

Infrastructure Funding and Financing Bill

Government Bill

As reported from the Transport and Infrastructure Committee

Commentary

Recommendation

The Transport and Infrastructure Committee has examined the Infrastructure Funding and Financing Bill and recommends that it be passed with the amendments shown.

A new funding and financing model for infrastructure

The bill would introduce a new funding and financing model to support the provision of infrastructure for housing and urban development.

The model the bill establishes would enable the use of a multi-year levy to fund eligible infrastructure. The levy would be paid by the beneficiaries of the infrastructure projects over the multi-year period. The levy would be authorised by Order in Council.

The major roles under the model would be for:

- **Special purpose vehicles (SPVs):** entities that would be set up to be responsible for the financing and construction of infrastructure assets.
- **Recommender:** which would provide independent advice to the Minister of Urban Development on a levy proposal and whether to recommend the use of a levy.
- **Monitor:** the regulator within the model, which would ensure that SPVs comply with the terms of the bill and levy order after the levy order has been made.
- **Responsible levy authority:** the territorial authority or authorities for the district or districts the levy area is located in. It would be responsible for assessing and collecting the levy on behalf of the SPV, usually by including the levy on a rates notice.
- **Responsible infrastructure authority:** the local authority or public body that the infrastructure asset would be vested in once construction is complete.

The bill aims to create flexibility in the infrastructure financing system so that economically viable projects can go ahead, without being burdened by a council's financing constraints. Crucially, the model would ring-fence an eligible infrastructure project's financing from the local authority's finances. This would mean there would be no recourse to the local authority.

Relationship with the Urban Development Bill

The bill is related to the Urban Development Bill which is currently before the House. However, the two bills' focuses are different. The Urban Development Bill aims to improve the coordination of the use of land, infrastructure, and public assets to maximise public benefit from complex urban development projects. The Infrastructure Funding and Financing Bill would create a new funding and financing tool to support the provision of infrastructure for housing and urban development. It does not aim to fix the wider infrastructure system.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss all minor, technical, or consequential amendments.

Interpretation

Responsible levy authority

Clause 7 would define a levy area as the geographic area or areas of land in which a levy is authorised by a levy order. A responsible levy authority would be the territorial authority for the district the levy area is located in. We recommend inserting clause 7(2) to clarify that, where the levy area is located in more than 1 district, each responsible levy authority's responsibility under the bill only relates to the part of the levy area that is in the authority's district.

Eligible costs

Clause 9 provides the definition for eligible costs, which are described in a levy order as costs that may be met by the levy. We agree with submitters who noted that land acquisition costs are a key part of infrastructure investment and should be considered eligible costs.

We therefore recommend inserting paragraph (aa) into the definition of establishment costs in clause 9(6) to include costs incurred in relation to acquisition and preparation of the land on which eligible infrastructure is to be constructed (including costs related to acquiring land and costs of procuring designations).

The levy proposal

A levy proposal must be prepared before a levy order can be made. We recommend the following amendments to the levy proposal process.

Responsibilities of each SPV to be contained in the levy order

Clause 18 would stipulate what must be included in the levy proposal. Paragraph (g) would require the levy order to provide information on the commercial relationships between SPVs if there was more than one SPV. We recommend moving that requirement to new clause 18(ga) and also requiring the levy proposal to identify the proposed responsibilities each SPV would have.

Endorsements and consents for a levy proposal*Asset endorsement and transfer of eligible infrastructure under vesting agreement*

Clause 20 would allow a responsible infrastructure authority to endorse the technical specifications of proposed infrastructure (referred to as an asset endorsement). The endorsement would help ensure two things. Firstly, that the infrastructure would be compatible with existing networks, or would be made compatible if the conditions under subsection (4) are met. Secondly, that the authority could meet the ongoing operating and maintenance requirements once it was vested with the infrastructure at the end of the project. Infrastructure would be transferred from the SPV to the authority through a vesting agreement set out in clause 88.

Clause 20(4) would allow the authority to include conditions in the vesting agreement. We recommend amending that clause to clarify that a responsible infrastructure authority, when providing an asset endorsement, may require that conditions be included in a vesting agreement under clause 88. Conditions would be limited to those set out in clause 20(1)(a). They relate to whether the technical specifications of the proposed infrastructure are compatible with any wider infrastructure it would be part of, and whether the authority will be able to plan for and meet the necessary operational and maintenance costs.

We recommend inserting clause 88(1A) in line with the changes to clause 20. This would require all specified conditions made under clause 20(4) to be included in the vesting agreement, other than any conditions the responsible infrastructure authority agreed to modify or waive.

We also recommend changing the term “asset endorsement” to “infrastructure endorsement” to better reflect the function of the endorsement and align with the term “responsible infrastructure authority”.

Levy endorsement

Clause 21(1) as introduced would allow the responsible levy authority to endorse its ability to collect rates during the proposed levy period. We believe it would be more appropriate for the authority to endorse the levy itself, unless it could demonstrate that the proposed levy would compromise its ability to collect rates.

Our proposed amendment would align the levy endorsement with the asset endorsement in clause 20. In both instances the responsible authority would endorse the asset or the levy itself.

Recommendation of a levy proposal

Clauses 19 to 26 set out the recommendation of the levy proposal by the recommender. Clauses 27 and 28 set out the responsible Minister's consideration of the levy proposal and the process they must take in recommending a levy order to the Governor-General.

Some submitters expressed concern that the bill as introduced would not require the endorsements and consents in clauses 20, 21, and 24 to be obtained by the recommender. Similarly, some submitters were concerned that clause 27 would enable the Minister to recommend a levy order without those endorsements and consents.

This is not the intention of the bill. These endorsements and consents are necessary to protect the legitimate interests of local authorities and owners of applicable protected Māori land. A recommendation of a levy order should not proceed without them. We therefore recommend amending clause 27 so that the Minister could only recommend a levy order after receiving a recommendation report that included all endorsements and consents under clauses 20, 21, and 24.

Our amendment to this section would also remove the restriction that the Minister may only consider a levy proposal after receiving a recommendation report. This would allow the Minister to consider aspects of the levy proposal during its development, before receiving the recommendation report. However, the Minister would still only be able to recommend that a levy order be made after receiving the report.

The levy order

Requirements for levy order

Clause 31 specifies the content that would need to be included in a levy order.

Subclause (h) would require a levy order, if there are 2 or more SPVs, to describe their responsibilities and the nature of their commercial relationship. We recommend removing the requirement to describe their commercial relationship, as this would already need to be assessed as part of the levy proposal under clause 18(g).

We recommend inserting clause 31(3)(c) and amending clauses 31(1)(d) and 31(3)(b) to align the levy period with the financial year. A levy order would need to specify 30 June of the final levy year as the end of the levy period, and the earliest commencement date for a levy period would be 1 July of the first levy year.

Leviable land

Clause 32 sets out whether the levy is to apply uniformly to all land and if not, how categories of leviable land may be defined. For clarity, we recommend amending clause 32 to specify that all leviable land in the levy area must be included in a category of leviable land.

We recommend amending clauses 32(4) and 33(5) to include access to a new or upgraded road that is part of the eligible infrastructure. This would allow the ability of land to access a new or upgraded road to be considered when establishing categories of leviable land and determining factors used in the calculation of levy liability.

Additional content of levy order

Clause 34 sets out additional content that may be contained in a levy order, in addition to the content required by clause 31. We recommend several changes in clause 34, including:

- Removing paragraph (c), which states when a surplus levy must be estimated or calculated. Clause 108 already requires that an SPV's annual report include information on surplus levies held.
- Amending paragraph (g) so that conditions could be imposed on procurement processes more generally. In the bill as introduced, conditions would only be permitted for procurement processes for construction of eligible infrastructure and financing of eligible costs. Our amendment would allow other procurements to be covered, such as SPV management services.
- Removing paragraph (h) because it is covered by paragraph (i).

Power to construct eligible infrastructure on private land

Clause 34(i) would allow the levy order to apply clause 96. Clause 96 would enable an SPV to exercise the powers of an authority under section 181 of the Local Government Act 2002. Section 181 of that Act allows the construction of works on private land. The Regulations Review Committee expressed two concerns about clause 34.

First, the committee was concerned that there would be no constraints on the exercise of this power. To alleviate that concern, we recommend inserting clause 27(4A) to the effect that the Minister must be satisfied that the SPV's exercise of the powers in clause 96(2) was reasonably necessary to complete the construction of the relevant eligible infrastructure.

The committee was also concerned that this clause would extend the application of section 181 of the Local Government Act by regulation (the levy order). We have not recommended any changes to this provision. Under clause 96, an SPV would exercise the powers under section 181 in place of a local authority. That is, they would only be powers which the local authority already had.

Annual levy resolution

Clauses 40 to 45 provide the process for setting the annual levy. The SPV would set the levy for each levy year via an annual levy resolution.

An annual levy resolution would not be a disallowable instrument

The Regulations Review Committee expressed concern that the levies proposed by the bill had the characteristics of a tax; that is, they would be compulsory, for public purposes, and enforceable by law. To provide appropriate parliamentary oversight, the committee believed that an annual levy resolution should be a disallowable instrument, presented to the House.

We note that the levy order would be the instrument that authorises and regulates a levy. It is the levy order that would be a disallowable instrument, subject to parlia-

mentary oversight. The annual levy resolution would be much simpler than the levy order and is administrative in nature. It would require the SPV to determine the levy income needed for each year and the amount to be charged to each property to receive that income. Importantly, the annual levy resolution would need to comply with the levy order, which must state the intended annual levy for each year. The monitor must also approve the annual levy resolution before it is set.

We believe that these measures provide sufficient parliamentary scrutiny of the levy and appropriately protect the interests of levy payers. We therefore recommend inserting clauses 45(3) and 50(2) to make it clear that an annual levy resolution would be neither a legislative instrument nor a disallowable instrument, and would not have to be presented to the House of Representatives.

Monitor to review proposed resolution and report

Clause 43(1)(b) would require the responsible SPV to give the monitor a report describing how the proposed annual levy resolution complies with the levy order.

We recommend removing the requirement in clause 43(2) for the monitor to determine whether the report complies with the levy order. The intention is for the monitor to determine whether the proposed annual levy resolution complies with the levy order, not the report from the SPV. We recommend removing consequential references to the report in clauses 44 and 47(c).

Rating information database

Removing requirement to clearly distinguish levy-related information

Clause 61 sets out how the responsible levy authority would need to include information related to the levy order in its rating information database (RID). Subclause (2) would require the authority to ensure that levy-related information was clearly distinguished from rating information. We believe that requiring these to be clearly distinguished would impose unnecessary compliance costs on local authorities, where there is a very low likelihood of rating information being confused with levy-related information. We therefore recommend removing clause 61(2).

Objections by levy payers

Clause 62 deals with objections by levy payers that the levy was incorrectly assessed. As introduced, the test the monitor must apply when considering an objection is whether the assessment was made in accordance with the levy order. We recommend amending clause 62(4)(a) and (c) to also reference the annual levy resolution.

To ensure objections are dealt with in a timely fashion, we also recommend inserting new subclause (4A) to require the monitor to make a decision on an objection by a levy payer within 30 working days.

Levy assessment and invoicing

Assessment of levy liability

Clause 68 sets out how a responsible levy authority must assess the levy to be paid by a levy payer. In the bill as introduced, factors are taken into account to assess liability for the levy on the date that they are entered into the responsible levy authority's RID. This could lead to difficulties. For example, if data relating to a subdivision was entered into the RID on 2 July, when the subdivision was completed on 28 June, the subdivision properties could not be levied for that financial year. To rectify this, we recommend removing reference to the date the factor is entered into the RID from clause 68 so that information is taken into account in the correct financial year for the levy assessment.

Levy invoice

To enable easy collection of the levy by the responsible levy authority, levy notices would usually be issued with rates. However, clause 71 would allow the responsible levy authority to invoice the levy separately from rates. We recommend amending clause 71, and a consequential amendment to clause 69, so this could only occur with the agreement of the SPV. This would reassure financiers that levies would be collected quickly and allow the preservation of good cash flow.

Excess, uncollected, and surplus levies

Excess levies

There may be some circumstances where an SPV would collect levies in excess of the amount needed to fund the eligible infrastructure. Clauses 89 and 90 set out how an over-collection of levies is to be distributed at the end of the levy period. We recommend several changes to clarify excess levy provisions.

Definition of excess levy

Clause 7 would define "excess levy" as levy revenue collected in relation to the levy period that exceeds eligible costs incurred during that period. This definition does not address some circumstances that were intended to be covered, such as where an SPV has incurred eligible costs, covered by a levy order, prior to the levy period or has received third party contributions. We recommend amending the definition of "excess levy" to mean levy revenue recognised as income in relation to the levy period that has not been applied to eligible costs incurred at the end of the levy period.

We recommend amending clause 89 to align with the amended definition of excess levy in clause 7.

Where an SPV is forecasting excess levies

If an SPV is forecasting excess levies beyond what is provided for in the levy order, clause 52 would allow the levy period and annual levies to be reduced. Clause 34(b) includes this as a requirement that may be specified in a levy order.

We believe these provisions should be amended. We think the best way to achieve the reduction in annual levies, when excess levies are forecast, would be to reduce the maximum levy revenue. Maximum levy revenue, as defined in clause 7, would be the amount specified in the levy order as the maximum amount of the levy that can be collected over the levy period.

We recommend amending clause 34(b) to allow a levy order to require the SPV to reduce the maximum levy revenue if a specified amount of forecast excess levy was exceeded. We also recommend amending clause 52(1) to require the maximum levy revenue to be reduced if the requirement in clause 34(b) was included in a levy order. The maximum levy revenue would be reduced by reducing either or both of the levy period or the amount of the levy set in later levy years.

We recommend making related amendments to clause 52(2) and (3) to require the SPV to notify the monitor of its decision, and the monitor to publish that notification.

Uncollected levies

A situation could arise at the end of a levy period where there were some levy arrears or postponed levies. The model in the bill intends that SPVs would be wound up as soon as possible after the levy period ends. This is designed to minimise the costs the SPV would incur to stay operating to collect a small number of outstanding levies. To allow for both the quick wind up of the SPV and the collection of any outstanding levy revenue, we recommend inserting new clause 90A.

New clause 90A would allow a responsible SPV to assign any uncollected or postponed levy to the responsible levy authority at the conclusion of the levy period. An SPV would be able to negotiate with the responsible levy authority for compensation for those uncollected levy fees.

After the assignment of any uncollected or postponed levy to the responsible levy authority, the Local Government (Rating) Act 2002 would apply to the collection and enforcement of the levy as if it were a rate.

Surplus levies in annual report

A surplus levy is the levy payable in a year that exceeds the eligible costs payable in that year. Clause 108(2)(d)(i) would require an SPV's annual report to include every decision to hold surplus levy to meet future eligible costs. We believe it would be more useful to remove that requirement, and instead insert new clause 108(1)(ca) to require an SPV to explain how the closing balance in the levy account each year would be applied to eligible costs in the future.

Previous development and financial contributions

Under the model proposed by the bill, previously paid development and financial contributions could still be applied to infrastructure being developed by an SPV. Clause 93 would give the SPV the power, by written notice, to direct the responsible levy authority in relation to development contributions. An SPV may direct the responsible levy authority to transfer the contributions to them and, after taking into

account the contributions, remit some or all of the levies on the rating unit to reflect the proportion of the levy that is payable.

We recommend amending clause 93(1) to allow 60 days for the SPV to give written notice of directions related to previous contributions.

Where the responsible levy authority must remit some or all of the levy, subclause (3) provides a formula to calculate the proportion of the levy still payable. We recommend amending that formula to take account of a situation where a party other than the SPV has made a capital contribution to the cost of eligible infrastructure. We recommend an associated amendment to subclause (1)(b). This could be, for example, a subsidy from NZTA or a capital contribution from the responsible local authority.

Crown guarantees

The bill would prohibit a local authority from providing any form of financial support to an SPV. This is designed to support the ring-fencing of the funding and financing arrangements from a local authority's balance sheet and to avoid any legal recourse. In practice, local authorities may need to provide some sort of financial contribution or guarantee to an SPV's project.

We therefore recommend replacing "provide financial support" with "credit" in clause 110(2). The clause as amended would only restrict lending and the provision of credit from the local authority to an SPV. We also recommend expanding the scope of the clause to cover both the responsible infrastructure authority and the responsible levy authority.

Monitoring of an SPV

Inquiry into an SPV's operations

Clause 119 would allow the monitor to inquire into an SPV's operations if it reasonably believes a significant problem relating to the SPV could exist, could potentially become a significant problem relating to the SPV, or if it had concerns relating to factors set out in clause 119(b)(i)–(iv). Clause 122 would allow the responsible Minister to appoint a Crown Manager to a responsible SPV if they believed there was a significant problem with the SPV and the monitor had recommended that a Crown manager be appointed.

We recommend removing clause 119(b)(ii), (iii), and (iv) to align the provisions. This would link the power to appoint a Crown Manager with the power to inquire into operations. It would allow the monitor to inquire into any aspect of an SPV's operations if the monitor had any concern relating to any matter that could potentially become a significant problem relating to the SPV.

Direction to address a significant problem

Clause 120 would enable the monitor to direct the SPV to address a significant problem that exists. The SPV must comply with that direction.

In practice, the monitor would likely consult with the SPV before issuing the direction. Nevertheless, we recommend amending the bill to provide an option for the monitor to allow an SPV to prepare and agree on a remedial plan to address the significant problem. We believe this would promote a better working relationship between the monitor and the SPV. It would also provide another pathway for addressing a significant problem that had been identified by the monitor.

However, we recommend retaining the monitor's ability to directly issue a direction, whether or not it had requested a remedial plan. This might be needed where there was urgency or the proposed remedial plan was not adequate.

Functions of a Crown Manager

The Crown Manager's role would be to perform the statutory functions of an SPV if there was a significant problem. Clause 123 expresses this role generally. We recommend amending clause 123 to clarify the statutory powers and functions of the Crown Manager. Under new subclause (3), the Crown Manager could work with the governing body of the SPV or act to their exclusion, or give directions to the governing body. New subclause (4) would require the governing body to co-operate with the Crown Manager, including complying with any directions it is given, while still remaining responsible for the general operations of the SPV.

Receivership of an SPV

The bill provides for two types of SPV: a finance SPV (responsible for the levy) and a construction SPV (responsible for the construction of the asset). These functions may be undertaken by one SPV or separate SPVs.

