

# Infrastructure Funding and Financing Bill

Government Bill

## Explanatory note

### General policy statement

This Bill is an omnibus Bill that amends more than 1 Act and is introduced under Standing Order 263(a) because the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. That single broad policy is to provide a funding and financing model to support the provision of infrastructure for housing and urban development that supports functioning urban land markets and reduces the impact of local authority financing and funding constraints.

### *Introduction*

New Zealand's current infrastructure funding and financing system presents a range of constraints that are making it difficult for the market and local and central government to respond to urban pressures. As a result, housing and infrastructure are not meeting the needs of New Zealanders. Specifically, local authorities face several challenges in relation to the financing of housing-related infrastructure and supplying serviced urban land.

This Bill establishes an alternative funding and financing model (the **Model**) to address these challenges and support the provision of infrastructure to support housing and urban development. The Model is an important step in the long-term evolution of the local authority funding and financing system and seeks to support the functioning of urban land markets by appropriately allocating the costs of infrastructure.

The Model is about creating flexibility in the infrastructure financing system to ensure that economically viable projects proceed, without being unnecessarily encumbered by a council's financing constraints. This will improve the responsiveness of infrastructure supply to service land for housing and competitive urban land markets, reducing the overall cost of housing in the long term. The Model also seeks to facilitate urban development infrastructure that supports community needs. Importantly, it

allows for a project to be ring-fenced from the local authority's finances, ensuring that there is no recourse to the local authority.

### *The Model*

#### **The levy**

At the core of the Model is a multi-year levy (the **levy**) which is paid by beneficiaries of infrastructure projects to a Special Purpose Vehicle (**SPV**). The levy will be enabled by legislation and authorised by an Order in Council (a **levy order**). Where appropriate, the design of the levy mimics many of the rating provisions within the Local Government (Rating) Act 2002. The person who is liable to pay the rates on a property is the person liable to pay the levy, and this will be collected by the territorial authority that is the responsible levy authority for the infrastructure.

The levy is applied to a geographic area of land and this will be identified within each levy order as the relevant area liable for the levy. The Bill provides for categories of eligible costs that are authorised to support the eligible infrastructure within a project area and recovered by the levy.

The Bill includes provisions requiring the agreement from owners of protected Māori land to the inclusion of their land within the area subject to the levy. This enables the owners of protected Māori land affected to assess the risks and benefits to them of the levy being applied and the development potential it will finance.

#### **Special purpose vehicle**

An SPV services the finance raised to cover the costs of the infrastructure via the levy and is responsible for both financing and construction of the infrastructure assets. Once constructed, the infrastructure will vest in the relevant local authority or public body. The SPV has a range of bespoke disclosure and reporting obligations that it must comply with. Depending on the structure and nature of the project, an SPV will have the following roles: raising capital (utilising the levy revenue stream), financing infrastructure, commissioning construction, transferring the infrastructure to the relevant local authority (or other relevant public entities), and repaying any finance raised for infrastructure. These functions may be divided between 2 or more SPVs named in the levy order.

#### **Recommender**

The role of the recommender is to provide independent, well-informed advice to the Minister for Urban Development on a levy proposal, and subsequently on whether to recommend the use of a levy, with a view to protect the interests of consumers and the Crown.

The assessment of a levy proposal by the recommender will make a recommendation on the structure and application of the levy, long-term beneficiary interests, affordability, and the expected distribution of benefits in the levy area. Consequently, the role of the recommender is critical in safeguarding the interests of levypayers through the

provision of high-quality advice to the Minister before a levy is authorised by a levy order.

### **Statutory powers**

There are several statutory powers that SPVs require to effectively and efficiently construct infrastructure. These include accessing powers conferred on network utility operators under the requiring authority regime in the Resource Management Act 1991. These powers provide an SPV with the ability to seek, hold, or receive a designation or to compulsorily acquire land through the Minister for Land Information. Local authorities are also enabled to exercise their existing Public Works Act 1981 powers in respect of projects that proceed, or are intended to be undertaken by an SPV, under the Model. In some instances, a public body may wish to transfer land held for a public work to an SPV to undertake that work.

Protected Māori land is excluded from compulsory acquisition powers; however, the voluntary sale of such land is possible.

It should be noted that the Model will continue to work with complementary regulatory regimes, such as resource and building consenting processes. However, as the Model provides local authorities with an additional tool to finance infrastructure, this may influence how local authorities allocate capital, meet other regulatory requirements, and plan urban development.

### **Monitor**

The role of the monitor is to ensure that SPVs comply with the terms of the empowering Act and levy orders. The monitor performs as a regulator within the Model and is an important safeguard for both the Crown and levypayers once a levy order has been made. The monitor also has a role in considering and determining any objection by a person subject to the levy as to the accuracy of the levy assessed to that person.

In order to fulfil its purpose, the monitor has the power to require information from SPVs and to annually confirm the amount of levy to be collect from levypayers, and will ensure that the SPV applies the levy in accordance with the levy order. The Monitor can give statutory directions to SPVs when they are in breach of these obligations and, if those directions are not followed, ultimately recommend that the Crown step in to manage the SPV until any significant problems are resolved.

### **Local authority involvement**

The local authority endorsement mechanism in the Bill is another safeguard to protect the legitimate interests of the local authority (or relevant public body) in which the assets will vest. A proposal for a levy must receive an asset endorsement and a levy endorsement before the Minister recommends it to Cabinet. The local authority must also assess and collect the levy on behalf of the SPV. This may entail including the levy on a rates invoice, with the levy paid simultaneously with rates collection.

Following construction, the asset will vest in the responsible infrastructure authority, be it a local authority, the New Zealand Transport Authority, or a council-controlled organisation.

### **Departmental disclosure statement**

The Department of Internal Affairs is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2019&no=204>

### **Regulatory impact assessment**

The Department of Internal Affairs produced a regulatory impact assessment on 10 May 2019 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact assessment can be found at—

- <https://www.dia.govt.nz/Resource-material-Regulatory-Impact-Statements-Index#five>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

### **Clause by clause analysis**

*Clauses 1 and 2* name the Bill and provide for when it commences.

## **Part 1**

### **Preliminary provisions**

*Clause 3* sets out the purpose of the Bill, which is to provide a funding and financing model for the provision of infrastructure to support housing and urban development.

*Clause 4* provides an outline of the Bill.

*Clause 5* relates to transitional, savings, and related provisions, setting up *Schedule 1* for that purpose. There are no such provisions at present.

*Clause 6* provides that the Crown is bound by the Bill.

*Clause 7* contains definitions, including definitions of construction, levy area, levy period, levypayer, SPV, responsible SPV, responsible levy authority, responsible infrastructure authority, surplus levy, and excess levy.

*Clause 8* defines the eligible infrastructure whose construction may be supported by a levy and *clause 9* defines eligible costs that may be recovered by the use of a levy.

*Clause 10* describes the kinds of persons and bodies that may be an SPV and provides that an SPV may be established and operated only for that purpose.

*Clauses 11 to 14* provide for land in which Māori have an interest. *Clause 11* defines protected Māori land, which is exempted from some provisions of the Bill, or in relation to which consent or agreement must be obtained before certain powers can be exercised. *Clauses 12 to 14* provide that Te Ture Whenua Maori Act 1993, the Marine and Coastal Area (Takutai Moana) Act 2011, and Treaty settlement obligations prevail if there is any inconsistency with the Bill.

*Clause 15* describes how provisions of the Local Government (Rating) Act 2002 are modified in order to apply to the levy scheme in the Bill. Provisions of that Act are applied topic by topic under *Part 3*.

