

**Cabinet  
Council**

8<sup>th</sup> July 2014  
15<sup>th</sup> July 2014

**Name of Cabinet Member:**

Cabinet Member (Public Services) - Councillor Lancaster

**Directors Approving Submission of the report:**

Executive Director - Place

**Ward(s) affected:**

All

**Title:**

Coventry & Solihull Waste Disposal Company – Revised Articles of Association and Memorandum of Understanding

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**Is this a key decision?**

No

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**Executive Summary:**

Coventry City Council and Solihull Metropolitan Borough Council jointly own Coventry and Solihull Waste Disposal Company Limited (CSWDC). Shareholding is split in a ratio of 66 Coventry shares and 33 Solihull shares. CSWDC has successfully operated the Energy from Waste Plant (EfW) in Coventry since 1994 (although the original plant dates from 1975), and over the last three years the operation has returned significant dividends to both shareholders.

As well providing the primary waste treatment capacity for Coventry and Solihull, CSWDC also obtain considerable revenues from the sale of electricity, heat and waste treatment capacity to other local authorities.

One of the challenges for CSWDC is securing a mixture of long term and short term waste contracts to fill the waste treatment capacity not used by Coventry and Solihull. One of the single biggest contributors of waste to CSWDC after Coventry is Warwickshire County Council (WCC), who's current contract expires in 2016.

Given the already existing close links between Coventry, Solihull and Warwickshire, as well as the need to explore joint service delivery models to deliver greater efficiency, officers of all three authorities have been exploring closer arrangements for waste disposal / treatment.

This report seeks approval for joint working on waste disposal to become a reality by making WCC a Class C shareholder in CSWDC in exchange for a guaranteed tonnage input for the next twenty five years.

## **Recommendations:**

Cabinet is asked to:

1. Approve the proposed changes to the Articles of Association and Memorandum of Understanding for Coventry and Solihull Waste Disposal Company, as detailed in the attached documents to allow Warwickshire County Council to become a shareholder in Coventry and Solihull Waste Disposal Company.
2. Approve the changes to the Coventry and Solihull Waste Disposal Company's shareholders agreement, as detailed in the attached documents to allow Warwickshire County Council to become a shareholder in Coventry and Solihull Waste Disposal Company.
3. Approve the issue of one Class C share in Coventry and Solihull Waste Disposal Company to Coventry City Council for the immediate forward sale to Warwickshire .
4. Approve the immediate forward sale of the Class C share from Coventry City Council to Warwickshire County Council, allowing them to become a shareholder in the Coventry and Solihull Waste Disposal Company.
5. To delegate authority to the Assistant Director for Streetscene and Greenspace to complete the necessary shareholder resolutions of CSWDC to give effect to the recommendations 1 and 2 above.
6. Recommend that Council note the retirement of David Wilson as Coventry City Council's non-executive director on the board of the Coventry and Solihull Waste Disposal Company, and approve the appointment of the Director of Resources (or his nominated substitute) as their replacement on a fixed term of two years and with no remuneration.

Council are asked to:

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## **List of Appendices included:**

- **Appendix 1** – revised articles of association for the Coventry and Solihull Waste Disposal Company limited.
- **Appendix 2** – revised shareholders agreement for the Coventry and Solihull Waste Disposal Company limited.
- **Appendix 3a** – Pre-emption Waiver
- **Appendix 3b** – Share Sale Agreement between Coventry and Warwickshire
- **Appendix 3c** – Share Transfer Form
- **Appendix 3d** – Power of Attorney for the Class C share sale

## **Other useful background papers:**

None

## **Has it been or will it be considered by Scrutiny?**

No

## **Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?**

No

## **Will this report go to Council?**

Yes – 15<sup>th</sup> July 2014

**Report title: Coventry & Solihull Waste Disposal Company – Revised Articles of Association and Memorandum of Understanding**

**1. Context (or background)**

**1.1 Shareholding:**

1.1.1 Between 2008 and 2010 Coventry, Solihull and Warwickshire Council’s explored the procurement of a sub-regional EfW to replace the existing CSWDC facility under the banner of Project Transform. This was project was considered to not be economically or technically viable in 2010 and was abandoned. However, the management of waste treatment on sub-regional basis still offered a great opportunity for joint working between three neighbouring authorities and a potential for all three parties to benefit financially.

1.1.2 Since this time negotiations have taken place between Coventry, Solihull and Warwickshire as to how joint working could bring benefits through the existing EfW facility operated by CSWDC.

