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16 October 2008

To: All Members of the Overview & Scrutiny Committee  
All Recipients of Overview & Scrutiny Committee Agenda

Dear Member,

**Special Overview & Scrutiny Committee, October 20<sup>th</sup> 2008, 7pm**

I attach a copy of the following report for the above-mentioned meeting which was not available at the time of collation of the agenda:

**5. NLWA PROCUREMENT - AFFORDABILITY ENVELOPE/DRAFT STATEMENT OF PRINCIPLES (2) (PAGES 1 - 28)**

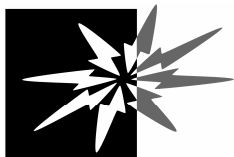
(Briefing Note from the Director of Urban Environment)

Please note, following consideration of the attached document, there is likely to be a motion to exclude the press and public. This is to allow consideration of the Cabinet report of 14 October 2008 to which the attached item refers, which contains exempt information relating to the business or financial affairs of any particular person (including the Authority holding that information).

Yours sincerely

Jeremy Williams  
Principal Committee Coordinator

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**Overview & Scrutiny: Briefing Note on NLWA Procurement –  
Affordability Envelope/Draft Statement of Principles Cabinet  
Report - 16<sup>th</sup> October 2008**

**Haringey** Council

## **1.0 Introduction**

- 1.1 A report on NLWA procurement process was presented to Cabinet on 14<sup>th</sup> October 2008. The information contained within the report was deemed to *relate to the financial or business affairs of any person* and therefore considered to be exempt and not for publication. However, this briefing note has been produced using information that can be used within the public domain. The briefing note will allow the public and press to have an understanding of the main points which enabled Cabinet Members to agree to the recommendations and will permit Overview & Scrutiny Members to debate the matters covered by this note in open session. Overview & Scrutiny Members will have access to the full exempt report and papers for debate in closed session (Part 2).
- 1.2 The structure of this briefing note will follow, where possible, the same format of the Cabinet report. The briefing note will address:
- the purpose of the Cabinet Report;
  - the introduction to the Cabinet Report by the Executive Member for the Environment & Conservation;
  - the recommendations as agreed by Cabinet; and
  - relevant background information on how the affordability envelope was determined and details on the second draft Statement of Principles.

## **2.0 Purpose**

- 2.1 The main aims of the Cabinet report were:
- To highlight to date the work undertaken by NLWA in procuring a waste treatment/disposal contract. This has led to the development of an Outline Business Case (OBC), which will need to be submitted to Defra as part of a PFI procurement process by 31<sup>st</sup> October 2008.
  - by using the analysis completed by NLWA and their external technical and financial consultants to estimate each constituent boroughs contribution to the overall base cost of the project. In order to help manage the risk of modelling cost over such a long period (30 years) sensitivity analysis has been undertaken to produce an upper threshold cost. The range of increased cost between the base and upper threshold represents the Council's affordability envelope.
  - To seek agreement from the Cabinet to send a letter (attached as Appendix A) to Defra which will set out the Council's commitment to finance the project within the estimated affordability envelope.
  - To report the potential impact of these costs and the modelled scenarios should it be fully financed by council tax.
  - To note and seek agreement to the proposed draft Statement of Principles (2) as attached as Appendix B as a basis for further discussions with the NLWA.

