

Agenda Item No: **Report No:**

Report Title: **Recycling Credits**

Report To: **Cabinet** **Date:** **23 July 2007**

Lead Councillor: **Collict**

Ward(s) Affected: **All**

Report By: **Chief Executive**

Contact Officer(s): **John Crawford**

Purpose of Report:

To explain the position we have reached with East Sussex County Council (ESCC) over the payment of Recycling Credits.

To explain that the difference between what ESCC is prepared to pay as the default figure under the Regulations and the actual cost per tonne diverted from landfill is currently worth 6.700 tonnes x the difference: (i.e. every £1 the actual figure is above the default figure produces £6,700).

Officers Recommendation(s):

- 1 To note the information given in the report.
 - 2 To receive any update on the response of ESCC and decide what further action it wishes to take.
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1 Reasons for Recommendations

To enable the Cabinet to keep the situation under review because the payment of recycling credits has an impact on the Council's financial ability to extend recycling.

2 Information

2.1 Appendix A to this Report explains what is meant by the term "Recycling Credit" and its relevance to waste collection and disposal. Recycling Credits are payments made by ESCC to the District Councils of East Sussex for each tonne of waste the District Councils divert from the waste stream. ESCC must, by law, make a payment to a District Council for each tonne of recycled material diverted from landfill. In 2006 new regulations were issued by the Government stipulating how recycling credits should be calculated. The effect of those regulations is explained in Appendix A.

2.2 The Regulations provide that the Recycling Credit rate should be the highest cost of disposal incurred by ESCC per tonne of waste material.

ESCC has stated that because it has entered into a “integrated waste management contract” with Onyx (now Veolia) it cannot calculate the cost of disposal per tonne and therefore is entitled to rely on the default figure set out in the Regulations and because it does not incur transport costs and would be entitled to apply the lower default figure of £31.53 per tonne.

- 2.3** Appendix B paragraph 2.2 explains why the County Council has decided to pay slightly more than the lower default figure. By coincidence, the decided rate corresponds to the higher default rate that would apply from April 2006 where transport costs are incurred. We know that transport costs were incurred in 2006/2007.
- 2.4** In 2006, ESCC consulted with the Boroughs and Districts of East Sussex on its proposal to set a rate of £43 per tonne for 2006/07. The District Councils responded to that consultation by questioning why ESCC proposed to use the default figure to justify its calculation of a recycling credit. The Borough/District councils suggested that County should calculate its actual saving at the highest cost per tonne of waste diverted from landfill.
- 2.5** At its meeting on 13 March 2007, the Cabinet of ESCC decided to approve a Recycling Credit rate of £43 per tonne for 2006/07, back dated to 1 April 2006.
- 2.6** In response to the District Councils’ argument, the County Council stated that:
- “The County Council and Brighton and Hove City Council have a joint integrated waste PFI contract with Veolia ES South Downs Limited worth £1bn over 25 years. Under that contract, the Councils make “management payments” to Veolia. These payments are instalments of the total contract costs for the management and disposal of waste, the control and operation of household waste recycling sites and the development, construction and management operation of the proposed waste facilities across the contract area (including East Sussex and Brighton and Hove). These do not reflect disposal costs for East Sussex County Council at the landfill sites and Veolia have confirmed to us that it is not possible to extract a discreet disposal cost from the contract, because it has not been modelled to enable that to happen. The contract itself is available for public inspection on the websites of both Councils, although some of the payment schedules have been withheld to legitimately protect information which is commercially sensitive.”*
- 2.7** Following that decision, the Borough/District Councils asked ESCC if they could see the parts of the contract that have not been made public to verify whether or not the contract enables ESCC to calculate the cost per tonne of waste diverted from landfill.
- 2.8** ESCC declined to give the District Councils copies of the relevant parts of the contract, but said they were prepared to allow two officers, drawn from the Boroughs/Districts, to go to County Hall and look at those parts of the contract under supervision.

2.9 On 21 May, Mr John Magness, Director of Finance and Community Services of Lewes District Council and Mr Steve Linnett, Finance Officer with Wealden District Council went to County Hall to look at the contract. Following that visit, we have concluded that ESCC is able to calculate the cost per tonne of diverting waste from landfill. I have sent to the Chief Executive of ESCC a letter setting out our conclusions. I have suggested that the best way forward would be for ESCC to agree for an independent auditor appointed by the Audit Commission to look at the parts of the contract that have not been made public and give us a definitive answer.

