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Cabinet Policy Committee

POL (06) 318

19 October 2006

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Title	Protecting Lake Taupo: Joint Fund Administration
Purpose	This paper seeks approval to the documentation to establish the Lake Taupo Protection Trust and the formal funding arrangements between the Crown, Environment Waikato and the Taupo District Council.
Previous Consideration	<p>In December 2003 the Committee agreed to a joint approach to protecting the water quality of Lake Taupo [POL Min (03) 32/9].</p> <p>In April 2004 Cabinet agreed to commit funding of up to \$36.7 million over 15 years, in collaboration with Environment Waikato and the Taupo District Council, to the Lake Taupo Water Quality Protection Programme [CAB Min (04) 13/3(28)].</p>
Summary	<p>Lake Taupo's excellent water quality is under threat from the effects of past and current land use activities in the catchment. The deterioration of the lake's water quality is due to excess run-off of nutrients, and particularly nitrogen.</p> <p>It is proposed that the Lake Taupo Water Quality Protection Programme with a Joint Fund of \$81.5 million to administer be governed by the Lake Taupo Protection Trust, a Council Controlled Organisation under the Local Government Act 2002. Independent interim Trustees have been appointed following a public nomination process. The Trust will be accountable to a Joint Committee made up of representatives from Environment Waikato, the Taupo District Council and the Crown, and two nominees of the Tuwharetoa Maori Trust Board.</p> <p>The project documentation comprises three documents: the Project Agreement, a Trust Deed and a Funding Deed. Copies of the three documents are attached to POL (06) 318. The documentation includes the necessary checks, balances, performance monitoring and review clauses to manage the risks around the government's investment in the programme. In effect the Project Agreement and the Trust Deed form the constitutional arrangements of the project, and the Funding Deed serves as the purchase agreement.</p> <p>Environment Waikato has prepared a proposed variation to the Waikato Regional Plan that contains new policies and rules to manage land use in the Lake Taupo catchment. The proposed new rules are designed to lock in the nitrogen reduction</p>

gains of the Lake Taupo programme and are integral to underpinning the effectiveness of the programme. Hearings have been held on the proposed variation to the Regional Plan and Environment Waikato is expected to consider the Hearing Committee's recommendations in February 2007.

Baseline Implications

Crown funding of \$36.7 million over 15 years in Vote Environment was approved in the 2004 Budget for the project. The Crown funding was GST inclusive. The funding from Environment Waikato and the Taupo District Council was GST exclusive.

In the first five year review it is proposed that the overall funding issues, and the apparent GST anomaly be addressed.

Legislative Implications

None.

Timing Issues

Subject to Cabinet confirmation of the proposal the council funding partners plan to consider the set of documentation at their council meetings in late October.

Announcement

Publicity will be planned for joint announcements with the programme partners following endorsement of the project documentation by the councils and the formal establishment of the Trust.

Consultation

The Minister indicates that consultation is not required with the government caucuses or other parties represented in Parliament.

Paper prepared by MfE, DPMC, Treasury, TPK, MAF, DIA, OTS and DoC have been consulted. Environment Waikato and the Taupo District Council were consulted on the project documentation.

The Minister for the Environment recommends that the Committee:

- 1 note that in April 2004 Cabinet approved appropriations to develop a policy package aimed at reducing the nitrogen levels in Lake Taupo by 20 percent from land within the catchment, and capped the Lake Taupo water quality funding package at \$36.7 million (GST inclusive) over an estimated 15 years [CAB Min (04) 13/3(28)];
- 2 note that Environment Waikato and the Taupo District Council have committed to funding the balance of the \$81.5 million Joint Fund;
- 3 note that the administrative proposal for the Joint Fund involves Environment Waikato, the Taupo District Council and the Crown entering an agreement to fund and implement the Lake Taupo Protection Trust (the Trust), a Council Controlled Organisation under the Local Government Act 2002;
- 4 note that the Trust will be accountable to a Joint Committee made up of two representatives from each of the following parties: Environment Waikato, the Taupo District Council, the Crown, and two nominees of the Tūwharetoa Maori Trust Board;

