

REPORT TO: Cabinet

DATE: 15th April 2010

SUBJECT: Dry Materials Recycling Contract – Interim Agreement

**WARDS
AFFECTED:** All

REPORT OF: J G Black - Operational Services Director

**CONTACT
OFFICER:** Clare Melser – Tel: 0151 288 6144

**EXEMPT/
CONFIDENTIAL:** No

PURPOSE/SUMMARY:

To advise the Cabinet of the implications of Cheshire Recycling Ltd, trading as AbitibiBowater Recycling Europe entering administration on February 11th 2010.

REASON WHY DECISION REQUIRED:

To gain approval from the Cabinet to enter into an interim agreement for the provision of the Dry Recycling Service, to ensure the continuity of service until key decisions on the future of the recycling service have been established.

RECOMMENDATION(S):

That Cabinet agree that an Interim Agreement for the continuing provision of a recycling collection service be established with Palm Recycling Ltd. pending the implementation of longer term formal arrangements for future recycling collection service provision.

KEY DECISION: No

FORWARD PLAN: No

IMPLEMENTATION DATE: Following the call-in period.

ALTERNATIVE OPTIONS: None, It would be very difficult to procure an alternative service provider at short notice due to the specialist nature of this service.

IMPLICATIONS:

Budget/Policy Framework:

Financial: Cost of Interim Agreement will be within existing budget. However, the gross increase in revenue expenditure for 2011/2012 to procure a new service was predicted to be in the region of £1.9m (Finance Department FD 324) which has been included in the Council's MTFP, this revenue implication may now occur during 2010/2011

<u>CAPITAL EXPENDITURE</u>	2009/ 2010 £	2010/ 2011 £	2011/ 2012 £	2012/ 2013 £
Gross Increase in Capital Expenditure				
Funded by:				
Sefton Capital Resources				
Specific Capital Resources				
<u>REVENUE IMPLICATIONS</u>				
Gross Increase in Revenue Expenditure				
Funded by:				
Sefton funded Resources				
Funded from External Resources	No			
When?				

Legal:

Risk Assessment:

Asset Management:

CONSULTATION UNDERTAKEN/VIEWS

FINANCE DEPARTMENT AND LEGAL DEPARTMENT

CORPORATE OBJECTIVE MONITORING:

<u>Corporate Objective</u>		<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1	Creating a Learning Community		✓	
2	Creating Safe Communities		✓	
3	Jobs and Prosperity		✓	
4	Improving Health and Well-Being		✓	
5	Environmental Sustainability	✓		
6	Creating Inclusive Communities		✓	
7	Improving the Quality of Council Services and Strengthening local Democracy		✓	
8	Children and Young People		✓	

LIST OF BACKGROUND PAPERS RELIED UPON IN THE PREPARATION OF THIS REPORT

Dry Material Recycling Service Contract – SC3960

Background:

- 1 On 2nd February 2010, Bridgewater Paper Company Ltd was put into Administration. Bridgewater Paper Company Ltd was the parent company of AbitibiBowater Recycling Europe, this immediately raised concerns for the future trading of AbitibiBowater in relation to the Dry Recycling Service Contract (the Contract).
- 2 Despite assurances Cheshire Recycling Ltd., trading as AbitibiBowater Recycling Europe, entered into Administration on 11th February 2010. The appointed Administrators then completed a sale of the Company's business and assets (but not the debts) to Palm Recycling Ltd for a total consideration of £800,000. Palm Recycling did not purchase the Company as a going concern and as such Palm Recycling is under no obligation to settle any amounts outstanding from Cheshire Recycling Ltd (In Administration). Amounts outstanding will rank as a non-preferential claim against Cheshire Recycling Ltd (In Administration) and will not be paid as an expense of the administration.
- 3 Sefton Council has presented invoices to Cheshire Recycling (In Administration) which have not been paid. The Council has however, on the earlier indications of a potential problem, withheld payments due to the Company. These payments will be netted off under clause 4.39.2.2 of Contract SC3960 and any monies owed to Cheshire Recycling (In Administration) will subsequently be paid.
- 4 On 23rd February 2010 Palm Recycling Ltd asked Sefton MBC to consider signing a Novation Agreement to transfer the existing contract to Palm Recycling in place of Cheshire Recycling Ltd. Following advice from both Legal and Finance it was considered that this agreement be refused on the grounds that it does not comply with European procurement rules, the absence of a Parent Company Guarantee and no financial assurance from Palm Recycling Ltd. As a consequence the Legal Director wrote to Cheshire Recycling Ltd. (In Administration) and formally terminated the Contract with effect from 11th February 2010 under clause 4.39.1.6 of Contract SC3960.

Current Situation:

- 5 Service continues to be provided by Palm Recycling Ltd and their sub-contractor PD Logistics Ltd. To date there have been few disruptions to the service with the exception being the bring bank service. This suffered disruptions for 2 weeks, following takeover, due to the change of sub-contractor servicing these containers, this has now been rectified and service has resumed to a satisfactory level.
- 6 Going forward Sefton MBC will be looking to confirm a short-term interim agreement for the continuation of the current service with Palm Recycling Ltd and their sub-contractor PD Logistics Ltd. It is proposed that an initial period until 30th September 2010 be agreed with an option to extend by further 1-month periods.

- 7 Contract SC3960 was due to formally end on 31st March 2011. The Council is already in the process of making key decisions on the long-term arrangements for recycling collection service provision. It would be appropriate to establish suitable interim arrangements to ensure the continuity of the current service until such time as key decisions about future service provision are made.

These key decisions will determine if the Council:

- Continues in the long term to provide a source separated kerbside service with the possibility of enhancing this service by adding additional materials such as plastics and cardboard.
 - Moves away from a kerbside sort service to a co-mingled collection using a third wheeled bin. In this case the Council would be looking to negotiate a reducing service provision over a given timescale in order for a smooth transition to the new method of service delivery.
- 8 It will now be a priority to accelerate the process of securing the future service, via a re-tendering exercise or implementation of an alternative co-mingled service.

Conclusion

- 9 There are various risks with the current situation that must be acknowledged:
- There is currently no official contract between Sefton MBC and Palm Recycling Ltd or PD Logistics Ltd.
 - Subject to a satisfactory Interim Arrangement being agreed service could effectively cease without notice.
 - It would be very difficult to procure an alternative service provider at short notice due to the specialist nature of the service.
 - Any new recycling service is unlikely to be provided within the existing budget.
 - The Gross Increase in Revenue expenditure for 2011/2012 to procure a new service is predicted to be in the region of £1.9m (Finance Department FD 324) and has been included in the Council's MTFP, however this revenue implication may now affect the 2010/2011 financial year.

Recommendation:

- 10 That Cabinet agree that an 'Interim Agreement' for the continuing provision of a recycling collection service be established with Palm Recycling Ltd. pending the implementation of longer term formal arrangements for future recycling collection service provision.