

WIRRAL COUNCIL

CABINET

19 JULY 2012

SUBJECT:	ENVIRONMENTAL STREETSCENE SERVICES CONTRACT 'BREAK CLAUSE' REVIEW
WARD/S AFFECTED:	ALL
REPORT OF:	DIRECTOR OF TECHNICAL SERVICES
RESPONSIBLE PORTFOLIO HOLDER:	COUNCILLOR HARRY SMITH, STREETSCENE AND TRANSPORT SERVICES COUNCILLOR BRIAN KENNY, ENVIRONMENT
KEY DECISION?	YES

1.0 EXECUTIVE SUMMARY

- 1.1 The Environmental Streetscene Services Contract is the delivery mechanism for executing Wirral Council's statutory obligations to collect household waste and maintain the cleanliness of the borough's highways and associated open spaces.
- 1.2 The current contract with Biffa commenced in August 2006 and is worth approx £12.5M p.a. It is a 14-year contract currently running in its sixth year and has a 'break clause' at 7 years (August 2013).
- 1.3 This report responds to the recommendations of Cabinet June 21st 2012 (Minute 28 refers) and in doing so provides details around the financial benefits and viability of the preferred break clause offer as well as the risks and service considerations associated with delaying the Break Clause decision for a further 3.5 years and accepting the associated savings package proposed by Biffa. Fundamentally, this report offers Elected Members an opportunity to examine risks and benefits of accepting the break clause offer in favour of re-tendering, to ensure that the decision made around the future of the Environmental Streetscene Contract gives due regard for achieving value for money.
- 1.4 A number of documents appended to this report contain sensitive commercial information related to the management accounts of Biffa PLC. In order to protect the commercial competitiveness of Biffa's position in the waste management market and to ensure the Council and Biffa are not disadvantaged in future procurement opportunities, this information has been classified as Exempt Information from public scrutiny, as set out the relevant paragraph/s of Schedule 12A of the Local Government Act 1972.

2.0 BACKGROUND AND KEY ISSUES

2.1 Endorsed Option: Delay of the break clause decision for 3.5 years and removal of the age restriction on the fleet (Value : £706k pa saving)

This was the preferred option endorsed at Cabinet on 21 June 2012 (Minute 28 refers). A range of offers from Biffa were appraised by Officers and a detailed report by Eunomia Waste Consultants was presented that highlighted the risks and benefits of staying with Biffa in favour of going back out to tender.

This option requires a variation to the contract in order to move the Council's decision over the break clause to April 2016 (with a view to determining the future of the contract from April 2017). This option would enable the Council to retain the flexibility to see out the full 14 year primary term and extend to 21 years should both parties wish to do so, but also enable the Council to consider the procurement opportunities at that time. This offer realises additional fleet depreciation savings. Biffa are prepared to pass on 100% of these savings to the council whilst retaining 100% of the risks associated with using an older fleet. This will include an enhanced maintenance programme and replacement of vehicles where necessary, as well as adequate resourcing for spare vehicles. This option provides the Council with the most flexibility going forward when considering how to "package" its Environmental Streetscene Services in the near future. It will enable the Council time to carry out a full procurement options appraisal and determine whether there is an opportunity and business case to pursue shared services and joint procurement options with neighbouring authorities, as well as carrying out a full review on the costs and benefits of bringing some or all of its services back in-house. This option also means that the Council will optimise its ability to respond efficiently to any legislative changes and waste treatment/disposal requirements in order to meet its statutory obligations around the recycling and treatment of waste. All known risks and opportunities are detailed in **Appendix 1**.

2.2 Endorsed option extension: Service change proposals: £498k pa saving (subject to one off costs of up to £80k)

A further £498k revenue saving has been proposed by Biffa as part of the break clause package as a result of increasing the efficiency of existing resources and reducing the size of their fleet. These significant savings can be achieved with minimal impact to service provision but will require the rationalisation of some services. It is proposed that these changes will be implemented no later than August 2013, after the conclusion of appropriate consultation with service users.

2.2.1 Removal of co-mingled bring sites: £142k saving

This service is currently extremely high in cost. Biffa only empty paper, cans and tins from bring sites and sites have reduced to from 19 to 16 sites over the contract term. Other materials are collected by private contractors, including textiles and shoes, Tetra Pak and colour separated glass banks. No changes to services provided by these private collectors and charities are proposed at this time. Demand for banks has fallen considerably now all residents can recycle paper and cans at the kerbside. It is also a non-statutory service.

