

# A Draft Memorandum of Understanding to Underpin the Statutory, Strategic and Operational Relationship between West Sussex Waste Authorities.

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## 1. Definitions

For the purposes of this document the following definitions will apply:

JMRMS meaning the Joint Materials Resource Management Strategy

MoU meaning this revised Memorandum of Understanding.

MRMC meaning the Materials Resource Management Contract.

RWHC meaning the Recycling and Waste Handling Contract.

WCA Waste Collection Authority meaning the District or Borough Council carrying out the statutory duty of waste collection.

WDA Waste Disposal Authority meaning the West Sussex County Council carrying out the statutory duty of waste disposal.

## 2. Preamble

- 2.1. In 1998 the WDA in partnership with the WCAs, made a strategic decision to procure two contracts for the handling, treatment and disposal of waste. The first, known as the RWHC deals with the provision of waste infrastructure in the county and includes all Waste Transfer Stations, Household Waste Recycling Sites and the provision of a Materials Recycling Facility. The second, known as the Materials Resource Management Contract, expected to come into operation in Autumn 2015 provides facilities for the treatment and disposal of the waste not handled under the RWHC. This treatment being in the form of further extraction of resource in the form of recyclate, composting, heat and electricity via either biological or thermal treatment processes.
- 2.2. The West Sussex WDA and WCAs have a long history of successful partnership working which is crucial to moving the waste agenda forward. The procurement and commissioning of new waste infrastructure in the county has led to a significant increase in the tonnage of wastes being recycled and also diverted from disposal by

other means. The progression of the infrastructure and associated management contracts also created the need for two separate but co-dependent Memoranda of Understanding between the County and the constituent boroughs and districts and this revised document seeks to combine these documents into this one inclusive document.

- 2.3. The Partners to this MoU recognise that they are part of the rapid change process in waste management which will become much more expensive and tightly regulated whilst being more professional and specialised and achieving higher environmental standards and that they will work together in the spirit of gaining greater efficiencies and 'Best Value' for the community and council tax payers of West Sussex.
- 2.4. The key issues recognised by the Partners in relation to this MOU include:
  - The recognition that greater emphasis needs to be placed on waste education, minimisation and reduction.
  - The need to comply with existing and new legislation and achieving the current and future statutory and strategic performance targets for recycling, recovery and diversion of wastes from landfill.
  - Funding the significantly increased costs involved in moving to recycling and recovery based strategies against the backdrop of on-going austerity.
  - The logistics involved in implementing the necessary collection and processing infrastructures (e.g. securing sites and planning consents).
  - Ensuring the availability of markets for recyclables and other products in the face of increasing competition nationally and globally.
  - Gaining and maintaining the public participation that is vital for the success of new recycling and composting and recovery based strategies.
- 2.5. Such partnership working can potentially enhance both WCA and WDA activities and result in new solutions to issues, economies of scale and increased efficiency.
- 2.6. The ongoing development of the waste contracts offer potential benefits in adding value to WCA and WDA activities and a means to advance both WCA and WDA objectives in line with Best Value principles through the common understanding and agreement of what is needed to deliver the requirements of the Joint Materials Resource Management Strategy (JMRMS).

### 3. Purpose and Status

This MoU is between the WCAs (both jointly and severally) and the WDA. It shall be considered as the pivotal working arrangement between the WCAs and the WDA in the development and delivery of the Countywide JMRMS.

3.1. The purpose of this MoU is to clarify the aims, objectives and commitments of the WCAs and WDA to ensure that the respective activities provide Best Value in discharging their relevant responsibilities under the Environmental Protection Act 1990 (EPA) and all other relevant and associated legislation.

3.2. The parties acknowledge that: -

- This MoU is intended as an operational document and not a formal contract and that they will use all authorised efforts to comply with its terms. No signatories shall be obliged to undertake expenditure or activities that they would not have otherwise undertaken in compliance with their duties as a WCA or WDA without this being agreed between the parties.
- Notwithstanding this MoU, the WCAs and WDA will each retain their respective statutory powers, responsibilities and duties.
- This revised and combined MoU document shall replace the existing 'MoU Schedule' in the MRM and RWH contract documents which may trigger the 'change of service' mechanism in each contract depending on the changes in this document and its associated Schedules and Appendices.

3.3. There are a number of Schedules (and appendices relating to specific Schedules) attached to this MoU, which will require agreement with the MRM and RWH Contractors. It is possible that these schedules will require ongoing revision (as the services dictate) post agreement of this MoU but can be revised independently as required.

3.4. These schedules are drawn from the previous two independent MoU's, revised and expanded upon to fully demonstrate the growth of the specific work areas resulting from the requirements of the MoU and the current management, recording and reporting mechanisms in place in each case.

3.5. Current schedules include;

Schedule 1 – RWHC operation and processes.

Schedule 2 – MRMC operation and processes.

Schedule 3 – Service Planning Requirements.

Schedule 4 – Waste communication, education and minimisation activities.

Schedule 5 – Other waste contracts relating to the partnership.

Schedule 6 – Financial information and processes.  
Schedule 7 – Governance.

#### 4. Guiding Principles

4.1. The WCAs and WDA acknowledge the following:

- The MoU will form the basis for mutual support and co-operation between the Partners for managing the MRMC and the RWHC, which, with other joint working will deliver the JMRMS.
- In determining the viability of, and continuation or otherwise of, any activity or process regard should be given to all implications and amongst other things, the effect of the decision upon the council tax payers of West Sussex as a whole and the impact upon the desire for an integrated waste management approach in delivering the JMRMS. (The purpose of this approach is to ensure that all aspects of the service provision are costed and taken into account when changes in services are being considered)
- Matters requiring decisions where the principles above apply may be referred, by any member of the Inter Authority Strategic Waste Officers Group (SWOG) to the Group and any associated groups for consideration and/or determination.
- When determining matters, regard should be had to the principles of sustainability from both the environmental, political, social and economic perspectives, and the fact that all parties are constrained by finite resources.

