

**DECISIONS SHOULD NOT BE IMPLEMENTED BEFORE
WEDNESDAY 20 APRIL 2022**

CABINET

Tuesday, 5 April 2022

PRESENT – Councillors Mrs H Scott (Chair), Clarke, Dulston, Durham, Keir, Marshall, K Nicholson and Tostevin

INVITEES – Councillors Curry, Harker and Snedker

APOLOGIES – Councillor Tait

ALSO IN ATTENDANCE – Councillors McCollom

C118 DECLARATIONS OF INTEREST.

There were no declarations of interest reported at the meeting.

C119 TO HEAR RELEVANT REPRESENTATION (FROM MEMBERS AND THE GENERAL PUBLIC) ON ITEMS ON THIS CABINET AGENDA.

In respect of Minute 123(2) below, representations were made by a member of the public in attendance at the meeting.

C120 TO APPROVE THE MINUTES OF THE MEETING OF THIS CABINET HELD ON TUESDAY, 8 MARCH 2022.

RESOLVED – That the Minutes be confirmed as a correct record.

REASON – They represent an accurate record of the meeting.

C121 MATTERS REFERRED TO CABINET

There were no matters referred back for re-consideration to this meeting.

C122 ISSUES ARISING FROM SCRUTINY COMMITTEE

There were no issues arising from Scrutiny considered at this meeting.

C123 KEY DECISIONS:-

(1) ANNUAL PROCUREMENT PLAN UPDATE

The Cabinet Member with the Resources Portfolio introduced the report of the Group Director of Operations (previously circulated) requesting that consideration be given to the Annual Procurement Plan (also previously circulated) including the assessment of contracts

that are considered to be strategic or non-strategic; updating Members on the outcomes of procurement(s) previously designated as Strategic; and the decisions taken by the Procurement Board to waive the Contract Procedure Rules.

The submitted report stated that any contract award decision with a value below £100,000 was delegated to officers; the Annual Procurement Plan contained all existing and new contracts that were valued at £100,000 and above which required a tender process; outlined the process for designating them either strategic and non-strategic contracts; and stated that three contracts had been designated strategic in the update to the Annual Plan.

RESOLVED - (a) That the assessment of strategic and non-strategic contracts as presented in Appendix 1 of the submitted report, be approved, and it be noted that:-

- (i) further reports/updates on the procurement process for those contracts designated as strategic (including decisions made by the Procurement Board) be brought to Cabinet;
- (ii) contract award decisions for the contracts designated as strategic, as listed in the plan at Appendix 1, will be subject to approval by the Procurement Board and will be reported back to Cabinet; and
- (iii) contract award decisions for the contracts designated as non-strategic will be made by staff from the appropriate Directorate as listed in the plan at Appendix 1 to the submitted report.

(b) That the contents of the report in respect of the update of strategic procurements, Procurement Board waiver decisions, and Social Value, be noted.

REASONS – (a) In respect of strategic/non-strategic contracts, the recommendations are supported by the following reasons: -

- (i) the Contract Procedure Rules require Cabinet to approve the designation of contracts as strategic and non-strategic;
- (ii) contracts designated strategic are of high value and high significance in respect of the impact on residents, Health & Safety and public safety; and
- (iii) the contracts designated non-strategic are of a lower value and lower significance in respect of the impact on residents and public safety.

(b) In respect of Procurement Board waiver decisions, the recommendations are supported by the following reasons:

- (i) in order to comply with the Contract Procedure Rules;
- (ii) to provide Cabinet with information about the decisions made by the Procurement Board; and
- (iii) to supplement the reports that are taken to Cabinet about proposed spend over

£100,000, that are set out in the Annual Procurement Plan and the in year update to that report.

(2) TEES VALLEY ENERGY RECOVERY FACILITY LOCAL AUTHORITY SPECIAL PURPOSE VEHICLE

The Cabinet Member with the Local Services Portfolio introduced the report of the Group Director of Services (previously circulated) providing an update to Members on all aspects of the Tees Valley Energy Recovery Facility (TV-ERF) project; outlining the rationale for setting up the Local Authority Special Purpose Vehicle (LA-SPV); how the LA-SPV will be governed; and the commercial principles as to how costs and liabilities shall be shared between the seven Councils over the term of the Project.

The submitted report stated that this Council had joined with Durham County Council, Hartlepool Borough Council, Middlesbrough Council, Newcastle City Council, Redcar and Cleveland Borough Council and Stockton Borough Council, to procure a contractor to design, build, operate and finance a new Energy Recovery Facility to be located in the Tees Valley, servicing the waste of 1.5m residents; outlined the current waste / treatment contracts for each of the seven authorities which were due to expire in 2025/26; stated that a new Residual Waste Treatment Contract was required to be procured to allow for a new facility to be constructed and fully commissioned in preparation for the commencement date for the new service of 1 April 2026; and that the contract would terminate on 31 March 2052 unless both parties agreed to an extension.

It was reported that the procurement process was being undertaken in accordance with the Public Procurement Regulations 2015 (as amended); the OJEU Notice to commence the procurement process was issued on 24 July 2020; supported by Business Cases, the requirement was for a 450,000 tonne per annum Energy Recovery Facility (ERF) with Combined Heat and Power (CHP) capability to treat the Councils' municipal solid waste; the combined tonnage unlocked economies of scale; the Tees Valley Energy Recovery Facility (TV-ERF) would be designed to have a minimum 40-year lifespan; the Contractor appointed would build, finance and operate the ERF; the initial contract term would commence in 2022 to enable construction of the facility; and that a 22-acre brownfield site, owned by South Tees Development Corporation (STDC), had been selected within the Teesworks regeneration site to locate the facility.

