



East
Northamptonshire
Council

Policy and Resources Committee - 13 September 2010

Northamptonshire Waste Partnership- developing the partnership

Summary

The purpose of this report is to summarise the prospective joint working options that the Northamptonshire Waste Partnership (NWP) is considering so that members within the constituent authorities can make informed decisions and provide clear direction to the Council representatives, Councillors Harwood and North, relating to collaboration going forwards.

Attachment(s)

1.0 **Background**

1.1 This section considers the factors which have and will continue to influence joint working within the NWP and the collaborative milestones that have been achieved thus far. A number of drivers have inspired the focus in waste management on joint working arrangements. These developments have placed difficult demands on local government and have required authorities to act cohesively in order to effectively discharge their statutory obligations.

1.2 Landfill Tax

Standard rate landfill tax will increase to £48 per tonne this year and will continue to be increased by £8 per tonne per annum until it reaches £80 per tonne in 2014. Landfill tax has doubled within a two year period and represents a significant financial constraint on local authorities.

1.3 The EU Landfill Directive and the Landfill Allowances Trading Scheme (LATS)

The Directive established national targets for the reduction in the landfilling of municipal waste to 35% of 1995 levels by 2020. The LATS was introduced as a mechanism to enable the UK to meet these obligations and provides financial incentive on local authorities to minimise annual landfill levels. As the Waste Disposal Authority (WDA), Northamptonshire County Council (NCC) has overall responsibility for the management of an allocated amount of tradable allowances which relate to the annual quantity of municipal waste it is permitted to landfill. The amount of allowances is set to decline each year until 2020. Under the scheme, WDAs in deficit will be required to purchase allowances from WDAs in surplus or risk paying a penalty of £150 per tonne of material not covered by an allowance.

1.4 Waste Strategy 2007

The previous Government set ambitious recycling targets for household waste which are reflected in the imposition of targets at a local level. The Government has indicated a commitment beyond those set by the previous administration which were to achieve recycling targets of 45% and 50% by 2015 and 2020 respectively. In addition, the strategy has set reduction targets for residual household waste.

1.5 Environmental

Climate change and growing public expectation of improved sustainability in waste

management practices has contributed to the need for change and modernisation. Moving waste further up the waste hierarchy is not simply fiscally prudent but it accords with the expectations of residents.

1.6 Demographics

It is anticipated that housing growth will increase substantially in Northamptonshire over the next twenty years which will consequentially place additional waste management strain on local authorities.

1.7 Residual Waste PFI Project

The driver which encouraged NCC and Milton Keynes Council to consider joint working arrangements for a joint waste disposal solution and enabled them to secure £129m of PFI credits was based on the principle of co-operation between authorities to increase market interest, assist with the availability of suitable sites, enhance co-operation in relation to transport links and logistics, strengthen negotiating advantage with the private sector, and provide economies of scale.

2.0 **The Northamptonshire Waste Partnership (NWP) and Joint Working**

2.1 Northamptonshire Joint Municipal Waste Management Strategy (the "Strategy") (January 2008)

2.1.1 The constituent authorities of the NWP are the Borough Council of Wellingborough, Corby Borough Council, Daventry District Council, East Northamptonshire Council, Kettering Borough Council, Northampton Borough Council, South Northamptonshire Council and NCC. The aim of the Strategy was to provide a joint and strategic approach to managing the County's municipal solid waste in the period from 2007/8 to 2020/21.

2.2 Memorandum of Understanding (MOU) (April 2008)

2.2.1 The MOU provided the next step in the development of closer partnership working. Although it was not legally binding, the Partners are under an obligation to use all reasonable endeavours to comply with the terms and the spirit of the MOU. The MOU describes important details relating to the principles of the Partnership, the operations of the Partnership Board, the establishment of the post of NWP Executive Officer and key aspects relating to the procurement of the Residual Waste Disposal PFI Contract (the "PFI Contract").

2.2.2 Part B of the MOU deals with the Partnership's support of the joint PFI procurement by NCC and Milton Keynes Council of residual waste treatment capacity and the consequential requirement to enter into a service level agreement ("SLA") to formalise arrangements between the WDA and the WCAs. Clause 15.2 provides that *"the Partners recognise that the Joint Residual Waste Project will require the negotiating, agreeing and implementation of legally binding service level agreements ... relating to the collection of municipal waste and its delivery to the Joint Residual Waste Project contractor(s)"*.

2.3 The SLA

2.3.1 Signing the SLA marked the first legally binding attempt to capture the joint working arrangements and responsibilities of the NWP authorities. The SLA builds upon the MOU and formalises important legally binding obligations and indemnity arrangements and sets the WDA and the WCAs ambitious recycling and composting targets. The WDA is under an obligation to achieve a target of 70% of waste received by 2012/13 and the WCAs have stepped targets rising to 43% of household waste by 2012/13.

