

CABINET
5 APRIL 2022

TEES VALLEY ENERGY RECOVERY FACILITY LOCAL AUTHORITY SPECIAL PURPOSE VEHICLE

**Responsible Cabinet Member -
Councillor Andy Keir, Local Services Portfolio**

**Responsible Director -
Dave Winstanley, Group Director of Services**

SUMMARY REPORT

Purpose of the Report

1. The purpose of this report includes:
 - (a) Providing an update to Members regarding all aspects of the Tees Valley Energy Recovery Facility (TV-ERF) project.
 - (b) The rationale for setting up the Local Authority Special Purpose Vehicle (LA-SPV) and how this will be governed as well as the commercial principles as to how costs and liabilities shall be shared between seven Councils over the term of the Project.
 - (c) The decisions that Members are being asked to consider.

Summary

2. Darlington Borough Council, Durham County Council, Hartlepool Borough Council, Middlesbrough Council, Newcastle City Council, Redcar and Cleveland Borough Council and Stockton Borough Council (the Councils) have a statutory obligation to provide waste management services. The Councils have joined together 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.
3. The Tees Valley Councils currently operate residual waste disposal services as a group under a single contract with SUEZ, which includes Redcar and Cleveland Borough Council, Hartlepool Borough Council, Stockton Borough Council and Middlesbrough Borough Council. Darlington Borough Council is part of the group but currently has its own separate waste treatment and disposal contract with Stonegrave Aggregates Ltd. Durham County Council and Newcastle City Council currently have their own separate residual waste disposal contracts with SUEZ.
4. All existing waste treatment/disposal contracts are due to expire in 2025/26 and therefore a new Residual Waste Treatment Contract must be procured in order to allow for the new facility to be constructed and fully commissioned in preparation for this. The service commencement date for the new facility is 1 April 2026.

5. The First Inter-Authority Agreement, which governs the procurement process up until entering into the Project Agreement (Financial Close), was executed by the seven Councils on 24 July 2020.
6. The procurement process is 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.
7. Supported by Business Cases, the requirement is 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, this being the residual waste that has not been (or cannot be) recycled. This combined tonnage unlocked economies of scale which were attractive to the Councils (and to the market) and encouraged them to commence this procurement together.
8. The Tees Valley Energy Recovery Facility (TV-ERF) will be designed to have a minimum 40-year lifespan and the Contractor appointed following the conclusion of the procurement process will build, finance and operate the ERF. The initial contract term shall commence in 2022 (subject to entering into the Project Agreement with the successful bidder (Financial Close)). The Contractor shall construct the facility in preparation for the service commencement date on 1 April 2026, at which point the Contractor is required to accept and manage all contract waste. The Contract shall terminate on 31 March 2052 unless both parties agree the terms of a potential [eleven-year] extension that may run up until 2063.
9. The Contract will require the successful contractor to invest very significantly, likely to be several hundred million pounds, to construct the TV-ERF. The procurement process is still underway, but it is expected that the total value of the contract could be £2.1bn over the 29 years (plus 11 years) contract. The facility will revert to ownership by the Councils at the expiry of the Contract.
10. The TV-ERF will be a source of renewable electricity (up to 49.9MW) equivalent to powering over 60,000 homes. It may be possible in the future to export the renewable heat which is generated by the facility, to be provided to local businesses and other local users of heat, should a future Business Case demonstrate this to be feasible (technically and economically) and provide overall Value for Money for such an investment.
11. To encourage competition, a 22-acre brownfield site, owned by South Tees Development Corporation (STDC), was selected within the Teesworks regeneration site and this is mandated for use by the successful Contractor. Detailed ground condition surveys were undertaken. As part of the wider remediation strategy that is being undertaken by STDC, the entire development area has been remediated in preparation for the commencement of the development.
12. The development will create a few hundred jobs during the construction phase and up to 50 permanent positions during the services phase. The residues from the process (including metals and bottom ash) will be recovered or recycled, thereby directly displacing the requirement within industry for additional virgin materials that would

otherwise have been required. The facility will make a valuable contribution to the local circular economy.

