

Regulatory Impact Statement: National licensing system in waste and resource recovery

Coversheet

Purpose of Document	
Decision sought:	<p><i>Analysis produced for the purpose of informing a Cabinet decision to approve the waste work programme, specifically in respect of a proposed national licensing system in waste and resource recovery:</i></p> <p>developing new legislation and regulations to support a national licensing scheme for more effective regulation, administration, and data collection from a range of parties in the waste sector</p>
Advising agencies:	<i>Ministry for the Environment</i>
Proposing Ministers:	<i>David Parker</i>
Date finalised:	<i>11 February 2022</i>
Problem Definition	
<p>Currently, there are a wide range of participants in the waste and resource recovery sector, including facilities that receive, sort, and dispose of waste. The waste sector is regulated under multiple pieces of legislation, which is fragmented and difficult to understand. This results in confusion in the sector and low rates of compliance. The government enforces the current legislative framework to varying degrees. Subsequently, NZ is having leakage from the system, such as via illegal dumping, unlawful export of problematic waste, contamination of land and water, some of which has intergenerational effects.</p>	
Executive Summary	
<p>Waste and resource recovery is a large and dynamic sector in New Zealand. It is characterised by a wide variety of participants from large internationally owned corporate entities through to community-based recovery initiatives. Waste and resource recovery comprises facilities which receive, sort, and dispose of waste, operators that collect and transfer waste in addition to other receptacles and organisations focused on particular waste streams.</p> <p>Participants can be permanent or temporary and the scale of participation in the sector can be difficult to ascertain at any one time given the absence of an entry and exit regime. Leakage from the system in the form of illegal dumping, unlawful export of problematic waste and often long-running contamination of land and water can have intergenerational effects. National operators must negotiate several separate regulatory contexts nationally which results in added costs.</p> <p>Much of the sector currently operates without significant regulatory oversight even where there is real risk of environmental, social, and cultural harm in addition to other challenges</p>	

including a poor health and safety record. For instance, some waste operators are partially regulated via the RMA but requirements vary and may be insufficient to manage environmental harms. Given the scale of waste's contribution to our national emissions profile, it is imperative that we develop new ways of regulating the sector and better means of managing harms.

The regulatory context is rapidly evolving via piecemeal changes to a suite of legislation that is implemented to varying degrees. The fragmented nature of the regulatory context contributes to confusion from the regulated community and increased costs of compliance, a lack of system transparency and a consequential difficulty in bringing about desirable behaviour change towards a circular economy.

Option	Name	Description summary
1	Counterfactual	The current manual regulatory approach anticipated through the levy expansion – no regulatory change anticipated other than what is already proposed or in place
2	Limited scope national licensing	A limited version of national licensing, prescribing licensing to only facilities currently subject to the levy and some operators (for example)
3	Comprehensive single-tier national licensing in waste and resource recovery	A harms-based and single level licensing scheme, managed at a national scale and covering waste and resource recovery.
4	Comprehensive two-tier national licensing in waste and resource recovery	A harms-based and two-level licensing scheme, managed at a national and local scale and covering waste and resource recovery.

Our recommendation is that New Zealand seek to scope, design (including with significant engagement with key stakeholders), and operationalise a comprehensive single-level national licensing system in waste and resource recovery (Option 3) via

- a. The amendment of, or development of, the replacement legislation for the WMA (must be enabled in primary legislation)
- b. The promulgation of regulations and other instruments to support the regime (detail is best placed in subordinate legislation) while at the same time integrating existing obligations into a single system under the WMA and potentially associated legislation
- c. The development of appropriate resourcing, training, and infrastructure to support the regime (development of systems and provision of implementation support)

This option is considered to hold the most merit because it:

- a. Has broad scope to integrate existing and familiar obligations with new requirements that can be phased in over time
- b. Enables the professionalisation of a key sector and enhanced transparency and credibility to underpin the transition to a circular economy
- c. Covers the full range of actors in the system across waste and resource recovery including exporters, recognising the complexity of the sector
- d. Provides for a coherent system to ensure as much as possible a level playing field is maintained, data management is uniform and management costs are efficient and provides a basis for integration of other regulatory obligations as appropriate.
- e. Provides for appropriate national oversight and a single system for managing regulatory data pertaining to the system, enabling

greater ability to report on what matters and identify harms, including reporting to the sector itself

- f. Provides for a robust basis for waste tracking, to better meet international obligations including expectations of the OECD and mandatory reporting under the likes of the Basel and Waigani Conventions.
- g. Its benefits in terms of enhanced visibility and prospects of detecting undesirable behaviour are likely to outweigh its costs of establishment and operation
- h. Provides a robust framework for an effective compliance monitoring and enforcement system including meaningful enforcement interventions such as suspension and requirements for personnel to hold particular experience or be of fit character in some circumstances to enhance overall sector performance.

Weak data and record keeping requirements in the waste and resource recovery sector can make it difficult to detect and prosecute unlawful activity and harms associated with that activity. A comprehensive national licencing system will enable integrated and effective management of waste operators. A formal relationship that is holistic, systematic and provides for sufficient flexibility and agility is a critical contingency for bringing about a circular economy. Second to the point of elevation is to establish a 'line of sight' which places obligations on parties which come into contact with materials throughout the sector until they are finally disposed of to establish a chain of custody.

A holistic, efficient, and effective approach to regulating the sector is a critical requirement in order that environmentally sound behaviours are incentivised, that responsibility for waste is sheeted home in a manner that is fair and equitable (and in line with the polluter pays principle) and that flows of information and data ensure progress toward or away from strategic objectives can be accurately measured and responded to. Recent consultation on the review of the New Zealand Waste Strategy and reform of the Waste Minimisation Act demonstrates significant support from stakeholders for these outcomes and nationally licensing more specifically. This paper sets out a means of achieving these things.

