

In-Confidence

Office of the Associate Minister for the Environment

ENV - Cabinet Environment, Energy and Climate Committee

Waste Legislation 6: report-back on the Treaty clause and waste levy

Proposal

- 1 This paper is a report-back on matters related to the development of new waste legislation and seeks decisions on:
 - 1.1 the inclusion of a Treaty of Waitangi (Treaty) clause;
 - 1.2 the suite of controls on the use of waste levy funds.
- 2 The paper also reports back on estimated administration costs associated with extended producer responsibility (EPR) schemes, including the distribution of these costs between the Crown and industry.

Relation to government priorities

- 3 The proposals in this Cabinet paper advance:
 - 3.1 Labour's 2020 Election Manifesto plans to prevent, reduce and recycle waste;
 - 3.2 implementation of the circular economy and waste-related commitments in the 2022 emissions reduction plan;
 - 3.3 implementation of the recently published Waste Strategy; and
 - 3.4 legislative context to support improvements to household recycling, as agreed by Cabinet in November 2022 [CAB-22-MIN-0539 refers].

Executive Summary

- 4 This paper builds upon a series of five Cabinet papers seeking policy decisions to inform the development of new waste legislation, which will repeal and replace the Waste Minimisation Act (WMA) 2008 and the Litter Act 1979.
- 5 In March, Cabinet invited a report-back on specific matters, including: the inclusion of a Treaty of Waitangi / Tiriti o Waitangi clause, an investment strategy to support use of waste levy funds, options on the use of waste levy funds, a summary of financial implications and impacts on stakeholders and an assessment of costs to government associated with administering EPR schemes.
- 6 I am seeking decisions on the inclusion of a Treaty clause within the proposed Responsibility for Reducing Waste Bill (the Bill) to reflect Māori interests in the effective management of waste. I consider a descriptive Treaty clause is the preferred option, because this approach recognises the Crown's obligation as a Treaty partner and also mitigates uncertainty in its application for the decision-maker by defining when it applies in practice.

- 7 I propose that, in addition to the decisions made by Cabinet in March 2023 in respect of provision for Māori interests in extended producer responsibility schemes, this clause be supported by provision in the Bill:
- 7.1 for local government engagement with iwi/Māori in the development and execution of waste management and minimisation plans (WMMPs);
 - 7.2 that the Ministry for the Environment must give consideration to Māori waste outcomes in the investment of waste levy-based funds;
 - 7.3 that Māori perspectives be sought when making decisions relating to the development of regulations under the Bill; and
 - 7.4 for the Waste Advisory Board membership to collectively hold knowledge and experience in tikanga (an existing requirement in the WMA) and te ao Māori (a proposed new requirement).
- 8 I am also seeking additional decisions that will strengthen the overall controls on the use of waste levy funds by both central and local government:
- 8.1 delegated authority to establish a process to consult with the Minister of Finance in setting investment priorities; and
 - 8.2 delegated authority to explore use of national standards as an appropriate tool for setting performance expectations for local government.
- 9 As part of the report-back request, I have also provided: a summary of the expected financial implications and impacts on stakeholders (based on decisions to date); an interim investment strategy that governs use of levy funds by central government in its investment capacity; and further information on the expected costs of administering EPR schemes, which will be enabled in the new legislation.
- 10 Finally, I have set out the estimated costs associated with administering EPR schemes. I note that the financial implications of EPR enabling provisions cannot be calculated in advance, because costs and benefits associated with their use in different scenarios could vary substantially.

Background

- 11 In March 2023, Cabinet made policy decisions on the development of new waste legislation, which would repeal and replace the Waste Minimisation Act 2008 (WMA) and the Litter Act 1979. The decisions covered the strategic framework for the system, roles and responsibilities for central and local government, regulatory tools to manage products and materials across their life-cycle and to manage the waste and resource recovery sector, and an enhanced compliance regime [ENV-23-MIN-0002, ENV-23-MIN-0004, ENV-23-MIN-0005, and ENV-23-MIN-0006 refer]. Further decisions were made in May 2023 on a framework for extended producer responsibility (EPR) schemes [DEV-23-MIN-0080 refers].
- 12 Several important decisions from the March 2023 Cabinet papers are subject to this report-back (refer to Appendix 1). I am seeking Cabinet's decisions to inform drafting of the Bill, which is expected to be introduced to the House in early/mid 2024.
- 13 Specifically (as noted in Appendix 1) Cabinet has invited me to report back by 30 June 2023 with:

- 13.1 further advice on the inclusion of a Treaty of Waitangi / Tiriti o Waitangi clause;
 - 13.2 a robust investment strategy to support use of levy funds and the Waste Minimisation Fund (WMF), including specifying future functions and funding-sources and clarity on waste investment needs (in relation to future Budget funding and/or funding from the Climate Emergency Response Fund);
 - 13.3 options on waste levy matters, including:
 - 13.3.1 a sunset clause for the central government portion of levy revenue;
 - 13.3.2 a role for the Minister of Finance in setting investment priorities and the level of funding set aside to achieve these;
 - 13.3.3 placing stronger expectations on how the waste levy will be used by local government;
 - 13.3.4 options for the waste levy to support the medium- to long-term emergency waste management responses (i.e. following situations like the recent severe weather events); and
 - 13.4 a summary of the financial and economic implications of the waste legislation proposals, including the impacts on stakeholders (central government, local government, industry, business, and individuals).
- 14 It was subsequently agreed by Cabinet to also include in the report-back an estimate of government administration costs associated with EPR schemes, including the distribution of these costs between the Crown and industry [DEV-23-MIN-0080 refers]. This is included in the Financial Implications section of this paper (see Part Four).

PART ONE: Options for a Treaty of Waitangi / Tiriti o Waitangi clause

Cabinet asked for a report back on whether the Bill should contain a Treaty / Tiriti clause

- 15 In consideration of proposals for new waste legislation it was proposed the Bill did not need a Treaty clause, on the basis that the Waste Strategy includes a focus on building Māori capacity and engagement on waste issues, as well as involvement in the sector transformation that the Waste Strategy will drive.
- 16 However, Cabinet asked for a report back on whether the Bill should contain a Treaty clause [ENV-23-MIN-0002 refers].

Applying 'Treaty Provisions Oversight Group' Guidelines

- 17 Treaty Provisions Oversight Group (TPOG) guidance refers to the Treaty of Waitangi Guidance CO (19) 5. This circular sets out guidelines agreed by Cabinet for policy-makers to consider the Treaty in policy development and implementation. It requires informed analysis of the application of the Treaty to the proposed policy. The Treaty of Waitangi Guidance focuses on the articles of the Treaty and poses practical questions to assist this analysis. It provides some examples of key questions which could be considered before any decisions about Treaty provisions are made:
 - 17.1 does the proposal support the Māori-Crown relationship and offer an opportunity to enhance Māori as well as all New Zealanders' wellbeing? Are there ways for Māori to participate?

