

In Confidence

Office of the Associate Minister for the Environment

Chair, Cabinet Environment, Energy and Climate Committee

Public consultation on options to implement amendments to the Basel Convention to better manage the international trade in plastic waste

Proposal

1. This paper seeks Cabinet agreement to:
 - 1.1. release the consultation document *Managing the trade in plastic waste – New Zealand's approach to implementing amendments to the Basel Convention*.

Executive summary

2. The Basel Convention¹ is an international agreement that aims to protect human health and the environment from the dangers posed by hazardous and household waste, and regulates the international movement of those wastes. It requires prior informed consent (consent) from importing countries for transboundary movements of waste listed under the Convention.
3. In May 2019, Parties to the Basel Convention agreed to amend annexes to the Convention to better manage the international trade in plastic waste (Basel Amendment). The Basel Amendment will require exporting countries or exporters to get consent from receiving countries before shipping most mixed, and hazardous plastic waste. Parties will be legally bound to implement the Basel Amendment by 1 January 2021, unless they have opted out by 24 March 2020.
4. The Basel Amendment will incentivise the trade in high-value plastic waste for recycling, while dis-incentivising the trade in low-value, mixed plastic waste as these exports tend to lead to more residual waste, which results in worse environmental outcomes.
5. The Basel Amendment creates three distinct categories for plastic waste in annexes to the Basel Convention. The requirements of the Amendment are that:
 - the export of most mixed plastic waste will require consent from receiving countries (with the exception of mixtures of PE, PP and PET)²
 - the export of hazardous plastic waste will continue to require prior consent from receiving countries

¹ Basel Convention on the Control of Transboundary Movements of Hazardous Waste and Their Disposal

² PE (polyethylene), PP (polypropylene), PET (polyethylene terephthalate).

- the export of separated plastic waste can continue without prior consent if it is destined for recycling in an environmentally sound manner.
6. As a Party to the Basel Convention, New Zealand needs to consider how to meet these new international obligations.
 7. The Basel Amendment will enter into force through a process known as 'tacit acceptance'. Through this process New Zealand will become bound automatically unless we 'opt out'. If New Zealand were to opt out it would need to do so in writing to the convention Secretariat before 24 March 2020.
 8. I consider the Basel Amendment to be minor and technical and therefore not subject to the Parliamentary treaty examination process as it:
 - is in line with the objectives of the Basel Convention, and requiring prior consent for the trade in mixed plastic waste is reflective of the types of waste the Convention was established to manage
 - still allows the trade in plastic waste, subject to prior consent for certain types of plastic waste
 - is in line with changes already happening in New Zealand's plastic waste management sector
 - reflects changes happening in the international market, particularly in relation to the restrictions set by importing countries.
 9. I do not recommend that New Zealand opts out of the Basel Amendment. Opting out of the Amendment would have negative impacts, including:
 - a near ban on exports of some types of plastic waste from New Zealand
 - low certainty for industry about how to manage exports of plastic waste
 - increased landfilling of plastic waste in the short-medium term
 - likely negative impact to New Zealand's international reputation and credibility.
 10. I propose to consult on options to implement the Basel Amendment.
 11. Implementing the Basel Amendment would mean amending the Imports and Exports (Restrictions) Prohibition Order (No 2) 2004 (Imports and Exports Order) to require a permit for imports and exports of most mixed plastic waste.
 12. The Imports and Exports Order does not have a statutory requirement to consult. However, I consider that the management and export of plastic waste for recycling is of direct interest to a number of stakeholders and the public. The purpose of consultation is to understand the impact the two proposed options will have on stakeholders such as local councils, the waste management sector (including importers and exporters of plastic waste), and the packaging sector.
 13. The consultation document will seek feedback on two options to implement the Basel Amendment:
 - Option 1: Permits for imports and exports of mixed plastic waste, **without** specifications (*preferred option*)
 - Option 2: Permits for imports and exports of mixed plastic waste, **with** specifications.

14. I consider that both options give industry greater certainty, and have a low overall impact because:

- administrative costs are low due to alignment with existing hazardous waste permits under the Imports and Exports Order
- they are in line with changes already occurring in the domestic and international markets.

