

<b>Cabinet Member for Environment</b>	<b>Ref No: ENV11 (18.19)</b>
<b>January 2019</b>	<b>Key Decision: Yes</b>
<b>Revisions to Recycling related Payments</b>	<b>Part I</b>
<b>Report by Executive Director of Economy, Infrastructure and Environment and Director of Energy, Waste and Environment</b>	<b>Electoral Divisions: All</b>
<p><b>Summary</b></p> <p>This report proposes to terminate the current Memorandum of Understanding (MoU) financial arrangement which settles recycling incentive payments to West Sussex Districts and Boroughs (D&amp;Bs) and to adopt a new approach from 1st April 2019 for up to one year. The future arrangements for incentivising improved recycling levels will be developed during that year with Districts and Boroughs.</p> <p>The County Council has no duty to pay any form of recycling credit for material delivered by the D&amp;Bs directly or indirectly to the Materials Recycling Facility (MRF). Nevertheless the County Council proposes to continue to make payments to the Districts and Boroughs in 2019/20 based on a published benchmark calculation per tonne of recyclate collected, to enable the transition to the future scheme.</p> <p>The mechanism and funding arrangements from 2020/21 will be reviewed and determined at a future date and will be informed by:</p> <ul style="list-style-type: none"> <li>• Changes in producer responsibility funding for household recycling collection and processing signalled in the Government's Policy Paper "Our Waste, Our Resources, a Strategy for England" (published on 18 December 2018);</li> <li>• Any proposals that emerge and can be agreed from discussing performance improvements with the D&amp;B partners;</li> <li>• Statutory obligations; and</li> <li>• Overall affordability, given the County Council's projected financial position.</li> </ul> <p>The County Council intends to fund the baseline waste partnership support and joint projects in 2019/20. Future partnership project arrangements will be considered as part of the above review and funding will need to be fairly shared.</p> <p>Although it has no direct impact on the County Council's contractual arrangements, the Memorandum of Understanding is referred to in both of the major contracts for waste services and these references should be amended or removed.</p>	
<p><b>West Sussex Plan: Policy Impact and Context</b></p> <p>This decision would support the objective of reducing waste to landfill by encouraging and agreeing with the District and Borough Councils the manner in which they focus their efforts in support of the County Council to improve waste diversion from landfill and improve recycling levels.</p>	

## **Financial Impact**

The financial impact for the County Council in 2019/20 would be a saving of c£1m, based on the total amount paid to the District and Borough Councils in 2017/18. The actual saving versus this year's spending will depend on the tonnages of material collected by the District and Borough Councils and the value of recycle in 2018/19.

## **Recommendations**

It is recommended that:

(1) The County Council formally notifies all of the County's District and Borough Councils of the termination of the current Memorandum of Understanding (MoU) funding arrangement.

(2) The County Council proposes a payment to be made to waste collection authorities of £61.12 per tonne for the financial year commencing 1<sup>st</sup> April 2019.

(2) The Director of Energy Waste and Environment is authorised to work with District and Borough partners on an alternative approach to any payments related to improved recycling performance from 2020/21. This is to take into account:-

- (a) Changes in producer responsibility funding for household recycling collection and processing signalled in the Government's Policy Paper "Our Waste, Our Resources, a Strategy for England" (published on 18 December 2018) ;
- (b) Any proposals that emerge from discussing performance improvements with the D&B partners;
- (c) statutory obligations; and
- (d) Overall affordability, given the County Council's projected financial position.

(3) Authority is delegated to the Director of Law and Assurance to settle arrangements for the removal of references to the MoU in the Materials Resource Management Contract and the Recycling and Waste Handling Contract.

## **PROPOSAL**

### **1. Background and Context**

- 1.1 The Environmental Protection Act 1990 introduced the concept of Waste Disposal Authorities (WDAs) incentivising Waste Collection Authorities (WCAs) to increase recycling, thereby diverting from landfill material which could otherwise be recycled and producing a net saving.
- 1.2 In 2006 the Government encouraged local authorities to come to their own arrangements but set out a calculation method in the Environmental Protection (Waste Recycling Payments) Regulations 2006 ("the Regulations") and a benchmark rate applicable where the standard calculation is not feasible. The calculation method or benchmark rate would apply if no such

agreement was reached or in place. At 2019/20 levels the benchmark rate would amount to £61.12 per tonne.