Clauses 131 to 136 set out the receivership process for an SPV or SPVs. Clauses 135 and 136 relate to the maintenance of public health and safety. In the bill as introduced they apply to construction SPVs. We recommend amending clauses 135 and 136 so that they capture all SPVs named in the levy order, whether finance or construction SPVs. This is because a finance SPV could also affect public health and safety. For example, it could withhold funds necessary to deal with a hazardous site.

Court orders

Clauses 139 to 146 provide for a number of court orders that could be made in relation to the conduct the SPV or another person. We recommend several changes to these provisions based on similar provisions in the Financial Markets Conduct Act 2013:

- Insert new clause 140A so the court could not require the monitor to give an undertaking as to damages when applying for an injunction against an SPV.
- Amend clause 141 to clarify the circumstances of non-compliance to state what circumstances a compliance order could apply to.
- Amend clause 143 to describe the content of a compensatory order.

We also recommend inserting clause 154A to state that the High Court would have the jurisdiction to hear and determine proceedings under the bill, except in relation to clause 102 and proceedings for offences.

Delegations

Clause 153 would allow an SPV to delegate its functions, duties, and powers under Parts 2 and 3 of the bill to a specified officer of the SPV. An SPV might also need to delegate powers it has in other Parts of the bill and powers it receives under other Acts. We therefore recommend amending clause 153 so that the responsible SPV could delegate the exercise of its powers under this or any other Act.

Applicability of the Official Information Act to SPVs

As introduced, the bill would not subject SPVs to the Ombudsmen Act 1975, the Official Information Act 1982 (OIA), or the Local Government Official Information and Meetings Act 1987 unless the SPV was a type of entity that those Acts already apply to. The original rationale behind this exclusion was that: SPVs could be private entities; they would rarely have direct relationships with individual levy payers; and would likely be small entities that should try to keep administrative costs low.

We believe it is important for levy payers to have transparency about an SPV's use of statutory levy powers. As SPVs would be performing public functions and spending public money, we believe there should be a high level of scrutiny over their operations. We note that the Chief Ombudsman has also expressed his belief that SPVs should be subject to the OIA and the Ombudsmen Act.

We note that other private entities are subject to the OIA to the extent they perform public functions. Scrutiny of public functions should not be avoided because those functions are performed by a private firm.

We therefore recommend inserting a provision in Schedule 2 of the bill to make SPVs subject to the Ombudsmen Act in relation to their administration of, and compliance with, the levy order and this legislation. This amendment would automatically make SPVs subject to the OIA.

Consistency with other legislation

Local Government (Rating) Act

The levy would likely be assessed and collected via a rates notice by the responsible levy authority. Because of the levy's similarity to rates, and the use of the rating system to collect the levy, it is appropriate for the bill to be consistent with the Local Government (Rating) Act, which sets out local government's rating system.

We recommend the following changes to align the bill with the Local Government (Rating) Act:

- Inserting new clause 51(5) to define "public notice" as having the meaning in section 5 of the Local Government (Rating) Act. Clause 51 would require an

SPV to give 14 days' public notice of its intention to correct an annual levy resolution.

- Amending clause 37(2) and inserting subclause (3) to require any rates assessed under section 93 of the Local Government (Rating) Act to be deducted first from the income referred to in that section, in any calculation of the levy liability. This would ensure that trustees would not be personally liable for rates or levies on Māori land held in trust. Trustees would only be liable for rates or levies to the extent of the income derived from that land.
- Inserting new clause 68A so that, if two or more rating units are owned by the same person, used as a single unit, and share a border or are only separated by specific things, they would be treated as 1 unit for the purposes of setting a levy. This is how rating units are treated under the Local Government (Rating) Act. This change would not materially affect the size of the levy base and would create fairness between this bill and the Local Government (Rating) Act.

Local Government Act 2002

Remission and postponement of levy

Clause 75 sets out levy remission and levy postponement policies. It does not state how these policies would apply to Māori freehold land. We recommend inserting new clause 75A to require an SPV and the responsible levy authority to consider matters in Schedule 11 of the Local Government Act when considering a remissions and postponement policy for the levy. Schedule 11 sets out matters relating to rates relief on Māori freehold land.

Applicability of the Public Finance Act 1989

Under clause 112, the Crown would not be able to provide a guarantee to an SPV, unless it was expressly guaranteed by the Crown under section 65ZD of the Public Finance Act. The similar provision in the Local Government Act would not limit that guarantee to section 65ZD. We recommend aligning the bill with the Local Government Act.

We also recommend inserting clause 104A to specify requirements for an SPV's accounting records. This is a general provision which appears in similar Acts and aligns the bill with the Public Finance Act.

Te Ture Whenua Māori Act 1993 and Marine and Coastal Area (Takutai Moana) Act 2011 not affected by this bill

We recommend amending the wording in clauses 12 and 13 to make it clear that nothing in this bill would limit or otherwise affect either Te Ture Whenua Māori Act 1993 or the Marine and Coastal Area (Takutai Moana) Act 2011. We believe this is more appropriate wording to reflect the intended interaction between these Acts and this legislation than in the bill as introduced.

We recommend amending clause 11 by inserting a definition for "Treaty of Waitangi claims" and replacing the reference to "historical claims" with "Treaty of Waitangi

claims” in clause 11(1)(i)(i). This would allow both historical and contemporary Treaty of Waitangi claims to be covered by the bill’s definition of protected Māori land.

We also recommend inserting a number of definitions in clause 11 that align this bill with the approach taken in the Urban Development Bill in relation to these two Acts.

Appendix

Committee process

The Infrastructure Funding and Financing Bill was referred to the committee on 17 December 2019. The closing date for submissions was 5 March 2020. We received and considered 38 submissions from interested groups and individuals. We heard oral evidence from 15 submitters at hearings in Wellington and by video link.

We received advice from the Department of Internal Affairs. The Regulations Review Committee reported to the committee on the powers contained in clauses 10, 34, and 40.

Committee membership

Darroch Ball (Chairperson)

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Matt King

Jan Logie

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Jamie Strange

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Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Phil Twyford

Infrastructure Funding and Financing Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Infrastructure Funding and Financing Act **2019**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent. 5

Part 1
Preliminary provisions

3 Purpose

The purpose of this Act is to provide a funding and financing model for the provision of infrastructure for housing and urban development, that— 10

- (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 15
- (d) appropriately allocates the costs of infrastructure.

4 Outline of this Act

- (1) This Part contains preliminary provisions.
- (2) **Part 2** describes how a levy to ~~support the funding of~~ fund eligible costs relating to eligible infrastructure is authorised. 20
- (3) **Part 3** describes how and by whom a levy is administered.
- (4) **Part 4** provides for operational and financial controls and powers.
- (5) **Part 5** provides for monitoring, enforcement, remedies, and some miscellaneous matters.

5 Transitional, savings, and related provisions 25

The transitional, savings, and related provisions (if any) set out in **Schedule 1** have effect according to their terms.

6 Act binds the Crown

This Act binds the Crown.

Interpretation 30

7 Interpretation

- (1) In this Act, unless the context otherwise requires,—

annual levy means the amount of levy set by the a responsible SPV under ~~section 40 subpart 3 of Part 2~~ **section 40** as the amount of levy intended to be collected in any levy year

annual levy resolution means a resolution that sets an annual levy, made by a responsible SPV under **section 45 or 50**

5

construction, in relation to infrastructure, includes—

- (a) design of the infrastructure; and
- (b) if the infrastructure is not yet vested ~~under section 88,—~~
 - (i) commissioning of the infrastructure; and
 - (ii) operation of the infrastructure between commissioning and vesting; and
- (c) all other necessary steps in a construction project, including planning, regulatory processes, tenders, project delivery, and contract management and administration

10

council-controlled organisation has the same meaning as in section 6 of the Local Government Act 2002

15

court means, in relation to any matter, the court before which the matter is to be determined (*see section 154A, which confers exclusive jurisdiction on the High Court in proceedings other than specified proceedings*)

Crown Manager means a Crown Manager appointed under **section 122**

20

development contribution has the same meaning as in section 197(2) of the Local Government Act 2002

due date, in relation to a levy or part of a levy, means the last day for payment of the levy, or the part of the levy, that is set out in the responsible levy authority's rates assessment that includes a levy assessment

25

eligible costs has the meaning set out in **section 9**

eligible infrastructure has the meaning set out in **section 8**

~~**excess levy** means levy revenue that is collected in relation to the levy period and that exceeds eligible costs incurred during that period~~

excess levy means levy revenue that—

30

- (a) is recognised by the responsible SPV as income in relation to the levy period; and
- (b) has not, at the end of the period, been applied to eligible costs

financial contribution has the same meaning as in section 108(9) of the Resource Management Act 1991

35

government agency means—

- (a) a department or departmental agency within the meaning of section 2 of the State Sector Act 1988; or

- (b) a Crown entity within the meaning of section 7 of the Crown Entities Act 2004; or
- (c) a Schedule 4A company within the meaning of section 2(1) of the Public Finance Act 1989

levy— 5

- (a) means a levy authorised by a levy order; and
- (b) includes a penalty added to a levy in accordance with **section 74**

levy area means the geographic area or areas of land in which a levy is authorised by a levy order

levy assessment means the ~~information relating to the assessment notice of~~ 10
levy liability that is ~~included in a rates assessment given to a levypayer under~~
section 69

levy order means an Order in Council made under **section 29**

levy period means the period over which a levy is to be payable, as specified 15
in a levy order or as later reduced by the responsible SPV under **section 52**

levy revenue means levy that has been collected or is intended to be collected

levy year, in a levy period, means ~~a 12-month period~~ period of 12 months
within the levy period, beginning on 1 July

levypayer means the person who is liable under **section 37** to pay any levy 20
that is due on a rating unit

maximum levy revenue means the amount of levy revenue that a levy order
specifies as the maximum amount of levy that may be collected over the levy
period ~~(or that amount as later reduced under~~ **section 52)**

monitor means the monitor appointed under **section 114**

previous contribution has the meaning set out in **section 91(2)** 25

proposer means the person who proposes the use of a levy to fund eligible
costs relating to eligible infrastructure

publish, in relation to the monitor or a responsible levy authority (the **pub-**
lisher), means to publish on ~~a~~ an Internet site that is maintained by or on behalf 30
of the publisher and is publicly available as far as practicable and free of
charge

ratepayer has the same meaning as in section 10 of the Local Government
(Rating) Act 2002

rates assessment has the same meaning as in section 5 of the Local Govern-
ment (Rating) Act 2002 35

rating information database has the same meaning as in section 5 of the
Local Government (Rating) Act 2002

rating unit means a rating unit for the purposes of the Rating Valuations Act
1998

receiver has the same meaning as in section 2(1) of the Receiverships Act 1993

recommender means the recommender appointed under **section 150**

resolution, in relation to a responsible SPV, means a formal resolution, determination, or decision of the SPV, including,—

- (a) in the case of a company within the meaning of section 2(1) of the Companies Act 1993, a resolution of the board of the company in accordance with clause 5(3) of Schedule 3 of that Act; or
- (b) in the case of a limited partnership within the meaning of section 6 of the Limited Partnerships Act 2008, a resolution of the limited partnership within the meaning of section 4 of that Act; or
- (c) in the case of a Crown entity within the meaning of section 7(1) of the Crown Entities Act 2004, a resolution of the board made in accordance with clause 12 of Schedule 5 of that Act

responsible infrastructure authority, in relation to eligible infrastructure, means an agency of ~~one~~1 of the following kinds in which the eligible infrastructure is, or is proposed to be, vested:

- (a) the responsible levy authority or another territorial authority;
- (b) a council-controlled organisation of the responsible levy authority;
- (c) the relevant regional council;
- (d) a government agency

responsible levy authority, in relation to a levy area, means—

- (a) the territorial authority for the district in which the levy area is located; or
- (b) if the levy area is located in more than 1 district, any territorial authority in whose district any part of the levy area is located (see subsection (2))

responsible Minister means the Minister who, under the authority of any warrant or with the authority of the Prime Minister, is responsible for the administration of this Act

responsible SPV, in relation to any function referred to in this Act, means,—

- (a) if 1 SPV is named in a levy order, that SPV; or
- (b) if 2 or more SPVs are named in a levy order, the SPV identified in the order as being responsible for the function to which the reference relates

significant problem, in relation to a responsible SPV, means a failure by the SPV to comply with this Act (~~in relation to a levy~~) or a levy order that could have adverse consequences for 1 or more levypayers

SPV (or **special purpose vehicle**) means a company, limited partnership, Crown entity, or other person that—

- (a) meets the requirements of **section 10**; and
- (b) is identified by a levy order as being responsible for the matters set out in the order

5

surplus levy, in relation to a levy year, means levy payable in relation to that year that exceeds eligible costs incurred during that year

territorial authority has the same meaning as in section 5(1) of the Local Government Act 2002.

vest, in relation to eligible infrastructure, means to transfer the infrastructure to a responsible infrastructure authority under a vesting agreement

10

vesting agreement means an agreement under **section 88**.

- (2) For the purposes of **paragraph (b)** of the definition of responsible levy authority in **subsection (1)**, each responsible levy authority's responsibility under this Act relates only to that part of the levy area that is in the authority's district.

15

8 Meaning of eligible infrastructure

- (1) In this Act, **eligible infrastructure** means infrastructure that is—

- (a) of a type set out in **subsection (2)**; and
- (b) described in a levy order as infrastructure in relation to which a levy is authorised.

20

- (2) The type of infrastructure for which a levy may be authorised is new or upgraded—

- (a) water services infrastructure; or
- (b) transport infrastructure; or
- (c) community infrastructure or community facilities; or
- (d) environmental resilience infrastructure.

25

- (3) In this section,—

community facilities has the same meaning as in section 197(2) of the Local Government Act 2002

30

community infrastructure has the same meaning as in section 197(2) of the Local Government Act 2002

environmental resilience infrastructure means infrastructure for—

- (a) managing risks from natural hazards, including by avoiding or mitigating those hazards and reducing those risks; and
- (b) environmental restoration generally

35

natural hazard has the same meaning as in section 2(1) of the Resource Management Act 1991

transport infrastructure means—

- (a) infrastructure that facilitates transport on land by any means; or
- (b) infrastructure that facilitates coastal shipping (including transport by means of harbour ferries, or ferries or barges on rivers or lakes)

water services infrastructure means infrastructure relating to water supply, sewerage, treatment and disposal of sewage, or stormwater drainage.

9 Meaning of eligible costs

- (1) In this Act, **eligible costs** means costs that are— 10
 - (a) of a type set out in **subsection (2)**; and
 - (b) described in a levy order as the costs that may be ~~recovered~~ met by the levy.
- (2) The types of costs for which a levy may be authorised are—
 - (a) the costs of the construction of eligible infrastructure (~~the construction costs~~) that are set out in **subsection (3)**; and 15
 - (b) the costs of financing the construction of eligible infrastructure (~~the financing costs~~) that are set out in **subsection (4)**; and
 - (c) the costs of the administration of a levy (~~the levy administration costs~~) that are set out in **subsection (5)**; and 20
 - (d) any further costs incurred by a responsible SPV in complying with this Act and the levy order; and
 - (e) the general operating costs of ~~the~~ a responsible SPV.
- (3) ~~The construction costs~~ costs of the construction of eligible infrastructure are—
 - (a) establishment costs; and 25
 - (b) construction costs; and
 - (c) costs incurred in operating, repairing, and maintaining eligible infrastructure after it is constructed and before it is ~~transferred under section 88~~ vested.
- (4) The financing costs are— 30
 - (a) ~~the cost~~ costs of meeting ~~the~~ a responsible SPV's commitments under any loan, or obligations under any incidental arrangement, ~~in connection with the construction~~; and
 - (b) the costs of refinancing; and
 - (c) a return on the capital provided by holders of debt or equity. 35
- (5) The levy administration costs are—

- (a) costs incurred by ~~the~~a responsible levy authority in assessing and collecting a levy; and
- (b) costs incurred by ~~the~~a responsible levy authority or ~~the~~a responsible SPV in recovering unpaid levy; and
- (c) costs incurred by the recommender, the monitor, or a Crown Manager in performing their functions or duties or exercising their powers under this Act, if ~~the~~a responsible SPV is liable to fund or reimburse those costs. 5
- (6) In this section,—
- construction costs** includes—
- (a) direct construction costs, insurance relating to construction, and project contingency costs incurred by ~~the~~a responsible SPV; and 10
- (b) construction costs incurred by any other person in relation to any matters set out in **paragraph (a)**, if the responsible SPV is contractually liable to fund or reimburse that person's construction costs
- establishment costs** ~~include~~includes— 15
- (a) costs incurred in the establishment of ~~the~~a responsible SPV; and
- (aa) costs incurred in relation to the acquisition and preparation of land on which eligible infrastructure is to be constructed, including the costs of purchasing or otherwise acquiring land and the costs of procuring designations under the Resource Management Act 1991; and 20
- (b) costs incurred by ~~the~~a responsible SPV in relation to planning and arranging for the commencement of construction work and in relation to any levy proposal; and
- (c) costs incurred by ~~another~~ any other person (including levy proposal costs) in relation to any matters set out in ~~**paragraph (b)**~~ **paragraphs (a) to (b)**, if the responsible SPV is contractually liable to fund or reimburse that person's costs 25
- general operating costs** means general management and administration costs associated with the construction of eligible infrastructure, the financing of that construction, the administration of a levy, or any support or service received from the Crown 30
- incidental arrangement** and **loan** have the same meanings as in section 112 of the Local Government Act 2002, except that each reference to a local authority must be read as a reference to the responsible SPV that is party to the loan or arrangement 35
- levy proposal costs** means costs incurred by—
- (a) the proposer of a levy that is authorised by a levy order; ~~and or~~
- (b) the recommender or any other person acting on behalf of the Crown in relation to any levy proposal.

10 What is an SPV

- (1) A company, limited partnership, Crown entity, or other person may be a special purpose vehicle (an **SPV**) under this Act only if its governing documents state that—
- (a) it is established and operates for the sole purpose of acting as a responsible SPV under this Act; and
 - (b) the governing documents cannot be amended without the consent of ~~a~~ the monitor-appointed under this Act.
- (2) An SPV may be established and operate only in relation to 1 levy order.

