



Agenda item:

[No.]


Cabinet

On December 21<sup>st</sup> 2010

Report Title: **Inter Authority Agreement In Relation To North London Waste Authority Procurement Of Waste Disposal/Treatment Services**

Report of Director of Urban Environment

Signed :

 - 6<sup>th</sup> December 2010

Contact Officer : Tom Hemming, Policy & Projects Manager, Environmental Resources

Email: Tom.hemming@haringey.gov.uk    Tel: x. 5625

Wards(s) affected: **All**

Report for: **Key Decision**

**1. Purpose of the report (That is, the decision required)**

- 1.1. This report presents a set of Key Principles (Appendix A, found at the end of this report) that will form the basis of an Inter Authority Agreement (IAA) between the North London Waste Authority (NLWA) and its seven Constituent North London Boroughs. A decision is sought on whether the Council sign up to the Principles.
- 1.2. The IAA itself will govern the relationship between the signatory authorities and the NLWA, and subsequently be reflected in the development of NLWA's future waste treatment/disposal contractual arrangements, currently being procured. It is currently intended that the IAA will be signed prior to the Call for Final Tenders in the NLWA procurement process.
- 1.3. In advance of the IAA being signed, the Key Principles will provide a level of certainty to prospective contractors on which they can bring forward the best value for money solutions with least risk.

## **2. Introduction by Cabinet Member for Neighbourhoods, Cllr Canver**

- 2.1. The waste disposal and treatment costs Haringey pays through the North London Waste Authority will increase in the coming years as taxes on landfill continue to rise and we strive to meet our challenging recycling targets and to deal with our waste more sustainably.
- 2.2. To meet these challenges and ensure the services we procure in future offer the best value for money it will be necessary to make commitments with our partner Boroughs in the NLWA, in the form of a binding Inter Authority Agreement.
- 2.3. This paper considers a set of Key Principles that will form the basis of a future IAA, and recommends the Council sign up. We have already signed up to a Statement of Principles in 2008 which set out an approach to the IAA, and in signing the Key Principles we will be acting in accordance with this. Furthermore, I believe the Key Principles offer more flexibility and opportunity to shape future waste services in North London than the previously agreed Statement of Principles.
- 2.4. Although NLWA have had PFI credits withdrawn in the recent Spending Review, steps are being taken to work out how costs can be reduced and the Key Principles are still applicable, so this should not prevent the Council from agreeing to them.

## **3. State link(s) with Council Plan Priorities and actions and /or other Strategies:**

- 3.1. The Inter Authority Agreement and objectives of the NLWA procurement link to a number of Council Plan Priorities.
- 3.2. A Cleaner, Greener Haringey**
- 3.3. The aim of the NLWA procurement is to develop new facilities that will ensure our waste is managed in a more sustainable way and improve the environmental footprint of North London. This will be achieved by a solution that supports higher recycling rates, reduces the amount of waste going to landfill, and increases the utilisation of waste for energy generation, thereby reducing emissions of carbon and other greenhouse gases and contributing to climate change mitigation.
- 3.4. The project as a whole therefore has a major role in delivering against the priority of A Cleaner, Greener Haringey, as well as the Sustainable Community Strategy 2007-2016 objective of An Environmentally Sustainable Future and the aims of the Greenest Borough Strategy to manage resources as efficiently as possible and reduce environmental pollution.
- 3.5. Delivering High Quality, Efficient Services**

3.6. Given the scale of the costs involved (potentially over £4bn over the duration of a 30 year contract), the efficient delivery of the procurement and establishment of value for money waste treatment/disposal services will contribute to the priority of Delivering High Quality, Efficient Services. The development of the IAA will play a key role in achieving these objectives, by providing a level of certainty to prospective contractors, on which basis value for money and high quality solutions can be developed.

### **3.7. A Thriving Haringey**

3.8. The construction and operation of major new facilities in North London, including at Pinkham Way, will generate employment and regeneration opportunities that will contribute to the priority of A Thriving Haringey.

## **4. Recommendations**

4.1. The Cabinet is recommended:

4.2. That the Key Principles set out in Appendix A are agreed, as the basis for a future Inter Authority Agreement. The Key Principles are consistent with the Statement of Principles previously agreed by the Council in 2008 (Appendix B) and furthermore provide a greater degree of flexibility and inclusion in the procurement process for Haringey.

