

By: Linda Davies
Director, Environment and Waste

To: Nick Chard
Cabinet Member, Environment, Highways and Waste

Subject: East Kent Joint Waste Project – to seek authority on behalf of the County Council to enter into such agreements as may be necessary in order to deliver cost effective and appropriate waste services in East Kent in the period 2010 – 2020.

Classification: Unrestricted

For Decision

Summary:

The East Kent Joint Waste Project is a groundbreaking initiative across both tiers of local government to deliver more cost effective waste collection, processing and disposal services and improved recycling performance in East Kent.

Further to the detailed report to Cabinet at its meeting on 30 November 2009, the Cabinet Member for Environment, Highways and Waste is now asked to agree that, subject to him being satisfied as to the detailed terms and conditions, the Executive Directive of Environment, Highways and Waste, be authorised to enter into such legal agreements as may be necessary to deliver waste services in East Kent in the period 2010 to 2020.

Background

- 1.1 More than 18 months of co-operation and in-depth work between Kent County Council, Canterbury City Council, Thanet, Shepway and Dover District Councils has resulted in an accord between these Councils on the way to achieve the most cost-effective waste collection, processing and disposal services and increased recycling performance in their administrative areas during the next ten years.
- 1.2 This East Kent Joint Waste Project, once implemented, will represent a significant success for the Kent Partnership, bringing savings to the Kent taxpayer through visible demonstration of the scope for enhanced working to deliver modern, cost-effective services across both tiers of local government.
- 1.3 The East Kent Joint Waste Project report to Cabinet of 30th November 2009 set out the detail of the project and the next steps required. Cabinet endorsed the report's recommendations to commit to the project through authorising the Leader to sign the Memorandum of Understanding, with the County Council's participation in the Legal Agreement (based upon the Memorandum of Understanding at Annex 1) with the four east Kent authorities to be taken as a separate decision. The latter is the subject of this report.

2. Cost-effective household waste services for east Kent

- 2.1 The aim of the East Kent Joint Waste Project is to develop more cost effective waste collection, processing and disposal services to minimise exposure to escalating costs, deliver efficiencies, and increase recycling, working across the two tiers of local government. It envisages a single waste collection method in place of the current differing arrangements between the four second-tier authorities. This and combining contracts will bring savings to each authority as well as to KCC as the waste disposal authority.
- 2.2 It is based upon extensive financial modelling of the various costs and benefits to both waste collection and disposal authorities of various options. The optimal model for waste collection also generates savings to the disposal authority. Savings overall are to off-set costs to the collection authorities of the shift to the new collection regime, but additionally provide overall savings to the Kent taxpayer. The optimal waste collection model may be amended if the current Competitive Dialogue process proposes variations which would bring additional benefits.
- 2.3 Joint procurement of waste services is underway to enable Dover and Shepway Districts to roll out the new household waste collection contract from the autumn of next year, delivering waste and recyclates to locations agreed with KCC, as waste disposal authority.
- 2.4 The current joint procurement involving KCC, Dover and Shepway Districts is the start of a process to minimise costs across the four east Kent authorities in the period to 2020, with Canterbury City Council and Thanet District Council committing to implement the agreement by no later than 2013.

3. Memorandum of Understanding

- 3.1 The overarching principles of the project and process for taking forward joint working have been enshrined in a Memorandum of Understanding (appended at Annex1.) It is this Memorandum upon which the legally binding agreement between all five partner authorities will be based.
- 3.2 The Memorandum of Understanding (MoU) sets out and develops the principles upon which the four authorities and KCC commit to the most economically advantageous and closest possible coordination of waste collection and disposal arrangements in east Kent, and participate in an optimum, most economically advantageous procurement solution to deliver the optimal waste collection methods and processing.
- 3.3 Key requirements upon partners to the Memorandum include the following:
 - East Kent authorities are required to commit to the optimum waste collection methodology as refined and informed by the Competitive Dialogue Process in order to deliver materials in a single cost efficient manner; and
 - Dover DC and Shepway DC must commit to deliver their specified recycling waste streams to the transfer points and facilities specified by KCC in accordance with agreed contractual conditions from October 2010; and

