

## BIRMINGHAM CITY COUNCIL

## PUBLIC REPORT

<b>Report to:</b>	<b>CABINET</b>
<b>Report of:</b>	<b>Director of Property</b>
<b>Date of Decision:</b>	<b>26 July 2016</b>
<b>SUBJECT:</b>	<b>HS2: Replacement Site for the Incinerator Bottom Ash Plant, Tameside Drive, Castle Bromwich</b>
<b>Key Decision: YES</b>	<b>Relevant Forward Plan Ref: 002083/2016</b>
<b>If not in the Forward Plan: (please "X" box)</b>	Chief Executive approved <input type="checkbox"/> O&S Chairman approved <input type="checkbox"/>
<b>Relevant Cabinet Member:</b>	<b>Councillor John Clancy – Leader of the Council</b>
<b>Relevant O&amp;S Chairman:</b>	<b>Councillor Mohammed Aikhlaq – Corporate Resources and Governance O&amp;S Committee</b>
<b>Wards affected:</b>	<b>Tyburn and South Yardley</b>
<b>1. Purpose of report:</b>  1.1 To update Cabinet on the implications of the HS2 requirement to relocate the Council's existing Incinerator Bottom Ash (IBA) Plant located off Tameside Drive in Castle Bromwich as shown edged black on the attached plan at appendix 1 and to note that an alternative site has been identified as the former Atlas Works on Redfern Road, Tyseley as shown edged black on the attached plan at appendix 2 .	
<b>2. Decision(s) recommended:</b> That Cabinet:-  Subject to agreeing a funding package with HS2 that will fully reimburse the Councils costs associated with the relocation on the basis of Equivalent Reinstatement under Rule 5 of section 5 of the Land Compensation Act 1961,  2.1 Authorise the Director of Property to: <ul style="list-style-type: none"> <li>i) negotiate the transfer of the preferred site at Redfern Road on procurement by HS2 to the Council to facilitate the relocation of the IBA plant.</li> <li>ii) negotiate a surrender of the existing lease to Veolia on land at Tameside Drive and to negotiate the re grant of a lease to Veolia of the replacement site (if required) at cost to HS2.</li> <li>iii) deal with any other property transactions that may be required including the acquisition of any additional land that may be identified to facilitate the relocation of the IBA plant at cost to HS2.</li> <li>iv) negotiate, in conjunction with the Strategic Director of Finance and Legal the terms for any relocation agreements and costs agreement with HS2 necessary to document the details of the relocation and repayment or funding of costs to BCC for the relocation project.</li> </ul> 2.2 Authorise the (Acting) Strategic Director of Place to: <ul style="list-style-type: none"> <li>i) commence detailed assessments for the preferred site in order to progress pre-planning discussions and to commence negotiations for any changes required to the existing waste contract with Veolia.</li> <li>ii) procure (via Single Contractor Negotiation if necessary) and place orders with specialists needed to prepare for the potential relocation including but not limited to planning/compensation/project management, design and construction of the replacement site, closing down the existing IBA, environmental/waste/other licences or consents, surveys and/or investigations needed for the replacement site and bring a further report in due course should this be required with respect to the actual relocation.</li> </ul> 2.3 Authorise the City Solicitor (including Interim City Solicitor) to negotiate, execute and complete all relevant legal documentation to give effect to the above recommendations.	
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### **3. Consultation**

Consultation should include those that have an interest in the decisions recommended

#### **3.1 Internal:**

The Deputy Leader of the Council, the Cabinet Member for Clean Streets, Recycling and Environment and Ward Members for Tyburn and South Yardley have been consulted on the report and support it going forward for an executive decision. Officers from City Finance, Legal and Democratic Services and Birmingham Property Services have been involved in the preparation of this report.

#### **3.2 External:**

Consultation has taken place with Veolia Environmental Services (Birmingham) and their sub-contractor Ballast Phoenix as the changes impact on the current contract and lease with Veolia for Castle Bromwich. The Environment Agency has given direction around the proposed alternative site.

