

Regulatory Impact Statement: Going for Housing Growth – Improvements to the IFF Act

Coversheet

Purpose of Document	
Decision sought:	The purpose of this analysis is to inform Cabinet decisions on improvements to the Infrastructure Funding and Financing Act 2020 (IFF Act) as part of the Infrastructure Pillar of the Government’s Going for Housing Growth (GfHG) work programme.
Advising agencies:	Ministry of Housing and Urban Development (HUD)
Proposing Ministers:	Minister of Housing
Date finalised:	25 November 2024
Problem Definition	
<p>The IFF Act was enacted in 2020 to provide a funding and financing model for infrastructure for urban development that overcomes councils’ funding and financing constraints. However, use of the IFF Act has been limited and only two IFF Act levies have been approved.</p> <p>There are two key barriers to the use of the IFF Act that have contributed to its low uptake:</p> <ul style="list-style-type: none">• The cost of IFF Act transactions relative to other funding tools; and• The time and effort required for applicants to have a levy approved. <p>Legislative amendments to the IFF Act can help address the second barrier but are likely to only have a minimal impact on the first barrier. In addition to addressing barriers to the IFF Act’s use, there is an opportunity to improve the IFF Act’s viability and flexibility for a range of infrastructure projects.</p>	
Executive Summary	
<p><i>Background</i></p> <p>The IFF Act can be used for the funding and financing of new or upgraded local infrastructure for urban development. Through the IFF Act, a special purpose vehicle (SPV) is used to fund infrastructure, rather than a council or other infrastructure authority. Those benefitting from the infrastructure (for example landowners in the area serviced by the new infrastructure) will be charged a levy by the SPV. These levies are charged annually for a specified amount of time (up to a maximum of 50 years). Levies are collected by councils alongside rates and then passed on to the SPV.</p> <p>The IFF Act was introduced to enable infrastructure projects to be delivered free from local authorities funding and financing constraints. Finance raised by an IFF Act SPV sits off councils’ balance sheets, ensuring it does not impact on their debt limits.</p>	

The IFF Act was initially envisaged as a funding and financing tool for infrastructure for greenfield residential development. However, to date, IFF Act levies have been struck for two city-wide infrastructure projects and no levy proposals have been received for infrastructure for new residential developments.

Objectives

Proposals in this paper are intended to:

- Remove unnecessary barriers to using the IFF Act;
- Improve the viability of the IFF Act for a range of infrastructure projects, particularly developer-led out-of-sequence projects; and
- Make the levy development and approvals process more efficient.

Issue 1 – Purpose of the IFF Act

The purpose of the IFF Act sets its scope. The Responsible Minister (currently the Minister of Housing) must consider whether a proposed levy is consistent with the IFF Act's purpose before recommending approval of a levy.

The purpose includes a focus on addressing local authority financing and funding constraints. However, this limits the use of the IFF Act for projects where councils have no financing and funding constraints (e.g. NZTA transport projects or water infrastructure constructed by entities established through Local Water Done Well reform). The focus on local authority financing and funding constraints is also not reflective of the expected use of the IFF Act in the new system as primarily a developer-led tool for out-of-sequence developments.

The purpose of the IFF Act also includes a requirement that use of the IFF Act “supports the functioning of urban land markets”. This term is not defined and is arguably superfluous as the purpose already requires that the IFF Act be used for “infrastructure for urban development”.

We have considered the following options to improve the IFF Act's purpose:

- Option 1A – Status quo.
- Option 1B – Repeal requirement that use of the IFF Act addresses local authority financing and funding constraints.
- Option 1C – Remove requirement that a levy support the functioning of urban land markets.

HUD's preferred option for the IFF Act's purpose is both options 1B and 1C together. Together these options would make the IFF Act simpler to use and option 1B would enable the IFF Act to support a wider range of projects.

Issue 2 – Levy approvals process

The process to develop a levy proposal and go through the approvals process can be resource and cost intensive for both applicants and central Government. The time and cost associated with establishing an IFF Act levy can act as a disincentive to use the IFF Act for projects where it would otherwise make sense.

However, IFF Act levies provide a taxing right for up to 50 years to a non-democratically accountable SPV. It is therefore important to ensure the approvals process provides adequate protections for levypayers' interests.

The IFF Act sets requirements for:

- Levy proposals prepared by those wanting to use the IFF Act;
- Recommendation reports prepared by HUD (as the IFF Act recommender) to aid the Minister's consideration of a levy proposal;
- The mandatory considerations the Minister of Housing must weigh before deciding to recommend approval of a levy; and
- The content of an Order in Council (levy order) authorising the charging of a levy.

In addition to the statutory requirements, Crown Infrastructure Partners (CIP) has been appointed to the non-statutory "facilitator" role. As the facilitator, CIP assists councils and developers to prepare levy proposals. CIP also raises finance for IFF Act transactions and may take an ownership interest in the SPVs established for each levy.

We have considered the following options to improve the levy approvals process:

- Option 2A – Status quo.
- Option 2B – Combine the facilitator and recommender functions. This would shift the recommender function from HUD to CIP, enabling levy proposals and recommendation reports to be combined into a single document. This option could create the risk of actual or perceived conflicts of interest associated with CIP developing levy proposals, assessing those proposals and then taking an ownership interest in the SPVs.
- Option 2C – Maintain separate facilitator and recommender functions but make other changes to streamline the process (see Annex B). Under this option, the mandatory considerations the Minister must weigh, and requirements for both levy proposals and recommendation reports would be simplified.
- Option 2D – Simplified assessment criteria for landowner supported levy proposals. Under this option, the responsible Minister would not need to consider the affordability of a levy to the extent that landowners that would be subject to the levy have provided written support for the levy.

HUD's preferred option for the approvals process is both options 2C and 2D together. Both options would significantly increase the viability of the IFF Act by reducing the time and cost associated with the levy approvals process. Option 2C would achieve this generally for all levies, while option 2D would achieve this for greenfield levies supported by developers (and other levies with landowner support). Despite simplifying requirements, the proposed options still ensure a robust approvals process that adequately protects the interests of levypayers.

Issue 3 – Use of the IFF Act to support value capture

Pillar Two of GfHG includes a workstream on value capture. This workstream includes investigating options for enhancements to existing cost-recovery tools (such as the IFF Act) to better enable value capture.

The IFF Act already enables a form of cost-recovery based value capture and fits within the OECD's "infrastructure levy" category of value capture tools. There is significant flexibility within the IFF Act around how levies are designed. Levies can be set based on a number of factors including distance from infrastructure, land area or zoning (or a combination of factors). This flexibility enables levies to be based on an estimation of benefits from an infrastructure project. However, the IFF Act does not enable levies to be set based on an actual measurement of the value uplift arising from an infrastructure project.

We have considered the following options to improve the IFF Act's utility as a value-capture tool:

- Option 3A – Status quo.
- Option 3B – Enable a levy deferral mechanism as an optional levy design choice,
- Option 3C – Enable use of the IFF Act for NZTA projects.

HUD's preferred option is both option 3B and 3C together.

A levy deferrals mechanism would enable levies to more appropriately allocate costs amongst levypayers by ensuring those that receive large benefits through value uplift are able to be charged larger levies without triggering affordability concerns (e.g. through deferring levy payment to sale of a property).

Enabling the IFF Act to be used by NZTA would enable new development to better contribute towards the growth costs of major infrastructure projects (rather than these costs being borne by wider ratepayers, taxpayers and road users). However, the extent to which the IFF Act would be used for NZTA projects is currently unclear.

Issue 4 – Setting IFF Act levies without reference to a specific infrastructure project

Currently IFF Act levies must be set with reference to a specific infrastructure project or projects. However, the proposed shift from development contributions to development levies (see *Regulatory Impact Statement: Going for Housing Growth – Improving Local Government Infrastructure Funding Settings*) will shift the causal nexus away from groups of developments and particular infrastructure projects to a nexus between all development and aggregate growth costs across an area.

Development levies not having a causal nexus with specific infrastructure projects raises the question whether IFF Act levies should also be able to be set without reference to a specific infrastructure project in some circumstances.

We have considered the following options for enabling IFF Act levies to be set without reference to a specific infrastructure project:

- Option 4A – Status quo.
- Option 4B – Enable IFF Act levies to be set without reference to a specific infrastructure project where the IFF Act is being used to finance payment of a development levy.

HUD's preferred option is option 4B. This option is still consistent with the overall intent of the IFF Act as the IFF Act levies would be used to pay development levies which in turn are used to pay for infrastructure for urban development. A broader ability to set an IFF Act levy without a direct link to a specific infrastructure project could undermine the intent of the IFF Act (e.g. enabling the IFF Act to be used as an off-balance sheet replacement for general rates).

Other changes

In addition to the preferred options detailed above, improvements to the IFF Act would also include:

- Changes to ensure IFF Act levies and the proposed development levies work well alongside each other; and
- Technical and remedial changes to improve the functioning of the IFF Act.

Targeted engagement

HUD has carried out targeted consultation on the issues covered in this RIS with some developers, officers in a number of councils, and other relevant stakeholders such as MAFIC and Cameron Partners.

All stakeholders, but particularly developers, were supportive of changes to streamline the levy development and approvals process. However, councils considered that use of the IFF Act for council-led projects would be limited because of the cost of IFF Act transactions relative to other funding tools, the impacts of Local Water Done Well reforms on councils' debt headroom, increases in borrowing limits, and political considerations around the size of rates bills (inclusive of IFF Act levies).

