

**CABINET
7 OCTOBER 2025**

TEES VALLEY ENERGY RECOVERY FACILITY (TVERF) - UPDATE

**Responsible Cabinet Member - Councillor Libby McCollom, Local Services Portfolio
Responsible Director - Dave Winstanley, Executive Director – Environment, Highways &
Community Services**

SUMMARY REPORT

Purpose of the Report

1. The purpose of the report is to seek supplementary approvals and delegations to support the previous Cabinet decisions on the project.

Summary

2. The five Tees Valley Authorities, Durham County Council and Newcastle City Council (together “the Councils”) are working collaboratively to procure a contractor to design, build, operate and finance a new Energy Recovery Facility (ERF) to be located in the Tees Valley.
3. A governance framework has been developed to manage the development and operation of the project. Cabinet has previously approved progressing with the project and the creation of a Special Purpose Vehicle (SPV), which will be a limited company owned by all seven councils. The SPV will enter into the contract with the preferred bidder, Viridor. The SPV will then manage the contract throughout the design, build, operation and financing of the ERF.
4. Cabinet has also previously approved entering into the Shareholders Agreement and the Waste Supply and Support Agreement with the SPV. Cabinet has also agreed that the SPV enter into contract with the successful bidder at financial close and enter into a 50-year lease with South Tees Development Corporation (Teesworks) for the TVERF site.
5. As part of previous approvals, Cabinet delegated authority to Group Director of Services, in consultation with the Cabinet Member for Local Services, to enter into two guarantees: the first for the SPV, the second to underwrite the SPV’s obligations under the 50-year lease for the site. Delegated authority was also approved to finalise and agree the business plan for the SPV and agree an equalisation agreement between the Tees Valley Authorities for the transfer and bulk transportation of material to the TVERF.

6. The project has a team of external specialist advisors. The legal advisors producing the contract documentation have advanced the development of the documentation and governance framework and there is a suite of associated agreements and ancillary documents that are required. This report seeks to supplement previous approvals, make appointments to the SPV and seeks approvals and delegations for the ancillary documents developed as part of the governance framework. The details of these are contained in the main report.

Recommendations

7. It is recommended that the following appointments to the SPV are approved:
 - (a) The Assistant Director of Environment and Community Safety as Darlington Borough Council's Director on the Board of the SPV and to authorise them, and any successors, to take all decisions as set out in the SPV and associated documents for the good governance of the SPV and TVERF and to authorise them to appoint an alternate representative to act as their substitute or deputy.
 - (b) The Executive Director of Environment, Highways & Community Services, and any successors, as the Shareholder Representative and to authorise that Shareholder Representative to appoint an alternate representative to act as their substitute or deputy.
8. It is recommended that the following authorisations in relation to the SPV are approved:
 - (a) authorise the Shareholder Representative and their alternate to make decisions under the Shareholder Agreement, the articles of association, including the making of shareholder resolutions on behalf of the Council.
 - (b) Endorse the Council being a shareholder, approve and adopt the Articles of Association and the Council subscribing for shares in the SPV.
 - (c) Delegate authority to the Assistant Director of Environmental Services and Community Safety in consultation with the Executive Director of Environment, Highways & Community Services, Chief Finance Officer and Cabinet Member for Local Services to enter into all other necessary agreements or legal documents on behalf of the Council or the SPV.
9. It is recommended that the following authorisations are approved
 - (a) To delegate authority to the Assistant Director of Environmental Services and Community Safety in consultation with the Executive Director of Environment, Highways & Community Services and Cabinet Member for Local Services to enter the Council into the following agreements
 - (i) The Shareholder Agreement
 - (ii) The Second Inter Authority Agreement

