

REPORT TITLE: Waste Disposal Contract Procurement

Cabinet date	9 th April 2024
Cabinet Member	Councillor Aafaq Butt – Environment
Key Decision Eligible for Call In	Yes Yes
<p>Purpose of Report</p> <p>This report serves several purposes:</p> <ol style="list-style-type: none"> <p>1. Information on Policy Changes and Project Dependencies</p> <p>To provide information on the significant number of matters that have arisen since publishing the waste disposal procurement outline business case (OBC) in 2022. The affect they have had on identifying future requirements and decision making, has resulted in a need to extend the existing interim contract arrangements by a further 3 years.</p> <p>2. Update on the Waste Disposal Contract Procurement Strategy</p> <p>To provide an update on the progress made on preparations for expiry of the current Waste PFI contract and development of the procurement strategy for the future Operation and Maintenance (O&M) of the Council’s waste infrastructure. This includes the Energy from Waste Facility (EfW), Materials Recovery Facility (MRF), 2 Waste Transfer Stations (WTS) and the Household Waste Recycling Centres (HWRC).</p> <p>3. Decision on Officer Recommendations</p> <p>Several officer recommended options are proposed for Cabinet approval, including areas of the (OBC) that required further analysis to confirm the final structure of the future waste contract, identifying the infrastructure and investment required to implement, and deliver the required changes to statutory waste services.</p> <p>Cabinet are asked to approve the revised procurement strategy timeline that extends the expiry date of the current contract by 3 years, and continues the existing interim arrangements to prepare for the new contract.</p> <p>Approval is also sought for a future delegated officer decision to progress with any potential further efficiency opportunities, such as HWRC and MRF operations, and the Network Rail Infrastructure Limited (NRIL) replacement of the Weaving Lane HWRC.</p> 	
<p>Recommendations</p> <p><u>Extension of the Existing Interim Arrangements</u></p> <p>The current interim arrangements are extended for a further 3 years and the contract expiry is reprofiled to March 2028 under the Heads of Terms agreement with Suez and a deed of variation (DoV2) is developed.</p> <p><u>Procurement Strategy</u></p>	

The revised procurement Strategy is approved based on the recommended option of a fully integrated contract including HWRCs.

A full business case is presented to Cabinet in Autumn 2026 to approve the appointment of the preferred contractor prior to commencement of the new contract.

Delegated Authority

Delegated authority is given to the Strategic Director (Growth & Regeneration), and Service Director for Legal, Governance and Commissioning and Service Director for Finance to:

Sign off and implement the required contract deed of variation (DoV2) and draw down the approved Capital and Revenue expenditure for extending the interim arrangements.

Commence a procurement process from December 2024 and to draw down the approved Capital and Revenue expenditure.

Take a decision following a further review to identify if efficiency opportunities can be made by mothballing the Kirklees MRF and using a 3rd party facility and/or changes to HWRC services.

Sign off and implement the required Deed of Variation to cover the NRIL replacement of the Weaving Lane HWRC.

Reasons for Recommendations

The officers' recommendations are in order to achieve value for money, align the current contract with the Council's and national strategy and allow critical time to prepare for the re-procurement of the waste disposal services.

Resource Implications:

Internal requirements of a waste programme office and technical team, and support from: procurement; legal; finance and external advisors for: legal, technical and financial issues.

Date signed off by Strategic Director & name

David Shepherd, Strategic Director, (Growth & Regeneration) – **15/03/2024**

Is it also signed off by the Service Director for Finance?

Isabel Brittain, Service Director - Finance (S151 Officer) – **27/03/2024**

Is it also signed off by the Service Director for Legal Governance and Commissioning?

Julie Muscroft, Service Director - Legal, Governance and Commissioning – **28/03/2024**

Electoral wards affected: All.

Ward councillors consulted: The following ward councillors were consulted through the cross-party Member Reference Group:

Councillor Aafaq Butt; Councillor John Taylor; Councillor Paul Davies; Councillor Susan Lee-Richards; Councillor Tim Bamford; Councillor Charles Greaves; Councillor Graham Turner.

Public or private: Public.

Has GDPR been considered? Yes.

1. Executive Summary

- 1.1** The Council's 25-year waste PFI agreement signed in 1998 has the option to extend by a maximum of 5 years, 2 years have been used up by interim arrangements that are providing value for money and performing well but they are due to expire in March 2025.
- 1.2** The Council's assets used to deliver the contracted waste services are ageing and need investment to continue operating for a new 10 -15-year contract and meet the mandatory policy changes and interdependencies that significantly impact the future requirements.
- 1.3** An external assessment by the Government's Infrastructure Project Authority advised that more time is needed to prepare for expiry and align a procurement with the Resource and Waste Strategies, other policies and dependencies. To achieve this alignment will require the existing interim contract arrangements to be extended for a further 3 years to March 2028 to provide the critical time to prepare and procure a new contract.
- 1.4** The additional capital/revenue costs and associated risk set out in this report for extending the existing contractual arrangements with the incumbent supplier are lower than the potential costs and risks of procuring whilst there remains uncertainty surrounding the unresolved issues of national obligations.
- 1.5** Procuring under the current circumstances, with global and national flux, would also require the Council to take a disproportionate level of risk in order to manage budget envelopes.

2. Information required to take a decision

2.1 Background

- 2.1.1** The Council entered into a 25-year waste PFI agreement in 1998 that had the option to extend it up to 5 years. The contract included the design, build, finance, operation and maintenance of waste facilities incorporating: an Energy from Waste (EfW) plant; Materials Recovery Facility (MRF); 2 Waste Transfer Stations (WTS); and 5 Household waste recycling centres (HWRC). All facilities will be handed back to the Council on expiry of the contract.
- 2.1.2** Interim contract arrangements to 2025 were agreed by Cabinet on the 21st of September 2021, this facilitated early implementation of some areas of the waste strategy and capital investment in the EfW facility. The resulting deed of variation (DoV) dated 14th December 2021 supported preparations for expiry and provided additional time for the Council to better position itself and de-risk areas that would have carried significant additional cost to a new service contract.
- 2.1.3** Following implementation of the DoV, the contract is evidenced to be providing value for money and performing well against the agreed levels of 85% diversion from landfill. Annual condition surveys are completed on the EfW, providing assurance that maintenance is carried out in line with the agreed plan. The surveys also provide bidders

with valuable information of the facilities good condition, this was identified in a Soft Market Testing (SMT) exercise as a critical requirement.

