	<p style="text-align: center;">ENVIRONMENT AND TRANSPORT PORTFOLIO 13 JULY 2007</p> <p style="text-align: center;">URGENT REPORT TO THE LEADER OF THE COUNCIL Councillor T Fox</p>
	<p>Urgent Decision YES</p>
<p>Corporate Priorities: Creating Quality Environments, and Improving the Council</p>	<p>Cabinet Portfolio Councillor Holder G A Backhouse</p>

REPORT OF: Strategic Director of Corporate Services (SDCS/07/37)

WARDS AFFECTED: All

SUBJECT: RE-NEGOTIATION OF THE WASTE RECYCLING AGREEMENT WITH YORWASTE FOR THE EXPANDED KERBSIDE RECYCLING SCHEME

RECOMMENDATION: To approve the re-negotiated Waste Recycling Agreement (WRA) with Yorwaste Limited, as set out in the report.

REASON FOR RECOMMENDATION: Changes need to be made to the current WRA, to allow Yorwaste to facilitate the approved Extension of the Kerbside Recycling Scheme, and ensure the scheme is fully operational in early October.

HIGHLIGHTED RISKS:

Until the revised WRA is approved, Yorwaste will not procure the necessary capital investment to sort co-mingled dry recyclable waste, which is a requirement of the extension of the kerbside recycling scheme.

Failure to re-negotiate and approve contractual terms with Yorwaste will delay the implementation of the extended scheme, subsequently affecting the Council's finances, performance and reputation with residents.

The revised contract is based upon the same principals as the existing terms, with changes to the gate fee to reflect the capital investment and increased tonnage. The Council is at financial risk if the level of recycling tonnage is not achieved.

The revised financial model appended to the contract excludes the provision for the payment of Land Fill Tax and Land Fill disposal costs. It is considered that these costs are the responsibility of the waste disposal authority (North Yorkshire County Council) but confirmation from NYCC has not yet been received. Yorwaste reserve the right to recharge the Council these costs if agreement with NYCC cannot be reached.

The level of recycled waste contamination is assumed to be 8% within the financial model. Should, after six months from the introduction of the extension to the recycling scheme (specifically co-mingled recycling waste) the percentage be much higher, then Yorwaste may re-negotiate terms for further payment from the Council.

The recyclates collected in the northern area are to be transported to Seamer Carr, Scarborough for processing; the cost of this transport is currently subject to negotiation with NYCC. The Council is at financial risk if NYCC fail to meet these costs.

During the 2-month refit at Seamer Carr, as the new Materials Recycling Facility is constructed, some recyclables will need to be transported to the Yorwaste facility in York for processing. The cost of this transport and processing is dependant on the actual tonnage delivered to Seamer Carr. These interim costs are in part dependant upon the success (or otherwise) of the new recycling scheme.

1. INTRODUCTION

- 1.1 In 2003, the Council entered into a 10 year WRA with Yorwaste, allowing the Council to collect and recycle sorted plastic, paper, tins and garden waste rather than disposal to landfill.
- 1.2 In December 2006 Cabinet, after consulting the views of the Service Performance Overview and Scrutiny on the best way forward for the Council to achieve future recycling targets, approved the Extension of Kerbside Recycling Scheme to include an Alternative Weekly Collection of co-mingled dry recyclables and garden waste.

1.3 Subsequently, the WRA with Yorwaste needs to be re-negotiated.

2. CORPORATE OBJECTIVES AND THE COMMUNITY PLAN

2.1 The WRA is a vital element of the Council being able to deliver kerbside recycling. It therefore contributes directly to the Council Corporate aims of creating quality environments and improving the council.

3. BACKGROUND AND ISSUES

3.1 Since entering into the WRA with Yorwaste, the Council has steadily expanded recycling. Details of the kerbside recycling phases implemented to date were set out in the 19 December Cabinet (HSS/06/37 & HEHS/06/95) report on the Extension of Kerbside Recycling. This report approved the introduction of a revised refuse and recycling service consisting of:

- Residual waste collected one week, dry recyclables the next
- Blue bins to be used for dry recyclables (paper, card, cans and plastic bottles) where a bin collection is possible
- Blue bags to be used for dry recyclables elsewhere
- Garden waste to be collected fortnightly with the exception of December and January, through the continuation of the bag collection service, but with a single payment bin option at a cost of £20.
- That the number of recycling bring sites (to be operated largely through third party recycling and partnership organisations) be increased across the Borough for additional materials over a 5 year period

3.2 Current WRA with Yorwaste

3.2.1 The existing contract provides for the Council to deliver to Yorwaste separated dry recyclables and garden waste.

3.2.2 The Council pays Yorwaste a price per tonne for each tonne of recyclate. The Council underwrites a guaranteed minimum level of recycling materials in the year.

