

# Birmingham City Council

## Report to Cabinet

27 June 2023



**Subject:** Decision Called In – Contract Award for the Operation and Maintenance of Tyseley ERF, Waste Transfer Stations and Household Waste Recycling Centres

**Relevant Cabinet Member:** Cllr Majid Mahmood, Cabinet Member for Environment

**Relevant O &S Chair(s):** Cllr Lee Marsham, Sustainability and Transport O&S Committee

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Are specific wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference:		
Is the decision eligible for call-in?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Following the request for 'call in' and subsequent referral back to Cabinet, Cabinet is now asked to take a final decision. This final decision cannot be 'called in'.		
Does the report contain confidential or exempt information?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, state which appendix is exempt, and provide exempt information paragraph number or reason if confidential:		
Appendix 2A		

## **1 Executive Summary**

- 1.1 The report sets out the reasons why the Sustainability and Transport O&S Committee 'called in' the decision to approve the 'Contract Award for the Operation and Maintenance of Tyseley ERF, Waste Transfer Stations and Household Waste Recycling Centres', and referred this decision back to Cabinet for re-consideration. This decision had been originally approved by Cabinet on 25 April 2023.
- 1.2 The members of the Sustainability and Transport Overview and Scrutiny Committee who 'called in' this decision are Cllr Chaman Lal (chair), and Cllrs Alex Aitken, David Barker, Colin Green, Timothy Huxtable and Richard Parkin.
- 1.3 The report also sets out the Executive response to this 'call in', and provides a new report, which seeks to obtain approval for the award of a contract following the Competitive Dialogue (CD) procurement process for the operation and maintenance of Tyseley ERD (Energy Recovery Facility), HWRCs (Household Waste Recycling Centre) and WTS (Waste Transfer Stations) at Tyseley, Kings Norton and Perry Barr. This also includes the redevelopment of the Kings Norton (Lifford Lane) waste management facility in accordance with the delegations approved by Cabinet on February 18 2018 in the strategy report in support of the Waste Strategy Framework 2017-2040.

## **2 Recommendations**

- 2.1 Notes, and considers, the reasons outlined by the Sustainability and Transport Overview and Scrutiny Committee to 'call in' and refer this decision back to Cabinet, as outlined in section 3.
- 2.2 Notes, and considers, the Executive response to the 'call in' as set out in Appendix 1.
- 2.3 Considers the recommendations outlined in the updated Cabinet Report (Appendix 2).

## **3 Background**

- 3.1 On 25 April 2023, Cabinet approved the Decision – 'Contract Award for the Operation and Maintenance of Tyseley ERF, Waste Transfer Stations and Household Waste Recycling Centres'. This decision was subject to 'call in'.
- 3.2 The 'call in' procedure is set out in the [Constitution Part B, 11.9](#).
- 3.3 Two requests to 'call In' this decision were received. Cllrs Ewan Mackey and Roger Harmer requested a 'Call In' on 26 April 2023; Cllrs Julien Pritchard and Rob Grant requested a 'call In' on 27 April 2023.

- 3.4 The Sustainability and Transport Overview and Scrutiny Committee met on 18 May 2023 to consider whether to 'call In' this decision and refer this decision back to Cabinet. The Committee was chaired by Councillor Chaman Lal, and Cllrs Alex Aitken, David Barker, Colin Green, Timothy Huxtable and Richard Parkin were also in attendance. The Cabinet Member for Environment, Cllr Majid Mahmood, attended to provide information on how and why the Cabinet took this decision. Cllrs Ewan Mackey, Roger Harmer and Julien Pritchard also attended to summarise their key reasons to request this decision is 'called in'.

***Summary of Discussion by Overview and Scrutiny Committee***

- 3.5 The criteria for 'call in' is set out in the constitution as follows:

Is the Executive decision within existing policy?

