

WRITTEN STATEMENT OF A KEY DECISION CABINET

ITEM:	WASTE MANAGEMENT CONTRACT
Members Present:	Councillors: AW Johnson (Leader), PM Morgan (Deputy Leader), GJ Powell, PD Price.
Date of Decision:	12 December 2013
Exempt:	No
Confidential	No
<p>This is a key decision because</p> <p>It is likely to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function concerned. A threshold of £500,000 is regarded as significant.</p> <p>And/or</p> <p>It is likely to be significant in terms of its effect on-</p> <p>Two or more Wards or electoral divisions;</p> <p>One Ward (unless the number of those affected is very small or it is impractical to treat this as a key decision).</p>	
<p>A notice was served in accordance with Part 3, Section 9 (Publicity in connection with key decisions) of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.</p>	
Urgency/Special Urgency: (As defined in Constitution)	No
Purpose:	To seek authorisation to conclude and execute a variation to the Joint Waste Management Services Contract with Mercia Waste Management to enable the construction of the EFW Plant at Hartlebury.

Decision:	THAT CABINET: 1. (a) agreed that the current position within the parameters set out in Annex 1 represented an acceptable position for Herefordshire Council to progress Mercia Waste Management Limited's ("Mercia") proposals for the Hartlebury Energy from Waste (EfW) plant by entering variation of the existing WMSC in accordance with the following recommendations; (b) agreed that such proposals for the EfW plant were affordable (subject to 2 below) and delivered value for money if the Councils' secured funding for the project from the Public Loans and Works Board in accordance with Option 2 set out in the report; (c) the Chief Financial Officer was authorised to come to an agreement with DEFRA on a reduction in Waste Infrastructure Grant (WIG) credits (as detailed in 11.5) in order to ensure the deliverability of Option 2; (d) agreed that the Council should enter a variation of the existing WMSC with Mercia to give effect to Option 2 to enable the construction and operation of a new EfW Plant at Hartlebury for the remainder of the WMSC as the most appropriate approach for Herefordshire Council's waste treatment arrangements; (e) subject to 2 below, the Director for Economy, Communities and Corporate be authorised (in consultation with the Chief Financial Officer and in conjunction with Worcestershire County Council) to conclude a variation to the WMSC with Mercia including enabling the construction of the EfW Plant at Hartlebury and its operation for the remainder of the WMSC and to take all necessary steps to put Option 2 into effect including execution of that variation in accordance with the Council's constitution and its certification under the Local Government (Contracts) Act 1997;
	(f) the Director for Economy, Communities and Corporate be authorised to update the Joint Working Agreement between Herefordshire Council and Worcestershire County Council to reflect the design life of the EfW Plant which will extend beyond the period of the WMSC;

- (g) that Council be recommended through a further report direct from the Chief Financial Officer on the details of the council's position as potential providers of appropriate funding for the project, to:**
- (i) amend its Treasury Policy Strategy and associated Treasury Management Statements and authorise a loan of up to £40 million (noting that Worcestershire County Council intend to loan £125 million) to Mercia for the purposes of the varied WMSC (Option 2);**
 - (ii) add up to £40 million to the Council's Capital Programme in order to enable the Council to provide such a loan to Mercia;**
 - (iii) authorise the Chief Financial Officer to take all necessary steps to obtain the funding for Option 2 from the Public Works Loan Board (PWLB);**
 - (iv) amend the Medium Term Financial Strategy (MTFS) as appropriate;**
 - (v) consider whether any arrangements are appropriate to ensure that the Council is able to properly take account of its interests as both the Waste Disposal Authority and as the funder; and**
 - (vi) authorise the Chief Financial Officer in consultation with the Solicitor to the Council to finalise a loan agreement with Mercia and advance funds as authorised above to Mercia by way of stage payments, properly authorised by the councils' joint independent certifier, as a loan repayable over the remaining life of the WMSC.**

2. The authorisation in 1(e) above be conditional upon (and the matter returned to Cabinet should any of those conditions not be met):

