

MIDDLESBROUGH COUNCIL	
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Report of:	Director of Environment and Community Services - Geoff Field
Relevant Executive Member:	Executive Member for Environment - Peter Gavigan
Submitted to:	Executive
Date:	8 October 2024
Title:	Waste Disposal Contract: Tees Valley Energy Recovery Facility
Report for:	Decision
Status:	Public
Council Plan priority:	Delivering Best Value
Key decision:	Yes
Why:	Decision(s) will incur expenditure or savings above £250,000 and have a significant impact in two or more wards
Subject to call in?	Yes
Why:	Non-Urgent Report

Proposed decision(s)	
<p>That the Executive:</p> <ul style="list-style-type: none"> a) Approves the creation of the Local Authority Special Purpose Vehicle (LA SPV). b) Appoints the Director of Environment and Community Services as the Council's Director on the Board of the LA SPV and authorises them and any successors; or any substitute or deputy appointed by the Director of Environment and Commercial Services should they be unavailable, to take all decisions on behalf of the Council as Director on the Board of the LA SPV for the good governance of the LA SPV and the Energy Recovery Facility. c) Authorises the Council to subscribe for shares in and to be a shareholder of the LA SPV; and to issue a Shareholder Resolution to approve and adopt the Articles of Association. d) Appoints the Section 151 Officer as the Council's Shareholder Representative and Authorises that Shareholder Representative to appoint an alternative representative to act as their substitute or deputy and authorises the Shareholder 	

Representative and their alternative to make decisions under the Shareholder Agreement, articles of association etc including the making of shareholder resolutions, including a shareholder resolution to approve and adopt the Articles of Association on behalf of the Council .

- e) Authorises the Council to enter into the Shareholders' Agreement and Delegates Authority to Director of Environment and Community Services (in consultation with the Mayor and supported by the Monitoring Officer and Section 151 Officer) to finalise and agree and enter into the Shareholder Agreement.
- f) Delegates Authority to Director of Environment and Community Services (in consultation with the Mayor and supported by the Monitoring Officer and Section 151 Officer) to authorise the LA SPV to enter into the Shareholder Agreement.
- g) Authorises the LA SPV to enter into the Service Level Agreement and Delegates Authority to the Director of Environment and Community Services (in consultation with the Mayor and supported by the Monitoring Officer and Section 151 Officer) to finalise and agree the Service Level Agreement.
- h) Authorises the Council to enter into the Waste Supply and Support Agreement ("WSSA") and Delegates Authority to the Director of Environment and Community Services (in consultation with the Mayor and supported by the Monitoring Officer and Section 151 Officer) to finalise, agree and enter into the WSSA with the LA SPV
- i) Delegates Authority to the Director of Environment and Community Services (in consultation with the Mayor and supported by the Monitoring Officer and Section 151 Officer) to authorise the LA SPV to enter into the WSSA;
- j) Authorises the LA SPV to award the Contract, enter into the Project Agreement with the successful Contractor and to enter into the 50 year lease with Teesworks for the site and Delegates Authority to the Director of Environment and Community Services (in consultation with the Mayor and supported by the Monitoring Officer and Section 151 Officer) to finalise and agree the Project Agreement, Lease and any associated agreements and documentation
- k) Delegates Authority to the Director of Environment and Community Services (in consultation with the Mayor and supported by the Monitoring Officer and Section 151 Officer) to finalise and agree the Business Plan for the LA SPV and provide sufficient resources to allow the LA SPV to reach Financial Close and then to monitor and manage the Contract on behalf of, and with, the Councils for the term.
- l) Delegates Authority to Director of Environment and Community Services (in consultation with the Mayor and supported by the Monitoring Officer and Section 151 Officer) to enter into Local Government (Contracts) Act 1997 Council certificates in relation to the WSSA.
- m) Delegates Authority to the Director of Environment and Community Services (in consultation with the Mayor and supported by the Monitoring Officer and Section

151 Officer) to finalise and agree the Secondment Agreement and to authorise the LA SPV to enter into the Secondment Agreement.

- n) Delegates Authority to the Director of Environment and Community Services (in consultation with the Mayor and supported by the Monitoring Officer and Section 151 Officer) to authorise, finalise, agree and enter into the Cost Equalisation Agreement.
- o) Authorises the Council to enter into a Guarantee of the Project Agreement and a Guarantee of the Lease and Delegates Authority to the Director of Environment and Community Services (in consultation with the Mayor and supported by the Monitoring Officer and Section 151 Officer) to agree finalise and to enter into the Council Guarantees.
- p) Delegates Authority to the Director of Environment and Community Services (in consultation with the Mayor and supported by the Monitoring Officer and Section 151 Officer) to authorise the LA SPV to enter into and be a party to the Council's Guarantee of the Project Agreement and the Guarantee of the Lease.
- q) Delegates Authority to the Director of Environment and Community Service (in consultation with the Mayor and supported by the Monitoring Officer and Section 151 Officer) to authorise the LA SPV to enter into a Novation of the Option Agreement, Side Deed with the Estate Owner and Environmental Deed and to authorise the LA SPV to enter into all other necessary agreements or legal documentation to enable the project to reach financial completion and to monitor and manage the contract.
- r) Delegates Authority to the Director of Environment and Community Service (in consultation with the Mayor and supported by the Monitoring Officer and Section 151 Officer) to authorise the Council to act as Guarantor in respect of the LA SPV Side Deed with the Estate Owner and Environmental Deed and to authorise the Council to enter into all other necessary agreements or legal documentation on behalf of the Council to enable the project to reach financial completion and to monitor and manage the contract.

Executive summary

Middlesbrough along with six other Local Authorities in the North East have undertaken a procurement for the disposal of residual waste. This disposal contract involves the building of a new Energy from Waste Plant and running that plant.

The project is now at a stage in that process where a preferred bidder has been selected and seven local authorities are working towards financial close of that procurement process.

This report sets out the decisions and delegations the Council needs to take to be able to work with the other authorities in respect of undertaking financial close with

the preferred bidder and the subsequent structures for managing the disposal contract.

