

Report title	Energy from Waste Plant Update	
Decision designation	AMBER	
Cabinet member with lead responsibility	Councillor Steve Evans City Environment and Climate Change	
Key decision	Yes	
In forward plan	Yes	
Wards affected	All Wards	
Accountable Director	John Roseblade, Director of Resident Services	
Originating service	Environmental Services	
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Report to be/has been considered by	Directorate	Daily Director updates from 9 January 2023

Recommendations for decision:

The Cabinet is recommended to:

1. Approve an exemption from the Council's Contracts Procedure Rules for all specialist advisors listed in Appendix 1 who are required to continue to provide the specialist advice for the Energy from Waste Programme until completion of all workstreams to provide continuity and continuation to the EFW Programme.
2. Delegate authority to the Cabinet Member for City Environment and Climate Change, in consultation with the Director of Resident Services to approve the award of a contract for a short-term operator of the Energy from Waste plant to commence in June 2023 and a maximum period of up to five years.

3. Delegate authority to the Cabinet Member for City Environment and Climate Change, in consultation with the Director of Resident Services to approve the award of a contract for conducting dilapidation repairs for the Energy from Waste plant.
4. Delegate authority to the Cabinet Member for City Environment and Climate Change, in consultation with the Director of Resident Services to approve the award of a contract for upgrading and compliance works necessary for the continued operation of the Energy from Waste plant.
5. Approve an exemption from the Council's Contracts Procedure Rules for all additional suppliers listed in Appendix 2 necessary for the continued operation of the Energy from Waste plant for a period of the contract referenced in recommendation 2 above but ensuring compliance with Public Contract Regulations 2015 (PCR).
6. Delegate authority to the Cabinet Member for City Environment and Climate Change, in consultation with Chief Operating Officer, Director of Resident Services and Director of Finance to agree settlement of all contractual termination obligations including dilapidations and financial settlement to Wolverhampton Waste Services.
7. Delegate authority to the Cabinet Member for City Environment and Climate Change, in consultation with Chief Operating Officer, Director of Resident Services and Director of Finance to create supplementary capital budgets for any works to be undertaken which are funded through the settlement with Wolverhampton Waste Services.
8. Delegate authority to the Chief Operating Officer and Director of Resident Services to exercise the rights within the Wolverhampton Waste Services contract to directly acquire essential plant, spares and consumables.

Recommendations for noting:

The Cabinet is asked to note:

1. The decisions made on 9 February 2023 under the urgent decision provisions of article 12.9 in Part 2 of the Council's Constitution by the Leader in consultation with the Chair of Scrutiny Board, Vice Chair of Scrutiny Board and Chief Executive who authorised the following:
 - a) Approve the Transfer of Undertakings (Protection of Employment) regulations (TUPE) transfer of the identified EfW staff into the council from the 11 February 2023.
 - b) Delegate authority to the Chief Operating Officer to agree the contractual terms and authorise the completion of an agreement with North Midlands Operations Limited (NMOL) substantially in accordance with the draft heads of terms at appendix 1.

