

## Submission by Hamilton City Council

### INFRASTRUCTURE FUNDING AND FINANCING (IFF) BILL

13 March 2020

#### 1.0 INTRODUCTION

- 1.1 Hamilton City Council (HCC) welcomes the opportunity to make a submission to the 'Infrastructure Funding and Financing Bill' (the Bill).
- 1.2 HCC is a high growth Council and having access to more financing tools that support the funding and delivery of growth infrastructure is critical to enabling a range of housing and business land offerings in Hamilton faster.
- 1.3 HCC supports the development of alternative infrastructure financing models which present opportunities with other initiatives such as the Hamilton–Auckland Corridor Plan, the creation of Kāinga Ora and a potential partnership deal to implement the long-term outcomes from the Metro Spatial Plan.
- 1.4 IFF presents a great opportunity for HCC to provide more housing faster through, for example, the opening of its greenfield growth cell Rotokauri and its potential for around 3,000 new houses over the life of the cell.
- 1.5 HCC wishes to acknowledge the collaborative approach the government has taken through its partners and agencies, including the DIA, Treasury, Crown Infrastructure Partners (CIP), and MHUD over the last 12 months. This includes preliminary investigations for the Rotokauri growth cell in Hamilton. Strong working relationships such as this will improve the likelihood of a successful and efficient deployment of the IFF model.
- 1.6 HCC's high-level submission points with brief commentary are set out in the body of this document, with further detail and selected references to the Bill set out in the Appendix.

#### 2.0 EXECUTIVE SUMMARY

- 2.1 HCC supports the Bill and its intention to provide an innovative funding and financing model which supports the provision of infrastructure for housing and urban development by addressing funding constraints and supporting community needs.
- 2.2 This submission addresses the following broad aspects of the Bill:
  1. Central and local government collaboration
  2. IFF approval process
  3. The extent of funding
  4. Infrastructure
  5. Public Consultation
  6. Affordability
  7. Levy criteria and implementation
  8. Development contributions

### 3.0 CENTRAL AND LOCAL GOVERNMENT COLLABORATION

#### Key submissions:

- That the government and its agencies continue to work closely with local government authorities in the development, approval, implementation and administration of IFF opportunities, in order to successfully achieve the purpose of the Bill.

- 3.1 Collaboration and a genuine partnership between central and local government will be critical to the Bill achieving its ambitions in an efficient manner. Matters of land use, infrastructure delivery, and processing of consents are domains local authorities have extensive knowledge and experience in.
- 3.2 HCC wishes to acknowledge the collaborative approach the government has taken with HCC through its partners and agencies, including the DIA, Treasury, Crown Infrastructure Partners (CIP), and MHUD during its scoping phase for IFF funding candidates. This has provided for good flow of information, robust conversations, and greater certainty.
- 3.3 HCC acknowledges the existing collaborative endeavors that the Government is making toward progressing the broader Urban Growth Agenda. HCC has submitted on the Urban Development Bill and supports the ability for Kāinga Ora to use alternative financing models such as those available through the IFF. HCC sees both of these bills as complementary and essential for enabling urban development in high growth areas.

### 4.0 IFF APPROVAL PROCESS

#### Key submissions:

- The recommender must not recommend a levy proposal to the responsible Minister unless the recommender has received notifications of positive endorsements from the territorial authority.
- That HCC will have the necessary input, influence and visibility to the process by which the SPV appoints contractors to construct assets, which will in turn be vested to HCC.
- That the deployment of IFF tools be directed to current and future structure planned areas to leverage integrated planning and strategic investment.
- Ensure appropriate and sufficient independence between the Facilitator and the Recommender, and the establishment and representation on the SPV.
- **Bill reference includes:** Part 2 Subpart1- Consideration of levy proposal

- 4.1 Territorial authorities are essential participants in the IFF scheme, yet there are suggestions in the Bill that territorial authority endorsement and approvals are diluted in important aspects of the Bill. For example:
- 4.2 The recommender must not recommend a levy proposal unless the asset endorsement and levy endorsements requested have been received but there is no obligation on any person to request the endorsements. Further to this, the endorsement notifications may be a decision not to give the endorsement, but it appears that the recommender can recommend a levy order despite the endorsements being negative.
- 4.3 This could lead to wholly unsatisfactory outcomes, including territorial authorities being in breach of other obligations under the Local Government Act 2002 and resource consent conditions, or rejecting subdivision resource consents because the infrastructure does not meet its requirements and services cannot adequately be provided to homeowners.

