

Recycling Centres – Future Operation to Meet Savings Requirements

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Forward Plan Reference:	SWB/11/03/01
Summary:	<p>The Board, at its last meeting on 11 February 2011, approved the Business Plan 2011-16 with certain amendments, including a key priority (2.1) <i>"to consider designating a number of statutory and non-statutory (discretionary) sites"</i> at this meeting. This report proposes that the four Recycling Centres under threat of closure be designated as "discretionary sites", to be operated in addition to the statutory sites provided under s.51 of the Environmental Protection Act 1990 (EPA) and that a modest charge of £2.50 per visit be introduced in order to secure their continued operation. The report also proposes that these arrangements are subject to review and adjustment as required. It identifies certain risks involved with this approach but concludes that there is a sufficient business, financial and legal case, as well as community support, to justify implementation.</p> <p>The report also seeks endorsement of revised hours of operation and prices for disposal of non-household waste.</p>
Recommendations:	<p>It is recommended that:</p> <ol style="list-style-type: none"> (1) In order to secure their continued operation, the Board designate the following Recycling Centres:- <ul style="list-style-type: none"> • Coleford in Mendip • Crewkerne in South Somerset • Dulverton in West Somerset • Middlezoy in Sedgemoor as discretionary additional sites, to be provided outside the ambit of section 51 of the Environmental Protection Act 1990. (2) The discretionary sites be publicly promoted as <i>Community Recycling Sites</i>. (3) A flat charge of £2.50 (inc VAT) per visit be imposed for residents at discretionary sites. (4) The Board endorses the scale of charges for non-household waste as set out in Appendix 2.

	<p>(5) The Board endorses the revised hours of opening at sites as shown in Appendix 3.</p> <p>(6) The Board reserves it's right, after evaluation of the first 3-4 months of operation of the discretionary sites, to:</p> <ul style="list-style-type: none"> (a) vary the charge so as to match any continuing shortfall in the savings target; and/or (b) close and mothball sites, subject to appropriate notice, should usage and income levels be significantly short of the target. <p>(7) Should a serious, imminent risk of income shortfall be identified within the first 3-4 months of operation, the Board authorises the Managing Director, in consultation with the Chairman and the Strategic Management Group, to exercise an action described in recommendation 5 (a) and/or (b) and to notify the Board accordingly.</p> <p>(8) The Board acknowledges the obligation set out in clause 17.1 of the Inter Authority Agreement for partners to pay the appropriate share of any additional costs, claims and liabilities and agrees to share any liabilities arising from:</p> <ul style="list-style-type: none"> (a) legal challenge on an equally split basis, and/or (b) income shortfall according to the Client Cost Formula set out in the Inter Authority Agreement, unless another course of action is subsequently agreed by the Board when it reviews its budget. <p>(9) After initial evaluation of the impact of the designation of the discretionary sites, the Board keep under review the question of whether consideration may need to be given to the designation of further discretionary sites in the future.</p> <p>(10) That the Board acknowledges the decisions in respect of recommendations 1 to 8 above should be implemented without delay as matter of urgency in order to deliver the approved annual budget.</p>
<p>Links to Priorities and Impact on Annual Business Plan:</p>	<p>SWB Business Plan 2011-16</p> <p>Key Priority 2.1</p> <p><i>(a) For the Board to consider designating a number of statutory and non-statutory (discretionary) sites at their meeting on 25 March 2011;</i></p> <p><i>(b) For further evaluation of options to be completed for the running of HWRCs that may be able to generate net savings of £314k per annum - potentially through charging for any non-statutory sites.</i></p>