### **3.0 Introduction of Cabinet Member for Environment & Conservation**

- 3.1 The Cabinet Report highlighted the scale of the waste treatment/disposal contract procurement and the impact that it will have in revenue terms on the Council in the next seven years.
- 3.2 The PFI procurement process as preferred by NLWA is prescriptive in its approach with the first stage being the submission of the Outline Business Case (OBC). The selection of the PFI process is premised on its ability to deliver value for money. It is expected that NLWA and the constituent boroughs will receive an estimated £500 million in PFI revenue support over the 30 year contract period.
- 3.3 A key requirement of the OBC is for each constituent borough to send an 'affordability letter' to Defra. Whilst this letter is not legally binding it does indicate to Government that this Council is willing to make local financial decisions that are consistent with the scope and scale of this project. In order to meet the deadline for this round (4) of PFI credits the OBC must be submitted to Defra by 31<sup>st</sup> October. The Comprehensive Spending Review 2007 identified that the waste PFI 'Round 4' would be the last available round for the allocation of PFI credits of this type.
- 3.4 The urgency in agreeing to the affordability letter is self evident, however this does not mean that NLWA and the constituent boroughs are wedded to the OBC reference project solution, rather the signing of the affordability letter allows NLWA and the constituent boroughs the opportunity to fully understand the scale of PFI credits the Government is willing to award to support this project. Ultimately, it will be the private sector that will be providing outline technical solutions to meet NLWA's output specification requirements. It is envisaged that the evaluation of these outline solutions will be conducted in the summer of 2009. It is at this point that NLWA and the constituent boroughs will have better understanding of the proposed waste facilities that will actually meet the objectives of North London Joint Waste Strategy (NLJWS).
- 3.5 The Cabinet Report also sets out the details of the second draft Statement of Principles, which includes considering the pooling of recycling targets, the delivery of all recyclate materials to NLWA, transferring the responsibility for the provision of Household Waste Recycling Centres to NLWA and the development of a menu pricing mechanism. These outline principals provide a platform from which NLWA and constituent boroughs can work together in a fair and equitable manner to ensure that the overall procurement project delivers value for money and achieves the objectives set out in the NLJWS. All the Statement of Principles will ultimately form the basis from which a detailed Inter Authority Agreement will be produced in December 2010/January 2011.

## **4.0 Recommendations**

### **4.1 It was recommended that the Cabinet:**

- note the base and upper threshold modelled whole life net nominal cost of waste treatment/disposal and waste collection for Haringey over the proposed 30 year contract period;
- agree to the draft affordability letter (attached as Appendix A);
- agree that delegated authority be given to the Leader, Chief Financial Officer and Chief Executive to finalise and sign the affordability letter on behalf of the London Borough of Haringey;
- note and agree to the second Statement of Principles (2) (attached as Appendix B); and
- agree that delegated authority be given to Leader of the Council to finalise and sign the Statement of Principles (2) on behalf of the London Borough of Haringey.

## **5.0 Background**

### **5.1 Affordability Envelope**

- 5.2 At its meeting on 15<sup>th</sup> July 2008 the Cabinet agreed the adoption of the North London Joint Waste Strategy (NLJWS). The strategy which is in the process of being adopted by NLWA and the seven constituent boroughs sets out a framework of how collectively these authorities will meet European and National statutory performance standards. In order to achieve these standards the constituent authorities have within the NLJWS committed themselves to meet the following recycling targets: 35% by 2010; 45% by 2015; 50% by 2020. At present the 7 North London Boroughs achieve between 25% and 30% recycling, with an average of 27% across the sub-region.
- 5.3 In order to provide a technical solution to meet these new recycling targets and reduce the amount of waste that is sent to landfill, NLWA initially completed, within the development of the NLJWS, a Strategic Environmental Assessment (SEA) of five possible technical solutions. Based on the results of this assessment further detailed in depth analysis was undertaken by technical advisors to identify a complete treatment and disposal solution that would act as a reference project.
- 5.4 NLWA's current waste disposal contract will end in 2014; therefore the procurement of the new 30 year (2012 – 2042) waste treatment and disposal contract will be key in order to deliver NLJWS objectives. NLWA has examined the possible ways forward and concluded that it should procure a contract solution involving new build and risk transfer to the private sector on key Design, Build, Finance and Operate issues. On value for money and affordability grounds the NLWA is currently anticipating pursuing the long term contract utilising the Private Finance Initiative (PFI).
- 5.5 It is estimated that pursuing a Private Finance Initiative (PFI) approach will result in a 9% reduction in risk adjusted Net Present Cost when compared to a traditional public sector procurement. However, in coming to this decision NLWA did analyse the potential benefits of financing the project through the prudential borrowing route.

NLWA' external financial advisors concluded that the potential saving on interest rates that might be made from prudential borrowing would be more than offset by the likely additional revenue support that would flow to the Authority from a PFI credit award. If NLWA is successful the award is likely to be worth between £500 million and £600 million in nominal terms over the life of the contract.

5.6 However, if the market response does not match the value for money analysis that has been modelled, other options including the use of prudential borrowing would inevitably need to be considered.

