NORTHAMPTONSHIRE WASTE PARTNERSHIP – SERVICE LEVEL AGREEMENT

1 Purpose of report

This report outlines the requirement for all member authorities within the Northamptonshire Waste Partnership to enter into a revised Service Level Agreement consequent on the revised approach for dealing with residual municipal waste within the county.

2 Executive summary

The draft Northamptonshire Service Level Agreement (SLA) relating to Residual Waste is an agreement between the Waste Collection Authorities (WCAs) and the Waste Disposal Authority (WDA). It builds on the joint working strategy, principles and procedures already established under the Joint Municipal Waste Management Strategy and Memorandum of Understanding. The SLA sets out details of the agreed arrangements relating to the management of residual waste; the agreements reached between the WDA and WCAs regarding recycling credits, tipping away payments and other payments.

3 Appendices

Frequently Asked Questions regarding the Northamptonshire Service Level Agreement Relating to Residual Waste briefing.

4 Proposed action:

4.1 The committee is invited to RESOLVE to approve the Northamptonshire Service Level Agreement relating to Residual Waste.

4.2 The committee is invited to RESOLVE to authorise the Chairman of the Community Committee to sign the agreement on behalf of the Council.

5 Background

5.1 Northamptonshire County Council (NCC) has procured new contracts for the treatment and disposal of residual municipal waste (“the new contracts”), which commenced on 1st April 2013. The procurement of new contracts was necessary because the NCC’s previous contractual arrangements for residual municipal waste, which had been extended up to their maximum duration, terminated on 31st March 2013, with the exception of the SITA transfer station contract in Daventry which expires 31st March 2016.

5.2 Three new contracts have been procured which cover three geographical areas of Northamptonshire. They will a number of advantages, including:

* WCA Position Statements have been completed by each WCA to state their current collection systems and any planned changes.
WCA Position Statements have been completed by each WCA to state their current collection systems and any planned changes.

(a) Flexibility resulting from three 7 year contracts, which are extendable to up to 12 years, which have been awarded to 2 contractors;
(b) More than 65% of residual waste will be diverted from landfill by 2020;
(c) Six Delivery Points for the delivery of Contract Waste.

5.3 The Borough Council of Wellingborough, along with other Borough and District Councils were involved in the development of the specification for the new contracts. The main benefits for Wellingborough will be:
(a) Reduced waiting times;
(b) Tipping on hard standing, which will reduce wear and tear on vehicles;

5.4 Partly as a result of the more demanding specification, the new contracts are more sophisticated than the previous contracts for the disposal of municipal waste, with a wide variety of aspects of the Contractor’s performance being monitored to ensure the service provided meets the specification. The new contracts include a Performance Measurement Framework with performance points and deductions applied if the Contractor fails to meet the required standards. Some of the performance deductions may be passed through to the District and Borough Councils as compensation payments.

6 Discussion

6.1 As part of the procurement process a Service Level Agreement (SLA) between NCC and the District and Borough Councils has been developed. The purpose of the Service Level Agreement is to provide a clear interface between the waste collection arrangements provided by the District and Borough Councils and the waste disposal arrangements provided by NCC. A draft copy of the SLA was brought to Community committee in September of last year and received an in principle approval by members.

6.2 The legislation sets out the statutory duties and responsibilities of the two tiers of waste management, and the relevant statutory payments. However, as noted above the new contracts are more complex than previous arrangements and include the possibility of performance deductions, which may result in compensation payments. Therefore, the SLA goes beyond what is set out in the legislation by making provision for payments which are not statutory, including:
(a) compensation payments in the event that a Council’s collection vehicle is unduly delayed when depositing its waste;
(b) compensation payments in the event that a Council’s collection vehicle is diverted to a contingency delivery point.

6.3 The SLA also:
(a) Provides greater certainty for both the WDA and WCAs which will provide better management of risk, for example by enabling close monitoring of the tonnages, including the risk of breaching the minimum, contractually guaranteed tonnages within the new contracts;
(b) Clarifies the information that is required by each party.

6.4 The SLA builds on the principles of the agreed Northamptonshire Joint Municipal Waste Management Strategy and the NWP’s Memorandum of Understanding.

* WCA Position Statements have been completed by each WCA to state their current collection systems and any planned changes.
6.5 The duration of the SLA is 12 years to reflect the potential maximum duration of the new contracts. Any Council can terminate its part of the SLA earlier than the 12 year period at which point all payments will revert to the statutory minimum. The SLA term can also be extended by agreement.