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*Protected Māori land***11 Meaning of protected Māori land**

- (1) In this Act, **protected Māori land** means any of the following:
- (a) Māori customary land:
 - (b) land vested in the Māori Trustee that—
 - (i) is constituted as a Maori reserve by or under the Maori Reserved Land Act 1955; and
 - (ii) remains subject to that Act:
 - (c) land set apart as a Maori reservation under Part 17 of Te Ture Whenua Maori Act 1993:
 - (d) any part of the common marine and coastal area in which customary marine title has, or protected customary rights have, been recognised under the Marine and Coastal Area (Takutai Moana) Act 2011:
 - (e) land that forms part of a natural feature that has been declared under an Act to be a legal entity or person (including Te Urewera land within the meaning of section 7 of the Te Urewera Act 2014):
 - (f) the maunga listed in section 10 of the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014:
 - (g) Maori freehold land:
 - (h) General land owned by Maori that was previously Maori freehold land, but ceased to have that status in accordance with—
 - (i) an order of the Māori Land Court made on or after 1 July 1993; or
 - (ii) Part 1 of the Maori Affairs Amendment Act 1967:
 - (i) land held by a post-settlement governance entity if the land was acquired—
 - (i) as redress for the settlement of ~~historical~~ Treaty of Waitangi claims; or

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- (ii) by the exercise of rights under a Treaty settlement Act or Treaty settlement deed:
- (j) land held by or on behalf of an iwi or a hapū if the land was transferred from the Crown, a Crown body, or a local authority with the intention of returning the land to the holders of mana whenua over that land. 5
- (2) In this section,—
- claimant group** means a group of Maori with Treaty of Waitangi claims against the Crown, whether or not those claims have been lodged with, or heard by, the Waitangi Tribunal under the Treaty of Waitangi Act 1975
- common marine and coastal area** has the same meaning as in section 9(1) of the Marine and Coastal Area (Takutai Moana) Act 2011 10
- Crown body** means—
- (a) a Crown entity, as defined in section 7(1) of the Crown Entities Act 2004; and
- (b) a State enterprise, as defined in section 2 of the State-Owned Enterprises Act 1986; and 15
- (c) the New Zealand Railways Corporation; and
- (d) a company or body that is wholly owned or controlled by 1 or more of the following:
- (i) the Crown; 20
- (ii) a Crown entity;
- (iii) a State enterprise;
- (iv) the New Zealand Railways Corporation; and
- (e) a subsidiary (as defined in section 5 of the Companies Act 1993) or related company of a company or body referred to in **paragraph (d)** 25
- deed of recognition** means the redress of that name included in certain Treaty settlement Acts
- General land owned by Maori** has the same meaning as in section 4 of Te Ture Whenua Maori Act 1993
- land held by a post-settlement governance entity** includes land that is, in accordance with a Treaty settlement Act, held in the name of a person such as a tipuna of the claimant group (rather than the entity itself) 30
- local authority** has the same meaning as in section 5(1) of the Local Government Act 2002
- mana whenua** has the same meaning as in section 2(1) of the Resource Management Act 1991 35
- Maori** has the same meaning as in section 4 of Te Ture Whenua Maori Act 1993

Maori customary land has the same meaning as in section 4 of Te Ture Whenua Maori Act 1993

Maori freehold land has the same meaning as in section 4 of Te Ture Whenua Maori Act 1993

Māori Trustee means the Māori Trustee established under the Māori Trustee Act 1953 5

~~**post-settlement governance entity** means a post-settlement governance entity established by an iwi or a hapū and approved by the Crown for the purposes of receiving redress in the settlement of the historical Treaty of Waitangi claims of that iwi or hapū~~ 10

post-settlement governance entity—

(a) means a body corporate or the trustees of a trust established, for the purpose of receiving redress in the settlement of the Treaty of Waitangi claims of a claimant group,—

(i) by that group; or 15

(ii) by or under an enactment or order of a court; and

(b) includes—

(i) an entity established to represent a collective or combination of claimant groups; and

(ii) an entity controlled by an entity referred to in **paragraph (a)**; and 20

(iii) an entity controlled by a hapū to which redress has been transferred by an entity referred to in **paragraph (a)**

protected customary right has the same meaning as in section 9(1) of the Marine and Coastal Area (Takutai Moana) Act 2011 25

redress means redress provided for, by, or under a Treaty settlement Act or Treaty settlement deed, including redress by or under—

(a) a statutory acknowledgment and the associated statement of association:

(b) a deed of recognition

statutory acknowledgement means redress of that name included in certain Treaty settlement Acts: 30

Treaty of Waitangi claim means a claim within the meaning of section 6 of the Treaty of Waitangi Act 1975, whether or not that claim was submitted to the Waitangi Tribunal.

(3) In this section and **section 14**,— 35

Treaty settlement Act means—

(a) an Act listed in Schedule 3 of the Treaty of Waitangi Act 1975; or

- (b) ~~any Act that provides collective redress or participation arrangements to claimant groups whose claims are, or are to be, settled by another Act~~
- (b) any other Act that provides redress for Treaty of Waitangi claims, including Acts that provide collective redress or participation arrangements for claimant groups whose claims are, or are to be, settled by another Act 5

Treaty settlement deed—

- (a) ~~means a deed or other agreement entered by the Crown and a group of Māori claimants in settlement of the historical Treaty claims of that group; and~~ 10
- (b) ~~includes a signed deed of settlement awaiting the enactment of the associated Treaty settlement Act.~~

Treaty settlement deed means a deed or other agreement—

- (a) that is signed for and on behalf of the Crown by 1 or more Ministers of the Crown and by representatives of a claimant group; and 15
- (b) that is in settlement of the Treaty of Waitangi claims of the members of that group, or in express anticipation, or on account, of that settlement.

12 Te Ture Whenua Maori Act 1993 prevails not affected by this Act

~~If a provision of this Act is inconsistent with a provision in Nothing in this Act limits or otherwise affects Te Ture Whenua Maori Act 1993, the provision in Te Ture Whenua Maori Act 1993 prevails.~~ 20

13 Marine and Coastal Area (Takutai Moana) Act 2011 prevails not affected by this Act

~~If a provision of this Act is inconsistent with a provision in Nothing in this Act limits or otherwise affects the Marine and Coastal Area (Takutai Moana) Act 2011, the provision in the Marine and Coastal Area (Takutai Moana) Act 2011 prevails.~~ 25

14 Treaty settlement obligations prevail

- (1) If a provision of this Act is inconsistent with a Treaty settlement obligation, the Treaty settlement obligation prevails. 30
- (2) In this section, **Treaty settlement obligation** means an obligation under any of the following:
 - (a) a Treaty settlement Act:
 - (b) a Treaty settlement deed.

*Application of Local Government (Rating) Act 2002***15 How Local Government (Rating) Act 2002 applies to this Act**

- (1) This section describes how provisions of the Local Government (Rating) Act 2002 ~~are applied~~ apply for the purposes of this Act.
- (2) If this Act applies a provision of the Local Government (Rating) Act 2002, that provision applies—
 - (a) as if any reference to—
 - (i) a local authority were a reference to ~~the~~ a responsible levy authority; and
 - (ii) rates included a reference to a levy; and
 - (iii) a ratepayer included a reference to a levypayer; and
 - (iv) a rates assessment included a reference to a levy assessment; and
 - (v) a rates invoice included a reference to a levy invoice; and
 - (vi) the local authority's district were a reference to the levy area; and
 - (b) as further modified by **subsection (3)**; and
 - (c) as further modified by the provision of this Act that applies the Local Government (Rating) Act 2002 provision; and
 - (d) with all other necessary modifications.
- (3) Despite **subsection (2)(a)(i)**, a provision of the Local Government (Rating) Act 2002 that is applied under **subpart 3 of Part 3** applies as if a reference to a local authority were a reference to ~~the~~ a responsible SPV.

Part 2**Authorisation of levy****16 Outline of this Part**

- (1) This Part provides for a levy to be authorised to fund ~~the provision of~~ eligible costs relating to eligible infrastructure.
- (2) **Subpart 1** describes how a proposal to have a levy authorised is considered and recommended.
- (3) **Subpart 2** describes the Order in Council that authorises the use of a levy in a levy area.
- (4) **Subpart 3** describes the basic features of levy liability and how the levy is set for each ~~year of the levy period~~ levy year.

Subpart 1—Consideration of levy proposal

*Levy proposal***17 Who may propose levy**

- (1) Any person may propose that a levy be authorised to fund eligible costs relating to eligible infrastructure. 5
- (2) The proposer must give the proposal to the recommender.

18 Content of levy proposal

A levy proposal for the authorisation of a levy must include the following information:

- (a) the proposed levy area: 10
- (b) details of any protected Māori land in the proposed levy area:
- (c) the proposed eligible infrastructure:
- (d) the expected eligible costs and the expected timing of the construction:
- (e) the proposed financing of eligible costs, including details of the commercial relationships between financing entities: 15
- (f) the proposed levy period:
- (g) the proposed SPV or SPVs, ~~including the commercial relationships between SPVs if more than 1 are proposed:~~
- (ga) if 2 or more SPVs are proposed,—
 - (i) the proposed responsibilities of those SPVs under this Act; and 20
 - (ii) the proposed commercial relationships between those SPVs:
- (h) for each proposed SPV, forecast financial statements for each ~~year of the levy period~~ levy year, including—
 - (i) all expected eligible costs, described by category; and
 - (ii) any expected funding (sources and amounts) in addition to the proposed levy; and 25
 - (iii) the projected levy revenue:
- (ha) the proposed responsible levy authority or authorities and proposed responsible infrastructure authority or authorities:
- (i) the proposed method of assessing levy liability for rating units in the levy area (including examples of expected assessments for a representative range of rating units): 30
- (j) all other information necessary to enable the recommender to assess the levy proposal.

*Levy proposal assessed by recommender***19 Recommender assesses levy proposal**

- (1) The recommender must notify the responsible Minister of any levy proposal that the recommender receives.
- (2) The recommender—
 - (a) may assess any levy proposal that the recommender receives; and
 - (b) must assess a levy proposal on request by the responsible Minister.
- (3) A proposer must give to the recommender any additional information required by the recommender for the purpose of assessing a levy proposal.

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20 ~~Asset-Infrastructure~~ endorsement

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- (1) A proposed responsible infrastructure authority may endorse the technical specifications of proposed eligible infrastructure if satisfied that—
 - (a) those specifications are compatible with any wider infrastructure network of which it is to be a part, or will be made compatible with the network if specified conditions included in the vesting agreement for the infrastructure under **section 88** are met; and
 - (b) the proposed responsible infrastructure authority will be able to plan for and meet the necessary operational and maintenance costs of the infrastructure after it is transferred to vested in the authority under **section 88**.
- (2) The proposed responsible infrastructure authority may give an asset infrastructure endorsement on request by the proposer, a person acting on behalf of the proposer, or the recommender.
- (3) The person who requests an asset infrastructure endorsement must give to the proposed responsible infrastructure authority any all additional information required by the authority for the purpose of giving the endorsement.
- (4) ~~The~~ For the purpose of **subsection (1)(a)**, the proposed responsible infrastructure authority may require that specified conditions that the authority considers appropriate be included in a the vesting agreement under **section 88** relating to the proposed eligible infrastructure.

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21 Levy endorsement

- (1) ~~The~~ A proposed responsible levy authority may endorse the proposed levy unless the authority can demonstrate that the proposed levy will compromise its ability to collect rates during the proposed levy period if satisfied that that ability will not be demonstrably compromised by the proposed levy.
- (2) The proposed responsible levy authority may give a levy endorsement on request by the proposer, a person acting on behalf of the proposer, or the recommender.

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22 Authorities not restricted by endorsement

Giving an asset-infrastructure endorsement or a levy endorsement does not—

- (a) ~~require the~~ a proposed responsible infrastructure authority or proposed responsible levy authority to agree with or approve of any other aspect of the levy proposal or the construction work to which it relates; or 5
- (b) limit or affect the authority in its performance of any function or duty, or its exercise of any power, under this Act or any other Act.

23 Endorsements notified

A proposed responsible infrastructure authority or proposed responsible levy authority must give the recommender and the person who requested an asset-infrastructure endorsement or a levy endorsement written notification of its decision about the endorsement (including a decision not to give the endorsement) and the reasons for that decision. 10

24 Consent to include protected Māori land

- (1) Protected Māori land may be included in a proposed levy area only if the owners of that land consent to its inclusion. 15
- (2) The owners must give any consent in writing to the proposer and the recommender.

25 Recommendation

- (1) The recommender must not recommend a levy proposal to the responsible Minister unless the recommender has received— 20
 - (a) all endorsements requested under **sections 20 and 21**; and
 - (b) the consent requested under **section 24**.
- (2) In deciding whether to recommend a levy proposal, the recommender must take into account only— 25
 - (a) the matters set out in **section 27(4)(a) to (g)**; and
 - (b) all other matters of practicality, efficiency, and equity that the recommender believes may assist the responsible Minister's consideration of the levy proposal.

26 Recommendation report 30

- (1) The recommender—
 - (a) must prepare a report on any levy proposal that the recommender is directed to assess under **section 19(2)(b)**; and
 - (b) may prepare a report on any other levy proposal given to the recommender. 35
- (2) A report under this section must contain—

- (a) the recommender's assessment of the proposal against the purpose of this Act; and
- (b) the recommender's assessment of the proposal against—
 - (i) the matters set out in **section 27(4)(a) to (g), (4A), and (5)**; and 5
 - (ii) all other matters of practicality, efficiency, and equity that the recommender believes may assist the responsible Minister's consideration of the levy proposal; and
- (c) the recommender's recommendation about whether the proposed levy should be authorised; and 10
- (d) all information that the responsible Minister needs to consider the levy proposal, including the information about—
 - (i) all of the matters set out in **sections 31 to 33**; and
 - (ii) any of the matters set out in **section 34** that the recommender considers relevant to the report. 15
- (3) The recommender must give to the responsible Minister—
 - (a) the recommendation report; and
 - (b) the notifications received by the recommender under **section 23**; and
 - (c) the consent received by the recommender under **section 24(2)**.

Responsible Minister's consideration of levy proposal 20

27 Responsible Minister may recommend levy order to Governor-General in Council

- (1) The responsible Minister may recommend to the Governor-General in Council that a levy order be made only if the responsible Minister is satisfied that authorising the proposed levy is appropriate having regard to the matters set out in **subsection (4)** and in accordance with ~~**subsection (5)**~~**subsections (4A) and (5)**. 25
- (2) The responsible Minister may ~~only consider a levy proposal~~ recommend that a levy order be made only after receiving a recommendation report. report that includes all endorsements and consents under **sections 20, 21, and 24**. 30
- (3) The responsible Minister—
 - (a) is not required to accept the recommendation in the recommendation report; but
 - (b) if recommending that a levy be authorised, may only recommend the levy on the terms set out in the recommendation report. 35
- (4) The responsible Minister must take only the following matters into account:
 - (a) whether the levy proposal is consistent with the purpose of this Act:

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- (b) the extent of expected benefits outside the levy area compared with expected benefits within the levy area:
 - (c) the distribution of expected benefits in the levy area as a whole or any identifiable part of the levy area, and to persons in the levy area:
 - (d) the extent to which the actions or inaction of particular persons or a group contribute to the need to undertake the construction work: 5
 - (e) the period over which benefits are expected to occur:
 - (f) the long-term interests of ~~proposed~~ levypayers over the levy period:
 - (g) the affordability of the levy for levypayers and the sustainability of its payment by them over the levy period: 10
 - (h) all other matters of practicality, efficiency, and equity that the responsible Minister considers relevant, including whether the expected returns on the capital provided by holders of debt or equity are consistent with outcomes produced in workably competitive markets.
- (4A) The responsible Minister may recommend that a levy order apply **section 96** only if satisfied that the exercise by a responsible SPV of the powers referred to in **section 96(2)** is reasonably necessary to complete the construction of the relevant eligible infrastructure. 15
- (5) The responsible Minister may recommend that a levy order apply either or both of the limits in **section 138** ~~be applied in a levy order~~ only if satisfied that the recommendation is not likely to unfairly prejudice any creditor of the responsible SPV in the relevant circumstances. 20
- 28 Consultation**
- (1) Before recommending a levy order, the responsible Minister must consult the Ministers responsible for the following Acts: 25
- (a) the Commerce Act 1986:
 - (b) the Credit Contracts and Consumer Finance Act 2003:
 - (c) the Local Government Act 2002:
 - (d) the Local Government (Rating) Act 2002:
 - (e) the Public Finance Act 1989. 30
- (2) Before making a recommendation under **section 27(5)**, the responsible Minister must consult the Minister responsible for the Companies Act 1993 and the Minister responsible for the Property Law Act 2007.

Subpart 2—Levy order

29 Order in Council

The Governor-General may, by Order in Council made on the recommendation of the responsible Minister, authorise the use of a levy for the purpose of funding ~~the eligible costs of relating to~~ eligible infrastructure.

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30 Monitor publishes recommender's report

If a levy order is made, the monitor must publish the recommender's report received by the responsible Minister under **section 26**.

