level of financial liability or cost will depend on what stage the project has reached. The risk to the Council will be small as the contract will not be entered into unless sufficient performance guarantees and bonds are able to be given. The principal risks will be shared between the concessionaire and its financiers/bankers.

The designation and resource consents in respect of the PENLINK project have been obtained by the Council based on a specimen design. The Council now requires this empowering legislation to allow it to proceed with the project.

On 31 May 2001 the Council resolved to proceed to the first stage of the tender process, the public calling for Expressions of Interest in the project, and to progress the Bill through the parliamentary process.

The provisions in the Bill are permissive rather than prescriptive to allow flexibility. For example, they enable a variety of toll collection systems to be used by the PENLINK Authority. The exact type of system to be used by the toll operator will not be known for some time because the concessionaire will want to take advantage of emerging technologies.

Although the Bill allows for all toll collection methods to be used, electronic toll collection will probably be used by the concessionaire because manual operations are more expensive. This would include transponder-based technology, coin machines and swipe cards.

Transponders activated from overhead gantries would be available for commuters while coin/card operated barriers with appropriately located change machines would cater for casual users. A camera-operated enforcement system would be used with an electronic tolling system.

The Bill specifically requires the PENLINK Authority to provide a payment option for casual users.

The Privacy Commissioner has been consulted about the use of electronic tolling and his main concern was that the anonymity of road users be protected. The use of coin/card operated barriers would achieve the objective. Special privacy provisions have been included in the Bill to protect the anonymity of road users. The purposes for which information can be collected, how it may be used, and when it can be disclosed by the PENLINK Authority have been carefully prescribed in the Bill.

PENLINK is a major and necessary undertaking of the Rodney District Council. The Bill provides the flexibility for the Council to enter into an innovative arrangement. The PENLINK Agreement will enable the Weiti Toll Road to be constructed and therefore provide the additional roading capacity needed to improve access to the Whangaparaoa Peninsula and be a catalyst for the provision of better public transport once the additional capacity has been provided.

Details of the Bill are set out in the following clause by clause analysis.

### Clause by clause analysis

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause. The Bill comes into force on the day after the date on which it receives the Royal assent.

## Part 1

### Preliminary provisions

*Clause 3* comprises the definitions of the terms used in the Bill. The terms that are defined are **ambulance**, **approved vehicle surveillance equipment**, **authorised officer**, **concessionaire**, **concession period**, **Council**, **GST**, **infringement offence**, **land transport document**, **motor vehicle**, **network utility operator**, **PENLINK**,

**PENLINK Agreement, PENLINK Authority, personal information, registered owner, schedule of tolls, toll payment point, and Weiti Toll Road.**

Any reference to a toll or tolls in this Bill means only a toll payable under the Bill for the use of the Weiti Toll Road by a motor vehicle.

*Clause 4* provides that the purpose of the Bill is to facilitate the financing, planning, design, construction, management, maintenance, and operation of the Weiti Toll Road.

## **Part 2**

### **PENLINK Agreement**

*Clause 5* empowers the Council to enter into an agreement with a concessionaire. The agreement may grant a concession so that, in return for undertaking the obligations specified in the agreement, the concessionaire is conferred the status of the PENLINK Authority and holds the right to levy and collect tolls for the period stated in the agreement. The agreement will be known as the PENLINK Agreement.

Subclause (4) requires that the PENLINK Agreement must include—

- (a) a schedule of tolls; and
- (b) an inflation index or inflation indices for the increase of tolls; and
- (c) criteria and procedures for the application, consideration, and determination of any change in the schedule of tolls; and
- (d) a statement of the circumstances in which any or all of the tolls in the schedule of tolls may be changed; and
- (e) a dispute resolution procedure; and
- (f) an agreed concession period.

*Clause 6* requires that the concessionaire must act in accordance with the PENLINK Agreement and this Act. The concessionaire is not to be regarded as acting as the agent or delegate of the Council. Subclause (3) allows for the concessionaire to enter into agreements for the purpose of carrying out its obligations under the PENLINK Agreement.

*Clause 7* requires that the PENLINK Agreement must clearly state the responsibilities of the Council and the concessionaire.

*Clause 8* provides that, if a PENLINK Agreement is entered into, the concessionaire is the PENLINK Authority. If no PENLINK Agreement is in force, the Council is the PENLINK Authority and Parts 3, 4, 5 and 6 apply with all necessary modifications.

*Clause 9* empowers the Council to grant the right to use the subsoil beneath the surface, the surface of, and the airspace above, any land that is necessary for the Weiti Toll Road, whether by lease, licence, or otherwise, to the concessionaire for the purpose of discharging any responsibilities under the PENLINK Agreement or the Act. Any lease or licence is not to be regarded as a subdivision or be subject to sections 40 to 42 of the Public Works Act 1981.

*Clause 10* provides that, if the Council and the concessionaire explicitly agree, as part of the PENLINK Agreement, the fixtures and improvements to the land including the roadway and the bridge will be the property of the concessionaire for the concession period. This allows for the concessionaire to own the fixtures and improvements while the Council owns the land on which the road is built.

Subclause (3) It is expected that the concessionaire will be required by the PENLINK Agreement to transfer the assets back to the Council for nil or minimal consideration at the termination of the concession period. This clause will prevent the concessionaire being taxed at the end of the concession period on a deemed market value.

*Clause 11* ensures that section EG 1A of the Income Tax Act 1994 does not apply to the concessionaire in relation to the fixtures and improvements which are the property of the Council.

### **Part 3**

#### **Council as PENLINK Authority**

*Clause 12* applies in the event that the Council is the PENLINK Authority. Under this clause, the tolls collected and levied by the Council can be applied only to costs incurred in relation to the Weiti Toll Road.

*Clause 13* specifies that the Council may levy and collect tolls only until such time as the Council enters a PENLINK Agreement or until the costs listed in clause 12 are paid.



## **Part 4**

### **Tolls**

*Clause 14* authorises the PENLINK Authority to levy and collect tolls for the use of the Weiti Toll Road by motor vehicles from the day on which the road is first open for public use by a motor vehicle, and in accordance with the Act. Tolls may be levied in respect of 1 or both directions of travel. The right to toll will cease at the end of the tolling period which is the maximum term of the concession period.

Subclause (6) clarifies that the right to toll is the right to use land within the meaning of Schedule 17, clause 4, of the Income Tax Act 1994 for the purposes of that Act.

*Clause 15* provides that, subject to clause 16, the tolls will be payable at the rate or rates specified in the schedule of tolls contained in the PENLINK Agreement. The schedule of tolls may establish fixed and differential tolls for a variety of reasons. If the Council is the PENLINK Authority, the tolls will be payable at the rates specified in the PENLINK Agreement, if there has been one, or as are prescribed by the Council in bylaws.

