

Report to the Cabinet

Report reference: C-085-2008/09

Date of meeting: 9 March 2009



**Epping Forest
District Council**

Portfolio: Environment

Subject: Inter Authority Agreement with Essex County Council

Responsible Officer: John Gilbert (01992 564062).

Democratic Services Officer: Gary Woodhall (01992 564470).

Recommendations:

(1) To consider whether the Council should, in principle, enter into any parts of the Inter Authority Agreement with Essex County; and

(2) That, subject to recommendation (1) above, to authorise the Environment and Finance & Performance Management Portfolio Holders to sign the final version of the IAA, subject to them both being satisfied that the final IAA does not materially differ from the version considered by Cabinet at this meeting.

Executive Summary:

In a number of previous reports to Cabinet on the development of the waste service, reference has been made to the possibility of Essex County Council providing support funding in respect of the collection of kitchen waste. The Inter Authority Agreement (IAA) is a legal document that enables this support to be provided. The IAA is also the document, which deals with the relationship between the County Council as the Waste Disposal Authority (WDA) and the districts/boroughs as Waste Collection Authorities (WCAs) in terms of the County Council's procurement of waste disposal infrastructure through its PFI bid to Government. The IAA is a legally binding document which, in the case of this Council will run effectively in two stages; the first being from April 2009 until the signing of the PFI or PPP agreement, and the second stage being for 25 years from the date of the PFI or PPP.

The IAA will be considered by the County Council's Cabinet at the end of March, but this delay, added to by the forthcoming County Council elections, results in significant difficulties for this Council in taking forward, with its contractor Sita, the service developments agreed by Cabinet at its special meeting in January 2009. This report therefore seeks a decision from Cabinet in principle to the IAA in its current form, with Portfolio Holders' decisions to follow once the final version of the IAA is made available.

The main concern of signing the IAA is that it is a long-term commitment. This is recognised by the WCAs' advisers, Sharpe Pritchard, who are working towards ensuring reasonable 'exit routes' out of the IAA for WCAs should they face changes in circumstances along the way which might require them to consider opting out at some point in the future.

This is a key decision

Council Plan 2006-10: "Green & Unique" – GU2

Reasons for Proposed Decision:

An IAA is necessary for Essex County Council (ECC) to satisfy DEFRA that, if it is awarded PFI credits, ECC will be able to deliver the project and secure necessary support from the WCAs. Even if PFI is not the financing route ultimately selected, the IAA is required to demonstrate to the waste industry and potential providers of finance (e.g. PPP) that the County Council and the WCAs will work in partnership to deliver sufficient and suitable waste to feed the multi-million pound facilities being procured. Finally the IAA provides the mechanism for the payment of support funding by the ECC to this Council for the provision of a kitchen waste collection service and additional recycling credit payments.

Other Options for Action:

There are two options available. The first is to delay any decision until the final IAA has been approved by the County and made available to the WCAs. This would mean that decision being deferred at least until the Cabinet on 20 April potentially giving rise to difficulties in procuring the wheeled bins and other containers required to deliver the revised service.

The second option at this stage is to opt out of the IAA altogether or to defer entering it until a later date. This option cannot be recommended since it may prevent the provision of significant additional funding for the waste service and may also have an adverse effect upon the County's ability to acquire PFI or PPP funding and thereby secure the disposal infrastructure for the next 25 years which is required to fulfil the Essex Joint Municipal Waste Management Strategy.

Report:

Background

1. The Inter Authority Agreement (IAA) is the final stage in the development of the Essex Waste Partnership's bid for PFI/PPP funding to procure waste disposal infrastructure for the next 25 years. This Council has already played an active and positive role in the Partnership, supporting the West Essex Joint Waste Committee and the countywide Waste Management Partnership Board. We have also continued to develop our waste management service, seeing recycling performance rise from the mid twenties percent to a level now in excess of 40%.