- 2.1.4 On 14th December 2021, cabinet approved the Outline Business Case (OBC) for the procurement of a semi-integrated waste management contract on the recommendation of progressing a pre-procurement phase that was to be completed by Autumn/Winter 2022. The OBC also identified a number of key interfaces and considerations that required further analysis to be undertaken in the pre-procurement process. The considered options and the officer recommendations are outlined in section 7 of this report.
- 2.1.5 In December 2021, the Infrastructure Projects Authority (IPA), completed an independent follow up review of the Council's preparations for expiry and procurement. The IPA noted the DoV agreement to be an exemplary template to formalise a contract agreement to deal with the issues left out of many earlier PFI projects.
- 2.1.6 Preparations for the procurement commenced in January 2022 with oversight provided by the new Waste Transformation Board and Member Reference Group, as recommended in the report to cabinet in December 2021.
- 2.1.7 A Prior Information Notice (PIN) was issued in May 2022, to notify the market of the forthcoming procurement and publication of a Soft Market Testing (SMT) exercise, that successfully obtained the markets view on the procurement proposals.
- 2.1.8 Numerous workshops involving stakeholders and advisors have taken place to support preparation of the future contract, its schedules, specifications and financial modelling documents that are to be used in the competitive dialogue procurement process. During this period many significant external factors developed that are beyond the control of the project, and when added to the number of delayed policy changes that impact on waste services, it became difficult to efficiently continue developing the documents and meet the procurement plan timeframe.
- 2.1.9 A Waste ambition check-point workshop was held towards the end of 2022, this opportunity was taken to review the current position and a pause was put on the procurement to develop a strategy around what was certain. This resulted in revisions to and reprofiling of the Kirklees Resources and Waste Strategy 2021-30, the new strategy was approved by Cabinet on 17th October 2023. The development and implementation of the Resource & Waste Strategy sets the context for the proposed development and investment for both the collections and processing or disposal of waste.
- 2.1.10 Given the continued uncertainty and advice of the IPA, procuring new services for 2025 is not a realistic or viable option and extending the interim arrangements to 2028, and continuing to make the best use of and invest in the existing facilities carries the lowest risk and impact on future costs.

2.2 Policy Changes and Project Dependencies

- 2.2.1 There are a significant number of project dependencies that have made it increasingly difficult and complex to make informed decisions on the future requirements for procuring the waste management services and these are as follows:

2.2.2 Imminent Policy Changes

- 2.2.3 There has been a great deal of uncertainty on the future statutory requirements and funding arrangements for local authority waste services that bring long term waste treatment challenges. Further delays have been recently announced and it is likely that further consultation will be required to identify how the numerous imminent policy changes impact on waste contracts.
- 2.2.4 The changes will attract significant additional costs to the Council and affect the collection systems for recycling materials and waste streams. The changes are expected to significantly reduce critical feedstock for both the MRF and EfW, and they are also likely to affect the composition of materials, and the calorific value of waste that is incinerated to create energy. Further delays in receiving clarity from government departments will require future service delivery models and contracts to be flexible enough to adapt to change, but this will come at a cost. Funding for New Burdens will only be provided for new food waste collections and disposal of packaging waste through the Extended Producer Responsibility scheme, however all other costs will need to be absorbed by Council budgets. To date the funding allocations that have been provided by Government have fallen significantly short of the implementation costs.
- 2.2.5 Extended Producer Responsibility (EPR)
- 2.2.6 The local authority cost of managing packaging waste will be passed to producers via the EPR scheme that is scheduled to go live in October 2025. DEFRA are currently working on the funding formula to local authorities who should be informed of their allocations in November 2024, however the first payment will not be made until December 2025. Payments will be made on the basis of effective service delivery and DEFRA are to define the measure of this and will exemplify efficiency and effectiveness. There is no certainty over when this information will be provided by DEFRA in order to benchmark our services.
- 2.2.7 Deposit Return Scheme (DRS)
- 2.2.8 The DRS implementation is likely to be from 2025, this scheme will remove plastic bottles, aluminium & steel cans from recycling bins in England. This will have a significant impact on reducing the volume of materials delivered into the MRF and subsequently the operational effectiveness, and value of the revenue returns from recycling markets.
- 2.2.9 Simpler Recycling (SR)
- 2.2.10 Councils will be required to provide a recycling collection service that separates plastic, paper / card, glass, metal and food waste, from every household and business it collects from. Any variance from the separation of materials will need a robust assessment to demonstrate the rationale. Local authorities are likely to be able to continue charging for garden waste services, however local authorities continue to await clarity on SR requirements. It has been indicated that mandatory implementation of SR is likely to follow EPR.
- 2.2.11 SR - Separate Glass Collections
- 2.2.12 The Deposit Return Scheme for England does not include the return of glass bottles, and separate glass collections are to be mandated in the consistent collections scheme. Expanding the Council's current system of using glass bring banks is being explored as an alternative to costly doorstep collections.

2.2.13 SR - Separate Food Waste Collections

2.2.14 The mandate for implementing separate food waste collections is likely to be from 2026, and the cost of this new service will be met by New Burdens funding. It is uncertain when this funding will be available to local authorities, but it could be as soon as 2024, however the funding formula is unknown at this time and there is a risk that it may not cover the full cost of the service to the Council, but details of this are emerging during the writing of this report.

2.2.15 Recently the Council has received notification from DEFRA that a capital allocation of £2.9m has been awarded to fund the implementation. The detail of this allocation has yet to be provided but would only fund c. 60% of the frontline costs of containers and vehicles, and there is no allocation for depot or transfer station infrastructure. The Council has written to DEFRA requesting this detail and how the shortfall is intended to be funded. There is no information or timeline on the revenue position.

2.2.16 Following conversations and communication between council officers and DEFRA, a specific dispensation has been approved by government ministers for Kirklees Council to delay mandatory implementation of separate food waste collections to 2028; to align with the start of the new waste contract.