4.4 We have suggested changes to reflect the above considerations in the Appendix.

## 5.0 EXTENT OF FUNDING

### Key submissions:

- HCC supports the fact that IFF funding can be used to fund a broad range of infrastructure, including community infrastructure and new greenspace.
- Close consideration should be given to the total costs facing Council even with IFF funding (including “spillover costs” and any liability through the GSP). Long-term growth investment by councils to build communities must be financially sustainable and politically acceptable, and the IFF mechanism must satisfy these conditions in order to be successful in its broader intentions.
- Greater clarity is sought through the legislation or guidance material about acceptable levy levels, noting that the size of the levy will influence the extent that IFF can be used to fund infrastructure and enable development in an area.
- That the full range of infrastructure enabled under the legislation is contemplated for funding, to enable the efficient development of greenfield cells, taking into account its other planned investment or progressive agreements it may be negotiating. This may include road upsizing, trunk mains, and green space.
- **Bill references includes:** Sections 7-9, Part 2 Subpart 1-Consideratoin of levy proposal.

- 5.1 For example, in Rotokauri (based on the discussions to date and broadly speaking) the IFF mechanism may fund around 40% of the circa \$230 million required infrastructure costs for the cell (all in years 1-10), with the balance of 60% for HCC to fund (across 15 years) which is largely funded late in HCC’s LTP, or not at all.
- 5.2 In the Rotokauri example, IFF is proposed to fund selected strategic infrastructure but not local roads and pipes, or community infrastructure and greenspace. An important HCC strategic outcome in greenfield cells is to build communities which include community or greenspace infrastructure and achieve strong environmental outcomes.
- 5.3 HCC acknowledge that in order to fund 100% of the cost of infrastructure to service the cell through an IFF levy, including parks and open spaces, would render the levy unaffordable. An acceptable balance needs to be arrived at which is acceptable to financiers, Ministers, levy-payers, and Elected Members. This represents a healthy challenge.

## 6.0 INFRASTRUCTURE

### Key submissions:

- Costs to secure designations, purchase land and undertake works in preparation for developing the levy area should explicitly be deemed establishment costs and should be recoverable by the local authority.
- The SPV should be required to obtain, and assign to HCC, industry standard warranties for defective construction.
- The relevant territorial authority may often have expended significant sums for planning and preparatory infrastructure and land acquisition to get projects to a point where the SPV takes over. Those costs and infrastructure should expressly be able to be recovered as eligible costs and construction costs.

- The Infrastructure to be constructed by the SPV often falls within a much larger network and planning framework of the relevant territorial authority, and greater consideration needs to be given to that.
- The IFF framework must be deployed in such a way that cost savings are preserved through any transition to IFF from Private Developer Agreements (PDAs) or any other arrangement. This includes provision in the legislation enabling efficient novation of such agreements.
- The legislation should preserve the flexibility and interest savings of moving a HIF project into an IFF model.
- That it be explicit in section 88 of the Bill that HCC will not be required to pay for the infrastructure that is being transferred to it.
- Clarity is sought as to how NZTA funding is to be addressed in the SPV funding. NZTA is a material funding source for councils for transport infrastructure.
- **Bill reference includes:** Part 2 Subpart 1 - Consideration of levy proposal, Part 4 – Other operational and financial matters and Subpart 1 – SPV’s ongoing duties and Subpart 3-SPV’s powers relating to construction, Subpart 4 - Other financial matters.

