

Urgent Decision under Delegated Powers

Recyclate and Green Waste Contract

Officer Making the decision

Strategic Director of Neighbourhoods and Community Wellbeing

Recommendations

1. That the Strategic Director for Neighbourhoods & Community Wellbeing signs the agreement to the revised terms directed by Leicestershire County Council in relation to revised payments to Charnwood on recyclate and green waste attached at Appendix 2, included in the direction notice issued by Leicestershire County Council on 7th May 2015.
2. That, as the matter is urgent, the call-in procedure be suspended in accordance with Scrutiny Procedure 11.9 of the Council's Constitution.

Reason

1. To enable the Borough Council to sustain some level of income, albeit reduced, from recyclate and green waste as part of the Council's annual budget and Medium Term Financial Strategy (MTFS). To also enable the Council to respond to the direction notice in a timely way.
2. To allow the agreement to come into immediate effect.

Authority for the decision

Section 8.3 of the Constitution gives delegated authority to the Chief Executive, Strategic Directors and Heads of Service to take such action as is required in the case of an emergency or urgency subject to:

- (i) consultation with the Leader (or, in the Leader's absence, the Deputy Leaders);
- (ii) consultation with the Chief Executive and relevant Strategic Directors in each case; and
- (iii) a report on the action taken being made to the next meeting of the Cabinet.

The above consultations have taken place. A report setting out the actions taken will be presented at the Cabinet meeting of 11th June 2015.

Reason for Urgency

In order for an agreement to be reached with Leicestershire County Council, which benefits both parties, as soon as possible after the elections and to ensure that there is sufficient time to deal with operational matters prior to implementation on 1st June 2015.

The decision is exempt from call-in in accordance with Scrutiny Procedure 11.9. The Deputy Mayor has given his consent to this and agreed that the decision is both urgent and reasonable and that the delay caused by the call-in process would not be in the interests of the Council or the public.

Decision and Date

AGREED - C. Trail, Strategic Director, 27.5.15

Background

As part of Leicestershire County Council's (LCC) budget setting process (2015-18), LCC identified savings in ceasing the annual inflationary increase on credit payments for all recyclable materials and to withdraw credit payments for green waste.

The existing recycling credit system and arrangements between LCC as Waste Disposal Authority and each district authority as Waste Collection Authorities was enshrined in an agreement signed between both parties in 2006.

Each council has been in discussions with LCC during the budget preparation process last year through liaison at District Chief Executives meetings and working group meetings of District Senior Officers on Waste in planning ongoing partnership work to consider longer term efficiencies. Individually and collectively there have been meetings with LCC officers to seek to negotiate a position with LCC which limits the long term financial impact of amendments to the recycling credits regime.

To ensure that each district's position was fully considered, independent legal advice was simultaneously taken on the specific impact upon each authority.

Information was sought from LCC relevant to the Borough Council's position and to maintain absolute flexibility in future engagement so that robust and informed decisions could be made.

Within the legislative framework (section 48 (4) and section 51 (4) (a) of the Environmental Protection Act 1990) governing this arrangement, LCC can simply direct the district councils to dispose of their recyclate and green waste at a site determined by LCC. Whilst LCC has issued a direction notice to Charnwood and other districts, the negotiations with LCC referred to above over a number of months have sought to achieve the best financial position to assist short and long term financial planning. This is detailed below.

Detail

A letter received from LCC dated 7th May 2015 is attached as Appendix 1.

The Agreement (attached as Appendix 2) proposed by LCC for Charnwood Borough Council to deliver 30% of our green waste during the period 1st April 2015 and 10th October 2015 to a site at Countesthorpe, for which the Borough Council currently have a contract (financial implications detailed below). The rest of the Agreement relates to the County Council providing Charnwood with a green waste facility that has been tendered through OJEU.

Although the financial impact for LCC commences from April 2015, discussions with Charnwood and other districts have continued during April and May. In addition, in the interests of transparency of decision making, it was considered prudent to not finalise this agreement during the pre-election and election period. Any further delay will incur further costs to LCC. Therefore the officer decision has been published as close to April 2015 as possible and at the earliest opportunity following the elections.

Financial Implications

The Agreement allows the Council to continue to use facilities with LCC picking up the charge for treatment at £18 per tonne. Charnwood produces circa 10,000 tonnes per year so 30% of the profiled green waste generated amounts to a value of approximately £54k.

