

**Report to:** Cabinet

**Date of Meeting:** 17<sup>th</sup> July 2017

**Report Title:** Future Waste and Cleansing Services

**Report By:** Mike Hepworth, Assistant Director, Environment & Place

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### **Purpose of Report**

To update Members on urgent developments associated with the provision of waste and cleansing services from June 29<sup>th</sup> 2019 when the existing contract ends.

To seek approval to:

- Commit to and participate in a joint waste services procurement with the East Sussex Joint Waste Partnership for new waste services from 29<sup>th</sup> June 2019; and
- Develop arrangements for a potential in-house street and beach cleansing, bulky waste and fly tip removal service to operate in Hastings from 29<sup>th</sup> June 2019.

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### **Recommendation(s)**

#### **Cabinet authorises:**

1. The Chief Legal Officer in consultation with the Director of Operational Services to sign the Joint Waste Partnership Inter Authority Agreement attached at appendix one. Committing the Council to procure waste services to commence 29<sup>th</sup> June 2019.
2. The Assistant Director Financial Services and Revenues in consultation with the Leader of the Council, to increase the 2017/18 budget allocation in support of waste procurement to £75,000. To enable the Council to commit to and participate in the East Sussex Joint Waste Partnership joint waste procurement.
3. The two Hastings Borough Council Members appointed to the Joint Waste Committee, to take key waste services procurement decisions on behalf of the Council, in accordance with the constitution of the Joint Waste Committee.
4. The Director of Operational Services to develop comprehensive fully costed arrangements for a potential Hastings street cleansing direct services organisation (DSO), which subject to meeting best value criteria, could provide street and beach cleansing, fly tip removal and bulky waste collection services in Hastings from June 29<sup>th</sup> 2019.

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### **Reasons for Recommendations**

The existing waste services contract provided through the East Sussex Joint Waste Partnership ends 28<sup>th</sup> June 2019, and new arrangements must be in place ready to commence on 29<sup>th</sup> June 2019, to ensure a seamless transition for residents.

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## Background

5. The procurement of the Council's existing waste services through the East Sussex Joint Waste Partnership was a ground breaking initiative, which resulted in significant savings and increased recycling. Many other local authorities have subsequently followed this partnership procurement model for waste services.
6. The Council approved participation in the project in November 2010, and then approved the following key phases of the project:-
  - March 2011 – approved establishment of the Joint Waste Partnership to make decisions on the procurement of the services on behalf of the partner Councils. Each waste collection authority having 2 Members on the committee. For Hastings the Leader and appropriate Lead Member.
  - June 2011 – approved the constitution of the Joint Waste Committee administered for the partnership by Rother District Council, and a supplementary estimate of £60,000 towards the joint procurement costs.
  - November 2011 – approved the Council's commitment to the procurement by signing a legally binding Inter Authority Agreement.
  - April 2012 – agreed the specification for waste services.
  - October 2012 – approved letting of the contract to the preferred bidder.
7. Through the competitive dialogue procurement process, a contract had been developed that (as requested by the bidders) essentially passed ownership of the recycling to the contractor. The idea being that they were best placed to make efficient and cost effective arrangements to process and market the recycling materials. Unfortunately almost immediately the contract was let in 2012, the international recycling commodity market crashed and has subsequently not recovered.
8. The collapse of this market resulted in significant financial pressures on the contractor, ultimately leading to the partnership recently agreeing to a mutual early termination of the contract on 28<sup>th</sup> June 2019. Therefore, each member of the partnership must now ensure that alternative waste service arrangements are in place for a seamless transition on 29<sup>th</sup> June 2019.

## Update on the East Sussex Joint Waste Partnership

9. The partnership currently consists of:
  - Rother District Council – the administering authority for the partnership and also providing the small central client team that liaises with the contractor's senior management, and each of the 4 local client teams based within the 4 waste collection authorities;
  - Hastings Borough Council;

