

EAST LONDON WASTE AUTHORITY

4th December 2002
(3.45 - 4.58 p.m.)

Present:- Councillor Dale (Chairman); Councillor Ware (Vice-Chairman);
Councillors Corbett, Leitch, McKenzie, Sladden and Tebbutt

1174 APOLOGIES FOR ABSENCE

An apology for absence was submitted on behalf of Councillor Weinberg.

1175 MINUTES

We have confirmed as correct the minutes of our meeting held on 18th September 2002. Further to Minute 1166, the Treasurer advised that he expects the District Auditor to issue a clean certificate in respect of the Authority's Statement of Accounts for the financial year 2001/02.

1176 2002/03 FINANCIAL POSITION - UPDATE

We have received a report from the Treasurer on the Authority's projected financial position in 2002/03, submitted in accordance with Section 114(3) of the Local Government Finance Act 1988.

At our last meeting, the Treasurer reported on the budget pressures faced by the Authority which were apparent at that time (Minute 1171 refers). Since that meeting, additional financial pressures have been identified in respect of the cost of disposal of refrigerators, increased professional fees and a higher than projected increase in waste volumes (the details of which were referred to in separate reports on the agenda).

In addition to these new pressures, the Authority's revenue position has been further impacted by the Secretary of State for the Environment, Food and Rural Affairs' Special Grant Report in respect of the allocation of the £40 million extra funding to local authorities towards the cost of disposing of refrigerators in 2002/03. The Special Grant Report includes a total allocation to the ELWA area of £885,499 but this money is to be paid to ELWA's constituent Councils under the proposals approved by Parliament. The effect of this decision is that ELWA will continue to incur the costs of disposal in the current year but is unable under normal levying arrangements to recover the money from the constituent Councils until next year. The Treasurer confirmed that this would result in a serious mismatch between the Authority's expenditure and income for this year unless a solution can be found.

The Treasurer advised that based on current information and incorporating all known budget pressures, the Authority is facing a potential revenue deficit of over £1 million in the current year after the use of available reserves. As a consequence, officers are pursuing a number of measures to mitigate the projected budget pressures. These measures include seeking the permission of the Office of the Deputy Prime Minister to treat all expenditure on refrigerators as a capital item in the current year's accounts, seeking the approval of the constituent Councils to the use of discretionary

powers under the Local Government Act 2000 to enable the refrigerator special grant money to be paid over to ELWA this year, and identifying potential borrowing opportunities.

We have noted the possible impact on next year's levy of redressing the revenue deficit position and restoring the Authority's balances to a prudent level and have also taken on board the officers' advice on how to take this matter forward. Accordingly, we have:-

- (i) noted the Treasurer's report; submitted in accordance with Section 114(3) of the Local Government Finance Act 1988;
- (ii) endorsed the letter from the Treasurer to the Office of the Deputy Prime Minister seeking approval for the Authority to treat all expenditure on refrigerators as a capital item in the current year's accounts;
- (iii) agreed that the Treasurer should formally write to the constituent Councils requesting that they pay the 2002/03 special grant funding for refrigerator disposal costs to ELWA in the current year in accordance with discretionary powers under the Local Government Act 2000;
- (iv) agreed that the Treasurer should pursue all other funding options referred to in his report;
- (v) agreed the provisional application of the PFI and Capital Reserves in the current year;
- (vi) agreed that Directors continue to take all steps possible to produce operational savings in the current year;
- (vii) agreed that no new non-contracted orders or commitments be accepted without the prior agreement of the Clerk and Treasurer;
- (viii) asked that Members be provided with an analysis of waste flows which show the 5.5% increase in this year compared to last year; and
- (ix) agreed that the Treasurer should continue to submit further progress reports to all future meetings this financial year.

1177 BUDGET MONITORING STATEMENT

We have received and noted a report from the Treasurer which compares the Authority's actual expenditure for the six-month period ending 30th September 2002 with the revenue estimates approved in February 2002.

The overall provisional net expenditure for the first half of this financial year shows an overspend of £489,000 (4.2%), taking account of allocations from contingencies and reserves and known seasonal and timing variations. The Treasurer advised on the main variances that have arisen in the six-month period, which relate to the increased costs associated with the 5.5% increase in waste volumes and necessary repair works to the premises and plant at the Jenkins Lane Refuse Transfer Station.

1178 DISPOSAL OF REFRIGERATORS - UPDATE

The General Manager presented a further update report in respect of the collection and disposal of refrigerators and the associated cost implications.

At our meeting on 26th June 2002, it was reported that the average weekly

number of redundant units handled in the previous six-month period was 574. Since that time, the average weekly intake has increased to over 700. We have noted that officers' investigations have identified no apparent reasons for this increase.

As a result of the increase it has been necessary to review the cost projection for the 2002/03 financial year. The revised cost projection for dealing with refrigerators in the current year is now £1,106,868 which is based on the current average weekly intake remaining constant and the costs incurred to date.

Provision of £835,000 has already been made in the Authority's estimates to deal with redundant units in the current year, therefore leaving a shortfall of £271,868. Having regard to our earlier consideration of the Authority's overall budget position, we have agreed that the Treasurer should make appropriate provision in the estimates to meet the revised projected full-year cost for the disposal of refrigerators.

Arising from our consideration of this issue, we have also discussed the possible implications of the EC Waste Electrical and Electronic Equipment (WEEE) Directive which, when introduced, will place obligations on producers in respect of redundant equipment. The General Manager confirmed that provision has been made in the IWMS Contract regarding the WEEE Directive and he agreed to report to our next meeting outlining the likely implications for the Authority of the Directive.