13. Outline Planning Permission for the proposed development was issued by the Planning Authority in July 2020. Obtaining 'Full Planning Permission' for the development is a prerequisite for any of the three bidders to be appointed preferred bidder.
14. A Local Authority Special Purpose Vehicle (LA-SPV) a Limited Company is required to be formed by the seven Councils. It will be the Contracting entity representing the seven Councils (the Shareholders) and will enter into the Project Agreement with the successful Contractor and the lease with STDC (Teesworks) for the site.
15. The regulation and management of the LA SPV shall be governed by the Shareholders' Agreement (SHA). Each Council (Shareholder) will 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).
16. The terms of the commercial arrangements between the seven Councils (the Shareholders) in relation to the LA SPV shall be defined and governed by the Waste Supply and Support Agreement (WSSA). The WSSA is required to be formally entered into by the seven Councils (Shareholders) in parallel with the LA SPV awarding the Contract and entering into the Project Agreement with the successful Contractor.
17. Each Council will be required to enter into two 'Council Guarantees'. The first will be to provide resilience to the LA SPV and to provide comfort to the Contractor that the LA SPV is fundamentally robust to meet its obligations under the Project Agreement. The second is to underwrite the LA SPV's obligations (rent etc.) under the 50- year lease for the site.
18. The target date for completion of the procurement process (including reaching Financial Close and entering into the Project Agreement) is 30 September 2022 based on the current procurement timescales. The Service Commencement Date will be 1 April 2026 and the Contractor will be required to accept and manage all contract waste from this date, even though the TV-ERF will not have completed its acceptance tests (contract waste will not be available to the contractor prior to 1 April 2026 and the acceptance tests can only be completed using contract waste).
19. Project governance continues to be provided by a Board made up of representatives of each of the seven Councils which normally meets on a monthly basis. The Board's terms of reference set out clear decision making and a voting structure and an escalation process in the case of any disputes. The Board has the delegated authority to proceed to financial close and enter into project documents (subject to approval through individual council governance processes).

Recommendation

20. It is recommended that:
 - (a) Members approve the creation of a Local Authority Special Purpose Vehicle which will be the contracting body for the seven Councils with the successful contractor **and** approve the Assistant Director Community Services to be appointed as a Director of

the LA-SPV.

- (b) Members approve the Council entering into the Shareholders Agreement and delegate authority to the Group Director of Services to finalise the agreement, in consultation with the Cabinet Member for Local Services.
- (c) Members note 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) Members approve entering into the Waste Supply and Support Agreement with the LA-SPV and delegate authority to the Group Director of Services to finalise the agreement, in consultation with the Cabinet Member for Local Services.
- (e) Members delegate authority 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) Members delegate authority 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, the second to underwrite the LA-SPVs obligations under the 50-year lease for the site.
- (g) Members delegate authority 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) Members delegate authority 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

21. The recommendations are supported by the following 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, we 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.

Dave Winstanley
Group Director of Services

Background Papers

- (i) Cabinet report 11 September 2018 Tees Valley Waste Management Strategy
- (ii) Cabinet report 8 January 2019 Tees Valley Waste Management Strategy
- (iii) Cabinet Report 5 November 2019 Tees Valley Joint Waste Management Contract
- (iv) Cabinet report 20 July 2020 Tees Valley Joint Waste Management Contract

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| S17 Crime and Disorder | The content of this report does not impact on crime and disorder. |
| Health and Wellbeing | Effective and safe management of waste can have a positive impact on the health and wellbeing of residents. |
| Carbon Impact and Climate Change | <p>The waste hierarchy determines that it is preferable, from an environmental perspective, to treat residual waste by generating energy from it instead of disposing of it in landfill.</p> <p>There will be emissions from the facility, but these will be minimised and strictly controlled in line with the conditions of the Environmental Permit, regulated by the Environment Agency.</p> <p>The potential development of a Carbon Capture Underground Storage facility, for the TV-ERF will allow CO₂ to be captured and stored through the infrastructure that is to be developed by the Northern Endurance Partnership as part of the East Coast Cluster. This will lead to the TV-ERF effectively being a net-negative carbon emitter.</p> |
| Diversity | There is no impact on diversity as a result of this report. |
| Wards Affected | There is no impact on any Ward particularly as a result of this report. |
| Groups Affected | No particular group is affected as a result of this report. |
| Budget and Policy Framework | There is no impact on the Council's Budget and Policy Framework. |
| Key Decision | Yes, as it affects all Wards. |
| Urgent Decision | No |
| Council Plan | The vast majority of the Council's residual waste will be treated through TV-ERF, thereby avoiding landfill as the alternative to disposing of this waste. This supports the sustainability work and contributes to addressing climate change priorities. |
| Efficiency | There is no impact on the Council's Efficiency agenda as part of this report. |
| Impact on Looked After Children and Care Leavers | This report has no impact on Looked After Children or Care Leavers. |