5.7 Within the PFI process one of the first key tasks is the submission of an Outline Business Case (OBC) to Defra. In order to potentially benefit from £500 million - £600 million PFI credits NLWA will need to submit its OBC by 31<sup>st</sup> October 2008. As part of the OBC submission NLWA is required to:

- compare the costs of the 'do minimum' scenario with the 'reference project' solution;
- calculate the affordability gap for both waste treatment/disposal and collection costs for NLWA and the constituent boroughs;
- complete cost sensitivity analysis on the reference project which will provide an upper limit project cost; and
- present an affordability letter from NLWA and the seven constituent authorities which sets out the base and upper limit costs (affordability envelope). This letter will give reassurance to the Government that NLWA and the constituent boroughs are prepared to make local financing decisions that are consistent with the scope and scale of the project.

5.8 NLWA formally agreed, at its meeting on 26<sup>th</sup> September 2008, for their Chair, Clerk and Finance Advisor to sign their affordability letter, which encompasses the total affordability gap for both waste treatment/disposal and waste collection costs across the seven constituent boroughs.

## **5.9 Draft Statement of Principles (2)**

5.10 At its meeting of meeting of 17<sup>th</sup> June 2008, the Cabinet agreed to delegate authority to the Leader of the Council to sign a Memorandum of Understanding (MOU) on behalf of the London Borough of Haringey. This was duly signed by the Leader on 30<sup>th</sup> July 2008 and sent to the North London Waste Authority (NLWA). As required all seven constituent boroughs and the NLWA agreed and signed the MOU and the first statement of principle the intention to enter a Deed of Confidentiality. For information the MOU is attached to this report as Appendix C.

5.11 The purpose of the MOU is to set a framework of high level principles (not legally binding) to provide a strategic platform on how the seven constituent boroughs and NLWA will work together to procure a future waste treatment and disposal contract that will achieve the common goals as set out in North London Joint Waste Strategy. The MOU and the subsequent draft Statements of Principle will lead to the development of an Inter Authority Agreement (IAA) which will be legally binding. It is expected that the IAA will be presented to the Cabinet in December 2010/January 2011 for consideration, following NLWA finalising contract documents and completing financial closure.

5.12 The MOU will evolve over time as it leads to the development of an IAA and such changes will be recorded as a Statement of Principle. The process is set out in section 5 of the MOU. The Cabinet Report considers the adoption of the second draft Statement of Principle whereby 19 overarching principles are specified. The majority of draft Statements refer to the boroughs and NLWA working together in a fair, equitable and transparent manner; however Cabinet Members were directed to the following four areas of principle that may result, if agreed at a later date via the IAA, to changes in how the Council currently operates. The proposed principles are:

- to transfer the duty to provide Household Reuse and Recycling Centres from the Council to NLWA;
- to consider the potential impact of pooling recycling targets;
- to consider providing to NLWA all recyclate materials collected and for NLWA to arrange for the sale of these materials; and
- to review how the Council operates its waste collection services. This review waste collection services will be undertaken as part of the development and procurement of the new integrated waste management contract, which is due to commence in April 2011.

## **Appendices**

Appendix A - Affordability Letter

Appendix B – Statement of Principles (2)

Appendix C – Memorandum of Understanding

*Stephen McDonnell, Head of Environmental Resources*

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Appendix A – Affordability Letter

Dear

**Acknowledgement of Affordability to Waste Management Proposals**

The full extent of the waste collection proposals included within the outline business case is clearly understood and the financial implications of the actions are fully appreciated.

In addition, the Council has been made aware of the North London Waste Disposal Authority's proposals for a procurement process consisting of new contracts for the delivery of a recycling, treatment and disposal services. The financial implications of these proposals have been presented in terms of an envelope of costs which range from the basic reference project costs to the same costs subjected to sensitivity analyses around capital expenditure, operating expenditure, recycling income and LATS expenditure. The Council has been able to review the high level outputs of the financial model including the estimated impact on the levy and collection costs

This Council has been informed that the total project cost of the Reference Project is estimated at £xxxx potentially rising to £xxxx billion after taking account of the sensitivities. Based on current Levy distribution this means a range of costs from £xxxx to £xxxx for the London Borough of Haringey.

The projected costs of the Reference Project are less than the "business as usual" (do minimal) option by £xxxx at the pre LATS sensitivity rising to circa £xxxx billion after taking into accounts the risk associated with LATS expenditure.

The North London Waste Authority has provided indicative Levy increases for either end of the envelope of costs to assist in assessing the question of affordability. This letter gives approval of the costs quantified being met, within the current affordability envelope, and subject to the sensitivities described above and outlined in more detail in the outline business case.

It is acknowledged that the additional costs of both collection and treatment/disposal have been taken into account with overall affordability of waste management considered.