2.10 I will report the response of the County Council to the Cabinet meeting, if I have received a response by that date.

3 Financial Appraisal

This report does not propose any expenditure by the District Council other than a contribution of £1,000 towards an independent audit of the County Council contract. This will be paid from the contingency fund. If the County Council agrees to pay Recycling Credits at a rate equivalent to the full cost of diverting a tonne of waste material from landfill the Council could expect to receive additional income because every £1 the actual figure is above the default figure produces £6,700.

4 Environmental Implications

I have completed the Environmental Implications questionnaire and this Report is exempt from the requirement because it is a progress report/budget monitoring report.

5 Risk Management Implications

I have completed a risk assessment in accordance with the Council's Risk Management Methodology and the following risks and mitigating factors have been identified:

- a If the County Council refuses to accept the arguments that have been put forward on behalf of the District Councils, there is a risk that the District Councils may have to take further action. If that position is reached, quantified assessment risk will be presented to the Cabinet.
- b If the County Council agrees to allow the contract to be examined by an independent auditor appointed by the Audit Commission, the five District Councils would be asked to bear each one fifth of the cost, which would be in the region of £1,000 each.
- c If the District Councils do nothing and continue to be paid at the default rate by the County Council, the most significant risk is that there will be less money available to improve the recycling service.

6 Background Papers

The joint integrated waste PFI contract between Veolia ES South Downs Limited County Council and Brighton and Hove City Council (the parts that have been made public).

7 Appendices

- Appendix A Waste Collection and Disposal – Recycling Credits Scheme
- Appendix B The Report of the director of Transport and the Environment to the ESCC Cabinet on 13 March 2007 - Recycling Credit Payments
- Appendix C Recycling Credit Payments – ESCC Cabinet Minute Extract from the meeting of 13 march 2007.

Waste Collection and Disposal

Recycling Credits Scheme

1. In areas of two tier local government, such as East Sussex, the District Councils collect household waste and the County Council is responsible for disposing of that waste.
2. In 1990, legislation introduced a 'Recycling Credits Scheme' to provide a financial incentive to help District Councils increase the amount of household refuse recovered for recycling. The Scheme provided that a County Council must reimburse a District Council for every tonne of material that the District takes out of the waste stream for recycling. The idea was that the more that Districts could recycle, the less the County Council would have to take landfill, so the County Council would save money. The reimbursement was called a 'recycling credit'.
3. In April 2002, in preparation for the New 'Integrated Waste Management Contract' with Onyx (now Veolia), ESCC asked the District Councils of East Sussex for a statement of their targets for recycling. The target given by Lewes District Council (LDC) was to achieve 27% recycling by 2005/06.
4. The legal position is that unless and until ESCC and the five Districts agree an alternative arrangement, ESCC is legally obliged to pay recycling credits and cannot unilaterally cap the level of recycling achieved by the five Districts nor unilaterally decide that it will not pay recycling credits above that unilateral cap..

The Clean Neighbourhoods and Environment Act 2005 (CNEA)

5. Changes to the Recycling Credits Scheme were introduced by section 49 of the Clean Neighbourhoods and Environment Act 2005. The changes had the following effect:
 - They enabled waste disposal and waste collection authorities in two-tier areas to agree alternative arrangements instead of recycling credits;
 - They gave the Secretary of State powers to make regulations about how recycling credits would be calculated;
 - They confirmed that recycling credits can be paid for material that is recovered for re-use.

6. The flexibility introduced by the CNEA 2005 was intended to allow councils in two tier areas to develop a joint municipal waste strategy tailored to their area that could remove the need for recycling credit payments through an agreed arrangement for cost-sharing.

7. In East Sussex, no alternative arrangement has been agreed and, therefore, ESCC remains liable pay recycling credits to the five Borough/District Councils under the duty contained in Section 52(1) of the EPA 1990. ESCC cannot unilaterally decide that it will not do so.

Calculating the Value of a Recycling Credit

8. The method of calculating the value of a recycling credit is set out in the Environmental Protection (Waste Recycling Payments) (England) Regulations 2006.

9. Under the Regulations, ESCC should calculate the value of a disposal credit in the following way:
From 6th April 2006 by:

- calculating the average cost per tonne of waste disposal for similar waste in 2005/06 using ESCC's most expensive form of disposal as of 31st March 2006.