## **5. Reason for recommendation(s)**

5.1. In agreeing the Principles, the Council would be acting in accordance with its decision to commit to an earlier Statement of Principles (Cabinet, October 2008 – attached as Appendix B), which were designed to underpin a future IAA. The main differences between these Key Principles and the Statement of Principles (SoP) are:

### **5.2. Key Principles 1/6/7 - Consignment of Recyclables / Collection Systems / Recycling Costs**

5.2.1 These Principles give a greater level of flexibility than outlined in the SoP as they allow the Council to 'opt-out' of consigning its recycling and organic waste (food and garden waste) to the NLWA waste treatment/disposal arrangements after considering actual bidders' proposals. Consideration of bidder proposals will enable Haringey to take into account real treatment/disposal costs in assessing any further efficiency and VfM implications for our collection systems. The principle also differs from the SoP position in making no reference to establishing joint collection systems between Boroughs.

### 5.3. Key Principles 3/12 - Recycling Targets / Reporting Performance

5.3.1 Principle 3 requests Boroughs commit to working towards our recycling targets of 45% by 2015 and 50% by 2020, consistent with the SoP and with commitments already made as signatories to the North London Joint Waste Strategy (NLJWS). However, Principle 12 is distinct from the SoP in terms of moving away from the proposal for a formal target pooling process between Boroughs. This is because it is currently deemed by the parties that menu pricing will provide a sufficient incentive financially to drive all Boroughs to maximise recycling and composting, and diversion from residual waste. Recycling performance will be reported at both a NLWA and Borough level.

### 5.4. Key Principle 5 – Move to a Menu Pricing Mechanism

5.4.1. This principle provides more flexibility than implied by the Statement of Principles, allowing consideration of actual bidders' proposals/costs before Boroughs will be asked to consider committing to the principle of menu pricing as an alternative to the current default levying system.

### 5.5. Key Principle 9 - Guaranteed Tonnages

5.5.1 A new principle introduces the requirement for NLWA (and by association Boroughs) to provide guarantees to the contractor on the minimum tonnages of recycling, organic and residual waste that will be delivered to the contractor's facilities. The principle proposes an approach that seeks to achieve an optimal VfM outcome by balancing, on the one hand, the benefits of having low guaranteed minimum tonnages that give NLWA and the Boroughs greater flexibility (as we would be less likely to fall below a lower tonnage threshold), against the potentially higher costs such flexibility could attract. As such it is recommended that the Principle is agreed.

### 5.6. Key Principle 10 - Change Mechanisms

5.6.1 To reflect NLWA's flexible approach, a new principle is introduced for change mechanisms to be included in the IAA. These will enable the IAA to take account of the areas of flexibility and 'opt-outs' described above (in relation to decisions on consignment of recyclables and preferred collection systems) and be updated before 'Financial Close'.

### 5.7. Key Principle 11 – Borough / Bidder Dialogue Meetings

5.7.1 As part of an inclusive approach NLWA will give Borough officers the opportunity to conduct dialogue meetings with bidders prior to the 'Call for Final Tenders' to help shape the future waste treatment/disposal contract.

5.8. The following Key Principles do not represent any substantive change from the Statement of Principles:

Key Principle 2 – Delivery of Residual Waste to NLWA.

Key Principle 4/8 - Transfer of Household Waste Recycling Centres to NLWA.  
The current situation in relation to the two centres in Haringey (otherwise known as Reuse & Recycling Centres) is that they will be included in the Council's new Waste Contract, but there will be flexibility in our new contract so that it remains possible to transfer to NLWA, subject to agreement being reached, as per Key Principle 4.

- 5.9. In summary, the Key Principles recognise that at this time Constituent Boroughs are not in a position to commit to final decisions in relation to a number of aspects of the IAA, and therefore introduce a greater degree of flexibility for Boroughs, whilst at the same time allowing a degree of certainty against which bidders can develop proposals.
- 5.10. The Key Principles, through the change mechanisms enshrined in Principle 10, enable the Constituent Boroughs to make binding commitments at a later, more appropriate stage of the procurement process. This allows NLWA time to provide necessary information to Boroughs in order that decisions to commit to the eventual waste treatment/disposal contractual arrangements can be made using actual bidders' proposals/costs.
- 5.11. There is an expectation that the IAA will faithfully reflect the Key Principles (which are not in themselves binding) and the enhanced flexibility and inclusiveness they entail. This is the basis on which the recommendation to adopt the Key Principles is made. The IAA document itself will be developed and presented to Cabinet at an appropriate later date.
- 5.12. Additionally, the Key Principles, if signed by all Boroughs, will represent progress in the process of establishing an IAA in that the SoP was noted but not approved by Barnet and Enfield in 2008.

