



JOINT WASTE COMMITTEE MEETING

Friday 16 June 2017 – 2:00pm

Council Chamber, Town Hall, Bexhill

Minutes of the Joint Waste Committee meeting held in the Council Chamber at the Town Hall, Bexhill on Friday 16 June 2017 at 2:00pm.

Joint Waste Committee Members present: Councillors N. Bennett (ESCC), P. Chowney (HBC), J. Dow (EBC), C. Fitzgerald (HBC), P. Franklin (LDC), R. Galley (WDC), A. Ganly (RDC), M. Kenward (RDC), D. Tutt (EBC) and G. Wells (WDC).

Other Members present: Councillor Mrs S.M. Prochak (RDC) and M.R. Watson (RDC).

Advisory Officers present:

East Sussex County Council:	Waste Team Manager.
Eastbourne Borough Council:	Senior Head of Community and EHL, Strategy and Partnership Lead for Quality Environment and Specialist Advisor (Waste).
Hastings Borough Council:	Director of Operational Services, Head of Environmental Services and Head of Communications and Marketing.
Rother District Council:	Executive Director of Business Operations (Lead Director), Executive Director of Resources (Secretary), Service Manager – Community and Economy, Contract Services Manager and Democratic Services Officer.
Wealden District Council:	Lead Head of Service.
Central Client Team:	Joint Waste Partnership Manager and Deputy Partnership Manager.
Kier Services Limited:	Business Manager (in part).

Publication Date: 26 June 2017

The decisions made under PART II will come into force on 4 July 2017 unless they have been subject to the call-in procedure.

Prior to the formal commencement of the meeting, the Lead Director advised that two officers who had served on the Committee from its conception would shortly be leaving their authorities; Alan Dodge, Contract Services Manager who was retiring from Rother District Council and Sue Oliver, Strategy and Partnership Lead for

Quality Environment who was leaving Eastbourne Borough Council. The Joint Waste Committee thanked both officers for their hard work and commitment to the project and wished them both well for the future.

JWC17/01. ELECTION OF CHAIRMAN

RESOLVED: That Councillor Dow be elected Chairman of the Joint Waste Committee for the ensuing municipal year.

JWC17/02. ELECTION OF VICE-CHAIRMAN

RESOLVED: That Councillor Chowney be elected Vice-Chairman of the Joint Waste Committee for the ensuing municipal year.

JWC17/03. MINUTES

The Chairman was authorised to sign the minutes of the meeting held on 10 March 2017 as a correct record of the proceedings.

JWC17/04. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors G. Mattock (EBC), R. Standley (WDC), Isabel Garden – Director of Environment and Community Services (WDC), Karl Taylor – Assistant Director Operations and Contract Management (ESCC), Carl Valentine – Head of Transport and Operational Services (ESCC) and Robin Vennard – Service Manager – Finance and Welfare (RDC).

JWC17/05. MEMBER QUESTION TIME
(7)

In accordance with the Joint Waste Committee Executive Decision Procedure Rules, the following question was submitted by Councillor Mrs Prochak, Rother District Council and answered by the Partnership Manager.

Question: How will the Joint Waste Committee ensure that the performance issues experienced in the current contract are not repeated in the new contract?

Answer: The performance issues in the current contract fundamentally stem from a lack of resource on the part of the contractor. This has for the most part arisen due to the collapse in commodity prices of recyclables from the date of commencing the contract, which has never recovered, leaving less available finance than anticipated to run the contract.

The Performance Management Framework (PMF) within the contract has been used in the most efficient way to assist the contractor to meet its obligations, but not penalise to such an extent as to exacerbate the situation.

As part of the re-procurement, the Pre-Market Testing will ask the market for feedback on the risk associated with recycling ownership, and we will use this to inform the decision on how this is included within the new contract and how they will better respond to these fluctuations. We will also be revisiting the PMF to ensure that it is 'fit-for-purpose' and will meet our needs going forwards.

PART II – EXECUTIVE DECISIONS – subject to call-in procedure under Item 10 of the Joint Waste Committee Constitution by no later than 4:00pm on 3 July 2017.

The Chairman re-ordered the agenda to consider additional Item 10.4 – Service Performance Update first.