6.6 Overall, the SLA benefits all Councils by clarifying the responsibilities of each party and providing a mechanism for the calculation and payment of non-statutory payments. i.e. The SLA goes beyond the legislation and establishes a process for additional payments to be made to the District and Borough Councils.

6.7 Following the award of the new contracts for the treatment and disposal of residual waste, the SLA has been refined in order to fully reflect the new contracts. This has included amendments such as:

(a) Inclusion of information for each of the Delivery Points;
(b) Specifying the compensation amounts for excessive waiting times, or delivery to contingency Delivery Points;
(c) Simplification to ensure the District and Borough Councils are only responsible for issues within their direct control (e.g. collection arrangements);
(d) Updates to each Council’s position statement, which details the collection systems that are currently in place, and any intended changes.

6.8 Waste and legal officers from each Council have subsequently reviewed the amended SLA.

7 Legal powers

The Service Level Agreement is a voluntary agreement and stands instead of any Environmental Protection Act or Waste Emissions Trading Act directions with respect to residual waste.

8 Financial and value for money implications

The agreement covers the statutory payment amounts payable by the Waste Disposal Authority in respect of recycling credits, mileage payments and (if the Residual Waste Treatment contractor does not accept the waste) tipping away payments in respect of failure of the contractor.

9 Risk analysis

The principal risk to the Waste Collection Authorities arises where a Waste Collection Authority breaches the position statement or makes changes to it without Waste Disposal Authority agreement. In these circumstances the Waste Collection Authority may become liable to cover any additional costs payable by the Waste Disposal Authority to the Residual Waste Treatment contractor, including any payment the Waste Disposal Authority has to make for the minimum tonnage where actual tonnages delivered are below the minimum tonnage but only to the extent that the particular Waste Collection Authority’s
breach directly led to such costs.

The service level agreement includes a review procedure that allows the Waste Collection Authorities to adjust its position statement, should the need arise, by agreement with the Waste Disposal Authority thereby mitigating any risk or liability for possible breach.

10 Implications for resources

There are no staffing or property resource implications – the service level agreement largely formalises current expectations within the Northamptonshire Waste Partnership building upon the joint Municipal Waste Management Strategy and the Memorandum of Understanding.

11 Implications for stronger and safer communities

The agreement will support the efficient and effective management of residual waste and ensure the best interests of the council tax payer within the county are met.

12 Implications for equalities

Entering into the service level agreement does not vary the current arrangements for the collection of municipal waste or recycling arrangements. There is no change to the council’s service and no requirement to evaluate the impact of its services, policies and activities on different groups in society to eliminate discrimination.

13 Author and contact officer
Terry Wright, Director of Services

14 Consultees
Geoff Hollands, District Law
John Casserly, Managing Director Wellingborough Norse

15 Background papers
Northamptonshire Joint Municipal Waste Management Strategy and Memorandum of Understanding.
Appendix 1

Frequently Asked Questions regarding the Northamptonshire Service Level Agreement Relating to Residual Waste briefing.

This Question & Answer Appendix provides a summary of the key features of the SLA and is not intended to replace a complete reading of the draft SLA.

What is it?
An agreement in writing between the Waste Collection Authorities (WCAs) and the Waste Disposal Authority (WDA) in place for 12 years. The WCAs and the WDA each have the ability to terminate the SLA earlier than the 12 year period. The term is further extendable after the 12 year period by agreement of the WCAs and the WDA.

Why is it necessary?
- Augments the statutory position.
- Confirms and crystallises agreements reached between the WDA and WCAs regarding statutory and non-statutory payments.
- Builds on (but does not replace) the principles and procedures already established under the Joint Municipal Waste Management Strategy and Memorandum of Understanding, setting out details of the agreed arrangements relating to the management of residual waste.
- Establishes an agreed position to provide a platform for the Residual Waste Treatment (RWT) Contracts.
- The SLA stands instead of any other EPA or WET Act “direction” with respect to residual waste. However, in the event that the SLA is terminated, the WDA will revert back to these statutory instruments.

What commitments are given by the Parties?
Both: To act in a way that promotes effective partnership working and the aims, objectives and effectiveness of the Joint Municipal Waste Management Strategy and MOU.
To provide information to each other.
To work to achieve joint targets as far as is possible.
To take reasonable steps to mitigate losses arising from a breach of the SLA.