<p>Financial Implications:</p>	<p>The effect of this proposal would be to provide an alternate means of meeting the savings requirement instead of through closure of the four sites. The Board is required to make further savings in 2012/13 and the experience gained through implementing the proposal will inform further decisions. At its meeting on 11th February, the Board formally approved its Annual Budget for 2011/2012. To achieve this budget requires a number of savings including £314k from closing and mothballing the 4 recycling centres, or by finding an alternative means to meet the budgetary gap. From a financial perspective, it is essential that a decision is reached quickly. The cost of delaying a decision on either closure (the default position) or charging equates to approximately £860 per day, c£6k per week or c£26k per month. This potential funding gap might have to be met by further cuts within the service in order to balance the budget.</p> <p>For this reason it is proposed that recommendations 1 to 8 should, as contemplated in paragraph 1.3 of Appendix 7 to the Constitution, be implemented without delay as a matter of urgency in order to deliver the approved annual budget.</p>
<p>Equalities Implications:</p>	<p>There are equalities implications in relation to charging users of certain sites but these are generally considered to be of lower impact than the potential closure of four Recycling Centres. The proposal to make charges will impact on the population in general but particularly those on low incomes. There will be some limited mitigation of the measures through the roll out of Sort It plus (albeit this is not due to be completed in West Somerset until spring 2012) but this will not substitute for the majority of materials taken to Recycling Centres. An Equalities Impact Assessment has been carried out and is attached at Appendix 1.</p>
<p>Risk Assessment:</p>	<p>Financial Risks – The principal risk is that income is insufficient to meet budget. As this is a new and imaginative approach, there is no comparative experience or data to draw from. This report has set out various scenarios to illustrate the impact of reduced visitor numbers. The Board is therefore recommended to review the policy and charges "in year" in order to mitigate any projected overspend after the service.</p> <p>Risk of legal challenge – The approach to charging is new (as explained in section 3 of this report) and may result in a risk of legal challenge. The risk of successful challenge is considered to be low as there is a robust case for the option as explained in paragraphs 3.10 to 3.15 of the report.</p>

1. Background

- 1.1. As a result of the savings targets required by SCC, on 11th February 2011, the Board approved a Business Plan and Budget which do not allow for the continued operation of all the existing Recycling Centres on the same basis as

in 2010/11 and previous years. The savings targets can be partially met by a reduction in hours and opening days and through charging for certain materials which fall outside the definition of household waste. The Board approved these savings at its last meeting.

- 1.2. The default position is that, unless equivalent savings or income can be found, the Recycling Centres at Dulverton, Coleford, Crewkerne and Middlezoy will be closed and mothballed.
- 1.3. On 11th February the Board resolved, amongst other things, to
 - 3 (a) *use best endeavours to put arrangements in place for any current HWRC that is not required to meet the WDA's statutory obligation with a view to enabling such HWRCs to continue to operate and be available for public use;*
 - (b) *to meet the requirements stated in (a), consider piloting one of the existing sites on this basis.*
- 1.4. This report outlines the rationale for designating some statutory and some discretionary sites as a means of generating revenue proportionate to the savings target.

2. Recycling Centre Provision

- 2.1. Members will recall that the County Council, as waste disposal authority, has a duty under s.51 of the Environmental Protection Act 1990, which has been expressly delegated to the Board, *to arrange for places to be provided at which persons resident in its area may deposit their household waste and for the disposal of waste so deposited.* The Board currently provides 18 such places across Somerset.
- 2.2. It is fundamental to the proposal of a savings option which would reduce the number of Recycling Centres, that the remaining network would be sufficient to meet the duty under s.51. This would be the case whether Centres were closed or taken outside the ambit of s.51. Somerset has a particularly high number of Recycling Centres by comparison with other counties and even with four fewer sites, the County's provision would still be among the top three in the country.
- 2.3. The criteria and rationale which were used to identify the four Recycling Centres proposed for closure were explained in my report to the Board on 11th February and included site costs, household numbers served, level of materials received and distances to alternative sites. I would reiterate my view, spelt out in that report, that if the four identified Recycling Centres were to become 'discretionary' sites, the geographical distribution, capacity and accessibility of the remaining Recycling Centres would be sufficient to ensure that the duty under s.51 to arrange for such places to be provided would continue to be met.

