

JOINT WASTE DISPOSAL BOARD

NOTICE OF MEETING

10 JANUARY 2007

TO: ALL MEMBERS OF THE JOINT WASTE DISPOSAL BOARD

You are invited to attend a meeting of the Joint Waste Disposal Board on **10 January 2007 at 6.00 pm** in the Group Room, Civic Offices, Shute End, Wokingham. An agenda for the meeting is set out overleaf.

Jon Freer
Project Director

Members of the Joint Waste Disposal Board

Bracknell Forest Borough Council:	Councillor Mrs M Ballin Councillor P North
Reading Borough Council:	Councillor R McKenzie Councillor S Waite
Wokingham District Council:	Councillor R Stanton Councillor S Weeks

EMERGENCY EVACUATION INSTRUCTIONS

If you hear the alarm:

- 1 Leave the building immediately**
- 2 Follow the green signs**
- 3 Use the stairs not the lifts**
- 4 Do not re-enter the building until told to do so**

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WOKINGHAM
DISTRICT COUNCIL

JOINT WASTE DISPOSAL BOARD
10 January 2007 (6.00 pm)
Group Room, Civic Offices, Shute End, Wokingham.

AGENDA

	Page No
1. APOLOGIES FOR ABSENCE	
2. ELECTION OF CHAIRMAN	
3. APPOINTMENT OF VICE-CHAIRMAN	
4. DECLARATIONS OF INTEREST Members are invited to declare any personal or prejudicial interests and to state the nature of any such interest on any items on the agenda.	
5. URGENT ITEMS OF BUSINESS To notify the Board of any items of business authorised by the Chairman on the grounds of urgency.	
6. MINUTES OF THE FORMER JOINT WASTE DISPOSAL BOARD - 20 SEPTEMBER 2006. To receive the minutes of the final meeting of the former Joint Waste Disposal Board held on 20 September 2006.	1 - 4
7. JOINT WASTE DISPOSAL BOARD - CONSTITUTION To consider the report of the Director of Corporate Services, Bracknell Forest Borough Council.	5 - 10
8. JOINT WASTE DISPOSAL BOARD - SCHEDULE OF MEETINGS To consider the report of the Director of Corporate Services, Bracknell Forest Borough Council.	11 - 12
9. PROJECT UPDATE To consider the report of the Assistant Director of Environment & Leisure, Bracknell Forest Borough Council.	13 - 16
10. JOINT WASTE DISPOSAL BOARD - DECISIONS TO BE MADE IN RESPECT OF THE PROJECT AGREEMENT To consider the report of the Borough Solicitor, Bracknell Forest Borough Council.	17 - 44
11. JOINT WASTE DISPOSAL BOARD - PROJECT MANAGEMENT ARRANGEMENTS To consider the report of the Head of Environment and Consumer Services, Reading Borough Council.	45 - 48

12. **EXCLUSION OF PUBLIC AND PRESS**

To consider the following motion:

That pursuant to Regulation 21 of the Local Authorities (Executive Arrangements) (Access to Information) Regulations 2000 and having regard to the public interest, members of the public and press be excluded from the meeting for the consideration of item 13 which involves the likely disclosure of exempt information under the following category of Schedule 12A of the Local Government Act 1972:

- (1) Information relating to any individual.

13. **APPOINTMENT OF PROJECT DIRECTOR**

49 - 50

To consider the report of the Assistant Director of Environment, Bracknell Forest Borough Council.

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Agenda Item 6

**JOINT WASTE DISPOSAL BOARD
20 SEPTEMBER 2006
(6.30 - 7.45 pm)**

Present: Bracknell Forest Borough Council
Councillors Mrs Ballin and McCracken

Present: Reading Borough Council
Councillor Waite

Present: Wokingham District Council
Councillors Stanton and Weeks

Apologies for absence were received from:
Councillor McKenzie

11. Minutes - 3 July 2006

RESOLVED that the minutes of the meeting of the Board held on 3 July 2006 be confirmed as a correct record and signed by the Chairman.

12. Declarations of Interest

There were no declarations of interest received in relation to any items on the agenda.

13. Urgent Items of Business

There were no urgent items of business received.

14. Exclusion of Public and Press

RESOLVED that pursuant to Regulation 21 of the Local Authorities (Executive Arrangements) (Access to Information) Regulations 2000, members of the public and press be excluded from the meeting for the consideration of item 6 which involves the likely disclosure of exempt information under the following category of Schedule 12A of the Local Government Act 1972:

(3) Information relating to the financial or business affairs of any particular person.

15. Outcome of Negotiations with Preferred Bidder for the RE3 Project

The Board considered a report detailing the progress since its last meeting on 3 July of the negotiations with the preferred bidder Waste Recycling Group (WRG) in response to the councils' invitation to initially submit a best and final offer and a subsequent appointment to that company to preferred bidder status as a consequence of the meeting of the Joint Waste Disposal Board on 20 April 2005.

The Chairman indicated that, whilst the report detailed the position at the time of publication, events had moved on since then and invited the Project Director to

outline the current position. The latter stressed that the priority for all three councils was now to conclude the negotiations and sign the contract. There was, however, increasing frustration at the number of new issues being raised on behalf of WRG which were necessitating further discussion, changes to documentation and review of the implications changing one document would have for the terms of the other twenty three. The Project Director added that he believed that WRG too was frustrated by some of the issues which had been raised by the councils as a result of their need to manage areas of potential risk. Given this scenario, he stressed that it was now imperative to remind the contractor that the deadline for signing of the contract was 31 October 2006 and that this would not be extended. Moreover, as the "Alcatel" notice had to be issued no later than 17 October to achieve a signing date of 31 October, all negotiations needed to be concluded within the next two weeks to enable the legal advisers to finalise the documentation. This meant that, for the outstanding issues, there was a need to take a view and move on. The Board confirmed the basis of the flexibility which it had given officers at the previous meeting to reach a final agreement with WRG.

The Board supported the Project Director's concerns and agreed that there was a need to convey to WRG's Chief Executive that there was no scope to extend the deadline for signing the contract beyond 31 October 2006. The Chairman indicated that he would write on behalf of the Board and read out a draft of a letter which he had prepared and was intending to finalise in consultation with the Councils' legal advisers, Eversheds. Other members were invited to let the Chairman have any comments on the letter.

The Board also discussed a proposal to submit a bid for pooling arrangements relating to statutory performance standards for recycling and composting of household waste for 2007/08. The officers indicated that they were satisfied that there were efficiencies to be gained from such an approach and accordingly the Board endorsed the submission of a bid.

RESOLVED

- 1 That progress made since the last meeting on the 3 July and the actions to be taken over the coming weeks be noted.
- 2 That a letter be sent to the Waste Recycling Group's Chief Executive expressing the Board's deep concern over the slow progress of the Waste PFI contract and reiterating that no extension could be granted to the deadline of 31 October 2006 for signing of the contract.
- 3 That the Chairman be authorised to finalise the letter on behalf of the Board following consultation with the councils' legal advisers, Eversheds
- 4 That an application be made to DEFRA to 'pool recycling targets' as a part of the Project.

16. Date of Next Meeting

In view of the fluid situation and the direction already provided to officers seeking to conclude the negotiations, it was agreed that no date would be set for a further meeting. The Board was advised that, in the event of a need for a meeting to be convened, it was likely to be at very short notice.

In addition, the Board was advised that, if the negotiations were concluded successfully and the contract signed, there would be a need to establish a new Board.

CHAIRMAN

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**TO: JOINT WASTE DISPOSAL BOARD
10 JANUARY 2007**

**JOINT WASTE DISPOSAL BOARD - CONSTITUTION
(Director of Corporate Services, Bracknell Forest Borough Council)**

1 PURPOSE OF DECISION

1.1 To advise the Board of it's Constitution.

2 SUPPORTING INFORMATION

2.1 The Board's Constitution is as laid down in the Constitution Agreement signed on behalf of the three councils on 31 October 2006. The details are appended to this report.