- 5 agree to the project documentation attached to POL (06) 318, made up of a Project Agreement, a Trust Deed and a Funding Deed, subject to minor editing and drafting corrections;
- 6 note that the Project Agreement and the Trust Deed in effect form the constitutional arrangements for the project, and that the Funding Deed in effect serves as the purchase agreement;
- 7 authorise the Minister for the Environment to sign the attached project documentation on behalf of the Crown;
- 8 note that the administrative arrangements for the programme include a formal review at five yearly intervals, and that at the first review, five years from the commencement date of the Trust, the funding issues and the apparent GST anomaly will be included in the review;
- 9 note that the Minister for the Environment indicates that consultation is not required with the government caucuses or other parties represented in Parliament.

Bob Macfarlane
for Secretary of the Cabinet

Copies to:

Cabinet Policy Committee
 Chief Executive, DPMC
 Director PAG, DPMC
 Secretary to the Treasury
 Director-General, Ministry of Agriculture and Forestry (Agriculture)
 State Services Commissioner
 Chief Executive, Te Puni Kokiri
 Secretary for Internal Affairs (Local Government)
 Director, Office of Treaty Settlements
 Minister of Conservation
 Director-General of Conservation
 Minister for the Environment
 Secretary for the Environment

Office of the Minister for the Environment

Cabinet Policy Committee

Protecting Lake Taupo: Joint Fund Administration

Proposal

1. The purpose of this paper is to seek Cabinet's approval of the project documentation to establish the Lake Taupo Protection Trust, which will form the administrative structure for a scheme to protect Lake Taupo's water quality.

Executive summary

2. The Government's funding commitment to the Lake Taupo Water Quality Protection Programme of \$36.7 million (including GST) was confirmed, through budget processes, by Cabinet in April 2004. Environment Waikato and the Taupo District Council have committed to funding the balance of the \$81.5 million Joint Fund.
3. The Minister for the Environment had been invited to report back to POL on a definitive funding proposal for reducing nitrogen inputs to Lake Taupo, and how it will be administered, by 30 April 2004 [POL Min (03) 32/9 refers]. It has, however, taken longer to establish an administrative structure for the joint fund than was envisaged and extensions to the report back date were sought and granted.
4. This paper seeks Cabinet's endorsement of an administrative proposal involving Environment Waikato, the Taupo District Council and the Crown entering an agreement to fund and implement the Lake Taupo Protection Trust, a Council Controlled Organisation under the Local Government Act 2002. Interim trustees have been appointed following a public nomination process. The project documentation [attached] will, subject to approval, set up the formal funding arrangements between the government, the Councils and the Trust.
5. The Trust will be accountable to a Joint Committee made up of two representatives from each of the following parties: Environment Waikato, the Taupo District Council, and the Crown; and two nominees of the Tuwharetoa Māori Trust Board (as holder of the title and kaitiaki of Lake Taupo for Ngati Tuwharetoa and its hapu).
6. The project documentation is made up of the Project Agreement, a Trust Deed and a Funding Deed. In effect the Project Agreement and Trust Deed form the 'constitutional' arrangements for the project and the Funding Deed serves as the 'purchase agreement'.
7. Subject to Cabinet's endorsement of the proposal, the council funding partners propose to consider an agreed set of documentation at their council meetings in late October 2006.

