





23 June 2009

## MINUTES

**BACKGROUND**

Included in the recently adopted 2009-2010 State Budget, the Treasurer announced the levy which is currently \$7/tonne, would increase to \$28/tonne from July 1.

Factored into the budget was an estimate that this would cost the average household, as paid through their Council rates, an extra \$24 annually.

In terms of increased State revenue it was estimated the increased levy would generate additional revenue of \$39m for the State Government.

The "levy" refers to a levy imposed under the Waste Avoidance and Resource Recovery Levy Act 2007.

Under the parent Act, the Waste Avoidance and Resource Recovery Act ("the Act") the intended purpose of the levy is to promote more environmentally sound alternatives to the use of landfill for waste.

Such a levy was first introduced in 1998, pursuant to the Environmental Protection (Landfill) Levy Act 1998 (now repealed by the new Act). At that time the levy was \$3/tonne.

It is worth noting that despite the levy, until a few years ago there was also a rebate scheme which paid local governments significant amounts of money for waste diverted from landfill.

This scheme no longer operates.

Under Clause 7.9 of the Act, the levy must be paid into an account, the Waste Avoidance and Resource Recovery Account.

Under Clause 80 of the Act the levy, can, effectively, essentially only be used to fund activities related to waste reduction, waste reuse, waste recycling and waste monitoring. (In fact it is an offence not to do so, for which penalties apply.)

The above is consistent with the objects of the Act, which are as follows:

- "(1) The primary objects of this Act are to contribute to sustainability, and the protection of human health and the environment, in Western Australia and the move towards a waste-free society by –*
- (a) promoting the most efficient use of resources, including resource recovery and waste avoidance; and*
  - (b) reducing environmental harm, including pollution through waste; and*
  - (c) the consideration of resource management options against the following hierarchy –*
    - (i) avoidance of unnecessary resource consumption;*
    - (ii) resource recovery (including reuse, reprocessing, recycling and energy recovery);*
    - (iii) disposal."*

Following is an extract from the Second Reading Speech of the former Minister for the Environment, the Hon David Templeman MLA in 2007:

*"Levy funds are only to be used for purposes provided for in the legislation. Specifically, the funds will be applied to programs relating to the management, reduction, reuse, recycling and monitoring of waste. The funds could only be used by DEC for administration of the Account and developing or coordinating implementation of programs consistent with the purposes of the legislation. The levy is not to be used to fund other normal ongoing operations of DEC."*

Following are extracts from the same Minister's Second Reading Speech on the Waste Avoidance & Resource Recovery Levy Bill 2007:

*"There are two objectives of the landfill levy. It functions as an economic instrument for influencing waste management practices, including reducing waste to landfill, by increasing the price of landfill disposal. The funds raised by the landfill levy are then used to support waste-related programs which have the effect of reducing waste to landfill.*

*While the wording of the Bill is appropriately general, there is no intention at this time to apply the levy to anything other than waste that is landfilled.*

*Should any Government seek to change how the levy is applied at some time in the future, it could only be achieved by the making of regulations, which would require wide consultation with affected stakeholders and the assent of the Parliament.*

*It is not anticipated that the levy should be applied to alternative waste treatment or materials recovery facilities at any stage."*

Under the Act a body known as the Waste Authority is established.

The Chairman is Mr Barry Carbon.

Clause 16 of the Act provides as follows:

*"16. Provision of services and facilities*

- (1) The Minister must ensure that the Waste Authority is provided with such services and facilities as are reasonably necessary to enable it to perform its functions.*
- (2) Without limiting subsection (1), the Minister may, by arrangement with the Department, and on such terms and conditions as may be mutually arranged with the Waste Authority, allow the Waste Authority to make use, either full-time or part-time, of –*
  - (a) the services of any officer or employee employed in the Department; and*
  - (b) any services or facilities of the Department.*
- (3) This section does not limit section 17."*

The functions of the Waste Authority are to be found in Schedule 2 of the Act and are attached. **ATTACHMENT**

Note in particular section 14 of that Schedule.

Under Clause 14 of the Act the Waste Authority, must, annually

*"...prepare and give to the Minister a report on the operations and proceedings of the Waste Authority for the previous financial year.*

*The Minister must cause the Waste Authority's report to be laid before each House of Parliament within 7 sitting days of the House after the Minister has received it."*

The above may be useful background for considering the following:

According to an article in the "West Australian", in March this year Waste Authority Chairman Barry Carbon told an Upper House committee inquiry into Municipal Waste Management that when he commenced work he had no staff however on 1 July 2008 he found there were 50 staff at the Department of Environment and Conservation who were being paid for out of the waste levy.

23 June 2009

MINUTES

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According to the article Mr Carbon said none of these staff represented the Waste Authority.