2.2.17 Implementation of the separate food waste collections will have the following impacts:

- Time for procurement of vehicles etc. and mobilisation period.
- Additional depot space and staffing.
- Reduced volume and Calorific Value (CV) into the EFW.
- Permitting & environmental consents.
- Conversion of transfer station infrastructure.

2.2.18 The level of financial exposure for noncompliance with statute is unknown, but DEFRA have indicated that the New Burden Funding associated with the introduction of food waste would not be available where a local authority is not complying. It is also expected that access to potential future income from Extended Producer Responsibility would also be curtailed.

2.2.19 Procurement Reforms

2.2.20 In addition to the above policy changes that directly affect waste services, the Procurement Bill, will reform the existing Procurement Rules. This received Royal Assent in October 2023 and in early 2024 secondary legislation will be laid to bring in some elements of the Bill and the wider regime into effect, this is anticipated to be October 2024. The existing legislation will apply until the new regime goes live and will also continue to apply to procurements started under the old rules. There is a key dependency on when the waste procurement commences to determine if it is to progress under the existing regulations of the Public Contracts Regulations 2015 or the new Procurement Act 2023.

2.2.21 **The Future of Energy from Waste**

2.2.22 DEFRA have forecast that future waste volumes will reduce significantly due to the Resource and Waste Strategy (RWS) policies that are identified above. This creates a risk that Kirklees will not collect enough residual waste to keep the EfW plant running.

This could be mitigated by accepting third party waste, that potentially presents an opportunity in the new contract to benefit from third party revenue income.

2.2.23 Implementation of the RWS will also bring significant change to waste composition, affecting the calorific value of residual waste. This may affect the EfW plant performance, its emissions and generation of electricity. The Government have capped the excess income revenues on electricity sales, however this should not affect the current contract.

2.2.24 Carbon Capture Utilisation and Storage (CCUS)

2.2.25 DEFRA are working to ensure that the existing EfW infrastructure network is maintained effectively, because future developments of EfW plants will be restricted and require fitting with CCUS, that requires significant investment, and it is only currently cost effective in large scale plants. This means that, at the end of the Kirklees EfW plant life expectancy, the most likely future option may be to use a third-party facility. A 10-year break point in the new contract will provide the opportunity for the Council to consider the point at which to pull back on investing in its EfW.

2.2.26 The Emissions Trading Scheme (ETS)

2.2.27 Following a consultation on ETS the Government has confirmed that the scheme will be extended to apply to Energy from Waste (EFW) plants from 2028. This involves EfW operators paying for the CO₂ emissions produced from burning waste, and the cost of this is more than likely to be passed on to local authorities through qualifying change in Law clauses and cheaper alternatives of processing waste could be available.

2.2.28 The ETS will be implemented in 2 stages:

- Stage 1: from 2026 operators of EfW will have to implement monitoring, this will need installation of monitoring equipment under the existing contract.
- Stage 2: from 2028 operators will have to pay for the carbon emissions produced from EfWs.

2.2.29 WIDP have completed an assessment of the impact ETS will have for the Kirklees EfW, and although it is difficult to identify the actual costings for 2028, the estimates are not as severe as first assumed. There is however still a significant additional cost exposure, this is estimated to be between c£2.8 and £5.6 million pounds per annum and it is currently unknown if Combined Heat and Power (CHP) linked to the HDEN will benefit from lower carbon prices.

2.2.30 ETS is a major concern to local authorities, who have alongside their representing organisations, raised the issues on the Government's multiple waste proposals and policies across multiple departments. These policies are creating a difficult legislative and financial landscape for LAs to operate within and there continues to be a lack of reference to funding and resourcing a service that is already stretched. The Government understand that ETS may raise the costs of waste disposal for LAs, and they will discuss this further to confirm the impacts before establishing the exact policy.

2.2.31 Reliability of the EfW Facility Steam Turbine

2.2.32 The Turbine is not a standard design for a UK EfW facility, and feedback from the market engagement, including Suez, raised big concerns over the risk of turbine failure. The

turbine is now obsolete and is no longer supported by the supplier and bidders will not provide any guarantees on a turbine of this age or configuration.

2.2.33 Vibrational issues starting in February 2018 took the turbine offline for approximately 10 months and it was brought back online following a major overhaul, but it was taken offline again in January 2019 for further commissioning. Around 9 months turbine operations were also lost during 2019-2020 due to a failure in the turbine gearbox, which required time to fabricate the new parts.

2.2.34 Timing is critical for replacing the turbine because of the long lead in time to specify, design, procure, manufacture, install and commission. Collectively this will culminate to approximately 8 months planned down time. Suez receive 100% of the revenue income from energy generation that is fed into the national grid which offsets the gate fees, and a compensatory payment to Suez would be required if the turbine was replaced under the existing contract.

2.2.35 The Huddersfield District Energy Network (HDEN)

2.2.36 The Huddersfield EfW facility was originally designed with the intention to export heat into a district heat network. The council has accessed Government support (via the Heat Networks Delivery Unit and more recently the Green Heat Networks Fund (GHNF)) in order to develop a heat network scheme for Huddersfield Town Centre, intended to take heat from the EfW and deliver it to supply premises in the town centre area. Heat supply from EfWs is a secure source of low carbon heat that can be accessed alongside the electricity production of these facilities. Whilst this scheme is separate to the Waste Contract there are significant interdependencies between the two schemes.

2.2.37 The Outline Business Case for the HDEN was approved by Cabinet in September 2022 and the Full Business Case is currently in development. The HDEN has also benefitted from a £8.2m funding award from the GHNF (£1m for commercialisation support and £7.2m for construction subject to successful completion of the FBC).

2.2.38 The development of the HDEN is complex in its own right due to the complexities around network route design and potential customer engagement in the town centre, alongside the EfW as the identified heat source. The latter interface and the role of the EfW as the intended heat source for the HDEN provides a significant interdependency between both programmes. There is a key interface between the Waste Contract Procurement timetable and the development of the HDEN Full Business Case.

2.2.39 As noted above, early market engagement (soft market testing) in relation to the Waste contract in 2022 identified that EfW operators were comfortable with the supply of heat-to-heat networks, but significantly less so with the potential 'private wire' supply of electricity, primarily due to the significantly more complicated regulatory regime associated with electricity provision. Consequently, the HDEN FBC is currently being developed on a 'heat only' basis without the private wire electricity element.