31 Content of levy order

- (1) A levy order must— 10
- (a) identify the levy area; and
 - (b) describe the eligible infrastructure that is to be constructed; and
 - (c) specify the eligible costs that are to be met by the levy; and
 - (d) specify the levy period and its earliest commencement date (which must be 1 July of the first levy year); and 15
 - (e) describe the levy; and
 - (f) identify the SPV that is entitled to the levy that is collected under the order; and
 - (g) provide whether that SPV is also responsible for the construction of eligible infrastructure; and 20
 - (h) if there are 2 or more SPVs, describe their responsibilities ~~and the nature of their commercial relationship~~; and
 - (i) specify limits on returns on capital; and
 - (j) provide for the periodic forecasting of excess levy; and
 - (k) include any other matter required by this subpart. 25
- (2) The description of eligible infrastructure under **subsection (1)(b)** must be—
- (a) general in nature; but
 - (b) detailed enough to enable the identification of eligible costs.
- (3) For the purposes of **subsection (1)(d)**,—
- (a) the levy period must not exceed the maximum levy period in **section 39(1)**; and 30
 - (b) the levy order must ~~state the earliest date on which~~ identify the first year of the levy period may begin, by—
 - (i) ~~by specifying a date year~~; or
 - (ii) ~~by referring to a future event~~; event; and 35

- (c) the order must specify 30 June of the final levy year as the end of the levy period.
- (4) For the purposes of **subsection (1)(e)**,—
- (a) the levy must be in accordance with **sections 32 and 33**; and
- (b) the description of the levy must— 5
- (i) specify the maximum amount of levy revenue that may be collected under the levy order; and
- (ii) include the intended annual levy for each year of the levy period levy year.
- 32 ~~Levy: leviable land and categories~~Setting levy: leviable land** 10
- (1) ~~The levy order may authorise a levy to be set in relation to—~~
- (a) ~~all leviable land in the levy area; or~~
- (b) ~~1 or more categories of leviable land in the levy area.~~
- (2) The levy order may authorise a levy to be set for all leviable land in the levy area— 15
- (a) on a uniform basis ~~for all leviable land in the levy area~~; or
- (b) differentially for 2 or more different categories of ~~that~~ leviable land.
- (3) If **subsection (1)(b) or (2)(b)** applies, the levy order must identify the categories of leviable land that are defined in terms of 1 or more of the matters listed in Schedule 2 of the Local Government (Rating) Act 2002, as modified by **subsection (4)** and with all other necessary modifications. 20
- (4) Clause 5 of Schedule 2 of the Local Government (Rating) Act 2002 applies as if—
- (a) it referred to the provision or availability to the land of ~~a service provided, or to be provided, using eligible infrastructure; and~~ either or both of 25
- the following:
- (i) a service provided, or to be provided, using eligible infrastructure;
- (ii) access to a new or an upgraded road that is eligible infrastructure;
and
- (b) it referred, in addition to the local authority, to— 30
- (i) a council-controlled organisation of the local authority; and
- (ii) any government agency.
- 33 ~~Levy: assessment of liability~~Setting levy: factors to be used in assessing liability**
- (1) The levy order must set out how liability for the levy is to be assessed for rating units. 35

- (2) The levy order must identify a factor or factors listed in Schedule 3 of the Local Government (Rating) Act 2002, as modified by **subsection (5)** and with all other necessary modifications, to be used to assess liability for the levy.
- (3) Despite **subsection (2)**, the levy order may provide for the calculation of the liability for the levy as a fixed amount for each rating unit in the levy area. 5
- (4) If the levy is set differentially under **section 32(2)(b)**, the levy order does not have to require a levy to be assessed using the same factors for each category of land.
- (5) Clauses 8, 9, and 10 of Schedule 3 of the Local Government (Rating) Act 2002 apply as if they referred— 10
- (a) to the provision or availability to the land of ~~a service to be provided using eligible infrastructure; and either or both of the following:~~
- (i) a service provided, or to be provided, using eligible infrastructure;
- (ii) access to a new or an upgraded road that is eligible infrastructure; and 15
- (b) in addition to the local authority, to—
- (i) a council-controlled organisation of the local authority; and
- (ii) any government agency.

34 Additional content of levy order

- ~~In addition, a~~ A levy order may— 20
- (a) specify a cap, or impose a control, on the application of levy revenue to specified types or categories of eligible costs; and
- (b) require the responsible SPV, in the event that a specified amount of forecast excess levy is exceeded, to ~~reduce the levy period or the levies payable in later years; and the maximum levy revenue by reducing either or both of the following:~~ 25
- (i) the levy period;
- (ii) the levies payable in later levy years; and
- (c) ~~state when surplus levy must be estimated or calculated; and~~
- (d) specify a cap, or impose a control, on the amount of surplus levy that may be held in the levy account, whether held in relation to 1 or more levy years; and 30
- (e) contain details of the incorporation and ownership of any SPVs; and
- (f) describe what change of ~~ownership or control~~ of an SPV constitutes a restricted change of control for the purposes of **section 118**; and 35
- (g) impose conditions on procurement processes ~~for—; and~~
- (i) ~~the construction of eligible infrastructure;~~
- (ii) ~~the financing of eligible costs; and~~

- (h) authorise a responsible SPV to exercise powers under **section 96 or 97** in relation to the construction of eligible infrastructure; and
- (i) apply any or all of the following:
 - (i) **section 96** (which confers a power to construct eligible infrastructure on private land) (powers relating to private land) in relation to all eligible infrastructure (or classes of it): 5
 - (ii) **sections 97 to 102** (which confer a power to construct water services infrastructure on powers relating to roads and public land):
 - (iii) either or both of the limits in **section 138** (which modifies the limit on usual rules for creditors) to transactions and dispositions of eligible infrastructure (or any class of them); and 10
- (j) impose further conditions and requirements on any SPV relating to the matters authorised to be contained in a levy order by this Act or to further support duties imposed on the SPV by this Act. 15

Subpart 3—Basis of liability for levy

Preliminary

35 Application

This subpart applies ~~once when~~ a levy order ~~has been made~~ comes into force.

36 Leviable land 20

Land within a levy area is leviable under this Act to the extent that it is rateable under sections 7 to 9 of the Local Government (Rating) Act 2002.

37 Who must pay levy

- (1) The ratepayer for a rating unit is liable to pay all levy that is due on the unit.
- (2) However, ~~a person other than the ratepayer may become liable to pay the levy in the circumstances set out in section 61, 62, or 96 of the Local Government (Rating) Act 2002.~~ 25
 - (a) a person other than the ratepayer may become liable to pay the levy in the circumstances set out in section 61, 62, or 96 of the Local Government (Rating) Act 2002; and 30
 - (b) the levy liability of trustees in whom Maori freehold land is vested is limited in accordance with section 93 of the Local Government (Rating) Act 2002, which applies subject to **subsection (3)** and with all other necessary modifications.
- (3) In any calculation of the levy liability of trustees under section 93 of the Local Government (Rating) Act 2002, any rates assessed under that Act must first be deducted from the income referred to in that section. 35

38 When levy payment must be made

Levy must be paid, and instalments of levy must be paid, on the dates set under section 24 of the Local Government (Rating) Act 2002 for the payment of rates and rates instalments.

39 Levy period

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- (1) The levy period specified in a levy order must not exceed 50 years.
- (2) The levy period begins at the start of the first year of the levy period.

*Responsible SPV sets annual levy***40 Annual levy**

- (1) The responsible SPV must, ~~by written resolution,~~ set the amount of levy for each levy year ~~of the levy period.~~ 10
- (2) Each levy must—
 - (a) relate to a levy year; and
 - (b) ~~be consistent~~ comply with the levy order.
- (3) In setting the levy, the responsible SPV must calculate it in accordance with the levy order. 15
- (4) ~~The responsible SPV must give a copy of a resolution under **section 45 or 50** for a levy year to the responsible levy authority on or before 10 May of the preceding year.~~
- (4) The responsible SPV must ensure that the process of confirmation of an annual levy set out in **sections 42 to 50** is completed in time for a resolution under **section 45** or, if applicable, **section 50** to be given to the monitor and the responsible levy authority by 10 May before the start of the levy year for which the annual levy is being set. 20

41 Rating information needed by SPV

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A responsible levy authority must give to a responsible SPV all rating information from the authority's rating information database that the responsible SPV reasonably requests in order to set annual levy.

*Confirmation of annual levy***42 Proposed annual levy resolution ~~to monitor~~**

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- (1) The responsible SPV must prepare a proposed annual levy resolution for each levy year ~~of the levy period.~~
- (2) A proposed annual levy resolution must contain information that is sufficient to enable the responsible levy authority to correctly assess the levy on all rating units in the levy area that are subject to the levy. 35

- (3) If a levy order authorises a levy to be applied to more than 1 category of land, ~~an a proposed~~ annual levy resolution must specify, for each category of land, the amount of levy to be assessed and the factor or factors to be used in the assessment.
- (4) The proposed annual levy resolution must also include the total amount of levy revenue that the SPV intends to collect in the levy year to which the resolution relates, including the levy revenue expected from each category of land. 5
- 43 Monitor reviews proposed resolution and report**
- (1) The responsible SPV must give to the monitor—
- (a) a copy of a proposed annual levy resolution; and 10
 - (b) a report that describes how the proposed resolution complies with the levy order and includes a statement of all assumptions about present and future events and circumstances relied on in preparing the resolution; and
 - (c) any further information required by the monitor. 15
- (2) The monitor must review the proposed annual levy resolution and report and determine whether ~~they are~~ the proposed resolution is in accordance with the levy order.
- 44 Monitor confirms proposed resolution and report**
- If the monitor is satisfied that the proposed annual levy resolution ~~and report~~ are is in accordance with the levy order, the monitor must— 20
- (a) confirm that the proposed annual levy is in accordance with the levy order; and
 - (b) notify the responsible SPV of the confirmation.
- 45 Responsible SPV sets annual levy** 25
- (1) On being notified of the monitor's confirmation of ~~annual levy~~ a proposed annual levy resolution, the responsible SPV must, by written resolution, set the annual levy for the coming levy year in accordance with that confirmation.
- (2) The responsible SPV must, no later than 10 working days after the day on which the resolution is made, send a copy of the resolution to the monitor and the responsible levy authority. 30
- (3) A resolution under this section is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012 and is not required to be presented to the House of Representatives under section 41 of that Act. 35
- 46 Monitor publishes resolution**
- The monitor must publish a resolution no later than the day that is 5 working days after receiving it under **section 45(2)**.

47 Monitor not satisfied

If the monitor is not satisfied that the proposed annual levy resolution ~~and report~~ complies with the levy order, the monitor must notify the responsible SPV of—

- (a) its decision; and 5
- (b) the reasons for the decision; and
- (c) what the responsible SPV should do in order to satisfy the monitor about the proposed resolution ~~and report~~.

48 Revised proposed annual levy resolution

- (1) On receiving a notification under **section 47**, the responsible SPV must prepare and give to the monitor a revised proposed annual levy resolution for confirmation. 10
- (2) **Sections 42 to 47** apply in relation to the revised proposed resolution.

49 Monitor directs resolution

- (1) If the monitor does not confirm the revised proposed annual levy resolution, the monitor may— 15
 - (a) allow the responsible SPV to prepare a further revised proposed annual levy resolution under **section 48**; or
 - (b) direct the responsible SPV to prepare an annual levy resolution in terms required by the monitor. 20
- (2) The monitor—
 - (a) may allow the process of preparation and consideration of revised proposed annual levy resolutions to be repeated; but
 - (b) must give a direction under **subsection (1)(b)** in time to enable the responsible SPV to set the annual levy under **section 50** on or before 10 May before the start of the levy year for which the annual levy is being set. 25

50 Responsible SPV sets annual levy as directed

- (1) On receiving a direction under **section 49**, the responsible SPV must,—
 - (a) by written resolution, set the annual levy for the coming levy year in accordance with that direction; and 30
 - (b) comply with **section 45(2)** in relation to that resolution.
- (2) A resolution under this section is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012 and is not required to be presented to the House of Representatives under section 41 of that Act. 35

*Correcting annual levy***51 Responsible SPV may correct annual levy resolution within same levy year**

- (1) The responsible SPV may correct an annual levy resolution ~~in~~ at any time before the end of the levy year for which the levy was set if—
- (a) the SPV considers it desirable to correct the levy because of— 1 or more of the following: 5
- (i) an irregularity in setting the levy; ~~or~~
 - (ii) a mistake in calculating the levy; ~~or~~
 - (iii) a relevant change in circumstances; and
- (b) correcting the levy will not increase the amount of levy assessed for any rating unit. 10
- (2) The responsible SPV may correct the annual levy only if—
- (a) it has given 14 days' public notice and notice to the monitor of its intention to correct the levy; and
- (b) the monitor consents to the change. 15
- (3) The notice must include the reason why the SPV has determined that it is desirable to correct the annual levy.
- (4) If correcting the annual levy results in a change to the amount of levy to be assessed for any rating unit,—
- (a) the responsible levy authority must correct the levy-related information in the rates record for the rating unit as soon as practicable; and 20
- (b) section 41 of the Local Government (Rating) Act 2002 applies.
- (5) In this section, **public notice** has the same meaning as in section 5 of the Local Government (Rating) Act 2002. 25
- Compare: 2002 No 6 s 119

*~~Levy period and annual levies~~ Maximum levy revenue can be reduced***52 ~~Levy period and annual levies~~ Maximum levy revenue can be reduced**

(1AAA) This section applies if a levy order includes a requirement under **section 34(b)**.

- (1) If the amount of the responsible SPV's ~~amount of~~ forecast excess levy exceeds the amount specified by the levy order, the SPV must reduce the maximum levy revenue by reducing either or both of the following:— 30
- (a) ~~reduce the~~ levy period; ~~or~~
- (b) ~~reduce the~~ amount of the levy set in later levy years under this subpart.
- (2) The responsible SPV must notify the monitor of a reduction in the ~~levy period~~ maximum levy revenue. 35

- (3) The monitor must publish a notice of the reduced ~~levy period~~ maximum levy revenue no later than the day that is 5 working days after being notified of it.

Part 3

Administration of levy

- 53 Outline of this Part** 5
- (1) This Part describes how a levy that is authorised under a levy order is administered.
- (2) **Subpart 1** provides for who is responsible for administering a levy and sets out modifications to the Local Government (Rating) Act 2002 that apply throughout this Part. 10
- (3) **Subpart 2** describes how the responsible levy authority administers a levy on behalf of the responsible SPV, including by recovering unpaid levy.
- (4) **Subpart 3** describes how the responsible SPV recovers unpaid levy in specified circumstances.
- Subpart 1—Who administers levy 15
- 54 Who administers levy**
- (1) The responsible SPV is authorised to administer a levy that is authorised by a levy order.
- (2) However, the responsible levy authority must administer the levy on behalf of the responsible SPV in accordance with— 20
- (a) the levy order; and
- (b) **subpart 2**; and
- (c) a levy administration agreement entered into with the responsible SPV.
- 55 Levy administration agreement**
- (1) The responsible levy authority and the responsible SPV must take all reasonable steps to enter into a levy administration agreement under which the responsible levy authority will administer a levy on behalf of the responsible SPV, including by assessing and collecting the levy and recovering unpaid levy. 25
- (2) The agreement must be consistent with this Part.
- 56 When agreement not reached** 30
- (1) If the responsible SPV and the responsible levy authority cannot agree on all ~~necessary~~ terms of a levy administration agreement, they must refer the issue to the monitor.
- (2) The monitor must determine all outstanding terms of the agreement within 20 working days. 35

- (3) The terms of the agreement are—
- (a) as agreed between the parties, to the extent that they are agreed; and
 - (b) otherwise, as determined by the monitor.
- 57 When SPV recovers unpaid levy**
- (1) This section applies if— 5
- (a) there is an amount of levy unpaid for a rating unit; and
 - (b) rates for that rating unit have been paid.
- (2) The responsible levy authority—
- (a) may notify the responsible SPV that the authority will not recover the unpaid levy; and 10
 - (b) on notifying the responsible SPV under **paragraph (a)**, is not required to recover that unpaid levy on behalf of the SPV.
- 58 Levy is charge against rating unit**
- A levy assessed in respect of a rating unit is a charge against that unit.
- Compare: 2002 No 6 s 59 15
- 59 Invalidity of levy not ground for refusal to pay levy**
- A person must not refuse to pay a levy on the ground that the levy is invalid unless the person brings proceedings to challenge the validity of the levy on the ground that the responsible levy authority or the responsible SPV is not empowered to set or assess the levy on the particular rating unit. 20
- Compare: 2002 No 6 s 60
- Subpart 2—Responsible levy authority administers levy**
- Levy proceeds paid to responsible SPV*
- 60 Collected levy paid to responsible SPV**
- (1) The responsible levy authority must pay to the responsible SPV all levy revenue that the authority collects, and all unpaid levy that the authority recovers, on behalf of the SPV under this subpart. 25
- (2) However, this obligation is subject to the terms of the levy administration agreement between the authority and the SPV.
- Rating information database and rating records* 30
- 61 Rating information database**
- (1) The responsible levy authority must include in its rating information database levy-related information about rating units in the levy area, including all information that relates to the unit that is required to—

- (a) determine the category (if any) to which the unit belongs for setting a levy; and
 - (b) calculate the liability for a levy.
- (2) ~~The authority must ensure that levy-related information is clearly distinguished from rating information in the database.~~ 5
- (3) The sections of the Local Government (Rating) Act 2002 that are set out in **subsection (4)** apply to the inclusion of that information in the database, except that any reference in—
 - (a) section 27(4)(b) to information must be read as referring to the information required by **subsection (1)(a) and (b)** of this section; and 10
 - (b) section 27(5)(a) to different categories must be read as referring to the categories referred to by **subsection (1)(a)** of this section.
- (4) The sections are—
 - (a) section 27 (rating information database):
 - (b) section 28 (inspection of rating information database): 15
 - (c) section 28A (Inspection of complete rating information database):
 - (d) section 28B (local authority must inform owners of right to withhold certain information from database):
 - (e) section 28C (owner entered on database may require local authority to withhold information from database): 20
 - (f) section 29 (objections to rating information database).

