COUNCIL – 29TH JUNE 2015
Report of the Chief Executive

ITEM 11    URGENT EXECUTIVE DECISIONS EXEMPT FROM CALL-IN

Purpose of Report

To note two urgent decisions taken by officers under delegated powers which were exempted from call-in in accordance with Scrutiny Committee Procedure 11.9.

Recommendations

1. That the decision to exempt from call-in the urgent decision taken by the Strategic Director of Neighbourhoods and Community Wellbeing regarding entering into an agreement with Leicestershire County Council relating to payments for recyclate and green waste be noted.

2. That the decision to exempt from call-in the urgent decision taken by the Head of Landlord Services regarding procuring a new contract for materials for the Housing Repairs team be noted.

Reasons

1. To note the Strategic Director of Neighbourhoods and Community Wellbeing’s decision and that the decision should have immediate effect to enable the agreement, which benefits both parties, to come into effect as soon as possible after the elections and to deal with operational matters prior to its implementation on 1st June 2015.

2. To note the Head of Landlord Services’ decision and that the decision should have immediate effect since any delay would result in the Council being unable to procure the new contract prior to the expiry of the existing one on 18th June 2015.

Policy Justification and Previous Decisions

Scrutiny Committee Procedure 11.9 requires that decisions which are exempt from call-in are reported to Council. Key decisions taken by officers are subject to call-in and the decisions taken by the Strategic Director of Neighbourhoods and Community Wellbeing and the Head of Landlord Services were exempted from call-in with the agreement of the Deputy Mayor and Mayor respectively.

Decision by the Strategic Director of Neighbourhoods and Community Wellbeing

The Strategic Director of Neighbourhoods and Community Wellbeing took the following urgent decision under delegated powers on 27th May 2015:
1. That the Strategic Director for Neighbourhoods and 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 [to the decision attached as Annex A], 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.

Reasons

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.

To comply with the procedure for taking urgent decisions, the Strategic Director of Neighbourhoods and Community Wellbeing undertook consultation with the Leader and the Chief Executive.

The report relating to the decision is attached as Annex A.

Decision by the Head of Landlord Services

The Head of Landlord Services took the following urgent decision under delegated powers on 28th May 2015:

1. That a new contract for materials for the Housing Repairs team to run for three years with an option to extend for a further year be procured through the Procurement for Housing (PfH) framework.

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

To enable a new contract for the supply of materials to be procured to provide materials for the Housing Repairs team to use when repairing Council dwellings before the expiry of the existing contract and in a manner that complies with the Council’s procurement rules.

To comply with the procedure for taking urgent decisions, the Head of Landlord Services undertook consultation with the Leader, the Chief Executive and relevant Strategic Directors.

The report relating to the decision is attached as Annex B.
Implementation Timetable including Future Decisions

As detailed within the decisions of the Strategic Director of Neighbourhoods and Community Wellbeing and the Head of Landlord Services, attached as Annex A and Annex B.

Report Implications

As detailed within the decisions of the Strategic Director of Neighbourhoods and Community Wellbeing and the Head of Landlord Services, attached as Annex A and Annex B.

Background Papers: None relating to this decision

Officer to Contact: Michael Hopkins
Democratic Services Manager
(01509) 634785
michael.hopkins@charnwood.gov.uk
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 24.5.15

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 £84k of gate fees to WT Clarke until October, giving a net £836k.

The difference between the 2 years is £321k.

<table>
<thead>
<tr>
<th>Recycling Credits and Sales Income 2014/15</th>
<th>Sales income – negative figures refer to gate fees paid</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Credits</td>
<td>£’000</td>
<td>£’000</td>
</tr>
<tr>
<td>Green waste</td>
<td>548</td>
<td>-230</td>
</tr>
<tr>
<td>Dry recycling</td>
<td>839</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>£1,387</td>
<td>-230</td>
</tr>
<tr>
<td></td>
<td></td>
<td>£1,157</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Risk Identified</th>
<th>Likelihood</th>
<th>Impact</th>
<th>Risk Management Actions Planned</th>
</tr>
</thead>
<tbody>
<tr>
<td>The financial loss to Charnwood arising from LCC reductions in payment of recycling credits</td>
<td>High</td>
<td>Medium</td>
<td>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.</td>
</tr>
<tr>
<td>Inability to reach agreement with LCC, and impact upon partnership working</td>
<td>Low</td>
<td>Medium</td>
<td>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.</td>
</tr>
</tbody>
</table>

**Key Decision:** Yes
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
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

7th May 2015
### SCHEDULE 1
The Waste

<table>
<thead>
<tr>
<th>Description:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Green Waste generated by households in the administrative area of Charnwood Borough Council (EWC Code 20 02 01)</td>
</tr>
</tbody>
</table>

Including but not limited to:

- 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:

<table>
<thead>
<tr>
<th>&quot;2006 Arrangement&quot;</th>
<th>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 31st August 2006. The County has issued letters to the District annually confirming the value of recycling credits calculated in accordance with the 2006 Arrangement;</th>
</tr>
</thead>
<tbody>
<tr>
<td>&quot;the Act&quot;</td>
<td>means the Environmental Protection Act 1990;</td>
</tr>
<tr>
<td>&quot;the Arrangements&quot;</td>
<td>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;</td>
</tr>
<tr>
<td><strong>Term</strong></td>
<td><strong>Definition</strong></td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>&quot;Commencement Date&quot;</td>
<td>means 1st April 2015;</td>
</tr>
<tr>
<td>&quot;the Contractor&quot;</td>
<td>means WT Clarke &amp; Son of Soars Lodge Farm, Foston Road, Countesthorpe, Leicestershire LE8 5WP;</td>
</tr>
<tr>
<td>&quot;the County Arrangements&quot;</td>
<td>means such arrangements as the County may have in place from time to time for the recycling of the Waste;</td>
</tr>
<tr>
<td>&quot;Day&quot;</td>
<td>means a period of twenty four hours beginning at midnight;</td>
</tr>
<tr>
<td>&quot;the Expiry Date&quot;</td>
<td>means 10 October 2015;</td>
</tr>
<tr>
<td>&quot;the Gate Fee&quot;</td>
<td>means the charge per tonne delivered for recycling made to the District by the Contractor in respect of the Arrangements being £18 per tonne;</td>
</tr>
<tr>
<td>&quot;Month&quot;</td>
<td>means a period of Days contained within a calendar month;</td>
</tr>
<tr>
<td>&quot;the Waste&quot;</td>
<td>means Green Waste generated by households in the administrative area of Charnwood (EWC Code 20 02 01)</td>
</tr>
<tr>
<td></td>
<td>Including but not limited to:</td>
</tr>
<tr>
<td></td>
<td>- Organic putrescible waste;</td>
</tr>
<tr>
<td></td>
<td>- Grass cuttings;</td>
</tr>
<tr>
<td></td>
<td>- Hedge clippings;</td>
</tr>
<tr>
<td></td>
<td>- Tree prunings;</td>
</tr>
<tr>
<td></td>
<td>- Leaves; and</td>
</tr>
<tr>
<td></td>
<td>- Other vegetation.</td>
</tr>
<tr>
<td>&quot;A Waste&quot;</td>
<td>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;</td>
</tr>
<tr>
<td>&quot;B Waste&quot;</td>
<td>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;</td>
</tr>
</tbody>
</table>

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://eldwaste1/isswdms_live/. Where the waste data management system charges 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 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 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:

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

--------------------------------------------------------
Authorised Signatory

--------------------------------------------------------
Authorised Signatory

E23
19
Urgent Decision under Delegated Powers

Officer Taking the Decision

Head of Landlord Services

Recommendations

1. That a new contract for materials for the Housing Repairs team to run for three years with an option to extend for a further year be procured through the Procurement for Housing (PfH) framework.

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

To enable a new contract for the supply of materials to be procured to provide materials for the Housing Repairs team to use when repairing Council dwellings before the expiry of the existing contract and in a manner that complies with the Council’s procurement rules.

Authority for Decision

Part 3 of the Council’s Constitution delegates Heads of Service, Strategic Directors and the Chief Executive 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) in the case of Executive functions or the Mayor, the Chair of the relevant committee, or, in the Chair’s absence, the Vice-Chair in the Case of Council functions;

(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 in the case of Executive functions or the Council or relevant committee, as appropriate, in the case of Council functions.

Decision and Date

Agreed 28 May 2015
Background

Charnwood Neighbourhood Housing procured a contract from the framework PfH to supply materials for the repairs team. The contract was awarded to Jewsons under this framework. That contract expires on 18th June 2015. There was provision in the contract for an extension for a year up to June 2016. However, following extension discussions with PfH, it was clear that a new contract, rather than an extension of the existing, would deliver benefits and deliver cost effective contract management. The new contract would be under a new framework set up by PfH in April 2015.

A new contract will deliver improvements including:

- Improved management information through the IT enhancements which will deliver electronic reporting and performance monitoring, thus delivering channel shift from existing manual reconciliation;
- 100% checking for audit purposes on materials ordered against invoices paid - currently checked on a sample basis manually;
- a consistent approach to materials management for up to four years. IT improvements will involve staff time resource by the Council’s housing IT team and this cannot reasonably be delivered if the contract were to be extended by only one year.

The original plan was to extend the existing contract for one year, and officers were not aware of the new framework contract until extension discussions commenced with PfH. This procurement was not, therefore envisaged until 2016 and approval to re-procure rather than extend was not requested from Cabinet. Re-procurement will bring forward the improvements by one year. This decision will enable the contract to be procured and awarded under the new framework in a way that is consistent with the Council's procurement rules.

Reason for Urgency

The existing contract expires on 18th June 2015. In order to allow sufficient time for the new contract to be procured through the PFH framework it is not possible for the decision to be taken at the Cabinet meeting programmed for 11th June 2015.

In accordance with the requirements of the Constitution the Leader, Chief Executive and relevant Strategic Directors will be consulted on this decision. A report setting out the decision will be submitted to the next meeting of the Cabinet.

The decision is exempt from call-in in accordance with Scrutiny Procedure 11.9. The 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.
Financial Implications

The new contract will run for three years with an option to extend for a further year and has an estimated value of £720k per year. The spending associated within this contract is included within the 2015/16 budget and similar levels of expenditure in future years have been assumed in the HRA Business Plan.

Risk Management

The following risks have been identified with this decision.

<table>
<thead>
<tr>
<th>Risk Identified</th>
<th>Likelihood</th>
<th>Impact</th>
<th>Risk Management Actions Planned</th>
</tr>
</thead>
<tbody>
<tr>
<td>iT Improvements required will not be delivered</td>
<td>Unlikely</td>
<td>Moderate</td>
<td>Project management will be put in place to include detailed project plan delivering the improvements</td>
</tr>
<tr>
<td>Contractor appointed will not be able to provide the materials required</td>
<td>Unlikely</td>
<td>Major</td>
<td>Contract management procedures plus support from Framework owner</td>
</tr>
</tbody>
</table>

Key Decision: Yes

Background Papers: None