2.2.40 There is ongoing technical and commercial engagement between the HDEN consultant team and Suez in order to inform the HDEN FBC and ensure that the benefits offered by HDEN are realised and the corresponding risks managed.

2.2.41 The process is underway to agree Heads of Terms between Suez and the Council (via the HDEN consultancy team) for the supply of heat. The underpinning principle is that the operator of the EfW will not be worse-off (and will ideally be better off) compared with

current business as usual energy / income generation. The supply of heat to a heat network is considered a potentially more commercially beneficial activity rather than the generation of electricity for export to the National Grid. Technical liaison meetings are also underway to work through and agree the engineering requirements (Suez and HDEN/AECOM).

2.2.42 Affordability of Future Waste Services

A core objective of the procurement exercise is to ensure value for money is achieved and although the principals are the same as always for important services, the right level of due diligence checks are needed to achieve a balance of affordability against risk, this is especially important in the current economic climate that has contributed to the rising cost of goods and services.

2.2.43 Depot Provision

2.2.44 The availability of the waste collection service is critical to delivering feedstock into the council's waste facilities but capacity for staff and vehicles at the existing depots is limited. The George St depot is already at its capacity limit, for both normal waste collection operations and future requirements such as separate food waste collection can't be accommodated at this site. The Vine St depot has some capacity but nowhere near the amount needed, and both sites also need to accommodate the waste growth of the Local Plan to build 30k new properties, a depot strategy is under development to deal with these issues.

2.2.45 Infrastructure Project Authority (IPA) and DEFRA Project Assurance

2.2.46 During Autumn 2022 the IPA conducted a review of the Council's preparations for expiry and procurement of new waste services, this included looking at documented evidence and interviewing senior officers. Their report was published in December 2022, and this confirmed that a lot of progress had been made since the last review, but there were still concerns in the following areas:

- The draft hand back plan requires revision to meet the required standard.
- The dependencies of DEFRA and other legislative changes remain a significant risk to future service provision.
- An early decision and time is needed to work through the interdependencies of the District Heat Network (HDEN).
- Given the complexity, risk and current challenges of the project, there is still a lot to do in the short time that is left to expiry and the Council will need to utilise at least some of the available further 3 years to extend.

2.3 Waste Disposal Procurement Strategy

2.3.1 Engaging the Markets on Project Proposals (SMT)

2.3.2 At the time of publishing the OBC there was a concern over a lack of bidders due to a narrowing market and the potential merger of Suez and Veolia, however this was later stopped by the Competition and Markets Authority. A soft market engagement exercise was completed in July 2022 and feedback from the markets confirmed that there was a healthy interest in the Kirklees procurement opportunity and the markets also gave confidence in the facilities continuing to operate for a further 15-year contract. However concern was raised around the turbine that will need to be replaced at some point, and

that bidders will require detailed asset data, and site visits, to form their own assumptions in order to provide value for money bids.

2.3.3 It was preferred that the Council should fund any future major capital lifecycle refurbishment work because the maximum contract period of 15 years is short in contract terms. The availability of capacity at alternative facilities was also confirmed, if required during an extended shutdown to complete any work.

2.3.4 The markets agreed there should be a benefit and risk sharing agreement between the Contractor and the Council, on income from both electricity generation and the recycling markets, which both carry risk and fluctuating financial returns.

2.3.5 When asked about including the Huddersfield District Energy Network (HDEN), the markets experience of heat supply for heat networks was standard practice, however significant concerns were raised on the complexity of issues placed upon the EfW operator for the private wire (electricity supply) element. The markets made it very clear that waste was their core business.

2.3.6 Treatment of Food Waste

2.3.7 A feasibility study was conducted for building a Council owned Anaerobic Digester (AD) facility in Kirklees to process food waste when separate collections are introduced. Site investigations on the only 2 potential and available locations for the development of an AD facility, have unfortunately identified that both sites are not suitable for substantial development.

2.3.8 Work completed in the meantime by the Waste Infrastructure Delivery Programme (WIDP) has also identified that, for economies of scale, an efficient AD facility would require an annual input capacity of c40k tonnes, and the estimated Kirklees food waste tonnage is only c11k tonnes per annum, this leaves a significant shortfall in filling a facility if one were to be developed in Kirklees.

2.3.9 Development of the new service contract has therefore taken the direction of the Council sourcing and securing a best price with a 3rd party food waste for processor, and the waste contractor providing the reception, transfer and haulage services.

2.3.10 Review of the Material Recovery Facility (MRF)

2.3.11 The recycling materials collected at kerbside are currently sorted at the MRF and a recent change to the collection system introduced plastic pots tubs and trays. Some upgrades have been carried out to the existing MRF, including the addition of a near infrared (NIR) sorter to capture better quality materials and attract a greater market position for the sale of recyclable material. However, the remaining MRF equipment and manual sorting methods, reflect its age and it may require significant refurbishment or replacement to accommodate future change and continue providing high quality reliable services into a new contract.

2.3.12 The procurement project's technical advisors WSP, were commissioned to review and examine the various options available for the MRF to process of material received from kerbside collections, as these influence the requirements of the MRF operations. The preferred options within the report depend on the Councils budget position and risk appetite and the assessed options and the recommendation is included in section 6 of this report.

2.3.13 The impact that pending policy changes will have on the MRF are not known at this time and in planning for future requirements the viability and affordability of continuing to operate the facility will be evaluated and if potential savings can be made by closing the Kirklees MRF and using a 3rd party facility.

2.3.14 In-house delivery of Household Waste Recycling Centres (HWRCs)

2.3.15 The HWRC services are currently being provided as part of the integrated PFI contract, issues with this model were raised during the Covid Pandemic which included political and resident perception, ownership and future availability.

2.3.16 The council commissioned WSP to look at the most suitable delivery model for the provision of the HWRC services and provide a report to give an overall view of opportunities and risks associated with each option. Four service delivery model options were considered, and the preferred options depended on the Council's budget position and risk appetite.