62 Objections by levypayers

- (1) If an objection under section 29 of the Local Government (Rating) Act 2002 (as applied to levy-related information) is not upheld, the objector may refer the objection to the monitor to consider whether the levy was incorrectly assessed. 25
- (2) Objections must be referred in writing and lodged with the monitor.
- (3) The monitor must consider any written objection lodged with it under this section.
- (4) After considering the objection, the monitor must— 30
 - (a) determine whether the assessment was made in accordance with the levy order and the relevant annual levy resolution; and
 - (b) inform the objector and the responsible levy authority in writing of its decision; and
 - (c) if the assessment was not made in accordance with the levy order and the relevant annual levy resolution, direct the responsible levy authority to ensure that the assessment is corrected. 35

- (4A) The monitor must comply with **subsection (4)** no later than 30 working days after the day on which the objection is lodged with the monitor.
- (5) If directed by the monitor, the responsible levy authority must—
- (a) correct the entry in the rating information database; and
 - (b) inform the levypayer that the correction has been made. 5
- 63 Responsible SPV to give levy-related information to responsible levy authority**
- The responsible SPV must give to the responsible levy authority all levy-related information that—
- (a) is necessary to enable the authority to keep and maintain its rating information database in accordance with section 27 of the Local Government (Rating) Act 2002, as applied by this Act; and 10
 - (b) is not in the authority's rating information database for rating purposes.
- 64 Notification of change in circumstances**
- The following sections of the Local Government (Rating) Act 2002 apply to levies under this Act: 15
- (a) section 30 (interpretation):
 - (b) section 31 (notification of change of ownership of rating unit):
 - (c) section 32 (notification of surrender or termination of lease or licence):
 - (d) section 33 (notification of transfer or assignment of lease or licence): 20
 - (e) section 34 (effect of notice on liability for rates):
 - (f) section 35 (when name of ratepayer entered in rating information database may be removed):
 - (g) section 36 (notification of change of name).
- 65 Rates records and objections, etc, to rates records** 25
- (1) The responsible levy authority must include information relating to levy liability in the rates record for each rating unit in the levy area.
 - (2) The sections of the Local Government (Rating) Act 2002 that are set out in **subsection (7)** apply to that levy-related information (except that, in section 37(3) of that Act, the reference to section 27(4) must be read as a reference to that provision as applied by **section 61(3)(a)** of this Act). 30
 - (3) A levypayer may object to the levy-related information in a rates record on the ground that it is incorrectly recorded.
 - (4) Objections must be lodged with the responsible levy authority.
 - (5) If an objection is lodged,— 35
 - (a) the responsible levy authority must notify the levypayer in writing of its decision on an objection; and

- (b) if the objection is upheld, correct the entry in the rates record accordingly.
- (6) If the responsible levy authority notifies the levypayer that the objection is not upheld,—
- (a) the levypayer may lodge the objection in writing with the monitor for reconsideration; and 5
- (b) the monitor must reconsider the objection and notify the levypayer and the responsible levy authority in writing of its decision on the objection; and
- (c) if the objection is upheld, the responsible levy authority must correct the entry in the rates record accordingly. 10
- (7) For the purposes of **subsection (2)**, the sections are—
- (a) section 37 (rates records):
- (b) section 38 (inspection of rates records):
- (c) section 39 (objection to rates records). 15
- 66 Correction of errors**
- The responsible levy authority, whether or not an objection has been made, may correct an error in levy-related information in—
- (a) ~~levy-related information in~~ the rating information database; or
- (b) a levy rates record. 20
- 67 Amended levy assessment and recovery of additional levy**
- (1) The sections of the Local Government (Rating) Act 2002 that are set out in **subsection (3)** apply to the issue of an amended levy assessment by the responsible levy authority.
- (2) In applying those sections, a reference— 25
- (a) to the rating information database must be read as a reference to levy-related information in the rating information database; and
- (b) to a rates record must be read as a reference to a levy record including a reference to levy-related information in that rates record; and
- (c) in section 41(1)(a) of the Local Government (Rating) Act 2002 to section 40 of that Act must be read as a reference to **section 66** of this Act. 30
- (3) For the purposes of **subsection (1)**, the sections are—
- (a) section 41 (amended assessment if error in rating information database or rates record is corrected): 35
- (b) section 41A (amended assessment to give effect to objection to valuation under Rating Valuations Act 1998):

- (c) section 42 (recovery of additional rates in certain cases).

Levy assessment and invoicing

68 Assessment of levy liability

- (1) A responsible levy authority must assess the levy to be paid by a levypayer—
- (a) in accordance with the levy order; and 5
 - (b) on the basis of the following information:
 - (i) the annual levy resolution for the levy year:
 - (ii) levy-related information in the authority's rating information database, corrected as at the end of the levy year immediately before the levy year for which the levy is assessed. 10
- (2) The levy liability of a rating unit is not affected by a change to any factor (listed in Schedule 3 of the Local Government (Rating) Act 2002, as applied by **section 33(5)** of this Act) ~~that is made in the responsible levy authority's rating information database~~ in relation to that unit during the levy year for which the levy is assessed. 15

68A Rating units in common ownership

The responsible SPV must treat 2 or more rating units as 1 unit for assessing levy if those units are—

- (a) owned by the same person or persons; and
- (b) used jointly as a single unit; and 20
- (c) contiguous or separated only by a road, railway, drain, water race, river, or stream.

Compare: 2002 No 6 s 20

69 Levy assessment included in notice of rates assessment notified to levypayer 25

- (1) A responsible levy authority must give to a levypayer in the levy area notice of the levypayer's liability for a levy on a rating unit, ~~by including levy liability in a notice of rates assessment delivered under section 44 of the Local Government (Rating) Act 2002.—~~
- (a) by including it in a rates assessment delivered under section 44 of the Local Government (Rating) Act 2002; or 30
 - (b) by agreement with the responsible SPV, as a separate notice of assessment.
- (2) A levypayer is liable for the levy on a rating unit when the responsible levy authority delivers the notice of rates assessment levy liability to the levypayer. 35

- 70 ~~Rates assessment to include information about levy~~ Information in levy assessment**
- (1) This section sets out the levy liability information that the responsible levy authority must include in a ~~rates-levy~~ assessment.
- (2) Section 45 (contents of rates assessment) of the Local Government (Rating) Act 2002 applies to a rates assessment that includes levy liability. 5
- 71 Levy invoice**
- (1) The responsible levy authority must deliver to a levypayer a levy invoice for a period for which levy payment is due, and section 46 (rates invoice) of the Local Government (Rating) Act 2002 applies to the levy invoice. 10
- (2) The authority may deliver the levy invoice—
- (a) by including it in a rates invoice delivered under section 46 of the Local Government (Rating) Act 2002; or
- (b) by agreement with the responsible SPV, as a separate invoice delivered under section 46(4) and (5) of the Local Government (Rating) Act 2002. 15
- (3) A levy invoice must include the name and address of the responsible SPV.
- (4) The authority must ensure that a rates invoice clearly distinguishes a levy from rates.
- 72 Further processes for levy assessment and levy invoice**
- The following sections of the Local Government (Rating) Act 2002 apply to a levy assessment and a levy invoice: 20
- (a) section 47 (issue of amended rates invoice):
- (b) section 48 (delivery of rates assessment and rates invoice):
- (c) section 49 (late delivery of rates invoice):
- (d) section 51 (combined rates assessment and rates invoice). 25

Collection of levy

- 73 Collection of levy**
- (1) The following sections of the Local Government (Rating) Act 2002 apply to the collection of a levy:
- (a) section 52 (payment of rates): 30
- (b) section 54 (power not to collect small amounts).
- (2) Section 54 of the Local Government (Rating) Act 2002 applies in relation to the combined amount of rates and levy to be collected, and the responsible levy authority must inform the responsible SPV of any amounts of levy not collected under that section. 35

*Penalties***74 Penalties for unpaid levy**

- (1) The responsible levy authority may impose penalties in addition to a levy that is not paid by the due date.
- (2) The amount of the penalty is the amount of penalty authorised by the authority in relation to unpaid rates under section 57 of the Local Government (Rating) Act 2002. 5
- (3) Section 58 (imposition of penalty) of the Local Government (Rating) Act 2002 applies to those penalties.

Remission and postponement of levy 10**75 Levy remission and levy postponement policies**

- (1) The responsible SPV and the responsible levy authority must take all reasonable steps to agree on the terms of a levy remission policy and a levy postponement policy for the purposes of this Act.
- (2) A levy remission policy may provide that there is to be no remission of levy, and a levy postponement policy may provide that there is to be no postponement of the requirement to pay a levy. 15
- (3) A levy remission policy must not contain any provision in relation to development contributions or financial contributions previously received by the responsible levy authority (~~see sections 92 to 94~~ **sections 91 to 95**). 20
- (4) The responsible SPV must give a copy of its levy remission policy and levy postponement policy to—
 - (a) the monitor; and
 - (b) the responsible levy authority.
- (5) The monitor must publish the policies. 25
- (6) The responsible levy authority must also publish the policies.

75A Levy remission and levy postponement policies relating to Maori freehold land

- (1) For the purpose of agreeing on the terms of a levy remission policy or a levy postponement policy (or agreeing not to have 1 or either of those policies) in relation to rating units located on Maori freehold land, the responsible SPV and the responsible levy authority must have regard to the matters and objectives set out in Schedule 11 of the Local Government Act 2002, which applies with all necessary modifications. 30
- (2) In this section, **Maori freehold land** has the same meaning as in **section 11(2)**. 35

76 Remission of levy

- (1) The responsible levy authority must remit all or part of the levy on a rating unit in accordance with the levy remission policy agreed under **section 75**.
- (2) The authority must give notice to the levypayer identifying the remitted levy.
- (3) The authority must record the remitted levy— 5
 - (a) on the rates record for the rating unit as paid on the due date; and
 - (b) in accounting documents as paid by the ~~authority~~ responsible SPV on behalf of the levypayer in accordance with the relevant objective in the remission policy.

77 Postponement of requirement to pay levy 10

- (1) The responsible levy authority must postpone the requirement to pay all or part of the levy on a rating unit in accordance with the levy postponement policy agreed under **section 75**.
- (2) The authority must give notice to the levypayer— 15
 - (a) identifying the postponed levy; and
 - (b) stating when, or in which circumstances, the levy will become payable.
- (3) The sections of the Local Government (Rating) Act 2002 that are set out in **subsection (4)** apply to the postponement of the requirement to pay a levy.
- (4) The sections are— 20
 - (a) section 88 (postponement fee may be added to postponed rates):
 - (b) section 89 (recording postponed rates):
 - (c) section 90 (postponed rates may be registered as charge on rating unit), except that section 90(3)(a) applies as if it referred to the chief executive or other authorised officer of the responsible SPV.

Recovery of unpaid levy 25**78 Recovery under Local Government (Rating) Act 2002**

The responsible levy authority may recover unpaid levy under sections 61, 62, **75A, 75B, 83A, 83B**, and 84 of the Local Government (Rating) Act 2002.

79 Recovery action in relation to Maori freehold land

The responsible levy authority may take recovery action in relation to unpaid levy and unpaid rates payable on Maori freehold land and the provisions of Part 4 of the Local Government (Rating) Act 2002 apply to that recovery. 30

Subpart 3—When responsible SPV recovers unpaid levy

80 Recovery action generally

- (1) The responsible SPV may take recovery action under Part 3 of the Local Government (Rating) Act 2002 in relation to unpaid levy if the responsible levy authority informs the SPV under **section 57(2)(a)** that the authority will not recover that unpaid levy. 5
- (2) The following sections of the Local Government (Rating) Act 2002, as further modified in accordance with **sections 81 to 83** of this Act, apply to that recovery:
 - (a) section 61 (default by person other than owner): 10
 - (b) section 62 (recovery of rates if owner in default):
 - (c) section 63 (legal proceedings to recover rates):
 - (d) section 64 (service of summons):
 - (e) section 65 (limitation of time for recovery of rates):
 - (f) section 66 (registration of charging order for judgment for rates): 15
 - (g) section 67 (enforcement of judgment):
 - (h) section 68 (rating sale or lease):
 - (i) section 69 (service of notice):
 - (j) section 70 (rating unit may be sold or leased):
 - (k) section 71 (how rating sale or lease must be conducted): 20
 - (l) section 72 (further powers and duties of Registrar):
 - (m) section 73 (execution of documents for rating sale or lease):
 - (n) section 74 (presumption of valid rating sale or lease):
 - (o) section 75 (application of proceeds of rating sale or lease):
 - (p) section 76 (application of balance of proceeds): 25
 - (q) section 84 (Crown land held on lease or licence).

81 Legal proceedings to recover levy

- (1) A responsible ~~levy authority~~ SPV may commence proceedings to recover as a debt due a levy that remains unpaid for 4 months after the due date for payment. 30
- (2) Sections 63 to 76 (other than sections 75 to **75B**) of the Local Government (Rating) Act 2002 apply to those proceedings.
- (3) **Section 82** of this Act applies instead of **sections 75 to 75B** of the Local Government (Rating) Act 2002.

82 Application of proceeds of rating sale or lease that involves levy

- (1) This section applies to the proceeds of a sale or lease under section 71 or 72 of the Local Government (Rating) Act 2002.
- (2) Those proceeds must be applied in the following order:
 - (a) the Registrar's fee (unless the fee has already been paid): 5
 - (b) the judgment, and any interest, costs, and disbursements:
 - (c) any other unsatisfied judgment for a levy for the same rating unit, with any interest, costs, and disbursements:
 - (d) any other levy due at the date of the sale or lease of the same rating unit, whether or not that levy is still recoverable under section 65 of the Local Government (Rating) Act 2002 (including, in the case of a lease, the levy (if any) that is or becomes due on the unit from the person on whose behalf the unit was leased while the Registrar received rents from it): 10
 - (e) any encumbrance on the rating unit: 15
 - (f) any other unsatisfied judgment for a levy on other rating units in the district (if the person against whom the judgment is entered is the levypayer of other rating units), with any interest, costs, and disbursements:
 - (g) any other levy due at the date of the sale or lease for other rating units owned by that person, whether or not the other levy is outside the period of limitation specified in section 65 of the Local Government (Rating) Act 2002. 20
- (3) For the purposes of **subsection (2)(d)**, if levies are imposed under more than 1 levy order, the proceeds of sale that are applied to the levies must be applied in the order in which those orders were made. 25

83 Recovery action in relation to Maori freehold land

The responsible SPV may take recovery action in relation to unpaid levy payable on Maori freehold land, and the provisions of Part 4 of the Local Government (Rating) Act 2002 apply to that recovery.

84 Responsible levy authority must give information to responsible SPV 30

The responsible levy authority must make available to the responsible SPV all information necessary to enable the SPV to recover unpaid levy under this sub-part.

Part 4

Other operational and financial matters

85 Outline of this Part

- (1) This Part provides for matters relating to the operations of an SPV and the financing of the construction of eligible infrastructure. 5
- (2) **Subpart 1** imposes ongoing duties on the responsible SPV.
- (3) **Subpart 2** provides for the disposal of excess levy at the end of a levy period and the use of previous development contributions and financial contributions.
- (4) **Subpart 3** gives statutory powers to an SPV that is responsible for the construction of eligible infrastructure. 10
- (5) **Subpart 4** provides for account-keeping and reporting by an SPV and other financial matters.

Subpart 1—SPV's ongoing duties

86 Levy collected must not exceed maximum levy revenue

A responsible SPV must ensure that the amount of levy collected over the levy period under a levy order does not exceed the maximum levy revenue. 15

87 Levy revenue must be applied only to pay eligible costs

A responsible SPV may apply levy revenue only to pay eligible costs authorised by the levy order (or otherwise as expressly permitted or required by this Act). 20

88 ~~Eligible infrastructure must be transferred under vesting agreement~~ vested in responsible infrastructure authority

- (1) A responsible SPV and the responsible infrastructure authority must enter into a vesting agreement that specifies the circumstances and conditions for the transfer of the eligible infrastructure to the responsible infrastructure authority. 25
- (1A) A vesting agreement must include all specified conditions required by the responsible infrastructure authority under **section 20(4)**, other than any condition the responsible infrastructure authority modifies or waives.
- (2) The responsible SPV must transfer eligible infrastructure to the responsible infrastructure authority, and the authority must accept the transfer, in accordance with that agreement. 30

Subpart 2—Excess levy, ~~uncollected levy~~, and previous contributions*Excess levy at end of levy period***89 Excess levy at end of levy period**

- (1) ~~This section applies to excess levy held by an SPV or the responsible levy authority at the end of the levy period.~~ 5
- (2) ~~The~~ A responsible SPV must pay any excess levy it holds to the responsible levy authority.
- (3) If the total amount of excess levy is equal to or greater than the excess levy threshold under **section 90** at the end of the levy period, the responsible levy authority must— 10
- (a) credit the rates record of each affected rating unit with the amount that reflects the amount of excess levy; and
- (b) in apportioning the amount to be credited to rates records, apply the same method as was most recently used to assess levypayers' levy liability under the levy order. 15
- (4) ~~The responsible levy authority may retain any~~ If the total amount of excess levy that is less than the excess levy threshold under **section 90**, the responsible levy authority may retain the excess levy.

90 Excess levy threshold

- (1) For the purposes of **section 89**, **excess levy threshold** means an amount calculated, as at the end of the levy period, in accordance with the following formula: 20

$$r \times \$e = \$t$$

where—

- r is the number of levypayers 25
- $\$e$ is \$50 or the increased amount most recently published by the monitor under this section (if any)
- $\$t$ is the excess levy threshold.
- (2) The monitor must, before the start of each levy year after the commencement of this Act (unless $\$e$ would not be increased as a result of **paragraph (a)**),— 30
- (a) increase the amount of $\$e$ by a percentage that reflects the upward movement (if any) in the index number of the Consumers Price Index (All Groups) published by Statistics New Zealand for the year ending on the previous 31 March; and
- (b) publish the increased $\$e$. 35

*Uncollected levy at end of levy period***90A Responsible SPV may assign uncollected levy to responsible levy authority**

- (1) The responsible SPV may enter an agreement with the responsible levy authority under which the SPV assigns to the authority the SPV's right to any amount of levy that is uncollected at the end of the levy period. 5
- (2) If an agreement is entered, the relevant provisions of the Local Government (Rating) Act 2002 apply to the collection and recovery of the uncollected levy in the same way that they apply in relation to rates under that Act.
- (3) In this section, levy is **uncollected** if—
 - (a) payment of the levy is due but the levy is unpaid; or 10
 - (b) the requirement to pay the levy has been postponed in accordance with a levy postponement policy.

*Previous development contributions and financial contributions***91 Application and interpretation**

- (1) This section and **sections 92 to 95** apply if the responsible levy authority has, before the levy order ~~was made~~ comes into force, received (or required but not yet received) previous contributions in relation to any eligible infrastructure. 15
- (2) In this section and **sections 92 to 95**, **previous contribution** means either or both of the following: 20
 - (a) a development contribution under subpart 5 of Part 8 of the Local Government Act 2002 in relation to any eligible infrastructure (or any infrastructure that includes eligible infrastructure):
 - (b) a financial contribution that was a condition under section 108(2)(a) of the Resource Management Act 1991 on the grant of resource consent in relation to any eligible infrastructure (or any infrastructure that includes eligible infrastructure). 25

92 Responsible levy authority to inform responsible SPV about previous contributions

- (1) As soon as practicable after the relevant levy order ~~is made~~ comes into force, the responsible levy authority must give the responsible SPV a list of previous contributions. 30
- (2) The list of previous contributions must, so far as information available to the responsible levy authority allows,—
 - (a) identify the eligible infrastructure to which contributions relate; and 35
 - (b) identify amounts or proportions of each contribution that relate to eligible infrastructure and other infrastructure; and

- (c) identify amounts or proportions of each contribution that relate to specific rating units.

