

CHESHIRE EAST COUNCIL

Cabinet

Date of Meeting:	24 th June 2013
Report of:	Head of Environmental Protection & Enhancement
Subject/Title:	Major Change Project 6.4 - Determine Future Delivery Model for Waste Management Services
Portfolio Holder:	Cllr David Topping - Environment

1.0 Report Summary

- 1.1 Cheshire East Council (CEC) is both a waste collection and waste disposal authority (as defined in the Environmental Protection Act 1990). CEC has a number of responsibilities for the household waste that arises within its area. Due to the size and shape of the authority the collection service is divided into two operational zones - North and South. A depot is located in each (Macclesfield for the North and Crewe for the South) and these are both owned by the Council.
- 1.2 For the collection of household waste, CEC operates an in-house, wheeled bin-based, three stream kerbside waste collection service. This is based on an alternate weekly collection (AWC) solution of refuse, co-mingled recycling and garden waste. The introduction of this was completed in October 2011. This service has been popular with residents, with 93% customer satisfaction ratings and has enabled the authority to achieve a recycling rate of around 55%, which is top performance quartile. Currently, the Council's residual waste is disposed of 100% through landfill.

2.0 Service Review Achievement Highlights and Future Challenges

- 2.1 Since commencing the service review earlier this year, the Council has already identified the following areas that will make significant contributions to future service delivery efficiencies:

£1.9m of savings that can be secured from improvements to current waste disposal and collection activities. All savings identified, can be delivered ahead of schedule within 2014/15;

Significant move away from landfill disposal techniques with the opportunity to divert residual waste disposal requirements to a "waste to energy" programme;

Challenged and rigorously reviewed the existing waste collection service and identified investment opportunities within the fleet that will improve service reliability;

Engaged with Council Members, Employees and Trade Union representatives to develop credible change programmes that can be implemented with minimal service disruption;

Identified a new approach to service delivery that will see the creation of a wholly owned company (WOC) that manages the Council's waste collection and disposal needs. The WOC will enable the Council to pursue an ambitious change programme, whilst retaining the flexibility to pursue future opportunities associated with diverting waste away from landfill into energy generating projects.

- 2.2 Although this paper has been presented as a single agenda item, due to the various strands and complexity of the activities, it will be presented in four sections. These being:

Section A - Existing Service Efficiency Review

This section runs through the detailed review undertaken by iESE Ltd (a public sector owned company) including all of their findings. Included within this section are details of actions needed that will generate on-going savings in excess of £1m from 2014/15. Once achieved, it is expected that the service costs, will then compare favourably to outsourced private sector provision.

The review covered both financial and non-financial implications of different efficiencies and has covered a wide range of service areas including:

Overall operational model;
Fleet provision and maintenance;
Round Structure – residual and recycling;
Management structure and staffing levels.

Section B - Future Delivery Models

This section runs through the various delivery models that will allow the Council to secure the greatest short-term benefits whilst remaining agile and flexible to adapt to the changing needs of waste management and the emerging opportunities associated with waste to energy initiatives. The review has considered a range of options from status quo through to the establishment of a wholly owned company.

Section C – Review of Depot Infrastructure

This section acknowledges the need for investment in new and existing facilities within the borough, providing the service with the greatest resilience in future years.

Section D - Interim Residual Waste Disposal Options (will be dealt with under Part 2 of the meeting and is contained in a separate paper).

This section explains in detail the procurement strategy associated with business continuity for all disposal arrangements post 31st March 2014.

- 2.3 Although each section can be read independently, it must be noted that none can be delivered/ progressed in isolation and only when combined, will deliver the service improvements required, namely:

Positive move away from landfill disposal methods;
Maintaining current levels of service satisfaction (in excess of 85%) that the residents of Cheshire East experience;
Securing service cost reductions of £2.5m by 2015/16.

- 2.4 The detailed analyses for Sections A to D can be viewed by contacting the report writer.

Summary of Recommendations

(For record of decisions – use detailed recommendations within each sub-section of the report, A – D)

3.0 Section A - Existing Service Efficiency Review

It is recommended that:

- 3.1 Cabinet note the findings of the service review that has highlighted the most appropriate areas for consideration (for full details refer to 3.4 within Section A below).
- 3.2 Cabinet approve the recommended plan and areas for delivery of the required efficiencies within the existing service (for full details refer to 3.4 within Section A below).
- 3.3 Once the above have been approved, that the responsibility for further development and implementation is delegated to the Head of Environmental Protection and Enhancement in conjunction with the Section 151 Officer, Monitoring Officer, Portfolio Holder for Environment and is subject to the corporate project quality assurance process governed by the Executive Monitoring Board (EMB) to ensure that the project is reviewed, prior to any future implementation.

4.0 Section B - Future Delivery Model

It is recommended that:

- 4.1 Cabinet note the findings of the options appraisal that has concluded the most appropriate future delivery model to be that of a wholly owned company encompassing an in-house collection service. (For full details refer to Section B below).
- 4.2 Cabinet approve, in principle, the formation of the company shell and the further work required to define the most appropriate legal form of company. The current view that requires further consideration with legal

advisors is that the company will be Limited by Guarantee or Limited by Shares.

- 4.3 Cabinet agree to the establishment of a Shadow Board of Directors for the company and the Cabinet portfolio holder for Environment, Cllr David Topping work with the Leader of the Council and Chief Executive to define the appointments of the Non Executive Directors to the Shadow Board.
- 4.4 The Chief Executive and Monitoring Officer are given delegated authority to take forward the actions required to implement the recommendations and set up the Company shell, reporting back to Cabinet in October 2013 for endorsement of the new company (for full details and specific actions, refer to Section B below).
- 4.5 That subject to agreement of 2.1 to 2.4 of Section B of the report, and with cognisance of delegation in 2.4 of the report, the responsibility for further development and implementation is delegated to the Head of Environmental Protection and Enhancement in conjunction with the Section 151 Officer, Monitoring Officer, Portfolio Holder for Environment and subject to the corporate project quality assurance process governed by the Executive Monitoring Board (EMB) to ensure that the project is reviewed, prior to any future implementation.