Costs and benefits

Compared to taking no action and maintaining the status quo, the preferred package of options (identified above) would have a range of benefits including:

- Making the levy approvals process simpler and more efficient; and
- Improving the viability and flexibility of the Act for a range of infrastructure projects.

These benefits could see increased use of the IFF Act, helping to bring forward delivery of the infrastructure necessary for housing development. However, if the preferred options package results in increased use of the IFF Act:

- HUD may incur costs associated with assessing the increased number of levy proposals; and
- Councils may incur costs associated with administering an increased number of levies.

Limitations and Constraints on Analysis

This analysis was compiled under time constraints in order for Cabinet decisions to be made in the final quarter of 2024. The decisions made by Cabinet will set the high-level direction for legislative change, and responsibility for detailed policy decisions will be delegated to the Minister of Housing.

Options that would be inconsistent with the wider objectives of GfHG have not been considered.

Time constraints have limited engagement on the changes proposed in this RIS to some developers, officials from a number of councils and other relevant stakeholders (see Annex A). Broader consultation with both councils and developers would have been desirable but was not possible in the time available.

There will be the opportunity for developers, councils and the wider public to participate through the select committee process. However, councils may be limited in how they can engage due to local elections falling into the projected select committee period.

We are also yet to engage with iwi/Māori on changes to the IFF Act. Officials intend to undertake engagement with Māori on the IFF Act's provisions concerning protected Māori land before legislation is introduced.

The low number of IFF Act proposals received to date has also provided only a limited evidence base to assess the effectiveness of the proposed options in addressing barriers to use of the IFF Act.

Responsible Manager(s) (completed by relevant manager)



Jane Keane
Policy Manager
Urban Development and Infrastructure
Ministry of Housing and Urban Development
25 November 2024

Quality Assurance (completed by QA panel)

Reviewing Agency:	Ministry of Housing and Urban Development, Department of Internal Affairs, Ministry for Primary Industries
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Panel Assessment & Comment:	<p>The panel considers that the information and analysis summarised in the RIA <i>meets</i> the quality assurance criteria.</p> <p>The information provided in the RIS is clear and concise and sets out all of the necessary information required. The problem and options to address the problem are clear, and the analysis underpinning the options is reasonable within the constraints and limitations noted. There are few prior levy proposals to use as a basis for analysis and so uncertainty about impacts is justified. The RIS is constrained by limited consultation with a subset of potentially affected parties, and highlights the lack of consultation regarding protected Māori land and iwi/Māori interests.</p>
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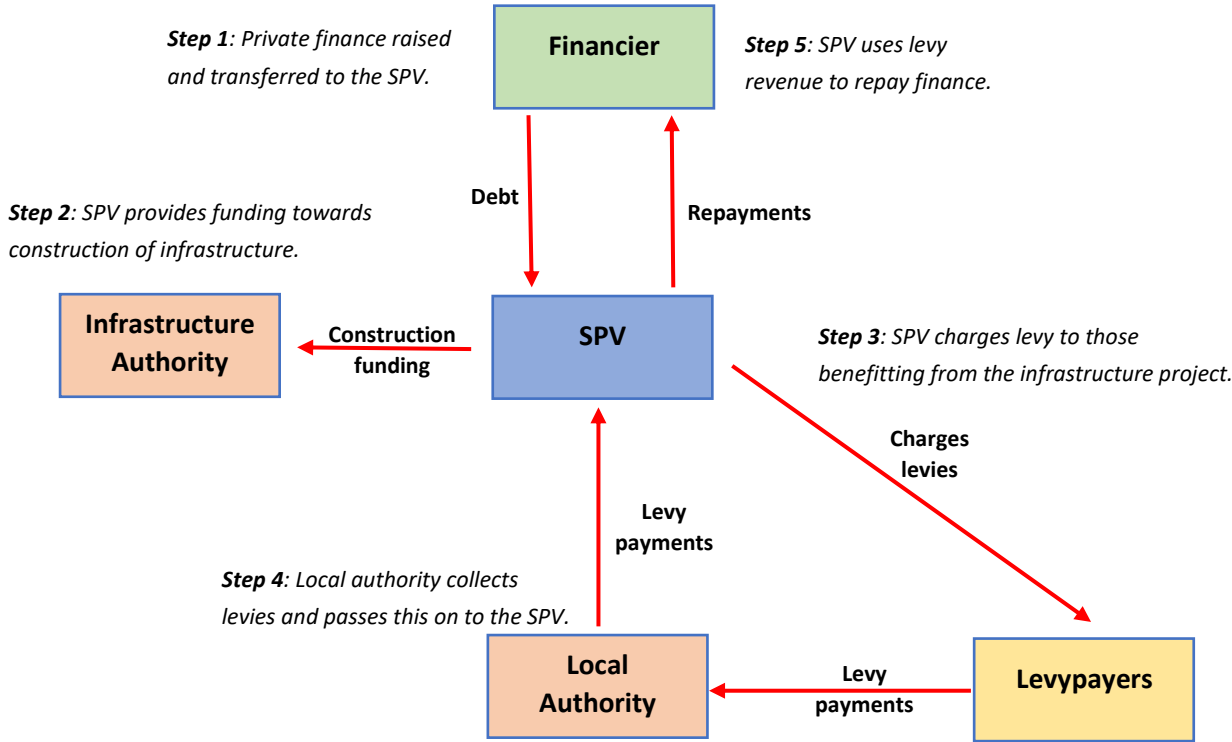
Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

Background

1. The Infrastructure Funding and Financing Act 2020 (IFF Act) can be used for the funding and financing of new or upgraded local infrastructure for urban development.¹ Through the IFF Act, a special purpose vehicle (SPV) is used to fund infrastructure, rather than a council or other infrastructure authority (e.g. Watercare). Those benefitting from the infrastructure (for example landowners in the area serviced by the new infrastructure) will be charged a levy by the SPV. These levies are charged annually for a specified amount of time (up to a maximum of 50 years). Levies are collected by councils alongside rates and then passed on to the SPV.

Figure 1 – Example of the IFF Act model



¹ Urban development is defined as the development of all types of housing, the development and renewal of urban environments (whether or not this includes housing development), and the development of related amenities, infrastructure, facilities, services or works.

2. Each IFF Act levy is linked to a specific infrastructure project or set of projects. The IFF Act may be used for:
 - a. water services infrastructure;
 - b. transport infrastructure;
 - c. community infrastructure or facilities (e.g. reserves, libraries and community hubs); and
 - d. environmental resilience infrastructure.

The IFF Act was introduced to address local authority financing constraints

3. The IFF Act was introduced to enable infrastructure projects to be delivered free from local authorities funding and financing constraints. Finance raised by an IFF Act SPV sits off councils' balance sheets, ensuring it does not impact on their debt limits.
4. Infrastructure supply is constrained by financial restrictions on local authorities, who provide most network infrastructure. In a number of our high growth regions, local authorities are facing constraints in their ability to invest in infrastructure to support and service growth. In particular, the demand for new housing is outstripping local authorities' ability and willingness to take on further debt, meaning there are infrastructure investments that can be funded over time, but not financed from local authority balance sheets.²
5. The constraints which are limiting the borrowing capacity of local authorities include:
 - a. Contractual requirements to meet Local Government Funding Agency (LGFA)³ borrowing covenants. Currently, councils with a credit rating have debt-to-revenue limits of 285%⁴ and councils without a credit rating have limits of 175%.
 - b. Self-imposed stricter debt limits to provide debt headroom for unexpected expenses (e.g. natural disasters). For example, Wellington City Council and Hutt City Council have set internal debt-to-revenue limits of 225% and 250% respectively.
 - c. A focus on maintaining their credit ratings to minimise borrowing costs.

Use of the IFF Act has been limited

6. The IFF Act was initially envisaged as a funding and financing tool for infrastructure for greenfield residential development. However, to date, IFF Act levies have been struck for two city-wide infrastructure projects and no levy proposals have been received for infrastructure for new residential developments.
7. The first IFF Act levy was for Tauranga City Council's (TCC) Transport Systems Plan. This transaction raised \$177 million on the strength of a 30-year city-wide levy to partially fund a combination of up to 13 different transport projects across Tauranga.
8. The second IFF Act levy was for Wellington City Council's new sludge minimisation facility. This transaction raised \$400 million on the strength of a 33-year city-wide levy.

² Funding refers to all the money needed to pay for infrastructure and comes from the community through users, taxpayers and ratepayers. Financing refers to when infrastructure is paid for (e.g. using cash surpluses to pay now or borrowing and repaying later).

³ The LGFA specialises in financing the New Zealand local government sector. It was established in 2011 to raise debt on behalf of councils on terms that are more favourable to them than if they raised debt directly.

⁴ Reducing to 280% from 1 July 2025. However, the LGFA announced on 20 November 2024 that debt-to-revenue limits for high growth councils is being increased to 350%.

