



Report Reference Number: E/18/24

To: Executive
Date: Thursday 8th November 2018
Status: Key Decision
Ward(s) Affected: All
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Lead Executive Member: Cllr Chris Pearson, Lead Executive Member for Housing, Health and Culture
Lead Officer: Julie Slatter, Director of Corporate Services and Commissioning

Title: Garden Waste Recycling Credits

Summary:

The report sets out the legal and financial issues arising from North Yorkshire County Council Executive Decision of 4th September 2018, to change the green waste recycling credit payment to all waste collection authorities across North Yorkshire from April 2019.

Recommendations:

The Executive approve that:

- i. Selby District Council accept North Yorkshire County Council Green Waste payment option 2a (Green Waste Incentive without taper) contained within a letter dated 18th September 2018 confirming NYCC Executive approval of changes to recycling credit payments effective from 1st April 2019.
- ii. Funding is made available from reserves for the income shortfall in 2019 / 2020 whilst alternative funding options for future years are approved.

Reasons for recommendation

Unless the Council is willing to legally challenge the WDA it will need to accept one of the proposed options. The legal advice is that the grounds for challenge have

significantly reduced during the period of consultation and the prospects of success are uncertain. It also needs to be borne in mind that a JR would quash the decision but the WDA could then make it again on correct grounds which would not be challengeable and therefore any JR challenge would simply delay any implementation.

1. Introduction and background

- 1.1 North Yorkshire County Council (NYCC) is the Waste Disposal Authority for all District and Borough Councils who are defined as Waste Collection Authorities (WCA's). The legal framework for the functions of each authority are set out within the Environmental Protection Act 1990 including the payment of recycling credits and the materials for which a collection charge can be levied.
- 1.2 NYCC in their capacity as a WDA have paid recycling credits since 2001 for each ton of garden waste collected and recycled by each WCA and currently the credit per ton received from NYCC is £51.51, generating an annual income of approx. £485,000 for Selby District.
- 1.3 A letter from the Leader of NYCC was issued to all Leaders of the WCA's in North Yorkshire dated 29th September 2017 advising of a review of the payment of recycling credits for green waste collected and recycled by each WCA. Reference was made to stopping the payment of recycling credits and the WDA providing composting arrangements that the WCA's would be required to take their garden waste to.
- 1.4 Dialogue between the WCA's and WDA resulted in the issue of a second letter dated 12th December 2017 advising that the proposed implementation date was being deferred to April 2019 along with a revised offer to reduce the recycling credit payment to £29.83 per ton.
- 1.5 Five of the seven WCA's agreed to fund Counsel's opinion with regard to the legality of the WDA's proposal and four of the five subsequently wrote to the WDA on 21st March 2018 challenging the legal basis of the proposal whilst also seeking a meeting to set out the legal parameters for change to agree a negotiated settlement.
- 1.6 A response was received from the WDA dated 3rd April 2018 seeking a meeting to agree a way forward. A meeting was held on 8th May to discuss the proposals from the WDA and for the WCA's to set out their issues including the two proposals received, the implementation timeframe and for Selby the additional option to stop the garden waste collection service.
- 1.7 A further letter dated 18th June 2018 has been received from the WDA, setting out the legal basis of the consultation in relation to the payment of recycling credits. The details and ensuing issues with regard to each of the three options contained within the letter are set out in the body of this briefing.

- 1.8 A response to the consultation was issued on 1st August together with a request for clarification with regard to understanding the implications of “tapering the introduction”.
- 1.9 The County Council Executive met on 4th September and approved a report recommending the withdrawal of green waste credit payments and the introduction of a lower value green waste incentive payment from 1st April 2019.
- 1.10 A letter of notification of the County Council decision was issued on 18th September seeking a response from the District Council with regard to the preferred payment option.

2. The Report

- 2.1 The letter dated 18th June sets out three proposed options with regard to the payment of recycling credits, together with an implementation date of April 2019 but with additional reference to “tapering the reduction to reduce short term impacts”.

The three proposed options the WCA’s are being consulted on are:

1. The WDA stops paying recycling credits from April 2019 and provides its own disposal arrangements with a direction to the WCAs to continue to separate the garden waste from residual and deliver it to the WDA facility.
2. The WDA reduces the recycling credit payment to £30.18 per ton and current WCA funded disposal arrangements remain in place.
3. Sets out the WDA stance with regard to a WCA ceasing to collect garden waste including potential scrutiny and legal challenge. Essentially they accept that this is legally possible but it would be the WCA to justify and take reasonable steps to ensure that garden waste is not added to residual household waste.

- 2.2 In terms of the economics of garden waste from the WDA perspective as set out in the letter the WCA’s currently receive a credit per ton of £51.51 whilst each WCA pays an average gate fee per ton of about £20. The letter also refers to the current annual charge levied per bin in 6 out of the seven WCA’s. Additionally the letter completely ignores the cost of collecting garden waste by each WCA when setting out the economics of garden waste from the WDA perspective.