- c) Authorise the adoption of non-standard procurement procedures, in relation to the supplies, goods and services listed at appendix 2, to enable the council to procure specialist supplies, goods and services for the continued operation of the EfW plant through its management agent NMOL.
 - d) Following on from recommendation 3 approve an exemption from the Council's Contracts Procedure Rules for all suppliers listed in Appendix 2 necessary for the continued operation of the EfW plant for a period of the NMOL contract but ensuring compliance with Public Contract Regulations 2015 (PCR).
 - e) Approve an exemption from the Contracts Procedure Rules but within the Public Procurement Regulations 2015 and specifically subject to further legal advice potential use of the exemptions contained therein under PCR 32(2)(b) to award a contract for specialist insurance policies to cover the EfW plant, to be placed by the council's insurance brokers.
 - f) Delegate authority to the Cabinet Member for City Environment and Climate Change, in consultation with the Director of Resident Services and Director of Finance for the procurement of a contract to allow the sale of electricity generated from the EfW and to enter into a Power Purchase Agreement.
 - g) Delegate authority to the Director of Resident Services and the Head of Environmental Services to order and procure any parts, consumables or services as necessary for the operation of the EfW plant, this will include the delegation of authority for procurement outside of the normal contract procedure rules but ensuring compliance with Public Contract Regulations 2015.
 - h) Delegate authority to the Chief Operating Officer, Director of Resident Services and Director of Finance to exercise the rights within the WWS contract at contract end to directly acquire those items of plant, spares and consumables that are essential to the operation of the plant and cannot wait until such time as further Cabinet approval can be obtained.
2. The need to undertake further work to determine the future strategic direction in terms of the Energy from Waste Plant.
 3. The need to provide dedicated ongoing Programme Management, Legal and Procurement resources to support the delivery of the EfW Programme.
 4. Any amendments to the procurement procedure approved by this report will be reported in an Individual Executive Decision Notice (IEDN) to the relevant Cabinet Member in consultation with the relevant Director in accordance with the delegation within this report.

1.0 Purpose

- 1.1 This report is to update Cabinet on the operation of the Energy from Waste (EfW) plant and including the urgent decision authorities which were obtained by the Council's urgent decision process on the 9 February 2023. The urgent decisions were required to support the ongoing operation of the EfW after expiry of the current contract with Wolverhampton Waste Services (WWS) on the 10 February 2023.
- 1.2 It is also seeking further approvals to ensure the longer-term operations and the proposed route to market for a further procurement, beyond the current temporary arrangements which last until the 24 June 2023.
- 1.3 The report requests delegated authority to agree and finalise the outstanding financial issues for the close down of the WWS contract in terms of a full and final global settlement.
- 1.4 It requests exemptions from Contract Procedure Rules and delegated authority to secure the continued delivery of the EfW Programme.

2.0 Background

- 2.1 The current 25 year contract with Wolverhampton Waste Services (WWS), to operate and maintain the EfW plant, expired on 10 February 2023.
- 2.2 Work was undertaken to manage the end of this contract and consider the Council's future EfW and waste disposal requirements. In December 2021 Cabinet approved a report which gave authority to extend the current contract if required.
- 2.3 Detailed and lengthy negotiations with WWS were undertaken with the intention of securing an extension of the contract with WWS. The basis of the extension was to facilitate essential upgrading and dilapidation works to be undertaken, the latter of which is the contractual responsibility of WWS.
- 2.4 Until January 2023 these negotiations, whilst challenging, looked very likely to secure the continued operation of the plant over the medium term. However, the unprecedented and unpredicted changes in the electricity generation market shifted the commercial considerations, increasing the potential income associated with electricity generation. Independent legal advice indicated that this meant the terms of the negotiated extension did not represent value for money for the Council. The additional income likely to be generated represented a significant increase above and beyond the existing contract and as such the extension was potentially illegal.
- 2.5 Negotiations continued with WWS in an attempt to redress the commercial balance of the agreement but unfortunately on 20 January 2023 WWS rejected a good commercial offer from the Council, based on external advice, including the alternative option of a very short-term extension to ensure the continued operation of the plant, however they then withdrew from the process.

- 2.6 A contingency plan was in place to ensure the continued disposal of domestic waste and to ensure that the Council continued to meet its statutory duties for waste collection and disposal. This involved a contract with a third party to remove the waste from the EfW site and transport it to alternative, out of city EfW disposal facilities. In following this contingency the operation of the Council's EfW plant would have ceased and the existing staff would have been made redundant.
- 2.7 As an alternative to the contingency plan discussions commenced with North Midlands Operations Limited (NMOL), WWS's operational subcontractor at the EfW, to explore options to keep the plant running.
- 2.8 Negotiations resulted in the reshaping of the EfW operation as a direct council run service including a short-term management contract with NMOL to provide the specialist competent technical management required to run a plant of this type and comply with the requirements of the current Environmental Permit.
- 2.9 This arrangement resulted in the TUPE transfer of all operational staff into the Council from the 11 February 2023, and the Council became responsible for the operation and direct maintenance of the EfW plant under the competent direction of NMOL, and the Environmental Permit they hold for the plant. The Council obtained clear legal and expert advice that this was a lawful approach and one that represented value for money.