In April 2010, the Biffa contract was varied to remove 50+ on street glass banks and in turn empty the same number of on-street recycling litter bins. However, due to

advancements of technology, the on-street litter recycling bins will be able to be emptied by Biffa's street cleansing vehicles as part of the mainstream contractual services in the near future.

It is proposed that localised consultation is carried out with bring site users (a small proportion of the population) through erecting notices on all banks serviced by Biffa for a period of two months, giving users an opportunity to respond to the consultation process.

Officers consider this to be an underused service where alternative provision is available to everyone and therefore recommend the withdrawal of the service, subject to any considerations arising from the consultation process.

2.2.2 Review of the "Exclusion Round: £96k saving

Primarily due to space restrictions, at the time of the multi occupancy recycling rollout in 2009 it was agreed that 100 locations (2266 households) with wheeled bins would remain on a weekly collection of residual waste. The annual cost to the Council for the associated "exclusion round" service is now £96k and pays for an extra 26 collections of residual waste from each location per year.

Officers believe that there is an opportunity to review this with a view to reducing the number of locations dependent on this additional service. At the time of the alternate weekly collection service rollouts, these locations were only given a small number of grey bins, primarily due to space restrictions. Ensuring enough green/grey bin capacity is allocated to each location to allow a move to alternate weekly collections will be the primary focus of this project. Therefore, as an incentive, officers recommend that the Council provide all extra containers required to facilitate the change free of charge to residents.

It is estimated that up to 900 extra wheelie bins will be needed at a cost of circa £29k including delivery. Alternatively, where space for extra bins cannot be made available by the property owners, the Council will recommend to residents that they move to bulk bins. To aid the transition, it is also recommended that the Council cover the capital cost of all waste receptacle changes required. The maximum cost (assuming all sites preferred to move to bulk containers) is £80k.

The Council's Section 46 Policy around the provision of a household waste collection service states that the Council must provide all property owners with 6 months notice so they may provide storage space for the necessary waste receptacles and comply with the policy. However, Biffa have agreed to continue weekly collections at some locations where, after consultation with land owners the Council deems alternate weekly collections to be unviable.

2.2.3 Reduction of overall alternate weekly collection fleet size: £200k saving

Whilst the current fleet resources for operation Wirral's core waste collection services is running at reasonable efficiency levels, finishing times, current working practices and tonnage profiles indicate that capacity does exist to reduce the fleet by two vehicles and still service all current properties to current standards. Rationalisation of the current fleet will require extensive consultation with the Biffa workforce and associated Union. However, resulting service changes to the public will not affect service delivery with the

exception of collection day changes to a proportion of households. All households are due to be calendared again in Autumn 2013. This would be brought forward to Summer 2013 if day changes were necessary so the Council would incur no additional publicity costs.

2.2.4 Street Cleansing: £60k saving

Biffa have offered a further reduction in cleansing costs whilst guaranteeing to maintain cleansing standards to the equivalent of an NI195 standard of 8% (litter and detritus), which is the current target associated with the Councils' Corporate Plan. In 2010/11 a reduction of £60k in cleansing costs was also realised through the removal of a mechanical brush sweeper. It is important to note that Eunomia have highlighted that savings of between 5 % and 10% on the Street Cleansing element of the contract would be achievable through a re-tender process (Appendix 3). However, due to the out-put specification and vast scope for localisation of service provision, Eunomia were unable to determine to what extent this level of savings would effect the current high service standards achieved by Biffa. Under the terms of the existing contract, variations can be negotiated to reduce cleansing frequencies and standards. As part of the Council's budget reduction considerations, Members will have the opportunity to request further savings from the street cleansing budget up to an estimated 5%, subject to the reduction of some cleansing services. Alternatively, if the service was to be re-tendered or brought back in house, the current specification could be reviewed in order to remove all non-statutory elements of the service (such as alley way cleansing of un-adopted entries) and reduce cleansing frequencies to provide minimum acceptable standards under the Clean Neighbourhood Act 2005, thereby maximising the savings potential. However, environmental quality is considered to be a high priority amongst Wirral residents and maintaining exemplary cleansing standards is a current Corporate Priority so such radical changes do not necessarily mean the Council will achieve value for money in the eyes of the public.

2.3 Price Water House Cooper "Open Book" Review

Appendix 2 details the findings of an open book review conducted on Biffa accounts to ascertain the legitimacy of Biffa's working figures that determined the "size" of their break clause offers. Direct costs, overhead apportionment and fleet depreciation assumptions were examined in detail. Overall, the investigation undertaken by PWC has highlighted a net understatement of costs by Biffa of up £8k to £28k. This indicates that Biffa's offer has been calculated on the true costs of the contract and the Council can be satisfied that the preferred offer is legitimate.

