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| <b>Committee(s):</b>   | <b>Date(s):</b>     |
| Port Health and Environmental Services   | 20 January 2015     |
| <b>Subject:</b><br>Household recycling services and the requirements of the Waste Regulations 2011 (amended 2012) "TEEP" | <b>Public</b>       |
| <b>Report of:</b><br>Director of the Built Environment   | <b>For decision</b> |

### **Summary**

Your Committee received a report from the Director of the Built Environment on 18 November 2014 providing information regarding the Waste (England and Wales) Regulations 2011, which transpose the revised Waste Framework Directive 2008/98/EC2 (rWFD) into English legislation. The legislation brought in to law the "waste hierarchy" and a requirement to separately collect four types of recyclate unless it can be shown that this would not be Technically, Environmentally or Economically Practicable (TEEP).

City Officers subsequently commissioned the specialist waste industry consultancy Eunomia Research & Consulting to complete an independent assessment of our recycling collection methods and advise in relation to compliance with the TEEP regulations. Eunomia's report has now been received and advises that:

- The Corporation's efforts to encourage waste prevention, reuse and recycling mean that it is compliant with its waste hierarchy obligations, although some administrative actions are recommended.
- Separate collection is required only if, in terms of the law, it is both "necessary" and "technically, economically and environmentally practicable".
- The advice received is that separate collection is:
  - Necessary, because it would improve the quality of recycling;
  - Technically practicable, although it presents significant difficulties; and
  - Environmentally practicable, because separate collection would yield greater carbon dioxide savings than co-mingled collections.
- However, separate collection would be approximately £440K (72%) more expensive than the current collection system. A system in which paper and card are collected separately from other materials would be £130K (21%) more expensive than the current system. These additional costs would be attributed to increased staff, vehicles, depot, treatment and processing costs. This represents an excessive cost for the Corporation, and means that separate collections are not economically practicable.

There would also be substantial transitional costs (recruiting staff, setting up new materials contracts and legal and compensation costs associated with halting or amending the current contract with Amey) for the Corporation to bear due to the need to amend its collection contract with Amey, which is due to continue until 2019.

### **Recommendation(s)**

Members are asked to:

- Note the report; and

- Approve the recommendation that any separate collection for paper, plastic, metals and glass is currently not economically practicable.

## **Main Report**

### **Background**

1. The City currently collects Dry Mixed Recycling (DMR), comprising of paper, plastic, metal and glass, using a comingled process. The DMR is then transported to an external Materials Reprocessing Facility (MRF) to be separated into individual recyclable material streams.
2. On 1 October 2012, amendments to the 2011 Waste (England and Wales) Regulations came into force through the Waste (England and Wales) (Amendment) Regulations 2012 which transpose the revised Waste Framework Directive 2008/98/EC2 (rWFD) into English legislation.
3. Regulation 12, which came into force in 2011, places an ongoing requirement on all waste collection authorities to apply the waste hierarchy to all materials collected.
4. Regulation 13 requires that from 01 January 2015 every collector of waste (including the City of London) must collect paper, plastic, metal and glass (the four materials) for recycling. It further requires that this should be by way of separate collection where it is:
  - necessary to facilitate or improve recovery (in effect, to provide high quality recyclates), and
  - technically, environmentally and economically practicable (TEEP) to do so.
5. Interpretation of the Regulations is not straightforward and the way that the rWFD is transposed in the Regulations has been the subject of judicial review. The original wording of Regulation 13 was amended by the Department for Environment, Food and Rural Affairs (DEFRA) and Welsh Ministers in 2012, clarifying that co-mingled Dry Mixed Recycling (DMR) is not a form of separate collection.
6. In the absence of guidance from DEFRA on how to interpret the law, a “Route Map” has been created by a variety of bodies, including Waste & Resources Action Programme (WRAP) and the London Waste and Recycling Board (LWARB) to provide some guidance and interpretations of the likely practical meaning of the law.
7. Your Committee agreed that, in view of the complexity of the law and the uncertainty of its interpretation, it was appropriate to seek external advice. This has now been received from Eunomia. Copies of this full report are available on request.

### **Findings**

8. The review indicates that the waste hierarchy has been given due consideration in the design of the City of London’s service, and that our current system of collections, support for reuse projects and waste prevention campaigns mean that the City of London would be in a good position to respond effectively to any hierarchy-based legal challenges that can reasonably be envisaged.