Parties involved in the IFF Act

9. The IFF Act includes a number of parties involved in developing, approving and administering levies as detailed below:

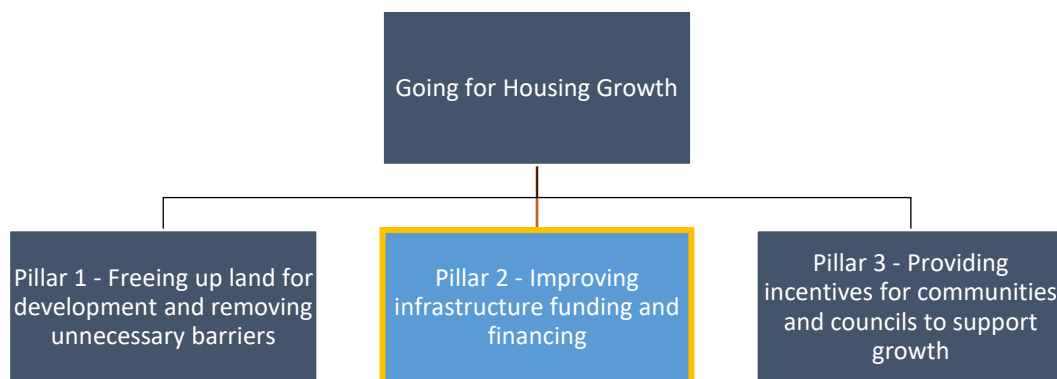
Party	Role
<p>Levy proposer</p>	<p>Submits a proposal to use the IFF Act for the funding and financing of an infrastructure project. Proposers typically work with Crown Infrastructure Partners (CIP) (as the facilitator) to develop and progress a levy proposal. However, working with CIP is not required.</p> <p>Anyone can propose that an infrastructure project is funded using the IFF Act model, including local councils, iwi, or private developers.</p>
<p>Crown Infrastructure Partners (CIP)</p>	<p>Facilitator CIP is a Schedule 4A company under the Public Finance Act 1989 and has been appointed the non-statutory role of facilitator by Cabinet. CIP works with central government, local government, developers, and landowners to assess the feasibility of an IFF Act transaction and advance the transaction through the process (including raising of finance).</p> <p>SPV owner Both SPVs established to date have been owned by CIP. It is anticipated that CIP will also own future SPVs.</p>
<p>The Ministry of Housing and Urban Development (HUD)</p>	<p>Recommender HUD was appointed the role of recommender under the IFF Act. The recommender's role is to assess a levy proposal and provide advice to the responsible Minister on whether a levy proposal should be approved. HUD also works with the Parliamentary Counsel Office (PCO) on the drafting of levy orders.</p> <p>Monitor HUD was also appointed the role of monitor under the IFF Act. The monitor is responsible for ensuring the SPV powers are used appropriately over the lifetime of the SPV.</p>
<p>Minister of Housing</p>	<p>Levy approval Assesses a levy proposal against the IFF Act's mandatory considerations and decides whether to recommend approval of the levy to Cabinet. The mandatory considerations broadly cover whether a levy is consistent with the IFF Act's purpose, whether the levy appropriately allocates costs and whether the levy is affordable.</p>

Party	Role
Minister of Finance	<p>Government Support Package The Minister of Finance approves a Government Support Package (GSP) for each levy.⁵ The Treasury provides advice to support the Minister of Finance’s consideration of the GSP.</p>
Special Purpose Vehicles (SPVs)	<p>Infrastructure funding SPVs raise finance on the strength of the levy and use this to provide funding for an infrastructure project.</p> <p>Charges levies SPVs charge levies to the beneficiaries of an infrastructure project. The SPV uses levy revenue to repay financiers and pay for other eligible costs.</p> <p>Infrastructure construction SPVs can be responsible for construction of an infrastructure project. However, to date, no SPVs have been responsible for construction.</p>
Local authority	<p>Levy collection Local councils collect levies on behalf of the SPV.</p>

The Going for Housing Growth plan seeks to address barriers to housing supply

- Improvements to the IFF Act are part of the Government’s Going for Housing Growth (GfHG) programme. GfHG is a programme of work which will tackle ongoing housing shortages by increasing the availability of affordable housing and improving living conditions for renters and homeowners. GfHG has three “pillars”, shown in the diagram below.

Figure 2 The pillars of the Going for Housing Growth Programme



⁵ The GSP is an indemnity to the SPV established for each transaction under the Public Finance Act. The GSP protects against certain risks, including judicial review, which financiers are not willing to accept.

11. Cabinet decisions on Pillar One were made in June 2024 (CAB-24-MIN-0228.01 refers). These decisions included:
 - a. Setting Housing Growth Targets for Tier 1 and 2 councils, requiring them to live-zone enough development capacity to meet 30 years of demand;
 - b. Making the Medium Density Residential Standards (MDRS) optional for councils;
 - c. Strengthening the intensification provisions of the National Policy Statement on Urban Development (NPS-UD);
 - d. Providing for mixed-use development; and
 - e. Removing the ability for councils to set minimum floor area requirements and minimum balcony requirements.
12. IFF Act improvements sit within Pillar Two. This pillar also includes changes to infrastructure funding settings and value capture. The Cabinet paper this analysis supports also contains recommendations on improving infrastructure funding settings (see *Regulatory Impact Statement: Going for Housing Growth – Improving Local Government Infrastructure Funding Settings*).

Aims of the Infrastructure Pillar

13. Pillar Two aims to ensure that councils, developers and government can access the funding and financing tools needed to build infrastructure that is necessary for growth. The key principle underpinning this pillar is “growth pays for growth” (i.e. the growth costs of infrastructure are paid for by new development rather than the wider community). To achieve this, the Government is developing a flexible toolkit that supports a range of development scenarios. This includes, ‘in sequence’ development planned and budgeted for by councils, and ‘out-of-sequence’ development that happens at a time or location not planned or budgeted for by councils.⁶
14. Alongside the IFF Act, this flexible toolkit will include:
 - a. Development contributions (with proposed change to development levies).
 - b. Development agreements (contractual agreements between developers and councils about the funding, financing and delivery of infrastructure necessary for a new development); and
 - c. Targeted rates (with proposed addition of “rating unit creation date” to the list of categories of land councils may use for setting a targeted rate).
15. Improvements to the IFF Act (with the exception of option 4B) are not dependent on other changes proposed as part of Pillar two and could be progressed on their own.

Role of IFF Act in the new system

16. Of the Pillar Two initiatives, which are largely focussed on funding and financing growth infrastructure, the proposed new development levies are expected to be the main funding tool (see *Regulatory Impact Statement: Going for Housing Growth – Improving Local Government Infrastructure Funding Settings*). However, the IFF Act (as well as development agreements) will play an important supporting role, particularly in funding and financing unanticipated or out-of-sequence developments.
17. The recommended changes to the IFF Act included in this analysis are intended to improve the IFF Act regardless of the type of infrastructure projects it is used for. However, a particular focus is on improving the IFF Act’s utility for out-of-sequence

⁶ For example, infrastructure for a greenfield development that has not been included within a council’s 10-year long-term plan.

developments. As the Pillar One GfHG initiatives will increase opportunities for unanticipated or out-of-sequence developments, it is important we have the funding and financing tools available to provide the infrastructure necessary for these developments.

18. For non-growth infrastructure projects (e.g. renewals or levels of service improvements), rates and user charges will continue to be the main funding tools, but the IFF Act will continue to provide an off-balance sheet financing option for councils. However, our engagement with councils has suggested that demand for use of the IFF Act in this way will be low. This is because of the cost of IFF Act transactions relative to other funding tools, the impacts of Local Water Done Well reforms on councils' debt headroom, increases in borrowing limits and political considerations around the size of rates bills (inclusive of IFF Act levies).

What is the policy problem or opportunity?

19. Uptake of the IFF Act to date has been limited and barriers to its use are reducing interest in using it for infrastructure projects where it could be a valuable funding and financing tool. Without legislative amendments, the IFF Act would continue to be an option for funding and financing infrastructure projects, however we expect it would continue to have limited use.
20. The two key opportunities for improvements to the IFF Act are:
 - a. Addressing current barriers to the use of the IFF Act; and
 - b. Improving the flexibility and viability of the IFF Act for a range of infrastructure projects. This would help achieve the "flexible toolkit" that is an aim of Pillar Two of GfHG.
21. Currently there are two key barriers to the use of the IFF Act:
 - a. The cost of IFF Act transactions relative to other funding tools; and
 - b. The time and effort required for applicants to have a levy approved.
22. Legislative changes to the IFF Act can help address the second barrier but are likely to only have a small impact on addressing the first. However, CIP is continually working to bring down the cost of IFF Act transactions through its facilitation role. In addition, the proposed new development levies will improve alignment with the IFF Act by better ensuring the full costs of growth are recovered. Currently development contributions do not always fully recover the costs of growth, making them a more attractive funding solution than the IFF Act for developers.
23. Individual IFF Act levies may also pose policy problems or create opportunities. However, these problems and opportunities would be considered when assessing a proposal to use the IFF Act.

Targeted engagement has occurred with relevant stakeholders

24. HUD has carried out targeted consultation on the issues covered in this RIS with some developers, officers in a number of councils, and other relevant stakeholders such as MAFIC and Cameron Partners. Annex A includes a list of stakeholders consulted.
25. The main feedback and themes from this engagement included:
 - a. Councils, noting the impacts of IFF Act levies on their ratepayers, generally considered that future use of the IFF Act for council-led projects would likely be minimal. Councils considered the cost of IFF Act transactions relative to undertaking projects on-balance sheet (e.g. through LGFA borrowing) made it an unattractive tool for their projects as, despite the benefits of off-balance-sheet financing, the costs of IFF Act transactions are ultimately borne by ratepayers. Councils acknowledged that legislative change to the IFF Act would likely only have a minimal impact on the cost of IFF Act transactions.