Limitations and Constraints on Analysis

The proposal was developed based on observations of the management of the regulatory system underpinning the Waste Minimisation Act 2008. The rationale and justification were informed by policy and operational experience and are at an early stage. For the purpose of the early decisions regarding the waste work programme, the analysis has been limited to the results of policy research, targeted engagement and the results of wider legislation review.

Further detailed analysis is required, including further expert engagement and a comprehensive cost benefit analysis are all to come. In addition, analysis of distributional impacts is required – including the community sector, social enterprises operating where they may be subject to a licensing obligation, and rural communities (due to distance from suitable disposal services) most particularly. Further detailed analysis of the intersection of this proposal and Te Tiriti partnership. These matters will be addressed in the finalised regulatory impact statement after further engagement.

The impact analysis makes several key assumptions about the waste and resource recovery sector and relies on data that is incomplete. There are significant limitations to the analysis because of the need to seek an early decision in advance of detailed analysis.

Assumptions are thus made regarding institutional arrangements, statutory obligations, opportunities in respect of further Te Tiriti partnership and the nature of the sector that may be tested by further evidence and changes in related policy programmes. The fuller proposals are to be presented to Cabinet later in 2022 while reporting back on consultation on amending the Waste Minimisation Act (2008).

Responsible Manager(s) (completed by relevant manager)

Glenn Wigley
 Director – Waste and Resource Efficiency Ministry for the Environment



9 March 2022

Quality Assurance (completed by QA panel)

Reviewing Agency:	The Ministry for the Environment’s Regulatory Impact Analysis Panel
Panel Assessment & Comment:	<p><i>The Ministry for the Environment’s Regulatory Impact Analysis Panel has reviewed the draft Regulatory Impact Statement document “National licensing system in waste and resource recovery”. The panel considers the document partially meets the quality assurance criteria for regulatory impact analysis.</i></p> <p><i>The panel considers the paper clearly sets out the options available to Ministers and illustrates trade-offs and opportunity costs. The paper outlines the known impacts, and the consultation process will identify likely impacts of the proposals on stakeholders.</i></p>

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

1. The waste and resource recovery sector is subject to partial and ineffectual oversight because the regulatory scope and reach are insufficient. The patchiness of the regime enables and disguises unlawful behaviour, particularly inter-jurisdictional issues (e.g., international export of plastic waste). The system quickly loses sight of waste due to weak regulatory oversight and the challenge of managing a large and complex sector with limited tools. The likelihood of considerable and widespread undetected harms is very high. Harms may include direct and specific impact through degradation of the environment, irreversible drawdown of natural capital and erosion of human health, in addition to other economic and socio-cultural harms.
2. The way materials move through an economy and the emissions that result have direct and indirect impacts on New Zealand’s emission profile. Waste is directly responsible for 9% of our total biogenic methane emissions and indirectly contributes to much more. To identify and curtail these harms to achieve better outcomes demands far

greater system coherence, an enhanced basis for integrated management and significantly improved transparency of the many steps materials move through until they reach their point of final disposal.

Relationship between Emissions Reduction Plan and national licensing

Reliable data is vital for reducing emissions, and minimising waste. A national licensing system was recommended in the Emissions Reduction Plan (ERP) to meet the Climate Change Commission's recommendations for improving waste data:

- publishing annual waste statistics from 31 December 2023
- improving data collection across the waste sector
- investing in data collection, to track progress towards a circular economy.

A licensing system would provide a more efficient and robust basis for administering the range of requirements for how sites operate (including the waste disposal levy and potentially the NZ ETS), as well as strengthening the evidence base for organic waste disposal bans and/or the alternative options.

The system would require new legislation (a review of the Waste Minimisation Act 2008 is underway) and would ideally align with local government data collection and reporting mechanisms. Pending improvements to other regulations (National Environmental Standards for Air Quality and the NZ ETS), it could also be used to capture information on waste composition and landfill gas, leading to improvements in the measurement of site-specific landfill gas capture efficiency, which is another key option for reducing emissions.

What is the policy problem or opportunity?

3. Waste and resource recovery is a large and dynamic sector in New Zealand. It is characterised by a wide variety of participants from large internationally owned corporate entities through to community-based recovery initiatives. Participants can be permanent or temporary and the scale of participation in the sector can be difficult to ascertain at any one time given the absence of an entry and exit regime. Data are missing on the way materials move through the sector and which entities or individuals have contact with them along the way. As a result, opportunities to assess current and emerging risks and to improve outcomes are scant.
4. Much of the sector currently operates without significant regulatory oversight even where there is real risk of environmental, social, and cultural harm. The regulatory context is rapidly evolving via piecemeal changes to a suite of legislation that is implemented to varying degrees. The fragmented nature of the regulatory context contributes to confusion from the regulated community, a lack of system transparency and a consequential difficulty in bringing about desirable behaviour change. Several parts of the sector currently have no or limited reporting obligations (i.e., Material Recovery Facilities) while others operate with no nationally consistent standards of operation which makes it difficult to detect good performers compared with poor (e.g., composting facilities).
5. Several reports have referenced concerns that the lack of consistency brought about by slowness at a national scale in providing a consistent framework, introducing data

management capabilities, and providing direction has left councils without necessary support. The lack of harmonisation was identified by Eunomia et al in 2014 as having three key areas of risk