- 1.3 A local scheme was agreed by the West Sussex Waste Partnership (WSWP) around 10 years ago. In other counties such schemes tend to involve either the WDA paying for the infrastructure to allow WCAs to deposit material in lieu of any recycling credit (e.g. Hampshire, Lancashire, Leicestershire), or a continuing system which pays on a per tonne basis at, or around, the level stipulated in the Regulations (e.g. Somerset, Gloucestershire). In West Sussex the agreement involved both these elements which represents a more generous arrangement than the Regulations require.
- 1.4 Legal advice taken by the County Council has confirmed that the County Council, having provided the MRF / Transfer Stations for D&Bs to deliver to, has no duty to provide payment to support the cost to the collection authorities of collecting that recycle (save in respect of the statutory "tipping away" liability arising where such facilities are located far from the area of the relevant WCA).
- 1.5 The principal purpose of recycling credits is to encourage recycling by compensating WCAs for the costs that they incur in recycling activities which serve to reduce the expenditure of the waste disposal authority. The payments should therefore lead to improved recycling levels as the recycling credits should be aimed at compensating costs which achieve that aim.
- 1.6 While the current scheme may have driven improved performance initially, performance overall, and on a council by council basis, is poor compared to comparator authorities as shown in Table 1 below (residual waste being the waste not recycled or reused). A principal purpose of the MoU arrangements was to drive improved performance. However performance (with the recent exception of Horsham who would be least impacted by the proposal) has stagnated in recent years. At a countywide level the high level of financial support has had no discernible significant impact on performance over a long period. Therefore the enhanced level of payment through the current MoU cannot be justified.

Table 1

## Residual Household Waste per household (Kg per Household) NI191

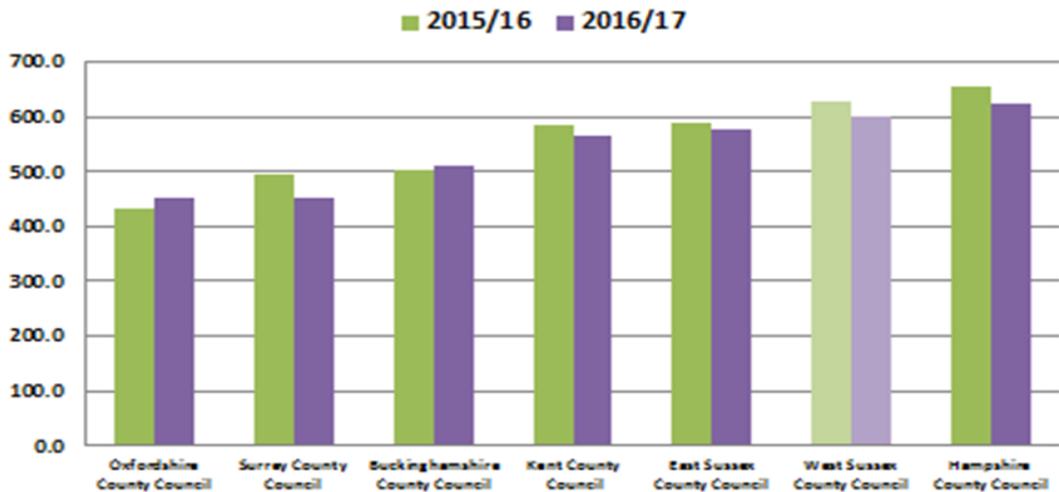
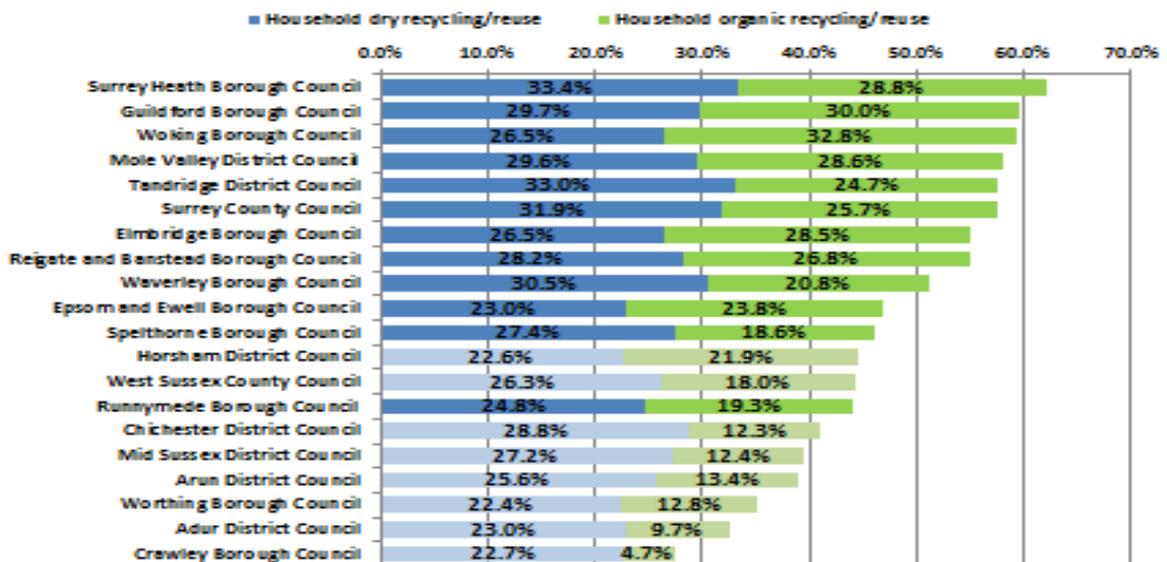


