

<b>DECISION MAKER:</b>	<b>EXECUTIVE COUNCILLOR NAME:</b>
	Councillor Strange
	Waste Services
<b>DATE OF MEETING:</b>	<b>17/03/2010</b>
<b>SUBJECT:</b>	Purchase of Landfill Allowances
<b>DECISION REFERENCE:</b>	01719
<b>REPORT BY:</b>	Richard Belfield Assistant Director
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<b>IS THE REPORT EXEMPT?</b>	No
<b>IS REPORT CONFIDENTIAL?</b>	No

<b>IS IT A KEY DECISION?</b>	No
<b>DIVISION(S) AFFECTED</b> Enter ALL or just name those Divisions affected.	All

**SUMMARY**

This report explains the Landfill Allowance Trading Scheme and describes how landfill allowances may be used, traded, banked and borrowed both in target and non target years. The report goes onto identify a likely shortfall in the Council's landfill

allowances for the year 2012/13 pending delivery of the Energy from Waste plant and identifies the authority offering to sell those additional allowances at the best price to the Council.

## **DISCUSSION & OPTIONS**

### **Introduction/Discussion**

#### **Statutory Background**

1. Articles 5(1) and (2) of the EU Landfill Directive 1999 set a series of landfill targets for member states to meet. For the UK these targets are to reduce the amount of biodegradable municipal waste (BMW) sent to landfill to 75% of 1995 levels by 2010, to 50% of 1995 levels by 2013 and to 35% of 1995 levels by 2020. 2009/2010, 2012/2013 and 2019/2020 are target years. To help the UK achieve these targets the Waste Emissions Trading Act 2003 (WET Act) makes provision for setting up landfill allowances schemes which operate to limit the amount of BMW sent to landfill in the UK.
2. Under The Landfill (Scheme Year and Maximum Landfill Amount) Regulations 2004 the countries of the UK were set maximum amounts of BMW which could be sent to landfill for the three target years. Thereafter each Waste Disposal Authority (WDA) was allocated allowances for each target year and the scheme years (any year during which a landfill allowance scheme operates) leading up to each target year covering 2005 to 2020 specifying the maximum amount of BMW which it could send to landfill in each year. A WDA that fails in a scheme year to comply with its duty not to landfill more BMW than the landfill allowances available to it is subject to a financial penalty (of BMW landfilled in breach of this duty) of £150 per tonne.
3. The allowances fall over time and have been designed to require WDAs to develop strategies to minimise the biodegradable waste that goes to landfill. In Lincolnshire that strategy through the Lincolnshire Waste Partnership (LWP) is to maximise recycling so that levels achieved are among the best in the country; to minimise waste so that Lincolnshire has the least amount of waste per capita in the UK and to select a reliable and deliverable technology for residual treatment in the form of Energy from Waste.
4. In order to enable WDAs, to collectively and flexibly reduce the amount of BMW sent to landfill in the most cost effective way The Landfill Allowance Trading Scheme (LATS) was introduced in the UK in 2005 by The Landfill Allowances and Trading Scheme (England) Regulations 2004 (the Regulations). The Regulations introduce a system of allowances which can be transferred by trade or otherwise between WDAs. This enables WDAs to sell surplus allowances and to purchase additional allowances as appropriate.
5. The Regulations also enable WDAs to borrow up to 5% of their next years allocation or to bank any unused allowances that they hold for use in future years. However the Regulations do not permit banking and borrowing into or out of target years.
6. Where a WDA agrees to transfer surplus landfill allowances to another WDA then the allowances are transferred from and into the same scheme year. So if the transferor is transferring allowances from its 2013/14 allocation then those allowances must be

transferred to the transferees allowances for 2013/14. They can be used in 2013/14 or sold for use in 2013/14. In the event that the transferee is left with surplus allowances at the end of 2013/14 they will be banked in accordance with paragraph 5 above. Allowances can be bought and sold at any time so the Council is able to purchase allowances now for 2012/13.