- 2.3 The table below sets out in summary the financial impact of each option for Selby District who suffers the biggest financial impact due to being the only WCA’s who has not implemented a chargeable service and additionally collects the largest tonnage.

	Current	Option 1	Option 2	Option 3
Collection	£670,500	£670,500	£670,500	£432,800**
Recycling Credit	(£502,600)	Nil	(294,500)	Nil
Disposal	£185,400	Nil	£185,400	Nil

Income	Nil	Nil	Nil	Nil
Net Cost	£353,300	£670,500	£561,400	£432,800
Budget Impact		£317,200	£208,100	£79,500

** Estimated residual cost and impact on Refuse service

2.4 Within option 1 the WDA would also issue a direction to WCAs to continue to separate garden waste from residual waste. They must consider such a direction to be necessary for coming with legislation. They have indicated that that this is necessary in the interests of achieving best value and the Environmental Protection Act. The previous legal advice obtained indicated that they could not justify such a decision based on financial considerations alone. The view is that the current (refined) proposals is now legally compliant with their obligations and would be difficult to challenge. It would require the WCAs to bring JR proceedings against the WDA with uncertain prospects of success. The WDA also acknowledges that in making a direction it needs to ensure that a WCA is not financially worse off as a result of the direction. The WDA states that that the WCAs would not be financially worse off because they already have arrangements in place, have the power to charge for collection and in the case of 6 of the 7 do charge thus covering the costs. The fact that SDC doesn't charge might give scope for negotiation.

2.5 If the WDA do implement option 1 and does not make any payments to SDC (which will be financially worse off) SDC could decide to cease collections (Option 3). This would require the Council to look at measures to ensure, so far as reasonably possible that alternative arrangements are in place and the waste does not end up in the residual bin. This would require encouraging home composting or taking the waste to Household Waste sites and consideration of making home composting bins available (at cost) alongside issuing a notice to residents (probably alongside the Council Tax bills) that they should not place garden waste in the residual bins.

2.6 In terms of option 2 the WDA have indicated that their preference is that one agreement to cover all 7 WCAs. However they accept that if some WCAs accept the proposal they would implement Option 2 for them and option 1 for the others. In essence this accepts the principle of bespoke arrangement. Within the letter the reference to tapering the arrangements applies to option 2 to reduce short term impacts (recognising that this would financially impact on the WDA's savings target). Since the proposals have the greatest impacts on SDC this gives scope for bespoke negotiation.

2.7 The letter of notification dated 18th September confirms the decision of the County Council executive and sets out in addition to the above information three tapering alternatives for option 2 as set out below.

Payment Option 2	Yr 1	Yr 2	Yr 3 On
a) GWI Without a Taper	£30.18	£30.18	£30.18
b) GWI With a taper	£43.22	£34.92	£26.63
c) GWI with a 1 year taper	£51.51	£26.63	£26.63

3. Alternative Options Considered

The options are set out within the letter from North Yorkshire County Council and summarised within the report.

4. Implications

4.1 Legal Implications

Contained within the body of the report

4.2 Financial Implications

4.2.1 Whilst the above sets out the financial impact of each option from April 2019 this must be set within the wider context of the councils medium term financial strategy (MTFS) for the next three years. Currently the MTFS as reported to full council in February has a savings target for 2019 / 2020 of £1.7 million which did not include the impact of any changes to garden waste recycling credits, for options 1 and 2 would increase the target to around £2 million in 2019 / 2020.

4.2.2 Whilst the timeframe for the WDA to implement the change to the payment of recycling credits for garden waste is achievable. There are broader financial implications of the changes to recycling credits in terms of the MTFS saving target of £1.7 million for 2019 / 2020. This level of saving across an ever reducing financial base is extremely challenging requiring full exploration of all options available to the Council to mitigate the financial impact of the County Council decision on the finances of Selby District Council.

4.2.3 The timing of any decision by North Yorkshire is such that introducing any mitigation measures would be impractical to achieve by 1st April 2019. Therefore the preferred option of dealing with the financial impact of approving option 2a amounting to £208,100 in 2019/2020 is to fund this from reserves whilst a long term sustainable solution is developed and approved for 2020/22021 onwards.

4.3 Policy and Risk Implications

The recommendation will deal with the financial risk for 2019/2020 only but will need a sustainable long term solution to be agreed by autumn 2019.

4.4 Corporate Plan Implications

4.5 Resource Implications

4.6 Other Implications

N/A

4.7 Equalities Impact Assessment

This decision has no equality implications as it is purely financial.

5. Conclusion

- 5.1 The recommendation minimises the impact on finances for 2019/2020 only and provides time to explore and approve an alternative sustainable solution.

6. Background Documents

N/A

7. Appendices

None

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