

Report Title: DEFRA Consultation – Response to Proposals to Change the Levy Default

Forward Plan reference number (if applicable):

Report of: Director of Environmental Services

Wards(s) affected: All Wards

Report for:

### **1. Purpose**

- 1.1 To inform Members of DEFRA consultation taking place on proposed changes to the Statutory Joint Waste Disposal Authorities levy apportionment basis and the Council's response to the consultation paper.

### **2. Introduction by Executive Member**

In the early Autumn of 2005, the Government carried out a brief consultation on changing the default charging arrangements for Joint Waste Disposal Authorities (JWDAs). Haringey is a member of a JWDA. Haringey is a member of the North London Waste Authority (NLWA). The current default charging arrangement system is unfair as it is based on an apportionment in proportion to each borough's Council Tax base. This is unsatisfactory as there is no direct relationship between the amount of waste produced by each borough and the levy that each borough pays. Neither does the present arrangement reflect the principle that 'the producer pays'.

Haringey has worked hard to increase recycling and reduce household waste. The new charging arrangements proposed by the Government would not only be fairer, but would encourage other councils to reduce waste, invest more in recycling and promote the reuse of materials. Although the Government's proposals would be largely cost neutral for Haringey, their intention to introduce the new levy arrangements for the financial year 2006/07 may result in a degree of uncertainty for constituent boroughs, who are members of JWDAs, until very late in the budget setting cycle, therefore the Council, whilst supporting the proposed changes, is also calling for transitional relief for those boroughs who would be adversely affected by these changes in the next financial year.

### **3. Recommendations**

3.1 That Members note:

- (i) the proposed changes to the North London Waste Authority (NLWA) levy apportionment basis and its estimated impact for the Council
- (ii) and confirm the Council's response to the consultation paper which had to be submitted to DEFRA by 28 October 2005.

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(ext 4523)

Contact Officer: Stephen McDonnell , Head of Waste Management (ext 5661)

### **4. Executive Summary**

- 4.1 The NLWA is largely funded by a levy that at present is paid by the constituent borough councils in proportion to their Council Tax bases. This way of apportioning the levy is the 'default' arrangement that applies if no other means of apportionment is unanimously agreed by the boroughs. A Government consultation paper proposes to change the law so that, from next year onwards, the default arrangement would require the levy to be made up of two parts. One part would meet the Authority's disposal costs of the household waste that it receives from the boroughs, and this part would be paid by the boroughs in proportion to their tonnages of household waste in the most recent completed financial year. The other part would meet all the Authority's other costs, including the transport and disposal costs of civic amenity waste, and would be paid by the boroughs in proportion to their Council Tax bases. Responses are sought by 28 October 2005.
- 4.2 This report describes the proposals and their likely effects for the NLWA levy on the Council and the other constituent borough councils and proposes a response to the consultation paper.

### **5 Reasons for any change in policy or for new policy development (if applicable)**

- 5.1 Proposed Government changes to the way Joint Waste Disposal Authority's levy is apportioned.

### **6 Local Government (Access to Information) Act 1985**

- 6.1 DEFRA consultation paper on changes to the joint waste disposal authorities funding levy, 26<sup>th</sup> August 2005
- 6.2 NLWA's report DEFRA consultation on levy apportionment, 19 October 2005.

## **7. Background**

### **Existing levy arrangements**

- 7.1 The NLWA is mostly funded by a levy paid by the seven constituent borough councils including Haringey. By law, which applies also to the other five Joint Waste Disposal Authorities (JWDAs), the levy is apportioned between the boroughs in such proportions as the boroughs may unanimously agree. If there is no unanimous agreement, the law specifies that a default basis of apportionment in proportion to each borough's Council Tax base shall apply.
- 7.2 The NLWA levy has always been apportioned on the default basis because there has never been unanimous agreement on any alternative method. By definition, any change in the apportionment method would be financially disadvantageous for at least one of the boroughs. This makes the necessary unanimous agreement hard to achieve - particularly when, as in North London's case, the financial effects for the boroughs would be significant.

