



Cabinet Economic Development Committee

Minute of Decision

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Waste Legislation 6: Report-back on the Treaty Clause and Waste Levy

Portfolio Associate Environment (Hon Rachel Brooking)

On 2 August 2023, the Cabinet Economic Development Committee:

Background

- 1 **noted** that in March and May 2023, Cabinet made decisions to inform the development of new waste legislation that would repeal and replace the Waste Minimisation Act 2008 and the Litter Act 1979 [ENV-23-MIN-0002, ENV-23-MIN-0004, ENV-23-MIN-0005, ENV-23-MIN-0006, DEV-23-MIN-0080];
- 2 **noted** that as part of these decisions, Cabinet invited a report-back on the following matters:
 - 2.1 further advice on the inclusion of a Treaty of Waitangi clause;
 - 2.2 a summary of the financial and economic implications across the suite of papers in a single document, including the impact on central government, local government, industry, businesses and individuals;
 - 2.3 a robust investment strategy to support the Waste Minimisation Fund, including:
 - 2.3.1 clear quantification of the future functions and funding sources;
 - 2.3.2 clarity that all waste investment needs will be funded from the levy revenue and will not be eligible for funding from Budget or the Climate Emergency Response Fund;
 - 2.4 options for hypothecation of the levy to mitigate the risks, including:
 - 2.4.1 sunset clause for the central government portion of the levy revenue to be reconsidered after a set number of years ensuring value for money; and/or
 - 2.4.2 embedding a formal role for the Minister of Finance in setting the investment plan priorities and level of funding set aside to achieve these, to ensure alignment with the government's fiscal strategy; and/or
 - 2.4.3 placing stronger expectations around how the levy revenue will be used at local government level;

- 2.5 options for using the waste levy to support the medium to long term emergency waste management response;
- 2.6 an estimate of government administration costs associated with extended producer responsibility schemes, including the distribution of these costs between the Crown and industry;

The inclusion of a Treaty of Waitangi clause in the Bill

- 3 **noted** that in March 2023, the Cabinet Environment, Energy and Climate Committee invited the Minister for the Environment to report-back on further advice on the inclusion of a Treaty of Waitangi clause in the Bill that will give effect to new waste legislation (the Bill) [ENV-23-MIN-0002];
- 4 **noted** that the Treaty Provision Oversight Group was consulted regarding the proposal for the inclusion of a Treaty clause in the Bill;
- 5 **noted** that consultation with Māori on the waste strategy and legislation highlighted Māori interests in effective waste management and that the Associate Minister for the Environment (Hon Rachel Brooking) (the Associate Minister) considers these interests are sufficient to warrant recognition of the Treaty and provision for Māori participation in the Bill;
- 6 **agreed** that the most appropriate mechanism is to provide for a ‘descriptive’ Treaty clause in the Bill, and for this clause to be supported by provision in the Bill:
 - 6.1 for local government with iwi/Māori engagement in the development and execution of waste management and minimisation plans (WMMPs);
 - 6.2 that the Ministry for the Environment must give consideration to Māori waste outcomes in the investment of waste levy-based funds;
 - 6.3 that Māori perspectives be sought when making decisions relating to the development of regulations under the Bill; and
 - 6.4 for the Waste Advisory Board membership to collectively hold knowledge and experience of te ao Māori, including tikanga;
- 7 **authorised** the Associate Minister to approve the final proposals for inclusion of a Treaty clause in the Bill;
- 8 **noted** that these provisions build on earlier Cabinet decisions regarding statutory proposals to reflect Māori interests in extended producer responsibility schemes and organisations;
- 9 **noted** that the Ministry for the Environment has recently appointed a waste investments panel with te ao Māori expertise and is continuing to build te ao Māori capability within its own waste investments team;
- 10 **noted** that iwi/Māori will also have the opportunity for input in the operation of the Environmental Protection Authority’s (EPA) functions, by virtue of the requirement for the EPA to maintain a Māori Advisory Committee under the Environmental Protection Authority Act 2011;

The use of waste levy funds

- 11 **noted** that a draft investment strategy is attached as Appendix Four to the submission under DEV-23-SUB-0164, and sets out the approach for how waste levy funds will be invested and the specific priorities for investment;
- 12 **noted** that a summary of the financial implications and impacts on stakeholder groups is attached as Appendices Two and Three to the submission under DEV-23-SUB-0164, which summarise the expected impacts that will be enabled through the new waste legislation;
- 13 **noted** that there may be future priorities and funding needs that are not able to be met through the use of waste levy funds and other funding from government sources may be necessary to meet these needs;
- 14 **directed** officials to review waste hypothecation settings and report back to Cabinet on options, including a sunset clause as part of the next review of levy effectiveness;
- 15 **agreed** that the Associate Minister will consult the Minister of Finance in the process of setting waste levy funding priorities through the action and investment plan, having regard to the waste strategy and purpose of the new waste legislation;
- 16 **agreed** that the Associate Minister will consult the Minister of Finance in considering individual investment proposals where the value of the government contribution is between \$10 million and \$25 million;
- 17 **noted** that Cabinet has previously agreed a range of mechanisms that will influence territorial authorities' use of levy funds and enable them to contribute to overall strategic priorities for waste minimisation;
- 18 **agreed** that further policy work will continue on the use of national standards and other mechanisms for setting performance expectations for territorial authorities, including with regard to their use of levy funds;
- 19 **authorised** the Associate Minister to approve the final proposals for setting performance expectations for territorial authorities for inclusion in the Bill;
- 20 **agreed** that the Bill explicitly empower local authorities to spend levy funds to support Māori participation in the development of Waste Management and Minimisation Plans;
- 21 **noted** that further policy work is underway to explore appropriate emergency provisions for inclusion in the Bill, including use of waste levy funds in state of emergency declaration situations;
- 22 **noted** that Cabinet has authorised the Associate Minister to make policy decisions and issue drafting instructions on emergency provisions for inclusion in the Bill;

Administrative costs of EPR schemes

- 23 **noted** that in approving the regulatory framework for extended producer responsibility schemes (EPR), in May 2023, Cabinet invited the Associate Minister to report back with an estimate of government administration costs associated with EPR schemes, including the distribution of costs between the Crown and industry [DEV-23-MIN-0080];
- 24 **noted** that the costs associated with establishing and operating EPR schemes are heavily dependent on the nature of the product and the regulatory approach;

- 25 **noted** the preliminary estimated cost to government of administering extended producer responsibility schemes is based on estimates for a container return scheme of \$1.3 million per year, of which \$850,000 would be cost recovered and \$450,000 would be Crown funded;
- 26 **noted** that these costs do not include the costs associated with assessing an application to establish an EPR scheme, which would be Crown funded, or the costs to the Environmental Protection Authority associated with licensing participants, which would be cost recovered;
- 27 **noted** that, to the extent that further Crown funding is required for costs referred to in the above decisions, this will be met from existing baselines or via the levy.

Jenny Vickers
Committee Secretary

Present:

Hon Grant Robertson (Chair)
Hon Dr Megan Woods
Hon Damien O'Connor
Hon Ginny Andersen
Hon Barbara Edmonds
Hon Dr Duncan Webb
Hon Rachel Brooking

Officials present from:

Office of the Prime Minister
Officials Committee for DEV