

Agenda Item No:

**NORTH LONDON WASTE AUTHORITY**

**REPORT TITLE:**

**REVIEW OF THE NORTH LONDON WASTE AUTHORITY  
REUSE AND RECYCLING CREDIT PAYMENT SCHEME**

**REPORT OF:**

**HEAD OF WASTE STRATEGY AND CONTRACTS**

**FOR SUBMISSION TO:**

**AUTHORITY MEETING**

**DATE:**

**26<sup>th</sup> September 2008**

**SUMMARY OF REPORT:**

This report reviews the background to and progress on the payment of third party reuse and recycling credits. The report summarises the Authority's policy to date and makes recommendations for continued payment of third party reuse and recycling credits for the forthcoming financial year 2009/10.

**RECOMMENDATIONS**

The Authority is recommended to:

- i) adopt the revised third party reuse and recycling credit policy as in paragraph 7.2 of this report; and
- ii) note that the Authority's policy on paying third party reuse and recycling credits will be kept under review in relation to any unforeseen issues that may arise, with a further specific review in September 2009.

**Signed by Head of Waste Strategy  
and Contracts**

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**Date:** .....

## **1.0 SUMMARY**

1.1 This report is structured as follows:

- Section 2 sets out the broad legislative background;
- Section 3 explains the consequent cessation of credits to boroughs;
- Section 4 presents the methodology for third party credits;
- Section 5 advises new Members of the current Authority policy and the auditing approach;
- Section 6 similarly advises new Members of the organisations registered for 2008/09; and
- Section 7 proposes a revised Authority policy against which, if approved, third-party organisations will be invited to register this autumn for receipt of credits in relation to tonnes reused and recycled during 2009/10.

## **2.0 OVERVIEW**

2.1 Recycling credits were introduced by Section 52 of the Environment Protection Act in 1990. The Authority commenced payments of recycling credits in 1993 and has continued to pay them since in accordance with its statutory duty. In 1993 recycling credits were the only financial or regulatory incentive to reduce waste to landfill but today there are a number of measures designed to promote more sustainable waste management, principally the landfill tax and the landfill allowance trading scheme (LATS).

2.2 Recycling credits are paid to parties that remove items from the municipal waste stream for recycling that would otherwise have been sent for disposal at the Authority's expense. The value of the credit recognises the saving to the Authority made by this recycling activity. The major beneficiary of recycling credits has historically been the constituent borough councils with a few far smaller claims paid to third parties, although changes in relation to the former are set out in section 3 below.

2.3 The Authority has a power to make recycling credit payments to third parties to support recycling activity. The Government recognises the benefits offered by third party recycling activities and has indicated in statutory guidance that it expects the Authority to be predisposed to make such payments. A new third party reuse and recycling credit scheme was introduced through Section 49 of the Clean Neighbourhoods and Environment Act 2005 (CNEA 2005) with new guidance to encourage this. The Authority's previous scheme for paying recycling credits to third parties was discontinued on 31 March 2007.

- 2.4 Payment of credits to third parties for waste they divert for recycling, composting or reuse is consistent with the North London Joint Municipal Waste Strategy.

### **3.0 CESSATION OF PAYMENT OF RECYCLING CREDITS TO BOROUGHES**

- 3.1 The Government has changed the default method of recovering costs from our constituent borough councils for waste disposal from a levy apportioned on relative Council Tax Band-D equivalents in each Borough to a levy apportioned on the relative amount of waste delivered to the Authority by each Borough. It remains possible however for the Authority's seven constituent borough councils to agree an alternative method of apportioning the levy so long as they are unanimous.
- 3.2 Under the new tonnage-based levy scheme the situation now is that when an individual Borough sends waste for recycling it benefits from a reduced share of the levy; consequently it would be unfair for it to receive a recycling credit as well. If a Borough delivers waste to the Authority for recycling, it simply pays a higher share of the levy than it would otherwise have paid (although there is a time lag in this process<sup>1</sup>).
- 3.3 The Authority has introduced the tonnage based levy in accordance with the default transitional arrangements between 2006/07 and 2007/08 with one third of the levy being applied on a tonnage basis in 2006/07 and two thirds being applied on a tonnage basis in 2007/08. The amount of recycling credit that Boroughs can claim against recycling tonnage is reduced inversely meaning that in 2006/07 the amount of credit that could be claimed from the Authority was based on two thirds of the theoretical value and 2007/08 the amount of credit that can be claimed from the Authority is based on one third of the theoretical value. In 2008/09, no recycling credits will be able to be claimed by the constituent boroughs.
- 3.4 2007/08 was the final year for which recycling credits could be claimed by Boroughs from the Authority. The tonnages and recommended payments are set out in a report elsewhere on this agenda.

