

The Treasury

Urban Growth Agenda: Infrastructure Funding and Finance - Infrastructure Levy Model Information Release

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Cabinet

Minute of Decision

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Urban Growth Agenda Infrastructure Funding and Financing: Infrastructure Levy Model

Portfolio **Housing and Urban Development**

On 24 June 2019, following reference from the Cabinet Economic Development Committee (DEV), Cabinet:

Introduction

- 1 **noted** that local authority financing constraints limit the timely delivery of infrastructure;
- 2 **noted** that as part of the Urban Growth Agenda, officials have been considering options to address local authority financing constraints;
- 3 **noted** that officials have developed an alternative financing model (the Model), which addresses local authority financial constraints and also has the following significant benefits:
 - 3.1 the costs of growth are properly allocated so that they fall on the communities and homeowners who benefit from the new infrastructure;
 - 3.2 planning and consenting decisions are made based on the environmental merits of a proposal under the Resource Management Act 1991 (RMA) and independently of the ability of the Council to finance the required infrastructure;
 - 3.3 viability of projects becomes the key determinant on whether they proceed (this removes the trade-offs that local authorities often have to make when allocating resources and ensures that infrastructure is more responsive to demand);
 - 3.4 promotes greater rigour and transparency in the allocation of risk and costs to the appropriate parties;
 - 3.5 provides price signals to help ensure investment occurs where the market demands it;
 - 3.6 will allow for a much greater quantity of debt to be leveraged from revenue streams than would be possible through a local authority;
- 4 **noted** that a core part of the Model is the use of a levy (the Levy), which is paid by beneficiaries of infrastructure projects;
- 5 **noted** that a change of rating agency methodology and accounting treatment could impact on the viability of the Model;

- 6 **noted** that the Model provides potential opportunity to iwi, both in terms of accelerating iwi-led developments and providing investment opportunities;

Purpose

- 7 **noted** that the Model requires legislation;
- 8 **agreed** that the purpose of the legislation be to provide an alternative financing and funding model for infrastructure for housing and urban development;

The Levy

- 9 **agreed** that the Levy may be designed in a similar way (but suitably modified) as a targeted rate set under the Local Government (Rating) Act 2002 (the Rating Act);
- 10 **agreed** that the maximum term of the Levy be 50 years;
- 11 **agreed** that a Levy may be used to fund new or upgraded infrastructure within the following categories:
- 11.1 water, wastewater and stormwater;
 - 11.2 transport and associated infrastructure including both local roads and State highways;
 - 11.3 public transport, including rail, busways, park and ride interchanges, stations and shelters;
 - 11.4 community amenities to the extent they form part of a wider project;
 - 11.5 environmental resilience infrastructure, such as flood protection, pump stations and environmental restoration;
- 12 **agreed** the Levy may be used to recover the following eligible costs:
- 12.1 construction costs including direct construction costs, insurance and project contingency costs;
 - 12.2 project establishment costs of the proposer (the Proposer), facilitator/recommender (the Facilitator and Recommender) (where these are directly attributable to a specific project funded by the Levy), bidders and Special Purpose Vehicle (SPV) owner;
 - 12.3 SPV operating costs including management and administration costs;
 - 12.4 construction, project establishment and SPV operating costs that have been incurred by another party and which the SPV is liable to fund or reimburse;
 - 12.5 asset operating and maintenance costs prior to vesting;
 - 12.6 financing costs, including debt interest costs, equity costs, arrangement, commitment and agency fees and reserve accounts;
 - 12.7 enforcement and intervention costs;

12.8 levy collection costs;

12.9 SPV monitoring costs;

12.10 costs of the Government Support Package (GSP) charged to the SPV;

13 **agreed** that the person liable to pay the rates on any property be liable to pay the Levy;

Exemptions, postponement, remissions and lump-sum payments

14 **agreed** that a local authority may remit, exempt or postpone Levy payments in accordance with policies and procedures agreed with the SPV;

15 **agreed** that the legislation will not permit lump sum payment of Levies;

Development contributions and financial contributions

16 **agreed** that, if a local authority has required development contributions or financial contributions in respect of the infrastructure to be funded from the Levy, the development contributions and financial contributions required must be transferred to the SPV to assist with the cost of constructing the infrastructure;

17 **agreed** that the local authority must, without public consultation, modify its development contribution policies to cease collecting compulsory development contributions in respect of infrastructure to be funded by the Levy from properties subject to the Levy;

Annual Levy confirmation process

18 **agreed** that the Board of an SPV authorised to set a Levy must confirm the Levy annually in accordance with the Order in Council (OIC) for each financial year by resolution of the Board made no later than 30 June in each calendar year;