JWC17/06. SERVICE PERFORMANCE UPDATE
(10.4)

The report of the Lead Director updated Members on performance across the Joint Waste Contract providing the total workflow, recycling levels, missed bin performance, street cleanliness as well as project work undertaken across the Joint Waste Partnership (JWP), and the current risks to joint waste services.

In terms of total workflow for the April to end of May 2017 period, analysis showed that a small proportion of scheduled collections were being missed daily. Therefore work was rescheduled for recovery the following day or by the end of the week. There had also been a high number of administrative changes to the clinical waste service, as well as staff absence. It was noted that Kier had taken action to cover absence and recruit staff, however it was anticipated that performance would not improve until these issues had been fully resolved. The Councils were therefore taking action under the performance management provisions of the Contract.

Kier had particularly focused on missed bin performance and achieved significant improvement throughout the winter period and had stated their ongoing commitment to ensure this level of performance was maintained. Missed bins were a primary measure of service so remained a concern for all of the Councils. For comparison across the JWP area, the numbers of missed bins were calculated per 100,000 collections due; current figures indicated 100 missed bins (JWP target was 60). Reporting missed collections currently varied across the partnership authorities with some reporting as soon as they believed it was missed with others not accepting a missed bin report until the next day (Hastings model); investigations to operate a consistent approach were underway.

Work was continuing on the ICT Review project and the focus was to ensure that both depot and customer service staff were using the systems as designed and intended.

The recycling (including garden waste/kerbside collections) and dry recycling rates for each authority were demonstrated within the report identifying that the average annual rates were 40% and 27.8% respectively for the JWP as a whole. High volumes of garden waste

had been experienced and collected which was attributed to the start of the growing season and the number of bank holidays during this period.

The December 2016 to March 2017 tranche of NI195 street cleaning surveys had been collated, indicating that service performance was unsatisfactory and consequent payment deductions had been received. Kier had developed action plans prioritising the work needed to improve standards in key locations and reviewed scheduled cleansing work.

An update position for each individual Partner authority was provided as follows:

Rother District Council: Overall performance on collections had been inconsistent. Good service had been experienced however this was sporadic and therefore high standards were not maintained. Round changes were being implemented to improve performance. Some Bring site containers required replacement and a programme to replace these was being established. Street cleansing remained a concern, particularly the clearance of detritus and weeds across the rural areas of the district. Kier was currently addressing these problems.

Wealden District Council: Overall missed bin performance was increasing which had been partly attributed to large volumes of garden waste collected, vehicle reliability, as well as staffing issues. The backlog of container deliveries remained a serious concern with approximately 1,000 still outstanding with an estimated delivery time of approximately six weeks. Performance for fly-tip clearance, bulky and clinical waste collections remained high. Street cleansing works had improved, however detritus remained a concern. To aid these issues, additional health and safety training was completed by the crews and routine mechanical sweeper schedules implemented; monitoring would be ongoing. Recycling performance had increased and was anticipated to exceed 50% target for Wealden during 2016/17. However, mixed glass contamination levels remained a concern; assurance was given that this issue would be closely monitored.

Eastbourne Borough Council: Performance remained high for both street cleansing and waste collections. The results of the last street cleanliness survey indicated that excellent standards were being achieved however minor improvements were required for dog fouling. The number of missed collections remained consistently low for all collection types. Bring sites required further improvement particularly regarding third party collection and container replacement. Kier was currently addressing these problems.

Hastings Borough Council: Street cleansing performance remained a significant concern with inconsistencies experienced across the borough, but particularly in high profile areas along the seafront / foreshore and town centre. Kier was currently addressing these problems.

The JWP Risk Register was maintained as a current document by the JWP Manager and was available to Members on request. The Committee noted that there were no 'very high' or 'high' risks currently recorded.

RESOLVED: That the performance and progress made since the last meeting be noted.

(The Secretary had accepted this item onto the Agenda as an Additional Agenda Item in order for the Committee to consider the latest performance information).

JWC17/07. **KIER SERVICES UPDATE**
(9)

Sean Trotter, Business Manager, led Members through Kier's presentation which provided an update on the current performance of the East Sussex Waste Collection, Recycling, Street & Beach Cleaning and Associated Services Contract.