93 ~~SPV may direct territorial authority to transfer previous contributions and remit levies~~

- (1) ~~On receiving a list of previous contributions, the responsible SPV may, by written notice to the responsible levy authority,—~~ 5
- (a) ~~direct the responsible levy authority to transfer the total amount of previous contributions to the responsible SPV as a contribution to the construction costs of eligible infrastructure; and~~
- (b) ~~direct the responsible levy authority to remit some or all of the levies on a rating unit to reflect the proportion of levy that is payable (if any), after taking account of those previous contributions, under **subsection (3)**.~~ 10
- (2) ~~The responsible levy authority must comply with that direction, and sections 85(2) and 86 of the Local Government (Rating) Act 2002 apply to the remission of the levy.~~ 15
- (3) ~~The proportion of levy for the purposes of **subsection (1)(b)** is:~~

$$p = b/e$$

where—

- p is the proportion of the levy that is payable
- b ~~is the expected construction costs of eligible infrastructure to which a~~ 20
~~previous contribution relates~~
- e is the expected construction costs of all eligible infrastructure.

93 Responsible SPV may direct responsible levy authority to transfer previous contributions and remit levies

- (1) The responsible SPV may, by written notice sent within 60 days after receiving a list of previous contributions, direct the responsible levy authority— 25
- (a) to transfer the total amount of previous contributions to the responsible SPV as a contribution to the construction costs of eligible infrastructure; and
- (b) to remit some or all of the levies on a rating unit so that the levy payable (if any) is the proportion of levy, calculated in accordance with the formula in **subsection (3)**, that remains payable after taking account of those previous contributions. 30
- (2) The responsible levy authority must comply with those directions, and sections 85(2) and 86 of the Local Government (Rating) Act 2002 apply to the remission of the levy. 35

- (3) The proportion of levy for the purposes of **subsection (1)(b)** is calculated in accordance with the following formula:

$$p = (a - b)/(c - d)$$

where—

- p is the proportion of the levy that is payable 5
- a is the expected costs of construction of eligible infrastructure to which previous contributions do not relate
- b is the amount of all capital contributions to factor ‘a’ from sources other than the responsible SPV
- c is the expected costs of construction of the eligible infrastructure 10
- d is the amount of all capital contributions to factor ‘c’ from sources other than the responsible SPV, including previous contributions transferred to the responsible SPV in accordance with a direction under **subsection (1)(a)**.
- (4) In this section, **costs of construction**, in relation to eligible infrastructure, means the costs of the construction of that infrastructure that are set out in **section 9(3)**. 15

94 Responsible levy authority must refund or return previous contributions if no direction

If the responsible SPV does not make a direction under **section 93**, the responsible levy authority must refund or return the amount of the previous contribution identified in respect of each rating unit in the list of previous contributions to the current ratepayer for that rating unit. 20

95 Sections 209 and 210 of Local Government Act do not apply to those previous contributions 25

Sections 209 and 210 of the Local Government Act 2002 do not apply to previous contributions—

- (a) transferred to ~~a~~ an SPV under **section 93**; or
- (b) refunded or returned to ratepayers under **section 94**.

Subpart 3—SPV’s powers relating to construction 30

Powers relating to private land

96 Power to construct eligible infrastructure on private land ~~(if applied by levy order)~~

- (1) This section applies to eligible infrastructure only if a levy order applies this section (*see* **section 34(i)(i)**). 35
- (2) A responsible SPV may exercise the powers of a local authority or a territorial authority under section 181 of the Local Government Act 2002 for the con-

struction of eligible infrastructure in a levy area (and, for that purpose, section 181 and Schedule 12 of that Act apply with all necessary modifications).

Powers relating to roads and public land

- 97 Powers to construct water services infrastructure on roads and public land (if applied by levy order)** 5
- (1) This section and **sections 98 to 102** apply only if applied by a levy order ~~applies these sections (see section 34(i)(ii))~~.
- (2) For the purposes of providing water services infrastructure in the levy area, the responsible SPV may—
- (a) construct, place, and maintain eligible infrastructure that is water services infrastructure in, on, along, over, across, or under any road or public land within or outside the levy area; and 10
- (b) for the purposes of any work carried out under **paragraph (a)**, open or break up any road or public land; and
- (c) alter, repair, or remove that infrastructure or any part of that infrastructure. 15
- (3) However, the responsible SPV must exercise the powers under **subsection (1)subsection (2)** in accordance with any ~~reasonable~~ conditions that the person who has jurisdiction over the road or land imposes. 20
- Compare: 2009 No 32 s 65
- 98 Notice requirement**
- (1) Before a responsible SPV proceeds to open or break up any road or public land under section 97(2)(b), the SPV must give to the person who has jurisdiction over the road or land written notice of the intention to carry out the work.
- (2) **Subsection (1)** is subject to **section 101**. 25
- (3) Every notice must specify the location of the proposed work, the nature of the work to be carried out, and the reasons for it.
- Compare: 2009 No 32 s 66
- 99 Responsible SPV to be notified of conditions**
- (1) The person who has jurisdiction over the road or land must notify the responsible SPV in writing of any conditions imposed under **section 97(3)**. 30
- (2) Notification must be given not later than the day that is 20 working days after the person receives written notice of the intention to carry out work.
- Compare: 2009 No 32 s 67

100 Failure to notify conditions

If the person who has jurisdiction over the road or land fails to notify the responsible SPV in accordance with **section 99**, the conditions are not imposed and the SPV may commence work.

Compare: 2009 No 32 s 68

5

101 Urgency

If work is urgent and necessary because of any defective equipment or other emergency, a responsible SPV—

- (a) is excused from giving notice under **section 98(1)** before commencing the work; but
- (b) must give the information required by **section 98(3)** to the person who has jurisdiction over the road or land as soon as practicable after commencing the work.

10

Compare: 2009 No 32 s 69

102 Appeal by responsible SPV to District Court

15

- (1) A responsible SPV may appeal to the District Court against ~~all or any of the conditions~~ any condition imposed under **section 97(3)** ~~by the person who has jurisdiction over the road or land~~ on the grounds that the condition is unreasonable.
- (2) An appeal must be made not later than the day that is 45 working days after the date of notification of the conditions imposed, or within any further time that the District Court may allow.
- (3) In its determination of any appeal, the District Court may confirm, modify, or cancel ~~any or all of the conditions imposed~~ the condition.
- (4) The decision of the District Court in the determination of an appeal under this section is final.

20

25

Compare: 2009 No 32 s 70

Subpart 4—Other financial matters*Accounting records and reporting***103 Definitions**

30

In this subpart,—

applicable auditing and assurance standard has the same meaning as in section 5(1) of the Financial Reporting Act 2013

financial statements has the same meaning as in section 6 of the Financial Reporting Act 2013

35

~~**generally accepted accounting practice**~~ has the same meaning as in section 8 of the Financial Reporting Act 2013

generally accepted accounting practice has the same meaning as in section 8 of the Financial Reporting Act 2013

qualified auditor has the same meaning as in section 35 of the Financial Reporting Act 2013:-

registered bank has the same meaning as in section 2(1) of the Reserve Bank of New Zealand Act 1989. 5

104 Levy account

~~An~~ A responsible SPV must—

- (a) pay levy revenue, as soon as practicable after it is received, into an account with a registered bank; and 10
- (b) until the levy revenue is used to pay an eligible cost or otherwise paid as permitted by this Act, ensure that the levy revenue is held separate from other money held by or on behalf of the responsible SPV.

104A Accounting records

- (1) An SPV must ensure that there are kept at all times accounting records that— 15
 - (a) correctly record the SPV's transactions; and
 - (b) will at any time enable the SPV's financial position to be determined with reasonable accuracy; and
 - (c) will enable the SPV to ensure that its financial statements comply with this Act; and 20
 - (d) will enable the SPV's financial statements to be readily and properly audited.
- (2) The SPV must establish and maintain a satisfactory system of control of its accounting records.
- (3) The accounting records must be kept— 25
 - (a) in written form; or
 - (b) in a manner in which they are easily accessible and convertible into written form.

105 Financial statements

An SPV must ensure that, within 4 months after the end of each levy year, financial statements that comply with generally accepted accounting practice are completed in relation to the SPV and that levy year. 30

106 Audit

- (1) An SPV must ensure that its financial statements are audited by a qualified auditor. 35
- (2) An auditor must, in carrying out an audit for that purpose, comply with all applicable auditing and assurance standards.

107 Annual report

- (1) An SPV must,—
 - (a) as soon as practicable after the end of each levy year, prepare an annual report on the operations of the SPV; and
 - (b) provide the annual report to the monitor within 4 months after the end of each levy year. 5
- (2) The monitor must publish the annual report.

108 Content of annual report

- (1) An SPV's annual report must contain—
 - (a) the information that is reasonably necessary to enable an informed understanding of the SPV's operations during the levy year to which it relates; and 10
 - (b) audited financial statements for that levy year for the SPV; and
 - (c) the auditor's report on those financial statements.
- (2) The annual report must include the following information for the levy year to which it relates: 15
 - (a) eligible costs incurred, itemised as in the levy order:
 - (b) all other costs incurred by the SPV:
 - (c) if the SPV is entitled to levy revenue,—
 - (i) ~~the levy revenue set for the levy year under **section 45 or 50**~~ annual levy: 20
 - (ii) the actual levy revenue collected:
 - (iii) in relation to the levy account required by **section 104**,—
 - (A) the opening balance of the account for the levy year; and
 - (B) interest earned on funds held in the account; and 25
 - (C) the closing balance at the end of the levy year:
 - (ca) how the closing balance referred to in **paragraph (c)(iii)(C)** will be applied to eligible costs in the future:
 - (d) in relation to ~~surplus levy held and~~ forecast excess levy,—
 - (i) ~~every decision to hold surplus levy to meet future eligible costs; and~~ 30
 - (ii) every forecast of excess levy; and
 - (iii) every decision to reduce the ~~levy period or reduce the amount of levy set in later years~~: maximum levy revenue by reducing the levy period or the levies payable in later levy years: 35
 - (e) any additional information required by the monitor under **section 109**.

109 Additional information required by monitor

- (1) For the purposes of **section 108(2)(e)**, the monitor may (by written notice to ~~the SPV~~ at least 4 months before the start of a levy year) require ~~a~~ an SPV to include additional information in its annual report for that year.
- (2) The monitor must publish any requirement given under this section.

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~~No guarantees or other liability to support SPV~~ Limitations on support given to SPV

110 ~~Responsible levy authority must not guarantee or financially support SPV~~ Support from responsible levy authority or responsible infrastructure authority

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- (1) A responsible levy authority or a responsible infrastructure authority must not give to any person any guarantee, indemnity, or security in relation to the performance of any obligation by an SPV.
- (2) A responsible levy authority must not lend money or provide ~~financial support~~ credit to an SPV.
- (3) In this section, **~~lend money or provide financial support credit~~**—

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(a) includes—

- (i) to defer payment for any goods or services supplied or works constructed for any person, organisation, or government; and
- (ii) to enter into hire purchase agreements or agreements that are of the same or a substantially similar nature; and
- (iii) to enter into finance lease arrangements or arrangements that are of the same or a substantially similar nature; and
- (iv) to subscribe for any debt securities or uncalled capital; but

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(b) does not include to sell or supply goods or services on credit in the ordinary course of the authority's performance of its lawful responsibilities and on terms and conditions generally available to other parties of equivalent creditworthiness.

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Compare: 1989 No 44 s 65K; 2002 No 84 ss 62, 112

111 Crown liability generally

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- (1) The Crown is not liable to contribute to the payment of any debts or liabilities of an SPV.
- (2) This section does not apply to a liability for any sum of a kind described in section 49(2) of the Public Finance Act 1989.

Compare: 2002 No 84 s 121

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112 Crown liability under certain contracts and arrangements

- (1) If an SPV is named as issuer or is otherwise named with its consent in a disclosure document, that document must contain a statement that the financial products being offered under the document are not guaranteed by the Crown.
- (2) **Subsection (1)** does not apply if the financial products offered under the document are expressly guaranteed by the Crown under ~~section 65ZD~~ of the Public Finance Act 1989. 5
- (3) ~~If a guarantee or an indemnity is given under section 65ZD of the Public Finance Act 1989, the loan agreement, incidental arrangement, or disclosure document must state the extent of that guarantee or indemnity.~~ 10
- (4) If an SPV enters into a loan agreement or an incidental arrangement, that agreement or arrangement must state that the loan or other liability under the agreement or arrangement is not guaranteed by the Crown.
- (5) **Subsection (4)** does not apply to any liability for any sum of a kind described in section 49(2) of the Public Finance Act 1989. 15
- (6) In this section,—
disclosure document means a product disclosure statement (as defined by section 6(1) of the Financial Markets Conduct Act 2013) or a disclosure document under clause 26 of Schedule 1 of that Act
incidental arrangement and **loan** have the same meanings as in section 112 of the Local Government Act 2002. 20

Compare: 2002 No 84 s 122

Part 5**Monitoring, remedies, enforcement, and miscellaneous**

- 113 Outline** 25
- (1) This Part provides for miscellaneous matters.
- (2) **Subpart 1** provides for—
 - (a) monitoring of ~~the~~ an SPV by the monitor;
 - (b) the ability ~~for~~ of the monitor to recommend that a Crown Manager be appointed for ~~the~~ an SPV if there are significant problems that are not addressed. 30
- (3) **Subpart 2** provides for the appointment and role of the Crown Manager.
- (4) **Subpart 3** provides for modification of the usual rules for receivership of an SPV and for creditors.
- (5) **Subpart 4** provides for enforcement and offences. 35
- (6) **Subpart 5** provides for miscellaneous matters.
- (7) **Subpart 6** ~~provides for~~ contains amendments to other Acts.

Subpart 1—Role of monitor

114 Appointment of monitor

The Governor-General may, by Order in Council made on the recommendation of the responsible Minister, appoint a government agency as monitor for the purposes of this Act.

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115 Functions, duties, and powers

(1) The monitor's functions are to—

- (a) publish information about the levy scheme and about specific levy areas, levy orders, and SPVs; and
- (b) determine any objection by a levypayer to an assessment of the levypayer's levy liability; and
- (c) monitor ~~a responsible~~ an SPV's compliance with this Act and the levy order; and
- (d) inquire into, and intervene in, ~~a responsible~~ an SPV's operations in accordance with this Act.

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(2) In addition, the monitor may exercise all powers that are—

- (a) conferred on the monitor by this Act; or
- (b) reasonably necessary for the performance of the monitor's functions and duties.

116 Monitor must publish information

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(1) The monitor must publish general information about the levy scheme established by this Act, to enhance public understanding of how a levy order applies to a levy area and how levy liability applies to rating units.

(2) In addition, the monitor must publish information about a specific levy area, levy order, and responsible SPV, including—

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- (a) the annual levy ~~revenue set by resolution of~~ the SPV for the coming year each levy year;
- (b) the SPV's annual reports;
- (c) information to assist levypayers to understand their levy liability and potential levypayers to understand how levy liability is assessed under this Act.

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117 Information and assistance

(1) The monitor may direct a responsible SPV or a responsible levy authority to give the monitor any information or other assistance that the monitor considers to be reasonably necessary for the performance of the monitor's functions and duties and the exercise of the monitor's powers (including all information

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requested by the monitor from the authority's rating information database and rates records).

- (2) The SPV or authority must comply with the direction.

118 Restricted change of control of SPV

- (1) This section applies if a restricted change of control occurs. 5

- (2) The monitor may direct the SPV not to pay any specified distributions to prohibited persons, and the SPV must comply with that direction.

- (3) In this section,—

distribution means any distribution by a company or limited partnership, or other payment of a similar nature to a distribution 10

prohibited person means a person who, as a result of a restricted change of control occurring, becomes a shareholder, partner, or other person with an interest or a right to participate in any capital, assets, earnings, or other property of the SPV

restricted change of control means a change of control as defined by the levy order for the purposes of this section (*see section 34(f)*). 15

119 Inquiry into SPV's operations

The monitor may inquire into any aspect of an SPV's operations if the monitor—

- (a) ~~the monitor reasonably believes that a significant problem relating to the SPV could exist; or~~ 20

- (b) ~~the monitor has any concern relating to—~~

- (i) ~~any matter that could potentially become a significant problem relating to the SPV; or~~

- (ii) ~~the SPV's compliance with this Act or the levy order; or~~ 25

- (iii) ~~the SPV's financial stability; or~~

- (iv) ~~the SPV's governance and management.~~

- (b) has any concern relating to any matter that could potentially become a significant problem relating to the SPV.

120 Direction to address significant problem 30

- (1) ~~If the monitor reasonably believes that a significant problem relating to the responsible SPV exists, the monitor must direct the SPV to address the significant problem.~~

- (2) A direction must—

- (a) ~~be in writing; and~~ 35

- (b) ~~describe the significant problem to be addressed; and~~

- (c) ~~state the date by which the problem must be addressed.~~

- (3) ~~In addition, a direction may state how the significant problem must be addressed.~~
- (4) ~~The SPV must comply with the direction.~~

120 Monitor may give direction or request remedial plan

- (1) This section applies whether or not the monitor has conducted an inquiry under **section 119**. 5
- (2) If the monitor reasonably believes that a significant problem relating to a responsible SPV exists, the monitor must direct the SPV—
- (a) to address the significant problem; or
 - (b) to prepare a remedial plan for addressing the significant problem. 10
- (3) A direction must—
- (a) be in writing; and
 - (b) describe the significant problem to be addressed; and
 - (c) state the date by which the significant problem must be addressed; and
 - (d) in the case of a direction under **subsection (2)(a)**, state how the significant problem must be addressed. 15
- (4) The responsible SPV must comply with a direction given under this section.
- (5) If the monitor is satisfied that a remedial plan prepared by the SPV will address the significant problem,—
- (a) the monitor may accept the plan; and 20
 - (b) the SPV must address the significant problem in accordance with the plan that is accepted.
- (6) If the monitor is not satisfied that a remedial plan prepared by the responsible SPV will address the significant problem, the monitor must give a direction to the SPV under **subsection (2)(a)**. 25
- (7) The preparation of a remedial plan does not prevent the monitor from giving a direction under **subsection (2)(a)**.

