

The Treasury

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

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Office of the Minister of Housing and Urban Development

Chair

Cabinet Economic Development Committee

Urban Growth Agenda: Infrastructure Funding and Finance – Infrastructure Levy Model

Proposal

- 1 This paper seeks Cabinet approval to establish an alternative financing model referred to as the Infrastructure Levy Model (the Model) to fund and finance local infrastructure projects.
- 2 Legislation is required to establish the Model and this Cabinet paper sets out the key policy positions that will underpin the legislation.

Executive Summary

- 3 Everyone in New Zealand deserves a healthy, secure and affordable home that meets their needs, and is within a thriving community that provides good access to jobs, education, amenities and services.
- 4 However, our current urban development system is presenting a range of issues and constraints that are making it difficult for the market and government to respond to urban pressures. This is particularly the case for high growth urban areas where supply is not able to keep up with demand. These pressures have led to housing unaffordability, reduced homeownership, increased hardship and homelessness, reduced economic growth, lowered wellbeing, and increased intergenerational inequality.
- 5 Addressing planning and infrastructure constraints is critical for unlocking development opportunities and addressing high land prices. While, high urban land prices are the result of high demand for areas with good amenities and access, they are often made worse by stringent planning rules and infrastructure funding and financing constraints that prevent the market from adjusting to demand. The Government's Urban Growth Agenda (UGA) is focussed on improving housing affordability by removing barriers to the supply of land and infrastructure and making room for cities to grow up and out.
- 6 This Cabinet paper is focussed on dealing with one of the key challenges to housing affordability; reforming the system for the financing of infrastructure.
- 7 Most infrastructure that enables housing is delivered by local authorities and is currently limited by financial constraints on local authorities. The financial constraints are a mix of technical factors and behavioural issues.
- 8 In September 2018 we asked officials to investigate alternative financing models to see if these might overcome the financing constraints of local authorities to

enable more timely delivery of infrastructure (CAB MIN (18) 0466 refers). We explicitly asked officials to consider whether legislation might be required to support these models.

A new Model has been developed

- 9 I am pleased to report that officials have designed a viable alternative financing model that can enable new infrastructure projects and upgrades to existing infrastructure to be delivered without being limited by local authority financial constraints. This is called the Infrastructure Levy Model (the Model).
- 10 The core of the Model involves the setting of a multi-year Levy (the Levy) which is paid by beneficiaries of infrastructure projects. The Levy is enabled by legislation and levied by a Special Purpose Vehicle (SPV) which is responsible for financing all or part of the project, and has the power to collect the Levy. The SPV may also itself (but doesn't always need to) have a direct role in commissioning construction of infrastructure. The infrastructure will be transferred to the local authority post construction for nil consideration.
- 11 The Model has a number of desirable features that do more than unlock the current financial constraints of local authorities. It reforms the local authority financing system so that:
 - 11.1 costs of growth are properly allocated so that they fall on the communities and homeowners who benefit from the new infrastructure;
 - 11.2 planning and consenting decisions are made based on the environmental merits of a proposal under the Resource Management Act 1991 (RMA)¹ and independently of the ability of the Council to finance the required infrastructure or its relative priority to other Council projects;
 - 11.3 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);
 - 11.4 there is greater rigour and transparency in the allocation of risk and costs to the appropriate parties;
 - 11.5 price signals are provided through the use of the Model to help ensure investment occurs where the market demands it; and
 - 11.6 a much greater quantity of debt is able to be leveraged from revenue streams than would be possible through a local authority.
- 12 This Model is not about new taxes. These are costs that would be borne by the ratepayer through their rates. The Model simply make these costs more transparent, borne by the communities and homeowners who benefit from the new infrastructure and are able to be spread over a long timeframe, reflecting the life of the asset and creating intergenerational equity.
- 13 The Crown will need to facilitate the Model. The Crown will need to:

¹ Nothing in this proposal changes the land-use decision making rights or processes of local territorial authorities.

- 13.1 approve the use of the Levy for each project by Order in Council (OIC);
- 13.2 provide a Government Support Package (GSP) to manage contingent residual risks which would ordinarily, but can't under the Model, sit with local authorities;
- 13.3 consolidate the activities of the SPV onto its balance sheet (at least initially); and
- 13.4 establish a monitoring regime for the SPV to ensure SPV powers are used appropriately.

The Model is not perfect – but neither are the alternatives

- 14 It is important to acknowledge the limitations and risks associated with the Model as it will not alone solve all the issues we face in delivering more housing and improving housing affordability.
- 15 The limitations of the Model include:
 - 15.1 The Model won't address issues with the planning system or the supply of labour and skills required to deliver housing and infrastructure projects. Planning system issues are being addressed by other UGA workstreams, whilst matters related to the supply of labour and skills are being worked on by the Ministry of Business Innovation and Employment (MBIE).
 - 15.2 The Model will work best for larger projects or a bundle of projects (officials expect the minimum scale of projects to use the Model will be \$50 million) due to the cost associated with setting up a Levy and finance costs. This means a small number of large projects will be progressed using the Model.
- 16 To accelerate infrastructure delivery, the Model will require greater Crown involvement and the transfer of some risks to the Crown. However, without some form of Crown intervention the delivery of housing infrastructure will remain slow. A lack of housing costs the Crown in many ways and is a significant driver of demand for Crown provision of affordable, social and emergency housing. Put simply, the do-nothing option will continue to cost the Crown.
- 17 Alternatives to the Model involve more fundamental intervention by the Crown and begin to distort where the costs and benefits of infrastructure lie. These include:
 - 17.1 Increasing local authority borrowing capacity. This would require agreement of local authorities and the initial view is that a Crown guarantee and a capital injection into the Local Government Funding Agency (LGFA) would be required.
 - 17.2 Government directly funding the costs of local infrastructure. This is inconsistent with existing institutional roles and responsibilities, could undermine local accountability, may impact the current Budget Responsibility Rules and would have material fiscal implications that could crowd out delivery of other central government priorities.

- 18 Notwithstanding these limitations and risks, I think the Model is an essential tool for local authorities struggling to provide infrastructure necessary for housing.

Strategy for rolling out the Model

- 19 How the Model is rolled out will be important. I recommend that the Model is initially used on greenfield sites before being rolled out to brownfield sites. This approach will enable the Model to be tested in less complex projects where beneficiaries opt in, which will reduce risk to the Crown and assist with the acceptance and understanding of the Model by local authorities, beneficiaries and the broader community.
- 20 At least initially, the Crown will need to own the SPV and account for its activities. A key focus over time will be minimising the risk that sits with the Crown through reducing the scope of the GSP and exploring different SPV ownership structures. Different SPV ownership structures could include joint Crown/Council or private ownership either at the time the SPV is set up, or upon construction of the asset.

Structure of this paper

- 21 This paper is structured into seven parts:

Part 1: Overview of how the Model will work

Part 2: Details of the proposed Levy Regime

Part 3: Process for utilising the Model including key roles and functions

Part 4: Safeguards and Protections

Part 5: Government Support Package

Part 6: Consequential amendments to legislation and delegations

Part 7: Risks

Part 1: Overview of how the Model will work

- 22 The core of the Model involves the setting of a multi-year Levy which is paid by beneficiaries of infrastructure projects. The Levy is enabled by legislation and levied by a SPV which is responsible for financing all or part of the infrastructure project, and has the power to collect the Levy. The SPV may also itself (but doesn't always need to) have a direct role in commissioning construction of the infrastructure. The infrastructure will be transferred to the local authority (or the relevant Crown body such as the New Zealand Transport Agency (NZTA)) post construction for nil consideration.
- 23 To support the Model to work efficiently and to ensure the interests of beneficiaries and the Crown are protected, there are four key roles. These are:
- 23.1 Facilitator (the Facilitator) – to work with proposers wanting to use the Model. This includes development of a beneficiary identification and

allocation approach and to filter out proposals that are not well suited to the Model.

- 23.2 Recommender (the Recommender) – to provide advice to Cabinet about whether or not to approve a Levy.
 - 23.3 Monitor (the Monitor) – to ensure that the SPV is only levying in accordance with the OIC approving the Levy.
 - 23.4 Negotiator of GSP – to ensure that the risk allocation is robust and the exposure of the Crown is well considered, appropriate, managed and reduces over time.
- 24 The treatment of the Model by credit rating agencies is critical; if the rating agencies' view any debt raised through the Model as being an obligation of local authorities, then the Model will be limited by local authority financial constraints. Crucially, the credit rating agencies' require there is no legal or moral recourse to the local authority should the Model fail. This means that no liability (actual or contingent) under the Model can sit with the local authority and an entity independent of the local authority must have the power to Levy directly.
- 25 As a result, the provision of a GSP to cover certain contingent residual risks is a fundamental element of the Model. These are the contingent residual risks that would normally sit with the local authority ^[38]
^[38] The GSP is critical to ensuring that there is no recourse back to the local authority and therefore meeting rating agency requirements.
- 26 This Model is intended to complement, rather than replace, local government infrastructure provision. The Model represents an evolution of the alternative financing model developed by Crown Infrastructure Partners (CIP) and piloted at Milldale².
- 27 While the Model is targeted to the provision of local government infrastructure, it also provides a tool that can be used to support the funding of central government infrastructure initiatives, should this be desired.
- 28 Appendix A sets out a high level, simplified case study of how the Model is intended to work.