The Council fully appreciates that the above costs are estimates and that they may change. However we have been assured by the NLWA that, should the estimates prove incorrect, then a further opportunity will be given to this Council to reconsider the affordability of the scheme prior to the parties becoming contractually committed.

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**Appendix B – Statement of Principles (2)**

DRAFT

Statement of Principles 2: Principles relating to Inter-Authority Agreement including Household Waste Recycling; sale of recyclates; collection systems and pooled targets

The Authorities intend to enter into a Statement of Principles as follows:

STATEMENT OF PRINCIPLES made the [            ] day of [                            ] 2008

BETWEEN

North London Waste Authority of Town Hall, Judd Street, London WC1H 9JE  
("NLWA")  
London Borough of Barnet of Town Hall, North London Business Park, Oakleigh Road South, London N11 1NP ("Barnet")  
London Borough of Camden of Town Hall, Judd Street, Camden, London WC1H 9JE  
("Camden")  
London Borough of Enfield of Civic Centre, Silver Street, Enfield, London EN1 3XA  
("Enfield")  
London Borough of Hackney of Town Hall, Mare Street, Hackney, London E8 1EA  
("Hackney")  
London Borough of Haringey of Civic Centre, High Road, Wood Green, London N22 8LE ("Haringey")  
London Borough of Islington of Town Hall, Upper Street, Islington, London N1 2UD  
("Islington"); and  
London Borough of Waltham Forest of Town Hall, Forest Road, Walthamstow, London E17 4JF ("Waltham Forest")

(together the "Authorities"); each of Barnet, Camden, Enfield, Hackney, Haringey, Islington and Waltham Forest are waste collection authorities for their respective areas (together "WCAs", and each a "WCA")

BACKGROUND

This statement of principles is made pursuant to clause 5.5 of the Memorandum of Agreement between the parties

The Authorities agree that the following are the overarching principles which the Inter-Authority Agreement (IAA) will adhere to:

1. That the IAA will establish arrangements which are fair and equitable for all parties to the agreement
2. That all detail on the operation of the IAA will be transparent with open book accounting and verifiable audit trails by all parties
3. That the agreement will seek to ensure the achievement of best value for all boroughs by maximising the containment of waste disposal costs by the NLWA over the life of the agreement and thereby containing the cost of the levy to the WCAs
4. That the IAA will seek to incentivise the Authorities towards the achievement of the desired outcomes and required targets

5. That any part of the IAA which relates to rewards and defaults for individual WCAs will operate fairly and equitably and no WCA will profit from another by the operation of the IAA. Benefit from the agreement will be derived by all boroughs from the maximisation of the containment of levy costs
6. That efficient and effective waste collection by the WCAs is a recognised factor in the achievement of containment of waste disposal costs and is part of the achievement of overall best value.
7. That the menu pricing mechanism specified in the IAA will operate fairly and equitably in the overall interests of the Authorities
8. That except for separate arrangements related to household waste recycling centres, the basis of charges to WCAs through the levy will be linked to and based upon the amount and type of waste delivered to NLWA
9. That LATS Trading Allowances either bought or sold will be part of the levy calculations for the WCAs and will be used fairly and equitably for the benefit of all parties to the IAA
10. That the Authorities agree to the Household Waste Recycling Centres becoming the responsibility of NLWA post 2014; and that arrangements which are fair, equitable and transparent will be established for the transfer of facilities to NLWA, to be operated thereafter to the benefit of all the Authorities. If appropriate the process will recognise, including financially, the level of WCA internal investment in individual sites on transfer
11. That NLWA will be the responsible body for the sale of all collected recyclates on behalf of the Authorities and that all recyclates collected by the WCAs will be delivered to NLWA.
12. That NLWA will operate a transitional compensation arrangement if any Authority is disadvantaged by the payments for recyclates against its existing agreements at the time of changeover
13. That the WCAs undertake to review formally their collection arrangements against models provided by NLWA (Entec UK), taking into account local environmental considerations, in order to move towards more like systems by 2014 or in subsequent years. Each WCA will decide individually on best fit to its circumstances whilst taking the achievement of like systems into full account
14. That the Authorities agree to the pooling of recycling targets for achievement of 45% by 2015 and 50% by 2020 as agreed in the North London Joint Waste Strategy
15. That the pooling of targets will be operated in a fair and equitable way which will both reward and penalise Authorities in financial terms and ensure all Authorities work to secure the maximum level of recycling achievement prior to pooling. The pooling will be managed by NLWA as a transparent internal trading process, including financial adjustments where appropriate
16. The use of material produced under The NLWA solution will be assessed using criteria which includes carbon impact and any material exported outside of The United Kingdom will be assured by The NLWA for appropriateness or handling and processes.
17. That all Authorities will seek to ensure all existing or new short term contracts related to recyclates will expire prior to 2014
18. That the WCAs will work in partnership with NLWA to submit bids for monies from the £74m currently available from the London Waste and Recycling Fund and any other appropriate identified grant regimes
19. That the Authorities will continue to work together on waste minimisation and the reduction of waste per person figures including public education exercises to encourage waste reduction and recycling

