

## Cabinet (Resources) Panel

15 November 2023

<b>Report title</b>	Wolverhampton Energy from Waste Contract Amendment	
<b>Decision designation</b>	AMBER	
<b>Cabinet member with lead responsibility</b>	Councillor Craig Collingswood Environment and Climate Change	
<b>Key decision</b>	Yes	
<b>In forward plan</b>	Yes	
<b>Wards affected</b>	All Wards	
<b>Accountable Director</b>	John Roseblade, Director of Resident Services	
<b>Originating service</b>	Environmental Services	
<b>Accountable employee</b>	Steve Woodward	Head of Service
	Tel	01902 554260
	Email	Steve.Woodward@wolverhampton.gov.uk
<b>Report to be/has been considered by</b>	Resident Services Leadership Team	3 October 2023

### Recommendations for decision:

The Cabinet (Resources) Panel is recommended to:

1. Agree to the TUPE (Transfer of Undertakings Protection of Employment) transfer of all council staff at the Energy from Waste Plant to North Midlands Operations Limited (NMOL).
2. Delegate authority to the Cabinet Member for Environment and Climate Change in consultation with the Director of Resident Services to agree the final variation terms to incorporate the TUPE transfer, and other minor contract variations as set out in the report.

## **1.0 Purpose**

- 1.1 This report outlines the proposal and requests approval to allow for all current council staff at the Energy from Waste plant (EFW) to TUPE transfer from the Council to North Midlands Operations Limited (NMOL).
- 1.2 It also requests delegated authority be given to the Cabinet Member for Environment and Climate Change in consultation with the Director for Resident Services to agree the final variation terms to be made to the Management Services contract in place between the Council and NMOL which commenced on the 25 June 2023.

## **2.0 Background**

- 2.1 The Council entered into a contract with NMOL on the 25 June 2023 following an open market tender process to provide Management Services for the EFW plant for up to a four-year period (a two-year contract with two single year extensions).
- 2.2 The contract includes the right for the council and NMOL to negotiate a transfer of the council staff to NMOL.

## **3.0 TUPE Transfer of Staff**

- 3.1 In order to streamline the day-to-day management of the plant, and enable NMOL to discharge their responsibilities for its operation in a more controlled and efficient manner, it is proposed to TUPE transfer the staff to NMOL, once an appropriate variation to the current contract has been agreed.
- 3.2 The contract variation will set out how ongoing staffing costs will be managed as well as providing appropriate financial safeguards and transparency requirements.

## **4.0 TUPE Transfer Process and timeline**

- 4.1 The TUPE transfer of the staff will be undertaken in line with legislative requirements, and follow the recognised ACAS processes and recommended timelines. The Council will engage in consultation with the staff and NMOL in line with the recognised processes.
- 4.2 Consultation will commence with staff once the contract variation is agreed with NMOL.

## **5.0 Evaluation of alternative options**

- 5.1 Alternatives to undertaking the TUPE transfer of the staff would see the staff remain as council employees which would necessitate a review of the terms and conditions of service for all employees.
- 5.2 This would not be beneficial to the Council, NMOL or the staff particularly due to a lack of transparency and duplication of day to day management, and does not reflect best value to the council.

## **6.0 Reasons for decisions**

- 6.1 In order to operate the EFW plant in the most efficient and economically advantageous manner possible for the Council, it is recommended that the TUPE of the staff to NMOL be undertaken.
- 6.2 The contract arrangement and TUPE proposals with NMOL provides the Council with the best value for discharging its statutory obligations for waste disposal.

## **7.0 Financial implications**

- 7.1 The current 2023-2024 budget for EFW is £10.8 million. The medium-term financial strategy includes annual inflationary growth of £142,000 for EFW. In addition, Energy from Waste has an income target of £5.4 million, resulting in the net budget of £5.4 million for 2023-2024.
- 7.2 Any increases incurred in operating costs in addition to the current budget and inflation assumptions will need to be taken into consideration within existing resources in the first instance, including reviewing income rates set on contracts or non-contracted fees and charges in line with financial procedure rules. However, if efficiencies or additional income cannot be achieved this would be subject to further reports to look at resourcing options.
- 7.3 In line with the recommendations sought in this report the final TUPE arrangements could result in the continuation of employer liability for the pensions of the employees who transfer.  
[LD/20102023/M]

## **8.0 Legal implications**

- 8.1 The proposed variations are compliant with all relevant public and private laws including but not restricted to the Public Contracts Regulations, the Employment Acts and Local Governments Acts and the Council's Constitution.  
[HR/30102023L]

## **9.0 Equalities implications**

- 9.1 An EIA will be completed as part of the TUPE transfer arrangements once this report is approved.
- 9.2 The Council will follow the standard ACAS recommended processes and council procedures to ensure all staff are treated fairly and equally.

## **10.0 All other implications**

- 10.1 HR have been involved and sighted on this proposal and will support the delivery of the TUPE process once agreed.
- 10.2 There are no other implications to be considered as part of this report.

## **11.0 Schedule of background papers**

11.1 Cabinet report 22 February 2023 – [Energy from Waste Plant Update](#)