*Clause 16* allows the PENLINK Authority to amend the rate or rates of tolls in the schedule of tolls in accordance with the agreed inflation index or inflation indices specified in the PENLINK Agreement. The PENLINK Authority may increase tolls using inflation indices only once in every 12 month-period. In addition to the minor increases, the concessionaire can also apply to the Council, in accordance with agreed circumstances, criteria and procedures, for the schedule of tolls to be amended. The PENLINK Authority may decrease the rate or rates of tolls in the schedule of tolls at any time as it sees fit.

*Clause 17* requires that the PENLINK Authority must publish the schedule of tolls and any change to the schedule of tolls, and the method of payment of tolls and any change to the method of payment, at least 28 days before the toll becomes payable or the method of payment commences. The information must be published in a newspaper circulating in the Rodney District and in a newspaper circulating in the Auckland region and must include a date when the tolls or methods are to take effect.

*Clause 18* requires that the toll rates must be clearly displayed at the place where the toll is payable and at all entry points to the Weiti Toll Road.

*Clause 19* allows for the PENLINK Authority to construct toll barriers, toll houses, and other works and systems for the collection of tolls on the Weiti Toll Road and on the connections to the Weiti Toll Road.

*Clause 20* places liability for the payment of a toll incurred by a motor vehicle for the use of the Weiti Toll Road in the first instance on the driver of the vehicle when the driver reaches the toll payment point on the Weiti Toll Road. If the driver fails to pay the toll, the registered owner of the vehicle becomes liable.

In the event that the registered owner of the vehicle was not driving, the registered owner is not liable to pay the toll if, within 28 days after receiving notification, he or she provides a sworn statement or statutory declaration containing the details of the driver or a statement that the motor vehicle was stolen at the relevant time.

*Clause 21* allows for the PENLINK Authority to stipulate the method or methods for toll payment. Subclause (2) requires that a convenient method of paying must be provided for casual users of the Weiti Toll Road.

*Clause 22* requires that the PENLINK Authority provide an anonymous method of payment for tolls. The PENLINK Authority can collect personal information only for the purposes of—

- (a) managing and operating the Weiti Toll Road; or
- (b) road safety on Weiti Toll Road; or
- (c) collecting tolls; or
- (d) enforcement of tolls; or
- (e) enforcement of offences under the Act; or
- (f) the Council managing and planning for the future needs of the Rodney District roading network.

Personal information can be disclosed only for these purposes or on the production of written consent by the individual to whom the information relates or on an appropriate search warrant.

*Clause 23* empowers the PENLINK Authority to refuse a vehicle access to the Weiti Toll Road if tolls are unpaid for that vehicle and to enforce the tolls either through debt collection or the infringement provisions.

*Clause 24* exempts members of the police, members of Her Majesty's armed forces, fire appliances, vehicles used for extinguishing fires, and ambulances from the payment of tolls. Additional exemptions can be added by the Governor-General by Order in Counsel under clause 37.

## **Part 5**

### **Offences and enforcement**

*Clause 25* states that it is an offence to refuse or fail to pay a toll payable by that person, evade payment of a toll, unlawfully resist or obstruct an authorised officer or falsely claim an exemption from a toll. Anyone who commits an offence is liable on summary conviction to a fine not exceeding \$500.

*Clause 26* allows the PENLINK Authority to appoint authorised officers to carry out functions and exercise powers authorised by the Act. It requires authorised officers to be issued with and carry warrants. Impersonation of an authorised officer is an offence and a person who commits this offence is liable on summary conviction to a term of imprisonment of up to 3 months and/or a fine not exceeding \$2,000.

*Clause 27* details the powers conferred under the Act to authorised officers, which relate primarily to road safety issues.

*Clause 28* details the offences in respect of authorised officers. Every person commits an offence and is liable on summary conviction for failure to comply with a direction of an authorised officer, or for giving false information to an authorised officer.

*Clause 29* confirms that an authorised officer of the PENLINK Authority can lay an information, or file an infringement notice, under the relevant provisions of the Summary Proceedings Act 1957.

*Clause 30* allows any officer or employee of the PENLINK Authority to appear and conduct proceedings on behalf of the Authority, whether or not they were the person who laid the information which initiated the proceeding.

*Clause 31* states that an image taken using approved vehicle surveillance equipment and produced in a proceedings for an offence under the Act is, in the absence of proof to the contrary, sufficient evidence of that fact. Approved vehicle surveillance equipment has the same meaning as in the Land Transport Act 1998 and means vehicle

surveillance equipment of a kind approved by the Minister of Police, by notice in the *Gazette*.

*Clause 32* provides the PENLINK Authority with the option of either proceeding summarily or issuing an infringement notice to an alleged offender.

*Clause 33* sets out the procedure for the issuing of an infringement notice, what form the infringement notice must take, and what information it must contain. It also allows for court proceedings, in relation to the infringement notice, to be commenced in accordance with section 21 of the Summary Proceedings Act 1957.

*Clause 34* requires that infringement fees are to be paid to the PENLINK Authority, and that 10% of all infringement fees received by the PENLINK Authority are to be paid to the Crown.

*Clause 35* provides that proceedings for the offence of failing or refusing to pay a toll, or evading payment of a toll, may be taken against either the driver of the motor vehicle or the registered owner of the motor vehicle. It is a defence if another person has already been fined for the same offence under the Summary Proceedings Act 1957. It is also a defence for a registered owner if he or she has provided a sworn statement in writing or a statutory declaration which either identifies the driver, or provides information which may lead to the driver's identification at the time when the offence occurred, or states that the car was stolen at the relevant time. In proceedings for an offence against section 25(a) or section 25(b), a sworn statement in writing or a statutory declaration is, in absence of proof to the contrary, sufficient evidence of matters stated in the statement or declaration for the purposes of proceedings under this section.

*Clause 36* provides that the PENLINK Authority is entitled to any fines arising from an offence under the Act. Under section 73 of the Public Finance Act 1989, 10% of the fine is deducted and credited to the Crown Bank Account and the remainder is paid to the PENLINK Authority. If any money is awarded by the court for loss or damage, as opposed to breach of clause 25, that money is recovered as a fine and there is no deduction made to that fine.

*Clause 37* authorises the Governor-General to make regulations to exempt persons or vehicles, or classes of persons or vehicles, from tolls, to prescribe infringement notices and other documents under the Act and to provide for other matters as are contemplated or

necessary to give full effect to this Act and for its due administration.

## Part 6

### Miscellaneous provisions

*Clause 38* clarifies the definition of the Weiti Toll Road as a road. Once the Weiti Toll Road is constructed, it falls within the definitions of road as defined in section 315 of the Local Government Act 1974 and section 2(1) of the Land Transport Act 1998 for the purposes of this Act, the Local Government Act 1974 and the Transit New Zealand Act 1989.

*Clause 39* declares that the PENLINK Authority is a road-controlling authority and a controlling authority for the purpose of the Land Transport Act 1998, the Transport Act 1969 and the Traffic Regulations 1976.

*Clause 40* specifies that, in the event that a declaration is made under section 60 of the Transit New Zealand Act 1989, or a regulatory body other than the Council becomes the owner of PENLINK, any PENLINK Agreement prevails until the expiry of that agreement.