- Wealden District Council;
  - Eastbourne Borough Council;
  - East Sussex County Council (ESCC) – has 1 representative on the Joint Waste Committee. Although not a waste collection authority, ESCC are the waste disposal authority and are therefore an important member of the partnership.
10. The end of the existing joint waste contract is an opportunity for each of the partners to consider their future options. These options include:
- Procuring new waste services outside of a joint procurement arrangement;
  - Participating in another joint waste procurement through the East Sussex Joint Waste Partnership;
  - Operating waste services through an in-house service delivery model.
11. Feedback from partners during the negotiations for the mutual termination with Kier, and at the most recent Joint Waste Committee held on 16<sup>th</sup> June, indicate that Hastings, Rother and Wealden all want to procure new services through the East Sussex Joint Waste Partnership. With the caveat that Hastings is also interested in the potential for operating street and beach cleansing services through a direct services organisation (DSO).
12. Following the move to closer working between Eastbourne Borough Council and Lewes District Council, there is uncertainty about how they will deliver their future waste services, and this could impact on the size of the partnership after June 2019. For many years Lewes District Council has provided waste services through a DSO. At the Joint Waste Committee on 16<sup>th</sup> June, Lewes District Council indicated that they were interested in joining the partnership to procure future waste services, but again the details were unclear. It is understood that both Councils are considering their future options at their respective Cabinets on 12<sup>th</sup> July.
13. Understandably, as a matter of urgency the Joint Waste Partnership is seeking clarification from all potential partners in East Sussex by 18<sup>th</sup> July 2017.

## **Partnership Proposals for Procuring New Waste Services**

14. Irrespective of how Eastbourne and Lewes may decide to deliver their waste services after June 2019, it appears highly likely that there will be a strong East Sussex Joint Waste Partnership comprised of Rother, Hastings and Wealden. It is likely that this would be attractive to bidders from a logistical perspective as the districts are coterminous, and there are 2 existing depots located in the West in Wealden, and 1 here in the East in Hastings.
15. The scope for a new joint waste procurement was discussed at the Joint Waste Committee on 16<sup>th</sup> June. The reports are available on the Rother District Council website at <http://www.rother.gov.uk/article/12695/Friday-16-June-2017> and set out the timeframe required if such a procurement exercise is to be carried out.

16. Work needs to start now as depending upon the model of procurement, the OJEU Notice advertising the procurement to potential bidders must be placed by November 2017. Whilst the existing documentation will be used as a template, and should only need minor amendments in many areas, some sections may need major changes, and this will require considerable officer time, expert technical, legal, HR, and financial support. Some of which will need to be provided by specialist contractors commissioned by Rother as the Administering Authority. Again the details including a draft project plan are included in the 16<sup>th</sup> June Joint Waste Committee reports.
17. The partnership can't proceed with a project to procure new waste services for the partnership until it is known which authorities will be participating. As with the procurement for the existing contract, the partnership needs full commitment from each partner before the Administering Authority starts to commission the process, which will probably cost in the region of £250,000.
18. The Joint Waste Committee has been asked to re-visit the Inter Authority Agreement (IAA) that was signed in 2011 for the then procurement exercise. The agreement is intended to establish a binding legal position between the partners and secure commitment from each Council at the beginning, and for the duration, of the procurement process.
19. Contractors actively seek assurance that such agreements are in place. It helps provide certainty that each Council in a partnership is committed to proceeding with the procurement. This is an important consideration for contractors because they incur considerable costs and investment of time while participating in procurement processes. It is therefore in the Partnership's best interests to provide such reassurance and seek interest from as many contractors as possible.
20. By replicating the process followed in 2011, we will again create a binding legal arrangement between the partners and demonstrate their ongoing commitment to the procurement. This will help ensure that appropriate resources are in place to deliver this project, and set out a clear mechanism for cost recovery should any Council seek to withdraw subsequently.
21. The IAA sets out in detail the various provisions proposed and, aside from minor amendments to update the text, replicates the agreement signed in December 2011. Members of the JWC have been asked to confirm agreement to the IAA by 18<sup>th</sup> July 2017.
22. The key aspects of the IAA relate to the costs arising from the procurement project. Depending upon the procurement route chosen, these costs are estimated to be up to £250,000 and the agreement enshrines how they will be distributed between the parties.
23. A significant risk is that one of the Councils withdraws after the commencement of the procurement process but prior to the award of contract. This could require re-starting the procurement and would certainly result in increased costs for the remaining Councils. Similarly, a withdrawal could result in a challenge from one of the ultimately unsuccessful companies, or alternatively may result in increased contract costs for the remaining Councils.

24. The IAA includes provision (at Clause 9.2) for three types of financial risk - the costs of procurement; the costs of a legal challenge; and, the increased costs in relation to waste services incurred by the other Councils - should one party withdraw from the process. This is intended to provide financial comfort to the remaining Councils should such risks materialise. As in the 2011 agreement, the provision for increased costs caused by withdrawal is capped at a maximum level of £100,000 per withdrawing Council. The draft IAA is set out at Appendix One.
25. The partners committing to the procurement may also be asked to pay a contribution to the procurement costs at the beginning of the process, possibly up to £75,000. The Council has currently budgeted £50,000 for waste procurement purposes in 2017/18, and Cabinet approval will therefore be required if more than this is required.
26. Once Councils commit to the procurement process a detailed specification for the new contract will be drawn up and put out to tender by November 2017. Subsequent negotiation and finalisation of a shortlist will be completed by the end of 2018. Final decisions by each individual Council on contract award are expected to be concluded in December 2018. This allows for a period of mobilisation prior to new arrangements being in place for June 2019.