The financial implications from the ceasing of Recycling Credits for Garden Waste were included in the MTFs for 2015/16 to 2017/18, as approved in January 2015, based on the available information at the time. The income from recycling credits (for both dry recycling and garden waste) in 2014/15 was £1,237k on top of which and for the same period, the Council paid WT Clarke £80k for Garden Waste gate fees, which brings the overall net income down to £1,157k.

The expected income from the recycling credits for 2015/16 is £900k (based only on Recycling Credits from Dry Recycling), less £64k of gate fees to WT Clarke until October, giving a net £836k.

The difference between the 2 years is £321k.

Recycling Credits and Sales Income 2014/15 For information			
	Credits	Sales income – negative figures refer to gate fees paid	Total
	£'000	£'000	£'000
Green waste	548	-230	318
Dry recycling	839	0	839
Total	£1, 387	£-230	£1,157

The impact of LCC's proposals have already been taken into account in the Council's 2015/16 budget, so there is no additional budget effect for the Council.

Risk Management

Risk Identified	Likelihood	Impact	Risk Management Actions Planned
The financial loss to Charnwood arising from LCC reductions in payment of recycling credits	High	Medium	Mitigated from LCC proposals to still pay the gate fee. In addition, reduction in income has already been accounted for in Charnwood's 2015/16 budget setting and in the MTFS for Charnwood.
Inability to reach agreement with LCC, and impact upon partnership working	Low	Medium	Ongoing discussions between LCC and Charnwood officers have ensured agreement around interim arrangements. For the longer term, it is within LCC powers to simply direct Charnwood and other districts. There is little area for manoeuvre/ negotiation on this. Officers have agreed to work together on longer term planning around further efficiencies.

Key Decision: Yes



FAO: The Chief Executive
Charnwood Borough Council
Southfield Road
Loughborough
LE11 2TX

Date: 7th May 2015
My ref:
Your ref:
Contact: Phil Crossland
Phone: 0116 3057000
Email: phil.crossland@leics.gov.uk

RECORDED DELIVERY

Dear Sirs

RECYCLING CREDITS AND GREEN WASTE

I write further to the discussions between our respective authorities regarding arrangements for the payment of recycling credits and green waste.

Please find enclosed a formal notice of objection and direction in respect of the green waste Charnwood Borough Council currently makes arrangements to recycle.

With regard to the 2006 local arrangement (documented in a letter to Charnwood Borough Council dated 31 August 2006), the County Council hereby gives notice to terminate the local arrangement on 31st May 2015. Any recycling credits payable from 1st June 2015 onwards will be calculated in accordance with the statutory scheme in force at the time of payment – currently the Environmental Protection (Waste Recycling Payments) Regulations 2006/743.

I would be grateful if you could complete and return the duplicate of this letter acknowledging receipt.

Yours faithfully,

**David Morgan
County Solicitor**

Chief Executive's Department
Leicestershire County Council, County Hall, Glenfield, Leicestershire LE3 8RA
Telephone: 0116 232 3232 Fax: 0116 305 6161 Minicom: 0116 305 6870

John Sinnott CBE, MA, Dipl. PA, Chief Executive
David Morgan, BA, LL.M, County Solicitor

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Charnwood Borough Council acknowledges receipt of the above letter containing:

- (1) Leicestershire County Council's notice ("the Notice") issued pursuant to section 48(4) and section 51(4)(a) of the Environmental Protection Act 1990; and**
- (2) Leicestershire County Council's notice in the above letter to terminate the 2006 local arrangement for the calculation of recycling credits.**

Charnwood Borough Council will deliver green waste (as defined in the Schedule to the Notice) to the location specified in the Notice from 1st June 2015 unless and until Leicestershire County Council issues a further direction pursuant to section 51(4)(a).

Charnwood Borough Council notes that recycling credits will no longer be payable in respect of green waste from 1st June 2015 onwards and that where recycling credits are payable in respect of other waste types they will be calculated as set out in the above letter.

.....
Authorised Signatory

.....
Name

.....
Date

Environmental Protection Act 1990 ("the Act")

Notice of:

Objection pursuant to section 48(4)

Direction pursuant to section 51(4)(a)

To: Charnwood Borough Council
Council Offices
Southfield Road
Loughborough
LE11 2TX

WHEREAS:

- A. Charnwood Borough Council is a waste collection authority within the County of Leicestershire and Leicestershire County Council is the waste disposal authority for the County of Leicestershire.
- B. Charnwood Borough Council has made arrangements for the recycling of the type(s) of waste ("the Waste") set out in Schedule 1 to this Notice.