### Need for additional allowances

7. As part of the LWP's Joint Municipal Waste Management Strategy the waste collection authorities (WCAs) and LCC (WDA) have adopted an aspirational target to recycle up to 55% of all waste arising by 2015.
8. However this in itself will not be enough to meet its LATS targets, thus LCC has proposed to build an EfW facility to be operational by 1<sup>st</sup> April 2013. The facility will treat 150,000 tonnes of residual waste however, this will not be available until 1<sup>st</sup> April 2013 at the earliest and consequently the authority will require the purchase of additional LATS allowances for the year immediately prior to completion of the EfW.

The LATS allowances required are demonstrated in the table below.

<b>Year All figures Tonnes</b>	<b>2010/2011</b>	<b>2011/2012</b>	<b>2012/13</b>	<b>2013/14</b>
Forecast Residual Waste	178,856	181,897	184,989	188,134.47
EfW Capacity (Residual)	0	0	0	102,000
Waste Actually Landfilled	178,856	181,897	184,989	86,134
<b>Equivalent BMW Landfilled (60%)</b>	<b>107,786</b>	<b>109,618</b>	<b>111,482</b>	<b>51,908</b>
<b>LATS Allowance (BMW)</b>	<b>116,753</b>	<b>102,130</b>	<b>87,506</b>	<b>83,752</b>
Balance of BMW Allowance to (Purchase) or Sell	8,967	(7,488)	(23,976)	31,844

9. It should be noted that these figures represent the "worst case" scenario, as we are currently experiencing an unexpected fall in the quantity of Municipal Waste collected. However, these figures may be justified, as the long term trend is still for increased waste year on year.
10. It should be possible to cover the 2011/12 shortfall using Allowances banked from 2010/11. However, 2012/13 is a target year, so neither banking nor borrowing is permitted requiring the purchase for year 2012/13 of an additional 23,976 LATS allowances (BMW tonnes).
11. In the years following completion of the EfW facility the authority will be able to sell its unused LATS allowances on the trading scheme in 2013/14 this could be 31,844 tonnes (BMW).

### Purchase of additional allowances

12. The purchase of additional landfill allowances has been considered by both Waste Services and the Lincolnshire Waste Partnership, and is reflected in the Joint Municipal Waste Management Strategy Action Plan Objective 5 reference 3 “to develop contingency arrangements to meet landfill allowance targets”.
13. Informal contact was made via the National Association of Waste Disposal Officers (NAWDO) to try and ascertain the likely price of allowances for 2012/13, and the response was that a price of around £20 per tonne was expected. The view was that the nearer authorities got to the target year of 2012/13 the higher the price would rise. Consequently £250,000 from the waste underspend was capitalised so that some 2012/13 allowances could be purchased in 2009/10. The intention was to then repeat the modelling exercise in future years using more up to date data and from that calculate what extra allowances, if any, might need to be purchased for 2012/13 to fully cover any shortfall.
14. Formal contact was then made with all WDAs both through NAWDO and by posting a request on the Defra LATS trading site indicating the Council was looking to purchase allowances for 2012/13 and inviting the submission of prices. Prices that were submitted back were generally in the £8 - £12 range, and the tonnages on offer more than met the worst case scenario of 24,000 allowances.
15. The best offer for 2012/13 was at the very low price of £4.99 per tonne. If 24,000 allowances were purchased that would result in an anticipated cost of £120,000.
16. It should be emphasised that to date there has been very few transactions for 2012/13 and as a result predicting market price as 2012/13 approaches is difficult. Once the number of transactions increases, a better grasp of market prices is likely to become available accepting always that markets are dynamic and prices will change over time. It may be that the price is being depressed because Government will shortly be consulting on the need to change the way LATS is calculated to include more commercial/business waste. There is speculation that as a result of this consultation the £150 per tonne penalties for exceeding landfill allowances might be removed. This is unlikely in the short term as the financial penalty is the primary mechanism for Government reaching its targets under the Landfill Directive 1999 and it is difficult to see how an alternative regime can be consulted on and implemented prior to 31 March 2013. What is clear is that £4.99 is the lowest cost the Council has seen either for 2012/13 or in previous years. In the unlikely event that we do not need to use the purchased allowances (for whatever reason) then we are free to sell them on into the market, subject to the rules of the trading scheme. It is likely that any sale price in 2012/13 will be higher than the current market value simply due to supply and demand pressures.