**6. Other options considered**

- 6.1. The Council has the option to agree to all, some or none of the Key Principles.
- 6.2. Most of the Key Principles are consistent with the previously signed Statement of Principles, and in addition represent a greater degree of inclusion and flexibility for the Council (i.e. to review positions at a later stage when more information will be available, based on bidders' proposals).
- 6.3. Those Key Principles introduced since the Statement of Principles are deemed to be in the interests of the Council, as detailed in section 5.
- 6.4. There are therefore no grounds to sign up to selected Principles only.

## **7. Summary**

- 7.1. The Key Principles (Appendix A) are intended to form the basis of a legally binding Inter Authority Agreement (IAA) between the North London Waste Authority (NLWA) and its seven Constituent North London Boroughs.
- 7.2. The IAA will govern the relationship between the waste treatment/disposal system of NLWA and the Boroughs' collection systems, and be reflected in NLWA's future contractual arrangements.
- 7.3. New contractual arrangements are being procured because the existing 20 year waste disposal contract with LondonWaste Ltd (LWL) finishes in 2014 and key existing facilities, especially the Energy from Waste plant at Edmonton, are coming to the end of their operational life. Further key drivers behind the new contract are rapidly increasing taxes on landfill disposal and national and agreed local policy frameworks requiring a more sustainable waste solution, including much higher recycling rates (in line with a 50% by 2020 recycling target).
- 7.4. Until the Spending Review announced by Government on October 20th 2010, NLWA had been pursuing a PFI procurement process, and had been awarded £258.4m of PFI credits by Government in early 2010, based on a revised Outline Business Case that had been submitted as part of the PFI process. However, as part of the Spending Review, the PFI credit award has been withdrawn. In response the Outline Solutions stage of the procurement is being extended and will include dialogue with bidders on how costs can be reduced to take account of the loss of PFI credits.
- 7.5. The IAA Key Principles therefore still apply and it will be beneficial to NLWA and the Constituent Boroughs to establish positions, through the adoption of the Key Principles, that will provide greater certainty to bidders, on which value for money solutions can be developed going forward. The Constituent Boroughs can therefore progress with signing up to the Principles, in order to pave the way for an IAA to be signed at an appropriate future point in the procurement process.

## **8. Chief Financial Officer Comments**

- 8.1. The Key Principles are expected to underpin a future Inter Authority Agreement that will be a major determinant in the cost of waste disposal for the Council for 30 years or more.
- 8.2. The current annual levy paid to NLWA is £6.6m and this is expected to increase significantly in coming years due to the impact of Landfill Tax, which continues to increase at a rate of £8 per tonne per annum, and also the costs related to the ongoing replacement of disposal facilities.

