

## MUNICIPAL YEAR 2013/2014 REPORT NO. 143

**MEETING TITLE AND DATE:**  
Cabinet 11<sup>th</sup> December 2013

**REPORT OF:**  
Director of Environment  
and Director of Finance,  
Resources and Customer  
Services

**Agenda – Part: 1**

**Item: 9**

**Subject: Amendments to the NLWA Levy**

**Wards: All**

**Key Decision No: KD 3807**

**Cabinet Member consulted: Cllr. Bond**

Contact officer and telephone number:

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### 1. EXECUTIVE SUMMARY

- 1.1 This report seeks approval for two changes to the North London Waste Authority (NLWA) levy.
- 1.2 The first and more significant of the two changes is to adjust the levy to compensate other Boroughs where a Borough consigns materials for recycling to the NLWA where it does not already do so. The change specifically relates to LB Barnet's consigning of commingled recyclates to the Authority from 9<sup>th</sup> October 2013. The proposed levy change is of financial benefit to Enfield Council as it will put Barnet in the same position as other Boroughs that are increasing their recycling tonnages.
- 1.3 The second, more minor, change is in relation to a change in the location of a Household Waste Recycling Centre in LB Haringey.

### 2. RECOMMENDATIONS

- 2.1 That, following review of the report by Overview and Scrutiny Committee, Cabinet approves the following resolutions set out in Appendix 1, in order to vary the NLWA alternative levy apportionment arrangements previously agreed by all North London Waste Authority constituent boroughs from the 2012/13. This is to take effect from the apportionment of the NLWA's 2014/15 levy.
- 2.2 That Cabinet agrees to delegate to the Director of Environment to agree minor changes to the proposed changes set out at Appendix 1, should this be required.
- 2.3 That Cabinet agrees, for the avoidance of doubt, that all other parts of the current locally agreed levy apportionment arrangements remain unchanged.

### **3. BACKGROUND**

#### Current NLWA Levy Arrangements

- 3.1 The NLWA is a Statutory Joint Waste Disposal Authority (JWDA) for 7 North London boroughs. The NLWA area jointly disposes of almost one million tonnes of rubbish every year, making it the second largest waste disposal authority area in the country.
- 3.2 The Joint Waste Disposal Authorities (Levies) (England) Regulations 2006 set out the default position for how the levy should be apportioned to the boroughs. However, should the boroughs come to unanimous agreement the default arrangements can be amended.
- 3.3 Therefore the North London Waste Authority (NLWA) levy can be apportioned between its seven Constituent Boroughs ('the Boroughs') in any way that the Boroughs can unanimously agree, otherwise the default position prevails. This is provided under the Joint Waste Disposal Authorities (Levies) (England) Regulations 2006. The Boroughs have now used this discretion and have unanimously agreed a local variation to the levy apportionment methodology as noted above. In the absence of any further unanimous agreement, the levy apportionment arrangements agreed by all NLWA constituent Boroughs and the NLWA from the 2012/13 levy will apply.
- 3.4 The changes agreed from the 2012/13 levy were in order to facilitate the transfer of Borough Household Waste Recycling Centres (HWRCs) to the NLWA in such a way as to ensure that constituent borough councils only bore the costs associated with the running of HWRCs that are situated within their borough boundary broadly in line with the distribution of costs prior to the levy change.
- 3.5 The exception to this is that the costs of the NLWA's previously proposed freehold purchase of land at Cranford Way from LB Haringey (to construct a replacement for an existing HWRC within the Borough). This was to be apportioned based upon the results of a recent visitor survey at the nearby site, that the proposed Cranford Way HWRC was proposed to replace (Hornsey High Street); it was agreed that this cost would be shared, as the asset was to be owned by NLWA. The levy arrangements agreed in January 2012 reflect that all costs in relation to Cranford Way (including the purchase of land) would be apportioned as set out in the proportions set out in Table 1 (Below). This was agreed by Cabinet and Full Council in Enfield in 2011/12 and all other NLWA boroughs at the same time unanimously.