- a. The waste industry, as reporting to different standards in different districts via bespoke licensing schemes, bylaws and consent obligations would be expensive and time-consuming
 - b. Central government, as it would restrict the ability to monitor the progress of the WMA and measure the effectiveness of specific aspects of the WMA, such as the waste levy
 - c. Local government, as it would make benchmarking against other districts unreliable.
6. The Waste Minimisation Act 2008 is the legislation primarily concerned with waste minimisation. The WMA is administered in part by the Ministry for the Environment, with a bylaw making power available to local government. Improvements are proposed to the status quo administered nationally, with new regulations recently granted assent which expanded the scope of the regulated community subject to both information reporting requirements and payment obligations regarding the National Waste Disposal Levy. The gradual expansion of the levy along with other proposed changes such as enhanced reporting by territorial authorities promises to introduce greater transparency into the sector in the near term.
 7. Other regimes have a considerable role however, including the Resource Management Act 1991, the Hazardous Substances and New Organisations Act 1996 and a suite of bylaws promulgated under both the WMA and the Local Government Act 2002. Waste and resource recovery entities are commonly regulated under HSNO, the WMA, the RMA and the LGA with no clear relationship between the obligations and limited interoperability, and as most of them differ by jurisdiction operators commonly need to navigate a significant number of overlapping obligations. Both RMA and LGA tend to be bespoke to a small jurisdiction (local council) and waste will commonly move back and forth across those jurisdictional boundaries with some frequency.
 8. The disjointed regulatory environment makes developing a sound picture of the harms and how to manage them highly challenging. Efforts have been made to consolidate data that are available and make it publicly available,¹ but there is broad acceptance that it is patchy and of dubious quality. Integrated management is unable to be achieved in such a fragmented environment, and systems to capture information in a way that adequately informs policy decision making are not available. This constrains the effectiveness of policy interventions and, when they are introduced, also constrains the potential to track their impact and effectiveness. Non-compliance can be subject to scant attention and only weak sanctions are available even where it may be egregious.
 9. To summarise, the regulatory context in waste and resource recovery is a barrier to effective management of the environmental harms that arise from the waste and resource recovery sector because
 - a. There is limited system coherence, transparency and consistency making policy decision-making inherently challenging

¹ [Estimates of waste generated in Aotearoa New Zealand | Ministry for the Environment](#) Treasury:4536155v1

- b. A lack of an entry or exit regime means parties can move in and out of the sector without the relevant regulators being aware of them, meaning maintenance of a level playing field is difficult
 - c. Regulatory obligations differ considerably at a national scale where they do exist, which presents a logistical challenge to operators working at more than a local scale and results in an absence of equity in the system
 - d. Where non-compliance can be detected, only weak sanctions are in place and behaviour change is thus difficult to bring about, particularly where activities can escape oversight and are lucrative. The maximum fine level is \$100,000 and there is no infringement regime.
 - e. While flexible methods of regulatory management are anticipated by the current legislation (i.e., licensing) these are invoked in only a limited number of examples and are highly variable.
10. Given the scale of emissions the waste and resource recovery sector are responsible for, the Emissions Reduction Plan (ERP) identified a significant need to improve the data and overall transparency of the sector to inform policy interventions and to drive New Zealand towards a circular economy. A critical contingency of the waste initiatives in the ERP was improving our knowledge and understanding of how the sector was operating and what the outcomes it was contributing to were.
11. The development of the revised New Zealand Waste Strategy and replacement legislation for the WMA also identified the fragmented regulatory environment as a significant check on potential progress. The inconsistency and under-implementation of the regime was raised in submissions as a key concern, so overcoming the drivers of that regulatory failure is a key objective of the revised statutory framework.
12. Without a significant course correction, including a lift in the performance of the sector (and in doing so, the economy at large) and enhanced underlying infrastructure to support good regulatory outcomes, the data ambiguity and consequential inability to detect and manage key sources of harm will perpetuate. A national licensing system provides for greater consistency and more effective compliance tools (including the sanction of suspending or revoking a right to operate). Licensing at a local scale however can be very costly and councils find it challenging to achieve economies of scale.
13. A comprehensive national licensing system would enable improved outcomes in waste and resource recovery including by enhancing data quality, promoting transparency and accountability and being more cost efficient. There would be a range of possible interventions that could be initiated to improve the interface between the sector and the regulator, including providing for greater flexibility, improved integration and a more risk-based approach to regulatory control.
14. Cabinet will be making some decisions in early 2022 to provide some certainty around what the inaugural emissions reduction plan will look like in May 2022. The opportunity afforded by national licensing is to develop a cogent and agile relationship with the regulated community and a more robust basis to track the achievement of statutory objectives. Related benefits include supporting risk-based monitoring and compliance across a range of regimes, including the Imports and Exports Prohibition Order (i.e., export of plastics).

15. Enhancing the outcomes of the waste and resource recovery system has wide ranging impacts and benefits throughout society. As such, the stakeholders with an interest in how these issues are addressed are significant in number and have diverse perspectives. It will be important to take a broad view of interested parties and contemplate bespoke engagement strategies to ensure those that may be impacted by how these issues are addressed are aware they will be. Key stakeholders include
- a. WasteMINZ and Waste Management Industry Forum (peak bodies)
 - b. Central government agencies
 - c. Māori
 - d. Brokers and exporters of waste
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- c. Local and regional government
 - d. Commercial waste companies
 - e. Recyclers
 - f. Community based waste organisations
 - g. NGOs
16. While we have not yet canvassed the views of the sector in detail, early indications are that there is a considerable level of support for the concept. In late 2021 the consultation for the new waste strategy and legislation yielded significant support (90% in favour) of a national licensing system. A range of other comments from submitters were highly aligned with the process towards establishing a system and its long-term benefits also. Again, these comments are sourced from those who already identify as being part of the sector, and we must keep in mind that the extent of the implications may be greater and extend into communities that may not have taken part in this engagement.
17. The results of consultation for the discussion document to support the revised New Zealand Waste Strategy, options to consider for the review of the Waste Minimisation Act and the first iteration of the Emissions Reduction Plan (ERP) are instructive. These consultation documents refer to the concept of a national licensing scheme. These consultation opportunities provide helpful insights to enhance and improve any proposed licensing system, including evident and broad support (259 of 289 key submitters indicated support for a national licensing system and a range of other comments from submitters were highly aligned with the process towards establishing a system and its long-term benefits.
18. Further consultation will of course be required, both within the Parliamentary process towards development of the new waste legislation in addition to targeted and expert engagement on key design decisions. It will be – throughout all these engagement points - important to consider if the proposed scope of the scheme is broader than those that would necessarily identify themselves as part of the sector. There may be subsets of the sector that do not engage if they don't expect to fall within scope (i.e., cleanfills). Bespoke reach outs and clever messaging will be essential to ensure the concept is appropriately signalled.
19. Further, previous consultation processes on related topics provide some useful insights and an indication of broad support and acceptability. In the consultation for the expansion of the waste levy the following relevant themes were noted
- a. The desire for national consistency and unified approaches and terminology
 - b. The importance of data to enable risk management and prioritisation of interventions (96 per cent of submitters said they believed waste data needed to be improved)

- c. Concerns regarding the neutrality of local government agencies, particularly with respect to confidential and commercial sensitive data
- d. Strong evidence of expectations of monitoring and oversight to ensure compliance with requirements and concerns about subversive behaviour leading to poor environmental outcomes.