Signed by

[each Authority – by Leader]

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Appendix C – Memorandum Of Understanding

Dated

2008

- (1) North London Waste Authority
- (2) London Borough of Barnet
- (3) London Borough of Camden
- (4) London Borough of Enfield
- (5) London Borough of Hackney
- (6) London Borough of Haringey
- (7) London Borough of Islington
- (8) London Borough of Waltham Forest

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Memorandum of Understanding in relation to a Waste Management Inter Authority Agreement

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**CONTENTS**

<b>Clause</b>		<b>Page</b>
1	THE MEMORANDUM OF UNDERSTANDING.....	6
2	DURATION OF THIS MOU.....	6
4	DEVELOPMENT OF THE CONTRACT(S) .....	7
5	CHANGES TO THIS MOU .....	7
6	JOINT WORKING.....	8
7	DEVELOPMENT OF FACILITIES.....	8
8	SITING OF FACILITIES .....	8
9	WASTE PREVENTION .....	9
10	COLLECTION OF RECYCLABLE & BIODEGRADABLE WASTES .....	9
11	SALE OF RECYCLATE .....	9
12	RESIDUAL WASTES .....	9
13	FINANCIAL ALLOCATION.....	9
14	COMMUNICATION .....	10
15	COUNTERPARTS .....	10
<b>Schedules</b>		
1	STATEMENTS OF PRINCIPLE.....	12

THIS MEMORANDUM OF UNDERSTANDING is made on the [ ] day of [ ] 2008

**IMPORTANT NOTE**

This MOU is subject to contract and is not intended to be legally binding nor does it represent a complete summary of the contractual or commercial aims of NLWA and the Authorities but instead expresses their desires and understandings.

**BETWEEN**

- (1) North London Waste Authority of Town Hall, Judd Street, London WC1H 9JE ("NLWA");
- (2) London Borough of Barnet of Town Hall, North London Business Park, Oakleigh Road South, London N11 1NP ("Barnet");
- (3) London Borough of Camden of Town Hall, Judd Street, Camden, London WC1H 9JE ("Camden");
- (4) London Borough of Enfield of Civic Centre, Silver Street, Enfield, London EN1 3XA ("Enfield");
- (5) London Borough of Hackney of Town Hall, Mare Street, Hackney, London E8 1EA ("Hackney");
- (6) London Borough of Haringey of Civic Centre, High Road, Wood Green, London N22 8LE ("Haringey");
- (7) London Borough of Islington of Town Hall, Upper Street, Islington, London N1 2UD ("Islington"); and
- (8) London Borough of Waltham Forest of Town Hall, Forest Road, Walthamstow, London E17 4JF ("Waltham Forest"),

(together the "Authorities" and each an "Authority")

**BACKGROUND**

- (A) NLWA is a joint waste disposal authority established pursuant to the Waste Regulation and Disposal (Authorities) Order 1985 ("the Order").
- (B) Each of Barnet, Camden, Enfield, Hackney, Haringey, Islington and Waltham Forest are waste collection authorities in their respective areas (together the "WCAs" and each a "WCA").
- (C) Pursuant to the Order, NLWA is obliged to discharge specified waste disposal functions in its area, that being the combined area of the WCAs ("WCAs' Area").
- (D) Under sections 48(1) and (2) of the Environmental Protection Act 1990 ("EPA Act"), it is the duty of each WCA to deliver for disposal all waste which is

collected by the WCA to such places as NLWA directs (with the exception of waste for which the WCA decides to arrange to recycle).

- (E) Under section 51 of the EPA Act, NLWA is responsible for disposing of all waste collected by the WCAs in the WCAs' Area.