- 8.3. NLWA had previously projected that the levy would effectively double over a 10 year timeframe, although delays in the procurement process and with the recession suppressing total waste arisings, have meant that the impact has largely been deferred to date, although sharp increases in the levy can be expected in the next couple of years as the procurement costs begin to come through and tonnages stop dropping. Additionally the withdrawal of £258m PFI credits from the project mean it is possible that costs will increase more than previously projected in future years, subject to the solutions ultimately delivered.
- 8.4. To some extent the IAA is a 'chicken and egg' process in that Boroughs would like to be sure of the relevant charges for disposal of different types of waste before committing themselves to collection systems or consignment of recyclates, whilst bidders desire more certainty on types and amounts of waste to be delivered before designing and costing facilities, which in turn will determine the menu prices. The Key Principles are in essence a compromise designed to give the market more certainty, whilst retaining a degree of flexibility in the short-term for the NLWA Boroughs.
- 8.5. The situation is slightly complicated within Haringey as we are in the final stages of procuring a new Waste Services contract which will involve making decisions around collection systems and potentially consignment of recyclates. Officers are seeking to build flexibility into any new contract so that it remains possible to react to any detailed proposals NLWA receives. Specifically Haringey may wish to consider any prices that NLWA can offer for recyclates in the context of what its own preferred contractor is able to offer.
- 8.6. The concept of menu prices represents the most significant financial impact, however at present the level of menu prices in the future is not clear. NLWA has provided estimates of future menu prices, but as well as just being estimates calculated before bidders' proposals have been seen, these will be impacted by the announcement on 20th October that the £258m of PFI credits allocated to the procurement have now been withdrawn. This could have a major impact on the cost of waste disposal to Boroughs in future years funded through the levy, as well as changing the differential between different types of waste disposal and treatment options.
- 8.7. However, it is clear that the introduction of menu prices will lead to a substantial divergence in the charge for organic or recycled waste from that of general refuse. Thus it becomes a financial imperative for the Council to substantially increase its recycling rate; a 1% change in recycling rate is likely to change costs by over £100,000 per annum. Measures to significantly increase recycling rates are being pursued as part of the ongoing procurement of the new Waste Services contract and the Council will need to be careful that the desire to achieve savings towards its wider targets from this contract does not compromise the ability to increase recycling rates.

## **9. Head of Legal Services Comments**

9.1. The Head of Legal Services notes the contents of the report.

9.2. The NLWA is the statutory body established pursuant to the Waste Regulation and Disposal (Authorities) Order 1985 and has responsibility for its seven Constituent Boroughs which includes the London Borough of Haringey.

9.3. The current waste disposal contract between NLWA and LondonWaste Ltd is due to terminate in December 2014 at which point a new contract will need to be put in place between NLWA and a waste disposal contractor. The procurement of the new contract has been under way for some time following a competitive dialogue process in accordance with the Public Contract Regulations 2006. The procurement is currently at the evaluation of outline solutions stage.

9.4. Legal representatives from each of the constituent authorities have been kept up to date on the progress of the procurement, and have been negotiating the terms of the IAA with NLWA.

9.5. As stated in paragraph 1.1 of the Report the IAA will be based on the Key Principles as set out in Appendix A.

9.6. Approval to enter into the IAA will need to be sought from Members in due course.

9.7. The Head of Legal Services sees no legal reasons preventing members from approving the recommendations set out in paragraph 4 of the Report.

## **10. Head of Procurement Comments – [ Required for Procurement Committee]**

10.1. Not applicable.

## **11. Equalities & Community Cohesion Comments**

11.1. An Equalities Impact Assessment was carried out on the North London Joint Waste Strategy (the joint strategy for the Constituent Boroughs and the NLWA) in 2008. The strategy sets out how the partners will manage waste from households and businesses in the area until 2020, and underpins the NLWA's Outline Business Case for the procurement of new waste treatment/disposal services.

11.2. Any further equalities and cohesion considerations/assessments in relation to new facilities or services will be completed by NLWA as part of the procurement process for the new waste services contract.



## **12. Consultation**

- 12.1. The Leader and Lead Members for Neighbourhoods and Finance & Sustainability, along with key senior officers, including the Chief Executive and Director of Corporate Resources, were provided with detailed briefings on the IAA process and key issues in August 2010.
- 12.2. Subsequent to this, the Key Principles were produced in consultation with Members and technical, finance and legal officers from each Constituent Borough at an NLWA-led Members' workshop event in September 2010.
- 12.3. This was attended by the two members from Haringey who sit on the NLWA (including the Lead Member for Neighbourhoods) who have also been kept apprised of developments in the IAA process through regular briefing sessions.
- 12.4. The Key Principles were considered by Cabinet Advisory Board on 25<sup>th</sup> November 2010.
- 12.5. The North London Joint Waste Strategy, underpinning NLWA's Outline Business Case, was subject to public and statutory agency consultation in 2008 and amended as a result.

