

## Call-in of Cabinet Decision of 15 March 2011 Cabinet meeting for Item 8

### Waste Management Contract update

We Call-in the above item as set out below

The grounds for our Call-in per OS33 etc are:

a.	proportionality (i.e. the action must be proportionate to the desired outcome)	The situation has changed so much that continuing on the basis of the cabinet decision is in breach of European Union Procurement directives on tendering.
b.	due consultation and the taking of professional advice from officers	The context of the contract has changed a great deal since it was set out and there being no public disclosure of the plan to be followed for the council's project plan/waste strategy there is a clear breach of this requirement for consultation.
d.	a presumption in favour of openness	Few or no details of the possible direction in which a project plan might go have been revealed to the public. It is inconceivable that no parts of the confidential section could be revealed to the public.  RRS would develop a plan without it being subject to cabinet or member scrutiny since delegation has been given to the Strategic Directors to finalise and accept RRS changes.
e.	clarity of aims and desired outcomes	There is no defined clear outcome for the waste strategy yet to be developed. So therefore it could not be judged against any aims and desired outcomes.
f.	a record of what options were considered and giving the reasons for the decision.	The Reasons section gives no detail of higher charges or any evidence of the assertions

Cllr Robin Turner

*Robin Turner*

Cllr Baggy Shanker

*BS*

Cllr MARGARET REDFERN

*M. Redfern*

24 March 2011



DERBY CITY COUNCIL

**COUNCIL CABINET**  
**15 March 2011**

Joint Report of the Strategic Directors of  
Resources and Neighbourhoods

**ITEM 8**

## Waste Management Contract Update

### SUMMARY

- 1.1 This report updates the Cabinet on the Waste Management Contract that the City Council and Derbyshire County Council have jointly with Resource Recovery Solutions (Derbyshire) Limited (RRS).
- 1.2 The report sets out how RRS could develop a revised project plan to provide a long term solution for the treatment and disposal of residual municipal waste produced in both the City and Derbyshire. Derbyshire County Council Cabinet will be considering a similar report at their meeting on 29 March 2011.
- 1.3 A separate confidential report on the agenda at this meeting sets out the detailed financial considerations.

### RECOMMENDATION

- 2.1 To forego the City and County Councils' right to exercise the first break clause as set out in the contract and thereby extend the minimum term of the contract to 5 years.
- 2.2 To delegate authority to the Strategic Directors of Resources & Neighbourhoods to finalise & accept the RRS changes to the methods statement for operating the contract set out in the confidential report
- 2.3 To request RRS to develop a revised project plan in line with the developed protocol.

### REASONS FOR RECOMMENDATION

- 3.1 RRS have offered to reduce the waste management contract rates to reflect efficiency savings. In order to achieve these savings they require changes to the Contractor's Method Statements for operating the contract. Details of the changes and savings are set out in the confidential report later in the agenda. It can be confirmed that the proposals ensure that the overall costs are within the affordability criteria set by the Cabinet on 21 April 2009.

Foregoing the City and County Councils' right to exercise the first break point in 2012 allows RRS time to develop a revised project plan.

- 3.3 If the City and County Councils take the first break point in 2012 i.e. terminate the contract, this will require the Councils to immediately commence a new procurement exercise for the waste management services. This is likely to take 12-15 months. This timescale prohibits a long term solution being sourced and therefore could only be for an interim solution.
- 3.4 There is a significant risk that procuring a new contract could result in higher charges due to it being for a short term
- 3.5 The targets the City and County Councils have been set by the Landfill Allowance Trading Scheme will not be met without additional residual waste being diverted away from landfill. The proposed changes to the contract would set a minimum tonnage that is required to be diverted from the residual waste tonnage currently being sent to landfill. They also create incentives for RRS to exceed this minimum diversion in tonnage.

## SUPPORTING INFORMATION

- 4.1 On 8 December 2009, the City Council and Derbyshire County Council entered into a contract with RRS for the provision of facilities and services in connection with the disposal of municipal solid waste by the Councils. Some of the services, namely, the operation of household waste recycling centres and the transfer and disposal of waste to landfill started on 1 April 2010. During the first 10 months of RRS' management, Raynesway Household Waste Recycling Centre has shown an increase in the recycling rate of 6.1% to 61.7%. It has also achieved a customer satisfaction rating of 97% people either very or fairly satisfied with their visits to the site.
- 4.2 However, elements of the contract relating to the provision of a state of the art waste treatment facility to divert residual waste to landfill and a waste education centre at Sinfin Lane in Derby were conditional on financial close. There has been no financial close on the project.
- 4.3 Cabinet is aware that on 17 December 2009, RRS failed to secure planning consent for the above facility. Furthermore, the appeal of this decision which was progressed by RRS has since been dismissed by the Planning Inspectorate.
- 4.4 This decision is now subject to Judicial Review.
- 4.5 The rejection of the planning appeal leaves the City and County Councils with significant waste management challenges. The treatment facility would have provided the Councils with financial stability on waste management costs for the next 27 years. The rejection exposes the Councils to future rises in landfill tax and uncertainty on treatment options and costs.
- 4.6 The contract has two optional break points included to cover the situation that the Councils now find themselves in. These are:
- 31 July 2012
  - 31 March 2015

