



# Waste Disposal Contract Interim Arrangement Agreement

## Call In by the Resources O&S Committee

### 1 Request for “Call-In”

1.1 On 11<sup>th</sup> December 2018 Cabinet took a decision to:

- Authorise the Corporate Director of Place to enter into a 5 year Interim Arrangement Agreement for the provision of waste disposal services with Veolia.
- Delegate authority to the Cabinet Member for Clean Streets, Waste and Recycling and the Cabinet Member for Finance and Resources jointly with the Director of Commissioning & Procurement, the Corporate Director of Finance & Governance (or their delegate), Corporate Director of Place and the City Solicitor (or their delegate) to finalise and agree the terms of the Interim Arrangement Agreement.
- Delegate authority to the City Solicitor (or their delegate) to execute all other necessary contractual documentation to effect this outcome

1.2 A private report accompanied the public report to Cabinet. Matters discussed at the call-in that refer to that private report are set out in a separate private scrutiny appendix.

1.3 A request for Call-In was made to the Resources Overview and Scrutiny (O&S) Committee by Councillors Sir Albert Bore and Josh Jones on 14<sup>th</sup> December 2018.

1.4 The Resources O&S Committee met on 20<sup>th</sup> December 2018 to consider the matter. However, due to key officers being unable to attend (because of ACAS talks), the Committee and the Cabinet Members for Finance & Resources, and Clean Streets, Waste and Recycling, agreed that the meeting be adjourned.

1.5 The committee reconvened on Thursday 10<sup>th</sup> January 2019, where consideration of the call-in was preceded by an evidence gathering session on the background and circumstances of the decision.

### 2 Key Issues

2.1 Members of the Committee heard from both elected members and officers involved in the decision:

- Cllr Lisa Trickett (former Cabinet Member with responsibility for waste); Cllr Majid Mahmood (now the Cabinet Member with responsibility for waste, and previously with responsibility for



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procurement) and Cllr Brett O'Reilly (Cabinet Member with responsibility for finance and resources);

- Rob James (Acting Director for Place since July 2018); Darren Share (Director with responsibility for waste since August 2018); Mike Smith (Acting Head of Commissioning and Procurement with responsibility for the procurement of the contract since October 2018).

2.2 The key issues discussed in the session were:

- a) Loss of strategic capacity. The Cabinet Members and former Cabinet Member all referred to the significant turnover of officers with responsibility for this area of the Council (including the loss of a Head of Sustainability) and how that contributed to a lack of leadership, direction and consistency. Lack of capacity was also an issue. Members of the committee acknowledged the severe detrimental impact of the loss of corporate knowledge and memory and the effect of such a high turnover of staff. As stated by both officers and Members, this is the biggest piece of investment the city has and a new facility certainly would be, so this should be given the priority it requires and deserves.
- b) The lack of reference to the long term vision for the city. The From Waste to Resource Scrutiny Inquiry (2014) set out an important framework within which to do something different as an authority. The 2016 Waste Strategy Report to Cabinet built on this, but this needs to be explicitly stated. The strategic fit of Tyseley Energy from Waste Plant was key to support a move to a low carbon city and to support sustainability priorities. This report does not reference that at all. The long-term vision for the city must be of paramount concern and importance in all of this.
- c) Concerns over best value. Members challenged the benefits listed in the reports (see appendix on private agenda). It was explained by the Cabinet Member and officers that the additional money required from the City Council was to extend the life of the plant (not to undertake maintenance, **which was Veolia's responsibility**). Another issue raised was the additional 2019+ budget requirement (see appendix on private agenda for more detail).
- d) A number of governance issues were uncovered. It was established that at no point did Cabinet authorise the negotiation of a five year extension, but that this was put on the table by Veolia in July 2018. A report to bring this decision back to Cabinet was repeatedly deferred. When it did come, the decision report did not explicitly set out the choice Cabinet had of the two-year or five-year extension. Indeed the report stated that the former option **had been "rejected"** – but did not state by whom or on what authority, given that that was the February 2018 Cabinet decision. Only Cabinet had the authority to reject or amend that decision. Members noted the findings of the independent report into the waste strike of 2017 (published December 2018) which referred to decisions taken at meetings that were not formal Cabinet meetings, so there was no accountability and transparency. The option of a five year extension should have been brought to Cabinet earlier, for it to make a decision on the potential for a five year overrun, which would have laid out a path for Cabinet to make that final determination when all the facts were known. It is also of great



concern that it took more than three months to take a decision paper from Council Management Team to Cabinet, with a cliff edge four months away from the CMT decision. There are significant lessons from this that the City Council must learn from.