MAIN REPORT

Information and Analysis

22. A detailed project update, detailed description of the proposals and reasons for recommending are contained within the **CONFIDENTIAL REPORT**. **This item contains exempt information under Schedule 12A Local Government Act 1972 (as amended by the Local Government (Access to Information) (Variation) Order 2006) namely, (para 3)**

information relating to the financial or business affairs of any particular person (including the authority holding that information).

Financial Implications

23. The financial implications of the LA SPV will be set out within the Business Plan. The treatment costs of the residual waste that will be required to be paid to the Contractor and how these will be shared between the seven Councils will be defined within the Waste Supply and Support Agreement.
24. The seven Councils were required to undertake a procurement process due to their existing waste treatment contract arrangements due to expire in 2025/26. By procuring this contract together, economies of scale provide enhanced value for money for the Councils. The benefits of forming a LA SPV to be the contracting entity with the Contractor include:
- (a) **Separate legal entity** - The Project would sit on the balance sheet of the LA SPV, rather than the full Project sitting on an individual Council's balance sheet (with all assets and liabilities running through their accounts);
 - (b) **Shared ownership** - The Project assets (and liabilities) would be owned by the LA SPV, which in turn would be wholly owned by all of the Councils;
 - (c) **Transparency** - Each of the Councils would be entitled to appoint a Director to the Board, having visibility over the activities of the LA SPV and direct involvement in the decision-making process;
 - (d) **Flexibility** - The agreement would allow any future changes to the Councils' relationships to occur.

Legal Implications

25. The procurement of the TV-LRF and the formation of the LA-SPV as the contracting entity representing the Councils interests will have legal implications. The Shareholders Agreement and the Waste Supply and Support Agreement will bind the Councils together in a robust and legally enforceable commercial agreement.

Environment, sustainability and climate change

26. Through the development of the TV ERF, the vast majority of the Council's residual waste will be treated through the facility, thereby avoiding landfill as the alternative to disposing of this waste.
27. As part of the Outline Planning Application process (for the construction of an Energy Recovery Facility and associated development), an Environmental Impact Assessment was completed. This included detailed assessments including Traffic Assessments and an Air Quality Report being produced. A detailed assessment of pollutant emissions released from the facility as a result of the combustion of waste as well as pollutant emissions from road traffic associated with the operation of the facility has been undertaken. The air quality effects on human health are judged to be not significant. Consideration was also

given to the Local Nitrogen Dioxide Plan - the proposed development will not cause any exceedances of or delay compliance with the limit values. The Outline Planning Application was approved in July 2020.

28. The waste hierarchy determines that it is preferable, from an environmental perspective, to treat residual waste by generating energy from it instead of disposing of it in landfill.
29. In line with the objectives of the Government's *Net Zero Strategy* and the *Resources and Waste Strategy* (which aims for no more than 10% of municipal waste to end up in landfill by 2035, and no food waste to be landfilled by 2030), the development of the TV ERF, will ensure that the vast majority of the Council's residual waste will be treated through the Energy Recovery Facility to enable the processing of waste into valuable outputs, such as energy - thereby diverting the waste from landfill. As a result, the net CO₂ Equivalent emissions will be lower than had the waste been landfilled.
30. The Contractor will be required to demonstrate how they will reduce carbon emissions from the facility, year-on-year, over the duration of the contract. In addition, c. 90,000 tonnes per annum of bottom ash and metals will be produced by the facility. The bottom ash will be recycled into a secondary aggregate which will be used within the construction industry, thereby directly displacing virgin aggregates that would otherwise have been required; the metals extracted will be recovered and remanufactured.
31. There will be emissions from the facility, but these will be minimised and strictly controlled in line with the conditions of the Environmental Permit, regulated by the Environment Agency.
32. The potential development of a Carbon Capture Underground Storage facility, for the TV ERF will allow CO₂ to be captured and stored through the infrastructure that is to be developed by the Northern Endurance Partnership as part of the East Coast Cluster. This will lead to the TV ERF effectively being a net-negative carbon emitter.