1. The decision appears to be contrary to the Budget or one of the 'policy framework' plans or strategies;
2. The decision appears to be inconsistent with any other form of policy approved by the full Council, the Executive or the Regulatory Committees;
3. The decision appears to be inconsistent with recommendations previously made by an Overview and Scrutiny body (and accepted by the Full Council or the Executive);

Is the Executive decision well-founded?

4. The Executive appears to have failed to consult relevant stakeholders or other interested persons before arriving at its decision;
5. The Executive appears to have overlooked some relevant consideration in arriving at its decision;
6. The decision has already generated particular controversy amongst those likely to be affected by it or, in the opinion of the Overview and Scrutiny Committee, it is likely to do so;
7. There is a substantial lack of clarity, material inaccuracy or insufficient information provided in the report to allow the Overview and Scrutiny Committee to hold the Executive to account and/or add value to the work of the Council;

Has the Executive decision been properly taken?

8. The decision appears to give rise to significant governance, legal, financial or propriety issues;
9. The notification of the decision does not appear to have been in accordance with council procedures.

- 3.6 When considering whether to refer this decision back to Cabinet for re-consideration, the Overview and Scrutiny Committee based their discussion around these criteria and with specific discussion on criteria 2, 3,4, 5, 6 and 8.

3.7 Criteria 2: the decision appears to be inconsistent with any other form of policy approved by the full Council, the Executive or the Regulatory Committees.

Points raised:

The decision is inconsistent with the Council's policies on clean air and climate change. The Council has declared a climate emergency in 2019 with cross party support. The Council also has an ambition to reach net zero carbon by 2030. As the contract will mean waste is incinerated until 2034 at the earliest, it falls outside of the target to reach net zero carbon by 2030 and is therefore incompatible with the Council's aims.

Following the Council's declaration of a Climate Emergency in 2019, the decision made in 2016 should have been revisited by the Executive as this provided a clear change of aims and objectives. There is no evidence of a reassessment.

There was insufficient evidence provided in the Cabinet report to highlight which other options had been considered. The options appraisal is based on data from 2016-17.

Response from Cabinet Member at the meeting:

The Council has a statutory duty to fulfil as a waste disposal authority. It has set itself competing priorities in the treatment of waste and its climate emergency and clean air policies. The only alternative solution to this is through the treatment and disposal of waste outside of the Birmingham area, and also to educate residents. This education is highlighted in the Environment and Sustainability Assessment.

The Council has declared a climate emergency with the objective of a just transition to alternative and greener methods for dealing with air pollution and waste disposal, so that the most disadvantaged in the city are not adversely affected. Its aim is to reach net zero by 2034 (or as soon as possible after).

The contract award is very cost effective for the citizens of this city.

Emissions from the Tyseley ERF are tightly controlled with strict limits. This will be strengthened from later this year and will impact on air pollution in the surrounding area. Public Health have completed a EHP study, which determined there are no social or health impacts as a result of living near the ERF. The Tyseley ERF complies with all legislative requirements and environmental permit requirements.

As part of the contract, a new fleet will be used which is compliant with the Council's Clean Air policy.

3.8 Criteria 3: the decision appears to be inconsistent with recommendations made by an Overview and Scrutiny Committee (and accepted by a full Council or the Executive).

Criteria 4: the Executive appears to have failed to consult relevant stakeholders or other interested persons before arriving at its decision.

### Points raised:

Previous scrutiny inquiries had recommended timely consideration of procurement options to ensure a full options appraisal. The current contract award is an example of failure to do this. A 5-year contract extension was put in place in 2019 at the end of the previous 25-year original contract award. This was designed to enable the Council to prepare for a full procurement process with a new contract to be implemented from 2024.

The decision made in 2019 for this contract extension had also been 'called-in'. The response from the Executive at this time was that lessons had been learnt, and the forthcoming procurement process for the new contract award from 2024 would involve looking at alternatives. However, the Council finds itself in the same position, and the previous recommendations have been ignored.

The Overview and Scrutiny Committee has not been kept updated on the progress of this procurement process before the final decision was taken. This is in spite of previous commitments made in 2016.