3.2.3 The Council receives from Yorwaste a 50% share of any sales income from the recyclable materials, and recycling credits from NYCC.

3.2.4 Recycling credit income per tonne is broadly in line with the gate fee, except that it is only receivable on actual tonnages recycled. Therefore, the Council is at financial risk if it does not achieve the guaranteed minimum level of recycling tonnage to Yorwaste.

3.3 Summary of Changes to the WRA

3.3.1 Following numerous complex discussions and negotiations with Yorwaste a revised contract has been drafted for approval. The main changes to the contract are as follows:

3.4 Co-mingling

3.4.1 Co-mingling allows the Council to collect and deliver to Yorwaste unsegregated dry recyclable waste. To the resident this means that paper, tins and plastic can be placed into the blue bin, without any segregation.

3.4.2 The additional duty placed upon Yorwaste is to sort the co-mingled materials. To do this they must invest in capital equipment (approximately £0.687 million) at their site at Seamer Carr. The additional costs of this investment are subsequently reflected in an increased gate fee. The overall impact in the gate fee is considered with the financial model at paragraph 3.9

3.5 Recycling Tonnages

3.5.1 The Extension of the Kerbside Recycling Scheme will increase the percentage of waste recycled. The Council's objectives are to achieve 20% by the end of 2007 and 40% by 2011.

3.5.2 Council Environmental Health Officers have examined the impact of recycling tonnages from other Local Authorities who have implemented a similar scheme to that approved by the Council. The outcome being that the expected recycling tonnages for 2007/08, which is part year impact of the new scheme, will be 14,963 and for 2008/09 and beyond (up to the termination of the contract) it will be 20,237 per year.

3.5.3 The revised increase in recycling tonnages has been built into the Yorwaste financial model in determining the revised gate fee and referred to in paragraph 3.9.

3.6 Land Fill Tax and Land Fill Disposal Costs

3.6.1 Yorwaste's financial model, appended to the current contract, provides for the Council to pay the Land Fill Tax and Land Fill Disposal Cost. This cost is reflected in the gate fee. Whilst reviewing the current agreement, Officers raised and firmly debated that this cost should be attributed to the disposal authority (NYCC) and not the refuse collecting authority (the Council). This issue has been raised with NYCC, but legal confirmation from the County's solicitors has not been received.

3.6.2 To enable the revised contract to be pursued, with the strict timescales, the contract reserves Yorwaste right to recharge these costs to the Council if an agreement with NYCC cannot be reached. Progress with NYCC will be reported directly to the Leader of the Council.

3.6.3 Officers have agreed with the support of Yorwaste to pursue NYCC for the reimbursement of Land Fill Tax and disposal charges for the period of 2003 to 2007 once confirmation from County's legal service has been received.

3.7 Yorwaste – Seamer Carr Rent to North Yorkshire County Council

3.7.1 Yorwaste operate at the site on Seamer Carr that was previously occupied by the Council who received it rent-free from NYCC.

3.7.2 NYCC, who have a controlling influence with Yorwaste, have opted to charge Yorwaste a rent for the use of the site for the last 2 years.

3.7.3 The financial model within the existing contract refers to rent but is assumed at a nil cost. Yorwaste have asked that the rental charge be included within the re-negotiated terms and be recompensed for rent paid for the last two years.

3.7.4 As Yorwaste are the Council's partners in working together with the WRA, their request is reasonable and transparent.

3.7.5 Officers have held discussions with NYCC to challenge the decision to charge rent on a site used to promote recycling, but this has come to no avail.

3.8 Inflation RPI(x)

3.8.1 The words within the WRA state that Yorwaste has the authority to increase the gate fee, annual by RPI(x), however this contradicts with the financial model, appended to the contract, which makes no allowance for inflation.

3.8.2 For the period 2003 to 2007 Yorwaste have increased the gate fee by RPI and not RPI(x) which is a lower inflation rate.

3.8.3 This has been brought to the attention of Yorwaste, whom have accepted that it was an oversight on their behalf.

3.8.4 To correct the position, Yorwaste have reinstated the original contracted 2003 gate fee of £38 as the gross gate fee for 2007. This is a significant financial savings to the Council.

3.8.5 In addition officers have been able to negotiate a partial reimbursement (50%) of the inflation applied since 2003. With inflation allowance being specifically referred to in the legal contract and as 3 full years have passed without the Council probing the Yorwaste model, this is deemed a fair outcome.

3.9 Yorwaste - Financial Model

3.9.1 Yorwaste financial model pulls together all their expected income and expenditure for operating the WRA over a 10-year period.

3.9.2 Yorwaste expectation from the model is to achieve a 10% return on their capital expenditure (£1.33m over 10 years).

3.9.3 The Council's Officers opinion is that Yorwaste financial return, over the period of the contract, should equate to their share of the total sales income (split 50/50 with the Council) to demonstrate true partnership working (£1.15m over 10 years).