- 17.2 does the proposal affect Māori interests and rights? Are these interests and rights in relation to a taonga? Are there ways for Māori to lead responses to the issues that affect them and/or exercise rangatiratanga over their taonga?
- 17.3 does the proposal look to achieve equitable outcomes including addressing inequalities and cultural bias?
- 18 The TPOG Guidance states that our aim should be legislation which is inherently Treaty-compliant because it is the product of proper engagement, sound Treaty analysis, and clear provisions which carefully implement the policy outcomes intended to give expression to the Treaty in that context. Whether the underlying policy and the Māori-Crown relationship are best served by a Treaty clause should be determined in light of that work.
- 19 In accordance with TPOG guidance, a clear policy definition comes from understanding all rights and interests involved, as well as the different perspectives involved, through engagement and collaboration between the Crown and Māori.
- 20 I have considered three pathways to provide for the Treaty in the Bill:
- 20.1 a general operative Treaty clause;
- 20.2 a descriptive Treaty clause;
- 20.3 no Treaty clause.

9(2)(h)

[REDACTED]

[REDACTED]

[REDACTED]

9(2)(h)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

General operative Treaty clauses

- 24 General operative clauses direct all parties discharging functions, duties and powers under the Bill to give a certain weight to Treaty principles (such as ‘have regard to’, ‘take account of’ or ‘give effect to’). Between April 2022 and February 2023, there were three general effect clauses progressed (in the Natural and Built Environment Bill, Water Services Entities Act 2022, and Accessibility for New Zealanders Bill).
- 25 These clauses are often most appropriate where the scope of legislation is broad and covers a wide range of complex matters and tools that are of particular importance to Māori (i.e. regulation that affects taonga).

9(2)
(h)

[REDACTED]

Descriptive Treaty clause

- 27 A descriptive clause would provide a reference to the Treaty and subsequently explain the ways the Bill primarily intends to provide for the Treaty, by referring to the provisions in the legislation that do so. For example, by explicitly providing for Māori participation in certain central and/or local government functions under the Bill. Between April 2022 and February 2023, eight descriptive clauses were progressed, including the:

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- 27.1 Pae Ora (Healthy Futures Act) 2022;
 - 27.2 Crown Pastoral Land Reform Act 2022;
 - 27.3 Income Insurance (Enabling Development) Act 2022;
 - 27.4 Children and Young People's Commission Act 2022;
 - 27.5 Plant Variety Rights Act 2022;
 - 27.6 Oversight of Oranga Tamariki System Act 2022;
 - 27.7 Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022;
 - 27.8 Emergency Management Bill.
- 28 Because this Bill is not wide in scope, I consider a descriptive approach is most suitable. The Supreme Court has determined that a descriptive clause does provide a greater degree of definition, and therefore certainty, as to the way the Treaty principles are to be given effect. However, the Supreme Court also held that it will not stop the court resorting to the Treaty or its principles as an interpretative aid, or reading Treaty considerations in as a relevant consideration in decision-making, should the court consider the context requires that.

No Treaty clause

- 29 I have considered not including a Treaty clause in the Bill, but rather providing for Māori interests through, for example, requirements to engage and/or provisions for involvement in decision-making. This approach provides certainty to the decision-makers as to what is required and therefore involves lower litigation risk and implementation risk. The examples provided in paragraphs 35, 38, 40 and 41 may be a way to achieve this in practice.
- 30 The Water Services Economic Efficiency and Consumer Protection Bill does not provide a Treaty clause, but places obligations on the Commerce Commission in respect of engaging with Māori in the discharge of specific duties. The Therapeutic Products Bill includes an obligation for the Regulator to ensure they have the capacity and capability to understand and give effect to the principles of the Treaty and a separate provision which states that the regulatory strategy must set out how the Regulator will give effect to the principles of the Treaty in performing their functions and exercising their powers. The Integrity Sport and Recreation Bill includes an obligation for the Commerce Commission to maintain the capability and capacity to carry out its functions in a manner that is responsive to the Treaty.
- 31 While I consider this to be a feasible approach, I recognise the importance of explicitly recognising the Treaty and the Crown's commitment to give effect to its principles.

Māori perspectives and the objectives I would like to achieve

- 32 Consultation on the Waste Strategy clarified that Māori have interests in effective waste management. There was particular emphasis in the feedback on the interconnectedness of systems and that ineffective management of waste can have impacts on Māori interests in climate, biodiversity and other environmental outcomes including land, freshwater and coastal marine environments. Submitters valued Māori participation in the waste system.

33 My objectives are to:

- 33.1 recognise the impact on Māori environmental interests and outcomes associated with waste minimisation;
- 33.2 provide for Māori to input into critical aspects of the regulatory system that will shape and deliver effective waste management in New Zealand.

Māori will have the opportunity for input through the Environmental Protection Authority's (EPA) Māori Advisory Committee

34 The EPA will regulate many of the tools in the new legislation and will have a mechanism through existing legislation for Māori input into decision-making. The Committee, Ngā Kaihautū Tikanga Taiao (NKT), is established under the Environmental Protection Authority Act 2011 and provides advice and assistance to the EPA on matters relating to policy, process, and decisions of the EPA under an environmental Act or this Bill. The Committee will enable Māori perspectives to be considered in the discharge of the various functions of the EPA under the Bill including relating to national licensing, export and import of waste and extended producer responsibility schemes.

Cabinet has already agreed to several statutory measures to reflect Māori interests

35 I also note that Cabinet has already agreed to ensure Māori interests are part of considerations for extended producer responsibility schemes [DEV-23-MIN-0080 refers]. This includes how Product Responsibility Organisation (PRO) applicants demonstrate how the scheme and its outcomes will be equitable for Māori, and specific design and reporting requirements.

Additional areas where Māori interests could be provided for

36 In the context of waste reforms, I consider there are a range of regulatory and non-regulatory opportunities to recognise the Treaty and provide for Māori interests. These are discussed in more detail below.

37 I consider that some of these opportunities can be progressed without explicit provision in legislation. However, based on experiences in developing legislation, including the Oversight of Oranga Tamariki System Act 2022, the Pae Ora (Healthy Futures) Act 2022 and water reform legislation, I recognise that specific statutory expectations are also important.

Operations

38 I propose to provide for local government engagement with iwi/Māori in the development and execution of waste management and minimisation plans (WMMPs). Explicit provision for Māori perspectives will support greater Māori involvement in the approach to managing waste within Māori communities and enhance Māori ability to effectively manage local environments.

39 I note that local government already have relationships with iwi/hapū and Māori organisations that they use to develop approaches to resource management and waste. The iwi/hapū and Māori organisations that have relationships with local government will depend on the location of the local authority and some are more formalised than others.

40 I also note that revised Mana Whakahono ā Rohe arrangements under the Natural and Built Environment Bill could be a mechanism for formalising waste relationships.

Investment of Waste levy funds

- 41 I propose to ensure waste funds (i.e. the Waste Minimisation Fund and Plastics Innovation Fund) support attainment of Māori outcomes in waste minimisation. Further work is required on how this should occur within the framework of the Bill. I propose that this be undertaken as part of the drafting process with the Parliamentary Counsel Office.
- 42 I also propose a non-statutory approach to ensure Māori perspectives are reflected in decision-making in respect of waste fund investments. I am aware that the Ministry for the Environment is already engaged in work to progress this proposal. Specifically, the Ministry's Investment Panel includes individuals with knowledge and experience in tikanga and te ao Māori. The Ministry has also sought to lift its capability to engage with Māori to raise the profile of the fund.

Regulation making

- 43 There are a range of regulation-making powers proposed under the Bill, for example, regulating products to form extended producer responsibility schemes. Prior to making regulations, the Minister for the Environment will be required to publicly consult. I consider there is value in explicitly providing for Māori perspectives to be considered as part of the process of deciding whether regulation is required.

