

Title of report: Waste Management Review – Waste Disposal

Meeting: Cabinet

Meeting date: Thursday 25 November 2021

Report by: Cabinet member commissioning, procurement and assets;

Classification

Open

This report is open but Appendix 2 is exempt by virtue of the following paragraph(s) of the Access to Information Procedure Rules set out in the constitution pursuant to Schedule 12A of the Local Government Act 1972, as amended:

3 - Information relating to the financial or business affairs of any particular person (including the authority holding that information)

Decision type

Key

This is a key decision because 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.

This is a key decision because it is likely to be significant having regard to: the strategic nature of the decision; and / or whether the outcome will have an impact, for better or worse, on the amenity of the community or quality of service provided by the authority to a significant number of people living or working in the locality (two or more wards) affected.

Notice has been 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.

Wards affected

(All Wards);

Purpose

Further to the adoption of the council's new Integrated Waste Management Strategy in July 2021 and subsequent planning for additional commissioning this report seeks to agree the council's preferred waste disposal arrangements necessary to implement the strategy.

The council's Waste Management contracts for the collection service and the disposal service are due to expire in 2023 and 2024. The council launched a waste collection consultation with the public in December 2020 following recommendations from the waste task and finish group in September 2020 and in response to expected changes in national legislation.

Recommendation(s)

That:

- a) **Cabinet agrees that the current position within the Parameters set out in Appendix 1 represents an acceptable position for the council to progress Mercia Waste Management Limited's ("Mercia") proposals for extending the duration of the Waste Management Service Contract ("WMSC") for a period of five years until 11 January 2029 by entering into a variation of the existing WMSC**
- b) **Subject to recommendation (a), that the Section 151 Officer following consultation with the Service Director for Transport, Environment & Waste be authorised to negotiate the form of a variation to the existing WMSC with Mercia to put into effect Mercia's proposals:**
 - 1) **to extend the duration of the WMSC by 5 years provided that the Variation is in compliance with the Financial, Contractual and Technical Parameters as set out in Appendix 1**
 - 2) **to vary the WMSC to achieve the council's preferred waste collection model as determined by Cabinet in response to the accompanying Cabinet Report 'Waste Service Review - Waste Collection'**
 - 3) **to accelerate the reduction of municipal waste to landfill and achieve a maximum of 1% to landfill starting in 2022 at a cost of £120k per annum until the extension commences in March 2024**
- c) **Cabinet, having regard also to any further report from the Section 151 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 to reflect the extended loan arrangement in the extension period;**
 - ii. **to authorise the Section 151 Officer to conclude all financial due diligence requirements remaining with the parameters stated in Appendix 1;**
 - iii. **amend the Medium Term Financial plan (MTFP) assumptions to reflect the WMSC variation as appropriate;**
- d) **Cabinet authorises the expenditure of up to £75k from the council's waste reserve and delegates authority to the Service Director Highways, Environment and Waste to commission a future options paper and to develop a capital business case for future site and facilities requirements beyond the proposed extension period; and**
- e) **The Section 151 Officer be authorised to update the Joint Working Agreement between Worcestershire County Council (WCC) and Herefordshire Council to reflect the extended term of the WMSC and future arrangements between WCC and the Council;**

Alternative options

1. Do nothing - This is not an option as the current waste disposal arrangements are due to expire in January 2024. The waste disposal service is a statutory service that the council has to provide so therefore it is not an option to do nothing.

2. Re-procure new waste disposal arrangements – This is not recommended following an independent expert assessment of the council's future waste disposal options by SLR (Appendix 2) and a second joint assessment of the proposed contract extension with variation by our waste technical advisors Woods PLC, financial advisors KPMG and legal advisors Eversheds.
3. To extend the existing contract without a variation to facilitate the council's preferred waste collection service – This is not recommended as this will not work operationally with the future collection service. This would also fail to meet the council's strategic objectives to increase recycling rates, reduce carbon emissions and reduce waste to landfill as set out in the council's Integrated Waste Management Strategy and the forthcoming requirements on local authorities in the Environment Bill.