- e) Secondly with regards to governance, the issuing of the VEAT notice and the soft market testing was unconstitutional. Whilst members understood the reasons for that – specifically the extremely tight time constraints – these matters should not have been implemented until the expiry of the call-in period.
- f) The move from a two-year to a five-year extension was repeatedly challenged, particularly in light of the serious legal advice given in the private report. Officers responded that the feedback from the market during the soft market testing was that an extension to the overrun and the completion of the essential works on the Tyseley plant would encourage more firms to come forward to bid in future. It was also noted that the community sector required more time to develop processes to provide services. However, it was acknowledged by all participants that we were now in a position where we have little choice but to extend the contract with Veolia – whether that be by two years or five. It is therefore crucial that specific and binding targets on performance are agreed with Veolia whether for a two-year or a five-year extension. These must be enshrined within the contract.
- g) The legal advice contained in the private report raises serious challenge to the decision. The Cabinet Member for Finance and Resources acknowledged those risks but stated that, in his judgement and based on the expert opinion of officers and consultants, there was a risk of challenge from any extension, and that the financial gains for the five year extension made that a risk worth taking. Scrutiny members were at best sceptical that the stated financial benefits would be realised and therefore outweigh the legal risks. Officers further stated that following discussions with potential bidders, the preference was for longer time to prepare for a new contract so challenges may not be forthcoming.

2.3 Other issues discussed included the condition in which the Tyseley EfW plant should be returned to the City Council (in particular whether the original contract had changed in this respect – there was no clear answer to this) and the essential works to be carried out.

### 3 The Call-In Criteria

3.1 At the meeting, Cllr Jones highlighted the following reasons for the request for call-in:

- 1. *the decision appears to be contrary to the Budget or one of the 'policy framework' plans or strategies* – the decision makes no reference to the 2016 Waste Strategy (point b above) and there are costs associated that are not covered in the budget consultation for 2019/20 (point c above);
- 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 not consistent with the



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decision made by Cabinet in February 2018 which authorised negotiations for a two-year extension. There is very little reference to this in the December 2018 report and it is not made clear that Cabinet has a choice of a two-year or five-year extension (point d above). It is also not consistent with other previous Cabinet decisions: '*Update on the Development of a Waste Strategy for Birmingham*' on 28<sup>th</sup> June 2016 and '*Procurement Strategy for Waste Management Services*' on 13<sup>th</sup> February 2018;

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) – the 2014 Scrutiny Inquiry into From Waste to Resource set out a way forward for the waste strategy and consequent procurement, and was agreed by City Council in June 2014 but was not followed, as is demonstrated by successive tracking reports. Also the decision makes no reference to the 2016 Waste Strategy (point b above);*
4. *the Executive appears to have failed to consult relevant stakeholders or other interested persons before arriving at its decision – the report does not mention any consultation with members including Cabinet Members;*
5. *the Executive appears to have overlooked some relevant consideration in arriving at its decision – there are no references to previous policy or the long term strategy for the city;*
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 so to do – the legal advice suggests there may well be challenge, and the decision is not set in the context of the longer term vision set out in the Waste Strategy;*
8. *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 is a lot of information that the O&S committee received to consider before this call-in and this should be made available to Cabinet Members in considering the decision;*
9. *the decision appears to give rise to significant legal, financial or propriety issues – the significant legal issues are set out in section 7.2 of the private report. The governance concerns (points d and e above) also give rise to significant propriety issues.*

## 4 The Committee Resolution

- 4.1 The Committee resolved to call-in the decision for reconsideration by Cabinet, five votes to zero, on the grounds set out above.
- 4.2 I therefore formally ask the Cabinet to reconsider its decision. The decision report is deficient in a number of respects and Cabinet should have sight of additional information that is not currently in either the public or private report. The committee recommends that a supplementary report accompanies the decision reports when Cabinet reconvenes. This should include:



- The comparison of the two-year and five-year extension options, which should be clearly set out so as to give Cabinet full insight into the decision to be taken. This should include details of the expected benefits from each option, and the likelihood of realising these benefits, as against the legal risks associated with each;
- How the decisions taken support the Waste Strategy already adopted by the City Council;
- The budget position should be clearly explained (see point c above) and the sentence in the **private report that states that the budget "is provided for in the 2019+ budget proposals"** should be removed.