**OPERATIVE PROVISIONS**

**1. THE MEMORANDUM OF UNDERSTANDING**

1.1 This Memorandum of Understanding ("MOU") is between the NLWA and the constituent waste collection authorities ("WCAs" and each a "WCA").

1.2 This MOU and the subsequent Inter Authority Agreement ("IAA"), the latter of which will be legally binding, are to be considered as the strategic link between the Authorities in the development and delivery of the Authorities' joint waste strategy (the "Authorities' Joint Waste Strategy").

1.3 The Authorities acknowledge that the Authorities' Joint Waste Strategy dated September 2004 is currently being revised, and as such all references to the Authorities' Joint Waste Strategy in this MOU are to be read as referring to the latest draft of that document or, once it has been completed, to the final Authorities' Joint Waste Strategy.

1.4 The purpose of this MOU is:

1.4.1 to define the aims, objectives, roles and respective responsibilities of the Authorities in delivering Best Value, legislative targets and the aims of joint working; and

1.4.2 to manage the process of joint working and collaboration,

in the procurement of the contractual arrangements to be entered into between NLWA and a contractor or contractors (the "Contractor(s)") to deliver the Authorities' Joint Waste Strategy (the "Contract(s)").

1.5 Nothing contained in this MOU will be deemed to constitute a relationship between the Authorities of partnership, joint venture, principal and agent or employer and employee. None of the Authorities has, nor may it represent that it has, any authority to act or make any commitments on the other Authority's behalf.

**2. DURATION OF THIS MOU**

2.1 In order to deliver sustainable waste management on the scale required, long-term investment will be necessary. This investment must be matched by a firm commitment to abide by the terms of the IAA and to deliver the Authorities' Joint Waste Strategy.

2.2 This MOU shall take effect on the date hereof and shall terminate upon the date of any IAA between the Authorities, or earlier by agreement.

**3. RELATIONSHIP TO THE CONTRACT(S)**

- 3.1 Each Authority acknowledges that:
- 3.1.1 NLWA will be entering into the Contract(s) for sustainable waste management services;
  - 3.1.2 the WCAs' input, in terms of recyclable and organic waste collection and design of collection services is imperative to the success of the Contract(s); and
  - 3.1.3 the collection services should not adversely affect the reception and handling arrangements implemented under the Contract(s).

3.2 This MOU shall not form a part of the Contract(s).

3.3 The Authorities intend to enter into the IAA prior to the commencement of any Contract(s), which will demonstrate a formal and binding commitment from the NLWA and WCAs to work in partnership with the Contractor(s) to deliver the common goals.

#### 4. **DEVELOPMENT OF THE CONTRACT(S)**

4.1 The NLWA shall involve representatives of the WCAs in matters relating to the Contract(s)' technical specification, financial arrangements and subsequent management, in circumstances where there may be a material impact upon the functions and activities of a WCA, including any matters subject to this MOU.

4.2 The issue of contract management will be a standing item on the agenda for meetings of the Directors of Environment and Finance Officers of each WCA and NLWA meetings.

#### 5. **CHANGES TO THIS MOU**

5.1 It is anticipated that this MOU will evolve over time, as the parties move towards the development of an IAA. It is intended that these changes will be agreed and documented in accordance with this clause 5.

5.2 Each Authority may propose changes to this MOU by raising the proposed amendments before meetings involving all Directors of Environment of the WCAs and authorised persons of NLWA.

5.3 The Authorities may only accept such changes to this MOU as shall serve to enhance the delivery of the goals and objectives of the Authorities' Joint Waste Strategy without prejudicing any of the relevant Authorities.

5.4 Proposed changes will be reviewed by and agreed between the Directors of Environment of the WCAs and authorised persons at NLWA each acting reasonably.

- 5.5 Once a proposed change to this MOU is agreed, it will be recorded in a statement of principle. This statement of principle shall then be signed and dated by the Authorities and inserted into Schedule 1 (Statements of Principles) of this MOU under an appropriate title and number.

**6. JOINT WORKING**

- 6.1 The Authorities shall explore the opportunities for joint working and shared service arrangements between the WCAs and/or the WCAs and NLWA following the principles of the partnership approach adopted in the Authorities' Joint Waste Strategy.

- 6.2 Whether or not formal joint arrangements or shared service arrangements are put in place between any of the Authorities, each Authority agrees to explore how the principles of joint working could be applied to the Contract(s), including (but not limited to):

- 6.2.1 optimising size and use of facilities;
- 6.2.2 combining resources;
- 6.2.3 sharing of skills and human resources; and
- 6.2.4 maximising value for money.

