

**REPORT OF THE SERVICE DIRECTOR FOR TRANSPORT, PROPERTY AND
ENVIRONMENT****WASTE MANAGEMENT CONTRACTS****Purpose of the Report**

1. To approve the 'in principle' agreement to clarify existing arrangements regarding the use of Eastcroft Energy from Waste (EfW) plant and to enter into a deed of variation with Nottingham City Council and FCC (Fomento de Construcciones y Contratas, formerly known as Waste Recycling Group - WRG) to reflect that agreement.
2. To give delegated authority to the Corporate Director, Environment and Resources, to negotiate the final details of a legal agreement to give effect to the above, in consultation with the Group Manager, Legal and Democratic Services.
3. To inform Committee of the outcome of the Department for Food, Environment & Rural Affairs' (Defra) re-assessment of the waste infrastructure grant for the Waste Private Finance Initiative (PFI) Contract.
4. To give an overview of progress on proposals in the Draft Revised Project Plan (DRPP) submitted by Veolia Environmental Services Nottinghamshire (VESN) in response to the planning failure for the Rufford Energy Recovery Facility (ERF).

Information and AdviceBackground

5. The County Council through its statutory role as Waste Disposal Authority (WDA) controls the recycling, reprocessing, treatment and disposal of around 380,000 tonnes of waste per annum (tpa).
6. The majority of the waste is managed through a PFI contract with VESN which was signed as a twenty-six year agreement in 2006. Although it forms a single integrated contract, the PFI Contract is structured as:
 - I. Contract A, which covers the management of the network of Recycling Centres, the development and operation of a new Materials Recovery Facility (MRF) at Mansfield, composting services, waste transfer

stations (WTS) and landfill, plus securing planning and environmental permitting for the Rufford ERF.

- II. Contract B, which was for the construction and operation of the 180,000 tonnes per annum (tpa) Rufford ERF at the former Rufford colliery near Mansfield. This was a conditional contract and was subject to VESN achieving a satisfactory planning permission, environmental permit and the construction cost being below a pre-agreed threshold.
7. Two other significant contracts are also used to manage waste streams in the County, these being a long term contract (joint with Nottingham City Council) with FCC for the use of lines 1 and 2 at the Eastcroft EfW plant to dispose of residual waste; and with SRCL Limited (part of Stericycle) for the disposal of separately collected clinical waste. All of these contracts operate together, at an annual cost of circa £32m.
 8. In May 2011, the Secretary of State for Communities and Local Government decided that VESN's planning application for the ERF at the Former Rufford Colliery, Rainworth should be refused. The Rufford ERF was the principal infrastructure to be delivered through the Waste PFI Contract and would have diverted the majority of residual waste away from landfill. This led the County Council to instigate the contractual DRPP process, which gave VESN the opportunity to present an alternative solution to the Rufford ERF for residual waste management. The failed planning permission for the Rufford ERF also led to Nottinghamshire's PFI Credit allocation being reviewed by Defra.
 9. VESN formally submitted their DRPP to the Council on 20th January 2012, which has subsequently been the subject of ongoing detailed discussions between the parties, in an effort to ensure that proposals which are financially, operationally and legally robust can be brought before members for a decision in due course.
 10. In addition, the County and City Councils have been reviewing tonnage allocations at the Eastcroft EfW plant, which is used to handle circa 60,000tpa of the County Council's waste. Time and resources required to engage effectively with both the PFI Credit Re-assessment process and discussions relating to tonnages at Eastcroft have impacted on DRPP progress, however both of these issues are now clarified and officers have therefore devised a programme of work to conclude the DRPP process which is included within this report (see below).

Eastcroft

11. The arrangements for waste disposal at Eastcroft EfW plant are governed by a three-party agreement between FCC (the operator), the County Council and the City Council. This is a historic agreement, but over recent times there has been a

difference of opinion raised by the City Council regarding the interpretation and application of the established joint use arrangements.