**Councillor Sir Albert Bore**

**Chair, Resources Overview and Scrutiny Committee**

## **Birmingham City Council Waste Disposal Contract – Interim Arrangement Agreement**

### **Executive response to ‘Call In’ of decision made by Cabinet 11 December 2018**

#### **Cabinet Meeting – 15<sup>th</sup> January 2019**

##### **1. Background**

The decisions made by Cabinet on 11<sup>th</sup> December 2018 were to:

- Authorise the Corporate Director of Place to enter into a five year Interim Arrangement Agreement for the provision of waste disposal services with Veolia.
- Delegate authority to the Cabinet Member for Clean Streets, Waste and Recycling and the Cabinet Member for Finance and Resources jointly with the Director of Commissioning & Procurement, the Corporate Director of Finance & Governance (or their delegate), Corporate Director of Place and the City Solicitor (or their delegate) to finalise and agree the terms of the Interim Arrangement Agreement.
- Delegate authority to the City Solicitor (or their delegate) to execute all other necessary contractual documentation to effect this outcome.

A private report accompanied the public report to Cabinet.

A request for Call-In was made to the Resources Overview and Scrutiny (O&S) Committee by Councillors Sir Albert Bore and Josh Jones on 14 December 2018.

The committee initially met on 20<sup>th</sup> December 2018 but adjourned that meeting and reconvened on Thursday 10<sup>th</sup> January 2019, where consideration of the Call-In was preceded by an evidence gathering session on the background and circumstances of the decision.

Members of the Committee heard from both elected members and officers involved in the decision:

- Cllr Lisa Trickett (former Cabinet Member with responsibility for waste); Cllr Majid Mahmood (now the Cabinet Member with responsibility for waste, and previously with responsibility for procurement) and Cllr Brett O'Reilly (Cabinet Member with responsibility for finance and resources);
- Rob James (Acting Director for Place since July 2018); Darren Share (Director with responsibility for Waste since August 2018); Mike Smith (Acting Head of Commissioning and Procurement Head of Category with responsibility for the procurement of the contract since October 2018).

##### **2. Reason for Request for Call-in**

The reason for the request for Call-In was that:

- a) the decision appears to be contrary to the budget or one of the ‘policy framework’ plans or strategies;

- b) the decision appears to be inconsistent with any other form of policy approved by the full Council, the Executive or the Regulatory Committees;
- c) the decision appears to be inconsistent with recommendations previously made by an Overview and Scrutiny body;
- d) the Executive appears to have failed to consult relevant stakeholders or other interested persons before arriving at its decision;
- e) the Executive appears to have overlooked some relevant consideration in arriving at its decision;
- f) 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 so to do;
- g) 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;
- h) the decision appears to give rise to significant legal, financial or propriety issues;

### 3. Key Issues raised by the Scrutiny Committee and response

**Loss of strategic capacity.** It is acknowledged that there has been high turnover of senior staff in this area. Despite the resource challenges there has been significant progress following the presentation of a revised offer from Veolia in July to move from a two year overrun Interim Arrangement Agreement to a five year Interim Arrangement Agreement. The offer was considered with external technical and legal experts in the field and the proposal presented to the Council's Management Team and the Executive Management Team. The financial implications were discussed at the Executive Management Team away day when considering the budget for 2019/20 and a report was prepared for Cabinet to consider the proposal. Going forward, the service will ensure the correct level of project management and support is available for the re-procurement of the waste disposal contract.