2.3.17 Network Rail Infrastructure Upgrade

2.3.18 In October 2021, the Council and Network Rail Infrastructure Limited (NRIL) signed a legal side agreement related to waste as part of the Transport and Works Act Order for the TransPennine Route Upgrade project. The agreement obligates NRIL, amongst other commitments, to construct a replacement HWRC at Weaving Lane so that the existing site adjacent to the current live railway line can be occupied entirely by NRIL and its sub contractors for the purposes of building a retaining wall along the length of the embankment for the TRU project, to accommodate the new high-speed lines above. A variation to the council's contract with Suez is required specifically to accommodate the operation of the replacement HWRC. Alongside this, the Council will need to issue a supplemental lease agreement as the new site lies just outside the boundary of the current lease.

2.3.19 The construction of the replacement HWRC site will be entirely at NRIL cost. The only costs likely to be incurred by the Council are related to the engagement of external legal consultants to undertake the variation and potentially to cover the supplemental lease work. It may be possible to claw back some or all of this cost from NRIL, but this is not guaranteed.

2.3.20 Approval to make a specific variation to cover the new HWRC at Weaving Lane may also be requested separately via the scheme of delegation powers at Strategic Director level if the risks presented by a longer process are considered significant.

3. Implications for the Council

3.1 Working with People

3.1.1 The outline business case was developed following feedback from a comprehensive public engagement exercise on the Council's Resource and Waste Strategy in Autumn 2020 which was one of the most successful public engagement exercises undertaken by the council with almost 8,000 responses.

3.1.2 The scale and value of the new contract presents significant opportunities for delivering social value outcomes to support people and local communities.

3.2 Working with Partners

- 3.2.1 The Soft Market Testing (SMT) exercise engaged with Suez and other key waste disposal operators in the market, the experience of other Local Authorities and government bodies has also been sought, to gain a full understanding of the opportunities available to provide the best service possible for Kirklees residents.
- 3.2.2 Ongoing support from DEFRA, WIDP and the IPA provides extensive local authority waste management experience of managing operational waste Private Finance Initiative (PFI) contracts. This is backed with access to network groups and experience of contract management reviews to provide project assurance that will facilitate in Kirklees Council securing a waste contract that continues to provide value for money.

3.3 Place Based Working

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3.4 Climate Change and Air Quality

- 3.4.1 The preparations for expiry and procurement makes use of the existing facilities and ensures they are maintained to a good standard to continue running efficiently and perform within what is considered to be best practice. The EfW plant has been adapted to meet changes in BREF legislation to ensure the emissions to air are set within the current and known future environmental limits. The new contract focuses on delivering a Waste Hierarchy approach to waste management, alongside zero waste to landfill which supports the Council's aim of achieving zero emissions by 2038.
- 3.4.2 The HDEN project is running in parallel to the procurement and is intended to provide a valuable opportunity to use locally generated low carbon heat energy from the EfW to heat nearby buildings. Utilising the EfW for this purpose provides a recognised source of low carbon heat and aligns with the Government's ambitions for the decarbonisation of the built environment in line with national and local 'net zero' targets.

3.5 Improving outcomes for children

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3.6 Financial Implications

3.6.1 Capital

- 3.6.2 The existing Capital Plan includes a £5.984m allocation to fund investment in EfW maintenance agreed as part of DoV interim contract arrangement. An additional £9.679m of investment is built into budget proposals agreed at Budget Council on 6th March 2024. The additional capital will enable EfW Gold Standard Maintenance to continue to 2028, replace obsolete infrastructure, meet legislative requirements, and £3m of the £9.679m is earmarked for a Depot Strategy i.e. feasibility & design work.

Table 1 – Capital Investment

Item	2023/24 £'000	2024/25 £'000	2025/26 £'000	2026/27 £'000	2027/28 £'000	Total £'000
Current Extension already Approved	1,694	1,727	1,762	801	0	5,984
Approved for Medium Term Plan - Full Council 6th March						
Proposed Extension	0	0	2,690	1,401	2,018	6,109
Legislation requirements	0	500	70	0	0	570
Proposed Depot (feasibility)	0	3,000	0	0	0	3,000
Total Approved for Medium Term Plan	0	3,500	2,760	1,401	2,018	9,679

3.6.3 Several capital pressures are classified as 'pipeline' schemes at this stage and are currently excluded from the Capital Plan. The projects include the development of depot and HWRC sites (c£27m), and post-2028 investment associated with the Waste Disposal Contract procurement, these pipeline schemes will be kept under regular review by the Capital Assurance Board.

3.6.3 Food waste

3.6.4 DEFRA have recently announced the funding allocations for Local Authorities based on WRAP modelling and for Kirklees this is a total of £2,945,184 for internal/external caddies at each property and collection vehicles. The Council's Modelling, also carried out in collaboration with WRAP identified a total capital requirement of £4,142,500, this leaves the Council with a shortfall of £1,197,316.

3.6.5 DEFRA have not identified any allocation of funding to communal properties and capital costs will also be incurred for additional critical infrastructure requirements for depots, and the reception and bulking at Waste Transfer Stations (WTSs). Space is also required to manage another separated material stream and WTSs are already under pressure because of other waste stream changes such as Persistent Organic Pollutants (POPs). These issues have been highlighted to DEFRA and this is going through a process of providing evidence.

3.6.6 Because Kirklees have a dispensation to implement food waste collections in 2028 to align with the new contract start, DEFRA will not release the funding to us until 2026, however this is not guaranteed because it would need to go through a government approval process.

3.6.7 **Revenue Financial Implications**

3.6.8 The remaining balance of Waste Transformation Reserve (opening balance of £502k at 23/24) coupled with a £200k per annum base budget (total funding allocation of £1.5m from 2023 to 2028) is earmarked to fund the programme office and external advisors required to deliver the Councils Resource and Waste Strategy, including the expiry and procurement of the waste contract. Arrangements to draw down the Waste Transformation Reserve continue to be subject to approval from of the Service Director Finance.

3.6.9 Proposed Extension

3.6.10 The Proposed extension is expected to increase the revenue requirements to make the extension a viable option to SUEZ and mitigate the uncertainty within the industry and rising costs of inflation during the extension period.