**Table 1: Current Levy Apportionment in Relation to Cranford Way HWRC**

Barnet	0.613%
Camden	0.038%
Enfield	0.383%
Hackney	0.191%
Haringey	97.894%
Islington	0.804%
Waltham Forest	0.077%

- 3.6 The changes to the levy agreed from 2012/13 were intended to be superseded by changes to the levy as set out in the proposed IAA to apply from the 2016/17 levy. The levy arrangements would otherwise remain unchanged from the statutory default.

The Inter-Authority Agreement (IAA)

- 3.7 Enfield and the other boroughs approved the draft IAA through Cabinet in July 2011 and so agreed in principle to the signing of an Inter-Authority Agreement (IAA) to underpin the previously proposed procurement process. A key component of the proposed draft IAA is a change to the NLWA's levy from April 2016. The overarching principle of the changes within the proposed draft IAA is that Boroughs are levied and charged according to the relative costs of the different types of waste that they deliver to the NLWA (i.e. with differential costs applied relative to the costs of managing each type of waste) with reconciliation after the end of each financial year. This is referred to as a 'menu pricing' system.
- 3.8 In relation to HWRCs controlled by the NLWA the IAA Cost Recovery Mechanism within the proposed draft IAA requires that the costs of these will be apportioned based on a periodic visitor survey (with transitional arrangements for new sites in consultation with the borough), and the costs of transporting and disposing of residual waste from those Boroughs such as Enfield that have not transferred their sites is apportioned on a per tonne basis (in line with other borough collected residual waste).
- 3.9 Due to the recent cessation of the NLWA procurement process it is likely that there will be a substantial re-draft of the IAA from the version previously proposed to be entered into to support the contractual arrangements under the procurement process. It is however expected that the redrafted IAA will still incorporate the menu pricing arrangements similar to those in the draft IAA, so that the NLWA's costs are more fairly apportioned than at present. This is likely to be the subject of a further report to Overview and Scrutiny Committee, and then to Cabinet.

- 3.10 In the meantime it is necessary to make changes to the current levy apportionment arrangements for 2014/15 and 2015/16. These need to be in place by December 2013 so that all NLWA constituent boroughs can be certain about the basis for apportioning the 2014/15 levy.

**Amendment 1 - Proposed Change in Relation to the Consigning of Waste Streams Not Previously Consigned to the NLWA in Advance of the Proposed Change to Menu Pricing**

- 3.11 From 9<sup>th</sup> of October 2013 LB Barnet has begun consigning commingled dry recyclables to the NLWA for processing under the NLWA's MRF Services contracts. The relevant tonnages are set out in Table 2 below and will add in the region of £1.1m per annum to the NLWA's cost base. Under the current levy arrangements LB Barnet's share of the levy will not increase to fairly reflect its share of the NLWA's additional costs until 2016/17. This is due to a two-year time lag in the levy mechanism, i.e. when the levy is set each February for the year ahead, the most recent audited tonnages available are from the preceding year (so 2012/13 tonnages will be used to apportion the 2014/15 levy and so on).

**Table 2: Proposed Commingled Dry Tonnage to be Consigned by LB Barnet to the NLWA**

<b>Year delivered:</b>	<b>Tonnes:</b>
2013/14	10,864
2014/15	24,225
2015/16	26,575

- 3.12 The current projected tonnages of commingled dry recyclables from all constituent borough councils for 2014/15 are shown at Table 3 (below). Under the current levy arrangements, all boroughs other than LB Barnet will bear a share of the levy for 2014/15 that reflects their tonnages delivered in 2012/13, but without the proposed amendment to the levy, LB Barnet would make only a small contribution to the NLWA's costs of its MRF Services contracts in 2014/15 and a partial (c. 50%) contribution for 2015/16. This is also true for the unbudgeted expenditure in 2013/14 that the NLWA will incur in relation to LB Barnet's commingled dry recyclables from October this year.