- 6.1 A potential levy area will always physically sit within a larger area and infrastructure network and be part of a territorial authority’s planning for its district, and that context needs to be taken into account.
- 6.2 Infrastructure constructed by the SPV will be connected to, and place demands upon, wider infrastructure networks, including water, wastewater and transport. The network demand brought forward by the SPV may trigger a need for, or bring forward, other investment in headworks or network expansion or capacity, which have not been planned for in the near future and may not be presently affordable. HCC, as a potential responsible infrastructure authority, needs the ability to take those considerations into account when making an asset endorsement.
- 6.3 In many cases, a strategic level of planning will already have been undertaken by HCC, such as routes and capacity for transport corridors, and the SPV should be required to reflect that planning in its infrastructure construction to ensure good planning outcomes.
- 6.4 Water take and wastewater discharge are subject to resource consent conditions from the relevant regional council. The impact of bringing forward demand on those conditions also needs to be able to be taken into account by HCC.
- 6.5 HCC will in many cases have undertaken actions to secure designations, purchase land and undertake works in preparation for developing the levy area. Those costs should be explicitly be establishment costs and should be recoverable by the local authority. At present, only planning and arranging for commencement of construction work in relation to a levy proposal are recoverable, and then only if the SPV is contractually liable to reimburse that person’s costs, and there is no requirement on the SPV to reach that agreement with HCC.
- 6.6 The IFF framework must be deployed in such a way that cost savings are preserved through any transition to IFF from Private Developer Agreements (PDAs) or any other arrangement, whether it is under development or already agreed.
- 6.7 Accordingly, the legislation should allow for existing agreements, including construction contracts, to be novated to the SPV if appropriate to avoid costly and inefficient re-tendering and procurement processes or jeopardise the agreement itself. More pointedly, if construction is already underway, a levy could not practically be created for that infrastructure and this flexibility would allow more projects that are appropriate for IFF to be funded.

- 6.8 In addition, HCC is in advanced discussions with developers to commence development in areas that are suitable for the IFF funding, such as the Rotokauri growth cell in Hamilton’s North-West. These developers might be happy to accommodate the IFF model, but do not want to hold their development until the legislation is in place and a levy approved.
- 6.9 HCC has been the beneficiary of the Central Government initiative the Housing Infrastructure Fund. While HCC appreciates the concessionary regime, the relevant funding is debt on its balance sheet. Given the advanced state of planning and even commencement of this project, it would be a natural fit for the infrastructure funding and financing model. HCC would like the legislation to preserve the flexibility and interest savings of moving the HIF project into an SPV model.
- 6.10 HCC’s understanding is that a levy area could conceivably encompass the district of more than one territorial authority. The complexity of catering for that eventuality is partly reflected in the legislation (see for example the definition of responsible levy authority), but more change may be needed to ensure this complexity is fully catered for (for example, who will be the responsible infrastructure authority?)
- 6.11 Land and land acquisition costs are a key component and cost of infrastructure but are not explicitly infrastructure or costs that can be recovered under the legislation. HCC would request that land be added to the legislation as eligible infrastructure and eligible costs.
- 6.12 As the ultimate asset owner of the infrastructure, HCC has an interest in ensuring that the infrastructure is built to last. Accordingly, HCC would request that the legislation:
- a) Explicitly require the SPV to ensure that whole of life costs of the infrastructure be minimised without compromising the council’s quality standards and acceptance rights, and
  - b) The SPV should be required to obtain, and assign to HCC, industry standard warranties for defective construction.

## 7.0 PUBLIC CONSULTATION

### Key submissions:

- That the timing of IFF deployment is aligned preferably with the local government Long Term Plan cycle, or if that is not practicable the Annual Plan process. This promotes resource efficiency and transparency, will allow proper integration of IFF funding in financial strategy and ensure local authorities can appropriately consult their communities.
- Any assessment on the viability of an IFF arrangement should include a detailed analysis of the four wellbeing’s to ensure optimum community and environmental outcomes.

