

BARNSELY METROPOLITAN BOROUGH COUNCIL

REPORT OF: GROWTH AND SUSTAINABILITY

TITLE: CONTRACT AWARD FOR THE MANAGEMENT OF THE HOUSEHOLD WASTE RECYCLING CENTRES.

REPORT TO:	Cabinet
Date of Meeting	17 August 2022
Cabinet Member Portfolio	Environment & Highways
Key Decision	Yes
Public or Private	Public

Purpose of report

The purpose of this report is to seek approval for Barnsley MBC (the **council**) to appoint a service provider through a procurement in conjunction with Doncaster Borough Council and Rotherham Borough Council (together the **councils** or **BDR Partnership**), to award a contract for the management of their household waste recycling centres (**HWRCs**) and to approve the changes to the operational policies set out within this report.

This report is initially seeking support to re-procure HWRC services across Barnsley, Doncaster and Rotherham (**BDR**) and also sets out the service enhancement proposals which will form part of the tender specification. The form of contract will allow the ability to negotiate so that each authority can tailor the specification to their needs after considering the impacts on the MTFS and the practical applications throughout the borough.

Council Plan priority

- Healthy, Sustainable Barnsley – Looking after our environment by encouraging reuse, recycling and minimising waste.
- Growing Barnsley – Improving our reuse provisions for residents.

Recommendations

That Cabinet: -

1. Approve the option of undertaking a collaborative procurement jointly with both Doncaster Borough Council and Rotherham Borough Council leading to the award of a single joint contract between the councils and the successful service provider for the provision of the councils' HWRCs managed service including for

the four (4) HWRCs in the borough. The council delegates to Doncaster Borough Council the lead role in procuring the single joint contract using the Contract Procedure Rules of Doncaster Metropolitan Borough Council. Once the single joint contract is awarded (and during mobilisation and operation) the council will perform the lead operational contract management role under the single joint contract on behalf of itself and the other councils.

2. Approve the leasing of the four (4) HWRCs to the successful service provider.
3. Receive a further update on the responses to the procurement exercise and seek Cabinet approval before awarding the new single joint contract.
4. Approve the changes to the practices (including operational policies) at the HWRCs to align with Defra's final national proposals following its consultation on household DIY waste. The BDR councils have responded to this consultation and are awaiting the response from Government.
5. Authorise the council's Head of Property to agree terms for the lease of each HWRC site in readiness for service commencement of the new single joint contract to commence in late October 2023 and to instruct the council's legal services team to complete the lease documentation alongside the managed service contract.

1. INTRODUCTION

- 1.1 The BDR Partnership (made up of Barnsley MBC, Doncaster Borough Council and Rotherham Borough Council) provides a network of fourteen (14) HWRCs within the boroughs of Barnsley, Doncaster and Rotherham which are currently managed and operated under a managed service contract with FCC Recycling (UK) Limited and where the HWRC sites are intended to be leased by the relevant council to the service provider for the duration of the managed service contract.
- 1.2 Four (4) HWRCs are within the borough. The council has a statutory obligation under section 51 of the Environmental Protection Act 1990 to provide HWRCs to residents within the borough.
- 1.3 This report is seeking approval to procure a new HWRC managed service contract with an initial term of eight (8) years and an option to extend by up to a further two (2) years. The current contract had an initial term of three (3) years with an option to extend of up to two (2) years and expires in late October 2023. The length of the current contract did not allow the service provider sufficient time to recuperate any capital outlay which ultimately led to a lack of investment into the sites over the last five (5) years. Increasing the term will make it more attractive to bidders and will allow for substantial investments into the current service provision, enabling the BDR Partnership to transform services and increase our offering to residents.

- 1.4 As part of this procurement the BDR Partnership intends to increase the material types accepted on sites and improve the reuse facilities making them more accessible to residents.
- 1.5 Bidders will be incentivised into offering cleaner and greener technology, helping achieve our 2030 Sustainability priority.
- 1.6 To date Rotherham Borough Council have received Cabinet approval to start the procurement process and Doncaster Borough Council have been through their Purple (Equivalent) approval.