1. Purpose of this report and its contribution to the achievement of the Council Plan ambitions

- 1.1 Middlesbrough along with six other Local Authorities in the North East have undertaken a procurement for the disposal of residual waste. We are now at a stage in that process where a preferred bidder has been nominated, and we are working towards financial close of that procurement process. The price per tonne achieved through the procurement process is at present £143 average price over the life of the contract at 25/26 prices indexed at CPI. This is below the ceiling limit that was set. The negotiations will continue to financial close with a view to reducing the price per tonne further.
- 1.2 The 2025/26 budget for residual waste disposal is £5.6m The current price paid under the current arrangements for residual waste disposal is £128.29 per tonne with an estimated inflationary rise to £144.97 per tonne in 2029/2030. The average annual tonnage is currently around 39,000 tonnes. This is expected to reduce over the next few years following the introduction of the Government's Simpler Recycling Initiatives.
- 1.3 In order to allow the council to fulfil its requirements as part of the process there are a number of decisions and delegations that need to be made and granted. These are outlined below in the recommendations.
- 1.4 Agreeing to the recommendations is in line with the councils of objectives of delivering Best Value and its Environment objectives. The price per tonne provides value for money in respect of the disposal of Middlesbrough's residual waste. It also allows Middlesbrough to increase its level of recycling in the town without affecting the contractual arrangements with the successful bidder.

Our ambitions	Summary of how this report will support delivery of these ambitions and the underpinning aims
A successful and ambitious town	<ul style="list-style-type: none"> - The TVEWP will provide local employment opportunities in both the construction and operational phase.
A healthy Place	<ul style="list-style-type: none"> - The TVEWP ensures that residual waste can be disposed of whilst complying to relevant environmental legislation and requirements.
Safe and resilient communities	<ul style="list-style-type: none"> - The TVEWP ensures that residual waste can be disposed of whilst complying to relevant environmental legislation and requirements.
Delivering best value	<ul style="list-style-type: none"> - The TVEWP is the result of a detailed and robust procurement process and delivers a competitive residual waste disposal cost. - The TVEMP will be an asset of significant value to MBC and partner authorities.

	- There is a robust management and governance management structure that are outlined in this report.
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2. Recommendations

That the Executive:

- a) Approves the creation of the Local Authority Special Purpose Vehicle (LA SPV).
- b) Appoints the Director of Environment and Community Services as the Council's Director on the Board of the LA SPV and authorises them and any successors; or any substitute or deputy appointed by the Director of Environment and Commercial Services should they be unavailable, to take all decisions on behalf of the Council as Director on the Board of the LA SPV for the good governance of the LA SPV and the Energy Recovery Facility.
- c) Authorises the Council to subscribe for shares in and to be a shareholder of the LA SPV; and to issue a Shareholder Resolution to approve and adopt the Articles of Association.
- d) Appoints the Section 151 Officer as the Council's Shareholder Representative and Authorises that Shareholder Representative to appoint an alternative representative to act as their substitute or deputy and authorises the Shareholder Representative and their alternative to make decisions under the Shareholder Agreement, articles of association etc including the making of shareholder resolutions, including a shareholder resolution to approve and adopt the Articles of Association on behalf of the Council .
- e) Authorises the Council to enter into the Shareholders' Agreement and Delegates Authority to Director of Environment and Community Services (in consultation with the Mayor and supported by the Monitoring Officer and Section 151 Officer) to finalise and agree and enter into the Shareholder Agreement.
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- i) Delegates Authority to the Director of Environment and Community Services (in consultation with the Mayor and supported by the Monitoring Officer and Section 151 Officer) to authorise the LA SPV to enter into the WSSA;

- j) Authorises the LA SPV to award the Contract, enter into the Project Agreement with the successful Contractor and to enter into the 50 year lease with Teesworks for the site and Delegates Authority to the Director of Environment and Community Services (in consultation with the Mayor and supported by the Monitoring Officer and Section 151 Officer) to finalise and agree the Project Agreement, Lease and any associated agreements and documentation
- k) Delegates Authority to the Director of Environment and Community Services (in consultation with the Mayor and supported by the Monitoring Officer and Section 151 Officer) to finalise and agree the Business Plan for the LA SPV and provide sufficient resources to allow the LA SPV to reach Financial Close and then to monitor and manage the Contract on behalf of, and with, the Councils for the term.
- l) Delegates Authority to Director of Environment and Community Services (in consultation with the Mayor and supported by the Monitoring Officer and Section 151 Officer) to enter into Local Government (Contracts) Act 1997 Council certificates in relation to the WSSA.
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- r) Delegates Authority to the Director of Environment and Community Service (in consultation with the Mayor and supported by the Monitoring Officer and Section 151 Officer) to authorise the Council to act as Guarantor in respect of the LA SPV Side Deed with the Estate Owner and Environmental Deed and to authorise the Council to enter into all other necessary agreements or legal documentation on behalf of the Council to enable the project to reach financial completion and to monitor and manage the contract.

3. Rationale for the recommended decision(s)

- 3.1 The recommendations allow the council to move to financial close on the procurement of the TVERF.
- 3.2 The TVERF provides a value for money method of disposing of Middlesbrough's residual waste.
- 3.3 The TVERF meets all environmental regulations.
- 3.4 The TVERF contract allows Middlesbrough to significantly increase its recycling rates and other environmental objectives of the council.
- 3.5 The TVERF has a robust governance and management structure to ensure value for money.
- 3.6 A Local Authority Special Purpose Vehicle (LA SPV) is required to be established as a Limited Company incorporated and registered at Companies House. It will be the Contracting entity representing the seven Councils (the Shareholders) and will enter into the Project Agreement with the successful Contractor and the lease with South Tees Development Corporation Teesworks for the site.
- 3.7 The regulation and management of the LA SPV shall be governed by the Shareholders' Agreement (SHA). Each Council (Shareholder) will be required to formally enter into the Shareholders' Agreement approximately three months in advance of the Project Agreement being entered into with the successful Contractor (Financial Close).
- 3.8 There will be a Service Level Agreement between Redcar and Cleveland Borough Council as the 'host authority' to provide support services to the LA SPV. The Service Level Agreement is required to be formally entered into by the seven Councils in parallel with the Councils entering into the Shareholders' Agreement.
- 3.9 The terms of the commercial arrangements between the seven Councils (the Shareholders) in relation to the LA SPV will be defined and governed by the Waste Supply and Support Agreement (WSSA). The WSSA is required to be formally entered into by the seven Councils (Shareholders) in parallel with the LA SPV awarding the Contract and entering into the Project Agreement with the successful Contractor.
- 3.10 A Business Plan for the LA SPV is being produced which details the 'structural' and operational costs of the Company that will administer the ERF contract.
- 3.11 As outlined in the Local Government (Contracts) Act 1997 (LGCA) - In a public private project such as the TV ERF Project, it is typical for the Project Agreement (and to the extant applicable, the funder direct agreement) to be certified by the procuring authority. In the case of the Project, the collaborative nature, and innovative structure of the public sector parties means this is not possible (as none of the Councils will be