- 7.1 Ideally, IFF projects should align with local government planning cycles. While in theory councils can make an LTP amendment at any time, the significance and complexity of the IFF tool would compromise its robustness and open councils to criticism around process and transparency.
- 7.2 HCC submits that those affected by a levy should be consulted prior to implementation. Allowing community stakeholders the opportunity to provide feedback on proposals will ensure that the community understands the purpose of the levy, the benefits and costs, and the opportunity to plan ahead.
- 7.3 The Local Government (Community Wellbeing) Amendment Act 2019 reinstated the responsibility of local government to improve the social, economic, environmental and cultural wellbeing of the communities that they serve. An important strategic outcome for HCC, particularly for greenfield sites, is to build communities and not simply a collection of houses.
- 7.4 The Bill should place importance on wellbeing as being central to achieving growth and supporting the needs of communities. Any assessment and subsequent recommendation of an IFF

arrangement should include a detailed analysis of the four wellbeing's to ensure optimum community and environmental outcomes.

## 8.0 AFFORDABILITY

### Key submissions:

- That the Levy Endorsement provision is expanded to ensure Councils' can consider the affordability for land owners that will pay the levy, rather than the drafting in the Bill which only considers the effect on councils' ability to collect general rates.
- Protections need to be put in place to ensure that future buyers are aware of the levy. The Bill should mandate disclosure of the levy on LIM reports and property titles.
- Considering their potential impact on residential levy payers, Council seeks confirmation that the levy, in addition to rates, forms part of the calculation for the Rates Rebate scheme provided by the Department of Internal Affairs.
- HCC recommends that levy postponement guidelines and templates are formed to support a standardised, consistent levy postponement policy.
- HCC submits that there should be an option for buyers to make a lump sum payment for the full levy at the time of purchase or a later date as requested. This would allow home owners to consolidate their liabilities.
- **Bill reference includes:** Part 2 Subpart 3 – Basis of liability for levy. Part 3 Subpart 2-Responsible levy authority administers levy.

- 8.1 HCC recognises the need for the ability of the levy authority to postpone the levy in some circumstances. Rates postponement is a lesser used tool within the LGRA, given the increase in the availability and value of the rates rebate scheme. Rates postponement can be administratively heavy and the application differs amongst local authorities as each is required to adopt their own policy. The rationale/intention behind Levy postponement needs to be made clear. HCC recommends that levy postponement guidelines and templates are formed to support a standardised, consistent levy postponement policy.
- 8.2 Further research is requested on the levels of tolerance buyers, Ministers and the community might have towards the size of the levy, as well as how the cost of the levy will impact house prices and affordability.
- 8.3 The Bill should consider existing landowners who may have no intention to sell or subdivide their property. A levy under IFF is likely to be an unforeseen additional cost that may be unaffordable for some existing landowners. As discussed in the next section, HCC submits that the Levy Postponement Policy for the levy area should include provisions for supporting existing land owners in these situations.
- 8.4 Certainty about the long-term cost of the Levy is required for the cost to be correctly priced into the purchase price of a home. It is also required to ensure buyers can make informed decisions around current and future affordability of a home.
- 8.5 HCC submits that the Government's Rates Rebate Scheme should apply to the levy to ensure that the wellbeing of those with low household income is not adversely affected by the levy.

## 9.0 LEVY CRITERIA AND IMPLEMENTATION

### Key submissions:

- HCC Supports the matters set out in the Bill which the Responsible Minister is required to take into account when considering the levy proposal for recommendation to the Governor General.
- That annual recalculation of the levy is predictable and transparent to levy-payers and variation is minimised to provide certainty to levy payers, developers, and councils.
- That the levy mechanism is constructed to be robust in changing political, planning and infrastructure environments over the life of the levy, avoiding the need for future structural change.
- HCC submits that non-capital costs attributable to the introduction of an IFF levy by HCC, such as developing technology, assessment resource, and administration, be recoverable from the SPV.
- **Bill reference includes:** Part 2 – Authorisation of levy, Part 3, Administration of levy.