- Canterbury CC and Thanet DC must commit to deliver their specified recycling waste streams to the transfer points and facilities specified by KCC in accordance with agreed contractual conditions from April 2013, or earlier by mutual agreement; and
 - KCC will fund enabling payments and containerisation payments to the east Kent authorities in accordance with compliance with the optimum collecting methodology; and
 - KCC will provide processing capacity and or facilities for the materials collected by the East Kent District and City Councils in accordance with the common waste collecting methodology in accordance with agreed contractual conditions; and
 - All parties agree to be bound by the benefit disaggregation principles whereby savings, anticipated from joint working across four districts on waste collection, including cross boundary vehicle deployment, contract scale economies and management, net of costs, along with the disposal savings shall be shared (disaggregated), with 50% going to KCC and the remaining 50% to be shared among themselves according to household numbers. KCC's investment will be refunded from disposal and collection savings before any benefits are distributed.
- 3.4 These and other requirements and practice will be developed as part of the Legal Agreement which will form the basis for working together into the future. A fuller Partnership Agreement is being considered for the longer term.

4. Recommendation

The Cabinet Member for Environment, Highways and Waste is asked to agree,

that subject to him being satisfied as to the detailed terms and conditions, the Executive Director for Environment, Highways and Waste be authorised on behalf of the County Council, to enter into such legal agreements as may be necessary with Canterbury City Council, Thanet, Shepway, and Dover District Councils to deliver cost effective waste services in east Kent as are described in this report.

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Background Documents:

Report to Cabinet 30 November 2009: East Kent Joint Waste Project- partner authority approvals

Annex 1

East Kent Waste Partnership
Memorandum of Understanding

DRAFT MEMORANDUM OF UNDERSTANDING FOR
THE EAST KENT JOINT WASTE PARTNERSHIP

1) PURPOSE OF THIS MEMORANDUM OF UNDERSTANDING

- i) The purpose of this Memorandum of Understanding is to:-
- (a) Set out in simple, non legalistic, terms the way that the Partners (see definition) to the Memorandum will work together towards the objective of procuring a waste management contract for the collection of recyclable and residual waste materials, processing of recyclable materials, and the provision of street cleansing services and associated arrangements,
- (b) Establish overarching principles for taking joint working forward to deliver the agreed work streams.

2) DEFINITION AND INTERPRETATION

Term	Definition
Alternative View	Each Council's developed views as comparative go-it-alone options
CCC	Canterbury City Council
DDC	Dover District Council
EKJAC	East Kent Joint Arrangements Committee
Enabling Payment	Annual Revenue Funding from KCC required by the EKD & CC's to fund the additional net costs of expanding services and where applicable the lost income from charging for garden waste collections and lost recycle income. This funding will be added to recycling credit funding and any other agreed KCC funding streams and termed as an East Kent District Award. Recycling Credits will no longer be paid but an amount equivalent to the value of recycling credits paid in the last full year prior to the relevant council entering into the EKJWP Service Contract will be added to the Enabling Payment. Elements of the Enabling Payment that relate to changed service costs will adjust in line with the annual contract review mechanism.)
Containerisation Funding	Capital Funding from KCC required by the EKD & CCs to fund changes in containerisation necessary to introduce the NOM.
EKD & CC's	East Kent District and City Councils
First Phase of Procurement	A) The procurement of waste collection and street cleansing services for DDC and SDC to commence from October 2010. B) Facility infrastructure or capacity for materials handling for recycling and composting materials arising from DDC and SDC from Oct 2010 and extended to CCC and TDC from April 2013.
Households	Household numbers are as defined for National Performance Indicators
Host Authority	DDC for the first phase of the procurement process, and then to be subject to further discussion and agreement.
KCC	Kent County Council
Lead Officer	The officer responsible for the delivery of waste management services in each authority
Memorandum	Memorandum of Understanding
NOM	Nominal Optimal Model – refers to the use of split bodied vehicles for kerbside collection of dry recycle, comingled collection of garden and food waste and alternate weekly collection of residual waste.
Partners	CCC, DDC, KCC, SDC and TDC