Table 2 below shows how WSCC’s D&Bs compare to Surrey local authorities. Surrey is used as comparator as they are a neighbouring county and although they are demographically on average a more affluent county it is striking that all bar one of the Surrey District and Borough (D&B) Councils perform better than all of the West Sussex D&Bs and in many cases markedly so.

Table 2

## 2016/17 Overall Recycling Rate NI192



## **2. Proposal Details**

- 2.1 This proposal is intended to reset the baseline on which any payments to Districts and Boroughs are calculated pending the settling of a new funding formula to support improved performance outcomes across West Sussex.
- 2.2 It is proposed that the County Council withdraws from the current Memorandum of Understanding (MoU) funding arrangement and, from 1<sup>st</sup> April 2019, proposes and adopts a recycling incentive payment based on the published benchmark rate contained in the Environmental Protection (Waste Recycling Payments) Regulations 2006 for one year.
- 2.3 A new and much more straightforward MoU is in the course of drafting by the WSWP partners and it is proposed that this MoU should take over from the one year arrangement if the terms agreed meet the objectives of improving overall performance and optimising spend.
- 2.4 When first settled, the terms of the Council's two major waste contracts (residual and recycling) each included references to the inter-authority MoU. These references have no material relevance for the operation of these two contracts and were included for information only. It is proposed that all references to the MoU are deleted from the two principal contracts by agreement through a Deed of Variation or such other form as the providers are content with. It is not proposed that references to the revised arrangements be included in the contracts.
- 2.5 The proposal would deliver an estimated saving of c£1m compared to the figure for the last full year available (2017/18) and adjusted for the 3% uplift in the benchmark rate applicable from April 2019. The actual level of this saving will be dependent on tonnages collected and recycle prices. Currently any shortfall or increase in budgeted income is shared with the District and Borough Councils. As the proposal adopts a different baseline tonnage rate calculation it will not include the current agreement for shared risk in terms of income. Under the new arrangements the risk of any variations in income levels would fall entirely to the County Council.
- 2.6 Under the proposal the Council intends to fund the baseline WSWP partnership support and core joint projects in 2019/20 in order not to lose the benefit of these to the whole partnership. Future partnership project arrangements will be considered as part of the above review and funding must be fairly shared.