Key considerations

Background

4. The Waste Management Services PFI Contract (WMSC) between Herefordshire Council and Worcestershire County Council and Mercia Waste Management Ltd (Mercia) was signed in December 1998 for 25 years. It is important to recognise that the WMSC was for an integrated solution to be delivered by Mercia for the disposal of all Local Authority Collected Waste (LACW), known as 'Contract Waste' arising within the two counties.
5. The WMSC includes requirements for;
 - a. a Mixed Waste Material Reclamation Facility (MRF),
 - b. Transfer Stations,
 - c. Pre-Sorted MRF,
 - d. Household Waste Sites (now Household Recycling Centres),
 - e. Operations and Management of Hill and Moor Landfill,
 - f. Construction and operation of an Energy from Waste Plant,
 - g. Composting facilities.
6. In delivering the waste management services, Mercia is required to meet certain performance targets with regard to the diversion of waste to landfill. To date the Contractor has constructed the Energy from Waste facility (EnviRecover) at Hartlebury, updated Household Waste Sites (to Household Recycling Centres), built and developed a number of waste transfer stations, developed a windrow composting site, constructed and operated a Materials Reclamation Facility at Norton ("Envirosort") and manages and operates a Landfill site in Worcestershire.
7. In May 2014 a variation to the WMSC was concluded to construct EnviRecover. This became fully operational as planned in March 2017. Since becoming operational EnviRecover has been performing well and is now in a steady state of operation.

Integrated Waste Management Strategy

8. Further to the General Scrutiny - Waste Management Review and subsequent executive responses, on 29 July 2021 Cabinet approved the ambitious new Integrated Waste Management Strategy for Herefordshire.

9. This strategy set out the following strategic targets in order to address the significant issues around climate, expected changes in legislation and the circular economy expectations which were outlined in the work of the task and finish group and the council's County Plan objectives.
- a. Net zero carbon by 2030
 - b. Reduce residual household waste arisings to less than 330kg /household/year by 2035
 - c. Achieve national municipal reuse and recycling rate targets of 55% by 2025, 60% by 2030 and 65% by 2035.
 - d. To meet the requirements of the Environment Bill
 - e. No more than 1% of municipal waste to be sent to landfill from 2025 and zero waste to landfill by 2035
 - f. Improve reuse and recycling at all HWRC sites to achieve a reuse and recycling target of 85% by 2035.

New Waste Collection Model

10. In order to meet the council's targets and objectives within the new Integrated Waste Management Strategy the council will need to change its waste collection model which will also require a change to the current waste disposal arrangements.
11. Subject to the outcome of the accompanying Cabinet agenda item and report titled 'Waste Service Review – Waste Collection' which recommends the following waste collection model, this report recognises the need to vary the future waste disposal arrangements to be able to meet the needs of this new collection service. The accompanying Cabinet report 'Waste Management Review – Waste Collection' is available here:
- a. <https://councillors.herefordshire.gov.uk/mglIssueHistoryHome.aspx?Ild=50039497&Opt=0>

Waste Disposal and Commissioning Options Appraisal

12. In September 2021 the Council undertook a competitive procurement process and appointed SLR Consulting to undertake an Integrated Waste Strategy Commissioning Options Appraisal. This appraisal was to consider the council's future commissioning options for both waste collection and waste disposal and the full scope included:
- a. Waste Disposal Contract Options Appraisal
 - (i) Vary and extend the existing waste disposal contract with Mercia and partnership with Worcestershire County Council.
 - (ii) Re-procure the waste disposal contract as a single contract for Herefordshire.
 - (iii) Re-procure the waste disposal contract as lots (e.g. separate lots for residual waste, recyclables, garden waste, food waste and/or HWRC services).

13. The recommendation from the SLR Consultancy is that negotiating an extension and variation to the current WMSC represents the most appropriate course of action for the council at this time, especially to provide service continuity from January 2024.