## **13. Service Financial Comments**

- 13.1. There are no immediate financial implications of adopting the Key Principles. They are designed to allow Boroughs to make provisional commitments to enable the NLWA's waste treatment/disposal solutions to be shaped with a degree of certainty, subject to the presentation of costs reflecting bid positions (Principle 6).
- 13.2. Once bidder costs are received, Boroughs will make final decisions on collection systems, consignment of recyclable materials and waste projections, which will then be incorporated into the IAA. As outlined in the CFO comments, the potential move to menu pricing (Principle 5) has the most significant financial implications. Binding commitments to move to menu pricing will also be subject to the presentation of bidders' costs, which will allow financial impacts by Borough to be calculated.
- 13.3. In terms of the impact of the withdrawal of PFI credits, the Outline Solutions stage of the procurement is being extended, including dialogue with bidders on how costs can be reduced to take account of the loss of credits. This process will ultimately be reflected in the bidder costs provided to Boroughs as per Principle 6, before a binding IAA is signed.

#### **14. Use of appendices /Tables and photographs**

- 14.1. Appendix A – Key Principles (to be found at the back of this report)
- 14.2. Appendix B – Statement of Principles, October 2008
- 14.3. Appendix C – Affordability Letter, January 2010
- 14.4. Appendix D – Memorandum of Understanding, June 2008

#### **15. Local Government (Access to Information) Act 1985**

- 15.1. Appendices listed under section 14.
- 15.2. NLWA Outline Business Case, 2010.  
[www.nlwa.gov.uk/procurement/key\\_procurement\\_documents](http://www.nlwa.gov.uk/procurement/key_procurement_documents)
- 15.3. North London Joint Waste Strategy, 2009.  
[www.nlwa.gov.uk/aboutus/our\\_strategy](http://www.nlwa.gov.uk/aboutus/our_strategy)

#### **16. Background information – NLWA Procurement**

16.1. The North London Waste Authority's (NLWA's) current Main Waste Contract with London Waste Limited (LWL) expires in December 2014. NLWA is now in the process of procuring replacement contracts. In October 2008 NLWA submitted an Outline Business Case (OBC) to Government for PFI credits to underpin the procurement, as the minimum cost option for council taxpayers. In the months leading up to this, in line with government expectations, each Constituent Borough:

- Signed a letter accepting and acknowledging their share of the NLWA's future waste management costs (an affordability envelope, agreed by Cabinet in October 2008), subsequently revised and approved in January 2010 by delegation to the Chief Financial Officer (Appendix C). Allowing for the award of the PFI credit, the total cost of the project for NLWA and the Boroughs is currently estimated to be £7.109 billion to £7.443 billion. These figures are based on NLWA modelling of both disposal and collection costs over a period of more than 30 years. For Haringey, this would mean a range of costs between £1.018 billion and £1.069 billion, based on current levying arrangements.

- Signed a Memorandum of Understanding (not legally binding) (Appendix D) that, at a high level, reflects many of the principles enshrined in the IAA (signed by the Leader after delegation by Cabinet, June 2008); and

- Approved a Statement of Principles (also non-binding) (Appendix B) that contained more specific principles to be included in a future IAA (agreed by Cabinet in October 2008 and by the other Constituent Boroughs, with the exception of Barnet and Enfield Councils, who noted it).

16.2 A revised OBC was accepted by Government earlier this year and £258.4m of PFI credits were awarded. However, as part of the Spending Review announced by Government on October 20<sup>th</sup> 2010, the PFI credit award has been withdrawn. In

response to this the Outline Solutions stage in the procurement is being extended and further dialogue is being held with bidders on how costs can be reduced to take account of the loss of PFI credits.

16.3 The procurement timetable may change to some degree depending on how the procurement progresses in the coming months. However, as a guide to the timescales involved, NLWA have Financial Close programmed for October 2012.

16.4 The Outline Solutions submitted by bidders to date have been based on working assumptions that NLWA has supplied to bidders, relating to aspects of the Borough's waste collection activities. It will be beneficial to NLWA and the Constituent Boroughs to provide more certainty to bidders, on which basis they can develop their solutions in the subsequent stages of the procurement. Establishing the IAA Key Principles will support this process and facilitate achieving value for money and reducing risks to the partner authorities.

## **17. Analysis of Key Principles**

17.1 The following section considers the key issues in relation to the Principles, that underpin the recommendations summarised in section 5 of this report.

### 17.2 Collection Systems (Principle 1 and 6)

17.2.1 Principle 1 requires Boroughs to specify their preferred collection system for recycling and organic waste, but is subject to Principle 6, allowing Boroughs to make a final decision on systems once bidder proposals are submitted.

