

Security classification – In Confidence

Office of the Minister for Urban Development

Cabinet Legislation Committee

Order in Council to appoint the recommender and monitor roles for the Infrastructure Levy Model

Proposal

- 1 I seek Cabinet authorisation to submit an Order in Council to appoint organisations to the roles required by the Infrastructure Levy Model made under sections 114 and 150 of the Infrastructure Funding and Financing Act 2020 to the Executive Council:
 - 1.1 Infrastructure Funding and Financing (Appointment of Monitor and Recommender) Order 2020.

Relation to government priorities

- 2 The Urban Growth Agenda was set by Cabinet in 2018, a programme of work designed to improve outcomes for New Zealanders by addressing the fundamentals of land supply, development capacity, and infrastructure provision. The infrastructure funding and financing work under this programme (in which the Infrastructure Levy Model sits) directly contributes to the Government's Economic Plan: Shift 3 (Deeper pools of capital are available to invest in infrastructure and grow New Zealand's productive assets).
- 3 This paper provides for the appointment of organisations to the new roles that will be established under the Infrastructure Levy Model, in order to begin its implementation.

Executive Summary

- 4 Last week, the Infrastructure Funding and Financing Act 2020 (the Act) received Royal assent. The Act enables the Infrastructure Levy Model (the Model) as an alternative model to fund and finance large infrastructure projects.
- 5 The Model requires the establishment of new roles. The roles to be established include:
 - 5.1 **Facilitator** – to assist with the preparation of proposals to access the levy;
 - 5.2 **Recommender** – to ensure Cabinet decisions on whether to use the levy for an infrastructure project are well informed and independent of any proposer of a project; and

- 5.3 **Monitor** – to ensure that Special Purpose Vehicles (SPVs) comply with the terms of the Infrastructure Funding and Finance Act and the particular Orders in Council that authorise a levy.
- 6 To operationalise the Model and in preparation of the Act receiving Royal assent, Cabinet agreed that Crown Infrastructure Partners would take on the role of facilitator and the Ministry of Housing and Urban Development would take on the roles of recommender and monitor [CAB-20-MIN-0329 refers].
- 7 The Act requires the recommender and monitor roles be performed by a government agency and appointed by Order in Council. The facilitator role is not provided for in legislation and therefore does not require an Order in Council.
- 8 As a result, this paper seeks authorisation to submit the attached Order in Council (Annex A) to the Executive Council so that the Ministry of Housing and Urban Development can formally adopt the roles of recommender and monitor:
- 8.1 Infrastructure Funding and Financing (Appointment of Monitor and Recommender) Order 2020.

Background

- 9 As part of the Urban Growth Agenda, Parliament passed the Infrastructure Funding and Financing Act 2020, which enables the Infrastructure Levy Model as an alternative model to fund and finance large infrastructure projects [CAB-19-MIN-0263 refers].

The Infrastructure Levy Model

- 10 The Model aims to make room for growth in our urban areas by improving the supply of local infrastructure, thereby enabling growth up (e.g. higher density housing near services and infrastructure) and out (e.g. well-connected houses in greenfield areas with good infrastructure). The Model does this by separating the financing decisions for specific infrastructure from councils' usual financing processes and constraints. The Model aims to shift towards a system where:
- 10.1 the provision of infrastructure is financially sustainable, without a need for substantial or ad-hoc Crown/council support and that finance is readily available;
- 10.2 the viability of projects becomes the key determinant on whether they proceed;
- 10.3 a much greater quantity of debt can be leveraged from revenue streams than would be possible through a local authority;
- 10.4 the costs of growth are properly allocated so that they fall on the communities and homeowners who benefit from the new infrastructure;

- 10.5 there is greater rigour and transparency in the allocation of risk and costs to the appropriate parties; and
- 10.6 price signals are provided to help ensure investment occurs where the market demands are.

The Model requires the establishment of new roles

- 11 The Model requires the establishment of new roles. The roles to be established include:
 - 11.1 **Facilitator** – to assist with the preparation of proposals to access the levy (unlike the recommender and monitor roles, this is not a statutory role);
 - 11.2 **Recommender** – to ensure Cabinet decisions on whether to use the levy for an infrastructure project are well informed and independent of any proposer of a project; and
 - 11.3 **Monitor** – to ensure that SPVs comply with the terms of the Infrastructure Funding and Finance Act and the Order in Council that authorises a levy.
- 12 Cabinet has agreed that Crown Infrastructure Partners (CIP) will take on the role of facilitator and that the Ministry of Housing and Urban Development will take on the roles of recommender and monitor [CAB-20-MIN-0329 refers]

Legislation requires the recommender and monitor roles to be appointed by Order in Council

- 13 The Act requires the recommender and monitor roles to be appointed by Order in Council.
- 14 To ensure the monitor and recommender roles are established as soon as practicable now the Act has received Royal assent, I recommend the attached Order in Council to appoint the Ministry of Housing and Urban Development to the monitor and recommender roles is submitted to the Executive Council.
- 15 The facilitator is not provided for in legislation and, as such, does not require an Order in Council for CIP to take on the role. This can be achieved through updating their Letter of Expectations.

