

BIRMINGHAM CITY COUNCIL

RESOURCES OVERVIEW AND SCRUTINY COMMITTEE

THURSDAY, 20 DECEMBER 2018 AT 14:00 HOURS
IN COMMITTEE ROOM 6, COUNCIL HOUSE, VICTORIA SQUARE,
BIRMINGHAM, B1 1BB

A G E N D A

1 NOTICE OF RECORDING/WEBCAST

The Chairman to advise/meeting to note that this meeting will be webcast for live or subsequent broadcast via the Council's Internet site (www.civico.net/birmingham) and that members of the press/public may record and take photographs except where there are confidential or exempt items.

2 APOLOGIES

To receive any apologies.

3 DECLARATIONS OF INTERESTS

Members are reminded that they must declare all relevant pecuniary and non pecuniary interests arising from any business to be discussed at this meeting. If a disclosable pecuniary interest is declared a Member must not speak or take part in that agenda item. Any declarations will be recorded in the minutes of the meeting.

3 - 22

4 REQUEST FOR CALL IN - WASTE DISPOSAL CONTRACT INTERIM ARRANGEMENT AGREEMENT - PUBLIC

To consider the 'Request for Call-In'. (The portfolio holder and the Lead Officer identified in the report have been summoned to attend the meeting).

The following documents are attached in respect of the public papers: -

- (A) The public Executive decision record.
- (B) The relevant form for the 'Request for Call-In' lodged by Councillors Josh Jones and Sir Albert Bore.
- (C) The public report considered by the Cabinet in reaching its decision

5 REQUEST(S) FOR CALL IN/COUNCILLOR CALL FOR ACTION/PETITIONS RECEIVED (IF ANY)

To consider any request for call in/councillor call for action/petitions (if received).

6 **OTHER URGENT BUSINESS**

To consider any items of business by reason of special circumstances (to be specified) that in the opinion of the Chairman are matters of urgency.

7 **EXCLUSION OF THE PUBLIC**

That in view of the nature of the business to be transacted which includes exempt information of the category indicated the public be now excluded from the meeting:-

Exempt Paragraph 3

P R I V A T E A G E N D A

8 **REQUEST FOR CALL-IN - WASTE DISPOSAL CONTRACT INTERIM ARRANGEMENT AGREEMENT - PRIVATE**

Item Description

9 **OTHER URGENT BUSINESS (EXEMPT INFORMATION)**

To consider any items of business by reason of special circumstances (to be specified) that in the opinion of the Chairman are matters of urgency.

10 **AUTHORITY TO CHAIRMAN AND OFFICERS**

Chairman to move:-

'In an urgent situation between meetings, the Chairman jointly with the relevant Chief Officer has authority to act on behalf of the Committee'.

Item 4

Details**Status**

Decision Subject To Call In

Title

Waste Disposal Contract Interim Arrangement Agreement

**Urgent Decision -
Not in Forward
Plan**

No

**Details for Agenda
Sheet**

Report of the Corporate Director, Place

**Implementation
Date (not before
meeting on)**

Tue 11 Dec 2018

Purpose**Key Portfolio**

----- N/A -----

**Include item on
Forward Plan/ Key
Decision**

No

Decision Maker**Reason For Key
Decision****Relevant
Documents****Is Private**

No

Directorate**Other Information****Private Reason****Decision Outcome**

On 11 December 2018, Cabinet:-

- (i) Noted the contents of this report;
- (ii) Authorised the Corporate Director of Place to enter into a 5 year Interim Arrangement Agreement for the provision of waste disposal services with Veolia
- (iii) Delegated 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;
- (iv) Delegated authority to the City Solicitor (or their delegate) to execute all other necessary contractual documentation to effect this outcome.

THE DEADLINE FOR CALL IN IS 1600 HOURS ON TUESDAY 18 DECEMBER 2018.