17.2.2 This is consistent with the Statement of Principles (SoP) (which requires Boroughs to review their systems whilst recognising decisions will be made by Boroughs based on best fit to individual circumstances), but Principles 1/6 also represents an added degree of flexibility for Boroughs. The receipt of bidder proposals will enable Haringey to take into account real treatment costs in assessing the overall efficiency and VfM of collection systems. Unlike the SoP, no reference is made to working towards common collection systems in the Key Principles.

### 17.3 Delivery of Residual Waste to NLWA (Key Principle 2)

17.3.1 This does not represent any change from the Statement of Principles. Boroughs are legally obliged to deliver residual waste to NLWA for disposal/treatment.

### 17.4 Recycling Targets (Principle 3 and 12)

17.4.1 Principle 3 requests Boroughs commit to working towards our recycling targets of 45% by 2015 and 50% by 2020, consistent with the SoP and with commitments already made as signatories to the North London Joint Waste Strategy (NLJWS). However, Principle 3 is distinct from the SoP in terms of moving away from the

proposal of a formal target pooling process contained in the latter. This is because it is currently deemed by all parties that menu pricing will provide a sufficient incentive financially to drive all Boroughs to maximise recycling and composting, and diversion from residual waste.

17.4.2 Additionally, Principle 12 introduces flexibility for recycling performance to be reported at Borough and NLWA levels, with the support of NLWA.

#### 17.5 HWRC Transfer (Principle 4 and 8)

17.5.1 Under the Statement of Principles (SoP) agreed in October 2008 the council committed to transfer HWRCs to NLWA, with acknowledgement that fair terms of transfer would be established. Principle 4 represents no change to the nature of this commitment.

17.5.2 Principle 8 adds that NLWA will consider the VfM and quality of bidders' solutions before making a final decision to include the management of transferred HWRCs within the scope of contractual arrangements for the main disposal/treatment services.

#### 17.6 Menu Pricing (Principle 5)

17.6.1 The default arrangements for the levying of waste disposal/treatment costs to Boroughs currently involves the lower costs of treating waste for recycling and composting being blended with the higher costs of residual waste disposal into an average cost per tonne. The greater the amount of recycling delivered, the lower the average cost per tonne will be. However, not all Boroughs consign their recycling to NLWA for treatment. Those Boroughs that do not are therefore benefiting from a lower cost for their residual waste. Meanwhile Boroughs that do consign their recycling, including Haringey, currently pay more than if the charges reflected the actual costs of treating the different waste streams they deliver.

17.6.2 Key Principle 5 requires consideration of the principle of an alternative levying system - Menu Pricing. Under Menu Pricing, Boroughs would be charged different per tonne prices for each type of treatment or disposal facilities used to manage specific waste types. Boroughs that consign more recycling to NLWA and less residual waste would pay a reduced proportion of the levy because recycling is the cheaper treatment route.

17.6.3 Under Key Principle 5, Boroughs are asked to consider Menu Pricing upon receipt of bidder proposals/treatment costs (as per Principle 6). Prior to withdrawal of the PFI credit support on October 20<sup>th</sup>, Principle 5 required Boroughs to agree to the principle of menu pricing and also the method of calculation. However, given the changes to costs that the PFI withdrawal is likely to result in, and the effect this will have on menu prices, Key Principle 5 has been made more flexible.

17.6.4 Given NLWA disposal costs are anticipated to increase considerably under new contractual arrangements, leading to a substantial difference in cost between residual waste and recyclables, Menu Pricing will incentivise all Boroughs to improve recycling performance and reduce the amount of residual waste they generate in order to contain their treatment/disposal costs. Remaining with the current levying system would not provide this incentive and result in higher overall disposal costs, shared between Boroughs. On this basis the principle of Menu Pricing was agreed by the Council in the SoP of 2008, and the Key Principles represent no change in the position Boroughs are being asked to commit to.

#### 17.7 Consignment of Recyclables (Principle 7 and 6)

17.7.1 Principle 7 allows Boroughs to consider bidder proposals before making a final decision on whether to consign recycling and organic waste (food and garden waste) to NLWA for the length of the proposed contractual arrangements.