- b. All stakeholders, but particularly developers, were supportive of changes to improve the efficiency of the levy approvals process. Developers noted that they are best-placed to know if a proposed levy affects the commercial viability of their developments. As such, for developer-led greenfield levies (where risk lies with developers and future property owners effectively opt-in to the levy when purchasing a property), developers considered central government assessment of a levy's affordability unnecessary.
 - c. Noting their role in administering and collecting levies, councils were keen to ensure the costs imposed on them were low.
26. In addition to targeted engagement with external stakeholders, HUD has worked closely with CIP and the Treasury on the issues and options covered in this RIS noting their respective roles in the IFF Act system.

What objectives are sought in relation to the policy problem?

27. Improvements to the IFF Act should be consistent with the overarching objectives of the infrastructure pillar of GfHG. This includes maintaining consistency with the 'growth pays for growth' principle.
28. Additional objectives for IFF Act improvements are:
- a. Removing unnecessary barriers to using the IFF Act for infrastructure projects;
 - b. Improving the viability of the IFF Act for a range of infrastructure projects, particularly developer-led out-of-sequence projects;
 - c. Making the levy development and approvals process more efficient for all parties.

What criteria will be used to compare options to the status quo?

29. Options have been assessed against a general set of criteria to evaluate the impacts of the proposals against the status quo:
- a. Fairness – Options should ensure the interests of levypayers, developers and councils are appropriately balanced.
 - b. Efficiency: Options should make the IFF Act simple and less costly to use for all parties including levy proposers, councils, and the Crown.
 - c. Flexibility: Options should improve the flexibility of the IFF Act to support its use for a range of infrastructure projects.
30. Options that improve efficiency and flexibility are likely to remove unnecessary barriers to using the IFF Act, improve the IFF Act's viability for a range of projects and make the levy approvals process more efficient. Options that improve or maintain fairness will ensure that only "unnecessary barriers" are being removed and necessary barriers to protect the interests of levypayers are maintained.

What scope will options be considered within?

31. Making improvements to the IFF Act has been included within Pillar 2 of the GfHG work programme. As such, options for IFF Act changes that would be inconsistent with the wider objectives of Pillar 2 of GfHG and the "growth pays for growth" principle have not been considered.
32. Non-legislative options are also being considered to improve the viability of the IFF Act. In particular, CIP is continually working to bring down the cost of IFF Act transactions through its facilitation role. However, legislative amendments are still required to remove some unnecessary barriers to use of the Act and make the levy approvals process more efficient.

33. For issue 2 (levy approvals process) we have not considered options that would remove the need for an Order in Council approved by Cabinet as the instrument authorising the charging of a levy. Other mechanisms (for example, levies authorised by a Minister or Crown Body) would be less constitutionally robust and not align with how other statutory levies are generally set.
34. A number of distinct issues, each with their own options, are considered in this analysis. Options are generally not mutually exclusive and a package of preferred options is proposed that includes multiple preferred options for some issues.

Section 2: Issues and options analysis

35. For each of the four issues set out below, we:
- a. describe the issue;
 - b. describe the options that have been considered;
 - c. analyse the options against the criteria set out above; and
 - d. where relevant, identify particular issues relating to options in the text below the analysis tables.
36. Options are analysed using the following key:

Example key for qualitative judgements:	
++	much better than doing nothing/the status quo/counterfactual
+	better than doing nothing/the status quo/counterfactual
0	about the same as doing nothing/the status quo/counterfactual
-	worse than doing nothing/the status quo/counterfactual
--	much worse than doing nothing/the status quo/counterfactual

- **Issue 1** – Purpose of the Act (page 16)
- **Issue 2** – Levy approvals process (page 19)
- **Issue 3** – Use of the IFF Act to support value capture (page 25)
- **Issue 4** – Setting IFF Act levies without reference to a specific piece of infrastructure (page 29)

Issue 1 – Purpose of the IFF Act

Problem definition

37. The purpose section sets the scope of the IFF Act and the types of projects it may be used for. Before recommending approval of a levy, the Minister of Housing must consider whether a proposed levy is consistent with the IFF Act's purpose.

3 Purpose

- (1) The purpose of this Act is to provide a funding and financing model for the provision of infrastructure for urban development, that—
- (a) supports the functioning of urban land markets; and
 - (b) reduces the impact of local authority financing and funding constraints; and
 - (c) supports community needs; and
 - (d) appropriately allocates the costs of infrastructure.
- (2) In this section, **urban development** includes—
- (a) development of housing, including public housing and community housing, affordable housing, homes for first-home buyers, and market housing;
 - (b) development and renewal of urban environments, whether or not this includes housing development;
 - (c) development of related commercial, industrial, community, or other amenities, infrastructure, facilities, services, or works.

Focus on local authority financing and funding constraints limits the scope of the IFF Act

38. The purpose of the IFF Act can limit its use for urban development projects where it would otherwise be a viable infrastructure funding tool. In particular, the focus on “local authority financing and funding constraints” limits the IFF Act's use for projects where councils have no funding obligations. For example, water infrastructure delivered by new water organisations established through Local Water Done Well reforms, or major transport projects funded by the New Zealand Transport Agency (NZTA).
39. The focus on “local authority financing and funding constraints” is also not reflective of the IFF Act's expected use in the new system as primarily a developer-led tool for out-of-sequence developments. While local authorities do have financing and funding constraints in relation to out-of-sequence developments, use of the IFF Act for these developments is really addressing developers' financing and funding constraints.

It is unclear what “functioning of urban land markets” means

40. The term “functioning of urban land markets” is not defined in the IFF Act or elsewhere in the New Zealand statute book. This adds complexity to the consideration of whether a proposed levy is consistent with the IFF Act's purpose.
41. This requirement is also largely superfluous as levies also need to be for “infrastructure for urban development”. It is highly unlikely a levy could be for “infrastructure for urban development” but not “support the functioning of urban land markets”.

Options description

42. The following options will be assessed to address the issues posed by the IFF Act's current purpose. Options 1B and 1C are not mutually exclusive.

Option	Description
Option 1A: Status quo	No changes to the IFF Act's purpose.
Option 1B: Repeal requirement that use of the IFF Act addresses local authority financing and funding constraints	<p>Levies would not have to reduce the impact of local authority financing and funding constraints in order to be consistent with the IFF Act's purpose. However, levies would still need to support community needs and appropriately allocate the costs of infrastructure.</p> <p>This would better reflect the IFF Act's use as a developer-led tool for out-of-sequence developments and support broader use of the IFF Act for projects with no local authority funding obligations (for example, transport infrastructure delivered by NZTA, and water infrastructure delivered by water entities established through Local Water Done Well reforms).</p>
Option 1C: Repeal requirement that a levy supports the functioning of urban land markets	Levies would not need to support the functioning of urban land markets in order to be consistent with the IFF Act's purpose. However, levies would still need to be for infrastructure for urban development.

Options analysis

Criterion	Option 1A: Status quo	Option 1B: Repeal requirement that use of the IFF Act addresses local authority financing and funding constraints	Option 1C: Repeal requirement that a levy supports the functioning of urban land markets
Fairness	0	0 Councils will be responsible for collecting levies even if the levy is not addressing their financing and funding constraints. However, councils' costs in administering levies can be included as an eligible cost that levy revenue can be applied towards.	0 No impact relative to status quo
Efficiency	0	+ Would be more efficient than the status quo through removing the need for assessment of whether a levy addresses local authority financing and funding constraints. This would also reduce the extent of supporting information levy proposers need to provide.	+ Would be more efficient than the status quo through removing the need for assessment of whether a levy supports the functioning of urban land markets. This would also reduce the extent of supporting information levy proposers need to provide.
Flexibility	0	++ Would enable the IFF Act to be used for projects with no local authority financing and funding constraints.	0 No impact relative to status quo
Overall assessment	0	++	+

Preferred option

43. HUD's preferred option for the purpose of the IFF Act is to repeal both the requirement that use of the IFF Act addresses local authority financing and funding constraints (option 1B) and the requirement that a levy supports the functioning of urban land markets (option 1C).
44. Together these options would make the IFF Act simpler to use and option 1B would expand the scope of the IFF Act. However, the remaining provisions of the purpose, along with the other mandatory considerations the Minister of Housing must consider when assessing a levy proposal, provide sufficient protections against levies being applied that are unaffordable or do not appropriately allocate costs of the infrastructure.