On the 14 December 2018 at 10.06am, a request for call-in was submitted by Councillors Josh Jones and Sir Albert Bore. No action on the decision can be taken until the request for call-in has been considered by the Resources Overview and Scrutiny Committee on Thursday 20 December 2018 at 1400 in Committee Room 6, Council House, Victoria Square, Birmingham, B1 1BB.

Rating

Yes

**Is the Decision
Maker Aware of the
Decision**

No

**Is the Head of
Services Aware of
the Decision**

No

**Is Decision County
Wide**

No

**Would the
recommended
decision be
contrary to the
budget and policy
framework**

No

**Decision Maker
Role**

Decision Options

Additional Information

Reg 10

Reg 11

Decision Criteria

This Decision does not contain any decision criteria records.

Wards

This Decision does not contain any Ward records.

Topics

This Decision does not contain any Topic records

Overview and Scrutiny

This Decision does not contain any Overview and Scrutiny records.



Appendix 2: Request for Call In – Pro-forma

To:

Committee Services, Room 315, Council House.

E-Mail: LESCommitteeServicesAll@birmingham.gov.uk (marked "For the attention of Dave Smith")

Date: 14th December 2018

Please arrange for a meeting of the

Resources

O&S Committee

to be called to discuss the following executive decision:

Title: Waste Disposal Contract Interim Arrangement Agreement

Taken By: Cabinet

On: 11th December

Reason for request:

- | | | |
|--|--|-------------------------------------|
| (a) 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; | <input checked="" type="checkbox"/> |
| | 2. the decision appears to be inconsistent with any other form of policy approved by the full Council, the Executive or the Regulatory Committees; | <input checked="" type="checkbox"/> |
| | 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); | <input checked="" type="checkbox"/> |
| (b) 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; | <input checked="" type="checkbox"/> |
| | 5. the Executive appears to have overlooked some relevant consideration in arriving at its decision; | <input checked="" type="checkbox"/> |
| | 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; | <input checked="" type="checkbox"/> |
| | 7. the decision appears to be particularly "novel" and therefore likely to set an important precedent; | <input type="checkbox"/> |
| | 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. | <input checked="" type="checkbox"/> |



(c) Has the Executive decision been properly taken?

9. the decision appears to give rise to significant legal, financial or propriety issues; ☒

10. the notification of the decision does not appear to have been in accordance with council procedures; ☐

(d) Does the Executive decision particularly affect a District?

11. the decision appears to give rise to significant issues in relation to a particular District. ☐

Councillor

Josh Jones

(Signed)

(Print Name)

Councillor

Sir Albert Bore

(Signed)

(Print Name)



Appendix 3: Criteria For 'Call In'

These are the criteria against which the Council expects an O&S Committee to judge any "request for call in". The Council does NOT expect an Overview and Scrutiny Committee to call in an Executive decision UNLESS one or more of the following circumstances applies –

	(a) 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);
	(b) 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 so to do;
7	the decision appears to be particularly "novel" and therefore likely to set an important precedent;
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.
	(c) Has the Executive decision been properly taken?
9	the decision appears to give rise to significant legal, financial or propriety issues;
10	the notification of the decision does not appear to have been in accordance with council procedures;
	(d) Does the Executive decision particularly affect a District?
11	the decision appears to give rise to significant issues in relation to a particular District.

PUBLIC REPORT

Item 4

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

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
11th December 2018



Item 4

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 9th July 1993 for the duration of 25 years, and the contract commenced on 17th January 1994, expiring on 16th January 2019.
- 3.2 On 28th 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 13th 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 28th 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">(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act;(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
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">(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;(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;(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.
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">(a) tackle prejudice, and(b) promote understanding
5	<p>The relevant protected characteristics are:</p> <ul style="list-style-type: none">(a) age(b) disability(c) gender reassignment(d) pregnancy and maternity(e) race(f) religion or belief(g) sex(h) sexual orientation

Item 4

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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