From 1st April 2007, ESCC should calculate the value of a disposal credit in the following way:

- By calculating the average cost per tonne of waste disposal for similar waste in 2005/06 using the council's most expensive form of disposal in each waste collection area as of 31st March 2006;
- By calculating the average of these values across the County area, to create a single credit value; and
- By increasing the average value by 3% on 1st April 2007 with subsequent increases by 3% of the compounded figure on 1st April each year. This is open to review by Government if there were circumstances where inflation were to rise substantially over 3%.

10. The Regulations provide a default position. They state that that if a County Council cannot determine its net saving per tonne of diverted waste, because sufficient accurate information is not available or could only be obtained at a disproportionate cost, the County Council's net saving of expenditure is deemed to be £41.62 per tonne inclusive of transport costs or £31.53 per tonne if no transport costs are incurred in disposing of the waste. This default figure must be increased by 3% on 1st April of 2007, with subsequent increases by 3% of the compounded figure on 1st April every following year.

Calculating the cost per tonne of waste material.

11. In calculating the average cost per tonne of disposing of waste material in 2005/06 ESCC must take into account:

- the market value at the relevant time of any of its assets (including land) used in connection with disposal of that waste;
- any expenditure incurred by the authority in operating any site or transfer station used in connection with the disposal of that waste;
- any transport costs incurred by the authority in relation to that waste;
- any expenditure which will be incurred in closing, restoring and subsequently maintaining any site belonging to the authority which is used for the disposal of that waste; and
- any other expenditure incurred by the authority in relation to that waste.

Collection Credits

12. A District Council (waste collection authority) can pay to another party who collects recyclable material the net saving to the District arising from the third party's collection activity.

End

APPENDIX B

Report to **Cabinet** Agenda Item
Date **13 March 2007**
Report By **Director of Transport and Environment**
Title of Report **Recycling Credit Payments**
Purpose of Report

To seek approval to raise the recycling credit payment rate for the financial year 2006/07, to pay recycling credits to third parties and to

RECOMMENDATIONS:

The Cabinet is recommended to approve:

1. an increase in the level of recycling credit payments to £43 per tonne from 1 April 2006;
2. the payment of recycling credits payments to third party recyclers from 1 April 2007; and
3. the payment of re-use credits to Waste Collection Authorities (WCA's) from 1 April 2007.

1. Financial Appraisal

1.1 The recommendation in this report to raise the level of recycling credit payments to £43 per tonne in 2006/07 would cost the County Council an additional £266,900 per annum at 2006/07 prices. This is based on an estimated 45,100 tonnes of recycling for the year across all Waste Collection Authorities (WCA's) and is subject to an annual increase of 3% per annum in line with the Department of the Environment Food and Rural Affairs (Defra) guidance.

1.2 The table below compares payments at current inflated prices with those proposed in this report for each of the WCA's, based on estimated annual tonnages.

	Eastbourne Borough Council	Lewes District Council	Wealden District Council	Rother District Council	Hastings Borough Council	Rate per tonne	Total Cost
	£	£	£	£	£	£	£
Current	263,300	248,400	775,000	218,800	166,900	37.08	1,672,400
Proposed	305,300	288,100	898,700	253,700	193,500	43.00	1,939,300
Difference	42,000	39,700	123,700	34,900	26,600	-	266,900

1.3 The proposed rate represents an increase of nearly 20% and is higher than the rate per tonne recommended in Defra's guidance, for those authorities who cannot calculate a cost of disposal (see paragraph 2.4 below).

1.4 In addition, it is expected there would be an additional payment of some £25,800 per annum to cover recycling credit payments in respect of new schemes, based on an estimated 600 tonnes per annum. This would include schemes operated, for example, by Scout Groups or registered charities.

1.5 The financial implications of introducing re-use payments (waste diverted from the waste stream and re-used in its current form) as recommended by Defra would amount to some £4,300 per annum based on an estimated 100 tonnes.

1.6 While these changes represent a total additional cost of some £300,000 per annum at 2006/07 prices, they remain affordable within the context of the Corporate Waste Reserve.

2.1 The payment of recycling credits is a statutory duty requiring payment to be made by the Waste Disposal Authority (WDA) to a Waste Collection Authority (WCA) (the Borough and District Councils) when the WCA diverts waste from the household waste stream for recycling. In the last financial year (2005/06) the recycling credit payment rate was £36.00 per tonne.