2. PROPOSAL

- 2.1 The four (4) HWRC sites in the borough are available for residents to dispose of their household waste and recycling. The new managed service contract will provide a modern and efficient service, embracing new technology to improve the service experience for residents and with an improved offer including:
 - Enhanced use of modern technology delivering a more streamlined user-friendly permit system, real time information and monitoring.
 - New equipment and signage
 - Commercial waste offering at some sites, potentially including.
 - Inert/rubble
 - Asbestos
 - Plasterboard
 - Wood
 - Green waste
 - Cardboard
 - WEEE (electrical items)
 - Mixed waste (residual waste)
- 2.2 Two (2) borough wide consultations across Barnsley, Doncaster and Rotherham commenced in June 2022 and are live for eight (8) weeks. The first is aimed at residents to ascertain improvements that can be made to the service. The second is aimed at businesses to scope commercial waste demand and acceptance criteria.
- 2.3 A further robust market testing consultation document has also been prepared to send to potential service providers which will be complemented by a site visit to at least one of their existing HWRC contract sites.
- 2.4 The market testing consultation includes the following areas for discussion:

Implementation and delivery of:

- Automatic number plate recognition (ANPR) technology, hosting and managing the pan-BDR Partnership councils' permit system(s) including a residents' permit scheme to enable cross-border use of HWRCs within the BDR Partnership administrative areas
- Acceptance of commercial waste
- The expansion of re-use and hard to recycle materials

Contractual points such as:

- Indexation
- Key performance indicators and service performance standards
- Changes which may be necessary to implement the Environment Act 2021 and any accompanying secondary legislation published as Regulations.

2.5 In preparation for the new managed service contract, BDR Partnership officers from each of the councils are working to harmonise the HWRC operational policies across Barnsley, Doncaster and Rotherham. The current operational policies in Barnsley are as follows:

Construction Type Waste – Accepted at all sites. Residents can dispose of up to 5 sacks (25kg) of rubble/ soil/ construction type waste per visit with a maximum of 2 visits per year.

Asbestos – Accepted at the West Street site only. Asbestos is accepted from residents who have undertaken DIY work at their home. A maximum of five bags are accepted, each visit must be pre-booked, and an appointment made at prescribed times. This material must also be prepared correctly prior to acceptance at site. If a resident wants to dispose of more bags, then a charge of £15 per bag is applied.

Van Permits or trailer permits – Permitted at all sites, residents are required to apply for a booklet which contains 12 visits, this can be renewed annually. The permit booklet covers the following vehicles:

- a car with a trailer (maximum size 7' x 4')
- a 4x4 with pickup
- a small van
- any van under 5.2 metres in length
- a minibus (short wheelbase)
- a medium camper van

If the vehicle is sign written, then the resident will not be allowed to tip the type of waste advertised.

One-Off booking – One-off bookings are designed for residents who may need to hire a vehicle to move house, or a non-resident who may be clearing out a Barnsley property due to a bereavement. Each visit must be pre-booked, and the number of visits will be granted on a case-by-case basis.

Pedestrian permits – Pedestrian access is allowed at all HWRC sites, but residents need to apply with the criteria for issue of a pedestrian permit being that the resident needs to live within one (1) mile of the site, does not have access to a vehicle and the resident must call to arrange a visit. Pedestrian permits are issued to ensure safe access to the HWRC sites as due to the site layouts it is not possible to install pedestrian gates.

2.6.1 The proposals recommend the following changes to policies:

- **Construction type waste** – It is proposed to align with Defra's recent consultation proposals which is to permit this type of waste resulting from householder DIY home projects to three hundred (300) litres (average car boot size) no more than once per week.
- **Van permits** – It is proposed to allow vehicles over 5.2 metres access to HWRC sites.
- **Cross-border use** – It is proposed to implement a cross-border use of HWRCs within the BDR Partnership councils administrative area, potentially through use of ANPR.
- **Introduction of commercial waste** - It is intended to allow commercial waste on the two (2) larger sites at Worsbrough and Goldthorpe. There is no known commercial “pay as you drop” sites within the borough allowing small and medium business enterprises (SMEs) onto an HWRC site to dispose of their waste. This would offer them an affordable and compliant disposal route for unwanted material. This has the potential to help reduce fly-tipping in the borough.
- **Asbestos** - It is proposed to change the asbestos policy to align to those already applicable in Rotherham and Doncaster by allowing a resident to dispose of up to eight bags of asbestos free of charge along with accepting large asbestos sheets (usually from a garage roof) where anything over these eight (8) bags/sheets will continue to be charged at fifteen pounds (£15) per bag/sheet.