17.7.2 This is consistent with the SoP in terms of allowing progress towards a position in which all recyclates collected by Boroughs will be delivered to NLWA, but crucially allows Boroughs an 'opt-out' based on receipt of the bidders' proposals (Principle 6) and thereby enables a greater degree of flexibility for Boroughs.

#### 17.8 Guaranteed Tonnages (Principle 9)

17.8.1 Principle 9 formally introduces the prospect of minimum guaranteed tonnages, whereby NLWA would have to guarantee delivery of a minimum tonnage of each waste stream (recycling, organic and residual waste) to the contractor's facilities or otherwise face costs (with consequences for Boroughs that cause breaches).

17.8.2 The principle proposes an approach that seeks to achieve an optimal VfM outcome by balancing, on the one hand, the benefits of having low guaranteed minimum tonnages that give NLWA and the Boroughs greater flexibility (as we would be less likely to fall below a lower tonnage threshold), against the potentially higher costs such flexibility could attract.

#### 17.9 Change Mechanisms (Principle 10)

17.9.1 A new principle is introduced for change mechanisms to be included in the IAA. These will enable the IAA to take account of the areas of flexibility and 'opt-outs' in relation to decisions on consignment of recyclables and preferred collection systems, and be updated before 'Financial Close'.

#### 17.10 Borough / Bidder Dialogue Meetings (Key Principle 11)

17.10.1 Borough officers will have the opportunity to conduct dialogue meetings with bidders prior to the 'Call for Final Tenders' to help shape the future waste treatment/disposal contract, a move which is welcomed.

## **APPENDIX A**

### **IAA Key Principles:**

1. Boroughs identify their preferred collection system subject to a final review of projected gate fees.
2. Residual waste is confirmed as in the contract and it is an NLWA decision to award the contract.
3. An eight authority commitment to work towards our recycling targets which includes the consideration of kitchen waste collection (a separate strategy to be developed).
4. Household Waste & Recycling Centres (HWRCs) to be transferred to the NLWA subject to agreement to 'transfer value' and overall service specification. NLWA to develop proposals for a capital investment programme covering the refurbishment of HWRCs and possible new sites. This programme to be shared with Boroughs for comment in advance of presentation to the Authority for decision.
5. That Boroughs agree to consider menu pricing upon consideration of the costs as set out in Principle 6.
6. At a given date in the procurement, NLWA will provide Boroughs with treatment costs reflecting bid positions, to allow costs to be assessed and a position taken on both recycling and menu pricing.
7. There is an individual Borough 'opt-out' covering i) recycling (whether source-segregated or co-mingled) and ii) the treatment of separately collected organic wastes.
8. Based on bid proposals (and previous decision on transfer to NLWA) the decision to include HWRCs in the contract to be made by NLWA.
9. Boroughs support the NLWA's position with bidders in relation to the 70% Guaranteed Minimum Tonnage (GMT) on the basis that Boroughs will not be penalised unless the Authority receives a contractual default. This position on GMT will only be changed on the basis of improved value for money prior to the 'Call for Final Tenders'.
10. Any change mechanisms necessary to up-date the IAA for 'Financial Close' are included in the Inter Authority Agreement.
11. NLWA will set-up a dialogue opportunity for Borough Officers to meet collectively with bidders prior to the 'Call for Final Tenders'.
12. Recycling performance will be reported at Borough and NLWA levels. Boroughs report all recycling activity within their boundaries with the support of NLWA.

Appendix AA  
MOU and IAA Draft Statement of Principles

## MOU and IAA Draft Statement of Principles

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:

That the IAA will establish arrangements which are fair and equitable for all parties to the agreement

That all detail on the operation of the IAA will be transparent with open book accounting and verifiable audit trails by all parties

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

That the IAA will seek to incentivise the Authorities towards the achievement of the desired outcomes and required targets

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

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.

That the menu pricing mechanism specified in the IAA will operate fairly and equitably in the overall interests of the Authorities

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

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

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

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.