## **Part 2**

### **Authorisation of levy**

*Clause 16* provides an outline of *Part 2*.

#### Subpart 1—Consideration of levy proposal

*Clauses 17 and 18* provide who may propose the use of a levy and what information a levy proposal must contain.

*Clauses 19 to 26* provide for the assessment of a levy proposal by the recommender, endorsements given by local authorities or other bodies, the need for the consent of the owners of protected Māori land, and the recommender's recommendation that is reported to the responsible Minister.

*Clauses 27 and 28* provide for the responsible Minister's recommendation to the Governor-General in Council that a levy order be made, including the matters that the Minister must take into account and the other Ministers who must be consulted.

#### Subpart 2—Levy order

*Clauses 29 to 34* provide for the making and the content of an Order in Council that authorises the use of a levy (a **levy order**), and also the publication of the recommender's report on the levy proposal that resulted in the levy order. The content of the levy order is extensive and includes the levy area, the levy period, the eligible infrastructure to be constructed, the eligible costs of construction that may be recovered by the levy, the SPV or SPVs and their roles, the maximum levy that may be collected, the rating units that are to be levied, and how the levy is to be assessed for those rating units.

#### Subpart 3—Basis of liability for levy

*Clauses 35 to 39* provide for preliminary levy-related matters, including that rateable land under the Local Government (Rating) Act 2002 is leviable, that ratepayers are liable to pay the levy when they pay the rates, and that the levy period begins on 1 July of the first levy year.

*Clause 40* requires the responsible SPV to set the annual levy for each levy year.

*Clause 41* requires the responsible levy authority to give a responsible SPV all rating information that the SPV reasonably requests.

*Clauses 42 to 50* provide for the confirmation of annual levy. The annual levy is set by the responsible SPV once confirmed by the monitor, or as directed by the monitor.

*Clause 51* allows a responsible SPV to correct an annual levy.

*Clause 52* requires a responsible SPV to reduce a levy or levy period if the amount of forecast excess levy exceeds the amount specified in the levy order.

### **Part 3**

#### **Administration of levy**

*Clause 53* provides an outline of *Part 3*.

##### **Subpart 1—Who administers levy**

*Clause 54* provides that the responsible SPV is authorised to administer a levy and requires the responsible levy authority to administer levy on the SPV's behalf in accordance with the levy order, *subpart 2* of this Part, and a levy administration agreement between the 2 parties.

*Clauses 55 and 56* provide for the levy administration agreement, and for the intervention of the monitor if the parties cannot agree on all necessary terms.

*Clause 57* provides that, if rates are paid on a rating unit but the levy is not paid, the responsible levy authority is not required to recover the unpaid levy. (The responsible SPV may do so under *clause 54*.)

*Clause 58* provides that a levy on a rating unit is a charge against the unit.

*Clause 59* provides that a person must not refuse to pay a levy on the ground that it 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 for the person's rating unit.

##### **Subpart 2—Responsible levy authority administers levy**

This subpart provides for the administration of a levy in the same way that rates are administered under the Local Government (Rating) Act 2002. Clauses in this subpart impose requirements on the responsible levy authority and also apply relevant provisions of the Local Government (Rating) Act 2002 with necessary modifications (*see clause 15*).

*Clause 60* requires a responsible levy authority to pay levy proceeds to the responsible SPV.

*Clauses 61 to 67* provide for how the responsible levy authority must use the rating information database and rates records kept under the Local Government (Rating) Act 2002 in collecting a levy. Matters covered include notifications by levypayers of changes in circumstances, dealing with objections, the correction of errors in the data-

base and records, and the requirement for the responsible SPV to give any necessary levy-related information to the responsible levy authority.

*Clauses 68 to 72* provide that the responsible levy authority must assess (and invoice) a levy along with rates.

*Clause 73* provides for how a levy is paid and provides that small amounts need not be collected.

*Clause 74* provides for the addition of penalties to a levy that has not been paid.

*Clauses 75 to 77* provide for the remission of a levy and the postponement of the requirement to pay a levy in accordance with policies agreed by the responsible SPV and the responsible levy authority.

*Clauses 78 and 79* provide for action that the responsible levy authority may take to recover unpaid levy (including any penalties). This includes taking legal proceedings, enforcing judgments (including by selling or leasing land), selling or leasing abandoned land on which a levy is unpaid, and recovery action in relation to Maori freehold land.

### Subpart 3—When SPV recovers unpaid levy

*Clauses 80 to 84* authorise the responsible SPV to recover an unpaid levy (and penalties) when there are no unpaid rates (*see clause 57*). Relevant provisions of the Local Government (Rating) Act 2002 are applied, with necessary modifications, and recovery action includes taking legal proceedings, enforcing judgments (including by selling or leasing land), and recovery action in relation to Maori freehold land. The responsible levy authority must make all necessary information available to the SPV.

## Part 4

### Other operational and financial matters

*Clause 85* provides an outline of *Part 4*.

#### Subpart 1—SPV's ongoing duties

*Clauses 86 and 87* set some key controls for the SPV that are implemented through the levy order. A responsible SPV must not collect more than the maximum levy revenue set by the levy order. The SPV must not apply levy revenue to costs other than eligible costs set by the levy order (or otherwise as permitted by the Act, for example under *clause 89*).

*Clause 88* requires the responsible SPV to enter into a vesting agreement with the responsible infrastructure authority and to transfer the eligible infrastructure to the authority in accordance with that agreement.

### Subpart 2—Excess levy and previous contributions

If there is excess levy held by the responsible SPV at the end of the levy period, *clause 89* requires that amount to be paid to the responsible levy authority. The responsible levy authority—

- must remit rates on the rating units to reflect that amount of excess levy if the amount of excess levy is more than the excess levy threshold permitted under *clause 90*; or
- if it is less than that threshold, may retain the excess levy.

The formula for calculating the excess levy threshold for this purpose allows for an annual CPI adjustment (to be published by the monitor).

*Clauses 91 to 95* relate to the case where development contributions or financial contributions have been previously given in relation to any eligible infrastructure. *Clause 92* requires the responsible levy authority to provide a list of these previous contributions to the responsible SPV. The responsible SPV may then direct the responsible levy authority to transfer those amounts to the SPV and then remit the levies on rating units to reflect the correct proportion of levy that should be payable (after deducting the previous contributions, using the formula set by *clause 93*). If the responsible SPV does not direct the transfer of the previous contributions, the responsible levy authority must instead refund them to the relevant ratepayers for the rating units on which the contributions were paid. *Clause 95* provides that the usual rules in the Local Government Act 2002 that relate to the refund of previous contributions do not apply to previous contributions under this Bill.

### Subpart 3—SPV's powers relating to construction

*Subpart 3* contains some specific powers for the responsible SPV (which apply only if applied by a levy order).

These specific powers include powers equivalent to those of local authorities under the Local Government Act 2002 to construct infrastructure on private land (*clause 96*).

The powers also include the ability to construct, place, and maintain water services infrastructure on roads and public areas and, for that purpose, break up roads and public land (*clause 97*). Before breaking up roads and public land, the SPV must give written notice to the person with jurisdiction over the road or land (*clause 98*), and must comply with reasonable conditions notified to it (*clauses 99 and 100*). There is provision for work to be started urgently without notice (*clause 101*), but in this case, the SPV must give notice later. *Clause 102* allows the SPV to appeal against conditions to the District Court.

### Subpart 4—Other financial matters

*Subpart 4* contains other financial accountability provisions.