### **The need for change**

- 7.3 However, in the last decade or so attention has increasingly been given to the case for payment to be made in proportion to the tonnages that boroughs deliver to the Authority. The main element in each Waste Disposal Authority's expenditure is the amount of waste that comes from the constituent boroughs for disposal. However, when the levy is apportioned on the default Council Tax base, there is no direct relationship between the expenditure incurred in disposing of the waste from each borough and the levy each borough pays.
- 7.4 In consequence, there has been a view in most constituent councils that the default Council Tax base is unsatisfactory, and that there is a case for a change in the law so that boroughs would pay on some form of tonnage basis. The higher a borough's tonnage the more it would pay, and vice versa. This would accord with the "producer pays" principle, would give boroughs more direct control over their own costs, and would be an encouragement to efficiency savings, and promoting waste minimisation, reuse and recycling.
- 7.5 The need for change has been greatly magnified by the substantial increases in waste management costs that now are beginning to be generated by increasing environmental standards being imposed on waste disposal contractors, the Landfill Tax and, in the future, compliance with the Landfill Directive.

## **8. DEFRA'S CONSULTATION**

- 8.1 The consultation paper was issued to all Joint Waste Disposal Authorities and all their constituent borough councils at the end of August along with draft statutory regulations.

- 8.2 In addition, DEFRA is also consulting on this matter with the Local Government Association, the Greater London Authority, the Association of London Government, and some other relevant professional/representative bodies.
- 8.3 DEFRA officials have already held a consultation meeting with representatives of the NLWA and constituent boroughs at Haringey Civic Centre on 20<sup>th</sup> September. DEFRA officials similarly have attended consultation meetings in the other five Joint Waste Disposal Authorities areas.
- 8.4 Responses are sought by no later than Friday 28 October 2005, which is only nine weeks after the consultation began. The paper notes that this allows less time than the Government's usually recommended twelve weeks because of the need for the new arrangements to be in place before the end of December in time for the setting of budgets for next financial year. The Executive Member for Environment and Conservation therefor submitted a draft response. The Council's response is attached at Appendix 1.
- 8.5 The consultation paper summarises the background and the case for change, which is similar to that set out above. It also sets out DEFRA's proposals and their rationale. A major constraint is that, because DEFRA intends to change the funding mechanism in time for next financial year, the changes are limited to those that can be implemented through secondary legislation alone.
- 8.6 In essence, the proposals are that the Joint Waste Disposal Authorities would continue to be mainly funded by levying upon their constituent borough councils and, by their unanimous agreement, the constituent borough councils would be able to decide for themselves how to apportion the levy. However, in the absence of their unanimous agreement, the present default arrangements of a levy that is wholly apportioned on Council Tax base would be replaced with a levy that is made up of two parts, each of which is apportioned differently. The principal areas of budget cost are set out below:
- 8.6.1 **Collected household waste levy**  
One part (which is referred to as the "collected household waste levy") would be to meet the budgeted costs of dealing with the household waste collected by the boroughs and delivered to North London Waste Authority for treatment or disposal. The boroughs would pay this part of the levy in proportion to their relative tonnages of household waste delivered in the most recent complete financial year for which data is available. In other words, the household waste tonnages delivered in 2004-05 would be used to apportion this part of the levy for 2006-07.
  - 8.6.2 **Other expenditure levy**  
The other part (which is referred to as the "other expenditure levy") would cover the remaining budgeted costs and administration, and would be apportioned between the boroughs on their relative Council Tax bases, as at present.
  - 8.6.3 **Civic Amenity/Re-use & Recycling Centre Waste**

It is envisaged that the proposed repeal of Section 1 of the refuse Disposal Amenity Act 1978 will result in: -

1. The categorisation of waste delivered to CA/RRCs falling in line with the recognised national interpretation as set out in the Environment Protection Act 1990 together with the resulting Controlled Waste Regulations 1992.
2. The provision of CA/RRCs to revert to the waste disposal authority as prescribed in Section 51 of the Environment Protection Act 1990.

Whilst, the Council agrees with the reclassification of the waste delivered to CA/RRCs, it is concerned that London Boroughs in JWDA areas should still be able to exercise its local democratic right to continue to operate its own CA/RRCs' sites. Haringey Council has invested significant amount of capital and ongoing revenue in the development of its RRCs in recent years. This investment has enabled the Council to recycle household waste at these sites providing a vital strategic role in Haringey being able to meet the recycling targets set by Government. However, the council does agree with Defra's suggestion, that in order to ensure that these sites remain open to all residents within the NLWA area, the costs for transport and disposal of waste from CA/RRCs' sites should continue to be funded via a council tax base within NLWA's 'other expenditure levy'.