Waste Advisory Board

- 44 I propose to ensure that the Waste Advisory Board membership collectively holds knowledge of te ao Māori (a proposed new requirement) including tikanga (an existing requirement). I consider there are several Māori waste minimisation organisations that will be able to assist officials to identify appropriate candidates for Ministerial consideration.

Proposed approach

- 45 Given Māori interests in the effective management of waste, and in line with modern regulatory practice, I propose that the Bill should provide for a Treaty clause.
- 46 I note that general operative clauses are often used where the extent of regulation is broad and complex, for example, the management of our natural and built environment (section 4 of the Natural and Built Environment Bill) and matters pertaining to the delivery of water services (section 4 of the Water Services Entities Act 2022). I do not consider the management of waste canvases the same scope of diverse and complex matters and believe the proposed waste Bill can be more explicit on the primary means by which the Crown intends to meet its specific Treaty obligations, therefore a descriptive clause is more appropriate.
- 47 The benefit of the descriptive clause in the form proposed is that it provides greater certainty in respect of how the Bill seeks to give effect to the Treaty. This largely relates to providing for consultation and engagement with Māori in decision-making processes. This will more likely ensure that input from Māori will lead to positive outcomes for Māori.
- 48 I propose that this clause provide that, in order to recognise and respect the Crown's responsibility to give effect to the principles of the Treaty, the Bill provides for provision for Māori participation as outlined in paragraphs 3, 38, 40 and 41 above.

PART TWO: Use of waste levy funds – investment strategy, future functions, and funding sources

Background

- 49 The WMA introduced the waste disposal levy (waste levy) to provide a financial incentive to reduce waste going to landfill and stimulate the market to find mechanisms for recycling, repurposing, and reusing, as well as to raise funds for waste minimisation activity. Levy revenue is hypothecated¹ (i.e., ring-fenced) under the WMA and funds are invested in waste minimisation activities by both central and local government. The WMA requires funds to be allocated to central and local government on a 50:50 split. The central government portion, less administration and compliance costs, is made available via the contestable Waste Minimisation Fund.
- 50 The levy was initially set at \$10 per tonne for waste disposed at municipal landfills. In 2020, Cabinet agreed to progressively increase the waste levy and expand its application to a wider range of landfill types [CAB-20-MIN-0264.1 refers]. This creates a stronger incentive for diversion from landfill while also increasing levy funds available for investment in waste minimisation activities. Recent modelling (see Table 1 below) shows the expected trajectory of levy revenue over the coming years. The figures below represent estimates, prior to the 50:50 split between central and local government and before administration or compliance costs.

Table 1: Projected waste levy revenue 2022/23 to 2029/30

	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30
Upper estimate	\$112m	\$223m	\$259m	\$257m	\$255m	\$253m	\$250m	\$249m
Lower estimate	\$112m	\$223m	\$259m	\$257m	\$243m	\$238m	\$230m	\$219m

Note: Forecasting levy revenue is complex and uncertain due to multiple factors such as market dynamics, policy impact, and data quality. These figures are estimates only and will likely shift over time.

- 51 Cabinet agreed in March 2023 [ENV-23-MIN-0002 refers] to broaden central government activities that can be funded from the levy to include:
- 51.1 collection and distribution of the levy (by the EPA);
 - 51.2 all compliance and enforcement activity under the new legislation (by the EPA);
 - 51.3 the long-term national behaviour change programme that is central to the Waste Strategy;
 - 51.4 start-up costs for schemes and systems such as extended producer responsibility or licensing systems if those costs cannot be met through the scheme itself or by industry; and
 - 51.5 administering the investment of waste levy funds.
- 52 Details of these activities were provided in the March 2023 Cabinet papers. In particular, the proposed, expanded role for the EPA was outlined, which broadly encompasses the EPA assuming responsibilities for existing operational and regulatory activities (currently

¹ Hypothecation is the dedication of revenue raised from a specific tax for a particular programme or service.

carried out by the Ministry for the Environment) and developing broader regulatory functions, which will be permitted once the new legislation is enacted.

- 53 Cabinet has invited me to present a robust investment strategy to support the WMF.² The focus of this investment strategy (attached as Appendix 4) is on the use of levy funds to support investment activities more generally and covers the current state under the WMA, as well as the expected future state under new waste legislation, which will permit a broader range of activities to be funded.
- 54 Key points from the investment strategy are:
- 54.1 in anticipation of the increase in levy revenue, the Ministry for the Environment has been developing a more sophisticated approach to managing its waste investment funds³;
 - 54.2 the investment strategy summarises the context for investment and the priority waste streams and investment types. It also includes the intervention logic framework for levy investment, and outlines governance arrangements including substantive and process controls;
 - 54.3 investment of the central government portion of the levy is strategically underpinned by the Waste Strategy and the first emissions reduction plan, which both set clear targets for waste minimisation and reducing emissions from waste;
 - 54.4 the investment strategy focuses on a set of targeted waste streams, which includes: organic materials, construction and demolition materials, plastics, and six declared priority products;
 - 54.5 the WMF has historically invested in a wide range of project types. Future investments will be targeted to a specific range of activities, aligned to the gazetted fund criteria, that address waste at all levels of the waste hierarchy. This will be enabled by new waste legislation specifying that levy funds be used to support the overarching goals in the Waste Strategy and any supporting plans (and the overall purpose of the legislation). The investment types are:
 - 54.5.1 infrastructure – a series of high-impact and scaled network and processing projects;
 - 54.5.2 behaviour change – through a national strategy delivered by key partners with central government support;
 - 54.5.3 system change – through regulated product stewardship such as for priority products (and EPR schemes under new legislation);
 - 54.5.4 contaminated land – the new legislation intends to allow contaminated land remediation, including landfills vulnerable to climate change, to be addressed using levy funds;
 - 54.5.5 research and innovation – applied research and innovation to develop new, or scale-up technologies to reduce or minimise waste; and

² The Waste Minimisation Fund is administered by the Ministry for the Environment and supports projects that increase reuse, recovery, and recycling, or decrease waste to landfill, one-off use, or litter.

³ WMF, Plastics Innovation Fund, in addition to funding from Covid-19 Response and Recovery Fund (CRRF) and the Climate Emergency Response Fund (CERF).

- 54.5.6 local circular solutions – these include community-driven circular economy or resource-recovery projects or programmes with potential to be scaled.

Expectations of future funding

- 55 While the broader suite of central government activities is expected to be within scope of levy fund revenue projections, there may be other priorities that emerge over time that are not within scope and/or exceed demand. The reasons for this are:
- 55.1 there is inherent uncertainty of levy revenue over the long-term. For example, as policies are established that reduce waste over time, levy revenue is expected to decline;
- 55.2 future policy required to meet government priorities may require substantial investment (e.g. future waste-related emissions reduction plan actions);
- 55.3 potential for unforeseen issues at national or international scale that could have immediate impact, which could create high impact or cost to the sector;
- 55.4 the activity/initiative is outside the defined scope for use of levy funds and/or the funding required exceeds funding available (e.g. timeframes for investment and/or total funding sought).
- 56 Consequently, it is not possible to provide assurance that all future waste-related activities will be able to be funded by current funding sources. However, formal review processes provided for in the new waste legislation will enable measurement of progress against the Waste Strategy and allow for broader consideration of waste levy matters (e.g. effectiveness of levy spend, consideration of levy rates, etc.). There has been some exploration of this to date (within the bounds of the WMA), although no firm commitments have been made to any application.