2.3.2 Although the execution of the SLA was a significant step forwards in terms of

progressing joint working within the NWP, it was always intended to be intermediary. To this end, Clause 2.2 of the SLA provides:

The Parties have signed the MOU and recognise that in due course they will need to sign a variation to or a replacement of this Service Level Agreement reflecting several of the detailed provisions which will in due course be set out in the PFI Contract. However, until that document has been finalised, this version of this SLA must necessarily remain an intermediate step between the non-binding MOU and the final version of this SLA when the PFI Contract has been finalised.

3.0 The Options: Contractual Arrangements, New Legal Entities and Administrative Arrangements

3.1 There are three broad approaches that have been adopted by local authorities to advance joint working relationships. Although contractual and administrative collaboration have been usefully employed in tandem, the creation of a new legal entity should be considered as an independent option. The NWP already has taken positive steps towards developing a contractual framework by creating the interim SLA. The decision to pursue administrative or corporate arrangements would, however, mark a significant step forward to progressing joint working and meeting the goals set out in the Strategy.

4.0 Contractual Arrangements

4.1 The sources of local authority contracting powers are sections 1 of the Local Government (Contracts) Act 1997 and the Local Authorities (Goods and Services) Act 1970 which enable them to contract with the private sector and between themselves in the discharge of their statutory functions. The SLA was an important achievement but it was developed primarily to secure the availability of waste in order to facilitate a successful outcome to the PFI Contract. The NWP could consider enhancing the SLA but it is generally accepted that contractual approaches alone will not be able to provide the necessary flexibility that will be required to respond to the complexities and challenges of sustained joint working in the waste sector. For this reason, most English waste partnerships have taken the decision to develop and integrate their joint working arrangements even further.

5.0 New Legal Entities

5.1 Companies, Limited Liability Partnerships and Unincorporated Associations

5.1.1 Some forms of joint working involve the establishment of a new legal entity which will have a separate legal personality from the authorities establishing it. Although unusual, incorporated vehicles, such as private limited companies and limited liability partnerships, and unincorporated vehicles, such as partnerships and industrial and provident societies, can all be used in the waste sector to secure joint working arrangements. There are considerable drawbacks to creating a new legal entity in this way such as the possibility of increased tax liability (companies are subject to corporation tax on any profit and cannot recover any VAT shortfall) and conflicts of interest between the entity that is established and the participating authorities. Concerns have also been expressed that members and officers of local authorities who take up senior roles within corporate entities will lose the wide statutory immunity from personal liability that they benefit from as local authority representatives. In addition, the private sector will expect parental company guarantees before they contract with entities that have a separate legal personality from the establishing authorities and there are also statutory restrictions on the extent of the decision-making which can be delegated.

5.2 Joint Waste Authority (JWA)

5.2.1 JWAs are a new form of statutory body which have been introduced under Part 11 and Schedule 13 of the Local Government and Public Involvement in Health Act 2007 and

require the approval of the Secretary of State by statutory Order to establish and to end them. JWAs are single-purpose local authorities dedicated to specific waste functions within their area and can be established to discharge either all or particular (i.e. waste collection and/or disposal, street cleansing etc.) waste functions within a specified area.

- 5.2.2 The constituent authorities need to prepare and submit a proposal to the Secretary of State after individually consulting with local electors and other interested parties in their respective administrative areas. Once established, the JWA exercises the waste collection and disposal functions, powers and responsibilities of the authorities who supported its establishment.
- 5.2.3 Since it has a separate legal personality, JWAs will be able to enter into third party contracts in their own name. This simplified interface with the private sector is perhaps one of the greatest benefits of adopting the JWA structure.
- 5.2.4 Decision-making within JWAs will depend upon the constitutional arrangements/standing orders adopted by the JWA. JWAs are given a wide degree of flexibility here and have the option of following the arrangements of any of the constituent authorities or adopting a bespoke set of rules. Regardless of the approach taken, what is materially important is that there is a clear and effective decision-making structure which attracts authority support. Certain key decisions such as the budget and the strategic planning framework will likely require the support of the constituent authorities.

6.0 Administrative Arrangements - Joint Committee (JC)

6.1 A JC is a voluntary arrangement under which the members of two or more local authorities come together and take decisions jointly which affect their combined areas. The JC is comprised of members from each of the participating authorities who are empowered to take decisions on behalf of their represented authority. Importantly, decisions at JC level can only be taken where they are within the competences delegated to them by the authorities. There is no specific form that JCs need to conform to and their remit and organisation can be tailored to the needs of individual partnerships. As such they represent an extremely flexible tool to meet the demands and sensitivities of joint working.

6.2 Decision-Making

6.2.1 Within each authority, the powers to decide to set up a JC, to appoint the authority's members to it, and to delegate particular powers to it, rest with the members within that authority who would be responsible for discharging the particular powers if they were not to be delegated to the JC.

