

MUNICIPAL YEAR 2015/2016 REPORT NO. 155

MEETING TITLE AND DATE:
Cabinet 20 January 2016

REPORT OF:

Director – Regeneration and Environment
Director – Finance, Resources and Customer Services

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Agenda – Part: 1

Item: 11

Subject:

Approval of Non-minor Amendments to the Inter Authority Agreement and replacement of Levy system with Menu Pricing arrangements for waste disposal

KD 4032

Wards: All

Cabinet Members Consulted: Cllr Anderson & Cllr Stafford

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1. EXECUTIVE SUMMARY

- 1.1 The Inter Authority Agreement is the legal document that governs the interface between the North London Waste Authority (NLWA) and the seven constituent Waste Collection Authorities (WCAs) (of which the Council is one) for waste disposal.
- 1.2 In July 2011, Cabinet approved the draft Inter Authority Agreement (IAA) and the recommendation to delegate minor amendments to the IAA to the Director Regeneration and Environment and Director of Finance, Resources and Customer Services which were subsequently approved in July 2012.
- 1.3 Further to the end of the procurement of the replacement waste disposal contract in 2013, a revised IAA is now required as the original document was structured to support the aborted waste disposal contract.
- 1.4 The Menu Pricing Mechanism (MPM) within the IAA is the proposed process by which NLWA will recover its waste disposal and operating costs from WCAs. The current system is a levy based approach whereby costs are apportioned between WCAs in proportion to the tonnage of household waste delivered. The proposed MPM apportions costs across actual delivered tonnages relating to waste streams and services. If approved by all WCAs the new process will begin from 1st April 2016

2. RECOMMENDATIONS

- 2.1 To approve in principle the change from the current levy process for payment of waste disposal and associated costs, to the Menu Pricing process included at Appendix 1.
- 2.2 To approve the revised IAA document attached at Appendix 1 of which the amendments are detailed at sections 3.11 to 3.41 subject to 2.3 below.
- 2.3 To delegate authority to the Cabinet Member for Environment and Director of Regeneration and Environment to approve, subject to any minor changes, the attached version of the revised IAA document and following the approval, to enter into the IAA.

3. BACKGROUND

- 3.1 This report provides an overview of the key amendments to the IAA since the last version was agreed by Cabinet in July 2012.
- 3.2 The IAA is the legal interface between NLWA and the seven constituent WCAs with regards to the future waste management arrangements and covers, in summary:
 - 3.2.1 The responsibilities of each of the parties,
 - 3.2.2 How any changes will be managed,
 - 3.2.3 The interface between NLWA and the WCAs concerning the Waste Contracts entered into by NLWA in relation to waste disposal,
 - 3.2.4 How the costs of the disposal services and relevant capital expenditure will be apportioned between the WCAs,
 - 3.2.5 The requirement for the WCAs to meet a 50% recycling target,
 - 3.2.6 The tonnages each WCA is expecting to deliver by waste stream,
 - 3.2.7 The transfer of Household Waste Recycling Centres (HWRCs) and the development of the HWRC network.
- 3.3 The IAA sets out the WCAs' commitments, collection systems and arrangements for provision of tonnages going forward. This information is

required by NLWA to ensure they make appropriate arrangements for managing this waste.

- 3.4 The IAA also references the Joint Waste Disposal Authorities (Levies) (England) Regulations 2006 and a Menu Pricing Mechanism developed under the provisions of those regulations. This is the proposed cost recovery mechanism for NLWA for the costs of the waste managed on behalf of the WCAs.
- 3.5. At its meeting of 26th of September 2013 NLWA decided to end its procurement for long-term waste management services. The Authority is currently pursuing a Development Consent Order for a replacement Energy from Waste (EfW) Facility at the Edmonton site that has the ability to both produce electricity and to supply heat to businesses and homes in the surrounding area. NLWA will then devise a residual waste management strategy, with EfW at Edmonton one of the options for consideration.
- 3.6 The ability to pursue this alternative strategy has been enabled by changes in local circumstances, notably recent changes in planning policy that are more favourable to EfW at the Edmonton site. It is intended that the agreed 50% combined reuse, recycling and composting rate target for 2020, and any jointly agreed successor targets, will still be achieved.
- 3.7 The Council had previously made a number of decisions that underpinned the, now ended, process. Notable among these is the cabinet decision in July 2011 to approve the IAA and July 2012 to approve non-minor amends to the IAA to delegate Authority to Director Regeneration and Environment, and Director for Finance, Resources and Customer Services to enter into an agreed draft IAA.
- 3.8 The previous draft IAA was intended to underpin the now ended procurement. It was also expected to form the basis of an interface between NLWA and the WCAs that mirrored the interfaces between the NLWA and its proposed contractors under the now ended process.
- 3.9 Now that the procurement process has been ended there is still a need for an IAA to manage the interface between NLWA and the WCAs. The revised IAA contains the following key aspects of the previous IAA, notably the proposed change from the existing agreed levy and charging arrangements to a 'menu pricing' system as set out in 3.26 to 3.40 of this report.
- 3.10 The rationale for a menu pricing arrangement is three fold:
 - It encourages WCAs towards positive waste management approaches (such as maximising recycling) as the costs of disposal are significantly higher than those for recycling and costs are charged to each WCA according to the tonnages they deliver.
 - The charges are actual costs related to the tonnage delivered. For example costs associated with disposal are applied only to disposal

