



## Infrastructure Funding and Financing (Wellington Sludge Minimisation Facility Levy) Order 2023

Cindy Kiro, Governor-General

### Order in Council

At Wellington this 7th day of August 2023

Present:

Her Excellency the Governor-General in Council

This order is made under section 29 of the Infrastructure Funding and Financing Act 2020—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Housing made in accordance with sections 27 and 28 of that Act.

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## Order

### 1 Title

This order is the Infrastructure Funding and Financing (Wellington Sludge Minimisation Facility Levy) Order 2023.

### 2 Commencement

This order comes into force on 1 October 2023.

### 3 Interpretation

In this order, unless the context otherwise requires,—

**Act** means the Infrastructure Funding and Financing Act 2020

**annual report** means an annual report under section 111 of the Act

**base rating units** has the meaning set out in clause 12

**BG1 (Base)** has the meaning set out in clause 12

**BG1 (Commercial)** has the meaning set out in clause 12

**BG1 levy amount** has the meaning set out in clause 15(1)

**BG2 (Base)** has the meaning set out in clause 12

**BG2 (Commercial)** has the meaning set out in clause 12

**BG2 levy amount** has the meaning set out in clause 15(2)

**capital value** has the meaning set out in section 2 of the Rating Valuations Act 1998

**commercial rating units** has the meaning set out in clause 12

**database category** has the meaning set out in clause 12

**forecast date** has the meaning set out in clause 27

**general rates** has the meaning set out in section 5 of the Local Government (Rating) Act 2002

**GST** means goods and services tax

**protected Māori land** has the meaning set out in section 11 of the Act

**sludge eligible costs** means the costs referred to in clause 8

**sludge eligible infrastructure** means the infrastructure referred to in clause 7

**sludge intended annual levy** means, in respect of any levy year, the intended annual levy for that levy year referred to in clause 11

**sludge levy area** means the geographic area referred to in clause 6

**sludge levy period** means the period specified in clause 9(1)

**sludge maximum levy revenue** means the amount described in clause 10

**Sludge Minimisation Facility** or **SMF** has the meaning set out in Schedule 2

**targeted rates** has the meaning set out in section 5 of the Local Government (Rating) Act 2002

**wastewater network** has the meaning set out in section 5 of the Water Services Act 2021

**Wellington wastewater network** means the wastewater network within the sludge levy area.

#### 4 Transitional, savings, and related provisions

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

**5 Authorisation of levy**

- (1) This order authorises the use of a levy for the purpose of funding eligible costs relating to eligible infrastructure.
- (2) This order sets out how liability for the levy is to be assessed for rating units.
- (3) For that purpose, clauses 6 to 29 set out the matters required or permitted under subpart 2 of Part 2 of the Act.

**Guidance note**

See section 40 of the Act, which requires the responsible SPV (which is Sludge Finance LP) to set the amount of levy for each levy year. In setting the levy, Sludge Finance LP must calculate it in accordance with this order.

**6 Levy area**

The levy area—

- (a) is the district in which Wellington City Council is entitled, at any time, to charge general rates or targeted rates under the Local Government (Rating) Act 2002; but
- (b) does not include protected Māori land within that district.

**Guidance note**

Wellington City Council is the responsible levy authority in relation to the levy area.

**7 Eligible infrastructure to be constructed**

The eligible infrastructure that is to be constructed is described in Schedule 2.

**8 Eligible costs to be met by levy**

- (1) The eligible costs that are to be met by the levy are as follows:
  - (a) the costs of the construction of the sludge eligible infrastructure that are set out in section 9(3)(a) and (b) of the Act; and
  - (b) the financing costs of the construction of the sludge eligible infrastructure that are set out in section 9(4) of the Act; and
  - (c) the costs of the administration of the levy that are set out in section 9(5) of the Act; and
  - (d) any further costs incurred by Sludge Finance LP in complying with the Act and this order; and
  - (e) the general operating costs of Sludge Finance LP.
- (2) Subclause (1)(b) is subject to clause 25, which imposes limits on the return on the capital provided by holders of limited partnership interests in Sludge Finance LP.

**9 Levy period and its earliest commencement date**

- (1) The levy period—

- (a) starts on 1 July 2024; and
  - (b) ends on the close of 30 June 2057.
- (2) The first year of the levy period—
- (a) starts on 1 July 2024; and
  - (b) ends on the close of 30 June 2025.
- (3) Accordingly, the earliest commencement date of the levy period is 1 July 2024.

#### **10 Maximum amount of levy revenue**

- (1) The maximum amount of levy revenue that may be collected under this order is \$1,271,444,793 plus GST (if any).
- (2) However, the maximum amount of levy revenue may be reduced under section 52 of the Act (*see* clause 29).

#### **11 Intended annual levy**

- (1) The intended annual levy for each levy year is set out in Schedule 3.
- (2) However, the intended annual levy for each levy year may be reduced under clause 29.

#### **12 Setting levy: leviable land**

- (1) This order authorises a levy to be set for all leviable land in the sludge levy area differentially for the following categories of land:
- (a) base rating units categorised as BG1 (Base); and
  - (b) base rating units categorised as BG2 (Base); and
  - (c) commercial rating units categorised as BG1 (Commercial); and
  - (d) commercial rating units categorised as BG2 (Commercial).
- (2) If a rating unit is categorised in more than 1 category of leviable land as set out in subclause (1), a levy is imposed on that rating unit for each such category.