2.2 The key points to note are that:

- Each Council will appoint 2 members to the Board whose term of office will be four years.
- This meeting is the annual meeting for the 2006/07 municipal year.
- The annual meeting in subsequent years will be the first meeting held after the 30 June in any year.
- No less than four meetings per annum shall be held (unless the Chairman exercises his discretion to cancel a meeting on the grounds of there being insufficient business).
- A special meeting may be convened at any time on the requisition of the Chairman or at least two members of the Board.
- The Chairman and Vice-Chairman shall not be members of the same Council.
- The Chairman does not have a casting vote in the event of an equality of votes.
- A quorum shall not be present unless 3 members of the Board are present with at least one from each of the three constituent councils.
- The Board may not make any decision which would commit the councils to expenditure of over £100,000 or aggregate expenditure in any financial year exceeding £100,000. Any such decision will be referred to the councils for them to make.

3 IMPACT ASSESSMENT

3.1 There are no implications arising directly from this report.

4 STRATEGIC RISK MANAGEMENT ISSUES

4.1 There are no strategic risk management issues arising from this report.

Background Papers

Constitution Agreement signed on 31 October 2006.

Contact for further information

Derek Morgan, Corporate Services: 01344 352044
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Doc. Ref

Joint Waste Disposal Board - Constitution

EXTRACT FROM THE CONSTITUTION AGREEMENT

3 CONSTITUTION OF THE JOINT WASTE DISPOSAL BOARD

- 3.1 On the date of the coming into force of the Joint Working Agreement there shall be constituted in accordance with arrangements made under Section 101 (5) of the Local Government Act 1972 a joint committee, to be called the Joint Waste Disposal Board (“the Committee”) for the purpose of discharging the functions assigned to it as set out in this Agreement. Each of the Councils will take such action as is necessary to abolish the Committee also known as the Joint Waste Disposal Board as it was constituted immediately before the coming into existence of the Committee
- 3.2 The Committee shall consist of 6 members and each of the Councils shall be entitled to appoint 2 members to the Committee.
- 3.3 A member appointed to the Committee shall hold office for four years and shall be eligible for re-appointment upon the expiry of such term provided that if the member should be removed and replaced by his appointing authority or shall cease to be a member of the Council by which he was appointed then membership shall cease.
- 3.4 If and to the extent of the powers and duties of any of the Councils are or become the responsibility of the Executive of the Council in question (in accordance with Section 13 of the Local Government Act 2000) then the reference in clause 3.1 to Section 101 of the Local Government Act 1972 shall be construed where appropriate as including a reference to Regulation 11 of the Local Authorities Arrangement for the Discharge of Functions) (England) Regulations 2000

4. APPOINTMENT OF CHAIRMAN AND VICE-CHAIRMAN

- 4.1 The Committee shall at their annual meeting in each year appoint a chairman and the chairman shall unless he resigns his office or ceases to be a member of the Committee continue in office until a successor is appointed at the next available meeting. In the event of the Chairman ceasing to be Chairman at any time before an annual meeting the Committee may elect a member of the Committee to be a temporary Chairman to hold office until a Chairman shall have been elected at the annual meeting and for the avoidance of doubt any reference in this Agreement to “the Chairman” shall be deemed to include a reference to any such temporary Chairman
- 4.2 The Committee may at their annual meeting in each year appoint one of their number to be Vice-Chairman and the Vice-Chairman shall unless he resigns his office or ceases to be member of the Committee continue in office until a successor is appointed at the next available meeting. In the event of the Vice-Chairman at any time before an annual meeting the Committee may elect a member of the Committee to be a temporary Vice-Chairman until a Vice-Chairman shall have been elected at the annual meeting and for the avoidance of doubt any reference in this Agreement to “the Vice-Chairman” shall be deemed to include a reference to any such temporary Vice-Chairman
- 4.3 The Chairman and Vice-Chairman shall not be members of the same Council (unless (but only for as long as) the non-availability or unwillingness to serve of any member or members at any relevant time shall prevent this clause from being observed)

4.4 Any power exercisable by the Chairman in accordance with this Agreement shall in the absence of the Chairman or if the Office of Chairman is vacant be exercisable by the Vice-Chairman

5. **MEETINGS OF THE COMMITTEE**

5.1 The first meeting of the Committee shall be the annual meeting for the year then current and thereafter the first meeting held after 30th June in any year shall be the annual meeting.

5.2 At all meetings the Chairman if present shall preside. If the Chairman is not present the Vice-Chairman if present shall preside. If both the Chairman and the Vice-Chairman are absent the meeting may choose a person to preside at that meeting. Any powers exercisable by the Chairman at a meeting of the Committee shall be exercisable by any other person presiding at the meeting in accordance with this clause

5.3 The Committee shall hold ordinary meetings no less than 4 times a year (including the annual meeting) except that:-

5.3.1 the Chairman may in his discretion cancel any ordinary meeting if in his opinion there is insufficient business to be transacted;

5.3.2 a special meeting may be convened at any time on the requisition of the Chairman or at least two members of the Committee

5.4 The standing orders of the Bracknell shall apply to the proceedings of the Committee as they do to meetings of that Council, except that in the event of those standing orders conflicting with the provisions of this Agreement this Agreement shall prevail

5.5 The quorum shall be no less than three representatives which must comprise at least one representative from each of the Councils. In the event that a quorum is not present at any meeting of the Committee within half an hour of its notified commencement time the meeting shall stand adjourned to the same day in the next week and at the same time and place unless the Chairman otherwise agrees.

5.6 If at the adjourned meeting a quorum is not present within half an hour of the time appointed the representatives present (provided that there shall be no less than two) shall have power to decide upon all matters which could properly have been disposed of at the meeting which was adjourned

5.7 Notwithstanding the generality of the foregoing it is expressly agreed that in the event of an equality of votes the Chairman shall not exercise a second or casting vote.

6. **ESTABLISHMENT OF WORKING PARTIES**

6.1 The Committee may appoint working parties as it considers necessary to advise it in the discharge of its functions or to exercise those functions.

7. **FUNCTIONS OF THE COMMITTEE**

7.1 The function of the Committee is to administer the operation of the waste disposal arrangements of the Councils in accordance with the Joint Working Agreement and

in accordance with the Principal Contract (as defined in the Joint Working Agreement and in particular Schedule 4 thereto once the delegations detailed in Schedule 4 have been confirmed by the Committee)

Without prejudice to the generality of the foregoing the Committee will:-

- 7.1.1 subject to the said confirmation by the Committee be responsible for the decisions assigned to it in Schedule 4 of the Joint Working Agreement; and
- 7.1.2 exercise such powers as all of the Councils may from time to time delegate to the Committee with the agreement of the Committee; and
- 7.2 For the avoidance of doubt, it is agreed that the Committee will not be responsible for making decisions on:
 - 7.2.1 change to the policies and targets of the Councils
 - 7.2.2 the determination of the budget of the Councils regarding the Project
- 7.3 The Committee shall not be empowered to acquire land or any interest in land.
- 7.4 The Committee may arrange for work to be carried out directly or on an agency or contract basis by any of the Councils
- 7.5 Where any power exercisable by the Committee or by the Chairman or Vice-Chairman commits or is likely to commit the Councils to expenditure in excess of £100,000 or to result in the aggregate expenditure of the Councils under the Project for the then current financial year exceeding £100,000 then any such decision shall notwithstanding the other provisions of this Constitution be referred to the Councils for the decision to be taken by them. The figure of £100,000 shall be reviewed by the Councils at five yearly intervals the first such review to take place on the fifth anniversary of the review and in respect of each such review the reference in this clause to £100,000 shall be deemed to have been amended by the substitution therefor of the appropriate reviewed figure

8. OFFICERS, STAFF AND ACCOMMODATION

- 8.1 The proper office within Bracknell being the head of democratic services shall be the Clerk to the Committee and the Section 151 Officer of the Administering Authority shall be the Treasurer to the Committee
- 8.2 The Borough Solicitor or otherwise the chief legal advisor of Bracknell shall be the Legal Adviser to the Committee.
- 8.3 The Project Director (herein called "the Project Director") shall be directly responsible to the Committee.
- 8.4 The Committee shall secure the provision of (but not employ) such staff, accommodation and other resources as the Committee shall consider necessary for the discharge of its obligation under this Agreement.

9. COSTS OF THE JOINT COMMITTEE

All costs in connection with the establishment and administration of the Committee shall be borne by the Parties in equal shares.