Five Year Extension Offer from Mercia

14. The existing contract with Mercia provides a fully integrated waste disposal service which works well alongside the existing partnership with Worcestershire County Council (WCC).
15. The fully integrated nature of this contract places all of the risk of market forces and the subsequent management of materials for reprocessing and disposal with Mercia. Given the significant current market uncertainties due to COVID, forthcoming legislation and volatile recycling markets the extension offer significantly reduces the level of risk to both authorities.
16. The extension offer from Mercia proposes to vary the existing contract for an additional 5 years, to reduce the annual revenue costs to both councils and amend the existing borrowing arrangements for the capital investment.
17. This extension offer is to vary the existing contract for a further 5 years to January 2029.

Subsequent variation to meet the needs of Herefordshire's future collection services

18. In order to meet the strategic objectives of our new Integrated Waste Management Strategy and to deliver the recommended new collection model as set out in the accompanying cabinet report, the existing WMSC requires a further variation.
19. In parallel to the extension negotiations with WCC, the council has received, considered and undertaken a separate due diligence assessment of a subsequent contract variation proposal to meet these needs.
20. Mercia have indicated that the improved recycling levels and quality from the recommended new collection service will generate potential savings of circa £1m per annum from 2024.
21. In line with our new Integrated Waste Management Strategy, this variation also includes a new contract requirement for Mercia to provide disposal options for food, garden waste and mixed paper and cardboard which have not previously been collected segregated from other waste.

Reducing Landfill to 1%

22. Herefordshire currently sends around 20% of its waste to landfill and a key strategic target within the new Herefordshire Integrated Waste Management Strategy is that *'No more than 1% of municipal waste to be sent to landfill from 2025 and zero waste to landfill by 2035.'*
23. Landfill is mainly caused by non-target material being placed by residents in recycling bins and by maintenance downtime at the energy from waste facility.
24. Through the contract extension and variation negotiations Mercia have offered to defer taking sufficient commercial waste to enable a reduction to just 1% of Herefordshire's waste going to landfill from 2024.
25. The additional cost for this would be £120k per annum and the council has the option to bring this forward and to implement this by 2022.

Due Diligence of Mercia Extension and Variation Offer

26. Throughout the contract extension and variation negotiations independent financial, legal and technical expertise were commissioned in addition to our own officer assessments to undertake a due diligence and clarification review of the extension and variation offers from Mercia.
27. This comprehensive and forensic review was jointly undertaken by KPMG (finance), Woods (technical) and Eversheds (legal) as a joint commission between the council and WCC.

28. The recommendation of this review is that the combined extension and variation offers provide value for money and would meet the objectives of Herefordshire's Integrated Waste Management Strategy.

Proposed Parameters for Contract Extension and Variation negotiation

29. Council officers have identified a number of parameters that need to be satisfied in order to demonstrate that the variation will be on terms which are acceptable to the council.

Financial Parameters - Value for Money and Affordability

30. Cabinet will need to be satisfied that the terms of the proposed variation would:
- a. be affordable;
 - b. represent value for money; and
 - c. not burden the council or WCC with unpredictable costs in the future
31. The WMSC already contains a payment mechanism which applies a Baseline Fee for each tonne of waste received by Mercia, with an uplift fee per tonne for treatments other than landfilling such as recycling and energy from waste.
32. The Financial Parameters set out in the Appendix 1 are intended to address the points referred to in the paragraphs above

Contractual Parameters

33. Legally enforceable public procurement rules have been established to prevent public bodies from improperly purporting to use variations to existing contracts to avoid costly and time-consuming re-procurement. Two golden rules are that:
- a. there must be no material change in the services and means of delivery compared with that envisaged when the original contract was let [WCC];
 - b. there must be no material change in the services and means of delivery compared with that envisaged when the original contract was let other than permitted under Regulation 72 of the Public Contract Regulations 2015 which permit a variation in service delivery subject to the following conditions being satisfied:
 - 72 (1) (c) where all of the following conditions are fulfilled:
 - (i) the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen;
 - (ii) the modification does not alter the overall nature of the contract;
 - (iii) any increase in price does not exceed 50% of the value of the original contract or framework agreement.

The proposed arrangements for the council's collection service which will require a subsequent amendment to the disposal service and which will take effect from November 2023 satisfy this test

and
 - c. if there is any change in the risk/reward share in the original contract, it should not be for the benefit of the contractor.