2.2 Defra Guidance was issued in April 2006 (available in the Members' room) and states that from April 2006 to March 2007, the value of the credit will be based on the most expensive form of disposal used in each WCA area but capped at 2005/06 levels with future increases of 3% per annum to keep pace with inflation. Further, from April 2007, the value of the credit should be based on the average cost of the most expensive form of disposal across a whole WDA area, creating a single credit value for the whole area. Again, this will continue to be capped at 2005/06 levels with 3% increases per annum. The guidance goes on to state (paragraph 6.5) that where the disposal cost is not known or is impossible to calculate, authorities may use default figures published in the schedule to the Regulations. There are two recommended default figures, £41.62 per tonne for those WDA's who incur transport costs, and £31.53 per tonne for those who don't. The County Council does not incur transport costs so arguably the lower rate could apply. However, the County Council wishes to encourage recycling and is already paying a higher rate than the lower default rate for recycling credits. We therefore adopted the higher figure, plus 3% for inflation which came to £42.87, and then rounded this up to reach the proposed £43.00 per tonne.

2.3 Under the County Council's integrated waste management services contract (IWMSC) the disposal cost is not separately identifiable.

2.4 The County Council carried out a consultation exercise with the WCAs. The outgoing consultation letter from the County Council, replies from the WCAs and the County Councils response to the comments are included in Background Papers, available in the Members' room. The County Council reviewed the comments made, which mainly questioned how the level was calculated and has responded. The County Council has also met with all the Borough & District Councils. (Appendix 1 below provides a summary of the consultation comments and responses).

2.7 The guidance also encourages payment of recycling credits to third parties for recycling and re-use activity, which are calculated in the same way as for local authorities.

3. Environmental Issues

3.1 The encouragement of recycling and reuse ensures that household waste is dealt with by more environmental methods rather than being sent to landfill and provides a benefit to our local community by the creation of jobs both in the collection and processing of materials.

4. Conclusion and Reason for Recommendation

4.1 The Council is committed to partnership building and assisting the recycling activities of the WCAs and third party recyclers. In addition, the County Council wishes to comply with

the Guidance. Hence it is proposed that the recycling credit payment should be made at a rate of £43 per tonne from 2006/07.

BOB WILKINS
 Director of Transport and Environment
 5 March 2007

CAB: 13 MARCH 2007 – RECYCLING CREDIT PAYMENTS

Contact Officer: Martyn Perry Tel. No. 01273 482218
 Local Member: All

BACKGROUND DOCUMENTS

Defra guidance on the Recycling Credit Scheme – April 2006
 Statutory Instrument 2006 No 743 (The Environmental Protection (Waste Recycling Payments) Regulations 2006
 Consultation correspondence on the level of payment for recycling creditEnd**Appendix 1**
Summary of consultation correspondence during December 2006/January 2007

Date	From	To Whom	Summary of correspondence
14 December	Letter from ESCC (WDA)	All WCAs (Chief Officers)	Informing them of proposed report
18 December	E-Mail from ESCC	All WCAs (WFSG)	Copy of consultation letter for information
20 December	E-Mail from Eastbourne BC	ESCC	Suggest BVPI 87 should be used
4 January	Letter from Wealden DC	ESCC	Suggests BVPI 87 should be used Concerns about financial problems
10 January	Letter from Wealden DC	ESCC	Confirms report going to Cabinet 7 February
16 January	Letter from Lewes DC	ESCC	Concerns Mentions BVPI 87
17 January	Letters from ESCC	Lewes DC,	Explains why BVPI87 not appropriate
17 January	Letters from ESCC	Eastbourne BC	As above plus notes Eastbourne's comment on recycling thresholds
17 January	Letters from ESCC	Wealden DC	As above plus notes Wealden's cabinet timescale.

For more details of letters see Background Papers in Members' Room

End

ESCC Cabinet Decision 13 March 2007

103 RECYCLING CREDIT PAYMENTS

103.1 The Cabinet considered a report by the Director of Transport and Environment

103.2 On the motion of Councillor Lock (duly seconded) it was RESOLVED – to

(1) an increase in the level of recycling credit payments to £43 per tonne from 1 April 2006;

(2) the payment of recycling credits payments to the third party recyclers from 1 April 2007;

(3) the payment of re-use credits to Waste Collection Authorities from 1 April 2007; and

(4) discussions continuing with District and Borough Councils in relation to waste contract issues and confidentiality, with the aim of reaching an agreed solution.

Reason

103.3 The Council is committed to partnership building and assisting the recycling activities of the Waste Collection Authorities and third party recyclers.