10. TERMINATION OF THIS AGREEMENT

- 10.1 This Agreement shall be effective for the duration of the Contract Period (as defined in the Project Agreement between the Councils and RE3 Limited of even date hereto) and for such other extended period as the Councils may agree
- 10.2 The Councils agree to review this Agreement for such period and with such modifications as they consider appropriate at any time after the fifth anniversary of its commencement.
- 10.3 The provisions of this Agreement may be amended at any time subject to the agreement of the Councils.

11. INTERPRETATION

- 11.1 In this Agreement any reference to any Act of Parliament or statutory instrument shall be construed as a reference to any Act of Parliament or Statutory Instrument amending the first mentioned Act or Instrument and for the time being in force

**TO: JOINT WASTE DISPOSAL BOARD
10 JANUARY 2007**

**SCHEDULE OF MEETINGS
(Director of Corporate Services, Bracknell Forest Borough Council)**

1 PURPOSE OF DECISION

- 1.1 To seek approval to a schedule of meetings for the remainder of this municipal year and 2007/08.

2 RECOMMENDATION(S)

- 2.1 **That meetings of the Joint Waste Disposal Board be held on the following dates:**

**Wednesday 28 March 2007
Wednesday 20 June 2007
Wednesday 12 September 2007 (Annual Meeting)
Wednesday 12 December 2007
Wednesday 12 March 2008**

3 REASONS FOR RECOMMENDATIONS

- 3.1 To ensure, as far as possible that meetings are planned, thereby reducing the likelihood of clashes with other meetings of the constituent authorities.

4 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 To choose alternative dates.

5 SUPPORTING INFORMATION

- 5.1 The Constitution stipulates that the Board should meet four times per annum. The following dates are proposed for discussion by the Board:

Wednesday 28 March 2007
Wednesday 20 June 2007
Wednesday 12 September 2007 (Annual Meeting)
Wednesday 12 December 2007
Wednesday 12 March 2008

6 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS

Borough Solicitor

- 6.1 Nothing to add to the report.

Borough Treasurer

6.2 Nothing to add to the report.

Impact Assessment

6.3 There are no implications arising directly from this report.

Strategic Risk Management Issues

6.4 There are no strategic risk management issues arising directly from this report.

7 CONSULTATION

Principal Groups Consulted

7.1 None.

Method of Consultation

7.2 None.

Representations Received

7.3 None

Background Papers

None.

Contact for further information

Derek Morgan, Corporate Services: 01344 352044
derek.morgan@btinternet.com

Doc. Ref

Joint Waste Disposal Board - Schedule of Meetings

**TO: JOINT WASTE DISPOSAL BOARD
10 JANUARY 2007**

**JOINT WASTE DISPOSAL BOARD
PROJECT UPDATE
(Assistant Director of Environment & Leisure, Bracknell Forest Borough Council)**

1 PURPOSE OF THE DECISION

- 1.1 To inform the Board of actions taken by the Project Director since the contract was signed on 31 October 2006 and to update on the project activities since.

2 RECOMMENDATION

- 2.1 **To affirm the actions taken by the Project Director under delegated powers.**
- 2.2 **To note the progress of the contract to date.**

3 REASONS FOR RECOMMENDATIONS

- 3.1 The Project Director is required to keep the Board informed of decisions made on their behalf and to appraise the Board on the performance of the Contract.

4 ALTERNATIVE OPTIONS

- 4.1 Not to affirm the actions taken.

5 SUPPORTING INFORMATION

- 5.1 The Waste PFI Contract was signed with WRG on 31 October 2006 and this in turn triggered a service commencement date of 4 December 2006, when WRG took on the management of the two Key Project facilities and the Bring Bank facilities across the three Councils.

5.2 EPC Contract Commencement

- 5.2.1 On the same day that the contract was signed, WRG also entered into a contract for the construction of the two Key Project Facilities at Smallmead and Longshot Lane. The intent of this contract, being to mobilise the EPC Contractor at the earliest opportunity to ensure that waste transfer facilities could be constructed and be available at Smallmead prior to the Burghfield landfill site closing at the end of March 2008.
- 5.2.2 On 31 October, Reading Borough Council also granted consent to WRG for the construction of the Waste Management Park at Smallmead.
- 5.2.3 To ensure that the facilities at Smallmead could commence in early January 2007 and provide a fully functioning waste transfer facility at the end of March 2008, the EPC contractor required an instruction to commence final design work and place

orders for key components. This instruction was issued on 6 December and the EPC Contractor has now started his mobilisation.

5.3 Dilapidations

5.3.1 To ensure that the existing facilities are kept in reasonable and safe condition until renewals start, there is a dilapidations fund of £200,000 available, within the Contract.

5.3.2 Prior to commencement of the contract WRG undertook condition surveys at both Longshot Lane and Smallmead. The surveys identified a number of items that require rectification in the near future, the most pressing being improvement to electrical systems and repairs storage areas and to roofs. An instruction has been given to undertake the electrical repairs and some of the repairs to the facilities, whilst discussion takes place on the scale of the roof repairs at Longshot Lane. All these works can be undertaken well within the budget available.

5.4 Project update

5.4.1 When the contract commenced on 4 December, WRG also replaced the Weighbridge Management systems at Longshot Lane. As they had been unable to pre-load vehicle data for the trade waste customers, this combined with software teething problems led to queues to the facilities and extended turnaround time for the first few days. Turnaround times are now monitored daily and are on the whole acceptable.

5.4.2 The bring banks in Wokingham were provided by the previous contractor, whereas in the remainder of the contract area, the Councils provided the banks. The bring banks in Wokingham have now been replaced and separate banks provided for different colours of glass, bringing the three Councils to a common level of provision, where all banks are provided and managed by WRG.

5.4.3 Mixed dry recyclable waste from much of the Wokingham area is now being delivered to Longshot Lane for processing. When the existing Mini MRF is unable to cope with the volume of material, the residual amount is now being taken to Luton for processing at WRG's facilities there.

5.4.4 WRG has not yet finalised a formal contract to use Planners Farm for the composting of green waste but have exchanged letters to enable the continued use for the next six months. Concerns have been raised by local residents about some smells from Planners Farm and alternative facilities have been found for leaves which have been rotting before they get to the facility. Discussions are now taking place with the Environment Agency regarding the complaints.

5.4.5 New bulk haulage vehicles have been ordered in Re3 livery and a delivery date is now awaited. In the meantime WRG are using hired in vehicles to transport waste to landfill sites.

5.4.6 Formal copies of the contract documentation have still to arrive with the Project Team. Although we have electronic copies of most of the documents there were a number of manuscript amendments made in the final hours before signing. Given the scale of the documentation to be managed, all the documents have been sent to a specialist publisher for scanning and indexing to help in document retrieval as the contract progresses.

- 5.4.7 A planning application has now been lodged with Bracknell Forest for the rebuilding of the Longshot Lane facilities. This is now being considered by the Authority.
- 5.4.8 The first monthly invoice has now been produced as a test and is due for payment in early January. This identified a number of issues that have been resolved and payment should be made on time.
- 5.4.9 The project has recently been put forward into the IDeA Front Office Shared Services Programme Research and may feature at a conference in the Spring where Local Authority exemplars will be showcased.
- 5.4.10 A member of the Project Team has been invited to speak at the annual meeting at the Welsh society of Local Authority Chief Executives on the 8 March. The topic will be 'managing joint waste procurements'.
- 5.4.11 Due to the complex nature of the Re3 procurement, joint working and our final PFI solution for waste management, the team have been approached by a number of authorities seeking advice and assistance. A number of authorities have asked to visit. Rather than host a number of different visits, the Project Team is considering arranging an open day and inviting interested authorities along.

Background Papers

Project correspondence.

Contact for Information

Jon Freer, Assistant Director Environment and Leisure, 01344 351907

jon.freer@bracknell-forest.gov.uk

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Project Update-28.12.06.doc

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**TO: JOINT WASTE DISPOSAL BOARD
10 JANUARY 2007**

**JOINT WASTE DISPOSAL BOARD -
DECISIONS TO BE MADE IN RESPECT OF THE PROJECT AGREEMENT
(Borough Solicitor)**

1 PURPOSE OF DECISION

- 1.1 To advise the Board of the changes to Appendix 1 of Schedule 4 to the Joint Working Agreement and to request that Members consider the proposed delegations with a view that those delegations should be approved.