**Table 3: Projected NLWA Commingled Recyclate Tonnages 2014/15**

<b>Borough</b>	<b>2014/15 (Tonnes)</b>
<b>Barnet</b>	24,225
<b>Camden</b>	19,000
<b>Enfield</b>	0
<b>Hackney</b>	15,195

<b>Haringey</b>	20,500
<b>Islington</b>	14,559
<b>Waltham Forest</b>	21,500
<b>Total</b>	<b>114,979</b>

- 3.13 Given the current levy's two-year time lag this will not continue long enough to capture the additional costs of LB Barnet's commingled dry recyclables before the proposed move to in year menu pricing in 2016/17.
- 3.14 The LB Barnet has therefore proposed and already agreed to vary the apportionment of the NLWA's levy in 2014/15 and 2015/16 to address the projected increase in the costs of other Boroughs by the consignment of LB Barnet's commingled recyclates. The proposed levy change set out in this paper has been agreed by LB Barnet's Cabinet with delegated authority to make minor amendments.
- 3.15 The proposed levy change will retrospectively adjust LB Barnet's (or any other borough that subsequently starts to deliver to the NLWA types of waste that it previously retained for recycling) tonnage basis for the purposes of levy apportionment such that the apportionment of the levy for 2014/15 will be undertaken as if LB Barnet had been previously delivering its dry recyclables to the NLWA
- 3.16 This will put LB Barnet immediately in the same position as all other constituent borough councils that have been delivering their commingled dry recyclables to the NLWA for treatment in recent years, and will avoid the need for Enfield to pick up a share of these costs. The proposed alternative levy apportionment arrangements are attached as Appendix 1.
- 3.17 The effect of these, subject to other changes that may arise in relation to the NLWA's budget and levy for 2014/15, are set out in Table 4 in such a way that illustrates the financial impact on the Boroughs in 2014/15 of firstly the NLWA having incurred some £0.474m in 2013/14 (from the unbudgeted costs of processing LB Barnet's commingled recyclates from 9<sup>th</sup> October 2013) that would otherwise have been available as balances to assist the funding of the 2014/15 levy; and secondly the NLWA budgeting to incur some £1.083m in 2014/15 for LB Barnet's commingled dry recyclables.

**Table 4: Projected Impact of Proposed Changes to the Levy on the 2014/15 Levy Calculation**

<b>Forecast Allocation of Costs Through the Levy – <u>Without</u> the Change</b>	<b>Forecast Allocation of Costs Through the Levy – <u>With</u> the Change</b>	<b>Variance of the at</b>
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	<b>Appendix 1</b>	<b>Appendix 1</b>	
<b>Barnet</b>	£295,241	£1,341,712	£1,046,471
<b>Camden</b>	£175,475	£29,898	-£145,577
<b>Enfield</b>	£181,397	£30,908	-£150,489
<b>Hackney</b>	£223,105	£38,014	-£185,091
<b>Haringey</b>	£242,816	£41,373	-£201,443
<b>Islington</b>	£186,316	£31,746	-£154,570
<b>Waltham Forest</b>	£252,288	£42,987	-£209,301
<b>Total</b>	<b>£1,556,638</b>	<b>£1,556,638</b>	<b>£0</b>

- 3.18 Increases and decreases in other components of the waste stream delivered by each borough also affect the final amount each borough is levied by the NLWA in any given year, so although indicative levy impacts are shown above, the final NLWA levy set and apportioned in February 2014 will be determined by a wide range of other factors as well.
- 3.19 All boroughs are agreed in principle, however the actual apportionment of the levy will remain unchanged unless all seven Boroughs unanimously approve an alternative.
- 3.20 Boroughs are requested by the NLWA to ensure that all necessary decisions in relation to changes to the levy are taken by mid-November if at all possible so that the NLWA can provide appropriate budget forecasts to the Boroughs from its December meeting.

**Amendment 2 - Summary of Proposed Change in Relation to the Changing of HWRC's within the London Borough of Haringey**

- 3.21 The second, more minor proposed change to the levy is to address the relocation of one of BLB Haringey's Household Waste Recycling Centres (HWRC's).
- 3.22 As stated above the prevailing levy arrangements in relation to HWRC's include specific arrangements to take into account the previously proposed relocation of one of LB Haringey's HWRC's from Hornsey High Street to Cranford Way. The NLWA and LB Haringey have subsequently decided to instead develop an alternative site in Western Road, Haringey, as a replacement for the Hornsey High Street HWRC.
- 3.23 The levy arrangements agreed by all boroughs unanimously in January 2012 did not envisage the proposed change from Cranford Way to Western Road. It is therefore proposed that the levy arrangements are changed such that the specific provisions previously agreed in relation to Cranford Way (based on a visitor survey conducted by the Authority at the High Street Hornsey HWRC) will apply directly to Western Road in the same way.

