

Constituting Agreement - Te Tai Poutini Waste Management and Minimisation Joint Committee

Parties

- (1) **BULLER DISTRICT COUNCIL**
- (2) **GREY DISTRICT COUNCIL**
- (3) **WESTLAND DISTRICT COUNCIL**

Background

- A Buller District Council, Grey District Council and Westland District Council are local authorities pursuant to the Local Government Act 2002.
- B The Councils wish to appoint a joint committee to manage the procurement of a contract or contracts for the provision of waste services in areas within the jurisdiction of the Councils, and to oversee implementation of the West Coast Minimisation and Management Plan.
- C Pursuant to clause 30A Schedule 7 of the Local Government Act 2002 the Councils wish to record their agreement on matters relating to the appointment, operation and responsibilities of the joint committee.

It is agreed

Definitions

1. In this Agreement, unless the context otherwise requires:

Act means the Local Government Act 2002.

Commencement Date means the date described in clause 4.

Committee means the joint committee appointed by the Councils under clause 6.

Councils means Buller District Council, Grey District Council and Westland District Council, and **Council** means any one of them.

Person includes an individual, the Crown, a corporation sole, a body corporate, and an unincorporated body.

Working Day means any day of the week other than—

- (a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Te Rā Aro ki a Matariki/Matariki Observance Day, and Labour Day; and
- (b) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and
- (c) a day in the period commencing with 25 December in any year and ending with 15 January in the following year; and

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- (d) the day observed as the anniversary of Buller or Westland.

Interpretation

2. Unless otherwise stated, a reference to a clause is to a clause in this Agreement.
3. Where the context requires, words importing the singular include the plural and vice versa.

Commencement Date

4. This Agreement shall commence on the date that it has been signed by all of the Councils.
5. This Agreement shall remain in force until:
 - (a) All the Councils agree in writing to cancel this Agreement and discharge the Committee; or
 - (b) Cancellation of this Agreement under clause 51.

Appointment of the Committee

6. The Councils shall unite in appointing a joint committee under clause 30(1)(b) Schedule 7 of the Act by the date 90 Working Days after the Commencement Date.
7. The Committee shall be known as Te Tai Poutini Waste Management and Minimisation Committee.
8. Each Council shall resolve that the Committee is not to be discharged at any time under clause 30(7) Schedule 7 of the Act.
9. Each Council shall prohibit the Committee from appointing a subcommittee.
10. Subject to clause 51, no Council shall discharge or reconstitute the Committee without the prior written consent of the other Councils.
11. No Council shall give general or specific directions to the Committee without the prior written consent of the other Councils.

Number of members each Council may appoint to the Committee

12. The Committee shall consist of 11 members, being the Mayor of each Council pursuant to section 41A(5) of the Local Government Act 2002 and 8 additional members of whom:
 - (a) 2 members shall be appointed by Buller District Council (at least one of whom shall be an elected member of Buller District Council);
 - (b) 2 members shall be appointed by Grey District Council (at least one of whom shall be an elected member of Grey District Council);
 - (c) 2 members shall be appointed by Westland District Council (at least one of whom shall be an elected member of Westland District Council);

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- (d) 1 member representing Te Rūnanga o Ngati Waewae shall be appointed by Westland District Council; and
- (e) 1 member representing Te Rūnanga o Makaawhio shall be appointed by Buller District Council with the prior written approval of Grey District Council.
13. The power to discharge any individual member of the Committee appointed under clauses 12 (a) to (e), and to appoint another in his or her stead, must only be exercised by the Council that appointed that member.

First meeting of the Committee

14. The first meeting of the Committee shall be held no later than 60 Working days after the date that all of the Councils have appointed the Committee under clause 6.
15. One of the members appointed by Buller District Council shall convene the first meeting and shall preside at the first meeting until the election of the chairperson of the Committee.