Disproportionate effects

20. The proposal to introduce a national licensing system in waste and resource recovery has the potential to generate disproportionate effects in the following ways
- a. Increasing reporting and other obligations (e.g. standards to lift equipment requirements) on operators and facilities may make them more costly to run and thus potentially uneconomical
 - b. Licensing fees and the expense of developing and sustaining an adequate control environment to furnish required information will create additional costs on operators and facilities, some of which run on limited margins or are not for profits.
 - c. Rural and remote locations with limited infrastructure and reduced socio-economic status may struggle to meet compliance obligations or encounter significantly higher relative costs in doing so.
21. It is proposed that structural design elements are considered to correct some disproportionate impacts, these may include exemptions, scaled obligations, fee amnesties and similar. Further targeted consultation and comprehensive consideration of the above matters is proposed following the submission of this decision support paper.

Special factors

22. An Interim RIA to support early decision-making for the ERP process does not require a Treaty section to consider the relationship between a proposal and the Treaty partnership. This section is intended to be used to set out 'Are there any special factors involved in the problem? eg, obligations in relation to Te Tiriti o Waitangi, human rights issues, constitutional issues, etc. Development of a national licensing system in waste and resource recovery provides an opportunity to enhance the Crown-Māori partnership, but only if designed carefully.
23. The outcomes for Māori from waste and resource recovery activities have often been highly deleterious, including because waste facilities have often been built on sacred or significant land or resulted in contamination of significant waterways. National licensing should be approached in a way that reflects the needs of Māori practically and considers opportunities to enshrine a Māori world view. Detailed engagement is still to be undertaken in this regard.
24. This will start with early engagement with Māori in respect of the design of the system and the degree of appetite for detailed involvement. Direct impacts are relatively straightforward to surmise. Māori are more likely to live rurally, more likely to have limited economic means, more likely to suffer intergenerational impacts of colonisation in myriad other ways. Financial impositions inherent in licensing may be felt more keenly in Māori communities. But this is the start not the end of the analysis. Iwi economic development initiatives are likely to interplay keenly with waste and the implications of licensing need unpacking in detail.

25. Further work is needed to consider how specifically design choices can support and enrich the Crown/ Māori relationship including by enshrining core principles of whakapapa, mauri, and mana and how internationally agreed rights such as the right to development under the [United Nations Declaration of Rights of Indigenous Peoples](#) (UNDRIP) successfully interplay with licensing where it might form a significant or absolute barrier?

What objectives are sought in relation to the policy problem?

26. The effective management of waste and resource recovery enables
- a. Reduction in the socialisation of environmental harms from poorly managed waste,
 - b. Reduced erosion of cultural values from damaged biophysical features
 - c. Reduced social and economic costs of poor waste disposal and
 - d. Avoids the opportunity cost of not keeping materials circulating in the economy for longer to avert the drawdown of raw materials.

Enabling effective management via a more structured and formalised context for the sector will have considerable benefits.

27. The Emissions Reduction Plan is a statutory instrument that is required in advance of each budget period to demonstrate how New Zealand will achieve its climate change goals. It is a key instrument under the Climate Change Response Act. Reducing the emissions arising from how materials are marshalled through the economy, how waste is managed at the end of its life and how data capturing these dynamics is collected, collated and used are key elements of achieving our national and international climate change obligations.
28. Beyond the Emissions Reduction Plan the development of the revised New Zealand Waste Strategy and replacement legislation for the WMA identifies the challenges outlined in this document as needing to be addressed to achieve a circular economy. Consultation is in progress on both these key documents, but greater transparency, more effective regulatory interventions and enhanced environmental outcomes are all key objectives. So while the ERP identifies the data paucity as the key issue of concern, the direct and indirect contribution national scale licensing could make is very much broader.
29. A national licensing system is recommended to meet the Climate Commission's recommendations for improving waste data:
1. publishing annual waste statistics from 31 December 2023
 2. improving data collection across the waste sector
 3. investing in data collection to track progress towards a circular economy.

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

1. We use the following criteria to assess options for national licensing, in addition to the counterfactual. These are
 - a. Comprehensiveness of scope to enable a point of elevation that gives a robust regulatory view of the system including flows of money and materials
 - b. Effectiveness at establishing a line of sight from point of generation through to final disposal of waste or otherwise reintroduction to economy via recycling through integrated record keeping and requirements for licensed entities to only work with other licensed entities etc
 - c. Challenge of implementation including the underlying cost of establishing necessary infrastructure (e.g., IT support systems) and extends to both the regulator and the regulated.
 - d. Time required to fully implement the system, noting this is in part dependent on decisions made regarding phasing
 - e. Continuity with existing system to ensure elements that are working well can be carried through and not changed without good cause
 - f. Initial cost to implement including development of infrastructure and staffing
 - g. Value for money in the long-term considering the positive outcomes that the effort enables over time
2. The costs and challenge of implementation must be considered relative to the scale and scope of what is proposed. To address the significant underlying data paucity, the change required is likely similarly significant. Further, continuity with the existing system is likely to keep stable notions of obligations but may not address the problem and thus be poor value for money.
3. Of the four options outlined below, only one does not require significant regulatory change at a national scale ('business as usual'). However this is something of a misnomer as this counterfactual actually anticipates the prospect of local level schemes arising would remain in addition to policy initiatives on the horizon centrally.
4. The costs of establishing a licensing system are significant regardless of scope and purpose. A limited scope regime may not have sufficient 'payoff' to justify the investment and excluding large subsets of the sector may limit its effectiveness in improving broader outcomes. For instance, missing out on other waste related activities such as composting or material recovery leaves critical regulatory gaps that will become increasingly noticeable as we ascend the waste hierarchy in bringing about a circular economy

What scope will options be considered within?