*Clause 104* requires an SPV to pay all levy revenue into a separate bank account with a registered bank.



*Clauses 105 and 106* require the SPV to prepare financial statements for each levy year, and have them audited by a qualified auditor.

*Clauses 107 and 108* require an annual report to be provided with those financial statements and the auditor's report to the monitor. The annual report must also contain information on the eligible costs and other costs incurred by the SPV and other information needed to enable the monitoring of the levy collection. Under *clause 109*, the monitor may require additional information to be contained in the annual report.

*Clause 110* prohibits the responsible levy authority from guaranteeing or indemnifying the SPV in any way, or from providing it with any loans or other financial support (including uncalled capital).

*Clause 111* makes it clear that the Crown is not liable to contribute to the SPV's debts. This position must be clearly stated in disclosure documents for any capital raising or other financing under the Financial Markets Conduct Act 2013 (*clause 112*).

## Part 5

### Monitoring, remedies, enforcement, and miscellaneous

*Clause 113* provides an outline of *Part 5*.

#### Subpart 1—Role of monitor

*Subpart 1* provides for the monitor, which is a government agency appointed under *clause 114*.

The functions of the monitor (set out in *clause 115*) are to—

- publish general information about the levy scheme for the public benefit. *Clause 116* sets out this function in more detail:
- determine objections to incorrect levy data or assessment under *clauses 62 and 65*:
- monitor compliance with this Bill and the levy order by the SPV. *Clause 117* provides powers for the monitor to obtain information and assistance from the responsible SPV or responsible levy authority. *Clause 118* enables the monitor to supervise any change of control in the responsible SPV:
- inquire into, and intervene in, a responsible SPV's operations if need be. Under *clauses 119 and 120*, the monitor may inquire into any significant problems, potential non-compliance with the Bill or a levy order, or any concerns as to financial stability or governance and management of the SPV. The monitor may direct the SPV to address significant problems. Under *clause 121*, the monitor may also recommend the appointment of a Crown Manager if the monitor determines that the SPV has not addressed the significant problem.

#### Subpart 2—Role of Crown Manager

*Subpart 2* provides for the appointment of a Crown Manager over a responsible SPV if the monitor has made a written recommendation and if the responsible Minister

reasonably believes a significant problem with the SPV exists (*clause 122*). The Crown Manager may exercise and perform all the powers and functions of the SPV (*clause 123*) and must keep the responsible Minister and the monitor informed of progress (*clause 124*). *Clauses 125 to 128* provide for the ability of the responsible Minister to terminate the Crown Manager's appointment, the Crown Manager's protection from liability, the Crown's entitlement to be reimbursed by the SPV for costs relating to the appointment, and the Crown Manager's entitlement to remuneration and expenses.

### Subpart 3—Modified rights and remedies for creditors

*Clause 129* provides that creditors' usual rights and remedies apply in relation to SPVs, except as set out in this subpart.

*Clauses 130 to 137* modify the application of the Receiverships Act 1993 to work more appropriately for SPVs in broadly the same way as the application of that Act is modified for local authorities. The modifications are designed to enable a receiver to exercise control over levy revenue, but not otherwise control non-charged assets of the SPV, and to ensure that appropriate constraints apply in relation to charged assets (for example, to ensure that public health is not compromised).

*Clause 138* limits the usual rules under the Companies Act 1993 and the Property Law Act 2007 that allow transactions or dispositions of property at under value to be clawed back for the benefit of creditors. If a levy order applies the limits in these Acts, those rules do not apply to the transfer of eligible infrastructure by a responsible SPV to a responsible infrastructure authority or the transfer between responsible SPVs of money to finance the construction of eligible infrastructure.

### Subpart 4—Enforcement

*Subpart 4* provides for enforcement, including—

- powers for the monitor to seek court injunctions against an SPV for possible contravention of the Bill or a levy order (*clauses 139 and 140*);
- powers for the monitor to seek a court order compelling an SPV to remedy non-compliance (*clause 141*);
- powers for the monitor to seek a civil liability order directing the refund of money or return of property from a person who has contravened a levy order to the SPV if the court is satisfied that the SPV has suffered loss or damage (*clause 142*) or a compensatory order if that order is not practicable in the circumstances (*clause 143*). Defences to both types of order are provided in *clauses 144 and 145*;
- in *clause 146*, defining involved in a contravention for the purpose of *clauses 142, 143, and 145*.

*Clauses 147 to 149* create offences for making false statements, refusing or failing to give information when required under the Bill, or obstructing a person acting in per-

formance of their functions or duties, or in the exercise of their powers, under the Bill.

### Subpart 5—Miscellaneous

*Subpart 5* provides for miscellaneous matters. These include—

- the appointment and functions of the recommender (*clauses 150 and 151*);
- the ability of a responsible levy authority and an SPV to delegate powers and functions under the Act, other than the SPV's functions, duties, and powers relating to the setting of the annual levy (*clauses 152 and 153*);
- the application of various provisions of the Local Government (Rating) Act 2002 (*clause 154*).

### Subpart 6—Amendments to other Acts

*Clause 155* empowers amendments to other Acts that are set out in *Schedule 2*. The key amendments are as follows:

- to the Goods and Services Tax Act 1985: the amendment ensures that GST is payable on the levy amount;
- to the Land Transport Management Act 2003: the effect of the amendment is to enable responsible SPVs to be considered for funding under the national land transport fund;
- to the Local Government Act 2002: the effects of the amendments are—
  - to allow a local authority to require development contributions to support the construction of eligible infrastructure that has been, or is intended to be, transferred to the authority under *clause 88* of the Bill;
  - to allow a local authority's policy relating to development contributions (and also financial contributions under the Resource Management Act 1991) to include contributions that support the construction of eligible infrastructure that has been, or is intended to be, transferred to the authority under *clause 88* of the Bill;
  - that a contract or an arrangement under the Bill for the provision of eligible infrastructure does not in itself contravene section 136 or 137 of that Act;
  - to allow a local authority to use the powers of emergency entry under section 173 of that Act appropriately in relation to eligible infrastructure being constructed under the Bill;
- to the Local Government (Auckland Council) Act 2009: the effect of the amendment is to allow an Auckland water organisation to give an asset endorsement under *clause 20* of the Bill or to accept a transfer of eligible infrastructure under *clause 88* of the Bill without breaching its obligations under section 57(1) of that Act;

- to the Local Government Official Information and Meetings Act 1987: the effect of the amendment is to require that a land information memorandum issued by a territorial authority under section 44A of that Act must include specified information relating to levy under the Bill if the relevant land is in a levy area:
- to the Local Government (Rating) Act 2002: the amendments provide how the rates recovery provisions of that Act apply in a case concerning both unpaid rates and unpaid levy under the Bill:
- to the Public Works Act 1981: the effects of the amendments are—
  - to allow a local authority to compulsorily acquire land under that Act for the construction of eligible infrastructure, but to prohibit the compulsory acquisition of protected Māori land; and
  - to allow the local authority to transfer land that has been acquired to a responsible SPV for the construction, and for the SPV to transfer the land back to the authority under *clause 88* of the Bill without having to comply with sections 40 to 42A of that Act:
  - to require the authority or the SPV that is disposing of land no longer required for eligible infrastructure to comply with those provisions:
- to the Resource Management Act 1991: the effects of the amendments are,—
  - by including a responsible SPV in the definition of network utility operator under that Act, to enable the SPV to apply for approval as a requiring authority that may—
    - require a designation for a project or work whether or not that SPV has financial responsibility for the project or work; or
    - apply to the relevant Minister to acquire land (other than protected Māori land) for the work:
  - to enable a responsible infrastructure authority to require a designation for work that relates to the construction of eligible infrastructure whether or not the authority has financial responsibility for the work:
  - to enable a responsible infrastructure authority that holds a designation for work that relates to the construction of eligible infrastructure to delegate to a responsible SPV those designated functions, duties, and powers that relate to the construction:
- to the Utilities Access Act 2010: the effect of the amendments is to require a responsible SPV, when accessing or working in a transport corridor, to comply with the same code of practice that other utility operators must comply with.