**Lack of reference to the long term vision for the City.** In July 2014 the Transport Connectivity and Sustainability Overview and Scrutiny Committee undertook a review of waste to resources. There were eight recommendations contained within the report. All were completed and three related to the procurement of the waste disposal contract:

- R04 Draft procurement plan to achieve the goals of the Waste Strategy
- R05 A rigorous analysis of the Tyseley Plant and site
- R07 Develop future options for HRCs (Household Recycling Centres)

The Waste Strategy identified over 200 different approaches to waste disposal and through a process involving the market, service specialists and local elected members the current procurement plan was developed. This plan was tracked through the Overview and Scrutiny process. The procurement plan (R04) has been followed and will be implemented during the period of the Interim Agreement. The Interim Arrangement Agreement and the subsequent contracts will allow time to investigate new technologies before any commitment to replace the Tyseley plant

beyond any life extension works. A significant piece of work will need to be started to procure a long term solution for Birmingham's waste. That work will commence immediately in order to have a clear strategic vision to provide an alternative to the Tyseley plant before it comes to the end of its extended working life. The procurement of this replacement plant will start in year one of the new disposal contract.

The Cabinet report requested the option to pursue an Interim Arrangement Agreement for a five year period to enable the Tyseley plant to be invested in, to extend its working life but only if:

- suitable terms can be agreed with Veolia; and
- procurement risk has been suitably mitigated through no procurement challenge being launched within 30 days of the issue of a VEAT notice.

Soft market testing was undertaken in November 2017. The market raised concerns about the two year timescale and the capital works to be completed, which could give the incumbent operator an unfair advantage and lead to risk pricing.

There are significant benefits of pursuing a five year Interim Arrangement Agreement in lieu of a two year Interim Arrangement Agreement these are outlined more fully in Appendix 1 of the Private Report.

Within the existing contract, Veolia is responsible for the on-going repairs to the City's assets at five waste disposal sites across the city. This obligation ceases on 16<sup>th</sup> January 2019 when the contract ends.

**Concerns over best value.** This repairing obligation ceases on 16<sup>th</sup> January 2019 when the contract ends. The essential works to be undertaken under the five year Interim Arrangement Agreement ("Essential Works") to the EFW (Energy from Waste) plant will be required and technical engineering experts have advised on the ability to deliver these and over what time period.

Veolia has presented a schedule of works along with a financial offer to the City Council that could provide significant financial and operational benefits if a five year Interim Arrangement Agreement is approved. As stated above, this is contained within the Private Agenda Executive response report.

The essential works that have been identified will be funded by the City Council. A series of commercial meetings have taken place between with Veolia and our technical engineering experts, Fichtner, to agree what essential works Veolia are able to deliver and over what time period to have the minimum disruption to the service. Veolia presented a schedule of works along with a financial offer to the Council that could provide the Council with significant benefits if a five year Interim Arrangement Agreement was offered as opposed to the two year overrun currently in place. This arrangement will also ensure the essential works will be completed (subject to the procurement timetable) before the waste disposal contract is re-procured. The benefits of this approach are summarised in the Private report.

In respect of the 2019+ budget, there are assumed savings which are currently identified as a pressure. This assumption did not include a provision for ongoing repairs and maintenance. The five year Interim Arrangement Agreement will make a contribution to this saving target which is over and above that offered by a two year Interim Arrangement Agreement. This is covered in the Private Report.



**Governance Issues.** During negotiations for the two year deal a five year interim arrangement was offered by Veolia and this had been repeatedly rejected. However when a formal offer was received from Veolia in July 2018 it was presented and discussed at an internal meeting of Officers and the Cabinet Member. The Cabinet Member instructed Officers to investigate the five year Interim Arrangement Agreement. Whilst the five year proposal was to be explored the governance for the decision to proceed sat with Cabinet, hence the Cabinet Report was presented in December 2018.

**Issue of VEAT notice.** The internal and external legal advice was to issue a VEAT notice. The VEAT notice is the formal way to let the market know the proposed extension by the City Council of this contract. The VEAT notice was required to be issued 31 days before the end of the current contract and was therefore issued on the 13<sup>th</sup> December 2018. The issue of a VEAT notice is irrespective of the length of time of the contract extension. The VEAT notice has to state the maximum period of time of the extension. Once issued the proposed extension time could be reduced but not extended.

#### 4. The Committee Resolution

The Committee resolved to Call-In the decision for reconsideration by Cabinet, five votes to zero, on the grounds set out above.

Cabinet is being asked to reconsider its decision. The view of the Scrutiny Committee is that the decision report is deficient in a number of respects and Cabinet should have sight of additional information that is not currently in either the public and private report.