9. A number of recommendations are made for administrative actions to summarise, plan and monitor future work relevant to our waste hierarchy compliance to ensure that this high level of compliance is maintained. These are detailed in Appendix A and will be included in the City’s Recycling Action Plan which is currently being reviewed.
10. With regard to the legal requirement to separately collect materials, the report examines two options that, while posing logistical challenges, might be feasible to implement – separate collection of three-streams of recycling (paper/card, glass, plastic/metals), and separate collection of two-streams (paper/card and other materials). These options are proposed as those most likely to deliver the necessary level of separate collection to provide the required high quality recycling while overcoming the specific challenges of limited storage space that the City’s housing stock presents for waste collection. Nevertheless, there are concerns as to whether any increase in separation of materials at the point of collection is practicable in the City.
11. Although it would not increase the quantity of recycling, increased separation of recyclables is deemed likely to improve the quality of the materials collected. As a result, separate collection is considered “necessary” within the meaning of the law. However, this position may change if the City is able to establish that the quality of the material produced under its new MRF contract is sufficiently high to meet the quality benchmarks explained in the report.
12. Both the two-stream and the three-stream systems mentioned in paragraph ten appear to be environmentally practicable. However, they would result in an increase in costs of 72% and 21% respectively as detailed in the table below. These costs are considered excessive given the City’s financial constraints and the level of the environmental benefits that could be achieved. Neither system would therefore be economically practicable.

|             | <b>Current<br/>Co-mingled<br/>collection</b> | <b>Option 1:<br/>Separate 4 stream<br/>collection</b> | <b>Option 2:<br/>Separate 2 stream<br/>(paper) collection</b> |
|-------------|--|---|---|
| <b>Cost</b> | <b>£611,959</b>                              | <b>£1,051,528</b>                                     | <b>£742,453</b>   |

13. The overall finding is therefore that, whilst “necessary”, increased separation of materials would not be practicable for economic reasons.

### **Next steps**

14. The TEEP test will need to be reviewed on an ongoing basis. Contracts, material prices or technology may change, removing or introducing barriers to compliance which could change the outcome of the test, and thus the decision reached in the consultants’ report may not hold if there are significant changes in the future.
15. The City will also need to consider the application of the Waste Regulations when future changes to the service are being planned, for example when extending or retendering the waste contract, changing MRF or when material costs significantly change.

### **Financial Implications**

16. Should the committee choose not to confirm the recommendations and opt instead for separate collections detailed, there would be a significant increase in the cost of waste collections ranging from approximately £130,000 to £440,000.

### **Legal Implications**

17. The City should keep and be able to provide for inspection, this report and the modelling work supplied by the Eunomia. This will help the Environment Agency (EA) to understand the basis of the decision-making process that justifies retention of the fully comingled dry mixed recycling service. These records would also be the basis of the City's argument if it was required to demonstrate compliance with the regulations in a court of law.

18. Whilst the EA has finalised and released the regulatory regime they will adopt from January 2015, the legislation will remain open to interpretation until tested and very little statutory guidance from the EA is currently available (despite Regulation 15 making provision for such guidance). Officers will review the City's position as soon as any statutory guidance becomes available.

### **Conclusion**

19. The assessment of the City's waste services with regard to the application of the waste hierarchy indicates that measures have been taken to seek to reduce and reuse a wide range of materials. Residents are able to recycle all commonly recycled materials. While the Corporation will need to continue to undertake action to encourage waste prevention and reuse, the Eunomia report does not identify any additional material collection services that would (in the terms set out in Regulation 12) be "reasonable in the circumstances".

20. City of London Officers agree that, based on the options appraisal undertaken by the consultants, the additional costs of separate collection would be excessive, and that separate collection is therefore not "economically practicable" (in the terms set out in Regulation 13) this justifies making no change to the current waste / recycling collection system.

21. It is proposed this report and the findings of Eunomia's detailed report will form the basis of the Corporation's response to the expected EA request for all Local Authorities (including the City) assessments of their compliance position with respect to the Waste Regulations. Copies of the Eunomia's full detailed report are available in the Member's reading room or upon request.

### **Appendices**

- Appendix A – Eunomia's Report: Waste Hierarchy Recommendations.
- Appendix B – Waste Regulations Compliance Review.

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## **Appendix A - Eunomia's Report: Waste Hierarchy Recommendations**

### Recommendation 1:

The Corporation may wish to produce and maintain an overview, based on Table 3-1, to evidence the actions carried out to implement the waste hierarchy and the rationale for their selection.

### Recommendation 2:

The Corporation may wish to ensure that it has a clear timetable in place showing planned actions relevant to the waste hierarchy.

### Recommendation 3:

The Corporation may wish to put in place documents that explain its rationale for incineration of certain material streams or state why it is not reasonable to take action to move these materials further up the waste hierarchy.

### Recommendation 4:

An analysis of the impact of waste prevention and reuse measures would provide the Corporation with further evidence of the effectiveness of the actions they have taken to apply the waste hierarchy; if this is not deemed feasible, the Corporation should record the reasons why.