2 RECOMMENDATIONS

- 2.1 **That the delegations detailed in Appendix A to Schedule 4 of the Joint Working Agreement shall be varied so that they are replaced by those delegations detailed in Annexe 1 to this report.**
- 2.2 **That the delegations in Annexe 1 to this report be approved.**

3 REASONS FOR RECOMMENDATIONS

- 3.1 Clause 7.1 of the Joint Working Agreement (which was executed by the Councils on 31 October 2006) states that “the delegation of responsibilities detailed in Schedule 4 to the Joint Working Agreement and Appendix A to that Schedule shall apply in respect of those matters detailed within Schedule 4 and Appendix A”. The clause further states that, at the first meeting of the Joint Waste Disposal Board, the Board shall be responsible for considering and confirming (with or without alteration) the delegations detailed in Appendix A to Schedule 4.
- 3.2 When the Councils executed the Joint Working Agreement on 31 October the legal officers representing each of the Councils agreed that Appendix A to Schedule 4 would be subject to further amendments following execution of the Joint Working Agreement. The need for this arose because changes were made to the Project Agreement during final negotiations which, due to time constraints, could not be reflected within Appendix A to Schedule 4. Therefore, at the time of execution of the Joint Working Agreement Appendix A was in need of updating.
- 3.3 Appendix A has now been updated so that it reflects the changes that were made to the Project Agreement immediately prior to signature. Amended Appendix A is attached as Annexe 1 to this report.
- 3.4 If the Board approve the revised Appendix A, with or without changes, this will avoid the need for a Deed of Variation to be executed by the Councils to update Appendix A. This would seem to be a quicker and simpler means of achieving an updated Appendix and also give Members the opportunity to review the delegation of decisions within that Appendix at the same time.

- 3.5 The rationale behind the delegations within Appendix A (and the amended Appendix A) have been discussed and agreed by the legal officers of each of the Councils. The delegations are regarded as being both workable and capable of safeguarding the Council against critical decisions being made at an inappropriate level. Members are, therefore, recommended to adopt the delegations within revised Appendix A.

4 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The alternative would be to redraft Appendix A to Schedule 4 of the Joint Working Agreement and include that redraft within a Deed of Variation which is executed by all of the Councils. This is a feasible option but would take longer to achieve. Should the Board wish to make alterations to Appendix A, such alterations could be included within the Deed of Variation.

5 IMPACT ASSESSMENT

- 5.1 There are no implications arising directly from this report.

6 STRATEGIC RISK MANAGEMENT ISSUES

- 6.1 There are no strategic risk management issues arising directly from this report.

Background Papers

Joint Working Agreement.

Contacts for Further Information

Nicole Norris, Assistant Borough Solicitor, 01344 353107

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Doc Ref

Report on Delegations

SCHEDULE 4

Delegation of responsibilities

Approval, consents and decisions under the Principal Contract

1. The Principal Contract envisages that the Parties will be responsible for the reaching of decisions in respect of the following:-
 - (i) the need for contractual change
 - (ii) the giving or withholding of consents or approvals
 - (iii) whether an event described in the Principal Contract has or has not occurred
 - (iv) whether a methodology plan or report is satisfactory
 - (v) whether action should be taken or not taken
 - (vi) other issues and matters requiring consideration and decision pursuant to the Principal Planning & Transportation – to proceed to arrange for the Planning Permission to be issued as soon as possible and to advise relevant officers of the terms of the Agreement
 - (vii)
2. In order to facilitate the decision making process of the Parties, the Parties will put the following arrangements in place:-
 - (i) the granting of the necessary authority to the Project Director Section 151 Officers and other Officers of the Parties to make those decisions delegated to them in Schedule 4 to this Agreement
 - (ii) the creation of the Joint Waste Disposal Board as a Joint Executive Committee in accordance with the Constitution attached as Schedule 2 to this Agreement
 - (iii) the Parties each undertake that they have passed the necessary resolutions as required by the Constitution of each Council to ensure that the delegated powers detailed in this Schedule 4 have been properly given to the Project Director and other appropriate officers and that proper authority has been vested in the Joint Waste Disposal Board to enable it to operate and make decisions that bind the Parties in accordance with the provisions of this Agreement
3. The Parties agree that they will abide by the decisions of the Project Director the Section 151 Officers and the Joint Waste Disposal Board so far as those decisions are properly made in accordance with the provisions of this Agreement
4. The Parties have agreed that certain matters should be reserved to be decided by themselves. In this event the decision of all Parties shall be unanimous in order for the decision to become effective save in circumstances where the decision will only affect (both financially and in respect of service provision) the Parties or Party making the decision and the provisions of clause 16 of this Agreement will apply in this respect.

- 5.1** The Parties hereby agree that their decisions will be made in the manner described in Appendix A to this Schedule 4 (as approved by the JWDB) provided that the operation of the decision making process detailed in Appendix A will not (where the decision is to be made other than by each of the Parties unanimous agreement):-
- 5.1.1 result in a Manifest Injustice to one or more Parties as a result of that Party or those Parties being unable to operate a veto on the decision
- 5.1.2 commit or is likely to commit the Parties to expenditure in excess of £100,000 or to result in the aggregate expenditure of the Parties under the Project for the then current financial year exceeding £100,000 in which event the decision shall be reserved to be made unanimously by all the Parties. The figure of £100,000 shall be reviewed by the Parties at five yearly intervals the first such review to take place on the fifth anniversary of the review
- 5.2** In this paragraph 5 the term “Manifest Injustice” shall mean any situation where:-
- (a) The implementation of a decision will have a financial impact on a Party which is significantly disproportionate to the gain or benefit bestowed upon that Party by the decision
- (b) A decision will have a significant financial impact as a result of its implementation which will place undue and unreasonable budget pressures on the Party as a result of the decision
- (c) The implementation of a decision would conflict with a fundamental policy of any Party
- 5.3** Where decisions are to be made by the JWDB the members of that JWDB shall have at all times due regard to advice of the technical officers of all the Parties relevant to the decisions to be made
- 5.4** Where decisions are to be made by the Project Director he will seek advice and make those decisions taking into account the advice of the technical officers of all the Parties relevant to the decisions to be made and shall report the decision to the next meeting of the JWA
- 5.5** The Parties agree to use all reasonable endeavours to convene the JWDB in sufficient time to comply with timescales for decisions detailed in the Principal Contract where such decisions fall to be made by the JWDB
- 5.6** In the event of an urgent decision being required by the Parties and in the event that it is not possible to call a meeting of the JWDB to consider such decision (where such decision is delegated to the JWDB) then:-
- 5.6.1** The Project Director shall be entitled to make such decision with the agreement of the Chairman of the JWDB (or in the absence of the Chairman the Vice Chairman of the JWDB); and
- 5.6.2** Details of the decision and the reason for its urgency shall be reported to the next meeting of the JWDB

APPENDIX A

Manner in which the Parties will reach joint decisions under the Principal Contract

In this Appendix all references are to clause numbers and clause headings in the Principal Contract. All terms used shall have the meanings assigned to them in the body of the Agreement

Clause Number	Clause Heading	Description of decision to be made	Description of manner in which the decision is to be made	Deemed Decision where no decision is reached
5.11.5	General obligations of the Councils	Issues arising from schedule 38	Project Director	Not agreed
5.13	Changes to Financing Agreements	Consents to amendment, waiver or exercise of a right under Financing Agreements	Section 151 Officer of Administrative Authority in consultation with Section 151 Officers of other Councils	No
5.16.2/ 5.16.3	Existing Facilities Condition Survey	Consent to Required Works and approval of excess	Project Director	Not agreed
5.17.2/ 5.17.3	Latent Defects	Consent to Latent Defects Works and excess	Project Director	Consent refused
6.5	Project Director	Appointment of Project Director and scope of authority	Agreement of all the Councils	N/A
6.6	Removal of Project Director	Removal or a replacement of Project Director	Agreement of all the Councils	N/A