Partnership	The Partners working together in an evolving relationship which will be reflected in a Partnership Agreement
Partnership Agreement	A legally binding agreement drafted in accordance with the principles of this Memorandum
Procurement Board	Sub Group of Steering Group with specific responsibility for progressing the procurement of the East Kent Joint Waste Contract. Reports back to Steering Group.
Programme Board	Consists of elected members from all Partners responsible for overseeing the work of the Steering Group and overall progress of the East Kent Joint Waste Project.
Project View	Each Council's view of the Project benefits used to contrast against Alternative View (see definition above).
the Project	Includes the first and second stages of procurement
Second Phase of Procurement	The procurement of waste collection and street cleansing services for CCC and TDC commencing from April 2013.
SDC	Shepway District Council
Steering Group	Formed from Lead Officers from Partners with responsibility for progressing the East Kent Joint Waste Project. Reports to Programme Board
TDC	Thanet District Council
WCA	Waste Collection Authority
WDA	Waste Disposal Authority

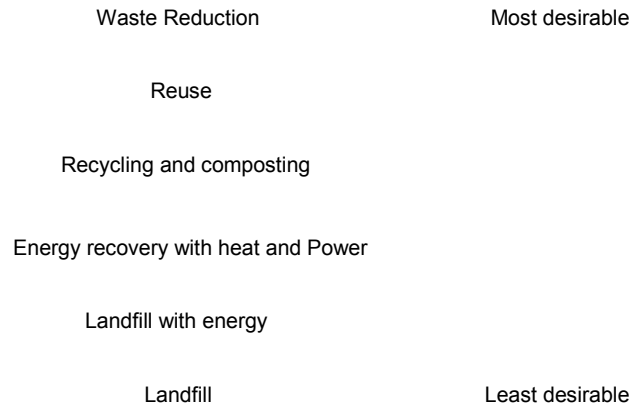
3) STATUS OF THE MEMORANDUM AND THE PARTNERSHIP

- i) The Memorandum is an operational not contractual document, however it is acknowledged by the Partners that the following areas will need to be agreed and entered into as legally binding documents as soon as practicable hereafter. The areas to be embodied in the legally binding agreement are outlined at Appendix II to this Memorandum.
- ii) The Partners have (by signing the Memorandum) agreed to use all reasonable endeavours to achieve the objectives of the overarching principles of the Memorandum.
- iii) The Partnership is not a legal entity. Accordingly, it cannot employ staff or enter into contracts in its own right. In those respects it will have to act through an agent - normally one of the Partners acting as a Host Authority. For the purposes of the first phase of procurement the Host Authority, subject to resource review, and agreement of all Partners will be DDC. The Host Authority for the second phase of the procurement is to be determined and this phase will commence from 1st January 2011.
- iv) The Partners will from time to time consider and if appropriate grant delegated powers to their lead and other officers to facilitate the working of the Partnership.

4) KEY OVERARCHING PRINCIPLES

- i) The Partners recognise that the co-ordination of action in procuring waste collection, recycle processing and street cleansing arrangements will be more effective than individual action by a single authority

- ii) The Partners recognise the guiding principles of the Best Practicable Environmental Option (BPEO) and the European Community (EC) hierarchy of waste management:-



- iii) The Partners will work to deliver the objectives of the Joint Municipal Waste Management Strategy for Kent,
- iv) The Partners commit themselves to the most economically advantageous and closest co-ordination possible of waste collection and disposal arrangements in East Kent, within the law and practical achievement.
- v) The EKD & CCs will participate in an optimum, most economically advantageous procurement solution to deliver the NOM. Procurement solutions to commence in 2010 for DDC and SDC and in 2013 for CCC and TDC.(or before this for TDC if achievable)
- vi) KCC will participate in this process and include the procurement of all the necessary arrangements, post collection, to provide capacity, for the handling, and processing of waste. KCC, in undertaking this obligation, will however have to take into account its commitments to Allington and other existing contracts.
- vii) The Partners will adopt the optimum most economically advantageous options as a result of the procurement process to include unified contract management arrangements and pan boundary collection efficiencies

5) STEERING GROUP

- i) The Partners shall be supported by a Steering Group consisting of a minimum of one Lead Officer responsible for waste from each of the Partners.
- ii) For the avoidance of doubt membership of the Steering Group should remain as constant as possible but may vary at the discretion of each Partner as appropriate to the topic or issue being considered and may include additional members as appropriate to the topic or issue being considered.
- iii) Officers of each Partner shall be required to and be responsible for reporting decisions to their own Council and implementing Partner decisions (once adopted by all Partners) and the Steering Group shall monitor the implementation of those decisions.
- iv) The Steering Group may agree to the setting up of other Officer sub/working groups to discuss and take forward any particular issues with particular emphasis on Joint Working. Such working groups will be accountable to the Partners through the Steering Group.