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#### **Examples**

##### *Base rating units*

A particular residential property in Wellington is a base rating unit. As with all other base rating units in the sludge levy area, it will be levied as BG2 (Base).

The property meets at least 1 of the criteria in the definition of BG1 (Base) because the wastewater of the property is treated at Moa Point, Wellington. This means it will be levied as both BG1 (Base) and BG2 (Base).

##### *Commercial rating units*

A particular business property in Wellington is a commercial rating unit. As with all other commercial rating units in the sludge levy area, it will be levied as BG2 (Commercial).

The property meets at least 1 of the criteria in the definition of BG1 (Commercial) because it is in the area specified in Schedule 4. This means it will be levied as both BG1 (Commercial) and BG2 (Commercial).

(3) In this order,—

**base rating units**, in respect of a levy year, means rating units that, as at 30 June immediately preceding the levy year, have a database category of “base” (or any other database category or categories that are generally applicable to rating units that are base property)

**BG1 (Base)** means a base rating unit within the sludge levy area that, as at 30 June immediately preceding the levy year, is connected to the Wellington wastewater network and meets 1 or more of the following criteria:

- (a) it is within the geographic area specified in clause 1 of Schedule 4:
- (b) its wastewater is treated at the Moa Point Treatment Plant or the Western Treatment Plant (Karori):
- (c) its wastewater is treated at the SMF

**BG1 (Commercial)** means a commercial rating unit within the sludge levy area that, as at 30 June immediately preceding the levy year, is connected to the Wellington wastewater network and meets 1 or more of the following criteria:

- (a) it is within the geographic area specified in clause 1 of Schedule 4:
- (b) its wastewater is treated at the Moa Point Treatment Plant or the Western Treatment Plant (Karori):
- (c) its wastewater is treated at the SMF

**BG2 (Base)** means a base rating unit within the sludge levy area

**BG2 (Commercial)** means a commercial rating unit within the sludge levy area

**commercial rating units**, in respect of a levy year, means rating units that, as at 30 June immediately preceding the levy year, have a database category of “commercial” (or any other database category or categories that are generally applicable to rating units that are commercial or otherwise non-base)

**connected to the Wellington wastewater network** includes rating units that are disconnected from the Wellington wastewater network due to maintenance, damage, or construction work

**database category**, in relation to a rating unit, means the category (if any) to which the unit belongs for setting a general or targeted rate in accordance with Part 1 of the Local Government (Rating) Act 2002, as determined from information in the database kept and maintained by Wellington City Council under section 27 of that Act.

(4) For the purposes of section 32(2) of the Act, the categories of leviable land in subclause (1) are defined in terms of the following matters listed in Schedule 2 of the Local Government (Rating) Act 2002:

- (a) clause 1 of that schedule (which relates to the use to which the land is put); and
- (b) clause 5 of that schedule (which relates to the provision or availability to the land of a service); and
- (c) clause 6 of that schedule (which relates to where the land is situated).

### 13 Setting levy: assessing liability

- (1) This clause and clauses 14 to 19 set out how liability for the levy is to be assessed for rating units.
- (2) For the purposes of section 33(2) of the Act,—
  - (a) the factor listed in Schedule 3 of the Local Government (Rating) Act 2002 to be used to assess liability for the levy for commercial rating units is the capital value of the rating unit (clause 2 of that schedule); and
  - (b) the factor listed in Schedule 3 of the Local Government (Rating) Act 2002 to be used to assess liability for the levy for base rating units is the capital value of the rating unit (clause 2 of that schedule).
- (3) For the purposes of section 33(3) of the Act, this order also provides for the calculation of the liability for the levy for base rating units to include a fixed amount for each of those rating units.

### 14 Annual levy

For the purposes of subpart 3 of Part 2 of the Act, the annual levy for a levy year must be calculated by—

- (a) taking the sludge intended annual levy for that year or a reduced sludge intended annual levy for that year that has been notified in accordance with clause 29; and
- (b) adding or deducting any amount in accordance with clauses 19 to 21.

### 15 BG1 and BG2 levy amounts

- (1) The **BG1 levy amount** for each levy year must be determined in accordance with the following formula:

$$\text{BG1L} = t \times 0.7$$

where—

BG1L is the BG1 levy amount for the levy year

t is the annual levy calculated under clause 14 and confirmed in the annual levy resolution for the levy year (expressed as an amount exclusive of GST).

- (2) The **BG2 levy amount** for each levy year must be determined in accordance with the following formula:

$$\text{BG2L} = t \times 0.3$$

where—

BG2L is the BG2 levy amount for the levy year

t is the annual levy calculated under clause 14 and confirmed in the annual levy resolution for the levy year (expressed as an amount exclusive of GST).

## 16 Assessing liability for base rating units

(1) This clause applies to every base rating unit in the sludge levy area, including any part of a rating unit that has a base rating unit categorisation.

(2) The liability for the annual levy in each levy year for each base rating unit in the sludge levy area categorised as BG1 (Base) must be calculated in accordance with the following formula:

$$L = (\text{BG1L} \times 0.75 \times 0.75 \times c \div a) + (\text{BG1L} \times 0.75 \times 0.25 \div n)$$

where—

L is the levy amount for each BG1 (Base) rating unit

BG1L is the BG1 levy amount determined under clause 15(1)

a is the estimated aggregate capital value of all BG1 (Base) rating units as at 30 June immediately preceding the levy year

c is the capital value of the BG1 (Base) rating unit as at 30 June immediately preceding the levy year

n is the estimated aggregate number of all BG1 (Base) rating units as at 30 June immediately preceding the levy year (excluding all BG1 (Base) rating units that are subject to a full levy remission).