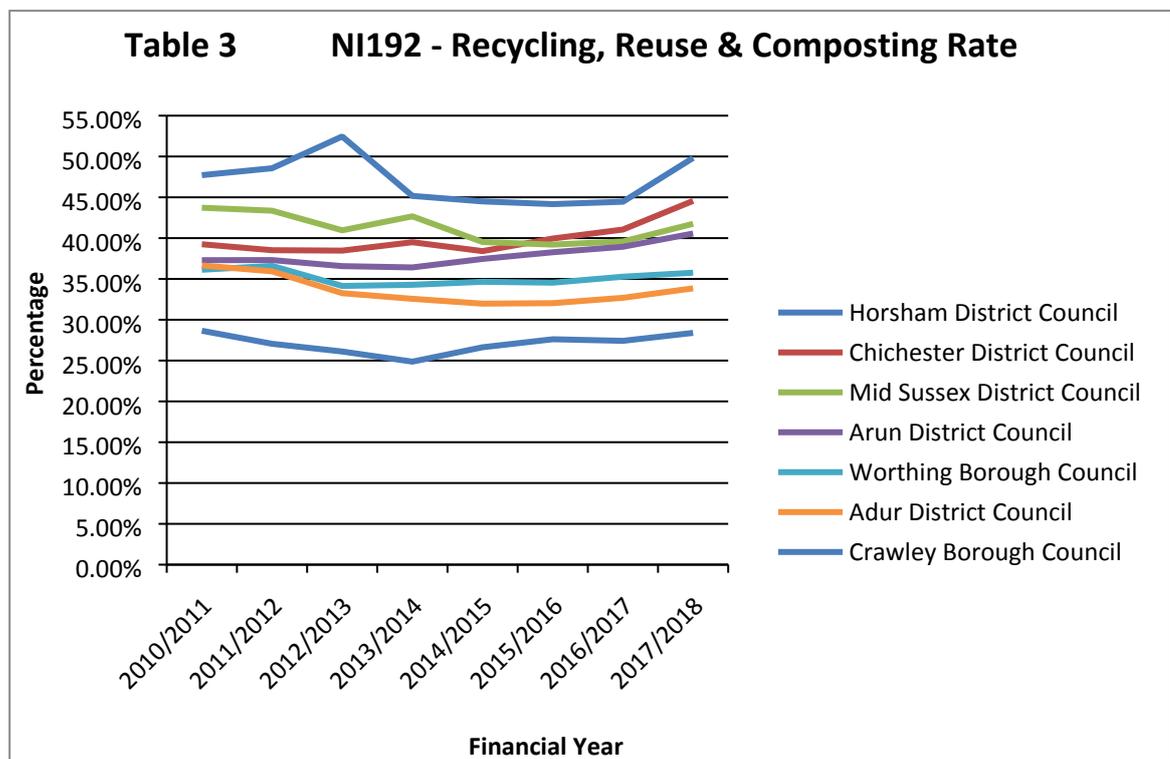
## **FACTORS TAKEN INTO ACCOUNT**

### **3. Policy landscape**

- 3.1. There has been considerable policy movement at Government level in the last few months. This has largely been linked with the adoption of the EU Circular Economy Package which contains ambitious targets to recycle more (55% by 2025 and 65% by 2035 with a requirement in the package to collect biowaste (interpreted to mean food waste) separately by 31<sup>st</sup> December 2023). The Policy Paper "Our Waste, Our Resources, a Strategy for England"

(published on 18 December 2018) provides the latest word from Government on these issues. .

- 3.2. The County Council welcomes recent policy developments and discussion with several D&B partners about potential changes to collection arrangements to improve performance and food waste/absorbent hygiene product trials.
- 3.3. If we do not move to a new service model there is no real prospect of improving performance across West Sussex to meet the expected challenging recycling targets. Improved recycling has both carbon and landfill reduction benefits and would contribute to driving down the total system cost to West Sussex council tax payers.
- 3.4. There is renewed public interest in recycling as a result of significant levels of media items relating to global pollution levels and specific examples such as Blue Planet and Sky Ocean Rescue's #PassOnPlastic campaign.
- 3.5. There is no evidence that funding through the current support mechanism is being used by D&B partners to invest in improved recycling performance through system improvements. Recent overall recycling rate improvements in West Sussex have largely been due to diversion of more material from household waste recycling sites. Table 3 below illustrates that D&B annual average recycling rates in the period up to 2016/17 did not vary greatly from 2010/11 with no sustained "step changes" which would be indicative of innovation. Improvement in 2017/18 coincided with WSCC arranging for D&B street sweepings to be recycled / composted which required no investment from the other partners. Horsham introduced their new Alternate Weekly Collection based service from February 2018.