Even at the time of the Inquiry 9 months later (March 2009) Mr Carbon advised the Inquiry:

*"The authority has no staff...So far despite significant negotiations and attempts over a nine month period there are zero staff of the authority who are deemed to be officers of the Waste Authority."*

Asked how, in that event, he was able to do his job, Mr Carbon stated:

*"I have absolutely no doubt in saying that the Waste Authority is not fulfilling the charter that is described in the Waste Avoidance and Resource Recovery Act and, indeed, is not capable of doing that in the absence of having any staff at all. It is just a joke."*

The Minister for the Environment, Donna Faragher, has not denied Mr Carbon's claims and appears to suggest the situation may not improve, due to amendments to the Act, as discussed further below.

Minister Faragher has in fact been startling frank, stating in a letter to Mr Carbon, written on the day after the State budget,

*"The intention is that additional revenue derived from the increase in the levy will be used to offset a reduction in the appropriation from the consolidated fund required by the Department of Environment and Conservation."*

It is worth noting that if a local government raised a levy for a specific purpose, for, say, underground power and used that levy for other purposes, it would be unlawful.

The Chief Executive Officer believes it is incumbent on the State Government to demonstrate that the uses of the levy to date have been entirely lawful.

The Minister then reportedly went further, effectively ordering Mr Carbon to obtain a recommendation from the Waste Authority to:

- support the levy increase
- support moves to legislatively decouple the levy from recycling and other landfill diversion initiatives, as currently required.

Under the Act, the Waste Authority's approval is needed for the Minister to achieve her objectives.

In regard to the above it should be noted the Department of Environment and Conservation is predicted to receive an extra \$39m as a result of the levy increase, whilst at the same time being allocated \$33.3m less funding in the recent State Budget. Interestingly the \$5.7m difference happens to be 3% of the Department's total appropriation which happens to equate with the 3% efficiency gains expected of all Government departments.

The \$39m *extra* income (which represents 20% of the Department's annual budget) from the levy might be compared with the \$2.5m the Minister says is currently being spent on helping local governments develop alternative waste treatment technologies. That \$2.5m might be compared with the \$13m the levy is estimated to currently be raising, which, under the Act, is meant to be hypothecated to strategic waste management activities.

Legislative changes will be required if the Minister is to achieve her objectives and whilst there is little doubt of Labor opposition (Eric Ripper has described the levy increase as "nothing but a tax grab"), the position of the Independents (and possibly also the Greens) will be of interest.



23 June 2009

MINUTES

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The matter is expected to be debated shortly.

If the Minister is successful in obtaining legislative changes such that the levy is no longer tied by law to recycling and like initiatives, it raises the very interesting question as to why those DEC officers who are concerned with waste management and whose salaries are being paid for out of a landfill levy (and thus whose jobs are arguably dependent on the levy), will have any particular motivation to look at means to discourage the use of landfill.

It is acknowledged the Minister has stated that under her proposed legislative amendments, waste related issues would receive about \$13m a year. With the levy rising to about \$52m a year for the State Government, this represents 25% of the levy's currently intended purpose.

**ISSUES**

The above situation gives rise to a number of issues.

Lack of Consultation

The Minister for the Environment, Hon Donna Faragher MLC, informed WALGA of the increase a week after the budget was adopted. There was no prior contact, consultation or discussion with local government.

The lack of consultation is consistent with the poor relationship between WALGA and the State Government which was first clearly manifested when the Minister for Local Government made his unilateral "amalgamations" announcement in March, also with no prior discussion with WALGA.

In the Chief Executive Officer's recent report on this issue, the CEO referred to the lack of a Partnership Agreement between WALGA and the current government, as had existed between WALGA and the previous government, with such partnership agreement dealing with the issue of consultation on matters such as this.

Interestingly, following the waste levy situation arising, WALGA have resurrected this issue.

In the Chief Executive Officer's view the lack of consultation in this case reflects an apparent disregard of, if not antipathy towards, the local government sector generally, by the current government.

It is important to note that numerous provisions of the Act referred to above, involve local government's role in waste management and waste minimisation, including statutory obligations for local governments.

Financial Implications

Various local governments have predicted substantially increased costs, as follows. It might be noted that most local governments were in the process of finalising their budgets when the increase was announced. It should also be noted that related regulations meant that all local governments were fully justified in assuming the levy would only rise to \$8/tonne in the forthcoming financial year.

- SMRC predicts \$2m increased costs (Note the levy is on top of other tip fees).
- WALGA predicts average households will pay an extra \$26-\$48.
- Town of Cambridge estimates \$273,000 in additional costs.
- City of Nedlands estimate \$111,000 in increased costs.
- City of South Perth estimate \$325,000 increase in costs.