*Clause 41* clarifies that, except for clause 9(4) which relates to subdivisions, nothing in the Act affects the application of the Resource Management Act 1991 or the Building Act 1991 to any work conducted in relation to the Weiti Toll Road.

*Clause 42* provides that neither the Weiti Toll Road nor any interest in land is to be treated as rateable land for the purposes of the Rating Powers Act 1988.

*Clause 43* declares that, except for the PENLINK Authority, no Crown entity, local authority, network utility operator or other person may place any wire, cable, pipe, tower, pole, or other structure, or thing on, over or under the Weiti Toll Road without prior written consent of the Council. In granting consent, the Council may impose any conditions that it sees fit.

*Clause 44* contains a consequential amendment to the Summary Proceedings Act 1957. The Rodney District Council (PENLINK Toll Road) Empowering Act 2001 is added to the Summary Proceedings Act definition of infringement notice.

*Schedule 1* contains a plan of the PENLINK project showing the Weiti Toll Road, the associated Whangaparaoa widening from

Brightside Road to Arklow Lane, Whangaparaoa Road and other landmarks.

*Schedule 2* defines the land on which the Weiti Toll Road will be constructed by specifying the legal descriptions of the land.

---

*Hon Dr Lockwood Smith*

# Rodney District Council (PENLINK Toll Road) Empowering Bill

Local Bill

## Contents

1	Title	22	Protection of privacy
2	Commencement	23	Powers in respect of non-payment
	<b>Part 1</b>	24	Exemption from payment of tolls
	<b>Preliminary provisions</b>		
3	Interpretation		<b>Part 5</b>
4	Purpose		<b>Offences and enforcement</b>
	<b>Part 2</b>		<i>Offences</i>
	<b>PENLINK Agreement</b>	25	Offences
	<i>PENLINK Agreement</i>		<i>Authorised officers</i>
5	PENLINK Agreement	26	Appointment of authorised officers
6	Exercise of functions and provision of services by concessionaire	27	Powers of authorised officers
7	Respective responsibilities	28	Offences in respect of authorised officers
8	PENLINK Authority		<i>Enforcement</i>
	<i>Right to use land</i>	29	Power to lay information
9	Power to grant right to use land for Weiti Toll Road activities	30	Power to conduct proceedings
	<i>Ownership</i>	31	Evidence of approved vehicle surveillance equipment
10	Ownership by concessionaire	32	Infringement offences
11	Ownership of fixtures and improvements	33	Infringement notices
	<b>Part 3</b>	34	Payment of infringement fees
	<b>Council as PENLINK Authority</b>	35	Owner liability for non-payment or evasion of toll
12	Application of tolls	36	Entitlement to fines
13	Levying and collection of tolls by Council	37	Regulations
	<b>Part 4</b>		<b>Part 6</b>
	<b>Tolls</b>		<b>Miscellaneous provisions</b>
14	Levying and collection of tolls	38	Weiti Toll Road to be road for certain purposes
15	Rates of tolls	39	PENLINK Authority to be road controlling authority and controlling authority
16	Amendments to schedule of tolls	40	Agreement to prevail
17	Publication of tolls and method of payment of tolls	41	Act not to affect Resource Management Act 1991 or Building Act 1991
18	Display of rates of tolls	42	Weiti Toll Road not to be treated as rateable land under Rating Powers Act 1988
19	Facilities for collection of tolls		
20	Liability to pay toll		
21	Payment of toll		

43 Restrictions on poles, wires, cables, etc on Weiti Toll Road  
44 Amendment to Summary Proceedings Act 1957

Schedule 1  
PENLINK Project  
Schedule 2  
Land on which Weiti Toll Road is to be constructed

**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Rodney District Council (PENLINK Toll Road) Empowering Act **2001**.

**2 Commencement**

This Act comes into force on the day after the date on which it receives the Royal Assent. 5

**Part 1  
Preliminary provisions**

**3 Interpretation**

(1) In this Act, unless the context otherwise requires,— 10  
**ambulance** has the same meaning as in section 2(1) of the Land Transport Act 1998

**approved vehicle surveillance equipment** has the same meaning as in section 2(1) of the Land Transport Act 1998

**authorised officer** means a person appointed by the PENLINK Authority to collect and enforce tolls and to carry out all or any of the functions and powers of an authorised officer under this Act 15

**concessionaire** means a person who has a PENLINK Agreement with the Council 20

**concession period** means the period specified in a PENLINK Agreement as the defined period during which the concessionaire, in return for undertaking the obligations imposed on the concessionaire by the PENLINK Agreement, has the right to levy and collect tolls 25

**Council** means the Rodney District Council

**GST** means the goods and services tax payable under section 8(1) of the Goods and Services Tax Act 1985



**infringement offence** means an offence against **section 25(a) or section 25(b)**

**land transport document** has the same meaning as in section 2(1) of the Land Transport Act 1998

**motor vehicle** has the same meaning as in section 2(1) of the Land Transport Act 1998 5

**network utility operator** has the meaning set out in section 166 of the Resource Management Act 1991

**PENLINK** means the Rodney District Council project that—

(a) is made up of the Weiti Toll Road and the associated widening of a 1 km section of Whangaparaoa Road between Brightside Road and Arklow Lane; and 10

(b) is shown on the plan in **Schedule 1**

**PENLINK Agreement** means an agreement under **section 5(2)**

**PENLINK Authority** means, subject to **section 8**,— 15

(a) the Council; or

(b) the concessionaire

**personal information** has the same meaning as in section 2 of the Privacy Act 1993

**registered owner** means, in relation to a motor vehicle, the person registered under the Transport (Vehicle and Driver Registration and Licensing) Act 1986 as the owner of that motor vehicle 20

**schedule of tolls** means the schedule of tolls referred to in **section 5** 25

**toll payment point** means the location or locations on the Weiti Toll Road where the PENLINK Authority requires that tolls be paid

**Weiti Toll Road** has the meaning given to it by **section 4(2)**.

(2) In this Act, unless the context otherwise requires, a reference to a toll means a toll payable under this Act for the use of the Weiti Toll Road by a motor vehicle. 30

#### **4 Purpose**

(1) The purpose of this Act is to facilitate the financing, planning, design, construction, management, maintenance, and operation of the Weiti Toll Road. 35

- (2) **Weiti Toll Road** means the road and bridge link (approximately 7 kilometres in length) between Whangaparaoa Road and East Coast Road to be constructed on the land described in **Schedule 2**; and includes all necessary links, buildings, erections, structures, and other works. 5

## Part 2 PENLINK Agreement

### *PENLINK Agreement*

#### 5 **PENLINK Agreement**

- (1) In this section, **person** means a company, partnership, firm, joint venture, association, trust, organisation, regulatory body or authority or entity, in each case, whether or not having a separate legal personality. 10
- (2) The Council may enter into a written agreement with any person under which that person is granted a concession so that, in return for undertaking the obligations with regard to the design, construction, maintenance, or operation of the Weiti Toll Road that are imposed on that person by the agreement, that person enjoys the right to levy and collect tolls for the period stated in the PENLINK Agreement. 15 20
- (3) An agreement entered into under **subsection (2)** is to be called a **PENLINK Agreement**.
- (4) **Subsection (2)** has effect despite anything in the Local Government Act 1974.
- (5) Subject to **section 15**, a PENLINK Agreement must include— 25
- (a) a schedule of tolls that details the rate or rates of tolls to be levied for the use of the Weiti Toll Road by motor vehicles; and
  - (b) an inflation index or inflation indices to be applied by the PENLINK Authority for the increase of the rate or rates of tolls specified in the schedule of tolls; and 30
  - (c) the criteria and procedures that apply in relation to any change in the schedule of tolls; and
  - (d) a statement of the circumstances in which any or all of the rates of tolls specified in the schedule of tolls may be changed; and 35
  - (d) a dispute resolution procedure; and
  - (e) the agreed concession period.