Legislation is required to enable the Model

- 29 Legislation is needed to enable an SPV to have statutory levying powers akin to a targeted rate and to enable the Levy to be collected for a long period of time (up to 50 years). The ability for an entity independent of local authorities to collect the Levy (that in turn is used to fund the construction of infrastructure) is fundamental to ensure the delivery of infrastructure is not limited by the financing constraints of local authorities.

² Milldale is a development North of Auckland where a contractual version of the Model is being used to enable the delivery of 4,000 new dwellings.

- 30 Legislation is also needed to provide the SPV with certain powers during the construction of the infrastructure.
- 31 The legislation is proposed to be enabling and permissive rather than prescriptive. This reflects that the legislation will need to cover a range of scenarios and infrastructure types and to allow the Model to evolve over time.

Part 2: Details of the proposed Levy Regime

- 32 The details of the proposed Levy regime are set out in the table below. Where appropriate the design of the Levy mimics many of the rating provisions within the Local Government (Rating) Act 2002 (the Rating Act).

Feature	Proposed approach
Levy commencement and length	Legislation enables the start of the Levy period and length of the Levy, to be determined on a project-by-project basis, but that the maximum length of the term be 50 years.
Type of infrastructure that can be funded via a Levy	The Levy may be used to fund new or upgraded infrastructure within the following categories: <ul style="list-style-type: none"> • water, wastewater and stormwater; • transport and associated infrastructure including both local roads and state highways; • public transport, including rail, busways, park and ride interchanges, stations and shelters; • community amenities to the extent they form part of a wider project; and • environmental resilience infrastructure, such as flood protection, pump stations and environmental restoration;
Costs funded by the Levy	Legislation enables the Levy to fund the following categories of costs (referred to as the eligible costs): <ul style="list-style-type: none"> • Construction costs including direct construction costs, insurance and project contingency costs. • Project establishment costs of the proposer (the Proposer), Facilitator/Recommender (where these are directly attributable to a specific project funded by the Levy), bidders and SPV owner. • SPV operating costs including management and administration costs. • Construction, project establishment and SPV operating costs that have been incurred by another party and which the SPV is liable to fund or reimburse (e.g. if the SPV did not construct the assets or took over the construction of assets from a local authority and used Levy revenue to repay local authority debt). • Asset operating and maintenance costs prior to vesting. • Financing costs including debt interest costs, equity costs (where relevant), arrangement, commitment and agency fees and reserve accounts. • Enforcement and intervention costs. • Levy collection costs most of which will be paid to a local authority to collect the Levy. • SPV monitoring costs. • [38]
Who is liable to pay the Levy	The person who is liable to pay the rates on any property is the person liable to pay the Levy.
Exemptions, postponement or remission of Levy	The legislation will include provision for exemptions, postponements and remissions in the same way as currently applies for rates.

Feature	Proposed approach
Lump sum payment of Levies	Legislation will not permit lump sum payment of Levies as this would add complexity and undermine predictability of cashflows, impacting finance.
Interaction between development contributions and the Levy	<p>It is possible that a local authority may have already begun collecting (or have the right to collect) development contributions under the Rating Act or financial contributions under the Resource Management Act 1991 (RMA) for a particular infrastructure project to be funded from the Levy. It is proposed that the legislation will require the transfer of relevant existing development contributions or financial contributions to the SPV to assist with the cost of constructing the infrastructure project.</p> <p>To prevent double charging, previously paid development contributions or financial contributions may be a factor in the design of the Levy. In addition, once the Levy has commenced, development contributions will not be permitted for the project infrastructure to be financed by the SPV. This will not preclude developers making voluntary capital contributions to expedite their ability to proceed.</p>
Annual Levy Confirmation Process	<p>The legislation will include provisions for setting the Levy within the parameters set out in the OIC. I am proposing the Board of the SPV be authorised to set the Levy annually for each financial year by resolution of the Board.</p> <p>The Board resolution will include information similar to that found within a rates resolution made by a local authority when setting a targeted rate and must include enough information to show it is following the applicable OIC.</p> <p>To ensure the Board of the SPV has the necessary information to set the Levy, the local authority will be required to provide sufficient information to the SPV from its rating information database.</p> <p>From a reporting perspective and to ensure efficiency and transparency, it will be required that a copy of the resolution be provided to the Recommender and the local authority within 10 working days of the resolution being made and that the SPV must ensure that its resolution is publicly notified within 10 working days of the resolution being made.</p>
Invoicing and collection of Levy	<p>The legislation will enable the SPV to collect the Levy directly (invoicing beneficiaries directly) or by entering into a Collection Arrangement with the relevant local authority for it to collect the Levy on behalf of the SPV (and the Levy may be included as a separate line item on its rates assessment and rates invoices).</p> <p>I consider that the optimal arrangement is for the SPV to enter into a collection arrangement with the local authority. This is from an efficiency perspective (local authorities have existing systems in place to allocate and collect the Levy from beneficiaries) and to enhance the bankability of the Model (default risk on items charged through the local authority rates bill is low).</p> <p>I recommend that the legislation require that the relevant local authority collect the Levy, if requested to do so by the SPV. This requirement will be subject to the SPV covering the local authorities' reasonable costs and expenses in providing the collection service and administering the Levy. A disputes resolution process may be required if agreement cannot be achieved.</p> <p>This legislative requirement would cover how the Local Authority could collect the Levy. For example, it would include:</p> <ul style="list-style-type: none"> • the ability for the Local Authority to include collection action for the Levy in any rates collection action it undertakes; • the ability to initiate collection action if a person withholds payment for the Levy but not its rates; and • an allowance for late payment penalties to be applied by the Local Authority to the Levy in the same manner as for a rate. <p>Ultimately, the Local Authority would have all the powers it has under the Rating Act, and also be subject to the same restrictions. This includes the ability to undertake legal proceedings to recover as a debt unpaid Levies, the recovery from the first mortgagee (if any) and rating sale and lease powers.</p> <p>The legislative requirement would not extend to enforcement action – as officials expect there would be considerable resistance from local authorities to taking enforcement action on behalf of another party (however a local authority could still agree to perform such a role by agreement).</p>

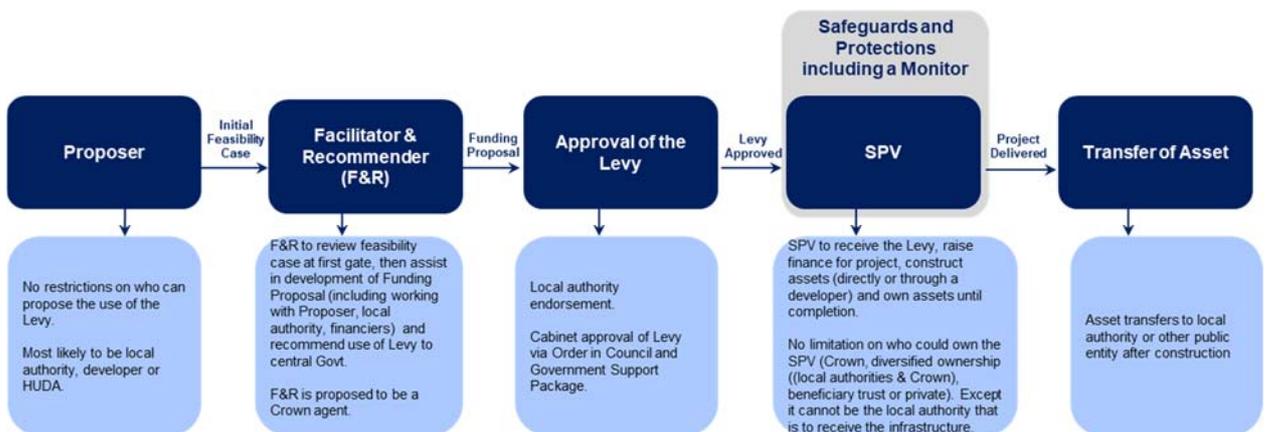
Feature	Proposed approach
	<p>Should the SPV collect the Levy directly, the legislation will provide that the SPV may initiate collection action separately from the local authority. The legislation would provide for the SPV to undertake Levy collection using the same procedures as in the Rating Act (suitably modified).</p> <p>The legislation will prohibit the SPV from the disclosure of rating information to any other party and it will specify that the SPV can only use it for the purposes of setting and collecting the Levy.</p>
Enforcement	<p>Legislation to enable the SPV to hold all legislative rights to enforce revenue in the same way a local authority can under the Rating Act. This includes the right to commence legal proceedings to recover unpaid levies and sue payor's mortgagee for debt. Ultimately, it means the SPV would have the power to sell property under the equivalent of a rating sale (after statutory timeframes have elapsed).</p>
Security over Levy	<p>Legislation to enable the SPV to grant security over its Levy rights, and for a receiver to be appointed to, and administer, those rights. This will be necessary in order for the SPV to raise finance on the strength of the Levy, as anticipated under the Model. These provisions would be based on similar provisions in respect of rates in the Rating Act, but (unlike under the Rating Act) they would not permit a receiver to set a new rate.</p>
Priority of Levy	<p>The priority regime has been modelled on the Rating Act, which applies to local authority rates. This means that the Levy will effectively be secured against the land in the same manner as local authority rates and have priority behind local authority rates but ahead of any other charges applying to that land (e.g. mortgages) on enforcement.</p> <p>In practice if a Levy is unpaid and enforcement action is required, the amounts recovered would be applied first towards any unpaid rates and then towards the Levy.</p>
Ordering of Levy - where there is more than one Levy on the same unit of land	<p>If there is more than one Levy being levied on the same unit of land, the Levies will have priority in the order in which they came into existence (i.e. the earlier Levy will have priority over the later Levies). This provides certainty because the SPV with the subsequent Levy will be aware of earlier ones, so can factor this into their models. This ensures that the security of earlier Levies are not undermined by subsequent Levies (similar to the ranking of mortgages and secured charges).</p>
Ability to vary the Levy	<p>The OIC will set a maximum Levy amount, however, there are options as to how the initial Levy is set:</p> <ul style="list-style-type: none"> • Initial Levy is set at the maximum Levy amount. • Initial Levy is set at lower than the maximum Levy amount but the SPV would have the power to increase the Levy from the initial amount up to the maximum Levy amount if certain risks eventuated (e.g. construction costs increased). <p>Choices about whether the Levy can be varied do not need to be made now but will be made at the time the OIC is approved, and in conjunction with decisions about the scale and scope of the GSP.</p> <p>In all circumstances the Levy could reduce (e.g. in the event of over-collection, or if contingencies do not materialise).</p>
Circumstances under which a revised OIC could be sought	<p>In a situation where the SPV wishes to revise the OIC to, for example, increase the amount of revenue that can be recovered by OIC or the term of the OIC, it would need to apply to the Recommender and provide the same amount of information as required to establish a new Levy.</p> <p>Guidance will be developed setting out the circumstances under which the SPV could apply for a revised OIC. This is to ensure that the Crown is only considering applications for revised OIC's that are appropriate. I expect that the guidance will, for example, not contemplate an application from an SPV for a revised OIC which is due to mismanagement of costs.</p>
Excess charging regime (in the event the Levies are more than required to complete the project)	<p>Legislation will include a framework for how excess Levies are to be used. In summary, in most cases there will be a reduction in future Levies, but potentially there could be refunds/rebates or a shortened Levy term. Specific requirements for any project will be included in the OIC.</p>