23 June 2009

## MINUTES

- Town of Claremont estimate a 3% rate increase will be needed to “cover” the levy.
- Town of Mosman Park estimate increased costs of \$52,000, necessitating a 1% rate increase.
- City of Swan estimate increased costs of \$1,000,000.

Financial Implications for Town of East Fremantle

Waste generated by the Town of East Fremantle is approximately 2,850 tonnes pa of “green bin” waste and 996 tonnes pa of “yellow bin” waste (total 3846 tonnes). With no waste recovery, the additional costs of \$21/tonne generated by this total would thus be  $3846 \times \$21 = \$80,766$  ie if this amount was all going to landfill. Such an amount would equate to approximately \$25.41 per household and about a 1.71% increase in rates.

However, due to the waste recovery programs of the SMRC, approximately only 50% (1425 tonnes) of green bin waste is diverted to landfill and 15% (149 tonnes) of the yellow bin waste.

Thus this total (1574 tonnes), at \$21/tonne, “on paper”, generates increased costs of \$33,054 (or \$10.40/household), equating to a 0.7% rate increase.

This figure is consistent with recent SMRC estimates of the increased costs to the Town of East Fremantle of the levy.

Such figures are a stark indicator of the amount of waste the SMRC and its member councils are diverting from landfill. Ironically, it is the very outcome which the levy is meant to be about achieving, as discussed above.

Benefit of Increase

It should be acknowledged that even if a substantial portion of the levy continues to not be applied to landfill diversion measures, a higher levy should provide at least some disincentive to use landfill (although it should also be noted that there is much contention, nationally, as to whether such landfill levies are an effective instrument for reducing waste to landfill) and thus an incentive for increased recycling and other landfill diversion measures.

This is particularly an issue for WA which currently has the lowest recycling rates in Australia.

It is why, in principle, the SMRC and others in the recycling industry support the levy increase as not only is it fairer on those local governments (like the Town of East Fremantle and other members of the SMRC) who have been “doing the right thing by the environment” and diverting waste from landfill, even when it was cheaper to use landfill – it should also encourage other local governments to now follow suit.

One Mayor, Simon Withers of the Town of Cambridge, has reportedly stated he wishes the increase had been twice what is proposed ie an increase of \$42/tonne to a total of \$49/tonne.

It is the case that in NSW, Victoria and South Australia much higher levies are charged, for example \$58.80/tonne in NSW (notwithstanding that in NSW a large proportion of the levy collected is also not used for landfill diversion purposes).

However it is highly arguable that the current increase was too sudden and too extreme to allow time for local governments not doing enough to divert waste from landfill and industries such as the construction industry to develop suitable alternatives – hence the current concern regarding increased illegal dumping. It should also be noted that there is currently only limited additional capacity in terms of recycling processing, particularly given the devastating effect of the recent SMRC fire.



23 June 2009

MINUTES

It is worth noting that the budget forecasts do not include an expectation that diversion from landfill will rise. The 2008/09 budget predicted a 40% recycling rate and the 2009/10 budget predicts the same rate.

This should come as no surprise. The WA government believes that while a landfill levy may act as a moderate disincentive for disposal to landfill in some circumstances eg for construction and demolition waste, its main benefit is to raise revenue to support waste reduction initiatives. This view is supported by an investigation commissioned by the Waste Management Board in 2006.

Illegal Dumping

It is predicted illegal dumping of waste (eg on roadsides or unmanned land fill sites) will increase in the Perth metropolitan area as a direct result of the above.

Note the levy also applies to homeowners taking waste to the tip, businesses who have their waste collected by commercial (ie non Council related) operators, construction and demolition waste.

The Minister's response to this issue has been to advise the Department is drafting amendments to the Environmental Protection Act to significantly increase fines for illegal dumping.

Despite the Minister referring to this in a Budget estimates hearing as a "crackdown on illegal dumping", with respect to which the Department's 100 inspectors would, according to the Minister, be supported by the police, the Police Commissioner advised today he was unaware of the proposal suggesting the police had been briefed on this issue.

It might also be noted that last year the Department carried out only two prosecutions for illegal dumping in the whole of the State.

In East Fremantle there is currently about one incident of illegal dumping per week on average, with resulting labour and disposal costs estimated at \$10,800pa.

This does not include the 1400kg of rubbish collected on Clean Up Australia Day.

The Council issued 5 fines for illegal dumping last year (ie more than double the prosecutions by the State).

Transport of Waste

Because the levy applies to the metropolitan area only, the likelihood of the increased transport of waste from metropolitan to non metropolitan areas has been suggested.

The CEO has been advised at least one local government is considering this option.

However the WARR Levy Regulations 2008 make it quite clear that the levy applies to waste collected in the metropolitan area even if it is taken to a non metropolitan landfill site.