2. Over the past few years, the Partnership has been developing a bid to Government for PFI funding to procure the waste disposal infrastructure required to put into place the disposal arrangements required to support the recently adopted Essex Joint Municipal Waste Management Strategy, which has the following as its key elements:

- continued high levels of recycling, with an aspirational target of 60% by 2020
- mechanical and biological treatment of residual waste
- anaerobic digestion of separated organic wastes
- possible use of solid recovered fuel (SRF) from the Mechanical & Biological Treatment (MBT) plant to provide energy

The Joint Strategy was adopted by Council on the 25 September 2008.

3. At its last meeting, Cabinet approved the submission of the Council's Waste Service Development Plan, which set out the Council's intentions over the next few years to develop its waste service and put into place the services required to meet the targets and aspirations within the Joint Strategy. This Service Plan will form a key component of the IAA

4. At the Special Cabinet meeting held on 19 January 2009, Members considered a report setting out options for the further development of the waste service. As part of that report Members were informed of the County Council's offer to provide support funding of £450,000 of revenue and £0.5m of capital, subject to the Council agreeing to enter into the Inter Authority Agreement. Cabinet agreed to implement option 1, that being the introduction of a weekly collection of commingled kitchen and garden waste alongside the existing core arrangements, with all residual collections becoming alternate weekly. The agreed funding was based on the receipt of the County Council's funding offer as set out above.

The Inter Authority Agreement

5. The Inter Authority Agreement (IAA) is a legally binding agreement between the County Council, as the Waste Disposal Authority (WDA), and the District/Borough Councils as Waste Collection Authorities (WCA). It is a complex document, and in view of that complexity, the County Council has funded the appointment of an independent specialist legal company, Sharpe Pritchard, to advise the WCAs on the content and format of the IAA.

6. Sharpe Pritchard have been in active discussions with the WCAs in order to ensure that they understand all the WCA concerns. Meetings have taken place which have involved waste officers, district/borough legal officers and Portfolio Holders. Sharpe Pritchard have produced a Members' briefing note on the IAA which sets out very clearly what the IAA is and what it is intended to achieve. Rather than seeking to précis that briefing note as part of this report, the entire briefing note is reproduced as appendix 1. The briefing note provides information on:

- (a) the basic law;
- (b) what an IAA is;
- (c) why an IAA is required;
- (d) how the IAA is beneficial to the WCAs; and
- (e) the format & content of the Essex IAA.

7. Each IAA will in some way be "tailored" to suit the circumstances of each WCA, since not all WCAs will feel able to commit to all elements of the agreement and the funding offers will be different for each WCA. The County had originally signalled its wish for all WCAs to sign the IAA by the end of March 2009 in order to align with the current timetabling for the PFI submission. However, delays in the process and the forthcoming elections have resulted in the County extending that deadline until June 2009.

8. The delay in the process is not helpful to this Council, which finds itself in the position of having agreed a new service proposal and the associated funding package, part of which is to be provided by the County. That funding will not be confirmed until the IAA has been signed, and that, as stated above may not be until June. However, if the new service is to be implemented by the autumn, it is essential that the procurement of containers and vehicles commences as soon as possible. This action is required to ensure the time for full compliance with the Council's contract standing orders and for the manufacture and delivery of the containers.

9. Discussions are taking place with the County Council, Sita and Sharpe Pritchard to determine whether the formal acceptance and signing of the IAA can be brought forward for this Council, so that we can move ahead. One option to be considered is that at this stage

the IAA, in its present form, be agreed “in principle”. This decision will only be recommended to Cabinet if the Council’s legal officers and Sharpe Pritchard are satisfied that:

- (a) the IAA in its present form does not present any significant issues for the Council; and
- (b) the final IAA is unlikely to differ significantly from the current version

Officers will provide either a verbal report or circulate a further report on the outcome of those discussions.

10. The most recent version of the document is attached as appendix 2. Sharpe Pritchard have been requested to attend the meeting in order to provide Members with an overview and answer questions.

Resource Implications:

The County Council has, subject to agreeing the IAA, made an offer of support funding for the changes to the Council’s waste service as follows:

2009/10: £280,000 revenue, £500,000 capital
2010/11: a further £170,000 revenue taking the support to £450,000
2011 onwards: £450,000

The revenue support is indexed linked.

