

**SURREY COUNTY COUNCIL****CABINET****DATE: 17 DECEMBER 2024****REPORT OF CABINET MEMBER: NATALIE BRAMHALL, CABINET MEMBER FOR PROPERTY, WASTE AND INFRASTRUCTURE****LEAD OFFICER: SIMON CROWTHER INTERIM EXECUTIVE DIRECTOR OF ENVIRONMENT, PROPERTY AND GROWTH****SUBJECT: SURREY ENVIRONMENT PARTNERSHIP AND JOINT WASTE SOLUTIONS****ORGANISATION STRATEGY HIGH PERFORMING COUNCIL****PRIORITY AREA:****Purpose of the Report:**

A separate part 2 report contains information which is exempt from Access to Information Requirements by virtue of Schedule 12A Local Government Act 1972, paragraph 3, "Information relating to the financial or business affairs of any particular person (including the authority holding that information").

The Report is to recommend the withdrawal of administration and project management functions (the "WDA Partnership Functions" or "Functions") carried out by the Joint Waste Service ("JWS") and return those Functions (as set out in paragraph 4 below) previously carried out by Surrey County Council to Surrey County Council ("SCC"). The Functions and related staff were transferred to JWS under an Inter Authority Agreement in 2018 and are performed by staff in the Joint Waste Services ("JWS") team hosted by Surrey Heath Borough Council ("SHBC"). The recommendation is to bring the Functions (and related staff) back into SCC.

The Surrey Environment Partnership ("SEP") is a forum for SCC (as the Waste Disposal Authority) and the Surrey District and Boroughs (as Waste Collection Authorities) to work together. The withdrawal of the Functions from JWS will in no way affect the operation of SEP.

*This piece of work helps Surrey County Council meet its high performing council priority objective and No One Left Behind because it seeks to respond to on-going and forecasted changes in waste policy and legislation which will have a disproportionate impact on SCC's revenue budget.*

<b>Recommendations:</b>
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It is recommended that Cabinet:

1. Agrees the principle of SCC bringing back the Functions and associated funding to SCC and to delegate authority to the Executive Director for Environment, Property & Growth in consultation with the Deputy Chief Executive and Executive Director of Resources and the Director of Law and Governance to take such actions and decisions as are necessary to facilitate the manner and mechanisms through which this decision can be most suitably implemented.

<b>Reason for Recommendations:</b>
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2. Surrey County Council ('SCC') transferred several of its activities ("Functions"), to encourage better recycling, to the JWS team in 2018 through an Inter Authority Agreement. As part of the process, six full time employees of SCC staff were TUPE transferred to SHBC to undertake the Functions for JWS.
3. JWS is the partnership organisation which manages a joint waste collection contract with Amey on behalf of Surrey Heath, Elmbridge, Mole Valley and Woking Councils. Surrey Heath Borough Council ("SHBC") hosts JWS and provides line management and back-office functions (e.g. HR).
4. The Functions transferred include activities to encourage better recycling by Surrey residents: communications and website hosting; data gathering and interpretation; project administration and governance; processing of some payments; and encouragement of food waste collections.
5. The wider Surrey Environment Partnership ("SEP") forum includes all eleven District and Boroughs ('D&Bs') as the Waste Collection Authorities ("WCA") for Surrey, and the group comes together with SCC at a number of meetings over the year. These meetings are part of the Functions and will be organised by SCC going forward if this recommendation is approved.
6. The current arrangement is no longer felt suitable to meet the strategic needs of SCC in reducing its exposure to policy changes. Policy measures will have a disproportionate impact on SCC as the Waste Disposal Authority ("WDA") as set out in paragraph 10 below. To mitigate these, SCC needs to: engage with the public (communications, recycling behaviour); have access to data; and to have financial control on project expenditure.
7. SCC clearly supports the concept of partnership with the D&Bs and would like to see a closer and more effective relationship with all 11 Councils. However, SCC feels that as long as the Functions and SEP administration remains subsumed within JWS (and hosted by Surrey Heath BC) then the wider strategic needs of the SCC will not be met.

8. The recommendation to SCC members is to relocate the Functions back into SCC, noting that this could involve the transfer of affected staff under TUPE transfers and some reorganisation of the service. Officers believe this would allow JWS to focus on its needs, and for SCC to mitigate its exposure to potentially very costly waste policy changes.

