Property Council New Zealand

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Infrastructure Funding and Financing Bill
Committee Secretariat
Transport and Infrastructure Committee
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Infrastructure Funding and Financing Bill

1. Recommendations

1.1. Property Council New Zealand welcomes the opportunity to provide feedback on the Infrastructure Funding and Financing Bill ("**the Bill**") which was introduced on 12 December 2019.

1.2. Property Council acknowledges that the Bill is the first step in the long-term evolution of the infrastructure funding and financing system, which will lead to the positive outcomes for the sector in the short and long term.

1.3. Property Council is generally supportive of the Bill as it will enable timelier provision of local infrastructure underpinning housing and urban development. However, there are certain aspects of the new legislation that require further consideration and amendments to ensure it is fit for purpose.

1.4. Property Council recommends:

- Extend clause 3(d) of the Bill to incorporate the 'beneficiary pays' principle.
- Delete the amendments to sections 106(7), 197AB, 201A(1)(e) of the Local Government Act to ensure there is no double dipping and the Bill delivers on the objectives set by the Government.
- More detailed guidance for beneficiary identification, the process for quantifying expected benefits, and cost allocation to make the whole process more transparent.
- Better alignment between the Urban Development Bill and the Infrastructure Funding and Financing Bill to achieve better outcomes.
- Inclusion of the private sector in the governance of the new infrastructure and funding model ("**the Model**") to ensure industry buy-in and input is considered, and informed decisions are made.
- Clearer guidance on how the operational and maintenance costs of the future infrastructure are recovered to ensure the planned development goes ahead and infrastructure projects are successfully delivered.

2. Introduction

2.1. Property Council's purpose is "Together, shaping cities where communities thrive". We believe in the creation and retention of well-designed, functional and sustainable built environments which contribute to New Zealand's overall prosperity. We support legislation that provides a framework to enhance economic growth, development, liveability and growing communities.

2.2. Property is currently New Zealand's largest industry with a direct contribution to GDP of $29.8 billion (13 per cent). The property sector is a foundation of New Zealand's economy and caters for growth by developing, building and owning all types of property.

2.3. Property Council is the leading not-for-profit advocate for New Zealand's largest industry - property. Connecting people from throughout the country and across all property disciplines is what makes our organisation unique. We connect over 10,000 property professionals, championing the interests of over 560 member companies who have a collective $50 billion investment in New Zealand property. Our membership is broad and includes companies that undertake large-scale residential and commercial development projects, including large commercial buildings, industrial parks and retail precincts where people live, work, shop and play across New Zealand.

2.4. This submission provides Property Council's feedback to the Government on the Infrastructure Funding and Financing Bill. Comments are provided on those issues that are relevant to Property Council and its members.

2.5. The new legislation aims to enable a funding and financing model to support the provision of infrastructure for housing and urban development and reduce the impact of local authority funding and financing constraints. This submission provides an overview of the current state of the infrastructure funding and financing in New Zealand, what constraints the current system presents, how the new legislation would help address these constraints, and what other factors the Government should also consider to make the new legislation fit-for-purpose.

3. Current state of infrastructure funding and financing

3.1. Local infrastructure is crucial to enabling economic activity, housing supply and well-functioning communities. Local authorities are responsible for most of this infrastructure. However, in high-growth areas, such as Auckland, Hamilton, Tauranga and Queenstown, they face significant constraints in funding and financing medium and large-scale infrastructure projects.

3.2. New Zealand has grown at an unprecedented rate over the past decade. There is a cycle of under-investment in infrastructure that supports or is required as a result of this growth.

3.3. Overall, fast growing population coupled with the financial constraints and significant historic under-investment in infrastructure resulted in viable infrastructure projects being postponed for years, placing even more pressure on urban land and housing supply. To be able to solve these problems, the Government needs to consider alternative methods for infrastructure funding and financing, such as sourcing funding from outside of the public sector which is where the Bill comes in.

4. Proposed future state of infrastructure funding and financing

4.1. Property Council supports the Bill's overarching purpose of providing much needed infrastructure for housing and urban development. In particular, the new legislation will help address local authorities housing-related infrastructure challenges and better service new developments by allowing a much greater quantity of debt to be leveraged from revenue streams.

4.2. Although the principle of those who benefit should pay is throughout the legislation, incorporating this principle into the overall purpose of the Bill would provide more clarity. This could be achieved by extending clause 3(d) as per below:

> *appropriately allocates the costs of infrastructure <u>"including through the imposition of levies on properties that benefit from the infrastructure."</u>*

4.3. Local authorities are responsible for most of housing and associated infrastructure. The majority of local authorities are close to the maximum debt levels, making it difficult to supply much needed infrastructure. The Model will allow viable projects to proceed outside of the local government financing constraints by enabling access to private debt finance to get infrastructure built sooner than would otherwise be the case.