4.2. This MoU is a non binding statement of the understanding between the WDA and the WCAs.

4.3. Although not a binding contract, this MoU is intended to provide a measure of reassurance and comfort, not only between the parties, but also between the WDA and its MRM and RWH Contractors.

4.4. This MoU provides a protocol for how the WDA and WCAs will work and communicate with each other to co-ordinate their activities in respect of waste management functions and responsibilities in West Sussex to successfully underpin the operational arrangements with the MRM and RWH Contractors. This is supported by the Communications Matrix and information detailed in Schedule 4.

#### 5. Responsibilities of the Parties

West Sussex County Council shall;

- Carry out its statutory responsibilities, duties and function as defined in S51 of the Environmental Protection Act 1990 and associated legislation.
- Consult with the WCAs on any proposed changes to reception and processing arrangements for wastes and recycling.
- Arrange for the reception of commercial and industrial waste collected by the WCAs or their contractors, subject to the WCAs obtaining the written approval of the WDA prior to entering into arrangements for the collection of commercial and industrial wastes.
- Involve representatives of the relevant WCAs in matters relating to contract management, where such matters relate to the functions and activities of a WCA.
- Make payments to the WCAs for residual waste diversion (as set out in Schedule 6, section x) and a net income payment to WCAs for collected recyclables (as set out in Schedule 6, section x) using approved payment mechanisms.
- Endeavour to give the WCA's 12 months' notice in writing of its intention or any proposal to introduce, change or discontinue any aspect of its current statutory and non-statutory service offering (as detailed in Schedules 1 and 2).
- Work with the WCAs on joint wastes promotion and education exercises subject to the availability of finance on joint promotional activities to raise awareness of integrated waste management in West Sussex (as detailed in Schedule 4).
- Adhere to the agreed MoU Governance arrangements detailed in Schedule 7.

The Boroughs and Districts shall either individually or collectively;

- Carry out its statutory responsibilities, duties and function as defined in S48 of the Environmental Protection Act 1990 (*"Duties of waste collection authorities as respects disposal of waste collected"*) and associated legislation.
- In general deliver all collected wastes and agreed recyclables to reception and processing facilities agreed between the WCAs and the WDA (as detailed in Schedules 1 and 2).
- Consult with the WDA concerning any proposed changes to the collection of wastes or recyclables (as detailed in Schedules 1, 2 and 3).

- Endeavour to give the WDA 12 months' notice in writing of its intention or any proposal to introduce, change or discontinue any aspect of its current statutory and non-statutory service offering (as detailed in Schedules 1 and 2 and 3).
- Collect wastes and recyclables in accordance with the SRPs and shall deliver them to the facility as agreed between the WCAs and the WDA (as detailed in Schedule 1, 2 and 3).
- Ensure that collected wastes and recyclables comply with the input specifications of the respective contracts (as detailed in Schedules 1 and 2).
- Notify the WDA annually as part of the SRP, the tonnage and types of materials expected to qualify for recycling support payments (as detailed in Schedules 3 and 6).
- Prepare a draft five-year Service Requirement Plan (SRP) setting out projected waste arisings, projected recycling tonnages and composting tonnages (as detailed in Schedule 3).
- Update its SRP annually by rolling it forward by one year (as detailed in Schedule 3).
- Work with the WDA on joint wastes promotion and education exercises subject to the availability of finance on joint promotional activities to raise awareness of integrated waste management in West Sussex (as detailed in Schedule 4).
- Adhere to the agreed MoU Governance arrangements detailed in Schedule 7.

## **6. Duration**

- 6.1. The term of the MoU needs to reflect the duration of any associated contractual or strategic arrangements (known to be 25 - 30 years) unless the MoU is terminated or amended by the mutual agreement of all parties and signatories. If the authorities represented in this MoU are subject of any authority reorganisations or statutory change in governance, the commitment shall transfer to any new authority.

## **7. Review Periods**

- 7.1. This MOU, its separate Schedules and all appendices relating to those Schedules shall be reviewed on an annual basis as a minimum.
- 7.2. Each annual review shall be directed by and reported to the SWOG for recording and adoption.

- 7.3. Any change to the MoU, its Schedules and Appendices shall be mutually agreed by all parties prior to its adoption.

## Schedule 1 – Recycling and Waste Handling Contract (Viridor)

### 6. Waste Deliveries

The WDA has a statutory duty to provide sites for the receipt of residual wastes collected by the WCAs. An important concept underlying the MoU is that this be extended to cover recyclable wastes. This arrangement provides a clear focus in operational terms; the WCAs being responsible for collection and the WDA arranging processing and marketing via long term contractual arrangements.

The WCAs shall in general deliver all collected wastes and agreed recyclables to reception / processing facilities agreed between the WCAs and the WDA. Exceptions shall be agreed between the parties and may comprise:

- Any specific materials retained by the WCA (either through their own services or through private contractors) for recycling;
- Any specific materials collected by voluntary, charitable and school groups as part of schemes supported by WCAs or WDA; and
- Home composted material (including material composted as a result of home composting initiatives initiated and or supported by the WCAs or WDA).

Changes to the types and quantities of waste to be excluded under the above provisions shall be implemented via the Service Requirement Planning arrangements.

The WCAs shall consult with the WDA concerning any proposed changes to the collection of wastes or recyclables (e.g. new collection contracts) that could have an impact on this MoU. Similarly, the WDA will consult with the WCAs on any proposed changes to reception and processing arrangements for wastes and recycling.

