

DRAFT Terms of Reference for the Nelson-Tasman Joint Committee of the Regional Landfill Business Unit

NELSON CITY COUNCIL

and

TASMAN DISTRICT COUNCIL

Agenda Version 8

Dated 9/9/2016

I Parties

- (1) **NELSON CITY COUNCIL**, Civic House, 110 Trafalgar Street, Nelson
- (2) **TASMAN DISTRICT COUNCIL**, 189 Queen Street, Richmond

II Background

- A. Nelson City Council (**Nelson**) and Tasman District Council (**Tasman**) are unitary authorities (jointly **the Councils**) under the Local Government Act 2002 (**the LGA**) with territorial responsibilities for promoting effective and efficient waste management and minimisation within their respective territorial boundaries (jointly **the Nelson-Tasman region**) under Part 4 of the Waste Minimisation Act 2008 (**the WMA**).
- B. Nelson owns and operates the York Valley landfill at 34 Market Road, Bishopdale, Nelson. The site includes the current operational area (Gully 1) and two other areas potentially suitable for landfill operations (Gully 3 and Gully 4) (**York Valley landfill**). The legal description of the land and the location and extent of these areas are shown in [Attachment 1].
- C. Tasman owns and operates the Eves Valley landfill at 214 Eves Valley Road, Waimea West, Tasman. The site includes a closed landfill (Stage 1), the current operational area (Stage 2) and a further area potentially suitable for landfill operations (Stage 3) (**Eves Valley landfill**). The legal description of the land and the location and extent of these areas are shown in [Attachment 2].
- D. The Councils acknowledge their respective roles and responsibilities under the LGA and the WMA.
- E. Nelson and Tasman have prepared and adopted a Joint Waste Management and Minimisation Plan dated April 2012 (**the Joint Waste Plan**) pursuant to sections 43 and 45 of the WMA.
- F. The Councils have agreed to jointly make the most effective and efficient use of York Valley and Eves Valley landfill space.
- G. The Councils have reviewed options for the provision of landfill capacity in the Nelson-Tasman region. They intend to jointly share in the management of the two landfills, through a Joint Committee of the Councils appointed pursuant to schedule 7 of the LGA (**the Joint Committee**).
- H. The Councils intend to enable the joint governance, management and use of York Valley Gully 1 and Eves Valley Stages 1, 2 and 3 as regional landfill facilities to accept all municipal solid waste (**waste**) generated in the Nelson-Tasman region.

- I. The Councils also intend the following:
- (i) That the York Valley landfill will be the primary regional landfill facility from 1 July 2017, to accept all waste generated within the Nelson-Tasman region until Gully 1 is at capacity (anticipated to be in approximately 2031), or until expiry of the existing resource consents for the York Valley landfill (being 31 December 2034), whichever occurs first.
 - (ii) That Stage 2 of the Eves Valley landfill to have all necessary consents and approvals to accept up to one years' waste from the Nelson-Tasman region in case of unforeseen temporary closure of the York Valley landfill, and that Stage 3 be retained for future use as a regional landfill facility.
 - (iii) Once the Joint Committee is established, it shall have responsibility for making all decisions on operation and use of the two landfills as regional landfill facilities, and the timing of their use.
- J. These terms of reference accompany a deed of agreement between the Councils and set out the membership, responsibilities, operating parameters and reporting requirements of the Joint Committee, to be known as the Regional Landfill Business Unit (**RLBU**).

III Terms of Reference

Purpose

1. The purpose of the RLBU is to manage and operate a regional landfill facility or facilities efficiently and in accordance with:
 - the Joint Waste Plan;
 - the Long Term Plans and Annual Plans of each Council;
 - the RLBU Activity [Asset] Management Plan;
 - the RLBU Business Plan;
 - resource consent conditions for each landfill; and
 - and the Councils' Solid Waste Activity Management Plans.
2. The RLBU shall plan for the future needs of the community in a cost efficient and environmentally sustainable manner in accordance with the objectives of the Joint Waste Plan.

3. The RLBU will designate itself as a public benefit entity (PBE) for financial reporting purposes.
4. The RLBU is intended to be a self-funding body which provides a service to its customers, (which include the Councils under a contractual relationship independent of its establishment as a Joint Committee of the Councils) and provides income to the Councils to implement the Joint Waste Plan.