- 9.1 While the SPV will own the levy and be responsible for its construction, it is also in the interests of the council, those paying the levy, and the developers that the levy works well and integrates well with the broader growth funding environment.
- 9.2 The successful implementation of the levy will strongly rely on how it is structured. In particular the identification of beneficiaries both inside and outside the levy area, and whether the levy structure can endure a dynamic development environment over the long recovery period without needing regular structural change.
- 9.3 We acknowledge that the proposed legislation appears reasonably straightforward when linking the implementation of the Levy to the Local Government Rating Act and providing flexible when referring to the Levy agreement.
- 9.4 It is likely that levy payers will identify the levy as ‘rates’, irrespective of the ultimate ownership of the levy. As such, HCC would like to see appropriate protections in place for prospective purchasers of land within the levy area, where all relevant information is supplied at every opportunity.
- 9.5 In order to comply with the requirements of the legislation, it is likely that councils will incur costs for developing technology, assessment resource, and administration. Existing rating software may not easily cater for the management of the levy, and bespoke solutions may be required. HCC submits that new costs attributable to the introduction of an IFF levy be recoverable from the SPV.

## 10.0 DEVELOPMENT CONTRIBUTIONS

### Key submissions:

- That the focus remains to ensure the IFF mechanism is complementary to the recovery of growth costs through development contributions.
- That concurrent use of development contributions with IFF levys is not compromised through the legislation, so as not to prevent legitimate cost recovery through development contributions for infrastructure in a levy area.
- Development contributions already collected which must be transferred to the SPV must take into account which infrastructure those development contributions were collected to fund, and not leave councils with unfunded liabilities.
- **Bill reference includes:** Sections 91-95.



- 10.1 Development contributions, for all growth councils, are a large and reliable source of funding for growth infrastructure in Hamilton. It is important that the introduction of an IFF levy compliments development contributions and does not directly or indirectly diminish councils overall funding sources for growth and therefore its ability to provide for more houses faster.
- 10.2 This could occur where the identification of beneficiaries under the SPV differs from the development contributions beneficiary areas, leaving unfunded 'spillover' costs which must be picked up by the general ratepayer, or where deficits are created by the transfer of development contributions to the SPV.

## 11.0 CONCLUSION

- 11.1 HCC thanks the Transport and Infrastructure Committee for the opportunity to submit on the Bill.
- 11.2 HCC supports the Bill and its intent, including reducing the impact of local authority financing and funding constraints, providing for continued growth, and supporting community needs.
- 11.3 HCC asks that consideration be given to the points raised in this submission and taken into account in the legislation before it is finalised.

## 12.0 FURTHER INFORMATION AND HEARING

- 12.1 Should the Transport and Infrastructure Committee require clarification of the points raised in this submission, or additional information, please contact Greg Carstens (Growth Funding and Analytics Unit Manager) on 07 959 9064, email [greg.carstens@hcc.govt.nz](mailto:greg.carstens@hcc.govt.nz) in the first instance.
- 12.2 **HCC wishes to be heard** at the Select Committee hearing for the Infrastructure Funding and Financing Bill.