5.0 Section C – Review of Depot Infrastructure

It is recommended that:

- 5.1 Cabinet acknowledge the need for new facilities within the North of the borough along with the need for improvements to be made to existing facilities at Pyms Lane (Southern Depot) to accommodate current and future service needs.
- 5.2 Cabinet approve that the responsibility for further development, funding and future implementation is delegated to the Head of Environmental Protection and Enhancement in conjunction with the Section 151 Officer, Monitoring Officer, Portfolio Holder for Environment and is subject to the corporate project quality assurance process governed by the Executive Monitoring Board (EMB) to ensure that the project is reviewed, prior to any future implementation.

6.0 Section D - Interim Residual Waste Disposal Options (will be dealt with under Part 2 of the meeting and is contained in a separate paper)

It is recommended that:

- 6.1 Cabinet note the findings of the costed options appraisal, financial implications and risks (for full details refer to **Interim Residual Waste Disposal Options Paper – Section D (Part 2 item)**, Para 3.4 to 3.5, 7.1 to 7.7 and Para 9.1 to 9.8) that concluded the most appropriate interim residual waste disposal solution.
- 6.2 Cabinet approve the recommended option for the interim waste disposal solution to be effective from April 2014 along with the offer to divert some residual waste away from landfill during 2013/14 as set out in **Interim Residual Waste Disposal Options Paper – Section D, Para 2.1 (Part 2 item)**.
- 6.3 Once the above are approved, that the responsibility for further development and implementation is delegated to the Head of Environmental Protection and Enhancement in conjunction with the Section 151 Officer, Monitoring Officer, Portfolio Holder for Environment and is subject to the corporate project quality assurance process governed by the Executive Monitoring Board (EMB) to ensure that the project is reviewed, prior to any future implementation.
- 6.4 Cabinet note an update regarding the previously approved contract extensions for Garden Waste, Dry Recyclate Bulking and Dry Recyclate Haulage as set out in **Interim Residual Waste Disposal Options Paper – Section D, Para 2.1 (Part 2 item)**.

7.0 Wards Affected

- 7.1 All Wards are affected

8.0 Local Ward Members

- 8.1 All Local Ward Members

9.0 Policy Implications

- 9.1 The Council's three-year plan budget principles – "We will ensure that those who provide services, whether in-house or externally, give real value for money".
- 9.2 This initiative aligns with Outcome 4 (Cheshire East is a green and sustainable place) of the Council's Three Year Plan.
- 9.3 The Council's Business Plan identifies efficiency savings linked to Waste Management services (Priority 6. Redefining the Council's role in core place-based services - 6.4: Determine future delivery model for waste management services).
- 9.4 For specific policy details – refer to each individual section A to D

10.0 Legal Implications

10.1 For specific details of the legal implications on each strand of the programme please refer to each individual section A to D of this report.

11.0 Financial Implications

11.1 For specific details of the financial implications on each strand of the programme please refer to each individual section A to D of this report but summary can be found below.

PROPOSED SAVINGS ACHIEVEMENT	2013-14 £M	2014-15 £M	2015-16 £M	Total £M
<i>Savings Target per Business Plan</i>	<i>(0.113)</i>	<i>(1.0)</i>	<i>(1.5)</i>	<i>(2.613)</i>
Service Efficiency Review (Section A)	(0.320)	(0.781)	(0.049)	(1.150)
Interim Residual Waste Disposal (Section D)	(0.111)	(0.510)	0.073	(0.548)
Existing Contract Extensions (Section D)		(0.110)	(0.110)	(0.220)
Total Savings Proposed	(0.431)	(1.401)	(0.086)	(1.918)

12.0 Risk Management

12.1 For specific details of the risk management factors for each strand of the programme please refer to each individual section A to D of this report.

13.0 Action Plan for Implementation

13.1 In order to implement the proposed programme, there is a significant but achievable amount of planning and discussion required.

13.2 This will require a dedicated project lead and sponsor with in-depth knowledge of the area and a dedicated project team will be needed.

13.3 With this in place, the identified benefits and improvements will allow the savings targets to be achieved across 2014/15 and 2015/16 and the new company to be set up and operational. Once Cabinet approval is given for the proposal, then a full implementation plan will be built defining milestones, reporting to progress and governance.

14.0 Further work yet to be conducted

14.1 Long Term Waste Strategy to be defined and tested

14.2 Procurement Strategy

14.2.1 The outcomes of the first phase of this programme of work will have delivered business continuity up until March 2016 with interim

disposal capacity in place, depot infrastructure planned and the service improvements underway.

14.2.2 The Council intend to go to market for a range of services during 2013 with the objective of having new contractual arrangements in place for April 2016 at the latest.

14.2.3 It is proposed that dialogue with suppliers across the waste industry will commence in July 2013 to gain an understanding of developments in the market and to begin to explore the Council's future requirements. The Council will publish a Prior Information Notice (PIN) notice in August 2013 declaring its intention to commence a procurement process and to establish the link with the market and engage interest in the Cheshire East waste service.

14.2.4 It is considered favourable to conduct this procurement through a competitive dialogue and the waste team will shortly commence the planning of this, to identify resource structure and costs for this process.