Feature	Proposed approach
Proceeds of the Levy	The SPV must keep the Levy proceeds in a separate designated account (until utilised for an eligible cost);
Identification of beneficiaries	<p>The legislation enables a permissive approach to identify beneficiaries of infrastructure projects, such as:</p> <ul style="list-style-type: none"> • Geographical land area • Use of land • Activities permitted on land • Value of the land <p>Beneficiaries in future urban zone land are anticipated to be included in the Levy. However, second wave beneficiaries (located outside the future urban zone) are anticipated to be excluded from the Levy on the basis that they will not substantially benefit from the infrastructure.</p> <p>I propose that the legislation enable a permissive approach to beneficiary identification and allocation of the Levy between beneficiaries. Under the proposed approach it will be possible for the Levy to be phased to incentivise development (e.g. larger amounts upfront and smaller amounts in later years) or to be allocated according to those that benefit the greatest from the infrastructure (e.g. by proximity to infrastructure).</p> <p>Feedback from local and central government is that the process of identifying beneficiaries and allocation choices can be complex and I intend to issue policy guidance to assist in those decisions.</p>
Objections	Legislation to outline a regime for objections from beneficiaries as to the application of the OIC to them (e.g. its calculation), but not the OIC itself.

Part 3: Process for utilising the Model including key roles and functions

33 The diagram below outlines the process for how an infrastructure project might be identified and a Levy raised.

Process for raising a Levy



Proposer

34 The role of the Proposer is to identify and put forward a project to be considered to be funded by the Levy. To encourage uptake of the Model (and given the range of other safeguards in place to ensure the Levy is used appropriately), I have not limited who can propose that a project be funded by the Levy. In

practice, I expect the most likely Proposers will be local authorities, developers and the Housing and Urban Development Authority (HUDA).

Facilitator and Recommender

- 35 As the approver of the Levy (and any GSP), the Crown will need to be advised by a party independent of the Proposer on whether to approve a Levy. I propose that the Crown appoint a party to act as both the Recommender of the Levy and also to Facilitate and filter proposals from Proposers seeking to access the Levy.
- 36 I considered separating the role of the Facilitator and Recommender as there is a potential conflict of interest between facilitating proposals and then objectively recommending which proposals are approved by Cabinet. However, I consider that this issue can be managed by either the Ministry of Housing and Urban Development (MHUD) or the Treasury providing second opinion advice to Cabinet on the recommendations made by the Recommender.
- 37 I expect the Facilitator and Recommender will need to work closely with other agencies across Central Government to ensure that projects are sequenced in a coherent manner, especially where a project places pressure on other sectors (e.g. the provision of connecting transport infrastructure by NZTA).
- 38 A decision on who acts as the Facilitator and Recommender is not required for legislation. My initial thinking is that both of these roles will be undertaken by CIP. CIP effectively provided the service of Facilitator and Recommender on the Milldale project so has the expertise and resourcing to perform these roles.
- 39 The Facilitator will receive an Initial Feasibility Case from the Proposer, covering:
- 39.1 project background and objectives;
 - 39.2 current state of the project;
 - 39.3 proposed asset and SPV ownership model;
 - 39.4 who the Proposer is; and
 - 39.5 an estimate of the amount of the Levy to be paid by beneficiaries.
- 40 The purpose of the Initial Feasibility Case is to provide a high level assessment of whether the Model is suitable for the project, without incurring significant cost for either the Proposer or the Facilitator.
- 41 Once through this initial assessment³, the Proposer (with assistance from the Facilitator) will develop the Funding Proposal, which will be used for final Levy approval and negotiation of any GSP. As part of the approval the

³ Any projects that do not pass the high level assessment will be referred back to the Proposer to consider whether they are re-scoped or whether the proposal to use the Model is abandoned.

Recommender will review the final Funding Proposal, which will need to include:

- 41.1 a detailed project overview including information on the consents that have, or will need to have, been obtained to proceed with construction of the asset(s);
- 41.2 detail on the structure and application of the Levy;
- 41.3 the commercial and financial business case for the project;
- 41.4 how the infrastructure will be procured;
- 41.5 a forecast budget for each year during the projected period of the Levy;
- 41.6 an assessment of the Levy against the matters for Cabinet to consider when setting a Levy as set out in the table in Part 1 of this paper.
- 41.7 confirmation that local authority endorsement to the use of the Levy has been received (as outlined further in the section below on approval of the Levy).

Approval of the Levy

- 42 A Levy for each infrastructure project will be set by an OIC. Legal advice received is that Cabinet approval of a Levy, via an OIC, is a constitutionally robust approach and therefore, reduces the risk of judicial review of the Levy.

Local authority endorsement

- 43 I propose that the local authority will have to endorse the use of the Levy prior to Cabinet considering whether to approve (or reject) a Levy.
- 44 The endorsement by local authorities is limited to reflect their specific interests in the use of the Model; in particular they will have ongoing responsibility for the assets constructed by the SPV.
- 45 I propose that the matters that a local authority can take into account when considering whether they provide an endorsement be limited to those relating to the use of the Model. The proposed matters to be taken into account are:
 - 45.1 the asset specification and compatibility of the asset with wider networks;
 - 45.2 the ability for the local authority to plan for and meet necessary operational and maintenance costs once the asset has vested in them; and
 - 45.3 whether the payment of the Levy will demonstrably compromise the ability of the local authority to collect future rate revenue.
- 46 In a situation where the relevant local authority does not endorse a Levy, the onus will be on local authorities to demonstrate that the impact of the Levy cannot be managed. The local authority will be required to provide evidence that the proposed asset will not be compatible with wider networks; or that they

will be unable to meet operational and maintenance costs once the asset has vested; or that the payment of the Levy will compromise their ability to collect future rate revenue.

- 47 In practice, the Facilitator and Recommender will work with local authorities from the early stages of a project to identify any significant risks to local authority endorsement of a project at the OIC stage.
- 48 My preference is that the requirement for the relevant local authority to endorse the use of the Levy is prescribed in legislation to provide clarity as to the role of the local authority.

Cabinet consideration of the OIC

- 49 Subject to local authority endorsement, Cabinet will have discretion to approve a Levy by OIC on the advice of the Recommender and Facilitator
- 50 The details of the matters for Cabinet to consider when approving the Levy and what must be specified in the OIC are set out in the table below.