- 4.7 If either party wished to exercise their right to take up either break point, they are required to give 12 months' written notice. Therefore the latest dates for making the decisions are:
- 31 July 2011
  - 31 March 2014
- 4.8 The contract covered the contingencies failure to obtain planning permission but this was conditional upon achieving financial close.
- 4.9 Any new procurement exercise would be covered by the Public Procurement Regulations. In order to demonstrate best value a long term solution, the process would have to start as "technology neutral". The process would have various stages and bidders would be invited:
- To show expressions of interest.
  - To submit outline solutions
  - To submit detailed solutions
  - To submit final tenders.
- At each stage the submissions would be evaluated and the numbers of bidders invited to progress to the next stage would be reduced, finally resulting in a preferred bidder after final tender.
- 4.10 This was the process used to select the current contractor in a process that started with a notice in Official Journal of the European Union in January 2006. The process took nearly four years to get to the contract being signed in December 2009.
- 4.11 The only way to shorten the process would be to look for a short term interim solution that did not require the building of any new facilities. By splitting the contract into three parts it would simplify them and allow the use of restricted procedures of the Public Procurement Regulations. The separate contracts would be tendered simultaneously reducing the procurement process to approximately 12 to 15 months. The individual contracts would be for:
- Management of the Raynesway Household Waste Recycling Centre
  - Provision of a waste transfer station including onward haulage
  - Treatment / disposal of waste through landfill or other means.
- There would be the option of procuring all of these jointly with the County Council, as they would also require transfer facilities in the City along with managing their own household waste recycling centres and to treat/dispose of the waste generated by the districts.
- 4.12 The current contract could provide this interim solution without incurring the costs of procurement and could be guaranteed by forgoing the City and County Councils' right to exercise the first break clause as set out in the contract and thereby extend the minimum term of the contract to 5 years.

- 4.13 RRS have offered to reduce the waste management contract rates to reflect efficiency savings they are proposing that require changes to the Contractor's Method Statements for operating the contract. Some of these savings reflect better prices that they can get by having longer contracts with their subcontractors achievable by having a longer minimum term on the contract. Details of all of the changes and savings are set out in the confidential report later in the agenda. It can be confirmed that the proposals ensure that the overall costs are within the affordability criteria set by the Cabinet on 21 April 2009.
- 4.14 A revised project plan protocol has been developed. It would replace the clauses that related to planning and permitting that were conditional on achieving financial close. It breaks down the development of a new plan into four distinct stages. This allows the City and County Councils to approve progression of each stage of development, minimising the costs incurred by all parties during this process. The four stages are:
- Scoping and Screening – This stage is intended to clarify the objectives of the Revised Project Plan and the ultimate solution and to screen a number of options for the parties to consider in detail in the later stages. It is intended that this will be completed by the end of April 2011.
  - Detailed Option Appraisal – The purpose of this stage is to look at the short listed options and assess them in sufficient detail to identify a preferred option. This will be concluded within 16 weeks of the approval of the outcome of the Scoping and Screening Stage. Approval from the Cabinets of both Councils will be required to allow the project to proceed any further.
  - Preferred Option Development – This is the point at which the contractor begins to implement the Preferred Option which particular focus on sites, consents, securing the supply chain, funding etc.
  - Revised Project Plan Close – At this stage legal documentation will be fine tuned and finalised, funding approvals will be obtained and any variation to the Project Agreement of the Contract will be completed.

The Councils will each need to obtain further Cabinet approval prior to completing the Revised Project Plan Close. It is anticipated however that this approval will confirm the approvals provided at the Preferred Option Development Stage above provided that the Revised Project remains within approved parameters.

- 4.15 The revised project plan protocol sets key dates for RRS to deliver their proposals. It is designed to ensure progress towards a long term solution which is acceptable to the City and County Councils.
- 4.16 As Derby City and Derbyshire County Councils have the contract jointly with RRS, Derbyshire County Council will be taking a similar report to their cabinet on 29 March 2011. Agreement by both Cabinets will be required for the recommendation to be enacted.

## OTHER OPTIONS CONSIDERED

- 5.1 Taking the first break point would involve commencing new procurement processes immediately as described in the report.

5.2 If the RRS judicial review into the planning appeal decision is successful, there may not be a requirement for progressing with the revised project plan.