14.2.5 Although the programme of improvements have a positive impact upon the Council's waste strategy goals, including a considerable number of environmental enhancements (most notably the move away from landfill disposal), it is necessary to further define the Council's long-term needs to ensure the Council's vision and future Strategy can adapt to the technological service improvements whilst at the same time being able to take advantage of emerging opportunities that will see a greater proportion of waste utilised as fuel in "waste to energy" projects. Therefore, the Council's waste strategy will need to continue to evolve as the change programme progresses.

14.2.6 All of the interim arrangements will be structured in such a way as to bring existing waste contracts co-terminus with any new contracts coming into operation and will also allow for early termination in the event that significant changes arise in the requirements of the service.

14.3 Gaps in Savings Against Target

14.3.1 There is a shortfall of £600,000 in savings against the target set in the 3 year financial planning 2013-16 and the Council will have committed to further reviews of the overall service to identify these.

14.3.2 The review has also identified a number of additional areas for consideration as detailed in section A, Para. 3.6 of this report and further work will be undertaken to test these.

Section A - Existing Service Efficiency Review

1.0 Report Summary

- 1.1 Cabinet, at its meeting on 10th December 2012, considered a report on the future of waste services. Key decision 22 (1-6) resolved: That the Strategic Director Places and Organisational Capacity, in consultation with the relevant Portfolio Holders, be authorised:
- i. To review the in-house collection service to identify areas of efficiencies;
 - ii. To procure external consultancy support to deliver new arrangements.

2.0 Recommendations

It is recommended that:

- 2.1 Cabinet note the findings of the service review that has highlighted the most appropriate areas for consideration. The full service review, with analysis and figures can be obtained by contacting the author.
- 2.2 Cabinet approve the recommended plan and areas for delivery of the required efficiencies within the existing service as shown in 3.4 below.
- 2.3 Once 2.2 has been approved, that the responsibility for further development and implementation is delegated to the Head of Environmental Protection and Enhancement in conjunction with the Section 151 Officer, Monitoring Officer, Portfolio Holder for Environment and is subject to the corporate project quality assurance process governed by the Executive Monitoring Board (EMB) to ensure that the project is reviewed, prior to any future implementation.

3.0 Reasons for Recommendations

- 3.1 There is a need to achieve best value for the services that the Council directly provides and reduce net operating cost wherever possible, whilst at the same time maintaining the best possible service for its residents in line with the Council's three-year plan.
- 3.2 The review and the delivery of the proposed efficiencies and improvements to the existing, in-house Collection service will contribute to achieving best value and the objectives of the 3-year business plan, as outlined in 3.1.
- 3.3 The purpose of the service review was to deliver an in-depth appraisal of the current, in-house waste collection services costs. The analysis covered both the financial and non-financial implications of different efficiencies and has covered a wide range of service areas including:
- 3.3.1 Overall operational model;
 - 3.3.2 Fleet – provision and maintenance;
 - 3.3.3 Round structure – residual and recycling;
 - 3.3.4 Management structure and Staff levels.

3.4 The report has concluded that there are many areas for consideration and implementation - the full service review can be obtained by contacting the author but a summary is included here for ease:

Ref:	Cost Reduction Description	Saving £	2013/14 £'000	2014/15 £'000	2015/16 £'000
CR1	No additional bank holiday funding with effect from 01/04/13	56k	(56)		
CR2	Holiday cover for previous years no longer required from 01/04/14	25k		(25)	
CR3	Harmonisation Compensation payment ceases Nov 2014	73k		(24)	(49)
CR5	Reduction in Residual Collection Rounds from 20 to 19.	127k		(127)	
CR6	Reduction in Recycling Collection Rounds from 18 to 17.	127k		(127)	
CR7	Further reduction in Residual from 19 to 18 and Recycling Collection Rounds from 17 to 16 following Round Reorganisation.	254k		(254)	
CR8	Extension of Existing Garden waste non collection period from 6 weeks to 17 weeks.	298k	(194)	(104)	
CR10	Replacement of existing 20 Core Contract hire vehicles with Council capital purchase vehicles.	120k		(120)	
CR11	Removal of charges associated with vehicles no longer in service.	40k	(40)		
CR12	Reduction in tyre costs arising from change in contract and procurement of more suitable tyres for vehicles accessing landfill.	30k	(30)		
		Phasing	(320)	(781)	(49)

Total recurring savings achieved by 2015/16 - £1,150,000

3.5 In reaching this plan, exhaustive discussion and consultation with service management and officers has taken place to refine the original thinking to arrive at an overall plan that is deliverable. There are some challenges associated with each of the proposed savings and some inter-dependencies that will need careful planning before implementation but all are considered possible with the right level of support and management.

3.6 Within the full service review a number of 'other' areas for consideration have been highlighted. It is recommended that further work be undertaken to fully address these areas to understand the implications to the Council and the financial impact each have on it - the full service review can be obtained by contacting the author but a summary is included here for ease:

Further consideration	
Waste Management Staffing Restructure	£314k
Further learning based on comparison of model figures and 2012/13 out-turn £tba	c. £122k
Payment of overtime in 2012/13 reflected in a budget provision, or rather, treated as a risk item and covered by earmarked reserve	£64k
Review and identification of more efficient cross-charging mechanism within Fleet Services	TBC
Agency staff review	TBC
Reduction in Household waste recycling centres	TBC
Joint Waste Team reduction	£216k
Comparison of current May Gurney Lease charges to Council capital purchase identifies a differential	TBC

4.0 Wards Affected

4.1 All wards.

5.0 Local Ward Members

5.1 All local ward members.

6.0 Policy Implications

6.1 The Council's three-year plan budget principles – "We will ensure that those who provide services, whether in-house or externally, give real value for money".