*Hon Phil Twyford*

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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 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***7 Interpretation**

In this Act, unless the context otherwise requires,—

5

**annual levy** means the amount of levy set by the responsible SPV under **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**

**construction**, in relation to infrastructure, includes—

10

- (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

15

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

20

**court** means, in relation to any matter, the court before which the matter is to be determined

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

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

25

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

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

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

30

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

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

**government agency** means—

35

- (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 of levy liability that is included in a rates assessment 10
- 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 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 15
- levy year**, in a levy period, means a 12-month period beginning on 1 July
- levypayer** means the person who is liable under **section 37** to pay any levy 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 20
- monitor** means the monitor appointed under **section 114**
- previous contribution** has the meaning set out in **section 91(2)**
- proposer** means the person who proposes the use of a levy
- publish**, in relation to the monitor or authority (the **publisher**), means to publish on a Internet site that is maintained by or on behalf of the publisher and is publicly available as far as practicable and free of charge 25
- ratepayer** has the same meaning as in section 10 of the Local Government (Rating) Act 2002
- rating information database** has the same meaning as in section 5 of the Local Government (Rating) Act 2002 30
- 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 35
- 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 5
- (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 10

**responsible infrastructure authority**, in relation to eligible infrastructure, means an agency of one 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: 15
- (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 20
- (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

**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 25

**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 30

**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— 35

- (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

**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.

- 8 Meaning of eligible infrastructure** 5
- (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.
- (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. 10
- (3) In this section,—
- community facilities** has the same meaning as in section 197(2) of the Local Government Act 2002
- community infrastructure** has the same meaning as in section 197(2) of the Local Government Act 2002 15
- 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
- natural hazard** has the same meaning as in section 2(1) of the Resource Management Act 1991 20
- 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) 25
- water services infrastructure** means infrastructure relating to water supply, sewerage, treatment and disposal of sewage, or stormwater drainage. 30
- 9 Meaning of eligible costs**
- (1) In this Act, **eligible costs** means costs that are—
- (a) of a type set out in **subsection (2)**; and 35
  - (b) described in a levy order as the costs that may be recovered 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
  - (b) the costs of financing the construction of eligible infrastructure (the **financing costs**) that are set out in **subsection (4)**; and 5
  - (c) the costs of the administration of a levy (the **levy administration costs**) that are set out in **subsection (5)**; and
  - (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 responsible SPV. 10
- (3) The construction costs are—
- (a) establishment costs; and
  - (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**. 15
- (4) The financing costs are—
- (a) the cost of meeting the responsible SPV’s commitments under any loan, or obligations under any incidental arrangement, in connection with the construction; and 20
  - (b) the costs of refinancing; and
  - (c) a return on the capital provided by holders of debt or equity.
- (5) The levy administration costs are—
- (a) costs incurred by the responsible levy authority in assessing and collecting a levy; and 25
  - (b) costs incurred by the responsible levy authority or the 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 responsible SPV is liable to fund or reimburse those costs. 30
- (6) In this section,—
- construction costs** includes—
- (a) direct construction costs, insurance relating to construction, and project contingency costs incurred by the responsible SPV; and
  - (b) construction costs incurred by any other person, if the responsible SPV is contractually liable to fund or reimburse that person’s construction costs 35



**establishment costs** include—

- (a) costs incurred in the establishment of the responsible SPV; and
- (b) costs incurred by the 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 person (including levy proposal costs) in relation to any matters set out in **paragraph (b)**, if the responsible SPV is contractually liable to fund or reimburse that person's costs

5

**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

10

**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

15

**levy proposal costs** means costs incurred by—

- (a) the proposer of a levy that is authorised by a levy order; and
- (b) the recommender or any other person acting on behalf of the Crown in relation to any levy proposal.

20

## 10 What is an SPV

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 monitor appointed under this Act.

25

### *Protected Māori land*

## 11 Meaning of protected Māori land

30

(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:

35

- (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: 5
- (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: 10
- (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: 15
- (i) land held by a post-settlement governance entity if the land was acquired—
- (i) as redress for the settlement of historical claims; or
- (ii) by the exercise of rights under a Treaty settlement Act or Treaty settlement deed: 20
- (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.
- (2) In this section,—
- common marine and coastal area** has the same meaning as in section 9(1) of the Marine and Coastal Area (Takutai Moana) Act 2011 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 30
- 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 35
- Māori Trustee** means the Māori Trustee established under the Māori Trustee Act 1953

- 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
- 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. 10
- (3) In this section and **section 14**,—
- 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 15
- 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
  - (b) includes a signed deed of settlement awaiting the enactment of the associated Treaty settlement Act. 20
- 12 Te Ture Whenua Maori Act 1993 prevails**
- If a provision of this Act is inconsistent with a provision in Te Ture Whenua Maori Act 1993, the provision in Te Ture Whenua Maori Act 1993 prevails.
- 13 Marine and Coastal Area (Takutai Moana) Act 2011 prevails** 25
- If a provision of this Act is inconsistent with a provision in the Marine and Coastal Area (Takutai Moana) Act 2011, the provision in the Marine and Coastal Area (Takutai Moana) Act 2011 prevails.
- 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. 35

*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 for the purposes of this Act.
- (2) If this Act applies a provision of the Local Government (Rating) Act 2002, that provision applies— 5
- (a) as if any reference to—
- (i) a local authority were a reference to the responsible levy authority; and
- (ii) rates included a reference to a levy; and 10
- (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 15
- (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 responsible SPV. 20

**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 infrastructure. 25
- (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. 30
- (4) **Subpart 3** describes the basic features of levy liability and how the levy is set for each year of the levy period.

## 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.
- (2) The proposer must give the proposal to the recommender. 5

**18 Content of levy proposal**

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

- (a) the proposed levy area:
- (b) details of any protected Māori land in the proposed levy area: 10
- (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:
- (f) the proposed levy period: 15
- (g) the proposed SPV or SPVs, including the commercial relationships between SPVs if more than 1 are proposed:
- (h) for each proposed SPV, forecast financial statements for each year of the levy period, including—
  - (i) all expected eligible costs, described by category; and 20
  - (ii) any expected funding (sources and amounts) in addition to the proposed levy; and
  - (iii) the projected levy revenue:
- (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): 25
- (j) all other information necessary to enable the recommender to assess the levy proposal.