Issue 2 – Levy approvals process

Problem definition

Overview of approvals process

45. The process to develop and approve an IFF Act levy involves a number of steps:

STEP	DESCRIPTION
Facilitation	CIP assists councils and developers to progress potential IFF Act transactions and develop levy proposals. CIP also uses its commercial expertise to raise finance for IFF Act transactions. ⁷
Levy proposal	The levy proposer (e.g. a council or developer) submits a levy proposal to HUD. While officially submitted by levy proposers, these proposals are largely drafted by CIP.
Infrastructure endorsement	The relevant infrastructure authority (the entity in which the infrastructure will be vested, e.g. a local or regional council, a council controlled organisation or a government agency) provides an endorsement confirming that the proposed eligible infrastructure will be compatible with the wider infrastructure network.
Levy endorsement	The relevant levy authority (the council that will collect the proposed levy on behalf of the SPV) provides an endorsement confirming the levy will not compromise the council's ability to collect rates.
Recommendation report	HUD, as the IFF Act recommender, provides a recommendation report to support the Minister of Housing to consider a levy proposal. The report cannot be provided until HUD has received both the infrastructure and levy endorsements for the proposed levy.
Ministerial consideration	The Minister of Housing assesses a levy proposal against the IFF Act's mandatory considerations and decides whether to recommend approval of the levy. The mandatory considerations broadly cover whether a levy is consistent with the IFF Act's purpose, appropriately allocates costs, is affordable and in the long-term interests of levypayers.
Ministerial consultation	Before recommending approval of a levy, the Minister of Housing must consult the Ministers responsible for the Commerce Act 1986, the Credit Contracts and Consumer Finance Act 2003, the Local Government Act 2002, the Local Government (Rating) Act 2002, and the Public Finance Act 1989. ⁸

⁷ The finance raising process typically runs concurrently with the levy approvals process with financial close achieved shortly after the Order in Council is authorised. CIP has a Senior Debt Panel of suitable debt providers that are approached to provide finance for IFF Act transactions.
<https://crowninfrastructure.govt.nz/infrastructure-financing/applying-the-model/>

⁸ These are the Ministers of Commerce and Consumer Affairs, Local Government and Finance.

STEP	DESCRIPTION
Drafting	HUD works with the Parliamentary Counsel Office (PCO) on the drafting of an Order in Council (the “levy order”) authorising the charging of the levy.
Levy approval	Cabinet approves submission of the levy order to Executive Council and the Governor-General authorises the levy by Order in Council.
Government Support Package	The Minister of Finance approves a Government Support Package (GSP) for each levy. The Treasury provides advice to support the Minister of Finance’s consideration of the GSP.
Levy establishment	An SPV is set up and the levy begins being charged in line with the levy order.

46. The IFF Act sets out the criteria for what must be in a levy proposal and recommendation report, the infrastructure and levy endorsements, how the Minister must assess a proposal (including Ministerial consultation), and the content of a levy order. Other aspects of the levy development and approvals process including CIP’s facilitation role and the GSP are not set out in the IFF Act.

The approvals process is inefficient and costly

47. The process to develop a levy proposal and go through the approvals process can be resource and cost intensive for both applicants and central Government. However, IFF Act levies provide a taxing right for up to 50 years to a non-democratically accountable SPV. It is therefore important to ensure the approvals process provides adequate protections for levypayers’ interests.
48. The time and cost associated with establishing an IFF Act levy can act as a disincentive to use the IFF Act for projects where it would otherwise make sense. This was a consistent theme raised through targeted engagement with both developers and councils.

Options description

49. The following options for improving the levy development and approvals process will be assessed against the status quo. Options 2B and 2C are mutually exclusive, however, neither are mutually exclusive with option 2D.

Option	Description
Option 2A: Status quo	No changes to the levy development and approvals process.
Option 2B: Combine facilitator and recommender roles	<p>The facilitator role currently performed by CIP and recommender role currently performed by HUD would be combined into a new role. CIP would perform this new combined role.</p> <p>Under this option, CIP would be responsible for:</p> <ul style="list-style-type: none"> Developing a levy proposal (in conjunction with a levy proposer);

	<ul style="list-style-type: none"> Assessing the levy proposal against the IFF Act’s criteria; and Providing advice to the Minister on whether to approve the levy. <p>This option would enable levy proposals and recommendation reports to be replaced by a single combined document that serves both purposes.</p> <p>While HUD would not retain the recommender function, it would still have a role to play in the approvals process:</p> <ul style="list-style-type: none"> As a Schedule 4A company, CIP is not linked into the machinery of Government. As such, HUD would still need to work with PCO on the drafting of levy orders and support the Minister of Housing in preparing Cabinet papers. As the administering agency for the IFF Act, HUD would likely still need to provide independent advice to the Minister of Housing to support their statutory decision-making and reduce the risk of judicial review.
<p>Option 2C: Maintain separate facilitator and recommender roles, but otherwise streamline the approvals process</p>	<p>Under this option, a raft of changes would be made to the levy development and approvals process. These changes are detailed in Annex B and are intended to reduce the time and cost associated with progressing IFF Act transactions through the approvals process.</p> <p>The key change to streamline the process is simplifying the mandatory considerations the Minister must weigh before recommending Cabinet approval of a levy. Under this option, these considerations would be simplified by removing duplication in the beneficiary analysis required when assessing a levy. This change would still ensure levies appropriately allocate costs of an infrastructure project. However, it would make developing levy proposals simpler by reducing the extent of evidence or supporting information that needs to be included in proposals.</p> <p>Other key changes under this option include:</p> <ul style="list-style-type: none"> Simplifying requirements for levy proposals and recommendation reports; and Limiting councils’ ability to block developer-led levy proposals by not providing the necessary endorsements.
<p>Option 2D Simplified assessment criteria for landowner supported levies</p>	<p>This option would remove the need for the Minister of Housing to consider if a proposed levy is affordable and in the long-term interests of leypayers to the extent land subject to the proposed levy is owned by:</p> <ul style="list-style-type: none"> The proposer of the levy; or Other landowners that have provided written support for the levy.

	<p>If a developer proposes (or supports) a levy, they are taking the risk that the proposed levy affects the commercial viability of the development. Future levypayers will know there is a levy so effectively self-assess affordability and opt in to the levy when deciding to purchase a property. If properties are not sold, the developer would be liable for payment of the levy. Given risk lies with developers, Ministerial consideration of whether a levy is affordable and in the long-term interests of levypayers is unnecessary.</p> <p>Affordability analysis would still be required for greenfield levy proposals to the extent:</p> <ul style="list-style-type: none"> • The proposed levy area includes some landowners that have not provided written support for a levy; or • Pre-sales have occurred before the levy proposal has been submitted (and these future homebuyers have not provided written support for a levy). <p>Examples of how the simplified assessment criteria would apply are detailed in Annex C.</p> <p>While targeted at levies for greenfield developments, this option would also apply to brownfield developments where existing landowners are supportive of the levy.</p>
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50. Changes to the approvals process to remove the need for an Order in Council as the instrument authorising the charging of a levy have not been considered. As IFF Act levies effectively give a taxing right to a non-democratically accountable SPV, it is appropriate they are authorised by Orders in Council approved by Cabinet. Other mechanisms (for example, levies authorised by a Minister or Crown body) would be less constitutionally robust and not align with how other statutory levies are generally set. There may also be difficulties raising finance on the back of a levy established through a mechanism other than an Order in Council.

Options analysis

Criterion	Option 2A: Status quo	Option 2B: Combine facilitator and recommender functions	Option 2C: Streamlined levy approvals process	Option 2D: Simplified assessment criteria for landowner supported levies
Fairness	0	- Having CIP perform both the facilitator and recommender functions could lead to actual or perceived conflicts of interest associated with CIP both developing and assessing a proposal, and having an equity interest in the SPV established if the levy is approved. This poses the risk of the interests of levypayers not being adequately considered.	+ Option prevents councils from unreasonably blocking developer-led levy proposals. Streamlined approvals process still provides adequate protections for levypayers interests but removes duplication in assessment criteria.	0 Interests of levypayers are still adequately protected as they effectively opt-in to the levy (either by providing written support for a proposal or when purchasing a property).
Efficiency	0	0 May be minor efficiency gains from combining levy proposals and recommendation reports into a single document. However, these are largely offset from the role HUD would still need to play in the approvals process.	++ Option reduces the time and cost associated with the levy approvals process through simplifying requirements for levy proposals, recommendation reports and Ministerial consideration.	++ Option reduces the time and cost associated with the levy approvals process for landowner supported levies through simplifying assessment criteria.
Flexibility	0	0 No impact relative to the status quo	0 No impact relative to the status quo	0 No impact relative to the status quo
Overall assessment	0	-	++	+

Preferred options

51. HUD's preferred option for improving the levy approvals process is both the streamlined approvals process (option 2C) and simplified assessment criteria for landowner supported levies (option 2D).
52. Both options would significantly increase the viability of the IFF Act by reducing the time and cost associated with the levy approvals process. Option 2C would achieve this generally for all levies, while option 2D would achieve this for greenfield levies supported by developers. Making the levy approvals process more efficient helps address one of the key barriers to the use of the IFF Act.
53. Despite simplifying requirements, we consider that the preferred options would still provide a robust approvals process and protect against levies being established that are unaffordable or inappropriately allocate costs of infrastructure. While option 2D would remove the need for affordability analysis for landowner supported levies, this is appropriate as levypayers effectively opt-in to the levy (either when providing written support or purchasing a property).

