

# Agenda Item No 11

NORTH LONDON WASTE AUTHORITY

REPORT TITLE:

**APPOINTMENT OF A DIRECTORS**

REPORT OF:

**LEGAL ADVISER**

FOR SUBMISSION TO:

**THE AUTHORITY**

DATE:

25 JUNE 2008

SUMMARY OF REPORT:

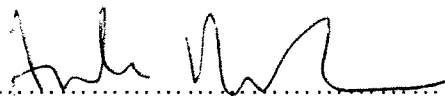
This report updates Members on proposals for the appointment of the A Directors of LondonWaste Limited and seeks agreement to changing the basis upon which they are to be appointed. In addition it seeks agreement to some changes in Standing Orders which assist in clarifying the basis upon which they can be appointed both now and in the future

## RECOMMENDATIONS

Members are asked to agree:

1. that the A Directors to LondonWaste Ltd are for the forthcoming year to be appointed from outside the Membership of the Authority
2. that the changes to Standing Orders in paragraph 20 of this report be approved
3. that an advisory panel be created to be comprised of three Members of the Authority to be chosen following consultation with the Leaders of the three groups on the Authority each to appoint one member of the panel and that the panel be advised by the Clerk to the Authority
4. that in the circumstances the Authority notes and agrees that as the matter will not admit of delay until the next Authority meeting the Clerk to the Authority pursuant to standing order A30.3 will appoint 3 A Directors to London Waste Limited, after consultation with the panel appointed pursuant to 3 above
5. That the details of those candidates to go before the panel be chosen from those individuals who will be identified by officers having undertaken a focused and conditional (upon this decision) recruitment process .

Signed by the Legal Adviser .....



Date: .....

16 June 08

## **Background**

- 1 Under Standing Orders, the Authority appoints 3 directors to the Board of LondonWaste Ltd, the company in which it has a 50% shareholding.
- 2 Members have previously considered this matter. In the report of the Legal Adviser to the meeting on 6 February 2008, the issue of appointment of the A directors of LondonWaste Limited was raised. LondonWaste Ltd is the Authority's contractor under its main contract for the disposal of waste. The joint venture agreement between SITA and the Authority, each of which holds 50% of the shares in LondonWaste, provides that 3 directors of the company will be appointed by the Authority, with one alternate director. These directors are defined as the "A" directors, and that is how they are generally known.
- 3 On 8 February 2006 Members considered a report of the then Legal Adviser on this issue. Similar considerations were raised to those in this report, and Members decided that the issue should be re-considered after the elections in May of that year.
- 4 A further report was presented to Members at the meeting on 16 April 2008, recommending that the "A" directors be appointed from outside the Membership of the Authority for the reasons set out in that paper, and further set out below. That report was not considered, in order that Members could consider the issues at the first meeting of the Authority in the municipal year, namely this meeting.
- 5 This report again puts this issue to Members albeit with the additional and more pressing time issues having been taken into account.

### **Procurement context for appointment of Directors to LondonWaste Board**

- 6 The Authority has for some time been preparing for the procurement exercise to lead to a new waste disposal contract when the current contract expires in December 2014. The current contract is with LondonWaste Ltd, who may, alone, through SITA or jointly with SITA, wish to tender for the new contract. This has led to extensive consideration of the interests of those members of the Authority who are A Directors, and the result has been advice, that in these circumstances the interest of the A directors when procurement issues are discussed is a prejudicial one, leading to the need for them to withdraw from the meetings.
- 7 In order to enable the Authority to consider and decide on the detail of the procurement process, a procurement committee was established at the meeting on 12 December 2007, with a membership of those members of the Authority who do not have an interest such that they cannot take part in the procurement business of the authority (in practice because of their

appointment as Directors to the board of LondonWaste); and by reference to political balance.

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- 8 That committee has now met on 4 occasions, and has approved the submission of an expression of interest for public finance initiative funding to DEFRA. The current timescale for the next step in this process is for submission of an outline business case to DEFRA in time to be included within round 4 of the PFI timetable.

### **Decision Making on procurement issues**

- 9 The procurement committee has, in accordance with Standing Orders, been established until this AGM. The Authority could decide to continue this method of taking decisions on procurement matters, with the membership of the committee determined in the same manner as at present. On the basis of the new membership of the Authority, the membership of the procurement committee for the year would be in the following proportions: assuming a committee of 8, 3 Labour members, 3 Conservative members and 2 Liberal Democrat members.
- 10 The importance and financial implications of the procurement to the business of the Authority are such that Members are invited to consider that it would be preferable for all members of the Authority to be involved in the detail of the decisions required for the procurement. The shape and scope of the contract will have a bearing on service delivery for the contract period (up to 30 years from 2014); and the cost of the contract will be reflected in the Authority's budget and therefore in the levy re-charged to the constituent boroughs. It may well therefore be considered important that all Members of the Authority are engaged in all elements of the decision making process leading to the procurement. In addition it is likely that potential bidders would prefer relevant decisions to have been made by all members of the Authority.
- 11 In order to avoid the specific issue of a prejudicial interest preventing some Members of the Authority from taking decisions in respect of the procurement, Members are asked to consider the appointment of A directors from outside the membership of the Authority such appointments given the need for urgent action to be made by the Clerk pursuant to Standing Orders.
- 12 The Authority has an obligation to appoint A directors in a timely manner, as the memorandum and articles of the company require the presence of an A director at a board meeting for it to be quorate. The same applies to the directors appointed by SITA, to reflect the nature of the joint venture agreement.