6.13.1	Conflict between Administering Authority Project Director and Authorised Officer	Resolution of conflict by Administering Authority	(1) The Chief Executives of the Councils or (2) JWDB in the event that conflict not resolved	N/A
8.1.4	Contractor to obtain Planning Permission for the Facilities	Consider comment and upon information	Project Director	Deemed no consent
8.1.5	Contractor to obtain Planning Permission for the facilities	Notification of failure to use all reasonable endeavours	Project Director	N/A
8.3.1.3	Obligations of Contractor	Variations to Planning Permission	Project Director	Deemed no
8.4	Proceedings	Appointment of Leading Counsel	Project Director	N/A
8.4.2/8.4.4/8.4.5	Proceedings	(1) Pursuing proceedings within budget (2) Pursuing proceedings where exceeded budget	(1) Project Director (2) Unanimous agreement of the Councils	Deemed no
8.4.3/8.9.10	Proceedings/Satisfactory Planning Permission	Requirement for opinion of Leading Council	Project Director	Deemed no
8.5.1/8.5.2	Cost of proceedings	Approval of cost of proceedings and mode of payment	Project Director	Deemed no
8.6	Costs awarded in proceedings	Manner of cost reimbursement	Project Director	Adjustment to Unitary Charge

8.8.6/ 8.8.7/ 8.8.8	Satisfactory Planning Permission	(1) Decision as to whether planning permission is unsatisfactory <u>and</u> (2) <u>Decision to refer to expert</u> (3) <u>Decision relating to appropriateness of the Revised Project Plan</u>	(1) Project Director (2) Project Director (3) Project Director	(1) N/A (2) Deemed no (3) Deemed No
8.8.8.1/ 8.8.10	Satisfactory Planning Permission	Decision whether to issue Council Notice of Change or prepare Revised Project Plan	JWDB	Deemed prepare Revised Project Plan
8.9	Failure to obtain Planning Permission	Decision to terminate or require a Revised Project Plan	All Councils unanimous agreement	Revised Project Plan required
<u>8.9</u>	Failure to obtain Planning Permission	Agreement of dates	Project Director	Deemed no extension of time
8.10	Revised Project Plan	Agree Revised Project Plan <u>or reject, suggest modifications and consider revised plan</u>	Project Director	N/A
8.12	Termination of a result of Planning Failure	Decision to terminate	Unanimous decision of all the Councils	Decision deemed not to have served a notice
<u>8.13.3</u>	Delays and Extensions of Time	Agreement of Revised Project Date	Project Director	Deemed no extensions

<u>8.8.1/8.14</u>	Satisfactory Planning Permission/ Challenge Period Smallmead	Direction to proceed to implement Planning Permission	Project Director	Deemed no
<u>9.5</u>	Necessary Consents	Consents to variations relaxation or waiver of Necessary Consents	Project Director	Deemed no
9.6.4	Contractor to obtain Waste Management Licences for the Key Project Facilities	If further measures required	Project Director	No further measures needed
9.9.1	WML proceedings	Decision to take opinion of Leading Counsel	Project Director	N/A
9.9.2	WML Proceedings	Approval to institute proceedings	Project Director	N/A
9.9.3	WML Proceedings	Leading Counsel's opinion required	Project Director	No opinion required
9.9.4	WML Proceedings	Directions in respect of proceedings	Project Director	N/A
9.10	Cost of WML Proceedings	Approval of further advisors	Project Director	Not approved
9.10.3	Cost of WML Proceedings	Request for breakdown	Project Director	N/A
9.12.4	Satisfactory Waste Management Licence	Acceptance that Licence unsatisfactory and proposed action	Project Director	Deemed not accepted
9.12.5	Satisfactory Waste Management Licence	Referral to expert	Project Director	N/A
9.12.6/9.12.7/9.12.8	Satisfactory Waste Management	decision to issue Council Notice of	Project Director	Deemed required to

	Licence	Change		prepare Draft Revised Project Plan
9.13	Failure to obtain Waste Management Licence	Notice to terminate or prepare revised plan	Unanimous agreement of the Councils	N/A
9.14.4/19.1 4.5/9.14.7	Revised Project Plan	Agreement of Plan	Project Director	Not agreed
9.16	Termination as a result of WML failure	Service of Notice to terminate	Unanimous decision of the Councils	N/A
11.2	Engagement of EPC Contractor and Operating Contractor	Terminate, waive rights to or Variation to the Ancillary Documents	Project Director	Deemed no
12.2.2	Procedures for commenting on the Designs	Review and approvals in accordance with Schedule 11	Project Director	N/A
13.1.1	Materials	Substitution of materials	Project Director	N/A
13.2	Compliance with Council Notices	(1) Issue of Notices and (2) Subsequent written consent	(1) Project Director (2) Project Director	(1) N/A (2) Deemed no
15.1.2	Right of Inspection	Decision to open up Works for inspection	Project Director	N/A

15.1.3/15.1.4	Right of Inspection	Notification of non compliance or withdrawing of the Notice	Project Director	N/A
15.2	Supply information of	Need for information from the Contractor	Project Director	N/A
16.2	Supply information of	Further information request	Project Director	N/A
17.2/17.3	Compensation Events	(1) Agreement to the claim for compensation; (2) The amount of compensation and any resultant time extension or other relief from obligations are reasonable	(1) Unanimous agreement of the Councils (2) Project Director	(1) Deemed no (2) Not agreed
18	Delays due to a Relief Event	(1) Agreement to the claim for relief and (2) Any resultant time extension	(1) Project Director (2) Project Director	(1) Deemed no (2) Not agreed
19.2.	Completion of relevant Key Project Facility	Any decisions in relation to acceptance testing in Schedule 14	Project Director	
21.3	Deposit and Access to As Built Drawings	Access to drawings	Project Director	N/A
22.2	Emergencies	Determination as to whether an emergency exists and scope of	Project Director	N/A

		<u>services required</u>		
23.6/23.17	Planned Maintenance	<p>(1) Information request to verify report</p> <p>(2) Request for maintenance records</p>	<p>(1) Project Director</p> <p>(2) Project Director</p>	<p>(1) N/A</p> <p>(2) N/A</p>
23.7	Planned Maintenance	To agree rectification of deficiencies of maintenance	Project Director	Deemed disputed
23.10	Planned Maintenance	Decision whether survey required	Project Director	No survey required
23.11	Planned Maintenance	To agree survey on different date	Project Director	Not agreed
23.13	Planned Maintenance	Notification of Rectification period and standard required	Project Director	Within a reasonable time dependant upon the circumstances
25.1	Council Change to the Works or Services	<p>(1) Proposals by the Parties for change resulting in savings (including the resultant Estimate, means of payment of reduction and related matters)</p> <p>(2) Proposals by the Parties for change resulting in additional costs (including the resultant Estimate means of payment and</p>	<p>(1) Project Director</p> <p>(2)&(3) Project Director if within budget</p>	<p>(1) No request deemed to be given</p> <p>(2) No request deemed to be given</p>

		related matters) (3) All other related matters (4) Approval of additional third party costs	(2)&(3) Unanimous Agreement of all the Councils if budget exceeded (4) Project Director	(3) Deemed no Council change or Council notice of change withdrawn (4) Not approved
25.1.13	Council Change to the Works or Services	Agreement to pay costs where funding not available	(1) Project Director or within budget (2) Unanimous agreement of the Councils if budget exceeded	Deemed not agreed
25.2	Small Works Changes	Agreement relating to small works changes schedule of rates and timing of small works	Project Director	Deemed acceptance
25.3	Contractor Change in Works or Services	(1) Consideration of the Contractors proposals for change <u>including subsequent modifications</u> (2) Agreement to implementation of change resulting in savings (3) Agreement to implementation of change resulting in additional costs (4) All other related matters	(1) Project Director (2) Project Director (3) Unanimous agreement of each affected Council through the JWA (ref: clause 16 of this Agreement) (4) Project Director if resulting in savings otherwise the affected Councils by unanimous	(1) Deemed No (2) Deemed No (3) Deemed No (4) Deemed No