<b>Executive Summary:</b>
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9. The current arrangements for JWS are governed by the Inter-Authority Agreement between Elmbridge Borough Council, Mole Valley District Council, Surrey Heath Borough Council, Woking Borough Council and Surrey County Council which relate to the discharge of waste collection functions by a joint committee for the joint contract for waste collection and street cleaning services, dated 5th June 2017, as amended by the variation agreement dated 2 August 2018. The latter variation transferred some SCC activities (referred to as “WDA partnership activities” and referred to here as the “Functions”) to JWS along with certain staff and associated funding for those posts.
10. The main driver for the change to the current arrangements is the impact of incoming government policies for waste, which are being introduced over the next few years, notably:
- a. The Environment Act 2021 will introduce a new funding stream for the collection and disposal of recyclables through Extended Producer Responsibility (‘EPR’). This new legislation will impose a levy on commercial packaging providers (such as those who use plastic containers) and the funds collected will be paid to Councils to support recycling activities. How the funds will flow between Surrey D&Bs (as Waste Collection Authorities) and SCC as the Waste Disposal Authority (‘WDA’) is unclear.
  - b. EPR may remove the obligation on SCC to make payments to the WCAs (including Recycling Credits) to support their collection costs. As these payments also partly fund the administration costs of the SEP activities and Functions provided by JWS on behalf of SCC, it is not clear whether WCAs in receipt of EPR payments will then commit to funding JWS administration costs from their own budgets.
  - c. Simpler Recycling will require WCAs to increase the materials they collect from the kerbside, i.e. plastic film, flexible plastic pouches, cartons and aerosol. This will have a knock-on effect on SCCs waste infrastructure in the county, requiring more space at Waste Transfer Stations (‘WTS’) and requiring SCC to amend dry recycling disposal contracts, potentially leading to increased costs.
  - d. The introduction of the UK Emissions Trading Scheme (‘ETS’) for waste will create new financial pressures on SCC as the WDA. ETS is

a levy imposed on waste tonnage sent to Energy Recovery Facilities ('ERF') and is potentially a new burden of £40-£50 per tonne. Given SCC currently send 200,000 tonnes of waste to ERFs, this could be a potential burden each year of up to £10m per year. Mitigation measures will require SCC to assist the public in better understanding and increasing recycling levels, and the avoidance of fossil-based waste in the residual waste stream.

11. These legislative changes are expected to dramatically alter the risk profile of SCC (as the WDA). SCC will be liable for ETS payments related to fossil-based waste but would have no control over the amount of such waste placed in the residual stream (i.e. in black bags). SCC is of the view that it would need to take a much greater communication role with Surrey residents on the impact of waste in black bags, to mitigate its exposure to ETS levies.
12. In light of the above, the second driver for the change relates to control and governance:
  - a. SCC is concerned that the governance arrangements for WDA Functions carried out by JWS are not future-proof, and the risks to SCC arising from the new government policies will be compounded by the current constitution.
  - b. SCC is also aware that the four authorities within the JWC are engaged in a dispute with Amey and are preparing to reprocure waste collection services ahead of the expiry of the Amey contract in 2027. SCC concludes that these pressures will inevitably impact the JWS staff in joint roles and may limit their capacity to focus on SCC's strategic priorities.
13. We therefore believe it will be beneficial to formally decouple the Functions from JWS and consolidate them with other responsibilities being delivered directly by SCC's in-house waste management team.
14. The third driver which is financial is described further in the Part 2 report.
15. Should SCC Cabinet approve the proposed changes, SCC funding to JWS for the WDA partnership activities would be anticipated to cease from 31 March 2025.
16. SCC intends to make the transition in a fair and transparent way, meeting its obligations and with due regard to the staff who will naturally be concerned for their future
17. Given the nature of these changes there may be Transfer of Undertakings (Protection of Employment) (TUPE) implications for some staff within JWS. This would mean that affected employees who are wholly or mainly assigned to these Functions could transfer employment to SCC under their current

terms and conditions of employment, ensuring the protection of their rights throughout the transition.

18. Staff transferring under TUPE to SCC would join the Council's waste team to help in the preparation of measures to help SCC mitigate its financial exposure under the new waste measures. Incoming staff would be asked to:
- a. Work closely with D&Bs to encourage partnership, whole system working, to maximise government funding of Surrey waste and recycling activities;
  - b. Implement communications strategies to support residents in understanding the new waste policies coming into force, encourage residents to decarbonisation residual waste (black bag waste), and increase recycling by residents at the kerbside and Community Recycling Centres (CRCs);
  - c. Manage specific projects aimed at supporting residents to minimise waste, increase recycling and avoid contamination in recycling at the kerbside;
  - d. Manage specific projects aimed at trialling initiatives for difficult to recycle materials, from both the kerbside and CRCs; and
  - e. Assist with data collection, interpretation and analysis.
19. The core opportunity is to mitigate SCC's exposure to new waste burdens such as ETS and maximise the benefits of the proposed strategic infrastructure.

