

**CABINET
5 NOVEMBER 2019**

TEES VALLEY JOINT WASTE MANAGEMENT CONTRACT

**Responsible Cabinet Member – Councillor Paul Howell,
Leisure and Local Environment Portfolio**

**Responsible Director – Ian Williams,
Director of Economic Growth and Neighbourhood Services**

SUMMARY REPORT

Purpose of the Report

1. This report seeks Members approval to:
 - (a) Adopt the Outline Business Case (OBC) for the future treatment of municipal residual waste on behalf of the five Tees Valley (TV) Councils (**Appendix 1 Part III exempt**);
 - (b) Enter into an Inter-Authority Agreement (IAA), between the five Tees Valley authorities in respect of the TV municipal residual waste treatment project (**Appendix 2**); and
 - (c) Note the Terms of Reference for the Project Delivery Group (**Appendix 3**).

Summary

2. Currently Hartlepool, Stockton, Middlesbrough, and Redcar and Cleveland operate a single contract for waste disposal. While Darlington is part of the overall Tees Valley Waste Group, we operate a separate Waste Treatment and Disposal Contract.
3. This report advises on the Outline Business Case (OBC) which has been developed to address the future treatment of municipal residual waste (waste remaining after recycled material has been removed) collected by the Tees Valley Councils when the current contract(s) expire in March 2025. The OBC develops the Strategic Outline Case that was agreed by all Councils in 2017. It provides a fully costed Reference Case, based upon a 250,000 tpa (tonnes per annum) Energy Recovery Facility with CHP (Combined Heat and Power) identified as part of the options appraisal undertaken for the update of the Joint Waste Management Strategy which was agreed by all Councils earlier this year.
4. An Inter-Authority Agreement (IAA) sets out the terms of the joint working arrangements for the project, appointing Hartlepool Borough Council as Lead

Authority in carrying out the procurement milestones.

Recommendations

5. It is recommended that:-

- (a) Members adopt the Outline Business Case for the future treatment of municipal residual waste on behalf of the five Tees Valley Authorities.
- (b) Members approve the Council enter into the Inter-Authority Agreement (IAA) between the five Tees Valley Authorities in respect of Tees Valley Municipal Residual Waste Treatment project substantially on the terms annexed and to delegate approval of minor amendments to the IAA to the Managing Director
- (c) Members note the financial commitment to Darlington's share of the procurement and project costs of £1m and release the funds subject to approval by full Council as part of the 2020/21 MTFP to be applied to the Project in accordance with the IAA.
- (d) Members approve the Council entering into a loan agreement with the Combined Authority to repay the £1m associated with the procurement over a 25-year period. The final details of the agreement to be delegated to the Assistant Director Resources in consultation with the Director of Economic Growth and Neighbourhood Services, Assistant Director Law & Governance and the responsible member for the Leisure and Local Environment Portfolio.
- (e) Authorise the Director of Economic Growth and Neighbourhood Services, in consultation with the Assistant Director Resources, Assistant Director Law & Governance and the responsible member for the Leisure and Local Environment Portfolio to accept any minor changes to the Outline Business Case, the Inter Authority Agreement and Terms of Reference of the Project Board if required.

Reasons

6. The recommendations are supported by the following reasons:-

- (a) To enable Darlington to participate in the joint procurement of the wider Tees Valley residual waste treatment facility for post 2025.
- (b) Entering into the IAA sets down the legal parameters for the procurement, ensuring that no individual authority can withdraw without financially compensating the other authorities for the relevant share of procurement costs and other losses.

Ian Williams

Director of Economic Growth and Neighbourhood Services

Background Papers

Cabinet report dated 08/01/19 approving the joint procurement approach with the Tees Valley Councils

CD

S17 Crime and Disorder	The content of this report does not impact on crime and disorder.
Health and Well Being	Effective and safe management of waste can have a positive impact on the health and well being of residents.
Carbon Impact	As part of the production of the Joint Waste Management Strategy and OBC, the impact of carbon has been considered and modelled against a number of solutions.
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	The £1m TVCA loan will be repaid via gate fees over a 25 year period. This will be included in the MTFP for approval.
Key Decision	Yes, as it affects all Wards.
Urgent Decision	No
One Darlington: Perfectly Placed	Waste Management from the collection to the treatment and disposal has an impact on the Perfectly Placed agenda.
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

Background

7. The joined procurement approach across the five Tees Valley authorities for the delivery of a Residual Waste Management Solution was approved by members in the Cabinet report dated 8 January 2019. This report details further progress on the joined procurement process and detail on how the authorities will work together to maximise competition for the joined solution and how the project will be funded over the immediate and the longer term.
8. The Joint Waste Management strategy (JWMS) for Tees Valley was updated in 2018/19 to extend its validity from 2020 to 2035. It was adopted by the Tees Valley Local Authorities in January 2019 after public consultation. This document sets out the future strategic aims and objectives of the Tees Valley councils as follows:
 - (a) Waste Generation:
 - (i) Aim to maintain the current level of below 1 tonne of household waste per household. (It should be noted that all the authorities are significantly below this level).