- d. In relation to the latter point any amendments to the WMSC will be limited to those necessary to give effect to Mercia's proposals and to any benefits the council and WCC are seeing from the opportunity created by the making of the variation. The council's position on these issues is set out in Appendix 1. Importantly the intention is that Mercia's rate of return is not improved

Technical Parameters

34. There are a number of Technical Parameters as set out in Appendix 1 which include ensuring that the technical performance of EnviRecover is maintained and the operational life of the other facilities is considered.

Future Processing and Treatment Site Needs

35. The new Integrated Waste Management Strategy anticipates as much waste and recycling as possible is processed within the County however Herefordshire's existing and shared Materials Recovery Facility, located in Worcestershire, is reaching the end of its life and will likely need to be replaced after the proposed extension period ends in 2029.
36. It is also anticipated that there will be additional future needs for additional garden waste composting facilities, additional food waste facilities and a review of the existing Herefordshire's Waste Transfer facilities and HRC's in order to promote greater reuse.
37. Additionally, in order to help meet the Council's Climate & Ecological Emergency commitments it is proposed that an options appraisal is undertaken to help reduce the carbon emissions from the existing EfW facility and that consideration is given to the future potential for Carbon Capture and Storage.
38. The lead time to develop these facilities is often several years and so it is recommended that a future site and facilities options paper is developed to inform the development of future capital business cases to meet Herefordshire's requirements beyond the proposed extension period.

Community impact

39. In accordance with the adopted code of corporate governance, the council is committed to promoting a positive working culture that accepts and encourages constructive challenge and recognises that a culture and structure for scrutiny are key elements for accountable decision making, policy development and review.
40. The proposed recommendations in conjunction with the accompanying 'Waste Management Review – Waste Collection' report seek to implement the new Integrated Waste Management Strategy which will have a positive impact on contributing towards local and regional strategy priorities, targets and legislation.
41. The County Plan (2020-24) priorities are:
 - a. Protect and enhance our environment and keep Herefordshire a great place to live
 - b. Minimise waste and increase reuse, repair and recycling
 - c. Build understanding and support for sustainable living
 - d. Invest in low carbon projects
 - e. Identify climate change action in all aspects of council operation
 - f. Support the an economy which builds on the county's strengths and resources;

- g. Seek strong stewardship of the county's natural resource
- h. Develop environmentally sound infrastructure that attracts investment
- i. Support an economy which builds on the county's strengths and resources and spend public money in the local economy wherever possible

Environmental Impact

42. The proposed contract extension and variation to accommodate the new waste collection model offers the Council a unique and once in a generation opportunity to make huge service and environmental improvements to the waste management service. Throughout the waste management review maximising the environmental performance has been a fundamental consideration as the Council's seeks to deliver on its ambitious Climate & Ecological Emergency commitments.
43. The proposed recommendation not only offers the most popular solution from the public consultation, the best value for money and the lowest carbon option but will also transform Herefordshire into a national leader on recycling rates. Here the proposed option will deliver a 57% increase in our current recycling rates which are modelled to increase from ~40% currently to 63% when the new collection service starts in 2023/24. This increase will achieve both the new 55% by 2025 and 60% by 2030 targets early and will place the Council in an excellent position to accelerate the 65% target by 2035.
44. Through the proposed new contractual arrangements the Council will also deliver a 95% reduction in the amount of waste that currently goes to landfill as the proportion of residual waste going to landfill will reduce from ~20% to a maximum of 1%. The option to accelerate this reduction from 2022 has also been secured and will enable the Council to deliver on the new targets within the Integrated Waste Management Strategy 3 years early.
45. In addition, the Council is close to securing an agreement with Mercia to introduce new checks and requirements for the downstream processing of our materials to ensure greater visibility and accountability. Here the Council is requiring that Mercia and its subcontractors seek the Council's permission, undertake environmental impact assessments and subsequent auditing of any recycling materials moving beyond the UK and European Economic Area.