			agreement	
<u>26.1.1</u>	Qualifying Change in Law	<u>Decision as to whether notice issued expressing an opinion</u>	Project Director	N/A
<u>26.1.2</u>	Qualifying Change in Law	<u>Discussion and agreement and agreement to mitigation</u>	Project Director	Deemed not agreed
<u>26.1.3</u>	Qualifying Change in Law	<u>Agreement to incurring capital expenditure</u>	Unanimous decision of the Councils	Deemed not agreed
<u>26.1.4</u>	Qualifying Change in Law	<u>(1) Consideration/determination of Councils Share</u>	(1) Unanimous decision of the Councils	(1) N/A
<u>28</u>	VAT	<u>Payment of VAT, VAT elections, requests for information</u>	Unanimous agreement of S.151 Officers of all the Councils	Deemed No
29.2	Project Director to reply by issuing Council's Monthly Reply	Agreement to Monthly Report	Project Director	Deemed agreed
29.3	Project Director to reply by issuing Councils Quarterly Reply	Agreement to quarterly report	Project Director	Deemed agreed
29.4	Project Director to reply by issuing Councils First annual reply	Agreement to first annual reply	Project Director	Deemed agreed
29.5	Project Director to reply by issuing Councils second annual reply	Agreement to second annual reply	Project Director	Deemed agreed
29.6	Councils may suspend payment	Decision to suspend payment	Project Director	Deemed agreed

	if no Monthly Report Quarterly Report First Annual Report and Second Annual Report			
29.8	Councils disagree with Monthly Report, Quarterly Report, First Annual Report or Second Annual Report	Disagreement or acceptance of reports	Project Director	Accepted
29.9	Contractor disagrees with Councils Monthly Report, Council's Quarterly Report, Council's First Annual Report or Council's Second Annual Report	Notification of disagreement	Project Director	Deemed confirmed
29.10	Referral to Dispute Resolution Procedure	Decision to refer to dispute	Project Director in consultation with Chair of JWDB	N/A
29.14	Monthly Performance Report	Notification of agreement or disagreement with report and confirmation or modification of response	Project Director	Deemed agreement
30	Refinancing	(1) Consent to Qualifying Refinancing and (2) Agreement relating to manner of receipt of share basis and method of calculation	(1) Unanimous decision of the Councils (2) Unanimous decision of the Councils	(1) Deemed no (2) Through reduction in Unitary Charge
31.1.1	Market Testing Haulage Services	Agreement to market test	Project Director	Date as per Principal Contract agreed
31.1.3.4/ 31.1.5	Market Testing Haulage Services	Agreement of changes to haulage services and tender requirements and contents of invitation to	Project Director	Deemed not agreed

		tender		
31.1.12	Market Testing Haulage Services	Veto of tenderers	Project Director	No veto
31.1.16	Market Testing Haulage Services	Dispute selection of replacement provider	Project Director	No dispute
31.2	Market Testing Recyclate	All decisions	As per clause 31.1	As per clause 31.1
32.1.2	Best Value Duty	Request for and scope of assistance under clause 32.1.2	Each affected party	N/A
32.2	Best Value Reviews	<p>(1) Need for the Parties to affect a best value review</p> <p>(2) Parties requirements for Contractor involvement in review</p> <p>(3) Consideration of results of review and decision to issue a Best Value Service Change Notice</p> <p>(4) Agreement to a Best Value Review Plan</p>	<p>(1) Project Director</p> <p>(2) Project Director</p> <p>(3) JWDB</p> <p>(4) JWDB</p>	<p>(1) N/A</p> <p>(2) N/A</p> <p>(3) N/A</p> <p>(4) Deemed Best Value Change Service Notice withdrawn</p>
33.3	Councils Monitoring	Election to monitor	Project Director	N/A

33.6	Increased Monitoring	Requirement for additional monitoring etc	Project Director	N/A
33.7	Increased Monitoring	Service of Notice	Project Director	N/A
34	Audit Access	Request for audit access	Project Director	N/A
35.1/35.4	Insurance	Request sign up to Letter of Undertaking by Broker, decisions to request policies, evidence of premiums, inspect and request information generally	Section 151 Officer of Administrative Authority in consultation with Section 151 Officers of other Councils	N/A
35.6	Breach	Payment of premiums	S.151 Officer of Administering Authority in consultation with S.151 Officers of other Councils	N/A
35.7	Notification of Claims	Request claims information	Project Director and S.151 officer of Administering Authority in Consultation with S.151 officer of Councils	N/A
35.10 / 35.12	Council Approval/ Professional Indemnity Insurance	Approval of Insurers and requests	Project Director	Deemed approval
35.16.1	Obligations	(1) Approval of reinstatement contractor (2) Approval of terms and timetable for Reinstatement Works	(1) Project Director (2) Project Director	(1) Deemed approved (2) Deemed approved

35.16.2	Obligations	<p>(1) Approval or rejection of Reinstatement Plan</p> <p>(2) Approval of person to effect reinstatement works</p> <p>(3) Approval of implementation of Reinstatement Plan</p>	<p>(1) Project Director</p> <p>(2) Project Director</p> <p>(3) Project Director</p>	<p>(1) Deemed approved</p> <p>(2) Deemed approved</p> <p>(3) Deemed not approved</p>
35.18	Uninsurable Risks	Agreement that risk uninsured <u>and means of management</u>	Unanimous agreement of S.151 Officers of all the Councils	Deemed not agreed
35.19	Consequences	<p>(1) Consideration of consequences and related issues</p> <p>(2) decision to continue or terminate due to uninsured risks and related matters</p>	<p>(1) Project Director</p> <p>(2) Unanimous agreement of all Councils</p>	<p>(1) N/A</p> <p>(2) Deemed decision to continue</p>
35.20	<u>Terms and Conditions that Become Unavailable</u>	Determination of whether terms are or are not available and any consequences	<p>(1) s.151 Officer of administering Authority in consultation with S.151 Officers of other Councils in event of no dispute</p> <p>(2) JWDB in event of dispute</p>	<p>(1) Deemed terms not available</p> <p>(2) Deemed terms not available</p>
35.21	Insurance	Acceptance of Joint	Section 151	Deemed

	<u>Premium Risk Sharing Schedule</u>	Insurance Cost Report and agreement to Exceptional Cost or Exceptional Saving	Officer of Administering Authority in consultation with Section 151 Officers of the other parties	accepted
<u>38</u>	Intellectual Property	Requirement for data or licensing issues	Project Director	N/A
<u>39</u>	Regular meetings of the Councils and Contractor	Attendance of staff at meetings and provision of Minutes	Project Director	N/A
<u>40</u>	Operational Manuals	<u>Request for Operation Manuals</u>	Project Director	N/A
<u>41</u>	Contractor's Records	<u>Request for and any inspection of information</u>	Project Director	N/A
<u>42</u>	Environmental Protection and Annual Environmental Report	<u>Considering Environmental Report</u>	Project Director	N/A
<u>43</u>	Data Protection	<u>Decisions in relation to DPA issues</u>	Project Director	N/A
<u>44</u>	Council Step-In	(1) Decision for Councils to step-in step out and any assignment where non urgent scope of action (2) Decision for Councils to step-in and scope of action where urgent	(1) Unanimous agreement of the Councils (2) Project Director who must then refer the matter to the Councils for appropriate budgetary provision to be made	(1) N/A (2) N/A

44.2	Right of access	<u>Exercise right of access</u>	JWDB and/or Project Director	N/A
45.4.3	Employment Information	Provision of Final Employee List	Project Director	N/A
45.5	Union recognition	Provision of Union recognition agreements	Project Director	N/A
45.7	Provision of details and indemnity	Councils request for details	Project Director	N/A
45.8.5/45.8.6	Compliance with Code obligations	Request for information	Project Director	N/A
45.8.8	Compliance with Code obligations	Actions by the Councils in respect of Code compliance	Project Director	N/A
45.9	Retendering	Request for employee information	Project Director	N/A
45.13.7/12	Undertaking from the Contractor/ Pension Issues on Expiry or Termination	(1) Request for information (2) Consents	(1) Project Director (2) Project Director	(1) N/A (2) No consent
46.3	Admission to each Existing Facility and/or Key Project Facility	Requirement for other particulars	Project Director	N/A
46.4.2	Criminal Records Bureau	Consent engagement to	Project Director	No consent
47	Equal Opportunity	<u>Considering equal opportunities issues and requesting information</u>	Project Director	N/A
49	Termination on Council Default	Considering action on receipt of termination notice	Unanimous decision of the Councils	N/A