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<sup>1</sup> There is a two-year time lag between audited tonnage data and its application to actual levy apportionment. For example, when the budget and levy will be set in February 2009 for the financial year starting the following April (2009/10), the most recently audited data with which to apportion the levy between the constituent borough councils is for the year ending the preceding March (2007/08).

## **4.0 CALCULATION AND PAYMENT OF REUSE AND RECYCLING CREDITS TO THIRD PARTIES.**

- 4.1 Since 1st April 2006, the Authority has had the power under the Clean Neighbourhoods and Environment Act to make recycling credit payments to third parties according to the amount of waste that is diverted from the Authority's waste stream. As previously stated in this report the Government expects the Authority to be predisposed to pay claims from third parties and such policy supports the North London Joint Waste Strategy implementation actions 4.C2 in relation to rewarding effective reuse services and 8.B1 to actively encourage community sector involvement in delivery of services wherever this can be demonstrated to offer Best Value. If an application for third party credits is refused it would be unreasonable for the Authority not to provide reasons for the refusal.
- 4.2 The Government suggests that the sale of second-hand books or clothes, and the use of returnable or refillable bottles will not be eligible for credit payments and that goods donated to charity shops are not classified as waste at the point of donation, so charity shops will not be eligible to receive recycling credits on goods donated to their shops (at the point of receipt by the shop). Charity shops will however be eligible for recycling credits for items that cannot be sold and are then recycled or exported for reuse. Both the Environment Agency and community waste sector have produced guidance notes on reuse that contain advice for Authorities and third parties, but difficult uncertain instances of reuse in particular will inevitably arise and judgments will have to be formed on whether the reuse activity proposed is genuinely reducing the Authority's waste stream.
- 4.3 Third parties continue to be entitled to claim reuse and recycling credits for waste that they divert as the implications of the Authority's change to a tonnage-based levy for waste disposal do not apply to them in the same way as they do to our constituent borough councils.
- 4.4 The value per tonne of third party reuse and recycling credits are calculated using the method described in regulations that include a default inflationary increase in waste disposal authorities' avoided cost of disposal of 3% per annum, but no reflection of the landfill tax escalator<sup>2</sup>. The Authority's projected value is £55.30 per tonne for 2008/09, rising to £56.96 in 2009/10.

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<sup>2</sup> The Environmental Protection (Waste Recycling Payments) (England) Regulations 2006. The credit is to be calculated as the average cost per tonne of waste disposal for similar waste in 2005/06 using the Authority's most expensive form of disposal in each WCA area as of 31 March 2006, calculating the average of these values across a WDA area to create a single credit value across a WDA area and increasing the value by 3% on 1st April 2007 with subsequent increases by 3% of the compounded figure on 1st April every year. This is open to review by Government if there were circumstances where inflation was to rise substantially over 3%. Where this figure is not known or is impossible to calculate the Authority can use the figures published in the Schedule to the Regulations.

- 4.5 No account shall be taken of expenditure incurred in administering the scheme.

## **5.0 CURRENT AUTHORITY POLICY ON THE PAYMENT OF THIRD PARTY REUSE AND RECYCLING CREDITS**

- 5.1 The following paragraphs detail the current Authority policy on the payment of third party recycling credits. This is a consolidation of decisions taken in previous Authority meetings since September 2006.

- 5.2 The Authority has agreed to pay third party reuse and recycling credits subject to the following conditions:

5.2.1 Only household waste, including waste collected from schools and colleges that is recycled, composted or reused is eligible for a credit.

5.2.2 All waste must be collected within the area served by the North London Waste Authority and its constituent borough councils.

5.2.3 The collection of waste for recycling (or reuse) does not conflict with existing Borough collection schemes and is consistent with the North London Joint Municipal Waste Strategy.

5.2.4 The Authority or the constituent borough councils do not already pay for the waste to be collected or recycled.

5.2.5 All claimants and reprocessors that will collect and recycle waste must be registered and approved by the Authority by 31st March in the financial year before services commence for which a claim is to be made. Registrations must be renewed annually.