3. Proposal to Designate Discretionary Sites

- 3.1. Across all four Centres proposed for closure, representatives of the communities affected have reported that users would be willing to pay a small charge to use the sites in preference to the alternative of driving to the next nearest site, which would be costly in terms of time and fuel.
- 3.2. However, s.51 expressly requires that each site must be provided *free of charge* for persons resident in Somerset. Officers have been investigating whether there might be any viable alternative options for overcoming this constraint, whereby a charge may be levied for the use of the sites in question. The major focus has been on looking at the possibility of:
 - (a) continuing to provide "s51" or "statutory" places thus enabling the Board to fulfil its duty to provide places for residents to deposit their household waste free of charge; and
 - (b) providing additional or discretionary sites for the use of which a charge would be levied on residents and others but which would provide a comparable level of service. These might be designated as "Community Recycling Sites".
- 3.3. Whilst we have tended to describe the places provided under s.51 as 'statutory sites', it is something of a misnomer to describe the discretionary sites as 'non-statutory' since all local authority powers derived from statute. It is therefore necessary to identify the powers available to enable us to provide additional places as a discretionary service in response to public demand.
- 3.4. Section 55 of the Environmental Protection Act 1990 confers a number of powers on both WCAs and WDAs in respect of recycling waste. These include making arrangements to recycle waste in respect of which the authority has duties under section 51 or agrees with another person for its disposal or treatment and buying or otherwise acquiring waste with a view to its being recycled.
- 3.5. By virtue of section 63A of the Environmental Protection Act 1990, a WCA or a WDA may do or arrange for the doing of anything which in its opinion is necessary or expedient for the purpose of minimising the quantities of controlled waste generated in its area.
- 3.6. Section 2 of the Local Government Act 2000 empowers local authorities to do anything which they consider is likely to achieve the object of promoting or improving the economic social or environmental well-being of their area. In determining whether or how to exercise this power, a local authority must have regard to its sustainable community strategy. This power does not enable a local authority to raise money by any means.
- 3.7. However, section 93 of the Local Government Act 2003 gives local authorities a power to charge for discretionary services. The power is subject to a duty to secure that, taking one financial year with another, the income from charges does not exceed the costs of provision.

- 3.8. The powers contained in sections 55 and 63A of the EPA have been expressly delegated to the Board by the Partner Authorities, as has the power contained in section 2 of the Local Government Act 2000 in respect of matters directly related to the management or recycling of waste. Whilst the exercise of section 93 of the Local Government Act 2003 has not been delegated to the Board, it is considered that it could be exercised by the County Council as Administering Authority on behalf of the Board.
- 3.9. These issues have been discussed and explored with Leading Counsel who has concluded that: *"the County Council and the Waste Board can justify and defend from legal challenge the reduction of overall numbers of HWRCs in the County whilst still fulfilling its duty under section 51 of the 1990 Act. The discretionary provision of further HWRCs to meet local demand, but at a charge, would then fall outside the ambit of section 51"*.
- 3.10. It is the considered view of your officers that the provision of the proposed discretionary recycling sites, outside the ambit of section 51, would constitute appropriate arrangements to recycle waste in respect of which the Board would otherwise have duties under section 51 and another means of acquiring waste with a view to it being recycled. Such sites would contribute to and facilitate the minimisation of the quantities of controlled waste generated in Somerset.
- 3.11. It is also considered that the continued operation of these sites, as opposed to their closure, albeit under different provisions and subject to a charge for their use, would be likely to promote the economic, social and environmental well-being of those parts of the county in which they are situated and of the residents of those parts, as well as of Somerset and its residents as a whole. The responses we have had to the consultation on possible closure has highlighted the importance with which the communities affected view the provision of a local facility at which they can bring their waste for recycling. The proposal would avoid the need for residents to undertake longer car journeys to the next available Recycling Centre (although they would have the choice to do so should they wish), thus reducing pollution and the cost to residents of transporting their waste.
- 3.12. The provision of the discretionary sites should reduce the likelihood of a higher incidence of fly-tipping occurring were the Centres to close. It should also help to enable the Board for the benefit of the residents of Somerset to meet its strategic objectives as recently affirmed in the business plan, including
- *"We will continue to demonstrate class leading value for money, transparency and accountability while making further efficiencies. Where any changes to services are required to be made, we will aim to make them in a way that minimises any potential adverse consequences for the community, the partners and the local economy"* and
 - *"We will remain committed to driving improvement primarily through waste minimisation and recycling/composting waste which is not avoided"*.
- 3.13. The proposals have been considered and endorsed by the Strategic Management Group, the individual members of the Group having confirmed, on behalf of their respective Authorities, that the proposals are consistent with their sustainable community strategies.