### Response from Cabinet Member at the meeting:

There has been a lengthy procurement process to enable the contract to consider the Council's climate emergency declaration in 2019 and the feedback from Route to Zero sessions organised by the Combined Authority. In 2020, the direction of the waste disposal strategy and moving waste through the waste hierarchy was discussed in these Route to Zero workshops. These workshops were generally supportive of the direction of the Council.

Only limited information could be shared at public committees due to the commercial sensitivity of awarding a contract, for example the progress of the procurement. The Council has to ensure that contractual information is kept confidential, otherwise it would be open to legal challenge. However, the Scrutiny Committee had received timely updates on the factual details that could be shared at their request.

The Cabinet Member values transparency and open-ness and would support greater information being shared with Members. He suggested we should revisit what information is available to Members in these cases.

The Cabinet Member advised he had not been invited to Overview and Scrutiny Committee to provide further information, with the exception of October 2022. However, he acknowledged that it may have been prudent to have attended more Committees to keep them informed and suggested that he would welcome attending Committee more often in future.

It was acknowledged that information (and the details of a meeting to discuss the award of the contract) was shared with members at very short notice. This meant that the Committee did not have the opportunity to inform this decision prior to the Cabinet meeting. The Cabinet Member confirmed that the information was provided to the Committee as soon as there was authority from Legal Services.

3.9 Criteria 5: the Executive appears to have overlooked some relevant consideration in arriving at its decision.

Points raised:

The Council did not appear to have considered all of the available options, and minimal analysis has been made of alternatives.

Members have been told that the contract must be of a minimum length of 10 years for the industry to consider it worthwhile, as alternatives with a shorter lifespan would be deemed to be a non-viable option. As the contract is being extended with the same provider, a set up period would not be required, and this would eliminate the need for a longer contract period.

The Cabinet report highlights that the incinerator is an old and out of date asset. It requires a lot of investment to keep it going, which is a further justification for the Council to be tied into a long contract. The amount of investment required to maintain the incinerator has not been considered carefully.

Furthermore, there is an assumption that recycling rates will not improve in the future to justify the continued use of the incinerator for waste disposal. Recycling levels for Birmingham remain low (Birmingham is ranked 330 out of 333 Local Authorities for total waste recycled) and have also remained static for the past 4 years. The city needs to improve its recycling levels, and currently this is being masked by using the incinerator. This demonstrates the need for a detailed action plan to increase recycling and reducing the use of the incinerator.

There is a need to make a serious commitment to reducing the amount of waste being sent to the incinerator. No comparison work has been undertaken to demonstrate the effect of reducing the total amount of waste going to the incinerator with the cost of sending waste to landfill. Even though travel would be involved, a cost analysis may indicate it costs the Council less to transfer a smaller amount of waste to another location. Consideration should be given as to whether an incinerator is actually required if waste disposal rates reduced significantly. There is an assumption that recycling rates will not improve in the future to justify the continued use of the incinerator for waste disposal.

Consideration needs to be given to alternative methods of disposal including looking at what other Local Authorities do.

Response from Cabinet Member at the meeting:

This decision is a contract award which has followed a procurement process. It does not seek to reopen the policy discussions about the decision taken to keep open the Tyseley ERF taken in 2018. The contract is in line with the Government's waste management plan, 2021.

This contract award is for a transitional contract, which will enable the Council to plan for a waste incinerator free post 2034 future. It is the intention to work with the Committee and other stakeholders in developing this. The transition plan

focuses on the use of developing technologies and working with other Local Authorities.

The disposal of waste outside of the city has been explored. However, by transporting waste outside of the city, this is in essence moving and creating a problem elsewhere.

Alternative technologies for the disposal of waste have also been explored. However, examples from other parts of the country highlight a range of issues which other Local Authorities have encountered including significant financial implications on the PFI; construction issues leading to increased costs, and poorly performing technology which has led to termination of the technology.

A 10-year contract maximises the lifespan of the Tyseley ERF and provides low carbon value for money. Significant investment has previously taken place to enable the plant to operate efficiently. Last year, this led to a reduction in waste being sent to landfill resulting in less costs to city overall. These savings led to a free bulky waste collection for residents on assisted collections.