15. The proposals would also benefit trade in plastic waste, and the environment:

- fewer exports of problematic plastic waste, and therefore a decreased risk of New Zealand's residual waste entering the environment elsewhere
- encourage further processing of plastic waste onshore and the trade in high-value plastic waste
- s 6(a)
- more transparency in the trade in plastic waste
- more certainty for industry about international requirements.

16. Implementing the Basel Amendment also supports current Government policy on plastic waste management. For example, in December 2019 the Prime Minister and I announced a plan to set targets to phase-out hard to recycle plastics in packaging starting with PVC (3) and PS (6).

17. Following public consultation I intend to return to Cabinet in June to seek final policy approvals for changes to the Imports and Exports Order, and approval to issue drafting instructions to the Parliamentary Counsel Office to give effect to the proposals.

Background

International trade in plastic waste

18. Currently plastic waste for recycling can be traded freely as long as it is not hazardous or mixed with other waste. It is often more cost effective for developed countries to export their plastic waste to developing countries (where processing and disposal costs are lower) than to recycle or dispose of it themselves. Some countries (including New Zealand) also do not have enough infrastructure to adequately recycle plastic waste.

19. Generally, developed countries export bales of mixed plastic waste. However, while the high-value plastic waste is extracted for recycling, low-value plastic waste and/or any residual waste is often dumped in landfills, or burned, with significant impacts for the environment and human health. Mismanaged plastic waste can flow into the ocean through river systems, or as a result of flooding and tropical storms, and become marine plastic litter, which has well documented consequences for marine life and seabirds.

20. There is a role for the international trade in plastic waste to recover recycling material that may otherwise end up in landfill. But the relatively free trade in plastics for recycling has led to limited transparency about:

- the type of plastic waste exported or imported for recycling or disposal
- how the importing country manages or disposes of plastic waste (including residual waste).

The decision to better manage the international trade in plastic waste

21. The Basel Amendment will better manage the international trade in plastic waste, especially plastic waste that is at most risk of becoming marine plastic litter, by incentivising the trade in high-value plastic waste for recycling, and dis-incentivising that of low-value plastic waste. The Amendment is likely to lead to less low-value, hard to recycle plastic waste in circulation.

22. Exporting countries or exporters will have to obtain consent from receiving countries before shipping most mixed plastic waste, and hazardous plastic waste.

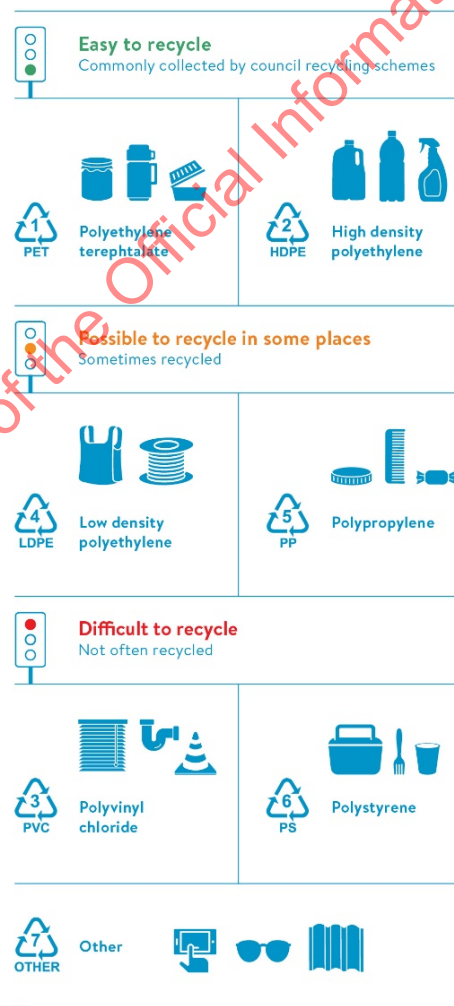
23. Waste that is clean, has been separated into single streams by type ('separated plastic waste'), and is destined for recycling in an environmentally sound manner, will remain outside the controls of the Basel Convention.

24. The Basel Amendment strikes a balance between enabling trade, and ensuring environmental integrity. This reflects the fact that not all countries have the infrastructure or capacity to process the waste, and that there is economic value in the trade of some plastic waste. It also acknowledges that greater regulation is necessary to prevent poor environmental management of such exports.