- (b) To delegate authority to the Assistant Director of Law and Governance to sign the Local Government Contracts Act (LGCA) Certificate.
- (c) To delegate authority to the Assistant Director of Environmental Services and Community Safety in consultation with the Executive Director of Environment, Highways & Community Services and Cabinet Member for Local Services to enter into the following agreements on behalf of the SPV.
 - (i) Shareholders Agreement and associated documents
 - (ii) Service Level Agreement
 - (iii) Secondment Agreement
 - (iv) Council Guarantee of the Project Agreement
 - (v) Novation of the Option Agreement
 - (vi) Side deed of the estate owner
 - (vii) Environmental Deed
 - (viii) The Lease and Lease Guarantee and associated documents
 - (ix) Waste Supply and Support Agreement

Reasons

10. The recommendations are supported by the following reasons:

- (a) External solicitors were appointed to advise and represent the Councils and have been advising on the necessary documentation. They have advised that an ancillary suite of documents and agreements are approved to compliment the governance of the contract and its future monitoring and management.

Dave Winstanley
Executive Director – Environment, Highways & Community Services

Background Papers

Cabinet Report dated 08 January 2019
Cabinet Report dated 05 November 2019
Cabinet Report dated 14 July 2020
Cabinet Report dated 05 April 2022

Ben Grabham : Extension 3321

Council Plan	The Council is committed to providing opportunities to reduce, re-use and recycle as much waste as possible. Whilst efforts to promote and enhance recycling will continue the Council needs a safe, reliable, sustainable and affordable treatment solution for its residual waste helping move towards the goal of sending zero waste to landfill.
Addressing inequalities	Not applicable to this report.
Tackling Climate Change	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.

	There will be emissions from the TVERF facility, but these will be minimised and strictly controlled in line with the conditions of the Environmental Permit, regulated by the Environment Agency. The TVERF has been designed to allow carbon capture and storage technology.
Efficient and effective use of resources	The project ensures the Council has a reliable, sustainable and affordable treatment solution for its residual waste.
Health and Wellbeing	Effective and safe management of waste can have a positive impact on the health and wellbeing of residents.
S17 Crime and Disorder	The content of this report does not impact on crime and disorder.
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	This project will have capital and revenue implications for the authority as outlined in previous reports.
Key Decision	Yes, as it affects all wards.
Urgent Decision	Yes
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

11. In July 2020, Cabinet approved the first Inter Authority Agreement between the five Tees Valley Authorities, Durham County Council and Newcastle City Council to agree the governance arrangements to pursue a joint waste treatment facility and approved the commencement of the procurement process to procure a contractor to design, build, operate and finance the TVERF. The Cabinet Report of 14 July 2020 contains more details.
12. In April 2022, Cabinet approved the creation of the SPV and delegated the authority for the entering into of the Shareholder's Agreement and the Waste Supply and Support Agreement between the Council's and the SPV, and delegated the authority for the SPV to award the contract, enter into the Project Agreement with the successful contractor and the lease for the land with STDC (Teesworks) on which the TVERF would be built.
13. The April 2022 decision by Cabinet also delegated authority to officers to enter into two Guarantees, one to the SPV for the Project Agreement and the second to provide a guarantee that the SPV will meet its requirements under the lease. Cabinet further delegated authority to finalise and agree the Business Plan and sufficient resources to allow the SPV to reach financial close and to monitor and manage the contract on behalf of the Councils. The Cabinet Report of 05 April 2022 contains more details.
14. The Councils have selected a preferred bidder for the contract, Viridor, and the project is moving towards financial closure.

Governance and Management of the SPV

15. The Council is required to have a Director on the Board of the SPV to represent the interests of the Council and would require the authority to make Board decisions without needing to return to Cabinet or the approval of a delegated officer before each decision can be made.
16. This would effectively be the same authority that the Assistant Director of Environment and Community Safety has to manage and monitor our current waste disposal contract.
17. The Assistant Director of Environment and Community Safety is proposed as Darlington Borough Council's Director on the Board of the SPV.
18. Each of the seven Councils will acquire one share each in the SPV which will entitle them to one vote each. It is proposed that the Council will be the Shareholder and therefore will require a Shareholder Representative to make decisions on behalf of the Council in its role as shareholder in the company.
19. The Executive Director of Environment, Highways & Community Services is proposed as the Shareholder Representative for Darlington Borough Council.
20. SPV decisions will be made by the Management Team, appointed Board Director or Shareholder, the governance of which will be set out in the Shareholder's Agreement, second Inter Authority Agreement and articles of association of the SPV.
21. The First Inter Authority Agreement (IAA) will end upon financial closure and the Waste Supply and Support Agreement and Shareholder Agreement will govern the management and monitoring of the contract.