Feature	Proposed approach
Matters for Cabinet to consider when setting the Levy	<p>I recommend the following matters be considered by Cabinet when setting a Levy and be incorporated in legislation. These are loosely based on the Rating Act and include:</p> <ul style="list-style-type: none"> • the proportion of eligible costs that may be recovered by the Levy; • the extent of benefits (if any) outside the project community. • the distribution of benefits between the project community (as a whole), identifiable parts of the project community, and individuals; • the period in or over which those benefits are expected to occur; • the extent to which the actions or inaction of particular individuals or a group contribute to the need to undertake the project; • the extent of any other contribution towards the costs of the project; • the long-term interests of consumers, including the affordability and sustainability of the Levy over the intended period • any other matters of practicality, efficiency or equity relevant to the Levy; and <p>The benefit of including these matters in legislation is that it provides some clarity to Proposers and the Recommender and Facilitator whilst preserving options for Cabinet to place weightings on different matters that are the most important to them, and to accommodate a wide range of potential projects.</p>
What must be specified in the OIC	<ul style="list-style-type: none"> • the entity which is entitled to set and receive the Levy (the SPV); • the land to which the Levy is to apply (the project community); • the manner in which the Levy applying to any rating unit within the project community is to be calculated; • the intended income the Levy is to generate (noting that it may vary from year to year); • the infrastructure that is to be funded by the Levy; • requirements to ensure that excess Levies are addressed in accordance with the overall requirements of the Act; • the maximum duration of the Levy; and • limits on returns to equity holders; <p>The calculation of how the Levy is applied to any rating unit:</p> <ul style="list-style-type: none"> • may be specified by formulas (different formulas may apply to different classes of property within the project community, and at different times); and

Feature	Proposed approach
	<ul style="list-style-type: none"> • may provide for an increase in the Levy (to address) contingencies in defined circumstances. <p>The OIC may also set out further conditions or limitations on the use of a Levy for a project (for instance, a limit on the amount of Levy revenue that can be applied towards particular costs (e.g. establishment costs)).</p>

- 51 I envisage that the Cabinet consideration process will work as follows:
- 51.1 The Facilitator and Recommender will provide a report to the relevant Minister recommending the use of the Levy. This report will include:
- 51.1.1 Summary of the relevant details from the funding proposal
- 51.1.2 an assessment of the Levy against the matters for Cabinet to consider when setting a Levy (as set out in the table above);
- 51.1.3 confirmation that local authority endorsement to the use of the Levy has been received; and
- 51.1.4 the draft contents of the OIC.
- 51.2 MHUD or the Treasury will provide second opinion advice to the Minister on the recommendations made by the Recommender
- 51.3 Before recommending the OIC to Cabinet, the Minister must:
- 51.3.1 be satisfied that it is appropriate to do so and would meet the purpose of the Act; and
- 51.3.2 consult the Minister of Finance, the Minister of Consumer Affairs and the Minister of Local Government.
- 51.4 The Minister will not have any discretion to amend the Levy amount or key terms and can only recommend or reject the Levy as put forward in the draft OIC by the Recommender.
- 51.5 Cabinet will consider the recommendation to approve the OIC taking into account the agreed matters for Cabinet to consider set out in the table above. If a GSP is required for the project it will be considered by Cabinet, on the advice of Treasury, at the same time as the OIC is considered.

Special Purpose Vehicle

- 52 The use of an SPV that is not owned by the local authority is required to ensure infrastructure projects can be delivered without being limited by local authority financial constraints.
- 53 The SPV will, depending on the structure and nature of the project, have the following roles: Levy collection; raising capital (utilising the Levy revenue

stream); financing infrastructure, commissioning construction and transferring the infrastructure to the relevant local authority (or other relevant public entities); and repaying any finance raised for infrastructure.

- 54 SPV ownership structures could range from Crown owned through to privately owned but all SPVs shall be audited. The only SPV ownership structure that would not work is ownership by the local authority that is to receive the infrastructure (which would not meet rating agency requirements). I propose that the legislation retain sufficient flexibility to enable any ownership option.
- 55 Officials at the high growth councils have expressed a strong preference that the SPV be at least initially owned by the Crown on the basis that the Model represents a significant change for their residents and elected members and that non-Crown ownership of the SPV may negatively impact on uptake of the Model. Local authority buy-in for the Model is important and this means that it may be necessary for the Crown to own the SPV's initially. This approach has implications for the Crown balance sheet that are set out in paragraphs 100 onwards.
- 56 To ensure that the aims of the Model are met, there will also need to be a number of provisions relating to the SPV structure within the legislation. Firstly, there will need to 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. Secondly, there will need to be agreement 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.
- 57 There will also need to be some specific reference to matters that the SPV will need to undertake in its role. I expect these to include:
- 57.1 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 agency reasonably requests. This will include keeping the Monitor informed of any surpluses, or likely surplus, and its intentions for the application of that surplus;
 - 57.2 that the SPV ensures that any disclosure and loan documents clearly state what, if any, Crown liability exists; and
 - 57.3 the SPV must produce an audited annual report complying with generally accepted accounting practice.

Transfer of Assets

- 58 Assets constructed by the SPV will vest in the entity that typically owns these assets (e.g. a local authority, NZTA, or a council controlled organisation). The SPV will own the asset during construction and the asset will vest after construction. This option meets the requirements of rating agencies but does not require the SPV to have a broad range of consequential legislative powers to operate and maintain the asset post construction.

Part 4: Safeguards and protections

- 59 It is a fundamental part of New Zealand's constitution that powers to tax are authorised by Parliament. The Levy proposed has characteristics similar to a tax – payment is compulsory and is necessarily backed by potentially punitive consequences for non-payment. Accordingly, safeguards and protections within the Model are proposed to avoid potential abuse of the levy power. These include:
- 59.1 local authority involvement in the Levy setting process;
 - 59.2 Cabinet Approval of the Levy via an OIC (including the Minister of Commerce and Consumer Affairs);
 - 59.3 the OIC regulating both how much the SPV spends on projects but also the types of expenditure which are levied on beneficiaries;
 - 59.4 the Facilitator and Recommender being a Crown appointed body – part of their role will be to ensure that there are contestable processes for key cost elements of infrastructure projects;
 - 59.5 development of guidance (by Treasury in consultation with the Commerce Commission and MBIE) for the Facilitator and Recommender to guard against monopoly pricing and ensure beneficiaries interests are protected;
 - 59.6 the SPV must produce an audited annual report that complies with generally accepted accounting practice;
 - 59.7 a disclosure regime to ensure buyers of land which is subject to the Levy are aware of their future obligations; and
 - 59.8 a statutory monitor with step in powers to take over aspects of the management of the SPV necessary to ensure the Levy is lawfully collected and applied.
- 60 Given that some SPV's might have monopoly like features in specific local markets, officials considered whether they should be subject to regulation by an independent regulator such as the Commerce Commission. However, given the range of safeguards outlined above it would be inefficient to extend direct regulation by the Commerce Commission to SPVs.
- 61 In the event the safeguards outlined above are insufficient, beneficiaries retain the right to appeal to the Commerce Commission who in-turn could decide to launch an inquiry.
- 62 I have set out below more detail about the role of the Monitor and the disclosure regime.

Monitor

- 63 I propose that there is a Crown-appointed Monitor for each SPV. The purpose of the Monitor is to:

- 63.1 ensure that SPVs comply with the terms of the empowering Act and any OIC authorising a Levy.
 - 63.2 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. A significant problem is defined as 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.
- 64 In order to fulfil its purpose the Monitor will:
- 64.1 approve application of each OIC by the SPV (e.g. approval of annual Levy calculations).
 - 64.2 consider and determine any objection by a person subject to the Levy as to the accurateness of the Levy assessed on to that person;
 - 64.3 receive periodic reporting from the SPV in respect of the Levy and the project.
 - 64.4 receive reporting from the SPV on material events and be able to require information from the SPV.
- 65 Crucially, if the Monitor identifies a significant problem in relation to an SPV the Crown will have the right to direct the SPV to address the problem and, ultimately, to appoint a Crown manager to exercise the SPV's rights if it has not complied with the direction.
- 66 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.
- 67 I am working through which agency is best to undertake this role, although at this stage it is likely to be MHUD. This is because the Ministry has an existing monitoring role and its organisational focus aligns well with the intention of the Model.
- 68 In addition, I will develop an appropriate offences and remedies regime to support the Monitor to undertake its activities. This will be developed in consultation with the offence and penalty vetting team at the Ministry of Justice.

Disclosure regime

- 69 To ensure that beneficiaries and other interested parties (such as prospective purchasers of land that is subject to a Levy) are aware of and understand the implications of the Levy. I recommend that the legislation include a disclosure regime that addresses mandatory disclosure to beneficiaries, mandatory disclosure to interested parties on request and mandatory public disclosure.

Mandatory disclosure to beneficiaries

- 70 I recommend that the regime for mandatory disclosure to beneficiaries be modelled on existing Rating Act provisions – in particular including requirements that:
- 70.1 levies be disclosed to beneficiaries on an annual “assessment” (either an SPV assessment or a rates assessment where a local authority is

acting as collections agent) which provides a full description of the Levies. As with rates, the issuance of the assessment would establish the liability to pay the Levy; and

- 70.2 an invoice must be sent to beneficiaries when a payment is due (either by the SPV or by a local authority where it is acting as a collections agent).