The scrutiny committee recommends that a supplementary report accompanies the decision reports when Cabinet reconvenes to include:

- The comparison of the two-year and five-year extension options, which should be clearly set out so as to give Cabinet full insight into the decision to be taken. This should include details of the expected benefits from each option, and the likelihood of realising these benefits, as against the legal risks associated with each;
- How the decisions taken support the Waste Strategy already adopted by the City Council;
- The budget position should be clearly explained and that the sentence in the private report in that states that the budget “is provided for in the 2019+ budget proposals” should be removed.

#### 5. Comments in response:

In response to the concerns raised by the Scrutiny Committee and to support the decision report of the 11<sup>th</sup> December 2018 the following information is submitted:

##### 5.1 Comparison of the two year and five year options

See Appendix 1 of Private Report.

## 5.2 How Decisions support the Waste Strategy

The procurement plan completely supports the Waste Strategy. It is proposed that the existing single contract will be broken down to smaller contracts to allow other contractors to bid for the work. The five year Interim Arrangement Agreement will also allow the City Council to respond to Governments 25 year plan for Waste. The consultation has only recently been issued and asks the question about further splitting the waste stream and increasing recycling.

## 5.3 The Budget Position

This is explained in Paragraph 3 above.

## **PUBLIC REPORT**

<b>Report to:</b>	<b>CABINET</b>
<b>Report of:</b>	<b>Acting Corporate Director Place</b>
<b>Date of Decision:</b>	<b>11 December 2018</b>
<b>SUBJECT:</b>	<b>WASTE DISPOSAL CONTRACT INTERIM ARRANGEMENT AGREEMENT</b>
<b>Key Decision: Yes</b>	<b>Relevant Forward Plan Ref: 005675/2018</b>
<b>If not in the Forward Plan: (please "X" box)</b>	<b>Chief Executive approved <input type="checkbox"/>x</b>
<b>Relevant Cabinet Member(s)</b>	<b>O&amp;S Chair approved <input type="checkbox"/>x</b>
	<b>Councillor Brett O'Reilly – Finance and Resources</b>
	<b>Councillor Majid Mahmood – Clean Streets, Waste and Recycling</b>
<b>Relevant O&amp;S Chair:</b>	<b>Councillor Albert Bore, Resources</b>
<b>Wards affected:</b>	<b>All</b>

### **REPORT**

**\* To be completed for all late reports, ie. which cannot be despatched with the agenda papers ie. 5 clear working days' notice before meeting.**

#### **Reasons for Lateness**

Further discussions were required with Legal Services.

#### **Reasons for Urgency**

There is a requirement to submit this to 11 December 2018 Cabinet.

**Public Report**  
**Birmingham City Council**  
**Report to Cabinet**  
**11<sup>th</sup> December 2018**



**Subject:** Waste Disposal Contract Interim Arrangement Agreement  
**Report of:** Corporate Director for Place  
**Relevant Cabinet Member:** Joint Report with Cllr Brett O'Reilly – Finance and Resources  
 Cllr Majid Mahmood – Clean Streets, Waste and Recycling  
**Relevant O &S Chair(s):** Cllr Sir Albert Bore, Resources O&S Committee  
**Report author:** Darren Share, Director – Waste Management

Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" 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 checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential :		

## **1 Executive Summary**

- 1.1 To inform Cabinet of the proposal to enter into a 5 year Interim Arrangement Agreement with Veolia for the continued provision of waste disposal services. A private report deals with the confidential and/or exempt information not covered in the public report and seeks approval of the proposal together with the relevant delegations.

## **2 Recommendations**

- 2.1 That Cabinet:
- 2.1.1 Notes the contents of this report.
- 2.1.2 Authorises the Corporate Director of Place to enter into a 5 year Interim Arrangement Agreement for the provision of waste disposal services with Veolia.

- 2.1.3 Delegates authority to the Cabinet Member for Clean Streets, Waste and Recycling and the Cabinet Member for Finance and Resources jointly with the Director of Commissioning & Procurement, the Corporate Director of Finance & Governance (or their delegate), Corporate Director of Place and the City Solicitor (or their delegate) to finalise and agree the terms of the Interim Arrangement Agreement.
- 2.1.4 Delegates authority to the City Solicitor (or their delegate) to execute all other necessary contractual documentation to effect this outcome.