- v) The Steering Group shall, by applying pooled resources, employ (through the Host Authority) a Project Officer and/or use of Consultants, to advance the aims and objectives of the Partnership. The work programme for the Project Officer and/or use of Consultants will be determined by the Partnership and monitored by the Steering Group.

6) SCRUTINY ARRANGEMENTS

Partners will be encouraged to conduct scrutiny through their individual scrutiny arrangements.

7) SPECIFIC PRINCIPLES

- i) The EKD & CCs will resolve by January 2010 to the legal commitments detailed at 3.i above.
- ii) The EKD & CCs will take all reasonable steps to achieve delivery of collection arrangements by a single contractor by 2013. This is envisaged to be achieved either by a 2 or 3 stage contract arrangement with separate commencement dates building on the existing specification work carried out by DDC and SDC (which would be the method by which a single contractor could be best achieved), or by 2 separate contracts let in 2010 by DDC and SDC, and in 2013 by CCC and TDC with a view to combining the contracts in 2020.
- iii) Further, all reasonable steps will be used to include as part of these contracted services processing capacity to achieve a more unified collection and processing contractual arrangement in East Kent, either through the use of 1 single contractor, or some better arrangement which gives best market price. Under both (ii) and (iii) of this section, in-house contractors will not be prevented from applying.
- iv) KCC will, in return for these commitments, agree to make enabling payments to the EKD & CCs in order for them to deliver the NOM as envisaged. This agreement will be entered into as part of the agreement of the EKD & CCs to collect according to the NOM, and to seek a single contractor outcome. Enabling Payments to District Councils will be made in accordance with the introduction of the changes in service required to deliver the NOM.
- v) KCC will also agree to fund the Containerisation changes required to deliver the NOM.
- vi) Disposal Savings will be determined, through open book accounting, by contrasting disposal costs delivered through the implementation of the project against base case disposal costs which represent the forecast disposal costs that KCC would have incurred if the Project had not been implemented. This base case will form part of the legal agreement to which all parties will commit.
- vii) Collection savings will be determined through the competitive dialogue process as tenderers define the benefits to be delivered:
 - a. Through joint working with DDC and SDC,
 - b. Through joint working across the Partners.
 - c. Through co-location of depot, transfer and processing facilities.
- viii) The principles of benefit disaggregation are detailed at Appendix III to this MoU.
- ix) The benefit to be disaggregated will exclude DDC and SDC savings already discounted from the Project.
 - a. In respect of SDC the discounted savings arise from the change from kerbside sort collection to the NOM collection method. The operational saving delivered by this change is estimated at £580k,(being a reduction in the number of rounds required to provide a fortnightly comingled collection service in comparison to the existing weekly kerbside sort service) **less** the processing costs and changes in recycle value

incurred in respect of the comingled collection as informed by the competitive dialogue procedure.

- b. In respect of DDC the discounted savings arise from the change from weekly residual waste collection to alternate weekly residual waste collection. The operational saving delivered by this change is estimated at £375,000 being the reduction in the number of residual waste collection rounds from 8 to 5. The true value of the saving will be identified through the competitive dialogue procedure and within the Contract Bill of Quantities as rates for both collection methods will be required.
- x) The benefit to be disaggregated will also exclude any savings which may accrue through on changes in street cleansing functions.
- xi) This will provide the EKD & CCs and KCC with a clear financial incentive to agree and deliver the efficiencies and improvements which will lead to these future savings. These mechanisms are to be enshrined within the Partnership Agreement referred to above.
- xii) Disaggregation benefit to be assessed annually and not subject to adjustments from previous years.