**7. DEVELOPMENT OF FACILITIES**

The delivery of the Authorities' Joint Waste Strategy will require significant investment in new facilities including a new residual waste treatment plant, composting sites, materials recovery facilities (MRFs) and bulking stations.

**8. SITING OF FACILITIES**

- 8.1 The Authorities shall jointly undertake an exercise to identify potential waste management sites within each WCA area in order to provide reception facilities that will optimise transport requirements for the WCAs.

- 8.2 In order to ensure that these facilities are commissioned in accordance with the required timetable for delivery of the targets in the Authorities' Joint Waste Strategy, each WCA will use its reasonable endeavours in its capacity as WCA (and not as Planning Authority) to facilitate the establishment, siting and construction of these facilities in accordance with such timetable.

9. **WASTE PREVENTION**

9.1 The Authorities will follow the waste hierarchy in the Authorities' Joint Waste Strategy ("Waste Hierarchy"), implementing policies to prevent or reduce the amount of municipal waste arising.

10. **COLLECTION OF RECYCLABLE & BIODEGRADABLE WASTES**

10.1 The WCAs shall move progressively towards the partnership model in the Authorities' Joint Waste Strategy and shall agree in the IAA forms, qualities and quantities of their collected recyclable and biodegradable wastes to be delivered to NLWA facilities.

11. **SALE OF RECYCLATE**

11.1 The outputs (other than process rejects) of recycling and composting facilities shall be termed "Recyclates".

11.2 In order to manage the bulk input of Recyclates into the market place, if it is agreed in the IAA, NLWA will assume responsibility for the marketing of all Recyclates under the terms of the IAA and shall use reasonable endeavours to obtain best value. This will give economies of scale for reprocessors and may attract reprocessing industries to the WCAs' Area, in accordance with the proximity principle. The WCAs will benefit through long term, stable prices and reduced risk.

12. **RESIDUAL WASTES**

12.1 If agreed in the IAA, NLWA will be responsible for the reception and treatment of all residual wastes and the fulfilment of biodegradable municipal waste ("BMW") diversion targets.

12.2 The WCAs recognise their significant role in relation to the achievement of these BMW diversion targets through the separate collection of biodegradable wastes and waste prevention work.

13. **FINANCIAL ALLOCATION**

13.1 The Authorities shall work together to establish the respective payment obligations for the IAA and the Contract(s) and site and property acquisitions and to build procedures for the management and monitoring of costs, Landfill Allowance Trading Scheme ("LATS") costs and revenues and specific contractual liabilities.

13.2 In particular the Authorities shall apply the following principles to the establishment of the financial allocation mechanism:

13.2.1 fairness;

13.2.2 consistency with the Waste Hierarchy;

13.2.3 recognition of collection interface risk; and

13.2.4 practicality and deliverability (including, but not limited to, a consideration of Authority governance and probity issues).

13.3 If agreed in the IAA, LATS penalties will be apportioned on the basis of the performance of WCAs and the NLWA in reducing the biodegradable content of municipal solid waste landfilled.

#### 14. **COMMUNICATION**

14.1 It is imperative that the Authorities communicate effectively, particularly when determining the viability of any new initiatives and working practices that may have an impact upon both the council tax payer and the development and implementation of the Authorities' Joint Waste Strategy.

14.2 In order to ensure effective communication between NLWA, the WCAs and the Contractor(s) pursuant to the Contract(s), any matters that materially affect the Authorities' Joint Waste Strategy, the IAA or the Contract(s) shall be referred to the Directors of Environment and Directors of Finance of each WCA.

14.3 With effect from the date hereof, each Authority shall have regard to the terms of this MOU and abide by the principles enshrined within it. Each Authority shall develop and implement systems compliant with the aims and objectives of the Authorities' Joint Waste Strategy.

#### 15. **COUNTERPARTS**

This Agreement may be signed in any number of counterparts, each of which so signed will be an original, but together will constitute one and the same instrument.