- 3.14. There remains a risk that this proposal may be subject to legal challenge whether by individuals or by an organisation. Such a challenge would be likely to be brought by way of a claim for judicial review of the decision of the Board, either on the basis of error of law or procedural impropriety, and seeking an order quashing the decision. A claimant must obtain the permission of the Court before bringing such a claim, which must be made promptly and generally within three months of the date of the decision. Even if the grounds of claim are established, the Court has discretion whether or not to grant a remedy. A claim for judicial review may include a claim for damages. While community representatives who have campaigned on behalf of the sites have clearly indicated a preference for charging over closure, it is not clear how the community will actually respond. However, in view of closure being the only other viable alternative, it is hard to imagine that any such challenge would emanate from or be supported in the wider community, since if a claim were to succeed, the discretionary facility would have to close in any event.
- 3.15. Nevertheless, while the likelihood of such challenge is considered to be low, there would be a financial impact, should any claim succeed. Apart from legal costs, the Board could face claims from users for their money to be returned. This could be costly to administer and would of course require the savings to be made up in some other way.
- 3.16. Having regard to all of these considerations, and pursuant to the statutory powers identified in this report, it is recommended that, in order to secure their continued operation, the Board designate the Coleford, Crewkerne, Dulverton and Middlezoy sites as discretionary additional sites, to be provided outside the ambit of s51 of the EPA.

4. Charging Regime

- 4.1. In adopting a proposal to charge all users, an early consideration is whether the level of charge should be the same for all four sites or should vary. The evidence provided within Appendix 4 of the February 2011 report shows that the actual cost per visit varies across the network with the cost (either the average cost per tonne of material or the average cost per visit) being relatively higher at smaller and/or more remote sites.
- 4.2. It is however recommended that the same level of charge be implemented across all four sites. It is considered to be important to be transparent regarding charges and to seek to recover the shortfall in funding and not to use the charge as means of raising additional income. That would not be permissible under section 93 of the Local Government Act 2003.
- 4.3. To calculate the level of income required, officers have made the assumption that the number of visits per annum will decline if a charge is imposed at *Community Recycling Sites*. Officers believe individual users will either choose to make less frequent trips and/or be more inclined to share trips with neighbours, friends or relatives. Some may prefer to use a s51 site free of charge if they are passing one in combination with other trips.
- 4.4. There is an "upside risk" that level of use might *increase* if trade recyclate is encouraged onto the site at the same charge, but on balance a net decline in

total users is the most likely scenario. It is therefore recommended to allow trade users to use the site for the same charge to deposit recyclable materials only.

- 4.5. Officers have looked at three scenarios: that user numbers reduce by 10%, 30% and 50%. In each case we have applied the same assumptions as we applied in the original closure scenario in respect of the material that does not end up at the site as a result of the entrance fee. This is a crude assumption as we have assumed that, while average visitor numbers will decline, the amount per visitor will increase. However, in practice, whether this cost is based on tonnage or visitor numbers does not make a significant difference to the figures.
- 4.6. It should be noted that the net savings requirement increases proportionately as usage declines. In other words, we need to make up more money if usage declines by 30% compared to 10%. This is because each site will continue to incur fixed costs in addition to the extra costs of dealing with some material displaced to a more expensive route (eg diversion of soil and rubble to kerbside collection).
- 4.7. Taking the average across all four sites, the estimated charge per visit to make up the savings requirement would be:

If visitor numbers drop by 10%	£1.32
If visitor numbers drop by 30%	£2.02
If visitor numbers drop by 50%	£3.29

- 4.8. On this basis, and without any experience of how pricing would affect usage, the recommendation would be to adopt a moderately cautious approach and assume that visitor numbers will decline by around 30%.
- 4.9. It is therefore recommended that the Board imposes a flat charge of £2.50 (inc VAT) per visit at the four discretionary *Community Recycling Sites*, pursuant to section 93 of the 2003 Act. This would be *in addition* to any charge for the deposit of non-household waste (for which a charge is being levied across the whole network).
- 4.10. Members may wish to consider whether the scale of charges for deposit of non-household waste should be reduced by £2.50 at *Community Recycling Sites*, or whether the £2.50 entrance charge for using a discretionary site should apply in addition to any other transactions which occur once on site. As the methodology for collection of the two charges will be different, and to deduct one from the other is likely to reduce income, it is recommended that both charges apply at discretionary sites. This can be reviewed as necessary once actual usage is known.
- 4.11. The impact of the policy would need to be reviewed within 3-4 months of implementation to determine actual usage levels and whether the income will meet the projected shortfall. It is recommended that the Board should reserve the right to vary the charges and also, in a worst case scenario, close and mothball sites, subject to appropriate notice being given should usage levels prove to be significantly short of the target. It is envisaged that community representatives would be given notice of such a course.