- 3.6.11 Areas of discussion currently include the level of capital investment and future proofing of the facilities, the use of Third-Party facilities under the incentive scheme, which is designed to ensure high landfill diversion rates, as well as indexation of wages.
- 3.6.12 Proposals to make efficiency savings linked to the proposed extension have also been explored and put forward on the Councils Budget Savings Plan that was agreed by Council on the 6th of March.
- 3.6.13 Options for further potential efficiencies are subject to completion of a further review of a proposed option to mothball the Kirklees MRF and use an alternative 3rd party facility instead.
- 3.6.14 The revenue implications will be kept under regular review by the Waste Transformation Board.
- 3.6.15 Food waste
- 3.6.16 DEFRA's forthcoming transitional and revenue new burdens funding will be paid to Local Authorities for delivering the separate food waste collection, the Council's expected annual operating costs are in the region of £3.9m. DEFRA funding related to the transfer and processing elements of the system has not yet been announced, issues such as drainage, odour and vermin/pest management will also have revenue impacts.
- 3.6.17 Emissions Trading Scheme (ETS)
- 3.6.18 The Council are working with DEFRA on the emerging process and costs for the ETS (Plastic Tax). This could see a bill to Kirklees ranging from £2.8m up to £5.6m per annum, work is ongoing to explore the options for mitigation. Currently the cheapest cost option would be to separate out plastics and landfill them to avoid the higher ETS charges, which appears to undermine the environmental intentions of the legislation. One element that DEFRA are still working through is the 'credit' that may be allocated should an EfW also have a heat network offtake, but this is still emerging.
- 3.6.19 Extended Producer Responsibility
- 3.6.20 The EPR will provide a new revenue income to offset the Council's cost of managing packaging waste that will be passed to producers via the EPR scheme, this is currently scheduled to go live in October 2025. DEFRA are currently working on the funding formula to local authorities who should be informed of their allocations in November 2024, however the first payment will not be made until December 2025. Payments will be made on the basis of effective service delivery and DEFRA are still to define the measure of this and will exemplify efficiency and effectiveness, so there is no guarantee that the Council will receive the full cost.
- 3.6.21 Share Agreements
- 3.6.22 The energy and recycling markets are subject to significant fluctuations and the recent introduction of the Energy Generation Levy has been introduced to tax the exceptional profits made on electricity sales during the energy crisis, whilst there have been downturns in some recycling markets. It is difficult to predict the future of energy and recycling markets, but the Council's financial modelling suggests that over a 10-year contract period, the costs payable by the Council are estimated to be £285m with an

income share of £47.7m to offset costs, and leave a net position of £237.4m, this is with an estimated capital investment of £14.3m which includes replacing the turbine.

3.6.23 In summary there are still a number of unknowns that make it difficult to identify the final net revenue position, efforts are being made to explore opportunities for savings and mitigate increasing costs. At the same time the Government are imposing some policies with a funding shortfall or without any funding at all that will present unfunded revenue pressures on baseline budgets, and these will be considered in the next round of the Council budget process for 2025/26.

3.7 Legal Implications

- 3.7.1 Legal services are engaged to support any variations pursuant to clause 3 of the PFI contract and the Council will be required to enter into the Deed of Variation to extend from the current expiry date of 31 March 2025 for an additional 3 years.
- 3.7.2 The Council has a duty of Best Value under section 3 of the Local Government Act 1999 to make arrangements for continuous improvement in the way its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.
- 3.7.3 The Council in carrying out its functions must comply with the Public Sector Equality duty under section 149 Equality Act 2010 before exercising any decision on a particular policy or strategy is taken ; namely it must have due regard to the need to eliminate unlawful discrimination, harassment, victimisation; advance equality of opportunity between persons who share protected characteristics and those who do not, and foster good relations between those who share protected characteristics and those who do not.
- 3.7.4 The Council will comply with its Contract Procedure Rules and Financial Procedure Rules; and the Public Contracts Regulations 2015 and/or the Procurement Act 2023 when brought fully into force (c. Autumn 2024) in relation to Goods, Works and Services.
- 3.7.5 The Council must comply with its duty under the Public Services (Social Value) Act 2012 to consider how services are procured might improve economic, social and environmental wellbeing of the area.

3.8 Risk

- 3.8.1 The new contract is introducing a new risk for the Council by developing a partnership approach to sharing risk and benefit on commodities and energy generation, this currently sits with the Contractor.
- 3.8.2 The Council is also investing Capital in the facilities that without it would have seen the Contractor managing down performance of the facility to the minimum level as the contract expired, affecting the condition of the facility and future running costs and remaining life.
- 3.8.3 Extending the contract allows the time to understand the impacts of Extended Producer Responsibility; Deposit Return Scheme; and other policies that affect the recycling; waste volumes and composition for the EfW and MRF avoids the risk of making the wrong assumptions, reducing the risk of a failed procurement or unnecessarily high costs.
- 3.8.4 Continuing a good standard of Maintenance on ageing facilities, managing lifecycle and obsolescence to operate within performance capabilities, reduces the risk of unknown

breakdown being priced into bids and maximises the life expectancy of assets for a new 10–15-year contract.

3.8.5 The Emissions Trading Scheme charges to be applied from 2028 of c.£5m is a corporate risk, and the service is working through the options for managing plastics to mitigate the impact and DEFRA are still working through ‘credits’ that may be allocated for EfW’s that have offtake for heat networks (such as the HDEN).

3.8.6 Interdependency of the Waste Contract with the HDEN

3.8.7 Whilst this proposal is primarily concerned with the delivery of the Council’s Waste disposal contract, there is a significant interdependency with the development of the HDEN scheme, with heat from the EfW intended as the primary heat source for the HDEN. Whilst this interdependency is intended to result in an additional income stream into the Council and help deliver the Council’s carbon reduction targets, it also adds risk to the delivery of core waste services.

3.8.8 In mitigation, regular dialogue and alignment between both project teams is maintained (including between the HDEN consultant team and Suez as the Waste contract incumbent) in order to ensure that the opportunities offered by the EfW are balanced against the resulting level of risk. Whilst there is longer-term uncertainty over policies on the future role of energy-from-waste, harnessing of these facilities for provision of low carbon heat is likely to help provide longer-term certainty.