### **3 Background**

- 3.1 The Council first awarded the waste disposal contract to Veolia for Waste Disposal Services and the construction of a new Incinerator Plant on 9<sup>th</sup> July 1993 for the duration of 25 years, and the contract commenced on 17<sup>th</sup> January 1994, expiring on 16<sup>th</sup> January 2019.
- 3.2 On 28<sup>th</sup> June 2016 Cabinet approved the recommendation of an Overrun Agreement with a stop date of January 2021. The rationale for this recommendation was the Overrun Agreement would mitigate the risk of any delays in the procurement process which could result in the Council not having a waste disposal contract in place before the mobilisation of a replacement provider. The rationale supporting agreement of this original overrun were to:
- ensure continuity of services through plant availability.
  - ensure asset condition was fit for purpose for the replacement contract.
  - reduce the Council's exposure to additional landfill tax.
- 3.3 A re-procurement strategy was developed during 2017 and agreed by Cabinet on 13<sup>th</sup> February 2018.
- 3.4 A project group was established in September 2016 consisting of 3 work streams, these being Procurement, Interim Arrangement Agreement and Asset (handback \ condition). The work streams consisted of representation from internal officers and external expertise from within the waste industry. The external representation has been provided by Bevan Brittan providing legal expertise, Price Waterhouse Cooper providing financial expertise, Fichtner Ltd acting as consulting engineers and Ricardo as Energy and Environment Consultants.
- 3.5 Findings (2017 Outage Inspection Report) from plant and site surveys undertaken by external technical experts in readiness for the hand back of assets to the Council identified a number of Essential Works which if not undertaken pose significant high risk to the Council in meeting its continuing obligations to manage waste disposal and reduce waste going to Landfill. During negotiations undertaken with the current provider and our technical experts it was concluded that it is not possible for all of these Essential Works to be completed within the timeframe that the approved 2 year Interim Arrangement Agreement allows.

An alternative option to enter into an enhanced Repairs and Maintenance Programme during the 2 year Interim Arrangement Agreement to include only some of the Essential Works was considered in July 2018 by the Waste Management Service Programme Board but rejected as it would result in;

- a) Higher costs resulting from delivery of the enhanced R & M as the Essential Works are still required and the risk priced in by bidders in the procurement process due to the uncertainty over the condition of the assets.
- b) Significantly increased risk of plant failure impacting on level of waste sent to Landfill, an enhanced R & M still leaves the Council at risk and there will be extended delays to having the works completed while new providers then source and carry out the remaining works needed.

3.6 Following a Waste Management Service Programme Board in June 2018 the impact of not completing the essential works was discussed. This led to a review of detailed options for an Interim Arrangement Agreement. It was identified that an increased 5 year Interim Arrangement Agreement would facilitate and help effectively deliver the new long term strategic procurement and essential maintenance works. The rationale supporting this would include the fact that:

- a) The interim period will enable a suitably structured and thought through procurement process be delivered by the Council over an appropriate time period for the recommissioning of the waste disposal service.
- b) All Essential Works will be undertaken to the Tyseley Energy Recovery Facility (ERF) during the interim period.
- c) The completion of the Essential Works that will be carried out during any extension will be advantageous to all bidders in any re-procurement exercise. For example by ensuring that the ERF plant will meet the agreed specification for handover to a new operator so bidders will not need to risk price for uncertainties in this regard
- d) The interim period will allow for suitable mobilisation arrangements to be made and/or secure consents (if required) for any future waste management sites ahead of re-procurement; and
- e) The interim period will enable greater information to be shared with future bidders about performance of the ERF, and potentially including access to the ERF during planned shutdowns for the purpose of conducting their due diligence in compiling tenders in a future procurement process.

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

- 4.1 An in house provision was considered but rejected, details are contained in the private report.
- 4.2 Exercise the decision of Cabinet on 28<sup>th</sup> June 2016 and extend the existing agreement with Veolia for a period of 2 years whilst the re-procurement exercise is undertaken. This option was rejected because the required Essential Works cannot be completed within this timeframe. In addition and given the

current condition of the plant and the Essential Works required it is highly likely that bidders would include a significant risk premium in their pricing submissions under a new procurement.