party to the Project Agreement). Each of the Councils is, however, party to the WSSA, pursuant to which the LA SPV will provide waste management services. The WSSA therefore satisfies the LGCA criteria for certification.

3.12 There will be a Secondment Agreement between the Host Authority (Redcar and Cleveland Borough Council) and the LA SPV, whereby the Host Authority shall second the Secondees to the LA SPV.

3.13 The five Tees Valley Authorities have previously agreed to equalise all costs in relation to the transfer and haulage of Contract Waste to the TV ERF.

4. Background and relevant information

4.1 Seven Local Authorities have joined together to procure a contractor to design, build, operate and finance a new Energy Recovery Facility to be located in the Tees Valley (TV ERF).

4.2 The seven Councils which include Darlington Borough Council, Durham County Council, Hartlepool Borough Council, Middlesbrough Council, Newcastle City Council, Redcar and Cleveland Borough Council and Stockton Borough Council (the Authorities) have a statutory obligation to provide waste management services to their collective 1.5m residents. The Tees Valley Councils currently operate residual waste disposal services as a group under a single contract with Suez and which includes Redcar and Cleveland Borough Council, Hartlepool Borough Council, Stockton Borough Council and Middlesbrough Borough Council. Darlington Borough Council is part of the group but currently has its own separate waste treatment and disposal contract. Durham County Council and Newcastle City Council currently have their own separate residual waste disposal contracts with SUEZ.

4.3 All existing waste treatment / disposal contracts with SUEZ have been extended to cover the period until the new ERF is in operation.

4.4 To align with these dates, the procurement programme was originally due to have Final Tenders submitted and evaluated in early 2022, with a Preferred Tenderer to be appointed by July 2022 and Contract Award / Financial Close aimed to be achieved by November 2022.

4.5 Having secured a grid connection with Northern PowerGrid that would have allowed the facility to export electricity generated from 2024, the Project was informed in March 2022 that due to electricity grid reinforcement works that were required to be undertaken by National Grid / Northern PowerGrid (to support the UK's Net Zero target and objectives), that the grid connection would fall under the Modification Application process being administered by National Grid and that export of electricity from the facility would not be permitted until approximately 2031.

4.6 Whilst two grid connections (42MW and 5MW) allowing a maximum export of 47MW of electricity have now been secured (in 2024) with Northern PowerGrid – and the timescales for when electricity can be exported from the facility are now realigned with the revised procurement programme - the project has been delayed by approximately two years whilst discussions with Northern PowerGrid and National Grid were taking

place as Contract Award / Financial Close could not be achieved whilst uncertainty regarding the grid connection remained.

- 4.7 In addition to the grid connection issues, construction materials' price inflation and volatility, resulting from the world economy regaining growth momentum (post-COVID) and the Ukraine war, meant that the Engineering Procurement and Construction (EPC) Contractors, acting on behalf of the Tenderers, were unable to guarantee Price Validity for a sufficient period of time to allow the conclusion of the procurement process.
- 4.8 The TV ERF Contractor will be required to be able to accept and treat all Contract Waste 1st April 2030, although the councils will not be obliged to send Contract Waste to the Contractor until such time that it is required, in accordance with the Testing and Commissioning Plan, to allow the Testing and Commissioning of the facility to be undertaken.
- 4.9 Due to the delays to the procurement programme caused by the grid connection issues, the Services Commencement Date for the new TV ERF facility will be the 1st April 2030. With the current Suez contracts due to terminate 31 March 2026, there is a need to bridge the gap between the existing contract and TV ERF contract to ensure continuity of service.
- 4.10 The First Inter-Authority Agreement, which governs the procurement process up until entering into the Project Agreement (Financial Close), was executed by the seven Councils on the 24 July 2020.
- 4.11 The procurement process is being undertaken in accordance with the Public Procurement Regulations 2015 (as amended). The OJEU Notice to commence the procurement process was issued on the 24 July 2020 .
- 4.12 Supported by Business Cases, the requirement is for a c.450,000 tonne per annum Energy Recovery Facility (ERF) with Combined Heat and Power (CHP) capability to treat the Councils' municipal solid waste, this being the residual waste that has not been (or cannot be) recycled. This combined tonnage unlocked economies of scale which were attractive to the Councils [and to the market] and encouraged them to commence this procurement together.
- 4.13 The ERF will be designed to have a minimum 40-year lifespan and the Contractor appointed following the conclusion of the procurement process will build, finance and operate the ERF. The initial contract term shall commence in 2026 (subject to entering into the Project Agreement with the successful bidder (Financial Close)).
- 4.14 Following a mobilisation period, the contractor shall commence the construction of the TV ERF, with the construction period anticipated to be between 3.5 and 4 years in total.
- 4.15 The Services Period shall commence on the Services Commencement Date (01 April 2029) and shall expire on 31 March 2055 (unless both parties agree the terms of a potential [eleven year] extension that may run until 2066).
- 4.16 For the period from the Services Commencement Date and the Planned Acceptance Date, Interim Services for the treatment of Contract Waste may be provided by the

contractor. There is no obligation on the Authority to have Contract Waste treated by the contractor in the Interim Services period, using Market Tested Facilities. However, the Authority will be required to provide Contract Waste to facilitate Commissioning of the facility, in accordance with the Interim Services Period Commitments, which will be defined by the Contractor in their Optimised Final Tender Submission (OFTS).