Issue 3 – Use of IFF Act to support value capture

Problem definition

Going for Housing Growth includes a value-capture workstream

54. The infrastructure pillar of GfHG includes a workstream on value capture. This workstream includes:
 - a. Investigating options for enhancements to existing tools (such as the IFF Act) to better enable value capture; and
 - b. Whether a new tool specifically targeted at value capture is also required.
55. Value capture is the recovery of some of the benefit that landowners receive from central or local government investment in public infrastructure (where those benefits are reflected in a land value uplift). Some of the value recovered can then be used as a source of funding for the project that led to land value uplift or reinvested in further infrastructure projects.
56. The OECD Compendium of Land Value Capture Policies identifies five categories of value capture tools.⁹
 - a. **Infrastructure levy:** An infrastructure levy is a tax or fee levied on landowners possessing land that has gained in value due to infrastructure investment initiated by the government.
 - b. **Developer obligations:** A developer obligation is a cash or in-kind payment designed to defray the costs of new or additional public infrastructure and services that private development requires.
 - c. **Charges for development rights:** Charges for development rights are cash or in-kind contributions payable in exchange for development rights or additional development potential above a set baseline.
 - d. **Land readjustment:** Land readjustment is the practice of pooling fragmented land parcels for joint development, with owners transferring a portion of their land for public use to capture value increments and cover development costs.
 - e. **Strategic land management:** Strategic land management is the practice of governments actively taking part in buying, developing, selling, and leasing land to advance public needs and recoup value increments borne through public action.

Existing use of the IFF Act as a value-capture tool

57. The IFF Act already enables a form of cost-recovery based value capture and fits within the OECD's "infrastructure levy" category of value capture tools.
58. There is significant flexibility within the IFF Act around how levies are designed. Levies can be set based on a number of factors including distance from infrastructure, land area or zoning (or a combination of factors).¹⁰ This flexibility enables levies to be based on an estimation of benefits from an infrastructure project. However, the IFF Act does not enable levies to be set based on an actual measurement of the value uplift arising from an infrastructure project.

Annual charging of levies is a barrier to use of the IFF Act as a value-capture tool

59. While the IFF Act already supports levy-based value capture, its use as a value capture tool is limited because IFF levies are charged on an annual basis. Even if an

⁹ OECD (2022) Compendium of Land Value Capture Policies.

¹⁰ IFF Act levies are set using the factors from Schedule 2 (categories of leviable land) and Schedule 3 (factors used in assessing levy liability) of the Local Government (Rating) Sct 2002.

infrastructure project materially increases a levypayer’s wealth through value uplift, payment of a large annual levy can be difficult if the levypayer has insufficient cash at hand.

60. Before recommending approval of a levy, the Minister of Housing must consider the affordability of the levy and the sustainability of its payment over time. If a levy is unaffordable on an annual cashflow basis, it is unlikely that it would be approved.¹¹
61. These affordability concerns can be somewhat mitigated through the use of levy postponement and remissions policies agreed to by the SPV and relevant council. For example, enabling payment of a levy to be postponed until a specified trigger (e.g. sale of a property) when the levypayer is expected to have the necessary cash to pay the levy. However, these policies generally sit outside the levy order and the Minister of Housing has no oversight of them. As such, when considering a levy proposal, the Minister lacks certainty that a levy postponement or remissions policy will mitigate cashflow affordability issues.

There is a gap in the use of IFF Act for major transport projects

62. Major transport projects such as state highways and rapid transit often provide significant development opportunities. As such, they provide a good opportunity to use value capture as a funding tool.
63. The IFF Act can be used for major transport projects delivered by councils. However, as discussed above, the IFF Act’s purpose includes a focus on addressing local authority financing and funding constraints. This can limit the IFF Act’s use for New Zealand Transport Agency (NZTA) projects (or the NZTA share of joint projects).

Options description

64. The following options will be assessed to better enable the IFF Act to be used as a value-capture tool. Options 3B and 3C are not mutually exclusive.

Option	Description
Option 3A: Status quo	The IFF Act can be used for a form of cost-recovery based value capture, but its use is limited.
Option 3B: Enable a levy deferral mechanism as an optional levy design choice.	<p>This option would enable levies to be deferred until a specified trigger has been met (for example, sale of a property or confirmation of a resource consent for a new development). This would address affordability concerns by ensuring payment of a levy is not required until levypayers have sufficient cash at hand to pay the levy.</p> <p>Levy deferrals would be an optional levy design choice. Levy orders would set whether a deferral mechanism applies and under what circumstances levies can be deferred. As such, the Minister of Housing would have oversight of the deferral mechanism and its effect on levy affordability when considering whether to approve a proposed levy.</p>

¹¹ This issue would be mitigated under option 2D above for landowner supported levies as the Minister would not be required to assess affordability. However, it would remain an issue for levy proposals without landowner support.

Option	Description
<p>Option 3C: Enable use of the IFF Act for NZTA projects.</p>	<p>This option would enable the IFF Act to be used for NZTA projects.</p> <p>The legislative changes to enable NZTA to use the IFF Act are likely to be simple and would include the proposed change to the IFF Act’s purpose (option 1B) and other minor changes. Despite this, the extent to which NZTA would use the IFF Act is unclear. However, the option could enable use of the IFF Act as a cost-recovery based value capture tool for major transport projects.</p> <p>For example, a new state highway project may significantly increase the development capacity of nearby greenfield areas. This option would enable NZTA to use the IFF Act to recover some of the costs of the project from the developments enabled by the project. This would reflect the “growth pays for growth” principle by ensuring these costs are not spread across wider taxpayers or road users.</p> <p>There may be some opposition from councils to IFF Act levies being imposed on their ratepayers for NZTA projects, especially as the councils would be the collection agents for the levies. In addition, while councils will have no direct funding obligations for state highway projects, they will likely be required to provide a share of costs from related local transport network investment. As such, any use of the IFF Act for NZTA projects should ideally be done in partnership with the relevant councils (however, this would not be a strict requirement).</p>

Options analysis

Criterion	Option 3A: Status quo	Option 3B: Enable a levy deferral mechanism as an optional levy design choice	Option 3C: Enable use of the IFF Act for NZTA projects
Fairness	0	<p style="text-align: center;">+</p> <p>This option would enable levies to more appropriately allocate costs amongst levypayers by ensuring those that receive large benefits through value uplift are able to be charged larger levies without triggering affordability concerns.</p>	<p style="text-align: center;">+</p> <p>This option would enable some of the growth costs of major infrastructure projects to be paid for by new development rather than wider ratepayers, taxpayers and road users (consistent with the “growth pays for growth” principle).</p>
Efficiency	0	<p style="text-align: center;">0</p> <p>Levies that use a deferral mechanism would be more complex. However, this is an optional design choice and levies that do not need deferrals to be affordable would not need to have a deferral mechanism.</p>	<p style="text-align: center;">0</p> <p>No impact relative to status quo</p>
Flexibility	0	<p style="text-align: center;">+</p> <p>This option would provide more flexibility around how the IFF Act is used.</p>	<p style="text-align: center;">+</p> <p>This option would provide more flexibility around how the IFF Act is used.</p>
Overall assessment	0	+	+

Preferred options

65. HUD’s preferred option for better enabling use of the IFF Act for value-capture is both enabling a levy deferral mechanism as an optional levy design choice (option 3B) and enabling use of the IFF Act for NZTA projects (option 3C).
66. A levy deferral mechanism enables more of the costs of a levy to be imposed on those benefitting (through likely value-uplift) from an infrastructure project by mitigating affordability constraints.
67. While it is unclear to what extent NZTA would utilise the IFF Act, the change is simple to make and would provide the flexibility to use the IFF Act for their projects. Furthermore, the levy approvals process would still apply to proposals to use the IFF Act for NZTA projects, ensuring that any levies that are established appropriately allocate costs and are affordable.

Issue 4 – Setting IFF Act levies without reference to a specific piece of infrastructure

Problem definition

Development contributions are proposed to be replaced with development levies

- 68. The development contribution regime is proposed to be replaced with a new development levy system (see Regulatory Impact Statement: Going for Housing Growth – Improving Local Government Infrastructure Funding Settings).
- 69. The proposed development levies regime will shift the causal nexus away from groups of developments and particular infrastructure projects to a nexus between all development and aggregate growth costs across an area. Each urban centre or town will be a discrete levy zone with separate levies for each type of infrastructure service.

Setting IFF Act levies without reference to a specific infrastructure project

- 70. Currently, IFF Act levies must be set with reference to a specific infrastructure project or projects. However, development levies not having a causal nexus with specific infrastructure projects raises the question whether it is appropriate for IFF Act levies to also be set without reference to specific infrastructure projects in some circumstances.
- 71. Enabling IFF Act levies to be set without reference to specific infrastructure projects would improve the flexibility of the IFF Act. However, it could also undermine the intent of the IFF Act and create risks of levies being applied inappropriately.

Options description

- 72. The following options will be assessed for enabling IFF Act levies to be set without reference to a specific infrastructure project or projects.

Option	Description
Option 4A: Status quo	IFF Act levies must be set with reference to a specific infrastructure project or projects.
Option 4B: Enable IFF Act levies to be set without a direct link to a specific infrastructure project where the IFF Act is being used to finance payment of a development levy	<p>The IFF Act could be used to raise finance necessary to pay a development levy. For example, a developer may be required to pay development levies totalling \$30 million towards council-provided bulk infrastructure to enable development in a new growth area but lack the funds to pay this. This option would enable them to use the IFF Act to raise \$30 million with finance paid back through an IFF levy charged to future homeowners over the next 30 years.</p> <p>Under this option, IFF Act levies would still need to be set with reference to a specific infrastructure project in any other circumstance.</p>

- 73. We have not identified any circumstances other than using the IFF Act to finance payment of a development levy where it may be appropriate to enable an IFF Act levy to be set without reference to a specific infrastructure project.