- 6 Exercise of functions and provision of services by concessionaire**
- (1) The concessionaire must, both in exercising functions under the PENLINK Agreement and in providing services under the PENLINK Agreement, act in accordance with the PENLINK Agreement and this Act. 5
- (2) The concessionaire, in exercising any function under the PENLINK Agreement or in providing any service under the PENLINK Agreement, is not to be regarded for any purpose as acting as the agent or delegate of the Council. 10
- (3) The concessionaire may enter into and carry into effect agreements with any person for any purpose connected with the concessionaire's obligations under the PENLINK Agreement (including obligations in relation to the performance of functions or the provision of services). 15
- 7 Respective responsibilities**
- A PENLINK Agreement must clearly state the responsibilities of both—
- (a) the Council; and
- (b) the concessionaire (including, in particular, any responsibilities being responsibilities of the Council or the PENLINK Authority under any enactment that become, by virtue of that agreement, responsibilities that are to be discharged by the concessionaire). 20
- 8 PENLINK Authority** 25
- (1) In relation to any period during which a PENLINK Agreement is in force, the concessionaire under that PENLINK Agreement, and not the Council, is the PENLINK Authority.
- (2) In relation to any period during which a PENLINK Agreement is not in force, the Council is the PENLINK Authority and **Parts 3, 4, 5, and 6** apply with necessary modifications. 30

*Right to use land*

- 9 Power to grant right to use land for Weiti Toll Road activities**
- (1) The Council may, for the purpose of enabling a concessionaire to discharge any responsibilities under a PENLINK Agreement or this Act, grant to the concessionaire, by the 35

PENLINK Agreement or by a lease, licence, deed, or other agreement, the right to use land in the discharge of those responsibilities.

- (2) The powers conferred on the Council by **subsection (1)** include the power to grant to the concessionaire the right to carry out activities— 5
  - (a) affecting the subsoil or any part of the subsoil beneath the surface of the land to be used for the Weiti Toll Road; or
  - (b) affecting the airspace or any part of the airspace above the surface of the land to be used for the Weiti Toll Road; or 10
  - (c) affecting the surface or any part of the surface of the land to be used for the Weiti Toll Road.
- (3) A grant under **subsection (1)** may be for the whole or any part of any period or periods within the concession period and on any terms or conditions as the Council thinks fit. 15
- (4) The powers conferred on the Council by **subsection (1)** are in addition to its powers under other enactments (including its powers under section 341 of the Local Government Act 1974). 20
- (5) The grant of a lease, licence, or other right to use land under this section—
  - (a) is not a subdivision of land for the purposes of section 218 of the Resource Management Act 1991; and 25
  - (b) is not subject to sections 40 to 42 of the Public Works Act 1981.

*Ownership*

- 10 Ownership by concessionaire**
- (1) In this section, **land** means the land specified in **Schedule 2**. 30
- (2) Despite any other enactment or rule of law, the PENLINK Agreement may include a provision stating that, for any period (being the whole or part of the concession period) during which the right to use and occupy the whole or part of the land is granted to the concessionaire by the Council, the concessionaire is to own the fixtures on, and the improvements to, the land to which the lease, licence, deed, or other agreement relates, including the roadway and the bridge. 35

- (3) Every provision of the kind described in **subsection (1)** is to have effect according to its tenor.
- (4) For the purposes of section EG 19 of the Income Tax Act 1994, the market value of any fixtures on, or improvements to, the land to which any lease granted under **section 9** relates (being fixtures or improvements owned by the concessionaire in accordance with this section) is, on the transfer by the concessionaire to the Council at the end of the term of the lease, equal to the amount, if any, paid by the Council to the concessionaire in respect of the transfer of those fixtures or improvements.

**11 Ownership of fixtures and improvements**

For the avoidance of doubt, it is declared that, if the Council owns any or all of the fixtures on, or improvements to, any land leased by the Council to the concessionaire for the whole or part of the concession period, section EG 1A of the Income Tax Act 1994 does not, for the term of the lease, apply to the concessionaire in relation to any such fixtures or improvements (including the roadway and the bridge).

**Part 3**

**Council as PENLINK Authority**

**12 Application of tolls**

In the event that the Council is the PENLINK Authority under **section 8**, the Council may use the tolls levied and collected under this Act only for the purposes of paying costs, charges, and expenses incurred by the Council—

- (a) in constructing, operating, and maintaining the Weiti Toll Road; and
- (b) in constructing, operating, and maintaining toll facilities that are located on the Weiti Toll Road and relate to the levying and collection of the tolls; and
- (c) from the purchase of the land described in **Schedule 2**.

**13 Levying and collection of tolls by Council**

In the event that the Council is the PENLINK Authority under **section 8**, the Council may levy and collect tolls only until such time as—

- (a) the Council enters into a PENLINK Agreement; or

- (b) the costs, charges, and expenses incurred in a manner listed in **section 12** are paid.

## Part 4 Tolls

- 14 Levying and collection of tolls** 5
- (1) Subject to **Part 3**, the PENLINK Authority may, in accordance with this Act, levy and collect tolls for the use of the Weiti Toll Road by motor vehicles.
- (2) The concessionaire must, in levying and collecting tolls for the use of the Weiti Toll Road by motor vehicles, observe not only the provisions of this Act but also the provisions of the PENLINK Agreement. 10
- (3) Tolls may be levied and collected in respect of 1 or both directions of travel.
- (4) The power to levy tolls commences on the day on which the Weiti Toll Road is first opened for public use by motor vehicles. 15
- (5) Subject to **section 13**, the power to levy and collect tolls will cease at the end of the tolling period.
- (6) For the purposes of **subsection (4)**, the **tolling period** means the maximum possible term of the concession period as agreed in the first PENLINK Agreement that is entered into under **section 5(2)**, taking into account all contingencies and provisos. 20
- (7) For the avoidance of doubt, it is declared that, for the purposes of the Income Tax Act 1994, the right under **subsection (1)** to levy and collect tolls is, within the meaning of clause 4 of Schedule 17 of that Act, a right to use land. 25
- 15 Rates of tolls**
- (1) The tolls payable under this Act are (subject to **section 16**) payable at the rate or rates as may be specified in the schedule of tolls, if any, and published under **section 17**. 30
- (2) The rate or rates published under **section 17** must include the amount (if any) payable by way of GST.
- (3) In the event that the Council is the PENLINK Authority, tolls payable under this Act are payable at the rate or rates published under **section 17** and— 35