6.2.2 Subject to the foregoing complexities on delegation, JCs are an extremely flexible arrangement. There is no standard approach to delegation and it will ultimately depend on the priorities and objectives to be achieved.

6.2.3 It is important to note that a delegation can be revoked or amended at any time by the appropriate officer or authority body and that the authorities are entitled to reserve key decisions for themselves. In addition, it will always be possible for authorities to withdraw from the JC at any time, although this may affect PFI support eligibility and have other financial implications. Ultimately, it will be a question of finding the appropriate balance between delegating sufficient powers to the JC so that it can make significant decisions in the collective interests of the authorities and ensuring that appropriate control is retained.

6.2.4 **Lead Authorities (LAs)**- The use of LAs will almost always be used to complement JCs because, as previously mentioned, JCs are not separate legal entities and cannot contract or own land on their own account. A legal entity, such as one or more of the

constituent authorities, needs to be used to carry out these important functions on behalf of the JC. LAs will be considered agents for the participating authorities and will fill the legal personality gap created by the formation of the JC. A JC often nominates different constituent members as LA for particular functions.

6.3 Inter Authority Agreement (IAA)

6.3.1 The SLA is an IAA. An IAA is usually a necessary part of joint working arrangements between constituent authorities forming a JC. Although the content of IAAs can be extremely wide ranging, it is most important that they deal effectively with costs apportionment and methodology vis-à-vis the authorities. This is particularly pertinent where LAs are being employed because they will want to ensure that the appropriate arrangements are in place so that they will have contractual recourse against the other authorities (as presently exists under the SLA) should any of them default on their payment or performance obligations. IAAs allow authorities to agree amongst themselves how they will fund the services to be delivered by the JC. In the context of the NWP, it is envisioned that an IAA will update and replace the existing SLA.

7.0 **Matters for consideration**

7.1 The preceding paragraphs set out the formal position and arguments in respect of developing the partnership. The most immediate key driver being the need to have a governance structure in place to enable the SLA to move forward and the Residual Waste PFI project to be delivered. The variation of the SLA and the detailed implications for this Council are currently a 'work in progress' and will be subject to a further report to this committee later this year when decisions around formal commitment and sign up will need to be made.

7.2 The immediate issues for this Council to consider come down to :

7.2.1 Do Members feel that a case has been made for the development of the Northamptonshire Waste Partnership with this Council as partners?

7.2.2 If Members can see the benefits in developing the partnership on what basis does the Council feel it should be progressed?

- * New legal entity
- * Joint Waste Authority
- * Joint Committee

8.0 **Recommendations**

8.1 Members are requested to provide the Council representatives on the Northamptonshire Waste Partnership with a clear position and direction on the points raised at 7.2.

Implications:		
Corporate Outcomes or Other Policy/Priority/Strategy		
Good Quality of Life	<input type="checkbox"/>	Good Reputation <input type="checkbox"/>
Good Value for Money	<input type="checkbox"/>	High Quality Service Delivery <input type="checkbox"/>
Effective Partnership Working	<input checked="" type="checkbox"/>	Strong Community Leadership <input type="checkbox"/>
Effective Management	<input type="checkbox"/>	Knowledge of our Customers and Communities <input type="checkbox"/>
Employees and Members with the Right Knowledge, Skills and Behaviours		<input type="checkbox"/>
Other:		<input type="checkbox"/>
Decision(s) would be outside the budget or policy framework and require full Council approval		<input type="checkbox"/>
Financial	There are no financial implications at this stage	<input checked="" type="checkbox"/>
	There will be financial implications – see paragraph	<input type="checkbox"/>

	There is provision within existing budget	<input type="checkbox"/>
	Decisions may give rise to additional expenditure at a later date	<input type="checkbox"/>
	Decisions may have potential for income generation	<input type="checkbox"/>
Risk Management	An assessment has been carried out and there are no material risks	<input checked="" type="checkbox"/>
	Material risks exist and these are recorded at Risk Register Reference - inherent risk score - residual risk score -	<input type="checkbox"/>
Staff	There are no additional staffing implications	<input checked="" type="checkbox"/>
	Additional staff will be required – see paragraph	<input type="checkbox"/>
Equalities and Human Rights	There will be no impact on equality (race, age, gender, disability, religion/belief, sexual orientation) or human rights implications	<input checked="" type="checkbox"/>
	There will be an impact on equality (see categories above) or human rights implications – see paragraph	<input type="checkbox"/>
Legal	Power: Local Government Act 1972, Environmental Protection Act 1990	
	Other considerations:	
Background Papers:		
Person Originating Report: Mike Deacon, Head of Environmental Services		
Date: 07 July 2010		
CFO		MO
		CX

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