BUDDLE FINDLAY

Flexibility needed to fund infrastructure

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Much has changed since the Infrastructure Funding and Financing Bill was first introduced in December 2019. But the need for such legislation is arguably more pressing now than it ever has been.

The Bill is described as an omnibus bill that aims to provide a funding and financing model to support the provision of infrastructure for housing and urban development that supports functioning urban land markets and reduces the impact of local authority financing and funding constraints. It was initially developed as a response to the housing crisis and was intended to provide a solution to identified problems that hampered local authorities and developers from accelerating the development of housing stock. The particular problem that the Bill aimed to address was the inability of many local authorities to borrow to fund the development of the horizontal infrastructure necessary to facilitate housing and urban development – such as the provision of roads, bridges, waste pipes, sewer lines.

The Bill is intended to provide an alternative funding mechanism for local authorities. It provides for the establishment of a special purpose entity (SPV) that will undertake the construction, operation and maintenance of new eligible infrastructure. The SPV is separate from the local authority and it is intended that the money that it borrows to fund the development of the infrastructure is not a debt on the local authority's balance sheet. The SPV's income is derived from levies that are collected from property owners within the levy area, the area serviced by or benefiting from the new infrastructure. The levies, which are similar in operation to targeted rates, are collected on behalf of the SPV by the local authority and will normally appear as a separate line item on the rates bill. At the end of the agreed levy term, the ownership of the assets transfers back to the local authority.

The model that the Bill enables has had a test run already. A similar model was first developed and implemented by Crown Infrastructure Partners for the Milldale development north of Auckland. Crown Infrastructure Partners created a partnership with Auckland Council and Fulton Hogan Land Development to implement a bulk housing infrastructure initiative. The SPV in that case is funded by long term debt provided by ACC and is developing five separate wastewater and road projects that facilitate the development of 5000 houses.

The Select Committee reported back on the Bill on 24 June this year and it has had its third reading in the House on 22 July during which it received broad cross-party support. There were a number of submissions on the Bill during the Select Committee stage, most of which were in support. Unfortunately, some of the suggestions made by submitters have not been adopted in the Select Committee's recommended changes to the Bill.

One of the points made by a number of submitters is the apparent inconsistency between the stated purpose of the Bill which is limited to providing "a funding and financing model for the provision for infrastructure for housing and urban development" and the definition of 'eligible infrastructure' which is broader and includes infrastructure for water services, transport, community facilities and environmental resilience. The submissions made suggested that the drafting of the Bill should be more permissive and not restricted to housing and urban development. This would allow the model to be used for a wider variety of projects.

The Bill was first proposed pre COVID-19 and was clearly aimed at facilitating housing development. In the intervening months the world has changed significantly, as have the Government's priorities. Infrastructure development has been recognised as a key enabler of economic recovery and the Government has set aside $3b for 'shovel ready' infrastructure projects in the COVID-19 Response and Recovery Fund (on top of the $12b infrastructure spend announced in December 2019) and has already announced the first tranche of projects that will receive funding. The commitment to spending on infrastructure is to be applauded but (there is always a 'but'), many of the legal, economic, structural and political impediments to actually getting infrastructure built that were recognised as issues pre-COVID still exist. Legislation like the Bill is the perfect opportunity to address some of these impediments but, to do so, it needs to be more flexible than focusing solely on housing.

Another criticism of the Bill made by some submitters is that the regime it establishes is too cumbersome, and inflexible to be a useful tool except for a relatively small set of large infrastructure projects. The process for getting a project approved and a levy order granted (that will provide the legal power to levy property owners in the area that will benefit from the infrastructure development) is complicated and requires approval from all relevant local government authorities, a recommender (who will provide advice to the Minister of Urban Development), the relevant responsible Ministers and then finally, the issue of an Order in Council. It is accepted that, as the levies are akin to a tax or rate on the affected properties, there do need to be appropriate checks and balances before such levies are authorised. However, the process that has been proposed appears reasonably complicated.

A levy order, once made, will set out the terms of the levy, the properties to which it can be applied and any other relevant conditions. The levy is collected by the relevant local authority as agent for the SPV and it is anticipated this will form part of the rates bill sent to the property owners. In order to ensure transparency, the Bill provides that each SPV can only have the benefit of one levy order, the local authority cannot provide any financial support to the SPV (meaning it cannot provide any of the funding for the SPV or provide any guarantees) and at the end of the term of the levy order the infrastructure that was subject to the levy order must vest in the local authority. The reasons for these restrictions are understandable and justified but when taken together they will have the effect of narrowing down the scope of projects that the framework can be used for and reducing flexibility and opportunities for innovation.

It is clear that the infrastructure needs across New Zealand are many and varied and that significant investment is certainly overdue. However, there is no 'one size fits all' solution for every project. Even more so in the post COVID environment where many local government entities are facing large budget deficits, all sectors of government, industry and finance should be focused on developing a toolbox of options that can be used to deliver infrastructure more quickly and efficiently than has been the case in the past.

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