(3) The liability for the annual levy in each levy year for each base rating unit in the sludge levy area categorised as BG2 (Base) must be calculated in accordance with the following formula:

$$L = (\text{BG2L} \times 0.75 \times 0.75 \times c \div a) + (\text{BG2L} \times 0.75 \times 0.25 \div n)$$

where—

L is the levy amount payable for each BG2 (Base) rating unit

BG2L is the BG2 levy amount determined under clause 15(2)

a is the estimated aggregate capital value of all BG2 (Base) rating units as at 30 June immediately preceding the levy year

c is the capital value of the BG2 (Base) rating unit as at 30 June immediately preceding the levy year

n is the estimated aggregate number of all BG2 (Base) rating units as at 30 June immediately preceding the levy year (excluding all BG2 (Base) rating units that are subject to a full levy remission).



- (4) If only a part of a rating unit has a base rating unit categorisation, only the capital value of that part must be used for the purposes of subclauses (2) and (3).
- (5) The capital value and the aggregate capital value of rating units, including for the purposes of clause 18, do not include the capital value of rating units to the extent that a levy remission applies.

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### Example

A base rating unit has a capital value of \$2 million and is in both BG1 and BG2.

The annual levy for the levy year ending 30 June 2028 is \$32,522,045 (exclusive of any GST). This is multiplied by 0.70 to determine a BG1 levy amount of \$22,765,432 and multiplied by 0.30 to determine a BG2 levy amount of \$9,756,614.

This example assumes the following:

	<b>Total capital value</b>	<b>Total number</b>
BG1 (Base)	\$87 billion	63,000
BG2 (Base)	\$105 billion	80,000

The levy amount payable for the base rating unit in respect of BG1 is \$362 plus GST. This is calculated as  $(\$22,765,432 \times 0.75 \times 0.75 \times \$2 \text{ million} \div \$87 \text{ billion}) + (\$22,765,432 \times 0.75 \times 0.25 \div 63,000)$ .

The levy amount payable for the base rating unit in respect of BG2 is \$127 plus GST. This is calculated as  $(\$9,756,614 \times 0.75 \times 0.75 \times \$2 \text{ million} \div \$105 \text{ billion}) + (\$9,756,614 \times 0.75 \times 0.25 \div 80,000)$ .

Therefore, the total levy liability for the base rating unit (comprising BG1 and BG2) is \$489 plus GST (\$362 + \$127). If the rating unit was just in BG2 (and not in BG1) the total levy liability would be \$127 plus GST.

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## 17 Assessing liability for commercial rating units

- (1) This clause applies to every commercial rating unit in the sludge levy area, including any part of a rating unit that has a commercial rating unit categorisation.
- (2) The liability for the annual levy in each levy year for each commercial rating unit in the sludge levy area categorised as BG1 (Commercial) must be calculated in accordance with the following formula:

$$L = \text{BG1L} \times 0.25 \times c \div a$$

where—

L is the levy amount for each BG1 (Commercial) rating unit

BG1L is the BG1 levy amount determined under clause 15(1)

a is the estimated aggregate capital value of all BG1 (Commercial) rating units as at 30 June immediately preceding the levy year

c is the capital value of the BG1 (Commercial) rating unit as at 30 June immediately preceding the levy year.

- (3) The liability for the annual levy in each levy year for each commercial rating unit in the sludge levy area categorised as BG2 (Commercial) must be calculated in accordance with the following formula:

$$L = BG2L \times 0.25 \times c \div a$$

where—

- L is the levy amount for each BG2 (Commercial) rating unit  
 BG2L is the BG2 levy amount determined under clause 15(2)  
 a is the estimated aggregate capital value of all BG2 (Commercial) rating units as at 30 June immediately preceding the levy year  
 c is the capital value of the BG2 (Commercial) rating unit as at 30 June immediately preceding the levy year.
- (4) If only a part of a rating unit has a commercial rating unit categorisation, only the capital value of that part must be used for the purposes of subclauses (2) and (3).
- (5) The capital value and the aggregate capital value of rating units, including for the purposes of clause 18, do not include the capital value of rating units to the extent that a levy remission applies.

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#### Example

A commercial rating unit has a capital value of \$2 million and is in both BG1 (Commercial) and BG2 (Commercial).

The annual levy for the levy year ending 30 June 2028 is \$32,522,045 (exclusive of any GST). This is multiplied by 0.70 to determine a BG1 levy amount of \$22,765,432 and multiplied by 0.30 to determine a BG2 levy amount of \$9,756,614.

This example assumes the following:

	<b>Total capital value</b>
BG1 (Commercial)	\$18 billion
BG2 (Commercial)	\$22 billion

The levy amount for the commercial rating unit in respect of BG1 is \$632 plus GST. This is calculated as \$22,765,432 × 0.25 × \$2 million ÷ \$18 billion.

The levy amount for the commercial rating unit in respect of BG2 is \$222 plus GST. This is calculated as \$9,756,614 × 0.25 × \$2 million ÷ \$22 billion.

Therefore, the total levy liability for the commercial rating unit (comprising BG1 and BG2) is \$854 plus GST (\$632 + \$222).