- (a) as may be specified in the schedule of tolls plus GST, if any; or
  - (b) as are prescribed by bylaws made by the Council under this Act.
- (4) Different provisions may be made in the schedule of tolls or in any bylaw prescribed under **subsection (3)** for—
- (a) different classes of motor vehicle; or
  - (b) particular motor vehicles; or
  - (c) different times of the day or for different days or for different days of the year; or
  - (d) any other differential basis.
- 16 Amendments to schedule of tolls**
- (1) Subject to **subsection (2)**, the PENLINK Authority may, in accordance with this Act, amend or replace the schedule of tolls.
- (2) The PENLINK Authority may, in accordance with the agreed inflation index or inflation indices contained in the PENLINK Agreement, increase the rate or rates of tolls in the schedule of tolls once in every period of 12 months.
- (3) The concessionaire may apply to the Council, in accordance with the agreed circumstances, criteria and procedures contained in the PENLINK Agreement for an amendment to, or replacement of, the schedule of tolls, including an increase in any or all of the rates of tolls specified in the schedule of tolls.
- (4) To avoid any doubt, it is declared that the PENLINK Authority may, at any time, decrease, to such an extent as it thinks fit, any or all of the rates or rates of tolls specified in the schedule of tolls.
- 17 Publication of tolls and method of payment of tolls**
- (1) The PENLINK Authority must publish—
- (a) the schedule of tolls and, after each amendment to the schedule of tolls, the schedule of tolls (as amended); and
  - (b) the total amount payable (inclusive of GST, if any) in respect of each toll;
  - (c) any increase or decrease in the rate or rates of the tolls; and, in the case of any increase in any rate or rates, the

- inflation index or inflation indices that have been applied; and
  - (d) any amendment to the schedule of tolls; and
  - (e) an explanation of the method or methods by which tolls must be paid; and 5
  - (f) an explanation of any change in the method or methods by which tolls must be paid.
- (2) Publication under this section must take place at least 28 days before the date on which the schedule of tolls or the schedule of tolls (as amended) or the amendment to the schedule of tolls or the replacement of the schedule of tolls or the change in the method of methods of toll payment takes effect. 10
- (3) The PENLINK Authority must publish all information required under **subsection (1)** in at least 2 newspapers including— 15
- (a) a newspaper circulating in the Rodney District; and
  - (b) a newspaper circulating in the Auckland region.
- (4) The information published under **subsection (1)** must, as the case may require, state the date on which the schedule of tolls or the schedule of tolls (as amended) or the amendment to the schedule of tolls or the schedule of tolls (as replaced) or the change in the method or methods of toll payment takes effect. 20
- 18 Display of rates of tolls**
- (1) The PENLINK Authority must, in accordance with this section, display the rates of tolls for the time being in force under this Act. 25
- (2) Those rates must be clearly displayed in a conspicuous place—
- (a) at or near each toll payment point on the Weiti Toll Road; and 30
  - (b) at each entry point to the Weiti Toll Road.
- 19 Facilities for collection of tolls**
- For the purpose of collecting tolls or enforcing the payment of tolls or both, the PENLINK Authority may, as it considers necessary,— 35
- (a) construct on the Weiti Toll Road toll barriers, toll houses, and other works; and



- (b) install on the Weiti Toll Road equipment, cameras, and toll collection systems.

**20 Liability to pay toll**

- (1) Subject to **subsections (2) and (3)**, the person who is in charge or control of any motor vehicle when the motor vehicle reaches the toll payment point is liable for the payment of the toll to the PENLINK Authority. 5
- (2) If a person who is liable to pay a toll under **subsection (1)** fails to pay the toll, the registered owner of the motor vehicle in respect of which the toll is payable is liable for the payment of the toll to the PENLINK Authority. 10
- (3) The registered owner of a motor vehicle is not liable under **subsection (2)** to pay a toll if, within 28 days after being notified of the non-payment of the toll, the registered owner supplies to the PENLINK Authority, in a sworn statement in writing or a statutory declaration,— 15
  - (a) the name and address of the driver of the motor vehicle or such other particulars within the knowledge of the registered owner as may lead to the identification of the person who was in charge or control of the motor vehicle at the relevant time; or 20
  - (b) a statement that the motor vehicle was a stolen vehicle at the relevant time.

**21 Payment of toll**

- (1) A toll must be paid by the method or methods required by the PENLINK Authority at the time the toll is due for payment. 25
- (2) The PENLINK Authority must provide casual road users with a convenient method of paying for their use of the Weiti Toll Road.
- (3) This section is subject to **section 22**. 30

**22 Protection of privacy**

- (1) The PENLINK Authority must offer users of the Weiti Toll Road an anonymous method of paying tolls.
- (2) Personal information collected under this Act by the PENLINK Authority and its agents may be collected and used only in accordance with the PENLINK Agreement and for the purposes of— 35

- (a) managing and operating the Weiti Toll Road; or
  - (b) road safety on the Weiti Toll Road; or
  - (c) collecting tolls for the use of the Weiti Toll Road; or
  - (d) enforcement of tolls for the use of the Weiti Toll Road; or 5
  - (e) proceedings in relation to offences against this Act; or
  - (f) management and planning by the Council of the future needs of the Rodney District roading network.
- (3) Except as provided in **subsection (2)**, personal information collected under this Act or by the PENLINK Authority may be disclosed only on production of— 10
- (a) written consent by the individual to whom the information relates; or
  - (b) an appropriate search warrant issued by any District Court Judge or Justice of the Peace or Community Magistrate or any Registrar (not being a constable); or 15
  - (c) an order for discovery issued by a High Court Judge, Master of the High Court, or District Court Judge.
- 23 Powers in respect of non-payment**
- If a toll remains unpaid after it has become due for payment, the PENLINK Authority may— 20
- (a) refuse to allow the motor vehicle in respect of which the toll is payable to proceed along the Weiti Toll Road; or
  - (b) either— 25
    - (i) recover as a debt from the person liable to pay the toll under **section 20** the amount of the toll together with all expenses involved in the collection of the toll; or
    - (ii) proceed against the person under the infringement provisions in **Part 5**. 30
- 24 Exemption from payment of tolls**
- (1) No toll is payable under this Act for any motor vehicle engaged in carrying—
- (a) a member of the police in the course of his or her duty;
  - (b) a member of any armed forces of Her Majesty when on duty or going to or returning from duty in the uniform of that member's corps: 35
  - (c) a person, or a member of a class of persons, exempted by regulations made under **section 37**.