### 7. Reception of Commercial, Industrial, Clinical Waste and Special / Hazardous Waste for Disposal.

The WDA shall arrange for the reception of commercial and industrial waste collected by the WCAs or their contractors, subject to the WCAs obtaining the written approval of the WDA prior to entering into arrangements for the collection of industrial waste (as required under the EPA).

Under this section, waste generated by the County, District and Borough councils shall be classified as commercial waste.

Commercial and, where agreed in writing, industrial waste collected by the WCAs or their contractors shall be accepted at facilities nominated by the WDA.

The WCAs shall be charged for the disposal costs incurred by the WDA.

The rate for general commercial and industrial waste will be set at the level of the countywide average recycling credit, as defined in section 14.

The WCAs shall give the WDA 12 months notice in writing of its intention or any proposal to discontinue commercial and industrial waste collections (i.e. not individual collections, but the whole service) including privatisation or disposal of these services.

Operational arrangements for the reception of all clinical waste, including routes, will be agreed between the WDA and WCAs. The WDA will meet the full cost of the disposal of clinical waste. Where WCAs refuse collection contractor provide the clinical waste collection service, disposal costs should be charged direct to the WDA by the disposal operator. Where a specialist clinical waste collection contractor is used, the WCA will invoice the WDA for the disposal element of the charge.

Similar arrangements would also apply to the reception of other non-household waste following within the scope of the DBFO Contract.

#### 8. Invoicing Procedure For Commercial and Industrial Waste

The WDA shall issue the WCAs with a monthly VAT invoice for one twelfth of the agreed annual charge based on estimated tonnages supplied by the WCAs via the SRP prior to the start of the financial year. The estimate will be compared to the actual tonnages following the end of the financial year and financial adjustments made as necessary. The actual figures should be fully supported by detailed data and may be audited by the WDA.

#### 9. Contract Management

The WDA shall involve representatives of the relevant WCAs in matters relating to contract management, where such matters relate to the functions and activities of a WCA, including the matters subject to this MoU. Contract management shall be a standing agenda item at SWOG meetings, any meetings of sub groups of the SWOG and implemented as set down in Section x.x.x.

#### 10. Wastes Management Facilities



The WDA shall procure via contractual arrangements the provision of a network of Waste Management facilities as in the MoU.

In the unlikely event that a facility is not provided (e.g. through failure to secure a suitable site or the necessary consents but excluding force majeure) by the contractor or that a facility is not available (e.g. through breakdown or planned maintenance) for the reception of delivery vehicles, the WDA shall reimburse the WCAs' actual additional reasonable and justified costs and / or losses directly attributable to waste haulage in using an alternative facility in accordance with the contingency plan as required under the DBFO contract. Reimbursement of costs shall not apply where alternative facilities are provided within the area of a WCA or within an agreed distance of the boundary of the WCA

Reimbursement of additional costs shall be based upon rates agreed (subject to inflationary increases and changes as a result of new collection arrangements) between the WDA and WCAs prior to the commencement of the DBFO contract.

#### 11. Opening Hours

The WDA shall require that waste management facilities provided through the DBFO contract shall be available as a minimum during the currently available opening times as set down in Appendix x (subject to planning and licence restrictions) for the receipt of authorised waste delivered by the WCA.

The WDA shall also require through its contracts (subject to planning and licence restrictions) that the facilities are available to the WCA for the reception of waste during additional hours at weekends and Bank Holidays (which reflect the historic custom and practice for the WCA) as set out in Appendix x.

Facilities may be made available during further additional hours (subject to planning and licence restrictions) subject to notice provisions and the WCA and WDA equally sharing costs, based on prices submitted by the DBFO contractor.

#### 12. Collection of Recyclables

The WCA shall collect recyclables in accordance with the SRP and shall deliver them to the facility as agreed between the WCAs and the WDA. Any changes in collection system(s) practice, or quantities or types of materials in so far as they affect the input specification referred to in Para 13 shall be agreed with the WDA via the WMLF. The WCA shall meet costs associated with any agreed changes the collection and delivery of materials to the agreed facilities.

The WDA may, after consultation and subsequent agreement with the WCAs, request that the collection of particular recyclables be

terminated/suspended where there is no market for those materials and the situation is unlikely to change for the foreseeable future. In such circumstances, the WCA(s) shall have the option of providing financial support (where available), to allow collections to continue.

In the event that the collection or processing of recyclables becomes unaffordable as a result of external influences beyond the control of the WCA and WDA, the WCA may, after consultation with the WDA via the WMLF, arrange for separate collection to be suspended. In such circumstances the WDA shall have the option of providing financial support (based on a rate per tonne) to allow collections to continue.

### 13. Specifications for Collected Recyclables

The parties recognise that the ability of processing contractors to meet their contractual obligations and produce materials and products of marketable quality can be very dependent on delivered materials meeting minimum quality standards.

Simple specifications for each collected type of shall be agreed between the WDA, DBFO contractor and the WCAs, and specifications are given in Appendix 4 to this MoU. The input specifications shall have regard to practice, costs and experience gained since household collections were introduced in West Sussex and the requirements of the reprocessing markets.

The WCA shall use reasonable endeavours to ensure that collected recyclables comply with the specifications. In circumstances where loads fail to meet the input specification, the WCA shall use reasonable endeavours to ensure that corrective action is taken. If, for any reason, loads repeatedly fail to meet the specification, the WCA and WDA can agree to request that such loads are processed, subject to the WCA agreeing to meet any reasonable additional processing costs involved, at rates submitted by the DBFO contractor. Where this is impracticable, the WCA shall meet any additional costs involved in disposing of the material.