tonnage and not spread across other waste streams. This means WCAs only need to pay for the services they use.

- Actual costs are allocated in year rather than applied retrospectively as has been the case based on tonnages delivered two years previously.

Minor Amendments to the IAA

- 3.11 Changes to or deletion of definitions and clauses previously drafted to mirror corresponding definitions within NLWA's previously proposed waste management contracts or referring to these contracts.
- 3.12 Provisions have been removed relating to processes set out in the former IAA linked to the previous procurement process that are either now completed (notably the transfer of the now transferred HWRC's) or are no longer relevant (notably the process for populating binding Schedules that set out Borough waste collection arrangements and tonnage projections).
- 3.13 The inclusion of more general provisions and language in some areas to reflect the fact that the precise nature of NLWA's contractual and other arrangements over the medium and long term are not currently known.
- 3.14 Some changes to provisions and definitions and terminology driven by intervening changes to the policy and legislative landscape.
- 3.15 A general simplification of some provisions and a greater emphasis upon transparency than would have been possible under the previous draft IAA.

Non minor amendments to the IAA

Guaranteed Minimum Tonnages (GMT), Maximum Tonnages (MT) and the Provision of Binding Tonnages by the Continuant Boroughs

- 3.16 A key element of the previous version of the IAA in 2012 was a requirement that WCAs provide binding annual tonnage projections by waste type and waste collection system for the duration of the proposed contracts under the now ended procurement process
- 3.17 GMT and MT clauses are relatively common in waste treatment and disposal contracts. As such NLWA may need to enter into a GMT and/or MT arrangement in the future and flexibility within the IAA is needed to enable this. Of particular relevance in this regard will be any future decision on the part of NLWA as to how any replacement residual waste facility might be delivered, contracted and financed.
- 3.18 The revised Clause 5, in Appendix 1 Page 12 requires prior unanimous agreement among the relevant WCAs on the need for a proposed GMT and/or MT to be included in any contract that NLWA then subsequently procures. Any WCA to which the relevant proposed contract would not be

relevant (by virtue of the fact that the WCA is making its own arrangements for the relevant waste type) would not be consulted on the GMT/MT, for example in the case of the Council and its recycling and organic contract.

- 3.19 The revised Clause 5, Appendix 1 page 12 requires WCAs to provide binding tonnages to NLWA. NLWA may use these to form the basis of any GMT or MT and to apportion any liabilities that may arise in this regard. Where there is a need for any such liabilities to be apportioned the agreed mechanism in Schedule 1b (Appendix 1 pages 37 – 41) will apply based on the binding tonnages (otherwise any such liabilities that arise would be spread across all tonnages of that waste type). The revised clause 5.4 of Appendix 1 page 12 also requires that NLWA undertakes reasonable endeavours to ensure that any liabilities arising from a breach of a GMT of MT are minimised. This is consistent with the previous IAA.

Termination and Change Provisions

- 3.20 The expiry of the IAA was previously linked to the expiry of NLWA's other related contracts. However the end date in the current amended version is 2055 to allow sufficient time for procurement and delivery of a new Energy from Waste facility.

Change Procedure

- 3.21 The clause and schedule relating to the Change Procedure has been removed in the revised draft. This is because those provisions relating to the proposed contracts are no longer relevant. Furthermore, a number of provisions of the revised IAA are more general in scope and application than the corresponding provisions in the preceding agreement, thus being less likely to require change in the short or medium term.
- 3.22 Instead, where changes are to be proposed under the revised IAA, they can only be made by entering into a successor agreement by all parties, thus negating the need for a change procedure. The revised IAA however does require the agreement to be reviewed whenever there are significant changes likely to materially affect one or more parties and, in any case, every three years.