Appointment of chairperson and deputy chairperson

16. The Committee shall have a chairperson and a deputy chairperson who are members of the Committee.
17. At the first meeting of the Committee, it shall elect 1 of its members to be chairperson and elect 1 of its members to be deputy chairperson. Thereafter, the chairperson and deputy chairperson shall be elected at the first meeting of the Committee in each calendar year.
18. A resolution that a person is elected chairperson or deputy chairperson carries if a majority of the total membership of the Committee votes in favour of the resolution.
19. The chairperson and the deputy chairperson must not be from the same Council.
20. The deputy chairperson shall perform all the responsibilities and duties, and may exercise all the powers, of the chairperson at any time while the chairperson is prevented by illness or other cause from performing the responsibilities and duties, or exercising the powers, of his or her office, or while there is a vacancy in the office of the chairperson.
21. The Committee may remove its chairperson or deputy chairperson from office at any meeting of the Committee. A resolution removing a chairperson or deputy chairperson carries if a majority of the total membership of the Committee votes in favour of the resolution.
22. Clauses 1 to 4A of Schedule 7 of the Act shall apply to the Committee in relation to the chairperson and deputy chairperson as if it were a local authority.

The terms of reference of the Committee

23. The terms of reference for the Committee are to:
- (a) Oversee and approve the procurement process for delivery of waste management and minimisation services to the Councils under a joint contract

or separate contracts that comply with the Councils' obligations under the Waste Minimisation Act 2008 and the Local Government Act 2002 (**Contract**);

- (b) Prepare and approve tender and contract documentation for the Contract, subject to each Council approving the scope of services applicable to its district;
 - (c) Oversee any consultation that each Council is required to undertake under the Act prior to entering into the Contract;
 - (d) Evaluate tenders and negotiate with tenderers, subject to each Council approving any changes to the scope of services applicable to its district;
 - (e) Make recommendations to the Councils to enter into the Contract;
 - (f) Monitor the delivery of services under the Contract;
 - (g) Monitor implementation of the West Coast Regional Waste Minimisation and Management Plan (**WMMP**);
 - (h) Report to the Councils on implementation of the WMMP and recommend amendments to the WMMP;
 - (i) Oversee the spending of levy money by each Council under section 32 of the Waste Minimisation Act 2008;
 - (j) Provide reporting and auditing information to enable each Council to comply with their obligations under the Waste Minimisation Act 2008;
 - (k) Contribute to waste service delivery reviews undertaken under section 17A of the Act; and
 - (l) Contribute to the Annual Plan and Long Term Plan planning processes of the Councils.
24. For the avoidance of doubt:
- (a) Nothing in this Agreement shall alter the ownership of any facility in Buller, Grey or Westland districts at which waste is disposed of (**disposal facility**), including a landfill; and
 - (b) Nothing in this Agreement shall amount to a consent or permission for any Council to dispose of waste at a disposal facility owned or operated by any other Council.

Responsibilities to be delegated to the Committee by each Council

25. Upon the appointment of the Committee each Council shall delegate to the Committee the following responsibilities, duties and powers:
- (a) [*To be advised*];

26. The Committee shall not delegate any of its responsibilities duties or powers to a subcommittee, committee or subordinate decision-making body, community board or to any Person.

How this Agreement may be varied

27. This Agreement may only be varied by agreement in writing signed by all of the Councils.

Quorum

28. A meeting of the Committee is constituted if a quorum is present.
29. Business may not be transacted at any meeting of the Committee unless a quorum is present during the whole of the time at which the business is transacted.

30. The quorum at a meeting of the Committee shall be:

- (a) half of the members if the number of members (including vacancies) is an even number; or
- (b) a majority of members if the number of members (including vacancies) is an odd number;

and in both cases the quorum must include at least 1 member appointed by each Council under subclauses 12 (a) to (c).

31. Any Mayor who is a member of the Committee solely by operation of Section 41A (5) of the Local Government Act 2002 must not be counted as a member of the Committee for the purpose of determining the number of members required to constitute a quorum or whether a quorum is present at any meeting of the Committee.