3. Urgent Decisions Made

- 3.1 In accordance with the provision of article 12.9 in Part 2 of the Council's Constitution, the Leader and Deputy Leader in consultation with the Chair of Scrutiny Board, Vice Chair of Scrutiny Board and Chief Executive were asked on the 9 February 2023 to authorise a number of steps to ensure that the EfW plant remained in operation following the end of the contract with WWS on the 10 February 2023.
- 3.2 These matters were of immediate urgency making the prompt exercise of the powers of the Cabinet desirable and could not wait for the next meeting of the Cabinet (on 22 February 2023).
- 3.3 These decisions were required to TUPE the staff into the Council, complete an agreement with NMOL to provide competent management of the plant and to provide the delegations essential for the day to day running of the plant from the 11 February 2023.
- 3.4 The decisions that were made and approvals that were given under these provisions were:
 - a) Approve the TUPE transfer of the identified EfW staff into the Council from the 11 February 2023.
 - b) Delegate authority to the Chief Operating Officer to agree the contractual terms and authorise the completion of an agreement with North Midlands Operations Limited substantially in accordance with the draft heads of terms at appendix 1 (NMOL).

- c) Authorise the adoption of non-standard procurement procedures, in relation to the supplies, goods and services listed at appendix 2, to enable the council to procure specialist supplies, goods and services for the continued operation of the EfW plant through its management agent NMOL.
- d) Following on from recommendation 3 approve an exemption from the Council's Contracts Procedure Rules for all suppliers listed in Appendix 2 necessary for the continued operation of the EfW plant for a period of the NMOL contract but ensuring compliance with Public Contract Regulations 2015 (PCR).
- e) Approve an exemption from the Contracts Procedure Rules but within the Public Procurement Regulations 2015 and specifically subject to further legal advice potential use of the exemptions contained therein under PCR 32(2)(b) to award a contract for specialist insurance policies to cover the EfW plant, to be placed by the council's insurance brokers.
- f) Delegate authority to the Cabinet Member for City Environment and Climate Change, in consultation with the Director of Resident Services and Director of Finance for the procurement of a contract to allow the sale of electricity generated from the EfW and to enter into a Power Purchase Agreement.
- g) Delegate authority to the Director of Resident Services and the Head of Environmental Services to order and procure any parts, consumables or services as necessary for the operation of the EfW plant, this will include the delegation of authority for procurement outside of the normal contract procedure rules but ensuring compliance with Public Contract Regulations 2015.
- h) Delegate authority to the Chief Operating Officer, Director of Resident Services and Director of Finance to exercise the rights within the WWS contract at contract end to directly acquire those items of plant, spares and consumables that are essential to the operation of the plant and cannot wait until such time as further Cabinet approval can be obtained.

4.0 Future Operation of the EfW plant

- 4.1 A short contract has been negotiated with NMOL which will expire in June 2023. This current arrangement with NMOL provides the council with the best value for discharging its immediate statutory obligations for waste disposal.
- 4.2 To ensure continued operation of the plant after the expiry of the contract with NMOL in June 2023 further procurement exercises need to be undertaken. It is proposed to commence these market exercises immediately and the exact terms and scope of the contracts are currently being finalised.
- 4.3 As a result of the ongoing assessment of the options for this short-term contract Cabinet are recommended to approve the commencement of a these market exercises and delegate authority for the contract award to the Cabinet Member for City Environment and Climate Change, in consultation with the Director of Resident Services for the procurement in accordance with the Public Procurement Regulations 2015, of an

appropriate length and specification to provide contractual arrangements to ensure the continued operation of the EfW plant beyond June 2023.