5. The present institutional settings devolve licensing to local government, focusing primarily on levy payment obligations at central government level. The scope therefore considers BAU alongside three key possible iterations of

licensing. Alternatives to licensing are just variations on the piecemeal regulatory approach set out in option 1 that would retain licensing at a local scale. It is important to note that already approved and future regulatory changes will form part of this counterfactual – business as usual is not static.

6. BAU is a traditional regulatory approach of developing incremental obligations on different sets of duty holders over time as needs arise, while retaining the same reactive underlying model. All three alternative options consider using a licensing approach at a national scale to fulfil the same regulatory objectives within a more integrated system.
7. The options have been developed based on sector experience, international exemplars, and targeted engagement. Non regulatory options have been ruled out, as the behavioural incentives on actors in the system make voluntary compliance challenging, and there is a long experience under the existing act of voluntary approaches and self-registration that demonstrate a sustained compliance gap. Further, voluntary systems particularly for data provision provide limited scope to control the quality and consistency of incoming data, and thus are poor value for the investment in systems required to support them.

What options are being considered?

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3	Comprehensive single-tier national licensing in waste and resource recovery	A harms-based and single level licensing scheme, managed at a national scale and covering waste and resource recovery.
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8. Four primary options have been developed to aid the discussion of a national licensing system in waste and resource recovery. Business as usual (Option 1) represents the alternative to a licensing system, rolling regulatory change and an ongoing absence of a 'system'. Because change is anticipated already to this system it is referred to as the 'counterfactual' in alignment with the template.
9. In making decisions about the scale and scope of the system, it is important to note that the key differentiating factor is how many parties will be subject to the scheme and what will those duties entail. Further work including sector engagement will develop these proposals but may include existing and new waste reporting obligations, national standards to put in place minimum requirements for measurement of waste, management of handling and disposal, health and safety and related performance requirements. National standards could also set expectations around the management of contamination levels and other quality control aspects of waste (which would have particular application to the management of exports).

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Option 1 Counterfactual (business as usual including waste levy expansion)

11. The BAU (counterfactual) option requires no additional regulatory change. Institutional settings remain the same, as no changes to those roles are proposed in the context of the levy expansion. The system would function much as it does now with an increasing number of actors, relying on manual approaches. The changes already set out via the regulations under the Waste Minimisation Act 2008 would roll out as already planned. Further regulatory

changes would of course still be possible via bespoke processes on an as-needed basis. Local licensing schemes would continue to occasionally be launched and local waste bylaws would retain current levels of variation.

12. There are considerable risks with this option in that it demonstrably fails to provide sufficient basis to manage a dynamic sector. This option continues to place the (partly optional) regulatory responsibility on TAs and creates uncertainty for industry and the public in a sector that operates across territorial boundaries. The critical choice whether BAU is preserved is whether investment in piecemeal regulatory creep, systems improvements where possible and enhanced capacity in administering agencies will be adequate to protect the long-term public interest.

Option 2 Limited scope national licensing

13. The 'limited scope' option provides for the introduction of a licensing regime with confined regulatory scope and reach. A working example would be that licensing is introduced across the scope of the levy expansion: that is that the obligation to become licensed remains for Classes 1-4 under current definitions, perhaps with licensing obligations or exemptions for clean fills, industrial monofills and transfer stations in accordance with their current demarcation.
14. This would require regulatory change, likely in the form of an amendment to the Act. The practical implications are significant in that parties subject to the levy would have an additional obligation in the form of a license. These may be administered together or separately. The institutional arrangements would need to be considered, but with perhaps less scope to consider externalising the role to another entity like the EPA. Obligations could include existing payment and information reporting obligations in addition to new and/or consolidated requirements related to improving performance, safety and environmental outcomes.
15. However, associated costs of outreach and engagement (which can be significant in establishing new regimes) are lower where there are fewer proponents and where they have existing familiarity with the regime via their levy liability.
16. The critical choice for Option 2 is whether such an option presents appropriate dividend for the start-up investments and captures a sufficient subset of the regulated community to establish the 'line of sight'. Certainly, the regulatory scope of the current regime provides for little regulatory control of diversion, so such a system would naturally be oriented more towards waste and final disposal thus potentially being insufficiently broad to engender real benefits.

Option 3 Comprehensive single tier national licensing in waste and resource recovery

17. The 'comprehensive single-tier' option provides for a harms-based and single level licensing scheme, managed at a national scale and covering waste and resource recovery. The institutional arrangements will require the advent of a large-scale national function to administer the licensing. [REDACTED]

[REDACTED]

