

Name of meeting: Cabinet
Date: Tuesday 21st September 2021
Title of report: Waste Disposal, Interim Contract Arrangements

Purpose of report:

For Cabinet to consider the proposed waste disposal interim arrangements and a decision is sought to approve the officer recommendations following endorsement by pre-decision Economy and Neighbourhood Scrutiny Panel on 7th September 2021.

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Yes Value over £250k
Key Decision - Is it in the Council's Forward Plan (key decisions and private reports)?	Key Decision – Yes Private Report/Private Appendix – Yes
The Decision - Is it eligible for call in by Scrutiny?	Not Applicable Endorsed by Pre-Decision Economy and Neighbourhood Scrutiny Panel on 7 th September 2021
Date signed off by Strategic Director & name	Colin Parr, 2nd September 2021
Is it also signed off by the Service Director for Finance?	Eamonn Croston, 31st August 2021
Is it also signed off by the Service Director for Legal Governance and Commissioning?	Marc Ellis/Julie Muscroft, 9th September 2021
Cabinet member portfolio	Councillor Naheed Mather - Environment

Electoral wards affected: All

Ward councillors consulted: No

Public or private: Public with Private Appendix

The report contains an appendix that is recommended to be taken in Private because the information contained is considered to be exempt information under paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended by the Local Government (Access to Information) (Variation) Order 2006.

It contains information regards the financial or business affairs of any person including the Council. It is considered that it would not be in the public interest to disclose the information contained in the report as disclosure could adversely affect overall ability to obtain value for money, compromise the commercial confidentiality and intellectual property of organisations mentioned in the report, may disclose contractual terms, and impact on any future legal action that may be required, which is considered to outweigh the public interest in disclosing information including, greater accountability, transparency in spending public money, and openness in Council decision-making.

Any publication of this document may result in the contractor withdrawing the commercial offer.

Has GDPR been considered? – Yes and there is personal or sensitive data; or other information covered by GDPR is included in this report.

1. Summary

- 1.1 The purpose of the report is to provide information on a proposed interim agreement with the current waste disposal contractor to:
- align the current service contract with some of the upcoming waste strategy requirements of the Council and national government; and
 - prepare the Council for re-procurement of waste disposal services.
- 1.2 The waste disposal contract is in year 24 of a 25-year waste PFI agreement. This contract, signed in 1998, was focused on landfill diversion and includes a number of waste treatment and disposal facilities operated and maintained by the contractor, Suez Recycling and Recovery Kirklees Limited (“Suez”) including:
- Energy from Waste (EfW) facility;
 - Material Recovery Facility (MRF);
 - Two Transfer Stations (TS);
 - Five Household Waste Recycling Centres (HWRCs); and
 - Two closed landfill sites.

Ownership of these facilities reverts back to the Council at contract expiry.

- 1.3 The contract was initially set up to deliver 60% diversion from landfill and taking into account change of law requirements over the last 23.5 years of the contract, the required landfill diversion minimum is currently just over 65%.
- 1.4 The new Kirklees Resources & Waste Strategy was approved by Council on 8th September 2021 and this will have an influence on the Council’s requirements for future waste processing services. Interim arrangements will be required to support the Council to deliver some of the recycling ambitions proposed by the strategy before the contract expiry date.
- 1.5 National government published the Resources and Waste Strategy for England in December 2018. This provided some highlights of government ambition for a circular economy and has been used to help the Council to develop its own strategy. The Council is currently awaiting publication of the Environment Bill regulations which will clearly state the amended statutory requirements of the Council, and any funding that might be available to support service delivery changes. Any changes implemented too early would potentially not qualify for government funding.
- 1.6 An interim agreement with the current waste contractor, Suez, will help the Council with its transition from its current waste disposal services to the requirements of national government.
- 1.7 The proposed interim arrangements look to offer to residents (among many other wider benefits to services provided to the Council):
- the addition of plastic pots, tubs and trays in the green bin;
 - longer opening hours at HWRCs; and
 - bring the hand back arrangements for the Council’s waste assets, including the Energy from Waste plant, up to the standards of modern contracts.

1.8 An offer is proposed by Suez, the details of which are commercially confidential. The Council is seeking Cabinet approval on the offer on 21 September 2021.

2. Information required to take a decision

2.1 A detailed private report (Private Appendix A) will be considered by Cabinet on 21 September 2021 as the information is exempt in accordance with Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended by the Local Government (Access to Information) (Variation) Order 2006.

3. Implications for the Council

3.1 Working with People

In order to help improve recycling into the 90% to 95% diversion rates community engagement will be required and a public engagement exercise on the Council's resources and waste strategy was carried out in Autumn 2020 which was the most successful public engagement exercise undertaken by the council with almost 8,000 responses. A section of the consultation was focused on waste disposal and the feedback from this will influence service requirements for the waste disposal contract.