8) CONFIDENTIALITY AND PUBLICITY

- i) The Partners shall hold confidential any information in respect of the Project, subject to their obligations at law or other requirements of an appropriate regulator (including the Audit Commission).
- ii) No Partner shall use any information received from another Partner in connection with the Project within its own organisation except to the extent necessary for the implementation of the Project save with the consent of the other Partner, such consent not to be unreasonably withheld or delayed.
- iii) If a Partner (the “**Receiving Partner**”) receives a request under the Freedom of Information Act 2000 (“FOIA”) it shall be for the Receiving Party to decide if such information should, as a matter of law, be disclosed and having acted reasonably and decided that it is legally obliged to disclose, it shall be entitled to so disclose.
- iv) The Receiving Partner shall use its reasonable endeavours to consult with those Partners that may be affected by such disclosure prior to deciding whether to disclose information pursuant to the FOIA but it shall not be obliged to so consult where to do so would put it in breach of this Act.
- v) The Partners shall comply with the Data Protection Acts 1984 and 1998.
- vi) Subject to clauses 8 (iii) and 8 (iv) (Confidentiality) no Partner shall make any public statement or issue any press release or publish any other public document relating to, connected with or arising out of this Memorandum, or the matters contained therein.

9) DISPUTE RESOLUTION

- i) In the event of a dispute under this Memorandum which cannot be resolved by the Partners the matter concerned will be referred to EKJAC. If any Partner disagrees with the decision of EKJAC the matter will then be referred to an independent adjudicator chosen by the Partners and whose decision will be binding on all Partners.

10) DURATION

- i) The arrangements set out in this Memorandum of Understanding will remain in operation until the Partnership is disbanded or the Partnership Agreement is entered into whichever

is sooner. Arrangements may, however, be varied by written agreement of all of the Partners.

- ii) Any Partner may withdraw from the Partnership by giving not less than 6 months notice in writing but not before such a proposal has been considered by the Partnership and the withdrawal shall not take effect until the following 31st March. The withdrawing partner may be liable for costs incurred by one or more Partners as a result of their withdrawal

11) APPENDICES - WORK STREAM SPECIFIC AGREEMENTS (Examples)

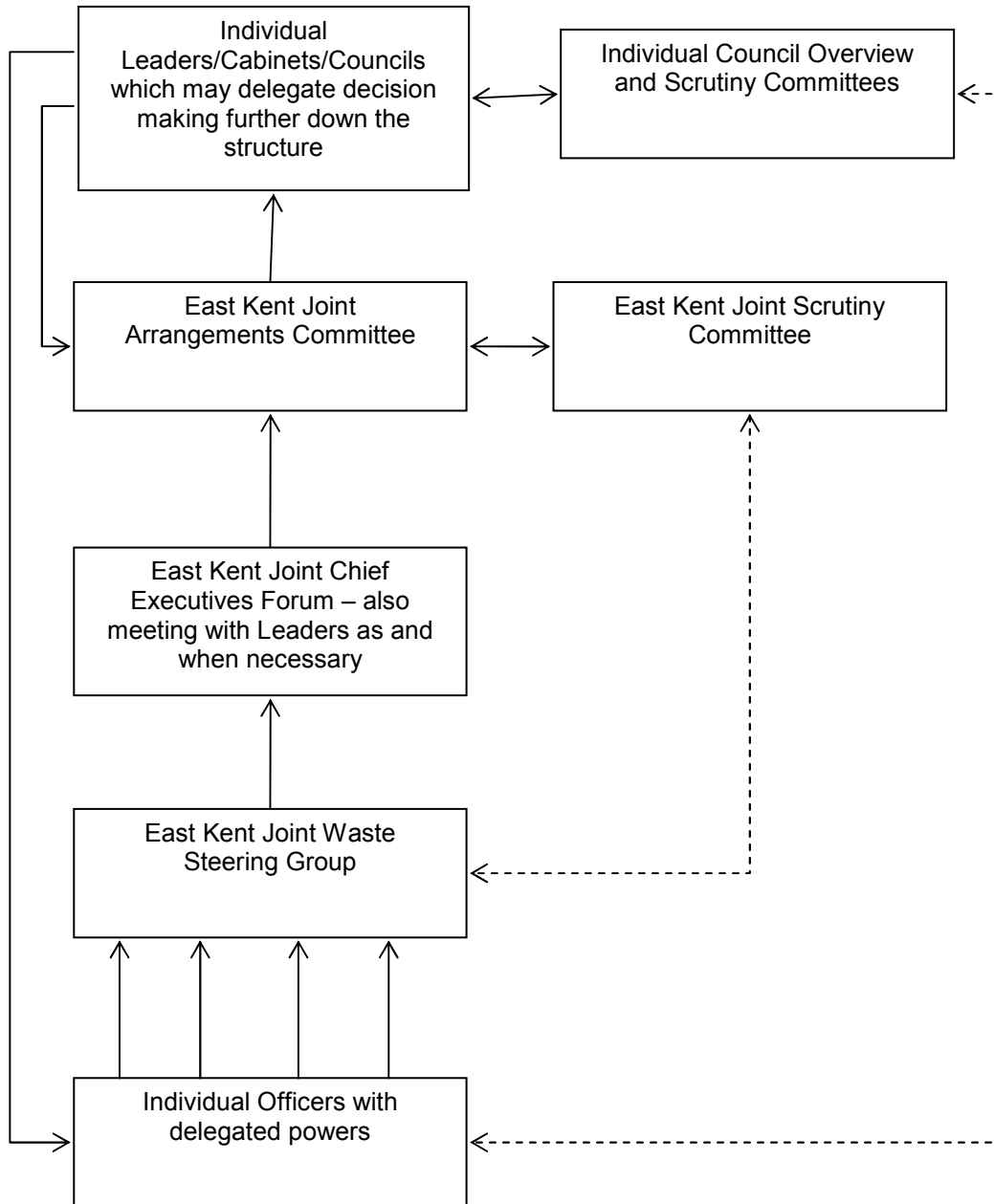
- a) APPENDIX I – Reporting Structure
- b) APPENDIX II – Legal Commitments
- c) APPENDIX III – Benefit Disaggregation Principles