Structure of RLBU

5. The RLBU will be established as a Joint Committee of Nelson and Tasman pursuant to schedule 7 to the LGA.
6. The RLBU shall comprise four or five members appointed as follows:
 - (i) Two members appointed by Tasman (at least one of whom will be an elected member of the Council);
 - (ii) Two members appointed by the Nelson (at least one of whom will be an elected member of the Council);
 - (iii) May include one jointly appointed/independent member, who is not involved in any business related to the RLBU activities. This member would only be appointed if mutually agreed to by both Councils and in accordance with the Councils 'Procedure for Joint Appointment of Directors/Trustees of Council Controlled Organisations and Council Controlled Trading Organisations' (2012 version, or its replacement). This member shall be appointed for a period of three years, and in such a way as to provide continuity through the triennial election period. The member shall be remunerated in accordance with the Councils' joint policy for the appointment of independent persons to joint committees.
7. The RLBU will include one iwi advisor, nominated by, local iwi with mana whenua at either landfill site, and appointed by both Councils. This iwi advisor shall be appointed for a period of three years, and in such a way as to provide continuity through the triennial election period. For clarity, the advisor shall not hold voting rights in the RLBU. Remuneration will be in accordance with the administering Council's protocol on meeting fees.
8. In appointing members to the RLBU, the Councils will have regard to the criteria, skills and experience required so that an appropriate mix of skills is maintained.
9. The RLBU will elect a Chair and Deputy Chair from its voting members at its first meeting of the triennium.

10. Where the RLBU has a split vote (50:50), a decision shall be sought from the Joint Committee of Nelson City and Tasman District Councils.

Powers and responsibilities delegated to the RLBU

11. The RLBU may without the need to seek any further authority from the Councils:
 - (i) Set fees and charges for waste disposal at the regional landfill facilities by 30 June each year; including the power to apply discounted fees and charges for the disposal of waste in bulk; and may determine other circumstances where discounted fees and charges may be applied. For clarity, the fees and charges shall be included in the draft annual Business Plan that is submitted for Council approval each year.
 - (ii) Make decisions to accept (or not accept) waste that is generated outside the Nelson-Tasman region.
12. The RLBU may recommend the purchase of additional land for landfill facilities to the Councils.
13. The RLBU shall contribute to the Long Term Plan planning processes of the Councils in a timely manner, including activity management plans and infrastructure strategies. Information is to be provided in sufficient time to enable the Councils to carry out and complete their statutory planning and reporting.
14. The RLBU shall contribute to and comply with the Joint Waste Plan of the Councils.
15. The RLBU shall contribute to the development of the Councils' Development Contribution and Financial Contribution policies, where these relate to solid waste activities or planning.
16. The RLBU shall contribute to the Councils' Regional Policy Statement and Regional Plan reviews, where these may relate to solid waste activities or planning.
17. The RLBU shall contribute to Solid Waste Service Delivery reviews in accordance with section 17A of the LGA, as necessary.
18. The RLBU shall follow generally accepted accounting practices and comply with the accounting policies of the Administering Council.

Meetings

19. For the avoidance of doubt, the RLBU shall comply with the provisions of the Local Government Official Information and Meetings Act 1987 and the standing orders of the administering Council in respect of its meetings.

20. The quorum for a meeting of the RLBU shall be three of the members (including vacancies). There shall also be at least one member from each Council represented in the quorum.
21. The RLBU shall meet at least 4 times per year at intervals decided by it in order to meet its obligations under these terms of reference.

Planning and reporting

22. The RLBU will produce the following plans in respect of its operations.

1. *Business Plan*

The Business Plan should state the activities and intentions of the RLBU. It shall outline how those activities relate to the objectives of the RLBU as documented in the current strategic plan, the financial forecasts for the following three years, the performance targets for the coming year and any variations to fees and charges proposed for that financial year.

A draft of the Business Plan for the coming year shall be presented to the Councils annually by 31 October.

After the Councils have had an opportunity to discuss and comment on the draft Business Plan the RLBU shall finalise the Business Plan, incorporating any changes agreed between the Councils and the RLBU and present the final Business Plan to the Councils by 31 May for inclusion in each Council's draft Annual Plan.

Any changes to the draft Business Plan arising out of consultation on the draft Annual Plan shall require joint agreement of the two Councils, or a resolution from the Joint Committee of Nelson City and Tasman District Councils.

2. *Activity Management Plan*

The RLBU Activity Management Plan shall provide an analysis of the assets controlled and services delivered by the RLBU in relation to the current levels of service required by its customers, and their likely future demands. It will also provide a financial analysis of the RLBU operations and indicate how the assets should be managed to ensure the most cost effective and efficient service. It will also outline the manner in which the RLBU will provide for appropriate risk management.

The RLBU Activity Management Plan shall be reviewed annually and revised at least every three years in time to meet the timeframes for each Councils Long Term Plan development and Solid Waste Activity Management Plan preparation.

The RLBU Activity Management Plan will be submitted to the Councils for approval.

3. Annual Report

The RLBU shall prepare an Annual Report at the end of each financial year which shall include reporting against the performance targets and financial forecasts in the approved Business Plan.

