



Haringey Council

Agenda item:

[No.]

Report to Cabinet

17th June 2008

Report Title: **Memorandum of Understanding**

Forward Plan reference number (if applicable): **n/a**

Report of: **Beverley Taylor, Assistant Director Streetscene**

Ward(s) affected: **All**

Report for: **Non-key decision**

1. Purpose

1.1 To detail the final version of the Memorandum of Understanding between the North London Waste Authority and the seven north London Boroughs relating to the process for procuring new waste treatment facilities.

2. Introduction Of Cabinet Member

2.1 The NLWA is charged with the responsibility of providing waste treatment and disposal arrangements for around a million tonnes of waste per annum on behalf of the seven constituent north London Boroughs.

2.2 The current contract with London Waste Limited is due to expire in 2014 and by that time there will need to be arrangements in place for a wide variety of new and different waste treatment facilities.

2.3 It is vital that any new facilities are in keeping with the requirements of the Boroughs and so it is important that the NLWA and the Boroughs agree a set of high level principles at this early stage of the procurement process. This is the purpose of the Memorandum of Understanding. Further reports on this issue will follow as the process rolls out.

3. Recommendations

3.1 It is recommended that:

3.1.1 The details in the Memorandum of Understanding are noted; and

3.1.2 The Leader of the Council signs the Memorandum of Understanding on behalf of the London Borough of Haringey.

Report Authorised by: **Niall Bolger, Director of Urban Environment**

Contact Officer: **Michael McNicholas, Acting Head of Waste Management**

Tel: 020 8489 5661

e-mail: michael.mcnicholas@haringey.gov.uk

4. Comments of the Chief Financial Officer

- 4.1 The purpose of the Memorandum of Understanding (MOU) is to set out the principles on which the Boroughs will jointly work together and with the NLWA to develop and deliver the joint waste strategy. It is not a legally binding document and as such agreeing it does not in itself give rise to any significant financial implications.
- 4.2 However, it does show an intention to proceed to a subsequent Inter Authority Agreement, which will be a legally binding commitment from the NLWA and Waste Collection Authority's to work in partnership to procure the contractual arrangements required to deliver the joint waste strategy. This will require substantial long term investment and will have significant financial implications for Boroughs. The Inter Authority Agreement will include the principles on which the financial allocations mechanism will be established.

5. Head of Legal Services Comments

- 5.1 The Head of Legal Services notes the contents of the report.
- 5.2 The current waste disposal contract between North London Waste Authority (NLWA) and London Waste Ltd is due to expire in 2014. In anticipation of this, NLWA is putting in place steps to procure a contract for waste disposal services on behalf of the constituent authorities. NLWA is circulating the attached Memorandum of Understanding to prospective bidders to show the commitment of the constituent authorities to the contractual process and to working together. The Memorandum of Understanding is not legally binding.
- 5.3 Legal representatives from the constituent authorities have been consulted in the preparation of the Memorandum of Understanding.
- 5.4 The confidentiality obligations between the NLWA and the constituent authorities will be contained in a separate legally binding agreement which will be signed by directors under delegated authority powers.
- 5.5 It is proposed that a final legally binding inter authority agreement will replace the Memorandum of Understanding and will be signed by the parties at the time of entering into the contract between NLWA and the waste disposal contractor.
- 5.6 The Environment Directorate will keep Members updated on the procurement process.

6. Local Government (Access to Information) Act, 1985

NLWA report dated 16th April 2008 titled Memorandum of Understanding
NLWA Procurement Timetable 2007-2014

7. Strategic Implications

- 7.1 At its meeting of meeting of 12th December 2007, North London Waste Authority (NLWA) Members considered a report entitled 'Waste Services Procurement: Governance, Procedural and resource Matters', and agreed that the NLWA's Director of Procurement and their Legal Adviser be authorised to proceed with seeking borough agreement to a Memorandum of Understanding as detailed in the report and, thereafter, an agreed statement of principles for an Inter Authority Agreement'.
- 7.2 The NLWA and the Boroughs already work together on the issues covered in the Memorandum, but in the context of this procurement it is important to be able to demonstrate the work, and the commitment that goes with it.
- 7.3 The Memorandum of Understanding is a high level document, which is not legally binding, and which sets out the principles on which the boroughs will work in order to enable the contract for waste disposal services which will be required in 2014.
- 7.4 The Memorandum will be included in the Outline Business Case due to be considered by NLWA Members at the meeting on 25 June for submission to DEFRA by the end of June. In considering an application for PFI credits, central government will be concerned to see that the Authority and the Constituent Boroughs are working together towards signing the contract, and in particular are reaching agreement on financial mechanisms and technical issues to do with the interface between collection and disposal. The criteria for OBC approval include, 'Proposals should demonstrate how the two tiers will work together to deliver their targets under legally binding agreements or constitutions, which should be in place by the start of procurement". While the MOU will not be a legally binding document, it shows an intention to proceed to an Inter-Authority Agreement which will be.
- 7.5 Similarly, potential bidders will want to know that the constituent boroughs are working together, and the Memorandum of Understanding will be used as an initial document to show agreement in principle to the contract and commitment to working together.
- 7.6 Boroughs have been asked to ensure that the document is signed by their Leaders in time for it to be presented to the NLWA meeting with the OBC papers on 25 June. Boroughs have been asked to comment on the Memorandum of Understanding and the document has been circulated to legal advisers of constituent boroughs for their input prior to finalisation.