Yours faithfully



**Richard Briggs**  
**CHIEF EXECUTIVE**



## APPENDIX

Section	Issue	Question/Edit
Section 8	<p><b>Meaning of Eligible Infrastructure</b></p> <p>There are current projects underway that may be transferred to an SPV. For example, HCC has discussed with officials the possibility of transferring the HIF financed projects into an SPV. The current definition of eligible infrastructure would prevent this being refinanced with the new funding tool.</p> <p>It is not clear that eligible infrastructure includes the purchase of land on which the infrastructure is situated.</p> <p>Eligible infrastructure should be established on a whole of life basis so as not to prejudice the responsible infrastructure authority.</p>	<p>(2) The type of infrastructure for which a levy may be authorised is <del>new or upgraded</del></p> <p>a) water services infrastructure; or            (b) transport infrastructure; or            (c) community infrastructure or community facilities; or            (d) environmental resilience infrastructure,</p> <p><u>and in each case includes land on which that infrastructure is constructed or under, over or through which it passes.</u></p> <p>Add New section 8(3):</p> <p><u>(3) The eligible infrastructure must be designed to minimise the whole of life costs of the eligible infrastructure.</u></p>
Section 9	<p><b>Meaning of Eligible Costs</b></p> <p>Similar to the point above, construction costs need to include costs that the responsible infrastructure authority has already incurred to advance eligible infrastructure. If this is not included, cash strapped councils will not be incentivised or perhaps able to advance projects unless and until an SPV has commenced, potentially putting projects back by years.</p>	<p>In this section,—</p> <p><i>construction costs</i> includes—</p> <p>(a) direct construction costs, insurance relating to construction, and project contingency costs incurred by the responsible SPV; and</p> <p>(b) construction costs incurred by any other person, if the responsible SPV is contractually liable to fund or reimburse that person’s construction costs <u>or a responsible infrastructure authority has incurred costs in connection with the eligible infrastructure in the levy order</u></p> <p><i>establishment costs</i> include—</p> <p>(a) costs incurred in the establishment of the responsible SPV; and</p> <p>(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</p> <p>(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 <u>or</u></p> <p><u>(d) a responsible infrastructure authority has incurred costs in connection with the eligible infrastructure in the levy order</u></p>

Section	Issue	Question/Edit
Section 15	<p><b>Application of Local Government (Rating) Act 2002</b></p> <p>The proposed legislation simply references sections 7-9 of the LGRA, defining rateable land. By default, exemptions for some land will apply as specified within Schedule 1 of the LGRA. Under this application, growth related targeted rates are unable to be applied to certain property types.</p>	<p>Further consideration should be given to the appropriateness of the current exemptions, how these property types may derive benefit from the development; how these exemptions may impact the level of targeted rate to be paid by other property owners; and in particular to how any change of use (from rateable land to non-rateable land) throughout the levy period would impact the calculation/quantum of the levy to existing levypayers.</p>
Section 18	<p><b>Content of Levy Proposal</b></p> <p>See key submission allowing existing arrangements to be transferred to the SPV.</p> <p>See also suggested changes to section 34.</p>	<p>Include the following as a new clause:</p> <p><u>A levy proposal for the authorisation of a levy must include the following information:----</u></p> <p><u>( ) whether any existing agreements are to novated to the SPV and identifying those agreements;</u></p>
Section 20	<p><b>Asset Endorsement</b></p> <p>See key submissions relating to wider network effects.</p>	<p>(1) A responsible infrastructure authority may endorse a levy proposal <del>the technical specifications of proposed eligible infrastructure</del> if satisfied that—</p> <p>(a) <del>those specifications</del> <u>the proposed eligible infrastructure specifications, including the route,</u> are compatible with any wider infrastructure network of which it is to be a part; <del>and</del></p> <p>(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;</p> <p><u>(c) the levy order will not cause it to be in breach of any law or other existing obligation; and</u></p> <p><u>(d) it has included in its long term plan in the appropriate year(s) the other infrastructure that is not being constructed by the SPV and that may or will be needed in order to properly provide services to the levy area and/or maintain the level of service to other ratepayers in its district.</u></p> <p><u>Insert new section 20(3):</u></p> <p><u>(3) The recommender must request an asset endorsement from the responsible infrastructure authority if no other person has requested an asset endorsement.</u></p>