Changes to the Treatment of Non-Transferred HWRC's

- 3.23 The Council has previously taken the decision not to transfer the HWRC at Barrowell Green on the basis it did not offer value for money. The previous draft IAA set out relatively specific provisions for the terms of transfer of HWRC's from WCAs to NLWA. To ensure that if a non-transferred site changes in the future the clause 6.4 Appendix 1 page 13 requires that NLWA, where transferring such sites does so "on terms equivalent to those prevailing at other RRCs, subject to individual site constraints".

- 3.24 Under the terms of the previous draft IAA, until the introduction of menu pricing on 1st April 2016, NLWA would continue to collect residual waste from all HWRC's, whether transferred or otherwise, and the costs of the transport and disposal would be apportioned by the proportion of Council Tax Band D properties in each WCA. After 1st of April 2016 it had previously been proposed that WCAs operating HWRCs that have not transferred to NLWA would be required to deliver their HWRC residual waste to NLWA and for this to be treated as Ad-Hoc residual waste under the Cost Recovery Mechanism (potentially at differential cost to other residual waste).
- 3.25 These provisions have been changed in the revised draft IAA based on a different interpretation of NLWA's legal obligations and powers. Schedule 4, in Appendix 1 page 48 of the revised IAA contains an agreement that extends NLWA's powers to collect HWRC residual waste from non-transferred HWRCs. Subject to a relevant WCA agreeing to the general arrangements for non-transferred HWRCs within this Schedule, the NLWA will continue to collect and treat residual waste from such sites. The costs of transporting and treating this residual waste will be levied directly to the WCA operating the relevant non-transferred site. As in the previous draft IAA the operating costs of non-transferred HWRCs will be incurred fully by the WCA operating the HWRC.

Menu Pricing

- 3.26 The current principles for cost apportionment within the IAA and Menu Pricing Mechanism are that costs are applied to specific waste streams or WCAs as appropriate.
- 3.27 In agreeing the previous 2012 version of the IAA the Council agreed in principle to move from the current levying and charging arrangements by which NLWA recovers its costs from WCAs (which broadly reflects the statutory default with some relatively minor amendments) to a 'Menu Pricing' system from the 1st of April 2016.
- 3.28 Assumptions made at the time were based on the Council returning all of its waste to NLWA with effect from that date (i.e. including recyclables) together with a large increase in the costs of waste disposal as the new contract commenced. The main reason for the increase would have been around capital investment associated with building new facilities – the Council's share of the levy was assumed to be £11.2m in 2016/17 at the time. Clearly moving to menu pricing would have been preferable for the Council at the time since it would have benefitted from a cost reduction relating to the recyclables. The new IAA does not carry the same benefits and so the Council has previously taken the decision not to deliver its recyclables to NLWA.
- 3.29 This report provides an overview of the key financial impacts to the Council of the MPM.

- When the MPM was first proposed the projected impact to LBE was in the order of £1m per annum.
- Further to negotiation with the NLWA the impact to boroughs reduced and subsequently indicated a negative impact on LBE of £624k.
- Following further work this was reduced to approximately £376k under the proposed mechanism.

. This is set out below.

Table 1	Proposed MPM £	Equivalent 2015/16 Levy & Charges* £	Variance £
Barnet	11,814,529	12,007,646	-193,117
Camden	9,308,258	9,669,059	-360,801
Enfield	7,739,702	7,363,667	376,035
Hackney	9,373,729	8,952,053	421,676
Haringey	8,803,426	8,590,500	212,926
Islington	8,028,737	8,648,164	-619,427
Waltham Forest	8,734,433	8,571,726	162,707
Total	63,802,815	63,802,815	0

* Each borough's figures adjusted for balances and commingled income from sale of recyclates as provided by the NLWA in August 2015.

3.30 The key factors that influence the costs within the MPM are:

- The change to visitor survey based cost apportionment for the HWRC's operated by NLWA (discussed below in 3.32)
- Differential costs within the levy for different waste streams reflecting the different costs of their treatment. (discussed below in 3.35)

3.31 The potential impact of these factors is estimated by NLWA as £376,035 per annum as of August 2015. Section 3.42 sets out the mitigation for this impact.