- 4.3 Immediately commence re-procurement of a replacement waste disposal contract. This option was rejected because there is insufficient time to complete a tender process and consequently it may leave the Council with a period of time without a contract whilst this process is concluded and the reasons stated above.

## **5 Consultation**

### **5.1 Internal**

Officers from Waste Management, Finance, Commissioning and Procurement and Legal Services have been involved in the preparation of this report and support and recommendation.

### **5.2 External**

- 5.2.1 There has been consultation with specialist Legal and Engineering Companies. The legal issues were raised and mitigated against and are explained in the Private Report due to their commercial nature. Their advice has been used to compile this report.

## **6 Risk Management**

- 6.1 To enable the Council to mitigate the risk of Interim Arrangement Agreement in the procurement and implementation of the new arrangements for the treatment and disposal of waste.
- 6.2 To reduce the risk of plant failure and impact to Landfill which delaying Essential Works presents.

## **7 Compliance Issues:**

### **7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?**

- 7.1.1 The Council approved and adopted the Council Plan 2018-2020, which identifies strategic outcomes for change in Birmingham (Children, Housing, Jobs and Skills and Health). This decision supports the priorities as follows:
- 7.1.2 We want Birmingham to be a great City to live in. This decision will enable improved facilities at household waste recycling centres at Tyseley, Perry Barr and Lifford Lane whilst reducing the risk of plant failure at the Tyseley ERF which would result in increased waste to landfill whilst any plant failures are

rectified. This will not remove the risk of additional waste to landfill from other factors beyond our control e.g. changes in collection or waste flows.

## **7.2 Legal Implications**

- 7.2.1 Maintaining the provision of waste disposal facilities facilitates the discharge of the Council's duty as a waste disposal authority under Section 51 of the Environmental Protection Act 1990.
- 7.2.2 The council has a duty to act as both a Waste Collections Authority and a Waste Disposal Authority under the Environmental Protection Act 1990.
- 7.2.3 Under S.111 of the Local Government Act 1972, the Council is entitled to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions.
- 7.2.4 The Council has best value duty under the Local Government Act 1999 to improve the efficiency, economy and effectiveness of the service it delivers.
- 7.2.5 The legal implications that may occur as a consequence of taking the decision are detailed in the Private Report due to their commercial sensitivity.

## **7.3 Financial Implications**

- 7.3.1 The Interim Arrangement Agreement will contribute towards addressing the existing budget pressures faced by the Service. The financial implications are commercially confidential and are set out in the private report.

## **7.4 Procurement Implications**

- 7.4.1 The Procurement Strategy in support of the outline Municipal Waste Strategy 2017 – 2040 dealing with all long term procurement decisions was approved by Cabinet in February 2018 and this is unchanged apart from the timeline.

## **7.5 Human Resources Implications**

- 7.5.1 It is intended that TUPE arrangements will not be applicable and this will be detailed in the Interim Arrangement Agreement once finalised.

## **7.6 Public Sector Equality Duty**

- 7.6.1 Attached as appendix 1.

## **8 Background Documents**

- 8.1 Appendix 1 - Public Sector Equality Duty Statement
- 8.2 Appendix 2 – Equality Impact Initial Assessment



## **Appendix 1**

### **PROTOCOL PUBLIC SECTOR EQUALITY DUTY**

- 1 The public sector equality duty drives the need for equality assessments (Initial and Full). An initial assessment should, be prepared from the outset based upon available knowledge and information.
- 2 If there is no adverse impact then that fact should be stated within the Report at section 4.4 and the initial assessment document appended to the Report duly signed and dated. A summary of the statutory duty is annexed to this Protocol and should be referred to in the standard section (4.4) of executive reports for decision and then attached in an appendix; the term 'adverse impact' refers to any decision-making by the Council which can be judged as likely to be contrary in whole or in part to the equality duty.
- 3 A full assessment should be prepared where necessary and consultation should then take place.
- 4 Consultation should address any possible adverse impact upon service users, providers and those within the scope of the report; questions need to assist to identify adverse impact which might be contrary to the equality duty and engage all such persons in a dialogue which might identify ways in which any adverse impact might be avoided or, if avoidance is not possible, reduced.
- 5 Responses to the consultation should be analysed in order to identify:
  - (a) whether there is adverse impact upon persons within the protected categories
  - (b) what is the nature of this adverse impact
  - (c) whether the adverse impact can be avoided and at what cost – and if not –
  - (d) what mitigating actions can be taken and at what cost
- 6 The impact assessment carried out at the outset will need to be amended to have due regard to the matters in (4) above.
- 7 Where there is adverse impact the final Report should contain:
  - a summary of the adverse impact and any possible mitigating actions (in section 4.4 or an appendix if necessary)
  - the full equality impact assessment (as an appendix)
  - the equality duty – see page 9 (as an appendix).

