



CABINET

6 September 2016

CORPORATE DIRECTOR FOR PLACE COMMISSIONING: TONY CIABURRO

**CABINET MEMBER WITH RESPONSIBILITY FOR
TRANSPORT, HIGHWAYS & ENVIRONMENT: CLLR IAN MORRIS**

Subject:	Procurement of county-wide contracts for the treatment of green waste.
Recommendations:	<p>Cabinet are asked to :</p> <ul style="list-style-type: none"> • note the background information provided on the procurement process; • approve the submission of the OJEU notice, which marks the commencement of the tender processes; • agree delegated authority is given to the Corporate Director for Place Commissioning, in consultation with the Cabinet Member for Transport, Highways and Environment and the Cabinet member for Finance, Performance and LGSS to: <ul style="list-style-type: none"> ○ pursue and conclude discussions with the District and Borough Councils regarding alternatives to the procurement and implementation of new county-wide green waste contracts; ○ issue notices to the District and Borough Councils as required by the Environmental Protection Act 1990; ○ authorise the award of contracts; <p>in respect of the new contractual arrangements for the treatment of green waste.</p>

1. Purpose of Report

- 1.1 The Waste Management Service has a £500k saving incorporated in the 2016-17 MTFP to be achieved by “Closer collaboration with District and Borough Councils on waste collection, recycling and disposal” (15-006-40).
- 1.2 The purpose of this report is to outline a proposal to achieve this saving by procuring new contracts for the treatment of green waste and consequently, to reduce payments made to the District and Borough Councils for the treatment of this waste.

2. How this decision contributes to the Council Plan

- 2.1 The Council’s vision is to make Northamptonshire a great place to live and work. This is achieved through increasing the wellbeing of your county’s communities and/or safeguarding the county’s communities.

This initiative specifically delivers increased wellbeing by ensuring that:

- Communities thrive in a pleasant and resilient environment, with robust transport and communications infrastructure.
- Resources are utilised effectively and efficiently, in coordination with partners and providers.

3. Background

Collaborative Working with the District and Borough Councils

3.1 The Council has been in discussions with the District and Borough Councils for more than two years, with the objective of achieving savings by working collaboratively to deliver the waste management service. As a result of these discussions making slow progress, the Chief Executives Group commissioned a review of waste services which commenced with senior waste officers developing a list of options in 2015, and validation of this work by an external consultant in 2016.

3.2 Six options were recommended as a result of this work, each of which could potentially reduce the costs of waste services, although not in the short term:

Introducing charges for collecting green waste	This could be considered by the Waste Collection Authorities as part of the “harmonisation project”.
Moving to 3-weekly collections of residual waste	This could be considered by the Waste Collection Authorities as part of the “harmonisation project”.
Increasing the levels of trade waste taken in at Household Waste Recycling Centres (HWRCs)	This initiative will be considered by NCC, although it is not expected to not provide a significant income.
Harmonisation of collection services	This to be considered as a project led by District and Borough Councils.
Investing in the development of a residual waste treatment plant	This will be considered by NCC as part of developing a strategy for the procurement of new residual waste arrangements from 2020.
Creating a local authority trading company ('LatCo') to deliver waste functions	This could be considered by the Northamptonshire Waste Partnership, but is an option for achieving savings / income in the longer term.

3.3 The Chief Executive’s Group have considered and discussed these recommendations and concluded:

- The Northamptonshire Waste Partnership would further investigate the opportunities for harmonising collection services;
- NCC would lead on solutions for residual waste, including commissioning an options appraisal and development of a business case.

During these discussions, NCC made it clear that because these options will not deliver savings for NCC in the short term, it must investigate alternative options to deliver savings in Waste Management in 2016/17.

