

**AUTHORITY MINUTES – MONDAY 04 FEBRUARY 2019 - PART 1 PUBLIC ITEMS:
(9.45 AM–11.15 AM)**

Present:

Councillor O Dervish (Chair), Councillor D Akwaboah, Councillor J Asser (Vice Chair), Councillor S Bain, Councillor R Benham, Councillor S Ghani, Councillor J Howard.

The Members agreed a delayed start to the meeting due to travel disruptions.

1. Apologies for Absence

An apology for absence was received on behalf of Councillor R Tripp and apologies for late arrival from Councillors S Bain, Councillor R Benham and for lateness, Ms D Hanson, External Auditor.

2. Declaration of Members' Interests

There were none declared.

3. Minutes - Part 1 (Public Items) of previous meeting: 19 November 2018

Members confirmed as true and accurate the public minutes of the Meeting held on 19 November 2018. The Chair was authorised to sign the same.

The Chair asked the Members whether they would be happy to vary the day and time of the meetings identified in these Minutes (Minute 7). A change in circumstances had necessitated his request to avoid attendance on a Monday morning. Members were not averse to moving the meetings and Officers were asked to secure more convenient days/times with Members.

4. External Audit Plan 2018/19

Members received the Finance Director's report and attached External Auditor's Provisional Audit Planning Report for the period 1 April 2018 to 31 March 2019, to include the 2018/19 final accounts audit.

Two representatives from the External Auditors, Ernst & Young, attended the meeting and the Associate Partner, Debbie Hanson, provided commentary and detail on the External Audit Plan 2018/19.

The audit strategy would cover audit and value for money risks, audit materiality and the scope of the audit would look at misstatements due to fraud or error, PFI liability and annual charges, valuation of property, plant and equipment, incorrect adjustments through movement in the reserves statement, pension liability valuation and implementation of new accounting standards.

Work had already started on the audit and the following were the issues identified with significant risks that may need assistance from specialists if the results of the review were out of line with expectations:

- a) PFI liability and annual charges and review of the financial model – Ernst & Young PFI specialists;
- b) property, plant and machinery valuation (in view of the size of the balance on the balance sheet) – the Authority's property valuer/Ernst & Young Estates team; and
- c) pension disclosure – Ernst & Young Pensions Advisory, PwC and Barnett Waddingham (LPFA Pension Fund Actuary).

The External Auditor explained the planned materiality level of £1.25m, representing 2% of prior year's gross expenditure; the performance materiality level is to be £0.94m representing 75% of planning materiality; and audit misstatements level below which reporting is not necessary is £0.062m. The Auditor also noted that any other misstatements found would be brought to the Authority's attention.

The value for money risk assessment work had not yet been complete and the Auditors will look at the impact of Brexit on future service provision, medium term finance and investment values. When asked when this work would be undertaken the External Auditor responded that the value for money work would be by March. The Auditor confirmed that she will report back on any major issues arising from the audit.

The Chair thanked the Auditors for their report.

Members noted and agreed the External Audit Plan.

5. Budget Control & Contract Monitoring to 31 December 2018

Members received the regular report prepared by the Managing Director and Finance Director for the period to the end of December, together with the budget monitoring statement to 31 December 2018 and tonnage profile appendices.

The Finance Director introduced the report stating that Appendix A provided a good financial summary of what was in the report. A net underspend on services was reported at £2.241m to date. An outturn underspend of £2.141m was forecast, due to lower tonnages received (by £1.848m) and additional income (£0.124m). The London Borough of Barking & Dagenham's housing service was a large contributor to the additional £0.124m commercial income expected to be received. Other forecast underspends related to professional fees (£0.060m) and payments to Constituent Councils (£0.043m). The forecast outturn underspend did not include any draw-down from the contingency. Interest receivable was due to exceed budget by £0.030m and other income by £0.035m. Tonnages received to date were 4.5% below profiled budget at the February 2018 Levy setting process. The contingency budget remained at £0.500m and, if unspent, this amount would be carried forward into the Revenue account to help any step increase in the 2019/20 Levy.

The Managing Director added that in terms of tonnage changes these were very slightly lower than last year and therefore tonnage growth did not yet arise. A range of communications work with schools by the Contractor, the Constituent Councils and Keep Britain Tidy had been undertaken to help minimise the tonnages.

Members were asked to approve an amendment to the recommendation that would allow the Finance Director to agree the outturn for 2018/19.

Members noted the report and forecast outturn and **delegated authority** to the Finance Director to agree the outturn for 2018/19.