6.2 The Council's Business Plan identifies efficiency savings linked to Waste Management services (Priority 6. Redefining the Council's role in core place-based services - 6.4: Determine future delivery model for waste management services).

7.0 Financial Implications (Authorised by the Director of Finance and Business Services)

7.1 In order to meet stringent financial targets the Council has detailed cost savings across all council services as part of the 3-year business plan. Within Waste Services, target savings of £1m in 2014/15 have been set with a further £1.5m set for 2015/16.

7.2 The full savings summary is shown in para 3.4 above and detailed modelling and analysis is available from the report author. In summary and subject to whether or not all of the proposals are recommended annual budget savings can be made in the order of £1m recurring by 2014/15.

7.3 The financial savings associated with the recommendations have been 'tested' and confirmed with Cheshire East's Waste Management team for scale and implementation. As noted in Para 3.5 above, there are some challenges and risks associated with each of the proposed savings and some inter-dependencies that will need carefully planning before implementation.

8.0 Legal Implications

8.1 Extending the period of garden waste non-collection from 6 weeks to 17 weeks will have an impact on the payments made to the service provider. The annual payment to the service provider will reduce although estimating the actual figure is difficult because we do not know how service users will manage waste in the event of the change. The Council has the right to require a change to the terms of the contract. The definition of Council Change is a change in the Council's policies that the service provider is obliged to accept, however, unless that change is as a result of contamination and the change is not in any way caused by the acts or omissions of the service provider then the Council will be

liable for the service providers losses. Should the Council choose to pursue this option it should first ascertain if the service provider will look to the Council for lost revenue.

- 8.2 Extending the period of non-collection will require consultation with service users.
- 8.3 Any restructure of waste management staff will require consultation with employees and Trade Unions as per HR policy and the appropriate restructuring/ redundancy exercises carried out in accordance with the legal requirements.
- 8.4 Any efficiency based on changing services or goods will be subject to the Council's ability to exit from current contractual relationships without penalty and new providers need to be selected following legally compliant procurement exercises.
- 8.5 Para 3.6 refers to the consideration of a reduction in household waste recycling centres. The Council has a duty to provide Household Waste Recycling Centre (HWRC) facilities under the Environmental Protection Act 1990. The legislation does not define the number of facilities required save the requirement for them to be 'reasonably accessible to persons resident in the area'. Consultation with service users and communication of changes will be required. If HWRC's are designated delivery points for waste electrical and electronic equipment (WEEE), alternative delivery points will need to be provided by the Council or a third party.

9.0 Risk Management

- 9.1 There are a number of risks associated with the cost savings proposal, these are captured in detail along with mitigating actions as a part of the Project governance, those described below represents the pertinent ones that it is felt necessary to bring to the attention of members.
- 9.2 Early and continued engagement with trade unions and the existing workforce even at this stage will be key to successfully delivering the outcomes of the review.
- 9.3 There will be a number of staffing issues that will need to be considered further as part of the implementation of the proposed savings.
- 9.4 The proposed reduction in the Garden Waste operation may result in reputational challenges for the Council. This will need to be managed very closely to minimise any adverse reaction or publicity.

10.0 Action Plan for Implementation

- 10.1 In order to implement the proposed cost savings, there is a significant but achievable amount of planning and discussion required. This will require a dedicated project lead and sponsor with in-depth knowledge of the area and a

dedicated project team will be needed. With this in place, the identified savings will allow the savings targets to be achieved across 2014/15 and 2015/16. Once Cabinet approval is given for the proposal then a full implementation plan will be built defining milestones, reporting to progress and governance.

Section B - Future Delivery Model

1.0 Report Summary

- 1.1 Key decision 22 (1-6) of the December 2012 Cabinet resolved: That the Strategic Director Places and Organisational Capacity, in consultation with the relevant Portfolio Holders, be authorized to consider the potential options for the continuance of the Councils statutory duties and for the future longer term development and delivery of the Waste management service. As part of this iESE Ltd were commissioned to undertake an exploration into the future operating model and legal vehicles that could be used to deliver the service in future.
- 1.2 This report now sets out the work to date on the future operating models. It seeks Cabinet approval to the establishment of a delivery company subject to additional work to establish the most appropriate company vehicle to optimise and achieve the Councils objectives and approval to continue to operate an in-house collection service for the foreseeable future within the construct of that company model. The project is in line with the Council's three-year plan - Priority six: Redefining the Council's role in core place-based services. It is also part of the Major Change Programme - 6.4: Determine future delivery model for waste management services.
- 1.3 The Corporate Management Team (CMT) reviewed the project on the 4th June and its comments have been taken into account in the writing of this report. Further work has also been undertaken on the project documentation following the CMT briefing meeting.
- 1.4 The current service includes household waste collection, residual waste disposal, mixed recycle bulking and haulage, garden waste and household waste recycling centres (HWRC), along with the management team associated with the service. The Waste Management service has 220 plus FTE staff and in 2012-13 financial year the council spent approximately £22m in delivering all waste services. In addition, a Joint Waste Team is funded between Cheshire East and Cheshire West & Chester Councils to manage the joint waste contracts for landfill, closed landfills and HWRCs.

2.0 Recommendations

It is recommended that:

- 2.1 Cabinet note the findings of the options appraisal that has concluded the most appropriate future delivery model to be that of a wholly owned company encompassing an in-house collection service.
- 2.2 Cabinet approve, in principle, the formation of the company shell and the further work required to define the most appropriate legal form of company. The

current view that requires further consideration with legal advisors is that the company will be Limited by Guarantee or Limited by Shares.