Legal and Governance Implications:

The IAA is a legally binding document, which will remain in being, subject to the exit clauses within the agreement, for at least 25 years. The IAA is required so that the County Council can satisfy DEFRA that, if awarded PFI credits, the County will be able to deliver the project and has the necessary support of the WCAs. In the event that PFI is not the chosen funding route, the IAA will still be required in order for the waste contractors building and managing the infrastructure can be assured as the partnership between the WDA and the WCAs and the WCAs’ commitment to deliver waste to the new plant in an agreed format thereby ensuring, as far as is practicable, that the facilities are able to operate effectively and efficiently.

The briefing note appended at Appendix 1 sets out the details of the IAA, but in essence it covers three main areas:

- (i) a commitment to work in partnership and in accordance with the adopted Joint Municipal Waste Strategy;
- (ii) a commitment to provide a collection of kitchen waste in return for the WDA providing funding; and
- (iii) a commitment to operate within the terms of the agreed service development plan so as to provide certainty to the infrastructure providers in respect of plant capacity, nature of material to be delivered etc.

It is likely that there will be one basic form of IAA with 12 different schedules, since circumstances will clearly vary between WCAs.

The signing of the IAA is a significant step, due in the main, to the long-term commitment it places upon the Council. A legal officer and a representative of Sharpe Pritchard will be present at the meeting to update Members on the status of the latest version of the IAA.

There are no known human rights issues associated with the recommendation.

Safer, Cleaner and Greener Implications:

The development of the waste service is a key element of the Council's Safer, Cleaner, Greener Strategy. The increase in recycling performance is also a key component of meeting the Council's obligations within the recently adopted Essex Joint Municipal Waste Management Strategy. Changes to the service will also assist the Council in meeting the criticisms contained within the Audit Commission's report on the waste service.

Consultation Undertaken:

None specifically on the IAA.

Direct discussions with Sharpe Pritchard.

Sita in respect of the timing requirements of the Council's own procurement exercise for the new waste service.

The outcome of these discussions will be provided to Cabinet either through an oral report or further circulated report.

Background Papers:

Previous Cabinet & Scrutiny Reports.

Sharpe Pritchard briefing note (attached as an Appendix).

The Inter Authority Agreement (attached at an Appendix).

Impact Assessments:

There are a range of risks associated with entering into, or not entering into the IAA.

If entered into:

(i) the IAA is very long term, upwards of 25 years, although there are exit clause provisions. Some of these provisions could result in costs and/or losses in funding support for the Council if termination of the IAA has an adverse effect upon the County Council, its contractors or indeed other Essex WCAs; and

(ii) the IAA will require the Council to meet stringent requirements in terms of the waste to be delivered to the disposal facilities although the IAA does provide flexibility for matters which are clearly outside of the Council's control.

If not entered into:

(i) support funding and enhanced recycling credit payments will not be available from the County Council. These are significant sums;

(ii) the Council will have to rely upon statutory provision in respect of disposal arrangements, which will not provide the certainty of the IAA; and

(iii) may jeopardise the success of the PFI bid, although this will depend upon the extent to which the IAA is not agreed and also the number of other Essex WCAs who also decide not to participate in whole or in part.

If an "in principle" decision is not made:

(i) risk that procurement will be delayed and the new service will not commence as anticipated in the autumn of 2009.

If an “in principle” decision is made:

(i) the risk that, despite views of legal advisers, the final IAA is significantly different from the one agreed in principle, to the long term detriment of the Council. This risk is in part mitigated by the fact that there is to be an exit clause at the time of the PFI/PPP being entered into and this coincides with the likely end of the existing contract with Sita. This provides some leeway to the Council for its approach to the IAA.

There is a further risk around changes in political arrangements arising from the elections in June this year. If the IAA is signed by the Council ahead of the outcome of the elections, and political control changes, would this result in a different approach to the IAA by a new Administration.