6. Constitution Review

Members received the Monitoring Officer's report, including Appendices A-G in relation to the outcome of the comprehensive review of the Constitution.

Members received commentary from the Monitoring Officer on the previous 'light touch' review carried out by the Managing Director in accordance with delegated powers. The Monitoring Officer advised that this report covered the wholesale review intended to bring the Constitution into line with best practice for democratically accountable public authorities and the practice of the Constituent Councils, particularly in relation to governance, standards, data protection, procurement, spending and contract and financial rules. Governance changes related to the Localism Act (2011) requirements of the Nolan Committee's seven standards in public life expected of a public body. Therefore, a completely new Member's code of conduct, Employees' code of conduct and inclusion for the first time of a new Member/Officer protocol have been drawn up.

Statutory protection for the Managing Director, Monitoring Officer and Finance Director required changes to Part B that establish a Disciplinary Panel Sub-Committee with decision making assisted by an independent person, as in the Localism Act. Other changes included the removal of the use of oral quotes for lower cost items and the creation of a clear audit trail; a full review of the rules against revised Public Contract Rules 2015; that current EU thresholds are followed; changes to the Employment Rules in relation to the establishment and composition of a Disciplinary Panel for Statutory Officer protection. Land acquisition changes had received a light touch review with changes

enabling the Authority to use an independent surveyor as valuer. The Codes of Conduct had been rewritten to cover key areas such as data protection, information handling and confidentiality, equalities, health and safety, whistleblowing, political neutrality and transparency. A new Member/Officer code had been introduced.

The Managing Director pointed out that Appendix G contained a summary and explanation of other proposed changes which included removal of the automatic rotation of the Chair every two years. It was believed that this was not in the best interest of continuity during the development and implementation of the new joint resources and waste strategy. Officers were asked to clarify the process re. Part 26.1 under Part B1 – Articles/Meetings, in particular the Managing Director's powers in the case of urgent action and the requirement for consultation with the Monitoring Officer and Finance Director and then with the Chair and/or Vice Chair. This was discussed, and **it was agreed** that in the event of the Chair and/or Vice Chair being unavailable, the process would always require consultation with two Members.

Members considered the prescriptive nature of paragraph 3.1 Annex C – Expenses & Claims at Part E relating to subsistence allowances and they challenged the out-of-pocket expenses in relation to current day prices. It was the Members' view that these were unrealistically low, and the wording should be amended to read 'not exceed £10 per meal'.

Members **noted the report and agreed** the revisions to the Constitution to include those additional changes mentioned above.

7. Review of the Corporate Risk Register:

Members received the Managing Director's report, appendices and commentary advising that the risk register was central to good governance and effective strategic management of the Authority. The register was split into two categories, corporate and operational risks, and although reviewed annually it was updated as and when changes in the Authority's risks profile were identified.

The Managing Director drew Members' attention to Corporate risk C6 (Brexit), C7 (new legislation) and a new risk C14 (revised local resources and waste strategy arrangements).

Of the fourteen Corporate risks identified, three were high scoring and only one, insurance, was assessed as probable due to difficulties faced by the Contractor in the insurance market resulting from wider waste industry issues.

The Managing Director advised Members that the risk register had been expanded to include the risk associated with Brexit. He stated that the contractor was seeking additional storage facilities and UK markets in preparation for potential difficulties with Refuse Derived Fuel, should export markets become unworkable. The MBT treatment hall currently being refurbished would be available shortly. Looking at the longer term and worst-case scenario, arrangements were in place for the Contractor to landfill these materials.

In respect of implementation of new legislation, this relates to the Government potentially making significant changes to legislation on what wastes fall to local authorities, and how these wastes are to be managed.

Twelve Operational risks had been identified of which none were considered high.

It was believed that adequate controls were in place for the identified risks.

Members approved the revised corporate and operational risk registers.

8. Treasury Management Strategy 2019/20 and Prudential Code Indicators 2019/20 to 2021/22

Members received the Finance Director's Treasury Management Strategy report and four appendices detailing new borrowing requirements, debt management arrangements, minimum revenue provision policy statement, annual investment strategy, treasury management policy statement and prudential indicators for capital & treasury management.

In commentary the Finance Director advised that provision had been made for a borrowing programme of up to £60.4m which included £60m to enable the purchase of land for the post 2027 joint resources and waste strategy, should the need arise, and potential capital works at the landfill of £0.4m. Capital reserves remained at £0.1m. The current Public Works and Loan Board borrowing rate would remain until such time as new borrowing was required when the rate would be renegotiated.