Background

8. Lake Taupo's excellent water quality is under threat from the effects of past and current land use activities in the catchment. The deterioration of the lake's water quality is due to excess run-off of nutrients, and particularly nitrogen.
9. On 10 December 2003 the Cabinet Policy Committee (POL) noted that local and central government are working to protect Lake Taupo by promoting sustainable development through low nitrogen land uses within its catchment. The Minister for the Environment was invited to report back to POL on a definitive funding proposal for reducing nitrogen inputs to Lake Taupo, and how it will be administered, by 30 April 2004 [POL Min (03) 32/9 refers]. It has, however, taken longer to establish an administrative structure for the joint fund than was envisaged and extensions to the report back date were sought and granted.
10. The Government's funding commitment to the programme of \$36.7 million (including GST) was subsequently confirmed, through budget processes, by Cabinet in April 2004. This confirmation was announced and reflected in the Estimates of Appropriations for the Government of New Zealand for the Year Ending 30 June 2005 as an appropriation agreed for Vote: Environment. Environment Waikato and the Taupo District Council have committed to funding the remainder of the \$81.5 million programme to improve Lake Taupo's water quality.
11. This paper reports on, and seeks Cabinet's approval of, the administrative structure for the Joint Fund.
12. Environment Waikato and the Taupo District Council agreed in June 2005 to establish a Council Controlled Organisation in the form of a Trust, under the Local Government Act 2002, for administering the public fund for the programme.
13. My officials have worked closely with the council funding partners to ensure the project documentation includes the necessary checks, balances, performance monitoring and review clauses to manage the risks around the government's investment in the programme. I am now in a position to seek Cabinet's endorsement of the proposed Trust to administer the fund and implement the programme. The project documentation [attached] will set up the formal funding arrangements between the government, the Councils and the Trust. Subject to Cabinet's endorsement of the proposal the council funding partners propose to consider an agreed set of documentation at their council meetings in late October 2006.
14. Environment Waikato is the authority currently administering the joint fund on behalf of the funding partners pending the formal establishment of the Trust.

Comment

15. In summary, the administrative proposal involves Environment Waikato, the Taupo District Council and the Crown entering an agreement (the

'project agreement') to fund the Lake Taupo water quality protection project. The project will be implemented by the Lake Taupo Protection Trust, a Council Controlled Organisation under the Local Government Act 2002. Independent trustees have been appointed in an interim capacity until the Trust is established.

16. The Trust will be overseen by a Joint Committee made up of two representatives from each of the following parties: Environment Waikato, the Taupo District Council, and the Crown; and two nominees of the Tuwharetoa Maori Trust Board (as holder of the title and kaitiaki of Lake Taupo for Ngati Tuwharetoa and its hapu). The Trust is accountable to the Joint Committee.
17. The objective of the Joint Committee is to establish the Lake Taupo Protection Trust and ensure the Lake Taupo Protection Project is implemented in accordance with the Trust Deed.
18. The project documentation is made up of the Project Agreement, a Trust Deed and a Funding Deed. In effect the Project Agreement and Trust Deed form the 'constitutional' arrangements for the project and the Funding Deed serves as the 'purchase agreement'.

The Project Agreement

19. The Project Agreement is the founding document for the project and will provide for its governance structure and implementation. The Project Agreement defines the objective of the project and covers the membership, functions and operation of the Joint Committee.
20. The single objective of the project is to reduce the volume of nitrogen, from manageable sources, entering Lake Taupo by a minimum of 20 percent over the 15 year term of the project. The manageable sources of nitrogen to the lake are nutrient run-off from farm land and urban areas (including stormwater and wastewater systems).
21. The Joint Committee has been in operation since August 2005 and is working well. It is chaired by Environment Waikato chair Jenni Vernon. The other members of the committee are: Mayor Clayton Stent and Councillor Don Ormsby (Taupo District Council); Councillor Basil Morrison (Environment Waikato); George Asher and Ian Kusabs (Tuwharetoa Maori Trust Board nominees); and Lindsay Gow and Tim Bennetts (Ministry for the Environment). Subject to the formal approval of the structure it could be appropriate for a representative from another government agency (e.g. Te Puni Kokiri or the Ministry of Agriculture and Forestry) to partner Lindsay Gow, the Deputy Chief Executive of the Ministry for the Environment; as the Crown's representatives on the Joint Committee.
22. The Project Agreement includes provisions whereby, in the event that the Joint Committee is not reconstituted (following local authority elections), or is otherwise inoperative, the governance of the project will continue on the same basis through a 'Representative Group', ie a group with representatives of each party and a representative of the Tuwharetoa Maori Trust Board will continue to govern the project.

23. The project documentation provides for the payment of all moneys directly from the funding parties to the Trust [see clause 5.1]. The Trust, however, will not apply all of the moneys to the Trust Fund. It will first pay the costs of establishing the Trust and the operation of the Joint Committee. The balance of the moneys will constitute the Trust Fund and must be applied to the purpose of the Trust.