- 2.3 Cabinet agree to the establishment of a Shadow Board of Directors for the company and give delegated authority to the Cabinet portfolio holder for Environment, Cllr David Topping work with the Leader of the Council and the Chief Executive to define the appointments of the Non Executive Directors to the Shadow Board.
- 2.4 The Chief Executive and Monitoring Officer are given delegated authority to take forward the actions required to implement the recommendations and set up the Company shell, reporting back to Cabinet in October 2013 for endorsement of the new company.

Specific actions are:

Review the legal advice and define the appropriate legal vehicle for the Company by end July 2013;

Define and draw up the Company objects;

Set up the Company as a separate legal entity and establish its Memorandum and Articles of Association by end August 2013;

Define the HR; Financial and legal implications of the company set up; transfer of staff and the service contractual agreements;

Develop a three year business plan for the company and set objectives against which its performance will be measured;

Define and develop the arrangements between the Council and the Company for all/any support services required and draw up any required service agreement(s).

- 2.5 That subject to agreement of 2.1 to 2.4 and with cognisance of delegation in 2.4 the responsibility for further development and implementation is delegated to the Head of Environmental Protection and Enhancement in conjunction with the Section 151 Officer, Monitoring Officer, Portfolio Holder for Environment and subject to the corporate project quality assurance process governed by the Executive Monitoring Board (EMB) to ensure that the project is reviewed, prior to any future implementation.

3.0 Reasons for Recommendations

- 3.1 There is a need to achieve best value for the services that the Council directly provides and to reduce net operating cost wherever possible, whilst at the same time maintaining the best possible service for its residents in line with the Council's three-year plan.

- 3.2 The review of the waste management service and the establishment of a wholly owned company means that the service will help to achieve the previous point whilst also maximising opportunity for partner engagement and promoting high quality service delivery.
- 3.3 The purpose of the options report was to deliver an appraisal for waste management services and to determine the future delivery models. The high level comparator analysis (shown in section 10 background, Para 10.4) completed thus far has considered at a high level the pros and cons and implications of different management vehicles and has covered a number of potential options, including:
- Establishing a new company;
 - Continuing in-house management;
 - Outsourcing management via a private sector company
- 3.4 The appraisal has concluded that a viable long term option aligned to the strategic direction and ambitions of the Council is the further exploration and establishment of a company model and this should be in the form of a new one created by the Council. The correct company structure is dependant upon the objects and function of the company. The review of the waste collection service has determined that, provided the identified savings are achieved there is no advantage to be gained from undertaking a procurement to outsource the service at this point in time. The review of the longer terms options for the waste services will give further consideration to the direction for the service beyond 2016.
- 3.5 While the Local Government legislation gives councils the ability to operate services inter-authority and to trade certain aspects of service, a company model can offer additional benefits such as:
- Offers a neutral vehicle for the service rather than one authority being seen to 'take over' the other. This can often be important politically;
 - Can serve as an interim step on path to a more arms' length arrangement such as spinning-out to a mutual or private sector;
 - Offers greater flexibility on pension and employment terms;
 - Moves the Council / service relationship to a contractual one which is a move to more of a commissioning Council structure;
 - Allows the service to operate in a more flexible decision making framework of a company outside of the normal restrictions of Council decision-making.
- 3.6 There is a requirement for the project to go through the Council's project Gateway process for review and endorsement before a recommended way forward can be presented to Cabinet.

4.0 Wards Affected

- 4.1 All Wards are affected.

5.0 Local Ward Members

5.1 All Local Ward Members.

6.0 Policy Implications

- 6.1 The Council's three-year plan budget principles – “We will ensure that those who provide services, whether in-house or externally, give real value for money”.
- 6.2 This initiative aligns with Outcome 4 (Cheshire East is a green and sustainable place) of the Council's Three Year Plan and the ambitions of the Council to invest in more innovative and flexible ways of delivering services.
- 6.3 The Council's Business Plan identifies efficiency savings linked to Waste Management services (Priority 6. Redefining the Council's role in core place-based services - 6.4: Determine future delivery model for waste management services).

7.0 Financial Implications

- 7.1 There is a programme of work yet to be completed to identify the financial implications of the financial costs and savings associated with the establishment of the company.
- 7.2 The work so far has investigated the costs of the collection service compared with outsourced models and current market behaviours. There are significant savings identified in the collection service in the next 2 years and the delivery of these is fundamental to the services being cost effective against market competition and to ensure it has a viable proposition to make to potential customers. The delivery of these savings is not reliant upon the establishment of a company vehicle for the service.
- 7.3 Further work is required to assess the financial implications of the company options to be considered based on the following key income and expenditure areas:
- the current net direct costs of the services;
 - the impact of VAT; NNDR and Corporate tax on the different models;
 - the impact arising from central support costs;
 - profit, contingency and overheads;
 - the impact on pension costs to the Council and operator;
 - detailed assessment of set-up costs and timescales;

- operational changes to increase revenue or reduce costs; and
- implications of including other services within the commissioning opportunity.

- 7.4 The recommendation is to finalise the establishment of a company legal vehicle and further define the nature of the company and ensure its smooth set up and transition of services. This further work will seek to identify additional savings which could be achieved through the establishment of the company and make recommendations to achieve both financial and non-financial benefits to the Council, particularly in relation to strategic priorities and integration of services. All current services within the Waste Management service will be included.
- 7.5 A fully costed implementation plan requires to be developed taking into account the legal considerations for the company structure and the implementation of the transition of the in-house waste collection services and outsourced waste contracts to the new company. However indications from our experience of other organisations that have taken the same path indicate costs to be in the region of £30,000 (such costs to be funded from Cost of Investment monies for the Waste Project in 13-14 & 14-15 totalling £600k).