Plastic waste and recycling in New Zealand

25. There are seven main types of plastic. They have different recycling attributes and different values as commodities.

- Clear PET (1) and natural HDPE (2) have the highest recycling value.
- Coloured PET (1), coloured HDPE (2), LDPE (4) and PP (5) are recyclable but are likely to end up in a 'mixed plastic' recycling stream with a low value.
- PVC (3) and PS (6) also end up in a mixed plastic stream in low quantities.
- 'Other' types of plastic waste (7) will not be recycled and will likely contaminate other recycling streams.



SOURCE | Recyclable royalsociety.org.nz/plastics licenced under CC BY 3.0 NZ

26. Plastic types 3, 4, 6 and 7 are generally lower in value due to the volume needed for recycling, the cost of collecting and sorting, and limitations in how they can be used.
27. The New Zealand waste sector (commercial and residential) collects about 1.295 million tonnes of materials for recycling (metal, paper and cardboard fibre, glass and plastic) each year. Plastics make up about 45,000 tonnes, or 3.5 per cent of the total collection.
28. Commercial sources of plastic waste are more likely to be single stream and therefore less contaminated by other types of waste.
29. Household collection for recycling is largely via kerbside services, where it is cheaper to mix recyclables together and sort them later at a materials recovery facility (MRF). The types of plastic collected and the requirements for separating, differ by council.
30. MRFs typically separate out three or four different plastic waste types:
 - clear PET
 - natural HDPE
 - coloured PET or coloured 'janitorial' plastics
 - mixed plastic (plastic that is left after the previous three separations).
31. Mixed plastics typically come from households. Their quality and value as recyclables are partially affected by the method of kerbside collection, and the MRF technology.
32. The MRF systems usually deliver bales of separated and mixed materials for sale to a set specification. This is driven by the cost of processing (including infrastructure), and local and international market demand.
33. Different MRFs may achieve different levels of contamination in bales of plastic waste. Contamination occurs when unspecified, or unrecyclable materials are included in bales. For example, where PVC (3) is found in a bale of clear PET (1).

Plastic waste exports from New Zealand

34. As New Zealand has few facilities for reprocessing plastic waste, we export much of it for recycling, or send it to landfill. New Zealand exports about 35,000 tonnes of plastic waste annually. This is about 90 per cent of the plastics collected. Exports are mainly bales of mixed plastics, shipped using brokers or commodities traders (although some large MRFs export directly to buyers).
35. Bales are sent as mixed plastics because the economic and technical feasibility of recovering plastic types PVC (3), LDPE (4), PS (6) and 'other' (7) has traditionally been poor. Baled on their own these plastics currently have a negative market value. To access markets for these lower value plastics, exporters include higher value types such as PET (1) and HDPE (2) to increase the value of mixed bales.
36. New Zealand, like other countries, has been facing changes to its domestic industry in response to import restrictions in receiving countries. Since China set new export controls our waste exports there have dropped markedly, and increased to other parts of Asia. Although the international market has already been driving changes

to the management and trade in plastic waste, the Basel Amendment is needed to provide a framework to manage low-value, hard to recycle plastic.

37. There are still some international markets for plastic waste, and the overall signs are that PET (1), HDPE (2) and PP (5) will retain commercial value. However, a growing number of councils have stopped collecting low-value plastics, or are sending them directly to landfill.
38. In December 2019 the Prime Minister and I announced a plan to set targets to phase-out hard to recycle plastics in packaging starting with PVC (3) and PS (6). I am working with officials at the Ministry for the Environment to determine the proposed scope and timeframe for this work s 9(2)(f)(iv)
39. For materials with viable markets, New Zealand is likely to continue exporting plastic waste in the short to medium term because it lacks the infrastructure and capacity to process it all here. There is also value in the trade in some plastic waste, although better regulation (such as the Basel Amendment requires) is necessary to curb poor environmental management of such exports.
40. I consider that implementing the Basel Amendment, together with the Government's wider resource efficiency work programme, will help improve New Zealand's waste management system, move away from using low-value, hard to recycle plastic, and keep high-value plastics in circulation for longer.

Analysis sections

Should New Zealand implement the Basel Amendment?