Governance Framework and ancillary documents

22. The agreements previously approved have been developed by the project teams legal advisors and an ancillary suite of documents and agreements have been produced to compliment the governance of the contract and its future monitoring and management. For clarity, the table below outlines all the agreements and ancillary documents and their current approval status.

Agreement	Brief Description	Status
Shareholder Agreement	An agreement between the company, the SPV, and its shareholders, the seven Councils, that outlines their rights, responsibilities and obligations. It governs how the SPV is managed and how disputes between shareholders should be handled. Cabinet have approved entry into this agreement for the Council, but approval is also required for the SPV to enter into the agreement.	Existing approval amended to reflect the formation of the SPV.
Waste Supply and Support Agreement	The Waste Supply and Support Agreement (WSSA) will deal with how the payment obligations and financial liabilities of the SPV will be shared between the Councils. Cabinet have approved the Council's	Existing approval amended to reflect the formation of the SPV.

	entry into this agreement, but approval is also required for the SPV to enter into the agreement.	
The Second Inter Authority Agreement	At financial close the First Inter Authority Agreement will fall away. The Second Inter Authority Agreement will set out the relationship between the Councils after financial close.	Approval for DBC to enter this agreement.
Service Level Agreement for SPV & Secondment Agreement	There will be a Service Level Agreement between Redcar and Cleveland Council as the 'Host Authority', providing support services to the SPV, such as Finance, HR, Legal and IT services. Linked to this there will be a Secondment Agreement between Redcar and Cleveland Borough Council in its role as the Host Authority providing support services to the SPV, whereby Redcar and Cleveland Borough Council shall second the Secondtees to the SPV.	Approval for the SPV to enter into the two agreements
Council Guarantee of the Project Agreement	Cabinet have approved a Guarantee to the SPV with regard to the Project Agreement. To provide comfort to the Contractor that the SPV is fundamentally robust to meet its obligations under the Project Agreement	Approval for the SPV to enter the Guarantee.
Novation of the Option Agreement	Hartlepool Borough Council entered into an Option to lease the land from South Tees Development Corporation (Teesworks) for the land on which the TVERF will be built. Once the SPV has been formed and financial close reached, Hartlepool will novate (transfer) the option agreement to the SPV.	Additional approval as part of the lease agreement previously agreed by Cabinet. Authorise the SPV to enter into the novation.
Side deed of the estate owner	A side deed between the SPV and the South Tees Development Ltd, Teesworks and South Tees Development Corporation will set out how the wider site issues and interaction with the remainder of the STDC estate will be dealt with. For example, service charges.	Additional approval as part of the lease agreement previously agreed by Cabinet. Authorise the SPV to enter into the side deed.
Environmental Deed	This will form part of the Lease of the site and will deal specifically with contamination and how it will be dealt with, by whom, should any contamination be identified.	Additional approval as part of the lease agreement previously agreed by Cabinet. Authorise the SPV to enter into the Environmental Deed.
Lease Guarantee	A Lease Guarantee, to underwrite the SPV's obligations (such as rent for example) for the site, is required to be provided by the Councils in favour of the landlord. Cabinet have approved the Council	Approval for the SPV to enter the Guarantee

	providing a Guarantee to the SPV with regard to the Lease from South Tees Development Corporation.	
Local Government Contracts Act (LGCA) Certificate	The purpose of section 2 of the LG(C)A 1997 is to allow a private sector contractor to contract confidently with an authority without worrying whether the authority has exceeded its powers or the officer signing the contract on behalf of the authority has the power to bind the authority.	Approval required to provide assurance to the Contractor.

Legal Implications

23. Legal advice has been received from an external law firm on behalf of all seven Councils that proposed supplementary agreements and delegations outlined above are necessary or advised.