Biffa have set aside £5k pa per Refuse Collection Vehicle for additional maintenance/refurbishment. PWC have indicated that technical officers would need to take a view on the reasonableness of this figure. Given that Biffa have agreed to carry 100% of the risk of running the vehicles until they are 10.5 years old officers believe that the figure set aside is appropriate. Many of the vehicles will need engine replacements in this time, costing around £18k per refit.

2.4 Timescales

The current contractual 'Break Clause' is effective from August 2013. The Council must notify Biffa by no later than 30 August 2012 if our intentions are to terminate the Contract. A decision is therefore sought at this meeting of the Cabinet to ensure this

timescale is met and allow for further scrutiny if required. Failure to do so will result in the contract continuing in its current format until August 2020 and the opportunity to secure £706k of the total £1.2m savings package will be lost.

3.0 FUTURE CONSIDERATIONS

3.1 The Council is faced with meeting challenging savings targets in the next 2 years. It will be forced to consider which services it wishes to continue delivering and to what standard the services are resourced. The Biffa contract primarily delivers statutory services, such as waste and recycling collections and street cleansing of the public highway. However, there is substantial scope to change the way we deliver these services to make essential savings that could protect other services across the Council that are the Council have a legal duty to maintain. Two significant areas of the contract include the garden waste kerbside recycling service and street cleansing. It is important for Members to understand the impact of the recommendations within this report on their future ability to maximise savings potential within these two areas.

3.1.1 Garden Waste Kerbside Recycling Service

At the 21 June Cabinet, Biffa stated that if they could only be guaranteed 3.5 additional years, then it would not be financially viable for them to offer the Council a separate "garden waste subscription service". This service is an opt-in service available to residents who would like to continue to enjoy recycling garden waste conveniently from their homes in return for a moderate annual fee. However, Biffa have recently indicated that due to the unprecedented success of the scheme in other local authority areas, they are confident that the scheme in Wirral would still be viable provided they could continue to offer the service in the longer term. As this service would not be part of the main Environmental Streetscene Services Contract, officers see no reason why the Council should wish to take this service off Biffa should our contract with them end in March 2017. It will be in the interests of Biffa to maximise take up of the subscription service to reduce operating costs and associated risks and officers believe that it is likely that they would request the Council to subsidise the service in its first year to reduce the cost to the public for a short period in order to encourage sign up. However, the Council would also benefit from this approach as it would minimise the reduction in lost garden waste tonnage that counts towards Wirral's recycling targets.

It is also important to note that Biffa's subscription service is just one of several options to consider when introducing a chargeable service to deliver necessary savings.

3.1.2 Street Cleansing

The Council currently spend £4.5m pa on keeping the public highways and associated open spaces free of detritus and litter. Wirral have above average cleansing standards when compared nationally and are operating in-excess of the minimum statutory requirements. When considering the Council's future funding priorities, it may be that the resource requirements for this service have to be reviewed. It is therefore important to note that any downsizing of this service would result in a reduction in the available savings offered from Biffa as they would have to absorb potential redundancy costs. However, if the Council chose to retender these services at a reduced scope, the Council would still be expected to take on these costs (or they would be priced by contractors bidding for the new tender). There will be an advantage to continuing with Biffa in that there will have been no new investment on fleet and therefore no penalties

to be passed on from redundant fleet. Obviously, if the Council was in a position to determine the scope of cleansing services within the next three months, any new tender could reflect the new fleet requirements.

The remaining risk that the Council will carry if it continues with Biffa is that savings arising from a reduction in cleansing resources would have to be negotiated with Biffa. It is highly unlikely that Biffa will pass on 100% of the net savings and the Council has no mechanism to enforce this. However, as the preferred option is to delay the break clause decision for 3.5 years (with an option to run this contract until as late as 2027), officers believe this will incentivise Biffa to co-operate with the Council in facing the challenging times ahead.

4.0 RELEVANT RISKS

Please see Exempt Appendix 7.

5.0 OTHER OPTIONS CONSIDERED

5.1 Other savings options were considered by Cabinet on 21st June 2012 and rejected in favour of the endorsed option (Minute 28 refers). However, should Members not feel able to approve the recommendation(s) within this report, the following course of action must be considered.

