

**JOINT WORKING CONSULTATION****WDA/49/13****Recommendation**

That:

1. Members agree the Treasurers recommendation that the Authority's sinking fund will no longer be required for its original purpose subject to the Resource Recovery Contract (RRC) reaching financial close.
2. Members agree that the sinking fund should be used to fund the Joint Recycling and Waste Management Strategy (JRWMS) Aims and Objectives.
3. Members agree to formal consultation with Districts on Joint Working proposal.
4. Members delegate Authority to the Chief Executive to develop a Memorandum of Understanding with Constituent Districts, that is to be the subject of a further report to the Authority.

THIS PAGE INTENTIONALLY BLANK

**JOINT WORKING CONSULTATION****WDA/49/13****Report of the Chief Executive****1. Purpose of the Report**

- 1.1 To seek Members approval of the Treasurers recommendation that the sinking fund is no longer required for its original purpose.
- 1.2 To seek Members approval for the use of the sinking fund to achieve the Aims and Objectives of the JRWMS as the strategy by which the Authority proposes to meet its statutory duties and make its contribution to national obligations.
- 1.3 As the JRWMS is a joint arrangement this report informs Members that the Chief Executive has been working with the Sefton Council Chief Executive as City Region lead. The Chief Executives have indicated that they support the proposals in this report in principle. The proposed arrangement would be made under the terms of the Environmental Protection Act 1990.
- 1.4 In order to enable the Authority to initiate the proposed Joint Working arrangements a formal consultation with the proposed partner Districts is required. This report seeks Members' agreement to formally consult on the proposals.
- 1.5 Should the Districts agree to the proposed course of action in the consultation, then Members approval is sought to develop a formal Memorandum of Understanding regarding the proposed working arrangement with Districts which would be subject to a further report to Members.

**Merseyside Waste Disposal Authority****29<sup>th</sup> November 2013**

## **2. Background**

- 2.1 When the Authority commenced its procurement programme several years ago, there was a real risk that the costs of future waste solutions would be significantly higher than hoped for. The impact of this would be a 'cliff face' increase in the Authority's Levy. To alleviate the potential impact of the Levy, and with the agreement of Districts, a Sinking Fund was established to provide a means for the Authority to mitigate the impact of the Levy increases.
- 2.2 The Authority was successful in securing the Waste Management and Recycling Contract (WMRC) (Veolia) at a lower cost than expected, and if as expected the RRC procurement is finalised as has been reported to Members, then those costs will no longer require significant Levy increases. The effect of this is that if the Authority succeeds in securing the RRC procurement the Treasurer advises that it will have funds set aside in the Sinking Fund that it no longer requires for their original planned purpose.
- 2.3 In addition to the sinking fund the Authority has held higher than 'normal' General Fund balances in anticipation of the risks arising from the RRC procurement. The prospect of those risks arising is significantly diminished and it is unlikely the General Fund will be required in full for its original proposed purposes. Initial projections of the Authority's likely financial position between 2014-15 and the prospective commencement of the RRC, are that the remaining General Fund Balance will be sufficient for managing the remaining likely cost increases for the Authority, so that the overall Levy charged to Districts can be at an average of zero in the period to 2017-18. After the RRC commences the Authority's costs are anticipated to return to current levels, as the prospective savings are realised.

## **3. Joint working**

- 3.1 Over a period of five years between 2007-08 and 2011-12 the Authority collected additional amounts in its annual Levy in preparation for what had been anticipated as a need to mitigate the potential impact of a very significant rise in the cost of the Levy to Districts arising from the RRC. The amount was collected from Districts on the basis of the appropriate relevant population within the Levy. Over time a Sinking Fund of £28.9M was established.

- 3.2 In light of the financial success of the WMRC and the potential for savings from the RRC procurement the Sinking Fund is no longer required to mitigate the Levy increases if Members agree with the Treasurers recommendation and will therefore be available to fulfil the Authority's Statutory Functions.
- 3.3 In light of this possibility the Chief Executive, in order to establish the best way of utilising the Sinking Fund, has been working with the City Region Chief Executives, under the lead of the Sefton Council Chief Executive. On behalf of the Authority and the constituent Councils, legal advice has been sought and obtained (see Appendix 1 to this report). The advice was jointly commissioned so that all the local authorities who commissioned it could rely on it (otherwise each would have had to take separate advice).
- 3.4 The Authority has two principal options in this regard, both of which are explored in the Legal Advice. These are practically summarised as follows:
  - 3.5 A Short term unsustainable approach to subsidise the Authority's day to day operations thereby reducing the Levy on a one off basis.
  - 3.6 A longer term strategic approach to work with Partner organisations to deliver shared strategic JRWMS goals.
  - 3.7 This latter approach will also give greater certainty that the Authority and constituent Districts will meet the challenging waste recycling and landfill diversion targets that the Localism Act 2011 effectively gives MRWA and Districts a statutory duty to contribute towards.
  - 3.8 Considering this advice and the work with Chief Executives it is proposed to utilise the Sinking Fund by establishing a Waste Development Fund. The Waste Development Fund would then be used by the Authority to support the Districts in their efforts to support the objectives and the targets of the Joint Recycling and Waste Management Strategy.
  - 3.9 As for the Authority's funding needs to contribute towards the JRWMS targets it is proposed that the Authority's higher than normal General Fund is utilised as necessary to supplement the proposed Levy strategy detailed at (2.3) above.
  - 3.10 In order to ensure equity in the funds paid to the Districts from the Development Fund and the need to reflect the challenge that they face in respect of the JRWMS targets, it is proposed that the Development Fund be distributed on a population basis and this would also be the same basis

as they were collected. This is illustrated at Appendix 2 to this report which is a table setting out how much was collected from the Districts and how much will be made available to each District under the proposed Development Fund.

