

Planning Parameters		
<i>Parameter</i>	<i>Status</i>	<i>Commentary</i>
There are no planning conditions which degrade the performance of the plant to such an extent it is not suitable to meet the output specification.		Conditions to Planning Application will have no impact on the performance of the Plant. Parameter Complied with – no further action
There are no planning conditions which render the Variation not value for money for the Councils.		Conditions to Planning Application will have no impact on the Value for Money of the Plant. Parameter Complied with – no further action
Overall Parameter Status		COMPLETE

Financial Parameters		
<i>Parameter</i>	<i>Status</i>	<i>Commentary</i>
1. The Councils are satisfied that the additional cost of the Variation is affordable in relation to:		
a) the Councils' MTFP and relevant reserves; and		The Financial Plans for the two Councils now incorporate the likely increases in costs.
b) the total cost of Waste Contract and the Variation for the life of the Waste Contract to 2023 (or as extended) compared with the inflated financial envelope of what was originally intended to be delivered (Kidderminster); and		.
c) likely costs of ownership and operation beyond the life of the Waste Contract (as extended) whether out-sourced or not (including the amount of any balloon payment to be made on termination/expiry).		This is included with the arrangements made in 1a) above. This has been assessed on a linear amortisation of the debt and capital. In addition, following dialogue with HM Treasury an infrastructure guarantee could be made available to project financiers for any balloon payments, if required.

2. The additional cost of the Variation represents value for money when assessed:		
a) absolutely in terms of the processes used by Mercia to procure competitively the facilities comprised within the Contractor's Proposals; and		This is being undertaken by Amec who have indicated that Mercia's procurement exercise has produced a very competitive outcome. Awaiting a final report from Amec
b) relatively with other similar facilities procured recently;		Early indications are that the procurement exercise has produced prices that are as good or better than recently procured facilities. Further evaluation work to be undertaken to confirm.
c) absolutely in terms of the processes used by Mercia to procure competitively the facilities comprised within the Contractor's Proposals; and		This is being undertaken by Amec who have indicated that Mercia's procurement exercise has produced a very competitive outcome. Report is awaited
d) relatively with other similar facilities procured recently;		This is being undertaken by Amec and Deloitte. Early indications are that the procurement exercise has produced prices that are as good or better than recently procured facilities. Further evaluation work to be undertaken to confirm.
e) in the light of the opportunity cost and other disadvantages of the "do nothing" option having regard to both:		
(i) the effects of an increasing land fill tax		See main report

<p>(ii) the finite capacity of existing landfill and the absence of a planning consent for any other form of residual waste treatment; and</p>		
<p>f) in the light of the opportunity cost of terminating the Waste Contract (in whole or in part) and re-procuring the facilities afresh.</p>		
<p>3. The amendments to the Schedule 6 prices and Payments Mechanism are made on the assumption that capital costs are amortised linearly over the design life of the facilities comprised within the Variation.</p>	<p>See 1c) above</p>	
<p>4. The Internal Rate of Return (IRR) over the whole life of the Waste Contract shall not exceed the IRR used in the financial model in the original procurement.</p>		
<p>5. DEFRA (WIDP) approve the Variation Business Case.</p>		<p>This can only be submitted to DEFRA when the negotiations are completed.</p>
<p>6. Neither DEFRA nor Audit Commission indicate that they have an objection to the Variation on grounds of value for money.</p>		<p>This can only be signed off by DEFRA and the Audit Commission when the negotiations are completed.</p>

Contractual Parameters		
<i>Parameter</i>	<i>Status</i>	<i>Commentary</i>
1. There are no alterations to the Waste Contract, its structure or financial basis (including models) resulting from the incorporation of the Variation, save for those		
a) necessary to give effect to the Variation; and		A draft Variation Agreement is being considered by legal advisors
b) bringing the Waste Contract into compliance with current and foreseeable legislation; and		In principle agreement over Change in Environmental Legal Requirement and Change in Legal Requirement is under negotiation
c) the net effect of which is to deliver a commercial benefit to the Councils		