50	Compensation and Council Default	(1) Agreement to the calculation of compensation (2) Consideration of asset transfer where all Parties interested (3) Consideration of asset transfer where not all Parties interested	(1) Agreement of all Section 151 Officers (2) JWDB for a recommendation to be confirmed by the Councils (3) Each affected Party	(1) N/A (2) N/A (3) N/A
51.1	Right to Termination Contractor Default	(1) Decisions to terminate as a result of Contractor Default (2) Agreement of rectification programme (3) Agreement that rectification effected	(1) Unanimous agreement of all Councils (2) Project Director (3) Project Director	(1) N/A (2) N/A (3) N/A
51.2	Persistent Breach	(1) Decision to serve warning notice (2) Decision giving Final Warning Notice	(1) Project Director (2) Unanimous agreement of all Councils	(1) N/A (2) N/A
52.1	Retendering Election	Whether the Councils can elect to re-tender, decision to re-tender Principal Contract or require expert determination	Unanimous decision of the Councils	Deemed decision to re-tender
52.2	Retendering Procedure	Tender Process, agreement of tender terms and all tendering related matters	Project Director	N/A
52.2.1.11/12	Retendering Procedure	(1) Determination of the Compliant Tenders	(1) Agreement of Project	N/A

		and agreement to the Adjusted Highest Compliant Tender Price (2) Decision to enter into a New Contract	Director and S.151 Officers of the Councils (2) Project Director	
52.2..1.18/52.2.1.19	Retendering Procedure	Elections and notification not to re-tender	Agreement of all S.151 officers of the Councils	N/A
52.3	No retendering procedure	(1) Election to require expert determination (2) Agreement of the Estimated Fair Value of the Contract	(1) Agreement of all S.151 officers of the Councils (2) Ditto	(1) N/A (2) Not agreed
53.3/53.9	Termination on Force Majeure	(1) Determination of occurrence of Force Majeure Event (2) Notice of cessation of Force Majeure Event	(1) Unanimous agreement of the Councils (2) Project Director	N/A
53.4	Termination on Force Majeure	Agreement of terms to mitigate event	Project Director	N/A
53.5/53.6	Termination on Force Majeure	Consideration of whether to terminate the Principal Contract and transfer of Assets	Unanimous agreement of all the Councils	N/A
53.9	Termination on Force Majeure	Council Notice of Change	As per clause 25.1	As per clause 25.1
53A.1	Termination at the Fixed Works Longstop Date	Service of Notification of termination	Unanimous agreement of all the Councils	N/A

54	Compensation on termination for Force Majeure	Agreement to calculation of compensation	Unanimous agreement of all S.151 Officers of all the Councils	N/A
55	Termination on Corrupt Gifts and Fraud	Decision related to Prohibited Act and Decision to Terminate	Unanimous agreement of all the Councils	Deemed no termination
56.1	Corrupt Gifts and Fraud	(1) Consideration of transfer of assets (2) Calculation of compensation	(1) As per clause 50 (2) Unanimous agreement of all Section 151 Officers of the Councils	(1) N/A (2) N/A
57	Voluntary Termination by the Councils	(1) Decision to terminate (2) Consideration of transfer of assets (3) Calculation of compensation	(1) Unanimous agreement of the Councils (2) As per clause 50 (3) Unanimous agreement of all Section 151 Officers of the Councils	(1) N/A (2) N/A (3) N/A
59	Termination by the Councils for Breach of the Refinancing Provisions	(1) Decision to terminate (2) Consideration of transfer of assets (3) Calculation of compensation	(1) Unanimous agreement of the Councils (2) as per clause 50 (3) Unanimous agreement of all Section 151 Officers of the Councils	(1) N/A (2) N/A (3) N/A
61.1	Method Payment of	(1) Decisions regarding method of making payment (2) Agreement of all termination payments	(1)&(2) Agreement of all S.151 officers of the Councils	(1) N/A (2) N/A

62/87	Expiry or early termination of Contract Period/Equipment	Consideration and agreement of all matters arising from the expiry or early termination of the Principal Contract not specifically dealt with elsewhere in this Agreement	Project Director and agreement of all S.151 Officers of the Councils	N/A
62.5.1	Final Survey	Requirement for final survey and agreement to date thereof and revised dates suggested by Contractor	Project Director	Revised Contractor dates acceptable
62.5.3	Results of Survey	Agreement of rectification or maintenance required and period for rectification etc	Project Director	N/A
62.5.5	Retention Fund	Consideration of whether work satisfactory or deduction should be made	Project Director	N/A
62.5.7	Failure to carry out work	Decision for Councils to effect work	Project Director	N/A
64	Conduct and Control of claims	Decisions in relation to any claims whether conducted by the Contractor or any of the Councils	Section 151 Officers of Administrative Authority in consultation with Section 151 Officers of other Councils	N/A
66	Change of ownership	Considerations relating to change of ownership and consent to change	Section 151 Officers of Administrative Authority in consultation with Section 151	N/A

			Officers of other Councils	
67.2	Restriction on transfer of the Contract by the Contractor	Decisions on any transfer/assignment by Contractor or approval of any new sub-contractor	Section 151 Officers of Administrative Authority in consultation with Section 151 Officers of other Councils	No
67.6	WPSA	Agreement to vary etc	Unanimous agreement of the Councils	Not agreed
69	Information and Confidentiality	Decisions on disclosure of confidential information	Project Director	N/A
70	Public Relations and Publicity	Approval of press releases etc	Project Director	N/A
71	Dispute Resolution	All decisions under this clause	Project Director	N/A
72.3	Waiver	Decisions regarding any waiver	Project Director	No waiver
79	Amendments	Decisions regarding any amendments to the contract	Unanimous agreement of the Councils	N/A
N/A	N/A	All other matters upon which a party decision must be reached and is not covered by the above	Project Director or where appropriate the unanimous decision of the Councils	N/A

The following provisions apply to schedule 44 of the Principal Contract

1.1.8.2/3	Indemnities	Notice relating to draft report and agreement to contents of report	Project Director	Report not agreed
1.2.1	Joint Responsibilities	Notice of Trigger Condition and consultation in respect of investigative or remediation works	Project Director	N/A
1.2.3/1.2.4	Joint Responsibilities	All provisions in connection with any action	Project Director	N/A
1.2.8	Joint Responsibilities	(1) Notification of indemnity claim	(1) Project Director	N/A
		(2) Settling amount to be paid	(2) Project Director and S.151 Officers of the Councils	N/A
1.2.14	Joint Responsibilities	Councils approval to change	Project Director and section 151 officers of the councils	Not approved
1.3.1	Contractor Responsibilities	Consent of Councils to works etc	Project Director	No consent
1.5.2.3	Further Joint Responsibilities	Consent of Councils to notify	Project Director	No consent
1.8.1	Appointment of Remediation Handback Consultant	Requirement for survey and agreement to consultant	Project Director	N/A

1.8.2/1.8.3	Appointment of Remediation Handback Consultant	Approval of deed of appointment	Project Director	Not approved
1.8.7.2/1.8.8	Appointment of Remediation Handback Consultant	Approval of Handback Specification and time extensions	Project Director	Not approved
1.9.1	The Tender Process	Agreement to 3 Proposed Contractors and form of Contract	Project Director	Not agreed
1.9.4 1.9.5	The Tender Process	(1) Councils approval to Tender (2) Revert for further details	(1) Project Director (2) Project Director	(1) Not approved (2) No further details needed
1.10.2.5/ 1.10.2.6	Remediation Handback Works	Request for information and site visits	Project Director	N/A
1.10.2.7	Remediation Handback Works	Representations of the Councils	Project Director	N/A
1.10.2.9	Remediation Handback Works	Authority to disclose	Project Director	Not agreed
1.10.2.10	Remediation Handback Works	Exercise of right to attend meetings and/or request correspondence	Project Director	N/A

1.10.2.13	Remediation Handback Works	Agreement to variations to Handback Specification	Project Director	Not agreed
1.12.4	Remediation Handback Completion	Referral to Expert	Project Director	N/A
1.12.5	Remediation Handback Completion	Agreement to further works	Project Director	N/A
1.15	Expert Determination	Representations from Councils	Project Director	N/A

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**TO: JOINT WASTE DISPOSAL BOARD
10 JANUARY 2007**

**JOINT WASTE DISPOSAL BOARD -
PROJECT MANAGEMENT ARRANGEMENTS
(Head of Environment and Consumer Services, Reading Borough Council)**

1 PURPOSE OF THE DECISION

- 1.1 To inform the Board of current and proposed future arrangements for project managing the Waste Private Finance Initiative.