The Finance Director advised that cash balances would vary between £15m and £26m and all investments were within the approved asset limits.

Members questioned whether the borrowing for 2027 was in preparation for the new facility and whether this would facilitate expenditure without the approval to Members. The Finance Director responded that the strategy and indicators put provisions in place to cover all bases, but that the approval of Members for any expenditure would be sought in the usual way.

Members agreed the Medium-Term Financial Strategy for the years 2019/20 to 2023/24 as set out in the recommendations.

9. Annual Budget & Service Delivery Plan (ABSDP) 2019/20

Members received the joint report of the Managing Director stating that he had concerns about the submitted 2019/20 ABSDP and that he could not recommend to the Authority that it approves the documents as drafted. The report included information on the current position including tonnages, recycling and diversion performances, Brexit, contractual cost and efficiencies and communications plan for 2019/20.

In relation to the 2019/20 ABSDP, Members were advised that the projected recycling rate of 26.5% remained below the 33% recycling target in the contract specification, but officers advised that it did reflect a realistic position for the coming year and could see that with the Operator's anticipated performance improvements it was possible the target may be met in 2020-21 if changes can be agreed and implemented by all parties. Members were reminded that the ABSDP had not been accepted for the last five years due to the recycling target being below 33%. They also noted that there were no financial deductions the Authority could impose at this level of recycling; however, should the figure fall below 22%, then financial deductions would apply.

Members were advised not to approve the ABSDP, but also noted that a formal rejection of the ABSDP was not advised because firstly this would not be conducive to ongoing discussions and negotiations for improvements, and secondly it may trigger the Dispute Resolution Procedure which would not necessarily be favourable to the Authority. The Managing Director advised that officers were working with the Contractor to move progressively towards the Contract specification targets.

The Managing Director reported that one of the Mechanical Biological Treatment (MBT) floors at Jenkins Lane had been repaired and the MBT hall was now up and running again. Relaying of one of the floors at Frog Island will start soon. The Chair commented that, on a recent site visit, he was impressed with the work carried out and found it reassuring.

The Managing Director informed Members of the position regarding a recent fire affecting a materials recycling facility at Lincoln used by Renewi, and the re-routing of recyclables from LB Newham and LB Barking & Dagenham, and the improved recycling captured by the alternative off-taker. In addition, he advised that Biffa were working with LB Havering (through the Operator and the Authority) with a view to achieving better quality recyclables. He briefly advised on LB Redbridge's comprehensive review of the waste collection service which included the potential for changes to recycling collection services.

The Managing Director proposed that officers continue to work with the Contractor and the Operator with a view to achieving a level at which the ABSDP could be approved.

Members noted the recommendations within the report.

10. Revenue & Capital Budgets and Levy 2019/20

Members received the Finance Director’s report and five appendices containing a Summary of Revenue Budgets for 2018/19 and Forward Budget for 2019/20 (£68.979m); Financial Risk Analysis 2019/20; Split of levy increase by Constituent Council 2018/19 to 2019/20; Population & housing projections over the five-year period; and Capital Strategy and capital programme 2019/20 (£60.400m). Members were being asked to agree the revenue budget and capital programme for 2019/20 and determine and agree the levy for 2019/20.

In commentary, the Finance Director advised that at February last year the forecast average increase in the Levy was 5.94%, in November that figure reduced to 5.52% (as set out in the Medium-Term Financial Strategy) and now the average increase proposed was 4.2% with the specific levies for each Constituent Council differing. Contributory factors were a reduction in the contract insurance costs, projected tonnages, inflation and reserves. The proposed levy for 2019/20 was £67.488m.

The Levy had been set based on the General Revenue Reserve being maintained at £3m over five years and the new Business Risk Reserve stood at £2m. It was anticipated that the Strategy Reserve would reach £22.458m (excluding draw-downs) at the end of 2023/24. This reserve would be built up in stages to fund revenue expenditure anticipated for the work towards the waste management arrangements post 2027. The Capital Reserve is to be maintained at £0.100m for potential future costs relating to the Aveley Landfill site. It was hoped to work towards future average levy increases over the next five years of between 3.75% and 5.39%, with the avoidance of any sharp increases in order to help the Constituent Councils with their own budgets.

Tonnages for 2019/20 are projected at 462,000 tonnes with an increase of 6,000, 9,000 and 8,000 tonnes respectively for the years 2020/21 to 2023/24 reflecting Band D property and population increases. These figures will be reviewed annually.