Green Waste

- 3.4 Currently, the District and Borough Councils have their own local arrangements in place for the disposal of green waste. Six of the District and Borough Councils fund the collection of this waste at the kerbside and pay a gate fee for the treatment of green waste. The exception is East Northamptonshire which operates a “garden waste club” which is an opt-in paid-for service. NCC pays a recycling credit to all District and Borough Councils based on the tonnage collected, which accounts for approximately half of the recycling credit paid to the District and Borough Councils per annum.
- 3.5 One of the reasons why green waste is now proposed as the focus of the options to achieve savings is that District and Borough Councils can charge households for the collection of green waste. Indeed, as noted above, East Northamptonshire Council have already implemented this system, and Daventry District Council have recently agreed to introduce charges for its green waste collection service from 2018. Nationally, 42% of councils now charge households for the collection of household waste (CIWM 2016). Introduction of these charges would mitigate any reduction in recycling credit payments made by NCC to the District and Borough Councils, although these charges may also change resident’s behaviour with regard to disposal of their green waste resulting in negative implications.
- 3.6 In 2014 an option was developed by NCC and discussed with the District and Borough Councils to procure a county-wide composting contract, to replace the arrangements that individual authorities make for the green waste collected at the kerbside, as part of the early discussions to achieve savings by working collaboratively. Since 2014, this option has been implemented successfully by other waste disposal authorities, including Lincolnshire and Leicestershire, and it is a model which is long established elsewhere (e.g. Oxfordshire and Buckinghamshire). Consequently, the Council has reviewed this option and is proposing it for Northamptonshire.
- 3.7 The procurement of new contracts for green waste could mean that NCC pays for the treatment of this waste and manage the contracts, therefore payment of a recycling credit would not be necessary, hence achievement of a saving. Alternatively, negotiations with individual District and Borough Councils may enable savings to be made to the total recycling credit paid for green waste, provided agreement(s) can be reached regarding a reduction in the recycling credit payable for this material. The basis of these two options is set out below.

Option A - Procurement Strategy for County-wide Composting Contracts

3.8 A multi disciplinary team comprising of officers from NCC and LGSS have developed a strategy for the procurement of countywide composting contracts. The basis of the procurement strategy is set out in brief below.

3.8.1 It is proposed that seven separate contracts are procured, one for each of the District and Borough Council area, which will allow for the new arrangements to dove-tail with the current arrangements in place. Furthermore, each contract can be tailored for each council.

3.8.2 It is proposed that the initial phase of the new contracts for treatment of green waste will co-terminate on 31.3.2020, which is when the current arrangements for residual waste are due to expire. This will offer the opportunity to procure a combined service package for residual waste and green waste from 2020. It is also proposed that the option of an extension may provide additional flexibility.

3.8.3 It is proposed that the treatment contracts are limited to green waste collected at from households at the kerbside, rather than introducing the co-collection of food waste.

3.8.4 It is proposed that the treatment method for the treatment of green waste is not specified, but rather a set of standards and targets are achieved.

3.8.5 It is proposed that the importance of local delivery points will be emphasised in the procurement documents in order to minimise distances that the District and Borough Councils will have to travel.

3.8.6 It is proposed that the open process is used to procure these contracts and tenders will be evaluated on the basis of scores weighted 70% price and 30% quality, provided a minimum threshold for quality is met.

3.8.7 It is proposed that the procurement will commence following agreement by Cabinet, with the publication of an OJEU notice by the end of September 2016. The procurement timescales will allow the first of these contracts to commence in March 2017, with each of the contracts phased in as the current arrangements terminate.

Option B – Pursue & conclude negotiations with individual District and Borough Councils to achieve savings for green waste

3.9 As noted earlier in this report (3.1) discussions with the objective of identifying and achieving savings for waste management have been on-going for several years with little progress. Several scenarios have been developed for green waste, including alternative payment options which would reduce, but not eliminate the amount paid to the District and Borough Councils for this material.

3.10 In May 2016 the County Council's Chief Executive Officer wrote to his equivalent colleagues in the District and Borough Councils to consult on the option to procure county-wide contracts for green waste (Option A), but also setting out some possible alternative financial models which could be implemented and suggesting agreement(s) could be reached with individual authorities.

3.11 It is proposed that discussions with individual District and Borough Councils are pursued and concluded during September 2016 prior to the commencement of the procurement of new contracts. These discussions could explore alternative options for achieving the required saving to green waste costs and would not be limited to the financial models in the consultation letter, but may include the scenarios previously developed and new scenarios such as an alternative rate of recycling credit for green waste. However, any alternative proposal must achieve the target efficiency saving of £500k per annum.