- 4.17 The Full Services Period will commence on the first day of the next calendar month immediately following the Planned Acceptance Date (once the Testing and Commissioning of the facility has been concluded and the facility has been issued its Acceptance Test Certificate by the Independent Certifier, confirming that the Acceptance Tests have been satisfied). From this point onwards, the Contractor is required to accept and manage all Contract Waste in accordance with the Project Agreement.
- 4.18 The Contract will require the successful contractor to invest very significantly to construct the TV ERF. The procurement process is still underway, but it is expected that the total value of the Contract could be £2.1bn over the 29 years (plus 11 years) Contract. The facility will revert to the ownership of the Councils at the expiry of the Contract.
- 4.19 The TV ERF will be a source of renewable electricity (up to 49.9MW) equivalent to powering over 60,000 homes. It may be possible in the future to export the renewable heat which is generated by the facility, to be provided to local businesses and other local users of heat, should a future Business Case demonstrate this to be feasible (technically and economically) and provide overall Value for Money for such an investment.
- 4.20 To encourage competition, a 22-acre brownfield site, owned by South Tees Development Corporation (STDC) , was selected within the Teesworks regeneration site and this is mandated for use by the successful Contractor. Detailed ground condition surveys were undertaken. As part of the wider remediation strategy that is being undertaken by South Tees Development Corporation, the entire development area has been remediated in preparation for the commencement of the development.
- 4.21 The development will create a few hundred jobs during the construction phase and up to 50 permanent positions during the services phase. The residues from the process (including metals and bottom ash) will be recovered or recycled, thereby directly displacing the requirement within industry for additional virgin materials that would otherwise have been required. The facility will make a valuable contribution to the local circular economy.

Administration of EFW Contract

- 4.22 A Local Authority Special Purpose Vehicle (a Limited Company) is required to be formed by the seven Councils as this will be the contracting entity with the successful Contractor.
- 4.23 Local Authority Special Purpose Vehicle

- 4.24 Hartlepool Borough Council (as the Lead Authority) have entered into the Option over the mandated Reference Site with STDC / Teesworks (prior to establishment of the LA-SPV for contract signature) but the LA-SPV will be the party entering the lease and therefore holding the leasehold interest in the Reference Site for the duration of the Project and thereafter, until expiry or reversion of the lease to STDC / Teesworks.
- 4.25 On expiry or termination of the Project Agreement, the Project assets (e.g. the ERF) would revert to the LA-SPV (with the LA-SPV becoming the owner of the ERF at that point).
- 4.26 The LA-SPV would back off all its liabilities under the Project Agreement to the Councils through a Shareholders' Agreement (and/or IAA); and
- 4.27 The contractor will seek a right of direct recourse to the Councils to in effect stand behind the LA-SPV's balance sheet (a guarantee or indemnity provided by the Councils for the benefit of the contractor).

Shareholders' Agreement

- 4.28 The Shareholders' Agreement (SHA) sets out and defines the corporate governance and structure of the LA SPV itself. It will regulate the management of the Company and the relationship between the Councils as shareholders in the Company.
- 4.29 The Key Commercial Principles for the Shareholders' Agreement have been developed based on the Heads of Terms set out in Schedule 5 of the First Inter-Authority Agreement and were further developed through the Inter-Authority Agreement Working Group (IAAWG).

The Key Points from the SHA include the following :

- The LA SPV will be a limited liability company incorporated in England and Wales.
 - Each Council shall hold a single share in the LA SPV and shall be entitled to one vote.
 - Each Council shall be permitted to appoint one Director to the LA SPV Board.
 - The Councils shall appoint a management team to carry out the day-to-day operations of LA SPV under the Project Agreement.
- 4.30 During the term of the SHA, depending on the type of decision which are required to be made (as defined with the Project Approvals Matrix), they shall be made by either the Management Team, LA SPV Board, or Shareholders.
- 4.31 The Councils will be required to engage and provide the necessary resource so that matters to be decided by the LA SPV Board and/or the LA SPV Shareholder can be appropriately considered (where applicable within timescales required to enable LA SPV to satisfy its obligations under the Project Agreement).
- 4.32 It is not anticipated that the LA SPV will be profit-making. However, assuming the existence of distributable profits, the payment of dividends will be a matter to be included in the Project Approvals Matrix.

- 4.33 There will be no circumstances in which the SHA will automatically terminate. It will continue in force until terminated by mutual agreement of the Councils. A party to the SHA will remain liable for its financial commitments under the Waste Supply and Support Agreement even if it ceases to be a member of LA SPV.
- 4.34 The responsibility for residual costs / decommissioning / winding-down at the end of the Project will be addressed in the Waste Supply and Support Agreement and will be shared between all Councils, irrespective of whether they have remained as a shareholder of the LA SPV and party to the SHA. Responsibility for such costs shall be shared based on tonnage supplied by each relevant Council during the life of the Project. Further details on this will be set out within the Waste Supply and Support Agreement.
- 4.35 Upon liquidation of the LA SPV and after discharge of all obligations associated with the winding down of the Project, any remaining assets of the LA SPV will be shared between the Councils in proportions equal to the overall tonnage of Contract Waste that each Council has supplied to the facility over its life.
- 4.36 There will be a Dispute Resolution Procedure for dealing with matters which cannot be resolved through negotiation between the appropriately authorised members of the LA SPV Board or representatives of the Councils.
- 4.37 If a Council ceases to be a party to the SHA it will still be obliged to honour its financial commitments under the Project. The SHA will make it clear that ceasing to be a party to the SHA is without prejudice to a Council's obligations under the Waste Supply and Support Agreement.
- 4.38 The Councils will pay all legal, accountancy and other fees and expenses incurred by the LA SPV on a pro rata basis.
- 4.39 The Shareholders' Agreement has subsequently been developed, based on the Key Commercial Principles for the Shareholders' Agreement and focuses on the corporate structure and decision making within the SHA.
- 4.40 The Shareholders' Agreement has been drafted . There will however be a need for a degree of flexibility in order to allow for non-material amendments to be made to the Agreement if required as the procurement programme is completed, and the Project Agreement has been entered into by the LASPV.