### **4. Compliance Issues:**

#### **4.1 Are the recommended decisions consistent with the Council's policies, plans and strategies?**

The proposal contributes towards the strategic outcomes outlined in the 'Council Business Plan and Budget 2016+'. The proposal will deliver a major regeneration project in the form of the HS2 line and will secure skills, economic investment and employment within the City. It also encapsulates the Council's values to work with public services, businesses and the people of Birmingham to create a city that is fairer, more prosperous and more democratic. The proposal is in line with the Future Waste Strategy under "Sustainable Neighbourhoods".

#### **4.2 Financial Implications**

(Will decisions be carried out within existing finance and Resources?)

There will be no financial impact on the City Council of these proposals provided the Council acts reasonably in mitigating its losses. HS2 are obliged to reimburse all of the Council's reasonable costs for the relocation of the IBA plant on the basis of Rule 5, Section 5 of the Land Compensation Act 1961 and the recommendations in this report. The Council has also agreed that it will identify the new IBA site, and obtain any necessary licences/approvals. A funding package will be agreed with HS2 to ensure that all the costs expended are recovered and an appropriate legal indemnity secured. It is incumbent on the Council to mitigate its losses as part of the Compensation Code when compulsory acquisition becomes certain (i.e. a General Vesting Declaration (GVD) is made or Notice of Entry (NoE) is served).

The day to day operational costs of the facility are met by Veolia and there should be no financial consequence to the City Council as described above. If there was a delay to the new site becoming operational the City Council, notwithstanding the requirements for it to act reasonably in mitigating its losses, could be liable for the Landfill Tax on any bottom ash diverted to landfill, if not met by HS2. It should be noted that bottom ash is categorised as inert waste and would cost £2.65 per tonne to dispose of at landfill. In a full year this cost could be £0.2m based on current volumes. Any other potential costs as a result of delays (e.g. of alternative disposal, transport), if not met by HS2, would have to be assessed at the time they became apparent.

#### **4.3 Legal Implications**

The Council has a general power of Competence under Section 1 of the Localism Act 2011. The Council has powers to acquire and dispose of property under S120-123 Local Government Act 1972. HS2 is being constructed under the High Speed Rail (London to West Midlands) Bill that is currently before Parliament due for Royal Assent at the end of 2016 in time for construction to start in 2017. The Bill will give powers allowing the compulsory acquisition of the IBA plant which is within the land needed for construction of HS2. HS2 have stated that they currently require the IBA by 1<sup>st</sup> September 2017 and can use their compulsory acquisition powers if the land is not acquired voluntarily by that date.

#### **4.4 Public Sector Equality Duty**

An Equality Assessment screening has been undertaken that confirms an EA is not required for the purpose of this report.