The Trust Deed

24. The Trust Deed details the powers and provisions relating to the establishment of the Lake Taupo Protection Trust and its trustees. The Trust Deed sets out the charitable purpose of the Trust and defines its structure, monitoring and reporting requirements. The appointment of between six and eight trustees is the responsibility of the Joint Committee.
25. The Trust will be established as a charitable trust incorporated under the Charitable Trusts Act 1957. The Trust will seek charitable status under the Charities Act 2005. This is not guaranteed. If granted, however, such status would provide the Trust with tax and gift duty exemptions.
26. The Trust is accountable to the Joint Committee and this accountability will be managed through the preparation of an annual Statement of Intent, by the Trust. The Joint Committee will be given the opportunity to comment on the Statement of Intent.
27. Following a public nomination process the Joint Committee appointed six trustees, in an interim capacity until the Trust is established, to the proposed Trust. It is an excellent group and brings a wide range of skills, attributes and experience to the programme. The interim trustees are (alphabetically):
- Gerald Fitzgerald - (Wellington) Lawyer/Partner with Kensington Swan.
 - Colin Horton - (Hamilton) Registered Agricultural Consultant.
 - John Hura - (Turangi) - Planning Manager- NZ Forest Mangers Ltd
 - John Kneebone - (Cambridge) – Retired. Very experienced with rural issues
 - Jeremy Rickman – (Hamilton) Chartered Accountant
 - Susan Yerex – (Turangi) Farmer

The Funding Deed

28. The Funding Deed records the manner in which the public funders (Environment Waikato, the Taupo District Council, and the Crown) will contribute to and manage the public fund. The Funding Deed defines the respective obligations to each other in respect of funding the Trust.
29. For the avoidance of doubt, the Funding Deed explicitly states that any party's contributions to the Public Fund, and the obligations of any party as a funder, shall terminate in the event of a change in relevant policy resulting in funding for the project no longer being available [Clause 2.10]. Twelve months notice of termination is required and the exiting

party must try to meet with the remaining parties prior to the change of policy and after service of notice of termination to discuss the implications for the project.

Review provisions

30. The project documentation includes robust review provisions, including:
- A requirement to review the project at five-yearly intervals [Clause 10.2 Project Agreement and Clause 6.1 Funding Deed]
 - An ability to review the project at any time if the parties are not satisfied with the Trust's performance. This review is triggered if a majority of the funders consider the Trust is not meeting its obligations and has not improved its performance following an agreed plan with the Joint Committee [Clause 5.3 Funding Deed]

Performance monitoring

31. The proposed Trust, as a Council Controlled Organisation (under the Local Government Act 2002), will be subject to the accountability and monitoring provisions contained in Part 5 of that Act. The Trust must act in accordance with its statement of intent and provide half-yearly and annual reports to the Joint Committee.
32. The documentation requires a statement of intent to be prepared and given to the Joint Committee for comment each year. The Trust must take into account the comments of the Joint Committee in finalising the statement of intent. The statement of intent must include the requisite information (including the nature and scope of activities to be undertaken) under the Local Government Act 2002 and also the Trust's proposed annual expenditure and projections for the next 2 financial years. The Funding Deed requires the Trust to obtain the Joint Committee's approval to spend more than 15% of the total proposed annual expenditure on any one project or item [Clause 4.1].

Funding Issues

33. In finalising the administrative structure for the programme officials and council staff realised that the council funding partners and the government had treated GST differently in the set up of the programme. The councils contributions have been calculated on a GST exclusive basis while the government's agreed contribution includes GST. I can only assume that in designing the funding profile for the programme in late 2003 each of the parties assumed, without explicit agreement, that there was a consistent approach to the treatment of GST.
34. I have agreed that the best way forward is to proceed with the programme on the basis of the current, and agreed, funding arrangements. The administrative arrangements for the programme include a formal review at five-yearly intervals. I propose, therefore, that the funding issues and the apparent GST anomaly are addressed at the first of the formal five year reviews.