5.1.1 Re-tender the Environmental Streetscene Services Contract

This option has the potential to result in the greatest amount of savings but also carries with it the most risk. In order to retain the quality of existing services, it would be necessary to carefully consider the price/quality specification of any new tender and subsequent evaluation criteria to ensure the Council continued to maximise value for money and minimise the risk of bidders under-resourcing their tenders to provide a competitive edge. Through a procurement market review, Eunomia have indicated that the Council could expect a re-tender process to yield savings between £1.25m and £1.77m whilst still minimising risks around the quality of service provision.

Additional associated risks to re-tendering include:

- Timescales for the end date of the existing contract (August 2013) leaving only 12 months to plan, procure and mobilise a new contract.
- Re-tendering would require a minimum 7-year term to gain adequate market interest. To secure a competitive bid, longer-term contracts are preferred by the market leaders. A commitment to the way we deliver our services over a longer period could limit our ability to respond to future needs and requirements.
- Re-tendering would enable the Council to investigate joint procurement opportunities with neighboring councils. However, this would be unachievable in the restricted time available at this time. A 3.5-year break clause extension provides a realistic timeframe for thoroughly examining our options and consulting other local authorities.
- Timing of the resulting procurement process would carry a number of risks, including the potential negative impact of Wirral Council's current reputation around governance and procurement decisions (HESPE/ PACSPE).

A full analysis of all known benefits and risks of re-tendering at this time are detailed in **Appendix 1**.

The upfront costs of re-tendering (consultancy fees and staffing resource) are likely to be between 150k and 200k. These costs have not been factored into the savings proposed within this report.

5.1.2 Contract Uplift Mechanism

In the report presented at Cabinet on 21 July 2012, officers highlighted the compounding impact of RPI applied to the current contract. Re-tendering could examine alternative ways of reducing the burden of inflation to the current position where RPI is applied to all items (currently running at 3.1%). **Appendix 6** details a report from the Director of Finance explaining why RPI was considered the most advantageous contract uplift mechanism at the time of developing the original contract specification. The report, presented for consideration to the Streetscene Options Steering Group concluded that RPI was lower than Baxters, is a single rate, and at the time, was widely used in Local Government budget setting. It was also considered to be more predictable than the Baxter Index. This key decision was reported to Cabinet 1st December 2005 (paragraph 2.4).

Any new tendering exercise would enable the Council to examine ways of reducing the burden of annual contract uplifts through the capping or restricting inflation mechanisms on specific items of the contract (especially where the contractor retains some discretion) such as employee costs. Currently, every 1% inflationary rise passed onto the Biffa workforce costs Biffa around £60k per annum and the compounding effects of increased staffing costs, when compared to the public sector trends of recent years means that future tenders will be priced to account for wage costs at the time. In the opinion of officers, the current contract uplift mechanism does not adequately incentivise the contractor to address wage costs. It is therefore in the public interest and the interest of Biffa to work together to facilitate future pay talks with the union that fall more in line with public sector pay awards.

6.0 CONCLUSION

6.1 Through an extensive and thorough negotiation process, Officers have secured an advantageous savings package offer from Biffa totalling £1.2m. This report details the resulting savings and strategic benefits of accepting this offer. It also highlights the potential opportunities lost should the Council decide to accept the offer and not go to the market at this time. **Appendix 1** provides a summary of evidence and arguments that support the decision to accept Biffa's break clause offer. The offer has been reviewed in detail by specialist external waste consultants (Eunomia) and accountancy consultants (Price Waterhouse Cooper) and conclude that the offer from Biffa (£1.2m savings) has integrity and provides the Council with value for money whilst at the same time "future proofs" the Council's medium term decision making process with regards to waste strategy requirements and procurement options. It is the view of officers that by delaying the break clause decision until August 2016, the Council will be in an optimal position to decide its waste strategy requirements and resulting procurement options.

7.0 CONSULTATION

7.1 Specialist waste consultancy and management accountancy services have been commissioned in order to ensure independent scrutiny and that due regard is taken for

securing the most advantageous outcome for this review in terms of achieving value for money.

8.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

8.1 There are no implications arising from this report.

9.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS

9.1 There are no staffing or financial costs arising from the report, should Cabinet accept the officer recommendations. However, should Cabinet reject this recommendation in preference of embarking on a re-tendering exercise costs of up to £200K are likely to be incurred.

9.2 The costs of external consultancy support commissioned for this review have been contained within existing budget provisions within Technical Services. The costs for all associated consultancy work will not exceed £46k.