Legal Implications

3.12 Legal advice regarding this proposal has been secured from LGSS Law, who has requested advice from Bevan Brittan. In summary, the legal advice states:

3.12.1 That, using the Environmental Protection Act 1990 (“EPA”) the Council can object to the District and Borough Council’s retention of green waste and direct the District and Borough Councils as to the place which the green waste should be delivered as per the new arrangements;

3.12.2 That consideration must be given to the risk of costs being passed to the Council as a result of a District or Borough Council terminating existing contractual arrangements. More information is required on the existing contracts to better understand the degree of exposure on the Council. These details include any right to extend the contract, or early termination liabilities;

3.12.3 That consideration must be given to the risk of costs being passed to the Council as a result of directing the District and Borough Councils to comply with any green waste separation requirements;

3.12.4 That the Council does not have to pay recycling credits to District and Borough Councils if it directs them to contracts that it has procured, but the Council should be mindful of potential compensation claims for “tipping away costs” (payments made to the District and Borough Councils by NCC if they are directed to dispose of this material at a place which is unreasonably far from the waste collection authority’s area) or collection costs;

3.12.5 That there may be potential negative reputational implications for the Council if these new arrangements are imposed on the District and Borough Councils, and it is noted that any dispute between parties could be resolved by arbitration. However, it should be noted that arbitration is itself costly and complex;

3.12.6 That changes to payments to recycling credits may be made by agreement between a waste disposal authority and waste collection authority.

- 3.13 The legal advice both from LGSS Law and from Bevan Brittan is that in order for the Council to procure new contracts for green waste, it must object to the WCAs' retention of the waste by way of notice under Section 48(4) EPA and, using its power under Section 51(4) EPA, direct the WCAs as to the place which the green waste should be delivered as per the new arrangements, as set out in 3.12.1 above. Whilst this can lawfully be achieved there are a number of critical procedural steps which must be taken to ensure the legislation is correctly applied and to minimise the risk of a legal challenge being brought. This risk cannot be eliminated and as is set out above, there are a number of potential consequences which may flow from this decision.
- 3.14 In summary, provided the legal advice is followed and certain steps are taken then LGSS are satisfied that the proposed approach is lawful, however, this is not without risk or the possibility of challenge.

4. Consultation and Scrutiny

- 4.1 The Council has been discussing options for collaborative working with the District and Borough Councils for more than two years, and has held several workshops with senior waste management officers. In October 2014, an options paper was circulated which included the option of procuring new county-wide green waste treatment contracts to replace the existing arrangements with the objective of achieving a saving.
- 4.2 In January 2016 the Northamptonshire Waste Partnership was invited to a scrutiny committee session to discuss the MTFP savings proposal for collaborative working for waste management. Options such as those listed in paragraph 3.2 and Section 6 were highlighted. However, the protracted timescales and lack of progress to date were noted and the possibility of implementing new contracts for the treatment of green waste was raised. Previously, waste management has been the subject of a number of scrutiny meetings.
- 4.3 Following the waste review commissioned by the Chief Executive's Group, in May 2016 the Council's Chief Executive wrote to all seven District and Borough Councils in order to consult with them. All seven District and Borough Councils replied with similar responses. Their responses raised the following points:
- 4.3.1 there was doubt whether savings would be achieved, however, if the proposal was in the tax payer's interests then they would support it;
- 4.3.2 the legal position of implementing the proposal was called into question.
- 4.4 In order to address these points, the Council has completed some modelling to examine the proposal to procure and implement county-wide composting contracts and the total waste costs from the tax payer's perspective. The Council also took further legal advice, which confirms that the proposal can legally be implemented.

5. Equality Screening

- 5.1 An Equality Impact Assessment has been completed for the proposal. There are no equalities implications because the proposal involves a change to the treatment of green waste, not its collection. Collection services are provided by the District and Borough Councils. Consequently no further action is required.