12. Capacity at Eastcroft EfW plant is shared between FCC, the City Council and the County Council. FCC is entitled to 10,000tpa of the plant capacity, and the remainder has historically been split between the two councils providing the County Council with disposal capacity of circa 60,000tpa.
13. Due to falling waste arisings and increased recycling, the City Council have disposed of a lower tonnage of waste at Eastcroft EfW plant and the County Council had therefore increased inputs accordingly to circa 65,000tpa. The City Council anticipates having spare capacity available until 2016/17. Beyond 2016/17, the City has advised that there is unlikely to be any spare capacity, due to population growth and changes to their waste collection arrangements. The County could utilise around 8,000 tpa of additional capacity (total of 68,000tpa) in 2013/14, 2014/15, and in 2015/16 by direct delivery from the districts of Broxtowe, Gedling and Rushcliffe.
14. It is in the County's interests to maximise throughput at Eastcroft because the rate of disposal is cheaper than the alternative of landfill. The financial implications of the revised Eastcroft arrangements are detailed within the Exempt Appendix to this report and are subject to agreeing the terms of a formal legal agreement between the parties. The City Council is currently drafting a legal agreement for the Council to consider and delegated authority to the Corporate Director, Environment and Resources is sought to conclude those negotiations to reflect the agreement outlined in the Exempt Appendix.

PFI Credits

15. The Waste PFI Contract was awarded £38.31m of PFI credits as a waste infrastructure grant in 2006, which equates to £2.998m per annum (£80m over the life of the Contract).
16. Following VESN's failure to achieve planning permission for the Rufford ERF, in August 2011 Defra wrote to the Council as part of an informal consultation on projects that had not yet delivered all project infrastructure. This was followed on 14th May 2013 with a letter confirming that they were going to review Nottinghamshire's PFI Credit allocation.
17. In recent months Defra has withdrawn credits allocated against a number of projects which have not delivered the proposed infrastructure and/or where the residual waste infrastructure is no longer required to achieve the EU Landfill Diversion targets. Most recently this has affected Norfolk County Council in October 2013; and Bradford & Calderdale Councils, Merseyside Recycling and Waste Authority, and North Yorkshire County Council / City of York in February

2013. The National Audit Office has also recently instigated value for money reviews of projects where the infrastructure has not been delivered.

18. The PFI Credit review had two strands:

- I. Re-assessment of the amount of PFI credits that the Council is entitled to in the context of the infrastructure that the County Council now proposes to deliver;
- II. Re-profiling of the PFI credit payments to ensure that payments are closely aligned to the delivery of the outstanding infrastructure.

19. The outcome of the PFI Credit review, which is subject to Ministerial approval, is a reduction in the Council's PFI credit allocation with effect from January 2014. The financial implications of this are detailed within the Exempt Appendix.

Draft Revised Project Plan (DRPP)

20. VESN's DRPP does not propose the development of any new residual waste treatment infrastructure within the Nottinghamshire administrative area. The DRPP is based upon the development of a network of transfer stations to feed a combination of third party and Veolia facilities outside of the County boundaries.

21. It has become apparent that some elements of the proposal are currently not capable of meeting an acceptable risk and cost for the Council to consider taking further. However, certain elements of VESN's proposal, particularly the use of the Sheffield ERF, are a viable option for the Council and could be used to dispose of 60,000tpa of waste from Nottinghamshire.

22. In April 2013, Veolia obtained planning permission to enable the Sheffield ERF to accept waste from the four northern districts of Nottinghamshire: Ashfield, Bassetlaw, Mansfield and Newark and Sherwood. This waste would require the development of the two waste transfer stations already proposed in the PFI Contract at Newark and Worksop. Sites have been identified for both of these facilities, and both benefit from planning permissions and would take approximately nine months to develop. Due to issues relating to the proposed Worksop WTS a new planning application was submitted for an alternative site in Worksop, which was validated in January 2014; it is hoped that this facility will be approved in the near future.

23. Table 1 summarises the residual waste flows proposed in the DRPP.

Table 1

Facility	2014/15	2015/16	2016/17 and beyond
Residual Tonnage	222,000t	222,000t	222,000t
Eastcroft EfW Plant (Lines 1 and 2)	68,000t	68,000t	60,000t
Sheffield ERF	0t	27,000t	60,000t
Remaining Tonnage Landfilled / Subject to Market Testing	154,000t	127,000t	102,000t