Options analysis

Criterion	Option 4A: Status quo	Option 4B: Enable IFF Act levies to be set without a direct link to a specific infrastructure project where the IFF Act is being used to finance payment of a development levy
Fairness	0	0 No change relative to the status quo. The option is constrained to only enabling levies to be set without a direct link to a specific infrastructure project in limited circumstances. This prevents the risk of levies being established that inappropriately impact the interests of levypayers.
Efficiency	0	0 No change relative to the status quo.
Flexibility	0	+ Supports a more flexible funding and financing toolkit through enabling the cost of a development levy to be spread over time through use of the IFF Act.
Overall assessment	0	+

Preferred option

74. HUD's preferred option is enabling IFF Act levies to be set without a direct link to a specific infrastructure project where the IFF Act is being used to finance payment of a development levy (option 4B).
75. This option is still consistent with the overall intent of the IFF Act as the IFF Act levies would be used to pay development levies which in turn are used to pay for infrastructure for urban development. A broader ability to set an IFF Act levy without a direct link to a specific infrastructure project would likely necessitate significant amendments to be workable and could undermine the intent of the IFF Act (e.g. enabling the IFF Act to be used as an off-balance sheet replacement for general rates).

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

76. The table below sets out HUD’s preferred options package:

Issue	Preferred options package
Issue 1 – Purpose of the IFF Act	Both: <ul style="list-style-type: none"> • Option 1B – Repeal requirement that use of the IFF Act addresses local authority financing and funding constraints; and • Option 1C – Repeal requirement that a levy supports the functioning of urban land markets.
Issue 2 – Levy approvals process	Both: <ul style="list-style-type: none"> • Option 2C – Maintain separate facilitator and recommender roles, but otherwise streamline the approvals process; and • Option 2D – Simplified assessment criteria for landowner supported levies.
Issue 3 – Use of IFF Act as a value capture tool	Both: <ul style="list-style-type: none"> • Option 3B – Enable a levy deferral mechanism as an optional levy design choice; and • Option 3C – Enable use of the IFF Act for NZTA projects.
Issue 4 – Setting IFF Act levies without reference to a specific piece of infrastructure	Option 4B – Enable IFF Act levies to be set without a direct link to a specific infrastructure project where the IFF Act is being used to finance payment of a development levy.

77. Each option within the package could be progressed individually and is not reliant on the other options. However, not progressing the full package of options would reduce the effectiveness of the amendments in achieving the objectives of IFF Act improvements.

78. In addition to the options set out above, amendments to the IFF Act would also include:
- a. Changes to ensure IFF Act levies and the proposed development levies work well alongside each other; and
 - b. Technical and remedial changes to improve the functioning of the IFF Act.

Interaction with development levies

79. The development levy regime is likely to necessitate changes to the IFF Act to ensure IFF Act levies and development levies work well alongside each other. For example:
- a. Ensuring IFF Act levies and development levies cannot be used to pay the same cost twice (“double dipping”). The IFF Act already includes provisions preventing development contributions and IFF Act levies paying the same cost twice. However, these double dipping provisions will need to be amended as development levies will not have the same nexus with a specific piece of infrastructure that development contributions do.
 - b. Ensuring IFF Act levies can be used to replace (in whole or in part) a development levy. For example, there may be circumstances where councils or developers would seek to shift part of the program of works subject to a development levy to an IFF Act levy. This could be done in response to a local

authority's financing constraints or to bring forward delivery of a particular infrastructure project.

80. Further information on the detailed design of the development levies regime is needed to determine what IFF Act changes are needed to ensure the two tools work well together. This work will be progressed as the detailed design of the development levies is progressed by HUD and the Department of Internal Affairs.

Technical and remedial changes

81. In implementing the IFF Act, officials have identified a number of technical issues with the IFF Act. Addressing these technical issues is important to remove barriers to the use of the IFF Act and ensure the IFF Act levy system functions well. Delegated authority will be sought from Cabinet for the Minister of Housing to agree to these technical and remedial changes.
82. Examples of these technical changes include:
- a. Removing the requirement for an SPV to enter into a vesting agreement with the relevant infrastructure authority if the SPV is not responsible for constructing the eligible infrastructure.
 - b. Shifting the deadline for the confirmation of annual levy resolutions from 10 May to 30 June and adding interim deadlines for the SPV to provide draft resolutions to the Monitor and for the Monitor to either confirm the resolution or ask for revisions.
 - c. Adding the withholding grounds from section 9 of the Official Information Act to the requirement to publish recommendation reports and adding a requirement to proactively publish levy proposals.
83. The provisions concerning protected Māori land also pose some technical difficulties for councils in administering levies. This is because protected Māori land can only be included in a levy area with the written consent of landowners and is therefore non-leviable without consent. However, protected Māori land does not fully align with the categories of non-rateable Māori land in the Rating Act, creating difficulties for councils in identifying if land is leviable.
84. The protected Māori land provisions are important for protecting against the alienation of Māori land and amendments could pose Māori Crown relationship and Treaty of Waitangi risks. Officials intend to undertake further engagement with Māori and councils to determine if the technical difficulties the protected Māori land provisions pose for councils can be addressed while still ensuring adequate protections against alienation and mitigating any Treaty of Waitangi risks.
85. Any changes to the protected Māori land provisions proposed following consultation are unlikely to have a material impact on the costs and benefits of the preferred options package.

What are the marginal costs and benefits of the option?

Affected groups <i>(identify)</i>	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
Potential levypayers	Options package could lead to more levies being established, imposing costs on levypayers. However, these costs would only be imposed on those benefiting from an infrastructure project.	Project specific and considered when assessing a levy proposal.	High
Councils	Councils may incur costs in administering levies if options package leads to more levies being established.	Likely low. Councils can be reimbursed for administration costs from levy revenue.	Low
HUD	HUD may need to increase resourcing for the recommender and monitor function if options package leads to more levies being established.	Low	Low
Wider government	Increase in non-core Crown debt if options package leads to more levies being established. ¹²	Project specific and recognised when a levy is established.	High
Total monetised costs		Unknown	
Non-monetised costs		Low	

¹² SPVs’ debt impacts non-core Crown debt when owned by CIP. However, there are no impacts on either OBEGAL or net core Crown debt from IFF Act transactions.

Affected groups <i>(identify)</i>	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional benefits of the preferred option compared to taking no action			
Potential homeowners	Options package more easily enables out-of-sequence developments to be brought forward. This would provide potential homeowners with increased housing choice.	Medium	Low
Councils	Options package enables local authorities to be more responsive to out-of-sequence developments by improving the viability of the IFF Act for developer-led levies.	Low	Low
Developers	Options package enables developers to more easily bring forward out-of-sequence or unanticipated developments.	Medium	Low
HUD	Options package simplifies the requirements for recommendation reports and should reduce resourcing required for each report.	Medium	Low
Wider government	Options package provides an additional funding and financing option for NZTA projects. However, it is unclear how useful the IFF Act would be for NZTA projects.	Low	Low
Total monetised benefits		Unknown	
Non-monetised benefits		<i>Medium</i>	

Impacts on Māori

86. The proposed options package currently has no direct impacts on Māori beyond those applying to other groups. Impacts on Māori from any potential changes to the protected Māori land provisions would be considered through the proposed engagement with Māori (see paragraphs 83-85 above).
87. Individual IFF Act levies could have impacts on Māori. These impacts would be considered when assessing a levy proposal.

Section 3: Delivering an option

How will the new arrangements be implemented?

88. The preferred options would be implemented through amendments to the IFF Act. Subject to Cabinet approval, legislation to implement these amendments would likely be introduced in mid-2025 and enacted in 2026.
89. More detailed policy decisions will be required from the Minister of Housing prior to legislation being introduced, particularly those that relate to the interaction with the new development levies regime.
90. The preferred options would apply to levy proposals submitted after enactment of legislation. For existing levies, the technical and remedial changes related to administration of levies would apply for levy years beginning after enactment of legislation.
91. HUD, CIP and the Minister of Housing would continue to perform their existing roles under the preferred options package. However, the preferred options package would refine processes.

How will the new arrangements be monitored, evaluated, and reviewed?

92. The Ministry of Housing and Urban Development will monitor the effect of the proposals to determine their effectiveness and whether any unintended consequences have arisen. This will include:
 - a. Regular engagement with CIP. Through their facilitation role, CIP will have good insights into both demand for use of the IFF Act and how the proposals are working in practice.
 - b. Seeking feedback from councils and developers on how the proposals are working in practice.
 - c. Consideration of levy proposals through HUD's role as the IFF Act recommender.
 - d. Consideration of impacts of the options on levy administration through HUD's role as IFF Act monitor.
93. HUD will provide advice to the Minister of Housing if any unintended consequences or issues with the proposals' effectiveness are identified.

