

**Cabinet**  
**26 June 2018**  
**Appendix 5**

**HWRS Service Review**  
**Alternative Models for HWRS Provision**

## **1 Alternative Models for HWRs Provision**

- 1.1 This appendix provides information on alternative delivery models for HWRs, following feedback received during the consultation, and as a result of the proposal to close the Forest Row and Wadhurst HWRs.
- 1.2 At the time of this paper's submission for East Sussex County Council's June 2018 Cabinet meeting, the Waste Team have not received any firm proposals or expressions of interest to operate the Forest Row site whilst there has been one tentative expression of interest from a private company in Wadhurst with an interest in operating, in some capacity, its HWRs. As such, this paper has been produced to attempt to cover all likely scenarios. The Waste Team is committed to assisting, where possible, 3<sup>rd</sup> parties to explore specific scenarios if they are provided to East Sussex County Council.
- 1.3 Its purpose is to ascertain if there are potentially effective models that, if Cabinet decide to close Forest Row and Wadhurst HWRs, could be considered by interested parties. These would need to be framed by any interested parties within the context of the annual costs, usage and tonnages of the two sites, which effectively provides the basis of any business model.
- 1.4 Research has considered
  - 1.4.1 Options available to East Sussex County Council to retain effective control over the two sites but which may enable it to operate on a more commercial basis
  - 1.4.2 Options whereby the local authority transfers the site into the control of an alternative organisation(s).
  - 1.4.3 For both of the above options, the ability for sites to charge for entry, which Waste Disposal Authorities such as East Sussex County Council cannot do under the Local Government (Prohibition of Charges at Household Waste Recycling Centres) (England) Order 2015.
  - 1.4.4 The ability of an alternative organisation operating a HWRs to have access to the Integrated Waste Management Service Contract (IWMS), to help provide the service.

## **2.0 Summary of possible alternative models of HWRs operation**

- 2.1 ESCC could transfer the operation of a HWRs to an alternative organisation / community group. It would be possible, via a contract variation, for this alternative organisation to access the IWMS. This alternative organisation / community group could charge for the disposal of non-household waste but not to access to the site, nor charge for disposal of household waste, due to the prohibition on charging for entry (and disposal of household waste) by Local Authorities. This prohibition arises due to the contractual link of the alternative organisation / community group accessing the IWMS which is held by East Sussex County Council.
- 2.2 A Parish Council could operate a household waste site by resolving to adopt the general power of competence under section 8(2) of the Localism Act 2011. However, it could not charge residents to access the site as it would be caught by the

prohibition on local authorities using the general power of competence to charge residents to access Household Waste Sites.

- 2.3 An alternative organisation / community group (for example a CIC) could charge for access to a HWRS and for the disposal of household waste which may allow it to trade on a commercial basis. However, it could not charge for access to a HWRS and disposal of household waste *and* also access the IWMSC due to the relationship with East Sussex County Council. Therefore, they would have to make their own arrangements for the disposal of waste at their own cost.
- 2.4 An alternative organisation / community group could seek to deal directly with Veolia (outside of the IWMSC) or alternatively, a different waste contractor.
- 2.5 ESCC could form a Local Authority Trading Company (LATC) to operate a HWRS beyond its statutory provision. However, if there was any contractual link back to the Local Authority, the LATC could not charge for entry to the site due to its proximity to the Local Authority and the prohibition on charging that it (the Local Authority) is subject to.

### **3.0 Local Authority Trading Companies (LATC) / Teckal Companies.**

- 3.1 Via the powers in section 95 of the Local Government Act 2003<sup>1</sup> a Local Authority is able to establish a Local Authority Trading Company (LATC). A local authority is permitted to trade in anything that it is authorised to do under its ordinary functions. LATCs generate a vehicle into which large portions of the Local Authorities business can be moved. They can be set up without a tender process but thereafter, can tender for additional work in other councils.
- 3.2 Any profits made by a wholly- or partly-owned company can be reinvested in other council services. Setting up a company, and putting in place arrangements is subject to satisfying a number of requirements, and involves various costs. A local authority that sets up a company must produce a business case before doing so. The authority must recover the costs of any accommodation, goods, services or staff provided. LATCs are governed by normal company law, and must be run according to the wishes of their shareholders. Like any company, they must pay VAT and corporation tax, and are subject to EU state aid rules.
- 3.3 Section 4 of the 2011 Localism Act<sup>2</sup> permits authorities, via the general power of competence, to provide a service on a commercial basis through a company – though this can only be done for things that the council can do for a non-commercial purpose. Where a local authority has statutory responsibilities to provide specific services to individuals, these services cannot be provided on a commercial basis<sup>3</sup>.
- 3.4 The County Council would potentially not have a specific duty under section 51 of the Environmental protection Act in respect of statutory provision of the HWRSs at Forest

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<sup>1</sup> Local Government Act 2003 <https://www.legislation.gov.uk/ukpga/2003/26/contents>

<sup>2</sup> Localism Act, 2011 <http://www.legislation.gov.uk/ukpga/2011/20/contents/enacted>

<sup>3</sup> House of Commons Briefing Paper: Local government: alternative models of service delivery  
<http://researchbriefings.files.parliament.uk/documents/SN05950/SN05950.pdf>

Row and Wadhurst as it already operates another 10 sites under section 51, and therefore it could potentially set up a company to run a HWRs under its general power of competence on a commercial basis. Its contractual relationship with the Local Authority would, to a large extent, determine much of the commercial framework within which it could legally operate (see 5.2) below.