- (2) No toll under this Act is payable in respect of the following motor vehicles:
- (a) fire appliances and vehicles used for extinguishing fires:
  - (b) ambulances:
  - (c) any motor vehicle or class of motor vehicles exempted by regulations made under **section 37**. 5

## **Part 5** **Offences and enforcement**

### *Offences*

- 25 Offences** 10
- A person commits an offence and is liable on summary conviction to a fine not exceeding \$500 who,—
- (a) without lawful excuse, refuses or fails to pay a toll payable by that person; or
  - (b) evades the payment of any toll payable by that person; 15  
or
  - (c) unlawfully resists or obstructs any authorised officer in the execution of his or her duty; or
  - (d) falsely claims exemption from any toll.

### *Authorised officers* 20

- 26 Appointment of authorised officers**
- (1) The PENLINK Authority may appoint any person as an authorised officer to carry out all or any of the functions and powers of an authorised officer under this Act.
  - (2) The PENLINK Authority must supply to each authorised officer a warrant of appointment containing— 25
    - (a) a reference to this section; and
    - (b) the name of the authorised officer; and
    - (c) a statement that the person to whom the warrant is supplied is an authorised officer under this Act; and 30
    - (d) a statement of the functions and powers that the authorised officer is authorised to exercise and carry out under this Act.
  - (3) Every authorised officer who exercises or purports to exercise any power conferred on the officer by or under this Act must have with him or her, and must produce if required to do so, his or her warrant and evidence of his or her identity. 35

- (4) Every authorised officer who holds a warrant issued under this section must, on the termination of his or her appointment or employment as such, surrender the warrant to the PENLINK Authority.
- (5) An authorised officer may exercise the functions and duties conferred or imposed on him or her by or under this Act only in respect of the Weiti Toll Road. 5
- (6) The PENLINK Authority, if it appoints any person under this section, is liable for the actions of that person as an authorised officer in all respects as if— 10
  - (a) that person were an officer or employee of the PENLINK Authority (whether or not that is the case); and
  - (b) any directions given or control exercised by any other person over the authorised officer in that capacity were directions given or control exercised by the PENLINK Authority. 15
- (7) Every person commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$2,000 or to both, who— 20
  - (a) personates the person named in a warrant supplied under **subsection (2)**; or
  - (b) falsely pretends to be an authorised officer.

**27 Powers of authorised officers**

- (1) Any authorised officer in possession of any warrant of appointment supplied under **section 26** may— 25
  - (a) direct any person on the Weiti Toll Road, and any person in charge of or in any vehicle on the Weiti Toll Road, to provide the person's name and address and give any other particulars required as to the person's identity, and give such information as is within the person's knowledge and as may lead to the identification of the driver or person in charge of any vehicle: 30
  - (b) if the authorised officer believes on reasonable grounds that a vehicle on the Weiti Toll Road causes an obstruction on the Weiti Toll Road, or that the removal of the vehicle is desirable in the interests of road safety or for the convenience or in the interests of the public, the authorised officer may— 35

- (i) enter, or authorise another person to enter, the vehicle for the purpose of moving it or preparing it for movement; and
  - (ii) move, or authorise another person to move, the vehicle to any place where it does not constitute a traffic hazard: 5
- (c) direct a person using a vehicle or riding or driving an animal on the Weiti Toll Road to stop the vehicle or animal, as the case may be, or to cause it to proceed or keep it to a particular line of traffic or direction: 10
- (d) direct a pedestrian not to proceed across the Weiti Toll Road where the authorised officer believes on reasonable grounds that the crossing of the Weiti Toll Road would create a hazard:
- (e) direct a pedestrian to remove himself or herself from the Weiti Toll Road or any specified part of the Weiti Toll Road if the authorised officer has reasonable grounds to believe that the removal of that person is desirable in the interests of road safety or for the convenience or in the interests of the public: 15
- (f) direct the driver or person in charge of any vehicle or animal on the Weiti Toll Road to remove the vehicle or animal from the Weiti Toll Road or any specified part of the Weiti Toll Road if the authorised officer believes on reasonable grounds that the vehicle or animal causes an obstruction on the Weiti Toll Road, or that its removal is desirable in the interests of road safety or for the convenience or in the interests of the public: 20
- (g) direct any person operating a heavy motor vehicle or combination of vehicles on the Weiti Toll Road to remove the heavy motor vehicle or combination of vehicles from the Weiti Toll Road if the authorised officer has reasonable grounds to believe that the person is operating the heavy motor vehicle or combination of vehicles in breach of— 25
- (i) the applicable gross weight limits that are prescribed under the Land Transport Act 1998 in respect of motor vehicles; or
  - (ii) the applicable maximum weight limits that are prescribed under the Land Transport Act 1998 for axles or groups of axles of motor vehicles. 35
- 40

- (2) Every person to whom any direction is given under the authority of this section must comply with that direction, and no person may do any act that is for the time being forbidden by any such direction.
- (3) Any person who is authorised by an authorised officer— 5
  - (a) to enter a vehicle for the purpose of moving it or preparing it for movement; or
  - (b) to move a vehicle or animal to a place where it does not constitute a traffic hazard— 10may do so, but must do everything reasonably necessary to ensure that the vehicle is not damaged.
- (4) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who—
  - (a) has possession of a vehicle as a result of its being moved under this section; and 15
  - (b) when requested at any reasonable time to do so by a person who produces satisfactory evidence to the effect that the person was lawfully entitled to possession of the vehicle immediately before it was moved, fails to deliver possession of the vehicle to that person without delay. 20

**28 Offences in respect of authorised officers**

- Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who—
- (a) fails to comply with any direction that an authorised officer gives under the provisions of this Act; or 25
  - (b) gives, in response to a direction of the kind referred to in **paragraph (a)**, any information that the person knows to be false.

*Enforcement* 30

**29 Power to lay information**

- To avoid any doubt, it is declared that an authorised officer (or a person acting in the course of his or her official duties as an officer or employee of the PENLINK Authority) may,—
- (a) under section 13 of the Summary Proceedings Act 1957, lay an information for an offence against this Act; and 35

- (b) under section 20A(2) of the Summary Proceedings Act 1957, file a notice in respect of any offence against this Act that is a minor offence within the meaning of section 20A(12) of that Act.

- 30 Power to conduct proceedings** 5
- If an authorised officer (or a person acting in the course of his or her official duties as an officer or employee of the PENLINK Authority) has laid an information for an offence against this Act, any officer or employee of the PENLINK Authority may appear and conduct the proceedings on the informant's behalf. 10
- 31 Evidence of approved vehicle surveillance equipment**
- (1) In proceedings for an offence against this Act, an image produced by means of an exposure taken by approved vehicle surveillance equipment and showing or recording a motor vehicle on a road, the location of the motor vehicle or the colour or form of a traffic control device and the date and time when the image was taken, or showing or recording any of those things is, in the absence of proof to the contrary, sufficient evidence of that fact or event. 15 20
- (2) The production in proceedings for an offence against this Act of an image purporting to be an image referred to in **subsection (1)** is, in the absence of proof to the contrary, sufficient evidence that the image was produced by means of an exposure taken by approved vehicle surveillance equipment. 25
- Compare: 1998 No 110 s 145
- 32 Infringement offences**
- If a person is alleged to have committed an infringement offence, that person may either—
- (a) be proceeded against summarily for the offence; or 30
- (b) be served with an infringement notice as provided in **section 33**.