*Levy proposal assessed by recommender***19 Recommender assesses levy proposal** 30

- (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. 35

- (3) A proposer must give to the recommender any additional information required by the recommender for the purpose of assessing a levy proposal.
- 20 Asset endorsement**
- (1) A responsible infrastructure authority may endorse the technical specifications of proposed eligible infrastructure if satisfied that— 5
- (a) those specifications are compatible with any wider infrastructure network of which it is to be a part; and
- (b) the authority will be able to plan for and meet the necessary operational and maintenance costs of the infrastructure after it is transferred to the authority under **section 88**. 10
- (2) The responsible infrastructure authority may give an asset endorsement on request by the proposer, a person acting on behalf of the proposer, or the recommender.
- (3) The person who requests an asset endorsement must give to the responsible infrastructure authority any additional information required by the authority for the purpose of giving the endorsement. 15
- (4) The responsible infrastructure authority may require that specified conditions that the authority considers appropriate be included in a vesting agreement under **section 88**.
- 21 Levy endorsement** 20
- (1) The responsible levy authority may endorse 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 responsible levy authority may give a levy endorsement on request by the proposer, a person acting on behalf of the proposer, or the recommender. 25
- 22 Authorities not restricted by endorsement**
- Giving an asset endorsement or a levy endorsement does not—
- (a) require the responsible infrastructure authority or 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 30
- (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 responsible infrastructure authority or responsible levy authority must give the recommender and the person who requested an asset 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. 35

**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.
- (2) The owners must give any consent in writing to the proposer and the recommender. 5

**25 Recommendation**

- (1) The recommender must not recommend a levy proposal to the responsible Minister unless the recommender has received—
  - (a) all endorsements requested under **sections 20 and 21**; and
  - (b) the consent requested under **section 24**. 10
- (2) In deciding whether to recommend a levy proposal, the recommender must take into account only—
  - (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. 15

**26 Recommendation report**

- (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 20
  - (b) may prepare a report on any other levy proposal given to the recommender.
- (2) A report under this section must contain—
  - (a) the recommender's assessment of the proposal against the purpose of this Act; and 25
  - (b) the recommender's assessment of the proposal against—
    - (i) the matters set out in **section 27(4)(a) to (g) and (5)**; and
    - (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 30
  - (c) the recommender's recommendation about whether the proposed levy should be authorised; and
  - (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 35
    - (ii) any of the matters set out in **section 34** that the recommender considers relevant to the report.

- (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* 5
- 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 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)**. 10
- (2) The responsible Minister may only consider a levy proposal after receiving a recommendation report.
- (3) The responsible Minister—
- (a) is not required to accept the recommendation in the recommendation report; but 15
  - (b) if recommending that a levy be authorised, may only recommend the levy on the terms set out in the recommendation report.
- (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: 20
  - (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: 25
  - (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: 30
  - (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.
- (5) The responsible Minister may recommend that 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. 35



**28 Consultation**

- (1) Before recommending a levy order, the responsible Minister must consult the Ministers responsible for the following Acts:
- (a) the Commerce Act 1986:
  - (b) the Credit Contracts and Consumer Finance Act 2003: 5
  - (c) the Local Government Act 2002:
  - (d) the Local Government (Rating) Act 2002:
  - (e) the Public Finance Act 1989.
- (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. 10

## 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 eligible infrastructure. 15

**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** 20

- (1) A levy order must—
- (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; and 25
  - (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 30
  - (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. 35

- (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 period in **section 39(1)**; 5  
and
  - (b) the levy order must state the earliest date on which the levy period may begin,—
    - (i) by specifying a date; or
    - (ii) by referring to a future event. 10
- (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—
    - (i) specify the maximum amount of levy revenue that may be collected under the levy order; and 15
    - (ii) include the intended annual levy for each year of the levy period.

### **32 Levy: leviable land and categories**

- (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. 20
- (2) The levy order may authorise a levy to be set—
- (a) on a uniform basis for all leviable land in the levy area; or
  - (b) differentially for 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. 25
- (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 30
  - (b) it referred, in addition to the local authority, to—
    - (i) a council-controlled organisation of the local authority; and
    - (ii) any government agency.

**33 Levy: assessment of liability**

- (1) The levy order must set out how liability for the levy is to be assessed for rating units.
- (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. 5
- (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.
- (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. 10
- (5) Clauses 8, 9, and 10 of Schedule 3 of the Local Government (Rating) Act 2002 apply as if they referred—
  - (a) to the provision or availability to the land of a service to be provided using 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 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 25
  - (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; and
  - (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 change of control for the purposes of **section 118**; and 30
  - (g) impose conditions on procurement processes for—
    - (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 35
  - (i) apply any or all of the following:

- (i) **section 96** (which confers a power to construct eligible infrastructure on private land) in relation to all eligible infrastructure (or classes of it):
- (ii) **sections 97 to 102** (which confer a power to construct water services infrastructure on roads and public land): 5
- (iii) either or both of the limits in **section 138** (which modifies the usual rules for creditors) to transactions and dispositions of eligible infrastructure (or any class of them); and
- (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. 10

### Subpart 3—Basis of liability for levy

#### *Preliminary*

#### **35 Application**

This subpart applies once a levy order has been made. 15

#### **36 Leviable land**

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. 20
- (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.

#### **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. 25

#### **39 Levy period**

- (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. 30

#### *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.

- (2) Each levy must—
- (a) relate to a levy year; and
  - (b) be consistent with the levy order.
- (3) In setting the levy, the responsible SPV must calculate it in accordance with the levy order. 5
- (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.
- 41 Rating information needed by SPV**
- 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. 10
- Confirmation of annual levy*
- 42 Proposed annual levy resolution to monitor**
- (1) The responsible SPV must prepare a proposed levy resolution for each levy year of the levy period. 15
- (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.
- (3) If a levy order authorises a levy to be applied to more than 1 category of land, an 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. 20
- (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. 25
- 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
  - (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 30
  - (c) any further information required by the monitor.
- (2) The monitor must review the proposed annual levy resolution and report and determine whether they are in accordance with the levy order. 35

- 44 Monitor confirms proposed resolution and report**
- If the monitor is satisfied that the proposed annual levy resolution and report are in accordance with the levy order, the monitor must—
- (a) confirm that the proposed annual levy is in accordance with the levy order; and 5
  - (b) notify the responsible SPV of the confirmation.
- 45 SPV sets annual levy**
- (1) On being notified of the monitor’s confirmation of annual levy, the responsible SPV must, by resolution, set the annual levy for the coming year in accordance with that confirmation. 10
  - (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.
- 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)**. 15
- 47 Monitor not satisfied**
- If the monitor is not satisfied that the proposed annual levy resolution and report comply with the levy order, the monitor must notify the responsible SPV of— 20
- (a) its decision; and
  - (b) the reasons for the decision; and
  - (c) what the SPV should do in order to satisfy the monitor about the proposed resolution and report.
- 48 Revised proposed annual levy resolution** 25
- (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.
  - (2) **Sections 42 to 47** apply in relation to the revised proposed resolution.
- 49 Monitor directs resolution** 30
- (1) If the monitor does not confirm the revised proposed annual levy resolution, the monitor may—
  - (a) allow the responsible SPV to prepare a further revised resolution under **section 48**; or
  - (b) direct the responsible SPV to prepare an annual levy resolution in terms required by the monitor. 35

- (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. 5

#### **50 SPV sets annual levy as directed**

On receiving a direction under **section 49**, the responsible SPV must,—

- (a) by resolution, set the annual levy for the coming year in accordance with that direction; and 10
- (b) comply with **section 45(2)** in relation to that resolution.

#### *Correcting annual levy*

#### **51 SPV may correct annual levy within same levy year**

- (1) The responsible SPV may correct an annual levy resolution in the levy year for which the levy was set if— 15
  - (a) the SPV considers it desirable to correct the levy because of—
    - (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. 20
- (2) The 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. 25
- (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 30
  - (b) section 41 of the Local Government (Rating) Act 2002 applies.