5.2.6 Applicants must advise the Authority of such details as are required to budget adequately and verify the claims made. These details may be amended or added to in future but are currently:

- Organisation name and address
- Description of recycling activity
- Whether the organisation is a not for profit, profit-making or charity
- Location by borough of waste collection points
- Types and estimated quantities of materials to be collected for recycling or reuse.

5.2.7 Claims are to be made quarterly during the financial year. Quarterly claims are to be submitted to the Authority within eight weeks of the quarter end.

- 5.2.8 The waste collector and subsequent holders of the waste must be fully compliant with the waste duty of care and other relevant waste management regulations and evidence to support this compliance must be made available to the Authority.
  - 5.2.9 All claims are to be submitted in writing to the Authority and must be supported by sufficient evidence to allow the Authority and the constituent borough councils to include the waste in the calculation of Best Value Performance Indicators and to satisfy all our external auditors.
  - 5.2.10 Applications for registration for third party reuse and recycling credits from profit-making companies or associated organisations such as non-profit making trusts or foundations associated with a private, profit-making company or a company such as a charity trading company, which covenants 100% of its profits to a charity or other non-profit-making organisation will be considered but their applications for credit claims will be assessed separately against the above criteria and will also be subject to negotiation by the Authority to determine appropriate terms and conditions. The Authority reserves the right not to pay any credits at all.
  - 5.2.11 Applications for registration from companies subject to any form of producer responsibility legislation or schemes and for wastes potentially falling within these will be considered but the Authority reserves the right to make special terms and/or not to pay any credits at all.
  - 5.2.12 Applications for registration for third party reuse and recycling credits from profit-making companies will be considered where the profit-making company provides services previously arranged by the waste collection authorities. The applications will be assessed against the existing payment criteria.
- 5.3 DEFRA recommends that applicants for recycling credits follow the “Measure your Treasure” guidance issued by the Community Recycling Network. This guidance recommends weighing waste where possible but also describes methods of estimating the quantities of waste recycled, reused or composted where a weighbridge is not available. Officers should agree in advance of any service for which a third party intends to claim how the amounts of waste collected are to be measured to ensure that the methods employed are appropriate and commensurate with the scale of the operation and the size of any claim that may arise.

- 5.4 Since 1<sup>st</sup> April 2007 there has been some discussion with particular groups about the evidentiary requirements in order to claim credits. Legal advice has been sought where appropriate, but all matters have so far been amicably resolved with claimants.

## **6.0 THIRD PARTY ORGANISATIONS REGISTERED 2008/09**

- 6.1 At its meeting in February 2008 the Authority registered the following organisations for third party reuse and recycling credits: Age Concern, Barnardos Children's Charity, British Heart Foundation, Chris Carey's Collections, Freecycle UK, Help the Aged, Homestore (QSA), Minds Matter, Nappy Ever After<sup>3</sup>, North London Hospice, Oxfam, PDSA, Restore Community Projects, Scope, Tesco Stores Limited and The Woodland Trust.
- 6.2 Payments have already started in relation to the not-for-profit organisations, but in the case of the two profit-making organisations there has not yet been agreement on the appropriate terms and conditions to be applied in accordance with the Authority's published policy for 2008/09.

## **7.0 THIRD PARTY REUSE AND RECYCLING CREDIT POLICY 2009/10**

- 7.1 It is at this cycle of the Authority meetings that Members update the third party reuse and recycling credit policy so that it can be promoted to potential applicants during the autumn, with applications for 2009/10 submitted in this December so that they can be assessed and recommendations made (along with expected budgetary implications) at the February Authority meeting.
- 7.2 The policy appears to have worked well in relation to the relatively small not-for-profit claimants, but complications have arisen in relation to the profit-making claimants. A revised policy is therefore set out below, with paragraphs that have changed being **highlighted**:
- i) Only household waste, including waste collected from schools and colleges that is recycled, composted or reused is eligible for a credit.
  - ii) All waste must be collected within the area served by the North London Waste Authority and its constituent borough councils.

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<sup>3</sup> Nappy Ever After's registration was subject to them not continuing to receive a direct reusable nappy subsidy.