3.9.4 A mutual compromise has been reached that satisfies the expected outcomes of the model (£1.19m over 10 years). The following tables summarise the impact on the gate fee and tonnage levels. The tonnage levels after 2008 remain constant for the duration of the contract.

Table 1 – Existing Contract with Yorwaste

	2007	2008
Tonnage (Minimum Guaranteed)	13,169	15,677
Gross Gate Fee per tonne (Prior to negotiations)	£42.18	£43.45
Gate Fee Discount	-£3.00	-£7.00
Net Gate Fee Per Tonne	£39.18	£36.45

Table 2 – Revised Contract with Yorwaste

	2007	2008
Tonnage (Minimum Guaranteed)	14,963	20,237
Gross Gate Fee per tonne	£38.00	£39.14
Gate Fee Discount	-£10.00	-£10.00
Net Gate Fee Per Tonne	£28.00	£29.14

** Yorwaste have agreed to pay a gate fee discount of £10.00 for 2007/08, but will spread the additional benefit to the Council of £7 per tonne (as the existing gate fee discount is £3) over three years (2007, 2008 and 2009).*

***The estimated recycling credits for 2007/08 per tonne is £38.22.*

3.9.5 The financial model includes the assumption that only 8% of the total recycle will be contaminated. The actual level of contamination may vary depending upon the success of the implementation of the new recycling scheme.

3.9.6 Yorwaste have requested that the contamination level be reviewed regularly with officers and if after 6 months from the introduction of the revised scheme, the percentage is much higher, then Yorwaste may re-negotiate terms for further payment from the Council.

3.9.7 Officers accept the concerns of Yorwaste with the Council acting proactively in employing Recycling Enforcement Officers.

3.10 Financial Consequences to the Council

- 3.10.1 The re-negotiated terms with Yorwaste could, pending the achievement of the minimum recycling tonnages, be a significant financial benefit to the Council.
- 3.10.2 The net gate fee payable to Yorwaste for 2007 is less than that paid in 2003 and includes the provision for co-mingled waste.
- 3.10.3 The up front costs to setup the Whitby Transfer Station and the transport and processing of recyclates at the Yorwaste facility York during the refit period which are dependent on the actual tonnages of recyclables collected during this interim period, will be met within the existing recycling budget.
- 3.10.4 The ongoing costs of transporting recyclables from the Whitby transport station to Seamer Carr are to be met by NYCC. However at present NYCC have not confirmed this in writing and the issue is subject to negotiation.
- 3.10.3 However, the concern is whether the Council will recycle, from the extension of the kerbside scheme, 14,963 tonnes in 2007 and 20,237 in subsequent years, when the tonnage on the existing scheme has averaged 8,500 tonnes per annum.
- 3.10.4 Therefore the prudent approach is to budget and set performance targets for the service to achieve at least the minimum recycling tonnage levels, but set a side a specific provision, from the financial savings from re-negotiating the contract terms with Yorwaste, in case the tonnages are not achieved.
- 3.10.5 If after 18 months of delivering the scheme, the Council is consistently achieving the recycling tonnages, and hence financial savings, then the monetary benefits will filter back into the Council's Financial Strategy.
- 3.10.5 The progress of the extended recycling scheme will be reported to Cabinet within the Quarterly Finance and Performance Monitoring report.
- 3.10.6 During the refit at Seamer Carr some interim measures are required to allow the delivery of waste to continue throughout the refit period. These measures include the transport to and processing of certain recyclates in York. These costs are to be borne by the Council and are dependant on the actual tonnage through put during this interim period. The costs are £18 per tonne for transport and £25 per tonne for processing. Based on our best estimates of existing tonnage and forecasted tonnage during the 2-month interim refit period, the costs will be approximately £100,000. Whilst some contingency is included within the recycling budget, this additional cost does add pressure to the budget. However, as set out earlier there are potential other financial advantages, and all efforts will be made to seek to constrain this within budget provision. Council Officers will monitor the refit process to ensure costs are kept to a minimum.

3.10.7 Negotiations are ongoing with NYCC regarding the payment of transportation costs of recyclates from the Yorwaste Transfer Station in Whitby to Seamer Carr. NYCC currently meet these costs, however they have intimated that once we move to the comingled service they will no longer do so. The Council disputes this assumption and is currently challenging NYCC on this issue. However should we be unsuccessful, based on the forecasted tonnage the Council may have an ongoing liability of approximately £72,000 per annum. This risk however does not form part of the contractual negotiations with Yorwaste.

4. CONSULTATION

4.1 There has been no consultation with stakeholders on these issues

5. ASSESSMENT

5.1 It is no surprise that the WRA entered into in 2003 requires some modification to reflect the extension of the kerbside scheme and the introduction of co-mingling for dry recyclables.