*Levy period and annual levies can be reduced***52 Levy period and annual levies can be reduced**

- (1) If the responsible SPV's amount of forecast excess levy exceeds the amount specified by the levy order, the SPV must—
  - (a) reduce the levy period; or 5
  - (b) reduce the amount of the levy set in later years under this subpart.
- (2) The SPV must notify the monitor of a reduction in the levy period.
- (3) The monitor must publish a notice of the reduced levy period no later than the day that is 5 working days after being notified of it.

**Part 3**

10

**Administration of levy****53 Outline of this Part**

- (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. 15
- (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. 20

## Subpart 1—Who administers levy

**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— 25
  - (a) the levy order; and
  - (b) **subpart 2**; and
  - (c) a levy administration agreement entered into with the responsible SPV.

**55 Levy administration agreement**

30

- (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.



- (2) The agreement must be consistent with this Part.
- 56 When agreement not reached**
- (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. 5
- (2) The monitor must determine all outstanding terms of the agreement within 20 working days.
- (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. 10
- 57 When SPV recovers unpaid levy**
- (1) This section applies if—
- (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— 15
- (a) may notify the responsible SPV that the authority will not recover the unpaid levy; and
- (b) on notifying the SPV under **paragraph (a)**, is not required to recover that unpaid levy on behalf of the SPV.
- 58 Levy is charge against rating unit** 20
- A levy assessed in respect of a rating unit is a charge against that unit.
- Compare: 2002 No 6 s 59
- 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. 25
- Compare: 2002 No 6 s 60
- Subpart 2—Responsible levy authority administers levy**
- Levy proceeds paid to SPV* 30
- 60 Collected levy paid to 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.

- (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*

**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— 5
- (a) determine the category (if any) to which the unit belongs for setting a levy; and
- (b) calculate the liability for a levy. 10
- (2) The authority must ensure that levy-related information is clearly distinguished from rating information in the database.
- (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— 15
- (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
- (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— 20
- (a) section 27 (rating information database):
- (b) section 28 (inspection of rating information database):
- (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): 25
- (e) section 28C (owner entered on database may require local authority to withhold information from database):
- (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. 30
- (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. 35
- (4) After considering the objection, the monitor must—

- (a) determine whether the assessment was made in accordance with the levy order; 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, direct the responsible levy authority to ensure that the assessment is corrected. 5
- (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.
- 63 SPV to give levy-related information to responsible levy authority 10**
- 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; and 15
  - (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:
- (a) section 30 (interpretation): 20
  - (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):
  - (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): 25
  - (g) section 36 (notification of change of name).
- 65 Rates records and objections, etc, to rates records**
- (1) The responsible levy authority must include information relating to levy liability in the rates record for each rating unit in the levy area. 30
  - (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 **section 61(3)** of this Act).
  - (3) A levypayer may object to the levy-related information in a rates record on the ground that it is incorrectly recorded. 35
  - (4) Objections must be lodged with the responsible levy authority.

- (5) If an objection is lodged,—
- (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. 5
- (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
  - (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 10
  - (c) if the objection is upheld, the responsible levy authority must correct the entry in the rates record accordingly.
- (7) For the purposes of **subsection (2)**, the sections are— 15
- (a) section 37 (rates records):
  - (b) section 38 (inspection of rates records):
  - (c) section 39 (objection to rates records).
- 66 Correction of errors**
- The responsible levy authority, whether or not an objection has been made, may correct an error in— 20
- (a) levy-related information in the rating information database; or
  - (b) a levy record.
- 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. 25
- (2) In applying those sections, a reference—
- (a) to the rating information database must be read as a reference to levy-related information in the rating information database; and 30
  - (b) to a rates record must be read as a reference to a levy 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.
- (3) For the purposes of **subsection (1)**, the sections are— 35
- (a) section 41 (amended assessment if error in rating information database or rates record is corrected):

- (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*

<b>68</b>	<b>Assessment of levy liability</b>	5
(1)	A responsible levy authority must assess the levy to be paid by a levypayer—	
(a)	in accordance with the levy order; and	
(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 data-base, 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 <b>section 33(5)</b> 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
<b>69</b>	<b>Levy assessment included in notice of rates assessment</b>	
(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.	20
(2)	A levypayer is liable for the levy on a rating unit when the authority delivers the notice of rates assessment to the levypayer.	
<b>70</b>	<b>Rates assessment to include information about levy</b>	25
(1)	This section sets out the levy liability information that the responsible levy authority must include in a rates assessment.	
(2)	Section 45 (contents of rates assessment) of the Local Government (Rating) Act 2002 applies to a rates assessment that includes levy liability.	
<b>71</b>	<b>Levy invoice</b>	30
(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.	
(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	35

- (b) as a separate invoice delivered under section 46(4) and (5) of the Local Government (Rating) Act 2002.
- (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. 5
- 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:
- (a) section 47 (issue of amended rates invoice):
- (b) section 48 (delivery of rates assessment and rates invoice): 10
- (c) section 49 (late delivery of rates invoice):
- (d) section 51 (combined rates assessment and rates invoice).

*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: 15
- (a) section 52 (payment of rates):
- (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. 20

*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. 25
- (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.
- (3) Section 58 (imposition of penalty) of the Local Government (Rating) Act 2002 applies to those penalties. 30

*Remission and postponement of levy***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. 5
- (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.
- (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*). 10
- (4) The SPV must give a copy of its levy remission policy and levy postponement policy to—
  - (a) the monitor; and
  - (b) the responsible levy authority. 15
- (5) The monitor must publish the policies.
- (6) The responsible levy authority must also publish the policies.

**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**. 20
- (2) The authority must give notice to the levypayer identifying the remitted levy.
- (3) The authority must record the remitted levy—
  - (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 on behalf of the levypayer in accordance with the relevant objective in the remission policy. 25

**77 Postponement of requirement to pay levy**

- (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— 30
  - (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— 35
  - (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 SPV.

*Recovery of unpaid levy* 5

**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. 10

Subpart 3—When 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)** that the authority will not recover that unpaid levy. 15
- (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: 20
  - (a) section 61 (default by person other than owner):
  - (b) section 62 (recovery of rates if owner in default):
  - (c) section 63 (legal proceedings to recover rates):
  - (d) section 64 (service of summons): 25
  - (e) section 65 (limitation of time for recovery of rates):
  - (f) section 66 (registration of charging order for judgment for rates):
  - (g) section 67 (enforcement of judgment):
  - (h) section 68 (rating sale or lease):
  - (i) section 69 (service of notice): 30
  - (j) section 70 (rating unit may be sold or leased):
  - (k) section 71 (how rating sale or lease must be conducted):
  - (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): 35



- (o) section 75 (application of proceeds of rating sale or lease):
- (p) section 76 (application of balance of proceeds):
- (q) section 84 (Crown land held on lease or licence).