Mutual Exit Agreement: A detailed communications strategy was developed and delivered in March 2017 regarding the mutual exit agreement which included: internal briefing to management and staff; staff briefing sessions held at four depots; internal communications including staff newsletters; media releases to the local and trade press; communication issued to supply chains; and all trade and media enquires answered. Kier's key focus was to support a seamless transition throughout the procurement process and ensure that staff were "kept on side" and remained committed to service delivery.

Safety Performance: Injuries experienced during June 2016 to May 2017 were consistent with expectations and remained relatively low. RIDDOR (Reporting of Injuries, Diseases and Dangerous Occurrences Regulations) incidents had increased compared to 2016 which was mainly attributed to road traffic accidents; drivers and crews received regular risk assessment training.

Developing Safety: Kier ensured that all employees understood their roles, responsibilities, competencies, desired behaviours, essential skills, and ensured that learning was applied within the workplace and that competency was achieved.

Service Delivery: Kiers' key aims were to focus on high quality service to all Partners. This would be achieved by focusing on reducing missed bins collections, leadership team focus, workforce engagement, increase vehicle and equipment resilience, continued communications and honesty with the Partnership authorities.

Street Cleansing: Improvements were required particularly with detritus issues across the Partnership, as well as litter in Hastings. Additional seasonal staff had been recruited to improve performance.

Communications Update: Members noted the website visitor statistics from January to May 2017 (1,312 website sessions, 933 website visits, 27.2% were new visitors and 72.8% returned visitors).

2017/19 communications and calendar (64 variations) distribution plans were being developed.

Resident Satisfaction Survey: A residents' telephone satisfaction survey was completed in February 2017 by an independent organisation; 1,800 responses were received. Residents were asked to comment on recycling and household waste collections, as well as street cleaning services. The results ranged from 58% to 100% satisfaction ratings. Street cleaning services received the lowest ratings.

At the conclusion of the presentation, Members requested clarity on the following issues:

- **Safety Performance:** Members wanted to know what the one "act of violence" was and what procedures were taken by Kier when these situations occurred? Verbal aggression incidents were classified under this category; there was an increasing trend of drivers / crews receiving verbal abuse from the public whilst carrying out their rounds / duties. It was noted that all incidents were reported to the police.
- **Co-mingled Collections:** clarity was sought on the procedure for co-mingled collections. Complaints had been received that drivers / crews were disseminating the wrong advice to residents about co-mingled collections; "standard practice to co-mingle". Kier advised that co-mingled collections could only be authorised by the supervising Authorisation Managers; staff would be reminded of company policy. Members were encouraged to report incidents (date, time, location and vehicle registration number) to the Partnership Manager for investigation. Kier supported this approach.
- **Road Sweeping:** clarity was sought on how road sweeping vehicles / crews coped with obstructed roads. It was confirmed that a range of techniques were used; monitoring was ongoing.
- **Detritus / Litter on 'A' Roads:** improvements had been realised particularly along the A259 and A21; Kier advised that their maintenance service plan was co-ordinated with the Highways authority.
- **Street Cleaning:** persistent problematic areas were still of concern across the Partnership, particularly in Eastbourne and Hastings. Kier was currently addressing these issues and measures implemented to maintain and improve standards.
- **Vehicles:** was it common practice for the collection vehicles to permanently display their hazard lights during rounds? It was confirmed that hazards lights should only be used during the collection and not whilst driving from location to location.

Kier reiterated their commitment to maintaining and improving service performance across the Partnership.

RESOLVED: That the presentation be noted.

Members considered the report of the Lead Director which introduced the draft Inter Authority Agreement (IAA) that had been prepared for the Committee to consider. Following the Mutual Exit Agreement with Kier it was necessary to progress the work required to procure a new contract to commence on 29 June 2019.

The IAA was principally aimed at creating a binding legal relationship between the Partner authorities as a basis for undertaking the procurement exercise with a view to jointly appointing a contractor for the delivery of waste services. Knowledge of the marketplace had shown that contractors were actively seeking this type of legal agreement to be in place between Councils in order to give them some certainty that the Councils were committed to proceeding with the project.

By creating legal relations between the Partner authorities, this demonstrated all parties' ongoing commitment to the process. This would also ensure that the appropriate level of finance and staff resources were in place to deliver the procurement project, as well as setting out a clear mechanism for cost recovery should any Council seek to subsequently withdraw from the project.