Waste Supply and Support Agreement

- 4.41 The Waste Supply and Support Agreement (WSSA) will deal with how the payment obligations and financial liabilities of the LA SPV will be shared between the Councils.
- 4.42 The WSSA will cover:
- any obligations on the Councils required to enable the LA SPV to satisfy its obligations under the Project Agreement;

- payment obligations on each of the Councils in respect of waste delivered to the Facility to enable the LA SPV to discharge its obligations to make the monthly unitary charge payments under the Project Agreement;
- how any other financial obligations and liabilities of the LA SPV under the Project Agreement will be allocated between the Councils, and the sharing of any income and/or savings;
- cross-indemnities between the Councils in support of the guarantee to be provided to the Contractor on a joint and several basis in respect of the performance of the LA SPV; and
- how any residual value in the Facility at the end of the Project term shall be shared.

4.43 The Key Commercial Principles for the Waste Supply and Support Agreement have been developed based on the Heads of Terms set out in Schedule 5 of the First Inter-Authority Agreement have been further developed through the Inter-Authority Agreement Working Group (IAAWG).

4.44 The Key Points from the WSSA include the following.

4.45 The WSSA will be entered into on (or shortly before) the date of the Project Agreement and will continue until terminated by mutual agreement of the Councils. Upon the WSSA coming into effect, the First Inter-Authority Agreement (entered into on 24th July 2020) will terminate.

4.46 The payment obligations of the LA SPV will be supported by a guarantee entered into by all of the Councils on a joint and several basis.

4.47 Given that the Guarantee will be provided on a joint and several basis, the Contractor will be entitled to claim against just one, several or all of the Councils in circumstances where the LA SPV is in payment default under the Project Agreement. This will be entirely to the discretion of the Contractor.

4.48 The general principles for the allocation of liability between the Councils will be based on the proportion of tonnage delivered by each respective Council compared to the overall tonnages either on a Cumulative Contract Waste Tonnage To Date basis, or on the Council's share of the Guaranteed Minimum Tonnage (GMT).

4.49 The Guaranteed Minimum Tonnage (GMT) under the Project Agreement is set at 310,000 tonnes per annum .

4.50 This will be allocated between the Councils as follows:

- Darlington: 15,310 tonnes per annum (c. 5%);
- Durham: 92,790 tonnes per annum (c. 30%);
- Hartlepool: 19,853 tonnes per annum (c. 6.5%);
- Middlesbrough: 30,646 tonnes per annum (c. 10%);
- Newcastle: 72,266 tonnes per annum (c. 23%);
- Redcar & Cleveland: 29,239 tonnes per annum (c. 9.5%); and

- Stockton: 49,898 tonnes per annum (c. 16%).

- 4.51 Where a Council fails to provide its portion of the GMT, that Council may still be liable to pay for its full GMT allocation.
- 4.52 Where a Council breaches the exclusivity arrangements, that Council will be responsible for any resultant Compensation Event liabilities arising under the Project Agreement.
- 4.53 The Contractor is required to accept every tonne of Contract Waste from all Councils.
- 4.54 The Contractor shall, subject to the Waste Acceptance Protocol, Accept in accordance with the Specification all Contract Waste that is delivered to it by or under the direction of the Authority, on or after the Services Commencement Date (01 April 2028), subject at all times to the Maximum Tonnage.
- 4.55 Each Council shall be responsible for paying the gate fee in respect of each tonne of Contract Waste that it delivers to the Facility. The Contractor will invoice the LA SPV on a monthly basis, by reference to forecast waste flows (to be agreed each year) and their allocation to the waste bandings. The LA SPV will in turn invoice the Councils for their respective proportions of the amounts due under the Project Agreement and the Councils will be required to make payment to the LA SPV to enable the LA SPV to satisfy its payment obligations to the Contractor.
- 4.56 The Councils will be allocated banding capacities (i.e. Band 1 to 5) for each Contract Year. Only once the Preferred Bidder is selected will the Tonnage Bands be known.
- 4.57 At the end of each Contract Year, a reconciliation will be undertaken to calculate the difference between amounts paid during the Contract Year and that which would have been paid based on actual performance. An adjusting payment/rebate will be levied accordingly.
- 4.58 Following the end of each Contract Year there will be an Annual Reconciliation Payment process undertaken, both between the LA SPV and the Contractor; as well as between the seven Councils.
- 4.59 Payments in respect of the Lease of the Site shall be allocated based on the actual tonnages supplied by each Council as a proportion of the total combined actual tonnage delivered by all seven Councils for the preceding Contract Year.
- 4.60 Corporate administration costs shall be shared on the same basis as lease payments.
- 4.61 Where the LA SPV is required to provide compensation to the Contractor, depending on the type of breach that has occurred, compensation shall either be allocated against one Council (where the occurrence can be attributed to a specific Council) or shall be allocated on the basis of Cumulative Contract Tonnage To Date (CCTTD) (forecast base case tonnages or GMT during the Works Period) for those Compensation Events that need to be allocated between Councils.

4.62 Any change in the gate fee arising as a result of a Change in Law shall be applied to future tonnages going forward (and the existing allocation mechanisms under the WSSA shall continue to apply).

4.63 The WSSA will include a mechanism to enable a Council to voluntarily withdraw from the Project on giving a specified period of notice to the other Councils, and a mechanism for a defaulting Council to be required by the other Councils to exit the Project in certain specified circumstances.

Compensation on Termination:

4.64 Where the Project Agreement terminates prior to expiry in accordance with its terms, compensation on termination payable by the LA SPV shall be allocated between the Councils on the following basis:

- Where the LA SPV caused default (Authority Default Termination) – compensation shall be allocated between the Councils on a CCTTD basis;
- Where a single Council has caused the default (Authority Default Termination) - the defaulting Council shall be responsible for compensation;
- Contractor Default termination – compensation shall be allocated between the Councils on a CCTTD basis; and
- No Fault termination (e.g. Force Majeure) – compensation shall be allocated between the Councils on a CCTTD basis.