WCAs: To continue carrying out collection of municipal waste within their respective boundaries.
To comply with their respective WCA Position Statements*.
To deliver waste to the relevant delivery points (or contingency delivery points if relevant).
To comply with the waste acceptance protocol.
To use reasonable endeavours to not damage delivery points.
To change their own collection & recycling arrangements only through the Review Procedure.

WDA: To carry out disposal of municipal waste delivered to the delivery points.
To provide the agreed delivery points to the agreed standards.

* WCA Position Statements have been completed by each WCA to state their current collection systems and any planned changes.
To pay Recycling Credits, Kitchen Food Waste Diversion Credit, and in the event of a performance failure by the contractor, compensation payments. To bear risk in relation to composition and tonnage fluctuations provided that WCAs comply with Position Statements.

What are the principal benefits to the WCA?
Confirmation of statutory payment amounts.
Share in performance failure payments made by the Contractor to the WDA where the WCA is directly affected.
Contractual liability of WDA to pay – interest payable on default.
Helps to facilitate long term waste management arrangements in County and better value for the Council tax payer.
WCA has right of action for breach of confidentiality and FOI provisions.

What are the principle risks for the WCA?
- If a WCA breaches its Position Statement (or changes it without WDA agreement) and the minimum tonnages are breached, then the WCA becomes liable to cover any additional costs payable by the WDA to the Contractor, including any payment the WDA has to make for the Minimum Tonnage where actual tonnages delivered are below the Minimum Tonnage, but only to the extent that the particular WCA’s breach directly led to such costs.
- Note, the WCA is able to adjust its position statement by agreement with the WDA (see question & answer below). If a WCA proposes a change, and NCC accepts it, and the minimum contractual tonnages (set within the new contracts for the treatment and disposal of residual waste) are breached, then the liability rests solely with the NCC.
- It should also be noted that individual District and Borough Councils are not liable for changes in the composition of waste.
- The WDA has right of action for breach of confidentiality and FOI provisions.

Can the Position Statements be reviewed?
Yes, at any time. The best time to do so is at an Annual Review but any party can also call for an ad hoc review. Ideally the WDA and WCA would agree to the change but if it is not agreed, the WCA may still implement it but is then potentially in breach of the Position Statement.

When a WCA seeks to change its Position Statement, the WDA has to tell the WCA of the potential future effect so that it can consider the potential cost consequences in reaching a decision as to whether to implement the change.

Why would the WDA refuse to agree a change to a WCA’s position statement?
The SLA allows the collection authorities to propose changes to their collection services at any time. The primary reason that a request for change would be declined would be if the proposed change was likely to result in NCC being in default of its contracted minimum tonnages.

Are WCAs liable for meeting minimum tonnages?
If a WCA complies with its Position Statement or any agreed changes, then no: even if the waste in fact goes below the contracted Minimum Tonnage due to the reduction in

* WCA Position Statements have been completed by each WCA to state their current collection systems and any planned changes.
WCA Position Statements have been completed by each WCA to state their current collection systems and any planned changes in waste arisings. The WDA bears this risk. If a WCA does breach its Position Statement then it would be liable for tonnages in so far as its breach has caused the overall tonnages to go below the Minimum Tonnage.

*What is the contracted Minimum Tonnage?*

The minimum tonnages have been set for each of the 3 geographic areas, which are generally combinations of WCAs and HWRCs; not a specific WCA. Each of the 3 Contracts has its own Minimum Tonnage which has been set based on the information within the Position Statements, including all planned improvements to the collection services and taking into account a wide range of scenarios. Waste Officers within each Council have reviewed the basis of the minimum tonnages and generally agree with them. A breach by one WCA of its Position Statement may not therefore cause overall tonnages to fall below the Minimum Tonnage and no liability would arise unless several WCAs’ breaches together took the waste below the Minimum Tonnage, then the liability is shared.

*Are the WCAs liable to each other?*

No.

*What if more than one WCA breaches or changes their Position Statement?*

A WCA is only liable to the extent of its own breach (so liability is shared fairly and proportionately). Of course, there is a cumulative effect and a change to collection services at one point in time may, later, impact with other changes to accrue a liability. However, if a change to a position statement has been agreed, then that WCA will not be liable.

*Can a WCA choose to terminate?*

Yes at any time. The impact is that the WDA withdraws non-statutory funding and the WCA could still be potentially liable for any breaches of the Position Statement.

*How will the SLA be managed?*

It will be managed using the existing Steering Group and NWP Board structures.

---

* WCA Position Statements have been completed by each WCA to state their current collection systems and any planned changes.