The annual accounts and financial statements, included in the Annual Report, shall be in a manner and form approved by the RLBU's auditor, fairly showing the operating and financial position of the RLBU for the financial year, including a statement of financial performance, a statement of financial position, a statement of cash flows, and all information necessary to enable an informed assessment of the operation of the RLBU. The audited financial statements must be prepared in accordance with generally accepted accounting practice and in compliance with the accounting policies of the administering Council.

The draft Annual Report will be presented to the Councils by 15 September in each year.

4. Agendas for all meetings of the RLBU will be forwarded to the Chief Executives of the Councils.
5. Minutes of all meetings of the RLBU will be forwarded to the Chief Executives of the Councils and to all RLBU members as draft minutes once they have been reviewed for accuracy by the General Manager and/or the Chairperson.

Management and support services

23. Management and support services will be provided as follows:

- (i) The administering Council shall carry out operational, financial, secretarial and administrative activities as necessary for the RLBU to fulfil its purpose and responsibilities under these terms of reference and shall report to the RLBU. The administering Council will be Nelson.
- (ii) A General Manager of the RLBU will be appointed by joint agreement of the Chief Executives of the Councils and may or may not be on the recommendation of the RLBU. The Councils may choose to appoint an independent General Manager

instead of appointing an independent member as outlined in clause 6 (iii). The General Manager shall be employed or contracted by the administering Council.

- (iii) The Councils will establish and maintain a Management Group, comprising the General Manager, and at least one staff member (or representative) with either engineering and/or financial expertise nominated by each Council. The Management Group will meet as necessary and report four times a year to the RLBU on the matters referred to it under this agreement, or on any other relevant matter requested by the RLBU.
- (iv) The Management Group shall receive all operational and financial information concerning operation of the landfills and the operating account and shall have the following tasks:
 - (a) reporting the financial position of the RLBU on a monthly basis to each Council, and quarterly to the RLBU;
 - (b) reporting operational performance;
 - (c) reporting compliance with resource consent conditions;
 - (d) making recommendations concerning the setting of fees and charges for the disposal of waste at the regional landfill facilities;
 - (e) making recommendations concerning the setting of discounted fees and charges for disposal of waste in bulk and other circumstances where discounted fees and charges may be applied;
 - (f) making recommendations on the awarding of operational contracts;
 - (g) making recommendations concerning any proposal to accept out-of-district waste for disposal at the regional landfill facilities, and the setting of fees and charges for the disposal of such waste;
 - (h) making recommendations concerning the setting of the waste management rebate for any operating year and carrying out a review of the operating account and waste management rebate during the year;
 - (i) the review of financial modelling information concerning operation of the York Valley landfill and Eves Valley landfill over the life of this agreement and any future agreement;
 - (j) making recommendations concerning any dispute that may be referred to it;

- (k) making recommendations for waste acceptance criteria;
- (l) the carrying out of and reporting on any other tasks identified in the Joint Waste Plan concerning regional waste management and minimisation referred to it jointly by the Councils; and
- (m) providing advice or recommendations on any other matters relevant to the RLBU.

Discharge of members

- 24. Subject to clause 25, the members of the RLBU will be discharged on the coming into office of the members of the Councils elected at the triennial local body elections. The new RLBU members shall be appointed by resolution of the Councils at the earliest opportunity after each election.
- 25. Prior to the election, the RLBU may recommend to the Councils that they approve a transitional arrangement through the triennial election process for representation on the RLBU. For clarity, this provision only applies where both Councils have approved a transitional arrangement.
- 26. The Councils may at any time replace their appointed members, or by joint agreement remove/replace the independent member of the RLBU. No action to replace any member will be taken without the Councils first consulting with the RLBU, except where the replacement is part of a triennial election process referred to in clause 24.
- 27. Iwi may nominate at any time a replacement for the appointed iwi advisor. The replacement iwi advisor shall be appointed jointly by the Councils.

Variations

- 28. These terms of reference may be varied by joint agreement of the two Councils to enable the RLBU to perform in such a manner as to give effect to its purpose, and to carry out its functions and duties effectively, provided that such variation is in accordance with the accompanying agreement and meets the requirements of the LGA.

Limitations

- 29. The RLBU may not borrow money or undertake major financial transactions other than with the approval of both Councils.

Media

- 30. The Councils shall endeavour to agree all public or media statements concerning the activities of the RLBU prior to release. However this clause shall not be construed as

restricting the right of each Council to discuss any aspect of the accompanying agreement or these terms of reference in open Council meetings, and to have such deliberations reported in the media, or to make statements in relation to them as each Council reasonably considers is necessary or desirable in the performance of its role as a territorial authority, or in the interests of full public debate of all issues relevant to a territorial authority, its community and its ratepayers.

Executed and delivered as a deed the _____ day of _____ 2016

Signed by

NELSON CITY COUNCIL:

Mayor

Councillor

Signed by

TASMAN DISTRICT COUNCIL:

Mayor

Councillor

Draft