1179 PROGRESS ON COMPLETION OF IWMS CONTRACT DOCUMENTS

Further to Minute 1168 of our last meeting, we have received from the Project Liaison Director a report on the progress towards completion of the documentation for the Authority's Integrated Waste Management Strategy (IWMS) Contract.

The Project Liaison Director provided a summary of the main features of the Contract and the key issues that have been considered during the period since Shanks Waste Services Limited were selected as Preferred Bidder for the Contract in March this year. This included a schedule of the clauses within the Contract relating to early termination and the consequences of each clause.

We have also noted the anticipated sequence of events leading up to Contract completion, including the issue of certificates in the appropriate form and the authorised signatories for the Authority, together with details of the main financial implications of the Contract in the first five years. With regard to the power of the Authority to enter into the IWMS Contract, we have considered the advice contained in the draft opinion from Wragge & Co., which confirms that the Authority has the requisite legal power.

Accordingly, having considered and noted the Project Liaison Director's report and the supplementary recommendations that were tabled at the meeting, we have:-

- (i) approved the amendments to the documents since the Preferred Bidder stage described in this and previous progress reports;

- (ii) confirmed our approval to entering into a Contract with the Preferred Bidder (Shanks Waste Services) for the delivery of the Authority's Integrated Waste Management Strategy;
- (iii) re-confirmed our previous decisions that the Clerk is authorised, subject to the strategies and relevant previous decisions of ELWA, to finalise and complete the necessary Contract documents;
- (iv) authorised the Clerk to resolve, at the appropriate time, that ELWA Limited is an arms-length company in accordance with Part V of the Local Government and Housing Act 1989;
- (v) authorised the Treasurer to agree the interest rate to be applied to the Financial Model within the Contract;
- (vi) approved the issue of the appropriate certificates under the Local Government (Contracts) Act 1997 on behalf of ELWA in respect of the main Contract and Direct Agreement; and
- (vii) approved the issue of an ELWA Certificate in accordance with the final legal opinion from Wragge & Co. (a draft of which appears at Appendix A to the Project Director's report).

1180 FEE EXPENDITURE

We have received a report from the Project Liaison Director regarding expenditure on professional advisers' fees, which includes a request for additional budget provision in the light of the delay in the completion of the IWMS Contract.

At our last meeting, we approved a total budget provision of £305,000 for professional fees up to project completion (Minutes 1168(ii) and 1171(ii) refer). As a result of the further delay in the timetable for completion and the specialist legal work that has been required to resolve a wide variety of issues since the last meeting, details of which were included in an appendix to the report, we have noted that further provision of £120,000 is now required.

Arising from our discussion of the issues in the report and having regard to our earlier consideration of the Authority's overall budget position, we have agreed that the Treasurer should make further provision in the Authority's estimates in the sum of £120,000 for professional advisers' fees up to project completion.

1181 MAYOR'S WASTE STRATEGY

The General Manager presented the Authority's proposed response to the Mayor's Draft Municipal Waste Management Strategy for London.

The Mayor has a duty under the Greater London Authority Act 1999 (the GLA Act) to prepare a Municipal Waste Management Strategy for London. The draft Strategy, which contains 56 policies and 106 proposals, was published for comment in September and the closing date for responses is 6th December.

We have noted that there are question marks around the Mayor's powers under the GLA Act to implement a number of the proposals in his Strategy. There are also concerns over the costings that have been applied to the proposals. The General Manager confirmed that he will continue to seek

clarification of these issues.

Accordingly, we have:-

- (i) agreed that the response at Appendix B to the General Manager's report be submitted to the Greater London Authority, subject to the inclusion of any additional comments from Members; and
- (ii) authorised the Clerk to finalise the Authority's response by the deadline of 6th December.

1182 PUBLIC RELATIONS ISSUES - UPDATE

At our last meeting, we approved funding for a public launch event in respect of the IWMS Contract and other projects (Minute 1169 refers). In the light of the financial constraints currently faced by the Authority, the Office Manager has discussed with Shanks Waste Services Limited the possibility of deferring these projects until the beginning of the 2003/04 financial year.

Having noted that Shanks has concurred with these proposals, we have agreed that the IWMS Contract public launch event, the next edition of the Waste Solutions newspaper and the launch of the new ELWA web-site be deferred until the new financial year. The Treasurer confirmed that appropriate provision would be made in next year's estimates for these projects to proceed.

We have also noted that the new IWMS contract service will operate under the trading name shanks.east london, with the registered company name remaining as ELWA Limited.

1183 ELWA LIMITED *

The Project Liaison Director presented a report on issues relating to ELWA Limited, together with details of the role of the Authority's A Director on the company and the advice provided to date to the A Director, Councillor Weinberg. Some of these issues related to the terms proposed by Shanks Waste Services Limited in respect of the IWMS Contract and, therefore, these items were included in the private and confidential section of the agenda.

We have noted the assurances that the Authority and all Directors of ELWA Limited are required to provide regarding the viability of ELWA Limited and the Business Plan for ELWA Limited that has been submitted to the Secretary of State for the Environment, Food & Rural Affairs. The Project Liaison Director also tabled a summary of the advice provided by independent legal advisers to the A Director in respect of the responsibilities of directors of limited liability companies.

Accordingly, we have:-

- (i) noted the position of ELWA Limited and the A Director as summarised in the report;
- (ii) noted the advice given to the A Director concerning his role and responsibilities on ELWA Limited;

- (iii) confirmed the delegated authority to the Clerk to sign the Authority's Assurances to the Secretary of State; and
- (iv) noted the Business Plan of ELWA Limited.

(* Part of this item was considered after the resolution had been passed to exclude the public and press from the remainder of the meeting as the information included details of the proposed terms in respect of the Authority's IWMS Contract, which is exempt from publication by virtue of paragraph 9 of Part I of Schedule 12A of the Local Government Act 1972.)