- 4.4 There will also be several capital procurements to be undertaken in the next few months that are needed to get the EfW plant up to current regulatory and market standards. The procurement processes for this work will need to be commenced in the next few weeks and will be completed over the next 12 to 18 months. Procurement will also be needed to support the routine maintenance of the plant including for the annual major outage programme.
- 4.5 Cabinet is recommended to approve the commencement of all market exercises required to operate, maintain and upgrade the Energy from Waste plant and delegate authority for the contract awards to the Cabinet Member for City Environment and Climate Change, in consultation with the Director of Resident Services for any procurement of works in accordance with the Public Procurement Regulations 2015.
- 4.6 An exemption was approved under the urgent decision report on the 9 February 2023 for a number of suppliers advised by NMOL as essential for the continued operation of the plant during their contract. A number of additional suppliers have been identified which were not included on the original list, but who will also require the same exemptions.
- 4.7 As a result, Cabinet is recommended to approve an exemption from the Council's Contracts Procedure Rules for all additional suppliers listed in Appendix 2 necessary for the continued operation of the EfW plant for a period of the NMOL contract but ensuring compliance with Public Contract Regulations 2015 (PCR).

5.0 Energy from Waste Programme

- 5.0 The EfW Programme was set up in January 2021 and is comprised of three projects:
- Project 1 – Current WWS Contract end (Covering the new NMOL contract to June 2023 along with the next short-term management contract as detailed in 4 above)
 - Project 2 – Interim O&M contract procurement
 - Project 3 – long term waste disposal requirements and EfW future options
- 5.1 Whilst the procurement exercises are undertaken work will also commence on Project 3 which will be evaluating the longer-term options for the waste disposal within the city of the next 25 to 30 years and assessing the potential options available. This will include consideration of the future role of the EfW facility.
- 5.2 In order to continue to deliver the EfW Programme dedicated Programme and Project Management support is required for the duration of the programme. It will also be essential for dedicated and specialist legal and procurement support to be available.

- 5.3 Currently resources have only been allocated to progress Projects 1 and 2 however due to the change of direction of the project since negotiations with WWS broke down the forecasted costings will need to be revisited. Additional budget allocations will be required to commence and deliver Project 3.
- 5.4 As a result, Cabinet is recommended to note the need to provide dedicated ongoing Programme Management, Legal and procurement resources to support the delivery of the EfW Programme.
- 5.5 A number of specialist experts have been supporting the EfW Programme over the last 18 months to deliver the continued operation of the plant and support with the contractual issues.
- 5.6 The expertise ranges from specialist technical, engineering and commercial advice from experts in the waste and EfW field, as well as specialist legal support from external lawyers. A considerable amount of work has been undertaken by these specialist advisors in the past few months, and the current officer level agreed exemptions to the Council's contract procedure rules in place to support these work streams needs to be refreshed.
- 5.7 Further work is necessary which requires the ongoing engagement of these retained experts. The required work streams will include, evaluation, design, confirmation and commissioning of engineering works to meet insurance and market requirements. This will also include support and advice on the development of appropriate new longer term contractual arrangements. The retention and ongoing advice of these experts is essential to the success of the EfW Programme and to provide best value.
- 5.8 As a result, Cabinet is recommended to approve an exemption from the Contracts Procedure Rules for all suppliers listed in Appendix 1 who are required to continue to provide specialist advice for the EfW Programme until completion of their workstreams to provide continuity and continuation to the EfW Programme. Appropriate mitigations to ensure compliance regarding Public contract regulations will be applied following discussions with the council's procurement team.

6.0 WWS Contract Close Down

- 6.1 The current contract with WWS ended on the 10 February 2023.
- 6.2 Within the contract there are a number of obligations that need to be met by both WWS and the council.
- 6.3 The Council's retained specialist engineers undertook a contract end audit on the 9 and 10 February to ensure hand back meets the contractual requirements.
- 6.4 There are also several items of plant, equipment, spares, and consumables that now need to be purchased from WWS.