19 **agreed** that the resolution must set out the similar information as would be found in the rates resolution of a local authority setting a targeted rate, and sufficient information to demonstrate that the Levy is confirmed in accordance with the relevant OIC;

20 **agreed** that, to enable the Board to confirm the Levy, the local authority of the project community must provide sufficient information from its rating information database to enable the entity to reliably calculate the Levy in accordance with the authorising OIC;

21 **agreed** that a copy of the resolution must be provided to the Monitor and the local authority within 10 working days of the resolution being made;

22 **agreed** that the SPV must ensure that its resolution is publicly notified within 10 working days of the resolution being made;

Invoicing, collection of Levy and enforcement

23 **agreed** that where no collection agreement is in place with a local authority, an SPV may collect the Levy itself;

24 **agreed** that a local authority shall collect the Levy on behalf of the SPV, if requested to do so;

25 **agreed** that, where such an agreement is in place, the local authority may include the Levy, separately identified as a Levy by the local authority, on its rates assessment and rates invoices;

- 26 **agreed** that the local authority shall be entitled to deduct its reasonable costs and expenses in administering the Levy from the sums remitted to the SPV;
- 27 **agreed** that the local authority may include collection action for the Levy in any rates collection action it undertakes, and may initiate collection action using the powers of the Rating Act if a person liable for the Levy withholds payment of the Levy only;
- 28 **agreed** that late payment penalties may be applied to the Levy in the same manner as for a rate;
- 29 **noted** that collection action includes all methods provided for in the Rating Act, including:
- 29.1 legal proceedings to recover as a debt unpaid levies;
- 29.2 recovery from the first mortgagee, if any;
- 29.3 rating sale and lease powers;
- 30 **noted** that collection action will be subject to the same restrictions as provided for in the Rating Act (including restrictions on the collection of rates from Māori freehold land);
- 31 **agreed** that the SPV may initiate Levy collection action separately from the local authority using the same procedures as in the Rating Act, and in such cases the local authority must make its rating information database and rates record information available to the SPV;
- 32 **agreed** that if the SPV is collecting the Levy itself, the same provisions as in the Rating Act, suitably modified, shall apply to the SPV;
- 33 **agreed** that the SPV may not disclose rating information to any other party and can only use it for the purposes of setting and collecting the Levy;
- 34 **agreed** that the enforcement procedures be the same as in the Rating Act, including ultimately the power to sell a property under the equivalent of a rating sale (provided the land is not Māori freehold land);

Security, priority and ordering of Levy

- 35 **agreed** that the SPV may grant security over its assets, including the Levy and associated rights, and that such security may provide for the appointment of a receiver with similar rights and limits as applies to receiverships of local authorities;
- 36 **agreed** that, in the event of an enforced property sale, the Levy rank behind rates but ahead of all other charges applying to land;
- 37 **agreed** that if more than one Levy applies to a property, Levies rank in the order they were authorised, earlier Levies having priority over later levies;

Ability to vary the Levy, revision of OIC, excess charging and proceeds

- 38 **agreed** that if the SPV wishes to increase the Levy, extend the period over which the Levy applies, or otherwise modify the OIC, it must provide the Recommender and the Monitor the same information as would be required for a new application;
- 39 **noted** that officials will develop guidance regarding the circumstances under which a revision to the Levy would be contemplated;

- 40 **agreed** that any surplus generated from the Levy may be applied only to:
- 40.1 a reduction or rebate of future levies; or
 - 40.2 a shortening of the period over which the Levy is applied; or
 - 40.3 a rebate or refund to payers;
- 41 **agreed** that the SPV must keep the Levy proceeds in a separate designated account (until utilised for an eligible cost);

Identification of beneficiaries and objections

- 42 **agreed** that the legislation have a permissive approach for identifying beneficiaries of projects;
- 43 **noted** that further guidance will be developed on beneficiary identification and allocation policies;
- 44 **agreed** that the legislation include an objection regime for objections on how the Levy has been calculated, but not the Levy itself;

Proposer

- 45 **agreed** that any ‘person’ be able to propose a project to be funded by the Levy;