4.65 The Council(s) will be able to introduce an Authority Change under the Project Agreement. The costs of such changes shall be shared between the Councils that any such change benefits.

4.66 Where the Contractor wishes to introduce a Contractor Change under the Project Agreement, this will be subject to approval by the LA SPV as required.

4.67 Where a Refinancing Gain arises the gain shall be shared between the Councils either through a reduction in the gate fees or as a lump sum payment shared on a tonnage proportional basis.

4.68 The Project Agreement will include a right for the LA SPV to make a capital contribution towards the Project. Based on the Councils collectively making a combined Capital Contribution of up to a maximum of £50 million at an agreed point in time once the facility has passed its Acceptance Tests, this has the potential to lead to a reduction in the gate fees that are charged to the LA SPV (as a result of the Capital Contribution reducing the amount of debt that the Contractor will be required to service over the duration of the Project Agreement). The specific details of this are being developed with the preferred bidder. Further discussions will then be held with the Contractor so as to allow the cost / benefit of such an investment to be modelled and understood.

4.69 If it is agreed by the seven Councils to make a Capital Contribution, this will be contractualised in the Project Agreement which will specify how much Capital each of

the seven Councils will contribute and when this payment will be made to the Contractor. Once agreed, the Project Agreement position will be reflected within the WSSA which will set out how the capital contribution will be split between the Councils.

- 4.70 The LA SPV will only be able to make a capital contribution if all Councils unanimously agree to do so.
- 4.71 During the Works Period, the Contractor shall incur deductions (payable to the LA SPV) where the Facility is late in passing the Acceptance Tests.
- 4.72 All Councils will have the option to exit the Project at the end of Contract Year [30] (2056).
- 4.73 Where at Contract Year [30], some Councils wish to exit and other Councils wish to extend the Project Agreement, the Councils wishing to exit will be entitled to exit in full at this stage and will be entitled to their respective shares in any residual value of the Facility at that point. The exiting Councils will be liable for their respective shares of the Project costs arising up to the end of Contract Year [30] and will also be liable for any decommissioning costs, which would have been incurred at the end of Contract Year [30], had the Facility been decommissioned at that point.
- 4.74 Where some or all of the Councils wish to continue beyond Contract Year [30], the WSSA will include a process whereby the Councils shall discuss and seek to agree the terms on which the Project Agreement will continue (this will include consideration of the Contractor's Extension Proposal and, in the event that not all Councils wish to continue, Contractor approval to vary the Project Agreement to account for this will be required).
- 4.75 At the end of [Contract Year 30], where one or more Councils wish to exit the Project, a calculation be carried out to determine:
- i. the residual value of the Facility at that point;
 - ii. the costs that would be incurred if the Facility was to be decommissioned at that point; and
 - iii. the costs of reinstating the Site.
- 4.76 Councils exiting at Contract Year [30] (plus any Councils that have exited prior to Contract Year [30]), will be entitled to a share in the residual value of the Facility at the end of Contract Year [30], less each Council's share of the decommissioning costs calculated as at that date.
- 4.77 A similar calculation will take place at the end of any extension period, with residual value and decommissioning costs being split between the remaining Councils.
- 4.78 The WSSA shall include a Dispute Resolution Procedure which shall include the following stages: referral to the chief executives (or equivalent) within the relevant Councils, mediation (through CEDR), adjudication and finally referral to the courts.
- 4.79 The WSSA is currently being drafted. Once it has been agreed by the Project Board, approval shall be sought from the Director of Environment Services the Director Legal

Services and the Section 151 Officer to finalise and enter into the Waste Supply and Support Agreement with the LA SPV.

LASPV Business Plan

- 4.80 An Operating Cost Model for the LA SPV has been drafted which covers the period from incorporation of the LA SPV Limited Company until expiry.
- 4.81 The types of costs involved include staffing, accommodation, lease / service charges with Teesworks a Service Level Agreements provided by RCBC as the 'host authority' to the LASPV (including for example Health & Safety, HR Advisory, HR Transactional, IT, Finance, Insurance etc) as well as external advisory support (for example Company Secretary, Owner's Engineer etc).
- 4.82 The Operating Cost Model is being updated and refined. This will allow the Business Plan to be developed to ensure sufficient resources are provided by the Councils to allow the LA SPV to reach Financial Close and then to monitor and manage the Contract on behalf of, and with, the Councils for the term.
- 4.83 The target date for completion of the procurement process (including reaching Financial Close and entering into the Project Agreement) is 31st March 2026 based on the current procurement timescales.
- 4.84 Project governance continues to be provided by a Project Board made up of representatives of each of the seven Councils which normally meets on a monthly basis. The Project Board's Terms of Reference set out clear decision making and a voting structure and an escalation process in the case of any disputes.
- 4.85 The combustion of residual municipal waste is undertaken primarily as a means to optimise the sanitary conditions associated with the management of the wastes, it also provides additional climate change benefits, without incineration of residual waste produced by residents would need to be placed into landfill. Within the landfill, the waste degrades over a long period of time, producing leachate and landfill gases (both of which require control and management to avoid impacting human health and the wider environment). In addition, landfilling residual waste presents visual, odour, noise and vermin issues during the operation of open-air sites. Incineration of the residual municipal waste ensures that the management of the waste is undertaken within a controlled building, significantly reducing the visual, odour, noise and vermin impacts of the operations. The combustion of waste in an incinerator produces carbon dioxide, whereas the degradation of waste in landfill produces methane, which is 28 times more potent as a greenhouse gas. The environmental benefit is further improved by the production of power as a by-product of the treatment process. The production of electricity and heat offsets the need to rely on the use of fossil fuels, thereby further improving the climate change benefits of the solution.
- 4.86 Middlesbrough's residual municipal waste is currently treated at the Haverton Hill EfW, operated by Suez. The benefits of moving away from landfill have already been achieved here, as there are already emissions associated with the management of the incineration of the Councils waste. The Douglas report into the health impacts of incinerators produced by the UK Health Security Agency (updated in 2025) supports

the position that Energy from Waste does not pose a health risk to the population, stating that “This systematic review shows that currently there is no clear evidence of association between human health exposure to emissions from modern, well-regulated MWI and morbidity, cancers, or adverse birth outcomes in the UK.” It also places the low contribution of emissions from municipal incinerators within the context of wider sources of emissions, stating “these incinerators only make a small contribution to local concentrations of air pollutants when compared to other sources of air pollution.”