6.5 To facilitate this Cabinet is recommended to delegate authority to the Chief Operating Officer and Director of Resident Services to exercise the rights within the WWS contract to directly acquire essential plant, spares and consumables.

6.6 Cabinet is recommended to delegate authority to the Cabinet Member for City Environment and Climate Change, in consultation with Chief Operating Officer, Director of Resident Services and Director of Finance to agree settlement of all contractual termination obligations including dilapidations and financial settlement to WWS.

7.0 Evaluation of alternative options

7.1 The Council reviewed alternative options for the continued waste disposal requirements. These were contained in the 9 February 2023 urgent decision report and concluded that the approach to reconfigure the operation of the plant to a council service with a short term management contract with NMOL as set out in this report demonstrated the best value for money approach, showing the other approaches were less advantageous to the Council and the City.

7.2 Those approaches considered were:

- Extension of the contractual arrangements with WWS – it was not possible to progress this.
- 3rd Party waste disposal to alternative EfW facilities across the country – this was not considered value for money and had a significant number of disadvantages including loss of local jobs, statutory compliance issues, increased costs, loss of income and adverse environmental impacts.
- Direct Award of a new Operating Contractor – the council were unable to progress this following legal advice due to the likely value of such a contract.

7.3 The procurement exercises identified within this report for short-term and longer-term contracts to support the plant's ongoing operation will consider the options available for best value, and this will be subject to further reporting under the delegations requested within this report.

7.4 The ongoing operation of the plant is dependent on the completion of the required maintenance. If this work is not undertaken the plant will not meet regulatory or industry standards and will run the risk of failure and closure of the plant. This work would have been required regardless of the operating model of the plant.

7.5 The retention of the specialists requested within this report would retain the continuity of advice and utilise the existing knowledge of those specialists for the current EfW Programme. If these specialists are not retained continuity will not be obtained, and additional time, money and resources will need to be allocated to updating any new advisors engaged which is not deemed value for money.

8.0 Reasons for decisions

8.1 Authority to procure contract

8.2 For the plant to remain operational a new short-term contract to commence in June 2023 is essential. Without this in place the plant will have to close and the 3rd Party contingency option to send waste to other sites will need to be engaged. Once the plant closes for a period of time it may be very difficult and expensive to get it operational again

8.3 It is therefore essential to meet the tight time frames associated with the end of the NMOL contract that these procurements commence as a matter of urgency.

8.4 Authority to procure works contracts to upgrade and maintain the plant

8.5 Without this work being undertaken the plant will not be fully compliant with regulatory and industry standards, it will also be more likely to fail and require expensive maintenance or be required to close with the loss of jobs and need to send waste to other plants across the country.

8.6 Exemptions Provided for all suppliers/supporting specialists/advisors

8.7 The requested exemptions for the technical advisors and supporting specialists are required to provide ongoing and continuity of specialist advice.

9.0 Financial implications

9.1 The 2022-2023 budget for EfW contract is £9.0 million. The medium-term financial strategy includes annual inflationary growth of £142,000 for this contract, and subject to approval by Full Council on 1 March 2023 will take the 2023-2024 gross budget to £9.1 million. In addition, Energy from Waste has an income target of £3.7 million, taking the net budget to £5.3 million for 2022-2023 and £5.4 million for 2023-2024.

9.2 In anticipation of increased costs with our energy from waste plant, £1.8 million has been built into a corporate contingency budget for growth, this would have been necessary regardless of which operating model is used for EfW. This is subject to approval by Full Council on 1 March 2023 and will be released subject to a business case and adjusted accordingly for factors such as income from energy.

9.3 Current forecasts indicate that the costs can be contained within the 2022-2023 approved budget and the draft budget for 2023-2024. However, these assumptions exclude any potential income from the sale of electricity prior to July 2023 therefore it is anticipated that the net cost will reduce in due course.