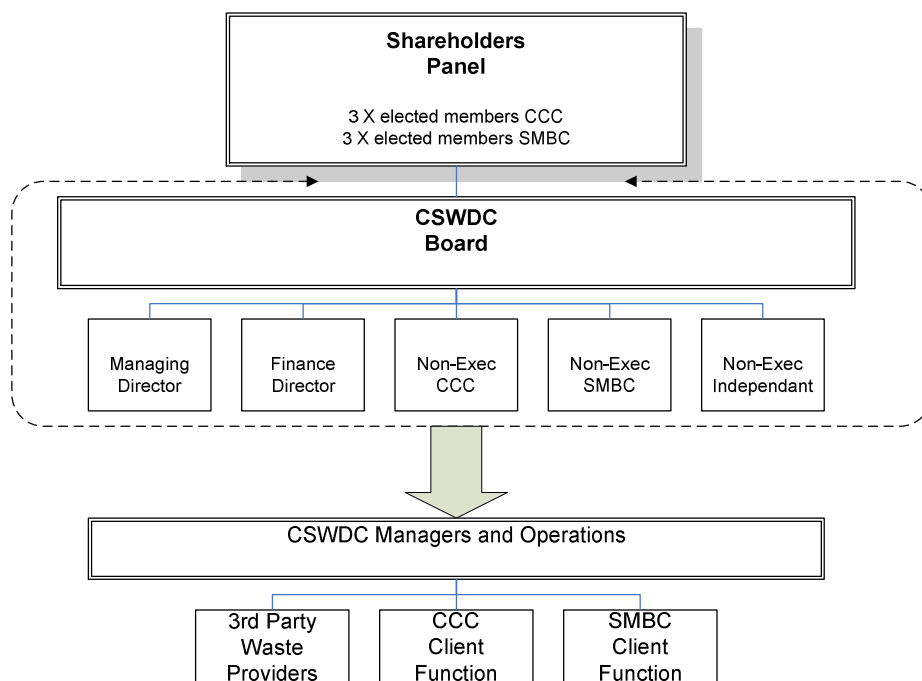
1.1.3 Coventry and Solihull currently, and will continue to, hold the only primary shares in CSWDC and receive a dividend in accordance with this shareholding. Sixty-six shares are held by Coventry (Class A), and thirty-three by Solihull (Class B). The proposal described in section two of this report does not diminish Coventry and Solihull’s ownership of CSWDC, nor does it reduce their proportion of any dividend paid.

1.1.4 In addition to the primary shares, Coventry and Solihull also hold “Preference Shares” to secure their original investment in CSWDC. Both Coventry and Solihull have allowed CSWDC to redeem these preference shares in exchange for dividend payments over the last two years. As with the primary shares, the proposal in section two of this report does not reduce the value of these Preference Shares, nor does it create any additional Preference Shares.

**1.2 Governance:**

1.2.1 Since the formation of CSWDC in 1994 the company structure has been as diagram 1 below.

**Diagram 1 – CSWDC Governance Structure**



1.2.2 Coventry's non-executive director has served on the board since 1994. Whilst there is currently no contractual end date for his term on the CSWDC board, it has mutually been agreed that now would seem an appropriate time for him to retire from his post and that Coventry should appoint a replacement on a time limited period.

## **2. Options considered and recommended proposal**

### **2.1 Warwickshire County Council becoming a shareholder in CSWDC:**

2.1.1 Warwickshire's current contractual arrangements with CSWDC comes to an end in 2016. At this point Warwickshire are left with two options for the waste treated by CSWDC to complement their existing arrangements with Staffordshire County Council and FCC Environment:

1. To re-tender the CSWDC contract on the open market, potentially losing the financial and environmental benefits of accessing a waste treatment facility located in the centre of the county.
2. To consider wider shared service options with Coventry and Solihull.

2.1.2 Warwickshire's preferred option was to explore option 2, and authority to enter into an agreement with Coventry, Solihull and CSWDC was given by Warwickshire's full council.

2.1.3 Two options for Warwickshire to become a shareholder of CSWDC have been considered, these are:

**Option 1** – with the agreement of Coventry and Solihull, CSWDC would arrange for the sale of a primary share in CSWDC based upon a valuation of CSWDC. This would provide CSWDC and the existing shareholders with a one off cash lump sum and entitle Warwickshire to a share of dividend from CSWDC. However, this would also expose Warwickshire to an equal share of any risks and liabilities in the future ownership of CSWDC. This option was discounted at an early stage of negotiations by Warwickshire.