Mandatory disclosure to interested parties on request

- 71 The proposed regime for mandatory disclosure on request consist of:
 - 71.1 an obligation on local authorities to disclose Levies in Land Information Memoranda (LIM), which can be obtained for a fee by any person, at any time, for any property and from one known and central place. This would involve an amendment to the Local Government Official Information and Meetings Act 1987, and would also be supported by an obligation on the SPV to provide the local authority with the requisite information about the Levies for this purpose if the local authority is not collecting the Levy; and
 - 71.2 an obligation on local authorities to include information about Levies on the rates record for any property. An inspection of the rates records is often an alternative/supplement to obtaining a LIM. It is free, unlike a LIM, and is part of the standard conveyancing procedure to inform what rates apportionments are required on settlement.
- 72 I recommend that the information to be disclosed on the LIM and the rates record includes:
 - 72.1 the existence of any OIC approving a Levy on the land;
 - 72.2 the period the Levy is currently authorised to be levied;
 - 72.3 information about how the Levy is collected and calculated; and
 - 72.4 if the local authority does not collect the Levy, contact details for the SPV assessing and collecting the Levy.
- 73 I also recommend that the rates record include details of unpaid Levies in situations where the local authority is the collector of the Levy.

Mandatory public disclosure

- 74 Finally, I recommend that the proposed regime for mandatory public disclosure consist of:
 - 74.1 an obligation for there to be a publicly accessible website maintained with all information in relation to Levies. People would be made aware of the website through their interactions with a relevant local authority when obtaining a LIM, or undertaking a search of rates records; and

74.2 a statutory role for the Monitor to inform the public on how the Model works and its impact on properties. I have recommended such a role as it will be important that beneficiaries and communities are informed about the effect of Levies, and their impact on properties. In particular, beneficiaries will need to understand the Levies so that they can be taken into account when agreeing to purchase a property. This may involve, for instance, the operation of the website referred to above, and other measures to ensure the public have access to information on how the Model works.

75 I have also considered whether to require the Levies be registered on certificates of title to land. However, I do not consider that such an approach is required as a registration obligation would go well beyond the existing disclosure regime for rates, would add on some additional cost to the SPV, could be an inconvenience to the land owner, and in my view is not likely to provide for significantly more effective disclosure (over and above the measures I have recommended).

Part 5: Government Support Package (GSP)

76 Currently, in the delivery of infrastructure projects funded by local authorities, the relevant local authority takes on the contingent residual risks that are not transferred to another party (either because these risks cannot be transferred or will not be priced efficiently).^[38]
[38]

77 For projects progressed under the Model, these risks will exist. However, these risks can't be borne by local authorities without impacting on the rating agency assessment of local authority finances. In addition, rating agencies' indicated any risks that are not explicitly allocated will be assumed to rest with the local authorities. If these risks remain with the local authorities, then there is financial recourse to the local authorities and the Model won't work.

78 Therefore, contingent residual risks will need to be explicitly allocated. Aside from the local authorities, the other options for who could bear these risks include:

78.1 Financiers –^[38]
[38]

78.2 Beneficiaries –^[38]
[38]

78.3 Contractor - To the extent possible the SPV will enter into fixed price contracts or a certain level of contingency will be included in the contract.^[38]
[38]

- 78.4 Crown – while this approach is not costless for the Crown, and would require risks to be monitored, it is consistent with the risk position that the Crown takes on large Crown funded infrastructure projects (e.g. transport projects).
- 79 To ensure the cost of managing these risks are minimised and to make the Model work, I propose that residual risks associated with infrastructure projects funded by the Levy sit with the Crown via a GSP. The GSP will be in place for the life of the Levy, but will be scaled back at the end of the construction phase, which is when the risks reduce considerably.
- 80 In addition, officials have considered how calls on the GSP could be mitigated – this includes:
- 80.1 building a contingency into the Levy to cover potential risks (likely to be most applicable to deal with construction cost overruns and financing related risks);
 - 80.2 independent due diligence in relation to construction cost, contractors and developers;
 - 80.3 use of insurance; and
 - 80.4 ensuring appropriate governance structures including robust monitoring, reporting and intervention regimes.

[38]

- 82 The GSP will be provided on a case by case basis by contract between the Crown and the SPV. Treasury will be responsible for making independent recommendations to Cabinet on the use of the GSP. This provides a level of independence from the project and will help ensure that there are the appropriate incentives to ensure that the GSP is minimised.
- 83 Cabinet ultimately retains the right to decide on the scope and scale of the GSP on a case by case basis.

Part 6: Consequential amendments to legislation and delegations

Consequential amendments to legislation

- 84 I also propose consequential amendments to legislation to ensure the Model will work. In particular, I propose amendments to:
- 84.1 the Local Government Official Information and Meetings Act 1987 and the Rating Act to provide transparency of Levies to prospective property purchasers;
 - 84.2 the Local Government Act 2002 to address possible inconsistencies with provisions relating to water services contracts⁴;
 - 84.3 The Local Government (Auckland Council) Act 2009 to clarify that the Model can be used by Auckland Water Organisations (i.e. Watercare) without placing them in breach of their obligation to keep the overall costs of water supply and waste-water services to its customers at the minimum levels; and
 - 84.4 the Local Government Act 2002 and RMA to address the interaction of development contributions and financial contributions with the Model.

Delegations

- 85 There are other areas where legislation may need to be amended to ensure the Model works effectively. These are:
- 85.1 How the insolvency regime relates to the Model. This is to ensure that there is no unintended opportunity for recourse to the local authority.
 - 85.2 The extent to which the Levy will or will not attract Goods and Services Tax (GST). Officials would ordinarily progress this matter through a binding ruling with the Inland Revenue Department (IRD). However, the Minister of Finance has indicated that he would like to determine whether to legislate that the Levy does attract GST, rather than using binding rulings to determine the appropriate GST treatment of the Levy.
 - 85.3 The powers that the SPV may require during construction and commissioning. For the Model to succeed:
 - 85.3.1 there needs to be an appropriate mechanism to enable a SPV to seek, hold or receive a designation in land, under the Resource Management Act 1991 (RMA), for the works to be constructed by the SPV;
 - 85.3.2 the SPV may need, in some circumstances, the ability to compulsorily acquire land (or have someone exercise this

⁴ Sections 136 and 137 of the Local Government Act 2002 do not apply to a funding arrangement approved by the Crown under the Model - without such a provision, aspects of the Model could be argued to be inconsistent with provisions (in particular, the provisions in s137 requiring local government organisations to retain control over the pricing of water services and the development of policy related to water services).

power on their behalf) either under the RMA or the Public Works Act 1981 (PWA);

- 85.3.3 the SPV may need 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.
 - 85.4 The SPV may benefit from access to the National Land Transport Fund (NLTF) for transport projects that would receive NLTF investment were the project delivered by the local authority or NZTA.
 - 85.5 An offences and remedies regime will need to be developed to support the Monitor to undertake its activities.
- 86 In order to allow for the drafting of legislation to occur in a timely manner, I seek the following delegations:
- 86.1 In relation to the insolvency regime and how it applies to the Model - the Minister Finance, the Minister of Housing and Urban Development, the Minister of Commerce and Consumer Affairs and the Minister of Justice be delegated to make subsequent policy decisions.
 - 86.2 In relation to whether GST should apply to the Levy – the Minister of Finance, Minister of Revenue and Minister of Housing and Urban Development be delegated to make subsequent policy decisions.
 - 86.3 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 Maori Development, the Minister for Land Information, the Minister for the Environment and the Associate Minister of Transport (Hon Julie Anne Genter) be delegated to make subsequent policy decisions.
 - 86.4 In relation to the offences and remedies regime referred to in paragraph 68 – the Minister of Housing and Urban Development and the Minister of Justice be delegated to make subsequent policy decisions.
 - 86.5 In relation to other minor and/or technical policy matters – the Minister of Finance and the Minister of Housing and Urban Development be delegated to make subsequent policy decisions.

Part 7: Risks

- 87 The risks associated with implementing the Model have been split between:
- 87.1 first order risks – these are risks which are fundamental to the Model working (these are described directly below); and
 - 87.2 second order risks – these are risks that go to how successful the Model will be and how widely it will be used (Appendix B).
- 88 All risks will be monitored and where possible mitigations will be put in place to help manage these.

Level of Support required by Central Government

- 89 To enable the Model, the Crown will be taking on certain decisions rights and risks that currently sit with local authorities. This creates the following risks:
- 89.1 The Crown will provide cover for residual risks if they are arise (via a GSP). The risks associated with the GSP and management of these risks are summarised in the GSP section of this paper above.
 - 89.2 Due to the level of control that the Crown has over the SPV (design of the SPV, approval of the Levy), pursuant to the relevant accounting standard, the assets and liabilities of the SPV will consolidate onto the Crown balance sheet. This should not result in additional net liabilities as the assets and liabilities will offset. There is a risk that Office of the Auditor-General (OAG) may take a different view of the accounting treatment – further detail on this risk is set out in the Financial Implications section of this Cabinet paper.
 - 89.3 Ownership of the SPVs remain with the Crown and does not evolve over time.
 - 89.4 Lobbying of the Crown by beneficiaries because final decision rights regarding the granting of the Levy sit with the Crown.
 - 89.5 Because of the greater decision rights of the Crown and Crown ownership of the SPV, it may give rise to a general expectation (above the Crown's agreed obligations) that the Crown will provide direct financial assistance if the infrastructure project fails before completion (over and above any GSP risks that the Crown might bear) or after completion (which is when the local authority assumes responsibility for the assets).
- 90 To manage these risks I propose that in any communication about the Model, the Crown be clear that:
- 90.1 its role in providing the Model is to support local authorities by removing a road-block but that otherwise local authorities remain responsible for the delivery of local infrastructure;
 - 90.2 ownership of the SPV may change over time and the Crown is interested in exploring different ownership structures with local authorities; and
 - 90.3 local authorities are still involved in the process to agree the Levy (by endorsing the use of the Levy and accepting the assets after construction) and that this Model is a partnership between the Crown and local authorities.