Equality duty

46. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to –

- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
47. The public sector equality duty (specific duty) requires the council to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that

we are paying 'due regard' in our decision making in the design of policies and in the delivery of services.

48. Two Equalities Impact Assessments (EqIA) have been undertaken as part of the Waste Management Review, the first for the impact of the waste collection changes and the second for the Household Waste & Recycling Centres. The EqIA se are attached as Appendix 3 and Appendix 4
49. The council's service providers will be made aware of their contractual requirements in regards to equality legislation through the future commissioning.

Resource implications

50. The council currently spends £4m per annum on the current waste collection arrangement and £11m on the current waste disposal arrangements.
51. The extension to the WSMC has been proposed with the following financial considerations from the contractor:
 - a) Receipt of £0.6m on agreeing the extension
 - b) A discount of £1.1m pa until existing WSMC end date (mainly generated from the increased capacity at the energy from waste plant)
 - c) A discount of £1.5m pa during each of the five year extension period
 - d) A change in the Net Excess Revenue Sharing percentage attributable to the Councils increasing from the current 50% share to an improved 60%.
52. In addition the current loan facility will continue during the five year extension period. This will result in the council receiving additional loan interest receipts totalling approximately £10m.
53. The subsequent variation to meet the needs of Herefordshire's future collection services in expected to generate further potential savings of circa £1m per annum from 2024.
54. Due to the extension period falling outside of the private finance initiative arrangement the council will lose its current PFI credits of £0.6m pa, this would occur even if the extension was not agreed.
55. A comparison to the likely cost of providing the disposal services without an extension to the current contract has indicated that the proposal offers value for money, provides certainty over costs and service delivery and minimises financial risks.
56. For these reasons it is considered the preferred option and is therefore recommended for approval.

Indicative Waste disposal budget	2020/21	2021/22	2022/23	2023/24	2024/25
	£m	£m	£m	£m	£m
Waste disposal contract cost	11.2	11.4	11.6	11.9	12.1
If contract extension agreed;-					
- One off receipt		(0.6)			

- Discount		(1.1)	(1.1)	(1.2)	(1.5)
- Collection Services variation					(1.0)
Reduction in landfill			0.1	0.1	0.1
Loss of PFI credits				0.2	0.6
TOTAL	11.2	9.7	10.6	11.0	10.3

Legal implications

57. The original procurement process undertaken prior to the award of the WMSC envisaged a contract of up to 30 years. The WMSC also includes contractual mechanisms for the proposed extension. There is nothing within the current WMSC which would preclude the proposed variation to the contract to deliver the defied outcomes from the Integrated Waste Management Strategy.
58. Taking into account Regulation 72 of the Public Contracts Regulations the proposed extension is acceptable on the basis that the council could not have foreseen the circumstances which give rise for the need to the variation (being the proposed obligations set out in the Environment Bill, the market uncertainties due to COVID and volatile recycling markets) , there is no overall change to the nature of the contract; the proposed increase in value is less than 50% of the original contract value.
59. Legal services have also noted that the financial, legal and technical due diligence undertaken on behalf of the council has confirmed that these is no beneficial change in the risk reward share for Mercia.

Risk management

Risk / opportunity	Mitigation
Public acceptance of new service	This recommendation seeks to extend and vary the existing service arrangements in order to deliver value for money and to meet the needs of the preferred future collection service.
Not enough time to complete required work	The proposed recommendation to extend and vary the contract is achievable within the current contract timescales. The contract extension also provides the Council with an additional 5 years to assess and develop capital business cases to meet the future services requirements beyond 2029.
Service is not compliant with new legislation that is expected in the next year from Central Government	The recommendation includes a contract variation to meet the service needs of the council's preferred new waste collection model. This includes the introduction of both a weekly food waste collection service and fortnightly garden waste collection service as anticipated in future legislation.
Poor Value for Money	A comprehensive and forensic review was jointly undertaken by KPMG (finance), Woods (technical) and Eversheds (legal) as a joint