The WCAs shall incorporate the need to comply with the input specifications in any future conditions associated with their collection contracts.

The DBFO contractor shall use all reasonable endeavours to immediately contact the WCA to ensure the WCA is given the opportunity to inspect any rejected loads within an agreed period of time, and to notify the WDA of the event.

### 14. Recycling Credits

Recycling credits will be payable by the WDA to the WCAs for materials retained by the WCAs for recycling, eg through their own glass banks and which is collected by a WCA approved agent, or collected by the

WCA and brought to processing or storage facilities provided through the DBFO. Payments will continue for so long as there is a statutory responsibility on the WDA to pay recycling credits to WCAs. Recycling credits will not apply to waste collected by the DBFO contractor at civic amenity sites.

Recycling credits payable by the WDA to WCAs will be calculated by reference to the countywide average cost, based on the most expensive normal disposal route for each of the seven WCAs.

The aim is to ensure that no WCA receives less in total than prior to the commencement of the DBFO contract or would receive in future without the award of PFI. Where the most expensive normal disposal route for a WCA produces more than would be available under the countywide average calculation, the WCA will have their recycling credits protected by a minimum payment or 'floor'.

The floor will be based on the cash value of recycling credits and any payments for recycled materials in the year prior to the letting of the DBFO contract. This will be increased by estimates agreed with each WCA of the increases in recycling that might have been achieved without the investment included in the PFI. The agreed floors will be increased annually by the RPI increase for September of that year.

The floors will apply until the value of recycling credits under the countywide average, multiplied by actual volumes, exceed the agreed floors. Floors are shown in Appendix 5. Recycling credits will be paid at the countywide average from 1 October 2003. The floor for the period 1 October 2003 to 31 March 2004 will be half of the 2003 04 full year figure shown in Appendix x.

#### 15. Processing, storage and Marketing of Collected Recyclables

The WDA shall, through contractual arrangements, arrange for the processing of collected recyclables, including dry recyclables and green garden waste as set out in the agreed SRP (subject to section 8). It should be noted that biowaste is currently excluded from the DBFO contract.

The WDA shall agree a protocol (Appendix 5) between the DBFO Contractor and jointly with the WCAs for the marketing of recyclables. The protocol includes actions to be followed when no markets are available for recyclables. In assessing the adequacy of proposed arrangements, the aim shall be to seek a balance between maximising waste recovery / recycling, income/cost and the ability to meet market specifications and achieving security and stability of markets

In the event that the processing of collected recyclables becomes unaffordable as a result of external influences beyond the control of the WCAs or WDA (e.g. there being no markets or high costs being incurred in securing outlets for collected recyclables) the WDA may, after

consultation with the WCAs concerning the lack of markets, arrange for processing to be suspended and the materials sent for disposal. Such arrangements shall be agreed by the Contract Liaison Panel.

The WDA shall make available to the WCAs facilities for the reception and storage of collected recyclables, either to be handled through materials recovery or composting facilities provided under the DBFO contract, or to be sent direct to reprocessors / end markets. The sites and materials handled shall be set out in the relevant schedule of the contract.

A WCA shall be able to compensate the DBFO contractor or the WDA where it has decided to make alternative collection arrangements to those stated on the SRP. This would only apply to the under utilisation of infrastructure as a result of the WCA's decision. The WCA may make other alternatives marketing arrangements if agreed under the Marketing Protocol. A WCA may, at its discretion, make other arrangements that are not included in the SRP and bear all the consequential costs of those arrangements.

The marketing and sale of collected recyclables is a key issue given that the major investment in collection and processing systems would be negated if secure markets are not available for the recovered materials. This is likely to become an increasing issue over time with the pressure on local authorities nationally to increase recycling against a background of finite markets. In such circumstances those organisations able to guarantee high quality standards and offer significant volumes of materials are likely to benefit, as are those able to access wider marketing networks, for example in relation to exports. The private sector is likely to be best placed to secure the best arrangements in such circumstances.

The full WDA share of income from sales of recycled materials, after deduction of contractors fees, will be payable to WCAs. Details are shown in 16 below. These arrangements will be covered under the terms of a separate legally binding agreement between the WDA, WCAs and the DBFO contractor.

#### 16. Summary of payments by the WDA to WCAs

WCAs will receive payment of recycling credits (as set out in section x) and a net payment for collected recyclables (as set out in section x) based on the following formula:

$$P = RC +/- MP$$

Where

P = total payment by WDA to WCA  
(P will not be less than the agreed payment floor)

RC= recycling credits

MP = materials payment (or charge where negative)

$$MP = (I - CF)$$

Where  $I$  = WDA share of income from sale of collected recyclables

$CF$  = fees paid by WDA to contractor

$$I = \% (S)$$

Where  $S$  = sales income from marketed materials

$\%$  = 90% for material processed through bulking facilities

$\%$  = 50% for material processed through MRFs and composting facilities

I will not fall below £22.50 for dry recyclables processed through bulking facilities, or a price as amended by the terms of the contract.

I will not fall below £12.50 for dry recyclables processed through MRFs or composting facilities, or a price as amended by the terms of the contract.

WCAs will notify the WDA annually as part of the SRP, the tonnage and types of materials expected to qualify for recycling credits. The WDA will pay recycling credits monthly, based on data provided by the DBFO contractor for materials recycled under the terms of the contract.

Payments for collected recyclables will be made by the WDA to the WCAs monthly, based on actual tonnages recycled. If as a result of market conditions the associated costs exceed the sales income, the WDA will deduct the charge from the recycling credit payment.

WCAs will invoice the WDA monthly for recycling credits for any recyclables sold for processing that were collected through any of the WCA's own contractual arrangements outside of the DBFO. The figures should be fully supported by detailed data and may be audited by the WDA.