Following feedback, this contract has been split into a number of packages. All of the contract packages will be coming to Cabinet. This contract award is for package 1. Recycling will feature in future packages. More could be done on recycling, and currently are exploring ways to improve recycling including around MHRCs and food waste. As regards high performing councils for recycling – all of them with the exception of St Albans use an incinerator to dispose of their waste. All are waiting for developing technologies to move away from this.

There does need to be a focus on reducing the overall amount of waste produced. The contract does look at reuse and recycling as part of its aim to push up the waste hierarchy.

It is agreed the City needs a detailed plan on how to reduce carbon emissions from the plant.

- 3.10 *Criteria 6: the decision has already generated particular controversy amongst those likely to be affected by it or, in the opinion of the Overview and Scrutiny Committee, it is likely to do so.*

Points raised:

There has been significant opposition to the extension of this contract. There is concern that in taking this decision, the Council's commitments and policies are not being adhered to (specifically the declaration of the Climate Emergency and to reach net zero carbon by 2030).

This is the second time this contract has been called in (previous contract award in 2016).

There has been media and press coverage covering this decision. This is highlighting cross party dissatisfaction.

Response from Cabinet Member at the meeting:

This decision is a new contract award which has followed a procurement process.

The Council has a statutory duty to fulfil as a waste disposal authority. It has set itself competing priorities in the treatment of waste and its climate emergency and clean air policies. The only alternative solution to this is through the treatment and disposal of waste outside of the Birmingham area, and also to educate residents. This education is highlighted in the Environment and Sustainability Assessment.

The Council has declared a climate emergency with the objective of a just transition to alternative and greener methods for dealing with air pollution and waste disposal, so that the most disadvantaged in the city are not adversely affected. Its aim is to reach net zero by 2034 (or as soon as possible after).

3.11 Criteria 8: the decision appears to give rise to significant legal, financial, governance or propriety issue.

Points raised:

There are concerns over the age and nature of delegations relied upon (appraisals undertaken in 2016 and agreed in 2018 but being implemented in 2023), and if actions taken are in line with the approved strategy as is a requirement of those delegations.

The cross-party group set up to be involved in the decision-making process has not met for 4-5 years.

Response from the Cabinet Member in the meeting:

This decision is a new contract award which has followed a procurement process and enables to Council to deliver its statutory duty to dispose of waste.

**Overview and Scrutiny Committee Resolution – from day of the meeting**

3.12 The Sustainability and Transport Overview and Scrutiny Committee resolved to refer this decision back to Cabinet for reconsideration.

3.13 The Decision was referred back to Cabinet on the following criteria:

Criteria 2: the decision appears to be inconsistent with any other form of policy approved by the full Council, the Executive or the Regulatory Committees.

The decision is inconsistent with the Council's declaration of the Climate Emergency and Clean Air policy. The contract will commit Birmingham to the use of a waste incinerator until at least 2034 (4 years after the target to reach net zero).

Criteria 3: the decision appears to be inconsistent with recommendations made by an Overview and Scrutiny Committee (and accepted by a full Council or the Executive).

There had been a lack of consultation with the Overview and Scrutiny Committee to inform the decision, despite previous recommendations to do this.



Criteria 4: *the Executive appears to have failed to consult relevant stakeholders or other interested persons before arriving at its decision.*

There had been a lack of consultation with the Overview and Scrutiny Committee to inform the decision, despite previous recommendations to do this.

Criteria 5: *the Executive appears to have overlooked some relevant consideration in arriving at its decision.*

Other key considerations in addition to the economic value and statutory duties have not been considered. It is understood that this is a balancing act, however this has not been achieved in this decision. The Council did not appear to have considered all of the available options, and minimal analysis has been made of alternatives.

Criteria 6: *the decision has already generated particular controversy amongst those likely to be affected by it or, in the opinion of the Overview and Scrutiny Committee, it is likely to do so.*

There is evidence that the decision has generated controversy amongst those likely to be affected by it.