**33 Infringement notices**

- (1) If an authorised officer has reasonable cause to believe that a person has committed an infringement offence, an infringement notice may be issued to that person by the authorised officer. 5
- (2) An infringement notice may be served—
  - (a) by attaching it, or a copy of it, to the vehicle to which the notice relates; or
  - (b) by delivering it, or a copy of it, personally to the person who appears to have committed the infringement offence; or 10
  - (c) by sending it, or a copy of it, by post, addressed to the person who appears to have committed the infringement offence at that person’s last known place of residence or business or postal address; or 15
  - (d) if the person who appears to have committed the infringement offence is a holder of a land transport document, by serving the notice, or a copy of it, by post on that person at his or her last address for service provided for the purposes of that document. 20
- (3) For the purposes of the Summary Proceedings Act 1957,—
  - (a) an infringement notice attached to a vehicle under **subsection (2)(a)** is to be treated as having been served when it is attached to the vehicle:
  - (b) an infringement notice sent to a person by post under **subsection (2)(c) or subsection (2)(d)** is to be treated as having been served on the person when it would have been delivered in the ordinary course of post. 25
- (4) An infringement notice must be in the prescribed form and must contain the following particulars: 30
  - (a) sufficient details of the alleged infringement offence to fairly inform a person of the time, place, and nature of the alleged offence; and
  - (b) the amount of the infringement fee, which amount is \$50; and 35
  - (c) the address or addresses at which the infringement fee may be paid; and
  - (d) the time within which the infringement fee must be paid; and
  - (e) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957; and 40



- (f) a statement of the right of the person served with the notice to request a hearing; and
  - (g) a statement of the consequences if the person served with the notice does not pay the fee and does not request a hearing; and 5
  - (h) such other particulars as are prescribed.
- (5) If an infringement notice has been issued under this section, proceedings in respect of the offence to which the notice relates may be commenced in accordance with section 21 of the Summary Proceedings Act 1957, and in that case the provisions of that section apply with the necessary modifications. 10

**34 Payment of infringement fees**

- (1) All infringement fees are payable to the PENLINK Authority.
- (2) The PENLINK Authority must pay into the Crown Bank Account a sum equal to 10% of all infringement fees received by it under this Act. 15

**35 Owner liability for non-payment or evasion of toll**

- (1) Proceedings for an offence against **section 25(a) or section 25(b)** may be taken against any 1 or more of the following persons: 20
  - (a) the person who was in charge or control of the motor vehicle at the time of the alleged offence:
  - (b) a person who, at the time of the alleged offence, was the registered owner, or one of the registered owners, of the motor vehicle involved in the offence. 25
- (2) It is a defence to proceedings against a person for an offence against **section 25(a) or section 25(b)** if another person has, by virtue of an order under the Summary Proceedings Act 1957, become liable to pay a fine or costs, or both, in respect of the offence. 30
- (3) It is a defence to proceedings against the registered owner under **subsection (1)(b)** if,—
  - (a) at the time the alleged offence was committed,—
    - (i) the driver was not lawfully entitled to possession of the motor vehicle (either jointly with any other person or severally); or 35
    - (ii) a person other than the registered owner was driving the motor vehicle; and

- (b) immediately after becoming aware of the alleged offence, the registered owner advised the PENLINK Authority in writing that, at the time the offence was committed, the driver was not lawfully entitled to possession of the motor vehicle or another person was driving the motor vehicle (as the case may be); and 5
- (c) the registered owner has given the PENLINK Authority in a sworn statement in writing or a statutory declaration—
  - (i) the name and address of the driver or such other particulars within the knowledge of the registered owner as may lead to the identification of the person who was in charge or control of the motor vehicle at the relevant time; or 10
  - (ii) a statement that the motor vehicle was a stolen vehicle at the relevant time. 15
- (4) In proceedings for an offence against **section 25(a) or section 25(b)** a sworn statement in writing or a statutory declaration given under **subsection (3)** is, in the absence of proof to the contrary, sufficient evidence of the matters stated in the sworn statement or statutory declaration; and it is admissible for all purposes of any proceedings under this section. 20

**36 Entitlement to fines**

- (1) Subject to **subsection (2)**, where an authorised officer prosecutes a person for an offence against this Act and the prosecution results in the imposition of a fine, the amount of the fine recovered must be paid to the PENLINK Authority. 25
- (2) There must be deducted from every amount payable to the PENLINK Authority under **subsection (1)** a sum equal to 10% of it, and that sum must be credited to the Crown Bank Account. 30
- (3) Despite anything in **subsection (2)**, where any money awarded by a court in respect of any loss or damage is recovered as a fine, no deduction under that subsection may be made in respect of that money. 35

- 37 Regulations**
- (1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:
- (a) exempting persons or motor vehicles or classes of persons or motor vehicles from payment of tolls levied under this Act: 5
  - (b) prescribing the forms of infringement notices and other documents required under this Act:
  - (c) providing for such other matters as are contemplated by or necessary for giving full effect to this Act and for its due administration. 10
- (2) Regulations under **subsection (1)(a)** may be made only with the concurrence of the PENLINK Authority.

**Part 6** 15

**Miscellaneous provisions**

- 38 Weiti Toll Road to be road for certain purposes**
- (1) To avoid any doubt, it is declared that, despite anything to the contrary in the Local Government Act 1974, when the construction of the Weiti Toll Road is completed, the Weiti Toll Road is a road (as defined in section 315 of the Local Government Act 1974) for the purposes of— 20
- (a) this Act; and
  - (b) the Local Government Act 1974; and
  - (c) the Transit New Zealand Act 1989. 25
- (2) **Subsection (1)** is subject to **section 39**.
- 39 PENLINK Authority to be road controlling authority and controlling authority**
- To avoid any doubt, it is declared that for the purposes of the Land Transport Act 1998, the Transport Act 1962 and the Traffic Regulations 1976, the PENLINK Authority is, in relation to the Weiti Toll Road, a road controlling authority within the meaning of section 2(1) of the Land Transport Act 1998, and a controlling authority within the meaning of section 2 of the Transport Act 1962 and regulation 2 of the Traffic Regulations 1976; and all the provisions of the Land Transport Act 1998, the Transport Act 1962, and the Traffic Regulations 1976 relating to the enforcement of safe road user behaviour, 30 35