- 4.87 The Douglas report does identify that levels of emissions can be reduced with the operation of modern, more efficient EfW plants - “Levels of airborne emissions from individual MWI are significantly lower now than in the past due to implementation of stricter legislative controls and improved technologies”. The Haverton Hill EfW has been operating since 1998, and whilst the plant complies with the emissions limits within its Environmental Permit, Table 1 demonstrates that the new TVERF facility to be developed by Viridor far outperforms it, providing significant reductions on emissions and increased electrical efficiency.

Table 1 – Comparison of the impacts of TVERF and the existing Haverton Hill EfW

Comparison	Tees Valley	ERF	Haverton Hill
Improvement			
Efficiency (kW/tonne)	0.11		0.07 31%
Emissions			
Total Organic Carbon (TOC)	10mg/m3		20mg/m3 50%
Hydrogen Chloride	6mg/m3		8mg/m3 33%
Sulphur Dioxide	30mg/m3		40mg/m3 25%
Oxides of Nitrogen (NOx)	100mg/m3		180mg/m3 44%
Ammonia (NH3)	10mg/m3		15mg/m3 33%
Dioxins/Furans (I-TEQ)	0.04ng/m3		0.06mg/m3 33%

- 4.88 In designing and operating the TV ERF, Viridor have also committed to providing additional environmental benefits and carbon reductions through their approach to design, construction and delivery. Within their tender submission, they have committed to achieve Excellent standard under the Building Research Establishment Environmental Assessment Methodology and to deliver 180,000 tonnes of CO2 eq savings in the construction and commissioning of the plant. During the operation of the facility they have committed to provide ongoing annual savings of over 5,000 tonnes of CO2 eq.

Carbon Capture and Underground Storage (CCUS)

- 4.89 The Government department for Business, Energy and Industrial Strategy (BEIS) announced on the 19 October 2021 its decision to fund two of the UK's first Carbon Capture, Usage and Storage (CCUS) Clusters following the submission of bids under Track 1 Phase 1 of its Carbon Capture Funding Programme. The East Coast Cluster (which is a collaboration between Net Zero Teesside, Zero Carbon Humber and Northern Endurance Partnership NEP) was named as one of these; it aims to remove a very significant proportion of all UK Industrial cluster CO2 emissions and will aim to

create and support an average of 25,000 jobs per year between 2023 and 2050. This means that the Government will support the development of the transport and storage proposals from NEP through use of the Endurance storage field in the North Sea. Northern Endurance Partnership have committed to the delivery of the infrastructure from 2026 which would allow the TVERF to connect to it.

- 4.90 The TV ERF is being designed to be 'CCUS-ready' in preparation for the connection to the East Coast Cluster through the new infrastructure that will be developed by the Northern Endurance Partnership (NEP).
- 4.91 The TVERF subsequently has the potential to be among the first purpose-built facilities that incorporates Carbon Capture and Storage technology in the UK and the aim is to deliver the TVERF (with Carbon Capture and Storage technology in place and operational) before the end of 2027. Since up to 50% of the CO₂ that will be emitted from the TVERF is derived from biogenic (non-fossil fuel) sources (the remaining being derived from anthropogenic – fossil fuel sources), this will mean that the facility could in fact become a negative CO₂ emitter which will contribute significantly to the ambitions of the Council to be carbon neutral by 2030.
- 4.92 Throughout 2022 and 2023, the TV ERF project partners pursued a bid for Carbon Capture and Storage (CCS) funding support as part of the Government's plans to support carbon capture projects across two new industrial carbon clusters – Hynet and the East Coast Cluster.
- 4.93 In early 2022, the TV ERF project made an application to the Department for Business, Energy and Industrial Strategy (now the Department for Energy Security and Net Zero - DESNZ) under Phase 2: Track 1 of the Government's Cluster Sequencing Process and, in August 2022, the TV ERF project was shortlisted to participate in further due diligence prior to funding awards being made.
- 4.94 Unfortunately, following an announcement by DESNZ in March 2023, the TV ERF was not one of just three projects in the North-East short-listed to commence detailed negotiations in relation to business model funding support.
- 4.95 Success through this process would have enabled the TV ERF to deploy carbon capture and storage technology from the outset – capturing carbon emissions from the plant and storing them in offshore storage as part of the East Coast Cluster. However, it is anticipated that future CCUS funding rounds will occur and the TV ERF will remain well placed to apply again should the opportunity arise.

5. Ward Member Engagement if relevant and appropriate

- 5.1 The Tees Valley Authority Project Board receive regular monthly updates regarding the progress made on all aspects of the TV ERF Project.
- 5.2 Regular updates on the Project are provided to the Chief Executive, Mayor and Executive Member.
- 5.3 This facility sits outside of the boundaries of Middlesbrough Council and therefore does not affect a particular ward.

6. Other potential alternative(s) and why these have not been recommended

- 6.1 The seven Councils were required to undertake a procurement process due to their existing waste treatment contract arrangements due to expire in 2026. By procuring this contract together, economies of scale provide enhanced value for money for the Councils.
- 6.2 If this approach is not agreed, then the Council would have to undertake a fresh procurement of a merchant contract. It is expected that this will deliver a higher gate price due to the lack of competition in the market.
- 6.3 6.2 The benefits of forming a LA SPV to be the contracting entity with the Contractor include:
- Separate legal entity - The Project would sit on the balance sheet of the LA SPV, rather than the full Project sitting on Hartlepool Borough Council's balance sheet (with all assets and liabilities running through their accounts);
 - Shared ownership - The Project assets (and liabilities) would be owned by the LA SPV, which in turn would be wholly owned by all of the Councils;
 - Transparency - Each of the Councils would be entitled to appoint a director to the Board, having visibility over the activities of the LA SPV and direct involvement in the decision-making process;
 - Flexibility - The agreement would allow any future changes to the Councils' relationships to occur.