PART THREE: Use of waste levy funds – sunset clause for hypothecation, setting investment priorities, local government spend, and supporting emergency waste management response

- 57 Cabinet has invited consideration of options related to levy funds (i.e. a ‘sunset clause’ on hypothecation) and setting expectations and/or controls on levy spend (i.e. a role for the Minister of Finance). This would help ensure both central and local government invest the levy in high-value projects that help achieve overall waste priorities. There is also a need to manage future reliance on levy revenue, which, as noted above, may vary or decline over time.
- 58 The options considered here are discussed in relation to the agreed provisions of the Bill, which cover support for formal periodic reviews, a strategic framework, reporting and performance requirements.
- 59 This report-back coincides with a review, currently underway, into the effectiveness of the waste levy, which is a requirement under the existing WMA. This review will assess how effective the levy has been in reducing waste that is disposed of in landfills, and increasing material that is diverted from landfills to beneficial uses (for example recycling or composting). The review provides a regular opportunity to review whether regulatory settings are appropriate. For example, the previous review in 2019/2020 identified a number of improvements to increase the rate and coverage of the levy. This review is expected to conclude later this year.

Options regarding hypothecation and setting investment priorities

Background

- 60 Primary legislation specifies the fundamental aspects that govern the application of a levy on the disposal of waste and its use,⁴ while regulation specifies detailed aspects of the levy.
- 60.1 Cabinet has invited me to report-back on specific options for hypothecation of the levy, including consideration of:
- 60.2 a 'sunset clause' for the central government portion of levy revenue to allow reconsideration after a set number of years; and/or
- 60.3 embedding a formal role for the Minister of Finance in setting investment plan priorities and the level of funding set aside to achieve these, to ensure alignment with the government's fiscal strategy.

Inclusion of a 'sunset clause' or similar on hypothecation of levy funds (central government portion)

- 61 A sunset clause would require a specific provision in the Bill to enable hypothecation settings for the central government portion of the levy to be reviewed and reconsidered after a specified period. A fundamental change to these hypothecation settings would most likely facilitate ongoing levy revenue being available for a central prioritisation process, as opposed to its default - ring-fencing for waste-related activities.
- 62 Given the scope of change anticipated over the coming years, it is not desirable or feasible at this point to set a timeframe for when hypothecation of levy funds ought to be reconsidered. As noted in Part Two above, the Ministry for the Environment has adopted a more robust investment strategy to manage the increase in levy funds available for investment. Concurrently, a comprehensive work programme is underway to address waste, using policy, regulatory and compliance tools. It is too early to effectively determine the cumulative impact of these initiatives.
- 63 In particular, significant investment in infrastructure and other capabilities is needed in coming years to implement the Waste Strategy and meet its targets, and those in the waste chapter of the emissions reduction plan (including the 40 per cent methane reduction target). This investment will leverage significant private, iwi and local government investment and these delivery partners require a level of certainty from central government. Without certainty about funding for these initiatives, there is a high risk of not meeting the targets.
- 64 Additionally, there is a general acceptance that imposing the waste levy (and the recent increase and expansion to the levy) ultimately results in use of levy funds to support improved outcomes in the sector. A premature change to hypothecation settings would put this at risk.
- 65 There may be scope for reviewing hypothecation settings in due course once there is clarity on progress towards meeting emissions reduction and Waste Strategy targets, policies have had time to be implemented, and there is evidence of sustained improvements in waste and emissions. Additionally, there are also a range of possible responses that could be considered in a future scenario where current hypothecation

⁴ To illustrate, the WMA covers: who must pay, how funds must be distributed and spent, the distribution methodology for councils, and the ability of the Minister for the Environment to set regulations. Regulations specify amendments to the levy rate, the types of facilities subject to the levy, information requirements, etc.

settings were deemed to be no longer appropriate (e.g. broadening the range of investment priorities).

- 66 Therefore, I propose that the hypothecation of waste levy funds is not subject to a specific sunset clause in the Bill.

Inclusion of a formal role for the Minister of Finance in setting investment priorities

- 67 This option would require a specific provision to enable the Minister of Finance to have a formal role in setting investment priorities and the level of funding set aside to achieve these. The intention would be to ensure alignment with the government's general fiscal strategy.

- 68 Cabinet has agreed the Bill will include several mechanisms for influencing investment priorities and the ability to decide on specific investment proposals above a certain threshold. This includes the introduction of a new power for the Minister to notify investment priorities from time to time [decision 42.1 from ENV-23-MIN-0002 refers]; an obligation for the Minister to gazette criteria for funding (e.g. setting expectations on matters like co-funding, size thresholds etc.) [decision 42.2]; and mandatory consideration of value for money, alongside overall controls on what can be funded [decision 42.3].

- 69 Additionally, proposals above \$10 million must be independently assessed [decision 42.4] and there is a requirement for the Minister to consult with the Minister of Finance before approving proposals over \$25 million [decision 42.5].

- 70 Building upon these provisions, there is value in ensuring a cross-government alignment of investment priorities, with the ability to consult the Minister of Finance as appropriate.

- 71 Therefore, I propose an amendment to these procedural elements, to include a power for the Minister for the Environment, in consultation with the Minister of Finance, to notify investment priorities through the action and investment plan, having regard to the Waste Strategy and/or the purpose of the Bill.

- 72 I also propose that the decision-making elements for individual proposals are further refined, with a requirement that the Minister for the Environment consult with the Minister of Finance regarding decisions between \$10 million and \$25 million (i.e. the proposed contribution of levy funds for the proposal is within this range; while the total value of the proposal may exceed this). Following earlier agreement, proposals above \$25 million will be decided by Cabinet.

- 73 These decision-making elements are summarised in Table 2 below.

Table 2: Decision-making elements to inform investments of waste levy funds

Overall direction and priorities	Decision-maker(s)
National Waste Strategy	Cabinet
Other direction-setting documents (e.g. ERP)	Cabinet
Action and investment plan	Minister for the Environment, includes consultation with the Minister of Finance
Investment priorities for WMF	Minister for the Environment

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Criteria for WMF applications	Minister for the Environment
Individual investment opportunities	Decision-maker(s)
Proposals above \$25 million	Cabinet, includes consultation with the Minister of Finance (also independently assessed)
Proposals between \$10 million and \$25 million	Minister for the Environment, includes consultation with the Minister of Finance (also independently assessed)
Proposals between \$1 million and \$10 million	Secretary for the Environment
Proposals below \$1 million	Deputy Secretary for the Environment

Options for setting expectations on how levy funds will be used by territorial authorities⁵

Background

- 74 Under current legislative settings (the WMA and Local Government Act 2002), territorial authorities (TAs) have some scope to decide what waste-related activities they carry out and how they fund them. Section 42 of the WMA states that a TA “must promote effective and efficient waste management and minimisation within its district”. Section 43 requires territorial authorities to prepare waste management and minimisation plans (WMMPs) every six years, which set out their plans and priorities.
- 75 Existing legislation contains limited mechanisms governing the use of levy funds. Section 32 of the WMA states that TAs can use levy funds on matters to promote or achieve waste minimisation and in accordance with their respective WMMP. Additionally, in terms of alignment to any national direction, each WMMP must “have regard to the New Zealand Waste Strategy, or any government policy on waste management and minimisation that replaces the strategy” (section 44(c)).
- 76 This has contributed to wide variation in the type and extent of waste minimisation activities carried out by TAs. Coupled with the variation in size and capability across local government, this has contributed to inconsistent outcomes.

