

Record of operational decision

Decision title:	Waste Disposal Extension, Variation and updated Joint Working Agreement.
Date of decision:	12 th December 2022
Decision maker:	Director of Resources and Assurance, (Section 151 Officer)
Authority for delegated decision:	<p>The Cabinet decision dated 25 November 2021 – ‘Waste Management Review – Waste Disposal’ authorises the followed recommendations:</p> <ul style="list-style-type: none"> 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: <ul style="list-style-type: none"> a. 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 b. 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' c. 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 d. 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. 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: <ul style="list-style-type: none"> a. amend its Treasury Policy Strategy and associated Treasury Management Statements to reflect the extended loan arrangement in the extension period; b. to authorise the Section 151 Officer to conclude all financial due diligence requirements remaining with the parameters stated in Appendix 1; c. 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; <p>The decision and report can be viewed using the link below https://councillors.herefordshire.gov.uk/ieDecisionDetails.aspx?ID=8381</p>

Ward:	Countywide
Consultation:	<ul style="list-style-type: none"> • Delivery Director – Environmental Transformation, • Director for Economy & Environment, • Service Director – Transport & Highways, • Head of Strategic Finance (Deputy S151 Officer) • Head of Environment, Climate Emergency & Waste, • Waste Services Manager, • Senior Solicitor, Governance and Major Projects • Commercial Services Manager • Cabinet Member – Commissioning, Procurement and Assets • Cabinet Support
Decision made:	<p>To approve:</p> <ul style="list-style-type: none"> • A 5 year extension to the Waste Management Service Contract (WMSC) • To vary the WMSC to achieve the council's approved new waste collection model • To vary the WMSC to accelerate the reduction of municipal waste to landfill of 1% starting in 2022 • 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
Reasons for decision:	<ul style="list-style-type: none"> • 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. • 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. • On 25 November 2021 Cabinet approved both the new waste collection service model and for the council to progress Mercia's proposal for extending the duration of the WMSC for a period of five years until 11 January 2029 by entering into a variation of the existing WMSC. • Since November 2021 significant due diligence has been undertaken with support from specialist legal, finance and technical consultants on the proposed extension and variations to the WMSC. • Through the contract extension and variation Mercia have commit to defer taking sufficient commercial waste to enable a reduction to just 1% of Herefordshire's waste going to landfill from 2022. • On 28 November 2022 the Council jointly published a Voluntary Ex-Ante Transparency (VEAT) Notice in order to provide voluntary prior transparency. • In order to undertake the extension and variation the Joint Working Agreement between Worcestershire County Council (WCC) and Herefordshire Council has been updated to reflect the extended term of the WMSC and future arrangements between WCC and the Council.
Highlight any associated risks/finance/legal/equality considerations:	<ul style="list-style-type: none"> • The extension to the WSMC has been proposed with the following financial considerations from the contractor: <ul style="list-style-type: none"> 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%.
- 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.
- The subsequent variation to meet the needs of Herefordshire's future collection services is expected to generate further potential savings of circa £1m per annum from 2024.
- 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.
- 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.

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

- 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.
- Legal services have also noted that the financial, legal and technical due diligence undertaken on behalf of the council has confirmed that there is no beneficial change in the risk reward share for Mercia.

Details of any alternative options considered and rejected:

- 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.
- 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 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.

Details of any declarations of interest made:	N/A