#### 19. Waste transfer, Bulking and Household Waste Recycling Sites (HWRS)

The WDA will provide a network of Waste Transfer and Bulking Facilities and Household Waste Recycling Sites across the area of the WDA in accordance with Section 51 (2) of the Environmental Protection Act 1990. These facilities are primarily for the receipt of household waste not collected by the refuse collection service (i.e. bulky items and garden waste).

The WDA will seek as far as practicable to achieve integration of the HWRS service with special household collections provided by the WCA. In particular, the WDA will maximise opportunities for the processing of special household collections via the HWRS service in order to maximise the recycling of such wastes.

## Schedule 2 - Materials Resource Management Contract (Biffa)

### 8. Waste Deliveries

- 8.1. The WDA has a statutory duty to provide sites for the receipt of wastes collected by the WCAs. Where the WDA directs any WCA that any waste shall be delivered and deposited at a location outside the WCA area, then the WDA shall reimburse the actual additional reasonable and justified costs and or losses directly attributable to waste haulage in using an alternative facility identified by any individual WCA. Any payments will be calculated in line with the agreed Tipping Away Protocol developed as part of the RWHC MoU.
- 8.2. The WCAs shall in general deliver all collected wastes to reception / processing facilities agreed between the WCAs and the WDA.
- 8.3. The WCAs shall consult with the WDA concerning any proposed changes to the collection of wastes that could have an impact on this MoU. Similarly, the WDA will consult with the WCAs on any proposed changes to reception and processing arrangements for wastes.
- 8.4. In the event that the WDA or WCAs (subject to a business case that will include input specifications for materials) requires the MRM Contractor to make available bulking facilities for either recyclables or green waste (not both) the WDA will require the MRM Contractor to do so.
- 8.5. Any deliveries of waste to the MRMC facility shall meet the specifications as per Appendix x.

### 9. Reception of Commercial, Industrial, Clinical, and Special / Hazardous Waste for Disposal.

- 9.1. Subject to an acceptable business case (which shall include issues relating to contract change and the ability to obtain regulatory consents) the WDA shall arrange for the reception of commercial and industrial waste collected by the WCAs or their contractors, subject to the WCAs obtaining the written approval of the WDA prior to entering into arrangements for the collection of industrial waste (as required under the EPA).
- 9.2. Under this section, waste generated by the WDA and WCAs from their own land, premises or administrative operations shall be classified as commercial waste.
- 9.3. Commercial and, where agreed in writing, industrial waste collected by the WCAs or their contractors shall be accepted at facilities nominated by the WDA. The WCAs shall be charged for the disposal costs incurred by the WDA.

- 9.4. The WCAs shall give the WDA 12 months notice in writing of its intention or any proposal to discontinue commercial and industrial waste collections (i.e. not individual collections, but the whole service) including privatisation or disposal of these services.
- 9.5. The WCAs and WDA will jointly manage the clinical waste collection and disposal service in accordance with any contract let by the WDA.
- 9.6. Invoicing arrangements for these materials will be in line with those arrangements in place under the RWHC.

## **10. Contract Management**

- 10.1. The WDA shall involve representatives of the relevant WCAs in matters relating to contract management, specifically where such matters relate to the functions and activities of a WCA, including the matters subject to this MoU but shall also seek views and comments in relation to the contract as a whole. Contract management shall be a standing agenda item at the SWOG meetings, any meetings of associated groups of the SWOG and implemented as set down in Section x.x.
- 10.2. As part of the ongoing co-operation and participation of the WCAs in the operation of the waste management services under the MRM and RWH Contracts, the Strategic Waste Officers Group will, from time to time, nominate members of the WCAs to sit on the MRM Liaison Panel which is to be established under the terms of the MRM Contract. The role of the MRM Liaison Panel will be to provide a forum for joint strategic discussion between the Authority, the WCAs and the Contractor, in respect of the contract operations. It will review and propose changes to the service specification and method of operation of the MRM Contract, to take account of changing market conditions and practices, where appropriate, and provide a means of dispute resolution, if required.

## **11. Wastes Management Facilities**

- 11.1. The WDA shall procure via contractual arrangements the provision of Waste Management facilities to be detailed in this MoU.
- 11.2. In the unlikely event that a facility is not provided (e.g. through failure to secure a suitable site or the necessary consents but excluding force majeure) by the Contractor or that a facility is not available (e.g. through breakdown or planned maintenance) for the reception of delivery vehicles, the WDA shall reimburse the actual additional reasonable and justified costs and / or losses directly attributable to waste haulage in using an alternative facility in accordance with the contingency plan as required under the MRM Contract. Reimbursement of costs shall not apply where alternative facilities are provided within the area of a WCA or within an agreed distance of the boundary of the

WCA. Any payment made will be in line with the Tipping Away Protocol developed as part of the RWHC MoU.

11.3. Reimbursement of additional costs shall be based upon rates agreed (subject to inflationary increases and changes as a result of new collection arrangements) between the WDA and WCAs.

**12. Opening Hours [Subject to Planning Permission]**

12.1. In normal operation, the only Partners to deliver directly to the MRMC facility will be Crawley Borough and Horsham District Councils. The WDA shall require that waste management facilities provided through the MRM Contract at Brookhurst Wood Landfill shall be available as a minimum during the currently available opening times as shown below :-

Opening Times		
	1 April – 30 Sept	1 Oct – 31 March
Mon to Fri	9am – 5pm	9am – 5pm
Saturday	8:30am – 11am	8:30am – 11am
Bank Holiday	Closed	Closed

or as required for the operational requirements of the local authorities (subject to planning and licence restrictions) for the receipt of authorised waste delivered by the WCA.

