
Infrastructure Funding and Financing Act 2020: A New Approach to Infrastructure Funding

The Government has recently developed a number of initiatives, including the Urban Development Act 2020 (UDA), the National Policy Statement on Urban Development (NPS-UD) and the COVID-19 Recovery (Fast-track Consenting) Act 2020, designed to support the functioning of urban environments and eliminate barriers to their creation throughout New Zealand.

As part of this package of initiatives, the Infrastructure Funding and Financing Act 2020 (“Act”) passed its final reading on 22 July 2020 and received royal assent on 6 August 2020. The Act looks to ensure that a lack of funding at local government level does not continue to constrain development. Using the Act, developers can now access a new funding structure that will allow them to raise the funds and finance necessary for large-scale projects themselves (rather than rely on local government), with repayments made by future owners through rates on the developed land.

As noted by Auckland Mayor Phil Goff, *“Traditional approaches to infrastructure funding and financing are not working. Constraints on council debt levels means viable infrastructure projects are postponed for years, despite the pressing need for more housing in these high-growth areas.”*

The new funding model provides an alternative funding mechanism in a bid to accelerate the development of housing in particular. The Act received cross party support and is designed to complement existing funding tools available to local government.

Milldale Model

The financing structure set out in the Act is modelled on the structure utilised in the Milldale development in North Auckland. For Milldale, a special purpose vehicle (SPV) was set up to oversee a residential development project. The SPV raised initial capital from investors, proposing to pay them back by an annual ‘infrastructure payment’ added to the rates bill. Payments will initially be made by the developer and, in time, by the section owners.

The infrastructure payment obligations are secured by an encumbrance on each title, meaning the obligation to meet the payment runs with the land and binds any subsequent owners. In the Milldale example the payments are \$650 + 2.5% interest per annum for apartments and \$1000 + 2.5% interest per annum for homes and will last for 30 years.

While the Milldale development is still in the construction phase it is already clear that the model has enabled acceleration of the project and therefore faster delivery of affordable housing in Auckland.

How will The Act Work?

The Act adopts a very similar model to the Milldale model, by allowing the use of multi-year levies in large scale development that place the cost of infrastructure on those who will benefit directly from it. Levies will be able to be proposed for the provision or improvement of the following:

- new water services infrastructure;
- transport infrastructure;
- community infrastructure or community facilities; or
- environmental resilience infrastructure.

The process for creating an SPV and initiating levies will broadly involve the following:

- The making of a detailed levy proposal to the government;
- The proposal must include, among other matters, details of the SPV proposed, the financing structure and who will be responsible for construction;
- The Minister for Housing and Urban Development as “recommender” will consider the levy proposal with reference to a number of factors and in consultation with the relevant local authorities and make a report to the responsible Minister (a Minister to be confirmed by the Prime Minister);
- The report will include an assessment of the proposal, a recommendation and endorsement from the relevant levy authority;
- The Responsible Minister may then recommend the Governor-General accept the levy (but may not amend the terms of the proposal).

Once a levy order has been made, the SPV will borrow funds to finance the infrastructure and set an annual levy that will be collected by the relevant local authorities on behalf of the SPV to pay back the borrowing. Vesting agreements will ensure that the conditions of any transfer of ownership of the infrastructure are clear. An encumbrance will secure payment of the levy by all future owners of the properties to benefit.

Commentary

Support for the Act has been reasonably wide as it is generally agreed that addressing infrastructure funding issues will enable faster provision of housing in areas where demand has been eclipsing provision. All major parties supported the Act, which then Infrastructure New Zealand CEO Paul Blair commented would “*enable a bolder, more streamlined way of delivering new infrastructure for the benefit all New Zealanders*”.

The Act will work with the direction in the NPS-UD that local authorities must have particular regard to plan changes for “out of sequence” (ie not zoned) development in some circumstances. In most cases “out of sequence” development will not be serviced by infrastructure, nor will the funding for requisite infrastructure be part of the local authority’s short to medium term plans. The combination of the NPS-UD and the Act will provide an avenue for development to take place in response to the ever-rising demand for housing outside of that already anticipated.

As summarised by the Minister for Urban Development:

“We need to remove restrictive planning rules that stop our city expanding on the fringes, which creates an artificial scarcity of land and drives house prices up, and

remove height and density rules that stop the city growing up, which, effectively, rations floor space. Local authorities need to plan ahead and make room for growth.....

This bill is part of our Government's policy response to that public policy failure. It's one step towards fixing a broken funding and financing system to support more and better urban development. It's complemented by the National Policy Statement on Urban Development gazetted this week, joint spatial planning work with local government in our six high-growth metro cities, and the Hon David Parker's review of the Resource Management Act."

For any questions on the Act please don't hesitate to contact [Lauren Semple](#) or [Francelle Lupis](#) for further information on the Urban Development Act, the NPSUD and the COVID-19 (Fast-Track Consenting) Act 2020, see [here](#).

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