- 3.5 In order for the LATC to operate commercially at the site without any of the restrictions of the local authority, it would need to be a completely separate entity with no links to the existing disposal contract. This may not be advisable as the commercial site would be operating near to a network of free sites.

#### **4.0 Community Operated HWRs**

- 4.1 Examples of Household Waste Sites that have moved from Local Authority Operation to other organisations – either alternative public sector, private or 3<sup>rd</sup> sectors – are relatively limited.
- 4.2 Two Waste Disposal Authorities have had significant experience of transferring the operation of Household Waste sites into alternative ownership with mixed results – this is largely due to the differing styles and sizes of sites transferred and the operating models involved.
- 4.3 Appendices 1 and 2 provide an overview of the examples in Warwickshire and Suffolk of alternative organisations operating HWRs.

#### **5.0 Charging for Access to a HWRs**

- 5.1 Given the low comparatively tonnages that are handled by Forest Row and Wadhurst HWRs (approximately 1,300 and 1,800 tonnes/year respectively), one option to allow these sites to run on a more commercial basis could be to charge for basic access with this entry charge contributing to costs of site operation and the disposal of waste.
- 5.2 The prohibition on charging for site access would not apply to a LATC, as it would be a separate legal body to that of its owning local authority. However if the LATC was under any sort of contract with the local authority to provide a household waste recycling centre, then the prohibition, and restriction on charging would probably apply to such arrangements, on the basis that the HWRC was being provided by the local authority. While the County Council could potentially support the setting up of the LATC, subject to it recovering its costs of doing so, it would probably not be able to enter into a contract with the LATC to provide a household waste centre, without such arrangements being caught by the prohibition, and restriction on charging. Without such a contract, the LATC would have to survive by obtaining business for itself, and deal with the disposal of any waste deposited.
- 5.3 The prohibition on charging for site access would apply if the site was transferred to a Parish Council as it would be caught by the prohibition on local authorities using the general power of competence to charge residents to access Household Waste Sites. In order for this site to charge, the Parish Council would itself need to transfer the site

to a 3<sup>rd</sup> party (e.g. a CIC). However, there could be no residual links back to the Parish Council or Local Authority.

- 5.4 Providing there is no contractual link to the Local Authority, a HWRS transferred into the operation of an alternative organisation such as a Limited Company, Community Interest Company etc. could, if it wished, charge for access. It would however need to decide if this made good business sense as the chargeable facility would be surrounded by a network of free facilities.

## **6.0 Access to the Integrated Waste Management Service Contract (IWMSC)**

- 6.1 The IWMSC and its provision of the Household Waste Recycling Site network within East Sussex delivers an effective framework to deal with the approximate 1.6million visits per year and 66,500t (2016/17 figures) tons of recyclable and non-recyclable material deposited across the 12 sites.
- 6.2 If a HWRS site transferred to another organisation and that organisation wished to access the IWMSC it would necessary for the IWMSC to be varied in accordance with the requirements of its clause 24, so that Veolia was no longer responsible for providing the HWRS on behalf of ESCC.
- 6.3 A CIC could agree a contract directly with Veolia (outside of the IWMSC) but it would then need itself to pay for the services provided.

## **7.0 Regulatory Aspects**

- 7.1 Any organisation operating a HWRS would need to satisfy a significant number of regulatory requirements. Examples of these are below but please note that this list is not exhaustive.
- 7.2 An appropriate Environmental Permit is required to be held at each site. It is possible that the existing sites permits could be transferred or, possibly, any new operator may have to apply for a new permit from the Environment Agency. Once a Permit has been secured, the site operator would need to adhere to any requirements of the permit particularly around acceptance of waste types, emissions monitoring etc.
- 7.3 Every waste management facility needs to have an accredited professional working on site for an agreed percentage of the time that has the training, knowledge and skills to govern safe working procedures. In terms of a facility like a HWRS, this can be satisfied by a 'Certificate Of Technical Competency' (CoTC) obtained via specialist, accredited training supplier.
- 7.4 More general regulatory aspects concern good practice around [Duty of Care](#). Any business that produces, handles or disposes of controlled waste has a statutory obligation to ensure it is managed correctly under [Duty of Care legislation](#). These day-to-day operational considerations also include aspects such as the recording of Waste Transfer notes. For non-hazardous waste types, these take the form of a 'Waste Transfer Note' and for hazardous waste, a 'Consignment Note'.