- 3.24 Currently this is expected to be in the form also shown at Appendix 1.
- 3.25 The report was considered by the Overview and Scrutiny Committee (OSC) on the 28<sup>th</sup> November 2013. The OSC asked that the legal advice, which has led to the change in procedure for agreeing Enfield's position on levy changes, be circulated to them. Such decisions had previously been taken by Cabinet and then Council. Subject to anything arising from the advice, the OSC agreed that future levy changes should be reviewed by OSC prior to any decision by Cabinet.
- 3.26 On the specific proposals in this paper, the OSC endorsed the officers' recommendation.

#### **4. ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 Not to agree to amendment 1 and pay a proportion of Barnet's co-mingled recycling costs up to the proposed change to menu pricing in 2016/17, in effect allowing Barnet to pass on the costs of the recycling to the other 6 boroughs due to the 2 year delay in the levy. This would not make financial sense.
- 4.2 Not to agree the amendment 2.. .If this change is not agreed, other boroughs are expected to pay a greater share of the costs of Western Road than of Cranford Way.
- 4.3 Not to agree to amendment 1 and amendment 2.

#### **5. REASONS FOR RECOMMENDATIONS**

- 5.1 The recommendations are made to protect the Councils financial position with regards to the levy for the years 2014/15 and 2015/16.
- 5.2 The second recommendation has a positive financial impact on Enfield.

#### **6. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS**

##### **6.1 Financial Implications**

- 6.1.1 The proposed levy change will limit the additional costs that will be borne by the LBE and other boroughs. Without this change LB Barnet will not pay an appropriate share of the levy until 2016/17 and others will pay a disproportionate share until then. As detailed in section 3.17, Enfield's share of the forecast additional cost recoverable through the 2014/15 levy with the proposed change is £30,908 compared to £181,397 without the change.
- 6.1.2 As part of the 2013/14 Budget process, the NLWA provided a medium term levy forecast. Enfield's forecast levy was £6,415M for 2014/15, and £6,387M for 2015/16, which has been allowed for in the Medium

term financial plan. It should be noted that these forecasts make no allowance for any revenue balances available as at 31 March 2014 & 2015 the final levy will also be affected by other changes including changes in waste tonnages and inflation

- 6.1.3 The NLWA will advise Boroughs of their final 2014/15 levy in February 2014.
- 6.1.4 The second change which relates to the change of site of LB Haringey's Housing waste recycling centre (HWRC) from Cranford Way to Western Road is not anticipated to have an additional financial impact on the Levy chargeable to member boroughs.

## **6.2 Legal Implications**

- 6.2.1 NLWA is established as a London Waste Disposal Authority under Schedule 1 of the Waste Regulation and Disposal (Authorities) Order 1985. Schedule 1 lists Enfield as one of seven Constituent Councils of the NLWA.
- 6.2.2 The Council has a duty to deliver for disposal all waste which is collected by the Council to places that the NLWA directs under section 48(1) of the Environmental Protection Act 1990 (the EPA).
- 6.2.3 Section 4 of The Joint Waste Disposal Authorities (Levies) (England) Regulations 2006 set out the method for apportionment of the levies, which includes the ability for the Boroughs to reach a unanimous decision as to how the levies are apportioned.
- 6.2.4 The re-draft of the IAA will need to support any new contractual arrangements for future procurements. It is in the Council's interests to be a party to the IAA in order to input into the outcome of any future procurement. Entering into any future IAA will create a legally binding relationship with the NLWA and the other six Boroughs, which the parties will be able to rely on. This is in addition to the statutory relationship as set out at 6.2.1. The final form of the IAA must be approved by the Assistant Director of Legal Services.

## **6.3 Property Implications**

None.

