

From: Simon Jones, Corporate Director, Growth, Environment and Transport

To: Rob Thomas, Cabinet Member for Environment

Subject: **Contract extension for the receipt and processing of organic waste in south west Kent (including Maidstone green waste) – (gw/2004/01)**

Decision Number: 24/00064

Decision Title: Approval to extend the contractual arrangement for the receipt and processing of organic waste – (gw/2004/01)

Classification: **Unrestricted**

Electoral Division: Tunbridge Wells, Tonbridge & Malling and Maidstone.

Summary: This report seeks Member approval to extend a contractual arrangement for the receipt and processing of organic waste.

Recommendation(s): For Cabinet Committee – The Cabinet Member for Environment is asked to agree to:

- (i) EXTEND the existing contract for the receipt and processing of organic waste for up to 19 Months.
- (ii) DELEGATE authority to the Director of Environment and Circular Economy, in consultation with the Cabinet Member for Environment to take relevant actions, including but not limited to, awarding, finalising the terms of and entering into the relevant contracts or other legal agreements, as necessary, to implement the decision;

as shown at Appendix A.

1. Introduction

- 1.1 KCC holds three contracts with Envar Composting Ltd, (previously held by New Earth Solutions) based in West Malling for managing organic waste in mid and south west Kent using an in-vessel composting system.
- 1.2 This report provides information concerning the option to extend one of those contracts which is due to expire on 31st August 2024. The remaining contracts are due to cease in March 2026.

2 Background

- 2.1 KCC is achieving less than 1% waste to landfill, by continuing to divert approximately 25,840 tonnes of organic waste per year from landfill by using treatment and recycling facilities.

- 2.2 There are limited in-vessel composting and windrow facilities in Kent which can accept the tonnages of green waste that HWRCs and collection authorities produce.
- 2.3 The South West Kent contract GW/2004/01 (commenced 2009) was initially set up to manage garden, veg, food and cardboard waste which was the accepted mix at the time from Tonbridge and Malling and Tunbridge Wells.
- 2.4 Maidstone Borough Council had been accessing the site on an earlier phase of the contract attracting a separate gate fee, as food was not included in their garden mix.
- 2.5 As garden waste collections increased, in 2014, two further contracts were awarded (via a competitive process) to New Earth Solutions to manage kerbside green from Ashford and Sittingbourne and from various household waste recycling centres across Kent. These are due to expire 31st March 2026.
- 2.6 Over the ensuing years, KCC varied the contracts in light of changing composition, collection methodology and government reforms to remove food and cardboard and to migrate those materials into other facilities.
- 2.7 It should be noted that whilst the facility's 'in-vessel' composting system offers benefits such as quality control, faster processing and reduced risk of infection due to high temperature operating methods, the technology involved means it tends to be more expensive than windrow composting (open air aerobic processing).
- 2.8 The current contract is for the processing of organic waste collected by the waste collection authorities from households in south west Kent, and Maidstone, as well as deposited by residents at Tunbridge Wells (North Farm) household waste recycling centre.
- 2.9 The contract had an option to be extended for a further period of up to 60 months and KCC's intention is to extend the contract based on negotiated terms.

3 Issues, options and analysis of options

- 3.1 In December 2023, KCC negotiated an extension to the incumbent (New Earth Solutions) on the proviso that the gate fees associated with the contract were rebased.
- 3.2 After a protracted period of negotiation on the extension, KCC was notified that the facility had been sold to Envar Composting Ltd and the contract was being novated to the new owners. As such, the extension negotiation was suspended until the contract novation was agreed and KCC could recommence discussions with the new owners.
- 3.3 In order for KCC to determine the best course of action during negotiations with New Earth Solutions, market engagement and benchmarking took place to understand whether the gate fees at that time were in line with market rates and to determine market appetite for this material.