NOTICE IS HEREBY GIVEN THAT:

- 1. Leicestershire County Council has made arrangements to recycle the Waste from 1st June 2015 ("the Effective Date") and in exercise of its power under section 48(4) of the Act objects to Charnwood Borough Council having the Waste recycled from the Effective Date.
- 2. In exercise of its power under section 51(4)(a) of the Act, Leicestershire County Council directs Charnwood Borough Council to deliver the Waste from the Effective Date to:

Lount Composting Facility, Nottingham Road, Lount, Nr. Ashby de la Zouch,
Leicestershire LE65 1SD


.....
David Morgan
County Solicitor
Leicestershire County Council


.....
Date

**SCHEDULE 1
The Waste**

<p>Description: Green Waste generated by households in the administrative area of Charnwood Borough Council (EWC Code 20 02 01)</p> <p>Including but not limited to:</p> <ul style="list-style-type: none">- Organic putrescible waste;- Grass cuttings;- Hedge clippings;- Tree prunings;- Leaves; and- Other vegetation.

DATE:

(1) LEICESTERSHIRE COUNTY COUNCIL

-and-

(2) CHARNWOOD BOROUGH COUNCIL

**AGREEMENT REGARDING ARRANGEMENTS FOR THE
RECYCLING OF GREEN WASTE AND RECYCLING
CREDITS**

THIS AGREEMENT IS DATED:

BETWEEN:

(1) **LEICESTERSHIRE COUNTY COUNCIL** of County Hall, Glenfield, Leicester LE3 8RA (“the County”);

-AND-

(2) **CHARNWOOD BOROUGH COUNCIL** of Council Offices, Southfield Road, Loughborough LE11 2TX (“the District”)

Together hereinafter referred to as “the Parties” and individually hereinafter referred to as “the Party”

WHEREAS:

- A. The County is the waste disposal authority for the County of Leicestershire and the District is a waste collection authority within the County of Leicestershire.
- B. The District is empowered under the Act to make arrangements for the recycling of waste collected by it unless the County exercises its power to object to such arrangements and directs the District to deliver such waste to arrangements the County has in place for recycling.
- C. The County and the District are empowered under section 52(1B) of the Act to enter into an arrangement whereby the District agrees that recycling credits are not payable in respect of waste that it has made arrangements to recycle.
- D. The District has made arrangements to recycle green garden waste.
- E. The County is empowered under section 51(4)(a) of the Act to direct the District to deliver waste to certain locations provided by the County.

IT IS AGREED:

1. Definitions and Interpretation

The following definitions shall apply:

“2006 Arrangement”	means the arrangement agreed between the Parties in respect of the calculation of recycling credits and documented in a letter from the County to the District dated 31 st August 2006. The County has issued letters to the District annually confirming the value of recycling credits calculated in accordance with the 2006 Arrangement;
“the Act”	means the Environmental Protection Act 1990;
“the Arrangements”	means the arrangements that the District has made for recycling the A Waste being the delivery for recycling of the A Waste to the Contractor;

“Commencement Date”	means 1 st April 2015;
“the Contractor”	means WT Clarke & Son of Soars Lodge Farm, Foston Road, Countesthorpe, Leicestershire LE8 5WP;
“the County Arrangements”	means such arrangements as the County may have in place from time to time for the recycling of the Waste;
“Day”	means a period of twenty four hours beginning at midnight;
“the Expiry Date”	means 10 October 2015;
“the Gate Fee”	means the charge per tonne delivered for recycling made to the District by the Contractor in respect of the Arrangements being £18 per tonne;
“Month”	means a period of Days contained within a calendar month;
“the Waste”	means Green Waste generated by households in the administrative area of Charnwood (EWC Code 20 02 01) Including but not limited to: <ul style="list-style-type: none"> - Organic putrescible waste; - Grass cuttings; - Hedge clippings; - Tree prunings; - Leaves; and - Other vegetation.
“A Waste”	means that part of the Waste being equivalent to approximately 30% of the loads of Waste collected by the District or on its behalf between the Commencement Date and the Expiry Date;
“B Waste”	means the Waste collected by the District excluding the A Waste being approximately 70% of the loads of Waste collected by the District or on its behalf between the Commencement Date and the Expiry Date;

- a. The further expressions (if any) defined in this Agreement shall have the meaning so specified.
- b. The headings are inserted for convenience only and shall not affect the construction of this Agreement;

- c. Unless the context requires otherwise:
 - i. words importing the singular number shall include the plural and vice versa;
 - ii. word importing any particular gender shall include all other genders; and
 - iii. references to persons shall include bodies of persons whether corporate or incorporate.
- d. Any reference in this Agreement to any statute or statutory provision shall be construed as referring to that statute or statutory provision as the same may from time to time be amended, modified, extended, re-enacted or replaced (whether before or after the date of this Agreement) and including all subordinate legislation made under it from time to time.