#### **4. Consultation**

- 4.1 The potential for the County Council to apply the benchmark rate identified in the Regulations was raised with the West Sussex Waste Partnership in the spring of 2018. Debate was largely around the timing and whether there would be a new agreement in place before withdrawing from the MoU.
- 4.2 In view of the potential for encouraging the separate collection of food waste and absorbent hygiene products, the need for tangible outcomes from the Council's financial support to the collection authorities and the need for certainty over the County Council's budget position, the proposal was discussed and supported at a briefing of Cabinet Members.
- 4.3 Key officers at District and Borough Council partners were sent a position paper in July 2018 outlining the County Council's rationale and proposal to introduce a revised recycling incentive payment calculation from April 2019.
- 4.4 The West Sussex Chief Executive Board (formal meetings of the County Council and District and Borough Council chief executives) was briefed on this proposal on 25<sup>th</sup> July 2018 in order to alert and allow our District and Borough Council partners to include this proposal in their Medium Term Financial Strategy (MTFS) planning assumptions.
- 4.5 The County Council's position was outlined prior to, and discussed at a meeting of the leaders of the County Council and all of the District and Borough Councils on 23<sup>rd</sup> November 2018. It was agreed to discuss future strategy for collection and disposal early in 2019.
- 4.6 Officer representatives from the D&Bs have, at their suggestion, been invited to join a partnership working group to look at a new local performance mechanism that could be agreed between the partners in due course. The principal shared objective is to develop a new fairer scheme that rewards performance and optimises system costs. If agreed by all partners, this could, in due course, supersede the proposal recommended here.

#### **5. Financial (revenue and capital) and Resource Implications**

##### *5.1 Revenue consequences of proposal for the County Council*

	Current Year 2018/19 £m	Year 2 2019/20 £m	Year 3 2020/21 £m	Year 4 2021/22 £m
Revenue budget	£5.6m	£5.6m	£4.6m	£4.6m
Change due to proposal	0	(£1.0m)	TBC	TBC
Remaining budget	0	£4.6m	TBC	TBC

Additional implications in relation to the use of income from sold recyclate are covered under the risk management section in paragraphs 7.4 and 7.5 below.

5.2 Revenue consequences for District and Borough Councils based on 2017/18 payments and tonnages

**Table 4: Impact of changes on each District and Borough Council**

	Household Allocation <sup>1</sup>	Performance Allocation <sup>2</sup>	Total	Proposal	Variance
	£m	£m	£m	£m	£m
Adur & Worthing	£0.77	£0.25	£1.018	£0.880	-0.138
Arun	£0.73	£0.26	£0.989	£0.882	-0.107
Chichester	£0.56	£0.29	£0.854	£0.770	-0.084
Crawley	£0.44	£0.23	£0.669	£0.458	-0.211
Horsham	£0.60	£0.28	£0.887	£0.821	-0.066
Mid Sussex	£0.62	£0.29	£0.909	£0.813	-0.096
Total Payments	£3.73	£1.60	£5.326	£4.624	-0.702
Waste Minimisation Projects and Initiatives			£0.331	£0.000	-0.331
<b>Total Budget</b>			<b>£5.657</b>	<b>£4.624</b>	<b>-1.033</b>

<sup>1</sup>The Household allocation is based on the number of properties in each District or Borough.

<sup>2</sup>The performance allocation is calculated as recycle tonnages per household for the previous year.

There are no capital implications.

## 6. Human Resources, IT and Assets Impact

There are no known human resources, IT and / or asset implications for WSCC nor any raised by the D&B partners.

## 7. Legal Implications

7.1 The potential legal implications fall into two broad categories: (1) the relationship between the County Council and the District and Borough Council partners; and (2) the contractual obligations of the County Council to the principal contractors in the Materials Resource Management Contract (MRMC) and the Recycling and Waste Handling Contract (RWHC).

7.2 All iterations of the MoU are explicitly non-binding. It is therefore both lawful and reasonable for the County Council to withdraw from and effectively bring the MoU to an end. In any event the County Council has given the collection authorities ample notice of its proposed course of action. A new, much more simple, MoU is being drafted with input from the Strategic Waste Officers Group (SWOG).