12.2. The WDA shall also require through the MRMC (subject to planning and licence restrictions) that the facilities are available to the WCA for the reception of waste during additional hours at weekends and Bank Holidays (which reflect the historic custom and practice for the WCA).

12.3. Facilities may be made available during further additional hours (subject to planning and licence restrictions) subject to notice provisions and the WCA and WDA equally sharing costs, based on prices submitted by the MRM Contractor.

**13. Recovered Resources**

13.1. Recovered resources arise where WCAs collect or carry out preliminary processing at their own cost, and those that the MRM Contractor recovers from the residual waste via the use of processing at a cost to the WDA.

13.2. Where the WCA delivers residual waste, and resource is recovered via the MRM Contract processes, no revenue return will be made to the



WCAs, unless there is agreement in future that WCAs process waste in some way (for example to enhance the materials presented to MRM contractor (such as to improve the cleanliness of green waste or improve calorific value) and where this creates a net market value over and above untreated residual materials then WCAs should share in benefit. Such agreement shall be subject to an acceptable business case.

13.3. It is noted that the WCAs have agreed that no separate kerbside collection of bio waste will be undertaken under the current arrangements as it would require a Contract Change. Future arrangements do not rule out changes to operations and material streams. However, such changes would require modifications to the proposed technologies and Change Procedures and therefore be subject to an acceptable business case.

13.4. Any business case shall include whether payments should be made by or to the WDA, and if so the formula to be used. It is recognised that any agreement may impact on recycling credits and recycling floors which will need to be reviewed as part of any such agreement.

#### **14. Recycling Credits**

14.1. Recycling Credits will not be paid to WCAs under the MRMC arrangements.

#### **15. Processing, Storage and Marketing of Recovered Resources**

15.1. The WDA shall, through the MRM Contractual arrangements, arrange for the processing and or treatment of waste to recover resource such as heat, power, and residual recyclables.

15.2. In line with the spirit of Partnership arrangements, The WDA shall agree a protocol (Appendix 6) between the MRM Contractor and jointly with the WCAs for the marketing of recovered resources.

15.3. In the event that the processing of recovered resources becomes unaffordable as a result of external influences beyond the control of the Partners (e.g. there being no markets or high costs being incurred in securing outlets for recovered resources) the WDA may, after consultation with the WCAs concerning the lack of markets, arrange for recovery to be suspended. The Contract Liaison Panel shall agree such arrangements.

#### **16. Promotional Activities**

16.1. The WDA and the WCAs shall work together on joint wastes promotion and education exercises subject to the availability of finance on joint promotional activities to raise awareness of integrated waste management in West Sussex as detailed in Schedule 4.

16.2. It is noted that the WDA intends to utilise the services of Better Tomorrows to deliver key waste educations and awareness messages and promotional activity in relation to MRMC and RWHC.

List of Appendices relating to Schedule 2

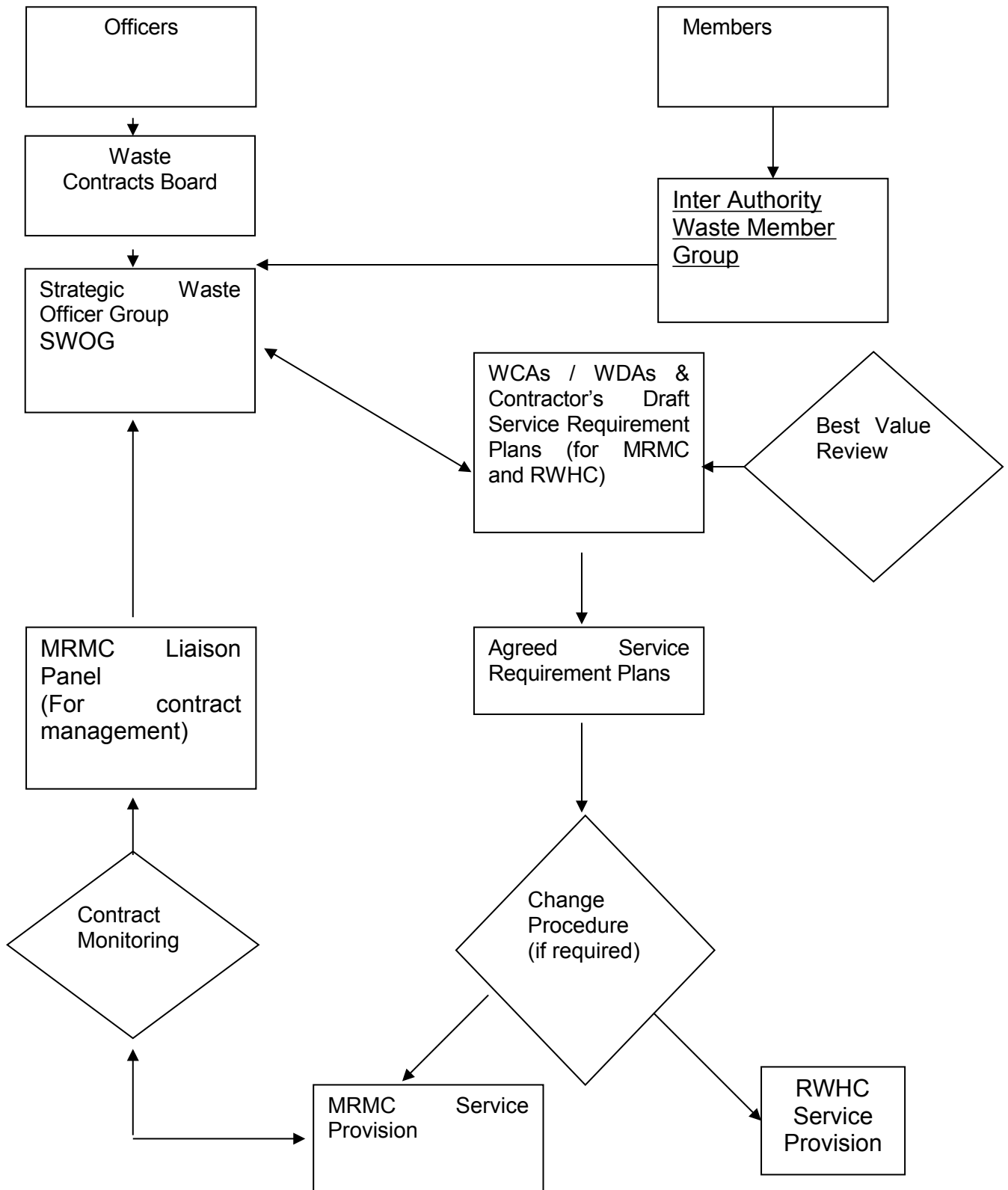
Appendix 1	Communications Diagram	
Appendix 2	Service Requirement Mechanism	Planning
Appendix 3	Removed	
Appendix 4	Input specification for delivered to MRMC facilities	wastes
Appendix 5	Marketing protocol	