5.2 The general principals set out in the original agreement remain the same as in the revised contract, with modifications to the financial model to reflect the capital investment to facilitate co-mingling and the expected increase in recycling tonnages.

5.3 In reviewing the WRA it has allowed the Council's officers to address and revise some issues within the contract.

5.4 Yorwaste have been willing to embrace the changes to the new recycling scheme and have worked with the Council, in the spirit of partnerships, to resolve all issues.

6. IMPLICATIONS

Policy

6.1 The changes are necessary in order to effect the previous decision of the Council to Extend the Kerbside Recycling Scheme.

Financial Implications

6.2 The detail financial implications arising from the re-negotiations of the WRA with Yorwaste, are detailed in paragraph 3.10.

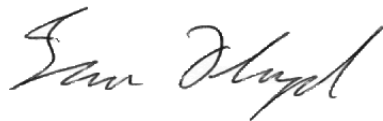
- 6.3 In broad terms the Council will financially benefit from the revised terms, subject to achieving the set minimum level of recycling tonnages.
- 6.4 A specific provision, from within the approved recycling budget, has been earmarked to mitigate the impact of not achieving the required recycling tonnages. The interim arrangements during the refit of the Seamer Carr site will cost an estimated £100,000.

Legal implications

- 6.5 The Councils' Legal Services team have drafted the revised WRA with Yorwaste.

Other Implications

- 6.6 I have considered whether further implications arise from this report and am satisfied that there is no identified implication that will arise from this decision.



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Background Papers:
None

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT OR WISH TO INSPECT ANY OF THE BACKGROUND PAPERS, PLEASE CONTACT NICK EDWARDS ON 01723 232410 ... e-mail nick.edwards@scarborough.gov.uk

Risk Matrix

Issue/Risk	Consequences if allowed to happen	Likelihood	Impact	Mitigation	Mitigated Likelihood	Mitigated Impact
<p>Failure to renew the Waste Recycling Agreement with Yorwaste</p> <p>(based on 4 month lead time for Yorwaste)</p>	<ul style="list-style-type: none"> • Delay in the scheme implementation (live date) Autumn September 2007 • Yorwaste are not ready in time as delay in capital expenditure • Adverse publicity and damage to reputation • Continue to pay Disposal to Landfill and Landfill Tax (should be NYCC outlay) • Significant financial implications 	Likely	Major	<ul style="list-style-type: none"> • Negotiations with Yorwaste have resulted in a revised WRA agreement • Each parties legal team are engaged on the project • 	Not Likely	Medium
<p>Failure to recycle anticipated tonnage</p>	<ul style="list-style-type: none"> • Potential significant financial impact – loss of recycling credits as gate fees fixed • Additional revenue cost of communication to improve take up • Not achieve reward grant from NYCC (40% recycling rate) • Loss of public support • Loss of political support • Detrimental impact on BVPIs • Adverse publicity • May fail to achieve statutory target – fines and penalties 	Likely	Major	<ul style="list-style-type: none"> • Monthly monitoring of tonnage collected/processed • Identify trends • Effect Communication strategy to engage public and further target ‘failing’ areas • Accurate determination of tonnage levels used for the model • Managing contamination levels • Create a financial contingency 	Likely	Medium

Issue/Risk	Consequences if allowed to happen	Likelihood	Impact	Mitigation	Mitigated Likelihood	Mitigated Impact
Higher level of contamination than expected	<ul style="list-style-type: none"> • Greater volume of recycling materials are rejected • Reduced tonnage processed • Loss of revenue • Contaminated bins not collected • Complaints from the public – loss of support • Increase in fly tipping 	Likely	Medium	<ul style="list-style-type: none"> • Dedicated support staff to visit households where contamination regularly occurs • Education program • Communication strategy –leaflet drops • Enforcement policy • Staff to inspect bin contents at regular intervals 	Not Likely	Minor
NYCC do not agree to pay transport costs of recyclates from Whitby Transfer Station to Seamer Carr.	<ul style="list-style-type: none"> • Financial loss 	Likely	Medium	<ul style="list-style-type: none"> • Ongoing negotiation with NYCC • Clarification of NYCC legal obligations under Environmental Regulations 	Not likely	None
Seamer Carr site not operational by 1.11.07.	<ul style="list-style-type: none"> • Interim transport and processing measures to continue until refit complete resulting in financial loss 	Likely	Major	<ul style="list-style-type: none"> • Revised contract with Yorwaste to include commencement date 1.11.07. 		

NYCC do not agree to pay the Land Fill Tax and Disposal costs	<ul style="list-style-type: none"> Financial Loss 	Likely	Medium	<ul style="list-style-type: none"> On going discussions with NYCC, with the outcome to be reported to the Leader of the Council 	Not Likely	Minor
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