- 3.4 The results were that indicative prices supplied by the market, including from the incumbent, highlighted that there is a limited market within Kent to process the volumes of organic waste that KCC manages, and that the gate fee on this contract is above market value and rebasing was recommended.
- 3.5 During negotiations with the new owners, it has been confirmed that they are unable to rebase due to the extensive investment required in the facility. The gate fee has not been increased and an option for a profit share on composting sales has been offered.
- 3.6 **The following options have been considered:**
- 3.7 **Option 1 - Do nothing – the current arrangements will cease and KCC will be unable to accept the waste** - this is not an option due to KCC's obligation to receive this material under waste legislation and dispose of it as per the Environmental Protection Act 1990.
- 3.8 **Option 2 - Continue to accept the waste but utilise alternative disposal options by using landfill or incineration** - This is not an option as there is a desire and obligation to move material up the waste hierarchy where possible, and to meet recycling and landfill diversion targets. Furthermore, to send this material to incineration would be costly against a treatment option.
- 3.9 **Option 3 - Commence a full procurement exercise before the end of the contract** – this is not an option as there is insufficient time to undertake a commissioning activity due to the unforeseen sale of the facility and subsequent cessation of negotiations.
- 3.10 **Option 4 - Extend for a period between 24 and 60 months (full extension)** - This is not discounted and has been considered as a proposal put forward by the new owners; however, it is felt that to align all organic contracts to one end date may produce economies of scale when a full county re-procurement is undertaken.
- 3.11 **Option 5 The recommended option - Extend for 19 months (to April 2026) and undertake a commissioning activity.** This is the preferred option to enable the undertaking of market research and a commissioning activity to secure a provider who can treat and utilise the waste material meeting the circular economy desired outcomes.

4. Reasons for recommendation

- 4.1 A 19-month extension will give the Authority time to:
- a) Further understand the current organic waste market and providers.
 - b) Research new technologies for managing Kent's organic waste such as high temperature pyrolysis for soil improvement or energy generation.
 - c) Seek opportunities for developing windrow composting sites within Kent.
 - d) Align to the remaining contracts due to end in March 2026; and
 - e) Carry out a full commissioning activity for all organic contracts in Mid, West Kent and East Kent

5. Consultation

- 5.1 The Commercial and Procurement Division have supported the service in extension discussions with the incumbent provider and have recommended that an extension period granted, followed by a competitive procurement process, so that a new contract is in place for 31 March 2026.

6. Financial Implications

- 6.1 The Budget for 24-25 is £1,564,300.
- 6.2 The estimated annual cost for 24-25 £2,008,742. There is a budget impact regarding the MTFP as the budget was reduced due to the anticipated savings that can no longer be delivered following the sale of the composting plant.
- 6.3 Negotiations have delivered a profit share for KCC for the sale of the composted material, although this will not completely reduce the budget gap, it will contribute to reducing it. In addition, if this waste is not processed through this contract, it will be sent via the FCC contract for energy from waste at a greatly increased gate fee, therefore increasing the overall budget pressure.
- 6.4 The cost of the 19-month extension is £3,180,500.
- 6.5 Haulage costs are accounted for within the HWRC & Transfer Station contracts.
- 6.6 A subsequent full retender which aligns all the organic contracts, will achieve synergies and economies of scale.

7. Legal implications

- 7.1 The extension period is permissible under the contract terms and conditions.
- 7.2 A key function of the waste disposal authority operating under the Environmental Protection Act 1990, Section 51 states that:
- It shall be the duty of each Waste Disposal Authority to arrange:
- a) for the disposal of the controlled waste collected in its area by the waste collection authorities.
 - b) for places to be provided at which persons resident in its area may deposit their household waste and for the disposal of waste so deposited.

8. Equalities implications

- 8.1 The Equality Impact Assessment undertaken concluded that no Protected Characteristics will be impacted upon either positively or negatively as a result of this contract award. This is due to the contract delivering a business-to-business service.

9. Governance

9.1 The Service Director will inherit the main delegations via the Officer Scheme of Delegation due to the potential financial value of this contract.

10. Conclusions

10.1 This is a necessary route with the expiry of the Authority's current contract, to reduce the risk of unbudgeted incurred costs and to offer KCC best available market value whilst enabling the Authority to discharge its statutory duty as the Waste Disposal Authority.

11. Recommendations

11.1 The Cabinet Member for Environment is asked to agree to:

(i) EXTEND the existing contract for the receipt and processing of organic waste for up to 19 Months.

(ii) DELEGATE authority to the Director of Environment and Circular Economy, in consultation with the Cabinet Member for Environment to take relevant actions, including but not limited to, awarding, finalising the terms of and entering into the relevant contracts or other legal agreements, as necessary, to implement the decision;

as shown at Appendix A.

12. Background Documents

- Appendix A – Proposed Record of Decision
- Environmental Protection Act 1990 - <https://www.legislation.gov.uk/ukpga/1990/43/contents>

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