- (a) The Council reaching an agreement with DEFRA on reduced Waste Infrastructure Grant (WIG) credits, formerly known as PFI credits, as set out in 1(c) above;**
- (b) No objection being received in writing from DEFRA or Her Majesty's Treasury (HMT) to Option 2 before 20 December 2013;**
- (c) Final discussions with Mercia to (i) bring the proposal within what the Leader in consultation with the Chief Financial Officer considers to be sufficiently close to the affordability envelope as set out in the report and (ii) conclude negotiations with the Engineering, Procurement and Construction Contractor, before executing**

	<p>the variation;</p> <p>(d) Worcestershire County Council giving approvals substantially in the same or a substantially similar form as those contained within 1 (a) to (e) above; and</p> <p>(e) agreement being reached with Worcestershire County Council on the terms of the revised Joint Working Arrangements between the two councils.</p> <p>3. Cabinet noted the progress in relation to the Waste Management Service Contract (WMSC) since the reports to Cabinet in February 2012 and December 2012.</p>
Reasons for the Decision:	<p>The recommendations will secure Herefordshire Council's long term capacity to treat residual waste and fulfil its obligations as a Waste Disposal Authority (WDA). It will also avoid the potential substantial one-off cost of terminating the contract that could fall payable in 2013/14.</p> <p>Doing nothing would cost the councils £128m, over the asset life, more than the Recommended option.</p>
Options Considered:	<p>The following options have been considered in this report, for reference Option 2 is the recommended approach:</p> <p>Option 1: EFW Variation to WMSC with Commercial Finance</p> <p>As envisaged in the WMSC this includes the requirement for Mercia to construct (at the Hartlebury Site), finance and be responsible for the operations and maintenance of an EfW Plant until the end of the WMSC (2023) and then for the Councils taking on these responsibilities after 2023 to 2042 (its useful life).</p> <p>Option 1a: EfW Variation to WMSC financed by Private finance and Council's Prudential Borrowing ("co-financing")</p> <p>Following discussions with DEFRA and Her Majesty's Treasury (HMT) a further option has been considered. This is essentially the same as Option 1 but with a mix of both public and private financing. This is assumed to be a minimum of 51% private financing and 49% public financing split.</p> <p>Option 2: EfW Variation to WMSC financed by Council's Prudential Borrowing (PREFERRED OPTION)</p> <p>As Option 1 but financed by the Councils.</p> <p>Option 3: Continue 'As Is'</p> <p>Continue within the current PFI WMSC without executing the proposed EfW variation. Following the expiry of the PFI WMSC in 2023, current forecasts are for the Councils' only landfill site to be full or nearly full. The Councils would procure new waste disposal services that may include the procurement of an Energy from Waste Plant or purchasing spare capacity from the merchant market. These services post 2023 have been modelled at a capped price of £125 per tonne based on</p>

	<p>appropriate technical advice. Therefore the choice of what type of waste disposal route will be made within a capped budget and this may include construction of or usage of other residual waste facilities if these can be delivered within the capped budget.</p> <p>Option 4: Termination of the WMSC and Councils procure an EfW Plant and other services through a new Design, Build and Operate Contract</p> <p>Terminate the existing WMSC and for the Councils to procure an EfW Plant (and operational and maintenance services), together with associated waste management services but with finance provided by the Councils.</p> <p>Option 5: Terminate the WMSC and re-procure existing services without the construction of an EFW</p> <p>Terminate the existing WMSC and procure all existing waste disposal services but not including procurement of an EfW Plant.</p> <p>The Options are detailed at Appendix B to the Report; this includes key assumptions and associated risks.</p>
Conflict of Interest ■ (See below):	None
Date the key decision is due to take effect:	18 December 2013

<p>COUNCILLOR AW JOHNSONDate: 12 December 2013 LEADER OF THE COUNCIL</p>

- a record of any conflict of interest declared by any executive member who is consulted by the member which relates to the decision;

And

- in respect of any declared conflict of interest, a note of dispensation granted by the relevant local authority’s head of paid service.