### **81 Legal proceedings to recover levy**

- (1) A responsible levy authority may commence proceedings to recover as a debt due a levy that remains unpaid for 4 months after the due date for payment. 5
- (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. 10

### **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): 15
  - (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): 20
  - (e) any encumbrance on the rating unit: 25
  - (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. 30
- (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. 35

<b>83</b>	<b>Recovery action in relation to Maori freehold land</b>	
	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.	
<b>84</b>	<b>Responsible levy authority must give information to SPV</b>	5
	The responsible levy authority must make available to the responsible SPV all information necessary to enable the SPV to recover unpaid levy under this subpart.	
<b>Part 4</b>		
	<b>Other operational and financial matters</b>	10
<b>85</b>	<b>Outline of this Part</b>	
(1)	This Part provides for matters relating to the operations of an SPV and the financing of the construction of eligible infrastructure.	
(2)	<b>Subpart 1</b> imposes ongoing duties on the responsible SPV.	
(3)	<b>Subpart 2</b> provides for the disposal of excess levy at the end of a levy period and the use of previous development contributions and financial contributions.	15
(4)	<b>Subpart 3</b> gives statutory powers to an SPV that is responsible for the construction of eligible infrastructure.	
(5)	<b>Subpart 4</b> provides for account-keeping and reporting by an SPV and other financial matters.	20
Subpart 1—SPV’s ongoing duties		
<b>86</b>	<b>Levy collected must not exceed maximum levy revenue</b>	
	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.	
<b>87</b>	<b>Levy revenue must be applied only to pay eligible costs</b>	25
	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).	
<b>88</b>	<b>Eligible infrastructure must be transferred under vesting agreement</b>	
(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.	30
(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.	35

Subpart 2—Excess 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 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—
  - (a) credit the rates record of each affected rating unit with the amount that reflects the amount of excess levy; and 10
  - (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.
- (4) The responsible levy authority may retain any amount of excess levy that is less than the excess levy threshold under **section 90**. 15

**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
- \$e is \$50 or the increased amount most recently published by the monitor under this section (if any) 25
- \$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)**),—
  - (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 30
  - (b) publish the increased \$e.

*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, received (or required but not yet received) previous contributions in relation to any eligible infrastructure. 5
- (2) In this section and **sections 92 to 95**, **previous contribution** means either or both of the following:
- (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): 10
- (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).

**92 Responsible levy authority to inform responsible SPV about previous contributions** 15

- (1) As soon as practicable after the relevant levy order is made, the responsible levy authority must give the responsible SPV a list of previous contributions.
- (2) The list of previous contributions must, so far as information available to the responsible levy authority allows,— 20
- (a) identify the eligible infrastructure to which contributions relate; and
- (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. 25

**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,—
- (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 30
- (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)**. 35
- (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.

- (3) The proportion of levy for the purposes of **subsection (1)(b)** is:

$$p = b/c$$

where—

- p is the proportion of the levy that is payable
- b is the expected construction costs of eligible infrastructure to which a previous contribution relates 5
- c is the expected construction costs of all eligible infrastructure.

**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. 10

**95 Sections 209 and 210 of Local Government Act do not apply to those previous contributions** 15

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

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

Subpart 3—SPV’s powers relating to construction 20

*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)*). 25
- (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 construction 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* 30

**97 Powers to construct water services infrastructure on roads and public land (if applied by levy order)**

- (1) This section and **sections 98 to 102** apply only if 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 5
  - (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.
- (3) However, the responsible SPV must exercise the powers under **subsection (1)** in accordance with any reasonable conditions that the person who has jurisdiction over the road or land imposes. 10

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, 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. 15
- (2) **Subsection (1)** is subject to **section 101**.
- (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. 20

Compare: 2009 No 32 s 66

#### **99 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)**.
- (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. 25

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. 30

Compare: 2009 No 32 s 68

#### **101 Urgency**

If work is urgent and necessary because of any defective equipment or other emergency, a responsible SPV— 35

- (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.

Compare: 2009 No 32 s 69

- 102 Appeal by SPV to District Court** 5
- (1) A responsible SPV may appeal to the District Court against all or any of the conditions imposed under **section 97(3)** by the person who has jurisdiction over the road or land.
- (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. 10
- (3) In its determination of any appeal, the District Court may confirm, modify, or cancel any or all of the conditions imposed.
- (4) The decision of the District Court in the determination of an appeal under this section is final. 15

Compare: 2009 No 32 s 70

## Subpart 4—Other financial matters

### *Accounting records and reporting*

- 103 Definitions**
- In this subpart,— 20
- 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
- generally accepted accounting practice** has the same meaning as in section 8 of the Financial Reporting Act 2013 25
- qualified auditor** has the same meaning as in section 35 of the Financial Reporting Act 2013.
- 104 Levy account**
- An SPV must— 30
- (a) pay levy revenue, as soon as practicable after it is received, into an account with a registered bank; and
- (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 SPV. 35

**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.

**106 Audit**

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

**107 Annual report**

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- (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.
- (2) The monitor must publish the annual report.

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**108 Content of annual report**

- (1) An SPV's annual report must contain—
  - (a) the information that is necessary to enable an informed understanding of the SPV's operations during the levy year to which it relates; and
  - (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:
  - (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**;
    - (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
      - (C) the closing balance at the end of the levy year:
  - (d) in relation to surplus levy held and forecast excess levy,—
    - (i) every decision to hold surplus levy to meet future eligible costs; and

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	(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:	
	(e) any additional information required by the monitor under <b>section 109</b> .	
<b>109</b>	<b>Additional information required by monitor</b>	5
(1)	For the purposes of <b>section 108(2)(e)</b> , the monitor may (by written notice to the SPV at least 4 months before the start of a levy year) require a SPV to include additional information in its annual report for that year.	
(2)	The monitor must publish any requirement given under this section.	
	<i>No guarantees or other liability to support SPV</i>	10
<b>110</b>	<b>Responsible levy authority must not guarantee or financially support SPV</b>	
(1)	A responsible levy 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 to an SPV.	15
(3)	In this section, <b>lend money or provide financial support</b> —	
(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	20
(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	
(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.	25
	Compare: 1989 No 44 s 65K; 2002 No 84 ss 62, 112	
<b>111</b>	<b>Crown liability generally</b>	30
(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	35

- 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

## Part 5

### Monitoring, remedies, enforcement, and miscellaneous

- 113 Outline**
- (1) This Part provides for miscellaneous matters. 25
- (2) **Subpart 1** provides for—
- (a) monitoring of the SPV by the monitor:
- (b) the ability for the monitor to recommend that a Crown Manager be appointed for the 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.
- (6) **Subpart 5** provides for miscellaneous matters. 35
- (7) **Subpart 6** provides for 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 SPV's compliance with this Act and the levy order; and
- (d) inquire into, and intervene in, a responsible 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—

25

- (a) the annual levy revenue set by the SPV for the coming 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 requested by the monitor from the authority's rating information database and rates records).

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- (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.
- (2) The monitor may direct the SPV not to pay any specified distributions to prohibited persons, and the SPV must comply with that direction. 5
- (3) In this section,—
- distribution** means any distribution by a company or limited partnership, or other payment of a similar nature to a distribution
- 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 10
- restricted change of control** means a change of control as defined by the levy order for the purposes of this section.
- 119 Inquiry into SPV's operations** 15
- The monitor may inquire into any aspect of an SPV's operations if—
- (a) the monitor reasonably believes that a significant problem relating to the SPV could exist; or
- (b) the monitor has any concern relating to—
- (i) any matter that could potentially become a significant problem relating to the SPV; or 20
- (ii) the SPV's compliance with this Act or the levy order; or
- (iii) the SPV's financial stability; or
- (iv) the SPV's governance and management.
- 120 Direction to address significant problem** 25
- (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 30
- (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. 35

**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 a Crown Manager to the SPV.

Subpart 2—Role of Crown Manager 5

**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—
- (a) the responsible Minister reasonably believes that a significant problem with the responsible SPV exists; and 10
  - (b) the monitor has made a written recommendation that a Crown Manager be appointed.
- (2) The notice of appointment must include—
- (a) the purpose of the appointment, including—
    - (i) an outline of the problem in relation to which the Crown Manager has been appointed; and 15
    - (ii) the extent of the Crown Manager’s authority; and
  - (b) the start and end dates of the Crown Manager’s appointment; and
  - (c) the start and end dates of the management period.
- (3) The responsible Minister must notify the appointment of a Crown Manager— 20
- (a) to the responsible SPV; and
  - (b) in the *Gazette*.

