

**Decision under Delegated Powers****Recyclate Contract****Officer Making the decision**

Strategic Director of Neighbourhoods and Community Wellbeing

**Recommendations**

1. That the Strategic Director for Neighbourhoods & Community enters into a settlement agreement with Viridor to enable either a resolution within the existing contract or for both parties to exit from the existing contract for recyclate;
2. That the Strategic Director for Neighbourhoods & Community Wellbeing enters into an interim contract as required in consultation with the Lead Member for Open Spaces & Leisure;
3. That the Strategic Director for Neighbourhoods & Community Wellbeing commences a procurement process for the remainder of the contract period following the end of interim contract.

**Reason**

- 1-3 To enable the Council to continue to deliver an efficient recyclate arrangement and to minimise any economic impact for the Council.

**Policy Justification and Previous Decisions**

At a meeting on June 11<sup>th</sup>, Cabinet agreed the following recommendations:-

1. That the Strategic Director for Neighbourhoods & Community be given delegated authority(in consultation with the s151 Officer, Monitoring Officer and Lead Member for Open Spaces and Leisure) to enter into a settlement agreement with Viridor to enable either a resolution within the existing contract or for both parties to exit from the existing contract for recyclate (minute 15E.1);
2. That, in the event that a settlement cannot be agreed, the Monitoring Officer be given delegated authority (in consultation with the Strategic Director for Neighbourhoods & Community Wellbeing) to instigate Court action ;

3. That the Strategic Director for Neighbourhoods & Community Wellbeing be given delegated authority to enter into an interim contract as required in consultation with the Lead Member for Open Spaces & Leisure;
4. That the Strategic Director for Neighbourhoods & Community Wellbeing be given delegated authority to commence a procurement process for the remainder of the contract period following the end of interim contract.

### **Background - Recyclate Contract**

The Council has a contract with Viridor to process and "sell on" our recyclate materials. The contract commenced in March 2011, and was due for expiration in March 2017. The expiration of this contract is coterminous with the expiration of the Council's contract with Serco for waste collection, and the fleet contract for waste vehicles.

During the last year, Viridor have raised concerns that contamination in our recyclate materials is increasing. Within the contract documentation, there is an input specification which sets levels for acceptable levels of contamination. However Viridor and the Council are both disputing the contractual effect of this input specification and the methodology of data on the calculation of these levels.

As a consequence, Viridor have sought substantial compensatory income from the Council and served a termination notice on it when the Council refused to make a major price adjustment. As recyclate value is at a low in the market, both the Council and Viridor are facing a drop in income from these materials.

The contract contains a dispute resolution procedure and the Council and Viridor entered into mediation on these issues during April. In summary, proposals to ameliorate the contamination problems and income issues were proposed and discussed but could not be finally agreed.

Mediation is now concluded and both parties have agreed an out of court (without prejudice but binding once approved) settlement figure from Viridor to enable them to exit the contract, and to compensate the Council for putting in place interim measures, pending re-letting of this contract up to 2017.

The figure that Viridor will pay to the Council will be £190k. This includes all disposal costs, additional claims for change in legislation gate fee (£1.48 since October 2014) and all gate fees up to and including the 30th June. This figure also takes into account the income that Charnwood anticipated from October to December 2014 (which amounts to approximately £15k).

The Council has already sourced potential options for interim emergency measures for recyclate materials, pending a re-procurement of the contract in 2017. EU procurement regulations suggest a ceiling of these type of interim emergency

services to the value of £172k, before the need to enter into a formal procurement. For the Council, this means measures are already in place to employ an interim emergency provider for up to approximately 10 months. At that point, the contract would need to re-tendered for the remaining contract period up to 31<sup>st</sup> March 2017.

The recommendations are for the Strategic Director for Neighbourhoods & Community Wellbeing and the Monitoring Officer to enable appropriate actions at the end of mediation to safeguard the Council's best interests.

In order to enable officers to take action quickly in response to the outcome of the mediation process, the Cabinet decision was exempted from call-in in accordance with Scrutiny Procedure 11.9. The Mayor gave his consent to this on 28th May 2015 and agreed that the decision was 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.

### **Financial Implications**

The figure that Viridor will pay to the Council will be £190k. This includes all disposal costs, additional claims for change in legislation gate fee (£1.48 since October 2014) and all gate fees up to and including the 30th June. This figure also takes into account the income that Charnwood anticipated from October to December 2014 (which amounts to approximately £15k).

### **Risk Management**

Risk Identified	Likelihood	Impact	Risk Management Actions Planned
Financial risk to the Council arising from the loss of contract price, upon the cessation of this contract	Highly probable	Minor	Negotiation of a settlement figure to mitigate this impact
Financial risk to the Council arising from cessation of the current contract and arrangements with an interim provider	Probable	Minor	Mitigation has been sought through a reasonable settlement from Viridor to address the Council's costs.  Financial impact is identified in the Financial Implications within this report. The council has sufficient reserves to cover the various scenarios.

Risk Identified	Likelihood	Impact	Risk Management Actions Planned
Threat to services for the public	Remote	Minor	<p>Serco is the contractor which collects the recyclate and this remains unaffected by this contract termination in this report.</p> <p>Through the provision of interim measures with another provider, there will be no break in service for recyclate <u>disposal</u></p>
Short term losses upon the re-tender of the contract for the remaining period up to 2017.	Possible	Moderate	<p>Whilst the market is currently depressed and therefore hard to predict, it is difficult to estimate what market impact will arise, and how much the short length (to 2017) of contract will impact upon value for money.</p> <p>Finally mitigation may be achieved through the potential to include contract extension terms, although this will need to be determined nearer the time of contract negotiation.</p>

### *Sustainability*

The Council will need to consider the impact upon co-terminous contracts and the length of current and future contracts in light of the cessation of this contract.

Officer(s) to contact

Chris Traill,

Strategic Director

Neighbourhoods & Community Wellbeing

[Chris.traill@charnwood.gov.uk](mailto:Chris.traill@charnwood.gov.uk)

01509 634774

*Agreed 28.7.15  
C. Traill*