If the commercial rating unit was just in BG2 (and not in BG1) the total levy liability would be \$222 plus GST.

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## 18 How aggregate capital value and numbers of rating units are estimated

- (1) This clause provides for how the aggregate capital value or number of rating units must be estimated for the purposes of clauses 16 and 17.

- (2) At the time that the proposed annual levy resolution is prepared under section 42 of the Act, Sludge Finance LP must estimate, as at 30 June immediately preceding the levy year to which the resolution relates,—
- (a) the number of BG1 (Base) rating units and the aggregate capital value of all BG1 (Base) rating units; and
  - (b) the number of BG2 (Base) rating units and the aggregate capital value of all BG2 (Base) rating units; and
  - (c) the aggregate capital value of all BG1 (Commercial) rating units; and
  - (d) the aggregate capital value of all BG2 (Commercial) rating units.

### 19 Annual reconciliation

- (1) Sludge Finance LP must carry out a reconciliation under this clause for each levy year (**year A**).
- (2) Sludge Finance LP must carry out a reconciliation for year A by taking the following steps:
  - (a) first, it must start with the annual levy for year A (as confirmed in the annual levy resolution for that year):
  - (b) second, it must subtract the total amount of levy assessed to date in respect of year A under section 68 of the Act:
  - (c) third, it must subtract any increases in levy assessments under section 68 of the Act for levy years before year A that are determined by the relevant person after the previous reconciliation under this clause was carried out:
  - (d) fourth, it must add (as a positive number) any decreases in levy assessments under section 68 of the Act for levy years before year A that are determined by the relevant person after the previous reconciliation under this clause was carried out:
  - (e) fifth, it must add (as a positive number) any bad debts that have not been added to a prior reconciliation under this clause:
  - (f) sixth, it must subtract any bad debts that were added to a prior reconciliation under this clause to the extent that those bad debts were subsequently paid.
- (3) Sludge Finance LP must complete each reconciliation under this clause between the start of year A and the date on which Sludge Finance LP sets the amount of levy for year B.
- (4) In this clause and clause 20,—  
**bad debt** means any levy invoiced to a levypayer that—
  - (a) relates to a preceding levy year; and
  - (b) remains unpaid (in whole or in part) as at the date on which the reconciliation is completed; and

- (c) Sludge Finance LP has categorised as a bad debt for the purposes of this order

**preceding levy year—**

- (a) means a levy year before year A; but  
(b) does not include the levy year that immediately precedes year A

**relevant person means—**

- (a) Wellington City Council; or  
(b) the monitor in the case of objections lodged under section 62 of the Act  
**year B** means the next levy year after year A.

**20 Annual levy for following year must take into account reconciliation**

- (1) If the amount determined under clause 19 is positive, the amount must be added under clause 14 when determining the annual levy for year B (that is, the annual levy for year B is increased by the reconciliation amount).
- (2) If the amount determined under clause 19 is negative, the amount (as a positive number) must be deducted under clause 14 when determining the annual levy for year B (that is, the annual levy for year B is reduced by the reconciliation amount).

**Example**

The intended annual levy for the year ending 30 June 2028 (year A) is \$32,522,045 plus GST.

At the time of reconciliation for year A, a levy of \$31,000,000 plus GST has been assessed.

After the completion of the last annual reconciliation, a \$300,000 plus GST increase in levy assessments (under section 68 of the Act) was determined for the year ending 30 June 2027.

Within year A, a total of \$500,000 plus GST was categorised as bad debts and \$100,000 plus GST of bad debts that were added to a prior reconciliation were subsequently paid.

The reconciliation amount for year A is therefore \$1,622,045. This is calculated as \$32,522,045 - \$31,000,000 - \$300,000 + \$500,000 - \$100,000.

As the reconciliation amount is positive, the annual levy for the following year needs to be increased to take this into account.

The intended annual levy for the year ended 30 June 2029 is \$32,663,066 plus GST. Under clause 14, the annual levy for the year ended 30 June 2029 is \$34,285,111 plus GST. This is calculated as \$32,663,066 + \$1,622,045.

**21 Adjustment must not exceed sludge maximum levy revenue**

An adjustment under clauses 19 and 20 must not be made to the extent that it would result in the total of all levies collected over the sludge levy period exceeding the sludge maximum levy revenue (taking into account any reduction under section 52 of the Act).

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**Guidance note**

A reconciliation under clause 19 may increase the amount of levy to reflect bad debts. While the amount of annual levy can be increased, the amount of levy collected cannot exceed the maximum levy revenue set out in clause 10, as may be reduced under clause 29. See sections 31(4)(b)(i) and 88 of the Act.

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**22 Special purpose vehicle (SPV) that is entitled to levy**

- (1) Sludge Finance LP is the SPV that is entitled to the levy that is collected under this order.
- (2) Sludge Finance LP is the responsible SPV.

**23 SPV not responsible for construction of eligible infrastructure**

Sludge Finance LP is not responsible for the construction of the sludge eligible infrastructure.

**24 Details of incorporation and ownership of Sludge Finance LP**

On the commencement of this order,—

- (a) Sludge Finance GP Limited is the sole general partner of Sludge Finance LP; and
- (b) CIP (IFF Holdings) Limited is—
  - (i) the sole limited partner of Sludge Finance LP; and
  - (ii) the sole shareholder of Sludge Finance GP Limited; and
- (c) Crown Infrastructure Partners Limited is the sole shareholder of CIP (IFF Holdings) Limited.