2 RECOMMENDATIONS

- 2.1 **To note the progress of the project management arrangements to date.**

3 REASONS FOR RECOMMENDATIONS

- 3.1 Clause 9.3 of the Joint Working Agreement (which was executed on 31 October 2006) states specifically that "The Parties shall each appoint the Project Director and shall be responsible for the appointment of and for the replacement of the Project Director from time to time. A report elsewhere on this agenda deals with the appointment of the Project Director. The Project Management arrangements to support the Project Director are whatever the councils agree from time to time.

4 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 None, the report is for information.

5 SUPPORTING INFORMATION

- 5.1 Following the successful award of the Waste PFI contract, the Business Change Group consisting of Mark Moon, Jon Freer and Kevin Holyer have been proposing and consulting on changes in the Council's Waste Management services, to complement the shared services arrangements, and support the Project Director. A number of factors make the timing right for these changes including:
- The need to put in place appropriate structures and contract management arrangements for the PFI Waste Contract.
 - The need to agree areas where joint working between the partner councils in the wider waste management arena can deliver an enhanced, more effective and efficient service for the benefit of all.
- 5.2 Consultation began in May 2006 with staff from across the three authorities. In summary, it was agreed that once the PFI contract became operative, the waste management functions of the Councils and the business processes associated with waste management services might be characterised as:
- Those that must be provided jointly for the effective management of the contract

- Those that could be provided jointly (whether for effective management of the contract or to make better use of the total skills and resources available) or could be replicated at the individual council level
- Those that must be provided at an individual council level

5.3 Where business processes are to be provided jointly there remains a further decision point as to the degree of integration of people/teams. The consultation has helped us to clarify the priorities and aspirations of the partner Councils' which in turn has enabled us to shape and develop outline proposals for the distribution of functions in the future. Details of the work carried out to apportion waste management functions and processes are available upon request. Based on the outputs of the consultation, the Business Change Group have developed proposals for the future into three areas:

- Structure, function and reporting lines
- Filling vacant slots
- Interim arrangements

5.4 Structure, function and reporting Lines

5.4.1 The joint working arrangements envisage the creation of a dedicated team to manage the PFI Contract and related joint waste management activities. The PFI Project Management Team will be supported by a range of specialist support from Reading Borough Council, the administering authority (finance, legal, Human resources, information technology, training etc).

5.4.2 The project management team will be headed by a PFI Project Manager who will (within the scope of delegations established by the Joint Working Agreement) be responsible for the management of the PFI Contract and will report to the Project Director.

5.4.3 It is proposed that the Project Manager will be supported by an officer with lead responsibility for Waste Performance Finance and Contract Administration and a part time officer with lead responsibility for Policy and Strategy. The contract management team will probably be completed by a Contract Monitoring Officer(s) as we develop the team and the interface with the collection services.

5.4.4 The proposed structure along with job titles and job roles is shown in the attached appendix 1.

5.5 Filling Vacant Slots

5.5.1 There is a need to fill the Project manager post as quickly as possible and this post is currently being filled in accordance with the council's agreed organisational change protocols and in line with the Joint Working Arrangements. Once the Project Managers post is filled, we will make further proposals about filling the other posts.

5.6 Interim Arrangements

5.6.1 We are aiming to have the changes in place as soon as possible and, as an interim measure, we invited expressions of interest to act as the Interim Project Manager until the permanent post holder is appointed. One expression of interest was received

and Oliver Burt, Waste Services Manager from Reading, is currently undertaking this role along side his substantive post.

6 STRATEGIC RISK MANAGEMENT ISSUES

- 6.1 The Waste PFI Contract is a very substantial project for the three Councils. As such it will be monitored both internally within each Council and by the External Auditors to ensure that the Contract is well managed in terms of delivery, financial and service performance. Should the contract not deliver then it would pose a significant risk to the Council.
- 6.2 The proposed project management arrangements are expected to deliver financial savings for each authority. The uniqueness of our waste solution is in the shared services approach and the proposed changes set out above are intended to complement the partnership arrangements.

Background Papers

Joint Working Agreement signed on 31 October 2006

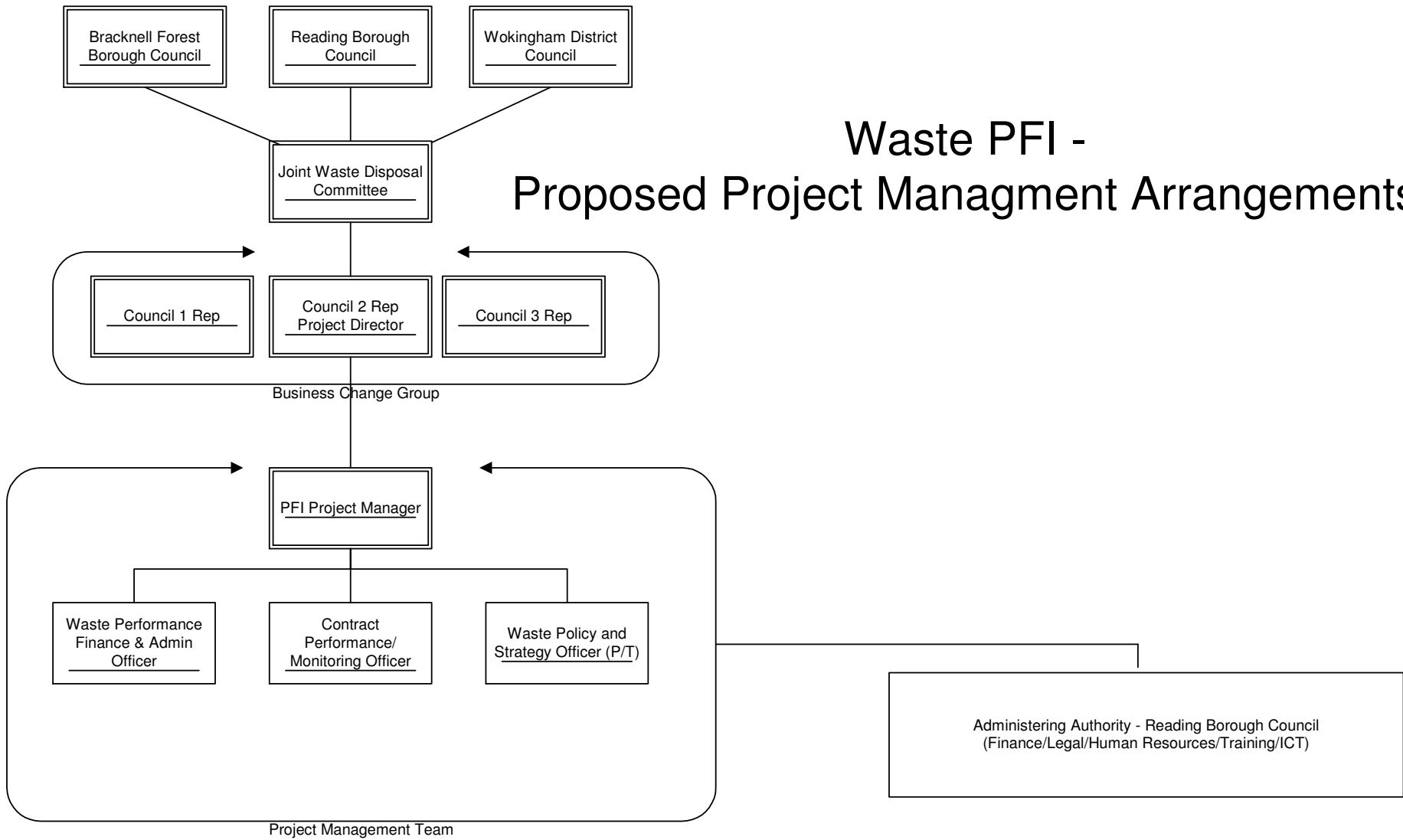
Contact for further information

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Project Management Arrangements

Waste PFI - Proposed Project Management Arrangements



Agenda Item 13

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