4.4. The Bill would enable a Special Purpose Vehicle ("**SPV**") to raise finance for the projects, collect a multi-year levy to repay the finance, and contract for the delivery of the infrastructure. This aligns with the Productivity Commission recommendation to expand the use of SPVs to finance different types of infrastructure investments, including SPVs that will benefit both new and existing residents.[1]

4.5. The new Model is designed to follow a 'beneficiary pays' principle, which Property Council is generally supportive of. At the core of the proposed Model is a multi-year levy ("**the levy**") which is paid by beneficiaries of infrastructure projects to a SPV. If properly implemented in each case, the Model will help make the cost of new infrastructure more transparent while spreading that cost so it falls primarily on the homeowners who benefit over time. We support long term levies as a tool to ensure the cost is intergenerational, and thus more fairly funded.

4.6. A similar model has been successfully implemented internationally (e.g. USA) and was adopted for greenfield development in Milldale, New Zealand in 2018. The new Model would provide transparency around cost allocation among beneficiaries, faster delivery of infrastructure projects and certainty to councils and developers about their ability to provide infrastructure that supported growth communities. However, there are other positive outcomes that the Model would also enable to deliver if some amendments are made to the Bill.

[1] Local Government Funding and Financing, New Zealand Productivity Commission, November 2019. Retrieved from https://www.productivity.govt.nz/assets/Documents/a40d80048d/Final-report_Local-government-funding-and-financing.pdf

5. Property Council's concerns

5.1. Although we are generally supportive of the Bill, there are some aspects of it that require further consideration to ensure it is fit-for-purpose.

Amendments to the Local Government Act (Clause 155)

5.2. Clause 155 of the Bill seeks to amend the Local Government Act to allow for a local authority to require development contributions to support the construction of eligible infrastructure that has been, or is intended to be, transferred to the authority under clause 88 of the Bill.

5.3. The purpose of the Bill is to establish a Model which will access private capital to fund infrastructure. The SPV creates a process in which beneficiaries pay over the long term. The proposed addition of clause 106(7) of the Local Government Act will directly contradict the purpose of the Urban Development Bill (to enable large greenfield developments) and the Infrastructure Funding and Financing Bill (to enable long term infrastructure through levies).

5.4. The proposed amendments to the Local Government Act raise legal consequences related to double dipping (i.e. that the local authority collects development contributions to pay for certain infrastructure, but that same piece of infrastructure is paid for from the levy). This is alarming, as it appears to be another attempt by central government to lump further costs onto developers which will be passed onto homebuyers at the front end.

5.5. The distinction between paying through development contributions (i.e. which result in higher house prices) or through the levy is one of great importance. The decision around the proportion of the infrastructure funded through development contributions (instead of the levy) will likely have the following negative outcomes:

- The first likely outcome is that house prices increase which is subsequently passed onto the new owners such as first home buyers and people wishing to downsize (or upsize).
- The second likely outcome is that the planned development does not go ahead due to feasibility issues (i.e. the proportion of development contribution fees in relation to the levy is too substantial).

5.6. The idea of expanding development contribution fees to fund infrastructure created under this Bill directly contradicts with the Government's housing affordability targets, as it is passed-on to the end purchaser at the front end. This would be a major barrier to having developers participate in the process which would likely result in lack of development or growth – directly contradicting the intent of this legislation.

5.7. A similar issue was highlighted in Insight Economics 2018 report for Hamilton City Council which concluded that the proposed changes to development contributions were so high that they would have a material impact on the viability of numerous prospect developments and that a market reduction would occur.[2]

[2] Insight Economics, 'Likely Developer Reactions to Increased Development Contributions Charges', Prepared for Hamilton City Council, 12 March 2018.

5.8. In comparison, a levy of 50 years would spread the cost of development over a long period and enable more affordable housing and lower development contribution costs would result in lower house prices. As a result, projects would be delivered in a timelier manner, as the likelihood of demand for these affordable houses would outweigh the negative outcomes of development contributions at the front end (i.e. higher house prices).

5.9. Therefore, Property Council recommends the deletion of the proposed amendment to section 106(7) of the Local Government Act. We also recommend deletion of the proposed amendments to sections 197AB and 201A(1)(e) as we oppose the local government collecting development contributions for infrastructure that has already been funded by levies.

Alignment with the Urban Development Bill

5.10. The Government has recently introduced the Urban Development Bill which would enable Kāinga Ora to facilitate specified development projects ("**SDPs**"). SDPs are intended to improve urban development outcomes through a mix of housing types, transport connections, employment and business opportunities, infrastructure, community facilities, and green spaces. While the purposes of the Urban Development Bill and Infrastructure Funding and Financing Bill overlap, there is no mentioning of how SDPs would work with SPVs in both legislations.

5.11. Property Council recommends better alignment and cross references within the two bills to ensure that Kāinga Ora can set up SPVs alongside SDPs. Cross referencing should better enable the financing and delivery of infrastructure within the project area.

Cross-subsidisation and beneficiary identification

5.12. Equity and affordability considerations are fundamental when it comes to designing the levy. It will need to be transparent as to who is paying for what and why.[3]

5.13. According to the Bill, the levy will be paid by those who are expected to benefit from the infrastructure project which the Property Council supports (*Clause 37*). However, there are certain risks that Property Council can foresee in the context of this.