**123 Functions, duties, and powers of Crown Manager**

- (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. 25
- (2) The functions and powers of a Crown Manager include all matters for which the responsible SPV is responsible.

**124 Information to responsible Minister and monitor**

- (1) A Crown Manager must inform the responsible Minister and the monitor about— 30
- (a) the steps being taken to address the significant problem; and
  - (b) the progress of those steps.
- (2) The monitor, if satisfied that the significant problem has been addressed, must inform the responsible Minister. 35

**125 Termination of appointment**

- (1) The responsible Minister may terminate the appointment of a Crown Manager at any time.
- (2) No compensation is payable to the Crown Manager in relation to the termination of their appointment. 5

**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 or duties or the exercise of their powers.

**127 Costs of Crown Manager** 10

- (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.
- (2) The SPV must not pay those costs by increasing the levy or extending the levy period. 15

**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
  - (b) to be reimbursed, in accordance with the fees framework, for actual and reasonable travelling and other expenses incurred in performing their function. 20
- (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. 25

## 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.

*Modification of Receiverships Act 1993 for SPVs* 30**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**

- (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. 5
- (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 10

**132 Receiver appointed by court**

- (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 levy.
- (2) The court must, as it considers appropriate, specify— 15
- (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— 20
- (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. 25
- (5) This section is subject to **sections 136 and 137**.

Compare: 1993 No 122 s 40B

**133 Powers of receiver** 30

- (1) This section applies if—
- (a) an 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. 35
- (2) From the date of the receiver's appointment until the termination of that appointment, all powers of the SPV that relate to a levy under this Act are conferred on, and may be exercised by, the receiver.

- (3) The receiver may exercise the SPV's powers as agent of the 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).  
Compare: 1993 No 122 s 40C(3), Schedule 1 cl 8; 2002 No 84 s 115 5
- 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)**.  
Compare: 1993 No 122 Schedule 1 cl 10
- 135 Constraints on receiver** 10
- (1) The receiver must ensure that no action of the receiver prevents any activities of the responsible SPV or the responsible infrastructure authority that are essential for the maintenance of public health and safety, regardless of anything in—
- (a) this Act or the Receiverships Act 1993; and 15
- (b) any instrument providing for or governing the appointment of the receiver.
- (2) An action of the receiver is only to be taken to prevent an activity of the SPV or authority if—
- (a) the action necessarily results in that outcome; and 20
- (b) the outcome is not more fairly attributable to the act or omission of a person outside the receiver's control.
- (3) A receiver appointed under **section 131 or 132**, in exercising any powers (including those of a manager), is not entitled to control, dispose of, or otherwise interfere with the SPV's or authority's ability to exercise or perform its rights, powers, and duties in relation to assets not charged in favour of the appointor of the receiver. 25
- (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: 30
- (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:
- (b) any amounts payable in respect of claims by law to be preferred to claims under any charge over those assets: 35
- (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)**:



- (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: 5
- (f) any residue to, or for the benefit of, the SPV as it directs.

Compare: 1993 No 122 s 40D

### 136 Protection of receiver

- (1) No proceedings lie against a receiver of a responsible SPV for any breach of **section 135(1)** by— 10
  - (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. 15
- (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).
- (4) A receiver appointed by the court (and any adviser and delegate) must be indemnified by the SPV. 20
- (5) A receiver appointed under a charge document (and any adviser and delegate) must be indemnified out of the assets subject to receivership, unless the terms of the appointment of the receiver provide otherwise.
- (6) **Subsections (1) and (3)** do not apply to an act or omission of a person that constitutes bad faith or gross negligence. 25
- (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. 30

Compare: 1993 No 122 s 40E

### 137 Exception in relation to Crown Manager

If a Crown manager is appointed under this Act in relation to the SPV (either before or after a receiver is appointed under a charge instrument or by the High Court), the High Court may order that any receiver so appointed may not, until the High Court so orders, exercise any of the rights, powers, and duties of a receiver. 35

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)**

- (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. 5
- (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.
- (3) In this section, **relevant transaction** or **relevant disposition** means— 10
- (a) the transfer of eligible infrastructure by the responsible SPV to a responsible infrastructure authority under **section 88**; 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. 15

## Subpart 4—Enforcement

*Injunctions and compliance orders***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. 20

**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— 25
- (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.
- (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. 30
- (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.
- (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. 35

**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.
- (2) The court may make a compliance order if it is satisfied that the SPV has failed to comply with a provision of this Act or the levy order. 5
- (3) The court may make a compliance order on any terms that it considers appropriate.
- (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 10
  - (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. 15
- (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 SPV if the court is satisfied that the SPV has suffered, or is likely to suffer, loss or damage because of the contravention. 20

**143 Court may make compensatory order**

- (1) The court may, on application by the monitor, make a compensatory order if the court—
  - (a) is satisfied that—
    - (i) a person has contravened or was involved in a contravention of this Act or a levy order; and 25
    - (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. 30
- (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).
- (4) **Subsection (3)** does not limit **subsection (2)**. 35
- (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—
- (a) A's contravention was due to reasonable reliance on information supplied by another person; or 5
- (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
- (ii) A took reasonable precautions and exercised due diligence to avoid the contravention. 10
- (2) For the purposes of **subsection (1)(a) and (b)(i)**, another person does not include a director, an employee, or an agent of A.
- Compare: 2013 No 69 s 499

#### 145 Defences for person involved in contravention 15

- (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.
- (2) In any proceeding under **section 142 or 143** against B for involvement in the contravention, it is a defence if B proves that— 20
- (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.
- (3) For the purposes of **subsections (1)(b) and (2)(a)**, another person does not include a director, 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— 30
- (a) has aided, abetted, counselled, or procured the contravention; or
- (b) has induced, whether by threats or promises or otherwise, the contravention; or
- (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or 35
- (d) has conspired with others to effect the contravention.
- Compare: 2013 No 69 s 533

*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 officer of the SPV.

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

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(a) the power to delegate; or

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

**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 under this Act:

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(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):

20

(d) section 136 (notification).

## Subpart 6—Amendments to other Acts

**155 Amendments to other Acts**

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

**Schedule 1**  
**Transitional, savings, and related provisions**

**s 5**

**Part 1**  
**Provisions relating to this Act as enacted**

5

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:

5

- (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(5), insert:

- (4) A contract 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 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 capital cost 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

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.

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.

**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 endorsement under **section 20** of the Infrastructure Funding and Financing Act 2019; or
- (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.

**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—
- (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 30
- (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.

**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. 15

**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 20
- (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** 25

**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 30

**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 35

**Public Works Act 1981 (1981 No 35)**—*continued*

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.

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:

*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.

**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

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**

**Resource Management Act 1991 (1991 No 69)**—*continued*

**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.

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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

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(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.

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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).

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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.

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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

30

After section 180, insert:

**180A When financial responsibility is transferred to 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

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**Resource Management Act 1991 (1991 No 69)**—*continued*

- (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
  - (e) the authority is the responsible infrastructure authority in relation to the construction. 5
- (2) The designation continues to apply to the construction work.
- (3) The responsible infrastructure authority may, by written notice, delegate to the SPV those functions, duties, and powers in relation to the designation that relate to the construction of eligible infrastructure. 10
- (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. 15

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.

**Utilities Access Act 2010 (2010 No 98)** 20

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
  - (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**: 25

In section 4, insert in their appropriate alphabetical order: 30

**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 35



**Infrastructure Funding and Financing Bill**

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