3.2 Working with Partners

Suez, the Department for Environment, Food and Rural Affairs ("Defra") and the Infrastructure Projects Authority ("IPA") have supported the Council in identifying the opportunities available to provide the best service possible for Kirklees residents. Sustainable, reliable, long-term solutions have been designed to deliver the principles of the upcoming Environment Bill and the national Resources and Waste Strategy.

3.3 Place Based Working

The only public facing service delivered by the waste disposal contract is operation and management of the HWRC sites. The consultation delivered to Kirklees residents in 2020 included a section on HWRCs. Whilst the MRF is not a public facing facility, residents expressed their views on what should and should not be included in the green bin for recycling. This consultation has directly contributed to the following provisions for Kirklees residents:

- HWRC: Longer opening hours in Summer
- MRF: More recycling materials accepted in the green bin

3.4 Climate Change and Air Quality

The facilities have a key role in tackling climate change and improving air quality. Performance measures already contained in the contract have a positive contribution towards the Council's impact on Climate Change. Early delivery of waste strategy initiatives, such as increases to recycling, will demonstrate further support towards reducing our impact on the environment.

The EfW facility can process up to 130k tonnes of waste to generate green electricity to power up to 15k homes from waste that would otherwise be sent to landfill which has significant detrimental effects on carbon emissions.

The interim contract arrangements will create the stability needed to deliver a successful District Heating Network (DHN) scheme as the EfW facility is a critical asset in its development. The DHN relies on the EfW as the primary heat and power source and good ongoing maintenance of the asset is required to ensure reliability of the asset that will have enhanced environmental benefits in linking to the DHN.

3.5 Improving outcomes for children

As noted in 3.1 community engagement is required to improve recycling rates and the strategy details how we will continue to provide an extensive engagement programme within schools and deliver meaningful educational resources to empower children to make a difference both now and in the future. We will also work with colleges and universities to support entrepreneurship and skills development in relation to waste management / circular economy; encouraging and enabling young people to explore, innovate and set up new sustainable businesses within the district.

3.6 Legal

Legal services are engaged to support the negotiation of the 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 2023 for an additional 2 years with provision for a further 1-year extension if required. 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.

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 Do you need an Integrated Impact Assessment (IIA)?

An Integrated Impact Assessment has been completed for the development of the Kirklees Resource & Waste Strategy 2021-2030. The assessment has not identified specific issues with the strategy itself, but such is the scope and scale of the transformation of waste services detailed within the strategy, further IIAs will be required for several of the specific proposals detailed within the strategy.

4. Financial

The financial details are included in the detailed private report (Private Appendix A) as the information is exempt in accordance with Part 1 of Schedule 12A of the Local Government Act 1972, as amended by the Local Government (Access to Information) (Variation) Order 2006.

5. Consultees and Their Opinions

The waste strategy team held working groups that completed due diligence checks and agreed the key principles for the agreement. The working groups included the following internal services: Risk & Insurance, Legal. Independent waste specialists included DEFRA and consultant advisors for Technical and Legal.

6. Next Steps

If approved by cabinet, the deed of variation to the contract will be completed and the interim arrangements will be implemented on 1st October 2021.

7. Officer Recommendations

The officers recommend that following endorsement from Pre-decision Scrutiny on 7th September 2021 Cabinet in order to achieve value for money, align the current contract

with the Council's waste strategy and allow time to prepare for the re-procurement of waste disposal services approve the recommendations below:

- The preferred Option 1 of the interim contract arrangements is approved.
- Consultation has identified that the flat rate is the preferred option and this should be adopted.
- The Council to put effort into community education to help improve recycling rates into the 90% to 95% diversion rates.
- Delegate authority to the Service Director Legal, Governance and Commissioning in consultation with the service Director, Highways and Streetscene to finalise enter into and execute any appropriate contracts and documentation in relation to the waste disposal interim contract arrangements outlined in the public and private report and appendix.
- Approve the proposed use of revenue resources.

8. Cabinet Portfolio Holder's Recommendations

The Cabinet Portfolio Holder for Environment has been consulted with regards to the contents of the interim arrangements and they support the officers' recommendations.

9. Contact Officers

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Lory Hunter - Commercial & Technical Development Manager - lory.hunter@kirklees.gov.uk - 01484 221000

Will Acornley, Head of Operational Services - will.acornley@kirklees.gov.uk - 01484 221000

10. Service Director Responsible

Sue Procter – Service Director, Highways and Streetscene

11. Attachments

Private Appendix A - Private report on waste disposal contract interim arrangements