IMPLICATIONS OF THE DECISION

3.1 Financial and Risk

- 3.11 Consultations have taken place with representatives of the Service Director - Finance (S151 Officer).
- 3.12 The current HWRC service is provided by FCC Recycling (UK) Limited (**FCC**) through a contract managed through the BDR Partnership. The annual budget of £0.928M covers the management, processing and haulage costs. Under this current contract the four (4) Barnsley and ten (10) Doncaster Borough Council and Rotherham Borough Council HWRC sites are leased by each council to FCC for the duration of the managed service contract. The current contract with FCC had an initial term of three years with an option to extend of up to two years and expires in late October 2023.
- 3.13 This report is seeking approval to procure a new HWRC managed service contract with an initial term of eight (8) years and an option to extend by up to a further two (2) years. Service providers will need to make substantial investment into the service provision to enable the BDR Partnership to transform services and increase the offer to residents. A longer contract term makes it more attractive as it provides a longer period to recover the capital outlay.

- 3.14 As part of this procurement the BDR Partnership intends to increase the material types accepted on HWRC sites and improve reuse facilities making them more accessible to residents. It also plans to incentivise bidders into offering cleaner and greener technology, helping achieve our 2030 Sustainability priority.
- 3.15 To date, Rotherham Borough Council have received Cabinet approval to start the procurement process and Doncaster Borough Council have been through their Purple (Equivalent) approval.
- 3.16 The prices for many services have increased significantly over the last twelve months for numerous reasons such as the below. These are expected to impact the tender prices.
- changes to red diesel legislation have resulted in an increase in fuel costs of almost two hundred per cent (200%)
 - inflation for May 2022 was 11.8% which is the highest since 1982
 - in March 2022 the price of steel increased by a record twenty-five per cent (25%).
- 3.17 Allowing commercial waste into HWRC sites will potentially help mitigate some of these increases and the BDR Partnership councils' officers are currently exploring the benefits of this option.
- 3.18 A series of government consultations have been released relating to the Environment Act 2021. Within this documentation Defra have implied that moving forwards local authorities will receive funding based on their provision of an efficient and effective service to residents. Although these terms are not yet fully understood it is possible that failing to modernise the HWRC sites and improve the current service could impact the grant funding the council could receive in the future.
- 3.19 Due to the timeline of the process (see table below), the BDR Partnership of councils cannot wait for the proposals in the Environment Act 2021 to be announced/clarified before awarding this new single joint contract. The drafting of the contract will need to acknowledge and address this issue.

Publish contract notice	05/09/2022 – 25/11/2022
Evaluation and negotiation	28/11/2022 – 10/02/2023
Approval to award	10/02/2022 – 27/03/2023
Mobilisation	28/04/2023 – 27/10/2023

- 3.20 In view of the above and some of the other proposed changes being considered by the BDR Partnership, the value of the contract will not be known until we receive responses to the tender. Once this process is complete a further report will be brought to Cabinet considering the full impact on the MTFS.
- 3.21 A separate report is being prepared to apply for capital funding for the four (4) HWRC sites to enable essential works to be carried out that includes the installation of drainage systems. The work will ensure that the council adheres to the HWRC sites' environmental permit requirements. Failure to install adequate drainage poses a significant risk of HWRC site closure. Work to stabilise the river embankment at the Penistone HWRC site is also required. The impact and extent of this work is not yet fully understood and a ground investigation survey has been instructed to ascertain the risks and costs involved. Routine maintenance will be funded from the council's waste disposal budget.
- 3.22 No Appendix A is required at this stage.

3.2 Legal

- 3.21 The council is a waste disposal authority for the purposes of the Environmental Protection Act 1990. Section 51 of the Environmental Protection Act requires a waste disposal authority to provide places which residents within its administrative area may deposit their household waste for disposal for free, that the arrangements are reasonably accessible to persons resident in the area and are available at reasonable times including weekend provision. It is however permissible to restrict the deposit of certain types of waste to certain sites.
- 3.22 Section 1 of the Localism Act 2011 provides the council with a general power of competence, allowing the council to do anything that individuals generally may do. Section 111 of the Local Government Act 1972 gives the council the power to purchase goods and services.
- 3.23 Section 123 of the Local Government Act 1972 sets out that the council has statutory power to dispose of non-housing/non-Housing Revenue Account land by way of a short tenancy of less than seven (7) years, without the Secretary of State's consent. Since the proposed lease of each Site has a maximum term of potentially ten (10) years (equivalent to the managed service contract) then the Secretary of State's consent is required except where the consideration is the best that can reasonably be achieved: here the combination of the managed service contract and the lease govern the arrangements with a service provider following a competitive tender exercise where the granting of leases is integral to the delivery of the service for the service fee but the lease rent is not a separate measure of consideration. It is expected that the HWRC site leases will be for a peppercorn rent and cross-default with the managed service contract. Best consideration is evidenced by the outcome of the tender exercise: the HWRC site leases provide occupational interests for the service provider to occupy the HWRC sites and the tendered price for the managed service contract evidences best consideration on award after applying the procurement evaluation methodology. It is not structured to have a contract price and rent operating in parallel.