Clarification was sought on the level of LB Redbridge’s levy and the reasons behind it. This was explained as being due to the way the levy mechanism deals with LB Redbridge’s green garden waste service changes since 2017/18 and its relative number of Band D properties. Members and officers discussed the free and chargeable green garden waste services and doorstep collections and property growth within the Constituent Councils and the impact these had on the Levy generally. Members were reminded that as their numbers of households increased their Council Tax income would contain an element for waste services to offset against the Levy.

A greater understanding of ELWA’s future strategy was being sought by the Cabinet at one of the Constituent Councils.

Members agreed:

- (a) the revenue budget totalling £68.979m as set out in Appendix A of the report;
- (b) the capital strategy and capital programme for 2019/20 totalling £60.400m as set out in Appendix E of the report;
- (c) the commercial waste charges for 2019/20 as: Commercial Waste - Recycled: £86 per tonne; and Commercial Waste - Other: £161 per tonne;
- (d) that on the basis of (a) to (c) above, ELWA determined its levy for 2019/20 at £67.488m, being an average increase of 4.20%;
- (e) that, on the basis of the agreed formula for apportioning the levy, the levies for the Constituent Councils and percentage increases be:

	£m	% increase
Barking and Dagenham	12.535	3.27
Havering	17.049	7.32
Newham	20.001	5.25
Redbridge	17.903	0.91

- (f) the risk analysis of the budget and the policy on reserves contained in the report; and
- (g) the continuation of existing arrangements for the payment of the levy, commercial and other waste charges.

11. DEFRA Resources & Waste Strategy

Members received a report on the DEFRA Resources and Waste Strategy report from the Managing Director that provided an overview of the key points of DEFRA's newly published "Our Waste, Our Resources; A Strategy for England". The Resources & Waste Strategy (RWS) was published shortly before Christmas 2018 and set out how the country will preserve material resources by minimising waste, promoting resource efficiency and move towards a circular economy. Members were advised that officers had engaged in discussions and had input into its direction and content, as had other waste disposal authorities. The Local Government Association had produced a briefing on the RWS (dated 20/12/18) and a copy was attached to the report at Appendix A.

The report outlined the chapters of the Government's Resources and Waste Strategy.

- (1) Sustainable Production: including the manufacture of products, Extended Producer Responsibility (EPR), and funding of packaging management to end-of-life. Reform models being considered were: deposit and return schemes; funding for local authorities; producer collection services; improvement to producer responsibility schemes for WEEE, battery and end-of-life vehicles. In addition, the EPR approach could be extended in the future to materials such as textiles, bulky waste, construction and demolition waste, vehicle tyres and fishing gear. The Authority and Constituent Councils are likely to be impacted by any new targeted EPR materials in terms of collection, treatment/disposal infrastructure and any changes to WEEE legislation.
- (2) Helping Consumers Take More Considered Action: there are proposals to ban certain plastic products, e.g. cotton buds, straws, stirrers (ELWA had previously responded to a consultation on these items), the introduction of a single use drink container deposit and return scheme, and reuse shops at Reuse & Recycling Centres.
- (3) Recovering Resources & Managing Waste: the document sets out core materials to be collected by all local authorities to deliver consistent recycling collection services and a better quality materials collection (this would potentially impact on Constituent Councils and ELWA if introduced before the end of the IWMS contract); introduction of mandatory separate food waste collections; the scrapping of chargeable green garden waste schemes; introduction of non-binding performance indicators; increase in urban areas' recycling rates (a concern to ELWA if not fully funded); improvement to shared working between Local Authorities; divergence in assumptions and forecasts between national and regional policy positions regarding the need for waste treatment infrastructure in London; and proposals to reconsider the introduction of an incineration tax.

Of less immediate significance to the Authority were chapters on

- (4) Tackling Waste Crime.
- (5) Cutting Down on Food Waste: Officers are helping Constituent Councils with commonality and a consistent approach to their local Reduction & Recycling Plans for the June deadline.
- (6) International leadership: Officers will monitor new proposals on exported fuels and recyclables.
- (7) Research & Innovation: calls for evidence may be made on the Authority and/or Operator; and
- (8) Data, Monitoring & Evaluation: proposals for carbon, natural capital rather than waste tonnages and the move away from waste to consumption of natural resources.