**25 Limits on returns on capital**

- (1) Sludge Finance LP must ensure that the cumulative net equity cashflow in each levy year listed in Schedule 5 does not exceed the equity cashflow cap for the corresponding levy year.
- (2) Sludge Finance LP must determine the equity cashflow cap for each levy year (**year A**) by adjusting the amount applicable to year A, as set out in Schedule 5, as follows:
  - (a) first, it must determine the lesser of the equity non-payment risk cap amount and the actual non-payment amount for each of the following levy years:
    - (i) year A:
    - (ii) each preceding levy year:
  - (b) second, it must aggregate those lesser amounts:
  - (c) third, it must subtract that aggregate amount from the amount applicable to year A as set out in Schedule 5:

- (d) fourth, it must add an amount equal to the penalties and interest imposed on the levy and recovered from levy payers (if any), net of the costs of recovery, in each case on a cumulative basis from the first levy year until and including year A.
- (3) For the purposes of this clause and Schedule 5,—
- actual non-payment amount** means the amount, calculated with reference to a single levy year, that is the aggregate levy that has been invoiced in that levy year and remains unpaid
- cumulative net equity cashflow** means the total payments provided by Sludge Finance LP to the holders of limited partnership interests in Sludge Finance LP as at the end of each levy year listed in Schedule 5 less total capital injections by the holders of limited partnership interests in Sludge Finance LP
- equity cashflow cap** means, for any levy year listed in Schedule 5, the amount determined under subclause (2)
- equity non-payment risk cap amount** means the amount, calculated with reference to a single levy year, that is 1.5% of the annual levy in that levy year (where the annual levy is the amount that is calculated under clause 14 and confirmed in the annual levy resolution for the levy year (expressed as an amount exclusive of GST)).

## 26 Restricted change of control

- (1) This clause describes what change of control of Sludge Finance LP constitutes a restricted change of control for the purposes of section 122 of the Act.

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### Guidance note

If a restricted change of control occurs, section 122 of the Act allows the monitor to direct Sludge Finance LP not to pay any specified distributions to certain prohibited persons.

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- (2) A restricted change of control of Sludge Finance LP occurs if—
- (a) Sludge Finance GP Limited ceases to be the sole general partner of Sludge Finance LP; or
  - (b) Sludge Finance GP Limited remains the sole general partner of Sludge Finance LP but ceases to be a wholly owned subsidiary of Crown Infrastructure Partners Limited; or
  - (c) CIP (IFF Holdings) Limited ceases to be the sole limited partner of Sludge Finance LP; or
  - (d) CIP (IFF Holdings) Limited remains the sole limited partner of Sludge Finance LP but ceases to be a wholly owned subsidiary of Crown Infrastructure Partners Limited.
- (3) However, a restricted change of control of Sludge Finance LP does not occur if the change referred to in subclause (2) occurs as a result of any of the following:

- (a) a permitted security enforcement;
  - (b) the appointment of a Crown Manager under section 126 of the Act;
  - (c) a change of control consented to in writing by the monitor.
- (4) In subclause (3), **permitted security enforcement** means any of the following:
- (a) the appointment of a receiver, a receiver and manager, an administrator, or a liquidator in relation to Sludge Finance LP or Sludge Finance GP Limited;
  - (b) the transfer of any partnership interests of Sludge Finance LP, or shares of Sludge Finance GP Limited, to a trustee or nominee that is owned or controlled by any party holding a security interest over the property of Sludge Finance LP or Sludge Finance GP Limited;
  - (c) the transfer of any partnership interests of Sludge Finance LP, or shares of Sludge Finance GP Limited, to a third party on the enforcement of a security interest, where the monitor has not, within 20 working days after being notified of the proposed transfer, notified the holder of the security interest in writing that it objects to the proposed transfer on specified grounds of public interest.

## 27 Periodic forecasting of excess levy

- (1) Sludge Finance LP must—
- (a) prepare a forecast of excess levy as at each forecast date; and
  - (b) include details of the forecast in its annual report for—
    - (i) the levy year that includes the forecast date; or
    - (ii) the period ending on the close of 30 June 2024 (in the case of the forecast before that date).
- (2) Sludge Finance LP must prepare the forecast of excess levy by taking the following steps:
- (a) first, adding its cash balances (as at the forecast date) to its forecast of the expected levy revenue to be received over the remaining sludge levy period;
  - (b) second, adding its forecast of the expected drawdowns of debt and equity funding over the remaining sludge levy period;
  - (c) third, subtracting the expected sludge eligible costs to be incurred by Sludge Finance LP over the remaining sludge levy period, where the expected sludge eligible costs are forecast on the basis set out in clause 28.
- (3) Sludge Finance LP must complete each forecast of excess levy under this clause before Sludge Finance LP sets the amount of levy for the levy year immediately following that forecast date.

- (4) Sludge Finance LP must take all reasonable steps to ensure that the forecast is accurate.
- (5) In this order, **forecast date** means each of the following:
  - (a) the date on which this order comes into force;
  - (b) the first 31 December after the completion and commissioning of the SMF;
  - (c) each subsequent 31 December during the sludge levy period;
  - (d) any additional date specified by Sludge Finance LP to the monitor in writing.