- (b) Reuse and Recycling:
 - (i) 45% to 50% in the first five years of this strategy (2020 to 2025);
 - (ii) Between 2025 and 2030 seek to further improve reuse, recycling and composting beyond the 2025 levels;
- (c) Set targets for beyond 2030 during the waste strategy review in 2025. Waste Recovery and Landfill Diversion:
 - (i) Provide sufficient waste recovery capacity to ensure that no more than 10% of LACW waste is landfilled.
- 9. The other four Tees Valley local authorities currently have a contract with SUEZ for the treatment of residual municipal waste, which expires in 2025. Darlington has a separate contract for the treatment and disposal of municipal waste, which also expires in 2025. Darlington has worked closely with the four Tees Valley local authorities for a number of years with regard to waste management and the opportunities for working together post 2025. Within the north-east region, SUEZ has a monopoly on residual waste treatment with the exception of Darlington, who have a contract with Stonegrave Aggregates Limited.
- 10. This means that there is limited opportunity for other contracts to offer residual waste treatment capacity and Tees Valley would be faced with going to the market with little chance of effective competition. In order to correct this the Councils took the view that offering the market a site with planning permission for a new residual waste treatment plant would create a more even playing field and increase competition. This was subsequently borne out by feedback from contractors at a Market Awareness day, held on 29th January 2019.
- 11. By 2025, it is estimated that around 200,000 tonnes per annum (tpa) of residual waste will require treatment in the Tees Valley increasing to around 210,000 tpa by 2050 as a result of housing and population growth. Government policy is expected to widen the definition of municipal waste to include similar commercial and industrial waste, effectively increasing the tonnage of material requiring treatment. This provides the Councils with a commercial opportunity to attract additional waste and income from third parties, thereby offsetting the gate fee (the price paid per tonne of waste). This opportunity was also confirmed during the Market Awareness day, consequently the reference case is based on the procurement of a 250,000 tpa facility.

Procurement Strategy and Residual Waste Reference Case

- 12. The procurement strategy recognises that strong competition will be needed to deliver the most economical solution and therefore a reference site will be offered to bidders with the benefit of planning permission. Obtaining planning before procurement removes a significant risk which might otherwise reduce the number of bidders willing to participate or be priced into the contract. It also means that any perceived advantage that SUEZ has is mitigated. The procurement will use an output specification with evaluation based around criteria developed by Tees Valley Councils. This means that any technology that is compliant with the criteria will be considered. The project will seek to use any electricity or heat produced by the

facility locally.

13. The Procurement of the solution will be delivered through an Inter-Authority Agreement (IAA) of the five Tees Valley authorities. This agreement sets out the terms of joint working arrangements for the Project, the procurement milestones, and the appointment of Hartlepool Borough Council as the lead authority in carrying out the procurement milestones.
14. To support the delivery of the project and enable the inward investment of energy from waste facilities to Tees Valley it is proposed that the Combined Authority provide support to enable procurement of the project.
15. This is an extremely complex project and a funding requirement of up to £5m has been identified to cover the costs of the procurement, obtaining planning permission on the reference site, project management and external advice in the areas of legal, financial and technical during procurement. The current timetable aims to complete the procurement process during the summer of 2021, with construction of the facility completed autumn 2024 to enable operational commencement by April 2025. The funding arrangements for the £5m procurement costs are detailed in the Financial Considerations section.
16. The procurement has been assessed by the Corporate Procurement team to be a Strategic Contract based on value, complexity and risk and Cabinet is asked to agree the procurement be added to the Annual Procurement Plan and be designated as a strategic contract.
17. The IAA deals with the co-operation of the Tees Valley Councils during the procurement process but once a contractor is identified and the final terms of the contract are agreed that the authorities will need to enter into a Second Inter Authority Agreement setting out their respective rights and responsibilities with reference to the final contract. This second agreement will include but not be limited to the matters set out in the heads of terms (see Schedule 5 **Appendix 2**).