Voting

32. The acts of the Committee must be done, and the questions before the Committee must be decided, at a meeting by—

- (a) vote; and
- (b) the majority of members that are present and voting on the basis of one vote per member.

33. The Chairperson of the Committee, or other member presiding at any meeting of the Committee:

- (a) Has a deliberative vote; and
- (b) In the case of an equality of votes does not have a casting vote (and therefore the motion is not passed and the status quo remains).

Meetings and Standing Orders

34. The Committee shall meet no less than once every two months.

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35. Meetings of the Committee shall be held at the offices of [*tba*] District Council or such other location agreed to by the Committee.
36. The Committee shall comply with the provisions of the Local Government Official Information and Meetings Act 1987.
37. The standing orders applicable to meetings of the Committee shall be the Buller District Council Standing Orders, dated October 2022.
38. A meeting of the Committee must be called and conducted in accordance with the standing orders of the Committee.
39. In the event of a conflict between the standing orders described in clause 37 and the provisions of this Agreement, the provisions of this Agreement shall prevail.
40. To the extent that it may be necessary, the Councils shall procure an amendment to their own standing orders to ensure compliance with this Agreement.

Attendance at meetings by audio or audiovisual link

41. A member of the Committee shall have the right to attend any meetings of the Committee by means of audio link or audiovisual link.
42. A member of the Committee who attends a meeting by means of audio link or audiovisual link is counted as present for the purposes of clauses 30 and 32.
43. In this Agreement 'audio link' and 'audiovisual link' shall have the meaning given to those words in clause 25A (7) Schedule 7 of the Local Government Act 2002.

Appointment of a manager

44. [*tba*] District Council shall employ a person to be the Regional Waste Contract Manager, who shall be responsible for:
 - (a) Providing advice to the Committee; and
 - (b) Implementing the decisions of the Committee.

Administrative facilities

45. [*tba*] District Council shall provide administrative facilities and secretarial services for the Committee.

Funding

46. The costs of the Committee shall be borne and paid by the Councils in equal proportions. The costs of the Committee include:
 - (a) The expenses of the performance and exercise by the Committee of its responsibilities, duties, and powers; and
 - (b) The costs incurred by [*tba*] District Council to employ the Regional Waste Contract Manager; and

(c) The costs incurred by [*tba*] District Council to provide administrative facilities and secretarial services for the Committee.

47. Invoices for costs of the Committee will be issued by [*tba*] District Council to the Councils on a monthly basis. Invoices shall be paid by the 20th of the following month.

Reporting

48. The Committee shall keep minutes of its meetings and deliver the minutes to the Councils.

49. The Committee shall report to the Councils at least quarterly on the activities of the Committee, and include such other information in the report as is required by the Councils.

Media

50. The Councils shall endeavour to agree all public and media statements concerning the activities of the Committee prior to release. However, this shall not restrict each Council from discussing any aspect of this Agreement in open Council meetings, and to have such discussions reported in the media, or make statements in relation to such discussions as each Council reasonably considers is necessary or desirable in the performance of its role as a territorial authority.

Cancellation and discharge

51. Any Council may cancel this Agreement and discharge the Committee at any time by giving not less than 6 months' written notice to the other Councils of its intention to do so.

52. Cancellation of this Agreement shall not release the Councils from their obligation to pay costs described in clause 46 up to and including the cancellation of this Agreement.

Counterparts

53. The Councils acknowledge that this Agreement may be signed in two or more counterparts each of which may be a facsimile/email copy (pdf) and which will be deemed to be an original but together will constitute the same instrument and will be binding on the Councils. Without limiting the foregoing, a Council may enter into this Agreement by signing any such counterpart by way of electronic signature in accordance with Part 4 of the Contract and Commercial Law Act 2017.

DATED

2023

SIGNED on behalf of
BULLER DISTRICT COUNCIL

Authorised signatory

13/07/2023

SIGNED on behalf of
GREY DISTRICT COUNCIL

Authorised signatory

SIGNED on behalf of
WESTLAND DISTRICT COUNCIL

Authorised signatory

13/07/2023

Draft