Facilitator and Recommender

- 46 **noted** that the Model includes a Facilitator to assist with the preparation of proposals to access the Levy;
- 47 **noted** that the Model includes a Recommender function to ensure Cabinet decisions on whether to use the Levy are well informed and independent of the Proposer;
- 48 **noted** that the Minister of Housing and Urban Development will report back to Cabinet on the appropriate entity to be the Facilitator and Recommender and associated funding arrangements;
- 49 **agreed** that the Governor-General may, on the recommendation of the Minister, by OIC appoint a body (being any one of a department, departmental agency, Crown entity, or company listed in Schedule 4A of the Public Finance Act 1989) to perform the functions of the Facilitator and Recommender;
- 50 **agreed** that the Recommender shall assess requests for the authorisation of a Levy or a revision to an existing Levy, and, where it considers appropriate, recommend to the Minister that such requests be agreed;
- 51 **agreed** that any request for a final Levy approval must include a forecast budget for each year during the projected period of the Levy, outlining for each year:
- 51.1 the expected costs of constructing or, as the case may be, upgrading the infrastructure;
 - 51.2 the expected timing of that construction;
 - 51.3 all eligible costs clearly by category;

- 51.4 the projected funding and financing of the infrastructure, including capital contributions, if any, from other parties;
- 51.5 the projected Levy income;
- 51.6 the proposed manner of calculating the Levy and the likely Levy charged to examples of properties representative of the range of properties in the project community;

Approval

- 52 **agreed** that an OIC cannot be recommended by the Minister for approval unless the proposal has first been endorsed by the relevant local authority;

Local authority endorsement

- 53 **agreed** that local authority endorsement will be required in relation to:
 - 53.1 the asset specification and compatibility of assets with wider networks;
 - 53.2 the ability for the local authority to plan for and meet necessary operational and maintenance costs once the asset has vested;
 - 53.3 whether the payment of the Levy will demonstrably compromise the ability of the local authority to collect future rate revenue;
- 54 **agreed** that in a situation where the relevant local authority does not endorse a Levy, they be required to provide evidence that:
 - 54.1 the proposed asset will not be of sufficient quality or compatible with wider networks; or
 - 54.2 they will be unable to meet operational and maintenance costs once the asset has vested; or
 - 54.3 the payment of the Levy will compromise their ability to collect future rate revenue;

Cabinet consideration of the OIC

- 55 **agreed** that a Levy must be set by an OIC, made on the recommendation of the Minister;
- 56 **agreed** that the Minister may only recommend the Levy as put forward by the Recommender and without altering the recommended Levy or key terms;
- 57 **agreed** that before recommending the OIC, the Minister must consult the Minister of Finance, the Minister of Commerce and Consumer Affairs and the Minister of Local Government;
- 58 **agreed** that before recommending the OIC, the Minister must be satisfied that it is appropriate to do so and would meet the objectives of the Act;
- 59 **agreed** that in setting the Levy, in determining the proportion of the eligible costs that may be recovered by the Levy, the Minister take into account the extent of benefits (if any) to land outside the project community;

- 60 **agreed** that in recommending the Levy, the Minister take into account:
- 60.1 the distribution of benefits between the project community (as a whole), identifiable parts of the project community, and individuals;
 - 60.2 the period in or over which those benefits are expected to occur;
 - 60.3 the extent to which the actions or inaction of particular individuals or a group contribute to the need to undertake the project;
 - 60.4 the extent of any other contribution towards the costs of the project;
 - 60.5 the long-term interests of consumers, including the affordability and sustainability of the Levy over the intended period;
 - 60.6 any other matters of practicality, efficiency or equity relevant to the Levy;
- 61 **noted** that the matters described in paragraphs 59 and 60 are the only matters which the Minister may take into account;
- 62 **agreed** that the OIC must specify:
- 62.1 the entity which is entitled to set and receive the Levy (the SPV);
 - 62.2 the land to which the Levy is to apply (the project community);
 - 62.3 the manner in which the Levy applying to any rating unit within the project community is to be calculated;
 - 62.4 the maximum Levy income over the period of the OIC;
 - 62.5 the intended annual Levy income;
 - 62.6 the infrastructure that is to be funded by the Levy;
 - 62.7 requirements to ensure that excess Levies are addressed in accordance with the overall requirements of the Act;
 - 62.8 the maximum duration of the Levy;
 - 62.9 limits on returns to equity holders;
- 63 **agreed** that the matters in paragraph 62.3 above:
- 63.1 may be specified by formulae (different formulae may apply to different classes of property within the project community, and at different times);
 - 63.2 may provide for an increase in the Levy (to address) contingencies in defined circumstances;
- 64 **agreed** that the intended income referred to in paragraph 62.5 above may vary from year to year, in particular to take account of the timing of the construction of the infrastructure funded and financed by the Levy;

- 65 **agreed** that the OIC may place conditions or restrictions on:
- 65.1 the use of the Levy proceeds or the financial dealings of the SPV desirable to fulfil the purposes and intentions of the Act;
 - 65.2 procurement processes for infrastructure funded by the Levy;
 - 65.3 the SPV's incorporation and ownership;