- 3.11 To ensure the Authority's Members are assured that the District Councils will use their best efforts to support the objectives and targets of the Joint Recycling and Waste Management Strategy it is proposed that a Memorandum of Understanding be established and signed between each Council and this Authority. This proposed Memorandum of Understanding would formalise the arrangements between the Authority and the Councils and would serve to confirm their agreement, and ours, to the proposed arrangement. In the case of this Authority, it is proposed that development of the Memorandum of Understanding be delegated to the Chief Executive and presented to the Authority before final approval to distribute the £28.9 million sinking fund is given.
- 3.12 A secondary purpose of each Memorandum of Understanding would be for the Councils to confirm that they have been consulted formally about the proposals and that they have satisfied themselves as to the status and nature both of the legal advice and the positions of each of the organisations in the proposed arrangement.

#### **4. Risk Implications**

- 4.1 The risk attached to this proposal is that the Authority will carry Sinking Fund monies in a higher amount than it has a need for. By utilising the Sinking Fund monies, the Authority mitigates the risks of holding funds for which the Treasurer considers will no longer be needed for the purpose for which they were levied.
- 4.2 In order to utilise the Funds via a Waste Development Fund that will be allocated on an equitable basis to Councils, the Authority is relying on legal advice that the powers exist under the Environmental Protection Act 1990 that enable it to use the funds to support waste minimisation and Recycling, both of which are the primary aim of the objectives and targets of the JRWMS.
- 4.3 The legal advice however cannot and does not confirm that the proposed Waste Development Fund mechanism could not be challenged and it is for Members to consider if the Waste Development Fund is a reasonable and rational use of the Authority's funds. The alternative being to retain the funds in case of future need or a reduction in the Levy.

- 4.4 The advice was jointly commissioned and so the Councils who are the Authority's partners in this can rely on the same advice as the Authority. The Authority is seeking a formal agreement to the proposals from each of the partner Councils, which in part will confirm that they agree with the status of the advice and the risks associated with it.
- 4.5 The Sinking Fund was established to mitigate the risks of very high Levy rises. Those risks have been assessed as having diminished and the remaining General Fund is likely to be sufficient to mitigate the impacts of the remaining increases until the Authority's costs are brought down through the RRC contract.

## **5. HR Implications**

- 5.1 There are no HR implications associated with the report.

## **6. Environmental Implications**

- 6.1 The Authority and the Councils are more likely to be able to achieve the objectives and targets of the Joint Recycling and Waste Management Strategy if the proposals in this report are adopted.

## **7. Financial Implications**

- 7.1 Following the successful procurement of the WMRC, which commenced operations in 2009, and after four years where the Levy change has been at nearly zero or below, the Authority is reaching the point where the RRC procurement is nearly at financial close. When financial close is completed it will be possible for the Authority to anticipate with greater certainty the medium term financial prospects.
- 7.2 At the same time the Authority has held higher than 'normal' General Fund balances in anticipation of legal challenges arising from the RRC procurement. The prospect of those challenges is significantly diminished and it is unlikely the General Fund will be required in full for its proposed purposes. Initial projections of the Authority's likely financial position between 2014-15 and the prospective commencement of the RRC, are that the remaining General Fund Balance will be sufficient for managing the remaining likely cost increases for the Authority, so that the overall Levy charged to Districts can be at an average of zero in the period to 2017-18. After the RRC commences the Authority's costs are anticipated to return to current levels, as the prospective savings are realised.

- 7.3 This position outlined at 7.2 above will also give sufficient capacity for the Authority to make its contribution towards the JRWMS targets without impacting upon the Levy over the next three years.
- 7.4 The Authority holds a Sinking Fund of £28.9M which was established for a particular purpose. When the RRC is secure the remaining need for the fund will be extinguished. At that point it will be possible to utilise the Sinking Fund balance to establish a Waste Development Fund that may be utilised under the terms of the Environmental Protection Act 1990. This will enable the Authority to pay amounts to District Councils to support the joint objectives and targets of the JRWMS. In order to ensure equity in respect of the challenge faced by Districts and in respect of the basis that MRWA collected the funds it is proposed to return the funds in the same amount as they were collected from the Councils.

## **8. Conclusion**

- 8.1 The Authority Sinking fund is no longer required for the purpose for which it was levied and the Authority's higher than normal General fund is sufficient for the Authority's medium term financial needs.
- 8.2 The Authority has made proposals for Joint Working arrangements through a Waste Development Fund to the City Region Chief Executives which are supported in principle. The proposed arrangement would be made under the terms of the Environmental Protection Act 1990.
- 8.3 A formal consultation with the proposed partner Districts is required. This report seeks Members' agreement to formally consult on the proposals.
- 8.4 Each of the Districts will be required to sign a Memorandum of Understanding regarding the arrangement. Delegation is sought for the Chief Executive to develop the Memorandum of Understanding and seek signatures from Districts and further delegation from the Authority.
- 8.5 If agreements are reached then the funds available to support the Joint Working arrangements can be made available once the Authority has finalised the terms of the Memorandum of Understanding and the RRC procurement.

The contact officer for this report is: Carl Beer  
7th Floor, No.1 Mann Island, Liverpool, Merseyside, L3 1BP

Email: [carlbeer@merseysidewda.gov.uk](mailto:carlbeer@merseysidewda.gov.uk)

Tel: 0151 255 1444

Fax: 0151 227 1848

The background documents to this report are open to inspection in accordance with Section 100D of The Local Government Act 1972 - Nil.