18. A combination of licensing obligations and exemptions would be included to ensure requirements are proportional to harm and means. A perverse consequence of licensing would be to elevate the costs of compliant operation enough to extinguish many critical community-led initiatives (e.g., Kaicycle) that operate on low to no margin and would be challenged by regulatory costs of this kind. The drafting of exemptions and other variations to structural components of the regime requires careful consideration. These distributional impacts are able to be mitigated via design decisions. Such decisions would be made following comprehensive engagement with key stakeholders.
19. The costs of this undertaking would be a significant, long term and structural change to the regime. A range of tests for substantive regulatory change would need to be met. A comprehensive design process would need a range of expert input and transitional arrangements to centralise all existing regulation in this space would be significant and logistically challenging. The risks of this approach are manifold. While licensing at a local scale would be dispensed with under this option, local government is likely to retain broad bylaw making power and the interplay will be critical.
20. The system may become too large, too granular, and unwieldy, particularly if sufficient investment is not made and secured for administering it. The system may not recover sufficient costs from a large and highly varied community and may have a range of unintended consequences (e.g., encouraging black market activity or dumping) particularly if barriers to entry are too high.
21. The benefits, however, would seem to be proportional in that this approach would best achieve the point of elevation and the line of sight, by developing a single integrated system. Key benefits of this approach include
- Harmonisation and centralisation of key obligations with reduced fragmented obligations and improve consistency thus reducing costs and complexity regulated parties
 - Streamlined regulatory obligations to improve efficiencies and make it easier for the sector to understand and navigate their obligations
 - Data paucity and a pervasive lack of understanding of what is occurring in the sector – a check on governance and the management of harms of the highest order - would be reduced.
 - Alleviation of the burden on local government of having to develop and institute licensing schemes.
22. Synergies can be explored with adjacent and overlapping regulatory regimes more easily in a centralised system, enabling interoperability in practice and mutual reinforcement in principle. Interoperability is important also because the noncompliant are often active in other sectors too, and tools such as fit and proper person tests enable regulators to pull wide range of levers that are

highly relevant. Leveraging these synergies presents broad benefit to the Ministry and councils; the present system does not enable this.

23. Harms based management would be sufficiently supported in terms of data to demonstrate where interventions are needed and what impact existing interventions have had. The governance and administration of the system may also provide the opportunity for innovative approaches to implementing the Treaty partnership. The critical choice for Option 3 is whether government has the appetite to embark upon a significant structural change and whether sovereign risk in the future can be managed such that a scheme is abandoned or not properly implemented over the long term. For this reason, the interplay with the levy is likely to be strategically critical.

Option 4 Comprehensive two-tier national licensing in waste and resource recovery

24. Option 4 entails a harms-based and two-level licensing scheme, managed at a national and regional/local scale and covering waste and resource recovery. This proposal has the scope and reach of Option 3 but managed over two tiers, whereby local government can continue in its bylaws-led role managing locally relevant aspects of waste, while larger proponents are managed centrally. The transition of bylaw led approaches to a single centralised system are thus avoided and local determinism prevails. The regulatory shortcomings of the bylaws approach encountered by many councils will, however, likely persist. Regionalisation may provide some prospects for addressing these, but transaction costs may remain relatively high even with that degree of consolidation. It may be difficult to achieve national consistency.
25. As with option 2 the costs of establishing a limited scope licensing regime are relatively significant and prospects for cost recovery in the long term reduced because of that limited scope. However, less disruption for jurisdictions with existing licensing schemes is a key benefit; such schemes can largely persist, and work will be needed to interface them with the national approach.
26. The relative responsibilities of local and national licensing tiers would need to be determined and it would seem challenging to devise where those thresholds might be. It may also be difficult to achieve the 'line of sight' where the fractured management role may sever it in practice. Further, for such an approach to be successful, all councils (or at least the great majority) would need to establish a scheme and this would be a significant undertaking. This option could also include mandates that local or regional government promulgate bylaws, licensing systems or other controls which might lead to additional regulatory change for operators.
27. The role of local councils in promulgating bylaws is the subject of review elsewhere in the work programme, and this analysis should be considered subject to whether the regulatory power to do so will remain during the revision of the regime. If it does not, then a two-tier system will only be possible if councils are charged with a regulatory role under the centralised system (which is prospective if desirable for options 3 and 4). Councils may be able to be warranted to enforce licenses alongside the central regulator in either case. The critical choice of Option 4 is about the role of local government. It is not clear that councils have an ongoing appetite to develop and administer licensing, with common calls for national leadership seemingly suggesting the opposite.

#	Options	Core	Possible	Excluded
1	Counterfactual (BAU + WLE)			
2	Limited scope national licensing	Levy liable facilities	Cleanfills Transfer stations Operators, transporters, exporters	All other facilities and individuals
3	Comprehensive national licensing in waste and resource recovery	Levy liable facilities Cleanfills Transfer stations Operators, transporters, exporters	Private rural fills servicing multiple properties Informal fills and stockpiling areas Community recycling facilities Composting facilities Hazardous waste facilities RPS schemes Vehicles that transport waste Receptacles	All other facilities and individuals
4	Comprehensive two-tier national licensing in waste and resource recovery	As above but managed over two tiers	As above but managed over two tiers	All other facilities and individuals

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What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

28. A preliminary recommendation is that New Zealand seek to scope, design, and operationalise a comprehensive single tier national licensing system in waste and resource recovery via

- The development of the replacement legislation for the WMA
- The promulgation of regulations and other instruments to support the regime
- The development of appropriate resourcing, training, and infrastructure to support the regime.

29. This option is considered to hold the most merit because it:

- Covers the full range of actors in the system across waste and resource recovery, recognising the complexity of the sector
- Provides for a single coherent system to ensure as much as possible a level playing field is maintained and management costs are limited
- Provides for appropriate national oversight, centralised quality control, and a single system for managing data for this purpose (noting several systems may still be required for other regulatory and non-regulatory purposes)
- Its benefits in terms of enhanced visibility and prospects of detecting undesirable behaviour are likely to outweigh its costs of establishment and operation
- It is most likely to deliver on the proposed objectives of the New Zealand Waste Strategy

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Section 3: Delivering an option

How will the new arrangements be implemented?