## **28 Forecasting expected sludge eligible costs**

- (1) For the purposes of clause 27(2)(c), Sludge Finance LP must—
  - (a) estimate the sludge eligible costs to be incurred by Sludge Finance LP based on its contracted operating costs, its projected debt service and equity distribution costs (subject to the limits set out in clause 25), and any other relevant information available to it at the time of the forecast (subject to subclause (2)); and
  - (b) apply a reasonable estimate of non-payment of levies over the remaining sludge levy period; and
  - (c) assume that the cost of future refinancings equals 1% of the forecast debt balance at the point of refinance; and
  - (d) assume that, following any future refinancing, debt balances will attract a margin of 1.60% per annum above the relevant base rate; and
  - (e) assume that, following any future refinancing, swaps will attract a credit and execution margin of 0.30% per annum; and
  - (f) apply a contingency of a specified percentage on forecast payments to debt holders to the extent required to meet Sludge Finance LP's commitments under any loan or obligations under any incidental arrangement.
- (2) For the purposes of the first forecast date, construction costs comprised in sludge eligible costs to be incurred by Sludge Finance LP must be assumed to be \$400 million (excluding GST).
- (3) In subclause (1)(f), a **specified percentage** is a percentage that is—
  - (a) 5% or more; but
  - (b) no more than 10%.

## **29 Reduction in maximum levy revenue and intended annual levy**

- (1) This clause applies if, at any forecast date, the amount of forecast excess levy determined in accordance with clause 27 is greater than \$1 million exclusive of GST.



- (2) Sludge Finance LP must reduce the maximum levy revenue, in accordance with section 52 of the Act, by an amount that will ensure that the forecast excess levy does not (following the reduction) exceed \$1 million exclusive of GST.
- (3) To the extent that Sludge Finance LP acts under section 52(2)(b) of the Act, Sludge Finance LP must make corresponding reductions to the amount of the intended annual levy that is used when calculating the annual levy under clause 14 (such that the total of the reduced intended annual levy used for the remaining levy years cannot result in the reduced maximum levy revenue being exceeded).
- (4) Sludge Finance LP must ensure that the notice to the monitor under section 52(3) of the Act includes the following:
  - (a) the amount of the reduced maximum levy revenue:
  - (b) the reduced intended annual levy (if any) that must be used when calculating the annual levy under clause 14 for the applicable remaining levy years, together with any updated schedule of the intended annual levy for those levy years.
- (5) Following a reduction, Sludge Finance LP must, in accordance with section 52(2) of the Act, ensure that the amount of levy set in later levy years does not cause the reduced maximum levy revenue to be exceeded.

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

cl 4

**Part 1  
Provisions relating to this order as made**

There are no transitional, savings, or related provisions in this order as made.

## Schedule 2

### Infrastructure to which this order applies

cl 7

The sludge minimisation facility (**Sludge Minimisation Facility** or **SMF**) located at Moa Point, Wellington (adjacent to the wastewater treatment plant that exists on the commencement of this order) that is to be built to utilise chemical and mechanical processes to handle and dispose of wastewater sludge (with a view to improving the stabilisation of, and reducing the volume of, wastewater sludge).

Works in relation to the following to the extent that those works are necessary or desirable in connection with the construction of the SMF:

- (a) the Moa Point Treatment Plant and other wastewater infrastructure in the vicinity of Moa Point;
- (b) the existing sludge pipeline;
- (c) the Carey's Gully dewatering facility;
- (d) the Western Treatment Plant (Karori).

### Schedule 3

#### Intended annual levy

cl 11

Levy year ending 30 June	Intended annual levy (\$) (plus GST, if any)
2025	7,820,543
2026	15,781,172
2027	24,261,464
2028	32,522,045
2029	32,663,066
2030	33,392,310
2031	33,535,884
2032	33,891,961
2033	35,808,068
2034	36,112,721
2035	36,404,664
2036	38,972,088
2037	39,326,725
2038	39,651,612
2039	42,481,894
2040	42,923,489
2041	43,312,462
2042	46,414,286
2043	46,796,243
2044	47,148,269
2045	50,394,419
2046	50,797,859
2047	51,167,165
2048	54,712,549
2049	55,181,433
2050	55,667,926
2051	59,500,223
2052	59,928,255
2053	60,359,366
2054	64,514,632
2055	0
2056	0
2057	0

