

# CHESHIRE EAST COUNCIL

## Cabinet

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<b>Date of Meeting:</b>	March 3 <sup>rd</sup> 2015
<b>Report of:</b>	Ralph Kemp Corporate Manager Commissioning – Waste and Environmental Services
<b>Subject/Title:</b>	Assessment of Waste Collection Compliance with New Legislation (TEEP)
<b>Portfolio Holder:</b>	Councillor David Topping, Service Commissioning

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### 1.0 Report Summary

- 1.1 The report strongly endorses Cheshire East Council's current, easy to use, recycling scheme and the high quality of the recycled materials that are extracted from the Materials Recycling Facility (MRF) at UPM in Shotton. In 2013-14 nine out of the top ten authorities for recycling collected their waste using a co-mingled system like ours.
- 1.2 This report shows that were the Council to change its collection scheme it would not only cost nearly £650,000 more but also see a reduction in the amount of recycled materials collected.
- 1.3 Under the revised Waste Framework Directive in respect to the Waste (England and Wales) regulations 2011, Regulation 13 requires that if an authority collects recyclable glass, metal, paper and plastic from householders then from Jan 2015 it should collect these separately.
- 1.4 As a Council that collects dry recyclables in one 'silver bin' (co-mingled, not separate) we will need to demonstrate that it would be unnecessary and uneconomic to switch to a separate collection and that the quality of the processed recycling streams being produced through our contract with UPM is of the same standard as if it had been kerbside sorted.
- 1.5 The report in appendix 1 demonstrates that there is no 'necessity' to collect the four materials separately and that it is not 'technically, environmentally and economically practicable' (TEEP) to do so.

### 2.0 Recommendation

- 2.1 To receive and accept the 'Note for Cheshire East Council: TEEP assessment'.

### **3.0 Reasons for Recommendation**

3.1 This report provides essential evidence that Cheshire East Council followed industry best practice to demonstrate that its kerbside collection of recycled materials is compliant with recent changes to waste collection legislation.

3.2 The Council would be open to legal challenge if this report is not accepted since this is the evidence of the required compliance.

### **4.0 Wards Affected**

4.1 All wards

### **5.0 Local Ward Members**

5.1 All members

### **6.0 Policy Implications**

6.1 This report is in line with the recently agreed Waste Strategy to 2030 which has as one of its aims to: "Provide all households with a simple, easy to use, kerbside recycling collection service". This point was agreed by over 90% of residents who responded to the consultation.

6.2 If the report is not accepted the Council is open to legal challenge and having to change its kerbside collection methodology.

### **7.0 Implications for Rural Communities**

7.1 The implications of the report apply equally to all communities.

### **8.0 Financial Implications**

8.1 This report gives evidence that the Council is compliant and therefore will not have to change its current collection methodology. If it were not compliant then the financial implications would be extensive since the collection of kerbside waste in a single silver bin would have to be changed to accommodate four different waste types.

### **9.0 Legal Implications**

9.1 The Waste (England and Wales) Regulations 2011 (SI 2011/988) (Waste Regulations 2011) (herein referred to as the Regulations) were challenged on the basis that they did not properly transpose into domestic law the European Waste Framework Directive, in that they did not require for the separate collection of recyclables. Regulation 13(2)

originally specified that co-mingled collection of recyclables (that is, collecting recyclable waste paper, metal, plastic and glass together, with a view to their subsequent separation for recycling at a materials recovery facility (MRF)) was a valid form of separate collection. Following Judicial Review Regulation 13 was amended to remove the provision that co-mingling was a valid form of separate collection. The Regulations were amended in 2012 and with effect from the 1st of January 2015 organisations are required to collect recyclables separately.

9.2 The requirement to separately collect applies when:

(a) it is necessary to ensure that waste undergoes recovery operations in accordance with Articles 4 and 13 of the Waste Framework Directive, and to facilitate or improve recovery; [the necessity test] and

(b) it is technically, environmentally and economically practicable ('TEEP') [the TEEP test]

9.3 On the 22nd December 2014 the Environment Agency issued a Briefing Note entitled Separate Collection of recyclables. The note provided the following guidance;

“Collectors who do not have separate collection arrangements should review their collection practices and consider carefully if and how they comply. They should rigorously apply the Necessity and TEEP tests. Collectors who have concluded it not necessary or not TEEP to operate separate collection arrangements should keep, and be able to provide for inspection, an audit trail which will help the Environment Agency to understand the basis of their decision-making. Records should be such that, if necessary, they could demonstrate compliance with the regulations in a court of law”.

9.4 The Council commissioned Consultants to undertake a TEEP Assessment to demonstrate that the Council satisfies the Regulations. The Assessment has concluded that;

‘It should be clear that the current system has been chosen because it is seen as more technically practicable, environmental and economic than collecting the four materials separately.’

9.5 The Environment Agency has the ability under regulation 38 and 39 of the Regulations to issue a compliance notice requiring an operator or authority collecting any of the four waste streams to take specified steps within a period to ensure that a contravention does not continue or recur or a stop notice prohibiting any further activity until steps specified in the notice are complied with.

## 10.0 Risk Management

10.1 Whilst the report demonstrates the Council's compliance, there is awareness within the waste industry that certain organisations, who are insistent on waste being sorted at the kerbside (not co-mingled in a silver bin), may take legal action against authorities who do not do this. The report in appendix 1 is a robust demonstration of our compliance and should minimise the risk of legal challenge.

## 11.0 Background and Options

11.1 Under the revised Waste Framework Directive in respect to the Waste (England and Wales) regulations 2011, Regulation 13 requires the **separate collection** of recyclable glass, metal, paper and plastic from householders from January 2015 where 'necessary' and 'practicable'. Cheshire East Council does not do this.

11.2 The effect of the regulations is that where an authority collects paper, metal, plastic or glass, they must ensure that such collection is, or those arrangements are, by way of separate collection. These requirements apply where separate collection is both:

- Necessary, in effect, to provide high quality recyclates, and
- Technically, environmentally and economically practicable (TEEP).

11.3 To ensure that the Council meets its statutory requirements, since it does not collect the 4 materials separately, it needs to

- Assess the extent to which separate collection is necessary and practicable within the terms of the regulations
- Document the decisions and retain a record of the evidence underpinning them.

11.4 Guidance concerning the necessity and TEEP testing was not provided by the Environment Agency or Defra and so a waste industry led group developed a 'Waste Regulations Route Map' which was considered by the EA to be an excellent document. This 'route map' was used by WYG, the consultants who were commissioned to prepare the report.

11.5 The report in appendix 1 demonstrates that there is no 'necessity' to collect the four materials separately and that it is not 'technically, environmentally and economically practicable' to do so.

## **12.0 Access to Information**

The background papers relating to this report can be inspected by contacting the report writer:

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