## **7. KEY RISKS**

That the seven boroughs do not unanimously agree this.

## **8. IMPACT ON COUNCIL PRIORITIES**

### **8.1 Fairness for All**

Recommendation 1 ensures fairness for all of the boroughs financially

### **8.2 Growth and Sustainability**

None.

### **8.3 Strong Communities**

None.

## **9. EQUALITIES IMPACT IMPLICATIONS**

Corporate advice has been sought in regard to equalities and an agreement has been reached that an equalities impact assessment/analysis is not relevant or proportionate for the approval of the amendments to the NLWA Levy.

## **10. PERFORMANCE MANAGEMENT IMPLICATIONS**

None.

## **11. PUBLIC HEALTH IMPLICATIONS**

None.

### **Background Papers**

None.

## APPENDIX 1

### **PROPOSED AMENDMENT**

#### **Apportionment of levies**

4.—(1) Subject to regulation 5, the amount to be levied by a joint waste disposal authority in respect of any financial year from each of its constituent councils shall be determined by apportioning the total amount to be levied by that authority in that year between those councils as follows—

- (a) in such proportions as all the constituent councils may agree; or
- (b) in the absence of such agreement, by a combination of the following proportions—

- (i) the costs incurred by the joint waste disposal authority in the disposal or treatment of household waste delivered to it by its constituent councils shall be apportioned between the constituent councils in proportion to the tonnage of household waste delivered by each of these councils to the joint waste disposal authority within the last complete financial year for which data are available **except for when a constituent council will start to deliver to the joint waste disposal authority types of waste that the constituent council had previously retained for recycling in which case the constituent council shall provide to the joint waste disposal authority records of the tonnage of such household waste it delivered elsewhere for recycling in the last complete financial year for which data are available and the joint waste disposal authority shall apportion its levy as if the constituent councils had also delivered such household waste to the joint waste disposal authority;**

- (ii) the costs incurred by the joint waste disposal authority in the disposal or treatment of business refuse that is deposited at places provided by the constituent councils under section 1 of the Refuse Disposal (Amenity) Act 1978(a) shall be apportioned between the constituent councils in proportion to the tonnage of business refuse deposited at such places within the area of each of these councils within the last complete financial year for which data are available;

- (iii) The costs incurred by the joint waste disposal authority in the planning, construction, equipping and operation of sites provided under section 51(1)(b) of the Environmental Protection Act 1990 (HWRCs), including contract payments, staffing, utilities, premises, reuse, recycling, composting (costs and/or income) and relevant management costs, but excluding the cost of removing residual waste and its disposal (the authority's duty under the Refuse Disposal (Amenity) Act 1978), shall be apportioned between those constituent councils in whose area an HWRC is situated proportionate to the authority's relative costs applicable to each HWRC, such that the authority's above costs of each HWRC are paid in full by the constituent council in which it is situated.

- (iv) The costs incurred by the joint waste disposal authority in the purchasing of ~~Cranford Way~~ **Western Road** HWRC shall be apportioned between the constituent councils in the following proportions:

Barnet	0.613%
Camden	0.038%
Enfield	0.383%
Hackney	0.191%
Haringey	97.894%
Islington	0.804%
Waltham Forest	0.077%

- (v) The costs incurred by the joint waste disposal authority in the purchasing of any further HWRCs shall be apportioned between the constituent councils in proportion to the number of households in each constituent council that exist within a two-mile radius of the entrance to the HWRC until a visitor survey has been undertaken by the Authority. Once a visitor survey has been undertaken by the Authority for any such HWRC the costs as at clause (iii) above shall be recovered from the constituent councils from the next financial year onwards in proportion to such visitor survey; visitors from outside the Authority's area shall be treated as visitors from the borough in which the HWRC is situated. Further visitor surveys may be undertaken by the Authority in future years, which shall be used in place of previous visitor surveys from the financial year after they are undertaken, including for the avoidance of doubt ~~Cranford Way~~ Western Road; and
- (vi) all other costs not falling within paragraphs (i)-(ii) (iii) (iv) or (v), shall be apportioned between the constituent councils by reference to the relevant proportion.