## Schedule 4

### BG1 geographical area

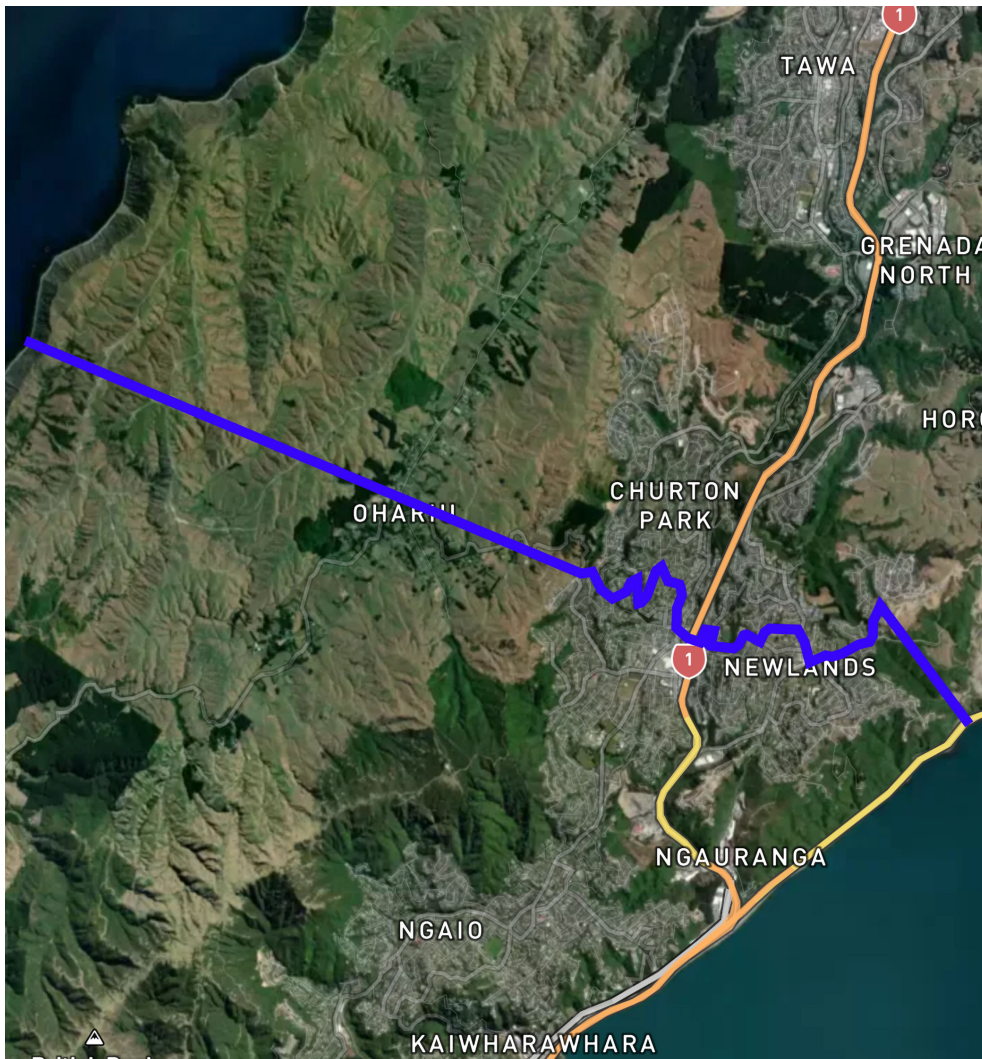
cl 12

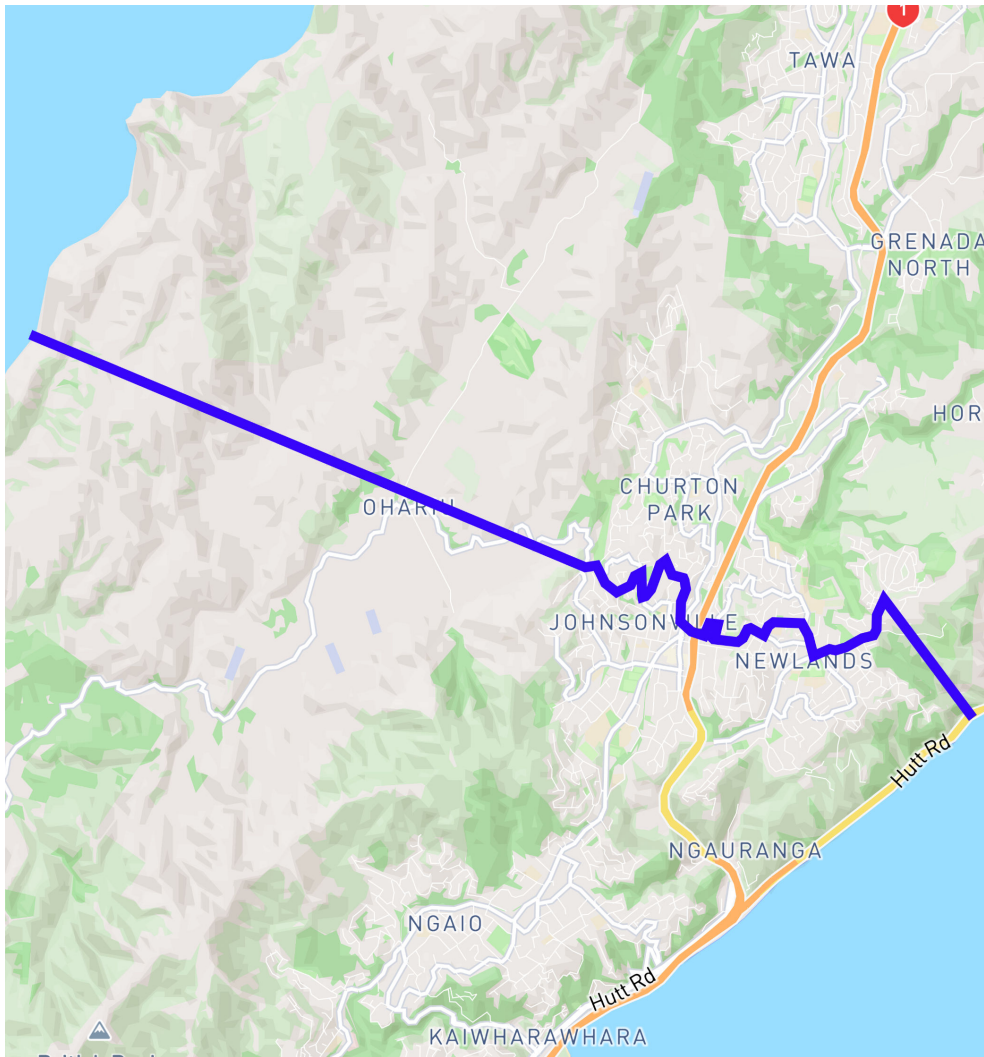
#### 1 Description of BG1 geographical area