<p>2. Legal opinion from Leading Counsel has been obtained confirming that the execution of the Variation by the Councils, in particular in relation to the "balloon" payment, should not be construed as ultra vires the power of the Councils.</p>		<p>Opinion will need to be sought once the Contractual Terms are agreed</p>
<p>3. There is no realistic prospect of a material delay to or cessation of the execution of the Variation as a result of a challenge to how the facility is being procured or operated and the European Commission, having been apprised of all of the facts (e.g. through the issue of a voluntary ex ante transparency notice) relating to how the Counties intend to effect the Variation, has not indicated that it has an intention to challenge UK government on procurement grounds.</p>		<p>Still awaiting indication European Commission's consideration of the current challenge.</p>
<p>4. The period of the Waste Contract is not extended unless such extension produces an economic benefit to the Councils and is in any event for no longer a period than that envisaged by the original EU procurement process.</p>		<p>The Authorities are still negotiating with the Contractor over the length of any extension (between 2023 and 2028)</p>
<p>5. Both DEFRA and the Audit Commission have indicated that they have no objection to the Variation (in its final form) being executed by the Councils.</p>		<p>This can only be signed off by DEFRA and the Audit Commission when the negotiations are completed.</p>

<p>6. Herefordshire Council and this Council have entered into an agreement to extend the Joint Working Agreement insofar as it relates to this facility for a period commensurate with the intended life of the facility.</p>		<p>The Councils have agreed the Principles of a new Joint Agreement and have instructed legal advisors to draft a revised Joint Agreement. This revision will also review the Payment Split between the two Councils to ensure VFM is delivered to both authorities</p>
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Technical Parameters		
<i>Parameter</i>	<i>Status</i>	<i>Commentary</i>
1. The Reliability, Availability, Maintainability and Safety (RAMS) and Life Cycle Costs (LCC) are such that:		
a) the costs of running the facility are the same or better than those for recently procured similar plants (adjusted for capacity and time); and		These are to be evaluated by the Councils Technical Advisors. They have been reviewed as part of the evaluation of the tenders, further work will be undertaken on the finally selected tender to confirm compliance with the parameters.
b) the costs of running the facility are not deflated during the period up to the end of the period of the Waste Contract at the expense of increased running costs from that point to the end of the design life of the facility.		

<p>2. The return condition of the facilities comprised within the Variation at the expiry of the Waste Contract, shall be such that they;</p>		
<p>a) are in accordance with the specifications pursuant to which they were procured (save for agreed changes); and</p>		<p>These are to be evaluated by the Councils Technical Advisors. They have been reviewed as part of the evaluation of the tenders; further work will be undertaken on the finally selected tender to confirm compliance with the parameters.</p>
<p>b) are in a condition consistent with proper use up to that point in time; and</p>		
<p>c) are capable of being operated for the remainder of their design life; and</p>		
<p>d) are likely to be capable of being re-financed at commercial rates; and</p>		
<p>e) are in a condition which, having regard to the adequacy of any maintenance reserve does not create an operational and/or maintenance burden for the remainder of the design life.</p>		
<p>3. Any prescriptive specification items required by the Counties [such as additional pollution control/de-nox] have been incorporated in the specification for the facility.</p>		<p>No prescriptive restrictions currently required. Complete</p>

<p>4. Any operating restrictions required by the Counties have been incorporated in the operating requirements for the facility.</p>		<p>No operating restrictions currently required. Complete.</p>
<p>5. Any major component warranties required by the Counties have been requested in Mercia's contract documents for the facilities.</p>		<p>These are to be evaluated by the Councils Technical Advisors. They have been reviewed as part of the evaluation of the tenders, further work will be undertaken on the finally selected tender to confirm compliance with the parameters.</p>