#### 8.6.4 **Non-household wastes**

Separate payment to the Joint Waste Disposal Authorities by their constituent borough councils for the disposal of collected commercial waste under Section 52(9) of the Environmental Protection Act 1990 would continue.

#### 8.6.5 **Recycling Credits**

Payment of recycling credits by the Joint Waste Disposal Authorities to their constituent boroughs would cease, since the tonnage based household waste levy inherently would provide the equivalent financial incentive for the boroughs to undertake recycling. The incentive for boroughs would simply be the reduced levy contribution that would follow from recycling waste and not sending it to the SJWDA.

#### 8.6.6 **Transitional relief**

The consultation paper offers no transitional arrangements. Discussions with DEFRA before and during the consultation meeting on 20<sup>th</sup> September have raised the possibility of statutory transitional relief arrangements being provided to assist constituent borough councils that would be substantially adversely affected by the changed

funding mechanism. DEFRA officials are currently not able to confirm if the Government will be able to support transitional relief financially.

## **9. THE DEFRA PROPOSALS IN PRACTICE**

### **Total amount to be levied**

9.1 If DEFRA's proposals are implemented in time for the setting of next year's budget and levy, the main part of the 2006-07 budget and levy process would be the same as it is now. In other words, as before, the NLWA would agree its budget, including its non-household waste charges, and then decide the total amount to be levied. It is not entirely clear, however, how NLWA should treat any balances. Currently these are taken into account when deciding the total amount to be levied. It appears, however, that in the future these may be apportioned either between the two parts of the levy, or they may be apportioned wholly to either the collected household waste levy or the other expenditure levy. From a practical point of view it would appear best to apportion balances in proportion to the budgeted costs for each element of the levy, i.e. the amount that needs to be financed before applying balances.

### **Fixing the size of the levy's two parts**

9.2 Having agreed the sum to be levied, and assuming no unanimous agreement by the constituent borough councils to do something different, the NLWA would divide the total amount to be levied into two parts. The division would be into firstly the net amount budgeted for collected waste, and secondly for other expenditure.

### **Apportionment of the two levy parts between the constituent boroughs**

9.3 After determining the total amounts of each part of the levy, the previous year's household waste tonnages notified by the constituent borough councils would be used to apportion the household waste levy according to the draft statutory instrument. The Council Tax bases notified by the constituent boroughs would be used to apportion the other expenditure levy.

### **Non-household waste tonnages and charges**

9.4 DEFRA's proposals would result in all the boroughs' delivered waste being paid for on one form of tonnage basis or another. Household waste would be paid for by a levy apportioned on a previous year's household waste tonnage. Non-household waste would be paid for on the tonnes delivered in the year in question, but some agreed method would still be needed to determine boroughs' non-household waste tonnages.

9.5 The NLWA had been working to develop a new, agreed way of assessing the amount of non-household waste contained within the mixed municipal waste stream from each constituent council. This work, however, was subsumed into developing a voluntary tonnage-based levy system. Now that a statutory tonnage-based levy is being proposed, it appears prudent to again postpone detailed discussion on the merits of any change in this area until the effects of the new statutory default levy arrangements are clear.

## **10. FINANCIAL EFFECTS OF PROPOSALS ON NLWA BOROUGHES**

- 10.1 To provide an indication of the effects of DEFRA's proposals, the NLWA has worked out some exemplification's using the Authority's approved budget for 2005/06 and the medium term forecasts for 2006/07 and 2007/08 as reported to the NLWA at its budget and levy meeting on 9 February 2005. In each case the figures have been adjusted to reflect the up-to-date recycling data that has been provided by boroughs to assist with this comparison, the effect of which is to reduce the Authority's recycling credit budget and therefore its levy requirements under the current levy arrangements. No allowance is made for possible revenue balances in 2006/07. The exemplification's are set out at Appendix 2.
- 10.2 For each year, the spreadsheets show the estimated levy payments that would be made by each borough on a council tax basis together with an estimate of the income that each borough would receive based upon each borough's latest estimate of their recycling activity. The net effect is to illustrate the net payment made by each borough to the NLWA. This is set out in table 1.
- 10.3 The information contained in table 1 provides a base for comparing the estimated financial effect on constituent boroughs of Defra's proposals in table 2.
- 10.4 The exemplification's indicate that the financial impact for Haringey is likely to be broadly neutral for the year the changes are proposed, a gain of £25k compared to the current system. In the main only Hackney and Waltham Forest are likely to be disadvantaged in the year of a change in the levy apportionment arrangements.