**SIGNATURES**

This Memorandum of Understanding is agreed by the Leader for and on behalf of each Authority:

North London Waste Authority

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London Borough of Barnet

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London Borough of Camden

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London Borough of Enfield

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London Borough of Hackney

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London Borough of Haringey

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London Borough of Islington

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London Borough of Waltham Forest

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## **SCHEDULE 1**

### **STATEMENTS OF PRINCIPLE**

#### **STATEMENT OF PRINCIPLE 1: Intention to enter into Deed of Confidentiality**

The Authorities intend to enter into a Deed of Confidentiality which incorporates the following clauses:

**"1. CONFIDENTIALITY**

- 1.1 Each Authority shall keep confidential any and all information that it may acquire in relation to the other Authorities during the course of discussions or sharing of documents while drafting and negotiating the MOU and the IAA, and wherever the WCAs are consulting on drafting and negotiating the Contract(s).
- 1.2 For the purposes of this clause, 'Confidential Information' means all information in respect of the business of an Authority including, without prejudice to the generality of the foregoing, any ideas, business methods, finance, prices, business, financial, marketing, development or manpower plans, computer systems and software, services, and all information in respect of the Authorities' waste management arrangements.
- 1.3 No Authority shall use any other Authority's Confidential Information for any purpose other than to perform its obligations under the MOU and the IAA. Each Authority shall ensure that its officers and employees comply with the provisions of this clause 1. In the event of a breach of this clause 1, the Authority in breach shall immediately disclose this to the Authorities whose Confidential Information has been disclosed.
- 1.4 The obligations on an Authority set out in this clause will not apply to any Confidential Information which:
  - 1.4.1 an Authority can demonstrate is in the public domain (other than as a result of a breach of this clause 1);
  - 1.4.2 an Authority is required to disclose by order of a court of competent jurisdiction;
  - 1.4.3 an Authority is required to disclose following a request made under either the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or any related or subsequent legislation; or
  - 1.4.4 an Authority has disclosed to the professional advisers, lawyers, auditors and bankers under terms of confidentiality and those

professional advisers, lawyers, auditors and bankers are bound by a duty of confidence.

- 1.5 Where a request for information is made under either the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or any related or subsequent legislation, the Authority (of whom such request has been made) must consult with those other Authorities who have the benefit of the Confidential Information in question to determine whether it is obliged to disclose the Confidential Information, or whether there is a discretion or exemption applicable. Authorities being consulted must respond to the Authority no later than 10 days after receiving notification from the Authority of the request for information. Following receipt of such a response, and in any event within any applicable statutory time limits, the Authority shall determine whether it is obliged to disclose the Confidential Information.
- 1.6 If it is determined that Confidential Information is to be disclosed, the Authorities with the benefit of the Confidential Information may, as part of their consultation under clause 1.4, require that information is disclosed in a certain manner and at a certain time, provided that such requirement does not fetter any obligation the Authority has to comply with all laws.
- 1.7 If there is a breach of this clause 1, the aggrieved party shall have all remedies available at law.
- 1.8 Without prejudice to clause 1.7, each and every Authority accepts and acknowledges that since damages may not be an adequate remedy for breach of this clause, the other Authorities shall jointly and separately be entitled to apply for an injunction to prevent a breach or continued breach, or in the case of a breach of the obligation to give information about any disclosure, an order for specific performance.

## 2. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

The Authorities do not intend that any of the terms of this Deed will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

## 3. **DISPUTE RESOLUTION**

- 3.1 If a major dispute or difference of any kind arises between any, some or all of the Authorities, the Authorities in dispute shall notify each other in writing as soon as is reasonably practicable that a formal dispute has occurred. In the event of such a dispute, each Authority in dispute shall appoint a designated representative to meet to attempt to resolve the dispute. The representatives shall meet as often as is necessary in order to gather and exchange all relevant information with respect to the matter in issue. In the event that the designated

representatives cannot reach agreement within 14 calendar days they shall escalate their disagreement to the senior levels of management within their respective organisations for resolution within a further 14 calendar days.

3.2 Subject to the requirements under clause 3.1 being exhausted, in the event of any dispute in relation to clauses 1 or 2 cannot be resolved amicably between the Authorities, then the matter may be referred to arbitration by any of the Authorities to the dispute.”

**SIGNATURES**

This STATEMENT OF PRINCIPLE 1: Intention to enter into Deed of Confidentiality is agreed by the following duly authorised officers for and on behalf of each Authority:

North London Waste Authority

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London Borough of Barnet

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London Borough of Camden

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London Borough of Enfield

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London Borough of Hackney

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London Borough of Haringey

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London Borough of Islington

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London Borough of Waltham Forest

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**DATE**

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