## **Proposals for Appointment**

- 13 It is suggested that those officers who are concerned in advice to the Authority should not be eligible for appointment, as they may find themselves in a position of conflict.
- 14 As the posts carry remuneration albeit from LondonWaste, it is important to ensure that there is a fair process to choose suitable candidates. This would not prevent, as is usual in current recruitment practice, the targeting by way of encouragement to apply, of individuals who it is thought might make good candidates.
- 15 The appointments would be made by reference to specific requirements of the Authority. In accordance with Standing Orders in particular "suitable experience and ability". A person specification was created and used as part of the executive search which has been undertaken subject to this decision and is detailed in paragraph 17 and 18. It is not considered necessary to appoint an alternate Director in these circumstances, and therefore Standing Order 14.1 is amended slightly to allow for such an appointment only if considered appropriate.
- 16 As proposed in the earlier report to Members, it is considered appropriate to remunerate non-Member Directors for the obligation to attend Authority meetings and to receive briefings on Authority issues from officers prior to company Board meetings. It is proposed that this be set at £1,000 for the year.
- 17 As the appointment of A directors is made at the AGM for each year, it is now important to appoint directors for the year in a timely manner. However to ensure the suggested process is in compliance with Standing Orders a suggested amendment has been included within the report allowing the appointment to be made after the AGM, albeit shortly after.
- 18 To enable the speedy appointment for the current year given the delay caused by the matter having been deferred from the April meeting, officers propose that a panel consisting of three members of the Authority to be nominated one by each of the groups. The Clerk would make the appointment to 3 directorships based upon consultation with both the panel as part of the process and thereafter the Chairman. Members will be aware that it is not lawful to delegate a decision to a single Member, or to a group of Members other than to a properly constituted committee.
- 19 The appointments would be reported to the next meeting of this Authority.

## **Standing Orders**

- 20 The following provisions of the Authority's standing orders relevant to the appointment of the A directors and to which changes are suggested:

A.9.1 Annual Meeting - (iv) to consider the appointment of Directors to serve on the Board of LondonWaste Ltd

#### A.14 LondonWaste Board Appointments

##### A.14.1 Annual Appointment

The Authority shall at its annual meeting each year appoint three Directors from its Membership to serve on the Board of the Joint Venture Company, LondonWaste Ltd, and, if appropriate, one alternate Director to attend meetings, but to vote only in the absence of a full Director.

##### A.14.2 Eligibility for Appointment

Subject to A.6.5 (regarding the chair and Vice-Chairs of the Authority), any Member of the Authority is eligible for appointment. The Authority may also appoint a person who is not a Member of the Authority to serve on the Board, provided it is satisfied that the person concerned has suitable experience and ability to serve on the Board.

##### A.14.5 Conflict of Interest

The Authority may require its Directors to leave a meeting at any time should it need to deal with matters where it is considered that there could be a conflict of interest between their position as Directors of LondonWaste Ltd and members of the Authority.

- 21 Standing orders therefore permit the appointment of A Directors from outside the membership of the Authority, and set out the requirements for eligibility in A.14.2.
- 22 It is assumed by Standing Orders that the more usual choice for the directors will be from the membership of the NLWA.
- 23 It is therefore proposed that for clarification the following amendments be made to Standing Orders:

In Standing Order A.14.1, to delete the words "from its Membership". and to add after "at its annual meeting" the words "or as soon as possible thereafter" This would not change the basis on which Members of the Authority or non-Members would be eligible, as these provisions are contained in A.14.2. However it would remove the apparent assumption (which does not currently sit well with A14.2 in any event) that they will be members of the Authority. The second change would make it clear that the appointment does not have to be made at the AGM but can be made thereafter and would make the suggested course of action in this report more clearly allowable.

In Standing Order A.14.2, to add in "or persons" after "a person" in the second sentence. This will make it clear, should Members wish to take

this route, that if agree all appointments to the Company may be of non members of the authority.

It is important to note that the proposed changes to Standing Orders do not prevent future appointment of A Directors from the membership of the Authority but are designed merely to clarify some current inconsistency with regard to appointments of those who are not members should that be the decision of the Authority.

#### **24 Comments of the Financial Adviser**

The Financial Adviser has been consulted in the preparation of this report and has no further comments to add.

#### **25 Comments of the Legal Adviser**

This is a report of the Legal Adviser.

#### **Access to Information**

No documents requiring disclosure were used in the preparation of this report

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**REPORT ENDS**