Consumer/beneficiary protections

- 91 Part 4 of this report (Safeguards and Protections) outlines the measures taken to ensure that consumer/beneficiary interests are managed appropriately. Notwithstanding these measures, there is a risk that a Levy payer could complain to the Commerce Commission, and given the possible natural monopoly nature of IFF projects, the Commission could decide to launch an inquiry under Part 4 of the Commerce Act that recommends that the Minister of Commerce and Consumer Affairs impose economic regulation via OIC.
- 92 Whilst both the MBIE and our legal advisors consider the risk of this occurring is small, it is a non-trivial risk that Ministers should be aware of, particularly given the range of projects that are proposed to use the Model. In the event economic regulation was imposed, officials would need to consider the interaction between Commerce Commission oversight and the safeguards within the Model to ensure that the Model operates efficiently (to ensure duplication is minimised).

Local authorities' willingness to use the Levy

- 93 The future behaviour of local authorities towards using the Model will govern its ultimate success. Officials have taken steps to involve local authorities in the development of the Model, including:
- 93.1 regular dialogue with high growth councils in relation to the Model;
 - 93.2 a series of workshops with officials from high growth councils to walk through our policy development proposals and solicit their feedback;
 - 93.3 engagement with officers of high growth councils to assess how the Model will work in practice with reference to actual projects; and
 - 93.4 facilitating Ministerial engagement with elected local authority members.
- 94 However, local authorities may be slow or reluctant to adopt the Model (although I note that funding pressures in Auckland in particular are now more acute). Issues that have been identified which may impact the willingness of local authorities to adopt the new model include:
- 94.1 Perceived loss of control of local authority responsibilities;
 - 94.2 Concern over the affordability/uncertainty of the Levy for beneficiaries;
 - 94.3 Concern over the ultimate owner of the SPV – high growth councils have indicated that they want the SPV to be owned by the Crown;
 - 94.4 Difficulty adapting to using the Model;
 - 94.5 The proposed infrastructure project may impact on feasibility and affordability of already sequenced and planned infrastructure investment; and
 - 94.6 Objection to the project itself (i.e. a local authority may prefer urban growth to occur first in areas other than where a Levy is proposed).

- 95 I propose to mitigate these risks by seeking input from local authorities during the process of developing a funding proposal. This involvement will provide local authorities with the opportunity to indicate any concerns, and provide Ministers with visibility over the nature of any concerns to inform their decision making process.

Rating agency decisions

- 96 The assessment of the Model by credit rating agencies' is critical to the success of the Model. ^[38]
[38]

- 97 [38]

- 98 [38]
[38] If there is a fundamental change in the approach taken by the credit rating agencies in relation to related obligations for government related entities, then this could undermine the Model. Officials have indicated that any proposed changes will be well signposted ^[38]
[38]

- 99 Officials will continue to engage with Standard and Poor's on a regular basis and continue to monitor the methodologies of the other main rating agencies. Officials will also commence high level engagement with the other rating agencies to manage this risk.

Financial Implications

- 100 It is not intended that the Crown will directly contribute towards the cost of infrastructure facilitated by the Model. Instead, beneficiaries of infrastructure will fund the cost of infrastructure (supplemented by contributions from other relevant agencies such as NZTA, local authorities and possibly developers).

- 101 Therefore, the creation of legislation has no direct financial implications for the Crown. However, for the Model to work the Crown will need to:

101.1 Provide a GSP – which will be reflected as a contingent liability for the Crown (until/unless the GSP materialises); and

101.2 Fund the cost of the Recommender and possibly also the Facilitator and Monitor in the event it is not appropriate for the cost of the Facilitator and Monitor to be covered by the Levy.

Accounting impacts for the Crown

- 102 In almost all cases, the costs of infrastructure will be met by the Levy on beneficiaries of infrastructure projects. The Crown will not fund projects enabled through the Model unless risks in the GSP materialise or the Crown agrees otherwise.

- 103 Officials have sought independent accounting advice from PwC on the accounting impacts for the Crown. I am advised that, due to the bespoke legislative and commercial structure of the Model, the Crown will most likely control the SPV from an accounting perspective and need to account for the assets and liabilities of the SPV. This is because of:
- 103.1 the Crown's involvement in the SPV's purpose and design predetermining the SPV's activities;
 - 103.2 the Crown's ultimate right to approve the details of the OIC;
 - 103.3 the fact that the local authorities and ultimately the Crown will receive the benefit of the service potential of the infrastructure assets constructed and financed by the SPV; and
 - 103.4 that significant risks related to the SPV's activities are expected to be borne by the Crown through the GSP.
- 104 The impact of consolidation of the SPV on the Crown balance sheet should be limited to a grossing up for the assets and liabilities of the SPV (i.e. it is not expected to result in the recognition of material additional net liabilities based on the PwC advice). Any net difference will likely reflect a timing difference only. As the Model evolves over time, non-consolidation may be possible.
- 105 There is however a risk that despite seeking accounting advice upfront on this matter from PwC, the OAG may take a different view of the accounting treatment. An alternative view would impact on the consolidated accounts, as an expense and additional liability would need to be recognised.
- 106 Officials will continue to engage with OAG on this matter and update the Minister of Finance and I, if the accounting treatment is different to the advice provided by PwC.

Alternatives to the Model

Increasing local authority borrowing capacity

- 107 In September 2018 Cabinet also directed officials to commence a work programme with local authorities and the LGFA investigating easing the LGFA's debt covenants (CAB MIN (18) 0466 refers). I expect this work to commence in the second half of 2019.
- 108 There are several constraints which limit the borrowing capacity of local authorities; with the contractual requirements to meet LGFA debt covenants (maximum debt to revenue ratio of 250%) the immediate binding constraint.
- 109 There are obvious financial benefits to easing the constraints. Relaxing the LGFA covenants, for example, could free up at least \$2 billion of additional debt capacity immediately for Auckland Council, and up to \$250 million for some high growth

local authorities. However, addressing these constraints will be complex and require shareholder⁵ agreement to amend the LGFA covenants.

[33] [38]

Government directly funds the cost of infrastructure

- 113 The option of central government fully funding local infrastructure provision has not been pursued on the basis that it is inconsistent with existing institutional roles and responsibilities, could undermine local accountability, may impact the current Budget Responsibility Rules and could have material fiscal implications that could crowd out delivery of other central government priorities,^[34]
^[34] I do however acknowledge this is likely to be the only solution that could provide immediate change.

Productivity Commission Inquiry into local government funding and financing

- 114 In July 2018 the Government requested the Productivity Commission (the Commission) undertake an inquiry into local government funding and financing. The Productivity Commission released an Issues Paper in November 2018. The Commission has received 135 submissions on the Issues Paper, including from 44 local authorities. The Commission is due to release a Draft Report in mid-2019, likely by the end of June 2019. Submissions will be invited on the draft report, with a final report due by 30 November 2019. At this stage, the Productivity Commission has not indicated what it may recommend in its draft or final reports.

⁵ It would take an ordinary resolution of more than 50% to pass any change in the covenants – of which Central Government is a 20% shareholder and the remaining 30 shareholding local authorities hold 80%.

- 115 In the Commission's Issues Paper, several questions were raised in relation to existing funding sources for capital works, and alternative mechanisms to fund infrastructure. A variety of views were expressed by submitters on the issue of funding infrastructure. These included the use of new revenue streams (e.g. a portion of GST), public-private partnerships, and new Special Purpose Vehicles. Some high-growth councils (Auckland Council, Tauranga City Council and Queenstown Lakes District Council) believe that current tools are inadequate to effectively manage high growth in their regions, and that there is a misalignment between the benefits and costs of economic development for local government.
- 116 Officials will continue to engage with the local government sector through a series of reference groups, with a view to preparing advice to Cabinet on the government's response to the inquiry.

Consultation

- 117 DIA, MHUD, MBIE, Land Information New Zealand, the Ministry for the Environment, Ministry of Transport, NZTA and the Ministry of Justice have been consulted on this paper. The Department of Prime Minister and Cabinet, Te Arawhiti and Te Puni Kōkiri have been informed of this paper.

Legislative implications

- 118 The Model described in this paper requires legislation to implement.
- 119 I have previously submitted a bid to 2019 legislative programme for the Infrastructure Funding and Financing Bill (the Bill). The Bill was given a priority of Category 3, to be passed if possible in 2019. I now seek Cabinet approval to issue drafting instructions to Parliamentary Counsel Office for this Bill.