	<p>commission between Herefordshire Council and Worcestershire Council.</p> <p>The recommendation of this review is that the combined extension and variation offers provide value for money and would meet the objectives of Herefordshire's Integrated Waste Management Strategy.</p>
Volatility of recycling markets, availability and prices	<p>The proposed extension of the current integrated Contract will significantly reduce the risk to the Council as the recyclables price risk is entirely borne by the contractor.</p> <p>It is unlikely that the Council would be able to secure a contract with an identical position on recyclables price risk in the current market and any future contract requiring this would likely incur significant risk pricing from by future contractors.</p>
Condition of the Material Recovery Facility	<p>A third party asset condition survey was recently undertaken for the MRF facility. This survey identified the facility as being in good operational condition with no significant issues. In addition the contract extension proposal includes lifecycle costs to maintain the facility for the duration of the duration.</p>
Delivering performance against the new and ambitious targets	<p>The existing WMSC performs well with robust joint contract management controls in place in partnership with WCC.</p>

Consultees

60. The following consultation has taken place:

Consultation	Date	Feedback
Waste Management Services Review Project Board	Monthly meetings in 2019/20 – 2020/21	Lead the development of the recommendations through the process.
Waste Contract Procurement Joint Review Board (With WCC.)	Numerous meetings in 2019/20 – 2020/21	Lead the development of the recommendations through the process.
General Scrutiny Committee	28 September 2020	Recommendations and the Executive Response are detailed in Appendix 5
Waste Services Task & Finish Group meeting prior to public consultation	2 December 2020	Support and comments which were included in the consultation documents

All member briefing prior to public consultation	2 December 2020	Support and comments which were included in the consultation documents
Public Consultation	Dec 2020 – Feb 2021	Full consultation report included as Appendix 4
All member briefing on the results of the public consultation	8 March 2021	
Management Board	26 Oct 2021	Support and comments included
Waste Management - Political Briefing with the cabinet member for Commissioning, Procurement and Assets	11 Nov 2021	
Group Leaders briefing	3 November 2021	
Political groups consultation on a key decision	2 Nov – 16 th Nov 2021	<p>The following comments were highlighted which have been considered in the reports and will be included into the future service design and communications strategy:</p> <ul style="list-style-type: none"> • The importance of the unified waste strategy to consider both waste collection and waste disposal together. • The need for a complimentary education programme that guides residents as to how they should dispose of any waste that cannot be reused or recycled. • The need for clear publicity and an explanation of the changes being driven by central government. • Highlighted that many houses do not have room for extra bins /boxes.

Appendices

- Appendix 1 - The Financial, Contractual and Technical Parameters
- Appendix 2 – SLR Options Appraisal (Exempt)
- Appendix 3 - Equalities Impact Assessment for Waste Collection Options

- Appendix 4 - Equalities Impact Assessment for HWRCs

Background papers

- None Identified

Report Reviewers Used for appraising this report:

Please note this section must be completed before the report can be published		
Governance	Sarah Buffrey, Democratic Services Officer	Date 06/11/2021
Finance	Josie Rushgrove	Date 02/11/2021
Legal	Alice McAlpine, Senior Solicitor	Date 03/11/2021
Communications	Luenne Featherstone, Strategic Communications Manager	Date 05/11/2021
Equality Duty	Carol Trachonitis, Head of Information Compliance and Equality	Date 02/11/2021
Risk	Paul Harris, Head of Corporate Performance	Date 05/11/2021

Approved by	Andrew Lovegrove, Chief Finance Officer and S151 Officer	Date 08/11/2021
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Please include a glossary of terms, abbreviations and acronyms used in this report.

- The Parameters – Collectively the financial, contractual and technical parameters as defined in Appendix 1
- Mercia - Mercia Waste Management Limited
- MRF - Mixed Waste Material Reclamation Facility
- MTFP - Medium Term Financial plan
- WMSC - Waste Management Service Contract
- LACW - Local Authority Collected Waste
- EfW - 'Energy from Waste'
- WCC - Worcestershire County Council

- The Advisors - Technical advisors Woods PLC, financial advisors KPMG and legal advisors Eversheds
- Hhld – Household
- HWRC – Household Waste & Recycling Centres
- EqIA - Equalities Impact Assessments