Catchment land use policies and rules

35. For your information, Environment Waikato has prepared, under the Resource Management Act 1991, a proposed variation to the Waikato Regional Plan that contains new policies and rules to manage land use in the Lake Taupo catchment. The proposed new policies and rules include controls for nitrogen emitting activities in the catchment including for farming activities and new urban development. Depending on the outcome of the plan variation process, the proposed new policies and rules could set some interesting and useful precedents for the Government's Sustainable Water Programme of Action.
36. The proposed new rules are designed to lock in the nitrogen reduction gains of the Lake Taupo programme and are integral to underpinning the effectiveness of the programme.
37. The proposed variation to the regional plan was publicly notified in July 2005 and submissions called for. The Hearing Committee, chaired by former Environment Court Judge Peter Skelton, has now completed hearing submissions and is due to complete its deliberations in late November 2006. Environment Waikato staff have informed my officials that the council is expected to consider the committee's recommendations in late February 2007. After the council has released its decisions, submitters will have 30 days to appeal decisions they are not satisfied with to the Environment Court.
38. One of the most contentious issues the hearing committee has had to deal with throughout the hearing process is the mechanism by which forested and undeveloped land is initially treated under the proposed plan. Under the variation, as proposed, owners of land that is currently in a forested or undeveloped state cannot develop alternative land uses unless nitrogen is sourced from other nitrogen emitters in the catchment. Farming activities are, however, effectively capped at existing levels. The foresters have argued that their activities are not the cause of elevated nitrogen levels in the lake and it is inequitable for their development opportunities to be restricted while those whose activities are leaching nitrogen can continue at their current intensity.
39. The issue is not about the use of nitrogen capping land use controls, which are integral to the overall programme, but is about the initial allocation mechanism used to implement the regime.

Consultation

40. The following government departments that have a direct interest in the outcome of this paper have been consulted during its preparation: Department of Prime Minister and Cabinet, Treasury, Te Puni Kokiri, Ministry of Agriculture and Forestry, Department of Internal Affairs, the Office of Treaty Settlements and the Department of Conservation. Environment Waikato and the Taupo District Council have been consulted in the development of the project documentation but not directly on the contents and recommendations of this paper.

Financial implications

41. The Government's funding commitment to the programme of \$36.7 million (including GST) was confirmed, announced and reflected in the Estimates of Appropriations for the Government of New Zealand for the Year Ending 30 June 2005 as an appropriation agreed for Vote: Environment.

Human rights

42. There are no human rights issues associated with the proposal.

Legislative implications

43. There are no legislative implications resulting from the proposal.

Regulatory impact and compliance cost statement

44. The proposal does not require the preparation of a regulatory impact statement (RIS) and business compliance cost statement (BCCS).

Gender implications

45. There are no gender implications associated with the proposal.

Publicity

46. Note that publicity will be planned for joint announcements with the programme partners following endorsement of the project documentation by the councils and the formal establishment of the Trust.

Recommendations

47. I recommend that the Cabinet Policy Committee:

- 45.1 Note the Government's funding commitment to the Lake Taupo Water Quality Protection Programme of \$36.7 million (including GST). Environment Waikato and the Taupo District Council have committed to funding the balance of the \$81.5 million Joint Fund.
- 45.2 Note the administrative proposal for the Joint Fund involves Environment Waikato, the Taupo District Council and the Crown entering an agreement to fund and implement the Lake Taupo Protection Trust, a Council Controlled Organisation under the Local Government Act 2002.
- 45.3 Note that the Trust will be accountable to a Joint Committee made up of two representatives from each of the following parties: Environment Waikato, the Taupo District Council, the Crown and two nominees of the Tuwharetoa Maori Trust Board.
- 45.4 Agree to the project documentation attached, made up of a Project Agreement, a Trust Deed and a Funding Deed, subject to minor editing and drafting corrections.

- 45.5 Authorise the Minister for the Environment to sign the attached project documentation on behalf of the Crown
- 45.6 Note that the administrative arrangements for the programme include a formal review at five yearly intervals and at the first review, five years from the commencement date of the Trust, the funding issues and the apparent GST anomaly will be included in the review.



Hon David Benson-Pope
MINISTER FOR THE ENVIRONMENT

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