3.8.9 HDEN Scheme risk is mitigated through the network design that is ‘technology agnostic’ in that it will be possible to switch to alternative independent heat sources with relatively little disruption should circumstances require this (though this may be less economically attractive). Furthermore, the HDEN network infrastructure is intended to be long-lasting (circa 40-50 years plus) and designed to be switched to an alternative heat source(s) once the EfW reaches end of life.

3.8.10 In summary, the risks associated with retaining and adjusting the existing contractual arrangements with the incumbent supplier are lower than the potential costs and risks of uncertainty arising from unresolved issues surrounding national obligations. Issues still to be confirmed or made certain to feature in the specification and procurement exercise may not be fully resolved by the time a competitive tender process takes place, but more time does potentially improve certainty, the relevant risk registers have been reviewed and updated as required.

4. Consultation

4.1 A public consultation on the Resources & Waste Strategy took place from October 2020 to January 2021, the waste markets were also consulted from April to May 2022 and the Procurement Strategy incorporates the findings of both these exercises.

5. Engagement

5.1 An extensive engagement process was conducted in Autumn 2020 to formulate the Resources & Waste Strategy that sets out the future requirements for waste treatment, processing, and the necessary infrastructure to enable delivery of services. An engagement exercise was completed over Spring and Summer 2022 to test market appetite and discuss proposals to aid development of a Waste Procurement Strategy that is deliverable and attracts good competition.

5.2 The Procurement Strategy update has been formulated with further assessment and engagement with waste experts, a cross party member reference group, public scrutiny and it has also seen external challenge and review from the Government's Infrastructure Projects Authority and DEFRA.

5.3 Engagement has confirmed that more time is needed to understand the requirements of emerging Government legislation and incorporate the approved changes to the Councils Resource & Waste Strategy that will require investment in the ageing waste infrastructure to ensure future operation.

6. Options

6.1 Options considered:

6.1.1 Extension of Interim Arrangements 2025 to 2028 (DoV2)

6.1.2 The ICO confirmed the existing DoV agreement to be an exemplary template and that project dependencies of DEFRA and other legislative changes remained a significant risk to future service provision. The new service contract needs to align with implementation of the resource and waste strategy that deferred additional cost of food waste and glass collections to 2028. They advised that the Council needs to utilise some of the available further 3 years to extend to allow time to understand the impacts of the Extended Producer Responsibility, Deposit Return Scheme and other policies that affect recycling, waste volumes and composition. An early decision and time are also needed to work through the District Heat Network interdependencies.

6.1.3 Extend on the existing contract and DoV terms for a further 3 years (Recommended).

6.1.4 Extend the contract 5 years beyond the contract conditions. (Not recommended)

- There is no realistic legal reason for extending the contract period beyond the scope of the original contract and doing so would also fall outside the allowance permitted in regulations.

6.1.5 Continue to procure (Business As Usual) for DoV expiry 2025. (Not recommended)

- Goes against the advice of the IPA.
- Lack of clarity of future service requirements.
- Very short time left to run a competitive dialogue procurement process.
- Would require the Council take hold the risk on the majority of items such as plant performance, income, change of law.
- No longer a realistic or viable option.

6.1.6 Turbine Replacement

- The existing turbine is aged, is of unusual configuration for an EfW, is obsolete and is not supported by the manufacturer.
- Spare parts are not readily available and may now require bespoke manufacture.
- Around 9 months of turbine operations were lost in 2019-2020 due to breakdown, resulting in significant loss of income revenue for the incumbent contractor.
- Other vibration issues followed, the incumbent contractor now has early monitoring and check for issues and solutions available, no immediate concerns at present.

- The long-term reliability of turbine availability cannot be guaranteed for electricity generation and a heat network.
- Discussions with markets raised their concern that the turbine will need replacing to guarantee future performance. (Note: the point of failure cannot be determined)

6.1.7 Replace the turbine and equipment in the new contract post 2028, reviewing the funding options and cost profiling, and discuss mitigation measures with SUEZ under DoV2 for the interim period. (Recommended)

6.1.8 Replace the turbine in the existing contract (Not recommended)

- Significant compensation payment for energy loss and capital in 2024/5.

6.1.9 Do not replace the turbine (Not recommended)

- Risk of catastrophic failure and damage to equipment with significant downtime and associated cost.
- No guarantee of future performance requirement for electricity generation and heat offtake for the HDEN.

6.1.10 Use a third-party facility (Not recommended)

- Gate fees would be significantly higher and additional costs in decommissioning and new transfer station.
- 3rd party facilities are also likely to see a future rise in gate fees to recover the cost of CCSU and ETS.

6.1.11 Materials Recovery Facility

6.1.12 The options were assessed against the future requirements for sorting comingled recycling materials using the existing MRF and best available technologies for automated sorting either with or without glass included. The requirements for operating for a further 15 years took account of obsolescence of parts, availability of interim solutions to avoid breaks in service, and the impact and options for career or job creation. Potential alternative uses for the building to provide an undercover HWRC or expansion of the reception hall for transfer of food waste were also considered.

6.1.13 Continue to operate the MRF and maintain business as usual, reviewing efficiency of the facility and wider use of SUEZ network. (Recommended)

6.1.14 Build a new MRF manual or automatic operation (Not recommended)

- Significant capital investment required (£4m) and alternative facility needed during construction period.

6.1.15 Build a new MRF automatic with glass included (Not recommended)

- Additional capital investment required (£4.5m) for glass and alternative facility needed during construction period.
- Strategy for glass collections unknown.
- Reduces quality and value of other recycling materials.
- Increased maintenance cost.

6.1.16 Use a third-party facility (Not recommended)

- Capital cost to decommission existing facility and increased haulage cost.
- Third party risk and issues.

6.1.17 Household Waste Recycling Centres

The options were assessed against HWRC operations and management, materials marketing, transport/haulage, this included an evaluation of 31 local authorities that have procured HWRC materials off take contracts since January 2017.

The options of 'In-house DSO' and 'Outsourced Separate' are considered to be the most suitable options dependent on the Council's preference and needs, although the cost differential assessment indicates that 'In-House Separate' option is likely to have the lowest annualised service costs from a service delivery cost perspective only.