## Glossary

HWRC	Household Waste Recycling Centre Provided by the WDA
MRMC	the Materials Resource Management Contract
EPA	Environmental Protection Act 1990
MoU	Memorandum of Understanding
MRF	Material Recovery Facilities
JMRMS	Joint Materials Resource Management Strategy (for West Sussex)
PFI	Private Finance Initiative
RC	Recycling Credits – as defined by Section 52 of the EPA: Where a person other than a WCA for the purpose of recycling and composting it, collects wastes arising in the area of a WDA which would fail to be collected under Section 45, the WDA may make to that person payments in respect of the wastes they collected of such amounts representing its net saving of expenditure on the disposal of the waste as the Authority determines.
RWHC	the Recycling Waste Handling Contract
SRP	Service Requirement Plan
WCA	Waste Collection Authority - The Districts and Borough Councils of West Sussex carrying out their duties in pursuance of Section 48 of the EPA.
WDA	Waste Disposal Authority – The West Sussex County Council carrying out its duties in pursuance of Section 51 of the EPA.
SWOG	Strategic Waste Officers Group

# Appendix 1

## MRMC – COMMUNICATIONS DIAGRAM



## Appendix 2

### Service Requirement Planning Mechanism

Proposed sequence of planning and providing the information required for service and delivery planning

Each Partner will produce an auditable annual service plan which can be agreed by the signatories as an accurate estimate of waste arisings (for the avoidance of duplication, the annual service plan will combine the requirements for both the MRMC and RWHC).

Each plan developed by the parties will be for a period of 5 years in accordance with Section **Error! Reference source not found.** of this MoU (and Section x of the RWHC Mou). The service plan mechanism for updating these figures is set down below and will be done annually to ensure that the figures given to the MRM Contractor are accurate.

In agreeing final SRPs, each authority shall, amongst other things, take into account the variation between projected and previous tonnages, physical capacities and constraints (e.g. opening hours) on processing facilities, costs associated with processing additional quantities/materials and the lead in time associated with providing/modifying the necessary facilities. In considering the overall impact of any WCA aspirations as set out in its SRP, account should be taken of the cumulative impact of the SRPs of other WCAs considered both on a local and countywide basis. The WCA and the WDA shall have regard to the advice of the SWOG in resolving any conflicts between WCA SRPs, including the utilisation of available processing capacities.

Month/period	Actions
June	WCAs submit outline wish lists / proposals to WDA. WDA to discuss proposals with WCAs and MRM Contractor and "Change Procedure" instigated by WDA.
August	Proposals to be implemented in order of agreed priority by SWOG which will confirm schemes to be priced by the MRM Contractor.
September	Schemes priced (where relevant) by the MRM Contractor and programme of works and costs submitted to WDA.
October	Schemes discussed with WCAs at SWOG together with cost and programme details of schemes in principle. Decision made on which schemes to implement.
November/ December	Funding proposals approved by Local Authorities (where applicable) and budgets agreed.

January/  
February WDA implements programme of change, via change procedure.

April Commencement of the new programme and changes for the new financial year.

Note: (1) schemes may span more than one financial year to implement

(2) some schemes may be minor and could (if agreed by the Contractor) be implemented via Contract review meetings

(3) some major schemes may require urgent implementation that can be actioned without the need to comply with the SRP if it has the agreement of the SWOG

## Appendix 4

Detail - This specification will relate to the type and composition of waste delivered but not the volume of waste.

The Input Specification will be reviewed annually and amended from time to time by agreement of the WCAs, the WDA and the MRM Contractor.

This may include

1. Input specification for dry recyclables which shall be bulked and forwarded either to a MRF or other recycling process as directed by the WDA.
2. Separately collected bio waste which shall be either treated by MRM Contractor or directed to alternative treatment processes by the WDA.

Where input specifications for specific categories of waste (such as dry recyclables or separately collected bio waste) are agreed and the composition of waste delivered by the WCAs deviates materially from this specification, the WDA may be required to adjust the payment to the MRM Contractor to take account of any increase or decrease in costs which the Contractor incurs as a result.

The responsibility for meeting any resultant increase in the payment to the MRM Contractor shall be subject to discussion and agreement through SWOG.