Financial Implications

- 16 This paper has no financial implications. The financial implications associated with the establishment of these roles were addressed previously by Cabinet [CAB-20-MIN-0329 refers].

Compliance

- 17 The Order in Council will comply with:
 - 17.1 the principles of the Treaty of Waitangi;

- 17.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
- 17.3 the principles and guidelines set out in the Privacy Act 1993;
- 17.4 the relevant international standards and obligations; and
- 17.5 the Legislation Design and Advisory Committee's Guidelines on Process and Content of Legislation.

Regulations Review Committee

- 18 I do not consider there are grounds under Standing Order 319(2) (2014) for the Regulations Review Committee to draw the Order to the attention of the House.

Certification by Parliamentary Counsel Office

- 19 The proposed Order in Council was certified by Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

Regulatory Impact Statement

- 20 A regulatory impact assessment was undertaken to inform Cabinet's decisions to proceed with the Model. The decisions sought in this paper are consistent with the *Infrastructure Funding and Financing Regulatory Impact Assessment*.

Climate Implications of Policy Assessment

- 21 Not applicable.

Population Implications

- 22 The policy proposals in this paper do not have specific implications for particular population groups.

Human Rights

- 23 The proposals in this paper do not have human rights implications.

Consultation

- 24 The Department of the Prime Minister and Cabinet, the Department of Internal Affairs, the Treasury, the Ministry of Business, Innovation and Employment, Te Puni Kōkiri, Te Arawhiti, Land Information New Zealand, the Ministry for the Environment, the Ministry of Transport and the New Zealand Transport Agency were consulted during the development of this paper.

- 25 Crown Infrastructure Partners and the New Zealand Infrastructure Commission, Te Waihangā were consulted on the development of the proposals in this paper.

Proactive Release

- 26 I intend to proactively release this Cabinet paper in line with the Cabinet Office circular *Proactive Release of Cabinet Material: Updated Requirements* [CO (18) 4].

Recommendations

- 27 The Minister for Urban Development recommends that the Committee:
- 1 **note** that the recently enacted Infrastructure Funding and Financing Act 2020 establishes the Infrastructure Levy Model as an alternative model to fund and finance aspects of large infrastructure projects;
 - 2 **note** that the Infrastructure Levy Model requires the establishment of new roles (facilitator, recommender and monitor);
 - 3 **note** that the Infrastructure Funding and Financing Act 2020 requires the recommender and monitor roles be appointed by Order in Council;
 - 4 **note** Cabinet agreed to appoint the Ministry of Housing and Urban Development to the recommender and monitor roles [CAB-20-MIN-0329 refers];
 - 5 **authorise** the submission to the Executive Council of the Infrastructure Funding and Financing (Appointment of Monitor and Recommender) Order 2020.

Authorised for lodgement

Hon Phil Twyford

Minister for Urban Development

IN CONFIDENCE

Infrastructure Funding and Financing (Monitor and Recommender) Order 2020

Governor-General

Order in Council

At Wellington this day of 2020

Present:
in Council

This order is made under sections 118 and 155 of the Infrastructure Funding and Financing Act 2020—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister for Urban Development.

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Order

1 Title

This order is the Infrastructure Funding and Financing (Monitor and Recommender) Order 2020.

2 Commencement

This order comes into force on 7 September 2020.

3 Appointment of monitor

The Ministry of Housing and Urban Development is appointed as monitor for the purposes of the Infrastructure Funding and Financing Act 2020.

4 Appointment of recommender

The Ministry of Housing and Urban Development is appointed as recommender for the purposes of the Infrastructure Funding and Financing Act 2020.

Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order, which comes into force on 7 September 2020, appoints the Ministry of Housing and Urban Development as monitor and recommender for the purposes of the Infrastructure Funding and Financing Act 2020.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*:

This order is administered by the Ministry of Housing and Urban Development.