## **5. Relevant background/chronology of key events:**

- 5.1 The City Council's IBA plant is currently located off Tameside Drive in Castle Bromwich. The plant takes the residual ash from the City Council's Energy Recovery Facility (ERF) in Tyseley. The process essentially separates metal from the ash using magnets to extract ferrous metal and eddy current separators to extract non-ferrous metals. The remaining IBA is then graded by particle size by crushing and screening to produce a graded, quality material that is useable as substitute aggregate in such applications as road building. As a result of the overall process very little of the ash produced by the Tyseley Incinerator goes to landfill.
- 5.2 The current IBA plant can handle up to 150,000 tonnes of residual ash per annum and is an integral part of the City Council's municipal waste strategy and the objective to reduce the amount of waste going to landfill. The operation of the plant forms part of the City Council's Waste contract with Veolia. The current Waste contract comes to an end in January 2019 and the City Council has commenced work on its retendering. Ballast Phoenix operates and manages the IBA plant on behalf of Veolia.
- 5.3 The HS2 scheme directly runs through the location of the current IBA plant as shown in appendix 1, which therefore needs to be relocated. The site is located at the mouth of the new portal where the HS2 rail track will emerge from the underground tunnel. HS2 Ltd have stated that the tunnel and its approach is a key element of their construction programme and that they need the current IBA site early in the process (understood to be September 2017). Detailed discussion has taken place with representatives from HS2 around the timescales but it appears that this site is identified as being on their critical path and the timescale and location at this stage are not negotiable. The adjacent Household Recycling Centre (also operated by Veolia under the Waste contract) can be reconfigured at cost to HS2 and will remain in-situ during the HS2 construction works and in the future.
- 5.4 The identification and progression of a relocation site at an early stage is therefore required to ensure that any gap in the operation of an IBA facility is kept to a minimum. Any delay could result in waste being diverted to landfill (having a financial and reputational impact on the Council). The powers to construct and build the new high speed railway in the parliamentary Bill give the Secretary of State for Transport the power to Compulsory Acquire the land needed. Royal Assent for the Bill is Programmed for the end of 2016. Arrangements have been made for all external work to be billed direct to HS2 and should the scheme not proceed before the IBA plant is decommissioned in circa July 2017 the City will not be disadvantaged.
- 5.5 The City Council has received and accepted assurances from High Speed Two Limited for the relocation and 'modern equivalent reinstatement' under the Compensation Code of the IBA plant. Under the assurances (and the Compensation Code) the City Council has a duty to mitigate its loss and identify a relocation site and obtain all the necessary licenses and approvals for the operation of the plant at the alternative site with all reasonable costs being met by HS2. The Council must demonstrate that it is taking all reasonable steps to do this by working with the acquiring authority.
- 5.6 The City Council appointed Ove Arup & Partners Limited to undertake a Site Options Assessment Report to determine the most suitable site for the relocation of the IBA plant. The report, funded by HS2 is in two parts. The first part, picking up the design and technical requirements of such a facility along with an assessment of what constitutes a 'modern equivalent facility'. The second part, a search of appropriate sites and the identification of a preferred site which is identified as the former Atlas Works on Redfern Road, Tyseley. (see appendix 2). A range of further specialists will be needed to complete the relocation project in areas such as securing planning permission, environmental/waste consents, project management, compensation advice, and construction of the replacement site.
- 5.7 HS2 has agreed to negotiate and procure acquisition of the new site directly with it being transferred to the Council's freehold ownership on completion.

- 5.8 The City is currently developing business continuity options with Veolia and Ballast Phoenix to mitigate against any gaps in service provision that may occur when the site is vested so that costings for alternative interim options are clear and discussions with HS2 can be held to seek assurance against these options.
- 5.9 Procurement activity associated with this proposal will be in accordance with the Procurement Governance Arrangements. If some of the required specialist services cannot be procured through existing Council framework agreements or “Find it in Birmingham”, then it is proposed that consent be granted for commissions to be sourced via Single Contractor Negotiations. The approvals requested in 2.1 to 2.3 provide evidence to HS2 that the Council is committed to mitigating its losses.

## **6. Evaluation of alternative option(s):**

- 6.1 Not to proceed with the relocation will mean that HS2 will vest the land under their compulsory acquisition powers. Also if the relocation is not progressed a critical part of the land required by HS2 for the construction of the line cannot be made available in a timely manner. This is not a viable option due to the close working relationship with HS2 and the Councils commitment to help deliver the scheme.
- 6.2 If we do not progress the replacement site now there will be a significant gap in provision once the existing site is compulsorily acquired. The Council would be at some financial risk as under the Compensation Code the claimant has a duty to mitigate its loss from the time a GVD or NoE is served by the acquiring authority.
- 6.3 It is not possible to wait until such time as the current waste contract is retendered as the contract expires in 2018, and the site is required and will have been vested and decommissioned by HS2 in September 2017 if the plant has not been relocated.

## **7. Reasons for Decision(s):**

- 7.1 To support the relocation of the IBA plant to the current preferred site.

<b>Signatures</b>	<b><u>Date</u></b>
Cllr John Clancy Leader of the Council .....	.....
Peter Jones Director of Property .....	.....

## **List of Background Documents used to compile this Report:**

Relevant Officer's file save for confidential information.

## **List of Appendices accompanying this Report (if any):**

- Existing site plan Tameside Drive
- Relocation site plan Redfern Road