New legislation will create a stronger strategic framework, governing use of levy funds by TAs

- 77 Cabinet has agreed the following, broader range of mechanisms for influencing TAs’ levy spend and enabling them to contribute to overall strategic priorities for waste minimisation:
- 77.1 new legislation will prescribe minimum obligations on TAs, including delivery of domestic/household waste and recycling collections [decision 16 from ENV-23-MIN-0002 refers];
 - 77.2 new legislation will require that WMMPs must align with the Waste Strategy and any AIPs [decision 26];

⁵ Under the Local Government Act 2002 a territorial authority is either a city or a district council.

- 77.3 the Minister for the Environment will have the ability to direct TAs on WMMPs as a backstop to ensure this alignment, within a specified timeframe (currently six months) [decision 28];
- 77.4 waste levy funds must be used to support the overall purpose of the legislation, and the goals and priorities set out in the Waste Strategy and supporting plans applicable at the time [decision 40], and provided for in WMMPs [decision 45];
- 77.5 TAs will be required to report to the Ministry and publicly on their progress against WMMPs and contribution towards the Waste Strategy and any AIP (every five years). The Secretary for the Environment will be required to prepare an independent public report on overall national progress every five years. Reports will need to include information on how waste levy funds have been used and an assessment of effectiveness, at a local, central government and combined level [decisions 34-36];
- 77.6 the Minister for the Environment will have the ability to withhold levy payments to TAs. This is an existing provision, broadened to improve its use and application, including clearly outlining in what circumstances the waste levy can be retained, and including the ability to retain, in part, or for waste levy funding to be back-paid on achieving compliance, where appropriate. It includes enhanced regulator discretion in how and when this tool is applied [decision 46];
- 77.7 application of specific regulations to govern TA activities. For instance, recent Cabinet decisions to improve kerbside collection services (which includes requiring that councils offer kerbside collection of dry recycling and food scraps and also collect a standard set of materials).
- 78 Cabinet has also agreed to mandatory reporting by TAs on how they have spent levy revenue, along with a range of other matters relating to the waste minimisation services, facilities, and infrastructure they provide [CAB-21-MIN-0181 refers].
- 79 Collectively, these provisions permit greater alignment of individual TA levy spend with the national direction, as well as flexibility for the Minister for the Environment to direct and/or affect levy-funded activities.
- 80 Supporting processes also create opportunities to facilitate greater value for money from the TA portion of levy spend, including:
 - 80.1 AIP development – will provide an integrated set of priorities and actions across agency, regional, and sector initiatives and perspectives, to deliver on the Waste Strategy and these supporting policy initiatives;
 - 80.2 national data framework – will create the evidence-base for investment opportunities, through expanding data sources and reporting requirements;
 - 80.3 methodology for distribution of levy funds – the proposed approach is for levy funds to be distributed with a combined base-level and population-based calculation, creating a more equitable approach, where smaller TAs are better resourced to support waste minimisation initiatives;
 - 80.4 formal reviews – consideration of the effectiveness of the levy and its spend (local and central government) (as part of a wider review across the Waste Strategy and AIP progress every five years). This will provide the opportunity to assess and consider other mechanisms for the use of levy funds;

80.5 general compliance activities, which includes audits of TAs' levy spend.

- 81 I consider that, collectively, these mechanisms will enable strong expectations to be set for the use of levy funds by TAs, compared to the status quo. Additionally, the Bill will contain provisions for periodic review processes, and appropriate mechanisms for the Minister for the Environment to apply further controls on TAs' use of levy funds.
- 82 I propose that Cabinet agree that the progress reports outlined at paragraph 74.5 include consideration of whether additional national standards or other mechanisms are required to ensure territorial authorities are meeting their obligations to a suitable performance level.
- 83 To enable this, I propose further policy work to explore the use of national standards or other appropriate mechanism in setting performance expectations for TAs in regards to their use of levy funds. I therefore seek delegated authority to approve the final proposals for national standards.
- 84 I also propose to give further consideration to whether the core roles and responsibilities for TAs, that Cabinet has already agreed [ENV-23-MIN0002 refers], should be supplemented by a secondary legislative tool to specify the details of the obligations. This would be another avenue for ensuring that TAs achieve high waste minimisation standards.

Use of levy to support TAs to engage with Māori in discharging their functions under the Bill

- 85 I have proposed to provide for collaboration between local Māori and TAs in the development and execution of waste management and minimisation plans (WMMPs).
- 86 In keeping with the approach undertaken in funding Māori participation in local government functions, most recently in relation to the Natural and Built Environment and Spatial Planning Bills, I expect that costs of Māori involvement will be met by local councils.
- 87 To minimise the extent to which this burden falls on rate payers, I propose the Bill will explicitly recognise that TAs may utilise levy funds for the purposes of funding Māori involvement in WMMPs.

Use of the waste levy to support emergency waste management response

- 88 State of emergency declarations in New Zealand may occur in response to a range of situations. The National Emergency Management Agency's records suggest that, of the 101 declarations since 2002, flooding has been the most common cause (43 instances), followed by severe weather (36 instances).⁶ These events have wide ranging levels of impact, and in the context of waste generation and management, the circumstances and needs can vary significantly.
- 89 For example, a national emergency was declared at 8:43am on 14 February 2023, owing to the impacts of Cyclone Gabrielle. This event compounded prior events, including Cyclone Hale and severe weather resulting in the Auckland floods. These events and many of those prior caused widespread damage to land, infrastructure, businesses and homes.

⁶ Declared States of Emergency, National Emergency Management Agency:
<https://www.civildefence.govt.nz/resources/previous-emergencies/declared-states-of-emergency/>

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- 90 Cyclone Gabrielle underscored the role and importance of having resilient waste and resource recovery infrastructure at a local level in an emergency. In recognition of this context, and acknowledging the likelihood of similar large-scale future events across New Zealand, Cabinet has invited me to report back on options for using the waste levy to support waste management activities in an emergency response situation.
- 91 Cabinet has also delegated decision-making power to me to make policy decisions and issue drafting instructions on emergency provisions in the Bill [ENV-23-MIN-0006 refers].
- 92 In the aftermath of Cyclone Gabrielle, current provisions in the WMA have enabled levy-related actions to support response and recovery efforts including:
- 92.1 processing applications for a waiver of the waste levy provided for under the WMA;
 - 92.2 communicating current WMF investment signals where there may be some intersect with response and recovery efforts⁷ and fast-tracking eligible applicants through application process;
 - 92.3 seeking use of Orders-In-Council (under the Severe Weather Emergency Recovery Legislation Act 2023) to address waste levy administrative matters.
- 93 While useful, the limited scope in the WMA for the use of the levy in emergencies has highlighted the need for a more adaptive approach, where councils require further support over and above what they have prepared for. The Civil Defence Emergency Management Act 2002 includes the requirement for Councils to plan for, and respond to, emergency events, for which waste and contaminated materials stemming from the event can be a priority issue, such as occurred with Cyclone Gabrielle.
- 94 Subject to further policy work on these matters (and utilising Cabinet's decision-making authority to finalise emergency provisions for inclusion in the Bill), I propose that provision be made for a wider use of waste disposal levy funds for exceptional situations where a state of emergency has been declared, and the scale and nature of the emergency warrants discretionary use of levy funding potentially outside its legislated purpose and an immediate response from Ministers. I am not proposing this provision be available for all emergency situations.
- 95 It is important to note, the timing of an emergency declaration and the potential levy funding available to support affected Councils may or may not be well aligned, as actual funding available at any given time varies (i.e. for both Council and Ministry administered levy funds).⁸
- 96 Subject to further work, I am considering an approach that might be adopted as follows:
- 96.1 a state of emergency declaration triggers a window of opportunity for the Minister for the Environment – in consultation with the Minister for Emergency Management, Minister of Local Government, and the Minister of Finance – to consider affected Councils' financial circumstances and whether any unallocated

⁷ The Government has recently announced funding of \$1m from the WMF to support a Hawke's Bay organic composting facility that was severely damaged by Cyclone Gabrielle.