- 4.12 However should a serious, imminent risk of income shortfall be identified within the first 4 months of operation, it is recommended that the Board authorises the Managing Director in consultation with Chairman and the Strategic Management Group, to exercise any action described in paragraph 4.11 above and to notify the Board and Community Representatives of the impending action.
- 4.13 By virtue of clause 17.1 of the Inter-Authority Agreement, each Partner Authority undertakes to pay to the Administering Authority its appropriate share of any additional costs, contributions to claims or liabilities which may arise as a result of the performance by the Administering Authority of its obligations under the Agreement in accordance with the cost sharing principles set out in Schedule 5. It is therefore recommended that the Board agrees on behalf of the partners to share any liabilities arising from legal challenge on an equal, six way split basis and share the risk of income shortfall according to the Client Cost Formula (set out in paragraph 2 to Schedule 5 of the Inter Authority Agreement) unless another course of action is subsequently agreed by the Board when it reviews its budget.
- 4.14. The methodology for collecting the charge is still being discussed with Viridor but a simple slot machine/barrier would seem to be the least labour intensive and most straightforward to implement. The cost of fitting barriers and slot machines are estimated to be in the region of £2000 per site. This can be met from the repairs and maintenance budget.

There will be costs associated with emptying machines which are being evaluated. It is envisaged that these can be mitigated by securing arrangements with the District Councils in the area who service car parking meters.

5. Impact on Core Services Contract

- 5.1. The assistance of the contractor Viridor in coming to this set of proposals is gratefully acknowledged. The partnership has a right under clause 8 of the Core Services Contract to require changes to services. Viridor are under the same clause only obliged to pass on half of any savings realised through a change in service which causes the contractor's costs to decrease. Viridor have offered to pass on the full extent of cost savings from reduced hours (and closures should they prove ultimately necessary).
- 5.2 The Core Services Contract also requires that Viridor provide a £200K pa discount as they operate all 18 Recycling Centres. Although it is hoped that this is academic, Viridor have agreed to continue to provide this discount even if up to four sites are closed. Members have already noted, from the February 2011 report, that Viridor have stated they could not continue to provide this discount if more than four Recycling Centres are closed.

6. Scale of Charges for Non-household waste.

- 6.1 The Board agreed on 11th February that charges would be implemented from April 2011 for certain categories of non-household waste across the whole network (ie at both statutory and *Community Recycling Sites*). The Board are asked to endorse the schedule of charges set out in Appendix 2. These are

based on the assumption that Viridor will recover the same amount of revenue as they would previously have received from SWP to provide these services free of charge. Any significant variations to this will be reported to the Board.

7. Opening Hours

- 7.1 Also on 11th February 2011, the Board agreed to reduce opening hours to 40 hours a week. The Board are asked to endorse the schedule of opening hours set out in Appendix 3. These have been developed as part of the overall package of negotiations with Viridor (see section 5 above). They have been modified to take into consideration comments made at the Joint Scrutiny meeting on 7th March 2011.

7. Consultations undertaken

- 7.1. Workshops were held with elected representatives from communities affected by the proposed Recycling Centre closure programme with the aim of exploring any viable options that would achieve a similar level of savings to closure and, ideally, be more acceptable to the community. The options explored were summarised at Appendix 5 to Report SWB/10/12/01 Draft Business Plan 2011-16 received by the Board on 11th February 2011.
- 7.2. The issues have been publicly debated within all six partners as part of the consideration of the Business Plan 2011-16.
- 7.3 There was a Joint Scrutiny Event on 7th March 2011 and each partner is expected to hold a further scrutiny meeting to discuss the contents of this report and related issues. Any comments from this process will be verbally reported at the Board meeting.

8. Background papers

- 8.1.
- Somerset Waste Partnership Constitution & Inter-Authority Agreement.
 - Somerset Waste Board 24th September 2010 Report SWB/10/04/05 – Outline Annual Business Plan 2011-16.
 - Somerset Waste Board 24th September 2010 Report SWB/10/05/01 – Review of Key Risks.
 - Somerset Waste Board 10th December 2010 Report SWB/10/04/09 Draft Business Plan 2011-16
 - Somerset Waste Board 11th February 2010 Report SWB/10/12/01 Draft Business Plan 2011-16
 - Equalities Impact Assessment (Appendix 1)

Note: For a hard copy of the background papers please contact the report author.