- 7.7 The Memorandum of Understanding itself is not designed to be a confidential document, as it sets out high-level principles of agreement, and contains no commercial detail. However, during discussions leading to the Statements of Principle and Inter-Authority Agreement, and in those documents, there will be issues which should be kept confidential, whether to the Boroughs or to the bidders in the procurement process. Therefore a confidentiality agreement has been agreed by the Heads of Legal Services of the constituent boroughs and the NLWA's legal adviser (copy at appendix B) which will be executed by officers under delegated authority.
- 7.8 Following on from the signing of the Memorandum of Understanding, it is envisaged that there will be further documents setting out points of principle as they are developed through the meetings of the Directors of Environment and the Directors of Finance of the constituent boroughs. Detailed discussions between the NLWA and Boroughs about the process and content of these documents have yet to take place. However, it may be that these points of principle will consider issues such as equitable cost apportionment to Boroughs, incentivising actions that minimise disposal costs, handling any LATs consequences arising from Borough actions (positive or negative), making appropriate links between the NLWA's exposure to risks under the contract payment mechanism and Boroughs' exposure under levy arrangements, and the need or otherwise to reflect the location of facilities.
- 7.9 Any Statements of Principle will need to be agreed by all the Boroughs and the NLWA if it is to have the intended effect. The final document, which will contain the agreements on all relevant issues to do with co-operation on the contract, including the financial mechanisms, will be the Inter-Authority Agreement, and this will be a legally binding agreement. The expectation is that this will only be signed once the contract details are finalised and the Authority is ready for financial close. This is in order to ensure that the obligations in the contract are capable of being met by the NLWA through the agreement with the Boroughs.
- 7.10 Members will receive further reports as Statements of Principle are proposed, and on the progress of negotiations for the Inter-Authority Agreement. In terms of the NLWA procurement timetable, the Inter-Authority Agreement will need to be finalised and signed off by June 2011. Prior to this there will be a period of engagement and negotiations with the boroughs as the procurement programme unfolds. The financial impact of the Inter-Authority Agreement will be felt by the boroughs when the contract goes into operation in 2015.
- 7.11 As a non-legally binding document, the expectation is that the Memorandum will be signed on behalf of the Boroughs by the Leaders of the Boroughs, and the Directors of Environment of the constituent boroughs have agreed to this.
- 7.12 It is also anticipated that the Leaders will sign their agreement to the procurement project's affordability envelope, which the Treasury have previously insisted is signed off by Leaders in another Joint Waste Disposal Authority project. As this is a

finance issue, it will be agreed through each borough's Directors of Finance in due course.

8. Financial Implications

8.1 There are no direct financial implications arising out of the signing of the Memorandum of Understanding.

9. Legal Implications

9.1 See paragraph 5 of the report.

10 Equalities

10.1 There are no specific equalities issues arising from this report.

11. Consultation

11.1 The Memorandum of Understanding has been circulated to legal advisers of constituent boroughs for their input prior to finalisation.

12. Background

12.1 At the meeting of the Authority on 12 December 2007, Members considered a report entitled "Waste Services Procurement: Governance, Procedural And Resource Matters", and agreed that NLWA's Director of Procurement and their Legal Adviser be authorised to proceed with seeking borough agreement to a Memorandum of Understanding as detailed in the report and, thereafter, an agreed statement of principles for an Inter Authority Agreement.

12.2 Since that meeting, the NLWA Director of Procurement has led discussions with each borough's Director of Environment about the Memorandum of Understanding and related work such as in relation to waste data were discussed and agreed. The NLWA Legal Adviser has had a meeting with legal representatives of each borough's Head of Legal Service, and has considered with them the drafting of the Memorandum of Understanding.

12.3 The attached document (appendix A) represents a document which has taken into account the comments of the boroughs' Heads of Legal Service following that meeting, and is agreed in principle. Any specific requirements for changes are dealt with in section 7 of this report.

13.1 Conclusion

13.1 The signing of the Memorandum of Understanding is the first step towards formalising the arrangements by which the NLWA and the seven constituent Boroughs will work together to deliver the waste treatment facilities needed from 2014. This document is necessary to support an application for PFI credits which will be necessary to help deliver these facilities.

14.1 Use of Appendices

- Memorandum of Understanding
- Deed of Confidentiality in relation to development of Memorandum of Understanding and Inter Authority Agreement.