The Head of Strategy and Development advised that the Resources & Waste Strategy's planned consultations were on packaging (consultation during 2019), two new EPR schemes (by mid-2022), and three more EPR schemes (by 2025). The announcement of four more large consultations is imminent and expected to relate to Extended Producer Responsibility, a Deposit Return Scheme, Consistency of Recycling Collections, and Plastics recycling. It is expected that responses will be due before the next Authority meeting. The key issues for the Authority to address will be the transition processes and periods between current legal positions and possible future changes implemented in line with the RWS; mandated service changes generating extra costs to the Authority, Constituent Councils or Operator; the wider financial implications of EPR and financial impacts on consumers/residents; availability of funding reverting to local authorities for reinvestment in waste collection/treatment infrastructure; a lifecycle and environmental impact analysis of proposed alternative materials and treatment technologies to avoid additional problems for local authorities; and the London Environment Strategy's requirement for forward-looking four-year waste Reduction & Recycling Plans (RRPs) from the Constituent Councils. He advised that Officers were working with the Constituent Councils to produce a consistent approach on which to build the RRP and the East London Joint Resources & Waste Strategy.

The Managing Director sought confirmation that, in conjunction with the Chair, he should respond to further consultations from DEFRA on the specific concepts within the Resources & Waste Strategy and update Members accordingly. He advised that there was a lot of work to be done with the Councils in order to understand what the position will be. He also noted that if the producers have to pay in part or in full for local authority services, then it was feasible that they would want control of the materials and some say over services. He added that any money that may become available to Authority and/or the Constituent Councils may come with conditions.

Members considered the inconsistency of recycling collection services generally and the possible confusion to residents moving home across boundaries; the impact for Renewi if the direction changes materially from that when the contract was entered into; Renewi's engagement with DEFRA and whether they will respond to the consultations; and the difficulties of putting in place new residual waste infrastructure.

Members noted the report and agreed the action that the Managing Director, in consultation with the Chair, responds to the additional consultations from DEFRA on the specific concepts within the RWS and keeps Members updated accordingly.

12. Riverside Energy Park DCO Application - Update

Members received the report of the Managing Director updating Members on the Development Consent Order (DCO) application that had been submitted to the Planning Inspectorate by Cory Riverside Energy for the inclusion of a second Energy Recovery Facility (ERF), anaerobic digestion facility, solar panels & battery storage at the proposed Riverside Energy Park (REP) at Belvedere. The Head of Strategy & Development advised that officers sought approval to the Authority's general approach and representation to the Planning Inspectorate as set out in Appendix D.

In commentary the Members were advised that the proposed ERF proposal would have a capacity of 650,000 tonnes per annum to fill a residual waste treatment gap in South East London. In July 2018 the Managing Director, in consultation with the Chair, had raised several issues in relation to Cory's application, as set out in Appendix A, in addition to having discussions with Cory's agents. Appendix B contained an illustrative site layout plan and location map, and Appendix C set out background information on how waste is managed elsewhere in London.

Members noted that the London Environment Strategy presumes no such new energy recovery facilities are needed in London, and requires that those already approved and being built meet the Carbon Intensity Floor, which will require waste heat to be used locally. The proposed ERF will be heat-enabled, and there are proposals for housing developments in the Belvedere area; however, it appears the existing ERF may be sufficient to meet their heat energy needs.

In addition, Members noted the proposed REP is to receive wastes via barges on the Thames, but that it was not clear if this would require the development of new waste transfer stations at protected wharves elsewhere along the river.

Members discussed the implications of the detailed DCO application in relation to the Authority's own future strategy. The discussions included logistical and transport issues, potential transport costs and overall provision of infrastructure in the East London and Thames Gateway areas.

Members noted the report **and agreed** the general approach and ELWA's outline representation to the Planning Inspectorate.

13. Date of Next Meeting (Annual General Meeting): Friday 28 June 2019

Members noted that the next meeting of the Authority was scheduled to be the Annual General Meeting and held on Friday 28 June 2019 at the Town Hall, Barking.

14. Any other public items

There were none.

15. Private Business

Members resolved to exclude the public and press from the remainder of the meeting by reason of the nature of the business to be discussed which included information exempt from publication by virtue of paragraph 3 of part 1 of Schedule 12A of the Local Government Act 1972 (as amended).

16. Minutes - Part 2 (Restricted Items) of previous meeting: 19 November 2018

Members confirmed as true and accurate the minutes of the restricted items discussed at the Meeting held on 19 November 2018. The Chair was authorised to sign the same.

17. IWMS Contract – Insurance Renewal 2019

Members received the Managing Director's report and agreed the recommendation.

18. ELWA Limited Update

Members received the Managing Director's oral update was noted.

Chair: O. Dervish

Date: 28/06/19