⁸ Opportunities to investigate more enduring solutions towards planning and funding waste infrastructure and services in emergencies include: the Government's Inquiry into the response to the North Island severe weather events and the Government's commitment, in its response to Rautaki Hanganga o Aotearoa, the New Zealand Infrastructure Strategy, to consult on the limitations of our current regulatory approach to delivering a resilient critical infrastructure system (led by the Department of the Prime Minister and Cabinet).

levy funding held by a Council and/or the Ministry for the Environment may be used to support affected Councils with waste management activities;

- 96.2 noting many declarations are relatively short and the alternative use of the levy is intended for exceptional circumstances, this approach would favour situations where larger scale impacts have occurred, such as national emergency declarations;
- 96.3 funded activities could extend into activities associated with the transition and recovery phases of emergencies, but this would be within a specified time period;
- 96.4 funding could be available for:
 - 96.4.1 the collection and transport of waste (including recyclable waste) resulting from the event, that is within the public interest, such as on/in council-owned assets and/or where there is a health or environmental risk, and not otherwise funded or able to be funded;
 - 96.4.2 the temporary storage and processing costs of waste (including recyclable waste);
 - 96.4.3 the restoration of council-owned waste and recycling infrastructure;
 - 96.4.4 council administrative costs towards provision of emergency-related waste and recycling services.
- 97 Subject to further policy work, use of the provision would be subject to an assessment of potentially available funding at the time, with a clear understanding of the implications and would be capped. It is my intention to ensure the 'waste minimisation' purpose of the waste disposal levy is maintained, even where the use of it in emergency management situations may ultimately facilitate waste disposal. Eligible costs should not include funding towards 'waste disposal' costs (noting the levy may also be waived from disposal costs in emergency management situations). The rationale being that even in an emergency, a high degree of diversion and resource recovery may be possible, but is not incentivised if the levy is both waived and then also used to pay for disposal.
- 98 For example, food waste disposal to landfill exacerbates climate change impacts through the production of methane, which contributes to an increased magnitude and frequency of extreme weather events. Following Cyclone Gabrielle, significant volumes of food waste were disposed of to both class 1 landfills and the new Reporoa anaerobic digestion plant in the central North Island; the latter has a much lower emissions impact. A scenario with "free disposal"⁹ to landfill in this context would have incentivised landfill disposal of potentially divertible materials.

PART FOUR: Summary of financial implications and impacts on stakeholder groups for waste legislation changes and administrative costs associated with EPR schemes

Financial implications and impacts on stakeholder groups

- 99 Subsequent to the range of policy decisions to date on new waste legislation, Cabinet has requested a summary of expected financial implications and impacts on stakeholders. The summary (presented in Appendix 2) outlines the expected financial

⁹ Free disposal in this context means fully subsidised disposal costs.

impacts, primarily from a central government expenditure point of view, with particular reference to future functions and funding sources (i.e. Crown funding, levy funding, and cost recovery). It is presented primarily for illustrative purposes, to indicate what is possible, rather than a blueprint that directs or binds future activities.

- 100 There are choices regarding scope for the individual regulations, which will give effect to the primary legislation. These will be shaped by analysis during any future decision-making process in tandem with choices on the sequencing of initiatives and pace of change, to help manage any fiscal impacts.
- 101 The summary presented in Appendix 3 also provides a high-level description of different stakeholder groups that are likely to be impacted by the broad suite of provisions enabled in the new legislation, such as licensing, waste tracking, duties of care, product/material bans, and duties of care. This summary information is intended to provide clarity on decisions to date and confirm that future decisions, enabled by regulation-making powers, will be subject to consideration (including consultation, cost-benefit analysis, and regulatory impact analysis).
- 102 I note that currently, the costs of managing waste generally fall on communities, local government, and the environment. Many of the regulatory tools in the new legislation will support a shift towards these costs being internalised in supply chains, and being met more fairly.

Administrative costs of EPR schemes

- 103 On 15 May 2023, Cabinet invited me to report back with an estimate of government administration costs associated with EPR schemes, including the distribution of these costs between the Crown and industry.
- 104 I note that the financial implications of EPR-enabling provisions cannot be calculated in advance, because costs and benefits associated with their use in different scenarios could vary substantially.
- 105 Nevertheless, any new EPR scheme will require increased administrative capacity and capability from regulatory agencies. Some of these costs, such as compliance monitoring, may be covered through cost recovery, while others may be supported through revenue from the waste disposal levy.
- 106 By way of example, officials have undertaken a preliminary estimation of administrative cost analysis for a type of EPR scheme – the (currently deferred) container return scheme (CRS). Based on a set of assumptions (and noting that costs are indicative only), costs for monitoring compliance with a CRS are estimated to be \$1.3 million, of which approximately \$850,000 could be cost-recovered through the PRO and \$450,000 would be Crown funded. These costs do not account for the costs associated with assessing the initial application for approval of a scheme/PRO, which would also be Crown funded. Analysis also does not account for the EPA's costs associated with licensing suppliers, which would be cost-recovered from individual applicants.
- 107 Any budget bids for EPR schemes would be made once a full cost assessment for the scheme has been undertaken.
- 108 Depending on the type of EPR scheme, it can be designed to increase the efficiency of administrative activities. For example, a CRS could use technology (including electronic counting and verification of returned beverage containers) to support data-collection and compliance and, where relevant, reduce costs. This automation would create efficiencies in the compliance, monitoring and enforcement framework, such as

providing real-time data and remote monitoring of returns, making it easier for the regulator to detect and investigate offending and reduce the regulatory burden.

Impact Analysis

Regulatory Impact Statement (RIS)

- 109 A RIS has been previously prepared by the Ministry for the Environment and accompanied the suite of Cabinet papers in March 2023.
- 110 The Ministry for the Environment and the Treasury's Regulatory Impact Assessment Panel (Panel) reviewed the RIS and the full quality assurance statement reads, "*The Panel considers that the RIS document on the proposals to support a transformation in waste management in New Zealand meets the quality assurance criteria for regulatory impact analysis. The problem definition, valuation criteria against which options were assessed, and the context are well set out. Having reached that assessment, the Panel notes that the RIS acknowledges that parts of the analysis are constrained by the limited ability to quantify some data at this stage in the project*".

Climate Implications of Policy Assessment

- 111 The new legislation itself has no direct climate impact. However, some of its content will support actions to reduce emissions from organic waste as set out in the emissions reduction plan. Aspects of the new legislation, including those that regulate products and materials and those that regulate the disposal of waste and resources are expected to contribute to the reduction of emissions.
- 112 The Climate Implications of Policy Assessment (CIPA) team has been consulted in regards to the broad suite of legislative change and the related policy decisions and confirms that the CIPA requirements do not apply to this proposal as it is of an enabling nature, with no direct quantifiable impact at this stage.