Operational implications

30. The appropriate legislative and institutional arrangements for the waste sector generally are currently undergoing review as part of wider policy work on the review of the Waste Minimisation Act and the Litter Act. The development of a national licensing scheme would have the following operational implications. It would require:
- The development of the replacement legislation for the WMA or its amendment (it is not anticipated under the existing act at a national scale)
 - The promulgation of regulations and other instruments to support the regime including detailed obligations and processes, guidance material and national standards, enhanced by introduction of general obligations such as individual and company duties of care
 - The development of appropriate resourcing, training, and infrastructure to support the regime.
 - The design of the system would be a significant undertaking and the Ministry would need assistance from the sector, access to learn from international exemplars, and specialist advice.
31. In addition to resourcing the development of the system, the operational implications would include the need to manage the transition of existing licensing schemes towards the national/single scheme, the interplay of the scheme with the resource management regime and communication to the sector. Training and bespoke guidance would require both development and implementation to ensure when regulatory requirements come online that everyone has a clear sense of what their obligations are. The regulatory role would need to include resourcing for both formal auditing and enforcement processes, in addition to informal outreach and complaints response.

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Preliminary recommendation on phasing

- 36. As discussed earlier, decisions about phasing should be made having regard to the challenge of detecting non-compliance as obligations kick in heterogeneously. Conversely, undertaking a licensing system rollout is a considerable exercise and is unlikely to be able to be done all at once. This is due to the volume of outreach and support required, the permitting burden and the importance of timely responses to the regulated communities. These two duelling pressures must be carefully weighed as the sector will behave accordingly and limited transparency provides for scant ability to manage the knock-on effects.
- 37. It is suggested that phasing of licensing obligations would begin once the new legislation is granted royal assent and any required secondary instruments are developed and in place. The earliest time this will occur is 2024. It would be logical to have already regulated parties subject to the licensing regime relatively quickly. Ahead of the legislation coming into place, effort will need to be expended in standing up the supporting infrastructure for such a system.

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[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]

CME implications

39. The development of a national licensing system would generate considerable additional obligations, provide an opportunity to recalibrate and align existing national obligations and create a need to centralise existing, devolved and highly varied local obligations addressed via bylaws. The development of the supporting compliance framework would require a comprehensive design process drawing on industry, regulatory and policy expertise in addition to needing to be appropriately resourced over time. The enhanced data availability would serve an intelligence function that would assist in identifying sector risks and focusing compliance effort to achieve maximum effect.

40. A national licencing system would provide a state change for waste CME in providing an effective structure for existing obligations to be monitored and enforced by, such as the waste disposal levy. The introduction of offences and penalties for operating without a licence or outside of the bounds of the licence would provide significant deterrence value where there are currently limited sanctions available. Licencing also enables regulatory action to be taken earlier for harmful illegal disposal sites as compliance questions are more straightforward.

41. The scope of the CME role in a licensing context would include the management of free riders who do not obtain requisite licenses and the management of actors and processes within the regime. The compliance monitoring and enforcement section of the Act is being developed separately so is not covered in detail here. However, the following elements would be essential under the Act.
 - a. Clear and enforceable roles and responsibilities for duty holders (individuals, companies)
 - b. Clear obligations and roles for state actors which have mandated transparency requirements
 - c. Appropriate powers to require information to enable levels of compliance to be detected and responded to, including via appropriate enforcement action
 - d. A coherent compliance management regime nested within the regulations supporting licensing that enables risk-based and proportionate management of compliance (e.g., providing for review, suspension, or revocation of licenses)
 - e. Appropriate offences and penalties to address non-compliance in a risk-based and proportionate way (including administrative, civil, and criminal instruments)
 - f. Appropriate reporting obligations for agencies for performance and system monitoring purposes

- g. General principles of good regulatory design will be important and required behaviours should be linked with (preferably a range of) interventions and sanctions.
- h. Monitoring, evaluation, and review

How will the new arrangements be monitored, evaluated, and reviewed?

- 42. Once a licensing system is brought in, monitoring evaluation and review will continue in another form. A licensing system is not a 'set and forget' system, it is designed to manage complex adaptive systems with multiple layers of obligations and high sector fluidity. By extension, the system stewardship including monitoring of how the regulatory settings are operating is of pivotal importance.
- 43. The wider review of the Waste Minimisation Act is examining roles and responsibilities and obligations including those set down in the Public Service Act 2020 are also relevant. Over time, enshrining implementation monitoring, and responsive review of settings will be critical.
- 44. Effective system monitoring of a licensing regime would likely include the following provisions and processes at a minimum.
 - a. The development of appropriate appeal rights and dispute and complaint resolution processes
 - b. Systematic processes to respond to concerns and issues
 - c. Tracking of interactions with the regulated community
 - d. System level analysis against statutory objectives at regular intervals
 - e. Periodic assessment of regulator effectiveness

Next steps

- 45. The next steps for the design of the national licensing regime involves answering the following questions
 - a. How might a system best be introduced and how can this be enabled through primary and subordinate legislation?
 - b. How does the licensing system interact with similar and related processes operating in local, regional and central government?
 - c. What systems and standards might form part of the regime and what elements of the management of the sector might be excluded (i.e., what is the relationship with the future Natural and Built Environments Act?)
- 46. Decisions relating to the content of the inaugural ERP will be sought from Cabinet in early 2022, with further policy analysis then being enabled to address the questions above.

Assessment summary table for national licensing in waste and resource recovery

<i>Establish a point of elevation and a line of sight in waste and resource recovery</i>	Option 1 Counterfactual (business as usual plus waste levy expansion)	Option 2 Limited scope national licensing	Option 3 Comprehensive national licensing in waste and resource recovery	Option 4 Comprehensive two-tier national licensing in waste and resource recovery
Effectiveness	0 Current system has limited visibility and there are many actors unknown to the regulator. Likelihood of detection of noncompliance is low and monitoring the effectiveness of the legislation due to data paucity and poor understanding of the system more generally is challenging.	+	++	+
Cost	0 Cost of current system to the levy system is high as it is manual and inflexible in nature. The main cost to regulated parties is the levy payable on the waste however, there are no compliance costs pertaining to the WMA otherwise. The regulated communities do however need to service the obligations and invest in the necessary control environment to do so.	--	-	--
Equitable and inclusive outcomes	0 There is no flexibility in the current system and obligations where they do exist are not commonly tiered to allow for diverse actors or special circumstances. A licensing system can better manage bespoke arrangements within the broader framework.	-	+	+