2. Section 52(1B) Arrangement

- a. The District acknowledges that the County could (and retains the right to) object to the Arrangements and direct the District to deliver all of the Waste (A Waste and B Waste) to the County Arrangements.
- b. The County and the District agree that with effect from the Commencement Date no recycling credit payments will be due to the District in respect of the A Waste or any other Waste recycled through the Arrangements. For the avoidance of doubt, this Agreement shall not affect the ongoing payment beyond the Commencement Date of any recycling credits in respect of any other waste (not being the Waste) for which the District has made arrangements to recycle.
- c. The Parties agree that the 2006 Arrangement shall terminate on 31st March 2015 and that where any recycling credits may be due from the County to the District from and including the Commencement Date they shall be calculated in accordance with the statutory scheme from time to time in force (currently the Environmental Protection (Waste Recycling Payments) Regulations 2006/743).
- d. This Agreement shall commence on the Commencement Date and continue until the Expiry Date.
- e. The expiry of this Agreement on the Expiry Date shall not affect the continuation and/or validity of clause 2A which shall survive expiry.

2A Section 51(4)(a) Direction

- a. The District agrees that that from and including the Commencement Date it no longer retains the B Waste for recycling.

- b. The District agrees that from and including the 11th October 2015 it no longer retains the A Waste for recycling.
- c. The District shall take all necessary steps to bring the Arrangements to an end on the Expiry Date and shall indemnify the County from all costs arising from the ending of the Arrangements.
- d. The District undertakes that it will not seek to extend the Arrangements beyond the Expiry Date and/or to re-procure its contract for the recycling of the Waste.
- e. The County directs the District pursuant to section 51(4)(a) of the Act to deliver from and including the Commencement Date the B Waste to Lount Composting Facility, Nottingham Road, Lount, Nr. Ashby de la Zouch, Leicestershire LE65 1SD.
- f. The County directs the District pursuant to section 51(4)(a) of the Act to deliver from and including 11th October 2015 the A Waste to Lount Composting Facility, Nottingham Road, Lount, Nr. Ashby de la Zouch, Leicestershire LE65 1SD.
- g. The County may rescind or alter the directions at clauses 2Ae and 2Af at any time on reasonable notice to the District (having regard to all the circumstances including but not limited to the availability of contractors under the County Arrangements) and nothing in this Agreement shall be taken to fetter the ability of the County to exercise its power to direct the District under section 51(4)(a) of the Act in respect of the Waste (A Waste and/or B Waste) or any other waste.
- h. The District agrees that if its contract with the Contractor for the Arrangements terminates prior to the Expiry Date, then it no longer retains the A Waste from the date of such termination and the direction at clause 2Af shall have effect from the date of such termination.

3. The Gate Fee

- a. The District shall continue to pay the Gate Fee in respect of the A Waste together with such other sums it is obliged to pay under the Arrangements to the Contractor.
- b. Subject to compliance with the terms of this Agreement, the County agrees to reimburse the District the cost of the Gate Fee incurred by the District for the A Waste delivered for recycling under the Arrangements from and including the Commencement Date until the Expiry Date. For the avoidance of doubt Gate Fees incurred in respect of the Waste delivered prior to 1st April 2015 shall not be reimbursed, but the County will pay recycling credits at a value of £49.97 per tonne in respect of such Waste delivered for recycling (tonnage delivered to be determined in accordance with the existing arrangements) up to and including 31st March 2015.