7. Impact(s) of the recommended decision(s)

Topic	Impact
Financial (including procurement and Social Value)	<p>The EFW will commence operations in 2030 which is outside of the Council's current Medium Term Financial Plan (MTFP). Future MTFP's will require the cost of waste disposal arising from the contract to be included. This will depend upon the level of residual waste and the final contract price that is agreed.</p> <p>The price per tonne achieved through the procurement process is at present £143 average price over the life of the contract at 25/26 prices indexed at CPI. This is below the ceiling limit that was set. The negotiations will continue to financial close with a view to reducing the price per tonne further.</p> <p>The 2025/26 budget for residual waste disposal is £5.6m The current price paid under the current arrangements for residual waste disposal is £128.29 per tonne with an estimated inflationary rise to £144.97 per tonne in 2029/2030. The average annual tonnage is currently around 39,000 tonnes.</p>

	<p>This is expected to reduce over the next few years following the introduction of the Government's Simpler Recycling Initiatives.</p> <p>The financial implications of the LA SPV will be set out within the Business Plan. The treatment costs of the residual waste that shall be required to be paid to the Contractor and how these will be shared between the seven Councils will be defined within the Waste Supply and Support Agreement.</p> <p>From a social value and local economic perspective, the construction process for the new TV ERF facility is expected to employ a construction workforce of over 200 people and create around 50 new long term skilled jobs.</p> <p>Through the procurement process, bidders have been incentivised to provide further economic regeneration and social value initiatives within their proposals and this will be given a substantial weighting in the assessment criteria – ensuring that the facility does indeed deliver not just tangible sanitation and environmental benefits to local residents, but also economic opportunity too. In respect of social value, the project delivers £0.1m per year as part of the project. Middlesbrough will receive a proportion of that value. Community Fund.</p>
Legal	<p>The legal position is set out in this report in respect of the formation of the SPV and the delegations required between now and financial close. The procurement of the TV ERF and the formation of the LA SPV as the contracting entity representing the Councils' interests will have legal implications. The Shareholders' Agreement and Waste Supply and Support Agreement will bind the parties together in a robust and legally enforceable commercial arrangement.</p>
Risk	<p>The significant risks around this project are that the procurement is not complete due to a council with significant levels of waste not agreeing to the TVEWP. This would require MBC to procure the treatment of residual waste through a merchant contract.</p>
Human Rights, Public Sector Equality Duty and Community Cohesion	<p>There are no implications</p>
Reducing Poverty	<p>This project is value for Money</p>

<p>Climate Change / Environmental</p>	<p>This project allows for the successful treatment of residual waste whilst allowing the Council to enhance its levels of recycling. As part of the Outline Planning Application process (for the construction of an Energy Recovery Facility and associated development), an Environmental Impact Assessment was completed. This included detailed assessments including Traffic Assessments and an Air Quality Report being produced. A detailed assessment of pollutant emissions released from the facility as a result of the combustion of waste as well as pollutant emissions from road traffic associated with the operation of the facility has been undertaken. The air quality effects on human health are judged to be not significant. Consideration was also given to the Local Nitrogen Dioxide Plan - the proposed development will not cause any exceedances of or delay compliance with the limit values.</p> <p>The Outline Planning Application was approved in July 2020.</p> <p>The waste hierarchy determines that it is preferable, from an environmental perspective, to treat residual waste by generating energy from it instead of disposing of it in landfill.</p> <p>In line with the objectives of the Government's Net Zero Strategy and the Resources and Waste Strategy (which aims for no more than 10% of municipal waste to end up in landfill by 2035, and no food waste to be landfilled by 2030), the development of the TV ERF, will ensure that the vast majority of the Council's residual waste will be treated through the Energy Recovery Facility to enable the processing of waste into valuable outputs, such as energy - thereby diverting the waste from landfill. As a result, the net CO2 Equivalent emissions will be lower than had the waste been landfilled. The Contractor will be required to demonstrate how they will reduce carbon emissions from the facility, year-on-year, over the duration of the contract. In addition, c. 90,000 tonnes per annum of bottom ash and metals will be produced by the facility. The bottom ash will be recycled into a secondary aggregate which will be used within the construction industry, thereby directly displacing virgin aggregates that would otherwise have been required; the metals extracted will be recovered and remanufactured.</p>
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	<p>There will be emissions from the facility, but these will be minimised and strictly controlled in line with the conditions of the Environmental Permit, regulated by the Environment Agency.</p> <p>The potential development of a Carbon Capture Underground Storage facility, for the TV ERF will allow CO2 to be captured and stored through the infrastructure that is to be developed by the Northern Endurance Partnership as part of the East Coast Cluster. This will lead to the TV ERF effectively being a net-negative carbon emitter.</p>
Children and Young People Cared for by the Authority and Care Leavers	There are no implications
Data Protection	There are no data protection implications

Actions to be taken to implement the recommended decision(s)

Action	Responsible Officer	Deadline
Incorporation of the LA SPV - This is expected to take place by 31st November 2025.	Geoff Field	31st December 2025
LA SPV to enter into: <ul style="list-style-type: none"> a. Waste Supply and Support Agreement (including Contract Waste Forecast Protocol) b. Service Level Agreement c. Secondment Agreement d. Project Agreement e. Council Guarantee of Project Agreement f. Novation of Option Agreement g. Lease (pursuant to Option Agreement) h. Side Deed (direct agreement with estate owner) 	Geoff Field	31 st December 2025
Financial Close of the Project – This is expected to take place on or around	Geoff Field	31 st March 2026

<p>the 31st March 2026 and will include the following steps:</p> <ul style="list-style-type: none"> i. Councils to enter into: a. Shareholders' Resolutions in respect of LA SPV's entry into the documents set out below. b. Waste Supply and Support Agreement (including Contract Waste Forecast Protocol). c. LGCA Certificates. d. Council Guarantee of Project Agreement (for the purposes Contractor security). e. Lease Guarantee 		
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Appendices

1	Tees Valley Energy Recover Facility : Briefing note
2	
3	

Background papers

Body	Report title	Date

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