- (1) The area is to the south of the line that—
  - (a) starts on the west coast of the North Island at 41°11.62'S and 174°43.63'E; then
  - (b) proceeds to the corner of McLintock Street North and Ohariu Valley Road at 41°12.91'S and 174°47.73'E in Johnsonville; then
  - (c) proceeds east on Ohariu Valley Road and continues south as it becomes Ironside Road to the corner of Ironside Road and Branscombe Street; then
  - (d) proceeds east along Branscombe Street to Ohariu Road; then
  - (e) proceeds south on Ohariu Road to the intersection with Clifford Road; then
  - (f) proceeds north-east on Clifford Road to where it joins Bassett Road; then
  - (g) proceeds south on Bassett Road to the intersection with Ironside Road and Makara Ohariu Valley, turns left onto Makara Ohariu Valley, then continues straight through the roundabout onto Helston Road; then
  - (h) proceeds south-east to the intersection with Petherick Crescent; then
  - (i) proceeds north on Petherick Crescent to Helston Road; then
  - (j) proceeds south on Helston Road to the intersection with Stewart Drive; then
  - (k) proceeds east on Stewart Drive to Padnell Crescent; then
  - (l) proceeds north-east on Padnell Crescent and continues east as the road becomes Trebann Street to Bracken Road; then
  - (m) proceeds south on Bracken Road and at the intersection turns onto Horokiwi Road West; then
  - (n) proceeds on Horokiwi Road West as it becomes Woodridge Drive; then
  - (o) proceeds to the corner of Woodridge Drive and Kentwood Drive at 41°13.09'S and 174°49.95'E and then to the edge of Wellington Harbour at 41°13.75'S and 174°50.61'E.
- (2) In this clause, a reference to proceeding in a direction is a reference to proceeding generally in that direction (for example, proceeding east is proceeding generally in easterly direction).

## 2 Indicative maps of line

The following maps are indicative only of the line described in clause 1. If there is any inconsistency between a map and the description in clause 1, the description prevails.





## Schedule 5

### Limits on returns on capital

cl 25

**Note:** All amounts in this schedule are plus GST (if any). An amount in brackets is a negative amount.

Levy year ending 30 June	Limit (\$)
2025	(8,611,108)
2026	(8,203,978)
2027	(7,785,468)
2028	(7,224,463)
2029	(6,661,025)
2030	(6,085,007)
2031	(5,506,513)
2032	(4,921,877)
2033	(4,304,188)
2034	(3,681,243)
2035	(3,053,263)
2036	(2,380,994)
2037	(1,702,608)
2038	(1,018,618)
2039	(285,805)
2040	454,625
2041	1,201,765
2042	2,002,411
2043	2,809,646
2044	3,622,954
2045	4,492,258
2046	5,368,521
2047	6,251,154
2048	7,194,946
2049	8,146,826
2050	9,107,097
2051	10,133,476
2052	11,167,239
2053	12,208,438
2054	43,808,182
2055	45,479,433
2056	45,479,433
2057 and following	45,479,433



Rachel Hayward,  
Clerk of the Executive Council.

## Explanatory note

*This note is not part of the order, but is intended to indicate its general effect.*

This order, which comes into force on 1 October 2023, authorises the use of a levy for the purpose of funding certain costs relating to the construction of a sludge minimisation facility at Moa Point, Wellington. The order is made under the Infrastructure Funding and Financing Act 2020 (the **Act**).

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

- supports the functioning of urban land markets; and
- reduces the impact of local authority financing and funding constraints; and
- supports community needs; and
- appropriately allocates the costs of infrastructure.

The maximum amount of levy revenue that may be collected under the order is \$1,271,444,793 plus GST (if any).

The order authorises the levy to be set for all leviable land in the Wellington City Council district (other than protected Māori land within that district).

The levy must be paid by ratepayers of base rating units (including residential properties) and commercial rating units. Those ratepayers are levypayers under the Act.

The levy is payable over a levy period that starts on 1 July 2024 and ends on 30 June 2057 (but that period may be reduced under section 52 of the Act).

The special purpose vehicle that is entitled to the levy that is collected under this order is Sludge Finance LP. *Clause 24* sets out details of the incorporation and ownership of that limited partnership.

The Act provides for the assessment, invoicing, and collection of the levy. In summary,—

- Wellington City Council (as the responsible levy authority) must assess the levy to be paid by levypayers in accordance with this order (*see* section 68 of the Act):
- Wellington City Council must give to a levypayer notice of the levypayer's liability for the levy and must deliver to a levypayer a levy invoice (*see* sections 70 and 72 of the Act):
- various provisions of the Local Government (Rating) Act 2002 apply to a levy assessment and a levy invoice (*see* section 73 of the Act) and to the collection of the levy (*see* section 74 of the Act). That is, the levy is payable in a similar manner to rates.

**Infrastructure Funding and Financing (Wellington  
Sludge Minimisation Facility Levy) Order 2023**

2023/190

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Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*: 10 August 2023.

This order is administered by the Ministry of Housing and Urban Development.

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Wellington, New Zealand:

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