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

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

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

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

That NLWA will ensure that all end users of recyclates and solid recovered fuel will be selected on criteria including proximity and will be within the United Kingdom

That all Authorities will seek to ensure all existing or new short term contracts related to recyclates will expire prior to 2014

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

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]

Gerald Almeroth  
Director of Finance  
London Borough of Haringey  
5<sup>th</sup> Floor River Park House  
225 High Rd  
Wood Green  
London N22 8HQ

5<sup>th</sup> January 2010

Dear Gerald

### **Acknowledgement of Affordability Implications of Waste Management Proposals**

As you are aware the North London Waste Authority has resubmitted its Outline Business Case to Defra. As part of the OBC resubmission the Authority in conjunction with its technical and financial advisers has reviewed and refreshed the technical costs and financial analysis underpinning the OBC. I am writing to you to:

- ▶ Summarise the revised financial metrics for the project and highlight the estimated affordability implications for the London Borough of Haringey
- ▶ Seek reaffirmation that the revised affordability position is within the affordability envelope agreed by Borough Cabinet / Executive in October 2008, as reflected in the letters of support at that time and supplied as part of the October 2008 OBC submission – a copy of your Authority's previous letter is attached as background.

In October 2008 the Council was informed that the total project cost of the Reference Project was estimated at £7.323 billion, potentially rising to £7.725 billion after taking account of the sensitivities included in the OBC. Based on current Levy distribution this implied a range of costs from £1.022 billion to £1.076 billion for the London Borough of Haringey.

As at December 2009 the total project cost of the Reference Project is estimated at £7.109 billion, potentially rising to £7.443 billion taking account of the sensitivities included within the OBC. Based on the current Levy distribution this means a range of costs from £1.003 billion to £1.055 billion for the London Borough of Haringey on the basis of the Authority receiving an award of £317 million in PFI Credits.


In the event that the Authority secures PFI Credits of £258.4 million (that amount requested in May 2009), based on the current Levy distribution this means a range of costs from £1.018 billion to £1.069 billion for the London Borough of Haringey.

The projected costs of the Reference Project are less than the "business as usual" (do minimal) option by £0.201 billion.

I would be grateful if you could sign below and return a copy to me to confirm for the benefit of the OBC resubmission that the costs quantified above (for both the £317million and £258.4 million PFI Credits) are within the affordability envelope agreed by your Authority in October 2008.

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

Yours sincerely,



Tim Judson

Director of Procurement

Signed G. Olliver

Authority LONDON BOROUGH OF WARRINGHAM

Date 11 JANUARY 2010



EVERSHEDS

Dated

30th July

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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**Eversheds LLP**  
Senator House  
85 Queen Victoria Street  
London  
EC4V 4JL

Tel 0845 497 9797  
Fax 020 7919 4919  
Int +44 20 7919 4500  
DX 83 Chancery Lane WC2  
[www.eversheds.com](http://www.eversheds.com)

## CONTENTS

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

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

---

London Borough of Hackney

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London Borough of Haringey

x

*George F Meehan*

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London Borough of Islington

---

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

---

London Borough of Barnet

---

London Borough of Camden

---

London Borough of Enfield

---

London Borough of Hackney

---

London Borough of Haringey

---

London Borough of Islington

---

London Borough of Waltham Forest

---

**DATE**

---



EVERSHEDS

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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## Deed of Confidentiality

In relation to the development of a waste management  
Memorandum of Understanding and Inter Authority Agreement

---

**Eversheds LLP**  
Senator House  
85 Queen Victoria Street  
London  
EC4V 4JL

Tel 0845 497 9797  
Fax 020 7919 4919  
Int +44 20 7919 4500  
DX 83 Chancery Lane WC2  
[www.eversheds.com](http://www.eversheds.com)

## CONTENTS

Clause		Page
1	CONFIDENTIALITY .....	5
2	CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999 .....	6
3	DISPUTE RESOLUTION .....	6
4	COUNTERPARTS.....	7

THIS DEED is made on the [ ] day of [ ] 2008

**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.

- (F) NLWA intends to procure a new waste management service for the disposal of all waste collected by the WCAs in the WCAs' Area.
- (G) In support of this procurement, the Authorities intend to enter into a non-binding Memorandum of Understanding ("MOU"). Over time the MOU will be developed by the Authorities and agreed changes signed and documented in statements of principle which are to be appended to Schedule 1 of the MOU. The final agreement between the Authorities will be reflected in a legally binding Inter Authority Agreement ("IAA").
- (H) Both the MOU and the IAA 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").

## **OPERATIVE PROVISIONS**

### **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.

4. **COUNTERPARTS**

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

**SIGNATURES**

This Deed 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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