9.3 The Council is faced with identifying savings over the next two years to address the current projected budget shortfall of £25m in 2013/14 and a further £38m in 2014/15. This would require a 20% reduction in total budget. Therefore a large strategic contract such as the Environmental Streetscene Services contract is expected to be able to contribute significantly to these savings. The total savings package offered for the "preferred option" is £1.2m. These savings will have a part year effect of £0.7m in 2013/14 and a full year-effect in 2014/15.

9.4 This contract is subject to annual inflationary increases based upon RPI (Retail Price Index) applied in August each year. RPI is currently at 3.1%.

9.5 This savings package is proposed as a direct result of negotiations around the 'break clause'. Technical Services intend to propose further opportunities to reduce the overall cost of Waste and Environmental Streetscene services. However future proposals are likely to impact on the range and standard of service provision and therefore would be subject to public consultation and Elected Member scrutiny.

10.0 LEGAL IMPLICATIONS

Please see Exempt Appendix 7.

11.0 EQUALITIES IMPLICATIONS

11.1 In response to changes to subsequent equality legislation, Biffa have confirmed they are compliant with the requirements of the Equalities Act 2010.

11.2 Has the potential impact of your proposal(s) been reviewed with regard to equality?

(a) Yes and impact review is attached –

<http://www.wirral.gov.uk/my-services/community-and-living/equality-diversity-cohesion/equality-impact-assessments/eias-2010/technical-services-0>

12.0 CARBON REDUCTION IMPLICATIONS

12.1 The officer recommendations within this report seek to maximise the flexibility the Council to respond to strategic waste management changes in order to meet the statutory recycling target of 50% by 2020 with due regard for maximising value for money of any service changes or new initiatives.

13.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

13.1 There are no planning or community safety implications arising from this report.

14.0 RECOMMENDATIONS

14.1 Cabinet is requested to:-

- (1) Approve the delay of the 'break clause' decision until April 2016 and remove the age restriction of the fleet used to service the current Environmental Streetscene Services Contract, thereby continuing the contract with Biffa until at least March 2017.
- (2) Approve the removal of all co-mingled bring sites (subject to consultation and completion of the associated EIA) by no later than August 2013.
- (3) Request a review of the "Exclusion Round" with a view to adding all properties on this service to the Alternate Weekly Collection Service (subject to consultation and completion of the associated EIA) by no later than August 2013.
- (4) Request that officers bring a further report to this Cabinet, detailing the capital costs required to facilitate the removal of the Exclusion Round, as a result of the consultation exercise (not to exceed £80k).
- (5) Note the revenue savings that have been identified from implementing the preferred option totalling £1.2m and that adjustments to the waste provisions be made to reflect the part year effect of savings in 2013/14 and the full-year affect thereafter.
- (6) Instruct the Director of Technical Services to present a further report to this Cabinet no later than October 2015, outlining further recommendations for the future procurement and service 'packaging' options of waste collection and street cleansing services, to include appraising any opportunities of joint procurement with neighbouring authorities and/or in-sourcing some or all of these services.

15.0 REASON FOR RECOMMENDATIONS

15.1 Implementation of these recommendations will ensure the efficient delivery of the Council's waste management and cleansing services and contribute significantly to the revenue savings required across the Council. In addition, this option will maximise the Council's flexibility to achieve future long-term financial benefits in its goal to meet its statutory obligations and targets around waste management. Failure of the Cabinet to make a decision around the 'break clause' before August 2012 will result in the Biffa contract continuing in its existing form, at its current cost and all negotiation opportunities will be lost.

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APPENDICES (PRESS EXEMPT – COMMERCIALY SENSITIVE)

- Appendix 1: Break clause vs. retender risk/benefits comparator table
- Appendix 2: Price Water House Cooper “open book review
- Appendix 3: Eunomia break clause delay risk considerations
- Appendix 4: Biffa letter explaining Biffa Municipal association with Biffa Waste Services
- Appendix 5: Eunomia technical assessment of Experian Risk Reports
- Appendix 6: November 2005 Streetscene options Steering Group briefing note: Comparison of RPI and Baxter Indices
- Appendix 7: Section 4.0 Relevant Risks and Section 10.0 Legal Implications

REFERENCE MATERIAL

None.

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Sustainable Communities Overview and Scrutiny Environmental Streetscene Services 5 th Annual Performance Review	30 January 2012
Cabinet Environmental Streetscene Services Financial Review	12 April 2012
Environmental Streetscene Services “Break Clause” Review	21 June 2012
Future Provision of Environmental Streetscene Services	1 December 2005