8.0 Legal Implications

- 8.1 Unless the Council is outsourcing the service delivery to a company that is wholly controlled by Cheshire East Council it will be necessary to undertake a procurement exercise.
- 8.2 As the value of the service contract exceeds £173,934, the contract is subject to the Public Contracts Regulations 2006 (as amended) and the fundamental principles of the Treaty of Rome (together the Public Contracts Regime) a procurement exercise means that the Council owned company would need to compete with the European open market for the work. A procurement exercise, depending on type will take in the region of nine months.
- 8.3 There is an exception, in certain circumstances, where a contract let by a public body will not be deemed to be a contract for the purposes of the Public Procurement Regime. The relevant circumstances are that:
- The service provider carries out the principal part of its activities with the relevant public body;
 - The public body exercises the same kind of control over the service provider as it does over its own departments;
 - There is no private sector ownership of the service provider or any intention that there should be any.

The exemption was established by a European Court of Justice case and is referred to as the Teckal exemption.

Case law has shown that the contracting authority, the Council, must have the power of decisive influence over the strategic objectives of the company at a constitutional and operational level. The company will need to function as a commercial entity.

- 8.4 Prior to a company vehicle being endorsed by Cabinet, or established, the Council will need to develop a business case and undertake internal approval through EMB. The Council has received legal advice on the options for company models in other service areas and this advice will be utilised to determine the type of company vehicle that best meets the Council's operating criteria. The Council must adhere to good practice principles when assessing the business case for proposed transfers to arms length companies, these include:

Ensuring there is a good case for change and that the business case states whether any relevant parties have been consulted;

Clarifying how the change will affect the accountability of the Council;

Undertaking a thorough options appraisal to ensure the most cost-effective and efficient option is chosen;

Identifying and managing the costs associated with the proposed reorganisation as accurately as possible;

Identifying and realising the benefits of the proposed change;

Ensuring the proposed change is well managed and delivered;

Putting in place effective review arrangements to monitor whether the long-term objectives of the proposed change have been achieved.

- 8.5 The Council will have to establish a service contract with the new company to define all the services and the service levels that it will provide.

- 8.6 Irrespective of the issue of control the intention is that the chosen company model will be an arm's length company i.e. will be separate legal entity from the council.

- 8.7 The transfer of the service to an arm's length company is likely to constitute a relevant transfer under the Transfer of Undertakings Protection of Employment Rights regulations 2006 (TUPE) under which employees who are working in or for waste management immediately before the transfer will transfer to the new company.

The council will have to undertake the necessary due diligence to identify which employees have the right to transfer to the new company and to be able to provide the necessary employee liability information in accordance with the TUPE regulations.

The Council and the new company will also have to comply with the Regulations consultation requirement which stipulates that consultation on changes to terms and conditions (measures) needs to be conducted in good time before the transfer. In "good time" is not defined in the regulations but a comparison is usually drawn with the timescale for redundancy consultation which is 45 days.

- 8.8 Further specialist pension/actuary advice will be required on pension issues, the pension admission agreement and confirmation of the potential bond costs if the new company is to continue to offer access to the Local Government Pension Scheme (LGPS) (as opposed to a broadly comparable scheme which could be offered as an alternative to the LGPS).
- 8.9 Note to Cabinet: The Government is currently consulting on possible changes to the TUPE regulations. These changes may be enacted by October 2013. Legal services will advise on any impact which these changes may have on this project as soon as there is clarity on the changes.

8.10 It is important for the Council to:

- Identify the scope of the company and its objects and the relationship with the Council;
- Consider who will be the Board of Directors and how such a role is to be reconciled with any role within the Council, taking into account actual and perceived conflicts of interest and bias;
- Consider the necessary constitutional and administrative processes which the Council has and make any necessary amendments to these to ensure that the company can be used effectively and efficiently to improve service delivery;
- Consider the effective drafting of the Memorandum and Articles of Association of the Company, to give the Council the necessary degree of control (e.g. the Council would approve any Business Plan (i.e. the overarching "envelope" of the Company's activities), scrutinise the Company's performance and Board activities (directing the Board where necessary to act or not act in a certain way) and exercise a veto at Board level on all or key, strategic decisions affecting the Company), without hampering the day-to-day operations of the Company or discretion of its Board so it retains agility and flexibility.

9.0 Risk Management

- 9.1 There are number of risk associated with the project, these are captured in detail along with mitigating actions as a part of the Project governance, those stated below represent the pertinent ones it is felt necessary to bring to the attention of members.

- 9.2 Early and continued engagement with trade unions and the existing workforce even at this early stage will be key to successfully delivering the outcomes of the review and also in transitioning to a new delivery model.
- 9.3 Early and continued engagement will also be required with the Cheshire Pension Fund in relation to the actuary reports required in relation to the transferring employees, bond requirements and pension changes and the completion of a Pension Admission Agreement.
- 9.4 The creation of the chosen company structure well in advance of the anticipated transfer of Service date to ensure that the company is able to undertake all the necessary preparatory steps prior to the transfer and to engage in the necessary consultation both with the employees and the Council.
- 9.5 Considerable input from Legal and Assets Services will be needed to ensure the Council's ownership is protected in order to secure the future use of the assets for waste management purposes. Members of staff from legal services form part of the project and allowance will be made within the implementation costs for any external legal work to be carried out.
- 9.6 There will be a number of procurement issues that will need to be considered further as part of the in-depth review of the preferred delivery model, these will include current regulations that address asset and service transfer and a review of the impending changes in EU law relating to Teckal and procurement which are expected in the autumn of 2013.
- 9.7 Guidance suggests that there are different routes depending upon whether the asset is to be transferred or a service is to be transferred and this will be further explored to mitigate risks by choosing the optimal company model.
- 9.8 The review of the depot asset base which is due to report in July 2013 will help determine the future assets required to operate the waste services and define what will be required in the near to medium term future to deliver the long-term strategic needs of the Council. This work will be incorporated into any future delivery model taking into account the future strategy for Waste services and the links to any future outsourcing of the service. This will be further explored as part of the review.
- 9.9 In order to achieve the financial benefits of a company model, it is also necessary to consider the method for handling of the existing and any future waste facilities and whether these will be leased to the company, with appropriate safeguards around facility maintenance and service delivery.
- 9.10 Consideration and care will need to be taken in respect of arrangements for future capital investment (i.e. to avoid incidence of significant irrecoverable VAT on developments).
- 9.11 The impact on the councils support services associated with this service will need to be analysed and managed effectively as part of the project. This will ensure the company retains the necessary expenditure and staff resources to

deliver the core business whilst reducing the likelihood of any residual overhead remaining with the council.