Annex A: List of consulted stakeholders

Councils

- Auckland Council
- Tauranga City Council
- Hamilton City Council
- Palmerston North City Council
- Porirua City Council
- Wellington City Council
- Christchurch City Council
- Queenstown Lakes District Council
- Waipa District Council

Developers

- Fulton Hogan – Milldale transaction was a precursor to the IFF Act
- Russell Group
- Perry Group

Other Stakeholders

- MAFIC – Advisors to CIP on IFF Act transactions
- KPMG – Advisors to CIP on IFF Act transactions
- Bell Gully – Legal advisors to CIP on IFF Act transactions
- Chapman Tripp – Legal advisors to both Tauranga City Council and Wellington City Council for their respective IFF Act transactions
- Cameron Partners

Annex B: Streamlined levy approvals process (option 2C)

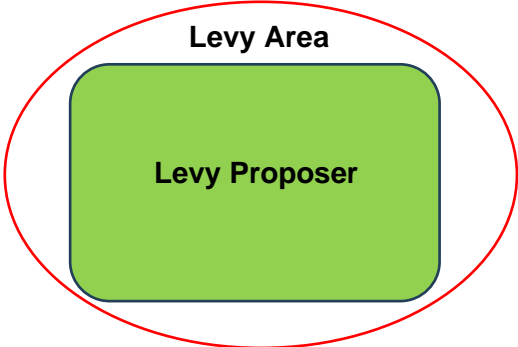
Change	Comment
<p>Levy proposal</p> <ul style="list-style-type: none"> Clarify that levy proposals must include information about all the matters proposed to be included in the levy order. Repeal requirements that are not related to matters that would be included in a levy order. 	<p>Levy proposals typically already include information about all the matters proposed to be included in the levy order. However, while some of these matters are explicitly referenced in the requirements for levy proposals (e.g. information about the proposed levy area and proposed eligible infrastructure), others rely on the requirement to include “all other information necessary to enable the recommender to assess the proposal”. It would be simpler to include a specific requirement for levy proposals to include information about all the matters proposed to be included in the levy order.</p> <p>Some other current requirements for levy proposals are not related to matters that would be included in a levy order. For example, levy proposals must include the proposed SPV’s forecast financial statements for each year of the levy. This information is generally not necessary for the recommender to assess the levy proposal and could therefore be repealed. Preparing this information can also be difficult as the finance raising process will typically occur after submission of the levy proposal.</p>
<p>Levy and infrastructure endorsements</p> <ul style="list-style-type: none"> Remove need for endorsements to the extent the levy proposer is also the responsible levy authority and/or responsible infrastructure authority. Require responsible levy and infrastructure authorities to provide levy and infrastructure endorsements if statutory requirements are met. 	<p>Levies can only be authorised if endorsements have been provided by all relevant responsible levy authorities (the council that will collect the levy on behalf of the SPV) and responsible infrastructure authorities (the entity in which the eligible infrastructure will be vested, for example a local or regional council, a council-controlled organisation or a government agency). These endorsements are unnecessary to the extent the levy proposer is also the relevant levy or infrastructure authority.</p> <p>Currently the IFF Act states that responsible levy and infrastructure authorities “may endorse” a proposed levy. This implies that a local council could unreasonably withhold an endorsement even if statutory requirements are met (e.g. because they oppose a development). Changing to “must endorse” would provide more certainty for developer-led proposals. However, councils could still withhold endorsements if the proposed infrastructure is not compatible with the wider network, or the levy would compromise the council’s ability to collect rates.</p>

Change	Comment
<p>Recommendation report</p> <ul style="list-style-type: none"> • Repeal requirement to include information about all the matters proposed to be included in the levy order. 	<p>Currently recommendation reports must include information about all the matters proposed for inclusion in the levy order. However, many of these matters are very technical and add little to support informed decision-making by the Minister. This requirement also adds significant length to recommendation reports.</p> <p>In adding the requirement to include this information in the levy proposal, it is no longer necessary to also require this information in the recommendation report. Relevant features of the proposed levy will still be discussed when assessing the levy against the Act's mandatory considerations.</p>
<p>Mandatory considerations</p> <ul style="list-style-type: none"> • Simplify required beneficiary analysis by removing assessment of: <ul style="list-style-type: none"> ○ The extent of benefits inside and outside the proposed levy area; ○ The distribution of expected benefits within the levy area and to persons in the levy area; ○ The extent to which actions or inactions of particular persons contribute to the need to undertake the infrastructure project; and ○ The period over which benefits are expected to occur. • Retain existing requirements to consider levypayers long-term interests, the affordability of the levy and all other matters of practicality, efficiency and equity that the Minister considers relevant. 	<p>In considering a levy, the Minister must consider whether a levy proposal is consistent with the IFF Act's purpose. In assessing whether a proposal is consistent with the IFF Act's purpose, the Minister must undertake a beneficiary analysis to test whether a proposed levy appropriately allocates costs.</p> <p>However, in addition to assessing a proposal against the IFF Act's purpose, the Minister must also consider:</p> <ul style="list-style-type: none"> • The extent of benefits inside and outside the proposed levy area; • The distribution of expected benefits within the levy area and to persons in the levy area; • The extent to which actions or inactions of particular persons contribute to the need to undertake the infrastructure project; and • The period over which benefits are expected to occur. <p>These mandatory considerations effectively duplicate the beneficiary analysis undertaken when assessing a proposal against the IFF Act's purpose, but with more specificity around how the analysis is undertaken. As such, they add little to ensuring informed decision-making and could be repealed. Repealing these mandatory considerations would also reduce the complexity of beneficiary analysis required in recommendation reports and the extent of evidence or supporting information that needs to be included in levy proposals.</p>

Change	Comment
<p>Ministerial consultation</p> <ul style="list-style-type: none"> • Repeal specific consultation requirements and instead rely on standard Cabinet consultation processes. 	<p>Currently the responsible Minister is required to consult the Ministers of Finance, Local Government and Commerce and Consumer Affairs before recommending approval of a levy. However, this requirement is unnecessary as consultation with these Ministers (and others) would typically occur as part of the standard Cabinet consultation processes.</p> <p>This requirement also prioritises consultation with these three portfolios over others that may have a greater interest in a proposed levy. For example, the Ministers of Transport and Infrastructure may often have a greater interest in a proposed levy than the Minister of Commerce and Consumer Affairs.</p>
<p>Levy approval</p> <ul style="list-style-type: none"> • Replace requirement that a levy order may only be made on terms set in the recommendation report with a requirement that a levy order may only be made on terms set in the levy proposal. • If financing conditions are better than anticipated in the levy proposal, allow the Minister to reduce the proposed maximum levy revenue and intended annual levy before recommending approval of the levy order. 	<p>The changes above will shift the requirement to include information about all the matters proposed for inclusion in the levy order from the recommendation report to the levy proposal. As such, the requirement that a levy order may only be made on terms set in the recommendation report should be replaced with a requirement that the levy order may only be made on terms set in the levy proposal.</p> <p>Typically, the process to raise finance for a proposed levy will occur after submission of a levy proposal. As such, levy proposals will include maximum levy revenues (and intended annual levy amounts) based off expected financing conditions plus a buffer to account for potential increases in financing costs before the levy is approved. However, if it is known before the levy is approved that the full maximum levy revenue included in the levy proposal will not be required, the maximum levy revenue (and intended annual levy amounts) should be able to be reduced in the draft levy order before it is submitted to Cabinet.</p>

Annex C: Examples of simplified assessment criteria for landowner supported levies (option 2D)

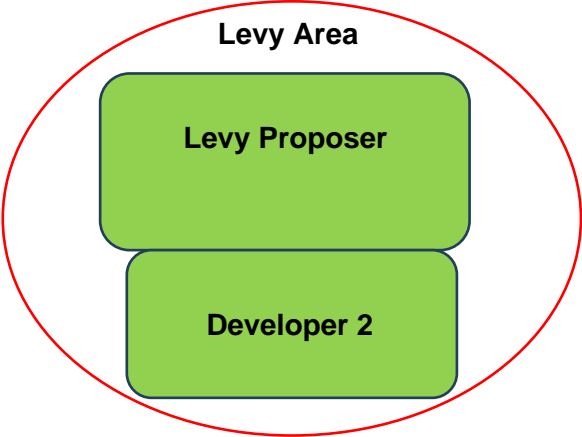
A – Levy area with one landowner



No affordability analysis required.

Levy proposer is the sole landowner in levy area. As such, the proposed levy is assumed to be affordable and in the long-term interests of levypayers.

B – Levy area with two landowners



If Developer 2 is supportive of the levy

No affordability analysis required.

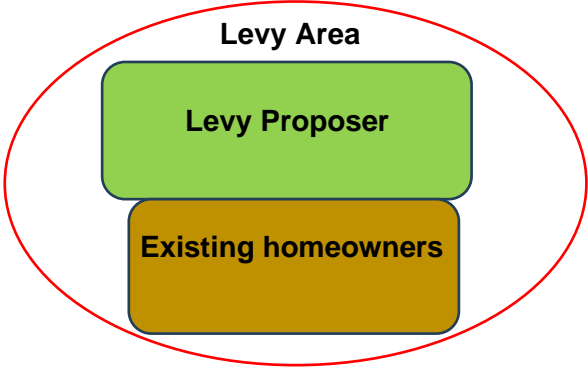
All landowners in the levy area are supportive of the levy. As such, the proposed levy is assumed to be affordable and in the long-term interests of levypayers.

If Developer 2 is not supportive of the levy

Affordability analysis required only in relation to land owned by Developer 2.

Levy is assumed to be affordable and in the long-term interests of levypayers for land owned by the levy proposer.

C – Levy area with multiple landowners



Affordability analysis required only in relation to existing homeowners.

Levy is assumed to be affordable and in the long-term interests of levypayers for land owned by the levy proposer.

Obtaining written support for the levy from all existing homeowners is unlikely to be practical. As such, affordability analysis is required in relation to these landowners.