

**JOINT WASTE DISPOSAL BOARD
3 JULY 2006**

UPDATE ON JOINT WORKING AGREEMENT

1. INTRODUCTION

- 1.1 The purpose of this report is to advise Members on the progress and the current status of the Joint Working Agreement (JWA) between the three Councils.

2. RECOMMENDATION

- 2.1 **That Members note the progress of the Joint Working Agreement.**

3. SUPPORTING INFORMATION

- 3.1 At the time of writing this report further drafting is being undertaken in respect of the provisions in the Joint Working Agreement relating to the following matters.

3.1.1 environmental issues;

3.1.2 the Financial Schedule;

3.1.3 the Constitution Agreement; and

3.1.4 the proposed delegations within Schedule 4 of the JWA relating to decisions that need to be made or matters that need to be considered pursuant to the Project Agreement.

It is anticipated that a further version of the Joint Working Agreement incorporating the above matters will be available for review by Members at the meeting of the Joint Waste Disposal Board on 3 July.

- 3.2 There are a number of matters that Members should note, all of which will be incorporated into the next version of the Joint Working Agreement. These are listed below in no particular order of importance.

3.2.1 It is proposed that the Joint Working Agreement will continue until the termination of the Principal Contract or the Lakeside Energy From Waste Contract ("the Lakeside Contract"). It has been necessary to extend the term of the JWA to incorporate the Lakeside Contract is because it is possible that the Project Agreement may terminate prior to the Lakeside Contract, for example, if the Project Agreement is terminated as a result of contractor default and the Councils take a novation of the Lakeside Contract. It will be necessary to consider whether further drafting will be required within the JWA to incorporate any provisions relating to the Lakeside Contract itself. It is proposed that this will be considered shortly.

- 3.2.2 There will be new provisions which require the Joint Waste Disposal Board to appoint the Project Director. From a legal prospective it is necessary for the newly constituted Joint Waste Disposal Board (as a Joint Committee) to delegate the duties and functions that the Project Director will perform to the Project Director. This is because an officer of one of the Councils cannot perform the functions of the other Councils save as authorised by the Joint Waste Disposal Board acting in its capacity as a Joint Committee.
- 3.2.3 It is proposed that Reading Borough Council will perform the function of Administering Authority in accordance with the terms of the JWA. It is further proposed that the Project Director will be an officer of either Bracknell Forest Borough Council or Wokingham District Council. The Authority which does not appoint the Project Director will be responsible for the administration of the Joint Waste Disposal Board and the Standing Orders of that Council will apply for the purposes of the Joint Waste Disposal Board. This will ensure a fair sharing of responsibilities between the three Councils.
- 3.2.4 It is proposed that any costs which may fall to Reading Borough Council or Bracknell Forest Borough Council in their capacity as Landlord of the Smallmead and Longshot Lane sites will be shared equally between the three Councils. It is not anticipated that these costs will be significant.
- 3.2.5 In the previous version of the JWA provisions were incorporated for a proposed Council change to the works or the services to be considered by the Joint Waste Disposal Board. The principle is that where only one Council or two Councils are affected by a proposal the Council or Councils which are not affected should not seek to stop the proposal being considered or implemented. The new suggestion is that a Council Change should be considered by the Project Director where the change would result in savings and that proposals for change which result in additional costs will be considered by the Project Director or will be reserved to the three Councils in the event that the proposed annual budget (an amount yet to be agreed) is exceeded. However, the principle that a party or parties who are not affected by a decision or proposal will not seek to stop the implementation of such decision or proposal (which could include a change to the Works or Services) remains and further and wider drafting covering this principle will be incorporated into the next version of the JWA.
- 3.3 The Constitution Agreement (incorporated as Schedule 2 to the Joint Working Agreement) has undergone complete revision. This has been effected in conjunction with the in-house Legal team and Eversheds. The revised Constitution Agreement incorporates the following:-
- 3.3.1 The abolition of the current Joint Waste Disposal Board.
- 3.3.2 That the Committee will consist of six Members with each Council appointing two Members.
- 3.3.3 That the Chairman and Vice Chairman will not be Members of the same Council save where this arises as a result of non-availability or unwillingness of Members at any relevant time which prevents this clause from being observed.
- 3.3.4 That the Committee will meet no less than four times a year and that decisions of the Project Director (made in accordance with Schedule 4 as confirmed by the Committee) will be reported to the Joint Waste Disposal Board at its next meeting.

- 3.3.5 A requirement to appoint the Project Director.
- 3.3.6 A limitation on the Committee's ability to commit the three Councils to expenditure in excess of an agreed budget which is still to be discussed and agreed. This will ensure that no decisions are made by the Committee outside the budgetary limits of the Councils.
- 3.3.7 The appointment of the Section 151 officer of the Administering Authority as the Treasurer to the Committee.
- 3.3.8 The appointment of the Chief Legal Adviser of the Council who will be responsible for administration of the Joint Waste Disposal Board as the Legal Adviser to the Committee.
- 3.3.9 A statement that the Project Director is directly responsible to the Committee.
- 3.4 The provisions of Schedule 4 have been the subject of considerable discussion and review by the in-house Legal team and in particular the Councils' three responsible Directors. As a result of this there has been a review of the decision processes and a revised Appendix A to Schedule 4 will be provided to reflect these discussions. Members should note that the first meeting of the Joint Waste Disposal Board will consider the proposed delegations in Appendix A with a view to ensuring that they are entirely satisfactory.
- 3.5 Appendix A to Schedule 4 will be re-drafted to reflect that the Project Director will be responsible for "medium impact" decisions. It is important to remember that the Project Director will be required to work within the agreed budget of the Councils and will be required to report his decisions to the next meeting of the Joint Waste Disposal Board. It is considered that the proposed delegations to the Project Director will ensure compliance with the timeframes detailed in the Project Agreement by which decisions must be made. It is to be noted that where the Project Director is not comfortable with making a decision that has been delegated to him he always has the option to refer the same to the Joint Waste Disposal Board.
- 3.6 Appendix A will also incorporate details of the deemed decision which will be applied where no decision has been reached by the appropriate person the Joint Waste Disposal Board or the Councils in accordance with Appendix A. This deemed decision will be primarily in the negative. The intention is to protect the Councils interests throughout.
- 3.7 There has been no any change in principle to the proposals regarding the apportionment of various elements of the unitary charge which are to be incorporated within the Financial Schedule to the Joint Working Agreement. This was reported to Members at the last meeting of the Joint Waste Disposal Board. The principles being that each element of the unitary charge will be apportioned according to the type of waste to which that element relates (for example, recycling according to the Councils relative shares of the total tonnages recycled). The default position is the relative shares of total Contract tonnage (for example, the waste minimisation payment). The relative shares are likely to vary throughout the life of the Contract in line with the actual tonnages of each Councils waste processed. In the case of the Energy from Waste payment and PFI credits it is considered more equitable to fix relative shares at the start of the Contract since these elements are not variable.

There still remains an ongoing process in place to test and refine these principles as the payment mechanism itself is finalised.

Background Papers

Version 17 of the Joint Working Agreement

Contacts for Further Information

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