Residual Waste Treatment Options and Reference Site

18. Four options for residual waste treatment were identified in the Strategic Outline Case and taken forward as part of an options appraisal (in the JWMS) with a number of waste collection and recycling options. These were evaluated against a series of criteria agreed at a workshop with Members and Officers, the four options were:
 - (a) Extend the existing contract
 - (b) New build Energy Recovery Facility (ERF)
 - (c) New build Refuse Derived Fuel plant
 - (d) Merchant Capacity

The highest scoring option was the new build ERF, with Combined Heat and Power and high-performance recycling systems. The new build ERF was taken forward as the Reference Case.

19. A Reference Site has been identified at the South Tees Development Corporation (STDC) site and will be offered to the market with outline planning consent. The project is in the process of negotiating the terms of this arrangement with STDC,

the design criteria and the requirements for obtaining a planning consent.

Project Team and Governance

20. It is intended that participating Councils will work together under an Inter-Authority Agreement which binds the parties together in a robust commercial agreement (see **Appendix 2**). This was a key issue for a number of the organisations at the Market Awareness day. Representatives from each Council will form the project delivery team which will be supported by external technical, legal and financial advisers. This team will report into the Tees Valley Chief Executive's. The Combined Authority will be part of the Project Team. The Terms of Reference for the Project Team are set out in **Appendix 3**. Further reports to Cabinet will be provided at key points during the project.

Timetable

21. The key dates are:
- (a) Pre-planning preparation: April to December 2019
 - (b) Planning submission: December 2019 – approval March 2020
 - (c) Procurement commencement: September 2020
 - (d) Contract signed: summer 2021
 - (e) Construction: autumn 2021 to autumn 2024
 - (f) Commissioning: autumn 2024 to spring 2025

Risk Implications

22. The five Tees Valley Local Authorities have agreed and implemented a robust risk management strategy to identify the key risk and ensure a consistent approach to both strategic and operation risk across the project. These are set out in full within the OBC.
23. The current waste disposal contract has already been extended and therefore a further extension of the contract without competition could be in breach of procurement rules save as to the case where there are circumstances outside of the Council's control which require the Council to postpone a new procurement (regulation 72 Public Contracts Regulations 2015).

Financial Considerations

24. The basic principles of the payment mechanism have been developed for the OBC and are tabulated in Section 5 of the OBC these will be finalised as part of the procurement strategy with a view to promoting value for money. Key elements involve:
- (a) The Councils each contribute their financial commitment to the cost of the procurement up to the sum of £5m pro rata with their waste tonnages (see OBC page 61, **Appendix 1 Part III exempt**).
 - (b) The contractor is incentivised to deliver the required service standards, this means to the timetable and objectives set out in the contract.
 - (c) Tees Valley only pay according to the level of performance actually achieved

and the amount of tonnage treated.

- (d) The contractor is subject to a Performance Framework and is deducted if it fails to meet the agreed performance standards.
 - (e) The allocation of costs will be based on residual waste tonnage produced by each authority and charged at a gate fee on actual waste.
 - (f) There will be a harmonisation of the Gate Fee to ensure that those authorities which are transporting residual waste are compensated for the cost of bulk transfer to the disposal facility (including the costs of a bulk transfer facility and transport costs) to be based on an agreed mechanism (allowing for increase in fuel costs over time) to ensure an equitable sharing of residual waste management costs.
25. The costs, budget and finance section of the OBC sets out the cost of the procurement to the Councils, demonstrates the Value for Money for the Reference Project (based on the Treasury's Value for Money Assessment Guidance) and the affordability of the Reference Project whilst providing the respective Council's budgetary commitment to the affordability implications as far as is foreseeable. Information on the projected gate fee and affordability gap are included in **Appendix 4 Part III exempt**.
26. In November 2017 the Combined Authority approved development funding of £450k to support the preparation of a Strategic Outline Business Case to address the future treatment of municipal residual waste for the Tees Valley Authorities. A budget of up to £5m has been set aside to cover the costs of the procurement and obtaining planning on the reference site. The advance of these funds as lending are subject to approval with the Tees Valley Combined Authority Cabinet (TVCA).
27. It is therefore proposed that the Combined Authority provides a loan facility of up to £5m for the project. The loan will be financed through prudential borrowing. Interest will be included at cost based on the prevalent PWLB rate. The repayment term will be for a 25-year period commencing the first day of operation, with annual repayments made by the five Tees Valley authorities based on a legal agreement with each authority for their share of these costs.
28. Darlington Borough Council will be required to enter into a funding agreement of £1m with TVCA with lending on terms of deferred payment until the site becomes operational and interest repayable at PWLB rates.
29. Subject to approval of the additional funds by Council (as MTFP) the advanced funds of up to £1m are proposed to be released by Cabinet be used to provide project management and external advice in the areas of legal, financial and technical during procurement as further detailed in and required by the IAA.
30. The Value for Money assessment is based upon the assumption that the facility will be project financed. It is subject to a number of qualitative tests to determine if the project is viable, desirable and achievable and a quantitative assessment (as set out in the Treasury Guidance). The assessments confirmed that the project offers value for money.