5.14. When developing the Bill the Government drew on the experience of Milldale (a partnership between Crown Infrastructure Partners and Auckland Council), where an alternative financing tool enabled the delivery of infrastructure to support building of 9,000 homes. However, the Bill enables levies to be applied to existing landowners, not just new buyers, as is the case in Milldale. Therefore, under the proposed law, someone who has owned a property for several years, for example, might be required to pay (either $650 for an apartment or $1000 for a home a year) to cover the cost of upgrading the wastewater system they use.

5.15. The Bill works practically for greenfield development but raises questions for brownfield development. We note that the accurate and fair allocation of costs may be challenging, particularly where a project funded by the levy has a network impacts or where there are existing residents and second wave beneficiaries. While the Model aims to provide greater

[3] Note: section 101(3) of the Local Government Act 2002. Retrieved from http://www.legislation.govt.nz/act/public/2002/0084/173.0/DLM172358.html?search=sw_096be8ed8179a9be_101_25_se&p=1&sr=3

transparency of infrastructure cost, beneficiary identification and allocation is still likely to be contentious, especially for brownfield areas. This poses a risk of encouraging development away from brownfield areas.[4]

5.16. Property Council recommends more detailed guidance is required on how beneficiaries would be identified, how the perceived benefit will be proven and quantified, and how the levy would be allocated among those beneficiaries as the Bill does not state it clearly. This is consistent with recommendations in the recent Treasury report on infrastructure funding and financing.[5]

Operating and maintenance costs

5.17. The Bill allows for completed infrastructure (or assets) to be passed onto local authorities or relevant agencies. Vested assets bring associated operating and maintenance costs. However, the Bill does not clearly explain how these ongoing costs will be recovered, and what mechanisms would be used for that (*Clause 20*).

5.18. We recommend the recovery of operational costs (or at least a portion of the cost) through rates, or a targeted rate over the life of the infrastructure (rather than development contributions). This would improve intergenerational equity and ensure that all those who benefit from the infrastructure help pay for it. Targeted rates are our preferred model of revenue gathering. This ensures that those who contribute directly benefit.

Governance issue

5.19. One of the big challenges in the sector that needs to be addressed is the failure of central and local government to actively work with the private sector to enable urban growth and expansion. The Bill is a great opportunity to resolve this challenge by building stronger relationships with the private sector. Collaboration with the private sector will likely result in more and better infrastructure being provided within a shorter timeframe.

5.20. It is concerning that the Bill does not mention private sector being part of the SPV governance structure. We suggest that developers should be consulted and included in the SPV board to ensure industry buy-in and input is considered. This would better align with the Ministry for the Environment's National Policy Statement on Urban Development which established the principle of requiring local authorities to determine whether development opportunities are: "feasible and likely to be taken up". We recommend the Bill is amended to include private sector as part of the governance process.

6. Additional comments

Other tools are available

6.1. The Bill creates an innovative model which is an important step in the long-term evolution of the infrastructure funding and financing system. However, there are other tools that the

[4] This works against the government wider urban development objectives.
[5] Infrastructure Funding and Finance Information Release, the Treasury, December2019. Retrieved from https://treasury.govt.nz/sites/default/files/2019-12/infra-fund-finance-4061524-tr72.pdf

Government should also take into consideration. The Model is only an addition to local authorities' infrastructure provision toolkit and does not replace the existing tools.

6.2. The other tools include, but not limited to volumetric wastewater levy and road-congestion charges. These tools would help give councils the means to efficiently fund the costs of growth. User charges can also help manage demand by increasing the number of people that existing infrastructure can support and extending the useable life of these assets.

The Bill only addresses one issue

6.3. The new Model aims to provide a more enabling funding and financing environment for local authorities that supports more responsive provision of local infrastructure that underpins land supply, housing growth and urban development generally. However, the Model is not a 'magic bullet', and on its own will not solve wider issues the sector is facing. This includes, but not limited to competitive land markets, housing affordability, allocation of responsibilities between central and local government to provide infrastructure and many others. A suite of other interventions are needed, and further work by the Government is required.

7. Conclusion

7.1. Property Council commends the Government on proposing the introduction of the Bill. We are supportive of its purpose and the positive outcomes it is aimed to deliver.

7.2. While we support the Bill in principle, there is a need to work through the detail of legislation to ensure it delivers on the objectives the Government has set for it. Our main concern is around amendments to the Local Government Act which raise legal consequences related to double dipping and directly contradict with the purpose of the Bill. This submission provides a list of recommendations which make the proposed legislation fit-for-purpose.

7.3. The Model on its own will not solve wider issues in the sector, and other interventions are also needed and further work to address these issues is required. However, Property Council believes that, while the new Model is not a 'magic bullet', introduction of the Bill is an important step in the long-term evolution of infrastructure funding and financing system in New Zealand.

7.4. Property Council would like to thank the Transport and Infrastructure Committee for the opportunity to provide feedback on the Infrastructure Funding and Financing Bill. We also wish to be heard in support of our submission.

7.5. Any further queries do not hesitate to contact Natalia Tropotova, Senior Advocacy Advisor, via email: natalia@propertynz.co.nz or cell: 021863015.

Yours sincerely,

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