Treaty Impact Assessment

- 113 A Treaty Impact Assessment has been prepared.
- 114 The Bill will contain express provision for Māori participation and outcomes in respect of extended producer responsibility schemes and related organisations. Subject to Cabinet consideration, the Bill may provide for additional recognition of Māori interests in waste management.

Cost-of-living Implications

- 115 The provisions in this paper are primarily enabling in nature to inform the development of new legislation to repeal and replace the WMA and the Litter Act. Any subsequent action to develop specific regulations that may have an impact of cost-of-living matters will be subject to further analysis at that time (including cost-benefit analysis). I consider that the proposals in the Cabinet paper will not significantly impact New Zealanders' ability to maintain their standard of living, as they are mostly administrative in nature.

Financial Implications

- 116 There are no direct financial implications from this paper, as it is to confirm policy decisions for drafting the Bill. More broadly, financial implications of the waste legislation proposals are summarised in Part Four above, with further detail provided in Appendix 2.

Legislative Implications

- 117 The decisions from this paper expand upon earlier Cabinet decisions to repeal and replace the WMA and Litter Act. The proposed new Bill is expected to be on the legislation programme for the next term of government as a category 5 Bill. While earlier Cabinet decisions had noted the intent to introduce the Bill this term, it is likely that Parliamentary Counsel Office drafting capacity and the House schedule will not permit this.

Population Implications

- 118 Other than Treaty implications, there are no additional population implications associated with this paper.

Human Rights

- 119 The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Use of External Resources

- 120 The policy advice and text for part one of this paper was developed in part by a sole trader contractor working in a part time capacity over a four-week period. The contractor was engaged as they are an expert in Treaty policy development, which was specialist knowledge.

Consultation

- 121 The following government agencies have been consulted: The Treasury, Te Puni Kōkiri, Te Arawhiti, Treaty Policy Oversight Group, Department of Internal Affairs, Environmental Protection Authority, New Zealand Customs Service, and the Ministry of Business, Innovation and Employment. The Department of the Prime Minister and Cabinet has also been advised.
- 122 The matters in this Cabinet paper relate to issues on waste legislation considered through earlier consultation and engagement.
- 123 In October 2021, Minister Parker released a public consultation document, *Te kawe i te haepapa para | Taking responsibility for our waste*, with a proposed new Waste Strategy and issues and options for new legislation. There was widespread support for a change in the waste sector, with many supporting the move to a circular economy.

Communications

- 124 As part of wider communication and stakeholder engagement activity in the lead-up to the introduction of the Bill to the House, the Ministry for the Environment will be engaging with stakeholders over the coming months.

Proactive Release

- 125 I intend to proactively release this Cabinet paper, excluding legally privileged material and subject to any redactions consistent with the Official Information Act 1982 and Cabinet Office agreement, within 30 days of decisions being made by Cabinet.

Recommendations

The Associate Minister for the Environment recommends that the Committee:

1. **note** 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, and DEV-23-MIN-0080 refer];
2. **note** 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. **note** that Cabinet invited a report-back on further advice on the inclusion of a Treaty of Waitangi clause;

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4. **note** that the Treaty Provision Oversight Group (TPOG) was consulted regarding the proposal for the inclusion of a Treaty clause in the waste legislation;
5. **note** that consultation with Māori on the waste strategy and legislation highlighted Māori interests in effective waste management and that I consider these interests are sufficient to warrant recognition of the Treaty and provision for Māori participation in the Bill;
6. **agree** 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 iwi/Māori engagement with local government 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. **agree** to delegate authority to the Associate Minister for the Environment to approve the final proposals for inclusion of a Treaty clause in the Bill;
8. **note** that these provisions build on earlier Cabinet decisions regarding statutory proposals to reflect Māori interests in extended producer responsibility schemes and organisations;
9. **note** 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. **note** 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. **note** I have provided Cabinet with a draft investment strategy that sets out the approach for how waste levy funds will be invested and the specific priorities for investment;
12. **note** I have provided Cabinet with an attached summary of the financial implications and impacts on stakeholder groups, which summarises the expected impacts that will be enabled through the new waste legislation;
13. **note** 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. **agree** that the Bill will not include a sunset clause on the hypothecation of waste levy funds and that officials will review waste hypothecation settings and report back to Cabinet on options, including a sunset clause as part of the next review of levy effectiveness;

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15. **agree** that the Associate Minister for the Environment will consult with 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. **agree** that the Associate Minister for the Environment will consult with the Minister of Finance in considering individual investment proposals where the value of the government contribution is between \$10 million and \$25 million;
17. **note** 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. **agree** 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. **agree** to delegate authority to the Associate Minister for the Environment to approve the final proposals for setting performance expectations for territorial authorities for inclusion in the Bill;
20. **agree** the Bill explicitly empower local authorities to spend levy funds to support Māori participation in the development of Waste Management and Minimisation Plans;
21. **note** 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. **note** that Cabinet has delegated decision-making authority to me, as Associate Minister for the Environment, to make policy decisions and issue drafting instructions on emergency provisions for inclusion in the Bill;

Administrative costs of EPR schemes

23. **note** that in approving the regulatory framework for extended producer responsibility schemes (EPR), Cabinet invited me to report back with an estimate of government administration costs associated with EPR schemes, including the distribution of costs between the Crown and industry;
24. **note** the costs associated with establishing and operating EPR schemes are heavily dependent on the nature of the product and the regulatory approach;
25. **note** 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. **note** 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. **note** that to the extent further Crown funding is required for costs referred to in the above decisions, this will be met from existing baselines or via the waste levy.

Authorised for lodgement.

Hon Rachel Brooking

Associate Minister for the Environment

Appendix 1: Report-back requirements from ENV-23-MIN-0002

The following decisions (numbered 12, 37-40 and 54 below) from ENV-23-MIN-0002 are subject to further decisions from a report-back to ENV Committee by 30 June 2023.

12 **invited** the Minister for the Environment to report back to the ENV by 30 June 2023 with further advice on the inclusion of a Treaty of Waitangi clause;

37 **agreed**, subject to paragraph 54 below, to continue ring-fencing the waste disposal levy funds;

38 **agreed**, subject to paragraph 54 below, that the waste disposal levy funds will continue to be split equally between central and local government;

39 **agreed**, subject to paragraph 54 below, that the new legislation allocates the local government portion of the waste disposal levy funding as follows:

39.1 Twenty per cent of the local government proportion is distributed evenly between territorial authorities to create a flat rate of waste levy funding for all territorial authorities to contribute to their legislated roles and responsibilities, and

39.2 the remaining 80 per cent of the local government proportion of waste levy funding is allocated to councils on a population basis, using the current formulaic approach;

40 **agreed**, subject to paragraph 54 below, that waste disposal levy funds be used to support the overall purpose of the new legislation and the overarching goals set out in the new waste strategy and any supporting plans;

54 **invited** the Minister for the Environment to report back to ENV by 30 June 2023 with:

54.1 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;

54.2 a robust investment strategy to support the Waste Management Fund, including:

4.2.1 clear quantification of the future functions and funding sources;

54.2.2 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;

54.3 options for hypothecation of the levy to mitigate the risks, including:

54.3.1 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

54.3.2 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

54.4 placing stronger expectations around how the levy revenue will be used at local government level;

54.5 options for using the waste levy to support the medium to long term emergency waste management response.