- 3.24 As the leases for each HWRC site are intended to have a break clause in favour of the council (in the event the new HWRC managed service contract is not extended or on an early termination of the managed service contract) it will be necessary to ensure the leases are excluded from the statutory renewal provisions of the Landlord and Tenant Act 1954 to enable effective termination at the same time as the managed service contract terminates.
- 3.25 The procurement of the service will need significant legal advice going forward and must be carried in accordance in light of Doncaster Borough Council's own contract procurement rules (as they are the lead council managing the procurement exercise on behalf of all of the councils) and the Public Contracts Regulations 2015 (SI 2015/102).
- 3.26 In order to comply with the general duty on local authorities to act fairly, when the council is considering revising a policy such as this that proposes to remove benefits that are or might be conferred on members of the public, it is important that the council formally consults with relevant stakeholders. In order to undertake a lawful consultation exercise, sufficient reasons must be put forward for the proposals to allow for intelligent consideration and response by the stakeholders, adequate time must be given for consideration and response and the product of the consultation must now be consciously taken into account by the decision maker before a final decision is made on the proposals. There are a number of consultation exercises being undertaken in this matter as detailed in paragraphs 2.2 and 2.3 of this report. The outcome of the general BDR Partnership-wide consultation should also be considered before a decision is made on the matters consulted.
- 3.27 The decision maker must be aware of their obligations under the public sector equality duty (**PSED**) in section 149 of the Equality Act 2010. It requires public authorities when exercising their functions to have due regard to the need to: eliminate discrimination, harassment, and victimization; advance equality of opportunity; and foster good relations between people who share relevant protected characteristics and those who do not. The relevant protected characteristics under the Equality Act 2010 are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The duty also covers marriage and civil partnerships but only in respect of eliminating unlawful discrimination. The decision maker must ensure that they have seen the due regard statement. The duty must be exercised in substance, with rigor, with an open mind and is not a question of ticking boxes. It is for the decision maker to decide how much weight should be given to the various factors informing the decision and including how much weight should be given to the PSED itself. The duty is a continuing one and there should be a record/audit trail of how due regard has been shown. It is not sufficient for due regard to be a "rearguard action" following a concluded decision. The decision maker must also pay regard to any countervailing factors and decide the weight to be given to these, which it is proper and reasonable to consider - budgetary pressures, economics and practical factors will often be important.

- 3.28 The proposed form of managed service contract will be based on the Chartered Institution of Wastes Management (**CIWM**) short form service contract and will use a set of amendments previously applied by the BDR Partnership councils on the current HWRC managed service contract and various of their other offtake contracts. It will also be informed by the outcome of the soft market testing consultation exercise. A template form of lease will accompany the managed service contract in the tender documents (it is being discussed between officers from the councils' legal services teams based on their experiences of drafting leases for the current HWRC managed service contract).
- 3.29 The new managed service contract is to be procured with Doncaster Borough Council being the lead council for the procurement phase acting on behalf of all of the councils (so the council and Rotherham Borough Council delegate that procurement responsibility to Doncaster Borough Council). Once the managed service contract is awarded and entered into by all of the councils and the service provider (it is not a joint procurement with separate council contracts it is both joint procurement and operation) then operational contract management is led by the council as lead council (where Doncaster Borough Council and Rotherham Borough Council both delegate operation of the service and appointment of the authorized officer to the council).
- 3.30 The BDR Partnership proposal is to use the competitive procedure with negotiation approach to procurement. It offers flexibility for possible engagement and negotiation with bidders if their initial tender submissions are not thought sufficient on a "brown envelope tendering basis" by pricing against a fixed set of terms and conditions and a fixed specification. Given the anticipated need for more modern systems, processes and technology than used in the current HWRC managed service contract, the effect of the Environment Act 2021 requirements and likely horizon scanning plus a possible commercial waste service offering the councils can use negotiation with selected bidders to explore and enhance any initial tender submissions.