Binding on the Crown

- 120 The Act is to bind the Crown. The Bill, if passed will enable some existing local authority powers to be used by an SPV. These powers are binding on the Crown and the treatment of these powers should be symmetrical to existing legislation.

Regulatory impact analysis

- 121 A regulatory impact assessment (RIA) has been prepared. The Department of Internal Affairs' RIA panel (the panel) has reviewed the 'Infrastructure Funding and Financing' RIA (the RIA) in accordance with the quality assurance criteria. This was a joint review by the Department and the Treasury.
- 122 The panel considers that the information and analysis summarised in the RIA meets the quality assurance criteria.

Human rights, gender implications, and disability perspectives

- 123 This proposal has no human rights, gender implications or impact on disability issues.

Publicity

- 124 There is likely to be widespread stakeholder interest in this work, including from local authorities. Accordingly, I intend to proactively release this Cabinet paper and have attached, as appendix C, a Communications Plan. I will also engage with local authorities and other interested stakeholders on the Model.

Recommendations

The Minister of Housing and Urban Development recommends that the Committee:

Introduction

1. **note** that local authority financing constraints limit the timely delivery of infrastructure.
2. **note** that as part of the Urban Growth Agenda officials have been considering options to address local authority financing constraints.
3. **note** 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 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; and
 - 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. **note** that a core part of the Model is the use of a levy (the Levy) which is paid by beneficiaries of infrastructure projects.
5. **note** that a change of rating agency methodology and accounting treatment could impact on the viability of the Model.
6. **note** that the Model provides potential opportunity to iwi, both in terms of accelerating iwi-led developments and providing investment opportunities.

Purpose

7. **note** that the Model requires legislation.
8. **agree** that the purpose of the legislation shall be to provide an alternative financing and funding model for infrastructure for housing and urban development.

The Levy

9. **agree** 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. **agree** that the maximum term of the Levy be 50 years.
11. **agree** 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; and
 - 11.5 environmental resilience infrastructure, such as flood protection, pump stations and environmental restoration.
12. **agree** 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. **agree** 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. **agree** that that a local authority may remit, exempt or postpone Levy payments in accordance with policies and procedures agreed with the SPV.
15. **agree** that the legislation will not permit lump sum payment of Levies.

Development contributions and financial contributions

16. **agree** 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. **agree** 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. **agree** 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. **agree** 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. **agree** 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. **agree** 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. **agree** 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. **agree** that where no collection agreement is in place with a local authority, an SPV may collect the Levy itself.
24. **agree** a local authority shall collect the Levy on behalf of the SPV, if requested to do so.
25. **agree** 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. **agree** 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. **agree** 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. **agree** that late payment penalties may be applied to the Levy in the same manner as for a rate.

29. **note** 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; and
 - 29.3 rating sale and lease powers.
30. **note** 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. **agree** 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. **agree** 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. **agree** 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. **agree** 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. **agree** 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. **agree** that, in the event of an enforced property sale, the Levy rank behind rates but ahead of all other charges applying to land.
37. **agree** 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. **agree** 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. **note** that officials will develop guidance regarding the circumstances under which a revision to the Levy would be contemplated.
40. **agree** 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. **agree** 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. **agree** that the legislation have a permissive approach for identifying beneficiaries of projects.
43. **note** that further guidance will be developed on beneficiary identification and allocation policies.
44. **agree** that the legislation include an objection regime for objections on how the Levy has been calculated, but not the Levy itself.

Proposer

45. **agree** that any 'person' be able to propose a project to be funded by the Levy.

Facilitator and Recommender

46. **note** that the Model includes a Facilitator to assist with the preparation of proposals to access the Levy.
47. **note** 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. **note** that I will report back on the appropriate entity to be the Facilitator and Recommender and associated funding arrangements.
49. **agree** 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. **agree** 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. **agree** 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; and
 - 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. **agree** 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. **agree** 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; and
 - 53.3 whether the payment of the Levy will demonstrably compromise the ability of the local authority to collect future rate revenue.
54. **agree** that in a situation where the relevant local authority does not endorse a Levy, they be required to provide evidence that the proposed asset will not be of sufficient quality or compatible with wider networks; or that they will be unable to meet operational and maintenance costs once the asset has vested; or that the payment of the Levy will compromise their ability to collect future rate revenue.

Cabinet consideration of the OIC

55. **agree** that a Levy must be set by an OIC, made on the recommendation of the Minister.
56. **agree** that the Minister may only recommend the Levy as put forward by the Recommender and without altering the recommended Levy or key terms.
57. **agree** that before recommending the OIC, the Minister must consult the Minister of Finance, the Minister of Consumer Affairs and the Minister of Local Government.
58. **agree** 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. **agree** 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. **agree** 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; and
 - 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; and
 - 60.6 any other matters of practicality, efficiency or equity relevant to the Levy.
61. **note** that the matters described in recommendations 59 and 60 are the only matters which the Minister may take into account.
62. **agree** 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; and
 - 62.9 limits on returns to equity holders.
63. **agree** that the matters in recommendation 62.3:
- 63.1 may be specified by formulae (different formulae may apply to different classes of property within the project community, and at different times); and
 - 63.2 may provide for an increase in the Levy (to address) contingencies in defined circumstances.
64. **agree** that the intended income referred to in recommendation 62.5 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. **agree** 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; and
 - 65.3 the SPV's incorporation and ownership.

SPV

- 66. **agree** that there is 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. **agree** 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. **agree** 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. **agree** 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. **agree** that the SPV must keep the Monitor informed of any surplus, or likely surplus, and its intentions for the application of that surplus.
- 71. **agree** the SPV must produce an audited annual report complying with generally accepted accounting practice.

Safeguards and protections – monitoring and disclosure regime

- 72. **agree** that a Monitor be appointed by OIC, made on the recommendation of the Minister.
- 73. **agree** that the purposes of the Monitor, in relation to the Levy, are:

- 73.1 to ensure that SPV's comply with the terms of the empowering Act and any OIC authorising a Levy; and
 - 73.2 to 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. **agree** that, to fulfil its purpose the Monitor, shall
- 74.1 review and approve the annual charge implementing each Levy; and
 - 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. **agree** 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; and
 - 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. **agree** that the Minister may appoint a Crown manager to an SPV on the recommendation of the Monitor.
77. **agree** 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. **agree** 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. **agree** that the Act will 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. **note** 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. **agree** 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; and
- 81.5 if the local authority does not collect the Levy, contact details for the SPV assessing and collecting the Levy.
- 82. **agree** 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. **agree** that where the SPV collects the Levy, the SPV must keep records available for inspection in the same manner as a local authority;
- 84. **agree** that any SPV must make available on a website;
 - 84.1 its annual reports; and
 - 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. **agree** 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; and
 - 85.2 publish on a website forecast budgets for approved levies; and annual reports for the entities setting approved levies.

Government Support Package

- 86. **note** the Government Support Package is an integral part of the rating agency requirements of the Model.
- 87. **agree** that a Government Support Package will be provided as part of infrastructure projects funded by the Model.
- 88. **note** the terms of each GSP will be agreed on a case by case basis, ^[38]
[38]

Consequential amendments

- 89. **agree** 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; and
 - 89.4 the Local Government Act 2002 and RMA to address the interaction of development contributions and financial contributions with the Model.

Delegations

- 90. **note** that officials are providing advice to Ministers on how the insolvency regime relates to the Model.

91. **note** 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. **note** 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 Resource Management Act 1991 (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; and
 - 92.3 access, in some manner, to the National Land Transport Fund.
93. **note** that officials are providing advice to Ministers on developing an offences and remedies regime.
94. **note** that to enable the drafting of legislation to occur in a timely manner the following delegations are sought to address the items noted in recommendations 90-93:
 - 94.1 In relation to the insolvency regime and how it applies to the Model - the Minister Finance, the Minister of Housing and Urban Development, the Minister of Commerce and Consumer Affairs, and the Minister of Justice be delegated to make subsequent policy decisions.
 - 94.2 In relation to whether GST apply to the Levy – the Minister of Finance, Minister of Revenue and Minister of Housing and Urban Development be delegated 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 Maori Development, the Minister for Land Information, the Minister for the Environment and the Associate Minister of Transport (Hon Julie Anne Genter), be delegated 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 delegated to make subsequent policy decisions.
95. **agree** to the delegations set out in recommendation 94.

Financial Implications

96. **note** that while the Bill has no direct financial implications for the Crown:
 - 96.1 The Government Support Package necessary to implement the Bill carries some fiscal risk for the Crown; and
 - 96.2 The cost to the Crown of the Facilitator, Monitor and the Crown manager, if any, are yet to be assessed.

97. **note** that further advice may be provided on the application of GST, income tax and accounting treatments to the Model.
98. **agree** that the Bill will bind the Crown.
99. **note** that the Bill has a priority of category 3, to be passed in 2019 if possible, in the legislative programme.
100. **invite** the Minister of Housing and Urban Development to issue drafting instructions to Parliamentary Counsel Office for the Bill.