Appendix 2: Summary of estimated financial implications

The following table sets out how future functions are expected to be funded once new waste legislation is enacted.

Caveats/notes:

Waste levy funding refers to use of the central government portion of waste levy revenue, except where noted.

Legislative provisions	Role(s)	Financial implications – estimated establishment and/or transition costs	Financial implications – estimated operational costs
Confirming roles and responsibilities	Ministry for the Environment (MfE) (sector policy and stewardship, regulatory policy, investment, behaviour change)	Establishment of new activity and/or ramping up of existing activity funded through Crown funding. For example: Developing regulatory policy (regulating products/materials, waste management sector) (see <i>below</i>); Developing national behaviour change campaign; Expansion of Waste Advisory Board role (estimated <\$1m/year).	Continuation of ongoing functions (policy, system stewardship, etc) funded through Crown funding. Ongoing national behaviour change campaign funded through waste levy (estimated \$1-5m/yr). Ongoing investment administration funded through waste levy (estimated \$7-9m/yr). <i>Indicative example(s):</i> Current MfE Investment support/administration \$5-7m/yr.
	Environmental Protection Authority (EPA) (central govt operational and CME functions, levy collector and administrator)	Significant transition costs expected to support transfer of current compliance monitoring and enforcement (CME) functions from MfE to EPA, funded through Crown funding (\$tbc, pending further decisions). Additional establishment costs for regulator functions enabled in new legislation (\$tbc, pending further decisions).	Ongoing operational and regulator functions, funded through combination of Crown funding, waste levy , and cost recovery (where agreed). For example: Levy collector and administration function; Operation of the national licensing system; Operation of the tracking system; Central government compliance and enforcement activity.

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			<p><i>Indicative example(s):</i> Current MfE CME functions \$5.5m/yr.</p>
	Territorial authorities	<p>Some transition costs to align existing local legislative instruments with national approach, where applicable (\$tbc – variable for individual TAs).</p> <p>Partial-establishment costs related to enacting specific policies, including duties of care, improving household recycling services (\$tbc – variable for individual TAs).</p>	<p>Ongoing execution of minimum obligations, ongoing part-funded through waste levy (local govt portion), and other sources of TA revenue.</p> <p>Duties of care (where TAs are the primary regulator) (\$tbc - variable, dependent on current individual activity, part funded through local govt portion of waste levy).</p>
	Customs (pending)	Potential border role pending further decisions [ENV-23-MIN-0002 refers].	Potential border role pending further decisions [ENV-23-MIN-0002 refers].
<p>Regulating products and materials</p> <p>Product/material bans, disposal bans environmental performance standards, information/labelling requirements, extended producer responsibility schemes,</p>	MfE, EPA	<p>Establishment costs as part of MfE regulatory policy development, funded through Crown funding (including, but not limited to: internal FTE, external procurement, technical advice, targeted consultation).</p> <p>Establishment costs for extended producer responsibility (EPR) schemes funded through waste levy and/or scheme charges. (\$tbc – variable. Factors influencing costs: maturity and cohesiveness of industry, progress to date through voluntary initiatives, etc.).</p> <p><i>Indicative example(s):</i> Product/material ban: current MfE activity to develop regulations for phase-out of suite of single-use and problematic plastics: \$1-5m/yr over 2-3 years (FTEs, consultant analysis, consultation, resources for business, etc).</p>	<p>Ongoing costs to support EPA regulation implementation and CME activities – highly variable, dependent of nature of regulations, materials/products in scope, market dynamics, etc (\$tbc – variable).</p> <p>Regulator costs determined on case-by-case basis (for example, agreed CME approach, cost to stakeholders, record-keeping and reporting requirements, etc).</p> <p><i>Indicative example(s):</i> CME approach to support plastic bag ban: up to 1 FTE/yr, reducing over time.</p>

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Environmental performance standards		<p>EPR schemes: current Ministry for the Environment activity to develop regulations for regulated product stewardship schemes for six priority products, \$1-5m/yr over 2-3 years (FTEs, external procurement, technical advice, public consultation, co-design of scheme).</p> <p>Levy funds used for co-design (e.g. Tyrewise funded \$1.2m from WMF for co-design regulated product stewardship scheme).</p>	
<p>Regulating the waste sector</p> <p>Duties of care, national standards, tracking system, licensing system</p>	MfE, EPA	<p>Establishment costs as part of MfE regulatory policy development, funded through Crown funding (including, but not limited to: internal FTE, external procurement, technical advice, targeted consultation).</p> <p>(\$tbc – variable. Factors influencing cost: extent of transition costs to manage local bylaws, scope of licensing and/or tracking regime, etc.).</p> <p>Some transition costs to manage any transfer of local licensing systems to national system) (estimated \$1-5m).</p> <p><i>Indicative example(s):</i></p> <p>9(2)(ba)(i) [REDACTED]</p> <p>[REDACTED]</p>	<p>Ongoing costs to support EPA regulation implementation and CME activities – highly variable, dependent of nature of regulations, parties in scope, market dynamics, etc (\$tbc – variable).</p> <p>Duties of care applicable to different parties, with corresponding obligations.</p> <p>Licensing – ongoing operational functions expected to be funded through license fees, subject to agreement of cost recovery provisions.</p>

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Appendix 3: Summary of expected impacts on stakeholders

The following table sets out how provisions within the new waste legislation are expected to impact different stakeholder groups and likely timeframes.

	Central government	Local government	Waste industry	Business	Individuals /consumers
Type of impacts experienced	MfE, EPA have expanded and clearly defined roles; overall clarification of responsibilities; will require transition process where applicable; levy funds able to support a broader range of some activities (CME, behaviour change).	Variable impact on different TAs – dependant on current activities. Minimum obligations specified in legislation to support national consistency; some TA operations transitioned from local to national regimes where applicable (e.g. licensing, bylaws); strategic framework sets national priorities that TAs must align with; reporting requirements to ensure value for money of levy spend; reporting requirements on levy spend and progress against waste strategy; supporting AIP development; duties of care (enforcement, warranting local officers); setting local bylaws where applicable.	Medium impacts from specific regulations as they are developed, including: licensing system for specified parties; duties of care; prescribed or prohibited action for disposal or recycling; national standards applied to specific activities; tracking system; greater CME tools applied to avoid environmental harm; record-keeping requirements may apply to waste industry operators.	Low-medium impacts from specific regulations on products and materials, including: ban on specific products/materials; application of environmental performance standards on products/materials, and duties of care regime.	Low impacts from passed-on costs of alternative products/materials. General duties of care to manage waste appropriately and not to litter.
When experienced	Main roles applicable upon legislation enactment. Further regulations developed over time, which will impact central government functions (e.g. CME approach).	Main role applicable upon legislation enactment. Further regulations developed over time, which may impact TAs.	Specific regulations developed over time, likely impacting different aspects of sector, subject to regulation-making process (RIS, CBA, consultation).	Some duties of care applicable upon legislation enactment. Specific regulations will be developed over time, subject to regulation-making process (RIS, CBA, consultation).	Some duties of care applicable upon legislation enactment. Specific regulations will be developed over time, subject to regulation-making process (RIS, CBA, consultation).

IN C O N F I D E N C E

Appendix 4: Waste Investment Strategy: Towards a low-waste, low-emissions, circular economy

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