SPV

- 66 **agreed** that there be a statutory prohibition on a local authority guaranteeing the debt of an SPV (including by the issue of uncalled capital), and with obligations on relevant disclosure and loan documents to draw attention to that prohibition;
- 67 **agreed** that the Crown is not liable to contribute to the payment of any debt or liability of an SPV, except as authorised under the Public Finance Act 1989;
- 68 **agreed** that disclosure and loan documents must clearly state what, if any, Crown liability exists in respect of the loans or financial arrangements to which they relate;
- 69 **agreed** that the SPV has a duty to assist the Monitor in the performance of its functions and must make available to the Monitor such information as the Monitor reasonably requests;
- 70 **agreed** that the SPV must keep the Monitor informed of any surplus, or likely surplus, and its intentions for the application of that surplus;
- 71 **agreed** that the SPV must produce an audited annual report complying with generally accepted accounting practice;

Safeguards and protections: monitoring and disclosure regime

- 72 **agreed** that a Monitor be appointed by OIC, made on the recommendation of the Minister;
- 73 **agreed** that the purposes of the Monitor, in relation to the Levy, are to:
- 73.1 ensure that SPVs comply with the terms of the empowering Act and any OIC authorising a Levy;
 - 73.2 recommend Crown intervention in an SPV if an SPV fails to remedy any significant problem in the SPV's application and administration of a Levy;
- 74 **agreed** that, to fulfil its purpose, the Monitor shall:
- 74.1 review and approve the annual charge implementing each Levy;
 - 74.2 consider and determine any objection by a person subject to the Levy as to the accurateness of the Levy assessed on to that person;
- 75 **agreed** that, to fulfil its purpose, the Monitor may:
- 75.1 require an SPV to report to it on material events;
 - 75.2 require an SPV to provide periodic reports on any aspect of the Levy's application and administration;

- 75.3 require an SPV to provide any information sought by the Monitor to assure itself of the financial sustainability of the SPV and probity of the SPV's management;
- 75.4 direct the SPV to address any significant problem with the administration of the Levy;
- 75.5 recommend to the Minister that the Crown appoint a Crown Manager to perform and exercise the powers or duties of an SPV, if an SPV has failed to comply with a direction to address a significant problem, but only to the extent necessary to address the significant problem;
- 76 **agreed** that the Minister may appoint a Crown manager to an SPV on the recommendation of the Monitor;
- 77 **agreed** that the costs of the Crown manager may be charged to the SPV and shall not be recoverable by increasing or extending the life of the Levy;
- 78 **agreed** that a significant problem shall mean a failure by the SPV to comply with the terms of the OIC or the Act that may have adverse consequences for payers of the Levy;
- 79 **agreed** that the Act include an offences and remedies regime, including offences if persons resist/obstruct an SPV from complying with its obligations, and an ability for the Monitor to injunct persons where breaches are anticipated, and seek orders from the Courts to redress any breaches that occur;

Disclosure regime

- 80 **noted** that the legislation will include a disclosure regime that addresses mandatory disclosure to beneficiaries, mandatory disclosure to interested parties on request and mandatory public disclosure;
- 81 **agreed** that local authorities be required to disclose on land information memoranda:
- 81.1 the existence of any OIC approving a Levy on the land;
- 81.2 the period the Levy is currently authorised to be levied;
- 81.3 information about how the Levy is collected and calculated;
- 81.4 if the local authority collects the Levy, any amounts that are unpaid in respect of that land;
- 81.5 if the local authority does not collect the Levy, contact details for the SPV assessing and collecting the Levy;
- 82 **agreed** that information about Levy charges, including details of unpaid Levies, must be shown on the rates records if the local authority is the collector of the Levy;
- 83 **agreed** that where the SPV collects the Levy, the SPV must keep records available for inspection in the same manner as a local authority;
- 84 **agreed** that any SPV must make available on a website;
- 84.1 its annual reports;
- 84.2 information about decisions it has made in relation to the Levy, including Board resolutions to confirm the Levy in respect of any financial year;

85 **agreed** that the Monitor shall:

85.1 provide information about the scheme generally and its application to individual communities to assist in public understanding of the Levy;

85.2 publish on a website forecast budgets for approved levies; and annual reports for the entities setting approved levies;

Government Support Package

86 **noted** the Government Support Package is an integral part of the rating agency requirements of the Model;

87 **agreed** that a Government Support Package be provided as part of infrastructure projects funded by the Model;

88 **noted** that the terms of each Government Support Package will be agreed on a case by case basis, potentially in return for appropriate premiums or compensation being paid to the Crown;