41. The Basel Amendment will enter into force through a process known as 'tacit acceptance'. Through this process New Zealand will become bound automatically unless we 'opt out'.
42. I recommend implementing the Basel Amendment as it will result in:
- fewer exports of problematic plastic waste, and therefore a decreased risk of New Zealand's residual waste entering the environment elsewhere
 - s 6(a)
 - more transparency in the trade of mixed plastic waste
 - more certainty for industry about international requirements.
43. Implementing the Basel Amendment also supports Government policy on plastic waste management. As the Government's wider waste programme progresses and infrastructure grows, all exports of plastics will likely decrease, especially exports of low-value plastics.
44. New Zealand has the ability to 'opt out' of the Basel Amendment which would mean that we would not assume any of the new legal obligations. If New Zealand were to opt out it would need to do so in writing before 24 March 2020. Note that New Zealand will be legally bound to implement the Basel Amendment by 1 January 2021.

45. Even if New Zealand does not accept the Amendment we would still have obligations for certain types of plastic waste as currently covered by the Convention (eg, those that have hazardous characteristics or are mixed with other wastes).
46. If New Zealand opted out, businesses would likely be prevented from exporting some plastic waste to countries we currently export to. It is likely that New Zealand exporters could only export mixed plastic waste to those countries that have not implemented the Basel Amendment. This is because the Environmental Protection Authority (EPA) would be unable to issue permits for these exports. I have been advised that there are unlikely to be many countries that will not implement the Basel Amendment, and that most of our destination markets ^{s 6(a)} will implement the Basel Amendment.
47. Where trade is possible, there will be a lack of regulation and a risk that residual waste will continue to enter the environment as a result.
48. In addition, opting out of the Basel Amendment will lead to further uncertainty for industry about how to manage exports of plastic waste, and there is likely to be more plastic landfilled in the short term as New Zealand does not have the necessary infrastructure to currently manage all types of plastic waste.
49. There is also a risk to New Zealand's international reputation if we do not implement the Basel Amendment. Parties agreed to the Amendment by consensus, ^{s 6(a)}. If New Zealand does not implement the decision there may be an international perception that New Zealand is not willing to address issues associated with its own waste, or the international trade of plastic waste.
50. I consider that opting out of the Basel Amendment would have significant impacts for industry, the environment and New Zealand's reputation.

Parliamentary treaty examination

51. Standing Order 397, which governs presentation of treaties to the House of Representatives, applies only to positive treaty actions and not to treaty actions subject to tacit acceptance (like the Basel Amendment). The Government has committed as a matter of policy to present amendments which are more than minor and/or technical to the relevant Committee.
52. I consider the Basel Amendment to be minor and technical and therefore not subject to the Parliamentary treaty examination process as it:
- is in line with the objectives of the Basel Convention, and requiring prior consent for the trade in mixed plastic waste is reflective of the types of waste the Convention was established to manage
 - still allows the trade in plastic waste, subject to prior consent for certain types of plastic waste
 - is in line with changes already happening in New Zealand's plastic waste management sector
 - reflects changes happening in the international market, particularly in relation to the restrictions set by importing countries.

Implementing the Basel Amendment in New Zealand

53. New Zealand implements its obligations under the Basel Convention through the Imports and Exports Order. Under the Import and Exports Order, all imports and export of hazardous wastes and household wastes are subject to consent from the importing country and require a permit from the EPA. The New Zealand Customs Service (Customs) enforces the Imports and Exports Order at the border.
54. The Imports and Exports Order would need to be amended to require a permit for imports and exports of mixed plastic waste (with the exception of PE, PP and PET), as described in the Basel Amendment.
55. The Imports and Exports Order does not need to be amended to include hazardous or separated plastic waste because:
- imports and exports of hazardous waste already require consent and a permit from the EPA before shipping
 - imports and exports of separated plastic waste do not require consent and therefore will not require a permit from the EPA before shipping.
56. While the Minister of Commerce and Consumer Affairs has parliamentary responsibility for the Imports and Exports Order, policy responsibility sits with the environment portfolio and I can recommend policy changes to the Order.

Consultation on options to implement the Basel Amendment

57. I propose to publicly consult on two separate options to implement the Basel Amendment. Both options would enable New Zealand to meet the new obligations under the Basel Convention for the trade in mixed plastic waste.
58. The options are variations on how the Imports and Exports Order could be amended to include mixed plastic waste in the permit system. However they differ on the specifications for separated plastic waste.
- Option 1 – Permits for mixed plastic waste **without** specifications (*preferred option*)
 - Option 2 – Permits for mixed plastic waste **with** specifications (such as a specific maximum rate for contamination).
59. I consider that both options give industry greater certainty, and have a low overall impact because:
- administrative costs are low due to alignment with existing hazardous waste permits under the Imports and Exports Order
 - they are in line with changes already occurring in the domestic and international markets.
60. I propose that these two options are tested with stakeholders during consultation to assess their workability and practical implications.