## **11. RECOMMENDATIONS**

- 11.1 That Members note the proposed changes to the NLWA levy apportionment basis and it's estimated impact for the Council.
- 11.2 That Members confirm the Council's response to the consultation paper which had to be submitted to DEFRA by 28 October 2005.

## **12. COMMENTS OF THE DIRECTOR OF FINANCE**

- 12.1 To provide an indication of the financial effects of the Defra proposals, the NLWA have undertaken some exemplification's using the Authority's approved budget for 2005/06 and medium term forecasts for 2006/07 and 2007/08, which are attached at Appendix 2. These show that the predicted financial effect for Haringey is very broadly neutral. Had the changes happened this financial year the net effect for Haringey would be an additional cost of £80k. For the proposed year of change 2006/07 Haringey would gain by £25k compared to it's share under the old system and for 2007/08, there is an additional cost of £119k. Factors for the annual variances include predicted rates of recycling by boroughs relative to each other and changes in the overall NLWA budgets for the next two financial years.

12.2 The Council's budget setting process for 2006/07 already includes a provision for the impact of these changes, which will be kept under review as the exemplification's are firmed up in the coming months. However, Defra's proposals may result in uncertainty for the constituent borough councils as to the structure and therefore potential amount of the final levy for next year until a very late point in their budget-setting processes.

### **13. COMMENTS OF THE LEGAL ADVISER**

13.1 The Legal Adviser has been consulted in the drafting of this report.

### **14. Use of Appendices / Tables / Photographs**

Appendix 1 – Council's response to the consultation paper.

Appendix 2 – Financial effect on constituent boroughs of the Defra proposals.



Local Authority Funding and Governance Team  
Department for Environment, Food and Rural Affairs  
Zone 7/E14  
Ashdown House  
123 Victoria Street  
London  
SW1E 6DE

28 October 2005

Dear Sir or Madam

**HARINGEY COUNCIL CONSULTATION RESPONSE ON ALTERING THE STATUTORY JOINT WASTE DISPOSAL AUTHORITY FUNDING MECHANISM**

Haringey Council is pleased that the Government has come forward with a consultation on changing the default apportionment of Joint Waste Disposal Authorities funding basis from a Council Tax basis to a tonnage basis.

The Council supports this on the basis that the current Council Tax base is unsatisfactory and bears no direct relationship between the expenditure incurred in disposing waste from each borough and the levy that each borough pays. Furthermore the proposals would accord with the “producer pays” principle, would give boroughs more control over their own costs and would encourage efficiency, recycling and waste minimisation generally.

The Council is pleased too that your officials were able to come to North London to set out the Government’s views and to listen to the NLWA and Borough views first hand. This aspect of the consultation is very much supported by the Council and we would prefer this approach again on any future Government consultation processes.

The Council supports the view expressed by NLWA that any new regime provides a certain, unambiguous funding base for this essential public service. In this regard the new default arrangements must be very clearly expressed, so that there is no scope for interpretation or challenge to any decision-making processes and their implementation. The continuing freedom to implement any alternative cost apportionment system that gains unanimous local approval should remain the avenue to correct any new imbalances that emerge over time.

The Council also sets out in Appendix A answers to your direct questions. Appendix B is other comments, observations or requests that relate to the proposed change.

Yours sincerely,

Cllr Peter Hillman  
Executive Member for Environment and Conservation

## Appendix A

### DEFRA Questions

**Q.1 Do you consider, in principle, that introducing a tonnage-based levy to be the best way of introducing a link between the size of the levy on the waste collection authorities and the amount of waste they deliver to JWDAs for disposal? If not, please give reasons**

A.1 Yes. The principle of a tonnage-based levy is supported by the Council.

**Q.2 Do you agree that the other elements of the JWDAs costs, aside from disposal costs, such as administration costs and the costs of running the JWDA civic amenity sites should be excluded from the new funding mechanism and instead continue to be funded through a levy based on the current council tax base? If not, please state how these costs should be funded.**

A.2.1 The Council is of the view that wherever possible all costs should be funded through the tonnage-basis, except for the costs of the transport & disposal of wastes from Civic Amenity Sites / Re-use and Recycling Centres (CA/RRC's) operated by councils to satisfy our duty under S.1 of the Refuse Disposal (Amenity) Act 1978 (RDA). This will ensure that there is no financial incentive on Councils to impose "residents only" restrictions on their sites, for fear of paying for waste from other areas.

