

Executive

18 March 2021

Report of the Director of Economy and Place
Portfolio of the Executive Member for Transport and Planning

Joint Waste Management Agreement

Summary

1. The City Council (CYC) entered into a Joint Waste Management agreement (JWMA) with North Yorkshire County Council (NYCC) in December 2010. This report seeks approval to update that arrangement with the Shared Waste Management Services Agreement attached as appendix A to deliver a shared service across CYC and NYCC.

Recommendations

2. The Executive is asked:
 - 1) To agree to the entering into the Shared Waste Management Services Agreement as contained with Appendix A and to delegate to the Director of Transport, Highways and Environment (in consultation with the Director of Governance or her delegated officers) the authority to take such steps as are necessary to complete the agreement

Reason: To develop a shared waste management service across CYC and NYCC for the management and disposal of waste (Excluding collection services).

- 2) To note the additional cost of the Shared Waste Management Agreement and that this will be met from existing budgets.

Reason: So that CYC pays its fair share of the shared service.

Background

3. CYC entered into a Joint Waste Management Agreement with NYCC in December 2010 which supported NYCC in entering into a contract with

Amey Cespa for the provision of a long term waste management service at Allerton Waste Recovery Plant (AWRP). In October 2014 Full Council approved to proceed to Financial Close for the Long Term Waste Management Service.

4. The contract for the Long Term Waste Management service (AWRP Contract) is between NYCC and Amey Cespa. The JWMA flows down certain obligations of the AWRP Contract to CYC and sets out payment provisions and governance. The overall costs to the authorities for the Long Term Waste Management service totalled over £34m in 2018/19 and therefore is a significant contract to the partners.
5. CYC pays a contribution to NYCC for the contract management for the work undertaken in managing the AWRP Contract.
6. Separately CYC and NYCC have each entered into Services Agreement with Yorwaste for the provision of Waste Management Services including the bulking and transport of waste to AWRP as well as the management of the council's Household Waste and Transfer Stations (Yorwaste Contract).

Current Management Arrangements

7. As stated above the AWRP Contract with Amey Cespa is managed by NYCC led by the Assistant Director for Waste and Countryside Services. There are a number of boards and joint meetings that are arranged in order to manage the contracts between the parties including

Meeting	Attendees	Frequency	Key Purpose
AWRP Project Board	NYCC Director and support / CYC Assistant Director / Amey / Shareholders	6 Monthly	Commercial / Contractual Issues
AWRP Joint Meeting	NYCC / CYC / Amey	Monthly	Operational Updates
NYCC / CYC	NYCC / CYC	Monthly	Commercial / Finance / Operational

8. These roles and duties within CYC are currently undertaken by a combination of the Assistant Director (Transport Highways and Environment) Head of Waste Services, Finance Manager, and Members of the Waste Strategy Team.
9. In reality the CYC Waste Services Team have been managerially stretched in dealing with improvements to CYC's Waste Collection Service and unable to get heavily involved with the AWRP Contract and liaison with Yorwaste. This has meant much of the joint working has been filled by the Assistant Director with support from Finance and Legal Services.

Drivers for Change

10. It has been acknowledged that the resources required for effective management and supervision of contracts with Amey Cespa and Yorwaste are greater than originally assessed. CYC has been paying a relatively small contribution towards these costs however NYCC has advised that these will need to increase. This is particularly due to CYC's historic contributions not including funding for a proportion of NYCC senior managers who are spending significant amount of time on the AWRP contract and also that CYC have not been paying for any overhead costs.
11. The forthcoming Government review of waste is anticipated to add new obligations on councils in terms of waste collection and recycling. This will likely impact the service at AWRP and closer collaboration with NYCC and the County Districts is anticipated.
12. There are significant linkages between the AWRP Contract and the Yorwaste Contract particularly in relation to bulking and delivering waste from transfer stations and transporting waste to AWRP. Any delays at the transfer station have ongoing financial implications to both councils. There is also a requirement for Yorwaste to source commercial waste from within North Yorkshire to deliver to AWRP in order to maximise the commercial benefit of the AWRP contract rates.

Proposal

13. As have been identified above there are significant synergies between CYC and NYCC in regards its their Waste Disposal services. Officers commenced preliminary discussions in 2019 to explore the benefits of

greater collaboration and whether a shared waste management Service could benefit the two organisations.