Option 1: Permits for mixed plastic waste without specifications (preferred option)

61. This option would amend the Imports and Exports Order to include mixed plastic waste, requiring importers and exporters to obtain a permit from the EPA. This option would not prescribe specifications for imports and exports of separated

plastic waste. As currently exporters must meet any importing country's requirements for waste.

62. This is the preferred option. It discourages the trade in low-value plastic waste, while giving industry some flexibility to adjust to changing markets. Market changes are likely to be fluid for some time as importing countries set their own requirements.
63. This option is in line with changes already underway in domestic waste management such as councils stopping collection of plastic types 3-7.
64. Option 1 could recommend using international standards to guide collecting, sorting, and processing. This would reflect the reference to international standards in the Basel Amendment. The Imports and Exports Order may need to cite specific standards, but these would not be binding. An example of an international standard is the Institute of Scrap Recycling Industries (ISRI) Scrap Specifications Circular 2018, which has guidelines for plastic scrap, including rates of allowable contamination by unspecified material types.
65. The impacts of this option will largely depend on whether exporters continue to export mixed plastic waste (which would require an EPA permit), or whether there will be a shift to further sort and process plastic waste domestically, and primarily export separated plastic waste (which would not require an EPA permit).

Option 2: Permits for mixed plastic waste with specifications

66. Like Option 1, Option 2 would amend the Imports and Exports Order to include mixed plastic waste. In addition, Option 2 would prescribe specifications (eg, for rates and types of contamination) for imports and exports of separated plastic waste.
67. For example, if a maximum contamination rate of 2 per cent was set for imports and exports of separated plastic waste, where contamination exceeded 2 per cent a permit would be required from the EPA before shipment.
68. Compared to Option 1, industry would have less flexibility to respond to the dynamic international market. However, set requirements would give industry more certainty for developing processes and infrastructure.
69. Some uncertainty would still remain due to the ability of importing countries to set their own importing specifications, which exporters would need to meet.
70. The impacts of this option would vary according to the level of the specifications. As with Option 1, the impacts would also depend on whether exporters continue to export mixed plastic waste, or whether there will be a shift to further sort and process plastic waste domestically, and primarily export separated plastic waste.

Validating exports of separated plastic waste

71. Separated plastic waste would not require an export permit from the EPA. Extra certainty might be needed, such as through a validation process. Validation might help to ensure that exports of separated plastic waste meet any standards for separation, contamination and environmentally sound management where necessary.

72. The Imports and Exports Order does not require validation for waste that is not regulated through the consent process under the Basel Convention. A validation process would go beyond the requirements of the Basel Amendment.
73. In the consultation document I am seeking feedback on whether stakeholders think that a validation process is needed for exports of separated plastic waste and whether this could be included as part of current industry practices (eg, quality checks of bales before export).

Consultation (with other agencies, departments, interest groups etc)

74. The EPA, the Ministry of Foreign Affairs and Trade, the Ministry of Business, Innovation and Employment, and Customs have been consulted on the proposals outlined in this paper.
75. Customs has raised some concerns about the risk associated with not requiring a permit for exports of separated plastic waste. This issue is outlined in the consultation document and I am seeking feedback from stakeholders on whether a validation process would be needed to help mitigate any risks.
76. The Treasury, the Department of the Prime Minister and Cabinet, and the Ministry of Justice have been informed.
77. The Ministry for the Environment has discussed the Basel Amendment and possible domestic impacts with stakeholders in the National Resource Recovery Taskforce³. This informal engagement sought initial thoughts on the decision and possible domestic implications. This helped inform the development of policy options and analysis to date.