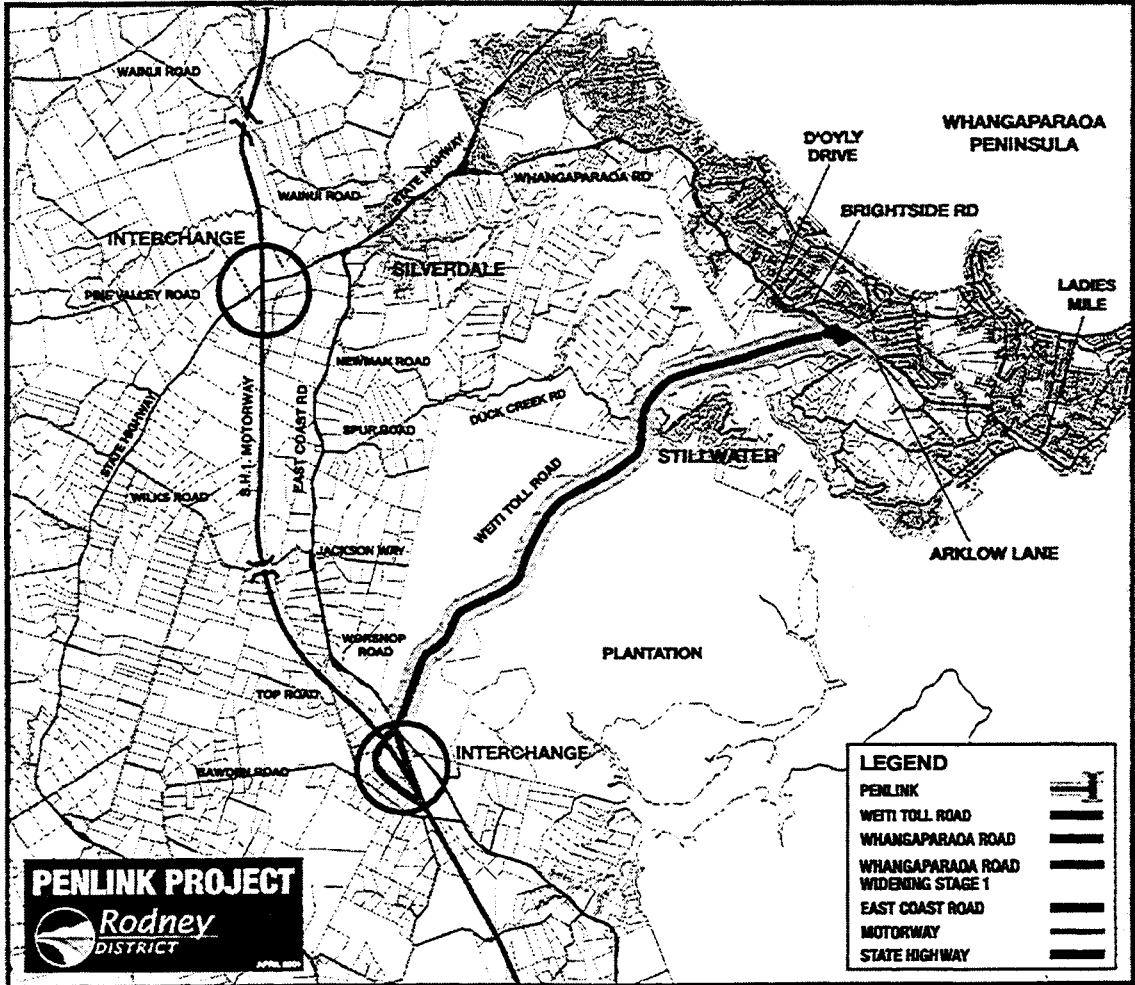
vehicle safety, road safety, and land transport apply accordingly.

- 40 Agreement to prevail**  
Despite section 60 of the Transit New Zealand Act 1989 and section 317 of the Local Government Act 1974, a PENLINK Agreement is not invalidated or discharged—
- (a) by a declaration under section 60 of the Transit New Zealand Act 1989; or
  - (b) by a body other than the Council becoming the owner of the land described in **Schedule 2**.
- 41 Act not to affect Resource Management Act 1991 or Building Act 1991**  
Subject to **section 9**, nothing in this Act affects the application of the Resource Management Act 1991 or the Building Act 1991 to any work proposed to be carried out or any activities proposed to be conducted in relation to the Weiti Toll Road.
- 42 Weiti Toll Road not to be treated as rateable land under Rating Powers Act 1988**  
Neither the Weiti Toll Road nor any interest in land granted under **section 9** is to be treated as rateable land for the purposes of the Rating Powers Act 1988.
- 43 Restrictions on poles, wires, cables, etc on Weiti Toll Road**
- (1) Except for the PENLINK Authority, no Crown entity, local authority, network utility operator, or any other person may place any wire, cable, pipe, tower, pole, or other structure or thing on, over, or under the Weiti Toll Road without prior written consent from the Council.
  - (2) Written consent under **subsection (1)** may be granted on any condition or conditions as the Council thinks fit.
- 44 Amendment to Summary Proceedings Act 1957**  
Section 2(1) of the Summary Proceedings Act 1957 is amended by inserting, in the definition of the term **infringement notice**, after paragraph (fa), the following paragraph:

“(fb) **section 33** of the Rodney District Council (PENLINK  
Toll Road) Empowering Act **2001**:”.

---

# Schedule 1 PENLINK Project



**Schedule 2**

s 4

**Land on which Weiti Toll Road is to be constructed**

All those pieces of land situated in the Rodney District and being:

Lot No	Plan No	Title	Area (ha)	
Part Lot 3	DP 26549	682/218	9.4506	5
Lot 4 & Allot 230	DP 26549 Psh of Okura	681/106	4.3025	
Lot 2	DP 29403	1020/274	9.2065	
Lot 3	DP 29403	850/228	2.0107	
Lot 6 & Part Lot 7	DP 44059	1382/9	24.5763	10
Lot 2	DP 51692	1D/983	4.2373	
Lot 1	DP 60949	16C/1432	4.0620	
Lot 2	DP 81388	37D/1172	1.0802	
Lot 1	DP 81653	37D/1172 & 37D/1173	0.1179	15
Lot 3	DP 81388	37D/1173	1.0029	
Lot 1	DP 81653	37D/1172 & 37D/1173	0.1179	
Lot 4	DP 81388	37D/1174	0.4614	
Lot 3	DP 95982	52A/373	311.1300	20
Part Lot 67	DP 40314	1000/277	1.4793	
Part Lot 1	DP 95984	80D/150	888.3613	
Lot 1	DP 100141	54C/756	78.7354	
Lot 1	DP 116105	66A/372	2.9633	
Lot 2	DP 116105	66A/373	1.0837	25
Lot 2	DP 117373	66D/215	3.0360	
Lot 3	DP 179955	110D/934	1.1631	
Lot 2	DP 182168	113B/679	2.0002	
Lot 1	DP 182168	113B/678	2.1862	
Lot 1	DP 184859	112A/892	3.9551	30
Lot 5	DP 200901	129B/274	14.7070	
Lot 1	DP 29403	784/134	12.7981	