24. This still leaves a significant tonnage of waste being disposed of to landfill (~100,000t), the majority of which is from the districts of Mansfield and Ashfield. These districts would have delivered their residual waste direct to the Rufford ERF under the original plans. To provide flexibility and a more sustainable method of managing the Mansfield/Ashfield waste, VESN have proposed the development of an additional WTS to serve the Mansfield/Ashfield area. The team are currently working with VESN to develop the proposal for the Mansfield/Ashfield WTS and options for managing the disposal of this waste, which will be subject to value for money safeguards built into the contract should this approach be taken forward.
25. Alongside the DRPP, officers have been working with VESN to identify savings that can be delivered through Contract A. This is contained within one of the Council's Outline Business Cases (B18).
26. The experienced officer team, mindful of the delay impact which both the PFI credit review and the Eastcroft allocation discussions have had on the DRPP process, have recently agreed with VESN a work programme to achieve a conclusion to the detailed discussions and financial modelling required to bring a decision report before members, which is detailed below:

27. Outline Work Programme milestones to Close:

- a) January 2014 – VESN to provide updated and complete information relating to the DRPP to build on discussions to date.
- b) February / March 2014 – meetings as required to resolve technical and financial issues to the satisfaction of the County Council. Legal teams to be instructed thereafter but no later than beginning of March.
- c) April / May 2014 – finalise commercial and legal issues.
- d) May / June 2014 – governance and approvals.
- e) Early July 2014 – complete deed of variation.

28. When the work programme is concluded a further report will be brought before the appropriate decision making body of the Council for a decision relating to the DRPP and any subsequent actions or issues arising from that decision. Committee is therefore requested to note the current position with regard to the DRPP process. Defra will also need to approve any material changes to the Contract in respect of the DRPP, to demonstrate that they are deliverable, affordable and provide value for money.

Other Options Considered

29. Committee could refuse to approve the agreement in principle reached by officers regarding the use of Eastcroft EfW plant; however that would prolong the ongoing uncertainty between the Councils and frustrate the assessment process for the DRPP. There will be a number of options open to the Council when reaching a decision on the DRPP when a report is brought forward on the conclusion of the work programme.

Reasons for Recommendations

30. It is in the Council's interest to use throughput at Eastcroft EfW plant because the rate of disposal is cheaper than landfill and will generate a saving to the Council net of any financial arrangement with Nottingham City Council.

31. Although the Council is disappointed with the reduction in waste PFI credits, given the situation at other authorities, where in some circumstances the full amount of PFI Credits have been withdrawn, senior officers are satisfied that this outcome is the best that could be achieved for the Council.

32. A further detailed report will be brought back to the appropriate decision making body later in the year with the final DRPP proposals, cost envelope and associated risks; and with information about the options open to Members on whether to accept

or reject these proposals and any subsequent action or issues which may flow from such a decision.

Statutory and Policy Implications

33. This report has been compiled after consideration of implications in respect of finance, equal opportunities, human resources, crime and disorder, human rights, the safeguarding of children, sustainability and the environment and those using the service and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

Financial Implications

34. The financial details of the Eastcroft arrangements and PFI Credit reassessment are included in the exempt appendix by virtue of Paragraphs 3 & 5 of Part 1 of Schedule 12A of the Local Government Act 1972. As it stands, the overall financial impact of the DRPP, the PFI credit re-assessment and the Eastcroft arrangements can be contained within the waste management budget. However, the financial implications of the DRPP are subject to ongoing detailed assessment and in the following decision report further information about the financial and other implications of the proposals will be set out to provide members with the necessary information on which to reach a decision.

Implications for Service Users

35. This report does not have direct implications on service users, because it does not propose any changes to the waste collection arrangements and it does not propose the development of any residual waste treatment infrastructure, with the exception of the network of transfer stations.

Recommendation

36. That Committee:

- a) Approves the 'in principle' agreement to clarify existing arrangements regarding the use of Eastcroft EfW plant and authorises the Council to enter into a deed of variation with Nottingham City Council and FCC to reflect that agreement;
- b) Give delegated authority to the Corporate Director, Environment and Resources, to negotiate the final details of a legal agreement to reflect the agreement in principle detailed above, in consultation with the Group Manager, Legal and Democratic Services;
- c) Acknowledge the outcome of Defra's re-assessment of waste infrastructure grant for the Waste PFI Contract;

- d) Note the current position reached on VESN's proposals in the DRPP.

Jas Hundal

Service Director, Transport, Property and Environment

For any enquiries about this report please contact:

Mick Allen, Group Manager, Waste and Energy Management

Constitutional Comments (HD 10/1/2014)

The recommendations within the report fall within the delegation to the Committee.

Financial Comments (TMR 13/1/2014)

The financial implications are set out in paragraph 34 and in the exempt appendix to the report.

Background Papers

None.

Electoral Divisions

All