A.2.2 It is envisaged that the proposed repeal of Section 1 of the Refuse Disposal Amenity Act 1978 will result in: -

1. The categorisation of waste delivered to CA/RRCs falling in line with the recognised national interpretation as set out in the Environment Protection Act 1990 together with the resulting Controlled Waste Regulations 1992.
2. The provision of CA/RRCs to revert to the waste disposal authority as prescribed in Section 51 of the Environment Protection Act 1990.

Whilst, the Council agrees with the reclassification of the waste delivered to CA/RRCs, it is concerned that London Boroughs in JWDA areas should still be able to exercise its local democratic right to continue to operate its own CA/RRCs' sites. Haringey Council has invested significant amounts of capital and ongoing revenue in the development of its RRCs in recent years. This investment has enabled the Council to recycle household waste at these sites providing a vital strategic role in Haringey being able to meet the recycling targets set by Government.

A.2.3 The Council is disappointed that the Government has decided not to harmonise non-household waste charging provisions and has thereby missed an opportunity to have a flat rate for household and non-household waste. As a consequence of this, the debate about the different systems used by WDAs to assess the amounts of non-household waste in the mixed municipal waste stream, and the impact this has on the reliability of household waste BVPIs, will remain unresolved.

**Q.3 Do you agree that the Secretary of State should remove the duty for all JWDAs to pay recycling credits to their collection authorities? If not, please give reasons.**

A.3.1 Yes, as the avoided cost of disposal under a tonnage based levy will fall to the boroughs and a direct relationship will be forged between recycling and waste disposal costs.

A.3.2 By definition, this must also apply to recycling and composting services that the NLWA contracts for when the Authority is calculating each Borough's proportions of future levies.

**Q.4 If the levy default were changed to a tonnage basis, do you agree that the levy should be based on historical data of waste volumes delivered to the JWDA from previous years? If not, please give reasons.**

A.4 Yes (assuming DEFRA means waste tonnages rather than waste volumes as above), because there must be a firm foundation for the levy that must be capable of resisting challenge. The use of the most recent audited data would offer certainty around the figures being used. The use of more recent un-audited/estimated figures would benefit authorities whose recycling rates are increasing quicker but the figures are capable of being challenged. Also at some point these figures would have to be compared with final audited figures and adjustments made if different.

**Q.5 If a tonnage-based levy was introduced, do you agree that the method of calculation should be left to individual JWDAs? If not, please give alternative.**

A.5 No. A clear statutory default position is essential so that it can be reliably applied without risk of challenge and so that an essential public service can be reliably provided. This should be achieved by the statutory instrument unambiguously stating the areas of expenditure that should be allocated to the tonnage-based “pot”, and saying that all other expenditure should go to the Council Tax “pot”. If, for technical reasons, this is not wholly possible, it must be clear that any decision that has to be made about the allocation of any area of expenditure to the tonnage-based “pot” or the Council-Tax based “pot” must clearly be a majority decision of the SJWDA alone.

It must also be clear and unambiguous if it is the Government’s intention that appropriate resolutions would have to be passed separately by all seven constituent borough councils for an alternative to the default to be applied, rather than being able to rely on a unanimous vote at the relevant meeting of the SJWDA.

**Q.6 Noting the potential for some JWDAs and their constituent authorities in moving to a tonnage-based levy in April 2006, do you consider there to be any action that Government should take centrally to assist with the transition. If so, please give details.**

A.6 Yes. The Government has previously recognised the need for better financial planning in local government (and beyond) by introducing three-year spending reviews. Given this consultation’s short timescale and the immediacy and magnitude of change, the Government needs to give direct transitional relief to those Boroughs which will suddenly have to find significant additional funds.

## Appendix B

### DEFRA Annex B - Draft Statutory Instrument

7. Clause 3(4) – the timetable for notifying the constituent borough councils of the size of the levy by 10<sup>th</sup> March is the same as in the 1985 Order, but this was recognised as impractical and amended by the Levying Bodies (General) Regulations 1992 (LBGR 1992) to 15<sup>th</sup> February. The draft SI must be amended to the 15<sup>th</sup> February as being the latest date for notifying constituent boroughs of the size of the levy otherwise boroughs could have major problems in meeting their statutory deadlines for setting their budget and Council Tax. A date earlier than 15<sup>th</sup> February would also be very helpful to the boroughs.