31. The affordability analysis is undertaken to determine if there will be a need to commit funds in the future, should the current Council budgets, inflated to April 2025, be insufficient to fund the Reference project. The level of funding available from the Council budgets is based upon the historical costs of operating the current Energy from Waste plant used by the other four Tees Valley authorities whereas the future project costs of the Reference Project are based upon the development of a new facility. These are also compared to the options of do nothing or simply extending the existing contract.

Legal Implications

32. The Council has the legal powers to enter into the Inter Authority Agreement and to implement the project pursuant to powers conferred upon it by s 51 and 55 The Environmental Protection Act 1990, s 19 Local Government Act 2000 and regulation 7 Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000.
33. As a best value authority the Council is under a duty to obtain best value and secure efficient use of resources. The IAA requires that the services obtained by the relevant authorities on behalf of the Tees Valley (ie up to the expenditure of £5m) will be subject to approval the Project Board (including the Darlington representative) and in accordance with the relevant authorities' procurement rules, Public Contracts Regulations 2015 and good industry practice.
34. It is intended to use a contract originally based on H M Treasury's Standardisation of Project Finance Initiative Contracts (SOPC4) as revised by PF2 and the Waste Infrastructure Delivery Programme (developed by DEFRA). This allocates the main risk of construction and commissioning to the developer before any payment is made by Tees Valley. It then provides for life cycle maintenance for the full duration of the contract; this means that at the end of the 25 year contract the Councils' are handed back a fully operational asset. The proposed procurement mechanism is Competitive Dialogue.

Consultation

35. A communications strategy has been developed and Tees Valley is fully committed to providing the required resources to ensure it can be delivered to keep all key stakeholders informed with appropriate information at the right time. The Strategy will be expanded on with the development of detailed plans following approval of the OBC. Key communication channels include social media and the Council's websites.
36. The Public Consultation on the JWMS was very positive with the majority of feedback connected to existing issues and no concerns expressed about the Reference Project.
37. A Market Awareness Day was held in January 2019 to gauge interest in the project from potential bidders. The event was successful with strong interest from all the major Contractors, the key message being that the project must provide a Reference Site with full planning consent.

Conclusion

38. By 2025, it is estimated that around 200,000 tpa of residual waste will require treatment in the Tees Valley increasing to around 210,000 tpa by 2050 as a result of housing and population growth. In addition, Government policy is expected to widen the definition of municipal waste to include similar commercial and industrial waste, effectively increasing the tonnage of material requiring treatment. This provides the Councils with a commercial opportunity to attract additional waste and income from third parties, thereby offsetting the gate fee.
39. An Outline Business Case (OBC) has been developed to address the future treatment of municipal residual waste (waste remaining after recycled material has been removed) collected by the Tees Valley Councils when the current contract(s) expires. The OBC develops the Strategic Outline Case that was previously agreed by all Councils in 2017. It provides a fully costed Reference Case, based upon a 250,000 tpa (tonnes per annum) Energy Recovery Facility with CHP (Combined Heat and Power) identified as part of the options appraisal undertaken when the Joint Waste Management Strategy was updated and agreed by all Councils earlier this year.
40. It is intended that participating Councils will work together under an Inter-Authority Agreement which binds the parties together in a robust commercial agreement. Representatives from each Council will form the project delivery team which will be supported by external technical, legal and financial advisers. This team will report into the Tees Valley Chief Executive's. The Combined Authority will be part of the Project Team. The Terms of Reference for the Project Team are set out in **Appendix 3**.
41. This is an extremely complex project and a funding requirement of up to £5m has been identified to cover the costs of the procurement, obtaining planning permission on the reference site, project management and external advice in the areas of legal, financial and technical during procurement. It is therefore proposed that the Combined Authority provides a loan facility of up to £5m for the project. The repayment term will be for a 25-year period commencing the first day of operation, with annual repayments made by the five Tees Valley authorities based on a legal agreement with each authority for their share of these costs. These funds are subject to approval with the Tees Valley Combined Authority Cabinet.
42. The current timetable aims to complete the procurement process during the summer of 2021, with construction of the facility completed autumn 2024 to enable operational commencement by April 2025.