Reason that no EqIA is required	as appropriate
The paper is for information only	
The proposal/activity/decision has no impact on customers or the service they receive	
The proposal impacts upon staff but the proposed staffing changes will not affect the service that customers receive*	
Other (please explain further)	

6. Alternative Options Considered

- 6.1 As described elsewhere in this report, options for collaborative working have been discussed with the District and Borough Councils for more than two years. However, an option has not been agreed up on which would achieve savings of the order of magnitude required and within the immediate timescales necessary.
- 6.2 The options considered as part of the “collaborative working” workshops are summarised in the table below, along with their status.

Option	Status
Capture additional recyclables from residual waste.	This option would have decreased NCC’s costs by reducing residual waste, and increased the income from recycling credits for the District and Borough Councils. However, rather than increasing, recycling rates have “flat lined” in recent years.
County-wide management of recyclables.	This option is similar to the proposed new arrangements for green waste, with District and Borough Councils using a county-wide contract for recyclables, which would mean these materials were marketed as a consortium to gain more income. However, currently this material is tied up in existing contracts.
Adjustments to the recycling credit payments.	Payments of recycling credits can be adjusted by agreement between parties. Several options have been considered, including reducing the automatic annual increase from 3% per annum, or introducing a recycling credit incentive, or adjusting the recycling credit paid per authority. However the District and Borough Councils have to date not agreed any changes to these payments.

Introduction of charges at HWRCs	This option was seriously considered by the Council, however, new legislation was introduced which prohibits this measure.
Reducing residual waste by reducing bin capacity.	This concept of this option was to force people to recycle more, by giving them less capacity in the residual bin, either by reduced bin sizes or less frequent collections. However, this option has not been implemented due to the capital cost of new residual bins, and the political resistance of reduced collections.
Introduction of charges per household for the kerbside collection of green waste.	The concept of this option was to enable an opt-in service for green waste which would be more efficient, and to enable an income for the collection of this waste, which would reduce the costs to the authorities. Although this is the current system in East Northamptonshire, and Daventry District Council has recently agreed to introduce charges from 2018, there is political resistance in other authorities.
New solutions for residual waste.	The costs of the current contracts for the treatment and disposal of residual waste have been scrutinised and it has been demonstrated that the current contracts provide value for money because they include gate fee, haulage and local disposal points. Therefore there is no benefit to changing these arrangements before they expire in 2020. The Council is currently developing a strategy for management of residual waste to enable savings to be made from 2020.

- 6.3 Additional options have been considered as part of the Chief Executive's review and these are summarised in section 3.2.
- 6.4 A further set of options for financial models were set out in the consultation letter sent to each District and Borough Council in May 2016. These models included the District and Borough Councils continuing with their current arrangements, with reduced payments made by NCC and the option of NCC paying for specific actions taken by the District and Borough Councils (for example interventions to reduce contamination of green waste).

7. Financial Implications

- 7.1 The proposals included within this cabinet paper are in response to the £500k saving included within the 2016-17 MTFP. The waste management service are committed to achieving this saving: an equivalent one-off saving has already been met for 2016-17 due to rigorous contract management, however an on-going saving must be achieved year on year.
- 7.2 Given the wide variety of parameters and variables involved, it is very difficult to predict the savings which will result from the implementation of Option A. For example, if the green waste collection services and collection rates remain the same as they are currently, then a saving of £1m per annum may be achieved. However, it is more realistic to anticipate a change in collection services which may include, for example:
- charging households for green waste collection which may result in reduce tonnages of green waste collected, with corresponding increases in residual waste tonnages and associated increased costs;
 - reduced monitoring & enforcement of contaminated green waste, resulting in rejected loads and increased costs.
- The impact of these changes would be to reduce the savings made.
- 7.3 In addition the financial models for Option A include a number of assumptions such as inflation rates and gate fees for green waste. Consequently, at this stage, it is only possible to offer a range of magnitude of savings which may be achieved, with the worst case scenario is that Option A may realise insignificant savings.
- 7.4 If Option B is implemented county-wide with a £9 per tonne reduction in the recycling credit paid for green waste is agreed and green waste tonnages remain the same as forecast, then a £500k saving will be achieved.
- 7.5 The actual savings achieved will depend on which option is implemented, recognising that Option A may be implemented for some District and Borough Councils, whilst Option B may result in savings for other District and Borough Councils. i.e. it is not necessarily a “one-size fits all solution”, but may be a mix and match approach.
- 7.6 The cost of implementing the proposals can be met through the existing waste management service budget by using existing resources.