9.4 The financial impact of future contracts referred to in this report will not be finalised until such time as the procurement process is undertaken. However, at this stage, it is anticipated that the current level of proposed growth in the draft budget will be sufficient. Should there be any further impact on the budget then approvals will be sought in line with the Financial Procedure Rules.

- 9.5 There is a current agreed revenue budget of £1.3 million, funded by reserves, to provide resources to support the EfW Programme. It is anticipated that the sum is sufficient to undertake the immediate work required however, in order to progress the longer-term option appraisal work, further revenue resources may be required. Once these costs are understood further budget approvals will be sought in line with the Financial Procure Rules.
- 9.6 As outlined in this report, it will be necessary to undertaken capital works to the plant in order to meet current regulatory and market standards. The capital Programme presented to Cabinet on this agenda includes £7 million within the Corporate Provision for Future Programmes to fund this work. A business case will be completed to demonstrate the need and value for money of such investment, linked to the contractual arrangements and future options outlined in this report. Delegated authority is in place to enable draw down of these funds on completion of the business case.
- 9.7 This report seeks delegated authority to agree the settlement of all contractual termination obligations including dilapidations and financial settlement to WWS. Delegated authority is also sought to create supplementary capital budgets in the event that the Council receives payment from WWS to carry out dilapidation works.
[CN/20022023/A]

10.0 Legal implications

- 10.1 The recommendations are compliant with the Council's Constitution.
- 10.2 The recommendations comply with Public Law generally but specifically the Public Contracts Regulations 2015 (as amended) and the Best Value Duty set out in the Local Government Acts.
- 10.3 The recommendations facilitate the discharge of the Council's duties as a Waste Disposal Authority under the Environmental Protection Act 1990.
[HNR/20022023/L]

11. Equalities implications

- 11.1 This proposal has no equalities implications. All staff were engaged with in regards to the TUPE transfer from their current employer NMOL, engagement is also ongoing with the union.
- 11.2 Statutory waste collections for all residents of the city will not be affected by the content of this report.

12. All other implications

- 12.1 There are no environmental and climate change impacts, associated directly with this report as it is the intention to continue operation of the plant in accordance with the Environmental Permit and operations being undertaken over recent years. Closure of the

plant and diversion of the waste would give rise to negative environmental impacts due to the need to transport the waste via the road networks to other plants around the country adding to environmental emissions, increasing the carbon footprint of disposal and adding to congestion.

- 12.2 The Council will comply with its environmental aspirations as set out in the Council's Waste Strategy and climate change commitments.
- 12.3 Any future investment will look to deliver the highest possible environmental mitigations for waste disposal and emissions. These will include but not be limited to the incorporation of the latest technology for electricity generation, solar usage, heat capture technology, carbon capture technology, emission controls and energy efficiency measures.
- 12.4 The EfW plant is a council owned asset and as such the arrangement within this report is being undertaken with the input from the Assets and Corporate Landlord teams.
- 12.5 There are no other implications associated with this report.

13. Schedule of background papers

- 13.1 [EfW – Future Operations](#) A preceding report was taken to Cabinet on 8 December 2021.
- 13.2 An urgent decision report was provided under the urgent items provisions on the 9 February 2023.
- 13.3 [2023-2024 Budget and Medium Term Financial Strategy 2023-2024 to 2025-2026](#), report to Cabinet on 22 February 2023 and Full Council on 1 March 2023
- 13.4 [Capital Programme 2022-2023 to 2026-2027 Quarter three Review and 2023-2024 to 2027-2028 Budget Strategy](#), report to Cabinet on 22 February 2023 and Council on 1 March 2023

14. Appendices

- 14.1 Appendix 1: Technical Specialists to provide support to the EFW Programme for Exemption
- 14.2 Appendix 2 : List of Additional EFW suppliers for exemption