### **Link to Strategic Infrastructure Waste Plan**

20. The Council, as the statutory Waste Disposal Authority ('WDA'), is responsible for the bulking, transport, treatment, and disposal of all household-collected waste by the 11 WCAs and the disposal of waste delivered to the County's 15 Community Recycling Centres ('CRCs'). It has always been in the interest of the WDA to encourage greater recycling by residents, and this was traditionally funded by recycling credits paid to WCAs.
21. Given the scale of legislative and policy changes in the public sector waste environment, SCC now believe that its statutory obligations and operational interests will be best served by the Council having greater responsibility for encouraging minimisation, decarbonisation and recycling by residents.
22. Returning the Functions to SCC, would enable greater coherence between SCCs infrastructure developments, D&Bs and our residents. A whole systems approach will allow for efficiencies to be realised, and a joined-up

approach will support in the effective implementation of our Strategic Waste Infrastructure Plan.

#### **Consultation:**

23. This proposal is to move the WDA Partnership Functions from JWS at Surrey Heath Borough Council (SHBC) back to SCC. Formal consultation will take place with affected staff in SHBC as a number of staff may be eligible for transfer to SCC under TUPE legislation.
24. Engagement on this matter has taken place at Surrey Chief Executives' and Surrey Leaders' meetings.
25. The proposal has been discussed at meetings of the Surrey Environment Partnership both the Officers group and, separately, the Members group.

#### **Risk Management and Implications:**

26. Risks are set out in Part 2

#### **Financial and Value for Money Implications:**

27. The decision is not driven by financial efficiencies, although an opportunity to review expenditure for delivery of the Functions may drive future changes.
28. SCC's direct contributions to SEP & JWS and the funding provided to JWS via the top slicing of SCC recycling support payments to D&Bs would be withdrawn, with a proportion of this needing to be retained within the waste budget to deliver the functions which would be returned to SCC.

#### **Section 151 Officer Commentary:**

29. The Council continues to operate in a very challenging financial environment. Local authorities across the country are experiencing significant budgetary pressures. Surrey County Council has made significant progress in recent years to improve the Council's financial resilience and whilst this has built a stronger financial base from which to deliver our services, the cost-of-service delivery, increasing demand, financial uncertainty and government policy changes mean we continue to face challenges to our financial position. This requires an increased focus on financial management to protect service delivery, a continuation of the need to deliver financial efficiencies and reduce spending to achieve a balanced budget position each year.
30. In addition to these immediate challenges, the medium-term financial outlook beyond 2024/25 remains uncertain. With no clarity on central government

funding in the medium term, our working assumption is that financial resources will continue to be constrained, as they have been for most of the past decade. This places an onus on the Council to continue to consider issues of financial sustainability as a priority, in order to ensure the stable provision of services in the medium term.

31. The proposed approach provides a means for the Council to respond to waste policy changes including mitigating its exposure to future ETS charges. As such the recommendations, subject to the definition and quantification of the costs associated with returning these services and functions to SCC including any TUPE implication and being affordable with the Council's Medium Term Financial Strategy, will deliver the outlined MTFs efficiency. Further financial implications are set out in Part 2 to this report.

#### **Legal Implications – Monitoring Officer:**

32. SCC entered into a pre-existing Inter-Authority Agreement dated 5 June 2017 by way of a variation agreement dated 5 August 2018 ("IAA") which set out arrangements between SCC and four D&Bs to facilitate the Functions jointly. SCC will need to consider the most effective means by which to bring matters to an acceptable conclusion under the IAA.

#### **Equalities and Diversity:**

33. An Equality Impact Assessment (EIA) is not required for this decision. The impact of the decision will be to transfer affected staff from Surrey Heath Borough Council to Surrey County Council. The obligations under the Equality Act (2010) apply to both organisations equally.

#### **Other Implications:**

34. The potential implications for the following council priorities and policy areas have been considered. Where the impact is potentially significant a summary of the issues is set out in detail below.

<b>Area assessed:</b>	<b>Direct Implications:</b>
Corporate Parenting/Looked After Children	None
Safeguarding responsibilities for vulnerable children and adults	None
Environmental sustainability	n/a
Compliance against net-zero emissions target and future climate compatibility/resilience	n/a
Public Health	None

### **What Happens Next:**

35. In accordance with the proposed delegated authority SCC would seek a mechanism to withdraw from the IAA by 31 March 2025. SCC is permitted to make this step under the terms of the Inter-Authority Agreement. For SCC, this would mean resuming responsibility for the 'Functions.

36. SCC would work with SHBC and other parties to ensure the smooth transition of affected staff and services having due regard for obligations under relevant legislation (e.g. TUPE) and for working in partnership with the eleven D&Bs in Surrey.

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### **Consulted:**

- SHBC Employee informal consultation taking place.

### **Annexes:**

None

### **Sources/background papers:**

Cabinet Paper December 2016: Developing a single waste approach

Cabinet Paper November 2017: Changes to payments to district and borough councils for the recycled waste they collect

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