8. Risk and Business Continuity Management

a) Risk(s) associated with the proposals

Risk	Mitigation	Residual Risk
Increased levels of contamination within the waste due to the collection authorities no longer enforcing at the kerbside. Leading to rejected loads or higher gateway fees.	Consider making a payment to the District and Borough Councils for enforcement action taken.	Amber
The financial benefit to NCC is	Financial modelling undertaken to	Amber

not achieved.	understand sensitivities. Contracts procured in a way to maximise financial benefits.	
NCC has to pay significant costs to the District and Borough Councils via tipping away payments.	Intention is to procure local composting solutions / delivery points.	Amber
Reputational damage to NCC due to the public messages issued by the District and Borough Councils.	Continue to pursue collaborative working on this exercise.	Amber
Legal challenge from the District and Borough Councils.	Internal and external legal advice received. Judicial review is only available in very limited circumstances, but arbitration may be sought.	Amber
A District or Borough Council may continue to retain green waste and ignore any objection or direction from NCC.	Continued communication with the District and Borough Councils. On-going legal advice which may result in NCC taking enforcement action.	Amber
Ability for NCC to take existing contractual arrangements in to account. Working in the absence of detailed information provided by the District and Borough Councils on their current contractual arrangements.	High-level information provided by some of the District and Borough Councils. It is hoped that more will follow as it is in the interests of all parties that the current contracts and requirements are fully understood.	Amber
Delays in receipt of information from District and Borough Councils may impact on procurement timescales which could impact on mobilisation time.	At least 4 weeks is allowed for in the current programme.	Amber

b) Risk(s) associated with not undertaking the proposal

Risk	Risk Rating
The £500k saving is not achieved.	Amber

The £500k saving has already been achieved for 2016-17 as a one-off saving due to rigorous contract management. However, if no action is taken (i.e. the proposal is not undertaken) there is a significant risk that the MTFP savings target will not be achieved for future years.

9. List of Appendices

None

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Background Papers:	Environmental Protection Act 1990
Does the report propose a key decision is taken?	Yes
If yes, is the decision in the Forward Plan?	Yes
Will further decisions be required? If so, please outline the timetable here	Yes (see below)
Does the report include delegated decisions? If so, please outline the timetable here	Yes <ul style="list-style-type: none"> September 2016 – conclude “alternative option” discussions with District and Borough Councils. By end 2016 – issue objection & direction notices to the District and Borough Councils as required by the Environmental Protection Act 1990. Phased from Jan 2017 to December 2018 - Authorise the award of contracts.
Is this report proposing an amendment to the budget and/or policy framework?	No
Have the financial implications been cleared by the Strategic Finance Manager (SFM)? Have any capital spend implications been cleared by the Capital Investment Board (CIB)	Yes Name of SFM: Rosemary Pallot Not applicable
Has the report been cleared by the relevant Director?	Yes Name of Director: Tony Ciaburro
Has the relevant Cabinet Member been consulted?	Yes Cabinet Member: Ian Morris

Has the relevant scrutiny committee been consulted?	Yes Scrutiny Committee: January 2016, specifically to consider the budget proposal for collaborative working, which is described in paragraphs 3.1 – 3.3 & section 6.
Has the report been cleared by Legal Services?	Yes Name of solicitor: Virginia Moggridge
	Solicitor's comments: <i>Provided the legal advice is followed and certain steps are taken then LGSS are satisfied that the proposed approach is lawful, however, this is not without risk or the possibility of challenge.</i>
Have any communications issues been cleared by Communications and Marketing?	Yes Name of officer: Liam Beasley
Have any property issues been cleared by Property and Asset Management?	Not applicable.
Are there any community safety implications?	Not applicable
Are there any environmental implications:	The treatment of green waste will confirm to the applicable legislation and standards. The Contracts will only deal with the treatment of green waste, not its collection, and the assumption is that collection services will continue as currently provided.
Are there any Health & Safety Implications:	No
Are there any Human Resources Implications:	No
Are there any human rights implications:	No
Constituency Interest:	County-wide