Criteria 7: *there is a substantial lack of clarity, material inaccuracy or insufficient information provided in the report to allow the Overview and Scrutiny Committee to hold the Executive to account and/or add value to the work of the Council.*

There had been a lack of consultation with the Overview and Scrutiny Committee to inform the decision and add value, despite previous recommendations to do this. A member wide session was arranged a few days before the Committee; this was then rearranged, and an informal briefing was held after the Sustainability and Transport O&S Committee the week before the Cabinet meeting.

Criteria 8: *the decision appears to give rise to significant legal, financial, governance or propriety issue.*

There were no further comments provided by the Committee.

### ***Executive Response***

- 3.14 Following the decision by the Sustainability and Transport Overview and Scrutiny Committee to refer back to Cabinet, this decision needs to be reconsidered by Cabinet in June 2023. Appendix 1 sets out the Executive Response.
- 3.15 An updated report to Cabinet to seek approval for this decision is included in Appendix 2. This decision will not be subject to 'call in', as decisions can only be 'called in' once.

## **4 Options considered and Recommended Proposal**

- 4.1 The updated Cabinet Report outlines the options considered and the recommended proposal following the re-consideration of this decision, as set out in Appendix 2, 4.1-4.3

## **5 Consultation**

- 5.1 The updated Cabinet Report outlines the consultation undertaken, as set out in Appendix 2, 5.1-5.2 outlines the consultation undertaken.

## **6 Risk Management**

- 6.1 The updated Cabinet Report outlines the key risks to be managed, as set out in Appendix 2A.

## **7 Compliance Issues:**

- 7.1 The updated Cabinet Report, as set out in Appendix 2, 6.1, sets out how it is consistent with 'Everyone's Battle, Everyone's Business'; the Corporate Plan 2022-26; the Council's declaration of the Climate Change Emergency in 2019, and the Birmingham Business Charter for Social Responsibility.

### **7.2 Legal Implications**

- 7.2.1 This report ensures the Council follows the procedure for Call-In's, as set out in the [Constitution, Part B, 11.9](#).

- 7.2.2 The legal implications in relation to the updated Cabinet Report are set out in full in Appendix 2.

### **7.3 Financial Implications**

- 7.3.1 The financial implications in relation to the updated Cabinet Report are set out in full in Appendix 2.

### **7.4 Procurement Implications**

- 7.4.1 The procurement implications in relation to the updated Cabinet Report are set out in full in Appendix 2.

### **7.5 Human Resources Implications**

- 7.5.1 The human resources implications in relation to the updated Cabinet Report are set out in full in Appendix 2.

### **7.6 Public Sector Equality Duty**

- 7.6.1 The Council has a Public Sector Equality Duty under the Equality Act 2010 to have due regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- 7.6.2 The equalities implications in relation to the updated Cabinet Report are set out in full in Appendix 2.

## **8 Appendices**

- 8.1 Appendix 1 – Executive Response to the Sustainability and Transport Overview and Scrutiny Committee Report
- 8.2 Appendix 2 – ‘Contract Award for the Operation and Maintenance of Tyseley ERF, Waste Transfer Stations and Household Waste Recycling Centres Cabinet Report, 27 June 2023
  - Appendix A – Exempt Report
  - Appendix B – Birmingham Total Waste Strategy
  - Appendix C – Options Appraisal
  - Appendix D – Environment and Sustainability Assessment
- 8.3 Appendix 3 – Executive Record of Decision, 25 April 2023

## **9 Background Documents**

- 9.1 Birmingham City Council’s Overview and Scrutiny Framework, April 2021
- 9.2 [Birmingham City Council, Cabinet Report: Procurement Strategy for Waste Management Services in Support of the Waste Strategy Framework 2017-2040 \(13 February 2018\)](#)
- 9.3 [Birmingham City Council, Cabinet Report: Waste Disposal Contract Interim Arrangement Agreement \(11 December 2018\)](#)