## **Appendix 1**

### **Suffolk County Council**

Suffolk County Council undertook a review of their HWRS network in 2010-11 and closed 7 of its 18 HWRSs

- 11 remain open under Local Authority Control
- Where alternative operators were found for the 7 sites proposed for closure, Operating Permits Transferred to the new operators – the County Council facilitated this.
- Sites take care of their own CoTC (Certificate of Technical Competency) cover with some assistance provided by district and borough councils.
- Some sites that were located relatively close to 'free' alternatives quickly failed as usage and tonnage dropped by a significant amount. 4 of the 7 sites now remain (see below).
- SCC did end up providing some temporary grant money to keep some sites open
- SCC offered some help in helping the organisations establish disposal routes but couldn't be too closely engaged in this due to procurement rules.
- Sites are generally let on a peppercorn rent.
- Sites generally charge for disposal of non-recyclable waste but not for entry
- Community run sites do not form part of SCC's Statutory Provision – they are 'extra' sites. SCC maintains its statutory provision via the retention of its other 11 HWRSs.

### **The Peninsula Community Recycling Centre**

Chelmondiston Parish Council took over the running of this site in conjunction with a local skip company. It was subsequently found to be financially unviable and closed. Public use was based upon a 'pay as you throw' system.

As the Parish Council holds a Waste Carriers License, it re-opened and now operates a 'Village Skip Day' two days per week again on a 'pay as you throw' basis. The site is staffed by volunteers.

The site has some recycling containers (free of charge) for paper, textiles and glass.

Fridges/freezers, gas bottles, asbestos, TV monitors, vehicle batteries, tyres, garden soil, plasterboard, liquid and hazardous wastes, including paint are not accepted.

<http://chelmondiston.onesuffolk.net/shops-and-services/public-facilities/recycling-facilities/>

### **Brome Community Recycling Centre (previously run by Suffolk County Council)**

This site appears to have had several changes of ownership since taking the site from Suffolk County Council in 2011. Now run by 'KHK Recycling' with the site permit held by Mid Suffolk District Council who also provide the CoTC cover as a 'support in kind'

Recyclables can be deposited free of charge with charges for the deposit of residual waste. The operator says that this site closes periodically on an ad-hoc basis depending on material prices and volumes of waste.

Brome Community Recycling Centre: <http://www.midsuffolk.gov.uk/waste-services/brome-community-recycling-centre/>

### **Newmarket Recycling Centre (previously run by Suffolk County Council)**

'Newmarket Open Door' is a Registered charity and limited company and was formed from a 'Churches Together' initiative

Took over the local Household Waste Recycling Centre in response to its proposed closure by Suffolk County Council in July 2011 but then closed in September 2015. The site later reopened with the help of a grant from SCC in April 2016.

Recyclables such as metal, glass, cardboard etc. are free of charge but garden waste as well as general household waste, plastics and non-reusable furniture are all chargeable.

<http://www.newmarketopendoor.org.uk/recycling-centre>

### **Beccles Community Recycling Centre**

Opened in 2016 by Radical Waste (Limited Company), this site is co-located with a skip hire company - B&B Skips). Charges are in place for bags and single items and also 'per load' charges for vans and trailers. There is free acceptance of some recyclable streams such as Cardboard, paper and textiles. Commercial vehicles are not permitted at the Community Recycling Centre, however all commercial waste can be dealt with at B&B Skips on a per tonne basis

<http://radicalwaste.co.uk/community-recycling/>

## **Appendix 2**

### **Warwickshire County Council**

In 2012-13, WCC 'franchised' 2 HWRCs and 5 Re-Use Shops to the Warwickshire Community Recycling - a social enterprise and voluntary sector organisation.

- The organisation recruited and trained 22 volunteers who provide 4,000 hours of their time per year.
- Warwickshire County Council maintained provision of technical and management support

In 2014 –

- WCC tendered the operation of 8 Re-Use Shops including the whole-site operation of 2 small HWRCs
- Warwickshire emphasised that whilst it welcomed enterprises to operate its re-use shops, peppercorn rents were seen as insubstantial and unsustainable in the current climate of austerity. With some shop sites turning over £250,000 a year, a benchmark was set of £50,000 per annum for each of the tendered lots.
- Age UK Warwickshire won all four tendered lots, and its contract to operate the eight sites – including the whole-site operation of two small HWRCs – commenced on 5 November 2014.
- WCC saw partnering with a reputable third sector partner with sufficient capacity was of prime importance
- WCC remains the permit holder
- WCC still supply the CoTC cover – this will eventually transfer to Age UK
- The operator has licence to occupy rather than a lease
- These sites remain part of network of statutory provision – not unofficial HWRCs
- The operator receives a share of the proceeds of material sales (metal, cardboard, WEEE etc.)
- The authority pays cost of residual and hazardous disposal
- The authority brokers / tenders for material sales across all sites which include the 2 smallest HWRCs operated by Age UK.
- The operator derives income from proceeds of recyclate and revenue from re-use shops. Because the package of sites includes 5-6 re-use shops at other sites where the HWRC is managed by WCC, they are able to cross-subsidise and absorb any costs associated with their 2 HWRCs. WCC receives a franchise fee of more than £300,000 a year from Age UK for the whole package.