10.0 Background and Options

10.1 The appraisal considered the options for the future services and the factors in determining the optimal company structure within which to operate the business. The options considered were:

- In-house v Outsourced;
- Fully integrated outsourced service;
- Wholly owned company.

10.2 The review of the in-house collection service together with an assessment of current market conditions have demonstrated that subject to the identified savings being delivered the internal collection service can compete with any financial offering from the private sector and there is no significant advantage to be gained from outsourcing the services at this time.

10.3 The Council has indicated that CEC wishes to consider the establishment of a company through which it will operate its Waste and potentially other environmental services. It has developed a Charging and Trading strategy the main principles of which are:

- Charging for discretionary services will be appropriate and balanced by the Council's priorities;
- The Council will engage in trading for profit where it is possible to support the delivery of local priorities without minimising the risk to public finances;
- The strategic direction of the Council aligns well with the proposed establishment of a company model which would allow the Council to take advantage of greater freedoms and a more commercial and business oriented approach to running the operation.

10.4 A review of the benefits; dis-benefits and risks of each option was explored and is shown in tables below:

Wholly Owned Company

Benefits	Dis-benefits and Risks
Aligns with the Council's objective and ambition to invest in innovative ways to deliver services and to be a commissioning organisation	Consideration must be given to the future function of the service to determine the optimal legal vehicle, which takes greatest advantage of policy and legislative developments
Ability to operate under commercial terms and greater autonomy for the services	Council must retain responsibility for the statutory obligations of the service
Retention of jobs within the local	Potential for Council to have reduced

<p>economy</p> <p>Benefits of improvements in service delivery are retained by the service Council or WOC not shared with private sector</p> <p>Opportunities for co-ownership with other Councils and a Teckal exempt model will provide opportunities for shared delivery</p> <p>Ability to generate surpluses within a Not for Profit model to reinvest in the growth of the business</p> <p>Implementation of different terms and conditions for staff thus potential reduction in costs to the Council</p> <p>Ability to influence and drive the direction of the service and attract partners</p> <p>Within an Company limited by shares model there would the ability for Council to receive dividends from company</p> <p>Incentivisation of the team to drive the business forward</p>	<p>control over the direction of the service as will have own Board of Directors</p> <p>Potential impacts on Council corporate services if not providing a service to the WOC</p> <p>Investment required to build a commercially viable activity</p> <p>Commercial and company operating skills and acumen required to deliver in a business oriented environment – stand alone survival</p> <p>Will potentially require a procurement of the service if the Council is not transferring the service under a Teckal arrangement</p> <p>A Teckal exempt model will place limitations on the nature and extent of the commercial activities</p>
---	---

In- House v Outsourced provision

Benefits	Dis-benefits and Risks
<p><u>In-house</u></p> <p>Total control over the nature of the services and the performance. Able to flex service as required</p> <p>Opportunity to continue to drive efficiencies and retain benefits</p> <p>Retention of jobs in the local economy</p> <p>Advantage of using Council reserves and investment management to</p>	<p>Council must retain responsibility for the statutory obligations of the service</p> <p>Investment in infrastructure for depots and fleet will be borne by Council</p> <p>On-going costs and liabilities of employment and cannot easily change terms and conditions of existing staff</p> <p>Effective client side management</p>

<p>invest for a return in service. No share to private sector</p> <p>Can trade under local government powers within Council structure</p> <p>Ability to borrow funds at lower cost than private sector</p> <p><i>Note: Would require development of additional in-house services or continued outsourcing of key services</i></p>	<p>required to optimise benefits for the Council</p> <p>Drive and determination and incentives to improve the service may not be as great as in a WOC model</p>
<p><u>Outsourced</u></p> <p>Private sector partner to inject investment and industry expertise into the service to drive improvements and efficiencies</p> <p>Aligns with Council's objective to be a commissioning organisation</p> <p>Transfer of some risk to suppliers</p> <p>Industry specialist expertise to deliver service improvements</p> <p>Capital investment in infrastructure is carried by the supplier – though passed through as revenue cost to council</p>	<p>Council retains overall statutory responsibility for the service performance and will have to influence change through client side management rather than control</p> <p>Requirement to pay margins to private sector typically up to 12%</p> <p>Effective client side management required to optimise benefits for the Council</p> <p>Supply chain and local economy impacts if services are not in locality</p> <p>Less control over legislative changes</p> <p>Cost of tendering £100-200k for restricted procedure</p>

Integrated Outsourced Model

Benefits	Dis-benefits and Risks
<p>Private sector partner to inject investment and industry expertise into the service to drive improvements and efficiencies</p> <p>Aligns with Council's objective to be a commissioning organisation</p> <p>Seamless structure and delivery across a range of services</p>	<p>Council retains overall statutory responsibility for the service performance and will have to influence change through client side management rather than control</p> <p>Costs to the Council of procurement exercise potentially in excess of £500,000</p> <p>Delivery of improvements delayed</p>