121 Monitor may recommend appointment of Crown Manager

If a responsible SPV fails to address a significant problem in accordance with a ~~direction given under **section 120**~~, the monitor may recommend ~~the appointment of to the responsible Minister that a Crown Manager be appointed to the~~ SPV. 30

Subpart 2—Role of Crown Manager

122 Responsible Minister may appoint Crown Manager

- (1) The responsible Minister may, by notice, appoint a person as Crown Manager to a responsible SPV if— 35

- (a) the responsible Minister reasonably believes that a significant problem with the responsible SPV exists; and
 - (b) the monitor has ~~made a written recommendation~~ recommended that a Crown Manager be appointed.
- (2) The notice of appointment must include— 5
 - (a) the purpose of the appointment, including—
 - (i) an outline of the problem in relation to which the Crown Manager has been appointed; and
 - (ii) the extent of the Crown Manager's authority; and
 - (b) the start and end dates of the Crown Manager's appointment; and 10
 - (c) the start and end dates of the management period.
- (2A) In addition, the notice of appointment may include limits or conditions on—
 - (a) the functions and duties to be performed, and the powers to be exercised, by the Crown Manager; and
 - (b) how those functions and duties are to be performed, and how those powers are to be exercised. 15
- (3) The responsible Minister must notify the appointment of a Crown Manager—
 - (a) to the responsible SPV; and
 - (b) in the *Gazette*.
- 123 Functions, duties, and powers of Crown Manager** 20
 - (1) A Crown Manager must perform the functions and duties and exercise the powers of the responsible SPV under this Act, ~~subject to any limits on the Crown Manager's authority set out in its notice of appointment.—~~
 - (a) in accordance with this Act and the levy order; and
 - (b) subject to any limits or conditions on the Crown Manager's role set out in the notice of appointment under **section 122**. 25
 - (2) The functions and powers of a Crown Manager include all matters for which the responsible SPV is responsible under this Act.
 - (3) The Crown Manager may—
 - (a) work with the board of directors or other governing body of the SPV or act to their exclusion; or 30
 - (b) give directions to the board or other governing body.
 - (4) The board of directors or other governing body of the SPV—
 - (a) must co-operate with the Crown Manager, including by complying with any directions given by the Crown Manager; and 35
 - (b) remains responsible for the general operation of the SPV.

124 Information to responsible Minister and monitor

- (1) A Crown Manager must inform the responsible Minister and the monitor about—
 - (a) the steps being taken to address the significant problem; and
 - (b) the progress of those steps. 5
- (2) The monitor, if satisfied that the significant problem has been addressed, must inform the responsible Minister.

125 Termination of appointment

- (1) The responsible Minister may terminate the appointment of a Crown Manager at any time. 10
- (2) No compensation is payable to the Crown Manager in relation to the termination of their appointment.

126 Protection from liability

The Crown Manager is not liable for any act done in good faith in the performance or intended performance of their ~~function~~ functions or duties or the exercise of their powers. 15

127 Costs of Crown Manager

- (1) A responsible SPV owes as a debt to the Crown any costs that the Crown incurs for the appointment of a Crown Manager to the SPV, including the payment of remuneration and expenses to the Crown Manager. 20
- (2) The SPV must not pay those costs by increasing the levy or extending the levy period.

128 Remuneration and expenses of Crown Manager

- (1) A Crown Manager is entitled—
 - (a) to receive remuneration for services as determined by the responsible Minister in accordance with the fees framework; and 25
 - (b) to be reimbursed, in accordance with the fees framework, for actual and reasonable travelling and other expenses incurred in performing their ~~function~~ functions.
- (2) In this section, **fees framework** means the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies in which the Crown has an interest. 30

Subpart 3—Modified rights and remedies for creditors**129 General law applies with some modifications**

Except as set out in this subpart, the usual rights and remedies available to creditors apply in relation to SPVs. 35

*Modification of Receiverships Act 1993 for SPVs***130 Application of Receiverships Act 1993**

The Receiverships Act 1993 applies to a receiver of an asset of an SPV appointed under this subpart with the modifications set out in this subpart.

131 Receiver appointed under instrument 5

- (1) This section applies if an SPV gives a charge over any asset of the SPV as security for any loan or for the performance of any obligation.
- (2) The instrument that creates or evidences the terms and conditions of the charge may provide for the appointment of a receiver of that asset on terms agreed by the parties. 10
- (3) This section applies subject to the Personal Property Securities Act 1999, and does not limit any other rights or remedies of the holder of a charge over any asset of an SPV.

Compare: 1993 No 122 s 40A

132 Receiver appointed by court 15

- (1) The court may, on application by any creditor of a responsible SPV, appoint a receiver to exercise the powers, and perform the functions, of the SPV under this Act in relation to the a levy.
- (2) The court must, as it considers appropriate, specify— 20
 - (a) the term of the appointment; and
 - (b) the rights, powers, and duties of the receiver; and
 - (c) the terms and conditions of the appointment, including terms about security and remuneration.
- (3) Before appointing a receiver, the court must have regard to— 25
 - (a) the interests of all of the responsible SPV's creditors (whether secured or unsecured); and
 - (b) the interests of the levypayers; and
 - (c) the role of the receiver under this subpart.
- (4) This section does not limit the proceedings that may be brought against an SPV or the circumstances in which a court may appoint a receiver of an SPV's other assets. 30
- (5) This section is subject to **sections 136 and 137**.

Compare: 1993 No 122 s 40B

133 Powers of receiver

- (1) This section applies if— 35

- (a) ~~an~~ a responsible SPV has charged levy revenue as security for any loan or for the performance of any obligation; and
 - (b) a receiver has been appointed under **section 131 or 132** in respect of that loan or obligation.
- (2) From the date of the receiver's appointment until the termination of that appointment, all powers of the responsible SPV that relate to a levy under this Act are conferred on, and may be exercised by, the receiver. 5
- (3) The receiver may exercise the SPV's powers as agent of the responsible SPV.
- (4) Section 13 of the Receiverships Act 1993 is subject to **section 135(3)** of this Act (which limits the exercise of those powers in relation to assets not charged in favour of the appointor of the receiver). 10

Compare: 1993 No 122 s 40C(3), Schedule 1 cl 8; 2002 No 84 s 115

134 General duties of receiver

The general duties imposed on receivers by section 18 of the Receiverships Act 1993 are subject to the constraints imposed on receivers by **section 135(1)**. 15

Compare: 1993 No 122 Schedule 1 cl 10

135 Constraints on receiver

- (1) ~~The receiver~~ A receiver appointed in relation to a responsible SPV or an asset of a responsible SPV must ensure that no action of the receiver prevents any activities of ~~the responsible SPV~~ that SPV, any other SPV, or the responsible infrastructure authority that are essential for the maintenance of public health and safety, regardless of anything in— 20
- (a) this Act or the Receiverships Act 1993; and
 - (b) any instrument providing for or governing the appointment of the receiver. 25
- (2) An action of the receiver is only to be taken to prevent an activity of the ~~SPV or responsible SPV~~, any other SPV, or the responsible infrastructure authority if—
- (a) the action necessarily results in that outcome; and
 - (b) the outcome is not more fairly attributable to the act or omission of a person outside the receiver's control. 30
- (3) ~~A receiver appointed under section 131 or 132, in~~ In exercising any powers (including those of a manager), the receiver is not entitled to control, dispose of, or otherwise interfere with the ~~SPV's or authority's~~ ability of the responsible SPV, any other SPV, or the responsible infrastructure authority to exercise or perform its rights, powers, and duties in relation to assets not charged in favour of the appointor of the receiver. 35

- (4) A receiver appointed under a charge instrument or by the court must distribute the proceeds of collection and recovery of the money and assets the receiver is entitled to collect and recover in the following order of priority:
- (a) any amounts required for the receiver's remuneration, costs incurred by the receiver, and the costs incurred by any person in obtaining the receiver's appointment: 5
 - (b) any amounts payable in respect of claims by law to be preferred to claims under any charge over those assets:
 - (c) any amounts required to be paid out of the proceeds of collection of the money and assets to enable the receiver to carry out the activities specified in **subsection (1)**: 10
 - (d) the amounts secured by any charges over those assets in the order of priority accorded those charges, so as to preserve the respective entitlements of the holders of those charges:
 - (e) if the receiver was appointed by the court on the application of 1 or more unsecured creditors, any amounts payable, or directed by the court to be paid, to those creditors: 15
 - (f) any residue to, or for the benefit of, the responsible SPV as it directs.

Compare: 1993 No 122 s 40D

136 Protection of receiver 20

- (1) No proceedings lie against a receiver of a responsible SPV for any breach of **section 135(1)** by—
- (a) the receiver; or
 - (b) any adviser or delegate of the receiver.
- (2) No proceedings lie against an adviser or a delegate of a receiver for any breach of **section 135**, other than proceedings brought by the receiver. 25
- (3) A receiver (and any adviser or delegate) must be indemnified in accordance with **subsections (4) and (5)** in respect of any liability relating to the exercise, purported exercise, or omission to exercise any right or power of the receiver by the receiver (or the adviser or delegate). 30
- (4) A receiver appointed by the court (and any adviser ~~and or~~ delegate) must be indemnified by the responsible SPV.
- (5) A receiver appointed under a charge document (and any adviser ~~and or~~ delegate) must be indemnified out of the assets subject to receivership, unless the terms of the appointment of the receiver provide otherwise. 35
- (6) **Subsections (1) and (3)** do not apply to an act or omission of a person that constitutes bad faith or gross negligence.
- (7) This section does not limit or affect the operation of sections 19 and 20 of the Receiverships Act 1993.

- (8) In this section, **adviser or delegate**, in relation to a receiver, means an adviser or a delegate of the receiver who has been reasonably selected and whose activities have been reasonably supervised.

Compare: 1993 No 122 s 40E

137 Exception in relation to Crown Manager 5

If a Crown ~~manager~~ Manager is appointed under this Act in relation to ~~the SPV~~ a responsible SPV (either before or after a receiver is appointed under a charge instrument or by the ~~High Court court~~), the ~~High Court court~~ may order that any receiver so appointed may not, until the ~~High Court court~~ so orders, exercise any of the rights, powers, and duties of a receiver.

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Compare: 1993 No 122 Schedule 1 cl 15

Limit on usual rules for creditors

138 Limit on usual rules for transactions and dispositions at under value (if applied by levy order)

(1AAA) This section applies only if applied by a levy order (see **section 34(i)(iii)**). 15

- (1) Section 297 of the Companies Act 1993 does not apply to the relevant transactions (or any class of relevant transactions set out in a levy order) if a levy order applies this limit.
- (2) Subpart 6 of Part 6 of the Property Law Act 2007 does not apply to the relevant dispositions (or classes of relevant dispositions set out in a levy order) if a levy order applies this limit. 20
- (3) In this section, **relevant transaction** or **relevant disposition** means—
 - (a) the transfer of eligible infrastructure by the responsible SPV to a responsible infrastructure authority under ~~section 88~~ a vesting agreement; or
 - (b) the transfer by the responsible SPV (that is responsible for financing and funding the construction of eligible infrastructure) of money to finance the construction of eligible infrastructure to another SPV that is responsible for the construction of that infrastructure. 25

Subpart 4—Enforcement

Injunctions and compliance orders 30

139 Court may grant injunction

A court may, on application by the monitor, grant an injunction restraining an SPV from engaging in conduct that constitutes or would constitute a contravention, or involvement in a contravention, of this Act or a levy order.

140 When court may grant injunction

- (1) A court may grant an injunction restraining an SPV from engaging in conduct of a particular kind if—
 - (a) it is satisfied that the SPV has engaged in conduct of that kind; or
 - (b) it appears to the court that, if an injunction is not granted, it is likely that the SPV will engage in conduct of that kind. 5
- (2) The court may grant an interim injunction restraining an SPV from engaging in conduct of a particular kind if in its opinion it is desirable to do so.
- (3) **Subsections (1)(a) and (2)** apply whether or not it appears to the court that the SPV intends to engage again, or to continue to engage, in conduct of that kind. 10
- (4) **Subsections (1)(b) and (2)** apply whether or not the SPV has previously engaged in conduct of that kind or there is an imminent danger of substantial damage to any other person if the SPV engages in conduct of that kind.

140A No undertaking as to damages required

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- (1) If the monitor applies to the court for the grant of an injunction, the court must not, as a condition of granting the injunction, require the monitor to give an undertaking as to damages.
- (2) In determining the monitor's application for the grant of an injunction, the court must not take into account the fact that the monitor is not required to give an undertaking as to damages. 20

Compare: 2013 No 69 s 482

141 Court may make compliance order

- (1) The court may, on application by the monitor, ~~order an SPV to take action to remedy non-compliance with a provision of this Act or a levy order.~~ make an order (a compliance order) requiring an SPV to do 1 or more of the following: 25
 - (a) to comply with a provision of this Act or a levy order;
 - (b) to remedy non-compliance with the provision by another means;
 - (c) to avoid or mitigate any actual or likely effect of non-compliance with the provision. 30
- (2) The court may make a compliance order if it is satisfied that, by engaging in any conduct, the SPV has failed, or is likely to fail, to comply with a provision of this Act or the levy order.
- (3) The court may make a compliance order on any terms that it considers appropriate, including by specifying any reasonable steps that the SPV must take in order to comply with the order. 35
- (4) ~~In this section, remedy non-compliance, in relation to a provision, means—~~
 - (a) ~~to comply with the provision; or~~

- (b) ~~to remedy the non-compliance by another means; or~~
- (c) ~~to mitigate any actual or likely effect of non-compliance.~~

Civil liability and compensatory orders

142 Court may make civil liability order

- (1) A court may, on application by the monitor, make a civil liability order if the court is satisfied that a person has contravened or was involved in a contravention of this Act or a levy order. 5
- (2) A civil liability order may direct the person in contravention, or the person involved in the contravention, to refund money or return property ~~to the an~~ SPV if the court is satisfied that the SPV has suffered, or is likely to suffer, loss or damage because of the contravention. 10

143 Court may make compensatory order

- (1) ~~The A~~ court may, on application by the monitor, make a compensatory order if the court—
 - (a) is satisfied that— 15
 - (i) a person has contravened or was involved in a contravention of this Act or a levy order; and
 - (ii) the SPV has suffered, or is likely to suffer, loss or damage because of the contravention; and
 - (b) it appears to the court that a civil liability order under **section 142** is not practicable in the circumstances. 20
- (2) The court may make any order it thinks just to compensate an SPV in whole or in part for the loss or damage, or to prevent or reduce the loss or damage.
- (3) An order under this section may include an order to direct a relevant person ~~to pay to the SPV the amount of the loss or damage (in whole or in part) to do~~ either or both of the following: 25
 - (a) to pay to the SPV the amount of the loss or damage (in whole or in part):
 - (b) to take other steps to avoid or mitigate any actual or likely loss or damage resulting from the contravention.
- (4) **Subsection (3)** does not limit **subsection (2)**. 30
- (5) In this section, **relevant person** means—
 - (a) any person in contravention; or
 - (b) any person involved in the contravention.

144 Defences

- (1) In any proceeding under **section 142 or 143** against a person (A) for a contravention of this Act or a levy order, it is a defence if A proves that— 35

- (a) A's contravention was due to reasonable reliance on information supplied by another person; or
- (b) both of the following apply:
 - (i) A's contravention was due to the act or default of another person, or to an accident or to some other cause beyond A's control; and 5
 - (ii) A took reasonable precautions and exercised due diligence to avoid the contravention.
- (2) For the purposes of **subsection (1)(a) and (b)(i)**, **another person** does not include ~~a director~~ a member of the board of directors or other governing body, an employee, or an agent of A. 10
Compare: 2013 No 69 s 499

145 Defences for person involved in contravention

- (1) This section applies if—
 - (a) a person (**A**) contravenes this Act or a levy order; and
 - (b) another person (**B**) is involved in the contravention. 15
- (2) In any proceeding under **section 142 or 143** against B for involvement in the contravention, it is a defence if B proves that—
 - (a) B's involvement in the contravention was due to reasonable reliance on information supplied by another person; or
 - (b) B took all reasonable and proper steps to ensure that A complied with the relevant provision of this Act or the levy order. 20
- (3) For the purposes of **subsections (1)(b) and (2)(a)**, **another person** does not include ~~a director~~ a member of the board of directors or other governing body, an employee, or an agent of A. 25
Compare: 2013 No 69 s 503

146 Meaning of involved in a contravention

In **sections 142, 143, and 145**, a person is **involved in a contravention** if the person—

- (a) has aided, abetted, counselled, or procured the contravention; or
- (b) has induced, whether by threats or promises or otherwise, the contravention; or 30
- (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or
- (d) has conspired with others to effect the contravention.

Compare: 2013 No 69 s 533 35

*Offences***147 False statement or information**

- (1) A person commits an offence if the person makes a statement or gives information for the purposes of this Act that is false or misleading in a material particular, knowing it to be false or misleading. 5
- (2) A person who commits an offence under this section is liable on conviction,—
- (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding \$5,000; and
- (b) in any other case, to a fine not exceeding \$15,000.

148 Refusal or failure to give information 10

- (1) A person commits an offence if the person refuses or fails, without reasonable excuse, to give any information that is in that person's possession or under that person's control when required under this Act to give the information.
- (2) A person who commits an offence under this section is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$2,000; and 15
- (b) in any other case, to a fine not exceeding \$5,000.

149 Resistance, obstruction, or failure to comply with directions

- (1) A person commits an offence if the person, without reasonable excuse,—
- (a) fails to comply with a direction given under this Act; or
- (b) resists or obstructs any person who is acting in the performance of their functions or duties or in the exercise of their powers under this Act. 20
- (2) A person who commits an offence under this section is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$2,000; and
- (b) in any other case, to a fine not exceeding \$5,000.

Subpart 5—Miscellaneous 25*Recommender***150 Appointment of recommender**

The Governor-General may, by Order in Council made on the recommendation of the responsible Minister, appoint a government agency as recommender for the purposes of this Act. 30

151 Function of recommender

The recommender's function is to perform the role and duties and exercise the powers conferred and imposed on the recommender under **subpart 1 of Part 2** to support the responsible Minister's consideration of a levy proposal.

*Delegations***152 Responsible levy authority may delegate**

A responsible levy authority may delegate the performance of its functions or duties or the exercise of its powers under **Parts 2 and 3** of this Act in accordance with section 132 of the Local Government (Rating) Act 2002.

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153 Responsible SPV may delegate

- (1) A responsible SPV may delegate ~~the performance of its functions or duties or the exercise of its powers under **Parts 2 and 3** of this Act to a specified to an officer of the SPV; the performance of its functions or duties or the exercise of its powers—~~

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(a) under this Act; or

(b) in its capacity as a responsible SPV, under any other enactment.