## APPENDIX 5

### Marketing and Sale of Residual Recyclables

1. This Appendix sets out the principles under which the Council (as WDA) shall market residual recyclables and is included in this MoU in the spirit of joint working.
2. These provisions shall relate to the following materials handled under the MRM Contract (it is noted that the MRM Contractor may not have the ability to charge for marketing arrangements for agreements inferred prior to the award of the MRM Contract) and which satisfy the relevant input specifications referred to in the MoU:
  - Recyclables which require processing and sorting through a Materials Recovery Facility (MRF) (or similar facility) to achieve separation into their constituent types prior to their dispatch for recycling and composting.
  - Compost produced from the processing of wastes delivered by WCAs to facilities provided by the MRM Contractor to produce compost.
  - For discussion - Under the MRMC is it possible to compost?
3. The WDA shall arrange under the MRM Contract for the MRM Contractor to be responsible for the marketing and sale of residual recyclables. The Contractor's costs, including administrative costs, arising from marketing and sale activities shall be met by the WDA as part of the overall MRM Contract costs.
4. The MRM Contractor is required to undertake marketing and sale activities in consultation with the WDA and the Contract Liaison Panel. The issues on which the WDA shall have powers of decision and direction include the following:
  - Giving prior approval to the terms of sale of materials and/or products and the terms of contractual arrangements for the same, including quality specifications.
  - Direction in the use of local markets in preference to an alternative more financially lucrative distant market. In such circumstances, the Contractor shall be reimbursed for any net losses arising from the use of local markets.
  - Releasing the Contractor from his obligation to market and sell recyclables, for example where no viable market exists.

- Directing the transport and storage of recyclables at third party sites for specified times where no viable markets exist and no storage capacity is available at the Contractor's sites. In such circumstances, the Contractor shall be reimbursed for the costs incurred.
5. In the interests of openness and joint working the WDA shall consult the WCAs via the SWOG nominated officers to form part of the Contract Liaison Panel in exercising its powers under Para 3 above. In such deliberations the aim shall be to achieve 'best value' in the overall interests of the community at large and the overall objective of sustainability. The aim shall be to reach a consensus view as to the option(s) to be pursued having particular regard to the financial implications and affordability, both direct and indirect, of the preferred course of action. In this respect, regard will be had to any financial support forthcoming from the WCAs to support particular options. However it is noted that the decisions made in relation to the MRMC contract remain solely with the WDA
  6. The Contract Liaison Panel (or an appropriate sub-group of the SWOG) shall be established involving representatives of the WDA, WCAs and the MRM Contractor to consider marketing and sale issues. The Panel (or Group) shall make recommendations to the SWOG as appropriate. The Panel (or Group) shall consider marketing and sale issues arising in a timely manner such that decisions and directions can be issued to the MRM Contractor in accordance with the contract requirements.
  7. Notwithstanding the above, the Council (as WDA) reserves the right to issue directions to the MRM Contractor over the marketing and sale of recyclables without agreement of the WCAs where this is necessary to comply with its contractual obligations under the MRM Contract and/or where there is no consensus agreement on a preferred solution.

### Schedule 3 – Service Requirement Plans (SRP)

An important feature of more integrated working between the WCAs and the WDA is the need for shared planning and decision making and the need for effective communication to agree and co-ordinate joint activities. For example, the expansion of WCA recycling must be matched to the provision and availability of MRF capacity. Similarly the design and layout of all work and recyclable reception arrangements must take into account decisions of the WCAs. A formalised approach to forward planning is therefore vital and the key stages of the process are outlined in Appendix x.

Each WCA shall prepare a draft five-year Service Requirement Plan (SRP) setting out projected waste arisings, projected recycling tonnages, composting tonnages, etc in a format agreed jointly by all signatories. The parties to this MOU recognise that the provision of infrastructure

under the contract will depend upon the agreement and delivery of the SRP.

Aspirations in each draft SRP shall be subject to discussion and agreement between the WDA and each WCA in consultation with the Contractor. In agreeing final SRPs, each authority shall, amongst other things, take into account the variation between projected and previous tonnages, physical capacities and constraints (e.g. opening hours) on processing facilities, costs associated with processing additional quantities/materials and the lead in time associated with providing/modifying the necessary facilities. In considering the overall impact of any WCA's aspirations as set out in its SRP, account should be taken of the cumulative impact of the SRPs of other WCAs considered both on a local and countywide basis. The WCA and the WDA shall have regard to the advice of the WMLF in resolving any conflicts between WCA SRPs, including the utilisation of available processing capacities, e.g. for recyclables.

The WDA and the WCAs shall use their reasonable endeavours, to ensure that the objectives and targets of the County-wide MWMS and any Statutory Performance standards are collectively met having regard to the availability of finance, practical considerations and the guiding principles set out in Section x, to ensure that the aspirations of SRPs are achieved.

Each WCA shall update its SRP annually by rolling it forward by one year. This shall be completed in accordance with a programme to be set out in this MoU.

**All current reporting and recording mechanisms to be detailed here**

Schedule 4 – Waste communication, education and minimisation activities.

The WDA and the WCAs shall work together on joint wastes promotion and education exercises subject to the availability of finance on joint promotional activities to raise awareness of integrated waste management in West Sussex.

**All current work areas and reporting/recording mechanisms to be detailed here**

Schedule 5 – Other waste contracts relating to the partnership.

Abandoned Vehicles

Clinical Waste Disposal Contract

Closed Landfill Site Management and Restoration Contracts

If the WDA and WCAs agree contractual arrangements that involve the major contracts, the WCAs shall continue to discharge the WDA's responsibilities until other long term arrangements have been agreed and secured for the storage and / or disposal of abandoned vehicles in accordance with the principles set out in Appendix x. The details and financial arrangements shall be agreed between the authorities.

All current contracts relating to the WDA and WCA's including any reporting/recording mechanisms to be detailed here

Schedule 6 – Financial information and processes.