14. Following an options appraisal officers from both authorities have concluded that a shared service would be the preferred solution.
15. The Shared Waste Management Service (SWMS) will provide the following functions for the two authorities
 - Contract Management of the AWRP Contract
 - Contract Management of the Yorwaste Contract
 - Client Management of Household Waste Sites
 - Payment of Invoices on behalf of authorities
 - Provision of Management Information including completion of Waste Data Flow
16. The SWMS will be managed by a Head of Service who will jointly report to the Assistant Director Transport Waste and Countryside Services at NYCC and the Assistant Director Transport, Highways and the Environment at CYC. The staff will be employed by North Yorkshire County Council and based at County Hall however will be expected to spend time within CYC and attend officer meetings and Executive / Executive Member / Scrutiny Meetings as required.
17. The SWMS will be governed by the Shared Waste Management Service agreement (SWMS Agreement).
18. It is important to stress that the SWMS Agreement does not change the CYC's ability to determine the service delivered at Household Waste Recycling Centres.
19. The SWMS Agreement does not change CYC's existing 25 year commitment to work with NYCC in a joint way as regards waste disposal through the Allerton Park facility as set out in the original Joint Waste Management Agreement which is incorporated into the SWMS Agreement.
20. CYC retains its obligations regarding tonnages to be delivered to Allerton Park.
21. CYC has greater freedom over non residual waste as this is not part of the existing 25 year agreement.

22. Oversight of the new SWMS Agreement will be through CYC's normal performance reporting mechanism and through the Executive member and scrutiny upon request.

Council Plan

23. Over the period of the Council Plan (2019-2023), the Council will actively seek to nurture strong connections with those who will help to achieve the best for York residents.

Financial Implications

24. The current budget for the Shared Waste Management Service totals £140k and this budget contributes towards the cost of NYCC staff who manage the AWRP Contract with Amey Cespa as well as associated advisor costs primarily Legal and Technical in supporting the contractual relationship. The current breakdown is approximately £85k relating to staffing costs and £55k for advisor costs.
25. The new Shared Waste Management Service will lead to CYC funding £145k staffing costs of the structure which is £60k greater than the current cost but does provide a significantly enhanced service and is more reflective of the value that CYC derives. CYC will continue to fund a share of advisor costs as the contract continues. It is assumed this will remain at similar levels (£55k).
26. There are potential savings as duties transfer to the Shared Waste Management Service and these will be identified through service restructures. It is proposed therefore that this cost can be contained within existing service budgets.

Legal Implications

27. CYC has the power to collaborate with NYCC as set out in the Local Authorities (Goods and Services) Act 1970, s1 of the Localism Act 2011, s93 of the Local Government Act 2003 and s101 and s111 of the Local Government Act 1972.
28. The arrangements contemplated by the SWMS Agreement do not require a procurement process to be carried out as they are in accordance with the provisions of regulation 12(7) of the Public Contracts Regulations 2015 (Regulations) regarding collaboration arrangements between authorities. Regulation 12(7) recognises that the

public procurement rules as set out in the Regulations are not designed to interfere with the freedom of public authorities to perform the public service tasks conferred on them by using their own resources which includes the possibility of cooperation with other public authorities.

29. NYCC and CYC entered into the JWMA in December 2010 which provides for sharing of costs between NYCC and CYC relating to the procurement of the long term service provided by Amey but does not extend to arrangements for formal management of the AWRP Contract.
30. NYCC and CYC also entered into contracts with Yorwaste Limited (a company owned jointly by NYCC and CYC) to provide certain waste management services to both parties.
31. The SWMS Agreement allows the authorities to collaborate in the management of contracted waste disposal services including AWRP but also for other waste disposal authority functions provided through Yorwaste and other third party contractors.

Human Resource Implications

32. Consideration has been given as to whether the potential transfer of responsibility for some tasks from CYC to NYCC is likely to qualify as a business transfer under the Transfer of Undertakings (Protection of Employment) (TUPE) Regulations 2006. If that was the case, the council would apply and follow the legislation. CYC employees who are assigned to work on any of the tasks that are transferring may be eligible to transfer to NYCC. However, given the current assignment of work across CYC staff, then based on what we know at present it is unlikely that TUPE will apply in respect of the tasks transferred or that redundancies would result.

Information Governance Implications

33. The council's corporate information governance offers assurance to its customers, employees, contractors, partners and other stakeholders that all information, including confidential and personal information, is dealt with in accordance with legislation and regulations and its confidentiality, integrity and availability is appropriately protected. The Council may face financial and reputational risks if it fails to protect the information it processes effectively. For example, the ICO can currently impose significant civil monetary penalties for serious data security breaches. Also the failure to identify and manage information risks may diminish the

council's overall effectiveness and damage its reputation and individual(s) may be at risk of committing criminal offences.

Risk Management

34. The proposals contained within the report do not impact upon the Councils ability to change the service residents receive and therefore is considered low risk.
35. The Transfer of Undertakings (Protection of Employment) (TUPE) Regulations 2006 apply the risk is thought to be low.

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Wards Affected:

All

For further information please contact the author of the report

Background Papers:

None

Annexes

Annex A – Proposed Joint Waste Management Agreement.