## **Recommended Future Waste Service Delivery Models for Hastings**

27. Hastings Members were briefed on the mutual early termination proposals during the last 12 months, both through confidential briefings and at the 10<sup>th</sup> October 2016 Cabinet. Although not the primary purpose of those briefings, there was some discussion of how waste services might be provided after June 2019.
28. Feedback suggests that Members would prefer refuse and recycling services to continue to be provided by a contractor, and it is therefore proposed that Hastings commits to procure these services through the East Sussex Joint Waste Partnership. The original partnership procurement delivered a refuse and recycling service that has generally worked well for the majority of residents. Given the need for substantial investment in containers, equipment, freighters etc it is likely that the Council will be able to procure a more competitively priced refuse and recycling service through joint procurement, than by itself.
29. Whilst a contracted out refuse and recycling service has generally worked well for Hastings, the same cannot be said for street cleansing. This has been highlighted through particularly poor independent audit results this year, and most recently at the Joint Waste Committee on 16<sup>th</sup> June, when the Kier Contract Director presented the results of their recent partnership wide customer satisfaction survey. This highlighted a stark difference between Hastings and the rest of the partnership. Whereas on average about 80% of respondents from Rother, Eastbourne and Wealden were satisfied or very satisfied with their street cleansing service, this was only 58% for Hastings residents.
30. However as Members will know, street scene issues such as littering and fouling have regularly featured at performance review and overview and scrutiny meetings for many years, well before the existing waste contract. Members have regularly reported street scene issues brought to their attention by residents, that can be exacerbated by inadequate street cleansing. In a borough so reliant on

regeneration and tourism, street and beach cleansing is probably one of the most vital services provided by the Council.

31. As a result, Officers have been exploring the potential for providing street and beach cleansing through a DSO. The main potential benefit of a DSO over a contracted out cleansing service is that the Council would have direct control of it. This would enable the Council to immediately directly address problems that arise, rather than having to highlight them to a contractor, and then wait for the contractor to analyse the issue and develop and implement a solution that may or may not work.

## **Exploring the Scope for a Hastings Cleansing DSO**

32. Throughout the last contract with Veolia, and the current contract with Kier, the Council has worked closely with a specialist waste consultancy (WYG) to carry out independent audits of 'street scene' 3 times a year. They work to a recognised methodology associated with a previous national indicator known as NI195. This enables an objective assessment of street scene issues such as litter, fouling, graffiti, detritus etc. In 2012 NI195 was adapted by the partnership and is used to monitor and assess the current contractor's street and beach cleansing performance, and some of the contract rectification and default provisions rely on this methodology.
33. WYG has specialist knowledge of waste services, extensive experience with clients using contracted out and DSO waste delivery models, and a very detailed knowledge of the borough gained through carrying out our NI195 audits for many years. As a result earlier this year WYG were commissioned to review the scope for this Council to operate a street and beach cleansing DSO. This work involved detailed discussions with officers from waste, HR, finance, IT, etc. WYG worked with the Waste, Parking and Street Scene Services Manager to devise a high quality 7 days a week service model that included:
- Good levels of staff management and supervision (higher than used by the current contractor).
  - Appropriate cleansing frequencies for every street and public open space in the borough. Ranging from several times a day using dedicated barrow beats for high footfall areas, to every 6 weeks using a mechanised sweeper for streets and roads where demand is very low.
  - Additional seasonal resources to tackle the summer season and things like leaf fall and public events.
  - Highway weed spraying and removal.
  - Routine use of IT solutions such as smart devices to improve communications between operatives and the back office system, and their supervisors.
  - Rapid response resources to enable an effective response to serious cleansing issues that can arise on a daily basis.
  - An out of hours/emergency service.

- A 10% contingency reserve to cover the potential for additional resources from time to time.

34. WYG's conclusions included:

- "It would be easier for HBC to bring the services in question in-house than for many councils";
- "All things considered, we feel a traditional DSO basis would work best for HBC";
- "It should be possible to establish an in-house service for delivering a street cleansing service which delivers to a high standard within current cost level i.e. the amount that is paid now".