6.1.18 Services retained within the integrated waste contract (Recommended)

6.1.19 Service procured as a standalone contract (Not recommended)

- A separate procurement would require additional procurement resource and cost.
- Additional contract management resources would be required to manage another contract.

6.1.20 Council provides services through a Direct Service Organisation (DSO) (Not recommended)

- Exposes the Council to new liabilities and risk on fluctuations in recycling income would sit with the Council.
- Legislation stops Councils profiting from DSO service delivery.
- Potential interference from trade unions and exposure to industrial action.
- Council staff have no recent operational experience of delivering HWRC services.
- Differential costs offer minimal benefit for the commitment the Council would be taking on.

6.1.21 Funding Capital Investments

6.1.22 The following funding options were considered for investing in the Council's waste infrastructure.

6.1.23 The Council borrow the Capital (Recommended)

6.1.24 The incumbent or incoming contractor provided the Capital (Not recommended)

- There would be a significant increase in the gate fee.
- Market engagement established that bidders are unlikely to be willing to borrow on what is considered to be a short-term contract.

6.2 **Reasons for recommended options**

6.2.1 Extend the existing contract and DoV terms for a further 3 years (Recommended).

- Allows deferring the implementation of food waste collections to coincide with the new waste disposal contract.
- Gives time to explore compliance of expanding glass banks to meet criteria of collections from kerbside.
- Gain benefit of a good performing and value for money contract, within the scope of affordability.
- Risk of energy generation sits with the contractor.
- Clarity on government policy, de-risking contract and avoidance of contract variations
- Continued DoV maintenance arrangements and monitoring to expiry.
- Delays capital cost of asset transfer at expiry.
- Gives time to assess feasibility of turbine location, design fit & operate prior to new contract and alignment with HDEN.
- Continues the same benefits of the existing DoV in de-risking the next contract and lower priced incoming contractor.

6.2.2 Replace turbine and equipment in the new contract post 2028 (Recommended)

- Removes risk of failure and guarantee for new contract.
- Delays some significant capital and revenue costs to 2027/28.
- Manages obsolescence and lifecycle in EfW and MRF and protects against legislation change and insurance requirements.
- Avoids payment to the incumbent contractor for significant loss of income on energy sales.
- Investment guarantees energy generation into a new 15-year contract and heat offtake for HDEN.

6.2.3 Continue to operate the MRF and maintain business as usual (Recommended)

- Capital and maintenance costs remain the same.
- Has the flexibility to add or remove materials and increase through put with additional shift.
- Use of wider SUEZ network can be explored.

6.2.4 HWRC Services retained within the integrated waste contract (Recommended)

- Modern contracts have well established and robust change mechanisms.
- Specialist providers have access to a wider pool of operating experience.
- Support functions are likely to be delivered remotely with cost savings.
- Reduces the need for a separate procurement exercise, reducing resource and costs.
- TUPE and workforce integration is complex and creates a financial risk.

6.2.5 The Council borrow the Capital to invest in its waste infrastructure (Recommended)

- Loan options can be secured at lower rates than 3rd parties.
- Loan can be paid back over life of the asset (20-25 years) rather than the period of the contract (10-15 years).
- Market engagement identified this as the preferred option of potential bidders.

7. Next steps and timelines

Waste Disposal Contract Expiry and Procurement Process		
Year	Month	Activity
2024	February	Finalise - Heads of Terms (extension of interim arrangements)
	March	Approval - Council Budget (capital plan 2024-25)
	April	Approval - Cabinet Report (Procurement; Ext.; DoV2)
	May	Signing - Deed of Variation 2 (extension of interim arrangements)
		Engagement - Market Testing Phase 2
		Pipeline Notice (if required)
	October	Start - Procurement Act 2023 (anticipated)
		Publish - Preliminary Market Engagement Notice
	December	Approval - Cabinet HDEN Final Business Case
		Publish - Tender Notice (Procurement Act 2023)
Hand-back Plan Agreed		
2025	March	Issue - Selection Questionnaire
		Receive - Request to Participate in Dialogue (Phase 1)
	April	Expiry - Current Interim Arrangements
		Start - Deed of Variation 2
		Dialogue - Phase 1
	September	Invitation - to Take Part in Dialogue Phase 2 (ITPD)
		Invitation - to Submit Outline Proposals (ISOP)
	December	Dialogue - Phase 2
Funding - EPR Packaging Waste payments		
2026	February	Start - HDEN Construction Phase
	April	Funding - Food Waste Capital
		Start - Monitoring Phase of Emissions Trading Scheme
		Stage - Final Tender
July	Approval - Internal Governance Process	
2027	April	Start - Hand-back Process
	August	Award - New Contract
		Start - Mobilisation Period
		Planning - Turbine Replacement
2028	March	Complete - Hand-back
	April	Start - New Contract
		Start - Separate food waste collections
		Funding - Food Waste Collections Revenue
		Start - Charges for Emissions Trading Scheme
2029	April	Complete - Turbine Replacement

8. Contact officers

Nigel Hancock, Programme Manager.

Tristan Fethney, Commercial & Technical Development Manager.

Will Acornley, Head of Operational Services, Highways and Streetscene.

9. Background Papers and History of Decisions

Waste Disposal, Interim Contract Arrangements Approval (September 2021)

<https://democracy.kirklees.gov.uk/documents/s42976/2021.09.21%20Interim%20Contract%20Arrangements%20-PUBLIC%20Cabinet%20Report%20FINAL%20V1.pdf>

Procurement Options for Waste Management - OBC Pre-decision Scrutiny Panel
(November 2021)

<https://democracy.kirklees.gov.uk/documents/s44016/PDS%20Procurement%20Options%20for%20Waste%20Management%20301121%20OBC%20Public.pdf>

Procurement Options for waste Management - OBC Approval (December 2021)

<https://democracy.kirklees.gov.uk/documents/s44215/Procurement%20Options%20for%20Waste%20Management.pdf>

Huddersfield District Energy Network (HDEN) Outline Business Case Approval
(September 2022):

<https://democracy.kirklees.gov.uk/documents/s48219/2022%2009%2007%20HDEN%20OBC%20Cabinet%20report%20v1.pdf>

10. Appendices

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11. Service Director responsible

Graham West - Highways & Streetscene, Growth and Regeneration.