Other work is underway

101. **note** that in June 2018, officials reported to Ministers on options to address local authority financial constraints including: central government funding infrastructure directly; alternative financing models; local authorities selling assets to fund infrastructure; and expanding local authority borrowing through the Local Government Funding Agency.
102. **note** that in considering the June 2018 report, Ministers asked officials to focus on alternative financing models and this decision was endorsed by the Cabinet Economic Development Committee in September 2018.
103. **note** Cabinet directed officials to commence a work programme with local authorities and the LGFA investigating easing the LGFA's debt covenants (CAB MIN (18) 0466 refers).
104. **note** that officials will not consider central Government funding of local authority infrastructure or local authorities selling assets to fund infrastructure.
105. **note** the communications plan attached as Appendix C.

Appendix A: High level simplified case study of how the Model is intended to work

Details of the Infrastructure Project:

- Large greenfield site with ownership split between five landowners. Four of the five landowners wish to develop their sites, whilst the fifth owner wishes to landbank. The total cost of the infrastructure is estimated at \$2.2 billion, 15,000 potential homeowners in stage one – with potential to increase to 23,000 dwellings in later stages.

Proposer phase:

- Four of five major landowners come to the Facilitator and Recommender with a proposal to fund the infrastructure.

Facilitator and Recommender (F&R):

- F&R works with the landowners to develop an Initial Feasibility Case. The Initial Feasibility Case enables the F&R to assess swiftly whether the Model will work. The type of information needed at this stage includes:
 - Background on the project
 - Status of consent and planning
 - Nature and cost of the infrastructure and how certain is the costing
 - Whether there is any other complementary infrastructure required (e.g. NZTA investment)
 - High level overview of the number of beneficiaries and preliminary thinking on the amount and allocation of the levy across beneficiaries
 - Local authority views on the use of the model for the Infrastructure Project.
- If the Initial Feasibility Case stacks up, then it would move to the development of a full Funding Proposal. This would include identification of beneficiaries and how the Levy would apply, any additional safeguards to protect beneficiaries, procurement of assets, securing the financing and an assessment of the project against central government approval criteria. On the strength of the Funding Proposal, the F&R would:
 - Enter into discussions with the Treasury regarding the details of a Government Support Package (GSP)
 - Engage with the Treasury on the GSP and (most likely) Ministry of Housing and Urban Development who would provide a second opinion on the Funding Proposal.

Approval Process

- As part of the approval process, the F&R would:
 - Seek local authority endorsement
 - Advise the Minister on whether a levy should be approved by OIC

- Before recommending the OIC, the Minister must consult the Minister of Finance, the Minister of Consumer Affairs and the Minister of Local Government
- Cabinet would consider the recommendation together with advice from the Treasury on the GSP and Ministry of Housing and Urban Development on the Funding Proposal.

SPV

- If Cabinet agreed to the OIC, the SPV would be set up and would construct the asset and levy beneficiaries (which could include unwilling land owners creating an incentive for development and land release). The local authority would collect the Levy on behalf of the SPV and would be paid a fee to do so.

Asset transfer

- At the end of construction, the asset would transfer to the local authority (at nil/nominal consideration). The local authority would then operate the asset and the SPV would continue to collect the Levy from beneficiaries to repay the finance raised to construct the asset.

Monitoring

- As outlined in the Cabinet paper, there is a comprehensive disclosure regime which will ensure residents know at the beginning and on an on-going basis whether land is subject to the Levy.
- The Monitor will also be checking that the levy is being charged in line with the OIC.

Points to note

- We anticipate that local authorities will be engaged throughout the process.
- Based on some of the potential infrastructure projects, local authorities may need to finance part of the infrastructure to ensure that the levy remains affordable.
- Beneficiaries don't get to choose whether to pay the levy or not, it is compulsory.
- In a greenfield scenario beneficiaries can opt-in by purchasing a property but in a brownfield scenario, the Levy will be imposed on existing landowners.
- Provides a mechanism to break the deadlock with land-bankers, but may also impact on incumbent land owners (e.g. people on fixed incomes).
- The Model enables flexibility both in terms of phasing of the Levy (for example larger upfront levies and lower levies during out-years) and vary the Levy between types of beneficiaries (for example there could be two distinct levies for one SPV – one for the direct beneficiaries, and one, possibly lesser, on a wider set of beneficiaries who benefit from the network investment).

Appendix B: Second order risks (note that first order risks are found in the body of the Cabinet paper)	
Risk	Commentary
Unwilling beneficiaries	<p>The Model will enable the power to Levy residents who have not opted-in to a project area. In some cases this will include unwilling beneficiaries. Mitigation of this risk is challenging, as there are many variables that lead to a beneficiary being unwilling.</p> <p>In a greenfield development scenario the risk of unwilling beneficiaries is more remote as purchasers and developers will likely be fully aware of, and are able to 'opt-in', to the Levy. This risk is higher in instances where brownfield development is funded and financed via the Model due to the impost of the Levy on existing residents. Wilful non-payment may occur with consequential costly recovery actions needed.</p> <p>Under certain circumstances (e.g. land banking) the Model may assist in breaking the impasse due to the cash impact of the Levy. However, it may also impact on those who are unable to afford the Levy (such as people on fixed incomes). Beneficiary identification, equity and affordability will be important considerations in the Levy design process which will help mitigate this risk. For example for existing residents, the Levy could be phased in or only become payable after a certain period of time or event (such as the sale of the house).</p>
Development may be incentivised away from brownfields	<p>As the Model will be more easily applied to greenfield projects (due to the greater simplicity of identifying beneficiaries and those who opt-in) it may encourage development away from brownfield areas. This may have environmental impacts and also work against the Government's wider urban development objectives. This risk will be partially mitigated through implementation of the wider UGA work programme which focuses on improving spatial planning and supporting urban intensification.</p>
Beneficiary allocation choices	<p>The accurate and fair allocation of costs in brownfield and greenfield areas may be challenging, particularly where a project funded by the Levy has network impacts or where there are existing residents and second wave beneficiaries. This is not a new issue with current methods of recovering costs, such as development contributions, consistently under recovering actual cost. The Model will provide greater transparency of infrastructure cost but beneficiary identification and allocation is still likely to be contentious. Officials will work with other government agencies and local authorities to develop guidance.</p>
Affordability and acceptability of the Levy	<p>There is a risk that the Levy is unaffordable either in the context of total rates payable, or on an individual basis. If the Levy is not affordable it may lead to non-payment by beneficiaries and pose a risk to the project more generally. This risk is being addressed through the disclosure regime and by affordability being one of the considerations for Cabinet when approving the use of the Levy.</p>
Equity issues with the use of the Model	<p>There is a risk that local authorities primarily use the Model in areas where the resident community are less likely to seek to challenge the Levy and/or apply pressure on local politicians. If this occurs, it could mean that areas with a greater proportion of renters and affordable housing are most significantly impacted by the Levy.</p> <p>These equity risks are matters that the Facilitator and Recommender will need to closely monitor and further advice will be provided to Ministers if required.</p>
Ability for the Levy to cover the full cost of the Infrastructure	<p>In some cases, it may be unaffordable for beneficiaries to cover the full cost of the infrastructure. Or it may be inappropriate for the beneficiaries to cover the full costs because there are wider community benefits. In these cases a contribution from the local authority or other related party (e.g. NZTA) might be required deliver the projects.</p>

Appendix B: Second order risks (note that first order risks are found in the body of the Cabinet paper)	
Risk	Commentary
Use of the Model may place pressure on funders of complementary infrastructure	<p>If successful, the use of the Model will accelerate the delivery of infrastructure projects and may require complementary projects to be funded sooner than envisaged (e.g. transport projects). There is a risk that if these complementary projects are not funded, it will hold back the delivery of viable infrastructure projects.</p> <p>Addressing this risk will rely on the ability of government agencies responsible for infrastructure, such as transport, to be adaptive and to be involved in the feasibility stage of proposals to identify and mitigate these risks. The work under the spatial and urban planning pillars of the UGA should help to deal with these issues as a more integrated approach is taken to planning, to identify and agree all infrastructure that is needed to develop a certain area.</p>
Powers given to a third party	<p>The power to Levy will be given to an SPV which may be owned privately or have a level of private capital. Whilst there are safeguards around the Levy and what the Levy can be used for, this could still be controversial. In most cases the SPV will only own the asset during construction, the asset will vest back to the local authority immediately or soon after construction.</p>
Communication with local authorities and beneficiaries	<p>The Levy and use of an SPV could be misinterpreted by the public, beneficiaries, local authorities or the media. Unfavourable public commentary on the Levy could lead to non-payment. To manage this risk Treasury will prepare a communications plan for any announcements about the introduction of legislation and will work with your offices to arrange briefings of key stakeholders in advance of any announcements.</p> <p>Additionally, the complexity of the Model may undermine uptake from developers and local government, and requires sophisticated understanding from political decision makers, officials, developers and consumers. Transparent and clear supporting material will be developed to avoid misconceptions and assumptions and increase the likelihood of uptake.</p>
New Legislation	<p>There are inherent risks with implementing new legislation and ensuring that it works as envisaged, particularly when working to compressed timeframes. Officials have sought to mitigate this risk through engagement and consultation with local authorities and other key stakeholders who will use the Model (financiers, developers and contractors). Officials have also been supported by Crown Infrastructure Partners, legal, commercial and capital market advisors.</p>

[34]