Section	Issue	Question/Edit
Section 25	<p><b>Recommendation</b></p> <p>The recommender must not recommend a levy proposal if the responsible infrastructure authority has not provided a positive endorsement taking into account the considerations in section 20 (as modified by this submission).</p> <p>Territorial authorities are essential participants in the IFF scheme, yet there are suggestions in the Bill that territorial authority involvement and consent is diluted in important aspects of the Bill. For example:</p> <ul style="list-style-type: none"> <li>a) The recommender must not recommend a levy proposal unless the asset endorsement and levy endorsements requested have been received (section 25(1) and the recommender is required to give the asset endorsement and levy endorsement notifications to the minister (section 26(3)(b)), but there is no obligation on any person to request the endorsements; and</li> <li>b) The endorsement notifications may be a decision not to give the endorsement, but it appears that the recommender can recommend a levy order despite the endorsements being negative.</li> </ul> <p>This could lead to wholly unsatisfactory outcomes, including:</p> <ul style="list-style-type: none"> <li>a) territorial authorities being in breach of other obligations as a result of a levy order being imposed, including under the Local Government Act 2002 and resource consent conditions;</li> <li>b) the territorial authorities rejecting subdivision resource consents because the infrastructure does not meet its requirements and services cannot adequately be provided to homeowners.</li> </ul>	<p>(1) The recommender must not recommend a levy proposal to the responsible Minister unless the recommender has received-</p> <p>(a) <u>Notifications of positive endorsements provided under section 23;</u></p> <p>....</p>
Section 27(5)	<p><b>Recommendation to the Governor General</b></p> <p>The Minister can only recommend that a limit on the application of the claw back provisions of the Companies Act 1993 or Property Law Act for undervalue be applied if it is not likely to unfairly prejudice any creditor of the responsible SPV.</p> <p>However, this is the entire point. The SPV is a stand alone finance vehicle and its investors will be going in with eyes wide open. HCC cannot be in the position where it has ratepayers that are receiving infrastructure services but the infrastructure is clawed back and sold to other investors.</p>	<p>Who will guarantee service to these ratepayers? Once the infrastructure is vested, there can be no going back. The SPV will have the ability to pursue the levy as its primary remedy.</p> <p>The limits should be applied to all levy areas.</p>

Section	Issue	Question/Edit
Section 34	<p><b>Additional content of levy order</b></p> <p>See key submission allowing existing arrangements to be transferred to the SPV.</p> <p>See also suggested changes to section 18.</p>	<p>Include the following as a new clause:</p> <p><u>In addition, a levy order may –</u></p> <p><u>( ) identify agreements that are to be novated to a responsible SPV if those agreements allow for that novation and the consent of all necessary parties has been obtained;</u></p>
Section 57, 60	<p><b>Levy collection</b></p> <p>There is a general issue with the sections relating to levy and rates payments. Money is fungible, so how is the responsible levy authority to determine whether rates have been paid or levy has been paid, in cases of part or under payment?</p>	<p>If an amount of money has been paid to the responsible levy authority which is exactly the same as the rates assessment, but no other amount, is it entitled to rely on that being an indication that the amount paid is for rates, and not for levy? This needs to be provided for in the legislation.</p>
Section 65	<p>A deeming provision appears to be necessary whenever rating provisions from the LGRA are used for the levy.</p>	<p>An example of such a deeming provision is section 67(2).</p> <p>Such a deeming provision is missing from sections 65, 72 and 80.</p>
Section 74	<p><b>Penalties for unpaid levy</b></p>	<p>To whom is a penalty on unpaid levy paid? Needs to be provided for in the legislation.</p>
Section 77	<p><b>Postponement of requirement to pay levy</b></p>	<p>Should postponement be applied, further clarity is required as to what constitutes ‘administration and financial costs’ (Section 77(4)(a) – in reference to section 88 of the LGRA).</p>
Section 82	<p><b>Application of proceeds of rating sale or lease that involves levy</b></p>	<p>Section 82 appears to cover the same ground as new section 75B of the LGRA and conflicts if there are also unpaid rates on the property.</p>
Section 93	<p><b>Transferring previous contributions</b></p> <p><i>All eligible infrastructure</i> could be misunderstood to be all activities.</p>	<p>Include the following amendment –</p> <p>(3) ..where, <u>on an activity by activity basis,</u> –...</p>
	<p>Be explicit about the calculation of the refund if no section 93 direction.</p>	<p>Include the following amendment –</p> <p>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, <u>calculated in accordance with Section 93(3),</u> to the current ratepayer for that rating unit.</p>