- iii) The collection of waste for recycling (or reuse) does not conflict with existing Borough collection schemes and is consistent with the North London Joint Municipal Waste Strategy.
- iv) The Authority or the constituent borough councils do not already pay for the waste to be collected or recycled.
- v) All claimants and reprocessors that will collect and recycle waste must be registered and approved by the Authority at the February Authority meeting for the subsequent financial year. Registrations must be renewed annually.
- vi) Applicants must advise the Authority of such details as are required to budget adequately and verify the claims made. These details may be amended or added to in future but are currently:
  - Organisation name and address
  - Description of recycling or reuse activity
  - Whether the organisation is not-for-profit, profit-making or a charity
  - Location by Borough of waste collection points
  - Types and estimated quantities of materials to be collected for recycling or reuse.
- vii) Claims are to be made quarterly during the financial year. Quarterly claims are to be submitted to the Authority within eight weeks of the quarter end.
- viii) The waste collector and subsequent holders of the waste must be fully compliant with the waste duty of care and other relevant waste management regulations and evidence to support this compliance must be made available to the Authority.
- ix) All claims are to be submitted in writing to the Authority and must be supported by sufficient evidence to allow the Authority and the constituent borough councils to include the waste in the calculation of National Indicators and to satisfy all our external auditors.

- x) Applications for registration for third party reuse and recycling credits from profit-making companies or associated organisations (such as non-profit making trusts or foundations associated with a private, profit-making company or a company such as a charity trading company, which covenants 100% of its profits to a charity or other non-profit-making organisation) will be considered but their applications for registration and subsequent credit claims will be assessed separately against the above criteria and even if registration is initially approved will remain subject to appropriate terms and conditions that provide additional, measurable social and economic benefits in the Authority's area to the Authority's satisfaction in accordance with its Best Value obligations and those of its constituent borough councils. The Authority reserves the right not to pay any credits at all.
- xi) Applications for registration from companies subject to any form of producer responsibility legislation or schemes and for wastes potentially falling within these will be considered but the Authority reserves the right to make special terms and/or not to pay any credits at all as at x) above.
- ~~xii) Applications for registration for third party reuse and recycling credits from profit making companies will be considered where the profit making company provides services previously arranged by the waste collection authorities. The applications will be assessed against the existing payment criteria.~~

## **8.0 RECOMMENDATIONS**

8.1 The Authority is recommended to:

- 8.1.1 adopt the revised third party reuse and recycling credit policy as in paragraph 7.2 of this report; and
- 8.1.2 note that the Authority's policy on paying third party reuse and recycling credits will be kept under review in relation to any unforeseen issues that may arise, with a further specific review in September 2009.

## **9.0 COMMENTS OF THE FINANCIAL ADVISER**

9.1 The Financial Adviser has been consulted in the preparation of this report and has no further comments to add.

## **10.0 COMMENTS OF THE LEGAL ADVISER**

- 10.1 The Legal Adviser has been consulted on this matter and advises that the Authority would be at risk of a legal challenge if it decides not to make payments to a registered body without a clear and reasonable reason for that decision. The legal advice also noted that “the guidance from DEFRA is clear that the Secretary of State would expect waste disposal authorities to pay recycling credits if they made a measurable contribution to recycling and supported delivery of the area’s waste management strategy”. The only grounds on which the Authority has refused to make payments to already registered third parties in the past has been on the basis of the failure of the organisation to provide necessary documentation to support their credit claims or failure to agree a date for an appropriate audit by the Authority’s Contracts Team to validate the third party’s systems.

### **Local Government Act 1972 – Access to information**

#### **Documents used:**

North London Joint Waste Strategy, Mayor’s Draft, September 2004.

“Guidance on the Recycling Credit Scheme”, DEFRA, April 2006

<http://www.defra.gov.uk/environment/waste/localauth/pdf/recyclingcreditschemeguidance.pdf>

Community Recycling Network “Measure your treasure” guidelines, available on the Community Recycling Network website originally published as a report from a data collection project of the same name, by the Community Recycling Network, 2001 <http://www.crn.org.uk/projects/myt/contents.shtml>

Greater Manchester Waste Disposal Authority, Report of the Executive Director, “Reuse Credits”, 20<sup>th</sup> October 2006

North London Waste Authority, Report of the Head of Waste Strategy and Contracts “Third Party Reuse and Recycling Credit Registrations”  
07 February 2007

North London Waste Authority, Report of the Head of Waste Strategy and Contracts “Third Party Reuse and Recycling Credit Registrations”  
06 February 2008

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**Report Ends**