- (2) This section does not authorise the delegation of—

(a) the power to delegate; or

(b) the SPV's functions, duties, and powers relating to the setting of an annual levy.

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- (3) An officer to whom a function, duty, or power is delegated (the **delegate**) may, unless the delegation provides otherwise, perform the function or duty, or exercise the power, in the same manner, subject to the same restrictions, and with the same effect as if the delegate were the SPV.

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- (4) A delegation does not affect or prevent the performance of the delegated function or duty, or the exercise of the delegated power, by the SPV.

- (5) In this section, **officer**, in relation to an SPV, means—

(a) a named person; or

(b) the person who is for the time being the holder of a specified office.

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154 Other provisions of Local Government (Rating) Act 2002 applied

The following provisions of the Local Government (Rating) Act 2002 apply in relation to ~~the levy set~~ a levy authorised under this Act:

- (a) section 133 (in certain cases Governor-General in Council may extend time or validate proceedings):
- (b) section 134 (Judge, etc, not interested merely by being ratepayer):
- (c) section 135 (evidence of certain matters):
- (d) section 136 (notification).

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Courts**154A Jurisdiction of courts**

The High Court has exclusive jurisdiction to hear and determine proceedings in New Zealand under this Act, other than—

- (a) appeals under **section 102**; and 5
- (b) proceedings for offences.

Compare: 2013 No 69 s 538

Subpart 6—Amendments to other Acts

155 Amendments to other Acts

Amend the enactments specified in **Schedule 2** as set out in that schedule. 10

Schedule 1
Transitional, savings, and related provisions

s 5

Part 1
Provisions relating to this Act as enacted

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There are no transitional, savings, or related provisions relating to this Act as enacted.

Schedule 2

Amendments to other Acts

s 155

Companies Act 1993 (1993 No 105)

After section 297(3), insert:

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- (4) This section does not apply to transactions to which the limit in **section 138(1)** of the Infrastructure Funding and Financing Act **2019** applies under a levy order made under that Act.

Goods and Services Tax Act 1985 (1985 No 141)

After section 5(7C), insert:

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- (7F) For the purposes of this Act, when a person is liable to pay a levy set under **section 40** of the Infrastructure Funding and Financing Act **2019** by a responsible SPV, as defined in **section 7** of that Act, the levy is treated as being consideration for a supply of goods and services to the person by the responsible SPV.

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Land Transport Management Act 2003 (2003 No 118)

In section 5(1), definition of **public organisation**, after paragraph (f), insert:

- (g) a responsible SPV (as defined in **section 7** of the Infrastructure Funding and Financing Act **2019**)

Local Government Act 2002 (2002 No 84)

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In section 5(1), insert in their appropriate alphabetical order:

eligible infrastructure has the same meaning as in **section 8** of the Infrastructure Funding and Financing Act **2019**

levy area has the same meaning as in **section 7** of the Infrastructure Funding and Financing Act **2019**

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levy order has the same meaning as in **section 7** of the Infrastructure Funding and Financing Act **2019**

protected Māori land has the same meaning as in **section 11** of the Infrastructure Funding and Financing Act **2019**

SPV means a responsible SPV that is identified by a levy order made under the Infrastructure Funding and Financing Act **2019** as having responsibility for the construction of eligible infrastructure:

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In section 5(1), replace the definition of **activity** with:

activity—

- (a) means goods or a service provided by, or on behalf of, a local authority or a council-controlled organisation; and

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Local Government Act 2002 (2002 No 84)—continued

- (b) includes—
 - (i) the provision of facilities and amenities; and
 - (ii) the making of grants; and
 - (iii) the performance of regulatory and other governmental functions; and
- (c) also includes, in section 106, subpart 5 of Part 8, and Schedule 13, the construction of eligible infrastructure that has been, or is intended to be, transferred by a responsible SPV to a responsible infrastructure authority under **section 88** of the Infrastructure Funding and Financing Act **2019**

After section 106(6), insert:

- (7) In this section, **capital expenditure** includes any funding provided by a responsible levy authority to contribute to the construction costs of eligible infrastructure that has been, or is intended to be, transferred to the authority under **section 88** of the Infrastructure Funding and Financing Act **2019**.

After section 136(3), insert:

- (4) A contract entered into by a local government organisation is not a contract to which subsection (1) applies merely because the local government organisation agrees to any 1 or more of the following:
 - (a) to propose the use of a levy under the Infrastructure Funding and Financing Act **2019** to support the construction of eligible infrastructure;
 - (b) to carry out any aspect of the administration of a levy under that Act;
 - (c) the vesting of eligible infrastructure under that Act;
 - (d) to contribute to the construction costs of the eligible infrastructure.

After section 137(54), insert:

- (44A) ~~A contract~~ An arrangement entered into by a local government organisation is not a joint arrangement or a joint local government arrangement to which this section applies merely because ~~the local government organisation agrees to~~ the arrangement includes doing any 1 or more of the following:
 - (a) ~~to propose~~ proposing the use of a levy under the Infrastructure Funding and Financing Act **2019** to support the construction of eligible infrastructure;
 - (b) ~~to carry~~ carrying out any aspect of the administration of a levy under that Act;
 - (c) the vesting of eligible infrastructure under that Act;
 - (d) ~~to contribute~~ contributing to the ~~capital cost~~ costs of the construction of the eligible infrastructure.

After section 173(2), insert:

Local Government Act 2002 (2002 No 84)—continued

- (3) A local authority may also use the powers in subsection (1) for the purpose of accessing eligible infrastructure under the control of an SPV under the Infrastructure Funding and Financing Act **2019**.

In section 197(1), insert in its appropriate alphabetical order:

capital expenditure includes any funding provided by a responsible levy authority to contribute to the construction costs of eligible infrastructure that has been, or is intended to be, transferred to the authority under **section 88** of the Infrastructure Funding and Financing Act **2019** 5

In section 197AB, insert as subsection (2):

- (2) In **subsection (1)(a)**, **assets** includes eligible infrastructure that has been, or is intended to be, transferred by a responsible SPV to a responsible infrastructure authority under **section 88** of the Infrastructure Funding and Financing Act **2019**. 10

After section 201A(1)(d), insert:

- (e) if the asset is eligible infrastructure that has been, or is intended to be, transferred by a responsible SPV to a responsible infrastructure authority under **section 88** of the Infrastructure Funding and Financing Act **2019**, the proportion of the capital cost to be funded by a levy under that Act and from other sources. 15

Local Government (Auckland Council) Act 2009 (2009 No 32) 20

After section 57(2), insert:

- (3) An Auckland water organisation does not breach its obligation under subsection (1)(a) merely by—
- (a) giving an asset infrastructure endorsement under **section 20** of the Infrastructure Funding and Financing Act **2019**; or 25
 - (b) accepting a transfer of eligible infrastructure under **section 88** of that Act; or
 - (c) contributing funding to the construction of eligible infrastructure that has been, or is intended to be, transferred to that organisation under that section. 30

Local Government Official Information and Meetings Act 1987 (1987 No 174)

After section 44A(2)(c), insert:

- (ca) if the land concerned is located in a levy area that is subject to a levy order under the Infrastructure Funding and Financing Act **2019**, information about— 35
- (i) the levy period:
 - (ii) how liability for a levy on the land is assessed:

Local Government Official Information and Meetings Act 1987 (1987 No 174)—
continued

- (iii) amounts of any unpaid levy:

Local Government (Rating) Act 2002 (2002 No 6)

After section 75, insert:

Legal proceedings to recover unpaid levies with unpaid rates

- 75A Unpaid levy under Infrastructure Funding and Financing Act 2019** 5
- (1) This section applies if rates and a levy remain unpaid 4 months after the due date for payment.
- (2) Sections 63 to 76 (other than section 75) apply to the recovery of both debts in the same legal proceedings—
- (a) as if any reference in those sections to— 10
- (i) the local authority included a reference to the responsible levy authority; and
- (ii) rates included a reference to a levy; and
- (iii) a ratepayer included a reference to a levypayer; and
- (b) with all other necessary modifications. 15
- (3) **Section 75B** applies instead of section 75.
- (4) In this section and **section 75B**, **levy**, **levy order**, **levypayer**, and **responsible levy authority** have the same meanings as in **section 7** of the Infrastructure Funding and Financing Act **2019**.
- 75B Application of proceeds of rating sale or lease that involves levy** 20
- (1) The proceeds of a sale or lease under section 70 or 71 that relates to a levy as well as rates must be applied in the following order:
- (a) the Registrar's fee (unless the fee has already been paid):
- (b) the judgment, and any interest, costs, and disbursements:
- (c) any other unsatisfied judgment for rates for the same rating unit, with any interest, costs, and disbursements: 25
- (d) any other unsatisfied judgment for a levy for the same rating unit, with any interest, costs, and disbursements:
- (e) any other rates due at the date of the sale or lease of the same rating unit, whether or not those rates are still recoverable under section 65 (including, in the case of a lease, the rates (if any) that are or become due on the unit from the person on whose behalf the unit was leased while the Registrar received rents from it): 30

Local Government (Rating) Act 2002 (2002 No 6)—*continued*

- (f) any other levy due at the date of the sale or lease of the same rating unit, whether or not that levy is still recoverable under section 65 (including, in the case of a lease, the levy (if any) that is or becomes due on the unit from the person on whose behalf the unit was leased while the Registrar received rents from it): 5
- (g) any encumbrance on the rating unit:
- (h) any other unsatisfied judgment for rates on other rating units in the district (if the person against whom the judgment is entered is the ratepayer of other rating units), with any interest, costs, and disbursements:
- (i) any other unsatisfied judgment for a levy on other rating units in the district (if the person against whom the judgment is entered is the levypayer of other rating units), with any interest, costs, and disbursements: 10
- (j) any other rates due at the date of the sale or lease for other rating units owned by that person, whether or not the other rates are outside the period of limitation specified in section 65: 15
- (k) any other levy due at the date of the sale or lease for other rating units owned by that person, whether or not the other levy is outside the period of limitation specified in section 65.
- (2) For the purposes of **subsection (1)(f)**, if levies are imposed under more than 1 levy order under the Infrastructure Funding and Financing Act **2019**, the proceeds of sale that are applied to a levy must be applied in the order in which those orders were made. 20

After section 83, insert:

83A Unpaid levy under Infrastructure Funding and Financing Act 2019

- (1) This section applies if the abandoned land is a rating unit for which a levy as well as rates have not been paid for 3 years or more. 25
- (2) Sections 77 to 83 (other than section 82) apply to the abandoned land—
 - (a) as if any reference in those sections to—
 - (i) the local authority included a reference to the responsible levy authority; and
 - (ii) rates included a reference to a levy; and
 - (iii) a ratepayer included a reference to a levypayer; and
 - (b) with all other necessary modifications.
- (3) **Section 83B** applies instead of section 82.
- (4) In this section and **section 83B**, **levy**, **levypayer**, and **responsible levy authority** have the same meanings as in **section 7** of the Infrastructure Funding and Financing Act **2019**. 35

Local Government (Rating) Act 2002 (2002 No 6)—continued**83B Application of proceeds of sale or lease**

- (1) **Sections 75B** and 76 apply, with the necessary modifications, to the application of the proceeds of every sale or lease of abandoned land to which **section 83A** applies.
- (2) For the purposes of this section, **expenses** includes all expenses incurred by the responsible levy authority in connection with the sale or lease. 5
- (3) If the proceeds of the sale or lease are not sufficient to meet the rates, levy, interest, costs, and expenses, the responsible levy authority may write off the deficiency.

Ombudsmen Act 1975 (1975 No 9)

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In Schedule 1, Part 2, insert in its appropriate alphabetical order:

SPVs (special purpose vehicles) within the meaning of **section 7(1)** of the Infrastructure Funding and Financing Act **2020**, in their role under that Act and under a levy order made under that Act

Property Law Act 2007 (2007 No 91)

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In section 185(2)(b), after “rates”, insert “, a levy under the Infrastructure Funding and Financing Act **2019**,”.

After section 346(2), insert:

- (3) However, this subpart does not apply to dispositions to which the limit in **section 138(2)** of the Infrastructure Funding and Financing Act **2019** applies under a levy order made under that Act. 20

Public Works Act 1981 (1981 No 35)

In section 2, replace the definition of **local work** with:

local work means—

- (a) a work constructed or intended to be constructed by or under the control of a local authority, or for the time being under the control of a local authority; and 25
- (b) a local SPV work

In section 2, insert in their appropriate alphabetical order:

eligible infrastructure has the same meaning as in **section 8** of the Infrastructure Funding and Financing Act **2019** 30

local SPV work means eligible infrastructure—

- (a) that is constructed or intended to be constructed by or under the control of an SPV, or for the time being under the control of an SPV; and
- (b) for which a local authority is the responsible infrastructure authority 35

Public Works Act 1981 (1981 No 35)—continued

protected Māori land has the same meaning as in **section 11** of the Infrastructure Funding and Financing Act **2019**

responsible infrastructure authority has the same meaning as in **section 7** of the Infrastructure Funding and Financing Act **2019**

SPV means an SPV that is identified by a levy order made under the Infrastructure Funding and Financing Act **2019** as having responsibility for the construction of eligible infrastructure

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After section 16(2), insert:

- (3) In addition, a local authority is empowered to acquire under this Act any land required for a local SPV work for which it is the responsible infrastructure authority.

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After section 23(8), insert:

- (9) No power in this section may be used to take protected Māori land for the purposes of a local SPV work.

After section 27, insert:

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*Land required under Infrastructure Funding and Financing Act **2019***

27A Transfer of land taken for construction of eligible infrastructure

- (1) This section applies to land acquired under this Part by a local authority—
- (a) using the power conferred by **section 16(3)**; or
 - (b) using the power conferred by section 16(2) in relation to land that is later required for the purpose set out in **section 16(3)**.
- (2) The local authority (that is a responsible infrastructure authority) may transfer the land to the responsible SPV for the purpose of a local SPV work.
- (3) Sections 40 to 42A do not apply to—
- (a) a transfer under **subsection (2)**; or
 - (b) a transfer of the land back to the local authority under **section 88** of the Infrastructure Funding and Financing Act **2019**.
- (4) If the local authority or the SPV that owns the acquired land no longer requires any of that land for eligible infrastructure, the authority or SPV must dispose of the land in accordance with sections 40 to 42A.

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Resource Management Act 1991 (1991 No 69)

Replace the heading to section 166 with “**Definitions**”.

In section 166, definition of **network utility operator**, after paragraph (h), insert:

- (ha) is a responsible SPV that is constructing or proposing to construct eligible infrastructure; or

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Resource Management Act 1991 (1991 No 69)—continued

In section 166, insert in their appropriate alphabetical order:

eligible infrastructure has the same meaning as in **section 8** of the Infrastructure Funding and Financing Act **2019**

public work includes work that relates to the construction of eligible infrastructure

responsible infrastructure authority has the same meaning as in **section 7** of the Infrastructure Funding and Financing Act **2019**

responsible SPV has the same meaning as in **section 7** of the Infrastructure Funding and Financing Act **2019**

SPV means a responsible SPV that is identified by a levy order made under the Infrastructure Funding and Financing Act **2019** as having responsibility for the construction of eligible infrastructure.

In section 166, insert as subsection (2):

(2) In this Part, work **relates to the construction of eligible infrastructure** if the work—

(a) involves such construction for which an SPV has financial responsibility; or

(b) is work—

(i) that is required to facilitate the future construction of eligible infrastructure; and

(ii) for which the local authority or the territorial authority giving notice of its requirement for a designation (under section 168 or 168A) has financial responsibility.

After section 167(4), insert:

(4A) If the applicant is a network utility operator described in **paragraph (ha)** of the definition of that term in **section 166(1)**, the applicant need not have financial responsibility for the construction work for the purpose of the Minister being satisfied of the matters in subsection (4)(b).

After section 168(2), insert:

(3) In addition, a local authority may at any time give notice in the prescribed form to a territorial authority of its requirement for a designation for a work that relates to the construction of eligible infrastructure for which the local authority is a responsible infrastructure authority.

After section 168A(1)(a), insert:

(ab) for work within its district that relates to the construction of eligible infrastructure for which the territorial authority is a responsible infrastructure authority; or

After section 180, insert:

Resource Management Act 1991 (1991 No 69)—continued**180A When financial responsibility is transferred to responsible SPV**

- (1) This section applies if—
- (a) a local authority or territorial authority holds a designation for work that relates to the construction of eligible infrastructure within the meaning of **paragraph (b)** of the definition of relates to the construction of eligible infrastructure in **section 166(2)**; and 5
 - (b) a responsible SPV has taken over, or proposes to take over, the construction; and
 - (c) a designation continues to be required for the construction; and
 - (d) the responsible SPV is not a requiring authority; and 10
 - (e) the authority is the responsible infrastructure authority in relation to the construction.
- (2) The designation continues to apply to the construction work.
- (3) The responsible infrastructure authority may, by written notice, delegate to the responsible SPV those functions, duties, and powers in relation to the designation that relate to the construction of eligible infrastructure. 15
- (4) The responsible SPV must perform those delegated functions and duties and exercise those delegated powers in accordance with any conditions attached to the designation.
- (5) A delegation does not affect the performance or exercise of any function, duty, or power by the responsible infrastructure authority. 20

After section 186(7), insert:

- (7A) This section does not apply if—
- (a) the network utility operator is a responsible SPV; and
 - (b) the land is protected Māori land. 25

Utilities Access Act 2010 (2010 No 98)

In section 4, definition of **utility operator**, replace paragraph (d) with:

- (d) in relation to water and wastewater infrastructure,—
- (i) a local authority as defined in section 5 of the Local Government Act 2002; or 30
 - (ii) a person acting on behalf of a local authority in relation to that infrastructure; or
 - (iii) a responsible SPV that is responsible for the construction of eligible infrastructure under the Infrastructure Funding and Financing Act **2019**: 35

In section 4, insert in their appropriate alphabetical order:

Utilities Access Act 2010 (2010 No 98)—*continued*

eligible infrastructure has the same meaning as in **section 8** of the Infrastructure Funding and Financing Act **2019**

SPV means a responsible SPV that is identified by a levy order made under the Infrastructure Funding and Financing Act **2019** as having responsibility for the construction of eligible infrastructure

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