Visitor Survey Apportionment of Household Waste and Recycling Centre (HWRC) costs

3.32 There are three elements to these costs:

- The operating costs of the sites including the costs of recycling.
- The capital and other costs of the development of the new Western Road HWRC in Haringey.
- The residual waste disposal and treatment costs of the sites.

The operating costs are not relevant for the MPM as a decision has previously been taken not to transfer Barrowell Green HWRC to the

NLWA. The Western Road HWRC development costs will apply to Haringey. It is therefore only the residual waste cost element that applies to LBE.

- 3.33 Under the current arrangement the total HWRC waste disposal costs across all WCAs are apportioned in line with the level of Council tax banding within each WCA. As the Council has a high projected tonnage of HWRC residual waste but a low level of the relevant council tax banded properties the apportioned cost is currently relatively low at around £270,000.
- 3.34 The proposed MPM apportions costs directly to tonnage which with the high projected HWRC tonnage results in an estimated cost of approximately £550,000. Therefore, the net difference is an increase of £280k. Mitigation for this is set out in 3.42 below.

Differential Levy Rates for each waste stream

- 3.35 This is the main factor contributing to the cost to Enfield under the MPM accounting for approximately 80% of the total. The direct costs for managing the residual waste stream are apportioned across the total residual waste tonnage.
- 3.36 Under the MPM the disposal rate per tonne is currently modelled at £87.05 and NLWA has modelled residual arisings at 71,522 tonnes giving a charge of £6.226m. This compares to a charge of £5.893m under the existing levy system.
- 3.37 Mitigating actions are available for this cost and the most obvious of which is to increase the Council's recycling rate and divert waste from residual into recycling or composting which is significantly cheaper. Enfield organic waste services are currently under review with options being considered that could increase the Council's performance.
- 3.38 It is difficult to quantify the benefits that may accrue through enhanced recycling performance. However the price differential between recycling and organic waste and residual disposal is sufficient to incentivise improved recycling performance. Although there are no specific service changes proposed at present officers are considering options to improve recycling levels within existing service methods.
- 3.39 At the Council's request additional provision has been made with the IAA to enable details of financial matters be provided. This view was supported by other constituent WCAs.
- 3.40 The apportionment method has been clarified in line with the text supplied, with examples provided of the apportionment calculations. Although the basis of all costs has not yet been demonstrated the provision highlighted at 3.39 above enables the WCAs to obtain this information.

Opt out for recyclables and organic waste

- 3.41 In line with the 12 principles of the IAA a clause has been inserted at 2.5 in the IAA (Appendix 1 page 11) to allow for WCAs (including the Council) to continue to opt out of delivering their recyclables and organic waste to NLWA.

Way Forward - Containing potential pressures

- 3.42 Further to the NLWA's estimate of the financial impact of menu pricing on Enfield (as set out in Table 1), the following mitigations have been identified by officers to contain this through:-

- A. The benefit of the HWRC (Barrowell Green) reduction of tonnage through the new contract
- B. Benefits from increased commercial waste business via flexibility gained from reducing trade waste disposal costs via menu pricing

Therefore it is considered that there will be no negative financial impact to the Borough through this agreement.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 Not to sign the revised IAA and Menu Pricing Mechanism. This would result in the Levy not changing in 2016. This may have a negative impact on recycling rates across North London as there would be reduced financial incentive for Boroughs to increase recycling and may also result in difficulties delivering partnership projects going forward. NLWA are the statutory Waste Disposal Authority for the north London area which means the Council are legally obligated to dispose of their municipal waste through the NLWA arrangements.
- 4.2 The original proposal included transitional arrangements before 2016 for phasing in menu pricing early. This was intended to provide financial incentives for Boroughs to increase recycling as early as possible. LBE felt that this was not an option as the proposal gave rise to significant financial pressure for the Borough and that the basis for the MPM costs should be revisited.
- 4.3 The option to base the levy on a per capita charge was also explored however this approach would not be financially viable for the Borough and would not encourage sustainable waste management approaches and so was discounted.