This report has been approved by the following officers:

<b>Legal officer</b> <b>Financial officer</b> <b>Human Resources officer</b> <b>Service Director(s)</b> <b>Other(s)</b>	S Leslie R Kershaw R Wood P Robinson
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<b>For more information contact:</b>  <b>Background papers:</b> <b>List of appendices:</b>	Name Andrew Hopkin, Head of Service Tel 01332 641518 e-mail <a href="mailto:andrew.hopkin@derby.gov.uk">andrew.hopkin@derby.gov.uk</a> or Barry Scotchbrook, Waste Project & Contracts Manager Tel 01332 641573 e-mail <a href="mailto:barry.scotchbrook@derby.gov.uk">barry.scotchbrook@derby.gov.uk</a> or Mark Wyld, Waste Accountant Tel 01332 641493 e-mail <a href="mailto:mark.wyld@derby.gov.uk">mark.wyld@derby.gov.uk</a> Management Cabinet Reports Direct and Internal Services Cabinet Meeting Report - 2 March 2010 Appendix 1 – Implications
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## IMPLICATIONS

### Financial and Value for Money

- 1.1 The financial implications are included within the confidential report which includes commercially sensitive data for the Project in line with Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

### Legal

- 2.1 The contract between the City and County Councils and RRS would be varied by means of a Deed of Amendment (including the substitution of revised Contractor's Proposals).
- 2.2 All parties would be relinquishing their right to terminate at the first break point.
- 2.3 A revised project plan protocol has been developed.
- 2.4 The changes to the services currently being delivered are very minor in nature and the cost to the Councils of those services is being reduced. The original OJEU notice was broad enough to cover this scenario. It is expected that the consequences of pursuing the revised project plan protocol will be a further Deed of Amendment. A view will have to be taken at the point that there is no objection to it in the light of public procurement law at that time.

### Personnel

- 3.1 None in this report.

### Equalities Impact

- 4.1 None in this report.

### Health and Safety

- 5.1 None in this report.

### Environmental Sustainability

- 6.1 RRS have agreed to source third party energy from waste capacity up to March 2015. This should help in the City and County Councils meeting their Landfill Allowance Trading Scheme Targets.

- 6.2 The revised project plan that would be developed under the protocol will be assessed for its carbon impact using the Environment Agency's WRATE tool.

## **Asset Management**

- 7.1 The land on Sinfin Lane may no longer be required for a Waste Management Facility, depending on the revised project plan to be developed by RRS.

## **Risk Management**

- 8.1 Retendering the services may result in higher cost for the services.
- 8.2 Although the proposal set a minimum tonnage of residual waste to be diverted away from landfill this alone will not be sufficient to meet both City and County Councils Landfill Allowance Trading Scheme targets.

## **Corporate objectives and priorities for change**

- 9.1 To deliver value for money across all services. The proposals offer substantial guaranteed savings and set up incentives for further efficiency savings to be made.

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# Minute Extract

## 215/10 Waste Management Contract Update

The Council Cabinet considered a report gave an update on the Waste Management Contract that the City Council and Derbyshire County Council had jointly with Resource Recovery Solutions (Derbyshire) Limited (RRS). The report set out how RRS could develop a revised project plan to provide a long term solution for the treatment and disposal of residual municipal waste produced in both the City and Derbyshire. Derbyshire County Council Cabinet would be considering a similar report at their meeting on 29 March 2011. A separate confidential report on the agenda at this meeting set out the detailed financial considerations.

### Options Considered

1. Taking the first break point would involve commencing new procurement processes immediately as described in the report.
2. If the RRS judicial review into the planning appeal decision was successful, there may not be a requirement for progressing with the revised project plan.

### Decision

1. To forego the City and County Councils' right to exercise the first break clause as set out in the contract and thereby extend the minimum term of the contract to 5 years.
2. To delegate authority to the Strategic Directors of Resources and Neighbourhoods to finalise and accept the RRS changes to the methods statement for operating the contract set out in the confidential report.
3. To request RRS to develop a revised project plan in line with the developed protocol.

### Reasons

1. RRS had offered to reduce the waste management contract rates to reflect efficiency savings. In order to achieve these savings they required changes to the Contractor's Method Statements for operating the contract. Details of the changes and savings were set out in the confidential report later in the agenda. It could be confirmed that the proposals ensured that the overall costs were within the affordability criteria set by the Council Cabinet on 21 April 2009.
2. Foregoing the City and County Councils' right to exercise the first break point in 2012 allowed RRS time to develop a revised project plan.
3. If the City and County Councils took the first break point in 2012 i.e. terminate the contract, this would require the Councils to immediately

commence a new procurement exercise for the waste management services. This was likely to take 12-15 months. This timescale prohibited a long term solution being sourced and therefore could only be for an interim solution.

4. There was a significant risk that procuring a new contract could result in higher charges due to it being for a short term
5. The targets the City and County Councils had been set by the Landfill Allowance Trading Scheme would not be met without additional residual waste being diverted away from landfill. The proposed changes to the contract would set a minimum tonnage that was required to be diverted from the residual waste tonnage currently being sent to landfill. They also created incentives for PRS to exceed this minimum diversion in tonnage.

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