<p>Wholly managed and integrated service and relationships are managed between principal and sub contractors to deliver benefits</p> <p>Capital investment in infrastructure is carried by the supplier – though passed through as revenue cost to council</p> <p>Resonates with Council direction to be a commissioning council</p>	<p>until award of contract which is estimated to be 2015 at the earliest</p> <p>There are a limited number of suppliers who can provide a fully integrated service. This may result in limited competition unless suppliers were to form consortia to bid</p> <p>Market may not view opportunity as attractive with resultant limited cost benefits or potential cost increases</p> <p>Requires strong supplier management skills and approaches to get the best from suppliers and ensure benefits are shared</p> <p>Loss of staff and union backing resulting in industrial action</p>
--	--

10.5 From the above options the Wholly Owned Company is the emerging option that closely aligns to addressing the needs of the Council whilst remaining flexible enough for the Council to take advantage of future innovative service improvements.

10.6 Further consideration will be given to the range of services that will constitute the makeup of the potential company but the first phase will be the whole of Waste Management services and the novated contractual agreements.

11.0 Action Plan for implementation

11.1 In order to implement a delivery model, there is a large amount of documentation to be prepared and legal requirements to be met. This will require a specialist project management with in-depth knowledge of the area and a dedicated project team will be needed. With this in place the preferred model should be fully operational by April 2014.

11.2 There is further work to be completed to refine the legal advice and determine the final legal vehicle for the Company but this will be a determinant between a Company Limited by Shares or a Company Limited by Guarantee.

11.3 The key elements of the development and implementation of the Company and in order to achieve this ambitious timeframe being:

- Development and testing of the optimal company model;
- Agreement from Cabinet to formally establish company;
- Creation of the company legal documentation;
- Registration with Companies House confirmed;

- Development of 3 year company business plan;
- Company becomes fully operational;
- Appointment of Chairman and Board of Directors – to include Executive Directors (see below) with consideration having been given to the role of Councillors acting as Directors of the Company;
- Appointment of CEO and Management Team;
- Establishment of financial management model and budget for company;
- Define governance arrangements operating between the Council and the Company;
- Drawing up of Service contract; SLA and Performance specification.

12.0 Action Plan for implementation

12.1 Once Cabinet has approved the decisions, a detailed and fully costed implementation plan will be developed and will be presented for consideration.

Section C – Review of Depot Infrastructure

1.0 Report Summary

1.1 Cabinet, at its meeting on 10th December 2012, considered a report on the future of waste services. Key decision 22 (1-6) resolved: That the Strategic Director Places and Organisational Capacity, in consultation with the relevant Portfolio Holders, be authorised:

- i. To procure an interim residual waste treatment contract to run from April 2014 until the implementation of new overall arrangements;
- ii. To extend the current dry recycling and garden waste contracts to coincide with the implementation of the new arrangements;
- iii. To review the in-house collection service to identify areas of efficiencies;
- iv. To procure external consultancy support to deliver new arrangements;
- v. To explore alternative procurement routes to traditional procurement processes, including working with other local authorities or local authority consortia to deliver the goals of this project but in a more cost effective manner.

1.2 This report is in response to all of the above items and acknowledges that current depot facilities (Commercial Road – vehicle storage depot and Pyms Lane – Waste Handling facilities) will not address the future needs of the service and without review and further investment will prevent many of the efficiencies already identified being realised.

1.3 The Council has for some time been reviewing its depot capacity to ensure that it can meet both current and future requirements, giving consideration to all available options. An appraisal of medium to long-term options for depot facilities has been commissioned which will consider:

Future depot requirements in the North of the borough;
Depot improvements at Pyms Lane (Southern facilities).

1.4 Jacobs Consultants are undertaking this initial feasibility work with a draft report to be submitted by Jacobs at the end of July 2013.

2.0 Recommendations

It is recommended that:

2.1 Cabinet acknowledge the need for new facilities within the North of the borough along with the need for improvements to be made to existing facilities at Pyms Lane (Southern Depot) to accommodate current and future service needs.

2.2 Cabinet approve that the responsibility for further development, funding and future implementation is delegated to the Head of Environmental Protection and Enhancement in conjunction with the Section 151 Officer, Monitoring Officer, Portfolio Holder for Environment and is subject to the corporate project quality

assurance process governed by the Executive Monitoring Board (EMB) to ensure that the project is reviewed, prior to any future implementation.

3.0 Reasons for Recommendations

- 3.1 In order to maintain an effective service that is “fit for purpose” in future years, depot facilities will be required.
- 3.2 Reviewing CEC current and future needs also addresses a monopoly situation with facilities and capacity within the Borough.

4.0 Wards Affected

- 4.1 All wards.

5.0 Local Ward Members

- 5.1 All local ward members.

6.0 Policy Implications

- 6.1 To be developed during the project feasibility stage

7.0 Financial Implications (Authorised by the Director of Finance and Business Services)

- 7.1 To be developed during the project feasibility stage

8.0 Legal Implications

- 8.1 To be developed during the project feasibility stage

9.0 Risk Management

- 9.1 To be developed during the project feasibility stage

10.0 Action Plan for Implementation

- 10.1 Following the outcome of the early feasibility work, a full and detailed action plan will be developed, outlining the preferred options that can be developed in detail through the Council’s project governance procedures and Executive Monitoring Board (EMB).

Section D - Interim Residual Waste Options

This item will be dealt with under Part 2 of the meeting

15.0 Access to Information – All Sections

15.1 The background papers relating to this report can be inspected by contacting the report writer

Name: Kevin Melling
Designation: Head of Environmental Protection & Enhancement
Tel No: 01270 686336
Email: kevin.melling@cheshireeast.gov.uk

End.