5. REASONS FOR RECOMMENDATIONS

- 5.1 The Council has been working with NLWA and the other 6 WCAs since 2004. NLWA is legally obliged to provide disposal services for the WCAs within its area and has the power both to raise levies from the WCAs for this and to direct WCAs to deliver waste to NLWA contractors.
- 5.2 The proposed IAA and Menu Pricing Mechanism provide a transparent and equitable method for apportioning costs across all WCAs.
- 5.3 The IAA is intended to promote and enable collaborative working and therefore benefit all partners to the agreement in the longer term. It should be noted that three other boroughs, Hackney, Haringey and Waltham Forest, have an initial projected budget pressure following the agreement of the IAA and MPM.
- 5.4 It is recommended that LBE enter into the revised IAA and MPM as under the agreement the following benefits have been secured:
- The initial financial pressure has been mitigated and the agreement enables a balanced budget to be delivered
 - NLWA have agreed to provide a recycling and reuse centre at Edmonton as part of the redevelopment of the site
 - The proposed EFW plant at Edmonton will utilise air cooling technology rather than water cooling meaning there will be no visible plume from the facility and this benefits Enfield residents
 - The new pricing structure provides the opportunity to develop the Council's commercial waste service to ensure reliable and cost effective waste services are available for local businesses.

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

6.1 Financial Implications

- 6.1.1 Based on the NLWA modelling the impact of Menu Pricing to the council in 2015/16 is currently estimated to be a £376k increase from the current levy and charges (see table in paragraph 3.29). This projection is based on a number of factors referred to in the report and is therefore subject to variation. The main factor is the differential levy rates for each waste stream and visitor apportionment of HWRC costs. As set out in 3.42 these actions will ensure that there is no financial impact on the council.
- 6.1.2 The original forecast increase of £624k in 2016/17 has been allowed for in the Medium Term Financial Plan. The final levy and mitigating actions will be included in the 2016/17 Budget Report and MTFP report to Council in February 2016.

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 the Council 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 NLWA directs under section 48(1) of the Environmental Protection Act 1990 (the EPA).
- 6.2.3 The recommendations in this report accord with the Council's duties and powers.
- 6.2.4 Further legal implications are set out in the Key Risks section below.

6.3 Property Implications

None.

7. KEY RISKS

- 7.1 Following a review of the most recent version of the IAA and the Menu Pricing Mechanism the following have been identified as key risks for the Council. The risks have been assessed in the wide commercial context.

Dispute Resolution / Change Procedure

- 7.2 The arrangement is planned to last forty years and, during this time, all of the Boroughs are likely to face significant changes. While there is provision at clause 13 (Appendix 1 page 17) for review every three years changes can be made only with agreement of all parties. Similarly the dispute resolution procedure at clause 23 (Appendix 1 page 21) is binding as to process but not as to outcome.
- 7.3 This means that, ultimately, a change will only be made if all parties agree to it. There is therefore no long-stop provision should one or more Boroughs have good reason to require a change to which one or more of the other parties will not consent. This position could arise through external factors over which no party has control but which does impact disproportionately upon one or other parties.
- 7.4 Officers have raised concerns regarding these issues and requested that the IAA be amended to include an escalation process that leads ultimately to an external independent decision maker as way to resolve any potential deadlock. This was not accepted by NLWA as appropriate for inclusion within the IAA.

- 7.5 The agreement is very long-term, but has no express provision for change protocol or binding dispute resolution. Generally, where entering into an agreement in excess of 10 years, a formal change procedure should be included. In the circumstances, the Council will need to rely on the existing governance arrangements of NLWA.

Indemnity

- 7.6 The indemnity provisions are wide, and could result in the Council being financially responsible to NLWA even where the relevant loss suffered by it was not the fault of the Council. The indemnity provisions are also financially unlimited. Officers have raised these concerns but changes have not been accepted for inclusion in the IAA. Officers have taken comfort from the fact that each borough is in an identical commercial position under the indemnity provisions.

8. IMPACT ON COUNCIL PRIORITIES

8.1 Fairness for All

The IAA has no direct implications relating to fairness and equality, but should help ensure that all Enfield residents receive an efficient waste collection and recycling service in future years.

8.2 Growth and Sustainability

The waste disposal contract held by NLWA seeks to support the reduction in waste and increases in recycling in North London. The treatment solutions sought seek to be more sustainable in the future.

8.3 Strong Communities

None.

9. EQUALITIES IMPACT IMPLICATIONS

It is not relevant or proportionate to undertake an equality impact assessment/analysis of the approval of minor amendments to the IAA.

10. PERFORMANCE MANAGEMENT IMPLICATIONS

The IAA will support the delivery of sustainable waste services for the future.

11. PUBLIC HEALTH IMPLICATIONS

None.

Background Papers

None.