- 7.3 Legal advice taken by the County Council has confirmed that there is no statutory duty to pay any form of recycling credit in respect of recyclable material that is delivered by the D&Bs directly or indirectly to the MRF.
- 7.4 The new funding arrangement and the new MoU would need to address the proposals for and the measures to be agreed for achieving the collective aims of improved performance in reduction of residual waste and the diversion of residual waste to reuse or recycling. .
- 7.5 The potential impact on the County Council's obligations under the principal contracts is that both contracts have referenced or embedded a version of the MoU. It is proposed that we seek to remove these references by Deed of Variation. It is not anticipated that such a variation would be contentious.

## **8. Risk Assessment Implications and Mitigations**

- 8.1 There are no new corporate risks. The following service risks are identified:
- 8.2 Legal challenge by the District and Borough Councils. As outlined above all iterations of the MoU are explicitly non-binding and the legal position is clear in that the County Council is not obliged to pay statutory recycling credits in respect of recyclable materials delivered by the D&Bs, directly or indirectly, to the MRF. The County Council is willing to work on a new local formula that reflects improved performance.
- 8.3 As there are no operational changes proposed, the District and Borough Councils would continue to have free access to the Ford MRF under this revised proposal. The County Council could protect itself from any proposal of the D&Bs to use an alternative outlet for recyclables by exercising its statutory powers to direct a Waste Collection Authority to deliver material to a designated delivery point. It is not considered necessary to do so at this point.
- 8.4 Income risk - This proposal transfers all the (upside and downside) recycle income risk to the County Council. In the past 2 years the total levels of recycle income have exceeded the modelled expectation by £0.5m (2016/17) and £0.4m (2017/18). This income was shared 75:25 in favour of the District and Borough Councils. Under the proposed arrangements this income would be fully retained by the County Council. Currently any shortfall in income against modelled expectations would largely impact on the District and Borough Councils (as to 75%) but the proposed model would fully expose the County Council to the volatility of the recycle market.
- 8.5 Under the current arrangement the value of recycling incentive payments that are made to the D&B's is calculated using funding defined mechanism and currently around £2m of income from sale of recycle. If the value of the income falls then the proportion of payments to the collection authorities funded from income reduces. Where income is greater than the base sum above then additional funds are paid to the collection authorities. Under the proposed arrangements because the rate paid to the D&Bs would be linked to the amount recycled and not linked to the amount received in income, any

shortfall or growth in income would be met by or due to the County Council. Income levels are expected to show a small reduction.

## **9. Other Options Considered**

- 9.1 Do not adjust the funding mechanism until after District and Borough Council partners have committed to a new service model and a revised funding mechanism has been agreed. This is not recommended on the basis that actual, rather than promised, innovation and improved performance should be incentivised. The beneficial outcomes would therefore be delayed.
- 9.2 Withdraw all current non-statutory incentive payments and rely on the infrastructure investment that the County Council has made and continues to make. At least two other County Councils have successfully adopted this approach. This is not recommended at this point as it would be counter-productive to the overall strategy and desire to work progressively with the District and Borough Councils. However the County Council will need to consider overall affordability, given WSCC's projected financial position.
- 9.3 Reduce funding by some other amount other than the methodology proposed. As the County Council is not obliged to pay a recycling credit in respect of materials delivered to the MRF, it could choose to decouple payments from the proposed benchmark (derived from the Regulations). This approach has not been adopted since the County Council's preference is for a rational and clear baseline rate for recycling incentive payments that is recognised as an industry benchmark and to provide a level of funding and financial certainty during the development of and transition to a new regime.
- 9.4 Most costs of the waste service are demand led and we have little control over the amount of waste generated. The Director of Energy, Waste and Environment and the Waste Team continue to look at other ways of reducing the cost of the service through contract reviews which would not impact on the public as service users or the WCAs. There would be the associated formal contractual implications which would require a longer lead-in period.

## **10. Equality and Human Rights Assessment**

There are no known Equality and Human Rights Act implications.

## **11. Social Value and Sustainability Assessment**

There are no known social value implications.

In terms of sustainability there should be no impact on waste diversion or recycling rates in the short term. In the long term we are aiming to improve performance and carbon balance due to improved recycling and reduced waste diversion.

## **12. Crime and Disorder Reduction Assessment**

There are no known Crime and Disorder Act implications.

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**Appendices**

None

**Background papers**

Memoranda of Understanding