The IAA could only be finalised once the number of parties to the agreement were known and approval for the procurement process and associated cost forecasts were in place. To progress the procurement work, each Partner authority had been invited to confirm their commitment to the project with the future intent of a joint contract by 30 June 2017.

Members noted that the 2011 IAA expired on completion of the procurement project and was replaced by the Joint Waste Contract. Each Council was advised to consider their own constitutional requirements with regard to budget and policy approvals should they wish to withdraw from the Partnership when the current contract ended on 28 June 2019. Further work would need to be made to the current Joint Waste Committee's constitution regarding procurement decisions should one or more of the Partners decide to leave.

A copy of the draft IAA was appended to the report which set out in detail the various legal provisions that were proposed. Many of these were standard to agreements of this nature and were designed to set out the basis of the legal relationship. Members were advised that the IAA also dealt with matters that had already been considered and established through operation of the Partnership. The most significant aspect related to procurement project costs therefore, it was important the legal agreement identified that these were distributed between each party.

It was noted that there were always risks attached to a sizeable project of this nature, one of the most significant being one of the Councils withdrawing from the project at a point after the commencement of the procurement process but prior to the award of the contract. This was a risk as it could result in increased procurement costs being apportioned

to the remaining Councils and could result in a challenge from one of the ultimately unsuccessful companies, or alternatively could result in increased contract costs for the remaining Councils. Therefore a clause had been included in the draft IAA to provide financial comfort to the remaining councils should such a risk materialise. Members' attention was drawn to this clause in particular as a steer was sought from the Committee as to its extent. It had been drafted to demonstrate that the other parties to the contract were being recompensed for losses that the parties were able to ascertain in advance of losses being incurred. The level of damages should be based upon a reasonable assessment of the type and value of the loss of additional expenditure that was likely to be incurred due to one of the Councils withdrawing.

During discussions on the IAA, a number of points were raised:

- Clause 9.2 of the Agreement which referred to withdrawal costs. It was noted that in 2011, the procurement costs amounted to approximately £324,000, therefore a withdrawal figure of £100,000 per Partner authority was considered inappropriate and be replaced with unlimited liability in the event of withdrawal incurring costs for the remaining partners.
- Some minor amendments were highlighted throughout the legal document.

Lewes District Council confirmed their interest in participating in the procurement process however they would not be prepared to commit fully to the Partnership at this time, but would be willing to contribute towards some of the costs should they decide to withdraw.

Due to each Partner authority's Committee meetings timetable, it was confirmed that a commitment from each Council would not be known by 30 June 2017. It was therefore agreed that the commitment date be deferred until 18 July 2017.

RESOLVED: That:

- 1) Eastbourne Borough Council, Hastings Borough Council, Lewes District Council, Rother District Council and Wealden District Council formally sign the Inter Authority Agreement no later than 18 July 2017 and proceed with the joint procurement of Waste, Recycling and/or Street Cleansing Services; and
- 2) each Council committing to the procurement, fund an equal share of the total cost.

JWC17/09. **PROCUREMENT OF JOINT WASTE SERVICES** (10.2)

Consideration was given to the report of the Lead Director which set out the service considerations and recommendations for the procurement of joint waste services.

In September 2016, the Joint Waste Committee (JWC) agreed to a Mutual Exit Agreement with Kier Services Ltd which was executed on

21 March 2017. Therefore work had progressed to procure a new contract to start from 29 June 2019.

Officers had reviewed the current contract documents which had highlighted several matters that would require refreshing or amending; these were:

- a. The geographical scope of services required (which councils are to be included in the contract).
- b. The recycling collection system and responsibility for handling and processing recycling materials.
- c. The frequency of collection services.
- d. Food waste.
- e. Client management and local service policies with regard to enforcement etc.
- f. Performance management.
- g. Technology Systems and Service Data.
- h. Customer Services.
- i. Public Communications.
- j. Recycling Bring Sites.
- k. Bulky Waste Service.
- l. Liability for new and replacement container costs.
- m. Street Cleansing, Litter and Dog Fouling standards.