		However other players will continue to have obligations to a piecemeal system.		will be challenging across multiple systems
Compliance and Monitoring	0 The maintenance of an even playing field is challenging when the sector is poorly understood, data are scarce and system outcomes and impacts are difficult to assess.	+ CME would be similar to business as usual but mapped into a new and more flexible system. The Ministry would already have most of the proponent's information and be managing them as part of waste levy expansion.	++ CME would be a significant challenge but would benefit from a single centralised approach to licensing of the sector. Centralised processes would provide certainty and stability in an often-volatile sector and ensure changes and patterns are tracked and better understood over the long term.	+ CME across a two-tier system would likely involve 67 TAs and a central regulator nationally. There would be no improvement on the status quo in terms of consistency and economies of scale
Overall assessment	0	Low (1)	High (4)	Low (2)
Overall Assessment		Partially achieves desired outcomes.	Achieves desired outcomes for New Zealand	Partially achieves desired outcomes.

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Marginal costs and benefits of the preferred option (option 3)

Affected groups	Cost	Benefit	Net impact	Evidence Certainty
	Additional costs of the preferred option compared to taking no action			
Householders	May pay more for waste disposal as collectors, transporters and waste facilities will pass their additional compliance costs on. Additional costs are likely to be minimal, however.	Greater oversight of the sector and improved ability by regulators to detect offending will result in enhanced sector performance and potentially reduced rubbish overall by enhancing transparency and accountability. This will be particularly effective if supported by individual duties of care in the new system. Householders will also benefit from enhanced transparency as their consumer choices can be better informed. They can choose licensed operators and have confidence as to performance.	Positive Experience internationally demonstrates that enhanced cost of waste disposal can increase fly-tipping. A licensing system increases transparency and accountability so will need support with robust compliance tools and duties of care to curtail that leakage. An overall improvement in sector performance would reduce the cost on ratepayers from fly tipping and would enable the system to be levy funded and avoid the costs of scheme establishment on local authorities (i.e.. rates) also.	Medium New Zealand has limited data and no truly comprehensive waste licensing schemes in place. The most comprehensive are Auckland and Christchurch, and in both cases the costs that are available may not be indicative due to specific characteristics of the jurisdiction.
Territorial Authorities (including unitary authorities) - existing licensing regulators under WMA	Additional responsibilities of serving a licensing system as a waste proponent but reduced costs of discharging regulatory functions which will likely be more centralised.	Centralised system provides certainty and clarity and alleviates the burden on local government of administering complex licensing systems with high transaction costs. Economies of scale involved in centralised system mean that multiple IT systems do not need to be developed for each district/region. Improved data at a national scale enables TAs to make better informed decisions in waste planning. National licencing provides for a greater certainty in waste procurement and resource management consenting processes. Increased levy revenue is distributed to TAs to	Positive Local government could leverage benefits from an improved sector and focus on other elements of waste management including positive behaviour change. Territorial authorities – providing they could access the data as appropriate – may be worse off in some respects if the data accrued nationally is not shared effectively. This impact would likely be confined only to the councils which administer schema (c.10).	Medium The impacts on TAs is likely to be highly variable depending on a number of factors including whether or not a licensing system is in place and the arrangements for the management of waste in that area.

		spend on waste minimisation.		
Regional councils (exc. unitary authorities)	Changing regulatory environment may not have a significant cost impact on regional councils but may have spinoff impacts that result in increased or changed costs.	Regional councils may be able to leverage the increased transparency of the new system and enhanced interoperability may improve outcomes in the resource management regime.	Positive	High Regional councils do not currently have regulatory obligations under the WMA
Waste Sector	Additional costs of compliance with a licensing regime. Additional obligations to improve data, performance and accountability are likely to increase compliance related spending. Costs of developing a control environment to cope with new obligations and acquiring appropriate persons are also likely to increase.	Greater clarity as to expectations of performance will be found in the terms of a licensing scheme, and greater transparency for the sector overall will be present for all participants. One system reducing compliance costs for operators that operate across districts/regions	Positive A holistic approach to managing the sector will reduce the leakage enabled through weak oversight. A more even playing field will have direct benefits for compliant proponents while the noncompliant and nefarious will be gradually excluded from the sector if they are unable to meet new standards.	Medium The sector has expressed significant support for the concept of a national licensing system through recent consultation
Businesses	Increased costs for waste and resource recovery through additional compliance obligations on the sector. Waste and resource recovery businesses also impacted by this increase. Businesses that are not currently licensed but need to be will also face new costs and ways of reporting they have not funded or participated in before.	Greater confidence that waste and resource recovery frameworks are delivering on social contracts.	Positive National operators will benefit from a single regulatory system that is consistent and administered centrally. The reduced local variation may reduce compliance costs overall and make it easier to understand what needs to be done to be compliant. The flexibility afforded by licensing may enable more fit for purpose categorisation and exceptions to improve workability in practice (e.g., adjustments to waste acceptance criteria to reflect bespoke circumstances and the potential for scaling).	Medium
Environment	Potential for increased fly tipping due to heightened compliance costs.	Reduction in biogenic methane emissions from landfill because of enhancing transparency of the sector and visibility of	Positive It is difficult to manage the sector via ad hoc regulatory change and without a formal and	High BAU provides for only very limited regulatory tools and renders efforts to

		behaviours. Increase in positive waste behaviour and fewer resources reaching their absolute end of life via incentives to limit final disposal.	effective relationship with regulated parties.	enhance outcomes inherently fraught.
Non-monetised costs and benefits	Some parties may not be welcoming of enhanced and more formal regulation and may view licensing as double dipping where activities are not already subject to RMA related controls.	Greater confidence that waste and resource recovery frameworks are delivering on social contracts. Opportunities to enhance the Treaty partnership within licensing.	Positive A point of elevation and a line of sight that brings about robust transparency enables other regulatory initiatives including improved options for tracking of hazardous waste etc which will have broad benefit.	Medium

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