This Memorandum of Understanding is agreed by the following:-

PARTNER	SIGNED	DATED
The Kent County Council Canterbury City Council Dover District Council The District Council of Shepway Thanet District Council		

Appendix I

Reporting Structure for East Kent Joint Waste Steering Group



Appendix II

LEGAL COMMITMENTS

In order for the Project procurement to progress through to the Final Tender Specification stage the Partners shall, as soon as practicable hereafter, make the following Inter Authority Commitments:

- 1 EKD & CCs are required to commit to the NOM collection methodology as refined and informed by the Competitive Dialogue Process in order to deliver materials in a single cost efficient manner; and
- 2 DDC and SDC must commit to deliver their specified recycling waste streams to the transfer points and facilities specified by KCC in accordance with agreed contractual conditions from October 2010; and
- 3 CCC and TDC must commit to deliver their specified recycling waste streams to the transfer points and facilities specified by KCC in accordance with agreed contractual conditions from April 2013, or earlier by mutual agreement; and
- 4 KCC will fund enabling payments and containerisation payments to the EKD & CCs in accordance with the EKD & CCs compliance with the NOM collecting methodology; and
- 5 KCC will provide processing capacity and or facilities for the materials collected by the EKD & CCs in accordance with the NOM collecting methodology in accordance with agreed contractual conditions; and
- 6 All parties agree to be bound by the disaggregation principles set out in Appendix III of the MoU

Appendix III

Benefit Disaggregation Principles

Partners agree to pool future avoided disposal savings and savings derived specifically from joint working across Waste Collection Authorities and Waste Collection/Disposal Authorities

Benefits to be disaggregated as follows:

- Investment to be refunded to KCC prior to the distribution of collection and disposal benefits.
- CCC to receive additional funding of £189k p.a. to compensate for the shortfall between its Project View and the Alternative View (excluding garden waste charging)
- Remaining Benefit to be disaggregated between KCC and the EKD & CCs in accordance with the following:
 - 50% KCC
 - 50% EKD & CCs
- The benefit derived to the EKD & CCs to be disaggregated in proportion to the number of Households within each district or city area (subject to the agreement of an equalisation mechanism) such that, over time, greater equity in KCC funding per household is achieved across all EKD & CC administrative areas