Three procurement options were proposed for consideration:

- **Restricted Procedure:** a two stage procedure with a short list drawn up at pre-qualification stage prior to the invitation to tender. Could be completed to a shorter timescale than other procedures and was less costly than other options.
- **Competitive Procedure with Negotiation:** Following changes to procurement rules, this option was now available and was suitable for services with no precise specification at the time of going to market, or risks that could not be priced at the outset. Preliminary Market Engagement was recommended to identify key issues and inform the specification; it was noted that this would need to be completed prior to placing the Official Journal of the European Union (OJEU) notice. A pre-qualification stage would follow involving inviting contractors to participate in negotiations. There would be no option to further negotiate after submission of final tenders. This would allow the Partnership to negotiate key points and consider costs with a higher degree of certainty.
- **Competitive Dialogue (CD):** This option was used by the Partnership in 2011. CD was a longer more complex process and would require additional administrative resources.

After careful consideration and noting draft legal advice recently received from Bevan Brittan circulated at the meeting, the Committee agreed that the procurement process proceed however the preferred option would not be agreed at this stage, until those councils participating in the joint procurement were known and the specific specification requirements from each Partner authority were also known.

RESOLVED: That the Joint Waste Committee complies with EU Public Procurement rules to procure a Joint Waste, Recycling and Street Cleansing Contract and that the procurement method to be used be determined at a future meeting.

JWC17/10. **PROJECT MANAGEMENT AND RESOURCES**
(10.3)

The report of the Lead Director outlined the project management work and additional resources required to successfully procure and deliver a new contract commencing on 29 June 2019.

Members were advised that the project would be delivered via four time-driven work streams including task milestones, as detailed in Appendix 1 to the report. Project plans were currently being developed and would include work stream tasks as well as inter-dependencies and resource requirements for delivery. It was noted contract award was planned for December 2018 followed by a six month mobilisation period. A Deputy Partnership Manager had been appointed in May 2017 to administer the project. Technical waste and recycling, legal and financial expertise would also be required to assist officers preparing and finalising tender documentation. To further assist with these documents a soft market / pre-market engagement exercise would need to be carried out prior to starting the procurement procedure.

The specification would be updated by officers, however details of each Partner authority's collection requirements would also need to be included. To assist with this work, the Partnership had sought technical support and funding from Waste Resource Action Programme (WRAP). It was noted that food waste would be included within WRAP's data analysis. Collated information would be used to form a draft contract specification including the Partnerships' requirements for residual, dry recycling, garden, bulky and clinical waste. All options identified would need to be considered by the Committee.

Service specification and performance management terms would need to be revised for street cleansing activities, as specific locations had suffered from regular incidents of detritus, litter and/or dog fouling within three of the authorities across the Partnership.

Members supported the appointment of a waste technical consultant to oversee the development of the procurement process and ensure that all of the JWP's service requirements including ICT provision were encompassed in the specification and dovetailed with all relevant tender documents. A full list of service specification requirements was attached at Appendix 2 to the report.

The Committee agreed that legal expertise would be essential to ensure that the procurement process was successful and supported the appointment of Bevan Brittan LLP from the Crown Commercial Service Legal Services Framework to manage the project. Financial expertise would also be required and Members agreed that assistance should be commissioned as and when required.

A comprehensive cost procurement plan would be developed once consultancy quotes had been received. Part of these costs would be offset by Kier's contribution. It was noted that the remaining costs would be funded equally by the Councils who were committed to the Inter Authority Agreement.

A Risk Register would be developed and maintained by the Deputy Partnership Manager; high risks would be reported to the Committee.

RESOLVED: That:

- 1) the project work streams, phases of planned activity and employment of the Deputy Project Manager by the Administering Authority be noted;
- 2) in accordance with the Procurement Procedure Rules, the Administering Authority' (Rother) appoint a technical waste consultant to support the procurement project;
- 3) the Administering Authority (Rother) directly appoint Bevan Brittan LLP from the Crown Commercial Service Legal Services Framework to support the procurement project; and
- 4) the Administering Authority (Rother) commission financial expertise internally or externally as necessary to support the procurement project.

JWC17/11. DATE OF NEXT MEETING
(11)

The next meeting was scheduled to be held on Friday 11 November 2017 in the Council Chamber, County Hall, Lewes. Due to procurement timetable complexities, decisions to be made and project milestones, Members agreed that additional meetings would need to be organised. Suitable dates would be considered, agreed with the Chairman and forwarded to Members as soon as possible.

CHAIRMAN

The meeting closed at 3:55pm

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