Legal Challenge

WALGA believes that, apparently regardless of the proposed legislative amendments, the levy is open to legal challenge because the levy is being raised under one Bill for a specific purpose however being used for general purpose revenue by the agency concerned. WALGA believes it arguable that means the levy is simply a tax and only the Commonwealth has such taxation powers.

WALGA reports having received conflicting legal advice on the matter and is considering obtaining senior counsel's advice at an estimated cost of \$30,000.



23 June 2009

MINUTES

Discussion

It should go without saying that the State Government has handled this matter in a very disappointing manner – nevertheless, given the Government’s current approach to local government “reform”, this should come as no surprise.

It should also come as no surprise given the sad lack of commitment and leadership shown by successive State governments on waste reform, an example of which has been the lack of support and understanding shown to bodies such as the SMRC.

It begs the question in fact as to whether the issue is “just too big” for the State Government (there is an analogy here with the Minister’s claims about the competency of small local governments) and whether the whole issue should be devolved to the Commonwealth. Currently the Federal Government is developing a national waste policy – this may indicate a viable alternative.

Meanwhile, with the collapse in prices in the recycling market (metal for example has dropped from \$350/tonne to \$10-\$50/tonne) the State Government should be doing all it can to support bodies such as the SMRC, including through financial support funded by the levy.

WALGA and the Town of Kwinana have asked local governments to register their opposition to the Government’s actions, as the SMRC has already done.

This is supported.

The following recommendation is based partly on a motion prepared by City of Melville Councillor and SMRC member Clive Robartson which the SMRC adopted on 28 May 2009.

Kwinana Mayor, Carol Adams, subsequently submitted a similar motion to her Council, which was adopted.

The attached recommendation however expands into the issue of whether the levy has been misused to date and also expands in other areas. **ATTACHMENT**

The Mayor thanked the CEO for his comprehensive report and invited the CEO to comment.

The CEO noted that just prior to the meeting commencing, news had been received that the government intended to postpone the introduction of the levy increase until 1 January 2010.

It was understood this was due to issues of the “constitutionality” (ie legality) of the amended legislation which was intended to accompany the levy increase – an issue which the CEO had addressed at length in his report.

At the invitation of the Mayor, the CEO answered various questions with respect to the report.

**Mayor Ferris – Cr Dobro**

**That in response to the State Government’s increase of the landfill levy by 300%, the Town of East Fremantle advise the Premier, the Minister for the Environment, the Minister for Local Government and all local state parliamentary members of the Town’s position regarding this matter:**

- 1. the Town is greatly concerned at the complete lack of consultation and notice provided by the State Government prior to increasing the landfill levy by 300%**



and further noting that the local government sector had every reason to have expected an increase to only \$8/tonne as per the current regulations.

2. the Town is greatly concerned that the increase was introduced after most local governments had finalised their draft budgets consistent with the above situation and this lack of time to plan for this considerable cost increase has caused a significant administrative burden to many local governments in addition to the financial burden which must now be passed on to the community.
3. the Town strongly condemns the use of landfill levy funds for consolidated revenue purposes, noting this is inconsistent with the current legislation and the advice given to parliament at the time the legislation was adopted. accordingly the Town requests that the State Government revoke this position.
4. the Town strongly believes that all funds raised by the landfill levy generated from domestic municipal waste streams and local governments should be hypothecated back to local government to support recycling and resource recovery activities and the associated infrastructure, consistent with the clearly stated purpose of the levy pursuant to the waste avoidance and resource recovery act. The Town notes that at the time of the introduction of the levy, commitments were made to local government that a rebate scheme would be introduced to return funds to local government for materials diverted from landfill.
5. the Town strongly supports an exemption from the landfill levy for all residual wastes from resource recovery facilities such as the SMRC thus providing further incentive for the development of such facilities.
6. the Town recognises that the levy increase should assist with helping divert some waste from landfill, however notes that without the infrastructure or cost support for alternative waste processing systems, any positive impact of the increased landfill levy in terms of diverting waste from landfill will be greatly reduced, particularly if most of the levy is used for purposes unrelated to diverting waste from landfill, as intended under the current legislation.
7. the Town supports WALGA's seeking of legal advice on the legality of the proposed amendments to decouple the use of the levy from the objectives of the Waste Avoidance & Resource Recovery Act however requests WALGA also seek advice on whether the use of the levy to date has been consistent with the legislation.

CARRIED UNANIMOUSLY

**192. CLOSURE OF MEETING**

There being no further business, the meeting closed at 8.55pm

*I hereby certify that the Minutes of the special meeting of the **Council** of the Town of East Fremantle, held on **23 June 2009**, Minute Book reference **184** to **192** were confirmed at the meeting of the Council on*

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*Presiding Member*