Financial implications

78. I anticipate that implementing the Basel Amendment will incur minor costs on industry and government. Information gathered during consultation will help inform these costs.
79. Financial impacts for all stakeholders will largely depend on whether exporters continue to export mixed plastic waste, or whether they will move to mainly exporting separated plastic waste.
80. For example, the EPA will incur additional costs to include mixed plastic waste in the existing permit system, and to process permits for mixed plastic waste. The costs associated with permitting will be dependent on whether or not industry and exporters continue exporting mixed plastic waste (which would require a permit).
81. There may be costs to councils and MRFs if exporters change from exporting mixed plastic waste to separated plastic. This may require changes to kerbside collections, and sorting and processing systems. Some of these changes are already happening in response to shifts in the international and domestic markets. In addition, any costs may be balanced with the benefits from achieving higher value plastic waste due to more sorting and separation. This is also in line with the objective of the Basel Amendment.

³ The Taskforce includes 10 metro council waste experts and 11 recycling industry experts.

Legislative implications

82. After consultation and final policy decisions have been made, regulations will be made by Order in Council under the Imports and Exports (Restrictions) Prohibition Order (No 2) 2004.

Regulatory impact analysis

83. The consultation document functions as an interim Regulatory Impact Assessment. The Ministry for the Environment's Quality Assurance panel has reviewed the consultation document and confirms the level of information provided meets the quality assessment criteria, for this stage of the process, and is likely to lead to effective consultation on the proposals. The consultation will provide information where there are currently limits or uncertainty and later support the delivery of a Regulatory Impact Assessment to inform subsequent decisions.

Human rights

84. The proposals in this paper and the attached consultation document are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Gender implications

85. There are no gender implications in this proposal.

Disability perspective

86. There are no specific implications from a disability perspective in this proposal.

Publicity

87. Should Cabinet agree to the recommendations in this paper, the attached consultation document, *Managing the trade in plastic waste – New Zealand's approach to implementing amendments to the Basel Convention* will be released on the Ministry for the Environment's website for public comment, accompanied by a media release. The Ministry's officials will offer to meet stakeholders with an interest in the proposal.

88. The consultation will begin on 19 March and close on 30 April 2020.

Proactive Release

89. I propose to proactively release this Cabinet paper at the same time as the consultation document. The documents will be redacted as appropriate under the Official Information Act 1982.

Recommendations

The Associate Minister for the Environment recommends that the Committee:

1. **note** that in May 2019 Parties to the Basel Convention agreed, by consensus, to amend Annexes II, VIII and IX of the Convention to better manage the international trade in plastic waste

2. **note** that the amendments to the Basel Convention will come into effect for all Parties that have not opted out of the amendments on 1 January 2021
3. **note** that New Zealand will be legally bound to implement the amendments to the Basel Convention by 1 January 2021 if we do not opt out before 24 March 2020
4. **note** that opting out of the amendments to the Basel Convention will have negative impacts for industry, the environment and New Zealand, and that accordingly New Zealand will not opt out
5. **note** that as the amendments will enter into force through a process of tacit acceptance, the amendments are not subject to the Parliamentary treaty examination process and will not be presented to Parliament
6. **note** that New Zealand implements its obligations under the Basel Convention through the Imports and Exports (Restrictions) Prohibition Order (No 2) 2004
7. **note** that while the Minister of Commerce and Consumer Affairs has parliamentary responsibility for the Imports and Exports (Restrictions) Prohibition Order (No 2) 2004, as Associate Minister for the Environment I have policy responsibility and can recommend changes to the Order
8. **note** that two feasible policy options have been identified to implement the Basel Amendment which will enable New Zealand to meet the new international obligations under the Basel Convention
 - 8.1. Option 1: Permits for imports and exports of mixed plastic waste, **without** specifications (*preferred option*)
 - 8.2. Option 2: Permits for imports and exports of mixed plastic waste, **with** specifications.
9. **agree** to a public consultation on the above proposed options
10. **approve** the consultation document *Managing the trade in plastic waste – New Zealand's approach to implementing amendments to the Basel Convention*
11. **agree** to delegate authority to the Associate Minister for the Environment to make minor technical and editorial changes to the consultation document prior to its public release
12. **invite** the Associate Minister for the Environment to report back to Cabinet by 30 June 2020 following public consultation for final policy decisions.

Authorised for lodgement.

Hon Eugenie Sage

Associate Minister for the Environment

Appendix 1.

Draft consultation document on ***Managing the trade in plastic waste – New Zealand’s approach to implementing amendments to the Basel Convention***

Proactively released under the provisions of the Official Information Act 1982