- c. Within six weeks of the end of a Month, the District will submit to the County evidence of the tonnage of the Waste delivered for recycling and the Gate Fee incurred for that Month through the waste data management system operated by the County currently to be found at http://etdwaste1/lsswdms_live/. Where the waste data management system changes the County will provide reasonable notice of the same to the District prior to any such change. The District shall provide all information reasonably required by the waste data management system including, for example, any copy invoice received under the Arrangements, weighbridge tickets and/or any other evidence of the tonnage of the A Waste recycled through the arrangements.
- d. The County will review the evidence submitted by the District and confirm to the District within fourteen Days of receipt of the evidence in writing whether it agrees the value of the Gate Fee claimed by the District. Where the value is agreed then the County will issue a purchase order number to the District and the District shall then submit an invoice to the County within fourteen Days of receipt of the purchase order number. Where the value is not agreed then the provisions of clause 5 shall apply.
- e. The use of the dispute resolution procedure under clause 5 shall include the provision by the District to the County of copy weighbridge tickets (where this has not already been done under clause 3c) relating to the Month in question prior to the first meeting between the Parties under clause 5a.
- f. Where the value is agreed and the District has issued an invoice to the County under clause 3d then the County will reimburse the cost of the Gate Fee within thirty Days of the receipt of that invoice from the District.
- g. For the avoidance of doubt the Gate Fee is limited to the rate per tonne stated in clause 1.

4. Not Used

5. Dispute Resolution

- a. If a question dispute or difference ("the Dispute") arises in relation to this Agreement then the Parties shall meet within seven working Days of the Dispute arising and use their respective reasonable endeavours to resolve the Dispute. If they are unable to reach a mutually acceptable resolution they shall refer the Dispute to their respective Chief Executives (or such other suitable senior officers as they shall each in their absolute discretion determine) who shall meet within fourteen working Days of the referral and use their respective reasonable endeavours to resolve the Dispute.
- b. Where it is not possible to resolve a dispute under clause 5a the Parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator will be nominated by CEDR. The costs of the mediation shall be borne equally by the Parties.

- c. Nothing in this clause 5 shall prevent a Party from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act and/or compelling the other Party to do any act.

6. Information

- a. The Parties acknowledge that they are both subject to the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR"). The Parties undertake that they will cooperate with each other in complying with their respective duties under the FOIA and/or the EIR as they relate to this Agreement.
- b. The District shall use its best endeavours to procure that any Contractor employed by it as part of the Arrangements provides all information it possesses and all support to enable the Parties to comply with their obligations under the FOIA and the EIR.
- c. Each Party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other Party, except where permitted by clause 6d.
- d. Each Party may disclose the other Party's confidential information:
 - i. to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the Party's functions under this Agreement. Each Party shall procure that its employees, officers, representatives or advisers to whom it discloses the other Party's confidential information comply with this clause 6;
 - ii. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- e. No Party shall use the other Party's confidential information for any purpose other than to perform its obligations under this Agreement.

7. General

- a. This Agreement shall be subject to English law in all respects (including formation) and shall be construed and interpreted in accordance with English law and shall be subject to the exclusive jurisdiction of the courts of England.
- b. The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.
- c. Each Party shall keep copies of all documents in its possession relating to the Arrangements and this Agreement (including all invoices and weighbridge tickets) for a period of seven years from the document's creation and shall make all such documents available, on reasonable notice, to the other Party.

- d. This Agreement (excluding the directions given under clause 2A) may only be varied by agreement between the Parties but any such variation shall not be effective unless and until recorded in writing and signed by both Parties.
- e. All notices and other communication in relation to this Agreement shall be in writing and shall be deemed to have been given if personally delivered; or mailed (first class postage prepaid) to the address of the relevant Party as detailed above or otherwise notified in writing; or emailed to at least two recipients of the relevant Party at the email addresses set out in clause 7ei and 7eii. If personally delivered all such communications shall be deemed to have been given when received (except that if received on a non working Day or after 5.00pm on any working Day they shall be deemed received on the next working Day) and if mailed all such communications shall be deemed to have been given and received on the second working Day following such mailing and if emailed service will be deemed when at least one recipient of the Party served has confirmed receipt PROVIDED that where no such confirmation is received within two working Days of the email being sent then the notice will not be deemed to be served.
 - i. Email addresses for service in respect of the County:
 - ii. Email addresses for service in respect of the District:
- f. Failure by either Party at any time to enforce the provisions of this Agreement or to require performance by the other Party of any of the provisions of this Agreement shall not be construed as a waiver of or as creating an estoppel in connection with any such provisions and shall not affect the validity of the Agreement or any part thereof or the right of the Party to enforce any provision in accordance with its terms.

8. Execution

In witness whereof the Parties hereto have executed this deed the day and year first above written.

EXECUTED as a DEED by)

LEICESTERSHIRE COUNTY)
COUNCIL by affixing its **Common**)
Seal the day and year first before)
written:)

.....
Authorised Signatory

EXECUTED as a **DEED** by)
CHARWOOD BOROUGH)
COUNCIL by affixing its **Common**)
Seal the day and year first before)
written:)

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Authorised Signatory