### **Application of Public Procurement Rules**

17. Defra have offered an informal view that if landfill allowances are traded for cash then the public procurement rules are not engaged as there is no acquisition of supplies or services. The Council’s legal advice agrees with this on the basis that with a LATs transfer the Council is purchasing the right to exceed its landfill allowances which is neither a service nor a supply. There are a number of other legal analyses which can be used to support the conclusion that the public procurement rules do not apply to LATS including arguments that the Council is not engaged in economic activity but in the essential functions of state namely the efficient provision of state funded

municipal waste disposal and also that as the procurement rules are primarily a common market measure aimed at promoting cross border trade, they have no place in circumstances such as these where the allowances are only available from English authorities and where therefore as a matter of fact there can be no cross border trade. In any event for whatever reason the legal advice is clear, the public procurement rules do not apply.

## Contract Regulations

18. The Council's Contract Regulations require at least 6 tenders to be invited for high value procurements that is £75,000 and above. As the Council has invited prices through NAWDO from all WDAs this requirement has been met

<b>Option A –</b>	Purchase 24,000 allowances
<b>Advantages</b>	This will enable the Council to meet its legal duty to comply with its landfill allowance target for 2012/13 and avoid the prospect of fines at £150 per tonne Prices have never been cheaper
<b>Disadvantages</b>	Will result in a cost of approximately £120,000 In the unlikely event that Government dismantles the £150 per tonne penalties the additional allowances will be superfluous
<b>Option B –</b>	Don't purchase any additional allowances
<b>Advantages</b>	Save in the order of £120, 000
<b>Disadvantages</b>	The Council will not be able to meet its landfill allowance targets for 2012/13 and risks fines at £150 per tonne estimated to be approximately 3.6 million pounds
<b>Option C –</b>	Delay the decision to purchase additional allowances
<b>Advantages</b>	Prices may fall further
<b>Disadvantages</b>	Prices may rise

## WHAT CONSULTATION UNDERTAKEN ON THE MATTERS FOR DECISION

The Executive Councillor has consulted with the Project Steering Group which supports the recommendation

## HAS AN EQUALITY IMPACT ASSESSMENT BEEN CARRIED OUT ?

Not applicable

#### **MONITORING OFFICER COMMENTS**

As a Waste Disposal Authority the Council has the legal duty to arrange for the disposal of controlled waste collected in its area under Section 51 (1) (a) of the Environmental Protection Act 1990.

Whilst fulfilling its duty to dispose of waste the Council must comply with its obligations under The Waste and Emissions Trading Act 2003 not to exceed the landfill allowances available to it. The Landfill Allowances and Trading Scheme (England) Regulations 2004 enable the Council to purchase additional landfill allowances from other Waste Disposal Authorities.

The Public Contract Regulations 2006 do not apply to this purchase for the reasons outlined in the report.

The Joint Municipal Waste Management Strategy Action Plan Objective 5 anticipates the need for contingency arrangements and the recommendation is therefore within the Policy Framework.

The recommendations are lawful and within the remit of the Executive Councillor

#### **DIRECTOR OF RESOURCES COMMENTS**

The advance purchase of LATS allowances for 2012/13 is a prudent action to mitigate the financial risk faced by the Council. Budgeting provision has been identified to fund this purchase.

#### **CORPORATE DIRECTOR COMMENTS**

The purchase of additional landfill allowances has been part of the Council's strategy for meeting its landfill allowances pending delivery of the Energy from Waste Plant. This is reflected in the Joint Municipal Waste Management Strategy Action Plan.

#### **SCRUTINY OPINION**

Not applicable

#### **RECOMMENDATIONS**

That the Executive Councillor for Waste authorises the Executive Director for Development to purchase 24,000 landfill allowances.

#### **REASONS FOR RECOMMENDATIONS**

This will enable the Council to meet its legal obligations under the Waste and Emissions Trading Act thereby avoiding incurring punitive fines. The current cost of allowances are low and they are affordable.

<b>BACKGROUND PAPERS</b>
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Background papers referenced or used in the report writing need to be listed together with a location where a member of the public could view them.
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No Background Papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.
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