Consequential amendments

89 **agreed** that legislative amendments be made in the following manner:

89.1 sections 136 and 137 of the Local Government Act 2002 to be modified to address possible inconsistencies with the Model;

89.2 that the use of the Model is consistent with the requirement for an Auckland water organisation's obligations, under section 57 of the Local Government (Auckland Council) Act 2009 to minimise the overall costs of its services;

89.3 the Local Government Official Information and Meetings Act 1987 and the Rating Act to provide transparency of Levies to prospective property purchasers;

89.4 the Local Government Act 2002 and RMA to address the interaction of development contributions and financial contributions with the Model;

Delegations

90 **noted** that officials are providing advice to Ministers on how the insolvency regime relates to the Model;

91 **noted** that the Minister of Finance has requested advice from officials about whether the legislation determine that the Levy be subject to Goods and Services Tax (GST);

92 **noted** that in some circumstances, an SPV may be responsible for constructing and commissioning the infrastructure to be funded by the Levy and may require or benefit from:

92.1 access, in some manner, to the powers to designate land under the RMA and the ability to compulsorily acquire land, either under the RMA or the Public Works Act 1981 (PWA);

92.2 access, in some manner, to local authority powers relating to water services during construction of water services assets and powers in relation to road construction;

92.3 access, in some manner, to the National Land Transport Fund;

- 93 **noted** that officials are providing advice to Ministers on developing an offences and remedies regime;
- 94 **noted** that to enable the drafting of legislation to occur in a timely manner, the following delegations are sought to address the items noted in paragraphs 90-93 above:
- 94.1 in relation to the insolvency regime and how it applies to the Model: the Minister of Finance, the Minister of Housing and Urban Development, the Minister of Commerce and Consumer Affairs, and the Minister of Justice be authorised to make subsequent policy decisions;
- 94.2 in relation to whether GST apply to the Levy: the Minister of Finance, the Minister of Revenue and the Minister of Housing and Urban Development be authorised to make subsequent policy decisions;
- 94.3 in relation to the powers the SPV has during construction and commissioning (including RMA and PWA powers and access to the National Land Transport Fund): the Minister of Housing and Urban Development, the Minister of Transport, the Minister of Local Government, the Minister for Māori Development, the Minister for Land Information, the Minister for the Environment and the Associate Minister of Transport (Hon Julie Anne Genter) be authorised to make subsequent policy decisions;
- 94.4 in relation to the development of the offences and remedies regime: the Minister of Housing and Urban Development and the Minister of Justice be delegated to make subsequent policy decisions;
- 94.5 in relation to other minor and/or technical policy matters: the Minister of Finance and the Minister of Housing and Urban be authorised to make subsequent policy decisions;
- 95 **agreed** to the delegations set out in paragraph 94 above;

Legislative implications

- 96 **noted** that the Infrastructure Funding and Financing Bill (the Bill) has a category 3 priority on the 2019 Legislation Programme (to be passed if possible in 2019);
- 97 **agreed** that the Bill bind the Crown;
- 98 **invited** the Minister of Housing and Urban Development to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above proposals;

Financial implications

- 99 **noted** that while the Bill has no direct financial implications for the Crown:
- 99.1 the Government Support Package necessary to implement the Bill carries some fiscal risk for the Crown;
- 99.2 the cost to the Crown of the Facilitator, Monitor and the Crown manager, if any, are yet to be assessed;
- 100 **noted** that further advice may be provided on the application of GST, income tax and accounting treatments to the Model;

Other work underway

- 101 **noted** that in June 2018, officials reported to Ministers on options to address local authority financial constraints, including:
- 101.1 central government funding infrastructure directly;
 - 101.2 alternative financing models;
 - 101.3 local authorities selling assets to fund infrastructure;
 - 101.4 expanding local authority borrowing through the Local Government Funding Agency;
- 102 **noted** that on 19 September 2018, the Cabinet Economic Development Committee:
- 102.1 endorsed the proposed approach to the Infrastructure Funding and Financing pillar of the Urban Growth Agenda;
 - 102.2 directed officials to commence a work programme with local authorities and the Local Government Funding Authority to investigate easing the Authority's debt covenants;
- [DEV-18-MIN-0211]
- 103 **noted** that officials will not consider central government funding of local authority infrastructure or local authorities selling assets to fund infrastructure;
- 104 **noted** the communications plan attached as Appendix C to the paper under CAB-19-SUB-0263.

Michael Webster
Secretary of the Cabinet

Hard-copy distribution:

Prime Minister
Deputy Prime Minister
Minister of Housing and Urban Development