35. WYG also reviewed the scope for delivering some ancillary waste services through the cleansing DSO. They concluded that:

- "It is entirely appropriate for bulky waste collections to be part of the in-house street cleansing service. Indeed, including it enables overall economies to be made by the more effective use of a specialist vehicle which would be utilised for bulky waste collections and the removal of fly-tips."
- "It is also entirely appropriate for graffiti cleaning to be part of the in-house street cleansing service."

36. Operating a Cleansing DSO that covered streets, the beach and foreshore, and bulky waste collections and removal of fly tips would give the Council direct control of practically all public space cleansing. However, there would be a need for careful ongoing liaison and co-ordination with those responsible for servicing other public areas, such as:

- Optivo in relation to the social housing areas they service.
- ESCC highways in relation to highway gulley emptying and grass verge cutting.
- The Council's grounds maintenance contractor.

37. Given WYG's conclusions, and the importance of providing a high quality cleansing service across Hastings, it is proposed that the Council should continue to develop and refine a comprehensive fully costed integrated street and beach cleansing and bulky waste and fly tip removal DSO.

38. The specification will then also be used to obtain bids for a contracted out cleansing service through the Joint Waste Partnership procurement. This will ensure that the Council can proceed with the best value option.

## Policy Implications

### Risk Management

39. Agreement to the IAA at this stage enables the Council to be clear on the level of commitment required, and provides a mechanism to control potential costs should any of the Councils withdraw.

40. The proposal to procure waste services through the Joint Waste Partnership is considered to be low risk, as the procurement process was well managed last time, and a very similar model is being followed.
41. The Inter Authority Agreement will, as in 2011, create a legal basis to govern the relationship of the parties to the procurement. This will help manage and reduce the risks associated with this project and ultimately make the offer more appealing to the market place.

### **Economic/Financial Implications**

42. In light of discussions prior to the conclusion of the Mutual Exit Agreement, provision of £50,000 has already been made for the costs of a re-procurement exercise in 2017/18. This may need to be increased if the Joint Waste Committee agrees to draft proposals to require a payment from each partner of £75,000 at the same time as the IAA is signed.
43. Further work will be required to ascertain the longer term budget implications once detailed specifications are worked up to assess the costs of the new refuse and recycling contract as the procurement process progresses. However, it is most unlikely that the cost will remain the same as for the existing contract. Given the changes to the recycling commodities market the partnership expects to face higher costs associated with recycling.
44. There will be additional work falling to the Waste Management Team to help take forward the procurement. Measures are already being taken to strengthen the team for the remainder of the contract, and further specialist support may be required to support Hastings specific elements of the procurement and service development process. Whilst some of this can be funded from within existing budgets there will be an as yet unquantifiable need for additional funding in 2017/18 and 2018/19.

### **Organisational Consequences**

45. Although the procurement process will be managed and led by Rother as the Administering Authority, it will also require significant input from a range of Council Officers, such as Finance, Legal, HR, senior management, the waste team, and the Assistant Director Environment and Place. Based on experience from the original procurement this should not be under estimated.
46. Development and refining of the cleansing service DSO proposals will also require further input from these services, and if a cleansing services DSO is implemented it will require one off mobilisation funding.

### **Legal Implications**

47. The Inter Authority Agreement will create a legally binding arrangement between the Councils for the duration of the procurement process. Should the Council seek to withdraw from the procurement exercise, the agreement provides that this will carry financial implication, be that for any increased procurement costs, legal costs and/or any other financial loss incurred by the other Councils. The last of these three is limited to a maximum of £100,000. However, the same provisions apply to

all the Councils and therefore will also act to protect the Council should one of the other Councils seek to withdraw from the process

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## Wards Affected

All Wards

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## Policy Implications

Please identify if this report contains any implications for the following:

Equalities and Community Cohesiveness	No
Crime and Fear of Crime (Section 17)	No
Risk Management	Yes
Environmental Issues	Yes
Economic/Financial Implications	Yes
Human Rights Act	No
Organisational Consequences	Yes
Local People's Views	No
Anti-Poverty	No

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## Additional Information

East Sussex Joint Waste Committee Reports for Meeting held June 16 2017 available at <http://www.rother.gov.uk/article/12695/Friday-16-June-2017>

WYG Future Waste Options report prepared on behalf of Hastings Borough Council June 2017.

## Appendices

Appendix One – Proposed East Sussex Joint Waste Partnership Inter Authority Agreement.

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## Officer to Contact

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