**Option 2 (Preferred)** - with the agreement of Coventry and Solihull, CSWDC would raise a new class of share (Class C), that would have no dividend rights for the holder, no liabilities, and limited voting rights at the shareholders panel and board on specific matters relating to the control of the Company . The Class C share would also not have the ability to appoint its own director to the CSWDC board, unlike the existing primary shareholders. However, as board appointments (other than those made directly by Coventry and Solihull) are by a joint elected member panel the holder of the C class share would have a right to be a member on this appointment panel.

2.1.4 The proposal is that once this Class C share has been issued to one of the existing shareholders (for practicalities it has been agreed that this will be Coventry), it would be immediately sold to Warwickshire County Council for nominal fee, giving them a holding in CSWDC, in exchange for guaranteed waste deliveries for the next twenty-five years.

### **2.2 Appointment of a new non-executive CSWDC board member for Coventry:**

2.2.1 Under the shareholders agreement both Coventry and Solihull each have a right to appoint one non-executive board member to the CSWDC board. All other board appointments are appointed collectively.

2.2.2 The current Coventry appointed non-executive board member has been in post since 1994, and receives an annual salary plus travel expenses, which is c. £20k per annum. With the introduction of Warwickshire as a Class C shareholder and recognising the current post holders 20 years of service, it is has been mutually agreed that he will step down at a convenient point this summer.

- 2.2.3 The appointment of the Coventry's non-executive board member is at the discretion of the City Council. As can be seen from diagram 1 above the work of CSWDC and decisions of its board are controlled and ratified by the elected members appointed to the Shareholders Panel, and the non-executive board member is appointed to act on Coventry's behalf in the best interests of CSWDC.
- 2.2.4 Therefore, to bring the CSWDC board membership in line with other Coventry City Council owned arm's length companies and to realise a saving it is proposed that a new non-executive board member is appointed on the following basis:
1. That a senior officer from the Resources Directorate is appointed to the non-executive director post for fixed term of two years from the retirement of the existing post holder.
  2. That the above appointment is made without the existing remuneration or expenses package. Saving CSWDC c.£20k per annum, which should then be passed back to Coventry City Council through an increased dividend.
  3. That the above arrangements are reviewed after the fixed term of office.

### **3. Results of consultation undertaken**

Significant consultation work has taken place between Coventry City Council, Solihull Metropolitan Borough Council, Warwickshire County Council, and CSWDC to reach this agreement.

### **4. Timetable for implementing this decision**

Following approval from Council this decision would be implemented in full by 31<sup>st</sup> July 2014.

### **5. Comments from Executive Director, Resources**

#### **5.1 Financial implications**

Coventry will receive 2/3rds of the consideration paid by WCC for the one Class C share in CSWDC, the balance going to Solihull. The value is however not a material sum.

This is a new class of share which has no dividend rights, therefore its issue will not directly impact any future dividends received by Coventry. Its issue does however secure minimum tonnages for CSWDC for the next 25 years which will positively impact on the company's financial position and potentially therefore any dividends issued

The replacement of a non-executive Director with the Council's Executive Director – Resources on the CSWDC board will result in a saving to the company of £20k. This will benefit Coventry in terms of increased dividend

#### **5.2 Legal implications**

CSWDC was established in 1992 because waste disposal authorities were obliged to arrange for the discharge of their waste disposal functions through a contractor or a Local Authority Waste Disposal Company. The Secretary of State had power under section 32 of the Environmental Protection Act 1990 to give directions to waste disposal authorities which had not transferred their undertakings to waste disposal companies requiring them to do so. Section 32 of Environmental Act 1990 has been repealed but Coventry and Solihull have continued to dispose of their waste through CSWDC. To enable CSWDC to make the necessary changes to its constitution under the Companies Act 2006 the Council as a shareholder has to approve the alterations to the Memorandum and Articles of Association

The share sale agreement sets out the terms of the sale of the C share from the Council to Warwickshire County Council.

**6. Other implications**

**6.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / Local Area Agreement (or Coventry Sustainable Community Strategy)?**

The decision to sell a Class C share to Warwickshire County Council will further improve the future financial viability of CSWDC and therefore Coventry's shareholding in this arm's length company. By strengthening the financial position of CSWDC is hoped that this will help maintain the current healthy level of dividends received from CSWDC which contribute considerably to the City Council's medium term financial strategy.

**6.2 How is risk being managed?**

Risk will be managed through the normal CSWDC management and shareholder arrangements.

**6.3 What is the impact on the organisation?**

None

**6.4 Equalities / EIA**

There are no Equality issues arising from this decision or this report.

**6.5 Implications for (or impact on) the environment**

None

**6.6 Implications for partner organisations?**

None

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