## Equality Act 2010

The Executive must have due regard to the public sector equality duty when considering Council reports for decision.

The public sector equality duty is as follows:

1	<p>The Council must, in the exercise of its functions, have due regard to the need to:</p> <ul style="list-style-type: none"><li>(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act;</li><li>(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;</li><li>(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.</li></ul>
2	<p>Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:</p> <ul style="list-style-type: none"><li>(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;</li><li>(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;</li><li>(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.</li></ul>
3	<p>The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.</p>
4	<p>Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:</p> <ul style="list-style-type: none"><li>(a) tackle prejudice, and</li><li>(b) promote understanding</li></ul>
5	<p>The relevant protected characteristics are:</p> <ul style="list-style-type: none"><li>(a) age</li><li>(b) disability</li><li>(c) gender reassignment</li><li>(d) pregnancy and maternity</li><li>(e) race</li><li>(f) religion or belief</li><li>(g) sex</li><li>(h) sexual orientation</li></ul>

Title of proposed EIA	Proposed Interim Arrangement for Waste Disposal Services
Reference No	EQUA125
EA is in support of	Amended Function
Review Frequency	Annually
Date of first review	01/09/2019
Directorate	Place
Division	Waste Management
Service Area	Waste Management
Responsible Officer(s)	<input type="checkbox"/> Bethany Hughes
Quality Control Officer(s)	<input type="checkbox"/> Lesley Ariss
Accountable Officer(s)	<input type="checkbox"/> Darren Share
Initial equality impact assessment of your proposal	The proposal is to enter into a 5 year interim arrangement agreement with Veolia for the provision of waste disposal services. The request is that Cabinet, supplementary to the decision by Cabinet in June 2016, approves the principle of an additional 3 year interim arrangement agreement for the provision of waste disposal services and the authority to enter in a 5 year overrun agreement with Veolia.
Protected characteristic: Age	Not Applicable
Age details:	
Protected characteristic: Disability	Not Applicable
Disability details:	
Protected characteristic: Gender	Not Applicable
Gender details:	
Protected characteristics: Gender Reassignment	Not Applicable
Gender reassignment details:	
Protected characteristics: Marriage and Civil Partnership	Not Applicable
Marriage and civil partnership details:	
Protected characteristics: Pregnancy and Maternity	Not Applicable
Pregnancy and maternity details:	
Protected characteristics: Race	Not Applicable
Race details:	
Protected characteristics: Religion or Beliefs	Not Applicable

Religion or beliefs details:

Protected characteristics: Sexual Orientation Not Applicable

Sexual orientation details:

Consulted People or Groups Consultation with Senior management team, Legal Services, Procurement and Finance etc and Veolia.

Informed People or Groups Senior management team, Legal Services, Procurement and Finance etc and Veolia.

Summary and evidence of findings from your EIA No impact on any service users, employees or the wider community. It it to continue current working arrangements to ensure the following while work continues on the procurement for the long term disposal contract:

- ensure service continuity through plant availability.
- ensure asset condition was fit for purpose for the replacement contract.
- negotiate the Gate Fee and Capacity Fee.
- reduce exposure to additional landfill tax.

Submit to the Quality Control Officer for reviewing? Yes

Quality Control Officer comments

Decision by Quality Control Officer

Submit draft to Accountable Officer? No

Decision by Accountable Officer

Date approved / rejected by the Accountable Officer

Reasons for approval or rejection

Please print and save a PDF copy for your records Yes

Content Type: Item

Version: 3.0

Created at 26/09/2018 12:28 PM by ☐ Bethany Hughes

Last modified at 26/09/2018 12:28 PM by Workflow on behalf of ☐ Bethany Hughes

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