3.3 Equality

A full EIA has been completed as negotiation of contract is ongoing, EDI requirements will be factored into the contract, this EIA will be updated once we have secured a provider.

3.4 Sustainability



Waste generation - The award of this managed service contract will increase reuse and recycling opportunities for both residents and commercial customers by improving facilities at HWRC sites.

Pollution - This managed service contract will focus on increasing reuse and repair which in turn will reduce waste. It aims to increase the materials the councils can accept on site for recycling. Additionally, it will make waste disposal more accessible to local businesses which potentially could help reduce fly-tipping.

Greenhouse gas emissions - As part of the managed service contract the councils are asking prospective bidders to become the service provider to suggest how they can make the managed service contract cleaner and greener by reducing carbon emissions and pushing waste up the hierarchy.

Sustainable Barnsley – As outlined above, this managed service contract will focus on increasing reuse and repair which in turn will reduce waste, it aims to increase the materials the councils can accept on HWRC sites for recycling and additionally it will make waste disposal more accessible to local businesses (which potentially could help reduce fly-tipping.)

3.5 Employees

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3.6 Communications

The Communications and Marketing service has already supported in promoting the BDR region-wide consultations. Further support in producing a communications and marketing plan, will be required to inform stakeholders of any relevant changes to the service once the contract commences. Co-ordination will be required between communications team partners across the partnership authorities.

4. CONSULTATION

4.1 This new managed service contract will be jointly procured between the BDR Partnership councils and lead to a single joint contract. Officers have worked together (and continue to work together to enhance or improve) to produce the specification, evaluation methodology, performance schedules and terms and conditions of the managed service contract as well as the template lease which will be broken out per HWRC site. Doncaster Borough Council's procurement team are leading the procurement exercise on behalf of all councils.

4.2 We have consulted with potential service providers.

4.3 Consultation has also been undertaken with:

- Procurement Team
- Finance
- Communications
- Legal
- Asset management

4.4 The Director of Environment and Transport and Head of Service have been consulted about the contents of this new managed service contract.

4.5 This report has been consulted with the Portfolio Holder for Environment and Highways to shape the service in preparation for the new managed service contract.

5. ALTERNATIVE OPTIONS CONSIDERED

5.1 The alternative options considered are as follows:

- **Bring the service provision in-house or contract independently** – The council does not have the resources to procure and/or deliver these services itself instead of outsourcing to a service provider. If it was to do an independent procurement the council would lose the efficiencies and economies of scale that the proposed procurement and delivery model with all councils delivers.
- **Do nothing** – The council has a statutory obligation under section 51 of the Environmental Protection Act 1990 which requires a waste disposal authority to provide places which residents within its administrative area can deposit their household waste for disposal for free.

6. REASONS FOR RECOMMENDATIONS

- 6.1 It is recommended that approval is granted to procure a managed service contract for the provision of HWRCs in the borough and approve the leasing of the four (4) HWRCs to ensure that the council remains compliant within the public procurement regime and with the requirements of waste management legislation.
- 6.2 This report sets out the service enhancement proposals which will form part of the tender specification. The form of contract will allow the ability to negotiate so that each authority can tailor the specification to their needs after considering the impacts on the MTFS and the practical applications throughout the borough.
- 6.3 It is recommended that the changes to the operational policies outlined within the report are approved to allow the BDR Partnership councils to maximise an effective and efficient service and to harmonise operational procedures across the joint managed service contract. These changes will improve the customer journey by making the HWRC sites more accessible to residents.

7. GLOSSARY

- ANPR – automatic number plate recognition
- BDR – Barnsley, Doncaster and Rotherham
- Defra – Department for Environment, Food and Rural Affairs
- HWRC – household waste recycling centre
- KPI – key performance indicator
- WEEE – Waste Electronic and Electrical Equipment.

8. LIST OF APPENDICES

Appendix A: No appendix A is required.

9. BACKGROUND PAPERS

There are no background papers for this report.

If you would like to inspect background papers for this report, please email governance@barnsley.gov.uk so that appropriate arrangements can be made

10. REPORT SIGN OFF

Financial consultation & sign off	Senior Financial Services officer consulted and date <i>Maq Ahmed 13/07/2022</i>
Legal consultation & sign off	Jason Field 22/07/22 Supported by Neil Tindall, Solicitor, BDR Partnership – 20 July 2022

Report Author: Victoria Chappell
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Date: July 2022