It was also reported that a Local Authority Special Purpose Vehicle (LA-SPV) (a Limited Company) was required to be formed by the seven Councils; the regulation and management of the LA-SPV would be governed by a Shareholders' Agreement (SHA); and that each Council (Shareholder) would be required to formally enter into the Shareholders' Agreement approximately three months in advance of the Project Agreement being entered into with the successful Contractor (Financial Close).

Particular references were made to the Waste Supply and Support Agreement (WSSA) which would govern the terms of the commercial arrangements between the seven Councils (the Shareholders) in relation to the LA-SPV; the target date for completion of the procurement process; and the governance of the project.

A member of the public in attendance at the meeting made reference to the possible inclusion, by the Government, of incineration in the Emissions Trading Schemes (ETS) and

enquired whether calculations had been done to factor in ETS costs and their impact and whether there was a evidence that 450,000 tonnes of incineration capacity would be required. References were made at the meeting to the fact that municipal waste was not included in the definition of energy from a renewable source in the Renewable Energy Directive; the carbon emissions from the facility; how the on-going reductions in emissions would be captured and what sanctions would the company face should they not be met; concerns around the bottom ash produced by the facility; carbon capture; and the implications should the economies of scale not be met. The Cabinet Member with the Local Services Portfolio responded thereon.

RESOLVED – (a) That the creation of a Local Authority Special Purpose Vehicle (LA-SPV), which will be the contracting body for the seven Councils with the successful contractor, be approved, and the Assistant Director Community Services be appointed as a Director of the LA-SPV.

(b) That the Council enter into the Shareholders Agreement and authority be delegated to the Group Director of Services to finalise the agreement, in consultation with the Cabinet Member for Local Services.

(c) That it be noted that the Council will be entering into a service level agreement with Redcar and Cleveland Borough Council as the host Authority to provide support services to the LA-SPV.

(d) That the Council enter into the Waste Supply and Support Agreement with the LA-SPV, and authority be delegated to the Group Director of Services to finalise the agreement, in consultation with the Cabinet Member for Local Services.

(e) That authority be delegated to the LA-SPV to enter into contract with the successful contractor at financial close and to enter into a 50-year lease with South Tees Development Corporation (Teesworks) for the site.

(f) That authority be delegated to the Group Director of Services, in consultation with the Cabinet Member for Local Services, to enter into two guarantees, the first for the LA-SPV and the second to underwrite the LA-SPV's obligations under the 50-year lease for the site.

(g) That authority be delegated to the Group Director of Services, in consultation with the Cabinet Member for Local Services, to finalise and agree the business plan for the LA-SPV.

(h) That authority be delegated to the Group Director of Services, in consultation with the Cabinet Member for Local Services, to finalise and agree an equalisation agreement between the Tees Valley Authorities for the transfer and bulk transportation of material to the TV-ERF.

REASONS – (a) The current waste contract has already been extended and cannot be extended further as this could potentially breach procurement regulations. The other Tees Valley Councils are in a similar position.

(b) It is essential the Tees Valley Councils have in place a contract for the treatment of the residue of waste once recyclable materials have been removed. This will provide diversion of waste from landfill and maximise the recovery of energy and any residues.

(c) The recommendations are the necessary steps to move forward the Tees Valley Energy Recovery Facility project.

(d) By procuring the development of the Tees Valley Energy Recovery Facility together with other Councils, this Council will be able to ensure the construction of a purpose designed modern facility within the region and be able to benefit from economies of scale.

C124 DISPOSAL OF LAND AT 294 HAUGHTON ROAD, DARLINGTON

The Cabinet Member with the Resources Portfolio introduced the report of the Chief Executive (previously circulated) requesting that consideration be given to the disposal of Council owned land at 294 Haughton Road Darlington, as shown edged red on the plan (also previously circulated), subject to the granting of planning permission for development.

The submitted report stated that the Council owned land at Haughton Road, totalling 0.13 hectares (0.34 acres), which was surplus to Council requirements and available for development; the land was currently grassed open land; the landlord for the Wickes retail store adjacent to the land, had approached the Council about acquiring the site in order to increase the outdoor retail area for Wickes, with access coming from the store not off Haughton Road; stated that without prejudice negotiations with the landlord had reached an agreed sales figure for the site, subject to a restricted use and subject to obtaining planning consent; and outlined the legal and financial implications.

RESOLVED – (a) That the sale of 0.13 hectares (0.34 acres) of land at 294 Haughton Road, Darlington, be approved, in principle, with the Chief Executive's Office being authorised to negotiate full terms in consultation with the Cabinet Member with the Resources Portfolio and with the terms being reported subsequently on the Schedule of Transactions.

(b) That the Assistant Director Law and Governance be authorised to document sales accordingly.

REASONS – (a) To achieve a capital receipt for the Council.

(b) To assist business development and job creation in Darlington.

C125 SCHEDULE OF TRANSACTIONS

The Cabinet Member with the Resources Portfolio introduced the report of the Chief Executive (previously circulated) requesting that consideration be given to the Schedule of Transactions (also previously circulated).

RESOLVED – That the Schedule of Transactions, as detailed in the appendix to the submitted report, be approved, and the transactions be completed on the terms and conditions detailed therein.

REASONS – The terms negotiated require approval by Cabinet before binding itself contractually to a transaction.

C126 MEMBERSHIP CHANGES - TO CONSIDER ANY MEMBERSHIP CHANGES TO OTHER BODIES TO WHICH CABINET APPOINTS.

There were no membership changes reported at the meeting.

**DECISIONS DATED –
FRIDAY 8 APRIL 2022**